

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

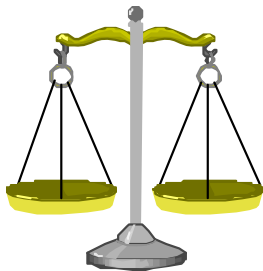
THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON  
MR TOKOTA SC  
MR HEMRAJ SC

#### HELD ON

1 OCTOBER 2012      PAGES 1 TO 65

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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<p style="text-align: right;">Page 1</p> <p>1 [PROCEEDINGS ON 1 OCTOBER 2012]  2 [09:35] CHAIRPERSON: Our apologies for beginning  3 late, but we had an important session beforehand with the  4 representatives of the media at which various matters were  5 discussed and had to be discussed before we could begin,  6 and that's the main reason why we're starting late and I  7 apologise to those people who've been kept waiting, arrived  8 at the proper time and thought we would start at 9 o'clock.  9 I want to begin by making some general remarks,  10 addressed particularly to the families of those who, and  11 the next of kin of those who died in the incidents which  12 form the subject of our inquiry, and I do so out of respect  13 to all those present here who's family members died as a  14 result of these incidents which we are called upon to  15 investigate, and the first thing I must do is to declare  16 this inquiry open.  17 The members of the Commission who are sitting  18 with me here on the stage are my colleague, Adv Hemraj SC  19 from the Durban Bar, and my colleague, Adv Tokota SC of the  20 Pretoria Bar. I am, as you may know, the chairman. We  21 were appointed by the President in terms of Section  22 84(2)(f) of the Constitution, read with the Commissions Act  23 of 1947. The Commission's task is outlined in the terms of  24 reference promulgated by the President on the 12th of  25 September, is to establish the facts about what happened in</p>	<p style="text-align: right;">Page 3</p> <p>1 important to assure everyone that the members of the  2 Commission are committed to work towards the realisation of  3 the objectives for which the Commission has been  4 established, and we will do so to the best of our ability  5 and we will at all times be conscious of the fact that we  6 are appointed as independent members of the Commission. We  7 will only act in accordance with our consciences and what  8 the evidence led before us leads us to believe are the true  9 facts, and no exterior influences of any kind will be  10 allowed to be brought to bear upon us.  11 What I'm going to do now is I'm going to request  12 my colleague Adv Thokota to read the names of the deceased  13 in memory of our fallen fathers, uncles, brothers,  14 countrymen and friends whose death will always be in the  15 heart of all South Africans as we commence this difficult  16 task. The deceased we pay tribute to include mineworkers,  17 police officials and a councillor of the Madibeng Local  18 Municipality. I ask family members to stand as the names  19 of the deceased are read. So after each name which Adv  20 Tokota reads he will pause to enable the family members, if  21 they are present, to stand, and thereafter I will ask  22 everyone to stand and we will observe a minute silence in  23 which those who wish to do so may pray for the souls of  24 those who died. The members of the families may, if they  25 wish during the minute's silence, be seated. Our country</p>
<p style="text-align: right;">Page 2</p> <p>1 Marikana when 45 people lost their lives and scores were  2 injured. It is in memory of those who lost their lives  3 during these tragic incidents that the Commission wishes to  4 dedicate this stated moment in this memory at the very  5 start of the inquiry. On behalf of the Commission, parties  6 and all persons who will interact with the Commission, we  7 convey our deepest heartfelt sympathy and condolences to  8 the families and next of kin of the deceased persons. I'm  9 advised that the majority of family members and next of kin  10 are in our midst and those others from Lesotho and  11 Swaziland who are unfortunately unable to be with us today,  12 will join the inquiry later. We acknowledge and thank you  13 for having made time to attend these proceedings. We  14 cannot measure your grief or less, but we believe that as  15 we relive the events that culminated in the events on the  16 16th of August, that we will do so in the firm belief and  17 conviction that getting to the truth of what, how and why  18 it happened will be part of the healing and restoration  19 process, which is so necessary.  20 As Commission we will do everything in our power  21 to make sure that your attendance and participation in this  22 inquiry will not add to your grief and trauma. It is for  23 this reason that the Commission has deemed it fit to  24 subscribe to the values of truth, restoration and justice  25 which are adopted in our official logo. It's also</p>	<p style="text-align: right;">Page 4</p> <p>1 weeps for this tragic and unnecessary loss of life and we  2 owe it to all concerned to ensure that the Commission works  3 efficiently and expeditiously to ascertain the truth of  4 what happened. Now Adv Tokota, will you please begin  5 reading the names?  6 MR TOKOTA SC: Thank you, Chair. I will  7 now read the names of the deceased persons. Most of the  8 people here that I recognise are Xhosa speaking, but I  9 recognise that some of the surnames as I understand and  10 know them, are not correctly spelt. So, but I will read  11 them as I know them. The first one, and I will not say  12 first, second, but will just read the names as they appear  13 and then I will pause in between. Thobile Mpumza. Thabiso  14 Thelejane. Anele Mdizeni. Makhosandile Mkhonjwa. Julius  15 Mancotyway. Janiveke Liau. Thabiso Mosebetsane. Mafolisi  16 Mabiya. Ntandazo Nokamba. Fezile Saphendu. Mpunsene  17 Ngxande. Sitelega Gadlela. Henry Pato. Michael Ngweyi.  18 Patrick Akhona Jijase. Bonginkosi Yona. Andries Msenyeno.  19 Mzukisi Sompeta. Jackson Lehura. I think I've already  20 read Mpunsene Ngxande, but Mpunsene Ngxande. Mpangeli  21 Lukusa. Mongezeleli Ntenetya. Cebisile Yana. Mguneni  22 Noki. Khawamare Elias Monesa. Bongani Ndongophele. John  23 Ledingoane. Babalo Mtshazi. Thembinkosi Gwelani.  24 Nkosiyabo Xalabile. Bongani Mdze. Teleng Mohai.  25 Modisaotsile Sagalala. Molefi Ntsoele. Hassan Fundi.</p>

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1 Frans Matlhomola Mabelane. Thapelo Eric Mabebe.  
 2 Thembelakhe Mati. Hendrik Tsietse Mohene. Sello Ronnie  
 3 Lepaaka. Sandi Teyise. Mlanduli Hendry Saba. Pumzile  
 4 Sokanyile, and the last, but not the least, Pauline  
 5 Masutle.  
 6 CHAIRPERSON: Thank you very much, Adv  
 7 Tokota. These proceedings are being transmitted also in  
 8 rooms nearby where what is being said is being interpreted  
 9 into isiXhosa, Sesotho and Tswana. So many people who'll  
 10 be watching this were not in the auditorium at the moment.  
 11 I see you've all stood. Let us observe a minute silence in  
 12 honour of those whose names have been read out. [One  
 13 minute silence] Thank you very much. May their souls rest  
 14 in peace.  
 15 I've already introduced the Commission, members  
 16 of the Commission to you. I now invite the evidence  
 17 leaders to introduce themselves and put themselves on  
 18 record, after which I will invite the parties, the  
 19 representatives of the parties to do the same. I've been  
 20 asked by those responsible for recording the proceedings to  
 21 see to it, to ask those who stand up and speak to give  
 22 their names for the benefit of those called upon ultimately  
 23 to transcribe these proceedings. You don't have to  
 24 necessarily do it every time, but initially there's a  
 25 specific request that you do so. Mr Mbuyiseli, you are the

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1 senior member of the team of evidence leaders.  
 2 MR MADLANGA: Thank you, Chair, members  
 3 of the Commission. For the evidence leaders the list is as  
 4 follows, and I will spell some of the names because of  
 5 one's experience in what one sometimes sees in the  
 6 transcripts. My name is Mbuyiseli, that's M-B-U-Y-I-S-E-L-  
 7 I, Madlanga, M-A-D-L-A-N-G-A, appearing together with  
 8 Geoffrey, spelt G-E-O-F-F-R-E-Y, not J-E, Budlender, and  
 9 Matthew Chaskelson, Charles Wesley, Kameshni Pillay,  
 10 Matthews Mojapelo, and Mojapelo is M-O-J-A-P-E-L-O.  
 11 Perhaps I should have spelt Kameshni as well, that's K-A-M-  
 12 E-S-H-N-I, and Thantaswa, T-H-A-N-T-A-S-W-A, Lupuwana, L-U-  
 13 P-U-W-A-N-A. That is the lot of us, Commissioners. Thank  
 14 you.  
 15 CHAIRPERSON: Before I call upon the  
 16 parties and their representatives, I've been asked to  
 17 indicate, to give a brief outline of the mandate of the  
 18 Commission. The terms of reference are fully set out in  
 19 the proclamation to which I referred earlier. Broadly  
 20 speaking, there are four themes which will form the subject  
 21 of our investigations. The first concerns the events over  
 22 the period from about the 9th of August to the 16th of  
 23 August, although it may be that events which took place  
 24 before those dates or after will be relevant in as much as  
 25 they may throw light on what actually happened during the

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1 period to which I've referred.  
 2 The second theme concerns the employer, Lonmin,  
 3 whether its policies and practices, conduct and so forth,  
 4 contributed to what ultimately happened.  
 5 The third theme deals with the trade unions who  
 6 were involved, and also the actions of each trade union,  
 7 the relations [inaudible 16:35] between the trade unions  
 8 and also the actions of the non-unionised members, miners  
 9 who were not members of the trade unions.  
 10 Then finally we're asked to investigate the  
 11 conduct, the actions and omissions of certain government  
 12 departments – Police, Mineral Resources and Labour. It may  
 13 be that the actions and so forth of the police may be  
 14 covered under the first theme, but if there's anything over  
 15 we will look at it together with the actions and omissions  
 16 of the other departments as well.  
 17 What we've decided to do is to deal firstly with  
 18 what I've called the first theme, and so for the first  
 19 period we will hear evidence and later submissions in  
 20 regard to the events from, over the period to which I've  
 21 referred, and after that we propose giving a report on our  
 22 conclusions in relation to that theme. After that we will  
 23 deal with the other themes. That is the way we propose  
 24 doing things. It may be that it will be necessary for  
 25 witnesses who've testified in relation to say the first

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1 theme to come back and testify in relation to some of the  
 2 other themes as well, but these are matters which we will  
 3 deal with as we go along.  
 4 It seems to us to be very important that in  
 5 relation to the first theme we should proceed to  
 6 investigate that with the greatest expedition. It's very  
 7 important that the truth insofar as what happened over that  
 8 period should become clear as soon as possible. We have to  
 9 balance the need to deal with the matter with expedition  
 10 with the need to be thorough, and we certainly want to give  
 11 everyone concerned the assurance that we will do our best  
 12 to ensure that the matter is dealt with thoroughly and as  
 13 exhaustively as is appropriate in the circumstances. I now  
 14 want to call upon the representatives of the parties to  
 15 place themselves on record. When you speak please turn  
 16 your microphone on so that I can see the red light, and  
 17 thereafter when you're finished speaking turn it off. I  
 18 take it the first representative I must call upon is the  
 19 representative for Lonmin.  
 20 MR BHAM SC: Thank you Mr Chair,  
 21 Commissioners. I appear for Lonmin. My name is Azhar  
 22 Bham. I'm an advocate practising at the Johannesburg bar.  
 23 Appearing together with me for Lonmin are Advocates Mike  
 24 Van As, Horace Shoji and Terry Motau, who's also senior  
 25 counsel. We are instructed by Attorneys Cliffe, Dekker,

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1 Hofmeyr. Sitting to my right is Fiona Leppan, who is from  
2 our instructing attorneys. Adv Schalk Burger will also be  
3 part of the team. He'll join us later in the week.

4 CHAIRPERSON: Thank you very much. Mr  
5 Bizos, I see you. Would you like to place yourself on  
6 record, tell us for whom you appear and who's appearing  
7 with you?

8 MR BIZOS SC: Thank you –

9 CHAIRPERSON: You don't have to stand  
10 unless you feel more comfortable standing.

11 [09:55] MR BIZOS SC: I have a fear that I become  
12 tongue-tied when I'm seated, Mr Chairman, it may be that  
13 you - if I may seek your indulgence to make available an  
14 interpreter's stool for me to use, but thank you for the -.  
15 Mr Chairman and members of the commission, I appear on  
16 behalf of the Legal Resources Centre together with my  
17 learned friends Mr Thembeka Ngokai Thobe, Adv Jason  
18 Brickhill and Michelle Bishop. We have a number of  
19 attorneys assisting us – Mr Sheldon Magadi, he is the  
20 director of the Cape Town office of the Legal Resources  
21 Centre, Mr Steve Canowitz from the same area, Mr Bongamusa  
22 Sibiya, the attorney in Johannesburg and a valuable member  
23 of our team, candidate attorney Mr Michael Power who may  
24 also be an important witness in this case and more  
25 particularly even today because he visited the scene and

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1 made notes and took photographs of what he found shortly  
2 after the event.

3 We are asked who our clients are, Mr Chairman,  
4 and unashamedly I say that we consider our primary client,  
5 the Constitution which guarantees the right to life and  
6 because of our respect of that fundamental right, we took  
7 steps early on to become involved and because our  
8 Constitution says that we are a client-based organisation  
9 we have – we did approach the families of Lendingoane, I  
10 hope I do justice to the pronunciation – the family Mabiya,  
11 the family Mdizeni and Shakakaza, not one of the deceased  
12 persons.

13 We took action early on because of our experience  
14 that, to quote the late Jonathan Gluckman, the foremost  
15 authorities in our country, sometimes a corpse is a better  
16 witness than a living person – and we obtained the services  
17 of pathologists. With the co-operation of some of the  
18 doctors that had already started doing the post-mortems,  
19 they attended on post-mortems and they had discussions with  
20 the district surgeons that were doing the post-mortems.  
21 They have filed a provisional report but have reserved  
22 their right to express definitive opinions once they had  
23 access to the reports that were drawn up by the medical  
24 practitioners on bodies that came, examined, too late for  
25 them to examine and also they would very much want, before

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1 expressing a final opinion, the nature of the wounds of the  
2 persons who were injured but who survived because they  
3 consider that information fundamental to their conclusions.

4 We have been under pressure by certain other  
5 parties to make those available. We have not done it and I  
6 would like, for the purposes of the commission and the  
7 public at large, very briefly to say that we did not want  
8 these documents to become public before they were in their  
9 final form and that the first recipient of those documents  
10 should be you, Mr Chairman, and the members of the  
11 commission and we are glad to see that our nous in relation  
12 to this matter was confirmed by regulation 14, recently  
13 published, which says that the documents intended for the  
14 commission should not be aired in public before they have  
15 been handed to the commission. We had the nous to actually  
16 forecast that particular provision.

17 Mr Chairman, even today if needs be, or the next  
18 few days, we have Mr Power who visited the scene. If a  
19 witness is needed, he is available and ready with the  
20 possible exception of needing time to copy the photographs  
21 that he took shortly after the event in order to be  
22 distributed to the commission.

23 What we are here for is because of our protection  
24 of the rights of the people of South Africa in terms of the  
25 Constitution. I will lead the team in relation to the

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1 conduct of the police. In relation to the other matter,  
2 the socio-economic conditions and others, my learned friend  
3 sitting immediately to my right will address the commission  
4 and examine the witnesses. We have already consulted with  
5 experts who have not given us final reports but we are  
6 here, not to take part or do any favours to any of the  
7 other parties, we are here to help the commission to come  
8 to a just conclusion in relation to this very serious  
9 matter.

10 And what I want to say finally, Mr Chairman, is  
11 this, that you see that we have a large team, we have  
12 others as well if they are needed either by the evidence  
13 leaders or by the commission whose resources, we are told  
14 publicly, are limited – to assist in the spirit of co-  
15 operation, any assistance that may be required of us. It  
16 will be done in good faith and without fear or favour.  
17 Thank you for the opportunity, for asking me to put  
18 ourselves on record, Mr Chairman.

19 CHAIRPERSON: Thank you very much, Mr  
20 Bizos. Thank you for the assurances -

21 MR BIZOS SC: I am reminded, Mr Chairman,  
22 that I – because I don't look at my notes, I have been  
23 reminded that we also act on behalf of the Benchmarks  
24 Foundation, an NGO which is concerned about the advancement  
25 of human rights. I'm sorry I didn't do it.

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1 CHAIRPERSON: Thank you, Mr Bizos, for  
 2 those comments and for the assurances which you gave and I  
 3 trust you and Mr Matlanga will be in contact in relation to  
 4 the evidence that, the photographs and so forth that you  
 5 have available.  
 6 MR BIZOS SC: Yes, we have already  
 7 assured the \*09:56 that we will co-operate with them fully.  
 8 CHAIRPERSON: Thank you.  
 9 MR TIPP SC: Mr Chair, members of the  
 10 commission, I head the legal team for the National Union of  
 11 Mineworkers. My name is Adv Karel Tipp SC and I am  
 12 appearing with Adv Hamilton Maenetje SC and Adv Thando  
 13 Ntsonkota. We are all instructed by attorneys Cheadle  
 14 Thompson & Haysom. I should take the opportunity perhaps,  
 15 Chair, to say that Mr Maenetje is absent today. It is  
 16 something that unfortunately is likely to crop up from time  
 17 to time, not only in respect of our team but others also.  
 18 We have all shed work in order to be able to be present as  
 19 often as possible. Inevitably some matters could not be  
 20 budgeted and we ask in advance for the commission's  
 21 indulgence on those occasions when personnel change from  
 22 one day to another.  
 23 CHAIRPERSON: Of course, Mr Tipp, there  
 24 shouldn't be a problem about that.  
 25 MR TIPP SC: Yes, I can add the assurance

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1 that we will not allow any of those circumstances to affect  
 2 the work of the commission. It will at no time impede the  
 3 progress here.  
 4 MR MPOFU: Thank you, Mr Chairman, and  
 5 members of the panel, my name is Dali Mpofu, I'm an  
 6 advocate at the Johannesburg Bar. I act for three  
 7 categories of parties, Mr Chairman. The first group is a  
 8 group of the 270 miners who were arrested and charged and  
 9 subsequently released, provisionally released, among other  
 10 things pending the outcome of this commission. All of them  
 11 were charged with murder and attempted murder and another  
 12 assortment of charges, which were all provisionally  
 13 withdrawn.  
 14 The second category, Mr Chairman, is an  
 15 organisation called the Lonmin Community Committee which is  
 16 a broader community structure that was formed, among other  
 17 things, to assist the broader community which is not  
 18 represented by either party. The third category is, we  
 19 also represent the family of Ms Pauline Macula who is the  
 20 last name that was read, who was their counsellor.  
 21 I am together with Adv Lesego Musi and we are  
 22 instructed by three firms of attorneys represented by Musi  
 23 Msimang, Hoffman Maluleke Msimang Attorneys, Mapule Kefe,  
 24 also of Maluleke Msimang, Andries Ngome of Ngome  
 25 Incorporated and Mr Simon Tlhatlha, spelt T-L-H-A-T-L-H-A,

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1 of Tlhatlha Attorneys. Thank you.  
 2 CHAIRPERSON: Thank you, Mr Mpofu.  
 3 MR MPOFU: Sorry, Mr Chairman, just to  
 4 add a small bit – included in the 270 are some of the, what  
 5 in your terms of reference are referred to as the injured  
 6 parties. There were about 10 or so people who were injured  
 7 and arrested but they have also been subsequently released.  
 8 CHAIRPERSON: Yes, thank you. I've been  
 9 asked to ask those who come on record to start by  
 10 mentioning their names for the benefit of those who will  
 11 transcribe these proceedings and then mention the names of  
 12 the entire team. It looks to me as if you're next, Mr  
 13 Badenhorst.  
 14 MR BADENHORST SC: Thank you, Mr  
 15 Chairman, honourable commissioners, my name is Cassie  
 16 Badenhorst SC. I am a member of the Johannesburg Bar and I  
 17 am representing the Department of Mineral Resources. Our  
 18 team consists of the following persons, Mr Sipho Mathebula,  
 19 M-A-T-H-E-B-U-L-A, the senior state attorney, Adv Dikeledi  
 20 Chabedi, C-H-A-B-E-D-I, of the Pretoria Bar, Adv Louis de  
 21 Bruin of the Johannesburg Bar and Mr Pieter Alberts, the  
 22 chief legal adviser of the DMR. Our team members, Mr  
 23 Chairman, will not all be present throughout the  
 24 proceedings but the DMR undertakes to always be represented  
 25 by one or more of the team members, as may be required, and

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1 we also provide the assurance that we will be fully  
 2 supportive of the commission's requirements. Thank you, Mr  
 3 Chairman.  
 4 CHAIRPERSON: Thank you, Mr Badenhorst.  
 5 MR SEMENYA SC: Good morning, Chairman  
 6 and members of the commission. My name is Ishmael Semanya,  
 7 I am a practising advocate at Johannesburg Bar. On  
 8 instructions of Van Velden Duffy and particularly Mr  
 9 Pretorius and the instructions of Mr Moselane from the  
 10 State Attorney, I am assisted by Mr Mathibedi,  
 11 M-A-T-H-I-B-E-D-I SC, Mr Ngalwana, N-G-A-L-W-A-N-A, Ms  
 12 Sello, S-E-L-L-O, and Ms Baloyi representing the South  
 13 African Police Services.  
 14 MR NTSEBEZA SC: Thank you, Mr Chairman.  
 15 Mr Chairman, members of the commission, my name is Dumisa,  
 16 Dumisa Ntsebeza SC. I appear for the following 20 families  
 17 of those who died in the period concerned – Mgunene Noki,  
 18 Mongezeleli Ntenetya, Bongani Ndongophele, Cebisile Yana,  
 19 Jackson Lehura, Sammy Jokanisi, David Fezile Saphendu,  
 20 Thobisile Nzimande, Henry Mvuyisi Pato, Julius Thokoti  
 21 Manotyotyo, Mzukisi Sompeta, Patrick Akhona Jijase, Babalo  
 22 Mtshazi, Mafolisi Mabiya, Michael Ngweyi, Anele Mdizeni,  
 23 Makhosandile, Makhosandile Mkhonjwa, Makosiyabo Xalabile,  
 24 Ntandaso Nkamba, Tobisile Zibambebe.  
 25 [10:15] I am assisted, Mr Chairman, and members of the

1 Commission by two baby juniors, Nicole Lewis and Tulwane  
 2 Mutwenya. We are instructed by the Socio-Economic Rights  
 3 Institute Law Clinic. My attorney assisted by a candidate  
 4 attorney is Osmond Ngwemezulu and the candidate attorney is  
 5 Jonathan Koga. Those are who we represent. Mr Chairman,  
 6 you will have you will have noticed that none of the people  
 7 we represent are here, and I believe Item number 6 of your  
 8 agenda, being only that at this stage, we should introduce  
 9 the parties and their representatives. I will possibly say  
 10 more about why they are not here at item number 8 of your  
 11 agenda because I intend to bring an appropriate application  
 12 at that stage to yourselves.

13 CHAIRPERSON: Thank you, Mr Ntsebeza.  
 14 Yes, Bruinders, I think.

15 MR BRUINDERS: Good morning, members of  
 16 the Commission, my name is Tim Bruinders, from the  
 17 Johannesburg Bar. Heidi Barnes, Stewart Wilson and Irene  
 18 de Vox, all advocates at the Johannesburg Bar, and I appear  
 19 for the Association of Mineworkers and Construction Union,  
 20 AMCU. We are instructed by an attorney Tebogo Mosikile  
 21 from SERI, which is the same organisation that instructs Mr  
 22 Ntsebeza.

23 CHAIRPERSON: Thank you, Mr Bruinders.  
 24 Whose is next to put or herself on record? Is anybody here  
 25 from – oh, sorry.

1 MR LE ROUX: Mr Chairman, and members of  
 2 the Commission, my name is Willem Le Roux, I am from the  
 3 firm Brink Cohen Le Roux in Johannesburg. We represent the  
 4 Chamber of Mines of South Africa and will representing the  
 5 interests of members of the Chamber. To a very great  
 6 extent, our role will be reactive, as opposed to proactive,  
 7 but certainly in regard to relevant matters, we will  
 8 address you and we may adduce evidence but we will not  
 9 burden the Commission unnecessarily with matters where we  
 10 are not directly involved.

11 CHAIRPERSON: Thank you very much. Is  
 12 there anybody here representing the Department of Labour,  
 13 is one of the departments listed in terms of reference? Is  
 14 there anybody else who hasn't had an opportunity yet to put  
 15 him or herself on record?

16 MR MPOFU: Mr Chairman, if I may be of  
 17 assistance. The Department is not legally represented by  
 18 the Deputy-Director General has been trying, Mr Les  
 19 Keteldas is sitting in the gallery, who is the Deputy-  
 20 Director General of the Department of Labour.

21 MR CILLIERS SC: Would he like to come  
 22 forward and put himself on record or has he merely got what  
 23 is known in legal circles, as a watching brief?

24 CHAIRPERSON: That appears to conclude  
 25 item 6 on the agenda, the introduction of the parties and

1 their representatives. We move on now to item 7, where I  
 2 am asked to give guidance on the process and procedures  
 3 regarding the in loco inspection. In a few minutes we will  
 4 proceed to Marikana to see the places where various things  
 5 took place. We will look at – we don't propose going down  
 6 the shaft or actually entering the shaft at this stage, we  
 7 merely go past, to see where various shafts are so when  
 8 they are mentioned in evidence, we will know what's being  
 9 talked about. If there's an application later for us to  
 10 actually inspect the shafts that's a matter we will deal  
 11 with as and when it arises. We will proceed to Wonderkop,  
 12 where we will see the koppie and the flat area next to the  
 13 koppie where we understand some of the dead bodies were  
 14 found, after the shootings. We will also see an informal  
 15 settlement which immediately abuts on that area. We will  
 16 also see what has been described to us as the Klein Koppie,  
 17 which is another koppie behind the first koppie at  
 18 Wonderkop, where it is alleged that certain other things  
 19 happened, and where there were marks placed on rocks,  
 20 which, some of which have since been defaced, but we  
 21 understand that there are photographs of the markings as  
 22 they were before the defacement took place. We will also  
 23 go to a spot on the way the Karee, K-A-R-E-E, Shaft where  
 24 we understand an incident took place on Monday, the 13th of  
 25 August, where two miners were killed and one miner was

1 injured, I understand, and two policemen were killed and  
 2 one policeman was injured.

3 We will also inspect the living conditions of the  
 4 miners. We will look at the hostels, we will go to the  
 5 informal settlements, where many of them lived, and we were  
 6 asked by Lonmin to include the, what was described as the  
 7 formal housing, which is also – were available to some of  
 8 the miners. We also invite members of the – or  
 9 representatives of various parties, to point other spots  
 10 out to us as we go along, which they consider to be of  
 11 importance, and it will helpful if they were identified as  
 12 being places where particular things happened, or  
 13 particular witnesses were standing, or saw things happen.  
 14 I understand that some of the parties are this stage not  
 15 able for various reasons to point out spots to us, this is  
 16 the fact that they haven't got instructions on these points  
 17 yet but nevertheless we expect them to do the inspection.  
 18 It may be that some of the spots that they will later learn  
 19 about will have been pointed out already. If there are  
 20 other spots which is necessary for us to look at, which  
 21 cannot be adequately depicted on plans or maps then we may  
 22 have to go back and have another inspection, but whether  
 23 that will happen, is a matter that can be decided upon  
 24 later.

25 I also want to say that we were told by the

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1 representatives of Lonmin, who wish to point out various  
2 things to us, that they anticipate that the inspection will  
3 not completed today, and will have to resume tomorrow, and  
4 we've made provision for that in our planning, and the idea  
5 is that we will, after we've adjourned here in the  
6 auditorium at the Civic Centre in a few minutes, we will  
7 resume here at nine o'clock on Wednesday morning when the  
8 parties have been invited, those who are able to do so, to  
9 put their versions of what happened before the Commission,  
10 and then there will be some, we will begin with the hearing  
11 of oral evidence, and documentary evidence will also be  
12 made available to us. I think that disposes of item 7.

13 We now move to item 8, which is a response or  
14 brief overview by parties who would participate in the in  
15 loco inspection. I must give the interpreter an  
16 opportunity to interpret what I said, and then perhaps it  
17 would be best to begin with Mr Bham, because your leader Mr  
18 Burger had something to say about the inspection. It's  
19 also been dealt with in correspondence, that the Commission  
20 has received from Lonmin, and then I will give the other  
21 parties' representatives a chance to say what they wish to  
22 say on this point. Mr Bham?

23 MR BHAM SC: Thank you, Mr Chairman. Mr  
24 Chairman, when Adv Burger has communicated with the  
25 Commission and when we had addressed correspondence, it

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1 wasn't clear to us at that stage yet, which areas would be  
2 the subject of the inspection in loco on the first and  
3 possibly the second day. We consequently alerted to the  
4 Commission to the fact that there may be certain areas  
5 where people might want to conduct an inspection which have  
6 this difficulty, that they fall under the mine safety  
7 regulations ambit, and so they would need an induction  
8 programme and that would take a bit of time. It does seem  
9 from the areas that you've referred to now, Mr Chairperson,  
10 that those areas are not going to be covered in the initial  
11 inspection, so that problem falls away. In addition to the  
12 areas that you had mentioned, we have been requested by the  
13 evidence leaders to point out the spot during the  
14 inspection in loco where two Lonmin employees who were  
15 employed in the security department, were killed, and we  
16 will do so at the appropriate time, so that we don't go out  
17 of sequence whilst we are visiting these areas. Other  
18 suggestions we have made, have found their way into what  
19 we've been told about the inspection in loco itself, so I  
20 need not repeat that, save for one additional suggestion  
21 and that comes out of my discussion with some of my  
22 colleagues earlier today, that perhaps we should have  
23 somebody appointed to do a sketch just in relation to the  
24 different areas we visited, and how they exist in relation  
25 to each other, so that we have a clear idea of what we are

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1 talking about when we, when the evidence is led.  
2 CHAIRPERSON: Proceedings are going to be  
3 filmed, the inspection is going to be filmed so we will  
4 have a record of what's pointed out but it may well be that  
5 a sketch will make things easier to follow and that's a  
6 matter we can take up with the evidence leaders in due  
7 course.

8 MR BHAM SC: Yes, it's over and above the  
9 audio visual recording, it's just so that we've all got a  
10 mind map of the areas we have visited, and where they exist  
11 in relation to each other.

12 CHAIRPERSON: I understand that Mr  
13 Budlender has paid a visit to the Surveyor-General's office  
14 and has obtained a number of scale maps of the area, which  
15 will be made available to all the parties, which should be  
16 of assistance, I would think, and possibly someone can be  
17 deputed to mark on one of those maps the points that you  
18 are concerned about. Before I ask the other parties to  
19 tell us what they propose doing at the inspection in loco,  
20 if anything, I should call upon Mr Madlanga, the leader of  
21 the evidence leading team, to tell us what his team  
22 proposes pointing out. I understand Bishop Siyoka will be  
23 there, is that correct?

24 MR MADLANGA: That is so, Chairperson.

25 CHAIRPERSON: Tell us further about what

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1 you have in mind.  
2 MR MAHLANGA: Chairperson, in fact where  
3 we propose pointing out sites are places that you have  
4 already referred to. It will be what in evidence will be  
5 referred to as Scene 1 at Wonderkop, close to the bigger  
6 koppie, and Scene 2, which is close to the smaller koppie,  
7 all of that being adjacent to the informal settlement. And  
8 thereafter, the scene of the earlier killings where the two  
9 policemen and some civilians had been killed. And may I  
10 ask at this stage, Chairperson, Commissioners, to hand up a  
11 Google map of the smaller koppie, with a key or index  
12 thereto. We will give copies to our colleagues. I seem Mr  
13 Ntsebeza glaring at me. Thank you, Chairman. And  
14 Chairperson, in the vicinity of the koppie, we will also  
15 point out the spot or site where Mr Isaac Twala of NUM was  
16 killed. Thank you, Chair.

17 CHAIRPERSON: Any representatives of the  
18 parties, I see – you are not quite a representative of a  
19 party, but you are an honorary party, Mr Bizos, would you –  
20 is there anything you want to say about the inspection in  
21 loco?

22 [10:35] MR BIZOS SC: Yes, Mr Chairman, Mr Parr  
23 that I have mentioned as one of our team, has visited the  
24 area on a number of occasions from early on, but he has  
25 started measuring the distances from certain other places

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1 which may be relevant during the course of evidence to have  
2 is available, if the members of the Commission or any of  
3 the parties want to know the distance, he's prepared to  
4 point out at the inspection what he saw and he'll give the  
5 measurements that we consider of some importance in  
6 relation to the results of the happenings.

7 CHAIRPERSON: Thank you, Mr Bizos. Do  
8 any other representative of any of the parties wish to say  
9 something at this stage?

10 MR NTSEBEZA: Thank you, Mr Chairman and  
11 members of the Commission. For the record, Dumisa Ntsebeza  
12 for the family. Chairman, we are really in a dilemma, and  
13 may I request your indulgence to explain why we are in a  
14 dilemma, relevant also to the inspection. My attorneys, Mr  
15 Ngomezulu and candidate attorney Jonty Xhosa came back last  
16 night from the Eastern Cape. They had been to Mqanduli,  
17 Idutshwa, Elliotdale, Lebude, Mbizana, Lusikisi, Xala,  
18 where I was born and bred, Mzesu, Dudjwa Ndabangulu. Now  
19 anyone who has got a fair sense of the geography of that  
20 area will realise that those are far-flung areas, one from  
21 each other, and they took instructions from the families  
22 who are instructing us. Firstly they were confronted with  
23 families who had not been advised that there is a  
24 Commission of Inquiry that is taking place that is going to  
25 inquire into the deaths of their loved ones. So they do

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1 not know that this is happening. Secondly, they told their  
2 attorneys that they are keen and they would like to be  
3 present at the proceedings. Particularly they would like  
4 to be able to have the sense of where those who fell, fell,  
5 and if the inspection is going to be assisting in that  
6 regard for closure and for everything else, it is their  
7 wish that this should be so. Not having known that the  
8 Commission of Inquiry would be sitting and would be for  
9 their benefit as well, and not having the wherewithal – I  
10 would like to make this submission without being  
11 melodramatic, Mr Chairman, members of the Commission – it  
12 is so that they are not being assisted to be represented  
13 here. We have indicated as much in correspondence to the  
14 leaders of evidence, who were copied to your good selves,  
15 and to those who would facilitate this. We believe that of  
16 all the parties that are represented here, if any one party  
17 would be worthy of being assisted by the State at  
18 taxpayers' expense, they are the parties that ought to be  
19 assisted. It would seem in my submission, Chairman, with  
20 great respect, that they have got a right to be present in  
21 these proceedings. They have got a right to be  
22 represented. They have got a right to be assisted to be  
23 represented. All the organs of State who are here  
24 represented, we assume and we hope we assume correctly,  
25 even the Commission itself are here because they are able

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1 to be assisted and they are assisted at State expense,  
2 other than Lonmin who in any event have got deep pockets, I  
3 would submit. Indeed, we don't want to be facetious about  
4 the submission. I cannot overemphasise it. For instance,  
5 some of the families lived here and part of the inquiry is  
6 to look into the places where they lived. Some of the  
7 families, reminiscent of the old days, were in the rural  
8 areas and their husbands were a little more than migrant  
9 labourer.

10 It seems to us therefore that guided as I am by –  
11 and I was encouraged in being guided by what you said, Mr  
12 Chairman, that we should try and balance the demands of  
13 expedition. You have got your orders to make so that this  
14 matter is dealt with, with expedition, and the families and  
15 those who instruct me are as keen as everybody else that we  
16 must get as quickly to the truth as we can. But you said  
17 the balance must also be for being as accurate as one can  
18 be who's gathering evidence, especially with all these  
19 lawyers involved. We would really want to assist you  
20 there, but we have got unfortunately a bigger  
21 responsibility, one that is a responsibility that we should  
22 discharge in the best tradition of this profession, and as  
23 you will know, Mr Chairman, when we represent anyone we  
24 need to be fully prepared. It's an insult both to  
25 yourselves if we will be so glaringly unprepared. Driving

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1 to this Commission this morning I had to ask both my  
2 attorney and the candidate attorney to leave their cars and  
3 come with me so that they can brief me on what they had  
4 been able to pick up in their visit to the Eastern Cape. I  
5 say nothing about Lesotho and Swaziland where also some of  
6 the deceased families are.

7 We had a consultation on Friday and at that  
8 consultation we agreed that we would participate in the  
9 inspection, but when these attorneys came and in the car  
10 told me the extent to which our clients want to be there as  
11 it happens, for a variety of reasons, one of them being  
12 that they would be keen to know who points out what place  
13 in relation to any of the things that they have heard. So  
14 though my sense says yes, it is important and critical that  
15 this matter must be dealt with expeditiously, my other  
16 sense tells me that if we have not dealt with this issue -  
17 and it is in two forms – the families must be assisted by  
18 the State to be properly represented here. My colleague  
19 Karel Okiep, as he says, when he is not able to be here, he  
20 will have arranged with his colleague, Maenetje SC, to deal  
21 with those matters that may be affecting his client. I do  
22 not have that luxury. In fact my clients have been so late  
23 coming into the field because all other names - and I will  
24 not mention them – that were available suddenly then became  
25 unavailable when their assistance could not be guaranteed.



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1 Now it's going to be a long haul. This  
 2 Commission has been given a four-month period. Even the  
 3 best of us cannot survive in those circumstances if we are  
 4 not able to be assisted. I think I've made the point. The  
 5 point therefore of this is to make an application – I know  
 6 I'm against an appeal here, Mr Chairman, but let me make  
 7 it, the application is that we must get – I'd call it if it  
 8 was a litigation, which unfortunately it is not, we should  
 9 get, all the parties should get in a state of readiness –  
 10 state of readiness. We have made several requests to the  
 11 Commission. We have asked for information in the following  
 12 way – a complete list of all SAPS personnel who were  
 13 deployed at or near Wonderkop between the 9th and the 18th,  
 14 and it's critical for us to get those names so that when an  
 15 inspection is taking place we know who is who because we  
 16 have already been given a list and we asked for that list  
 17 of SAPS personnel between the dates of the 9th and the 18th  
 18 of August and we wanted that list to be arranged by date,  
 19 and including officers deployed from the regular Police  
 20 Force, from the Tactical Response Unit and the Special Task  
 21 Force. We asked for the name of the officer in charge of  
 22 the operation on the 16th of August. We ask for the  
 23 identity of the officer or officers who decided to deploy  
 24 the Tactical Response Unit and the Special Task Force. We  
 25 asked for the identity of any officers responsible for the

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1 decisions to use bullets, teargas, live ammunition and  
 2 thunder flares on the 16th of August. We ask for the  
 3 identity of the officer or officers who authorised the use  
 4 of razor wire. We ask for the identity of the officer or  
 5 officers in charge on the ground.  
 6 The way we intend to approach, Mr Chairman, even  
 7 an inspection is where we have been able on the basis of  
 8 what we have to consult those who are living who may be  
 9 eyewitnesses, because it's all very well for us to get to  
 10 the scene and be told hopefully by the members of the SAPS  
 11 it is where the razor wire was and all of that, it is where  
 12 so-and-so died, this is where your client died, this is  
 13 where your client died. That is a version that will be by  
 14 the SAPS, and I'm not even going into the merits of whether  
 15 that version is a correct version. I'm simply saying we  
 16 will not be able to have a version. We need the time. We  
 17 need to be able to compare what we have and what we get  
 18 told. The first time ever for me to be able to come to  
 19 Marikana was yesterday, because I was instructed only the  
 20 other week, and even then I have to collate the versions of  
 21 those who are eyewitnesses, who have not been able to  
 22 commit themselves to us to whether they will give us  
 23 statements, and therefore we have a great deal of problem,  
 24 even taking into account what you said, Mr Chairman - and  
 25 we thank you for that – that if there is an application at

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1 a later date, that application will be dealt with on its  
 2 own merits at that time. There may well have to be a  
 3 second inspection. The only thing that we are putting up  
 4 to you as far as that is concerned is that we have got  
 5 families who say if there is something like this that  
 6 happens, they said so at this weekend, we would have loved  
 7 to have come, and we tie this to the request that we have  
 8 made that the families must be assisted not only to be  
 9 present here - that's why you didn't see anyone of them  
 10 here, family of the 20 that we represent. They are not  
 11 here. They are in the rural areas. They were being  
 12 consulted by Mngomezulu and Jonty Xhosa in the rural areas.  
 13 They were not told by the Commission or by anybody else  
 14 that this Commission would be sitting, and we have very  
 15 clear instructions from them - we would like to be there  
 16 when it happens. Those are our submissions.

17 CHAIRPERSON: You said you were going to  
 18 bring an application. You haven't told us what the prayer  
 19 is, what the relief is that you seek in your application.  
 20 It would help us if you told us.

21 MR NTSEBEZA: Thank you, Mr Chairman.  
 22 It's because I'm rather reluctant to make the application,  
 23 because I don't want to incur your ire and –

24 CHAIRPERSON: I shall be as patient as I  
 25 can. You tell me what the prayer is, the relief that you

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1 seek.

2 MR NTSEBEZA: Quite frankly, the prayer  
 3 is that we should postpone these proceedings for –

4 CHAIRPERSON: To when?

5 MR NTSEBEZA: For a period of 14 days in  
 6 the –

7 CHAIRPERSON: 14 days. Anything further  
 8 you want to say?

9 MR NTSEBEZA: No.

10 CHAIRPERSON: The remarks you made  
 11 relating to the list of SAP personnel deployed, the officer  
 12 in charge, those who took decision to deploy the Tactical  
 13 Response Unit, that's information that of course we haven't  
 14 got, which Mr Semanya may be able to help us with. So  
 15 perhaps I could call on him to respond to that part of what  
 16 you said and also tell us the attitude of his clients in  
 17 regard to the application you've made for a postponement  
 18 for a fortnight, and then I'll ask the other advocates to  
 19 do the same. After Mr Semanya has spoken I'll ask Mr  
 20 Madlanga and then the other representatives here if they  
 21 wish to deal also with the application you made. Mr  
 22 Semanya?

23 MR SEMENYA SC: Chairperson, members of  
 24 the Commission, thank you. Might I address the first point  
 25 first, and that is what it is that the South Africa Police

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1 Service were to see happen at the inspection in loco. We  
 2 are inviting Brigadier Calitz, C-A-L-I-T-Z, and Colonel  
 3 Botha, together with General Naidoo. They will on site be  
 4 able to show us how the vehicles were deployed, where those  
 5 vehicles were deployed, where members of the POP were  
 6 stationed, where the members of the TRT were stationed, and  
 7 where the STF were stationed. They will with some measure  
 8 of effort also try and show us how the movement of the  
 9 people on the day was on the 16th.  
 10 [10:55] They would be able to tell us where was the water  
 11 cannon stationed, what motor vehicle triggered the razor  
 12 wire first and on his instruction that happened. The  
 13 points are too numerous just to mention for the record, but  
 14 I can assure the commission that there will be every  
 15 attempt at identifying all the relevant information that  
 16 will pertain to this inquiry. As regards the list, we are  
 17 able to give Advocate Dumisa Ntsebeza the list of all the  
 18 people who had deployed from the 10th up to the 16th and  
 19 what shifts they did at various dates. So that information  
 20 we can collate and forward. We do mention on the record  
 21 though that our effort has not been greatly assisted or  
 22 would have otherwise been greatly assisted if we had had  
 23 the benefit of the post-mortem reports. They would be able  
 24 to help us put the cartridges that are found where the  
 25 members who had been using the ammunition on that day and

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1 the particular body that was found in that area and the  
 2 post-mortem reports would've been able to assist us in  
 3 identifying which member fired which firearm and be  
 4 objective evidence against which we can measure the counts  
 5 that we are receiving through our consultations.  
 6 CHAIRPERSON: We thank you. What is your  
 7 attitude to the application for a postponement for a  
 8 fortnight? I take it you've got your people in position,  
 9 have you, at Wonderkop as we speak?  
 10 MR SEMENYA SC: Yes, Chair. We would not  
 11 oppose the application, we could benefit from some measure  
 12 of time that will assist our preparation.  
 13 CHAIRPERSON: I take you've got people at  
 14 the scene at the moment, today?  
 15 MR SEMENYA SC: We do.  
 16 CHAIRPERSON: Ja. Everyone would be in a  
 17 better position to move forward once the inspection has  
 18 been held and the spots have been pointed out.  
 19 MR SEMENYA SC: Indeed. There would be  
 20 witnesses that are ready except as we point out, our  
 21 consultations have not been assisted by objective evidence  
 22 on the ground. I'm now looking at a Google map that  
 23 identified the ballistics that were there. I haven't  
 24 received the reports of those ballistics. I have not  
 25 received the post-mortem reports. I can see various bodies

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1 and their numbers, but I have not been able to identify  
 2 that objective evidence with the account that we have been  
 3 given by our consultations.  
 4 CHAIRPERSON: Yes, I see. Anything  
 5 further you want to say?  
 6 MR SEMENYA SC: That'll be all, Chair.  
 7 CHAIRPERSON: Yes.  
 8 MR MAHLANGU: Thank you, Chair. Chair –  
 9 CHAIRPERSON: Is it necessary for all  
 10 this to be interpreted?  
 11 MR MAHLANGU: No. Mr Chair, yes I would  
 12 suggest just summarise very briefly what was said.  
 13 CHAIRPERSON: Who wishes to address us  
 14 now on the application?  
 15 MR MPOFU: Chair, it's Dan Mpofo. Chair,  
 16 I just want to, firstly to make common cause with what  
 17 Advocate Ntsebeza said and I will maybe just shift the  
 18 emphasis from the issue of the postponement which I'll  
 19 address later. To the first issue that he raised which is  
 20 the issue of resources. Maybe, Chair, without wasting our  
 21 time, just to paint the picture broadly. On that fateful  
 22 day at that koppie there were about 3 000 people. Of  
 23 those, 34, which is about 1% of those died and that's Mr  
 24 Ntsebeza's, some of Mr Ntsebeza's clients whom I think are  
 25 the most important people who have brought us here, but

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1 also of those, another 10%, about 270 to 300, which the  
 2 people I represent were either arrested or injured or  
 3 detained in hospital. So although, and as you, Mr  
 4 Chairman, correctly pointed out at the meeting, I sent a  
 5 transcript of the meeting of the 17th, although there are no  
 6 parties as such here, they were all in search of the truth.  
 7 The other truth is that Mr Ntsebeza and I and maybe one or  
 8 two other parties do represent what one could call the  
 9 victims as opposed to maybe the state parties, to use  
 10 neutral terms. Now I want to put it more pointedly than  
 11 maybe Mr Ntsebeza and say the prayer, so to speak that I  
 12 would ask for, Mr Chairman, is twofold. One, that the  
 13 commission should do whatever it is in its power and we  
 14 know that its powers are not unlimited, to influence the  
 15 powers that be that the poor people that we represent, the  
 16 victims should not be disadvantaged merely because of their  
 17 economic station in life and that such assistance,  
 18 financial and otherwise, that has been extended to this  
 19 commission should also cover those people. In particular,  
 20 Mr Chairman, I would like if they are representatives of  
 21 the Department of Justice which has announced that there  
 22 was a budget of about R25 million for this commission, that  
 23 clarity be given whether that amount is only reserved for  
 24 the state parties or whether it is also accessible for the  
 25 victims. Because otherwise, Mr Chairman, should that not

1 be the case then the search for truth, reconciliation and  
 2 justice that we talk about here cannot happen in the skewed  
 3 situation where some of the parties, or group of parties,  
 4 have access to those tens of millions and the rest of the  
 5 parties who are crucial to the search for that truth have  
 6 to be scraping around and giving each other lifts just to  
 7 get here, Mr Chairman. And so we would really like to make  
 8 that point very strongly that whatever can be done within  
 9 the limited power should be done to clarify that, either on  
 10 the part of the government who appointed the commission or  
 11 the commission itself.

12 That then, Mr Chairman, leads us to the second  
 13 point which is related to Mr Ntsebeza's application for a  
 14 postponement. Obviously parties like us who have had to  
 15 struggle even to be able to consult, you can appreciate, Mr  
 16 Chairman, that consulting with 270 people, you know, can  
 17 take quite a long time and we would like therefore, if  
 18 there is time, extra time it will be welcomed on our part  
 19 in order to be able to consult thoroughly but time on it's  
 20 own is not going to be of assistance. We'd like to couple  
 21 the request, the support for the application for  
 22 postponement with a stronger support rather application for  
 23 material support. Thank you, Chair.

24 CHAIRPERSON: Thank you. I see it's  
 25 already almost ten past 11, perhaps it's appropriate for us

1 to take the tea adjournment at this stage. I see Mr  
 2 Badenhorst and Mr Tipp both indicated they wish to say  
 3 something, but would you like to say it after tea?

4 MR BADENHORST: It would be convenient to  
 5 do that, Chair.

6 CHAIRPERSON: Very well. The commission  
 7 will adjourn for 15 minutes.

8 [INQUIRY ADJOURNS INQUIRY RESUMES]

9 [11:31] CHAIRPERSON: Mr Tipp, I think you  
 10 indicated before the adjournment that you wish to say  
 11 something.

12 MR TIPP SC: Thank you, Mr Chair and  
 13 commission members. I address these remarks of course on  
 14 behalf of NUM and we share the concerns which were  
 15 articulated earlier by our colleague Mr Ntsebeza concerning  
 16 the position of families in the Eastern Cape who have not  
 17 been informed of these proceedings and are not presently in  
 18 a position to attend them. We also support his application  
 19 for a postponement but with what may be an important  
 20 qualification and the qualification is, in essence, that  
 21 the time between now and two weeks hence should not simply  
 22 be passed, it should be used to the best extent possible to  
 23 introduce objective material –

24 CHAIRPERSON: Is there any reason why we  
 25 couldn't have the inspection followed by a session of the

1 commission where formal evidence is presented, such as the  
 2 post-mortem reports, evidence from the police forensic  
 3 people who went to the scenes, indicating what they found.  
 4 Possibly thereafter, after the inspection has been held and  
 5 after formal evidence of the kind I've mentioned has been  
 6 presented, the question of a postponement could then  
 7 possibly be revisited or dealt with if it is still  
 8 necessary. How would you respond to that?

9 MR TIPP SC: We have no difficulty with  
 10 that and that would have formed part of the submissions  
 11 that I was going to make.

12 CHAIRPERSON: I'm sorry to have  
 13 interrupted you.

14 MR TIPP SC: No, no, not at all, Chair.  
 15 It's the best way to clarify matters. We're very much of  
 16 the view that the inspection should take place and if that  
 17 requires work to continue on that tomorrow, so be it. We  
 18 had the opportunity during the tea adjournment just to say  
 19 to our colleague Mr Ntsebeza that we, whilst we were  
 20 wholeheartedly concerned about the position of the  
 21 families, that that shouldn't hold back the work of the  
 22 commission in its entirety, that arrangements be made that  
 23 if and when they come up there, that to some extent there  
 24 can be a reproduction for their benefit of the necessary  
 25 inspection, but that the commission as a whole can continue

1 and should continue.

2 We are very much in favour also, Chair, of the  
 3 following process being considered in respect of the  
 4 inspection. There are a great number of teams, there are a  
 5 great number of representatives, there are a great number  
 6 of interested persons and to seek, in the course of an  
 7 inspection, to comment on particular points that are  
 8 visited may become quite unwieldy and what we would propose  
 9 is that the inspection should really be concerned, with the  
 10 support and assistance of the technology we have, that we  
 11 can film, that we can photograph, that we can record, that  
 12 all of that should be done and that too can thereafter in  
 13 session here, be enlarged upon through oral evidence in  
 14 order to give greater clarity to what the significance is  
 15 of particular points. Otherwise, if everybody is trying to  
 16 have their say on the kopje, Chair, we feel that fear that  
 17 it may become unworkable.

18 In respect of the course of action which, Chair,  
 19 you've articulated and which we respectfully endorse, I'd  
 20 like to just say one or two things about why it is  
 21 important that we should maximise the access by all parties  
 22 to as much objective material at this stage as possible.  
 23 We have, as NUM's legal team, of course sought to do as  
 24 much consulting as we can. There are two big problems.  
 25 The one is that this is not a commission of inquiry which

1 is taking place with the benefit of a considerable time  
 2 since the event and between the event and the inquiry  
 3 itself and the volatility in the community and around the  
 4 community is still high. Happily, it is our impression  
 5 that it is subsiding but it is still difficult to consult  
 6 in the manner that one would wish to consult and we have  
 7 reason to believe from the discussions that we've had with  
 8 other parties, that that is a common experience. People  
 9 are, I'm afraid, at this stage uneasy about coming forward  
 10 with evidence, they're uneasy about the prospect of giving  
 11 oral evidence, no matter what assurances might be given.  
 12 That is the one difficulty.

13 The other difficulty is that with the best will  
 14 in the world, given the traumatic nature of the events,  
 15 when one relies solely on recollection in respect of what  
 16 witnesses say, it can often be unreliable and so one has a  
 17 situation where an important event is identified by one  
 18 witness as having taking place on the 14th of August, and  
 19 other witnesses say no, I think that was the 15th of August.  
 20 If that sort of difference is not screened from the  
 21 presentation to the commission, I feel that the commission  
 22 will embroil itself in a variety of disputes that can be  
 23 avoided and they can be avoided if we are given, all of us,  
 24 as much objective photographic and documentary material as  
 25 possible, that can then form the framework within which

1 directed and sensible consultations can take place with a  
 2 view to then letting the fruits of that be presented to the  
 3 evidence leaders.

4 We have in mind that the South African Police  
 5 Service should do everything it can at this stage, no  
 6 matter if there may be some areas that it still has to  
 7 refine. We have in mind that Lonmin might also be asked to  
 8 assist in that process, we believe that they have a good  
 9 deal of footage also of the area and of the events. That  
 10 is, in essence Chair, our position.

11 CHAIRPERSON: Before I call upon the next  
 12 counsel to address us, there are a few things I'd like to  
 13 say. I've been informed during the tea adjournment that  
 14 the Department of Social Development is already in the  
 15 process of making arrangements for the members of the  
 16 families who are in the Eastern Cape to be transported  
 17 here. A social worker has, as I understand, been assigned  
 18 to each family and arrangements, as I've said, are being  
 19 made, are in the process of already being made to convey  
 20 the family members to Rustenburg. So that deals with the  
 21 one aspect that Mr Tipp has mentioned. I mention it now to  
 22 get it out of the way. Mr Bizos, you indicated and I think  
 23 you indicated also, sir, but I received a request, Mr  
 24 Bizos, they say that when you stand up your voice isn't  
 25 properly recorded. I know you prefer addressing us from a

1 standing position but one wouldn't want you to lose your  
 2 locus standi here before the inquiry but if you'll be kind  
 3 enough to address us in a sedentary position, what you say  
 4 may be preserved for posterity with more accuracy than  
 5 otherwise.

6 MR BIZOS SC: I'm to function as a  
 7 messenger and to inform the commission that the CCMA is  
 8 present and wants to record its presence. They didn't come  
 9 to me directly, I got a note to that effect. Perhaps you,  
 10 Mr Chairman, will ask for them to come forward and then I  
 11 have something to say.

12 CHAIRPERSON: Behind you, behind your  
 13 right shoulder, Mr Bizos, is a lady who's waving her hand  
 14 and I suspect that she is the lady from the CCMA. Would  
 15 you like to place – turn your microphone on, place yourself  
 16 on record and then we'll get what Mr Bizos has to say.

17 MS KAZEE: Thank you, Commissioner. My  
 18 name is Shaista Kazee, that's K-A-Z-E-E, and I am here for  
 19 the CCMA. I've just received the instruction during the  
 20 tea break to place myself on record and I apologise for not  
 21 doing so in the beginning when the time was afforded to do  
 22 that. At the moment the CCMA is on a watching brief and  
 23 we'll make submissions as and when requested by you, thank  
 24 you.

25 CHAIRPERSON: Thank you. Mr Bizos? Give

1 the interpreter a chance, sorry. Mr Bizos, you wanted to  
 2 give us your reaction to -

3 MR BIZOS SC: To the application.

4 CHAIRPERSON: The appearance – well, you  
 5 said you wanted to say something, I understood, about the  
 6 CCMA's appearance.

7 MR BIZOS SC: No, no, I was only a  
 8 messenger for them to record their presence.

9 CHAIRPERSON: Oh, I see. You want to say  
 10 something about the application?

11 MR BIZOS SC: I don't represent them, Mr  
 12 Chairman. What I want to say, Mr Chairman, is that we of  
 13 the Legal Resources Centre know of the plight of poor  
 14 people, it's part of our existence to help them. We  
 15 therefore associate ourselves with the remarks of our  
 16 colleagues acting for the victims that they require  
 17 assistance, but I would appeal to them and submit to the  
 18 commission that there are other doors to be knocked in  
 19 relation to finance and in relation to assistance, travel  
 20 assistance for the people to be present. Although the  
 21 commission may support that they are entitled, saying that  
 22 they are entitled to be here and confirming it, our learned  
 23 friends must go and knock on the correct doors in order to  
 24 get their assistance. It's not for me to suggest to them  
 25 which are the correct doors, I think that they are

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1 sufficiently informed about the system that prevails in  
 2 South Africa and they should make use of it.  
 3 Having said that, Mr Chairman, what I want to say  
 4 is that a postponement for a period of 10 days will impede  
 5 the function of this commission and the waste of the amount  
 6 of money that is going to be spent – because we in the  
 7 Legal Resources Centre get a salary, we don't get fees but  
 8 my learned friends do and the amount of money that will be  
 9 wasted by the time that the matter is postponed, is to be  
 10 taken into consideration in refusing an application to  
 11 postpone.  
 12 The suggestion that we wish to make is this, Mr  
 13 Chairman, having the inspection in loco postponed will  
 14 serve very little purpose. Arrangements can be made, as  
 15 you have said, you mentioned the appropriate body and  
 16 possibly with religious leaders - which is the background  
 17 of one of our clients – in order to bring them up at an  
 18 appropriate time –  
 19 CHAIRPERSON: I've got you, Mr Bizos. I  
 20 did indicate that I understand the Department of Social  
 21 Development is already in the process of making  
 22 arrangements to bring them up.  
 23 MR BIZOS SC: Well, then –  
 24 CHAIRPERSON: So that point appears to be  
 25 in the process of being dealt with. You take it further,

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1 if they don't do it, somebody else –  
 2 MR BIZOS SC: I go further, of the damage  
 3 will be done by any delays that may be, may come about.  
 4 South Africa as a whole is anxiously awaiting a speedy  
 5 result to be pronounced upon by your commission, Mr  
 6 Chairman, and I would appeal to everyone concerned to find  
 7 ways and means which would not prejudice their cause, but  
 8 there are ways. By way of example, we can have the  
 9 inspection. We, together with Mr Ntsebeza, have made  
 10 certain demands from the police – ours are more  
 11 comprehensive than his but be that as it may, what I want  
 12 to draw to the commission's attention is that the police  
 13 ought to be preparing for this day since the 16th of August  
 14 so that they must be put under pressure to respond to the  
 15 requests, if not fully, in the particularly important  
 16 matter of the identity of who was in command and who did  
 17 what – that those matters should be deposed to and if  
 18 perchance any one of us is not ready to cross-examine them  
 19 in part or in whole, they can apply to you for the matter  
 20 to stand down. Actually not having a postponement and  
 21 putting pressure on the police who, unlike many of us, have  
 22 ways and means, to find ways and means – they have the  
 23 information, they should have been working on it and let  
 24 the pressure be put on them by the commission and by the  
 25 evidence leaders to provide the information.

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1 So let us have the inspection, let us have any  
 2 evidence which the evidence givers have of a quasi-formal  
 3 nature, for the rest of the week, if necessary, nobody to  
 4 the prejudice – nobody will be prejudiced by it because if  
 5 they say we don't know whether to object to this document  
 6 or not, an opportunity will be given to you. This  
 7 commission, with the greatest respect, must not be a  
 8 commission at which, the unfortunate sporting expression,  
 9 kicking the ball to touch. None of us should seek to kick  
 10 for touch, we must get on with this job that has been  
 11 assigned to the commission and although I am sympathetic to  
 12 my colleagues and I don't whether I unduly influenced my  
 13 learned friend Mr Ntsebeza with our discussion yesterday  
 14 when he asked me whether we would support the application  
 15 for postponement or not, I don't know if it has any  
 16 influence on his reluctance to make it, but our attitude is  
 17 clear. Yes, let's get on with it but we can trust the  
 18 Chairman, that nobody is going to be prejudiced with a  
 19 speedy way forward.  
 20 CHAIRPERSON: I think, Mr Bruinders, you  
 21 raised your hand and I think Mr Badenhorst raised his hand.  
 22 I'm not sure if anyone else – and Mr Bham wants to talk  
 23 also, right. In the order I've mentioned, Mr Bruinders?  
 24 [11:51] MR BRUINDERS: Thank you, Commissioners.  
 25 We support the application for a postponement, subject to

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1 the following. 1, the inspection should go ahead today, 2,  
 2 in relation – well, sorry, about the inspection, can we  
 3 just ask that you add to the list of places we are going to  
 4 visit the NUM offices, because that is a –  
 5 CHAIRPERSON: During the course of the  
 6 inspection, you can at any time, I would like to add an  
 7 extra place, particularly when we are in the vicinity, and  
 8 then we can go there. You don't have to, at this stage,  
 9 mention the places. Obviously any place anyone wants to  
 10 show us we will go to.  
 11 MR BRUINDERS: Thank you, Chair, then 2,  
 12 at the meeting on the 17th of September, you said that on  
 13 the second day of the Commission what you had in mind was  
 14 the viewing of audio visual material. We see no reason why  
 15 that should not go ahead because that would help us in our  
 16 preparation. 3, we hear from the evidence leaders that  
 17 they would like to lead what they call formal evidence. We  
 18 have some idea of what that is. We don't know what the  
 19 extent of it is, but there should be no reason why the  
 20 formal evidence should not be led insofar as it doesn't  
 21 raise any issues of great dispute because that too would  
 22 help in our preparations.  
 23 CHAIRPERSON: It wouldn't formal evidence  
 24 if it raises issues of great dispute, would it?  
 25 MR BRUINDERS: Nothing would surprise me

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1 in this, if that does happen, Mr Chair, but can I just  
2 raise this lastly, and that is that any postponement would  
3 in fact be of no use unless we get the materials we had  
4 requested. Now, there has to be a timeline for when those  
5 materials will come to us because unless we have them, we  
6 simply can't prepare. We've taken numerous statements from  
7 people, in fact in excess of 25, but without the objective  
8 materials, it becomes very difficult to prepare properly,  
9 so that even if Mr Bizos has his way and people are put  
10 into the box and they testify, it wouldn't help if we  
11 hadn't seen documents beforehand that would enable us to  
12 prepare for our cross-examination.

13 CHAIRPERSON: Mr Badenhorst, you are  
14 next.

15 MR BADENHORST SC: Yes, Chairman, I want  
16 to be brief because I support generally the indication  
17 given from the Commission as to let's get on with things,  
18 but may I perhaps add this perspective to the debate that  
19 is going on. It is perhaps inappropriate to be talking of  
20 applications for a postponement. What this Commission is,  
21 with the greatest of respect, is a commission of inquiry  
22 with certain terms of reference. It will operate on the  
23 basis of an inquisitorial process, it seem to me, not a  
24 court of law, and it is inappropriate to suggest that the  
25 Commission be postponed. The Commission will carry on with

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1 such tasks and functions as it can do, with what is  
2 available to it at that particular point. Perhaps our  
3 learned friends could reflect on, while we are going on the  
4 inspection, and with the assistance of some fresh air, is  
5 perhaps that what is more appropriate is to work out a  
6 programme and that perhaps answers some of the concerns  
7 expressed. It doesn't help us all to go away and come back  
8 in two weeks, and then find that Mr Ntsebeza still has some  
9 outstanding issues or some of the parties still need some  
10 or other report. It seems that where perhaps the  
11 communication can be improved is that these parties who  
12 have problems or concerns, should communicate them by not  
13 later than a specific time, and give the evidence leaders a  
14 specific list of issues that they have concerns with, and  
15 possibly by some co-operative effort between the teams, one  
16 can work out a draft plan, the witness plan for example,  
17 that can be tabled to the Commission where everyone  
18 concerned knows what will be happening more or less when,  
19 as one sees if one consults the one interesting website  
20 that the Chairman had very kindly referred us to, the Pike  
21 River tragedy inquiry, there the Commission had, I am sure,  
22 through consultation between those involved prepared quite  
23 a specific programme with people were kept to time limits,  
24 which I also fear will probably become a very essential of  
25 this Commission's work, because some of us can carry on for

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1 a bit, and as lawyers, we are of course for that, and that  
2 is why it seems to me that perhaps the time between today  
3 and tomorrow can be used by those who have problems to set  
4 them out in a systematic way, give them to the evidence  
5 dealers team, very capable people, I know most of them, and  
6 I am sure they will be very helpful in working out a  
7 systematic programme which goes towards achieving the  
8 Commission's ultimate objective, and that is to work as  
9 expeditiously as possible. In fact, I could mention to  
10 you, if one goes onto the website at this minute, the world  
11 is already watching what is going on in this very room.  
12 There is already flowing reports through as to what the  
13 Commission is doing, or I fear not doing, as the case may  
14 be. So I would recommend the approach that says, let's get  
15 on with it, we've got certain things to do, and in the  
16 meantime people can use time to assist the Commission by  
17 coming up with constructive proposals. Thank you, Mr  
18 Chairman.

19 CHAIRPERSON: Mr Bham, I think you were  
20 the next person to raise a hand, and then after that, I  
21 call on Mr Madlanga.

22 MR BHAM SC: Thank you, Chair,  
23 Commissioners, following on the theme of trying to ensure  
24 that the Commission uses the time available to it in an  
25 effective whilst at the same time ensuring that those who

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1 ought to be represented, and who ought to be able to test  
2 evidence on matters which most severely affect them, we  
3 would like to make a few practical suggestions, in other  
4 words, practical suggestions which may take us away from  
5 the debate on whether we should postpone or not, but try to  
6 practically get the work of the Commission going. We think  
7 first of all that the inspection in loco should proceed as  
8 planned, with the caveat that to the extent that we need to  
9 do it again at some point in the future, because there are  
10 parties who are not present, or because something arises  
11 during evidence that that should always be open but I have  
12 no doubt that that is something that we need not even  
13 articulate, it would occur if necessary.

14 The second point we want to make is that upon the  
15 conclusion of the inspection in loco and perhaps on  
16 Wednesday morning, picking up on a suggestion which had  
17 been made by Mr Semanya, acting on behalf of the South  
18 African Police Services in correspondence on Friday, we  
19 think we should use Friday – I mean, not Friday, Wednesday  
20 for a procedural meeting where matters such as the exchange  
21 of documents, the question of witness statements, the  
22 request that parties have, can be dealt with round table,  
23 and we can try to ensure that all those matters are dealt  
24 with, and that the parties are able to get their  
25 information they seek. That once we are through with that,

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1 that would also include a time table of some sort, once we  
 2 are through with that, the evidence which is described of  
 3 evidence of a formal nature, can be dealt with.  
 4 CHAIRPERSON: Why should the formal  
 5 evidence not be lead first. I can understand the way  
 6 forward, you want to discuss among yourselves ways of  
 7 shortening proceedings, exchanging statements and  
 8 information, but I would have thought you know, this is a  
 9 prima facie view obviously, so that's what will say, I  
 10 would have thought that the formal material which is  
 11 available, the post mortem reports, the evidence of the  
 12 forensic people who came on to the scene as to what they  
 13 found, photographs they took, and so forth, and of course  
 14 the television material, which I want to say something  
 15 about in a moment, I would have thought that could  
 16 appropriate be put before the Commission on Wednesday,  
 17 would be then available to everybody. What we also said in  
 18 the letter that was written to the parties on Friday, was  
 19 we would invite the parties so far as they can, to indicate  
 20 their version. I understand, for example, that the police  
 21 have, what's been described as a power point demonstration.  
 22 I would have thought that those parties who complained they  
 23 are not properly instructed would be in a better position  
 24 to take instructions once that happens. But I put that to  
 25 you as a prima facie view, so I can get the benefit of your

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1 reaction.  
 2 MR BHAM SC: In fact the usefulness of an  
 3 exchange on procedural matters is that we would be able to  
 4 find a way of making sure that the Commission works  
 5 efficiently. I think what you've put to me, Mr Chairman,  
 6 is a very good idea. If I can then modify what I said to  
 7 you, that introduce the type of evidence you refer to, but  
 8 we think straight after that, there should be a procedural  
 9 meeting of some sort where outstanding queries are dealt  
 10 with, and we can chart a way forward which would, amongst  
 11 other things, then take into account the concerns raised by  
 12 Adv Ntsebeza and Adv Mpofo and Adv Bruinders, so that we  
 13 ensure that when we start with the substantive evidence,  
 14 queries and information sought and requested by parties  
 15 have been furnished, and that they have been in a position  
 16 to ensure that they can cross-examine on the days. I think  
 17 it would be awkward for the entire commission for example,  
 18 if we go into the substantive evidence of what occurred,  
 19 let's just say on the 16th, and the very people who are  
 20 represented – the victims, as they would describe  
 21 themselves, people who were shot, and their families, are  
 22 unable to test the versions that are coming through. So  
 23 some allowance should be made for that, but they would be  
 24 in a better position to prepare the case, and to get a  
 25 sense of how much time they need for that, once I think we

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1 go through the formal evidence and a procedural matter to  
 2 thrash out the programme that allows us to move forward  
 3 with the – that's what we would suggest we do.  
 4 CHAIRPERSON: Mr Madlanga?  
 5 MR MADLANGA: Thank you, Chairman,  
 6 Commissioners, Mr Bizos' approach to the question of the  
 7 funding of Mr Ntsebeza's team was perhaps more tactful than  
 8 our approach. During the lunch adjournment, we made  
 9 ourselves busybodies in the sense that we contacted Legal  
 10 Aid South Africa.  
 11 MR D'ALESSIO: I think you mean the tea  
 12 adjournment. Did you have lunch during that adjournment as  
 13 well?  
 14 MR MADLANGA: We contacted Legal Aid  
 15 South Africa and they have shown an interest to be of  
 16 assistance but they indicate that a formal application  
 17 should be made to Legal Aid South Africa for that purpose,  
 18 and the contact person is Mr Thembela Mthate. We have his  
 19 contact details. Apropos what my colleague Mr Ish Semanya  
 20 said about post mortem reports, we too only received our  
 21 copies as the evidence leading team last night, but we are  
 22 going to – our instructing attorney is going to be  
 23 preparing copies all day today for everybody else, so we  
 24 hope that if the formal evidence is to be led, those copies  
 25 should be ready for everybody.

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1 Then lastly on the question of the application  
 2 for a postponement, we as the evidence-leading team, are in  
 3 the Commission's hands. Thank you, Mr Chair.  
 4 CHAIRPERSON: Thank you.  
 5 MR SEMENYA SC: Chair, members of the  
 6 Commission, I -  
 7 CHAIRPERSON: I was going to call upon  
 8 you, perhaps you should put yourself on record, and then I  
 9 will give Mr Ntsebeza chance to reply.  
 10 MR SEMENYA SC: Ishmael Semanya.  
 11 Chairman, members of the Commission, I have just received a  
 12 little distressing note that the information we are  
 13 receiving is that the ballistics report will only be ready  
 14 end of October.  
 15 CHAIRPERSON: You are not suggesting we  
 16 should postpone for the end of October, until we get that,  
 17 are you?  
 18 MR SEMENYA SC: I am making, I am  
 19 imploring nothing of the kind, Chair, I am just giving us a  
 20 cold data which impacts on what we are doing. If we are  
 21 going to deal with the events of the 16th without the  
 22 benefit of this ballistic report it might be a little  
 23 uncomfortable. If the Commission use its weight, I am told  
 24 there's only one individual who was assigned to do the  
 25 ballistics reports. If we can use the weight of the

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1 Commission to have this matter expedited, it would help all  
 2 of us.

3 CHAIRPERSON: Thank you, Mr Semenya,  
 4 perhaps at this point already, I can express an appeal to  
 5 those concerned preparing the ballistic reports, to treat  
 6 the matter one of extreme urgency, so that this material is  
 7 available as soon as possible. Of course, I will also  
 8 though state a note of caution, and that is I am not sure  
 9 that we are here to have a rehearsal for a possible  
 10 criminal trial of people who fired and - their firearms  
 11 were responsible for deaths. I don't want to close the  
 12 door completely on that inquiry, but basically our concern  
 13 is to find out what happened in the broad, as it were.  
 14 Whether Constable A or Constable B is guilty of murder is a  
 15 matter which I don't expect us to be called upon to make a  
 16 finding, and that would in any event be undesirable  
 17 presumably if Constable A and Constable B were later  
 18 charged. But certainly the point you make I've adopted and  
 19 I express an appeal to those responsible to prepare those  
 20 reports as soon as possible. Mr Ntsebeza, you wanted to  
 21 reply.

22 MR NTSEBEZA SC: Thank you, Chairman, and  
 23 members of the Commission. Indeed I wanted to, I want to  
 24 reply. Let me start with the positive response, and that  
 25 is to the extent that the Commission has indicated that

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1 where it would be appropriate and on my instructions, it  
 2 will be appropriate for another inspection to be held at a  
 3 time when hopefully members of the families will be present  
 4 and to the extent that that will be possible, and can be  
 5 accommodated. On my instructions, we have no opposition to  
 6 the inspection taking place today as planned. We do so  
 7 reluctantly, but we are trying to do that which the  
 8 Chairman indicated and that is trying to balance expediency  
 9 with expedition. Well, I had said "expedition" earlier on,  
 10 it reminded me of something, it's not my mother tongue.  
 11 But anyway. Very much as been said about whether it is  
 12 necessary for us to get the postponement for purposes of  
 13 preparation. I will not repeat the submissions that I made  
 14 earlier on.

15 [12:11] I think we will benefit from a period during  
 16 which hopefully we will also receive everything else that  
 17 we have asked for, requested from the Commission, and that  
 18 if the Commission grants us the postponement that we are  
 19 asking for, for the period of time that we are asking it  
 20 for, we will make good use of that period.

21 My learned friend Mr Badenhorst in opposing the  
 22 application, indicated that there needs to be a  
 23 communication between us and the leaders of evidence about  
 24 exactly that, what it is that we want from them that would  
 25 assist us in getting to as near a good state of readiness

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1 as we can be. That has already been done, what I read to  
 2 the Commission by way of what we have requested is merely a  
 3 tip of an iceberg. We have sent no less, between the 25th  
 4 and the 28th, no less than three letters in which we are  
 5 itemising in great detail what our requirements are, and it  
 6 will be helpful if those can be exchanged, but the only  
 7 report that we are now told is going to be available only  
 8 at the end of October, that would also assist us. We do  
 9 need to be able to have a battle plan. We do need to be  
 10 able to be as near to being ready to be able to put  
 11 meaningful questions to those we are allowed to put  
 12 questions to, and we cannot do that if we have not  
 13 consulted even members of the family, given the themes that  
 14 the Commission is going to have to deal with.

15 I appreciate what my learned friend Mr Bizos said  
 16 about us having to knock at correct doors. If I didn't  
 17 know him and if I had not known for quite a long time, I  
 18 would take the strong exception for him suggesting that I'm  
 19 asking for a postponement because I'm kicking for touch.  
 20 He knows as well as I do, and I've known him long enough,  
 21 that this is not a matter in relation to which I would  
 22 unnecessarily kick for touch, but I know him and I would  
 23 hope that he didn't really mean that that is the purpose  
 24 for which I'm making this application.

25 Insofar as Mr Madlanga is concerned, I mean Legal

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1 Aid, in fact my instructing attorneys just said to me it  
 2 would benefit us if we can get a draft copy of the letter  
 3 that they sent to Legal Aid. Here to be blunt and to be  
 4 open, I can see no reason for a State Commission making it  
 5 its duty to ensure that those who are from the organs of  
 6 State, who are represented here at the tariffs that the  
 7 State Attorney is engaging them at, that that should not be  
 8 extended to those who represent the poor. It is one of the  
 9 most unconscionable things that can happen that the  
 10 wretched of the earth – and I said earlier on I don't want  
 11 to be melodramatic about this – as we sit here the wretched  
 12 of the earth, that I represent, have only one senior and  
 13 two baby juniors, and look at all the other sides. In fact  
 14 I did a little bit of research here, Mr Chairman, and my  
 15 research took me to the inquiry into Bloody Sunday in  
 16 Northern Ireland, and the complaint there was not so much  
 17 that the entire commission had been funded at taxpayers, or  
 18 at State expense; it was the amount that was paid for all  
 19 the legal counsel that had been involved. In fact, one of  
 20 the reports says barristers representing the families of  
 21 those killed or wounded, the theme includes eight UCs  
 22 headed by Michael Mansfield, have run up bills of more than  
 23 three and a half million pounds, while their solicitors  
 24 have been paid more than six million pounds, and then the  
 25 inquiry, there was – MPs reacted to these figures with



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1 disbelief and they asked the prime minister at that time,  
2 you know, to curb these expenses. So the point here is not  
3 so much whether we should not, those who represent the poor  
4 should not be assisted at State expense. The tariff that  
5 everybody else will have arranged with the State Attorney  
6 for their representation of the entities that they are  
7 representing here should be equally available to those who  
8 do not have the means. I don't have to go and ask my  
9 attorneys to knock at Mr Bizos' correct doors. This is a  
10 State Commission of Inquiry. Our submission, with great  
11 respect, is that in order to ensure as near as possible to  
12 the equality of all we should be assisted.

13 Mr Chairman, I need somebody who is a senior or  
14 as close to being a senior as I am. On that very 15th that  
15 I'm asking the matter to be postponed to I've got a duty to  
16 be at the Judicial Services Commission of Inquiry, together  
17 with my learned friend Mr Semanya. Mr Madlanga has got an  
18 alternate. We don't have alternatives, being the  
19 President's nominees. Now this is a serious matter for  
20 those families whom we represent and it's not a kind of –  
21 without reflecting on the competence of the baby juniors  
22 who I am appearing with here, but this is a very serious  
23 matter and we take it serious, and I had hope that this is  
24 not a matter that would not have to be dealt with in open  
25 sessions like this. That is a matter that we could have

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1 taken on the side, but I do not think the solution is that  
2 we must make an approach to Legal Aid. Those are our  
3 submissions.

4 CHAIRPERSON: I have considered the  
5 application for a postponement and have come to the  
6 conclusion that it must be rejected. What is proposed is  
7 that there be an inspection in loco this afternoon, which  
8 in all probability will continue tomorrow. On Wednesday  
9 evidence of a formal nature will be led, which will in fact  
10 place the legal representatives who are not properly  
11 instructed at this stage in a better position to obtain  
12 instructions. It also will be necessary I think for us to  
13 see the television footage on Wednesday, which will again  
14 assist counsel concerned to take instructions on the  
15 matter.

16 With regard to the members of the family, as I've  
17 already said, the Department of Social Development is  
18 making arrangements for them to come here to Rustenburg.  
19 The inspection in loco will be filmed. The film can be  
20 shown to them and, if necessary, someone can take them to  
21 the scene and point out to them the spots that were pointed  
22 out by the witnesses. If it becomes necessary at some  
23 later stage for us to have another inspection to see other  
24 points, that is a matter that can be dealt with as and when  
25 it arises.

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1 So I'm not satisfied that anyone would be  
2 prejudiced if we were to proceed in the way that I've  
3 suggested. I'm fortified in this view by the submissions  
4 made by certain of the counsels who appeared, who opposed  
5 the postponement or insofar as there was to be a  
6 postponement, qualified their support by saying that the  
7 inspection should need to take place first and formal  
8 evidence should be led first. It may well be that after  
9 the formal evidence that I've outlined has been led on  
10 Wednesday, that it might be considered appropriate for a  
11 postponement of some kind to take place so that counsel can  
12 get together and work out, as had been suggested I think  
13 particularly by Mr Badenhorst, a programme on the way  
14 forward.

15 I would also hope that counsel in the course of  
16 such a meeting could apply their minds to the question of  
17 what can be done to shorten the proceedings by way of  
18 summaries and agreed facts and things of that kind. It's  
19 also possible that some of the witnesses might be able to  
20 give evidence-in-chief simply by confirming a statement  
21 prepared previously and then being cross-examined  
22 thereafter. I'm not sure that that's an appropriate way of  
23 proceeding. In the case of certain witnesses, possibly the  
24 more unsophisticated witnesses who would I think be put  
25 under pressure if that procedure were to be followed, but

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1 certainly in the case of some of the other witnesses that  
2 procedure, which is normally adopted in arbitrations in  
3 London for example, works very well and in fact can shorten  
4 the proceedings quite considerably. But for those reasons  
5 the application for a postponement is refused.

6 We will proceed, I will adjourn in a moment and  
7 we will resume at Marikana at 2:30. I suggest that we  
8 allow the leader of the evidence leaders to be our leader  
9 today. We will keep an eye on Adv Madlanga and endeavour  
10 to join him at Marikana at the place where he is.

11 Before we adjourn, however, I want to address a  
12 request - perhaps an appeal is a more appropriate word – to  
13 representatives of the media who are present here who are  
14 in possession, or whose employers are in possession of  
15 video material relating to the events of the 16th, according  
16 to certain press reports there is, someone is in possession  
17 of media material as to what happened prior to the actual  
18 shootings, when someone described as a gentleman in a green  
19 blanket was seen negotiating. I think that there's also  
20 reference to Bishop Seoka having been depicted on video.  
21 He was present before the shooting. He, I gather, will be  
22 at the inspection to point out where he was on the day in  
23 question, but we understand that the television material  
24 has been made available to the evidence leaders, which was  
25 previously in the possession of the Independent Police

1 Investigative Directorate and the police is edited  
2 material. We would ask that for the co-operation of the  
3 media to make all the material they've got, edited and  
4 unedited, available. I can't see any prejudice to anybody  
5 if that is made available to us. It will certainly assist  
6 not only the Commission, but all those participating in the  
7 proceedings of the Commission, if that material is  
8 available. I would hope that some of it at least can be  
9 shown to us here when we reassemble on Wednesday before the  
10 formal evidence which I have mentioned is led. On that  
11 basis the Commission adjourns and we'll resume at 2:30 at  
12 Marikana.

13 [INQUIRY ADJOURNED]

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