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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 50 20 FEBRUARY 2013 PAGES 5420 TO 5460

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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

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1 as an RDO, and where?
 2 MR PHATSHA: That was in the year 1982.
 3 MR MPOFU: Yes, and where was that?
 4 Which mine was that?
 5 MR PHATSHA: I was at St Helena.
 6 MR MPOFU: Right, and then until which
 7 year?
 8 MR PHATSHA: I arrived in St Helena in
 9 1982. I was there for 10 years.
 10 MR MPOFU: Yes, after that – okay, I'll
 11 take you through this quickly. Is it correct that after
 12 that you then went to work at a place called Venlab, which
 13 is in Sasol, or Sasolburg, for another seven years?
 14 MR PHATSHA: It is so.
 15 MR MPOFU: And then after that you went
 16 to work at Western Deep Levels for another seven years from
 17 about 2000.
 18 MR MAHLANGU: What is the last place,
 19 Sir?
 20 MR MPOFU: Western Deep Levels.
 21 MR PHATSHA: It is so.
 22 MR MPOFU: And at Lonmin, as it says in
 23 your statement, you started in 2007 until now, so about six
 24 years.
 25 MR PHATSHA: That is so.

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1 MR MPOFU: And currently your earnings,
 2 or at least as at the time of August last year, your
 3 earnings were over, just over R4 000, and you also had a
 4 sleep-out allowance of more than R1 000, but the combined
 5 effect of those was still less than R6 000. Is that
 6 correct?
 7 MR PHATSHA: It reached the amount of R5
 8 000, that is including the amount for sleeping out.
 9 MR MPOFU: Yes. Now in your statement
 10 you also say that you heard about the action taken by the
 11 workers and you joined on the 10th. Is that so?
 12 CHAIRPERSON: May I ask you, which shaft
 13 did you work at?
 14 MR MPOFU: Yes.
 15 MR PHATSHA: 3 Shaft, known as Bob.
 16 MR MPOFU: What you call Bob, is that
 17 what is known as the Eastern Platinum Shaft?
 18 MR PHATSHA: That is also known as
 19 Eastern Platinum.
 20 CHAIRPERSON: And you had a living-out
 21 allowance. Where do you live?
 22 MR PHATSHA: I was staying at Wonderkop.
 23 CHAIRPERSON: Wonderkop, thank you.
 24 MR MPOFU: Thank you, Chairperson. Do
 25 you still stay there, in a shack?

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1 MR PHATSHA: Yes, I have a shack at
 2 Wonderkop.
 3 MR MPOFU: Thank you.
 4 MS HEMRAJ SC: Mr Mpofo, the R5 000, is
 5 that a gross salary or a net salary?
 6 MR MPOFU: I think it is net, Chairperson
 7 and Commissioners, yes. I think it's net, but I'll verify
 8 that during the tea break. In fact, what I propose to do
 9 with either this one or one of the next witnesses is just
 10 simply to put a payslip so that we have a sample of one of
 11 them. Thank you. Now I don't think we're going to find
 12 anyone else who has been an RDO for as long as you have
 13 been, so maybe before I get into the sequence of events,
 14 could you just tell the Commission about the nature of the
 15 job that you have to do as an RDO?
 16 MR PHATSHA: This is inside the mine. We
 17 work with machines there, we push the machines inside and
 18 we'll pull it out and then we also have, there is what he
 19 refers to as ropes, which we put inside into the Milford
 20 These are pipes, Mr Chairperson, to remove the dust, to
 21 blow the dust out, and also ropes, pipes that contain
 22 water.
 23 MR MPOFU: And is the work in one of the
 24 footages that we're going to play where you speak, you
 25 describe the work as painful. Is that –

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1 MR PHATSHA: It is so, yes.
 2 MR MPOFU: Can you then explain to the
 3 Commission what is so hard and painful about this job?
 4 MR PHATSHA: Firstly the machine that we
 5 use for tracking, for burrowing into the rock, it's a heavy
 6 machine. One has got to pick that machine up. One puts
 7 the jumper inside this machine and then pick it up. It is
 8 heavy. In using this kind of a machine one has got nobody
 9 to assist him. You do this all by yourselves, whereas in
 10 other shafts people doing this job have got assistants.
 11 MR MPOFU: And is it so that for the, all
 12 the years you worked as an RDO, except now at the Eastern
 13 Shaft, you have worked without an assistant?
 14 MR PHATSHA: All the mines that I
 15 mentioned from St Helena to Deep Levels to a place called
 16 Winkelhaak, I was doing this job alone with nobody
 17 assisting me.
 18 MR MPOFU: Yes, and can you tell the
 19 Commission anything about the safety issues or the dangers
 20 of doing this type of work?
 21 MR PHATSHA: The danger, Sir, involved
 22 there is you switch this machine off and you hit against
 23 the rock, one can easily cut off his fingers.
 24 MR MPOFU: Yes, and in your 30 years'
 25 experience, what kind of injuries or fatalities have you

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1 observed, associated with this work?
 2 MR PHATSHA: Many workers have died, Mr
 3 Chairperson, whilst holding this machine, grinding against
 4 the rock, what he refers to as the table. This is now the
 5 ceiling above the hole, then sinks in and falls onto them,
 6 that is the rock.
 7 MR MPOFU: Sorry, he said something about
 8 others being crushed and breaking limbs.
 9 MR PHATSHA: That is the table, that is
 10 the roof, falls onto this person. Either he dies or he
 11 gets a fractured, gets broken.
 12 MR MPOFU: Thank you very much. Now on
 13 the 10th, we were talking about the 10th. We know, the
 14 Commission knows that –
 15 CHAIRPERSON: 10th of August 2012?
 16 MR MPOFU: 10th of August 2012. Thank
 17 you, Chairperson. The Commission already knows that there
 18 was a march to the LPD offices. At what stage did you join
 19 that march, if at all?
 20 MR PHATSHA: I arrived late at the LPD.
 21 MR MPOFU: Okay, at that stage, what were
 22 the workers doing?
 23 MR PHATSHA: When I arrived, Mr
 24 Chairperson, this was at the time that the workers were on
 25 their way back, returning.

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1 [11:23] MR MPOFU: Okay, there's also undisputed
 2 evidence that after that there was a decision to have a
 3 meeting on the 11th of August near the stadium, which
 4 according to your statement you, or rather after which
 5 there was a march, which according to your statement you
 6 were part of. Can you then explain to the Commission as to
 7 at what stage did you join the meeting of the 11th, or the
 8 march?
 9 MR PHATSHA: Again on the 11th I was late.
 10 I met the employees on their return from – sorry, the
 11 workers weren't there and it was on their way back that I
 12 came across them.
 13 CHAIRPERSON: Did you say "I met the
 14 workers on their return from Sorry," or is that just a word
 15 you, Mr Interpreter, that you inserted to apologise for the
 16 fact that you're interrupting, or did he talk about a place
 17 called Sorry?
 18 MR MAHLANGU: It was used by him. He
 19 said the sentence, and then said sorry. I interpreted it,
 20 and then he continued that "I met the workers on their way
 21 back."
 22 CHAIRPERSON: I see, so there isn't a
 23 place called Sorry. I thought it might have been like Stop
 24 Nonsense.
 25 MR PHATSHA: No, I was apologising.

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1 MR MPOFU: If there was, Chairperson, it
 2 would be next to Stop Nonsense. Okay, now these workers
 3 that you say were coming back, they were coming back from
 4 where and what – were they walking, were they running?
 5 MR PHATSHA: They were coming back from
 6 the NUM offices.
 7 MR MPOFU: Okay, and what did you observe
 8 about them and what did you hear as something that had
 9 happened there?
 10 MR PHATSHA: As I was proceeding towards
 11 them, I heard the sound of a gun and people started
 12 running, coming back.
 13 MR MPOFU: Yes, and according to your
 14 statement you say that you heard that two strikers had been
 15 shot dead. Is that correct?
 16 MR PHATSHA: It is correct, yes.
 17 MR MPOFU: In your statement it says that
 18 you thereafter went home.
 19 MR PHATSHA: Thereafter yes, I went home.
 20 MR MPOFU: Sorry, Chairperson. Sorry,
 21 this technology –
 22 CHAIRPERSON: - eject people whose cell
 23 phones went off, but if I eject you then who will lead the
 24 witness?
 25 MR MPOFU: Yes, that will be a bigger

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1 problem. I'm sorry, I'm very sorry, Chairperson. Sorry,
 2 Mr Phatsha, for that rude interruption. Yes, now I was
 3 saying in your statement it says you went home. In actual
 4 fact before you went home, did you go to the koppie?
 5 MR PHATSHA: Yes, we went and arrived at
 6 the koppie.
 7 MR MPOFU: Right, and you did not stay
 8 long and you went home.
 9 MR PHATSHA: I wasn't long on the koppie.
 10 I then proceeded homewards.
 11 MR MPOFU: Right, then it says that you
 12 did not – this was Sunday, is that correct?
 13 MR PHATSHA: Yes.
 14 CHAIRPERSON: The 11th was the Saturday.
 15 MR MPOFU: Was a Saturday, that's
 16 correct, Chair.
 17 MR PHATSHA: The 11th, yes, was Saturday.
 18 MR MPOFU: Thank you, Chair. That was my
 19 mistake. And then you say that for the next three days, in
 20 other words that would be now Sunday, Monday, Tuesday, you
 21 did not, you were going in and out but did not observe
 22 anything of significance, and you were going there to check
 23 if there was any progress with the workers' action. How
 24 long, on average how long would you spend on those days
 25 when you were going in and out, without staying for long?

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1 MR PHATSHA: I would be there for a very
2 short while.

3 MR MPOFU: Right, but in any event on the
4 15th you did spend the day at the koppie. Is that correct?

5 MR PHATSHA: Yes, I was there for the
6 whole day.

7 MR MPOFU: And once again evidence has
8 been led – can I just put it this way, that you did observe
9 both Mr Zokwana and Mr Mathunjwa's visits on the 15th in the
10 late afternoon. Is that correct?

11 MR PHATSHA: Yes, it's true. I saw them.

12 MR MPOFU: And the workers had asked Mr
13 Mathunjwa, because he came when it was already getting
14 dark, that he should come back the following day. Can you
15 confirm that?

16 MR PHATSHA: It is correct.

17 MR MPOFU: You then state that on that
18 day, the 16th, you only came back to the koppie at about 2.
19 Is that correct?

20 MR PHATSHA: It is so.

21 MR MPOFU: And then Mr Mathunjwa visited,
22 did his second address to the workers. Can you just
23 explain to the Commission what, more or less what he said
24 to the workers on his second visit?

25 MR PHATSHA: When Mr Mathunjwa came for

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1 the second occasion he said to the workers, he pleaded us
2 to go back to places where we stay because the situation
3 that he has observed now is tense and he does not think
4 there would be anything right going on.

5 MR MPOFU: You also state that he, in
6 pleading as you explained, he went down on his knees, but
7 that his request was not accepted by the workers. What was
8 the view of the workers to his pleas of returning to work?

9 MR PHATSHA: The workers insisted they
10 wanted to see the employer, they wanted to hear from the
11 employer what it is that he had to say to them as his
12 employees.

13 MR MPOFU: Yes, and can you explain to
14 the Commission what it is that they wanted the employer to
15 come and say or talk about?

16 MR PHATSHA: What we wanted from the
17 employer, Mr Chairperson, was money in the amount of R12
18 500.

19 MR MPOFU: Right, you then say that
20 shortly after Mr Mathunjwa left, you saw one of the Nyalas
21 dragging barbed wire and attempting to close you - not you
22 personally but you as a group - to close you in.

23 MR PHATSHA: That is so.

24 MR MPOFU: Then you say that you made
25 some movements – I don't want to lead you on this one.

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1 When you saw this Nyala closing you in, where did you want
2 to go to?

3 MR PHATSHA: We left immediately and the
4 idea was to get out there and proceed to the shack
5 settlement.

6 MR MPOFU: Yes, is that shack settlement
7 the one nearby in front of the big koppie, called Nkaneng?

8 MR PHATSHA: We were running toward
9 Nkaneng settlement, yes.

10 MR MPOFU: Alright, you also say that
11 there were a number of people in front of you, but
12 generally speaking you were one of the people in the front
13 group.

14 MR PHATSHA: It is so.

15 MR MPOFU: Okay, now I would like you to
16 put this in your own words again. You've said that you
17 wanted to go to Nkaneng. Which path or road did you intend
18 to use on your way to the squatter camp?

19 MR PHATSHA: When we were towards the
20 kraal, the Nyala had already closed that opening with the
21 barbed wire. We turned around the kraal in order to get a
22 way toward Nkaneng. We found that the police had closed
23 our way in front of us.

24 MR MPOFU: Chair, if you could just bear
25 with me. Maybe to make this part easy, I refer you to

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1 exhibit L. Go to slide, let's take 194. You said that you
2 were, when you were in front of the, or close to the kraal,
3 it had been closed off. You'll see there that there are at
4 least about three roads or footpaths that are depicted
5 there. Can you indicate to the Commission which of the
6 paths that you were following on your way to the – which of
7 the paths depicted there, that you were following on your
8 way to the squatter camp?

9 MR MAHLANGU: The witness indicates, Mr
10 Chairperson, the one going parallel to the yellow arrow
11 towards the, which passes the kraal on the right-hand side.

12 MR PHATSHA: And we found that it was
13 closed. We then turned left towards the red arrow and ran
14 in that direction.

15 MR MPOFU: Right, can you indicate on
16 which side the entrance of the kraal is?

17 MR MAHLANGU: He indicates the - I think
18 the best would be for me to indicate, to show the
19 Chairperson exactly where he has marked. Where there is an
20 X mark, that would be the entrance to the kraal.

21 MR MPOFU: Okay, thank you. Now you also
22 state in your statement that once you realised that that
23 gap was closed, that you ran behind the kraal to access the
24 road from the other side. Are you, when you say to access
25 the road, referring to the same road that you had indicated

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1 earlier you intended to take?
 2 MR PHATSHA: That is correct.
 3 MR MPOFU: You also say that while all
 4 this was happening, the group was being fired on with
 5 teargas and water canon spray. Is that correct?
 6 MR PHATSHA: It is correct, yes.
 7 MR MPOFU: Now once the front group
 8 emerged from behind the kraal, as you have described, what
 9 then happened?
 10 [11:43] MR PHATSHA: Immediately they emerged
 11 from the kraal, the bullets started ringing, fired live
 12 ammunition and the people were falling down.
 13 MR MPOFU: You indicate that you jumped
 14 over the bodies of the injured or dead colleagues and you
 15 ran into the kraal. Where did you enter the kraal?
 16 MR PHATSHA: I jumped over people that
 17 had fallen there who I thought had died, some were injured.
 18 I went inside the kraal and went out on the other side.
 19 MR MPOFU: Right, did you enter at the
 20 entrance of the kraal?
 21 MR PHATSHA: That is correct, Mr
 22 Chairperson, but at that time I started feeling a pain in
 23 my foot.
 24 MR MPOFU: And how did you exit the
 25 kraal?

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1 MR PHATSHA: I went through the enclosure
 2 which is made of some sharp-edged sticks, over them, over
 3 the thorns, and jumped on the other side. Yes, over the
 4 thorns and jumped through.
 5 MR MPOFU: Chairperson, can I at this
 6 stage, because we are now moving to scene 2 –
 7 CHAIRPERSON: - be an appropriate stage
 8 for the adjournment.
 9 MR MPOFU: Appropriate, thank you, Chair.
 10 CHAIRPERSON: The Commission will now
 11 take the tea adjournment.
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]
 13 [12:04] CHAIRPERSON: Commission resumes. I'm
 14 informed that there's a problem with the toilets here at
 15 the Civic Centre because a water main in the vicinity has
 16 burst and the supply of water to the Civic Centre is not
 17 working at the moment. It was obvious that the toilets
 18 aren't working, so the municipality are, however, working
 19 on it. They're not able to tell us when the supply of
 20 water will be restored, but they are doing their best to
 21 ensure that it is as soon as possible. We will review the
 22 situation after the lunch adjournment, and if it's clear
 23 that the toilets are not going to be working for the rest
 24 of the day we may have to adjourn early because I can
 25 understand the need of those in the auditorium to have

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1 access to working toilets. So we'll carry on now until
 2 lunchtime and then review the situation thereafter. You're
 3 still under oath, Sir, and you're still leading your
 4 witness in chief.
 5 MR MPOFU: Thank you, Chairperson. In
 6 respect of the remarks about the plumbing situation, Chair,
 7 I might indicate that Mr Mathibedi had approached me during
 8 the break to ask that SAPS would defer their cross-
 9 examination till tomorrow, I think when Mr Semenya is here,
 10 so that might be half of the answer, but we will finish the
 11 evidence-in-chief and then, as you say, maybe review it at
 12 that stage.
 13 CHAIRPERSON: And it may be that we'll
 14 have to consider starting earlier tomorrow –
 15 MR MPOFU: Yes.
 16 CHAIRPERSON: - to try to make up some of
 17 the lost time.
 18 MR MPOFU: And a shorter break, ja.
 19 CHAIRPERSON: And take a short lunch
 20 adjournment.
 21 MR MPOFU: Thank you.
 22 CHAIRPERSON: And possibly sit a bit
 23 later in the afternoon. Well, it doesn't help to sit too
 24 long because people get tired and it's not fair to the
 25 witness to expect the witness to be testifying for a long

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1 period. But anyway, we'll bear those facts in mind.
 2 MR MPOFU: Thank you, Chair.
 3 CHAIRPERSON: We'll do what we can to
 4 make up the lost time, if time is in fact lost. But please
 5 proceed.
 6 MR MPOFU: Thank you, Chair. Yes, thank
 7 you, Mr Phatsha, we were dealing with the stage when you
 8 were, where you had jumped from the kraal through the
 9 thorns there, and can you tell the Commission what you
 10 noticed in respect of your left toe?
 11 MR PHATSHA: What I noticed on my toe is
 12 that it was burst open and only a piece of flesh was left,
 13 or remaining, and because of that remain it then gave me
 14 some difficulty running because this was a piece of flesh
 15 which was still sticking, so the whole, the bone in fact of
 16 my toe was completely gone and only a piece of flesh was
 17 remaining.
 18 MR MPOFU: Yes, and how did this affect
 19 you as you were running?
 20 MR PHATSHA: It gave me some difficulties
 21 indeed because the Nyala itself came then from the opposite
 22 direction, so I had to run towards the rocks.
 23 MR MPOFU: Yes, and you've testified that
 24 the injured toe was impeding your movement and also getting
 25 caught by stones and plants on the ground. Is that so?

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1 MR PHATSHA: I sat down, cut off that
 2 piece, and I was then able to run after that.
 3 MR MPOFU: And what happened to the toe,
 4 the piece that you had cut off?
 5 MR PHATSHA: I left it there at that
 6 place.
 7 MR MPOFU: Right, in any event, you then
 8 proceeded towards what is now known as scene 2, the smaller
 9 koppie. Is that correct?
 10 MR PHATSHA: That is so.
 11 MR MPOFU: Alright, before we go to scene
 12 2, I'm going to play you some footage, which I hope is
 13 ready, just regarding the events at scene 1 and I'll ask
 14 you one or two questions. Chairperson, this is the, just
 15 to familiarise everyone, it's the part where they collected
 16 three footages from separate news agencies and it might be
 17 appropriate to give the customary warning to the families
 18 insofar as it might show the actual shooting.
 19 CHAIRPERSON: Yes, we are now going to be
 20 shown some video clips of the shooting and the clips will
 21 show a number of people who were killed in the shooting,
 22 and if their relatives are present they may find watching
 23 the video a particular painful and unpleasant experience.
 24 So those people in the auditorium whose relatives were
 25 killed at scene 1 will be given an opportunity to leave the

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1 auditorium, if they should so wish. I ask the operators
 2 not to show the videos until a minute has elapsed, so
 3 anyone who wishes to leave the auditorium may do so. We've
 4 had this experience in the past where family members saw
 5 the dead bodies of their loved ones and found that
 6 extremely painful to behold, and so I give you an
 7 opportunity, if you're likely to be affected by that, to
 8 leave.
 9 MR MPOFU: Chairperson, I'm sorry, Mr
 10 Interpreter. As it happens, it looks like that particular
 11 footage is not ready, so can we deal with that matter when
 12 it does come. It's actually not even essential for this
 13 stage.
 14 CHAIRPERSON: The warning I gave will
 15 fall away in the light of what Mr Mpofo has now told us.
 16 If it becomes necessary for me to repeat it because the
 17 video clips of the kind that I've described are going to be
 18 shown, I will then give timeous warning of that.
 19 MR MPOFU: Thank you, Chairperson, I'm
 20 indebted to the Chairperson, and sorry for that. Now Mr
 21 Phatsha, you were now at the stage where you have reached
 22 the second scene. According to your statement you found a
 23 piece of cloth, which you described as a piece of a
 24 pinafore, and then you used it to grip and tighten your
 25 foot to lessen the bleeding. Is that correct?

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1 MR PHATSHA: That is so.
 2 MR MPOFU: And can you also now tell the
 3 Commission in your own words what you observed in respect
 4 of people who were being shot, as you state in the
 5 statement, while coming out of their hiding places in the
 6 rocks?
 7 MR PHATSHA: What happened is at the time
 8 people were raising their hands and asking forgiveness,
 9 they were being shot at.
 10 MR MPOFU: And you yourself were taken
 11 and you joined the group of people who were being arrested
 12 and ordered to lie facing down on the ground. Is that so?
 13 MR PHATSHA: Yes, we were made to lie
 14 down.
 15 MR MPOFU: And how did it come about that
 16 you were then separated out from the group?
 17 MR PHATSHA: Then a certain police
 18 officer came forward; he stood aside and pointed at, at
 19 least, I think it was three of us, and said, "You, and you,
 20 and you, stand aside. You must go and have your wounds
 21 dressed and bandaged, because you are seriously injured."
 22 MR MPOFU: Right, then you were then
 23 taken to the side of the people who were injured, as
 24 opposed to those who were being arrested. Is that so?
 25 MR PHATSHA: That is so.

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1 MR MPOFU: Can we now, I'm now going to
 2 show you a very short clip which shows you during the
 3 period that we are talking about. This is the Captain
 4 Ryland videos, clip. Thank you.
 5 CHAIRPERSON: Has it already been seen,
 6 or must it be given an exhibit number?
 7 MR MPOFU: It has not been seen. That
 8 particular clip has not been seen, but it is –
 9 CHAIRPERSON: So it will be DDD2.
 10 MR MPOFU: We'll call it DDD2, yes, thank
 11 you, Chair, or Ms Pillay, with her customary efficiency –
 12 CHAIRPERSON: Alright, Ms Pillay is –
 13 MR MPOFU: DDD5.
 14 CHAIRPERSON: - is gesticulating that I
 15 must wait till she comes down and she will then tell us
 16 what exhibit number we must give it, and we will –
 17 MR MPOFU: Yes, she says it's DDD5 but
 18 we'll get it from her –
 19 CHAIRPERSON: DDD5?
 20 MR MPOFU: Ja.
 21 CHAIRPERSON: Right, we'll wait for her
 22 to come down and she can tell us.
 23 MR MPOFU: She'll tell us when she comes
 24 down. Thank you, Chairperson. Mr Phatsha, you can use
 25 that screen there.

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1 MR PHATSHA: Yes.

2 [VIDEO RECORDING PLAYED]

3 MR MPOFU: - when Mr Phatsha is on the

4 frame, thanks.

5 CHAIRPERSON: Well, they know where Mr

6 Phatsha is on –

7 [VIDEO RECORDING PLAYED]

8 CHAIRPERSON: Perhaps he can wait –

9 [VIDEO RECORDING PLAYED]

10 MR PHATSHA: Yes, that's me. What I'm

11 wearing on my right foot in fact is a sock.

12 MR MPOFU: And on your left foot, which

13 according to the evidence was the injured foot, what can we

14 see there?

15 MR PHATSHA: It's that apron.

16 CHAIRPERSON: Which foot was injured?

17 Your left foot or your right foot?

18 MR PHATSHA: It was my left foot.

19 CHAIRPERSON: I see, and on the video

20 clip we can see what looks like an apron, red and green and

21 yellow, I think. Is that what you're referring to? Is

22 that what you used to bind up the wound?

23 MR PHATSHA: That's a blanket that was

24 lying on my side next to me.

25 MR MPOFU: I think what the Chairperson

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1 wants to know, on your left foot on that frame that we can

2 see there, you can see that there is, that your foot is

3 sort of tied around with a piece of cloth. What piece of

4 cloth was that?

5 MR PHATSHA: It was a brown apron.

6 MR MPOFU: Okay, and then next to –

7 alright, apart from the apron, or pinafore, was there

8 another multicoloured small blanket next to where you were?

9 MR PHATSHA: Yes.

10 MR MPOFU: Okay, in any event the part

11 that we can see on this footage is that when you had

12 already been separated out from the group that was being

13 arrested.

14 MR PHATSHA: Yes, that is so.

15 MR MPOFU: And earlier in the, when we

16 were playing the video, were you able to see the group of

17 people, a number of people facing down on the ground?

18 MR PHATSHA: Yes.

19 MR MPOFU: Thank you. After this scene,

20 were you then taken in an ambulance to the hospital?

21 MR PHATSHA: Yes, I was transported to

22 the hospital.

23 MR MPOFU: And were you taken to the

24 Andrew Saffy Hospital, the hospital in the mine premises?

25 MR PHATSHA: Yes.

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1 MR MPOFU: And then later on you were

2 transferred to Ferncrest. Is that correct?

3 CHAIRPERSON: Ferncrest Hospital.

4 MR PHATSHA: That is so.

5 MR MPOFU: Now before that happened, you

6 were present during a visit to Andrew Saffy Hospital by the

7 President of South Africa, President Zuma. Is that

8 correct?

9 [12:24] MR PHATSHA: I was present.

10 MR MPOFU: And did you interact with the

11 President and explain your situation?

12 MR PHATSHA: Yes, I did explain to the

13 President about my injuries.

14 MR MPOFU: And were you present within

15 hearing and visibility range when two other patients,

16 fellow patients, or fellow workers, also gave explanations

17 to the President?

18 MR PHATSHA: Yes, I was close to them and

19 further I am agreeing with them.

20 MR MPOFU: Yes, Chairperson, at this

21 stage we have obtained the relevant footage. Unfortunately

22 it was obtained belatedly. We have discussed it with the

23 evidence leaders, at least with Ms Pillay. It doesn't

24 really affect anybody else, so unless if there's an

25 objection, and despite the fact that we have not discovered

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1 this footage, with your leave, Chairperson, we'd like to

2 play it. It's not long.

3 CHAIRPERSON: If anyone wishes to cross-

4 examine about it, they can reserve their cross-examination

5 at this stage, and when they're in a position to cross-

6 examine on it, if they wish to do so, they can do it then.

7 It may not be necessary.

8 MR MPOFU: Thanks, Chairperson. What we

9 have done, is we have made copies, CDs, which we'll

10 distribute to the other parties, of this footage, and we've

11 also taken the liberty to prepare a transcript and a

12 translation, Chairperson. The transcript, I'll describe it

13 now, it's shows the three people who are speaking, then we

14 put the Xhosa, original version, which is what will appear

15 on the video, and then put in bold the English translation

16 for each person, but once the document is – we'll now, with

17 the leave of the Chairperson, we'll distribute – both the CDs

18 and the transcript.

19 CHAIRPERSON: Ms Pillay is back in her

20 place. She can tell us what exhibit number and description

21 we must give to the video clip we saw, and then the new

22 video clip and the transcript must also be marked.

23 MS PILLAY: Chair, the video clip of

24 Captain Ryland's video is exhibit I5.

25 MR MPOFU: I5.

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1 CHAIRPERSON: Yes, the video we're now
 2 going to see and the transcript?
 3 MS PILLAY: The video will be DDD2 and
 4 the transcript will be DDD3.
 5 MR MPOFU: Chairperson, I might add also
 6 that the translation, I can own to doing the translation.
 7 If any of the parties want to contest the translation, we
 8 can deal with it at that stage, but I'm –
 9 CHAIRPERSON: You've given, I see you've
 10 given the, as you said –
 11 MR MPOFU: The Xhosa –
 12 CHAIRPERSON: The original isiXhosa
 13 version –
 14 MR MPOFU: Yes.
 15 CHAIRPERSON: - as well as an English
 16 translation.
 17 MR MPOFU: The English translation, ja.
 18 CHAIRPERSON: And if anyone wishes to
 19 object to the translation or amplify it or correct it in
 20 any way, that can be done later.
 21 MR MPOFU: Thank you, Chairperson. Thank
 22 you, alright. Thank you, Operator, if –
 23 CHAIRPERSON: - ask, was this footage
 24 ever broadcast by the SABC, or is –
 25 MR MPOFU: Yes, actually that's where it

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1 was spotted, Chairperson, fortuitously –
 2 CHAIRPERSON: I see.
 3 MR MPOFU: - on a program. I see it when
 4 it was being played.
 5 [VIDEO RECORDING PLAYED]
 6 MR MPOFU: Chairperson, I had satisfied
 7 myself that although there is some shooting scenes, there
 8 is no identifiable victims, and that's all there is, is
 9 this part that has been shown.
 10 [VIDEO RECORDING PLAYED]
 11 MR MPOFU: Sorry, I just wanted to
 12 identify, Mr Phatsha, is that you on the video at this
 13 stage?
 14 MR PHATSHA: Yes, that's me.
 15 MR MPOFU: Okay, and you can play it from
 16 the part where you can see the President, thank you.
 17 [VIDEO RECORDING PLAYED]
 18 MR MPOFU: Just show some of this bit and
 19 then to the next bit.
 20 [VIDEO RECORDING PLAYED]
 21 MR MPOFU: Okay, we've missed something
 22 that is not directly relevant, Chairperson, to what we're
 23 dealing with now. Thank you very much. Mr Phatsha, you
 24 have already said that not only were you able to hear what
 25 the other workers said, that you say that you agree with

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1 them. I just wanted to make sure that I got that
 2 correctly.
 3 MR PHATSHA: Yes.
 4 MR MPOFU: Okay, now I'm going to read
 5 for the record the English translations of what was said,
 6 starting with yourself. You said, "We work painfully," and
 7 I put that "painfully hard," which is the context. "We
 8 work painfully here in the mine. We are dying, but now
 9 when we want money it is not given to us. The employer
 10 does not want to give us money. We are beaten up, or
 11 attacked, for wanting money here at Lonmin." Does that
 12 capture what you said?
 13 MR PHATSHA: That is so.
 14 MR MPOFU: And the next person said that,
 15 Mr Mayisana, "What the police did is we saw a lot of them
 16 gathering. After that we decided to look for an exit.
 17 They then blocked us by means of razor wire. As they were
 18 blocking us with this razor wire, what they did is that
 19 when we wanted to exit on the side, they were" –
 20 MR MATHIBEDI SC: Sorry, Mr Mpofo.
 21 MR MPOFU: Yes, sorry, Mr Mathibedi.
 22 MR MATHIBEDI SC: Mr Chairman, we'd like
 23 to know whether the persons are going to testify or not.
 24 If they're not going to testify we'll never have an
 25 opportunity of cross-examining them.

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1 MR MPOFU: If I may answer, Chair, if the
 2 people are required to testify we'll obviously call them,
 3 but obviously what I'm doing is to circumvent exactly that
 4 because we just don't want to prolong –
 5 CHAIRPERSON: I understand your case is
 6 that this particular TV broadcast was seen by his family.
 7 MR MPOFU: Absolutely.
 8 CHAIRPERSON: And they then reacted to
 9 it.
 10 MR MPOFU: They reacted to it, ja.
 11 CHAIRPERSON: If there's anything in what
 12 the other two people say which the police don't agree with,
 13 and if they want to cross-examine them then we can arrange
 14 for them to be subpoenaed, if necessary, if you don't
 15 arrange –
 16 MR MPOFU: I don't propose to do –
 17 CHAIRPERSON: And they can then be cross-
 18 examined. In other words you can make it possible for the
 19 police to cross-examine them if they wish.
 20 MR MPOFU: That's correct.
 21 CHAIRPERSON: Then they may well after
 22 they've considered what was said, that it doesn't take
 23 things much further and there's no point in cross-
 24 examining, but that's a decision they must make at the
 25 appropriate time. We won't waste any further time on it at

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1 the moment. Carry on, and we will deal with that matter in
 2 a way which will be simply fair to the police at a
 3 subsequent stage, if it should be required.
 4 MR MPOFU: Thank you, Chairperson. Ja,
 5 and also the reason why I asked this witness that this was
 6 done in his presence, was exactly to, not only in his
 7 presence, but within earshot –
 8 CHAIRPERSON: Yes.
 9 MR MPOFU: - was the basis that he saw it
 10 happening.
 11 CHAIRPERSON: I understand he's
 12 expressing his concurrence with what was said, but the two
 13 people who are on the video, Simphiwe Mayisana and Zola
 14 Mkhambhe, are they both available as far as you're aware?
 15 MR MPOFU: Yes, hold on, Chair. Yes, I
 16 know Mayisana is. Yes, we would be able to get them should
 17 that eventually –
 18 CHAIRPERSON: Okay.
 19 MR MPOFU: Thank you, Chair. Yes,
 20 alright, so I'll just read that one again. "What the
 21 police did is, we saw a lot of them gathering. After that
 22 we decided to look for an exit. They then blocked us by
 23 means of razor wire. As they were blocking us with razor
 24 wire, what they did is that when we wanted to exit on the
 25 side they were upon us and shooting at us." That's the

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1 English version of what we saw. Did you hear that being
 2 said in your presence?
 3 MR PHATSHA: Yes, he said that.
 4 MR MPOFU: Right, and then the third one
 5 is Mr Mkhambhe, said, "We were blocked off with razor wire.
 6 I don't know whether we are baboons or," and then he said
 7 something which I found inaudible. He says, "baboons or
 8 'tswenes'" which I'm told is a synonym for baboons in
 9 another language, but for now we'll say it's inaudible, and
 10 then he says, "In other words, we are not regarded as
 11 employees here at Lonmin. We were surrounded by means of
 12 razor wire. As we were being surrounded with that razor
 13 wire, then the soldiers arrived. Then the police lined up
 14 in front of us. When we looked for a gap for exiting, it
 15 was no longer there. We were being shot at. When we run
 16 towards the side which was not blocked, with a view to flee
 17 towards our places of residence, we were blocked by the
 18 police. That is where they killed a really large number of
 19 people. Even if you watched this thing on television, you
 20 did not see it properly. It did not reach or cover the
 21 scene where they were finishing people off, because they
 22 would beat up a person, the person would fall down and
 23 another one would kick the person and then finish him off."
 24 Was that also said in your presence, at the same time?
 25 MR PHATSHA: Yes.

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1 MR MPOFU: Right, we've already
 2 established that after the President's visit, at some stage
 3 you were transferred to another hospital, and that where
 4 your toe was, or rather, you continued treatment on the
 5 place where your toe used to be. Is that so?
 6 MR PHATSHA: Yes.
 7 MR MPOFU: Now before that, a policeman
 8 came to the hospital and asked you about the events of the
 9 16th. Is that correct?
 10 MR PHATSHA: At the hospital.
 11 MR MPOFU: Yes. Chairperson, this
 12 statement is already in the IPID documents. For the
 13 reference of the other parties, it's page 00068 of the IPID
 14 documents, but insofar as –
 15 CHAIRPERSON: Triple zero –
 16 MR MPOFU: No, actually it's quadruple
 17 zero, 000068.
 18 [12:44] CHAIRPERSON: So just so –
 19 MR MPOFU: But we can call it DDD4.
 20 That's correct, Chair. Thank you. Chair, it's DDD4 – is
 21 it 4, Kameshni?
 22 MS PILLAY: It's 4, yes. DDD4.
 23 MR MPOFU: Thank you.
 24 ARBITRATOR: DDD4.
 25 MR MPOFU: 4, yes, thank you,

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1 Chairperson. This statement has also been read back to you
 2 in isiXhosa by myself. Is that correct?
 3 MR PHATSHA: Yes.
 4 MR MPOFU: And you've indicated that you
 5 substantially agree with the statement, but there's one or
 6 two details which you wanted to deal with. On page 2 of
 7 the statement, or 00069, it says that, "I was hit by a
 8 bullet on my left leg." Did you tell someone that you were
 9 shot on your leg?
 10 MR PHATSHA: The mistake in fact that was
 11 made was that the one who was reducing the statement in
 12 writing wrote an incorrect version.
 13 MR MPOFU: Yes, okay, well I suppose a
 14 question of where the leg starts or ends is –
 15 CHAIRPERSON: Do you say that the
 16 statement that you were hit by a bullet on your left leg
 17 was incorrect? Should it be your left foot?
 18 MR PHATSHA: That is so.
 19 MR MPOFU: Thank you. Thank you,
 20 Chairperson. And then you also say that the person who
 21 wrote here did not capture what you have said about your
 22 cutting off your own toe, but apart from that you agree
 23 with the statement. Is that correct?
 24 MR PHATSHA: That is so.
 25 MR MPOFU: Thank you. Now the evidence,

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1 or rather not evidence as such, the version of the police
2 is that people like you, or the other people that you
3 observed there, were shot at in the, while they were
4 attacking the police. What can you say about that?
5 MR PHATSHA: That was not like that.
6 MR MPOFU: And did you attack any person
7 on the 16th of August, on which you were shot?
8 MR PHATSHA: Never.
9 MR MPOFU: Okay, now I'm sorry to take
10 you back. There's just one detail which I omitted to deal
11 with. Actually it's two details. Can you tell the
12 Commission, there's been a lot of evidence about unions and
13 trade unions and trade union involvement in this matter.
14 Can you tell the Commission which union you belonged to on
15 the 16th of August 2012?
16 MR PHATSHA: I was a member of NUM.
17 MR MPOFU: Okay, which union are you a
18 member of now?
19 MR PHATSHA: I'm a member of AMCU.
20 MR MPOFU: And how long had you been a
21 member of the NUM for?
22 MR PHATSHA: Since from 1982 until
23 December.
24 MR MPOFU: Until December 2012, a period
25 of about 30 years?

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1 MR PHATSHA: Yes, that is so.
2 MR MPOFU: Okay, the other detail which
3 we unfortunately did not deal with in the statement is
4 there's also been a lot of evidence since we spoke to you
5 about weapons and so on. What weapons were you carrying,
6 if any, on the 16th?
7 MR PHATSHA: I had a panga and an
8 assegai.
9 MR MPOFU: Sorry, I'm not happy with the
10 translation of the second – the "incula" which was
11 described nicely by Mr Madlanga much earlier, is a
12 different thing to a spear. If that distinction can be
13 just made clear. Sorry, Mr Interpreter.
14 CHAIRPERSON: That is a panga, referred
15 to as a panga –
16 MR MPOFU: No, Chairperson, it's – well
17 ja, I'm happy, he called it, he actually called it "bush,"
18 which I suppose means butcher knife, which is the same
19 thing really, So on that one I'm not quarrelling that
20 much. I think let's rather use the words that the witness
21 uses, ja.
22 CHAIRPERSON: So isn't – no, I just want
23 to be clear, the witness said a bush knife, did he? That's
24 what he said when he described cutting off his toe.
25 MR MPOFU: Yes, he said a bush knife.

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1 CHAIRPERSON: So he had a bush knife –
2 MR MPOFU: Ja, stroke panga, stroke –
3 CHAIRPERSON: Ja, stroke –
4 MR MPOFU: That's the one weapon.
5 CHAIRPERSON: Ja, and then the other,
6 then he also said he had another weapon as well.
7 MR MPOFU: Yes.
8 MR HANABE: It's a –
9 CHAIRPERSON: Are you happy with –
10 MR MPOFU: It's translated as assegai,
11 which –
12 CHAIRPERSON: Are you happy –
13 MR MPOFU: No, I'm not happy with the
14 second one.
15 CHAIRPERSON: You're not happy with that
16 interpretation?
17 MR MPOFU: Yes, thank you, Chairperson.
18 CHAIRPERSON: I see. What should the
19 interpretation be?
20 MR MPOFU: It's –
21 CHAIRPERSON: Well, before you say, let
22 me ask –
23 MR MPOFU: Yes, thank you.
24 CHAIRPERSON: There is an isiXhosa
25 linguist on my left. What's the correct word?

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1 MR TOKOTA SC: Well, I wouldn't know.
2 It's a sharpened instrument.
3 CHAIRPERSON: Alright, he says a
4 sharpened instrument –
5 MR TOKOTA SC: Like an iron -
6 MR MPOFU: Sharpened piece of iron.
7 MR TOKOTA SC: An iron rod which is
8 sharpened –
9 CHAIRPERSON: A sharpened iron rod.
10 MR MPOFU: That's correct, Chairperson.
11 CHAIRPERSON: Are you happy with that?
12 MR MPOFU: Which Mr Madlanga on an
13 earlier date last year had, it's spelt I-N-C-U-L-A –
14 CHAIRPERSON: No, wait a bit. You're
15 going too fast for me. Sharpened iron rod, how it's spelt?
16 MR MPOFU: I-N, for Nellie –
17 CHAIRPERSON: Yes?
18 MR MPOFU: C-U-L-A, and somewhere on the
19 record we –
20 CHAIRPERSON: "Incula?"
21 MR MPOFU: "Incula," that's correct, and
22 somewhere on the record Mr Madlanga described it, ja.
23 CHAIRPERSON: Alright, Mr Interpreter,
24 you heard this discussion between the learned Commissioner,
25 Adv Tokota, and Adv Mpofo, about this word "incula" and

1 what it means. They say it's a sharpened iron rod. Would
2 you go along with that?

3 MR HANABE: I fully agree, Commissioner.

4 MR MPOFU: Thank you.

5 CHAIRPERSON: Alright, so assegai, that
6 isn't quite right. Is that right? The sharpened iron rod
7 is the better translation. Is that correct?

8 MR HANABE: Yes, it is. It is,
9 Commissioner.

10 MR MPOFU: Thank you, Mr Hanabe. Now I
11 just want to ask you this. On the 10th, although you say
12 you arrived at the march late, and on the 11th you also say
13 you arrived late and you were at the back, and so on, but
14 the question I want to ask you is that on those two
15 occasions, what weapon or weapons were you carrying?

16 MR PHATSHA: I had no other weapon
17 besides a stick.

18 MR MPOFU: Now can you tell the
19 Commission why the type of weapons that you were carrying
20 changed from the 10th and 11th to a stick, from a stick, as
21 you explained, to the stage where by the 16th you were
22 carrying "incula" and a butcher knife?

23 MR PHATSHA: The reason we carried these
24 weapons is because –

25 [POWER OUTAGE]

<p style="text-align: center;">A</p> <p>able 5422:10 5423:7 5437:19 5440:2 5445:16 5449:24 5452:16</p> <p>Absolutely 5451:7</p> <p>accepted 5433:7</p> <p>access 5435:23,24 5438:1</p> <p>action 5425:10 5431:23</p> <p>actual 5431:3 5440:18</p> <p>add 5448:5</p> <p>address 5432:22</p> <p>adjourn 5437:24</p> <p>adjournment 5437:8 5437:11,22 5438:20</p> <p>ADJOURNS 5437:12</p> <p>Adv 5459:25,25</p> <p>affect 5439:18 5446:24</p> <p>affirm 5421:8</p> <p>Africa 5446:7</p> <p>afternoon 5432:10 5438:23</p> <p>agencies 5440:16</p> <p>agree 5449:25 5451:12 5455:5,22 5460:3</p> <p>agreeing 5446:19</p> <p>allowance 5425:4,21</p> <p>alright 5434:10 5440:11 5443:12 5445:7 5448:22 5452:20 5459:3,23 5460:5</p> <p>ambulance 5445:20</p> <p>AMCU 5456:19</p> <p>ammunition 5436:12</p> <p>amount 5425:7,8 5433:17</p> <p>amplify 5448:19</p> <p>Andrew 5445:24 5446:6</p> <p>answer 5438:10 5451:1</p> <p>anybody 5446:24</p> <p>anyway 5439:1</p> <p>apart 5445:7 5455:22</p> <p>apologise 5421:3 5429:15</p> 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