

# 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

DAY 2      3 OCTOBER 2012      PAGES 66 TO 111

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 3 OCTOBER 2012]  
 2 [09:04] CHAIRPERSON: Good morning, everybody,  
 3 the Commission resumes. What we had planned to do this  
 4 morning is to give the parties an opportunity to state  
 5 their versions. We understand that the police have  
 6 prepared a PowerPoint presentation indicating their  
 7 version. I don't know whether they're prepared to show it  
 8 to us this morning but I would – I hope they are. And then  
 9 we have the witnesses from the inspection in loco, those  
 10 who pointed places out to us. This is the inspection in  
 11 loco which we did on the 1st of October, first day, relating  
 12 to the events on the 16th of August in the vicinity of the  
 13 koppie at Wonderkop, the flat area of land in front of it  
 14 and then on what was described as the "klein koppie", the  
 15 smaller koppie behind. Those witnesses we – witnesses who  
 16 pointed out places at the request of the evidence leaders  
 17 will testify.

18 I understand also that certain other documents  
 19 and so forth will be put before us, but I want to begin by  
 20 inviting the representatives of the parties to present, if  
 21 they are able to do so, their versions at this stage. It's  
 22 appropriate to call –

23 ADV NTSEBEZA SC: Mr Chairman –  
 24 CHAIRPERSON: Yes?  
 25 ADV NTSEBEZA SC: Dumisa Ntsebeza. Mr

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1 Chairman, I crave your indulgence to make yet another  
 2 submission and again it is a submission that follows what  
 3 you advised us on Monday after refusing our application for  
 4 a postponement and that was that the Department of Social  
 5 Development, you had been told, was making arrangements for  
 6 the families. I thought it would be appropriate for us,  
 7 before we resume today's proceedings, for you to be given a  
 8 sense of where we are at -

9 CHAIRPERSON: Yes.  
 10 ADV NTSEBEZA SC: - with regard to that.  
 11 CHAIRPERSON: Yes.  
 12 ADV NTSEBEZA SC: And may preface my  
 13 remarks by saying, Mr Chairman, that for us, as well as for  
 14 our clients, it is a matter of grave, grave importance that  
 15 this Commission should not proceed in their absence. This  
 16 Commission is about dead people, those people who died  
 17 between the requisite dates. I would – I'm sure Mr Semenya  
 18 will speak for his clients – I would be very concerned if  
 19 the widows of those who died and the relatives of those who  
 20 died are absolutely absent. This is about, a commission  
 21 into their deaths, I mean – I see everything else about  
 22 Lonmin and what else could have been done, but this is  
 23 about those people who died.

24 There is an assumption, Mr Chairman – and please,  
 25 I know you will indulge me – there is an assumption that

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1 even the footage of what happened on that day is known  
 2 because it is known in the United States, in Russia and  
 3 everywhere else. Let me tell you, Mr Chairman, that when  
 4 my attorneys visited those areas in Lusikisiki and the  
 5 border, there is not even radio communication. Now we are  
 6 going to be here, seeing what we have seen as  
 7 commissioners, as leaders of evidence, as attorneys, as  
 8 everybody else. There are people who are related to the  
 9 dead who have not even seen video footages of what happened  
 10 and therefore we are making a plea, Mr Chairman, we are  
 11 making a plea that, whilst expedition – I've got it right  
 12 this time, Mr Chairman – where expedition is important,  
 13 there should be a level of sensitivity.

14 Can you indulge me and I take you back, Mr  
 15 Chairman and members of the Commission, to Monday. On  
 16 Monday you were given a script, now it is clear, you were  
 17 given a script which assumed the presence of those whom we  
 18 are representing. You were even made to say, I have been  
 19 told that the majority of you are present here except for  
 20 those who come from Lesotho and Swaziland. Now we know  
 21 there wasn't anybody here. It can't be correct, Mr  
 22 Chairman, in our humble and respectful submission, that we  
 23 enquire into the dead and that their families are not here.  
 24 It is your duty, Mr Chairman, with respect – and I say so  
 25 taking into account section 16 of the Regulations. I don't

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1 want to be seen to be disparaging or saying anything about  
 2 the Chairperson or about this Commission, I make these in  
 3 earnest and I say to, Mr Chairman, please let all the  
 4 parties which it is contemplated ought to be present, let  
 5 them be present. Let's all proceed with a Commission which  
 6 wanted to get the job done, but that job could only be done  
 7 if we are seen to be sensitive.

8 You yourself, Mr Chairman, expressed very  
 9 passionately – and I know you meant it – you expressed very  
 10 passionately about how this Commission is seeking to do  
 11 everything in its power to ensure that justice is done. It  
 12 should be justice done to the families of those who fell in  
 13 the main and if they are not here, what are we doing here?  
 14 Is it asking too much, Mr Chairman, that give us a few  
 15 days, these people are here. Am I being obstructionist?  
 16 Am I kicking for touch, as one of my colleagues submitted  
 17 to you? Do I look like I'm kicking for touch? Is there no  
 18 sense in what I'm saying?

19 I seek to persuade you, Mr Chairman, that the  
 20 people who are affected – Mr Mpfu will speak for himself,  
 21 but the people who are affected, it is critically important  
 22 that they should be present in proceedings about those – I  
 23 don't want to make a fine point of it but that is – that is  
 24 what I want to submit.

25 Now, let me tell you what happened, Mr Chairman,

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1 because I think it is my duty to advise you. You were  
 2 advised - and I mean to impute no dishonesty to those who  
 3 advise you - you were advised on Monday that the Department  
 4 of Social Development is arranging for the families to be  
 5 present and indeed my learned friend Mr Madlanga brought  
 6 two social workers to us and my attorney and the two social  
 7 workers got into an interaction and this is the situation.  
 8 The Department - those two social workers made it very  
 9 clear that they have no mandate or any instructions to  
 10 provide any transportation of any of those families from  
 11 wherever they are to this venue. Now, that's what they  
 12 said. They said they have only a mandate to provide  
 13 services of a counselling nature when they are here. In  
 14 fact, when they came to the attorney they said, where are  
 15 these people, so that we can do our job. And they had to  
 16 be told the expectation from us is that the government  
 17 through your Department is going to do three things, in the  
 18 main. One, it is going to locate all the families,  
 19 wherever they are, make arrangements for their  
 20 transportation to this venue - and that can only be what  
 21 anyone should expect reasonably, because you cannot assume  
 22 that because you have had this conversation then they must  
 23 come from wherever. By definition, they are poor people.  
 24 Now, that is what my attorney actually expressed  
 25 himself very clearly to the social workers. We expect - or

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1 that is what we understood - that when government says,  
 2 through its Department of Social Development, it's going to  
 3 provide for the families, that the families are going to be  
 4 fetched from all those places, if that it took them three  
 5 days to reach them - Thursday, Friday, Saturday, Sunday,  
 6 four days. Let them be fetched from there, let them be  
 7 brought to this venue. For the duration of the hearing  
 8 here, let them be accommodated in some reasonable  
 9 accommodation, that's what I would expect. And whilst they  
 10 are here, let them be fed. Let all those decent things  
 11 that you and I are entitled to or at least reasonably  
 12 expecting should be done to us at a venue like this, let it  
 13 happen to those people. It's a government appointed  
 14 Commission of Inquiry and let this Commission never go down  
 15 in history as a Commission that never cared for those for  
 16 whom particular care should be given to. And that's what  
 17 my attorney said to the social workers, then the social  
 18 workers told them, we have no mandate, we haven't got a  
 19 mandate like that.  
 20 Have the Commission - have the individual  
 21 families been contacted? Now that we've told the  
 22 Commission, and we're not lying, that they had not been  
 23 told, even about today - no, we have not contacted them.  
 24 Contact only began yesterday - we will be able to make this  
 25 by way of affidavit, if needs be - contact was made

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1 yesterday and then those who instruct me have indicated  
 2 that this is the minimum that we request. Contact must be  
 3 made, they must be fetched, they must be brought to your  
 4 Commission. When they are here, they must be reasonably  
 5 accommodated. Those who might - we don't know who might  
 6 even feel that they need counselling on an ongoing basis,  
 7 that must be provided. It must be, please - some of these  
 8 people are going to see, and we submit it is important that  
 9 they do so, they are going to see these video footages for  
 10 the first time. It's going to be traumatic to them.  
 11 Provision must be made for people who'll be there on an  
 12 ongoing basis to make sure that if they break down whilst  
 13 we are watching the footages, they are able to be attended  
 14 to. That's what we did in the Truth and Reconciliation  
 15 Commission, we anticipated that due to the nature of what  
 16 is going to happen, people must be in place to make sure  
 17 that in the event there are those kinds of breakdowns, the  
 18 people are able to be attended to.  
 19 These are not just figures that we must refer to,  
 20 these are people. These are people who lost their loved  
 21 ones. This Commission expressed itself on Monday as a  
 22 caring Commission. I know it should be. Mr Chairman,  
 23 please allow me to - I mean, allow me to express this. You  
 24 yourself - and allow me the liberty to say so - you  
 25 yourself know that in the dark days in the '80s I used to

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1 brief you all the way from Cape Town to come and apply for  
 2 people to be released from detention, even though the laws  
 3 were draconian, and you'd say but these laws will not  
 4 permit this and I would say, go into that court and fight  
 5 for the release of this person, don't tell me about what  
 6 the law provides - and you did it and in one case you were  
 7 successful, in spite of those laws.  
 8 I am instructed to come and persuade you with the  
 9 same passion that this is a moment when this Commission  
 10 should redeem itself. We cannot, with a clear conscience,  
 11 proceed without those who are affected. Make sure, Mr  
 12 Chairman, that your Commission is enabled by those who  
 13 instituted it, to deal with all the participants here on  
 14 the basis that they are cared for, on the basis that  
 15 everything is done to provide for them that is reasonable  
 16 and within the mandate of this Commission.  
 17 So what is our request? It will not be proper  
 18 for anyone to give a version - I mean even if they were not  
 19 eye witnesses, if Mr Semanya is going to give a version on  
 20 behalf of his clients, they are not here, they are not here  
 21 to react, like they were not here yesterday to know that  
 22 this is where Mamboes died, this is where one person died.  
 23 I saw him personally yesterday, a body was found, a body  
 24 was found here, a body was found there. If they say we  
 25 don't have the courage to go round and make those

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1 inspections, let it be their choice.  
 2 That is done now, that's over. May I just plead  
 3 that before we contemplate proceeding, we must take into  
 4 account that we have an obligation, all of us here – all of  
 5 us, even those who represent the Constitution, all of us  
 6 here have an obligation to help these people. I want to be  
 7 able to, now and again when a version has been given, to go  
 8 to my people there and say, you have seen that there, is  
 9 there anything that you want to say about it? They are not  
 10 here. Something about that, Mr Chairman, members of the  
 11 Commission, darkens - and I implore you.

12 We can use the day fruitfully, as far as I  
 13 understood. I think the day, there was a process or as  
 14 procedure thing where we could exchange, that day can be  
 15 fruitfully used. I am not obstructionist, in fact I resent  
 16 any indication that I'm raising these issues because I'm  
 17 just being obstructionist. I do so because I feel for  
 18 those people. I do so, if you allow me, because there was  
 19 a commission not unlike this one, in which I served, in  
 20 which we put the interests of the victims first. Those are  
 21 my submissions, Chair.

22 CHAIRPERSON: Is there anything that you  
 23 wish to say in response to this, Mr Madlanga or those  
 24 appearing with you? And when you have finished, if you  
 25 propose saying something, I'll then give the

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1 representatives of the other parties an opportunity to  
 2 speak also.

3 ADV MADLANGA SC: Mr Chairman,  
 4 Commissioners, may I ask perhaps that our other colleagues  
 5 respond in the meantime? We're just trying to establish  
 6 what, how we should deal with the matter.

7 CHAIRPERSON: There are also issues, I  
 8 understand, in relation to the correctness or otherwise of  
 9 the information that we were given on Monday, which I  
 10 communicated to the parties about the arrangements made by  
 11 the Department of Social Responsibility but I take the  
 12 point you made. I invite the other parties to speak.

13 ADV MADLANGA SC: I would deal with that  
 14 part of it quickly now, Mr Chairman, just to make sure that  
 15 no wrong impression is created. I was not party to that  
 16 advice and I feel that I should make that point because my  
 17 name was mentioned by my learned friend Mr Ntsebeza. What  
 18 happened is, after the Commission had risen to go for the  
 19 in loco inspection, two ladies, unsolicited, approached me  
 20 and said that they were from the Department of Social  
 21 Development. I immediately took them to Mr Ntsebeza who  
 22 was standing there, down the stairs there and I left them.  
 23 So just to say I was not party to any advice that had been  
 24 given to anybody. Thank you.

25 ADV NTSEBEZA SC: Mr Chairman, may I just

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1 for the sake of completeness –

2 ADV MADLANGA SC: And may I say of course  
 3 by saying that I am by no means suggesting that Mr Ntsebeza  
 4 was suggesting otherwise.

5 ADV NTSEBEZA SC: Not at all.

6 ADV MADLANGA SC: I know, I just meant to  
 7 give clarity on the matter.

8 ADV NTSEBEZA SC: Mr Chairman, just by  
 9 way of completeness, I've since been advised that in fact  
 10 after we had had this communication from the social  
 11 workers, my attorneys yesterday were sitting on the  
 12 Department of Social Development and this is the latest.  
 13 The latest is that they have now come to an accord in terms  
 14 whereof they undertake that they will make sure that the  
 15 families – I'm sorry about this device -

16 [09:24] They make sure that the families are here at the  
 17 latest, Monday the 8th. Now to that extent – but I would  
 18 really like it to be pursued. They will be here, they will  
 19 be kept in reasonable accommodation. They will be fed.  
 20 They will be transferred from wherever their venue is to  
 21 this Commission and all of those things. But that's  
 22 detail. But as at the end of the day yesterday, because  
 23 there was constant pressure being put by my attorney, that  
 24 is where we are at this stage.

25 CHAIRPERSON: Mr Madlanga suggested that

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1 I call upon the representatives of the parties to respond,  
 2 if they wish to do so, to the submission that Mr Ntsebeza  
 3 has made. Is there anybody among the representatives of  
 4 the parties wish to address the Commission on this aspect.  
 5 I see you are raising your hand, Mr Bizos.

6 ADV BIZOS SC: Sympathetic to the appeal  
 7 made by Mr Ntsebeza, and it may well be that the showing of  
 8 the film which is vital to the families to witness, perhaps  
 9 it should not be shown, because they have to use my learned  
 10 friend's word, been deprived of their presence whilst the  
 11 pointing out were done.

12 CHAIRPERSON: There is nothing to prevent  
 13 the film being shown to them later. I haven't made up my  
 14 mind in relation to what –

15 ADV BIZOS SC: Yes.

16 CHAIRPERSON: - Mr Ntsebeza said, but as  
 17 far as the film is concerned, it could be shown now, and  
 18 could be shown subsequently to them privately, possibly  
 19 with appropriate arrangements for counselling at some later  
 20 stage. Sorry, I am interrupting you.

21 ADV BIZOS SC: Be that as it may in  
 22 relation to the film, Mr Chairman, we are trying our best  
 23 to prepare our work without knowing what the police version  
 24 is. I believe, with respect to my learned friend that  
 25 viewing or hearing what the police version is going to be

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1 will be very, very helpful if it happens today. It will  
2 enable us, Mr Ntsebeza and his team, and everyone else  
3 concerned, to use the time between now and Monday to  
4 prepare. So don't let us waste the day. It cannot  
5 prejudice the families if their team conveys to them, if we  
6 hear it today what the police version is. There will be no  
7 comfort in it for them but it may be to their benefit that  
8 we actually hear what the police have to say so that we can  
9 prepare to deal with their version, and this is why I  
10 believe that we should not miss that opportunity today.

11 CHAIRPERSON: Thank you, Mr Bizos. My  
12 colleague, Adv Tokota, wishes to ask you a question, Mr  
13 Bizos.

14 ADV TOKOTA SC: Thank you, Mr Chair. If  
15 I understood you correctly initially, you indicated that it  
16 is important that they should be here when the video  
17 footage –

18 ADV BIZOS SC: Yes, I have no doubt. I  
19 have no doubt.

20 ADV TOKOTA SC: Is it not also important  
21 that when the evidence is being led, they should be present  
22 to hear what has to be said –

23 ADV BIZOS SC: I agree.

24 ADV TOKOTA SC: - by the policemen.

25 ADV BIZOS SC: I agree.

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1 ADV TOKOTA SC: If that is the position,  
2 if we proceed today in the absence of these people hearing  
3 the police giving their version, how does it tally with  
4 your initial –

5 ADV BIZOS SC: Because I understand the  
6 position, Mr Chairman, that there will be no evidence. I  
7 understand the position that counsel for the Police is  
8 going to tell us what their version is going to be. That  
9 is a different matter. That can be communicated to  
10 everybody, including Mr Ntsebeza's clients and it will help  
11 all of us, in order to use the time available to prepare.  
12 It's not going to be – if I understood correctly, it was  
13 not going to be evidence that is led.

14 ADV TOKOTA SC: Sorry, how is that going  
15 to be communicated to you? Do you mean that you will have  
16 a conference or is it – the evidence leaders, are they  
17 going to make a statement, opening statement, or?

18 ADV BIZOS SC: I haven't been privy to Mr  
19 Semenya's thinking, I don't know what he intends doing. I  
20 only heard from the evidence leaders that there will be a  
21 statement by the Police. If in fact, it is not viva voce  
22 evidence given by police officers, but merely what in broad  
23 terms the Police version is, it can't be to the prejudice  
24 of the families, as weighed against the time being used to  
25 give us an opportunity to know what we have to – we will

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1 have to face so that we can prepare.

2 ADV TOKOTA SC: Is it possible that that  
3 can be done through say, call it a pre-trial conference  
4 between the representatives of the parties without -

5 ADV BIZOS SC: I would have no objection  
6 to it, provided it is recorded, I would not object to that,  
7 it would serve our purposes, if we have the representatives  
8 of the police officers to say, this is going to be the  
9 Police case, and it is recorded in the presence of all of  
10 us, it needn't necessarily be a sitting of the Commission  
11 but the time, the two days left, it is two days or three,  
12 will be usefully utilised in order to progress.

13 ADV TOKOTA SC: Usefully utilised without  
14 having to proceed with the proceedings.

15 ADV BIZOS SC: Let us assume that the  
16 Commission adjourns, so that there is no evidence, but it's  
17 like a pre-trial conference, so to speak, which can be  
18 substituted for the hearing of evidence. Provided that  
19 takes place, we would have no objection in adopting that  
20 procedure. We are interested in getting on. We don't want  
21 to deprive the families of any of their fundamental rights.

22 CHAIRPERSON: I think the appropriate  
23 thing to do is to ask Mr Semenya whether he is going to  
24 respond to the invitation at this stage, or was preparing  
25 to do so, to give a statement to us, what the version of

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1 the Police will be.

2 ADV MATHIBEDI: Good morning, it is T F  
3 Mathibedi, on behalf of the South African Police Services.  
4 It has never been our intention, and at this stage, we are  
5 not yet ready to present a version of the account of the  
6 Police.

7 CHAIRPERSON: So that point then falls  
8 away. I did understand that it was proposed to hand on  
9 from the Bar, without evidence at this stage, the post  
10 mortem reports on the, in respect of the people who were  
11 shot. It seems to me that that would be very helpful. I  
12 can't understand any prejudice being suffered by anybody if  
13 that was to take place. It would enable the parties to  
14 prepare. There may be technical reasons why it's desirable  
15 that they should be handed in rather than just handed over  
16 outside the Commission, but I invite Mr Madlanga to address  
17 us on this point.

18 ADV MADLANGA: Chair, members of the  
19 Commission, well let me directly, initially you invited me  
20 to respond to Mr Ntsebeza's application. May I touch on  
21 something that Mr Bizos, my learned friend across has  
22 touched on, whilst debating with Commissioner Tokota.  
23 Quite early on, as soon as he can come on board, my  
24 colleague, Mr Semenya, did propose a pre-hearing conference  
25 so the point I too was going to make is that the day would

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1 not be lost if there were to be a postponement. We, as the  
 2 legal representatives, could remain here today and engage  
 3 each other and come up with, or chart a path for ourselves.  
 4 Also, I just wanted to remind all of us gathered here, of  
 5 the very logo under which this Commission operates, and it  
 6 reads, "Marikana Commission of Inquiry, Truth, restoration  
 7 and justice." Speaking for myself, I would say that I read  
 8 that to speak to the families of the deceased, more than it  
 9 does to anybody else gathered here today, and if one were  
 10 not to be sensitive to what Mr Ntsebeza has said, I think  
 11 we would be going the wrong way about it. Lastly, on the  
 12 Police presentation, of course, my learned friend, Mr  
 13 Mathibedi has responded to that. I would have said that my  
 14 colleagues, learned friends, Mr Matthew Chaskalson and  
 15 Charles Wesley, have had the pleasure of viewing, not  
 16 pleasure in the sense of enjoyment, I mean in the sense of  
 17 the benefit, yes, benefit, thank you to the first language  
 18 English speaker to my right, I am a third language English  
 19 speaker and I think I am doing very well, Mr Chairman.  
 20 Back to being serious, the point I wanted to make about the  
 21 Police presentation, Chairman, Commissioners, is that  
 22 according to my colleagues to my left that runs for no less  
 23 than six hours without interpretation. So the point I  
 24 would make is, surely in it there must be something that  
 25 those families would be interested to see or to view or to

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1 be part of, or to be a part of. So to me, not even that,  
 2 it would not be in order to view even that as this stage.  
 3 Then back to your last question, Mr Chair, we are  
 4 ready to hand up the post mortem reports from the Bar, but  
 5 my learned friend Mr Chaskalson has been tasked to attend  
 6 to that part of our duties. I am not even sure that we  
 7 have enough copies. The photocopying facilities that we  
 8 have been given, packed up yesterday, but he is in a better  
 9 position to speak to all of that, Mr Chair, thank you.  
 10 CHAIRPERSON: Thank you, Mr Madlanga. Mr  
 11 Chaskalson.  
 12 MR CHASKELSON: Mr Chair, firstly just to  
 13 correct what may be a misunderstanding that I don't want to  
 14 cause any, well suspicions later. The time of six hours is  
 15 not something that I've personally witnesses. We have seen  
 16 a power point presentation without viewing the video clips  
 17 that are built into the power point presentation. So what  
 18 we saw didn't run for two hours, it ran for considerably  
 19 less because we were just being scrolled through slides.  
 20 The figure of six hours is what was communicated to me as a  
 21 very rough estimate of what it might take to present that  
 22 presentation in Commission. So if it turns out that it is  
 23 a lot shorter people shouldn't be concerned that we saw  
 24 something of six hours and the Commission sees something  
 25 that is shorter. We have just seen slides. We haven't

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1 seen the videos and as I understand it, the Police are  
 2 really estimating what the total time would be.  
 3 In relation to the post mortem reports, we have  
 4 logistical problems. In fact my master copy is currently  
 5 at a print shop in Rustenburg, being copied, to generate  
 6 copies for the legal team. We do have three files which we  
 7 are in a position to hand up to the Commission. They are  
 8 not an exhaustive set of post mortem reports, and if I  
 9 might briefly describe what they comprise. In relation to  
 10 the 34 victims of the 16th, we have 31 post mortem reports  
 11 which we are satisfied to hand up at present. There is one  
 12 post mortem that is still outstanding in the sense that the  
 13 doctor is making last minute finalisations to the draft, or  
 14 is settling the draft. We expect to get that report  
 15 within, if not today, then within the next couple of days.  
 16 There are two post mortem reports which we have,  
 17 which have been furnished to us which are final, but we are  
 18 not yet satisfied of proof of identity because there is no,  
 19 in the post mortem bundles that have been furnished to us,  
 20 there is no proof of identity of the body satisfactory for  
 21 us to hand it up as a post mortem report of one of the  
 22 victims. That accounts for the 34 victims of the day.  
 23 Of the victims in the week leading up to the day,  
 24 at present, we have three post mortem reports, three of the  
 25 ten. The three that we have, are the three that relate to

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1 investigations that were conducted by IPID because they  
 2 were investigations in respect of which it was, there was a  
 3 suspicion that the Police may have been involved in the  
 4 killings. The remaining post mortem reports, we are still  
 5 to locate. We've had technical difficulties which needn't  
 6 detain the Commission, but the hard, an external hard drive  
 7 that we have received from the Police, we have been unable  
 8 to open but we will be opening it today, and we are hoping  
 9 that we might find those post mortem reports there. But at  
 10 present, what I would propose then, Mr Chair, with your  
 11 leave, is for us to hand up to the Commission the files  
 12 that contain the 31 post mortem reports that we can verify  
 13 of victims of the 16th. The two additional post mortem  
 14 reports that we have reason to believe are also victims of  
 15 the 16th, but have as yet not been identified, and the three  
 16 post mortem reports relating to victims of the week before  
 17 the 16th. And we will, we are unfortunately not in a  
 18 position to give these files to our colleagues but in the  
 19 course of the day, we will be in a position to do so.  
 20 CHAIRPERSON: Thank you. Yes, did you  
 21 indicate, you wished to speak?  
 22 ADV MPOFU: Chairperson.  
 23 CHAIRPERSON: I ask people please to  
 24 identify themselves, to assist those who are transcribing  
 25 what is being said.

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1 ADV MPOFU: Chairperson, my name is Dali  
 2 Mpofo, and I think I want to emphasise again who I  
 3 represent, because it's going to become relevant to what I  
 4 am going to say. As I said on Monday, I represent three  
 5 parties or instances. The first one is the group of 270 or  
 6 so persons who were arrested on the 16th, and charged with  
 7 murder, among whom is a group of the injured persons who  
 8 are covered by the terms of reference, since some of those  
 9 people were either kept in hospital under police guard and  
 10 subsequently released when the rest of the 270 persons were  
 11 released. The second group of persons that we represent is  
 12 the Lonmin Community Committee. That committee is a broad  
 13 committee that has been formed to look after the broad  
 14 interests of the Marikana, or rather the Marikana Community  
 15 Committee, and to look after the broad interests of the  
 16 Marikana Community and indeed some of the 270 persons who  
 17 were not necessarily Lonmin employees, but just members of  
 18 the community who were here in solidarity with their  
 19 community members. Some of them were members of the unions  
 20 and to that extent, there might be an overlap but some of  
 21 them were not unionised persons. The members of that  
 22 committee for the record are here, some of them, in a  
 23 representative capacity and we took that step, Chair, as a  
 24 practical measure because of the relative impracticality of  
 25 having all the 270 people here. However, Chair having said

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1 that it is important to note that these people are back at  
 2 work, even now are being requested to make letters so that  
 3 they can prove to their employers that they were here.  
 4 [09:44] And it's an arrangement that I'm hoping, maybe if  
 5 we do have a pre-trial, we will be able to reach with  
 6 Lonmin, in particular, so that when the representatives of  
 7 the committee come here they can rotate or any other  
 8 practical arrangement that we can come to, but the most  
 9 important thing, Chair, is that we would like those people  
 10 to always be represented here. We can't – it would be  
 11 extreme if we say they must all be here, because, as I say,  
 12 it would not be practical, but one way or the other, we  
 13 would like them to always be represented. The third  
 14 instance that we represent, Chair, is the family of the  
 15 deceased councillor, Pauline Masutle, and to that extent we  
 16 represent one of the deceased persons provisionally, and  
 17 I'll explain why we say provisionally just now, but to the  
 18 extent that she is a victim and a deceased victim, then  
 19 obviously we are in the same boat as Mr Ntsebeza.  
 20 I can mention, Chair, that the funeral of that  
 21 particular victim is taking place this Saturday, and the  
 22 family – one, the sister, joined us and I introduced her to  
 23 you, Chair, at the inspection yesterday, and they are  
 24 leaving for the funeral which will take place a month  
 25 later, and therefore they cannot be sitting here for the

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1 next few days.  
 2 CHAIRPERSON: I think I must point out  
 3 that the death of the councillor, it doesn't strictly  
 4 speaking fall within the terms of the reference of the  
 5 commission. You indicated to me at the inspection that you  
 6 were applying to the president to have the terms of  
 7 reference expanded to cover the period relevant.  
 8 ADV MPOFU: I was moving to that, Chair.  
 9 CHAIRPERSON: I see, sorry, well carry  
 10 on.  
 11 ADV MPOFU: Thank you, Chair, the reason  
 12 I used the word provisionally, I used it advisedly for that  
 13 reason, Chair, and I might as well, now that the Chair has  
 14 raised the issue, just deal with that very quickly,  
 15 briefly. As I indicated, and indicated to you, Chair, so  
 16 that we don't mislead the court – the commission, when the  
 17 list of victims was being read on Monday, Ms Masutle's name  
 18 was read, and that was correct, because she is a victim of  
 19 what might broadly be described as the Marikana crisis.  
 20 She's indeed the 45th of the 46 victims, and I think it was  
 21 correct to include her among these victims.  
 22 Due to that and due to very strong instructions  
 23 coming from her family, a week after her death, we  
 24 addressed this letter to the president of the Republic of  
 25 South Africa. And I did say yesterday, Chair, that this is

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1 a matter I wish to place on record today. I'm doing that,  
 2 but I'm also going to contextualise it within what  
 3 Mr Ntsebeza and the other colleagues have been discussing,  
 4 if I get the indulgence to do so.  
 5 The letter we wrote, Chair, is dated 21st  
 6 September 2012 and, with your permission, I'll read it into  
 7 the record. "Dear Honourable President, representations  
 8 for the extension of the terms of reference of the Farlam  
 9 Commission of Inquiry. 1, We act for the family of Ms  
 10 Pauline Masutle, who died on Wednesday, 19th September 2012,  
 11 as a result of injuries sustained at Marikana during last  
 12 weekend's raids by the security forces of South Africa.  
 13 The deceased suffered injuries from a bullet fired by the  
 14 said security forces. Ms Masutle was a municipal  
 15 councillor. 2, The family is not satisfied with both the  
 16 circumstances surrounding the shooting, nor his mysterious  
 17 death in hospital after she showed signs of recovering. 3,  
 18 we have learnt in the media that the government  
 19 contemplates an investigation into her death. 4, We have  
 20 been instructed to make the request, as we hereby do, that  
 21 instead of launching a parallel inquiry, it would be more  
 22 practical, efficient and cost-saving rather to incorporate  
 23 the issues arising from the death of, into the existing  
 24 Farlam Commission. We are advised that it is within the  
 25 powers of the Honourable President to extend the existing

1 terms of reference to incorporate the issues associated  
 2 with said raids and the resultant death. 5, We are already  
 3 set to participate in the inquiry on behalf of a separate  
 4 set of clients and it would be convenient for us to deal  
 5 the matters in the same proceedings. 6, In addition, it is  
 6 our humble view that Ms Masutle, being the 46th victim and  
 7 the first woman fatality of the broader Marikana crisis, is  
 8 in the same position as the other 45 victims. Her life is  
 9 worth the same as the other victims. 7, we are also of the  
 10 view that including this issue would ensure total closure  
 11 of the issues of the Marikana issue once the commission has  
 12 finalised its work. 8, We have already been informed by  
 13 the Commission Secretariat that the work of the commission  
 14 will commence on 1 October 2012. We would accordingly  
 15 appreciate a response to this request on or before  
 16 Wednesday, 26 September 2012, so that we may either  
 17 commence our preparations or seek alternative ways to  
 18 pursue the wishes of the family. 9, This letter will be  
 19 copied to the Minister of Justice and Constitutional  
 20 development and we are more than willing to meet and engage  
 21 with any functionaries of your office of the South African  
 22 government to further engage on this matter should it be  
 23 deemed necessary by your good offices. This may provide an  
 24 opportunity for us to expand on and further to motivate  
 25 this request. We await your urgent response." My attorney

1 sent the letter and it was acknowledged – receipt was  
 2 acknowledged by the Office of the President, dated 21st  
 3 September 2012, and acknowledged by the Minister of  
 4 Justice, dated 25th, just after the long weekend.  
 5 I raise this issue, as I said, Chair, for two  
 6 reasons: one, to place it on the record, but also to find  
 7 common cause with the issue of the presence of that family  
 8 here. I might also place on record that we have not  
 9 received the response from the president, as we had  
 10 suggested, which we would have wanted to receive before the  
 11 Monday, the commencement of the commission. And our  
 12 instructions from the family are to leave no stone unturned  
 13 to ensure that this death is included in this commission.  
 14 I'm not at liberty at this stage to indicate what steps we  
 15 may take should this request be refused, but we will leave  
 16 no stone unturned.  
 17 Now, Chair, coming back to the issue at hand, my  
 18 impression, Chair, I may be wrong, is that no party sitting  
 19 here is ready to proceed with this matter. For, after the  
 20 interventions of Mr Madlanga and Mr Mathibedi, it would  
 21 seem that, at least about that, there's no dispute. The  
 22 second issue is that, Chair, the haste – the issue of the  
 23 credibility of the commission is quite important. There's  
 24 already a public discourse about this issue of the victims  
 25 and I know you, Chair, that is something that you take to

1 heart to ensure that the plight of the victims is not  
 2 underestimated. The impressive manner in which you started  
 3 this commission shows that you do care about the victims.  
 4 And haste might just result in us having a half-baked – a  
 5 very hasty and rushed, but half-baked product.  
 6 I wanted to say this without any fear of  
 7 contradiction, since I represent, broadly speaking, the  
 8 victims, as I've defined, together with Mr Ntsebeza and  
 9 other parties. There is nobody in this country who is more  
 10 keen for the finalisation of this commission than the  
 11 victims. I think that has to be made very clear, but that  
 12 does translate into a rush job, which will not result in  
 13 the reconciliation and the truth and the justice, nogal,  
 14 that we all seek. So I think that that statement needs to  
 15 be made, so that there are no accusations about delaying  
 16 tactics.  
 17 The last point I want to make, Chair, is that –  
 18 is to link this issue, at least as far as we are concerned,  
 19 with the other issues that we raised on Monday about  
 20 resources. It is very difficult for the parties that we  
 21 represent to participate in this commission. It is  
 22 extremely difficult. It is extremely difficult even for  
 23 us, as the legal representatives, given the distances, the  
 24 number of people. Just to give you a perspective, Chair,  
 25 to have to consult with 270 people, even if you were to

1 estimate it an hour or two hours per person, that goes into  
 2 about a month, a full month of consultations, before you  
 3 even decide which of those people you are going to call.  
 4 And to have to do that under the extreme trying  
 5 circumstances, for people who are poor and who's reason for  
 6 being killed in the first place was the fact that they earn  
 7 R4 000 a month, is really I think stretching it too far.  
 8 And therefore, if there were to be break, Chair –  
 9 I'm raising it only in this context - of any sort, it would  
 10 not only serve the purposes of having the pre-trial issues  
 11 that my colleagues have eloquently spoken about, but it  
 12 would assist the victim parties to pursue this issue of how  
 13 it is going to be that for the next four months, the victim  
 14 parties are well-resourced, and I'm not – I'm just talking  
 15 about logistical resources here, I'm not even talking about  
 16 fees - that's matter that we can deal with separately,  
 17 maybe with the Department of Justice, but just merely to  
 18 make them able to participate meaningfully.  
 19 And, Chair, the last point I want to make is that  
 20 we have represented these people pro bono in the criminal  
 21 cases. We have no problem with that. There will be  
 22 subsequent civil cases for their wrongful arrests, their  
 23 assaults that they suffered at the hands of the police,  
 24 their unlawful detentions. We do not need anybody's  
 25 assistance with that, but as far as the participation in



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1 this inquiry is concerned, Chair, there is no moral or  
 2 legal or logical reason why these people should not be  
 3 assisted. They are here not to gain anything from this  
 4 commission, they are here to assist you, Mr Chair, to  
 5 assist the country to reach the truth and the  
 6 reconciliation and the justice that is sought. They could  
 7 have stayed away for all that matters. There's no monetary  
 8 judgment that will come into their favour, and as much as  
 9 any other party that is here, is here to assist the  
 10 commission and the country, they are also in that same  
 11 position. And once again, if this issue of the resourcing  
 12 of the victims is not heeded, we will take it to the next  
 13 level, but at this stage we are trying to use as peaceful  
 14 means as possible to write letters, to petition, to speak  
 15 the Department of Justice, to appeal to the president, to  
 16 appeal to you, Chair, that there must be equality of arms.  
 17 That there must be recognition that these victims need to  
 18 be assisted one way or the other, and therefore any break  
 19 will also assist us to deal with those issues. Chair, I  
 20 will stop at that. I just wanted to place these matters  
 21 insofar as they might also be dealt with during whatever  
 22 break is contemplated. Thank you, Chair.

23 CHAIRPERSON: Mr Mpofo, you heard what Mr  
 24 Chaskalson said. Speaking for myself, I can't see any  
 25 prejudice to anybody. If the post-mortem reports that are

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1 available are handed in now, having full regard to the  
 2 sensitivity questions which have been raised, which are  
 3 very important in a case of this kind, having full regard  
 4 to those, there can be no prejudice to anybody, in fact, an  
 5 advantage, as I see it, if that material is handed up and  
 6 made available to enable full instructions to be taken and  
 7 so forth. Do you –

8 ADV MPOFU: Yes, Chair, I agree with you.  
 9 On the contrary, it would be to our advantage if the  
 10 material was dissipated at this stage, and I might say that  
 11 for the post-mortem of the female victim, that I referred  
 12 to, is also underway and we will, when we get access to it,  
 13 ensure that our colleagues get it. So I would – I don't  
 14 think and I can speak for Mr Ntsebeza without even  
 15 consulting him, that the dissipation of those post-mortems  
 16 would cause any prejudice.

17 CHAIRPERSON: Thank you. Does anyone –  
 18 any other member present, representing the parties, wish to  
 19 say anything at this point. Mr Bizos, it would help if you  
 20 turned your machine on.

21 ADV BIZOS SC: A further interest which  
 22 we must bring to the notice of the commission, the people  
 23 that have been injured, who are Mr Dali's client's – Mr  
 24 Mpofo, I'm sorry, I know he was a clerk so this is why – we  
 25 have asked him and he has agreed to make his clients

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1 available to go with Mr Powell of our team to the place, so  
 2 that each one of them points out the spot where the bullet  
 3 hit him, and Mr Powell will measure the distance between  
 4 where the police were, or were supposed to be, and the spot  
 5 where they were hit and what they were doing, were they  
 6 running away or facing the police, what they were doing.  
 7 That is absolutely vital evidence for our pathologists'  
 8 reports.  
 9 The analysis of those wounds are as important as the  
 10 findings of the post-mortem examinations, in order that  
 11 inferences may be drawn why shots were fired. So that I  
 12 thought I would bring that to the commission's attention.  
 13 What we were hoping is that we could do, in the meantime,  
 14 things that will not prejudice the families, but we,  
 15 ourselves, consider that information and we are ready to  
 16 start today. The wield is nearby, you don't need a tape  
 17 measure anymore, you just wield something. This is what I  
 18 learnt recently.

19 So we, ourselves, want to be ready. Our forensic  
 20 pathologists want to see that evidence so that, please, can  
 21 we – we've managed to get about 50 lawyers together, can we  
 22 all try to get a couple of busses into the Eastern Cape to  
 23 bring the people here so that we can get on with the job?  
 24 I appeal to my colleagues to cooperate in that regard, so  
 25 that we can get on with the work of the commission.

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1 CHAIRPERSON: I understood from what Mr  
 2 Ntsebeza said – thank you, Mr Bizos. I understood from  
 3 what Mr Ntsebeza said that this later instruction that he  
 4 got, that he gave us in his reply, was to the effect that  
 5 negotiations are underway, and it would appear that there's  
 6 already a commitment, if I understood him correctly, from  
 7 the Department to assist people to be here. Did I  
 8 understand you correctly, Mr Ntsebeza?

9 ADV NTSEBEZA SC: Yes, you did, Chair.  
 10 In fact, the Department or the social workers indicated  
 11 that they might be ready to do so on the 8th.

12 CHAIRPERSON: Thank you. Does anybody  
 13 wish to make any comment before –

14 ADV BRUINDERS SC: Chair, yes, Tim  
 15 Bruinders, AMCU, we of course don't have any objection with  
 16 what appears to be the way that you propose to proceed this  
 17 morning, but there's one question that we'd like to ask and  
 18 that is this, in addition to the post-mortem reports being  
 19 handed up, why can the PowerPoint presentation not be  
 20 distributed before it's dissipated, why can that not be  
 21 given to the parties this morning? It doesn't have to be  
 22 led formally, we just want a copy of it so that we can  
 23 prepare. We have written numerous letters to the  
 24 commission requesting a number of documents and audiovisual  
 25 material. We haven't had a response to any of them. We

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1 make no point about that. We understand that it is very  
 2 difficult to get documents out of not only the SAPS, but  
 3 also Lonmin. We'd like to see whatever there is available  
 4 now, not here this morning, but in the comfort of the trees  
 5 we consult under in Marikana, so that we can prepare.

6 CHAIRPERSON: I think the question you  
 7 ask in relation to the PowerPoint presentation should be  
 8 addressed to the representatives of the South African  
 9 Police Service. They have the PowerPoint presentation.  
 10 Part of it, as you heard, was shown to Mr Chaskalson and  
 11 his learned friend, Mr Wesley. Even they didn't see the  
 12 full presentation. The commission evidently hasn't got it  
 13 at the moment, but it's a request which will properly be  
 14 addressed by the representatives of the Police Service, and  
 15 I would appeal to them and to the parties generally, to  
 16 cooperate with each other as much as possible, so that we  
 17 can expedite these proceedings and time won't be  
 18 unnecessarily spent on procedural matters which can be  
 19 solved outside the place where the commission holds its  
 20 formal sittings. What I would suggest is, – what I would  
 21 suggest is the following way forward, that we receive the  
 22 post-mortem reports, or the copies that are available, we  
 23 hear that extra copies will be made and given to the  
 24 parties. We see those now.

25 [10:04] I had hoped we could see the TV footage, but

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1 there are two problems. The one is the one that Mr  
 2 Ntsebeza's mentioned. I thought that could be solved by  
 3 showing that to them later, particularly in the company of  
 4 people who could give them the necessary counselling. But  
 5 there is another problem, and that is, we haven't got all  
 6 the footage that we would like to see. You will remember  
 7 that I made an appeal to the representatives of the media  
 8 houses, to make other material that has not actually been  
 9 broadcast available. I understand there hasn't been a full  
 10 response to that. I also understand that there is or may  
 11 be at the very least, footage available in respect of the  
 12 events of the 13th, on the Monday which were dealt with in  
 13 the inspection in loco yesterday. So it would presumably  
 14 be advisable if all the TV footage that is available, if  
 15 there is TV footage available on that as well, should all  
 16 be shown at the same time. So proceeding with the TV  
 17 footage today, doesn't seem a practical proposition.

18 The post mortem reports clearly no one can be  
 19 prejudiced if they are handed in now. If the Police aren't  
 20 able, or consider themselves not able at this stage to give  
 21 us their power point presentation, they will be given an  
 22 opportunity to do so when we next meet. The further point,  
 23 which I had hoped we'd be able to deal with today, would be  
 24 evidence from the people who pointed out spots at the  
 25 inspection in loco yesterday and the day before, just

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1 confirming effectively on oath what they had pointed out to  
 2 us and giving some extra explanation, but it would seem  
 3 that it is thought that members of the family might wish to  
 4 be present when that evidence is given as well, and so it  
 5 may well be appropriate to hold that back also. But is  
 6 there anything that counsel for the evidence-leaders wish  
 7 to add before we – I deal with the application?

8 ADV MADLANGA: No, Mr Chairman, thank  
 9 you.

10 MR MAHLANGU: Mr Chairperson, I just want  
 11 to very briefly explain to –

12 CHAIRPERSON: I think you must say who  
 13 you are, for the benefit of the transcribers. Sorry, Mr  
 14 Ntsebeza, you want to say something?

15 ADV NTSEBEZA: Chair, I just wanted to in  
 16 reply to, to just put the correct position, so that there  
 17 is no misunderstanding about what I m instructed by my  
 18 attorney. My attorney seems to have been dealing with a Ms  
 19 Cutshwa, spelt C-U-T-S-H-W-A, and Mr Ganyile, G-A-N-Y-I-L-  
 20 E, the social workers in the Department of Social  
 21 Development, one from the Eastern Cape and I would like to  
 22 just read what she has said to be the position, so there  
 23 are no mistakes about what I said here when things do not  
 24 work out well. And in relation to that, I am going to  
 25 request the assistance of the Commission and I can already

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1 bank on the assistance of the evidence-leaders, who have  
 2 been extremely helpful in assisting us to get this thing on  
 3 track. But this is what has happened. When we contacted  
 4 the people in the Department of Social Development, he says  
 5 in paragraph 19 of what would be his affidavit. "Ms  
 6 Cutshwa confirmed the arrangements between her office and  
 7 Mr Ganyile's office. She said the Eastern Cape Provincial  
 8 Government and Department of Social Development was  
 9 facilitating the families attendance of the Commission on 8  
 10 October 2012. She confirmed that the Department of Justice  
 11 would pay for transportation and accommodation of the  
 12 families to attend the Commission. I enquired from her as  
 13 to the duration of the families' attendance at the  
 14 Commission. In particularly I enquired if the families  
 15 will be unable to attend the Commission for a specific  
 16 period, or for the entire duration of the Commission. Ms  
 17 Cutshwa said she did not have answers to my questions, and  
 18 advised me to direct those questions to Mr JB Skosana." Mr  
 19 JB Skosana, as the Commission will know is the secretary of  
 20 this Commission. So it is none too clear and it is for  
 21 that reason that I would appeal for the Commission at your  
 22 level, Mr Chairman, and at the level of the evidence-  
 23 leaders to be involved in this matter to the extent that  
 24 the Commission is itself satisfied that we will not deal  
 25 here with a token appearance on the 8th, and then we are

<p style="text-align: right;">Page 102</p> <p>1 back to square one. We really want, when once we start, we  2 run with this. We have made arrangements for exactly that.  3 But for me, it will be a charade if they are only brought  4 here for the 8th of October. They are not provided for in  5 terms of accommodation, they are not provided for in terms  6 of where they will stay, and the time is none too clear as  7 to for how long they can stay. We are expecting that for  8 the duration of the Commission they should be here. It can  9 only be fair that if that Commission is going to be  10 enquiring into all of the mandated terms of reference that  11 they should be here for the duration of the Commission.</p> <p>12 CHAIRPERSON: Thank you.  13 ADV NTSEBEZA: We would really need a  14 period of time before we resume when these matters will  15 have been clarified.</p> <p>16 CHAIRPERSON: Thank you, Mr Ntsebeza.  17 The points that you have made will be taken into  18 consideration. I don't think it appropriate for me to say  19 any more than that about that at the moment. What I  20 suggest we do now, is we allow Mr Chaskalson to hand in  21 what he was proposing to hand in. Thereafter it seems to  22 me that it's virtually to be common cause among all the  23 parties present that we should have an adjournment. The  24 only question outstanding is until when? And what I  25 suggest we do is that we, after Mr Chaskalson has handed in</p>	<p style="text-align: right;">Page 104</p> <p>1 CHAIRPERSON: That sounds like a sensible  2 suggestion. I suggest you proceed along the lines you have  3 indicated.</p> <p>4 MR CHASKALSON: Then, if we can then hand  5 up those there files, and if I can suggest an appropriate  6 annexure numbering.</p> <p>7 CHAIRPERSON: Shall we give them exhibit  8 numbers? I suppose the whole bundle can be exhibit 1, and  9 then it will be accompanied in due course by an index which  10 will indicate what precisely is contained in the exhibit,  11 is that correct?</p> <p>12 MR CHASKALSON: Given the circumstances,  13 that would be the most convenient approach, Mr Chairperson,  14 but at the outset I might just draw your attention to a  15 number of issues, or if you can just note them at this  16 stage, because the document isn't yet paginated. I don't  17 have my master file in front of me, so it's not going to  18 help me even if it is paginated because that's at the copy  19 shop. But my copy is at the printers. Mr Chair, it's  20 merely a note, I don't need a file in front of me, but I  21 want to draw attention to the fact that the two, that the  22 first three post mortems that you will find in that file  23 with death registration numbers 553 of 2012, 555 of 2012,  24 and 554 of 2012, in other words 553 to 555, although they  25 are not sequentially appearing in the bundle, are the post</p>
<p style="text-align: right;">Page 103</p> <p>1 the documents to which has referred, we take an  2 adjournment, to enable the representatives of the parties  3 to meet together, to see whether they can reach an  4 agreement as to the date when we should resume. I hope  5 that when they do that, they will have regard to the two  6 factors that I mentioned in the beginning namely the need  7 for expedition, on the one hand, on the other hand the need  8 to deal with the matter, not as described by Mr Mpofu, in  9 half-baked fashion, but what the nation expects of us is a  10 proper investigation, not a superficial one, expect us to  11 deal with the matter expeditiously of course, but they also  12 expect us to do a proper job and be thorough, not in  13 relation necessarily to every bullet that was fired by  14 every person, because that may be the subject of other  15 cases later, but certainly in respect of the terms of  16 reference we have. So, Mr Chaskalson, are you ready to  17 hand in the documents?</p> <p>18 MR CHASKALSON: I am, Mr Chairperson.  19 What strikes me is that we may have difficult indexing and  20 paginating – well, when nobody else has copies of them in  21 front of them, but possibly with the, unless any of my  22 colleagues object, we can index and paginate or give them  23 names, attend to the pagination and put up and index, which  24 – from which everybody else can paginate once the copies  25 have been furnished to them.</p>	<p style="text-align: right;">Page 105</p> <p>1 mortems in respect of the three victims prior to the 16th in  2 respect of whom there was a suspicion that the police may  3 have been responsible for the killing. All of the  4 following post mortem reports are the post-mortem reports  5 of victims of the 16th itself, and the two reports in  6 respect of which there is not yet satisfactory  7 identification have the death registration numbers 578 of  8 2012 and 583 of 2012.</p> <p>9 The last point that I would make is that we are  10 in possession of black and white photographs of post mortem  11 photographs to accompany these reports in respect of all  12 but the first three of the post-mortem reports. We are  13 currently trying to locate colour copies of those  14 photographs, because the black and white copies are of very  15 little assistance. If we can locate colour copies within  16 the near future, that is what will be distributed to the  17 Commission and to the parties but if we can't, we will have  18 to make do with the black and white photographs which at  19 present are not included in that file.</p> <p>20 And finally, Mr Chair, just to repeat that there  21 is one report that is still outstanding from the 16th but we  22 expect to receive that very soon.</p> <p>23 CHAIRPERSON: That's the one that's not  24 been finalised yet?  25 MR CHASKALSON: Indeed, Mr Chair.</p>

<p style="text-align: right;">Page 106</p> <p>1 CHAIRPERSON: Right thank you. We have  2 received this bundle of documents as exhibit 1. We will  3 return the copies to you, so that the index can be inserted  4 and the pages can be appropriately paginated. Now, I  5 suggest that we take the – I propose that we take the tea  6 adjournment. We won't resume immediately in 15 minutes,  7 unless we are told, which is unlikely that we will be told,  8 that the parties have had a meeting and have agreed on  9 certain aspects which are part of the way forward. The  10 first thing of course, is the date to which we should  11 adjourn. If the parties can't agree then I will have to  12 decide what date's appropriate, but I hope that they will  13 be able to agree, being mindful of the two factors that I  14 mentioned. But there are various other matters which I  15 have, some of them I've mentioned here in formal sittings  16 of the Commission, others I've mentioned outside, things  17 that the parties can agree on, which will shorten the  18 proceedings and in fact make it much easier for us to  19 proceed with the necessary expedition, and these matters  20 can also be discussed by counsel. At this point, we will  21 adjourn and we will resume after we've been told that it is  22 appropriate for us to continue.</p> <p>23 [COMMISSION ADJOURNS COMMISSION RESUMES]  24 [14:04] CHAIRPERSON: Good afternoon, the  25 Commission resumes. I understand the advocates and other</p>	<p style="text-align: right;">Page 108</p> <p>1 Motlhalpepula Msenyeno. Family member Sam Monene, deceased  2 Hendrick Monene Sam. Family member Mamiki Adelaide  3 Tsemele, deceased Papi Ledoane. I believe the last one,  4 Papi, was a policeman.</p> <p>5 CHAIRPERSON: Those members who are  6 present whose names were read out, who are family members  7 of the deceased, the Commission wishes to express its  8 sympathy and its condolences on the loss which they've  9 suffered and to give them the assurance which we gave also  10 on Monday, that we will do everything we can to the best of  11 our ability to ascertain the facts which gave rise to the  12 deaths of the deceased persons whose names were mentioned.  13 Thank you, Mr Interpreter. Mr Madlanga, are you now able  14 to inform us what happened, what the results are of the  15 meeting that you had with the representatives of the other  16 parties?</p> <p>17 ADV MADLANGA SC: Thank you, Chairman,  18 Commissioners. Mr Chairman, agreement was reached on a  19 number of issues covering a whole range of matters,  20 including the exchange of witness lists, witness  21 statements, discovery of documents and of course that the  22 matter be postponed to a specific date. I do not propose  23 that saying anything – or rather, stating or setting out  24 the dates of the time frames other than the dates of  25 postponement and the agreed date is the 22nd of October</p>
<p style="text-align: right;">Page 107</p> <p>1 representatives of the parties had a very fruitful meeting  2 at which various matters were discussed and agreed, ways in  3 which the proceedings can be expedited and proceed more  4 efficiently, but before I call upon Mr Madlanga to address  5 us on that, I've been informed that we have with us today  6 the members of the family of five of the deceased persons,  7 people who were not here when we started on Monday and I'd  8 ask my colleague, Adv Tokota, to read out their names,  9 together with the names of the deceased whose family  10 members they are and then I wish to say something to them.  11 Excuse me, Mr Interpreter, I'm sorry, I understand these  12 people are either Sesotho speaking or Setswana speaking. I  13 know that you're proficient in those two languages also, so  14 would you please make the interpretation – I don't know  15 whether, if you're interpreting Sesotho, the Setswana-  16 speaking people will follow you, but I'll leave that to  17 your discretion. Thank you. Mr Tokota, would you please  18 read out the names of the family members who are present as  19 well as the deceased persons whose families they belonged  20 to.</p> <p>21 ADV TOKOTA SC: Thank you, Mr Chairman.  22 Family member Ithumeleng David Sagalala, the deceased  23 Modisaotsile Van Wyk Sagalala. Family member Esther  24 Dinkwese Mabebe, Eric Thapelo Mabebe the deceased. Family  25 member Msenyeno Lebogang Fransina, deceased Andries</p>	<p style="text-align: right;">Page 109</p> <p>1 2012, that is the date that we propose the Commission  2 should postpone the matter to.</p> <p>3 There was agreement on all the issues, unanimous  4 agreement, except for on the date of postponement but even  5 on that, there was sufficient consensus that the matter be  6 postponed to the 22nd of October. Thank you, thank you  7 Chair.</p> <p>8 CHAIRPERSON: I think that if regard is  9 had to the proposed timetable for the exchange of  10 documents, the preparation of a consolidated index and  11 bundle of documents and so on, it would be unrealistic for  12 these proceedings to be adjourned for any date prior to the  13 22nd of October. I want to stress though that the – an  14 enormous amount of work will have to be done, not only by  15 the parties' representatives but also by the members of the  16 Commission over that period. There's an enormous amount of  17 reading that will have to be done.</p> <p>18 The documents, as I understand it, which will be  19 exchanged by the parties will be made available to the  20 Commission and the idea is that we will all be in  21 possession of sufficient knowledge of what's in the  22 documents to ensure that the evidence, when it is led, is  23 dealt with expeditiously, without undue interruption or  24 anything of that kind.</p> <p>25 So I'm grateful, my colleagues and I are grateful</p>

1 to the representatives of the parties for the trouble that  
 2 they took to come to this agreement and for the many  
 3 excellent suggestions which are contained in this document  
 4 which will, I am sure, enable the Commission to perform its  
 5 work as effectively and efficiently as can be expected in  
 6 the circumstances.

7 So the order that I make, insofar as I'm called  
 8 upon to make an order, is that the proceedings will be  
 9 adjourned until the 22nd of October. Is there anything,  
 10 before we formally take the adjournment, that anyone wishes  
 11 to place on record. 9 o'clock on the morning of Monday,  
 12 the 22nd October. Does anyone wish to add anything or raise  
 13 any question before we formally adjourn? I don't see any  
 14 indication. I beg your pardon, Mr Semenya.

15 ADV SEMENYA SC: Chairperson, we had also  
 16 requested some direction on how the Commission intended  
 17 writing on the various themes and what it is that is  
 18 expected of us. I don't know if that has \*11:03.

19 ADV MADLANGA SC: My I respond to that,  
 20 Chair? We have not approached the Commission on that issue  
 21 yet. We will do that and we will communicate the response  
 22 to our colleagues. Thank you.

23 CHAIRPERSON: We were handed the minutes  
 24 of this meeting a few minutes before we came into court.  
 25 We read them, but we haven't had a chance to consider the

1 various points that have been referred to us for decision  
 2 but, as Mr Madlanga says, I can give the parties  
 3 reassurance, we'll apply our minds to those matters and we  
 4 will communicate to them as soon as we can what our views  
 5 in respect of the proposals are in respect of the points  
 6 raised.

7 The Commission stands adjourned until 9 a.m. on  
 8 Monday, the 22nd of October.

9 [COMMISSION ADJOURNED]

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