

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 53 25 FEBRUARY 2013 PAGES 5658 TO 5769

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 25 FEBRUARY 2013]
 2 [10:09] CHAIRPERSON: The Commission resumes.
 3 I'm happy to report that, as some of you will have
 4 discovered, the toilets are functional; the water system is
 5 flushing, and as you can see, the electricity is working as
 6 well. So it's not necessary for us at this stage to change
 7 venue, so we can continue here in Rustenburg. You're still
 8 under oath, Sir.
 9 SIPETE PHATSHA (CONTD.): Thanks.
 10 CHAIRPERSON: And Mr Mojapelo, you're
 11 still cross-examining.
 12 CROSS-EXAMINATION BY MR MOJAPELO (CONTD.):
 13 Yes, Mr Chair. Good morning, Mr Phatsha.
 14 MR PHATSHA: Morning.
 15 MR MOJAPELO: We were on the 16th, just
 16 after Mathunjwa has left the koppie. You still remember
 17 where we were?
 18 MR PHATSHA: Yes, Sir.
 19 MR MOJAPELO: In paragraph 10 of your
 20 statement you say that you were part of the front group,
 21 trying to leave the koppie when the police deployed the
 22 barbed wire.
 23 MR PHATSHA: No, I was at the back.
 24 MR MOJAPELO: Okay, in paragraph 10 of
 25 your statement, if I can read it back to you, it says,

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1 "Together with many other workers we ran towards the path
 2 next to the kraal with the intention of escaping into
 3 Nkaneng," and then the last sentence says, "There were a
 4 number of people ahead of me, but I was generally speaking
 5 part of the front group."
 6 MR PHATSHA: It is so.
 7 MR MOJAPELO: I want to show you a
 8 picture, L198. Do you see a group of people there next to
 9 a Nyala?
 10 MR PHATSHA: Yes, I see them.
 11 MR MOJAPELO: Do you see the person at
 12 the most front of the group there, the person we famously
 13 know now as Mambush?
 14 MR PHATSHA: I see him.
 15 MR MOJAPELO: You were part of this
 16 group, isn't it?
 17 MR PHATSHA: Yes, but in the middle of
 18 this group.
 19 MR MOJAPELO: Can you just explain to
 20 this Commission what was happening during this period?
 21 MR MAHLANGU: The period on the 16th?
 22 MR MOJAPELO: Ja, during the time when,
 23 this slide.
 24 MR PHATSHA: We were standing and
 25 singing.

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1 MR MOJAPELO: Okay, was that police
 2 vehicle or standing?
 3 MR PHATSHA: It was standing.
 4 MR MOJAPELO: The police vehicle was
 5 standing and you were also standing and singing?
 6 MR PHATSHA: Yes.
 7 MR MOJAPELO: Okay, and then what
 8 happened next?
 9 MR PHATSHA: Nothing happened.
 10 MR MOJAPELO: Okay, as you were singing
 11 there, when you reached next to the Nyala, did you go
 12 forward or did you go back to the koppie?
 13 MR PHATSHA: We went back.
 14 MR MOJAPELO: Back to the koppie?
 15 MR PHATSHA: Yes.
 16 MR MOJAPELO: Okay, and then as you went
 17 to the koppie, what did the police vehicle, the Nyala do?
 18 MR PHATSHA: It started closing up with
 19 the wire.
 20 MR MOJAPELO: Okay, and then?
 21 MR PHATSHA: That one was pulling the
 22 wire, and another one thereafter, we then realised we were
 23 now being boxed up. We then proceeded along the road that
 24 leads to the settlement.
 25 MR MOJAPELO: Okay, the road – so you

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1 went back to the koppie and then the Nyala continued
 2 pulling the wire, and then you came back to the direction
 3 of the Nyala. Is that what you're saying?
 4 MR PHATSHA: Yes, towards the Nyala, but
 5 not straight at it, along the road, we wanted to go out
 6 through the road that leads to the settlement.
 7 MR MOJAPELO: Okay, then what happened
 8 next?
 9 MR PHATSHA: When we came to the kraal
 10 they had already closed. We tried to turn around the kraal
 11 in order to reach the road that leads to the settlement.
 12 It was at this stage that we were being shot at.
 13 MR MOJAPELO: Before you went around the
 14 kraal, what were the police doing, the police who were not
 15 in the Nyalas? Were they shooting?
 16 MR PHATSHA: I wasn't aware of the
 17 shooting at that time, but I saw people collapsing right in
 18 front of me and later I realised that my foot had been
 19 injured.
 20 MR MOJAPELO: Okay, your foot was injured
 21 when you were coming around the kraal, isn't it?
 22 MR PHATSHA: At the time that people had
 23 collapsed in front of me I was jumping over them, and it
 24 was at that time that I started feeling the pain in my
 25 foot.

<p style="text-align: right;">Page 5662</p> <p>1 MR MOJAPPELO: Okay, can we go a little 2 bit back, before we go around the kraal. I want to know 3 whether at the time that you said you came back and you 4 found that the road was closed, what were the police doing 5 at the time? Were they shooting or not? 6 MR PHATSHA: They were shooting. 7 MR MOJAPPELO: Okay, and then now you 8 decided to come around the kraal? 9 MR PHATSHA: Yes. 10 MR MOJAPPELO: Can I just show you 11 pictures L206 and L207? Let's start with L206. 12 CHAIRPERSON: Up to now we've been 13 referring to them as slides. 14 MR MOJAPPELO: Are you able to see 15 yourself at slide 206? 16 MR PHATSHA: I'm not appearing there. 17 MR MOJAPPELO: Okay, but can we accept 18 that you were part of that group? 19 MR PHATSHA: But at the back. 20 MR MOJAPPELO: Okay, the next slide is 21 L207. Are you able to see yourself there? 22 MR PHATSHA: I am not visible there. 23 MR MOJAPPELO: Okay, but we can accept 24 that you are part of this group? 25 MR PHATSHA: But at the back, yes.</p>	<p style="text-align: right;">Page 5664</p> <p>1 MR MOJAPPELO: You can pause there. Do 2 you see this group? 3 MR PHATSHA: Yes. 4 MR MOJAPPELO: Yes, this is the group that 5 is in your own words, generally in the front. 6 MR PHATSHA: It is so. 7 MR MOJAPPELO: You were part of this 8 group, isn't it? 9 MR PHATSHA: Yes, at the back. 10 MR MOJAPPELO: Okay, you can roll it 11 forward. 12 [VIDEO RECORDING PLAYED] 13 MR MOJAPPELO: Okay, when that shooting 14 where there's a large number of bullets that we've just 15 heard, I take it that you were part of the front group? 16 MR PHATSHA: I heard the sound of 17 bullets, yes. 18 MR MOJAPPELO: Okay, where were you? 19 MR PHATSHA: I think at that stage it's 20 when I realised that the others had fallen in front of me. 21 I jumped over them and went into the kraal. At that stage 22 I had also been injured. 23 MR MOJAPPELO: If we just go back just 24 before you turn around the kraal, was it visible, was it 25 clearly visible to you that the police were shooting at</p>
<p style="text-align: right;">Page 5663</p> <p>1 MR MOJAPPELO: Okay, I want to show you 2 now a picture, a video, a video that was after picture 207, 3 I think it's AAA7. 4 MS LEWIS: Mr Chair, I'm sorry, before 5 the video is played, can I just ask whether the shooting or 6 any of the deceased's bodies will be visible on the video? 7 MR MOJAPPELO: No, this one is a side 8 angle. It will not show the deceased, but the usual 9 warning may be made, but I don't – the last time I checked 10 it didn't show – 11 CHAIRPERSON: Alright, the video clip 12 that's going to be shown will show some of the strikers 13 being fired at, and though I'm told that they cannot 14 readily be recognised because it's a side view, those who 15 are related to or loved ones of people who were shot at 16 that time may find viewing it distressing and disturbing, 17 so I shall ask those responsible for showing the clip to 18 wait two minutes to give those who wish to leave the 19 auditorium the opportunity to do so. 20 MR MOJAPPELO: The video can be shown now. 21 CHAIRPERSON: No, people are still 22 leaving the auditorium. Just give them the opportunity to 23 leave the auditorium. I did say two minutes, because I 24 realise that it might take – 25 [VIDEO RECORDING PLAYED]</p>	<p style="text-align: right;">Page 5665</p> <p>1 that time? 2 CHAIRPERSON: Visible or audible? 3 MR MOJAPPELO: Visible. Maybe we can just 4 use visible and audible. 5 MR PHATSHA: When there's sound of 6 bullets, when the sound of firearms being discharged, the 7 police are shooting. 8 MR MOJAPPELO: Okay, what I wanted to know 9 was that it was clear to you that the police were busy 10 shooting at the strikers? 11 MR PHATSHA: It is so yes, I had also 12 been injured at that stage. 13 MR MOJAPPELO: What I want to know is that 14 while it is clear that the police are busy shooting, why 15 did you proceed towards the police? 16 MR PHATSHA: We were not going to the 17 police. We were trying to go through to the road that 18 would lead us to the settlement where we were staying. 19 MR MOJAPPELO: You see, Mr Phatsha, before 20 the police could start shooting, Mr Mathunjwa told you to 21 go home, and you didn't go home, but when the police are 22 shooting, you are going in the direction of the police. 23 MR PHATSHA: This is again where I have 24 to pose a question. 25 MR MOJAPPELO: Okay, respond.</p>

<p style="text-align: right;">Page 5666</p> <p>1 MR PHATSHA: I'm saying, Sir, we have now 2 reached a point here where I have to ask you a question. 3 MR MOJAPELO: Okay, you – 4 CHAIRPERSON: Go ahead and ask the 5 question. 6 [10:29] MR PHATSHA: When the police are shooting 7 at people and people are falling, how can those people that 8 are fallen go back? 9 MR MOJAPELO: Okay, I don't understand 10 your question. 11 MR PHATSHA: Should I repeat myself? 12 CHAIRPERSON: Would you like him to 13 repeat it? 14 MR PHATSHA: I say people had been shot 15 at, Mr Chairperson, they have fallen onto the ground. How 16 can those people stand up and run backwards? 17 MR MOJAPELO: Okay, I don't know whether 18 your question has got something to do with my question. 19 Let me just clarify my question – 20 CHAIRPERSON: I think you can answer the 21 question by saying, at least I assume you would say that 22 you wouldn't expect people who'd been shot and fallen down 23 to get up and run away, but he did run forward. He wasn't 24 lying on the ground. So your question is, why did he not 25 try to run away. I take it that's your question. Is that</p>	<p style="text-align: right;">Page 5668</p> <p>1 MR PHATSHA: We made a cross the other 2 day here, an X mark on the picture where I indicated the 3 entrance to the kraal. I don't see it on this slide. 4 MR MOJAPELO: No, no, we'll go to the 5 entrance of the kraal. I'm talking the period just before 6 you went around the kraal. Isn't it before you went around 7 the kraal, you just told us that the police were busy 8 shooting? 9 MR PHATSHA: It is so. 10 MR MOJAPELO: Yes, and these police were 11 shooting in the vicinity of the small kraal? 12 MR PHATSHA: It is so. 13 MR MOJAPELO: Yes, what I want to know is 14 why do you choose to go to where the police are shooting in 15 the vicinity of the small kraal, and not go away from the 16 shooting and run towards the big kraal? 17 MR PHATSHA: Just repeat the question 18 again. 19 MR MOJAPELO: Okay, you just told us that 20 the police were shooting and they were shooting in the 21 vicinity of the small kraal, and this was even before you 22 ran around the kraal, the small kraal. 23 MR PHATSHA: It is so. 24 MR MOJAPELO: So why are you running 25 towards the police at the small kraal, instead of running</p>
<p style="text-align: right;">Page 5667</p> <p>1 right? 2 MR MOJAPELO: Yes. 3 CHAIRPERSON: Alright. 4 MR PHATSHA: I think I will repeat the 5 question again. How could I have gone back to the place 6 where the bandage was applied on my foot, if I had not gone 7 back? 8 MR MOJAPELO: Mr Chair, I think I will 9 clarify my question with answering it in another way, pen 10 it in another way. Mr Phatsha, can I refer you to slide 11 L25? 12 MR MAHLANGU: Slide L? 13 MR MOJAPELO: 205. 14 MR PHATSHA: I'm looking at it. 15 MR MOJAPELO: Do you see slide 205, there 16 are two kraals there; there's a big kraal and there's a 17 small kraal, which is on the right-hand side of the big 18 kraal. 19 MR PHATSHA: Yes. 20 MR MOJAPELO: And there are white police 21 cars next to the small kraal there. 22 MR PHATSHA: I'm looking at them. 23 MR MOJAPELO: And this is the place where 24 you just told us that the police were busy shooting even 25 before you came across the kraal, around the kraal.</p>	<p style="text-align: right;">Page 5669</p> <p>1 away from the police towards the direction of the big 2 kraal? 3 MR PHATSHA: If you'd repeat the 4 question, I'm not clear what you're saying. 5 MR MOJAPELO: Okay, do you see the big 6 kraal there? 7 MR PHATSHA: I see it. 8 MR MOJAPELO: When the police were 9 shooting, why didn't you run towards the direction of the 10 big kraal? 11 MR PHATSHA: The road passes that kraal, 12 just in front of that kraal. The reason I ran behind the 13 kraal was in order to reach the road, which I could not 14 reach, as it is, the road that leads to the settlement 15 where I stay. 16 MR MOJAPELO: But in that road, you've 17 already told us that there were policemen busy shooting. 18 Why do you run towards the direction of the shooting 19 police? 20 MR PHATSHA: The reason is that I stay in 21 the shack settlement. 22 MR MOJAPELO: Mr Phatsha – 23 CHAIRPERSON: I'm sorry, but I take, the 24 point is that the settlement was behind the police as you 25 were approaching them. Is that correct?</p>

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1 MR PHATSHA: Yes, Sir.
 2 CHAIRPERSON: So you had to run towards
 3 the police, past the police, to get to the settlement?
 4 MR PHATSHA: We were not running
 5 necessarily towards the police, Mr Chairperson. We were
 6 running to save our own lives.
 7 CHAIRPERSON: No, I understand that, but
 8 if the police were between you and the settlement, you had
 9 to run towards the police and past the police to get to the
 10 settlement, didn't you? You've admitted that already.
 11 MR PHATSHA: It is so, yes.
 12 CHAIRPERSON: Tell me, did you have your
 13 bush knife in one hand and your sharpened iron rod in the
 14 other?
 15 MR PHATSHA: That's mine, yes, Sir.
 16 CHAIRPERSON: Thank you. Mr Mojapelo,
 17 please proceed.
 18 MR MOJAPELO: So you chose to run towards
 19 the direction of the police with your weapons in your
 20 hands?
 21 MR PHATSHA: When I was shot at, I had my
 22 arms, yes.
 23 MR MOJAPELO: We've just seen from the
 24 videos there, as your group was approaching the police were
 25 shooting. Do you believe that there was anything that was

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1 going to save you from the bullets of the police?
 2 MR PHATSHA: I was running away. I had
 3 no belief whatsoever.
 4 MR MOJAPELO: When you were at the
 5 mountain, you heard about "intelezi," isn't it?
 6 MR PHATSHA: I heard nothing about
 7 "intelezi."
 8 MR MOJAPELO: You didn't hear that some
 9 people at the mountain believed that "intelezi" will
 10 protect them against the bullets of the police?
 11 MR PHATSHA: That I did not hear.
 12 MR MOJAPELO: Mr Phatsha, I put it to you
 13 that the only reason you could run towards the shooting
 14 police was that you also believed that the bullets will not
 15 be effective towards you.
 16 MR PHATSHA: That I don't know.
 17 MR MOJAPELO: Okay, if we go back to 205,
 18 L, slide 205, other than the direction of the big kraal, do
 19 you see there's a group of people on the open veld there?
 20 MR PHATSHA: Yes, I see them.
 21 MR MOJAPELO: I put it to you, Mr
 22 Phatsha, that if you had the intention of saving your life
 23 you would not have run towards the direction of the police;
 24 you would have chosen to go to the open veld like other
 25 people who are appearing on the picture here.

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1 MR MPOFU: No, no, no, Chairperson, with
 2 the greatest respect, the basis has to be laid. If my
 3 learned friend knows the direction of these people in the
 4 still picture, then he must tell us how he knows it.
 5 MR MOJAPELO: The direction?
 6 MR MPOFU: Which way they were running.
 7 MR MOJAPELO: Whatever the direction,
 8 it's away from the small kraal and the police.
 9 MR MPOFU: How do you know that? You
 10 have to know where they were coming from to know whether
 11 it's away or towards. It's a still photo, Mr Mojapelo.
 12 MR MOJAPELO: I'll rephrase the question
 13 so that there won't be any need for a ruling. Mr Phatsha,
 14 do you see on the, if you're looking at the picture, on the
 15 bottom part of the picture there's an open veld.
 16 MR PHATSHA: I don't see. I only see
 17 some lot of confusion there.
 18 MR MOJAPELO: Okay, why didn't you run
 19 towards that confusion?
 20 MR PHATSHA: I don't understand you, Sir.
 21 MR MOJAPELO: My question is, why didn't
 22 you run away from the small kraal into that area which you
 23 describe as a confusion?
 24 MR PHATSHA: I had already said a person
 25 runs towards a place where he feels he would be safe.

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1 MR MOJAPELO: Okay, let's continue. Can
 2 you go to slide L209? There are white cars there, and then
 3 there is a kraal there.
 4 MR PHATSHA: Yes.
 5 MR MOJAPELO: And there is a pathway that
 6 passes between, more or less between the cars and the
 7 kraal.
 8 MR PHATSHA: I see it.
 9 MR MOJAPELO: Is this the pathway to
 10 Nkaneng?
 11 MR PHATSHA: Yes, that's the road.
 12 MR MOJAPELO: Okay, on this picture,
 13 Nkaneng, is it on the right or on the left, in the
 14 direction of that road, that pathway?
 15 MR PHATSHA: Nkaneng would be on the
 16 lower side of the road.
 17 MR MOJAPELO: Okay, on the picture
 18 there's N there for north.
 19 MR PHATSHA: I can see that, yes.
 20 MR MOJAPELO: Is that the direction to
 21 Nkaneng as you walk past that kraal, towards the letter N?
 22 CHAIRPERSON: The witness is illiterate.
 23 I'm not quite sure whether he understands when you talk
 24 about -
 25 MR PHATSHA: There is no N on the road

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1 that we travel on daily.

2 CHAIRPERSON: That's the kind of answer

3 you get when you ask that kind of question.

4 MR MOJAPELO: Okay, you said – can you

5 tell the difference between left and right?

6 MR PHATSHA: Just repeat the question,

7 Sir.

8 CHAIRPERSON: A question like that is a

9 bit insulting, the way you phrase it. It might be better

10 to say, I take it you can tell the difference between left

11 and right. You know, it's like if I were to ask you, can

12 you read, you'd be very offended, wouldn't you? So don't

13 ask questions that give rise to that kind of response.

14 MR PHATSHA: I get a bit confused, Mr

15 Chairperson, because I am not a learned person and indeed,

16 Chair, I don't know what is the meaning of left or right.

17 MR MOJAPELO: Okay, I'm sorry, I'll try

18 to help you, Mr Phatsha. Can you put that picture in front

19 of you?

20 MR MAHLANGU: Slide 209?

21 MR MOJAPELO: Slide 209.

22 MR MPOFU: Sorry, Mr Chairperson, really,

23 I'm sorry, the witness has said that Nkaneng is on the

24 lower side of the picture. All my learned friend has to

25 establish is which side is it, the one away from the page

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1 or the one next to the margin, or which one is the lower

2 side. I don't understand this.

3 CHAIRPERSON: It doesn't sound like a

4 objection, but it sounds like a helpful hint. I suggest

5 you take it.

6 [10:49] MR MOJAPELO: I'm still confused. I

7 don't know which one is the lower, that is why I wanted to

8 see from his body language.

9 MR MAHLANGU: The witness indicates if

10 you travel from the right-hand side, that is Marikana,

11 towards in a northerly direction, as he indicates, Nkaneng

12 would be in that area.

13 MR MOJAPELO: Okay, so after you have

14 come across the, around the kraal, after you came around

15 the kraal, in order to go to Nkaneng, would you agree with

16 me that you will have to turn left?

17 MR PHATSHA: The reason I turned around

18 the kraal, Mr Chairperson, was to get to the road, the road

19 that comes from Marikana and leading to the shack

20 settlement.

21 MR MOJAPELO: Yes, so the road that is

22 leading to the shack settlement, you have to turn to the

23 left.

24 MR PHATSHA: Yes.

25 MR MOJAPELO: And in order to get into

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1 the kraal, that is the entrance to the kraal, you turned,

2 you had to turn to the right.

3 MR PHATSHA: As you are saying it, yes.

4 MR MOJAPELO: Okay, let's talk about

5 after you were shot and then you are in the kraal. How did

6 you get out of the kraal?

7 MR PHATSHA: I had to climb over the

8 thorns there and I fell outside the kraal and then turned

9 and ran towards the mountain.

10 MR MOJAPELO: Okay, when you left the

11 kraal towards the mountain, I take it now you're talking

12 about the small koppie?

13 MR PHATSHA: I turned towards the big

14 koppie because at that time I had a difficulty in running.

15 Some piece of flesh was still hanging, the bone was

16 damaged, and there was a hippo right in front which I could

17 see causing a lot of damage right in front of me, so I was

18 scared of being run over by that hippo. I turned towards

19 the rocks there, sat on the rocks, first had to get rid of

20 the piece of flesh that was hindering my running before I

21 could run further. I then could run and reach the small

22 koppie. That is where the real shooting took place and

23 where people died. People were raising their hands; even

24 if their hands were risen, they were shot at. Because of

25 the pain that I was feeling and the loss of blood, I could

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1 feel that blood was running out of my system, I picked up a

2 piece of apron, tighten my foot in order to stop the

3 bleeding, and only then did I feel better. Should I

4 proceed further, Mr Chairperson?

5 MR MOJAPELO: Yes, we'd like to know more

6 of what you saw in that small koppie. You said people were

7 being shot. Do you know anyone who was shot?

8 MR PHATSHA: I did not know the people

9 who were there. These are black men and we were all

10 sleeping very painfully on our stomachs.

11 MR MPOFU: I'm sorry, Chairperson, if I

12 may help. That "ihlongwini" is a very deep Xhosa word, so

13 I don't blame the interpreter, but if I may be of help, it

14 means when the grass has been burned the black, the black

15 grass, as it were, and that's the part that was not

16 interpreted.

17 MR MAHLANGU: I didn't get you, Sir. You

18 said the kind of grass?

19 MR MPOFU: No, when you burn grass, and

20 then long after that it becomes black. That place is

21 called "ihlongwini," which is the black grass. That's what

22 he said there. Maybe the witness can confirm.

23 CHAIRPERSON: Mr Tokota confirms that

24 that is correct.

25 MR PHATSHA: That place had been, the

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1 grass had been burned. That is what we refer to it in
 2 Xhosa, Mr Chairperson, a place where grass had been burned,
 3 we refer to this as "ihlongo."
 4 MR MAHLANGU: I did not know this, I must
 5 admit.
 6 MR MOJAPPELO: Okay, this was between the
 7 rocks in small koppie?
 8 MR PHATSHA: That is correct.
 9 MR MOJAPPELO: Mr Phatsha, you say people
 10 were shot that you saw with your own eyes.
 11 MR PHATSHA: My own eyes, yes Sir.
 12 MR MOJAPPELO: Do you know any of those
 13 people that were shot next to you, I mean that you saw?
 14 MR PHATSHA: I did not know them then.
 15 We only came to know each other at the hospital when we
 16 were asking what is your name, from which area do you come
 17 from, and so on.
 18 MR MOJAPPELO: Okay, if I show you a
 19 photo, that is slide L235, this is the photo of the small
 20 koppie -
 21 MR MAHLANGU: 235?
 22 MR MOJAPPELO: 235. Are you able to point
 23 at that photo where you were during that time when the
 24 shooting was taking place?
 25 MR PHATSHA: I am unable to show you,

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1 Sir, because this is not very clear.
 2 MR MOJAPPELO: Okay, and when you were in
 3 the small koppie, did you experience water canons?
 4 MR PHATSHA: They were spraying water on
 5 people and at the same time there was also shooting.
 6 MR MOJAPPELO: Were you, Mr Phatsha,
 7 sprayed with water?
 8 MR PHATSHA: No, I did not, because I was
 9 on the other side on the side of where the people were that
 10 were being sprayed.
 11 MR MOJAPPELO: Okay, look at that photo.
 12 On the left-hand side is a water canon with pure water, and
 13 on the right-hand side is a water canon with blue, or green
 14 water.
 15 MR PHATSHA: That is so. This is exactly
 16 what I saw happening on the small koppie.
 17 MR MOJAPPELO: Yes, what I want to know is
 18 when you were hiding there in the small koppie, what colour
 19 of water from the canon did you see?
 20 MR PHATSHA: White and also blue.
 21 MR MOJAPPELO: Oh, you saw both?
 22 MR PHATSHA: Yes.
 23 MR MOJAPPELO: Any of those people that
 24 you saw being shot, do you know whether they survived or
 25 did they go to hospital?

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1 MR PHATSHA: Just repeat the question,
 2 Sir.
 3 MR MOJAPPELO: Okay, ja I think I put it
 4 in a clumsy way. The people that you saw being shot, do
 5 you know whether they are dead or whether they were taken
 6 to hospital, whether they survived?
 7 MR PHATSHA: I was suffering pains and at
 8 that time I was experiencing terrible pain. Whether there
 9 was people amongst them there are those who died or
 10 survived, I would not be able to say.
 11 MR MOJAPPELO: Okay, and how did you get
 12 to be, to get into an ambulance? How did you – can you
 13 explain how you got from your hiding place and to get to an
 14 ambulance?
 15 MR PHATSHA: What happened is I left the
 16 rocks where I was hiding, went to lie amongst the people
 17 that were being made to lie there; this is the people who
 18 were being arrested and put into Nyalas. I was assisted by
 19 a policeman who realised that I was amongst the seriously
 20 injured. He said those should come one side so that they
 21 could be taken to hospital.
 22 MR MOJAPPELO: Okay, one last question.
 23 You say in paragraph 14 when you described your shooting,
 24 I'm going to read the last sentence, you say, "I thought I
 25 must have been shot from one of the helicopters." Why –

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1 okay, explain.
 2 MR PHATSHA: Looking at the injury,
 3 that's what made me think so, looking at the injury on my
 4 foot.
 5 MR MOJAPPELO: Okay, no further questions,
 6 Mr Chair.
 7 CHAIRPERSON: Thank you. Mr Semenya, are
 8 you now in a position to commence your cross-examination?
 9 MR SEMENYA SC: I am, Chair.
 10 MR PHATSHA: Can I just add one more
 11 thing, Mr Chairperson?
 12 MR MOJAPPELO: Mr Chair, the witness wants
 13 to explain something.
 14 CHAIRPERSON: Yes, yes, he may do so.
 15 MR PHATSHA: Mr Chairperson, I have this
 16 request that I have been talking about this injury, which
 17 nobody has seen. I suffer terrible pain. Do I have the
 18 permission to display this before the Commission?
 19 CHAIRPERSON: Mr Semenya, do you have any
 20 reaction to the request that he's made?
 21 MR SEMENYA SC: No, I have no objection,
 22 Chair.
 23 CHAIRPERSON: Mr Mpofo, he's your
 24 witness.
 25 MR MPOFU: Yes. Thank you, Chairperson,

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1 yes, no I don't have any objection. On the contrary, I
 2 would support it, Chairperson. I found that the victims
 3 that I've consulted with really do have, feel a need to
 4 show the Commission some of their injuries, so if there's
 5 no objection then I'm indebted to my colleagues. I would
 6 request the Commission to indulge the witness.

7 CHAIRPERSON: In the case of the previous
 8 witness he showed us his injury in chambers. We have
 9 extended the same courtesy to him and during the tea
 10 adjournment, which we'll be taking in 10 minutes' time, he
 11 can come to chambers, accompanied by you, and he can show
 12 us the injury.

13 MR MPOFU: Okay, Chairperson. Ja, but I
 14 need to register that they want to show it here.

15 CHAIRPERSON: Alright, if you insist, Mr
 16 Mpofu.

17 MR MPOFU: I do, Sir.

18 CHAIRPERSON: I had thought that there
 19 were elements of personal dignity and prudence and so on
 20 which operated in the case of the previous witness, but if
 21 he wants to show it –

22 MR MPOFU: Yes Chair, I can confirm that
 23 he –

24 CHAIRPERSON: - as you assure us that he
 25 –

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1 MR MPOFU: He would waive –

2 CHAIRPERSON: Then he may do so.

3 MR MPOFU: Thank you, Chair.

4 CHAIRPERSON: If someone has a camera,
 5 perhaps they could – I'm not too sure if, if there's
 6 someone with a camera to take a photograph, which we could
 7 then have as an exhibit so that those who have the
 8 unfortunate task of reading the record at some later stage
 9 will understand what exactly it was that we saw.

10 MR MPOFU: Yes, Chairperson, if there's
 11 no journalist who can help us then I'm sure one of my
 12 attorneys can do so.

13 CHAIRPERSON: Somebody is handing you a
 14 camera. Can I appoint you as photographer in chief to take
 15 a photograph of what we're going to be seeing?

16 MR MPOFU: I found a deputy.

17 CHAIRPERSON: Is it the sort of camera
 18 that can tell us whether proper pictures were taken? No,
 19 it's alright, so we have these pictures which can be handed
 20 in as an exhibit later, so that there will be a pictorial
 21 record of what he's shown. Ja, thank you.

22 [11:09] MR MPOFU: Thank you very much,
 23 Chairperson, Commissioner. We will arrange that the
 24 pictures are emailed to Ms Pillay. Thank you, Chairperson.

25 CHAIRPERSON: Yes, thank you.

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1 MR PHATSHA: Thank you, Mr Chairperson,
 2 for allowing to see the injury.

3 MS PILLAY: Chair, for the purposes of
 4 the record we should mark that photograph as DDD5, I think
 5 then.

6 CHAIRPERSON: I thought that at least
 7 three pictures were taken, so it will be DDD5.1, 2 and 3.

8 MS PILLAY: That's correct, Chair.

9 CHAIRPERSON: We describe them as
 10 photographs of the witness's injury. Thank you. Are you
 11 now able to commence your cross-examination, Mr Semenya?
 12 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
 13 I am, Chair, thank you. Mr Phatsha, the last time we spoke
 14 there were pictures of naked men on the koppie. Remember
 15 that?

16 MR PHATSHA: I remember that, yes Sir.

17 MR SEMENYA SC: Who you said were washing
 18 on the koppie.

19 MR PHATSHA: I said so, yes.

20 MR SEMENYA SC: At 4 o'clock in the
 21 afternoon?

22 MR PHATSHA: If a person wants to wash,
 23 he decides when, what time he wants to wash.

24 MR SEMENYA SC: And these ones decided at
 25 the same time, a group of 50-odd men, naked at 4 o'clock,

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1 washing on the koppie?

2 MR PHATSHA: I would not know. People
 3 don't have the same kind of hearts.

4 MR SEMENYA SC: Okay, let's leave the
 5 heart alone now. Did you see a tap on the koppie?

6 MR PHATSHA: No, there was no tap there
 7 because we don't have a house for washing.

8 MR SEMENYA SC: Any buckets?

9 MR PHATSHA: Yes, there were buckets.

10 The people were being sent to the shack settlement to go
 11 and get water for people to wash, people that had slept
 12 over at the mountain.

13 MR SEMENYA SC: Did you sleep over on the
 14 mountain at any stage yourself?

15 MR PHATSHA: No, I did not sleep on the
 16 mountain because my shack is there at Wonderkop.

17 MR SEMENYA SC: Do you know of people who
 18 slept on the mountain?

19 MR PHATSHA: Which people are you
 20 referring to?

21 MR SEMENYA SC: The ones you are
 22 referring to.

23 MR PHATSHA: People were sleeping on the
 24 mountain, though I did not know who it is. I didn't even
 25 look at their faces to say who is this and who is that.

<p style="text-align: right;">Page 5686</p> <p>1 MR SEMENYA SC: Do you know why people 2 were sleeping on the mountain? 3 MR PHATSHA: I don't know why they slept 4 there. 5 MR SEMENYA SC: Did they sleep with their 6 weapons on the mountain? 7 MR PHATSHA: It can be so because I'm 8 unable to say, I wasn't amongst them as they were sleeping 9 there. 10 MR SEMENYA SC: And they were sleeping on 11 the small koppie, right? 12 MR PHATSHA: There are two koppies there. 13 I wouldn't be able to say which one they really used for 14 sleeping because when I arrived there the people had been 15 awake already. 16 MR SEMENYA SC: I want to show you post 17 mortem photographs of Mambush. 18 CHAIRPERSON: I don't know if any of Mr 19 Noki's relatives or loved ones are present. If they are, I 20 would suggest that they leave the auditorium. I'm going to 21 take the tea adjournment now anyway. When we resume, the 22 post mortem photographs of Mr Noki will be shown and if 23 there are relatives or loved ones of him, they may find 24 looking at these photographs very distressing and a hurtful 25 experience, and I would suggest that they do not return to</p>	<p style="text-align: right;">Page 5688</p> <p>1 MR PHATSHA: If a person does that kind 2 of cutting for the ritual, only that person would know why 3 he is doing it. 4 CHAIRPERSON: That's not the question. 5 The question is, do you – the question doesn't concern the 6 reason why those marks were there. The question is, do you 7 recognise the marks you see on the photograph as ritual 8 incisions? Is that correct, Mr Semenya? 9 MR SEMENYA SC: Correct. 10 CHAIRPERSON: That's the question. 11 Please answer that question. 12 MR PHATSHA: Yes, I do. 13 MR SEMENYA SC: So too on DDD6.2, the 14 second photograph? 15 MR PHATSHA: I can see it. 16 MR SEMENYA SC: So too the following one, 17 DDD6.3, correct? 18 MR PHATSHA: I can see it. 19 MR SEMENYA SC: They are the same type of 20 ritual incision we are talking about, correct? 21 MR PHATSHA: I can see it, yes. 22 MR SEMENYA SC: I know you can see it. 23 Do you accept those are ritual incisions? 24 MR PHATSHA: Where exactly, Sir? 25 MR SEMENYA SC: On the photograph.</p>
<p style="text-align: right;">Page 5687</p> <p>1 the auditorium until after those photographs have been 2 shown. We will now take the tea adjournment. 3 [COMMISSION ADJOURNS COMMISSION RESUMES] 4 [11:39] CHAIRPERSON: The Commission will resume. 5 You're still under oath, Mr Phatsha. Mr Semenya? 6 SIPETE PHATSHA (CONTD.): Yes. 7 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.): 8 Thank you, Chair. Mr Phatsha, I have placed before you 9 photographs, three of them, which I have – four of them, 10 rather – which I think our most competent Ms Pillay will 11 call it DDD6.1 to 4. 12 CHAIRPERSON: What are they, Mr Semenya? 13 MR SEMENYA SC: They are post mortem 14 photographs of Mr Noki, four. Do you see the body cuttings 15 that appear on those photographs? 16 MR PHATSHA: I see on the very first one. 17 MR SEMENYA SC: Do you recognise that to 18 be a ritual incision? 19 MR PHATSHA: I know that, yes. 20 MR SEMENYA SC: Do you recognise it as 21 that? 22 MR PHATSHA: I can see it, yes. 23 MR SEMENYA SC: No, I know you can see 24 it. We can all see it. I'm asking you, do you recognise 25 this as a ritual incision?</p>	<p style="text-align: right;">Page 5689</p> <p>1 MR PHATSHA: I see. 2 MR SEMENYA SC: Do you accept it as 3 ritual incisions? 4 MR PHATSHA: It is so. 5 MR SEMENYA SC: There will also be 6 evidence of such similar incisions on the post mortem 7 findings of at least 17 others who passed on. 8 MR PHATSHA: I would not know because I 9 don't do this. 10 MR SEMENYA SC: You're sure? 11 MR PHATSHA: I am certain I don't do 12 this. 13 MR SEMENYA SC: My information is that 14 you have those incisions on your chest. Do you want to 15 show your chest to the Commissioners? 16 MR PHATSHA: I do that "kapula," this 17 cutting, only if I have some problem, my body aching, 18 itching, and so on. I do that. 19 MR SEMENYA SC: Do you take this 20 Commission seriously? 21 CHAIRPERSON: No, before you ask that 22 question, do we understand then that you have such 23 incisions on your chest? You can tell us why you them, why 24 you them. 25 MR PHATSHA: I do have these incisions on</p>

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1 my body being done, but only because my body is itching.
 2 MR MPOFU: Sorry, he said something about
 3 blood.
 4 MR PHATSHA: That I take blood out.
 5 MR SEMENYA SC: Mr Phatsha, do you take
 6 this Commission seriously?
 7 MR PHATSHA: Very important, because I'm
 8 here, yes.
 9 MR SEMENYA SC: And you recall you were
 10 asked to speak, you're under oath and you must tell us the
 11 truth?
 12 MR PHATSHA: It is the truth that I'm
 13 speaking as of now.
 14 MR SEMENYA SC: So what were you telling
 15 us that you don't do these things because you're a
 16 Christian?
 17 MR PHATSHA: I did them that time before
 18 I got involved in church activities, in Christianity.
 19 MR SEMENYA SC: Why did you tell us you
 20 don't do these things because you're a Christian, Mr
 21 Phatsha?
 22 CHAIRPERSON: No, he says he did this
 23 before he became a Christian. That's how I understand his
 24 argument. So I take it what he means is now that he's a
 25 Christian he doesn't do it, but he may well have done

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1 things in the past before he was a Christian. So I don't
 2 think the question you're asking is a fair elaboration on
 3 the answer he gave. Perhaps you can reformulate it and
 4 avoid that difficulty.
 5 MR SEMENYA SC: Mr Phatsha, when did you
 6 become a Christian?
 7 MR PHATSHA: I confirm that.
 8 MR SEMENYA SC: Mr Phatsha, when did you
 9 become a Christian?
 10 MR PHATSHA: It's not so long ago that
 11 I've been into the church, but when I went to church I had
 12 already stopped doing those rituals.
 13 MR SEMENYA SC: What do you mean by not
 14 very long ago? Are you talking, was it after the shooting
 15 at Marikana that you became a Christian?
 16 MR PHATSHA: At the time of the shooting
 17 I wasn't doing those things anymore.
 18 MR SEMENYA SC: When more or less did you
 19 become a Christian, Mr Phatsha?
 20 MR PHATSHA: The months, I would not be
 21 able to say that, because you're going to ask me about
 22 months and I'll get confused.
 23 MR SEMENYA SC: 10 years ago?
 24 MR PHATSHA: Yes, very much.
 25 MR SEMENYA SC: Do you remember just now

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1 you were telling us that you do these things when you want
 2 to take blood out, when you're feeling unwell?
 3 MR PHATSHA: Not now that I'm a member of
 4 the church.
 5 MR SEMENYA SC: Do you recall you have
 6 just told us now when you're not feeling well and you want
 7 to take blood out, that's what you do?
 8 MR PHATSHA: But since I became a member
 9 of the church, that does not happen anymore.
 10 MR SEMENYA SC: Do you recall that
 11 answer?
 12 MR PHATSHA: Who gave me that answer?
 13 MR SEMENYA SC: Do you recall you gave us
 14 that answer, Mr Phatsha?
 15 MR PHATSHA: What was my answer again,
 16 Sir?
 17 CHAIRPERSON: You said "I take blood
 18 out." You didn't say "I used to take blood out." You said
 19 "I take blood out," using the present tense. That's what
 20 counsel says.
 21 MR PHATSHA: That was the question coming
 22 from counsel that was confusing, that is why I gave that
 23 answer.
 24 MR SEMENYA SC: How was my question
 25 confusing you?

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1 MR PHATSHA: I said when my body itches I
 2 do the "kapula" ritual.
 3 MR SEMENYA SC: Yes, and you are
 4 repeating that, correct?
 5 MR PHATSHA: I say, but I have left those
 6 things now because I am now a member of the church.
 7 MR SEMENYA SC: So your body no longer
 8 itches?
 9 MR PHATSHA: Because I'm now a Christian.
 10 MR SEMENYA SC: Your body no longer
 11 itches?
 12 MR PHATSHA: No, not now.
 13 MR SEMENYA SC: Not in the past 10 years?
 14 MR PHATSHA: I haven't had.
 15 MR SEMENYA SC: So why do you tell us you
 16 do it when your body itches?
 17 MR PHATSHA: When a person is being asked
 18 questions and under pressure, the answers, the tongue [he
 19 says] becomes short instead of being quite long.
 20 MR SEMENYA SC: Just repeat that for me.
 21 MR PHATSHA: I say the tongue becomes
 22 short when one is under cross-examination and is being
 23 asked questions, and not given a chance to expatiate.
 24 MR SEMENYA SC: So when the tongue is
 25 short you tell us things that are incorrect?

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1 MR PHATSHA: The truth I am telling you,
 2 Sir, is the following, that my body does not give that
 3 problem of itching since I became a member of the church.
 4 MR SEMENYA SC: Well, I'm going to argue
 5 at the end that you're not truthful in that departure.
 6 MR PHATSHA: I don't know what it is that
 7 you will be saying, but the truth of the matter is it is
 8 true that my body does not itch since I went into church.
 9 MR SEMENYA SC: Your body has not been
 10 itching more than 10 years now?
 11 MR PHATSHA: Even now, yes.
 12 MR SEMENYA SC: So you never had to take
 13 blood out.
 14 MR MAHLANGU: Sorry?
 15 MR SEMENYA SC: You have never had reason
 16 to take blood out?
 17 MR PHATSHA: No.
 18 MR SEMENYA SC: You know that medically
 19 we can tell the age of a wound, Mr Phatsha?
 20 MR PHATSHA: Just repeat the question,
 21 Sir.
 22 MR SEMENYA SC: You know that
 23 scientifically we are able to date a scar?
 24 MR PHATSHA: Where does that expert come
 25 from?

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1 MR SEMENYA SC: And it would be possible
 2 –
 3 CHAIRPERSON: He's asked you a question.
 4 He says where does that expert come from. You can't just
 5 ignore his question; you've got to deal with it.
 6 MR SEMENYA SC: Mr Chair, I've never
 7 spoken about an expert.
 8 CHAIRPERSON: No, but the age of wounds
 9 can be ascertained, so he then asked you where does that
 10 expert, i.e. the expert who can ascertain the age of a
 11 wound, come from. I wouldn't have thought you'd have
 12 difficulty answering the question, but it might help if you
 13 answered him, then we can carry on. Otherwise he'll raise
 14 the question again and again and you'll say, repeat the
 15 question, then we're back where we were on Friday when you
 16 weren't here.
 17 MR SEMENYA SC: An expert who is
 18 qualified in medicine, any respectable university anywhere
 19 in the world, who would know how to date a scar.
 20 MR MPOFU: Chairperson, sorry, before the
 21 answer, maybe Mr Semenya would favour us with the specific
 22 designation of such a scientist –
 23 CHAIRPERSON: He tried to give a general
 24 answer about that. No, I don't think you can ask that.
 25 The point is he says any qualified person from any

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1 reputable university, doctor, will be able to do that. You
 2 may not agree. That's what he's putting.
 3 MR MPOFU: Ja well, and that's what I'm
 4 questioning, is that a fact?
 5 MR SEMENYA SC: It's a scientific fact,
 6 Chair.
 7 MR MPOFU: Is that what his expert is
 8 going to say?
 9 CHAIRPERSON: Would you have any – in
 10 view of the fact that you've shown us the injury you
 11 sustained on the 16th of August, would you have any
 12 objection if Mr Semenya were to ask you to submit to an
 13 examination by a doctor nominated by him, to look at these
 14 marks on your chest to tell us whether they are 10 years
 15 old or were sustained far more recently?
 16 MR MPOFU: Chairperson, I'm going to –
 17 I'll stop the witness from answering that question. He can
 18 only answer that once he has been advised. I don't think
 19 it's fair to ask a witness directly on a matter where he
 20 might need legal advice.
 21 CHAIRPERSON: What does he need legal
 22 advice about? It's not a legal question. It's whether
 23 he's prepared –
 24 MR MPOFU: Well, it is.
 25 CHAIRPERSON: - to allow that. He –

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1 MR MPOFU: Well, if he's going to waive
 2 his privacy, that's a very legal question.
 3 CHAIRPERSON: He's already waived his
 4 privacy in respect of his foot.
 5 MR MPOFU: That's exactly, that's also a
 6 legal question. The fact that he has already waived it and
 7 therefore he might waive it again is a legal question. It
 8 might be; it might not be. That's the exact legal question
 9 I'm talking about. He's entitled to get legal advice on
 10 legal issues.
 11 CHAIRPERSON: It's not exactly a legal
 12 issue; it's a question of whether he's prepared, whether he
 13 has a right to refuse. Well, okay, let me put it
 14 differently. You have the right to refuse to be examined,
 15 but I can't order that you be examined if you are
 16 unwilling.
 17 [11:59] That's why I phrased the question the way I did.
 18 What would your attitude be if Mr Semenya were to ask for
 19 you to be, if you were prepared to be examined by a doctor
 20 to ascertain when the incision marks on your chest were
 21 sustained?
 22 MR PHATSHA: I would not allow to be
 23 taken to a doctor, Mr Chairperson, because I only go to a
 24 doctor when I'm sick. I am presently not at all sick.
 25 MR SEMENYA SC: So you would not want to

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1 validate that you're a truthful witness on this point?
 2 MR PHATSHA: Just repeat the question,
 3 Sir.
 4 MR SEMENYA SC: You are unwilling to have
 5 yourself examined, even if only to validate that you're a
 6 truthful witness on this point, so that when you tell us
 7 you saw police shoot people, we can begin to believe you?
 8 MR PHATSHA: As it is the police did
 9 shoot people, do you believe that they shot these people?
 10 MR SEMENYA SC: I want to believe you,
 11 but you're not giving me the opportunity, and I will
 12 believe you that you are truthful on this point if you
 13 submit to a medical examination.
 14 MR PHATSHA: I will not allow to go to a
 15 doctor because I don't go to a doctor before I do things.
 16 The only time I go to a doctor is when I am ill.
 17 MR SEMENYA SC: And I'm going to argue
 18 that your refusal is simply because you are afraid you will
 19 be shown to be a liar on this point.
 20 MR PHATSHA: The reason I'm refusing to
 21 go to a doctor is that a doctor's permission was not sought
 22 before they shoot us. They didn't go to a doctor to say
 23 now we are going to shoot people.
 24 MR SEMENYA SC: I can't see the
 25 connection there, Mr Phatsha.

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1 MR MAHLANGU: The question is, Sir?
 2 MR SEMENYA SC: I can't see the
 3 connection with the shooting and the police and the doctor.
 4 MR PHATSHA: Because I was shot at.
 5 MR SEMENYA SC: Okay, I want to go with
 6 you, Mr Phatsha, and tell you what the group of Mambush was
 7 doing, which you were part of. The Commission will hear
 8 from a witness – for now I will call him Mr X – he was also
 9 part of your group, the Mambush group. He will tell the
 10 Commission that on the 11th of August 2012 the group with
 11 which you were part that went to the NUM offices, you
 12 remember you were part of that group?
 13 MR PHATSHA: I was at the back.
 14 MR SEMENYA SC: I like it when you are at
 15 the back with Mambush group.
 16 CHAIRPERSON: Mr Semenya, it doesn't help
 17 to make comments. You just ask questions. I've already
 18 pulled people up for making sarcastic comments and if I do
 19 it to them, I've got to do it to you too, so just carry on
 20 with your question.
 21 MR SEMENYA SC: You remember the group
 22 where you were at the back of?
 23 MR PHATSHA: The group that I at the
 24 back, I was in the middle of people who were moving there.
 25 I did not look, see the people in order to know and

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1 recognise them.
 2 MR SEMENYA SC: Just refresh my memory;
 3 what was the group going to do, your Mambush group going to
 4 do at the NUM office –
 5 MR MPOFU: I'm sorry, Chairperson, has it
 6 even been established that Mambush was there? How can it
 7 be called the Mambush group on the 11th when no basis has –
 8 CHAIRPERSON: - same point –
 9 MR MPOFU: Thank you, Chair.
 10 CHAIRPERSON: Perhaps Mr Semenya can
 11 reformulate the question -
 12 MR MPOFU: Thank you, Chair.
 13 CHAIRPERSON: - and deal with that.
 14 MR SEMENYA SC: Chair, I don't know
 15 whether Mr Mpofu appreciates that this is the evidence of a
 16 witness –
 17 CHAIRPERSON: No, I understand. No,
 18 you're perfectly entitled to say Mr X says that Mambush
 19 went with the group or was part of the group, but I
 20 understand you then to put a question, which was more a
 21 statement of fact, to the witness, you were a member, you
 22 were part of the Mambush group, or words to that effect.
 23 That's why I suggested you reformulate the question. No
 24 problem with your putting what you were putting as part of
 25 what Mr X says, but sometimes if you say something which

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1 looks as if you're departing from what Mr X said and just
 2 putting statements of fact to the witness, then Mr Mpofu
 3 will object. I don't want him to object. I just want you
 4 to carry on with putting your case to the witness.
 5 MR SEMENYA SC: Mr Phatsha, just accept I
 6 am going to be telling you what Mr X will say, that he's
 7 part of the Mambush group, and I know there were times when
 8 you associated yourself with this group. So that's the
 9 context within which we are going to be discussing with you
 10 now. Okay?
 11 MR PHATSHA: I want to know this X.
 12 MR SEMENYA SC: I'm afraid you can't now,
 13 Mr Phatsha. Let's move forward.
 14 MR PHATSHA: Why can't you tell me?
 15 MR SEMENYA SC: Because I want his safety
 16 to be protected. Now can we proceed?
 17 MR PHATSHA: Is there then any truth in
 18 that if that is the position?
 19 CHAIRPERSON: I don't think you can ask
 20 counsel that question. He's putting to you his case. He
 21 says that he has a witness who will come and give evidence
 22 before this Commission. He's not prepared at this stage to
 23 say who the witness is, in order to protect the witness,
 24 but he's telling you he has a witness and he's putting to
 25 you what the witness says. If you disagree with what it is

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1 said the witness will say, then you can say so, but you
 2 don't have to ask at this stage what the witness's name is
 3 in order to answer whether what the witness says is true or
 4 untrue.
 5 MR PHATSHA: The interpreter would repeat
 6 this again? [Interpreter repeats question]
 7 MR MPOFU: Chairperson, as much as you
 8 don't want me to object, I also don't want to object, but –
 9 CHAIRPERSON: I don't want you to have
 10 reason to object.
 11 MR MPOFU: Yes, yes, thank you,
 12 Chairperson. I also don't want to even have reason to
 13 object, but Chairperson, on the statement of Mr X, at least
 14 the version that we have, there is no mention of Mambush as
 15 being –
 16 CHAIRPERSON: No, I understand that. I'm
 17 not sure if that's the basis of an objection. Mr Semenya
 18 presumably will explain to us where he gets his information
 19 from –
 20 MR MPOFU: Okay, that maybe from a
 21 consultation outside the statement, yes.
 22 CHAIRPERSON: I would think that.
 23 Anyway, let's proceed.
 24 MR SEMENYA SC: You can accept that the
 25 evidence will be that Mambush was one of the committee

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1 members appointed to lead this group. So I'm talking about
 2 that group to which you were a member. Now just refresh my
 3 memory. What was this group going to do at the NUM
 4 offices?
 5 MS LEWIS: Chair, I'm sorry to interrupt
 6 my learned friend but –
 7 CHAIRPERSON: - benefit, but carry on.
 8 MS LEWIS: But I do have to object at
 9 this point. From the statement it appears as if that
 10 committee was elected after the march that Mr Semenya is
 11 referring to.
 12 CHAIRPERSON: But as Mr Mpofu said, it
 13 does appear as if Mr Semenya has also consulted with the
 14 witness and got extra information. I'm not sure that, or
 15 say extra instructions. I'm not sure that's the basis for
 16 an objection, so I'm not going to allow that objection.
 17 Carry on, Mr Semenya. When Mr X testifies – none of these
 18 points can be traversed, but I don't think you can traverse
 19 them at this stage. You will recall, Ms Lewis, that this
 20 question relates to what the group was going to do. He
 21 already told us previously in his evidence the purpose of
 22 going to the NUM office and so Mr Semenya is just seeking
 23 to get him to repeat that, or possibly give a different
 24 answer - we will see – so he can then proceed with his
 25 cross-examination. I don't think there's anything wrong

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1 with the cross-examination and he may continue.
 2 MR PHATSHA: I have not changed from what
 3 I said before.
 4 MR SEMENYA SC: Refresh my memory, what
 5 was the group going to do at the NUM offices?
 6 MR PHATSHA: The question was going to be
 7 put to NUM why is it that they did not allow the employer
 8 to come to us with a response to our demand of R12 500.
 9 MR SEMENYA SC: And Mr X will tell us the
 10 reason for going there was completely different; it was to
 11 go and close the NUM offices.
 12 MR PHATSHA: There was nothing like that.
 13 MR SEMENYA SC: But do you accept that
 14 the people at the NUM offices were told that this crowd you
 15 were part of was coming to burn the NUM offices? That's
 16 what the security of Lonmin told them.
 17 MR PHATSHA: That officer, security
 18 officer, he's the person who knows that, but the reason we
 19 went there is, was to go and inquiry as to why the employer
 20 was told not to come and meet us because of the demand that
 21 we had made, why he was not coming back with a response for
 22 the money.
 23 MR SEMENYA SC: And if all you were there
 24 about was as peaceful as you say, there would have been no
 25 reason for the security to warn the NUM personnel that were

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1 in the offices.
 2 CHAIRPERSON: I don't think he actually
 3 know about that; that evidence hasn't been led yet, though
 4 you can put it as a fact that that is so, or that those are
 5 your instructions, and then ask him about that further, but
 6 I don't think you could put it as something that's already
 7 common cause or a proven fact. I think you must
 8 reformulate that question.
 9 MR SEMENYA SC: Chair, that's already
 10 evidence that the security of Lonmin went to tell the NUM
 11 officials, "There's a crowd coming here with deadly
 12 intentions; you must go."
 13 CHAIRPERSON: No, no, but the witness
 14 doesn't know that, I don't think. So you're putting it to
 15 him as a fact something that he has no knowledge about and
 16 I thought that, we're going to have all sorts of questions
 17 from him and so on if you put the question as formed, so I
 18 suggest you – I'm not saying there's anything wrong with
 19 the question as you're ultimately going to ask it, but I
 20 think the way you're putting it now isn't going to take the
 21 process forward very much because he's just going to ask
 22 you where you get that from, and so on. So I suggest you
 23 reformulate the question, putting the point that you want
 24 to put, then we can perhaps get an answer from him.
 25 MR SEMENYA SC: If your movement towards

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1 the NUM offices was friendly, do you accept that there
 2 would be no reason for the security officers to warn the
 3 NUM personnel in the offices that there was danger coming?
 4 MR PHATSHA: The security person is the
 5 only one to know. I don't know anything about it.
 6 MR SEMENYA SC: And after the skirmishes
 7 of that afternoon, there was a decision now to go and hold
 8 meetings at the koppie. Am I right?
 9 [12:19] CHAIRPERSON: I think the skirmishes took
 10 place in the morning, according to the evidence, isn't it?
 11 The incident at the NUM office was I think on the 11th, was
 12 in the morning, so –
 13 MR SEMENYA SC: I stand corrected, Chair.
 14 CHAIRPERSON: There's going to be more
 15 confusion if it's –
 16 MR SEMENYA SC: The skirmishes of that
 17 day, Mr Phatsha, resulted in your group deciding to hold
 18 future meetings at the koppie as opposed to the stadium.
 19 Am I right?
 20 MR PHATSHA: It is so.
 21 MR SEMENYA SC: Mr X would be right then?
 22 MR PHATSHA: That we would now meet at
 23 the koppie?
 24 MR SEMENYA SC: Correct.
 25 MR PHATSHA: It is so, we did in fact

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1 meet there.
 2 MR SEMENYA SC: And at the koppie there
 3 is a discussion that in the light of what had transpired,
 4 you'd better get yourselves a sangoma. That will be the
 5 evidence.
 6 MR PHATSHA: That I don't know of.
 7 MR SEMENYA SC: Who was going to protect
 8 all of you from being shot at and to make your crowd
 9 strong.
 10 MR PHATSHA: I don't know that.
 11 MR SEMENYA SC: And that sangoma would be
 12 a gentleman coming from Bizana.
 13 MR PHATSHA: I'm hearing that from you,
 14 Sir.
 15 MR SEMENYA SC: Is it consistent with
 16 your knowledge?
 17 MR PHATSHA: I have no knowledge of this.
 18 That is why I'm saying I don't know anything about it.
 19 MR SEMENYA SC: So Mr X will tell us that
 20 at the koppie there, there was an agreement that people
 21 must pay R20 towards organising transport to go and fetch
 22 the sangoma. Do you recall that happening?
 23 MR PHATSHA: Possibly something like this
 24 was discussed after I had departed, had gone to my house.
 25 MR SEMENYA SC: So you were told that

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1 there was a decision of collecting R20 so that the sangoma
 2 could be fetched?
 3 MR MADLANGA SC: Mr Chair, I don't think
 4 the translation was quite accurate. The response was I
 5 think that decision must have been taken whilst I had gone
 6 home. He did not state it as a fact that it was taken.
 7 CHAIRPERSON: As I heard the answer and
 8 wrote it down, the interpreter said, "Possibly that
 9 decision was taken after I left," which is the same meaning
 10 as what you've put, that he doesn't know about that, but it
 11 could have happened after he left. So I don't think the
 12 question, as positively framed as it was, is –
 13 MR MADLANGA SC: My apologies to Mr
 14 Mahlangu. My most sincere apologies.
 15 MR MAHLANGU: Accepted.
 16 MR MADLANGA SC: Thank you.
 17 CHAIRPERSON: It sounds as if your
 18 apology is accepted. Anyway, Mr Semenya I'm sure can
 19 rephrase his question in a manner which doesn't arise
 20 objection either from you, me, or anybody, or even Mr
 21 Mpfu.
 22 MR SEMENYA SC: Were you told about that,
 23 Mr Phatsha?
 24 MR PHATSHA: Repeat the question.
 25 MR SEMENYA SC: Were you told about the

Page 5709

1 collection of R20, were you told that story?
 2 MR PHATSHA: I was not told of such a
 3 thing.
 4 MR SEMENYA SC: Ever?
 5 MR PHATSHA: Until today.
 6 MR SEMENYA SC: What were you told then?
 7 MR PHATSHA: What I was told was that we
 8 were demanding money, an amount of 12 500.
 9 MR SEMENYA SC: No, I'm talking about the
 10 sangoma and the money.
 11 MR PHATSHA: No, about that, the money
 12 and the sangoma, I have no idea. I don't know anything.
 13 CHAIRPERSON: You say you know nothing
 14 about the sangoma. Did you hear at any stage when you were
 15 at the koppie, or even when people were walking past your
 16 house in the settlement, that some people were taking an
 17 amount of R20 each to the koppie for some reason?
 18 MR PHATSHA: If people were talking about
 19 this in the street, it's something that I really did not
 20 concern myself much about.
 21 CHAIRPERSON: Did anyone talk about it on
 22 the koppie?
 23 MR MAHLANGU: I'm sorry, Sir, if?
 24 CHAIRPERSON: Did anyone talk about it on
 25 the koppie, people were bringing R20 each for some reason?

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1 MR PHATSHA: That's what I've already
2 said, Sir, I have never heard anything like that.
3 MR SEMENYA SC: And at the koppie on the
4 11th, Mr X will tell us, that there were persons who were
5 called as volunteers, who are brave, who will be attended
6 to by this sangoma.
7 MR PHATSHA: Who is this X? I don't know
8 him.
9 MR SEMENYA SC: Is that consistent with
10 your information or knowledge?
11 MR PHATSHA: The question is not very
12 clear. Could it be repeated?
13 MR SEMENYA SC: The volunteers who were
14 going to be attended to by the sangoma were to be chosen
15 there. Do you know that to be correct, or don't you?
16 MR PHATSHA: No idea, Sir.
17 MR SEMENYA SC: Most important, Mr X will
18 say that the purpose for this "muti" thing was so that
19 those volunteers must be people who cannot run away when
20 attacked by the security or the police.
21 MR PHATSHA: I have not heard this
22 before. I'm hearing it for the first time.
23 MR SEMENYA SC: And the volunteers are
24 called "makarapa."
25 MR PHATSHA: I don't understand, Sir.

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1 MR SEMENYA SC: Those volunteers were
2 called "makarapa," the ones who will not run away from the
3 security and the police.
4 MR PHATSHA: No, this I wouldn't know
5 that people would then call themselves "makarapa" because a
6 "makarapa," Mr Chairperson, is the steel hat that I wear on
7 my head to avoid the rocks falling from the mine to fall on
8 my head.
9 MR SEMENYA SC: Let me interpose
10 something, Mr Phatsha. If we go to exhibit L, slide 198 –
11 MR MAHLANGU: Slide number, Sir?
12 MR SEMENYA SC: 198.
13 CHAIRPERSON: Can we be shown that slide,
14 please?
15 MR SEMENYA SC: We have established that
16 you were part of the group, correct?
17 MR PHATSHA: It is so.
18 MR SEMENYA SC: And you have told us you
19 were going home.
20 MR PHATSHA: I said I was in the middle
21 of this group.
22 MR SEMENYA SC: Going home.
23 MR PHATSHA: Just repeat the question.
24 MR SEMENYA SC: You were in the middle of
25 that group, going home.

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1 MR PHATSHA: No, no, I did not say that.
2 MR SEMENYA SC: Were you part of that
3 group, going home, Mr Phatsha, or not?
4 MR MPOFU: Sorry, Chairperson, that's a
5 misrepresentation of the witness's evidence. His evidence
6 was that that group went back to the koppie and only
7 thereafter there was a rollout of barbed wire and so on,
8 and so on. So if it can be put on that basis, Chair. And
9 in fact, Chairperson, to be fair, in terms of the evidence
10 I think what Mr Semenya is putting is the more correct
11 version, but this witness said that this group went back to
12 the koppie and that's what he said when Mr Mojapelo asked
13 him this morning.
14 MR PHATSHA: That's exactly as Mr Mpofo
15 is putting it.
16 MR SEMENYA SC: Chair, I've just asked
17 the witness, you were part of that group, in the middle,
18 were you going home. How can that ever be objectionable?
19 CHAIRPERSON: Hold the objection. The
20 question is, were you in the middle of that group. You
21 said you were. When you were in the middle of the group,
22 as depicted on that slide, were you going home?
23 MR PHATSHA: No, from this slide we went
24 back and sat down there.
25 MR SEMENYA SC: Do you want to answer

Page 5713

1 that question now, Mr Phatsha?
2 MR PHATSHA: How should I?
3 MR SEMENYA SC: Were you going home when
4 you were part of that group, as depicted on that picture?
5 How can that be difficult to answer?
6 MR PHATSHA: There's that part where they
7 started pulling the barbed wire and that's what confuses
8 me.
9 MR SEMENYA SC: Forget the barbed wire
10 now. When you were part of that group there, as we look at
11 slide 198, were you going home?
12 MR PHATSHA: Not at this stage, I wasn't
13 going home at that stage.
14 MR SEMENYA SC: Okay, now we know you
15 moved from the koppie; you were going towards that car, I
16 mean that Nyala. Where are you going?
17 MR PHATSHA: You heard me saying we went
18 back and sat.
19 MR SEMENYA SC: Before you went back and
20 sat, Mr Phatsha, you moved from the koppie towards those
21 Nyalas. Am I correct?
22 MR PHATSHA: That is so.
23 MR SEMENYA SC: And we know you're not
24 going home at that stage.
25 MR PHATSHA: The last part of the

Page 5714

1 question was?

2 MR SEMENYA SC: You told us that as you

3 are approaching that Nyala, you are not going home.

4 MR PHATSHA: I wasn't going home, yes.

5 MR SEMENYA SC: Next question. Where are

6 you going?

7 MR PHATSHA: We were just singing around

8 and jumping around there, going back. We were still

9 waiting for the employer.

10 MR SEMENYA SC: You were going around

11 there, singing, waiting for the employer. That's why

12 you're approaching the Nyala?

13 MR PHATSHA: We were not going directly

14 to the Nyala, but we went past it, turning around, singing.

15 MR SEMENYA SC: Because you're waiting

16 for the employer?

17 MR PHATSHA: As it is, yes.

18 CHAIRPERSON: Mr Semenya, it might be

19 helpful to go back to slide 194 and then take it together

20 with 197 where what is depicted is there were three

21 separate attempts where the protesters approached the

22 police line. Now I take it that what you are busy with on

23 slide 198 is the first attempt.

24 MR SEMENYA SC: It's the first incident.

25 CHAIRPERSON: So if you take him back to

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1 – to be fair to him, I'm not sure he quite understands the

2 point you're putting, and if you go back to 194 and take

3 him through 197, he might then understand and be able to

4 give an answer that does justice to his case.

5 MR SEMENYA SC: Mr Phatsha, let's start.

6 When you were part of that frame, you were not going home.

7 Are you saying you were going around singing, whilst

8 waiting for the employer?

9 MR PHATSHA: That is so, yes.

10 MR SEMENYA SC: Okay, being led by Mr

11 Noki, Mambush?

12 MR PHATSHA: I see the blanket. I don't

13 know his face well.

14 MR SEMENYA SC: You don't know?

15 MR PHATSHA: I don't know his face well.

16 MR SEMENYA SC: No, but you were led by

17 Mambush, were you not?

18 MR PHATSHA: According to the blanket,

19 yes.

20 MR SEMENYA SC: And you're saying you

21 approached that Nyala because you are waiting for the

22 employer?

23 [12:39] MR PHATSHA: We did not go to the Nyala.

24 MR SEMENYA SC: Did that Nyala part your

25 way?

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1 MR PHATSHA: I don't remember so well

2 now. This happened some time ago.

3 MR SEMENYA SC: Do you remember turning

4 from that frame, going back to the koppie?

5 MR PHATSHA: Yes.

6 MR SEMENYA SC: Do you remember going

7 back to the Nyala again from the koppie?

8 MR PHATSHA: I don't remember well, Mr

9 Chairperson, because there was also the call of nature, at

10 one time I had to go and relieve myself.

11 CHAIRPERSON: I don't think it's helpful

12 to have a lot of laughter while people are talking. It

13 distracts the witness and it distracts counsel. I would

14 appeal to the people in the auditorium to restrain their

15 mirth and keep quiet while they listen to the evidence. If

16 they don't keep quiet, I will have to order them to leave

17 the chambers, and I don't think they want that.

18 MR SEMENYA SC: So after you answered the

19 call of nature, you joined the group?

20 MR PHATSHA: It is correct, yes.

21 MR SEMENYA SC: So that you can sing and

22 wait for the employer for the second time?

23 MR PHATSHA: We were waiting for the

24 employer very much to give us an answer.

25 MR SEMENYA SC: Okay, let's go to slide

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1 194. You will see behind the yellow half circle that

2 frame, properly zoomed, shows people who are moving away

3 from the back of that half circle.

4 MR PHATSHA: Yes, I see.

5 MR SEMENYA SC: You did not want to take

6 that direction, not so?

7 MR PHATSHA: I did not make the decision

8 of running backwards. I ran in the direction of the

9 settlement, the shack settlement.

10 MR SEMENYA SC: No, remember we are still

11 just going to the Nyala so that we are waiting for the

12 employer. We haven't decided to go home yet.

13 MR PHATSHA: I had not left at that time.

14 MR SEMENYA SC: I know. I'm saying, were

15 you still going to approach the Nyala for the second time

16 so that you wait for the employer, while singing?

17 MR PHATSHA: We have been waiting there

18 patiently for the employer to come and give us an answer.

19 MR SEMENYA SC: Anyway, the evidence will

20 be that Mr Noki does not live in that direction at all.

21 Mambush does not live there. He lives in Karee.

22 MR PHATSHA: That I would not know.

23 MR SEMENYA SC: Ja, but if that evidence

24 is established, there is no way Mr Mambush is leading a

25 group of people to go home. That's not his home.

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1 MR PHATSHA: A person who is in front is
2 not necessarily a leader.

3 MR SEMENYA SC: He could not be in front
4 of a group that is going home because his home was in
5 Karee.

6 MR PHATSHA: I don't even know his home.

7 MR SEMENYA SC: So do you accept that he
8 could not have been leading you on his way home?

9 CHAIRPERSON: But he says he doesn't know
10 that. He says he doesn't know where he lives, or lived.
11 What's being put to you is that –

12 MR PHATSHA: I was seeing him for the
13 very first time there, Mr Chairperson. I didn't even know
14 where he works, this Mambush.

15 CHAIRPERSON: Yes, what is being put to
16 you by counsel is if it is correct that Mr Noki lived at
17 Karee, he was then not moving towards his home when he
18 moved forward to the police at the front of the group.
19 That's what you're being asked to comment on.

20 MR PHATSHA: Whether he was moving home
21 or running away –

22 CHAIRPERSON: Do I understand you to say
23 that you saw Mr Noki for the first time on the 16th, or did
24 I misunderstand you?

25 MR PHATSHA: The position is if I'd seen

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1 somebody today, Mr Chairperson, I would not be able to
2 recognise that person tomorrow, and even now if he was to
3 get rid of the blanket, I wouldn't even be able to
4 recognise him.

5 MR SEMENYA SC: Mr Phatsha, let's go to –

6 CHAIRPERSON: What does that mean? Does
7 that mean that you did see him for the first time on the
8 16th or you may have seen him earlier, but you don't know,
9 or what exactly are you trying to say?

10 MR PHATSHA: The position, Mr
11 Chairperson, is a person that one sees from quite some
12 distance, one would not be able to recognise that person.
13 There was mention of Mambush. One recognise him with that
14 which he is wearing only, like in my case as I'm appearing
15 before the Commission wearing this [he shows the jacket
16 he's wearing] people will say he was wearing this jacket,
17 this is the man who was appearing before the Commission.

18 MR SEMENYA SC: Mr Phatsha, okay, take me
19 through this patch of your evidence. When you approached
20 the Nyala for the first time, the police fired teargas at
21 your group. Correct?

22 MR PHATSHA: That is correct.

23 MR SEMENYA SC: And your group then went
24 back to the koppie. Is that right?

25 MR PHATSHA: That is so.

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1 MR SEMENYA SC: And then you went to
2 relieve yourself.

3 MR PHATSHA: That is correct, yes.

4 MR SEMENYA SC: Now I want us to look at
5 slide 89 of exhibit L. To orientate ourselves, you will
6 see there are three kraals there.

7 MR PHATSHA: I can see.

8 MR SEMENYA SC: There is the small kraal
9 where the shooting happened. Do you see that?

10 MR PHATSHA: These kraals are near each
11 other. They're in the same vicinity. I wouldn't be able
12 to say which one is the big one and which is the small one,
13 but this is, the one we ran to was the first kraal which is
14 nearer to the road.

15 MR SEMENYA SC: Ja, and that's the one I
16 prefer to call the small one. Do you see it though?

17 MR PHATSHA: I see it, yes.

18 MR SEMENYA SC: Then there is the one on
19 the edge of that frame, touching the edge of the frame. It
20 looks like the picture cut the second kraal. Do you see
21 that? To the left of the -

22 MR PHATSHA: I see it, yes.

23 MR SEMENYA SC: You see that from the
24 koppie you can go towards that kraal with ease. Am I
25 correct? If you chose to do that.

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1 MR PHATSHA: How? How could one walk
2 there freely?

3 MR SEMENYA SC: If you elected to walk
4 towards that, you could have done that with ease. Is that
5 a fair statement or not?

6 MR PHATSHA: Which is the road from
7 Marikana there?

8 MR SEMENYA SC: You told us it's the one
9 that's closer to the small kraal. I'm not talking about
10 that one. I'm talking about –

11 MR PHATSHA: I can see on the photo that
12 there is the road that comes from Marikana.

13 MR SEMENYA SC: Ja, I'm not talking about
14 that. I'm saying from the big koppie you could go to that
15 kraal on the edge of that frame to the left. You can do
16 that, and you could do that.

17 MR PHATSHA: There was no time to think
18 of that, but what I decided was to run along the road that
19 leads to the shack settlement.

20 MR SEMENYA SC: And if anyone elected to
21 do as I postulate, they would be able to go to the informal
22 settlement of Nkaneng as well?

23 MR PHATSHA: People were walking freely
24 there. There was nothing disturbing them. Some were
25 coming from Marikana towards the settlement, nothing

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1 disturbing them.

2 MR SEMENYA SC: And you group of Mambush

3 could equally have walked away from the small kraal to

4 Nkaneng through that route. Am I correct?

5 MR PHATSHA: How did we move then? How

6 did we –

7 CHAIRPERSON: What counsel is putting to

8 you, that it was possible for you to do that, you could

9 have done that.

10 MR PHATSHA: We did not think so.

11 MR SEMENYA SC: Because you wanted to

12 confront the police. That's why.

13 MR PHATSHA: No, there's nothing like

14 that.

15 MR SEMENYA SC: Just before the lunch

16 adjournment, when do you get rid of your bush knife?

17 MR PHATSHA: The bush got lost in the

18 small mountain.

19 MR SEMENYA SC: So despite being fired at

20 by the police, you are having your bush knife, you're

21 running with it to the small koppie?

22 MR PHATSHA: I had it, yes.

23 MR SEMENYA SC: And you've got your

24 "incola" as well?

25 MR PHATSHA: I had the "incola" as well

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1 because it's mine, Sir. The bush knife is the one that I

2 used to cut off that hanging toe.

3 MR SEMENYA SC: And it doesn't occur to

4 you just to drop those weapons and go home?

5 MR PHATSHA: How could I have gone home

6 when I was being shot at?

7 MR SEMENYA SC: Even on your logic, why

8 don't you just leave those arms there and walk yourself

9 home?

10 MR PHATSHA: It's a thing in me that says

11 how could I throw away my weapons, because I did not know

12 where I was going to and what I was going to be confronted

13 with. We could not go anywhere because that whole place

14 were boxed up by the police, they had closed up, we

15 couldn't go anywhere. When you look this side of the

16 mountain, you would see the police there and there was

17 shooting going on, and look on the other side, the same

18 thing, and the birds were singing over our heads.

19 MR SEMENYA SC: Was that not a good

20 moment to put your arms down?

21 [12:59] MR PHATSHA: I did put my weapons down.

22 After putting my weapons down, I took the apron, that

23 cloth, and bound my injured foot with. I then went on my

24 stomach and started crawling on my stomach on that burnt

25 patch of grass. A policeman then came to my rescue, he

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1 said those of us who were seriously injured should come one

2 side so that we could be attended to and be bandaged. This

3 is where I appear on the TV, seated, waiting for my foot to

4 be bandaged.

5 MR SEMENYA SC: And the argument will be

6 you went to the small koppie because that's where your,

7 that was the forte for Mambush group where the rituals were

8 performed.

9 MR PHATSHA: No, there is no such thing.

10 The small koppie, that is where we were being killed and

11 there were many bodies of dead people that were found

12 there.

13 MR SEMENYA SC: Would this be a

14 convenient stage, Chair, for the lunch adjournment?

15 CHAIRPERSON: The Commission will adjourn

16 till half past 1. I may as well announce now that this

17 week we'll be taking a short lunch adjournment from 1 until

18 1:30 because we cannot sit on Friday afternoon. So we

19 adjourn until half past 1.

20 [COMMISSION ADJOURNS COMMISSION RESUMES]

21 [13:35] CHAIRPERSON: The Commission continues.

22 Mr Phatsha, you're still under oath.

23 SIPETE PHATSHA (CONTD.):

24 CHAIRPERSON: Mr Semenya, I take it you

25 want to proceed with your cross-examination.

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1 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):

2 Thank you, Chair. Can I ask the video operator to play us

3 frame 112 – not frame 112, a video. I have requested it to

4 be played and then I'll identify it, Chair.

5 CHAIRPERSON: Now is any kind of warning

6 required before it's played?

7 MR SEMENYA SC: No.

8 CHAIRPERSON: No. Is the video operator

9 ready to show the clip that you've asked for? Yes,

10 apparently the answer is yes. Please proceed.

11 [VIDEO RECORDING PLAYED]

12 MR SEMENYA SC: Just hold it. Hold it

13 there. Did you observe, Mr Phatsha, the young gentleman

14 there in a red T-shirt, busy spraying the crowd? Do you

15 see that?

16 MR PHATSHA: I can see. I'm watching.

17 MR SEMENYA SC: And the evidence will be

18 that is one of the sons of the sangoma who's busy spraying

19 them like that. Do you know differently?

20 MR PHATSHA: I don't know anything about

21 this issue of sangoma.

22 MR SEMENYA SC: Okay, let's proceed with

23 the video clip.

24 [VIDEO RECORDING PLAYED]

25 MR SEMENYA SC: Stop it. You will see

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1 this is a distinct group of people who are crouching there.
 2 Do you see that?
 3 MR PHATSHA: I can see it.
 4 MR SEMENYA SC: And you are part of that
 5 group. Am I right?
 6 MR PHATSHA: I could be among those
 7 people.
 8 MR SEMENYA SC: Yes, can you play on?
 9 [VIDEO RECORDING PLAYED]
 10 MR SEMENYA SC: Can you on those clips
 11 show us the one marked 112? Yes.
 12 [VIDEO RECORDING PLAYED]
 13 MR SEMENYA SC: Stop. You will see in
 14 this group of people there are a whole host of them without
 15 arms. Do you see that?
 16 MR PHATSHA: I'm watching.
 17 MR SEMENYA SC: Can you roll on the video
 18 clip?
 19 [VIDEO RECORDING PLAYED]
 20 MR SEMENYA SC: Stop. You will see
 21 that's now a very different distinct group on the corner
 22 bottom of that frame, as we are watching.
 23 MR PHATSHA: Yes, I'm watching.
 24 MR SEMENYA SC: Those were the warriors.
 25 Am I right?

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1 MR PHATSHA: That I could not know.
 2 MR SEMENYA SC: But you see they are
 3 crouching very distinctly away from the large other group
 4 who we have been looking at.
 5 MR PHATSHA: I can see it.
 6 MR SEMENYA SC: If that is played slower,
 7 we will be able to see you in the front group.
 8 MR MPOFU: I'm sorry, Chairperson,
 9 there's another translation issue. I just want to check
 10 with Mr Semenya whether when he talks about crouching, is
 11 that something different from sitting? Because the
 12 translation has been referring to "ukuchopha," which means
 13 sitting, so that if there is a distinction that seeks to be
 14 made, then it must be made clear to the witness.
 15 MR SEMENYA SC: I'm referring to this
 16 group. The witness will hopefully identify himself and
 17 will know which one we're referring to, Chair.
 18 CHAIRPERSON: But Mr Mpofo says what you
 19 put was that members of this group were crouching, and he
 20 says the interpreter used an isiXhosa word which means
 21 sitting, and he wants to know whether you mean crouching as
 22 opposed to sitting, or whether you mean sitting. That's
 23 the point he raised.
 24 MR SEMENYA SC: Chair, if one looks at it
 25 closely, really, some are crouching, some are sitting. So

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1 I'm trying to find a distinction that won't confuse us.
 2 I'm talking about the group at the front, not the one at
 3 the back. Can we play it and see if you can see yourself
 4 there?
 5 CHAIRPERSON: If we can see him there we
 6 can then decide how one describes his posture at the time.
 7 [VIDEO RECORDING PLAYED]
 8 MR SEMENYA SC: Shall we roll this
 9 slowly? Can I ask Mr Mojapelo up there to show us the
 10 frame that I'm looking for? Can you get closer there and
 11 see whether you can recognise yourself, Mr Phatsha?
 12 CHAIRPERSON: Is it possible to zoom in
 13 on the person who is being circled by the arrow at the
 14 moment?
 15 [VIDEO RECORDING PLAYED]
 16 MR SEMENYA SC: I think on that video it
 17 would be against the 1:58. 1:48, sorry.
 18 [VIDEO RECORDING PLAYED]
 19 MR SEMENYA SC: Maybe I should proceed,
 20 Chair.
 21 CHAIRPERSON: Yes, I think you'd better.
 22 When this clip is found, perhaps after the tea adjournment
 23 this afternoon, you can revert to this matter if the clip's
 24 been found by then.
 25 MR SEMENYA SC: Thank you, Chair. But

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1 I'm correct, Mr Phatsha, that day you had a blanket on.
 2 You had a blanket with you. Am I right?
 3 MR PHATSHA: I was not wearing a blanket,
 4 but I had put on, wearing a towel.
 5 MR SEMENYA SC: You saw people with
 6 blankets in that frame we're looking at now?
 7 MR PHATSHA: Yes, there are those who are
 8 wearing blankets.
 9 MR SEMENYA SC: And it was a very hot
 10 day, the 16th of August last year. Correct?
 11 MR PHATSHA: I don't remember.
 12 MR SEMENYA SC: And those blankets were
 13 intended to reduce the impact of the rubber bullets if
 14 fired at this group.
 15 MR PHATSHA: That I wouldn't know.
 16 MR SEMENYA SC: And some of these
 17 members, your group, had multi layers of clothing to reduce
 18 any possible impact of the rubber bullets.
 19 MR PHATSHA: That they could know, but I
 20 personally do not know.
 21 MR SEMENYA SC: What was your towel for?
 22 MR PHATSHA: I was wearing the towel
 23 because it was a bit cold, the weather.
 24 MR SEMENYA SC: Bishop Seoka tells us it
 25 was very hot and people wanted drinking water.

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1 MR MPOFU: No, Chairperson, there's no
 2 such evidence.
 3 MR PHATSHA: That I could not know. I
 4 wouldn't know.
 5 MR SEMENYA SC: My recollection, Chair,
 6 is the bishop said they wanted food and they wanted water,
 7 it was hot.
 8 CHAIRPERSON: That part I remember.
 9 Whether it was hot is something I can't remember, but again
 10 it's a matter that can be checked in the transcript. We
 11 don't have to spend time on it at the moment.
 12 MR SEMENYA SC: But for your part, Mr
 13 Phatsha, you remember you had the towel because it was
 14 cold?
 15 MR PHATSHA: That's what I'm saying.
 16 CHAIRPERSON: Can you now remember that
 17 it was a cold day?
 18 MR PHATSHA: It was cold on that day.
 19 CHAIRPERSON: A few minutes ago you said
 20 you couldn't remember if it was a hot day. Has your memory
 21 suddenly improved?
 22 MR PHATSHA: I remember because if you
 23 feel it in yourself and not feeling it for another person,
 24 that when it is hot or cold, you yourself will then put on
 25 something so that you can cover yourself. But one can put

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1 on something warm even if it is hot.
 2 [13:55] MR SEMENYA SC: Okay, let's go back to
 3 the koppie with the sangoma's son on the koppie. Mr X will
 4 say there was a requirement for each person to pay R500 so
 5 that they can apply "muti" on him who elects to pay that
 6 money. Did you hear that?
 7 MR PHATSHA: I'm asking you please to
 8 give me a break when it comes to this X, because he's the
 9 one in fact who's deviating my statement. X must come here
 10 and answer for himself, just as much as I'm doing, which
 11 means answering.
 12 CHAIRPERSON: You know, I don't think
 13 your request can be acceded to. Mr X will in due course
 14 come, as I'm informed, and will give evidence and answer
 15 questions put to him by various counsel, including your
 16 counsel. But Mr Semanya must as a matter of fairness put
 17 to you what X is going to say according to his
 18 instructions, to give you an opportunity to give your side
 19 of the story and to say whether anything that Mr X says is
 20 correct and, if so, what parts of what is being put to you
 21 are correct. So your request cannot, as I said, be acceded
 22 to. Mr Semanya is perfectly entitled, and indeed obliged
 23 to put to you what Mr X is going to say insofar as it
 24 relates to you, to give you an opportunity to deal with it.
 25 MR MPOFU: Chairperson, I just want to

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1 place something on the record. It's not an objection. I
 2 agree with the summary that the Chairperson has just given,
 3 but I feel that I have to place this on the record, that
 4 due to certain assurances which I was given by Mr Semanya
 5 regarding whether or not this witness and the next one were
 6 implicated in the whole Mr X business, this particular
 7 witness has not been consulted or prepared in relation to
 8 that and I accept that what Mr Semanya is saying is not
 9 that, he's not saying Mr X said about you and so on; he's
 10 simply putting the version. But I just want to put that on
 11 the record, Chair.
 12 CHAIRPERSON: Alright, it's on the
 13 record.
 14 MR SEMENYA SC: Chair, if I may, I'm told
 15 that the clip can now be shown. It's critical that we
 16 locate the witness.
 17 CHAIRPERSON: Will we be able to locate
 18 the witness if the clip is shown again?
 19 MR SEMENYA SC: Yes, Chair.
 20 CHAIRPERSON: Alright, would you please
 21 show the clip again?
 22 [VIDEO RECORDING PLAYED]
 23 MR SEMENYA SC: Mr Phatsha, can you just
 24 get closer to the screen?
 25 MR PHATSHA: To do what?

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1 MR SEMENYA SC: To go and see, you'll see
 2 there will be an arrow there, whether you recognise that
 3 person to be yourself.
 4 MR PHATSHA: I can see myself.
 5 MR SEMENYA SC: Yes. So you were part of
 6 what I call the Mambush group, not those who are sitting at
 7 the back without arms. Am I right?
 8 MR PHATSHA: I don't know Mambush group.
 9 CHAIRPERSON: Perhaps we should see more
 10 of the group to see whether the allegation that that's the
 11 Mambush group can be verified from the clip.
 12 MR PHATSHA: There were no groups there.
 13 It was only employees who were working at Lonmin, and
 14 further it's people who were demanding money from the
 15 employer.
 16 CHAIRPERSON: But what one can see from
 17 the clip, there's a clear space between the group of people
 18 who are on the left side of the screen and people sitting
 19 further back. There's a clear space between them, so to
 20 that extent Mr Semanya is correct in describing the people
 21 we can see immediately in front of us on the screen as
 22 being a group apart from the others. My fellow
 23 Commissioner Adv Tokota says the gentleman in the front of
 24 the, the forefront of the slide who's wearing a blue and
 25 white shirt appears to have a knobkierie and an assegai on

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1 his left shoulder. Can you confirm whether that is
2 correct?

3 MR PHATSHA: I can see him.

4 MR SEMENYA SC: You'd also be having your
5 bush knife and your spear as you were seated there?

6 CHAIRPERSON: He didn't have a spear; he
7 had a sharpened iron rod.

8 MR SEMENYA SC: "Incula." Sorry, a
9 "incula."

10 MR PHATSHA: I was carrying my sticks.

11 MR SEMENYA SC: Ja, we just wanted to see
12 whether we are able to see Mambush in that group. Is it
13 the end of the clip? Can you go at the very beginning of
14 the clip where there are – Chair, I'll find an opportunity
15 to reconcile the two a little later. Mr Phatsha, can we
16 continue. The people –

17 CHAIRPERSON: Sorry, before you carry on,
18 Mr Semenya, when you said that you weren't in a group,
19 everyone was all together, and I put to you that Mr Semenya
20 was correct in the sense that there was one group of
21 people, quite a large group, and then another group sitting
22 apart from them with a section of grass in between, so that
23 the people with whom you were could correctly be described
24 as being a separate group from the rest of the people. Now
25 what comment do you have to make about that?

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1 MR PHATSHA: I am not saying that there
2 were groups, because a person sits wherever he feels he
3 should sit.

4 CHAIRPERSON: But there's a clear
5 division between the two groups that we can see on the
6 video clip. It's not just a question of people sitting
7 higgledy-piggledy, as it were, where they want to sit.
8 There's a clear division which you can now see between the
9 two groups. Isn't that so?

10 MR PHATSHA: I can see it.

11 MR SEMENYA SC: Do you accept there are
12 two distinct groupings of people in that frame?

13 MR PHATSHA: I'm watching.

14 MR SEMENYA SC: Do you agree?

15 MR PHATSHA: Which thing?

16 MR SEMENYA SC: That there are two
17 distinguishable groups in that frame.

18 MR PHATSHA: That's why I'm saying then a
19 person sits wherever he thinks he should sit.

20 MR SEMENYA SC: I'm going to argue you're
21 being evasive. I'll ask you for the last time, are you in
22 agreement with all of us, I may even hazard to say, that
23 looking at that frame, there are two distinct groups
24 separated by a patch of grass?

25 MR MPOFU: Chairperson, I hope Mr Semenya

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1 is not counting me in that "all of us."
2 CHAIRPERSON: Your reservation has been
3 noted.

4 MR MPOFU: Yes, I'm not part of that –

5 CHAIRPERSON: Your reservation has been
6 noted. Everyone else, except Mr Mpofu and a few others,
7 thinks that, but he doesn't. Anyway, Mr Semenya, carry on.
8 Ignore that objection.

9 MR PHATSHA: I know nothing about groups.
10 What I know is that the people who are sitting there are
11 Lonmin employees.

12 CHAIRPERSON: Mr Semenya, I think you've
13 made the point you want to make, if there's a point that's
14 been made. Perhaps you can move on to the next aspect of
15 the matter. He's obviously taken the position, it's in
16 concrete, I think, and I think his view is made clear to us
17 and your view is made clear. At the end we have to decide,
18 if it's necessary, which of the two of you is correct.

19 MR SEMENYA SC: Mr X will tell the
20 Commission that the group to which you are part was called
21 the warrior group.

22 MR PHATSHA: Hence I'm saying let's put
23 this X aside because I really don't know the issue about
24 this X.

25 CHAIRPERSON: What you're being asked in

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1 effect is whether an allegation which is to be made by a
2 witness who is to be called by Mr Semenya, that you were a
3 member of the warrior group at Marikana at the koppie,
4 whether that allegation is correct.

5 MR PHATSHA: I don't agree.

6 MR SEMENYA SC: And so the evidence will
7 continue that at the koppie on the 11th of August in the
8 evening the Mambush group was then taken to the river,
9 where the rituals were performed.

10 MR PHATSHA: I was not present there.

11 MR SEMENYA SC: And the group was told to
12 go and get two sheep, one white, one black. Do you know
13 about that?

14 MR PHATSHA: I was not there. I never
15 heard about that.

16 MR SEMENYA SC: And the two sheep were
17 put on fire alive, according to the instruction of the
18 sangoma.

19 MR PHATSHA: A person who might have been
20 there could know it, but for me, a person who was not
21 there, I know nothing about that.

22 [14:15] MR SEMENYA SC: And the ashes of the
23 sheep were mixed with "muti" and people were, and it was
24 put on their ear cuttings.

25 MR PHATSHA: It is at a time I was not

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1 present during those things.
 2 MR SEMENYA SC: And they were told that
 3 with that "muti," the "muti" will prevent the bullet to
 4 penetrate their bodies.
 5 MR PHATSHA: How can I know about such a
 6 thing when I was not there when those things happened?
 7 MR SEMENYA SC: And it was illustrated to
 8 this group that the "muti" was effective because a box was
 9 fired at and the bullet would not penetrate it.
 10 MR PHATSHA: I never saw that.
 11 MR SEMENYA SC: And Mr X will say that he
 12 and others believed as a result that the "muti" was indeed
 13 working.
 14 MR PHATSHA: X is the one who could know
 15 that, but I personally don't know about it.
 16 MR SEMENYA SC: And the instructions to
 17 the crowd was that to keep the "muti" effective they must
 18 never open their arms; they must speak with fists in the
 19 air.
 20 MR PHATSHA: Can you repeat?
 21 MR SEMENYA SC: Maybe I'll repeat after
 22 we play the clip showing Mr Mpembe and Mr Mambush at the
 23 railway line, if we can play that clip. Are we able to get
 24 to that clip? Alright, let's proceed, Mr Phatsha. This is
 25 what Mr X will say about the events of the 12th, that that

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1 morning at 9 o'clock the group decided, whilst at the
 2 mountain, to go to the NUM offices again and took a
 3 decision that they were going to fight anyone who stands or
 4 block their way.
 5 CHAIRPERSON: Mr Semenya, the slide 50 of
 6 exhibit L relates to the confrontation between General
 7 Mpembe and the group coming back from Karee. I don't know
 8 whether that's what you're looking for.
 9 MR SEMENYA SC: That is the one. I'm
 10 indebted to you, Chair. Are we able to find slide 50 on
 11 exhibit L? If we can have the audio as well. Mr Phatsha,
 12 please look at the video clip; you'll see that Mr Mambush
 13 does not open his arm at all.
 14 [VIDEO RECORDING PLAYED]
 15 MR SEMENYA SC: Okay. Did you observe
 16 that the speakers from the crowd, they speak with their
 17 clenched fists?
 18 MR PHATSHA: I see them.
 19 MR SEMENYA SC: Were you part of that
 20 group?
 21 MR PHATSHA: I was not there.
 22 MR SEMENYA SC: Were you told that it is
 23 important for people not to open their hands?
 24 MR PHATSHA: I never heard about such a
 25 thing.

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1 MR SEMENYA SC: Okay, now let's go to the
 2 Sunday of the 12th. You were with the group on the 12th,
 3 were you not? Sunday.
 4 MR PHATSHA: Which group?
 5 MR SEMENYA SC: The group of Mambush.
 6 MR PHATSHA: There we had no group. We
 7 were sitting there as people who wanted money from the
 8 employer.
 9 MR SEMENYA SC: While you're still with
 10 Mambush on that day?
 11 MR PHATSHA: Which day?
 12 MR SEMENYA SC: Sunday.
 13 MR PHATSHA: I don't know whether I was
 14 with him or whether he was there or not.
 15 MR SEMENYA SC: You were with those who
 16 were armed.
 17 MR PHATSHA: On which day?
 18 MR SEMENYA SC: Sunday.
 19 MR PHATSHA: I don't recall very well.
 20 MR SEMENYA SC: Were the others having
 21 arms on Sunday when you were there?
 22 MR PHATSHA: That's why I'm saying I
 23 don't recall whether weapons were carried or sticks were
 24 carried.
 25 MR SEMENYA SC: But Mr X will say then

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1 there was a decision to go back to the NUM offices and that
 2 you were going to resist any attempt at stopping you as a
 3 group.
 4 MR PHATSHA: I neither heard nor saw
 5 that.
 6 MR SEMENYA SC: And that this group of
 7 people were having spears, bush knives, pangas,
 8 knobkieries. They had firearms, pistols and handguns with
 9 them.
 10 MR PHATSHA: I never saw guns and
 11 assegais. The things that were carried were sticks and
 12 branches.
 13 MR SEMENYA SC: When is it the first time
 14 you see people holding sharp weapons like you're having?
 15 MR PHATSHA: I started seeing that on the
 16 14th, 15th, and the 16th.
 17 MR SEMENYA SC: When do you for the first
 18 time get to know that there were security personnel that
 19 was killed?
 20 MR PHATSHA: Can you repeat?
 21 MR SEMENYA SC: Do you recall being told,
 22 according to your evidence, that there was security
 23 personnel of Lonmin who were killed?
 24 MR PHATSHA: I heard.
 25 MR SEMENYA SC: Just in your own words,

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1 what did you hear?
 2 MR PHATSHA: I heard that the employees
 3 were shot at by security personnel.
 4 MR SEMENYA SC: And?
 5 MR PHATSHA: I wouldn't know then as to
 6 the stage on which they died.
 7 MR SEMENYA SC: No, I'm interested in
 8 what you're told now.
 9 MR PHATSHA: I cannot hear.
 10 MR SEMENYA SC: I'm interested in you
 11 telling us what was reported to you about the killing of
 12 Lonmin security people.
 13 MR PHATSHA: Can you repeat?
 14 MR SEMENYA SC: Please tell us what you
 15 were told regarding the killing of Lonmin security
 16 personnel.
 17 MR PHATSHA: What I am telling you is
 18 that the security personnel from Lonmin shot at the
 19 employees.
 20 MR SEMENYA SC: And?
 21 MR PHATSHA: And the fact that they died
 22 in my absence, I don't know whether they indeed died or
 23 not.
 24 MR SEMENYA SC: What else were you told?
 25 How were these people killed?

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1 MR PHATSHA: I never heard as to how they
 2 died.
 3 MR SEMENYA SC: You're not interested at
 4 all?
 5 MR PHATSHA: You cannot be interested if
 6 it is said that people died.
 7 MR SEMENYA SC: You don't want to know
 8 how they were killed?
 9 MR PHATSHA: I never wanted to know
 10 because I was not there, and further, I never killed
 11 anyone.
 12 MR SEMENYA SC: So you're not interested
 13 to know how the two security gentlemen were killed?
 14 [14:35] MR PHATSHA: That could be known by those
 15 who killed them, but I know nothing about that.
 16 CHAIRPERSON: Who told you about the two
 17 security people having died, or being killed?
 18 MR PHATSHA: I heard people talking as
 19 they were passing there.
 20 CHAIRPERSON: People who were passing
 21 where?
 22 MR PHATSHA: They were going past my
 23 shanty.
 24 MR SEMENYA SC: And they didn't tell you
 25 how the people were killed?

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1 MR PHATSHA: They never told me.
 2 MR SEMENYA SC: Neither were you
 3 interested to know?
 4 MR PHATSHA: I could not have been
 5 interested when people died.
 6 MR SEMENYA SC: On the Monday, the 13th,
 7 Mr X will tell us there was a decision to go and stop
 8 people who were going to work at the Eastern Platinum
 9 Shaft. That's where you worked. Am I correct?
 10 MR PHATSHA: This X is the one that I
 11 said we should ignore because I cannot answer your question
 12 satisfactorily if X is mentioned.
 13 MR SEMENYA SC: Were you part of a group
 14 of people who went to the Eastern Plats Shaft to stop
 15 people from working?
 16 MR PHATSHA: I was not there.
 17 MR SEMENYA SC: Where were you on the
 18 13th?
 19 MR PHATSHA: I was in the shanty.
 20 MR SEMENYA SC: Were you on strike as
 21 well?
 22 MR PHATSHA: How?
 23 CHAIRPERSON: Were you on strike? The
 24 question, it's a simple question – were you on strike, yes
 25 or no?

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1 MR PHATSHA: On the issue of the strike I
 2 was supposed to be there because I want money.
 3 CHAIRPERSON: You still don't answer the
 4 question. Were you on strike, or weren't you?
 5 MR PHATSHA: I was on strike.
 6 CHAIRPERSON: Thank you.
 7 MR SEMENYA SC: Why don't you join those
 8 who were on strike at the koppie?
 9 MR PHATSHA: It's because I could feel it
 10 [he refers to his blood in himself] that I was not well; I
 11 was not feeling well.
 12 MR SEMENYA SC: Were you sick?
 13 MR PHATSHA: I was not that healthy.
 14 MR SEMENYA SC: You got healthy on the
 15 15th?
 16 MR PHATSHA: I consulted a doctor, who
 17 examined me and told me that I was better, and I also was
 18 feeling better.
 19 MR SEMENYA SC: What day was this?
 20 MR PHATSHA: I cannot remember what day
 21 it was because it happened some time ago.
 22 MR SEMENYA SC: Before you held the
 23 weapons, or after?
 24 MR PHATSHA: Doing what?
 25 MR SEMENYA SC: To go and see the doctor.

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1 MR PHATSHA: You don't carry weapons when
 2 you go to the doctor.
 3 MR SEMENYA SC: I know. I'm just asking,
 4 Mr Phatsha, to orientate yourself. By the time you went to
 5 see the doctor, was it before or after you started carrying
 6 weapons to the koppie?
 7 MR PHATSHA: I was carrying a stick
 8 because I could feel that to me that I was not well and I
 9 was not sure that I could carry my weapons.
 10 MR SEMENYA SC: So you're not able to
 11 tell us whether it was before or after you went to see the
 12 doctor?
 13 MR PHATSHA: I carried my weapons after I
 14 had consulted the doctor.
 15 MR SEMENYA SC: Okay, now we know up to
 16 this point you have never been part of any attacks. Am I
 17 right?
 18 MR PHATSHA: It is so.
 19 MR SEMENYA SC: And you have never been
 20 part of a group that was attacked, at the point when you
 21 decided to arm yourself.
 22 MR PHATSHA: I was never attacked of
 23 that.
 24 MR SEMENYA SC: So by the time you
 25 decided to take arms, you have never been attacked; you

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1 have never been part of a group attacking anybody?
 2 MR PHATSHA: I never attacked anyone. I
 3 was also never attacked.
 4 MR SEMENYA SC: So you did not need to
 5 defend yourself against anything.
 6 MR PHATSHA: I do not understand.
 7 MR SEMENYA SC: There was nothing
 8 threatening your life or limb.
 9 MR PHATSHA: The threat was when the
 10 employees were assaulted by NUM.
 11 MR SEMENYA SC: No, no, no, this time we
 12 know when that happened, you were not armed; you were not
 13 attacked. I'm talking about later, on your version the 15th
 14 now when you take arms.
 15 MR PHATSHA: What made me carry my
 16 weapons was seeing other employees carrying their weapons,
 17 hence I decided to also take mine.
 18 MR SEMENYA SC: For what?
 19 MR PHATSHA: The reason was that
 20 previously we had been attacked.
 21 MR SEMENYA SC: But you told us when you
 22 decided to take arms, you were never attacked; you never
 23 attacked anybody.
 24 MR PHATSHA: It is so.
 25 MR SEMENYA SC: Why are you arming

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1 yourself then, I must ask?
 2 MR PHATSHA: I have to carry weapons when
 3 I go to other employees who have been attacked.
 4 MR SEMENYA SC: Why don't you go to the
 5 other employees who are not carrying arms, who are the
 6 other group?
 7 MR PHATSHA: No-one was without his
 8 weapons.
 9 MR SEMENYA SC: No, we can play that clip
 10 again. The big part of the crowd are people that are there
 11 without arms, on the koppie.
 12 MR MPOFU: Chairperson, that is not the
 13 evidence. The so-called other group also had weapons, from
 14 what I saw, otherwise we'll have to play it again.
 15 MR SEMENYA SC: Mr Phatsha, let me narrow
 16 it for you. I'm talking about the group that's not having
 17 spears and sharp weapons and bush knives.
 18 MR PHATSHA: I know nothing about people
 19 who carried no weapons. What I know is that at the
 20 mountain people were carrying their weapons and their
 21 sticks.
 22 MR SEMENYA SC: You consciously joined
 23 the ones that were holding the sharp weapons, the pangas,
 24 and the "inculas."
 25 MR PHATSHA: I had to go to them,

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1 carrying my sticks, because I was not aware as to when we
 2 were again going to be attacked.
 3 MR SEMENYA SC: So before the 15th your
 4 evidence is there was nothing significant that you saw
 5 happening?
 6 MR PHATSHA: I never saw anything.
 7 MR SEMENYA SC: And on the 15th the second
 8 time Mr Zokwana is on the koppie, that you observed?
 9 MR PHATSHA: I never saw him with my eyes
 10 because he was inside the Nyala, not knowing as to whether
 11 it was him who was talking to the employees who went to the
 12 Nyala to talk.
 13 MR SEMENYA SC: Did you hear over the
 14 loudhailer that you are to disarm and go home?
 15 MR PHATSHA: Where?
 16 MR SEMENYA SC: At the koppie on the 16th.
 17 MR PHATSHA: On the 16th no-one ever said
 18 to us we must put down our weapons.
 19 MR SEMENYA SC: No, I think you're
 20 mistaken. You want to think that answer through?
 21 MR PHATSHA: What is the mistake then?
 22 Because this is what I'm saying.
 23 MR SEMENYA SC: Are you saying nobody
 24 told you to disarm on the 16th?
 25 MR PHATSHA: Who then said we must put

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1 down our weapons?
 2 MR SEMENYA SC: Mr Mathunjwa.
 3 MR PHATSHA: You didn't say that it is Mr
 4 Mathunjwa who said we must put down our weapons. That's
 5 why I want to know this person who said we must put down
 6 our weapons.
 7 CHAIRPERSON: Counsel has now told you it
 8 was Mr Mathunjwa, so would you like to answer the question?
 9 MR PHATSHA: Mr Mathunjwa never said we
 10 must put down our weapons. He said we must go to our
 11 places of residence because the situation was bad, and
 12 further it was going to be bad.
 13 MR SEMENYA SC: Mr Mathunjwa didn't say
 14 you must disarm?
 15 MR PHATSHA: He never said that. He said
 16 we must go back to our places of residence because the
 17 situation was bad, and it was still going to be bad.
 18 MR SEMENYA SC: What did you understand
 19 him to be referring to?
 20 MR PHATSHA: He wanted us to leave that
 21 place and we were waiting for the employer.
 22 MR SEMENYA SC: But he told you the
 23 employer is not coming. Did he not?
 24 MR PHATSHA: What would be the reason for
 25 him not to come, as we are his employees, working for the

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1 employer?
 2 MR SEMENYA SC: Mr Mathunjwa said that to
 3 you that the employer is not coming. Am I right?
 4 MR PHATSHA: Mathunjwa is not the
 5 employer. We wanted the employer.
 6 MR SEMENYA SC: Did he tell you, or he
 7 didn't?
 8 MR PHATSHA: Even if he said it, perhaps
 9 I never heard him.
 10 MR SEMENYA SC: Because it will be the
 11 evidence that Mr Mathunjwa told you to surrender your
 12 weapons, move away from the koppie, because there would be
 13 bloodshed.
 14 MR MPOFU: Sorry, Chairperson, if I can
 15 get clarity from that last question, where that evidence is
 16 going to emanate from that Mathunjwa said something about
 17 weapons?
 18 MR SEMENYA SC: The evidence, Chair, will
 19 come from somebody who the witness doesn't want to mention.
 20 Every time I say Mr X, I know predictably what the witness
 21 is going to say to me. That will be the evidence. Did you
 22 hear Mr Mathunjwa say that?
 23 MR PHATSHA: Let X come forward so that
 24 we can hear what he has to say. I must not be mentioned in
 25 the issues of X whereas I'm not part of it.

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1 [14:55] CHAIRPERSON: I've already explained to
 2 you that Mr X is going to come and give his evidence.
 3 Insofar as he gives evidence that relates to you it's only
 4 fair that Mr Semenya should now, while you're in the
 5 witness box, put to you what will be said so that you can
 6 deal with it. So you must answer the questions he puts to
 7 you in that regard.
 8 MR PHATSHA: That is why, or the thing I
 9 have in me that each and every person in the court answers
 10 for himself.
 11 CHAIRPERSON: What happens in a court is
 12 that each and every person who is implicated in the
 13 evidence that's going to be given by other witnesses has
 14 that evidence put to them so that they get a chance to deal
 15 with it.
 16 MR PHATSHA: Am I then going to represent
 17 X?
 18 CHAIRPERSON: That is a question which is
 19 totally irrelevant to what we're concerned with. You're
 20 just wasting our time and playing the fool. Stop doing
 21 that; behave yourself and answer the questions.
 22 MR PHATSHA: I don't believe that I could
 23 be in this place and displaying folly in the court.
 24 CHAIRPERSON: Well, if you confine
 25 yourself to answering the questions then you will certainly

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1 not display folly. I suggest you take that advice and let
 2 Mr Semenya proceed.
 3 MR SEMENYA SC: Did you hear Mr Mathunjwa
 4 say people must lay their arms down and otherwise there
 5 will be bloodshed?
 6 MR PHATSHA: What I said is Mr Mathunjwa
 7 said, "Men, go back to your places of residence because the
 8 situation is going to be bad." He never said we must lay
 9 down our weapons.
 10 MR SEMENYA SC: Would this be a
 11 convenient stage, Chair, to take the tea adjournment?
 12 CHAIRPERSON: I just want to make a note
 13 of what he said and then we'll take the adjournment. Very
 14 well, the Commission will take the tea adjournment.
 15 [COMMISSION ADJOURNS COMMISSION RESUMES]
 16 [15:21] CHAIRPERSON: The Commission resumes. Mr
 17 Phatsha, you're still under oath. Mr Semenya, do you still
 18 have questions in cross-examination?
 19 MR SEMENYA SC: I do, Chair.
 20 SIPETE PHATSHA (CONTD.): Yes.
 21 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
 22 Mr Phatsha, I want to put a series of propositions that I'm
 23 going to argue at the end of this hearing, and I'm going to
 24 invite you to react to these propositions, if you are able
 25 to. The one is that after the initial confrontation with

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1 the personnel of NUM on the 11th, there was a decision to
2 take up arms. Are you able to react to that?

3 MR PHATSHA: I'm listening as you are
4 saying it.

5 CHAIRPERSON: How do you respond to it?
6 Was there a decision to take arms on the 11th when a group
7 of people went to the NUM offices?

8 MR PHATSHA: Can you repeat? I did not
9 hear.

10 CHAIRPERSON: Listen carefully next time.
11 Was there a decision to take arms on the 11th of August, on
12 the part of the group who were going to the NUM offices?

13 MR PHATSHA: On the 11th, because I never
14 heard the weapons would be carried.

15 MR SEMENYA SC: And then the decision was
16 also made to appoint a committee of 15, comprising groups
17 of five from each shaft.

18 MR PHATSHA: I don't know.

19 MR SEMENYA SC: And that Mambush was one
20 of those 15.

21 MR PHATSHA: I wouldn't know.

22 MR SEMENYA SC: And that committee
23 decided a "inyanga" or a sangoma must be secured.

24 MR PHATSHA: I never heard about such a
25 thing.

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1 MR SEMENYA SC: Sorry, I lost you. I did
2 not follow your answer.

3 MR PHATSHA: Can you repeat?

4 MR SEMENYA SC: There was a decision that
5 –

6 CHAIRPERSON: His answer was that he
7 didn't know about it.

8 MR SEMENYA SC: Oh, he said, "I never
9 heard about this thing."

10 CHAIRPERSON: He never heard about it.

11 MR SEMENYA SC: Yes, and the sangoma, the
12 two sons of the sangoma were procured, who performed
13 various rituals on the Mambush group.

14 MR PHATSHA: I never saw any people who
15 came to perform rituals where we were.

16 MR SEMENYA SC: Sorry, I'm corrected,
17 it's not three shafts, I'm told it's three mines – Eastern
18 Plats, Western Plats and Karee Mine, and I will go to the
19 point where you are on the koppie. On the koppie there was
20 a distinct group of the warriors who were called
21 "makarapa," and you were part of it.

22 MR PHATSHA: Can I answer?

23 MR SEMENYA SC: Yes.

24 MR PHATSHA: I said "makarapa" is the
25 protective hat, the helmet which we put underground to

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1 protect myself from the rocks. Now I'm hearing for the
2 first time that people are referred to as "makarapa."

3 MR SEMENYA SC: And that this warrior
4 group had armed themselves to the teeth with all assortment
5 of dangerous weapons.

6 MR PHATSHA: On which day?
7 MR SEMENYA SC: The days when you were
8 there.

9 MR PHATSHA: People had to arm themselves
10 because we had been attacked by NUM.

11 MR SEMENYA SC: And that the warrior
12 group was fortified in their belief of invincibility
13 because the security tried to fire rubber bullets at them
14 and they came out of that unscathed.

15 MR PHATSHA: I wouldn't know that.

16 MR SEMENYA SC: And on the contrary, it
17 was the security personnel that was killed on the 12th.

18 MR PHATSHA: That is the exact thing that
19 I do not know.

20 MR SEMENYA SC: And the following day,
21 the 13th, they killed the police, with very few casualties
22 on the warrior group, if there was any.

23 MR PHATSHA: I have no knowledge of that.

24 MR SEMENYA SC: On the two occasions,
25 Sunday and Monday, they disarmed police of firearms and an

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1 R5 –

2 CHAIRPERSON: On Sunday, security guards?
3 MR SEMENYA SC: Security on Sunday and
4 police on the Monday –

5 CHAIRPERSON: No, no, you said police.
6 You said police. They disarmed security guards on Sunday
7 and police on Monday of firearms. Is that what you're
8 putting?

9 MR SEMENYA SC: That is what I'm putting
10 to the witness, Chair.

11 MR PHATSHA: I know nothing about that.

12 MR SEMENYA SC: Two of the police two-way
13 radio.

14 MR PHATSHA: I know nothing about that.

15 MR SEMENYA SC: And on the 14th at the
16 mountain they executed Mr Twala.

17 MR PHATSHA: I wouldn't know that.

18 MR SEMENYA SC: And put the skull of a
19 cow on his chest after the murder.

20 MR PHATSHA: I don't know.

21 MR SEMENYA SC: On the 16th, despite being
22 requested to disarm and leave the koppie, the warrior
23 group, to which you were part, did not heed that request.

24 MR PHATSHA: I asked who said we must lay
25 down our weapons.

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1 MR SEMENYA SC: And instead when the
2 Nyala was starting to deploy the razor wire, the warrior
3 group approached the police line.
4 MR PHATSHA: People there were running so
5 that by the time the barbed wire is pulled, that they would
6 not be enclosed. They were running in order to go to the
7 informal settlement. They were not going to fight.
8 MR SEMENYA SC: The larger group of
9 people who were on the koppie then dispersed peacefully.
10 MR PHATSHA: How can they walk peacefully
11 when they were shot at, or people were shot at?
12 MR SEMENYA SC: And the belligerent
13 bellicose group of Mambush instead went to the police line.
14 MR PHATSHA: No-one was going to the
15 police there. People were running away so they could go to
16 the informal settlement, so they ran towards the lower, the
17 south side of the kraal, but when they reached that place
18 they met the police and the police shot at them.
19 MR SEMENYA SC: And despite the teargas
20 used to disperse them, the Mambush group, to which you were
21 part, did not disperse.
22 MR PHATSHA: When you run, no-one thinks
23 as to what exactly he's going to do, or where he will run
24 to, but you run to a place where you will be secured.
25 MR SEMENYA SC: And amongst, some of the

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1 people in the Mambush group had firearms.
2 MR PHATSHA: That I wouldn't know.
3 MR SEMENYA SC: And fired at the police.
4 MR PHATSHA: That I wouldn't know.
5 MR SEMENYA SC: And despite rubber
6 bullets being shot at you to disperse you, you still
7 persisted to breach the police line the second time.
8 MR PHATSHA: Can the people fall as a
9 result of being shot at by rubber bullets, and you say
10 that's rubber bullets?
11 MR SEMENYA SC: And despite there being
12 ample space behind the big koppie, the Mambush group
13 persisted in confronting the police.
14 MR PHATSHA: With the aim of running to
15 the informal settlement because the road was leading to the
16 informal settlement.
17 MR SEMENYA SC: And in fact that theory
18 is incorrect; Mambush did not live in that direction and he
19 was leading this group.
20 MR PHATSHA: A person runs to a place
21 where he feels he will survive. Perhaps he was running to
22 the informal settlement because he wanted to survive.
23 MR SEMENYA SC: And even you, on your own
24 version you intended to run past the police line with your
25 sharp weapon and your bush knife.

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1 MR PHATSHA: It's the one that I used to
2 cut off the piece of flesh which was remaining, as my bone
3 was fractured.
4 MR SEMENYA SC: Before being shot at, I'm
5 saying your intention was to go past the police line with
6 your sharp weapons. Am I correct?
7 MR PHATSHA: My weapons are my weapons.
8 MR SEMENYA SC: And you were going to go
9 past the police line with your weapons, which are your
10 weapons?
11 [15:41] MR PHATSHA: Because I never saw the
12 police line. I was running to the informal settlement in
13 order to hide there in the shanty.
14 MR SEMENYA SC: Why didn't you ask for
15 police protection that time so that they escort you and
16 take you home?
17 MR PHATSHA: Can you repeat so I can
18 hear?
19 MR SEMENYA SC: Because you're so
20 desperate to get home, why don't you ask for police
21 protection to escort you?
22 MR PHATSHA: Why did I go back to the
23 small koppie? What was the reason?
24 CHAIRPERSON: That's a question that you
25 might like to answer yourself. How can you expect Mr

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1 Semenya to answer it?
2 MR PHATSHA: It is necessary because I
3 went and died where many people had died.
4 MR SEMENYA SC: Ja, but you want to go
5 home –
6 CHAIRPERSON: I don't think he could have
7 said that. Did I hear you, "I went and died where other
8 people died?" –
9 MR PHATSHA: During the shooting I ran
10 into the kraal and after that I went back and at the time
11 the police had closed, as I intended to run towards the
12 informal settlement.
13 CHAIRPERSON: Let me understand it. What
14 you said was, according to the interpreter, was you went
15 and died where the other people died. All I'm saying to
16 you is you may have gone to lie down; you may have gone to
17 take cover, as it were, by lying on the ground, or you may
18 have been injured, but you certainly didn't go there and
19 die there because we know that, very happily, you weren't
20 killed and you're alive today to tell the story.
21 MR PHATSHA: I have then to say that I
22 had to go and die where the others had died because the
23 police had encircled, or enclosed, and then I ran limping,
24 and at the same time I had wounds, so I had to go and hide
25 behind the rocks, as the police were shooting. Then by the

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1 power of God I then survived on that war which was directed
 2 to us as we were being shot at.
 3 MR SEMENYA SC: And that you and 200-odd
 4 of Mambush crowd, armed as you were, you had jointly
 5 concluded you were going to run through the police line
 6 with those weapons you had.
 7 MR PHATSHA: Being armed, we had to be
 8 armed because we never did anything to anyone and no-one
 9 had intended to kill the police with those weapons.
 10 MR SEMENYA SC: Okay, let me establish
 11 this as a last area I take up with you. On your way home
 12 as a group of 200, on your version, when there was a police
 13 line in front of you, you had meant to run through that
 14 line of police, armed as you were - am I correct? - on
 15 your way home.
 16 MR MPOFU: Sorry, Chairperson, I think
 17 we're going to have another interpretational light measure.
 18 Mr Semenya's question is very clear that they intended to
 19 go through the line, as it were. The interpretation, it's
 20 not incorrect but it gives the impression of going, passing
 21 the line, [Xhosa word], you pass something, and those are
 22 two different things. If maybe the interpreter, just on
 23 what I've said, Chair, can just adjust. It's not that he's
 24 wrong, but the words that he used, [Xhosa words], can
 25 either mean -

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1 CHAIRPERSON: It's not that he's wrong,
 2 it's just that there's a nuance that the interpretation
 3 didn't cover, which you've now explained.
 4 MR MPOFU: Thank you, Chair.
 5 CHAIRPERSON: Alright.
 6 MR SEMENYA SC: You were meaning to go
 7 through the police line, armed as you were, on your way
 8 home. Am I right?
 9 MR PHATSHA: Talking about a line, where
 10 there's a line, usually there is a mark which is made, that
 11 which I did not see. So our aim was to run to the informal
 12 settlement, but not with the aim of going there to fight.
 13 MR SEMENYA SC: And any attempt by the
 14 police to stop you, what would you have done?
 15 MR PHATSHA: We would not have done
 16 anything because we never intended to fight. All we wanted
 17 was money from the employer only.
 18 MR SEMENYA SC: I'm saying as you were
 19 going to home, had the police tried to stop you with your
 20 arms, what would have happened?
 21 MR PHATSHA: We were going to stop and
 22 wait to here what they would have to say.
 23 MR SEMENYA SC: And if they told you to
 24 disarm and go back, what would have happened?
 25 MR PHATSHA: Because we had already been

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1 shot at, we were not going to agree with our weapons.
 2 MR SEMENYA SC: No, before any shooting,
 3 they were to stop you and say okay, you can put your
 4 firearms, your arms on the ground and go home, what would
 5 have happened? Would you have agreed to put your arms
 6 down?
 7 MR PHATSHA: We would concede, we would
 8 have conceded.
 9 MR SEMENYA SC: And that's where your
 10 evidence is completely unbelievable. They have been
 11 pleading with you to put your arms down all along and now
 12 all of a sudden you're going to do it?
 13 MR PHATSHA: We said we must lay down our
 14 weapons?
 15 MR SEMENYA SC: And you were not going to
 16 disarm, whatever the circumstances were.
 17 MR PHATSHA: The thing that made us not
 18 to lay down our weapons was because we were shot at.
 19 MR SEMENYA SC: And I'll argue finally
 20 that your evidence is not dependable to support any
 21 conclusion, unless otherwise supported by objective
 22 evidence.
 23 MR PHATSHA: You then do well by not
 24 believing because you are not the one who was shot at.
 25 MR SEMENYA SC: Those are the questions I

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1 have for the witness, Chair.
 2 CHAIRPERSON: Mr Semenya, as far as I can
 3 see you haven't dealt with paragraph 19 of his statement,
 4 nor the second paragraph of the second page of exhibit
 5 DDD4, unless I am mistaken. If you have dealt with it,
 6 then fine, I won't ask anymore about it.
 7 MR SEMENYA SC: Mr Phatsha, on your
 8 evidence, at the small koppie, your statement reads that
 9 the people were shot while they were having their arms
 10 raised. Do you recall that?
 11 MR PHATSHA: I remember.
 12 MR SEMENYA SC: And you said they were
 13 shot by the police.
 14 MR PHATSHA: They were being shot at by
 15 the police even now.
 16 MR SEMENYA SC: And my consultation says
 17 this is entirely incorrect.
 18 MR PHATSHA: How? As we were shot at by
 19 the police.
 20 MR SEMENYA SC: Even speaking about the
 21 small koppie, despite water canons being thrown at the
 22 crowd, you were unwilling to disarm. Am I right?
 23 MR PHATSHA: We laid down our weapons and
 24 we made to lie down on our stomachs and we were made to
 25 crawl on our stomachs on the burnt grass.

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1 MR SEMENYA SC: No, before the arrests.
 2 You remember when there was, the water canons were spraying
 3 water there?
 4 MR PHATSHA: I personally was watching
 5 them.
 6 MR SEMENYA SC: At that time you did not
 7 put your weapons on the ground, raised your hands and went
 8 to the police. Am I right?
 9 MR PHATSHA: We laid down our weapons and
 10 we were made to lie down and the Nyala was parked there and
 11 people were being arrested.
 12 MR SEMENYA SC: Before the arrests, while
 13 there was blue water, you remember that time?
 14 MR PHATSHA: Yes.
 15 MR SEMENYA SC: That's the time you're
 16 saying the police were shooting you?
 17 MR PHATSHA: They were really shooting at
 18 us.
 19 MR SEMENYA SC: Whilst the water was
 20 being sprayed on this crowd?
 21 MR PHATSHA: The water would be sprayed,
 22 but it would land or hit the rocks, and in turn would be
 23 sprinkled on the people who were in the nearby, but at that
 24 time I was a bit far from where the water was being
 25 sprayed.

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1 MR SEMENYA SC: That's when you see
 2 people raising their arms and being shot at by the police?
 3 MR PHATSHA: Indeed.
 4 MR SEMENYA SC: And I'm going to argue
 5 that your evidence is false.
 6 MR PHATSHA: How?
 7 MR SEMENYA SC: You also say there was a
 8 point at which you were surrounded by the police.
 9 MR PHATSHA: The police had encircled, or
 10 surrounded the small koppie, that is referred to as the
 11 small koppie, and there was not even a place to escape.
 12 MR SEMENYA SC: And the evidence will be
 13 those from the small koppie who were moving without arms,
 14 were allowed by the police to just walk in various
 15 directions.
 16 MR PHATSHA: I'm hearing that from you.
 17 CHAIRPERSON: But do you say that it's
 18 not correct, or do you admit that it is correct?
 19 MR PHATSHA: At the time the police had
 20 surrounded that thicket, no-one would go freely. Anyone
 21 the police would see, they would shoot at that person.
 22 MR SEMENYA SC: And you'll be mistaken to
 23 think that any police officer shot from the helicopters.
 24 MR PHATSHA: How? Because the helicopter
 25 was flying over us, above us.

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1 MR SEMENYA SC: So I'm going to argue
 2 that your version must be rejected where you suggest that
 3 police shot at anyone whilst they had their arms raised in
 4 surrender.
 5 MR PHATSHA: That is known then by you.
 6 MR SEMENYA SC: And on the contrary,
 7 amongst the Mambush group at koppie 3 where people with
 8 firearms were firing at the police.
 9 MR PHATSHA: That I wouldn't know.
 10 MR SEMENYA SC: Those are the questions I
 11 have for the witness, Chair.
 12 [16:01] CHAIRPERSON: It's 4 o'clock, so we're
 13 going to take the adjournment now, but before we do that,
 14 let's find out if there's anyone who wishes to ask
 15 questions in cross-examination before Mr Mpofu has an
 16 opportunity to re-examine. Anyone going to ask questions
 17 in cross-examination from the AMCU side?
 18 MS BARNES: Chairperson, yes, we are, but
 19 very short. We'll be very quick, Chair.
 20 CHAIRPERSON: And Ms Lewis, from the
 21 family side?
 22 MS LEWIS: Chair, yes, we do wish to
 23 cross-examine this witness.
 24 CHAIRPERSON: And Mr Mpofu, I take it
 25 you've got some re-examination.

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1 MR MPOFU: Indeed I do, Chairperson.
 2 CHAIRPERSON: Mr Bizos?
 3 MR BIZOS SC: We would not have any
 4 question for the witness, thank you.
 5 CHAIRPERSON: Well, we will proceed then.
 6 We'll continue tomorrow morning at 9:30. The Commission
 7 will now adjourn.
 8 [COMMISSION ADJOURNED]
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