RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 19 23 NOVEMBER 2012 PAGES 2008 TO 2129

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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Page 2008 Page 2010 [PROCEEDINGS ON 23 NOVEMBER 2012] Bishop, my client was deeply shocked by the statement that 2 [09:32] CHAIRPERSON: you made last week, which says that police officers can The commission resumes. I 2 was informed last night that the bishop has rearranged his 3 3 never be trusted in this country, but before we could even 4 schedule, good morning, Bishop -4 entertain that aspect, I wanted to you know very well in 5 RT REV SEOKA: 5 the context of being a leader, thereafter I wanted to put CHAIRPERSON: - so that he can finish off 6 some few propositions to you and thereafter we can deal 6 7 7 his evidence, to use the words that were much used with that statement you made last week. Are you with me? yesterday, to finish off his evidence today. Bishop, it is 8 Let me firstly deal with your leadership expertise. Is it 8 9 9 not necessary but nevertheless I have to do it, to remind correct, Bishop, that you are president of the South you you're still under oath. 10 African Church Council of South Africa? 10 11 RT REV SEOKA: 11 CHAIRPERSON: What is called the South Yes. 12 CHAIRPERSON: Thank you. Mr Bizos, it is 12 African Council of Churches. your turn now to cross-examine. There were some things you 13 13 MR GUMBI: Yes. wanted to clarify, did you intend to clarify them outside 14 14 CHAIRPERSON: But I presume that's what 15 the auditorium, as it were? 15 you mean? MR BIZOS SC: Mr Chairman, I think that 16 16 MR GUMBI: Yes, yes, Chairperson, thanks what I said was that although there are matters disposed of 17 17 for that. 18 by the bishop, we would rather examine the persons that he 18 RT REV SEOKA: Yes, I am. 19 interacted with, rather than with the bishop. 19 MR GUMBI: For how long have you been a 20 CHAIRPERSON: Okay, I misunderstood you 20 president of the South African Council of South Africa? 21 but now you've removed my misunderstanding, thank you. 21 RT REV SEOKA: About two years. 22 MR BIZOS SC: Thank you. 22 Can I assume, Bishop, that MR GUMBI: 23 CHAIRPERSON: Is there anybody else who 23 your position has certain responsibilities and duties wishes to cross-examine before I invite the evidence 24 attached to it? 24 25 25 RT REV SEOKA: leaders to do so? Yes. Page 2009 Page 2011 MR GUMBI: Can I assume that one of those 1 MR GUMBI: Yes, Chairperson, yesterday we 1 indicated that on the behalf of POPCRU we would like to responsibilities as a leader is to lead by example? 2 3 CHAIRPERSON: Yes sorry, I'd forgotten 3 RT REV SEOKA: Yes. 4 it, Mr Gumbi, you did indicate, forgive me for forgetting 4 MR GUMBI: At all times you must be a 5 it for the moment, thank you for reminding me. Please role model, you agree with me on that? RT REV SEOKA: 6 proceed with your cross-examination. 6 Yes 7 CROSS-EXAMINATION BY MR GUMBI: 7 MR GUMBI: Can I also assume that as a Thank you very much, Chairperson. Bishop, I hope you are in the leader you always solve problems and you always provide 8 8 9 position to see where I am sitting? 9 solutions, in fact your organisation has a history of 10 CHAIRPERSON: 10 fighting injustice in this country, you'll agree with me? You know it is probably a good idea that he should be able to see you and you should RT REV SEOKA: I agree. 11 11 12 be able to see him directly. I see, well, Mr Tip isn't 12 MR GUMBI: As you are testifying here, you are here to provide a solution? 13 here today, so perhaps you would like to sit in Mr Tip's 13 seat, also Mr Nkosi Thomas SC, so you can sit in the seat 14 RT REV SEOKA: 14 Yes. 15 of either of those absent SC's and cross-examine as if 15 MR GUMBI: When you were asked by various you're an SC already. I see you followed my example, not counsels in this proceeding, you kept on saying that you 16 16 17 for my - but in the alternative form by sitting in Mr 17 learned through me that there was a problem in Marikana and you drove there to intervene, do you still remember that? 18 Bruinders' SC seat. 18 19 19 CHAIRPERSON: Yes. RT REV SEOKA: I remember. MR GUMBI: Thanks very much, Chairperson. 20 MR GUMBI: Based on that, Bishop, can I 20 21 Bishop, let me start by introducing myself to you. My name 21 assume that you read the newspapers on a daily basis, you is Louis Gumbi and I am instructed by Mduduzi Attorneys and listen to the radio, you watch television to acquaint 22 I represent POPCRU in this proceeding. yourself with current news? 23 23 24 RT REV SEOKA: Yes. 24 RT REV SEOKA: Yes. 25 CROSS-EXAMINATION BY MR GUMBI: Yes, 25 MR GUMBI: There are certain propositions

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Page 2012
                                                                                                                            Page 2014
     that I wanted to put to you, you will agree or you will
                                                                        can you dispute the number I am putting to you, that there
     disagree with me, thereafter we'll move on. As a church
                                                                     2
                                                                         are 690 police officers that had been killed in the line of
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 3
     leader will you agree with me that in South Africa police
                                                                     3
                                                                         duty?
                                                                     4
 4
     officers, they are killed in the line of duty, that's the
                                                                                RT REV SEOKA:
                                                                                                      No, I cannot because I am
 5
     public domain information, you can find it through a
                                                                     5
                                                                         ignorant of it.
     newspaper or watching television and listening to radio,
                                                                     6
 6
                                                                                MR GUMBI:
                                                                                                  As a church leader, Bishop,
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                                                                     7
     you cannot deny that?
                                                                         can I also assume that you know of widows whose husbands
 8
            RT REV SEOKA:
                                                                     8
                                                                         were killed in the line of duty and you also know orphans
                                   Yes.
 9
                                                                     9
            MR GUMBI:
                              Are you aware, Bishop, that
                                                                         whose fathers were killed in the line of duty and those
     since 2005 up to date almost 690 police officers that have
                                                                    10
                                                                         people that are members of your church?
10
     been killed in the line of duty and the majority of those
                                                                    11
                                                                                RT REV SEOKA:
11
                                                                                                      Ja, I am aware that there
     police officers are POPCRU members, are you aware of that?
12
                                                                    12
                                                                         are widows, I am aware that there are orphans.
13
            RT REV SEOKA:
                                   No, I am not aware of
                                                                    13
                                                                                MR GUMBI:
                                                                                                  Okay, can I move on to the
14
     that.
                                                                    14
                                                                         next proposition? As a church leader, Bishop, can I also
15
            CHAIRPERSON:
                                  You were asked two
                                                                    15
                                                                         assume that you know that this country is facing a high
                                                                         rate of crime? It is one of the major problems facing this
16
     questions, perhaps the question should be broken up. The
                                                                    16
17
     first question is the statistic, the number, and the second
                                                                    17
                                                                         country, as a church leader you are aware of that, it is
18
     one was about the majority of POPCRU members. You said,
                                                                    18
                                                                         public domain information.
     no, and I don't know, were you saying no to both
                                                                    19
                                                                                RT REV SEOKA:
19
                                                                                                      Yes. I am aware of that.
     propositions? Are you aware of the fact, as it has been
20
                                                                    20
                                                                                MR GUMBI:
                                                                                                  And you are also aware that
21
     put to you, that, I think he said 690, is that right?
                                                                    21
                                                                        one of the reasons why we are having such a high rate of
22
            MR GUMBI:
                                                                        crime in this country, it is because the community, they
                              Yes.
                                                                    22
23
            CHAIRPERSON:
                                                                    23
                                                                         don't trust the police and the police, they don't trust the
                                  Approximately 690 police
     officers, which I take it he means commissioned officers as
                                                                    24
                                                                         community? Are you aware of that, one of the reasons?
24
25
     well as constables, sergeants and warrant officers,
                                                                    25
                                                                                RT REV SEOKA:
                                                                                                      No, I spoke for myself, I
                                                        Page 2013
                                                                                                                            Page 2015
                                                                        was not a representative of anybody, so I hear what you are
     approximately 690 members of the South African Police
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                                                                     2
 2
     Service have been killed in the line of duty, he said from
                                                                        saving.
 3
     2005 to date, is that correct?
                                                                     3
                                                                               CHAIRPERSON:
                                                                                                     Bishop, that's not quite a
 4
            MR GUMBI:
                               Yes, Chairperson, thanks very
                                                                     4
                                                                        direct answer to the question. Mr Gumbi says, do you
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     much.
                                                                     5
                                                                        accept or are you aware that one reason, one of the reasons
            CHAIRPERSON:
                                                                        for the high rate of crime in South Africa is the fact that
                                   That's the first question,
                                                                     6
 6
 7
     did you know that?
                                                                     7
                                                                        the public, the community generally tend to distrust the
            RT REV SEOKA:
                                   I didn't know of the
                                                                    8
                                                                         police, is that an accurate summary of your question?
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                                                                     9
                                                                               MR GUMBI:
                                                                                                 Yes, Chairperson, thanks.
     statistics.
                                                                                                     But he doesn't say that's
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                                                                    10
                                                                               CHAIRPERSON:
            CHAIRPERSON:
                                   I take it you knew that a
                                                                        the only cause or even the main cause for the high crime
11
     number of -
                                                                    11
12
            RT REV SEOKA:
                                   I know that -
                                                                    12
                                                                        rate, but he suggests to you that is one of the causes and
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            CHAIRPERSON:
                                   - our members of the
                                                                    13
                                                                        he wants your comment on that.
     service had been killed in the line of duty.
                                                                    14
                                                                               RT REV SEOKA:
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                                                                                                     It could be but I don't
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                                                                    15
                                                                        see really how the mistrust contributes towards crime.
            RT REV SEOKA:
                                                                    16
                                                                               MR GUMBI:
                                                                                                 Can you dispute it, Bishop, if
16
            CHAIRPERSON:
                                   It was just the statistic
17
     you didn't know?
                                                                    17
                                                                        I put it to you that you are one of the leaders who can
                                                                        play an active role in the fight against crime in this
18
            RT REV SEOKA:
                                                                    18
19
            CHAIRPERSON:
                                   The next question is, are
                                                                    19
                                                                        country?
20
     you aware of the fact that the majority of those who were
                                                                    20
                                                                               RT REV SEOKA:
                                                                                                     Yes, that's true.
21
     killed are members of Mr Gumbi's client, POPCRU? Is that -
                                                                    21
                                                                               MR GUMBI:
                                                                                                 To sum up my propositions,
22
            MR GUMBI:
                               Yes, yes, Chairperson, thanks
                                                                    22
                                                                        Bishop, are you aware again that most of those members who
                                                                    23
                                                                        are killed in the line of duty, they are breadwinners in
23
     very much. 4
24
            RT REV SEOKA:
                                   No, I was not aware.
                                                                    24
                                                                        their home, are you aware of that?
25
            MR GUMBI:
                               And you cannot even dispute, -
                                                                    25
                                                                               RT REV SEOKA:
                                                                                                     Yes.
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CHAIRPERSON:

I take it what Mr Gumbi

means is, insofar as what you said, could it be interpreted

Page 2016 Page 2018 MR GUMBI: And you are also aware that as referring to the deceased breadwinners of his clients. 1 the South African Police Services have a special fund for 2 not his clients, the deceased breadwinners, members of the 2 3 widows and orphans of those members who are killed in the 3 South Africa Police Services who were killed on the 13th of 4 line of duty? In fact the SAPS has gone beyond their 4 August, insofar as it could be interpreted as referring to 5 constitutional mandate and they are taking care of those them, that's not what you intended and if it was so families of those members who are killed in the line of 6 6 interpreted, you wish to retract and withdraw, that's what 7 7 he is putting to you. How do you respond to that? Am I duty, you are aware of that? 8 RT REV SEOKA: 8 putting your point correctly? I am aware of that. 9 9 MR GUMBI: And you further testified in MR GUMBI: Yes, Chairperson. this proceeding that before you went to Marikana you 10 RT REV SEOKA: 10 Ja, if those were your weren't aware that there were two police officers that were 11 members, of I was not aware of, I would apologise to them. 11 killed on the 13th of August 2012, do you remember that? 12 12 MR GUMBI: Not only those police officers 13 RT REV SEOKA: I remember. 13 who were killed on that day, I am referring to all the 14 MR GUMBI: Are you aware that those 14 police officers in this country who are killed in the line widows of those police officers who are killed in the line of duty up to date. 15 of duty, they are in this commission, they are attending 16 16 RT REV SEOKA: Yes, if they died on the 17 this commission and they want to know the circumstances 17 line of duty doing their work as prescribed, I am sorry 18 under which their husbands were killed, that's why they are 18 about that. 19 here, are you aware of that? 19 [09:52] MR GUMBI: Okay, and I assume that as you 20 RT REV SEOKA: I would expect them to be 20 are testifying here, Bishop, you are quite aware that this 21 21 forum is not only a national forum, it is an international here. 22 Can I refer you to Exhibit L, 22 forum, the whole world is looking at us right now, are you MR GUMBI: 23 23 aware of that? Bishop? 24 24 RT REV SEOKA: RT REV SEOKA: F? I am aware of that. 25 MR GUMBI: Exhibit L, slide number 52, 53 25 MR GUMBI: So the statement you made last Page 2019 Page 2017 and 54? Exhibit L, slide number 52, 53 and 54, Exhibit L, week, don't you think that it is the biggest setback in the 1 2 slide number 52, 53, 54 and slide number 55? 2 fight against crime in this country? 3 RT REV SEOKA: Yes. 3 RT REV SEOKA: I actually don't think so, 4 MR GUMBI: Do you see the bodies of those 4 if somebody said that to me I'll begin to try and prove 5 5 police officers depicted in those slides? myself and show the person that what he/she believes about RT REV SEOKA: 6 Yes. 6 me is actually not true. The question for me will be, why 7 MR GUMBI: And those police officers, 7 is this person not trusting me and then deal with that. they were killed on the 13th of August 2012? 8 8 MR GUMBI: It is not a question of your 9 RT REV SEOKA: 9 Yes trust, Bishop, it is a question, what I am putting to you 10 MR GUMBI: And one of the police officers 10 is that the statement you made last week, don't you think who was there, who was attacked by this group of armed mine that is the biggest setback in the fight against crime in 11 11 12 strikers you saw yesterday, will come and testify before 12 this country, yes or no? 13 13 this commission and he will tell this commission the RT REV SEOKA: No, I don't think so. 14 circumstances under which he was attacked by a group of 14 MR GUMBI: Thanks very much, Chairperson, those striking miners. Okay, based on those propositions 15 15 I don't have further questions. that I've just canvassed with you, Bishop, don't you think 16 16 CHAIRPERSON: Thank you. Do any other 17 that the best way to get rid of these is to retract that 17 representatives of any of the parties wish to ask questions 18 statement and apologise to those widows whose husbands were 18 of the witness? Is -19 19 killed in the line of duty and to those orphans whose MR MPOFU: He is not here, Chairperson. 20 fathers were killed in the line of duty? 20 CHAIRPERSON: - a chance to re-examine in 21 RT REV SEOKA: I have no problem with 21 due course? that, but as I explained yesterday, it is not every police 22 MR MPOFU: Well, I mean I am not sure. 22 23 23 that I referred to. Chairperson, whether I do that before -

CHAIRPERSON:

Well, I just want to make

sure that everyone who wants to cross-examine has been

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Page 2020
     given an opportunity.
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            MR MPOFU:
                              Yes.
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            CHAIRPERSON:
                                  As is my duty.
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            MR MADLANGA SC:
                                      We have no questions for
5
    the bishop, Chairman, Commissioners, thank you.
            CHAIRPERSON:
6
                                  Mr Mpofu, do you have any
7
    questions in re-examination?
8
            RE-EXAMINATION BY MR MPOFU:
                                                    Yes, thank
9
    you, Chairperson. Bishop, I am just going to ask you a few
    questions to clarify some of the issues that were raised
10
    with you under cross-examination. You've just testified
11
    just now that you are sorry effectively for any deaths that
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13
    would have occurred, is that correct?
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            RT REV SEOKA:
                                  Yes.
15
            MR MPOFU:
                              And that seems somehow to be
    mixed up with this question of whether or not you, as a
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17
    person and how much you trust the police, of course with
18
    the qualification that you've made that you were not
19
    referring to all the police in this country. Maybe you can
20
    just expand on the issues that have led to your mistrust,
21
    qualified as it is.
22
            RT REV SEOKA:
                                  I did allude to one
23
    instance yesterday at Marikana Police Station. I think a
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    child could be arrested but he/she does not deserve to be
25
    handcuffed. I have heard of an instance where a close
                                                      Page 2021
    person to me died. The IDT people and the locksmith people
1
    came long before the actual police came when the first
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Page 2022 became very suspicious, I never trusted him again. At one, 2 even today there is no report of how the person died. 3 MR MPOFU: Thank you, Bishop -4 RT REV SEOKA: And I've got many more examples I can give you, but this is the one that is very 6 close to my heart. 7 MR MPOFU: Yes, I am sure you have other 8 examples, Bishop, and I just would like to capture all of 9 them by the following question, given what you told the 10 commissioner about your interactions with the police in the 11 past 30 years or so, would you say as an individual your 12 interactions with the police compared with the general 13 population are average, above average or below average? 14 RT REV SEOKA: I think it is above 15 average. 16 MR MPOFU: Thank you. You know the 17 police before 1994 at least, were known to have something called a dirty tricks department, which among other things 19 is to dig up people's affairs as it were, and to your 20 knowledge and given some of the questions that were put to 21 you, would you say that everything has changed since 1994? 22 RT REV SEOKA: A lot has changed, but 23 there is still a lot of old elements of the old system that 24 we have inherited and that's probably where the problem is. 25 MR MPOFU: And seeing that somebody Page 2023 obviously went to dig up some statements that you must have made to the police, could you clarify to the commission

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23

- 3 message was to the police station. When ultimately they
- 4 came and talked to us and given all the evidence, until
- 5 today we are not getting an answer from the police,
- something with the station commander who promised that 6
- 7 there will be no stone left unattended and actually later
- 8 said to me over the phone they are closing on the person
- 9 but they would not tell us who the suspect is. I've made
- 10 several attempts to try and get an answer from the police,
- ultimately I went to the police station, the station 11
- 12 commander was ever absent and ultimately I got somebody
- second in command and then I was told who the investigator 13
- 14 was, and I told them what the problem was and I was told,
- 15 be patient, he'll be with you and ultimately he did come.
- MR MPOFU: 16 Okay -
- 17 RT REV SEOKA: He came to my house, I
- 18 need to finish this one because I think it is very
- 19 critical, through you, Chairperson, and he comes with the
- 20 file and he shows the suspect and asked certain questions.
- 21 I said, but have you done the following? He says, well, I
- 22 am doing it. That was about a Friday. He said he was
- going to come and see me sooner. On the Sunday I was here 23
- 24 in Rustenburg doing confirmation and that policeman called
- me. He asked if I could borrow him R15 000 as a fact and I

- under which conditions, as you said, that you would ask to
 - make the statement yourself and under which conditions you
 - would allow someone else to make the statement?

6 MR SEMENYA SC: Chair, I think Mr Mpofu

7 should retract the insinuation that the collection of cases

with reference to the bishop are a dirty trick of the

police prior to at least 1994, there is no correlation so

10 whatsoever that can be made like that.

11 CHAIRPERSON: I must say I don't quite 12 see how this really arises from the questions he was asked

13 in cross-examination and even there is some kind of a

14 connection, I am not sure it is sufficiently close to

15 enable this commission to decide the questions which have

16 been referred to for its findings, so -

MR MPOFU: No, thank you, Chairperson -

18 CHAIRPERSON: - I am inclined therefore,

subject to what you may have to say, to uphold the

objection but if you persist in it then I'll listen to you

21 and consider what you have to say.

22 MR MPOFU: No, Chair, - well, it is

equally relevant or irrelevant to whether the bishop made

24 statements or not.

25 CHAIRPERSON: Obviously the bishop has

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Page 2024

had an experience in the past -1

2 MR MPOFU: Yes -

3 CHAIRPERSON: - or perhaps experiences

4 where statements he has made to the police weren't properly

recorded. All of us who have been involved in motor

6 accidents sometimes had similar experiences. I am not sure

7 that that particular aspect of matters is going to assist

us at all to answer the questions we have to answer. 8

9 MR MPOFU: Thank you, Chair.

10 CHAIRPERSON: So perhaps you're exercising a wise discretion and not persisting with the 11

12 question.

13 MR MPOFU: I am not, I am not, 14

Chairperson. Okay, thank you, Chairperson. Let's just move to something, from the cross-examination of the past

few days and I think even this morning, there has also been

16

17 a further subtext that would suggest that you cared less

18 about the ten deaths that occurred prior to the 16th. Now I

would like you to answer this question. Why did you go to 19

20 Marikana in the first place on the 16th? 21

RT REV SEOKA: Through you, Chair, I have

22 already addressed this issue that through media I became

aware that people had died. I didn't know who they were, I

24 was just concerned that people have died and that something 25

needed to be done to stop further deaths, I've said that.

Page 2026

- the media reports on the growing tensions and loss of life
- 2 in Marikana, Wonderkop I decided to visit the area on 16
- 3 August 2012 to try and assist in averting further loss of
- 4 life. And then you also, paragraph 36, you say, "If this
- 5 tragedy can provide the platform from which long-term
- 6 solutions can be found to the ills of the mining industry,
- 7 in particular - and South African society in general, then
- 8 the approximately 46 lives of the deceased persons will not
- 9 have been lost in vain." Both those statements, in both
- 10 those statements where you talk about further loss of life

11 and where you talk about 46 persons who had lost their

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lives, would those statements be consistent with a

13 discrimination between the depth that this commission is

14 concerned with.

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RT REV SEOKA: I think for me it's consistent in linking up the two. Death is death, and I was motivated by death to move in and I moved in and I'm

18 hoping that this platform here would actually help us to

19 come together as a nation and see how we can deal with the

20 past in order to correct the future, to avoid this thing

21 happening. It's painful, it doesn't matter how you look at

22 it, people died. People have subsequently died in the

23 Western Cape, yesterday evening people died in

reason to refrain from talking?

Carletonville, how many more must die before we do

something about it? The time is now, we have to act

Page 2025

- So I went there because there were people who had died in 1
- 2 that violence and I was trying to find a way of helping,
- 3 stop the violence, to create a peaceful atmosphere so that
- 4 people can co-exist around the common cause that had
- 5 brought them to the koppie. In fact, Chairperson, you
- 6 could allow me to say that, for instance yesterday 7 afternoon, last night and this morning I've been thinking
- 8 seriously about the deaths that were reported in
- 9 Carletonville. Fortunately I know the leadership of the

10 sections and I was hoping that after this session I'll

11 probably be talking to the concerned union and see whether

we can intervene in that situation. 12

I think one of the questions that we should be asking ourselves here, why our people have become so destructive to property and life, something needs to be done and the church is well placed to deal with such behaviour and attitude, but we need to find out what is going on that is causing so much pain to the nation. So if the representatives of the people in Carletonville are present here today, even though Chair, it is outside my jurisdiction, I feel compelled to try and do something about it.

- [10:12] MR MPOFU: 23 Yes, thank you, Bishop, and in 24 your statement in paragraph 5 you open your involvement in
- Marikana Wonderkop, saying the following, after following

Page 2027 together as a nation. Enough is enough. One death is too much.

MR MPOFU: Thank you, Bishop. It was also suggested to you among other things that it was reasonable, I think was the word that was used, for Lonmin to adopt the attitude that it would not talk to what they referred to as criminals in your testimony, because ten people had been murdered. Now in your view, those ten murders, would they have been the reason to talk or the

RT REV SEOKA: I think my recollection is that I said it was more the reason why we should have allowed another opportunity of intervention and talk to each other. As I said just now, one death is too much. You cannot wait for another death before you do something. So I think it was unreasonable, I think it was insensitive because the further death of 34 people would have been averted.

MR MPOFU: Thank you, Bishop. You also were questioned about the necessity of patience. Did anybody ever tell you why it was so urgent that the standoff had to be resolved on the 16th and not on the 17th or the 18th, any other time.

Email: realtime@mweb.co.za

24 RT REV SEOKA: If the question again could be repeated, Sir, I'm not sure?

25

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Page 2028 MR MPOFU: Now I think the Bishop has 1 also asked about the element of patience and the ability to 2 3 let things take their time. Did anybody, either before or 4 after these tragic events ever explain to the Bishop why 5 this stand-off had to be resolved by the 15th, on the 15th and not on the 17th and not on the 18th, not on the 19th? 6 7 RT REV SEOKA: No, nobody did. 8 MR MPOFU: And I take it you were not 9 aware that that morning the Provincial Commissioner had made a statement to the effect that today was D-day? 10 11 RT REV SEOKA: No, I only got to know 11 12 about it when I saw it in the clipping here. 13 MR MPOFU: Thank you. It was also 14 suggested to you that the use of the words suggesting that 15 the mineworkers were criminals would be denied by Mr Kgotle to whom you ascribe those words. Now when that is done, 16 that is just lawyer speak to say either that what you are 17 18 saying is not correct or that you might be making a 19 mistake. Could what you are saying about the use of those 20 words by Mr Kgotle be a result of either a deliberate 21 untruth on your part or a mistake? 21 22 RT REV SEOKA: I think the statement was 23 motivated by anger, I think there was a lot of anger there.

Page 2030 whether that's good argument or not, it's an argument, which you'll presumably advance at the proper time. I don't think the point is strengthened by the fact that the Bishop agrees with the argument. So I suggest you move on 5 to something. 6 MR MPOFU: Thank you, Chairperson. Thank 7 you, well actually Sir, can I then ask you that, the last, 8 to round off that point, can I simply say that evidence 9 will also be led later that that language -10 CHAIRPERSON: I'm not sure it's helpful to say evidence will possibly be led. 12 MR MPOFU: Not possibly? 13 CHAIRPERSON: Evidence will be led, I presume, depending on what the evidence will be, it might be appropriate to put it to the witness to get his comment in anticipation, as it were, but I'm not sure that it's 17 appropriate to say evidence may be led. If that evidence is led, what do you say, I don't know that -19 MR MPOFU: That will, Chairperson. 20 CHAIRPERSON: You said possibly, if you withdraw the word "possibly" I will let you carry on. 22 MR MPOFU: Yes, I withdraw it. Okay, 23 evidence will be led that this language of criminals and

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24

that your evidence on that point is not correct. He says 1

Mpofu's question. Mr Mpofu says it's been suggested to you

You're not answering Mr

2 there are two possible explanations, either you

CHAIRPERSON:

- 3 deliberately made it up or you're mistaken. Now he's
- 4 asking you to comment what you say about the allegation,
- 5 either that what you said in that regard was incorrect
- because you made it up or it was incorrect because you were 6
- 7 mistaken. I think that's the question, Mr Mpofu.
- MR MPOFU: That's exactly it, Chair. In 8 other words could you be mistaken or making it up that Mr 9 Kgotle said those words to you? 10

RT REV SEOKA: Those were his words. I 11 12 find it interesting that yesterday those words were

attributed to Kgotle's colleague, not him, but those were 13

14 his words, he was the one that spoke most, the other two 15 were almost on the quiet side.

MR MPOFU: 16 Yes, in fact, ja, you 17 mentioned the issue of Mr Mokoena having used those exact

words on an SAFM programme as was revealed by my learned

19 friend, Mr Ntsebeza. The fact that Mr Mokoena used those

20 exact words that you ascribe to Mr Kgotle, does that

21 strengthen or weaken your -

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22 CHAIRPERSON: Mr Mpofu, I don't know that 23 this is a question that's necessary to ask in re-

24 examination, it's a point you can raise in argument, and,

25 but I don't think you need any buttressing by the Bishop on Page 2031

of that organisation, and that language was also

dastardly acts and so on was prevalent within the

2 transmitted to the state organs. Is that, what would be

leadership of Lonmin and it went right up even to the board

3 the effect of that in respect of what you ascribe to, Mr -

4 CHAIRPERSON: This sounds like a point on

5 which you're asking the Bishop's opinion and I'm not sure

6 that he's an expert to give evidence on the effect of

7 language of that kind. In his opinion, it's a matter

8 possibly in which we all can express opinions but I'm not

9 sure that he's got any special expertise to enable him to

10 give opinion evidence on the point. Again it's a point you

11 can argue, I'm not suggesting that you can't argue it, and

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I'm not suggesting it's even a bad point because it may 13

well be a good point, once we've heard all the arguments.

14 But I don't know if the case is taken any further, with

15 respect by getting the Bishop to agree or not agree to the

16 point you are now putting.

> MR MPOFU: Okay, Chairperson, I won't push it much further, except to say that what I was asking the Bishop is not exactly his opinion, I'm just asking him in relation to his conviction that Kgotle said or did not say the words that -

22 CHAIRPERSON: He said that's what was 23 said. You put it to him that it was suggested it wasn't 24 said, it's either a mistake or a fabrication on his part.

He said no, that's what was said, so his evidence on the

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Page 2032

point is clear. I don't know if it's taking any further

- 2 re-examination by getting him to repeat it or to underline
- 3 it or anything of that kind. It's on record, that's what
- 4 he said. It apparently is disputed by the Lonmin witnesses
- 5
- and we may or may not have to decide at the end of the day,
- which of the two sets of witnesses on the point is correct, 6
- 7 but I don't know, if you're asking these questions to this
- 8 witness is going to help us.
- 9 MR MPOFU: Thanks, Chairperson. Alright,
- going back to the issue of the ten deaths. Once again 10
- 11 there was an underlying assumption or a sub-text as I have 12 referred to it earlier that these ten deaths, as it were,
- 13 were on the one side, namely the employer and the state as
- 14 opposed to the other side, namely the employees. Now given
- 15 that, could it surprise you that actually of those ten
- deaths, there were 5:5, given the configuration that I was 16
- saying, in other words five deaths were on the side of the 17
- 18 employees and another five on the side of the -
- 19 CHAIRPERSON: No Mr Mpofu, I don't
- 20 understand the relevance of that question. Even if it was
- 21 only, ten deaths are ten deaths, ten too many, but even if
- 22 five of them were from one side and five were from another,
- 23 does it really assist us to take that point any further?
- 24 MR MPOFU: Ja, Chairperson, you know, it
- 25 only assists us, well if the next, if you can allow me for

Page 2033

- the next question, Chairperson, it will be clear.
- 2 CHAIRPERSON: I'll hear the next question
- 3 first before I give a ruling.

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- 4 MR MPOFU: Yes, yes. Okay, given the
- 5 balance that I've just said to you, and the suggestion that
- because of the deaths, it was reasonable not to want to 6
- 7 negotiate, the workers, who had lost an equal number of
- 8 people, what was their attitude to negotiations?
- 9 RT REV SEOKA: I think talking to the
- management, I did say that the workers' report has lost 10
- some of their members, but they were willing to talk, 11
- 12 whereas the other side had lost its members but not willing
- 13 to engage with the workers.
 - MR MPOFU: Then there was evidence about
- 15 time, which I'm not going to come right, whether you were
- there at half past 1 or half past 2 and so on, but what was 16
- 17 important in that evidence was that you had testified, both
- 18 in chief and under cross-examination that you were told
- 19 that the area was cordoned off, when you made your request,
- did you know if this was the truth or not, that the area 20
- 21 had been cordoned off?
- 22 RT REV SEOKA: I believe it was true

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- because of the atmosphere where we were and the take-off of 23
- 24 the helicopters towards the koppie. But also I did say
- 25 that the Chaplain alluded to something that they have been

- asked, all the members of his group, I can't remember the
- word but clergy, social workers and medical personnel were
- asked to be on standby.
- [10:32] MR MPOFU: Yes, and given the fact that
- this reason was one of the main reasons why you were
- prevented from going back to the copy, what would your
- 7 comment be if I tell you that the evidence will be that the
- 8 Police allowed and escorted Mr Mathunjwa to address the
- 9 workers at the koppie at 15:35?
- 10 CHAIRPERSON: Sorry, Mr Mpofu, again I
- don't understand how any comments that the Bishop may make 11
- 12 on that particular point are going to assist us to decide
- 13 the points that we have to decide at the end of the day.
 - MR MPOFU: Well Chairperson, with the
- 15 greatest respect, the Commission surely has to decide the
- question of whether or when the area was cordoned off, and
- I'm simply probing that point, whether if someone 17
 - subsequent to him being told that it was cordoned off was
- 19 actually allowed in there.
- 20 CHAIRPERSON: That is a point for
- 21 argument -

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- 22 MR MPOFU: Well, it can't be but -
- 23 CHAIRPERSON: It's a point for argument.
- 24 You're simply trying to be able to say this is my argument
 - and the Bishop agrees with it. Well, even if the Bishop
 - Page 2035
- doesn't agree with it, if it's a good argument it's a good
 - argument, and if it's a bad argument the fact that the
 - Bishop agrees with it isn't going to help you. These are
 - argumentative points which you will be able to raise at the
 - 5 appropriate time. You'll also be able to ask witnesses
 - 6 directly involved with the matter about them, but just
 - 7 putting the argument to the Bishop and saying what's your
 - 8 comment on this, in the hope that he will say he agrees,
 - 9
 - with respect isn't going to help us at all to answer the 10
 - questions that we've been asked to answer.
 - 11 MR MPOFU: Okay.
 - 12 CHAIRPERSON: So I don't think that
 - 13 question can be allowed.
 - 14 MR MPOFU: Chairperson, I respect your
 - 15 ruling, but if I can make one more attempt. The only
 - relevance that I'm placing on this, Chairperson, is simply 16
 - 17 that the Bishop, the most important thing about the
 - 18 Bishop's evidence is him being stopped from going back and
 - 19 I'm simply exploring whether given the fact that the place
 - 20 may not even have been cordoned off, what impact that would
 - 21 have on his attitude to him being stopped. This is the
 - 22 most crucial aspect of his evidence.
 - 23 CHAIRPERSON: My colleague, Commissioner
 - Tokota wishes to ask you a question. 24
 - MR MPOFU: Yes, I'm sorry.

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           MR TOKOTA SC:
                                   Ja, given the purpose of
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    the re-examination, what point are you trying to clarify
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    here which is not clear, arising from the cross-
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    examination?
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           MR MPOFU:
                              Yes, thank you.
           MR TOKOTA SC:
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                                   In other words, what would
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           MR MPOFU:
                              Ja, I understand.
9
           MR TOKOTA SC:
                                   In other words, which of
    the parties here directed a question in regard to this
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    which the Bishop answered in a vague manner, which you
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    would now like to clarify for us to understand in the
    proper perspective manner? Or are you trying to elicit
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    some opinions and comment from him?
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           MR MPOFU:
                              No. No, well I didn't know
    that was the purpose of re-examination, or the only purpose
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17
18
           MR TOKOTA SC:
                                   I'm telling you that is
    the purpose. The purpose of re-examination is to clarify
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20
    matter arising out of cross-examination.
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           MR MPOFU:
                              Yes.
22
           MR TOKOTA SC:
                                   Not to try and elicit some
23
    opinions and comments on other matters which you may have
    to raise at a future stage or -
24
25
           MR MPOFU:
                              Alright, let me assist you
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opinion or eliciting comment and so on. That -2 MR TOKOTA SC: But he has already conceded that the placed was cordoned off. You asked him if he believed it and he said yes -5 RT REV SEOKA: No. No, no, no, -MR MPOFU: 6 No, no, please, he says, I 7 asked him whether what, did he believe it, and he says he 8 believes, he doesn't say it was cordoned off, he says he 9 saw helicopters, or what have you. That's fine. Now I'm 10 saying in respect of that answer, if I then told him that 11 someone else, that I went there, let's say, without being 12 stopped, what impact would that have on that issue. He 13 didn't say it was cordoned off, please. He says because 14 they stopped -15 CHAIRPERSON: Okay, sorry, let me ask the question. Bishop, you were told that the area was cordoned 17 off and you couldn't go, and therefore you went away. If 18 you had known that somebody else was allowed there after 19 you left, would you have gone? Would you have left, or 20 would you have stayed and made a further attempt to go back 21 to the area? 22 RT REV SEOKA: I would have actually 23 tried to persuade both management and Police to allow me to go back. 24 25 MR MPOFU: I'm indebted to the

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then -
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            MR TOKOTA SC:
                                   If you can try and assist
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     us in that regard it will save us a lot of time.
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            MR MPOFU:
                               Yes, I'll assist you and save
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     a lot of time, Commissioner. Yes, well in addition to what
     you have said to the Chairperson, namely that the gravamen
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 7
     really of the Bishop's evidence centres around this issue
 8
     of being disallowed to go back on the basis of this
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     cordoning off allegation, (1). (2), to answer your
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     question about which party raised it, Lonmin has said - in
11
     fact the whole thesis of Lonmin's cross-examination of the
12
     Archbishop was that he cannot -
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            CHAIRPERSON:
                                  Archbishop Makgoba isn't
     here. The Bishop of the Diocese of Pretoria is at the
14
15
     moment in the witness box.
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him you might allow the question, Chairman, but no, on a

examination of the Bishop was, was simply this, you can

reduce it to the following proposition. That you cannot

blame Lonmin for your non-return to the koppie simply

Now if it turns out that the area was not cordoned off,

allowed to go there at 15:35, surely that is not what

because it was the Police that had cordoned off the area.

(1), or at least not inaccessible, such that Mathunjwa was

serious note, what Lonmin's thesis of their cross-

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23 24 MR MPOFU:

were also put to you, I think by Lonmin. One of them was a 3 suggestion that you were actually not stopped from going 4 back and I just wanted to refer you to paragraph 15 of your statement. Well, firstly start at paragraph 14. It says, you say Mr Mokoena said, "Bishop, you can no longer return 6 7 to the koppie. The place has been cordoned off and is now 8 a security risk zone, or words to that effect," and then at 9 15 you say, "At being stopped from returning to the 10 workers, I was very concerned that we would lose their 11 trust," and so on. So really I think the question is 12 simply whether from your subjective point of view you felt 13 that you had any choice of returning to the koppie. 14 RT REV SEOKA: I had a strong desire to 15 go back there, but I realised that I couldn't because I 16 understood Mokoena to be the senior officer of the mine on 17 whose property I was at, at the time, and therefore I would 18 not undermine or ignore or disobey what he was telling me. 19 MR MPOFU: Thank you. 20 RT REV SEOKA: But I must say, through you, Chair, that I regretted having not gone back. It was regrettable, especially when I received that call and when 23

Chairperson. Finally, Bishop, there were two issues which

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I thought that if I promote

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Page 2040 I suspect it came from, can anybody in this room imagine 2 what that is doing to me? I can hear that voice all the 3 time I think about what happened on the day. Sir, I still 4 hear the voice even as I testify here, and yesterday I did 5 approach Mr Madlanga to say to him they need to provide a 6 psychologist in this process because this is not a child's 7 play, it's a very heavy burden that some of us are 8 carrying. I have gone a step further by approaching the 9 chairperson or president of the Psychological Society of 10 South Africa, to see if they can provide services to this Commission, even if it's for free. I'll be the first 11 12 patient of these people, but those widows seated there, 13 their children, their friends, their families, all those 14 workers who were affected, should be assisted by people who 15 can actually take this burden out of them. CHAIRPERSON: Bishop, would it be correct 16

the opportunity of receiving psychological counselling and
 therapy?
 RT REV SEOKA: Yes, Sir, Chair, I would
 have said that at the end of my testimony, but I felt

if I were to say that you are in effect now making a

recommendation to this Commission that it should in its

report recommend that attempts should be made, or efforts

should be made to ensure that all those who are affected by

the tragic consequences of what happened should be given

RT REV SEOKA: 1 Most of those who survived, who were part of that grouping, some of them are 3 limping, you know, still nursing their, the wounds. They are very traumatised. Yesterday about lunchtime - don't ask me what time it was, but about lunchtime because we 6 were out there eating -7 MR MPOFU: People were eating. 8 RT REV SEOKA: People were eating all 9 over the place. A man did approach me with his wife and a 10 daughter and he was not coherent, he was trying to speak to 11 me, asking if I could help with the problems they are still 12 faced with and I took his particulars and promised that 13 maybe when he's in a better state of mind I could call him and see what his problem was. But he was devastated. He's traumatised, confused, and looking for help, and that's the 16 kind of person that would have been referred to the 17 psychologist or such professional people to assist. I don't think I have those skills myself. My skills are 19 different as a priest to those of a psychologist. Some of 20 them, Sir, have told me continuously they live in fear 21 because of that day's experience. 22 [10:52] MR MPOFU: Yes, thank you. Your 23 activities after the 16th in making peace at the, in this 24 conflict will form part of the second phase of the Commission. But if you can just round off this point by,

Page 2041 1 compelled by what senior counsel is saying to bring it up 2 now, because it hurts. 3 CHAIRPERSON: Yes, well he's not yet senior counsel, but he won't object to you trying to give 4 5 him the promotion that he tried to give you. MR MPOFU: According to the Bar Council I 6 7 am, Chairperson. But thank you -8 CHAIRPERSON: That recommendation you've 9 made, we will seriously consider when we compile our final report in the matter. Mr Mpofu, do you have any further 10 11 questions? 12 MR MPOFU: Just one, Chair. Thank you, 13 Bishop, and I take it that would go to all the victims of this tragedy. 14 15 RT REV SEOKA: Indeed, but I also want to 16 include all those clergy persons who were there subsequent 17 to the massacre because I know that some of them were 18 affected by what they experienced as they engaged, trying 19 to counsel some of those workers. 20 MR MPOFU: And in that similar vein, and 21 given your experience even subsequent to the events and your interactions with most of the affected persons, what 22 23 impact did you observe on those survivors who did not lose

their lives but were merely injured and witnessed their

fellow workers being killed in front of their eyes?

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Page 2043 given your interactions with the players, about what other you might have had to deal with in addition to what you've just said, in respect of the fact that those survivors, or some of them, were subsequently charged with the murder of 5 their own -6 CHAIRPERSON: No, no, Mr Mpofu, I don't 7 know that this arises at this stage. 8 MR MPOFU: Fellow employees - sorry, Sir. 9 CHAIRPERSON: And the answer is going to 10 give is going to give on this point aren't going to help us in regard to the particular questions we're busy with at 11 12 the moment, so I'm not going to allow the guestion, but -13 MR MPOFU: Okay, Chairperson. No, I was 14 just asking in terms of the level of -15 CHAIRPERSON: No, no, I understand why you were tempted to ask the question. I sympathise a lot, 17 but I must try to keep things in check. 18 MR MPOFU: Yes, thank you, Chairperson. 19 CHAIRPERSON: Any more questions? 20 MR MPOFU: Yes, one more. 21 CHAIRPERSON: Finally and in conclusion. 22 MR MPOFU: Seriously one more, 23 Chairperson. There was also a suggestion which was made, I 24 think by Mr Semenya, that when you spoke to the Provincial

Commissioner, you did not, as it were, say to her what you

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wanted. Something, if I'm misrepresenting him, then I'm sure he'll say so, but I'm not saying it word for word, and 2

3 in respect of that, I'd like to refer you to paragraph 11

4 of your statement and then ask you to clarify the last

5 sentence there.

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6 That sentence says, "We were then asked, probably 7 by Mr Mokoena, to accompany them to the Provincial Police Commissioner, and put our proposals, since the company was 8 9 not prepared to meet with the workers." Now, assuming 10 that you then went to the commissioner for this reason, to 11 put your proposals, what proposals, if any, did you put to 12 the commissioner in respect to what you wanted to happen? 13 RT REV SEOKA: When we got there, and of 14

course I told you that she was in a troubled state, and when she asked about our mission, we said we have been asked by the workers at the koppie to request that Mkashe she must come and address them on their demands.

I don't know whether understood what we were saying, because she then answers by saying, "You can negotiate with management whatever you want to negotiate, but security is our concern and it's non-negotiable."

All we were wanting to persuade her to do is to provide security for the management to go back with us and address the workers, because that is what we had asked. If Mr Farmer was not available, somebody senior should have

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MR BIZOS SC: Yes. Bishop, thank you, the Commission has enough matters to decide, and not this one, but I thought it advisable that to put it on record, lest we be accused that we kept quiet about it, while knowing about it.

CHAIRPERSON: It may be relevant in the second phase when we consider the position of Lonmin and their policies, and so on, to what extent they are the owners or the lessees of the land, or rightful owners, but it's not a matter that need detain us at this stage.

MR BIZOS SC: Yes, but I didn't want, because of the LOC's involvement, I didn't want to be accused eventually that, of keeping it back.

CHAIRPERSON: Well, if any such accusations are made against you, you'll be able to refute them very shortly and sharply.

17 MR BIZOS SC: Thank you, Mr Chairman, 18 that's all I have.

CHAIRPERSON: We'll now take the adjournment, before we do, you said - there's something I want to say too, but you say you're thing first and I'll say mine.

Thank you very much. RT REV SEOKA: Chair, I just want to express my gratitude for the opportunity provided for the Church to make its

Page 2045

been available and Mokwena appeared to be such a person.

2 MR MPOFU: Bishop, I want to thank you

3 very much and also, in particular, thank you for allowing

4 me to twist your arm to come this morning, despite your

5 schedule, but that will be all I'll be putting. Thank very

much, Chairperson. 6

> CHAIRPERSON: Yes, thank you, Bishop, for coming and giving us your evidence and for coming back today especially to assist us to deal with this aspect of the matter. You are excused, but - I beg your pardon, Mr Bizos, you did indicate, forgive me.

12 MR BIZOS SC: No, it's just question.

Bishop, the question has got nothing to do with everything that you said, except on one question. You have said that the land belongs to Lonmin. I think that you may have

knowledge, or whether you have knowledge or not, I must ask 16 17 you the question, do you know that an organisation called

18 Bapo Ba Mogale claims that the land it belongs to them and

19 not to Lonmin? I don't know if anything is going to turn

on it, but I don't want to leave the question open. Have

21 you any knowledge of it?

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22 RT REV SEOKA: When I was here the first time, the legal person representing those people did speak 23 24 to that, and I became aware that in actual fact this is the 25 people's land, not Lonmin's land.

Page 2047 presentation. I would like to ask that this tragedy of

2 Marikana help us to create a platform to seek long term 3 solutions, as I say in my statement, that will make our 4

country a better place for all.

whole nation really.

CHAIRPERSON: Yes.

RT REV SEOKA: Secondly, I would like to suggest and recommend that the koppie be declared a monument as a gesture for healing of memories, because it is, according to the African culture and beliefs, Mr Semenya, a sacred space now, because so many lives were lost there and their spirits are believed to be in that situation, and so that will be a critical gesture to help with the healing of those that have been affected, and the

Having said that, also the psychological provision that I've said, but thank you so much for entrusting - those who have entrusted this responsibility of representing the working poor of our country at this Commission, and I want to thank you also for handling this hearing the way you have done, but it will be mistake if we don't convey our appreciation to the Labour Department, to the Minister of Labour, to CCMA, to the unions, themselves, who allowed us and provided us with a space to be part of

the solution, and more so the workers that really entrusted

us with the responsibility of journeying with them, and for

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Page 2048 Page 2050 If a cross-examiner intends to refer in crossthat I thank you. 1 2 CHAIRPERSON: 2 Thank you, Bishop, for that examination to documents which are in one or other of the 3 comment. I want to make - I said I was going to say 3 hard drives or to some other document that isn't even in 4 something myself, it's really in addition to the thanks 4 the hard drive, the appropriate way to do it so have copies 5 5 that you expressed to various people, and that's, I think prepared in advance and then when the appropriate moment 6 it's also appropriate to place on record, in the light of arrives, to give the documents to the witness and also to 6 7 7 what you've said, that the Department of Social Development the commission and if it is not in the hard drive, to the 8 8 has also played a role from the very beginning of the other parties as well and I would expect in future all 9 9 sessions of this Commission, in giving assistance to the cross-examiners who are going to refer to documents to family members and others who have been in attendance and 10 follow that practice. Mr Madlanga, I think the next 10 11 arranged for them to receive counselling and therapy and 11 witness is to be called by Mr Semenya, is that correct? 12 so, and it's only - whether they also need assistance from 12 MR SEMENYA SC: That's indeed correct, psychologists, and whether the Department Services go as 13 13 Chair, we beg leave to call Warrant Officer Wessels. His 14 far as that is something I don't know at this stage, but 14 names in full, Albert Olckers Wessels, Olckers spelt O-L-C-15 certainly it's appropriate I think at this stage, in the 15 K-E-R-S, Wessels, W-E-S-S-E-L-S and Albert, A-L-B-E-R-T, context, to pay tribute and express our gratitude to the 16 Warrant Officer. 16 Department for all that that have done in making it 17 17 CHAIRPERSON: Sorry, I think at this stage we're at Exhibit HH, I think that's correct. We have 18 possible for the family members to, not only come here to 18 got what amounts to a CV of Warrant Officer Wessels, which 19 be in attendance, but giving them counselling and 19 20 assistance during, what has sometimes been a very harrowing 20 was given to us. It isn't really a summary of his 21 and unpleasant aspect for them, namely seeing the slide 21 evidence, it is more a summary of his CV, I don't know that have been seen the videos that have been seen, which 22 22 whether there is a statement you're going to hand in, or 23 brought back very sad and heart rendering memories to them. 23 are you just going to hand in his CV but in any event, his 24 On that note, we will take the tea adjournment. 24 CV, I take it, will be Exhibit II, double I. 25 25 RT REV SEOKA: MR SEMENYA SC: On that note, I would like That's correct, Chair. Page 2051 Page 2049 to ask, because I don't recall that we have ever respected CHAIRPERSON: I don't know, the swearing 1 those who lost their lives, just to stand for a second in has to be on the record. Are you prepared to take the oath 2 3 respect of the miners who died. 3 or do you wish to affirm? 4 CHAIRPERSON: A leader of the church for 4 W/O WESSELS: I can take the oath, Mr 5 us to do it again, let's have a have one minute silence. 5 Chairperson. 6 May their souls rest in peace. 6 CHAIRPERSON: Do you swear that the 7 RT REV SEOKA: 7 evidence you will give before this commission will be the Amen. [COMMISSION ADJOURNS COMMISSION RESUMES} 8 8 truth, the whole truth and nothing but the truth, please 9 9 [11:28] CHAIRPERSON: raise your right hand and say, I swear, so help me God? The commission resumes. Yesterday at some stage in the cross-examination various 10 ALBERT OLCKERS WESSELS: 10 I swear so help 11 11 documents were referred to which were in either the police me God. 12 hard drive or the Lonmin hard drive and I said we would 12 CHAIRPERSON: Thank you, you may be 13 have a housekeeping session this morning, getting those 13 seated. Mr Semenya? documents, marking them and having them handed in formally 14 **EXAMINATION BY MR SEMENYA SC:** Thank you, 14 as exhibits, but Ms Pillay who had taken upon herself the 15 15 Chair. You are a warrant officer in the South African onerous task of being the clerk of the papers is not with 16 16 Police Service, Mr Wessels, aren't you? 17 us today, but I understand from her leader, Mr Madlanga, 17 W/O WESSELS: That is correct. 18 that she will be here on Monday. So I've asked him to ask 18 MR SEMENYA SC: In what area of 19 her to take that matter in hand, so we will deal with it as 19 specialisation do you work in? 20 first business on Monday. We will be starting on Monday at 20 W/O WESSELS: I am employed at the 21 ten o'clock, but in order to make up for the lost time we 21 Forensic Science Laboratory at the Ballistic Section. will only have a half hour lunch break and we'll resume at 22 22 MR SEMENYA SC: And at the very outset 23 23 half past one, as we will today, but I want to say this, can we just explain whether that area includes expertise in 24 that Mr Burger showed us, with respect, how this thing is 24 matters like pyrotechnics and tear gasses or is it a 25 done. separate area?

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Page 2052
                                                                                                                         Page 2054
           W/O WESSELS:
                                 The scope of the Ballistic
                                                                   1
                                                                              W/O WESSELS:
                                                                                                     The capacity of the
1
    Section unfortunately does not include pyrotechnics or
                                                                       magazine would depend on the specific make and specific
2
                                                                   3
                                                                       model of firearm. In this case it appears to be a Beretta
3
    teargas or any of those.
                                                                   4
4
           MR SEMENYA SC:
                                   And Warrant Officer,
                                                                       92SB.
                                                                   5
5
    Exhibit II which happens to be your CV, is that correct?
                                                                              MR SEMENYA SC:
                                                                                                       Okay, let's get -
           W/O WESSELS:
                                                                   6
                                                                              CHAIRPERSON:
6
                                 That is correct,
                                                                                                     I am sorry to interrupt,
7
    Chairperson.
                                                                   7
                                                                       you said a copy of this page, of Exhibit B in slide form
8
           MR SEMENYA SC:
                                   And you say that you
                                                                   8
                                                                       which can be put up for people in the auditorium to see, if
    joined the Ballistic Section since 2000 as an examiner of
                                                                   9
9
                                                                       there isn't there isn't, but if there is it would, I think
10
    Forensic Ballistic related cases?
                                                                  10
                                                                       be helpful.
11
           W/O WESSELS:
                                                                  11
                                                                              MR SEMENYA SC:
                                 That is correct.
                                                                                                       Mr Chairperson, perhaps
12
                                                                       the solution would be to quickly have it taken up there and
           MR SEMENYA SC:
                                   Did you do any in-service
                                                                  12
13
    training?
                                                                  13
                                                                       set up, when I met the crimes scene experts it was ready
14
           W/O WESSELS:
                                 I did receive a three year
                                                                       and it could be shown by means of a projector, now no
    in-service training course at the Ballistic Section.
                                                                  15
                                                                       arrangement was made for that.
15
                                                                  16
                                                                              CHAIRPERSON:
16
           MR SEMENYA SC:
                                   And what did that entail?
                                                                                                     I see Mr Wesley is on his
17
           W/O WESSELS:
                                 It entailed everything as
                                                                  17
                                                                       way, so I take it if we give him a minute or two we can
18
    stated on my CV, it is guite a lengthy document, but I can
                                                                  18
                                                                       then have this picture screened for the benefit of those in
    work through it if you would like me to.
19
                                                                  19
                                                                       the auditorium -
20
           MR SEMENYA SC:
                                   Chair, if we -
                                                                  20
                                                                              MR SEMENYA SC:
                                                                                                       Yes -
21
           CHAIRPERSON:
                                 I take it we can take the
                                                                  21
                                                                              CHAIRPERSON:
                                                                                                     - so that they can follow
    document as read, there may be certain paragraphs you wish
22
                                                                  22
                                                                       you. Thank you, Mr Wesley, perhaps you should go back
23
    to highlight and refer to specifically, but he has already
                                                                  23
                                                                       again then to the first -
24
    confirmed it is correct, so I take it you don't have to go
                                                                  24
                                                                              MR SEMENYA SC:
                                                                                                       Warrant Officer, we have
25
    through it line by line.
                                                                  25
                                                                       on the screen at the top left corner what you referred to
                                                       Page 2053
                                                                                                                         Page 2055
1
            MR SEMENYA SC:
                                     Thank you, Chair, we will
                                                                   1
                                                                       as a pistol, is that correct?
2
    consider the document as having been read, but Warrant
                                                                   2
                                                                              W/O WESSELS:
                                                                                                    That is correct, Mr
3
     Officer, can I invite that they place before you their
                                                                   3
                                                                       Chairperson.
4
     Exhibit B? Do you have the document, Exhibit B in front of
                                                                   4
                                                                              MR SEMENYA SC:
                                                                                                       And you explained that a
5
     you? Yes, that's the one.
                                                                       pistol would have a magazine, correct?
            W/O WESSELS:
                                                                   6
                                                                              W/O WESSELS:
                                                                                                    That is correct, Mr
6
                                  Yes, I do.
7
            MR SEMENYA SC:
                                                                   7
                                                                       Chairperson.
                                    Can I invite you to go to
                                                                   8
8
     page 59 of that exhibit? There is an array of firearms and
                                                                              MR SEMENYA SC:
                                                                                                       And depending on what
9
                                                                   9
     ammunition displayed on that page, do you see it, Warrant
                                                                       magazines, they contain different quantities of ammunition.
10
    Officer?
                                                                  10
                                                                              W/O WESSELS:
                                                                                                     That is correct, in this
            W/O WESSELS:
11
                                  I do, thank you, Sir.
                                                                  11
                                                                       particular case this magazine that comes standard with this
12
            MR SEMENYA SC:
                                     Based on your area of
                                                                  12
                                                                       particular firearm would contain 15 rounds, but there are
13
     expertise can you tell us what appears there and what are
                                                                  13
                                                                       also extended or larger capacity magazines available.
14
     the capabilities of the various firearms on B59?
                                                                  14
                                                                              MR SEMENYA SC:
                                                                                                       Can you just tell us, in
15
            W/O WESSELS:
                                                                  15
                                                                       short that is, the functionality of this firearm?
                                  In order of appearance and
                                                                                                    The pistol on the screen
     as numbered on this page, firstly there is a pistol, a semi
                                                                  16
                                                                              W/O WESSELS:
17
     automatic pistol, secondly a revolver, third a pump action
                                                                  17
                                                                       depicted there is a semi automatic pistol.
18
     shotgun -
                                                                  18
                                                                              MR SEMENYA SC:
                                                                                                       Meaning?
19
            MR SEMENYA SC:
                                     Let's just take them in
                                                                  19
                                                                              W/O WESSELS:
                                                                                                    What it means, Sir, is that
    turn, in relation to a pistol normally that type of firearm
                                                                  20
                                                                       it is only able to fire a single shot for each deliberate
20
21
     is capable of what? How many magazines would it carry?
                                                                  21
                                                                       pull of the trigger.
22
            W/O WESSELS:
                                  The amount of magazines,
                                                                  22
                                                                              MR SEMENYA SC:
                                                                                                       And when one pulls the
     normally the pistol only takes one magazine at a time.
                                                                       trigger what is the firearm able to do?
23
                                                                  23
24
            MR SEMENYA SC:
                                     And how big would a
                                                                  24
                                                                              W/O WESSELS:
                                                                                                    The normal firing sequence
     magazine be?
                                                                       for a semi automatic pistol would start with the magazine
25
```

Page 2056

- inserted into the handgrip, the slide cocked to the rear to
- 2 feed around into the chamber. This movement of cocking the
- 3 slide would also then cock the hammer towards the rear.
- 4 Upon applying pressure on the trigger the hammer will move
- 5 forward and strike the firing pin situated in the slide of
- 6 the pistol. The force imparted by the hammer towards the
- 7 firing pin will drive the firing pin forward which in turn
- will striker the primer of the chamber cartridge. When the 8
- 9 firing pin strikes the primer the primer will ignite with
- 10 the priming compound, which will then in turn ignite the
- propellant charge situated inside the cartridge case. This 11
- 12 propellant gas that is formed by the burning propellant
- will then drive the bullet from the cartridge case down the 13
- 14 barrel of the firearm and out towards the target. Also
- 15 during this process some of the resultant gas will be used
- and act upon the cartridge case inside the chamber to drive 16
- 17 the slide and the barrel backwards for a short distance.
- 18 MR SEMENYA SC: Is that what explains the
- 19 jacking movement of the firearm?
- 20 W/O WESSELS: That is correct, Sir, it is
- 21 part of it.
- 22 MR SEMENYA SC: What happens to the
- 23 cartridge?

1

- 24 W/O WESSELS: After the short period of
- 25 travel the barrel unlocks, mechanically unlocks from the

Page 2057

25

4

5

6

- slide, the barrel then stops and the slide on its own
- 2 continues the rearward movement. During this movement the
- 3 slide will cock the hammer to the fully cocked position,
- 4 towards the rear. It will also then by the use of the
- 5 extractor that's situated in the slide, will drag or pull
- the fired cartridge case from the chamber of the barrel and 6
- 7 move it, holds it while it moves rearward with the slide.
- 8 This will then pull the fired cartridge case along, out of
- 9 the chamber until it strikes the ejector also situated on
- 10 the frame. This will in turn eject the fired cartridge
- 11 case from the pistol.
- 12 MR SEMENYA SC: And to which side of the
- 13 firearm would the cartridge be ejected?
- 14 W/O WESSELS: In this particular model,
- 15 Sir, the cartridge case will be ejected towards the right
- and slightly to the rear. During the rest of the movement 16
- 17 of the slide or during the rearward movement of the slide,
- 18 the recoil spring underneath the slide is compressed. Once
- 19 the slide reaches the utmost or the rearmost position of
- its travel, the recoil spring will then force the slide
- 21 forward again, it will strip the next round from the
- 22 magazine, the extractor will take hold of the rim of the
- 23 cartridge case and feed it into the chamber. As the slide
- 24 and the barrel connects, it again moves forward for a short
- period until it returns to battery in the ready-to-fire

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position.

Then the fire-arm will be [11:48] MR SEMENYA SC:

ready for, to discharge another bullet, if the trigger is 3

4 pulled.

8

11

5 W/O WESSELS: It can only fire the next

6 shot on another application of force towards on the trigger

7 or pulling of the trigger.

> MR SEMENYA SC: Are you able to tell us

9 what factors would influence what direction of the

10 cartridge and what distance?

> W/O WESSELS: There are various factors

12 that can play a role in the ejection of the particular

13 cartridge case. Firstly the direction and the area where

14 it is ejected to is determined by the position of firstly

15 the extractor and also then very importantly, of the

16 ejector. On this particular firearm the extractor is on

17 the right hand side, if you're standing behind the weapon,

18 the extractor is on the right hand side of the slide and

19 the ejector is on the left. When the slide pulls the

20 cartridge case from ejector, pulls the cartridge case from

21 the chamber, it strikes the ejector on the left hand side

22 and it's in turn thrown towards the right out of the

23 pistol. Factors that might influence the distance and

24 direction would be whether or not the firearm is correctly

maintained, if it's well-oiled or not. This will determine

Page 2059

the slide velocity or the way, the guickness of the

2 movement towards the rear. Another factor would be the

velocity of the cartridge case or determined by the amount

of propellant or the charge used for the manufacture of the

ammunition.

If the firearm is well-MR SEMENYA SC:

7 oiled, how far would the cartridge be ejected?

8 W/O WESSELS: Sir again, this is, even

9 though it might be well-oiled, the other factors we will

still come to will also play a role. I would expect though 10

11 that a well-maintained and a well-oiled firearm where the

12 slide would be moving easier on the frame, if we can call

13 it, or more smoothly on the frame, we can call it that way,

14 would eject the cartridge case in a longer distance than a

15 frame that, or a slide that was dry and sticking and not

moving smoothly across the frame of the pistol. 16

17 MR SEMENYA SC: A pistol like this, when

18 fired, what happens with residue?

19 W/O WESSELS: The residue that is

20 developed during the firing process, most of it is during

21 the cycling action of the slide, some of, or most of the

22 action or the residue will be blown out of the action, but

23 some of it will still adhere towards, or on the slide and

24 on the working surfaces of the firearm. It would however,

with my experience in these matters, it would take a

Page 2060

multitude of rounds before it would really start affecting

a well and properly functioning firearm. 2

MR SEMENYA SC: 3 Should the evidence get 4 there, Warrant Officer, what would happen to the person

5 discharging the firearm in relation to the residue?

W/O WESSELS: 6 Some of the residue would

be deposited on the hands or on the arms of the firearm, of

the person holding the firearm. 8

9 MR SEMENYA SC: There is also elements

like tattooing, can you explain that to us? 10

W/O WESSELS: Sir, tattooing is actually 11

12 found only in wound ballistics. This is when the firearm

13 was in such close proximity to the wound or to the person

14 or the target that some of the unburnt and partially burnt

15 propellant power particles is actually blown into or onto

the target, and in the case of a human victim will create 16

17 small secondary wounds around the main entrance wound. 18

This would however only be found in very close contact

19 shots.

25

1

12

13

14 15

17

23

7

20 MR SEMENYA SC: With a pistol is the

21 distance determinable where a tattooing would occur? Are

22 we able to determine?

23 W/O WESSELS: It is possible to determine

24 to a certain extent within a bracket, not direct, down to

the last centimetre but within a reliable bracket, we can

Page 2062

can make a distance bracket where we would expect to find

the ejection of the cartridge cases. I would say that in a

3 pistol of this type as depicted by the picture, I would

4 expect it at about a 3 o'clock facing towards the front,

and towards the right of the shooter and a distance of

6 about 1 to maybe five metres maximum.

MR SEMENYA SC: And the effective range of the bullet discharged out of a pistol would be in what

9 bracket range?

10 W/O WESSELS: Sir, the cartridge is

11 capable of being fired accurately at quite a distance. The

biggest problem, and what is normally used is 50 metres. 12

13 It is however much further effective and can be lethal much

14 further than that. Normally the biggest problem found with

the effectiveness of the firearm is the interface between

the person doing the shooting and the firearm itself. So 16

17 the cartridge is capable of lethality, much further than 50

18 metres, but the effective use depends on the skill of the

19 operators.

21

20 MR SEMENYA SC: The second example,

Warrant Officer, we have there is a revolver.

22 W/O WESSELS: That is correct,

23 Chairperson.

24 MR SEMENYA SC: Can you in summary tell

us the functionality of a revolver?

Page 2061

determine how far the pistol with that particular ammo, or

ammunition would create that pattern of tattooing. 2

3 MR SEMENYA SC: What would be the average

4 distance?

5 W/O WESSELS: I would expect tattooing to

be, occur in a bracket from about one or two centimetres 6

7 from the target up to a maximum distance, again depending

8 on the firearm ammunition used of maximum 15 to 20

9 centimetres.

10 MR SEMENYA SC: Is there anything you

11 can, you wish to add in relation to a pistol?

> W/O WESSELS: I would just like to add

that another factor that will affect the distance of

ejection of the cartridge case will be the way that the

pistol was held. If there is enough support towards the

16 rear of the pistol, and the pistol is held in a firm grip,

then the cartridge case should be ejected further than when

18 it's not supported completely and the cycling of the slide

19 is not completed in a satisfactory manner.

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20 MR SEMENYA SC: It may be what distance,

21 if the grip is firm?

22 W/O WESSELS: Normally, it would depend

on, again like I said the specific firearm and the specific

24 ammunition used. All these factors will play a part. It

is difficult to say exactly how far it would go. Again we

Page 2063

W/O WESSELS: The revolver differs from

the pistol in that it does not eject the cartridge cases by

itself. It's normally a manual ejection of the cartridge

cases. It also does not use a magazine in the sense of the

word of the pistol, but rather has a cylindrical cylinder

6 which contains between five, up to a maximum of about eight

rounds

7

8 MR SEMENYA SC: It too will fire one

9 bullet per pressing of the trigger, would it, Warrant

Officer? 10

11 W/O WESSELS: It is the same as the

12 pistol there, Mr Chairperson, it will only discharge one

13 round for each separate pull of the trigger.

14 MR SEMENYA SC: Subject to the skill of

15 the person discharging it, what would be the bracket range

of effectiveness with a revolver? 16

17 W/O WESSELS: It would be much the same as a pistol, Mr Chairperson, around 50 metres for effective 18

19 use.

20 MR SEMENYA SC: Anything more you would

21 want to tell us about the revolver, Warrant Officer?

22 W/O WESSELS: There are though some

23 smaller sub-calibre revolvers which have larger cylinder

24 capacities. These would be in the small calibre such as

the 22 long rifle and they can contain up to 10 or 12

Page 2064 rounds even in a single cylinder. Most commonly found 2 though are six shot and five shot revolvers. 3 MR SEMENYA SC: And at the top right 4 corner of this slide there, we have a shotgun, is that 5 right, Warrant Officer? W/O WESSELS: 6 That is correct. It 7 appears to be a pump action shotgun. 8 MR SEMENYA SC: How does that work? 9 W/O WESSELS: Again the pump action shotgun will only fire or discharge a single shot for every 10 single deliberate pull on the trigger. The mechanism of 11 12 the pump action shotgun as depicted here requires that the 13 round be fed from the magazine which is the tube under the 14 barrel. I don't know if it's clearly visible to everybody. The picture actually depicts the shotgun, what looks like 15 two barrels, one on top of each other, two cylindrical 16 17 objects. The bottom cylindrical object is a tube magazine 18 which contains the rounds. By working or pumping the fore-19 end, that is the wood, what appears to be wood and with the 20 little lines across it, halfway between the action and the 21 barrel by manipulating the front handgrip towards the rear, 22 that will eject, dispense cartridge, cartridge case from 23 the action and eject it through the ejection port which is 24 situated on the, which is the white area on the slide. 25 MR SEMENYA SC: And what type of

ammunition, would be 100 metres. 2 MR SEMENYA SC: Is there anything else 3 you would like to testify about a shotgun? W/O WESSELS: I think this will do for 4 5 now. 6 MR SEMENYA SC: Can we now talk about the 7 example appearing at the second column on the left, the 8 assault rifle. 9 W/O WESSELS: We can continue. 10 MR SEMENYA SC: Can you explain how this 11 one functions? 12 W/O WESSELS: The basic premises of the 13 assault rifle in semi-automatic mode is very close to that of the semi-automatic pistol. If we can define an assault 15 rifle, the definition of an assault rifle is a rifle 16 capable of fully automatic fire or selective fire, 17 chambered for an intermediate cartridge. 18 MR SEMENYA SC: Warrant Officer, let us 19 at least try and anticipate the evidence here. There will be mentioned made of an R5, of an R1, and can you tell us 20 21 what we're looking at now? 22 W/O WESSELS: The firearm depicted in

Page 2065

Page 2067 means that the barrel is longer, slightly longer than that

2 of the R5, but in other respects it is very similar to the

3 R5 rifle.

23

24

25

11

16

4 MR SEMENYA SC: And an assault rifle of this type would have a magazine contained what amount of

this slide, in this photo, is what appears to be a Vector

made R4 rifle. This is the slightly bigger brother in the

sense that, of the R5, and when I say slightly bigger it

6 ammunition?

7 W/O WESSELS: For the R4 and the R5 8 rifles there are two magazines available. Most commonly 9 found is a 35-round magazine, taking 35 rounds. There is 10 also a 50-round magazine available, but it's not

encountered as much.

12 MR SEMENYA SC: And can you tell us more

13 about how it functions, what would happen, you said it is automatic. You would mean what by that? 14 15

W/O WESSELS: It is capable of both semiautomatic fire, which is the same as we described with the pistol. Basically it means that a single shot will be

17 18 discharged for every single deliberate pull on the trigger.

19 The fully automatic capability means that the firearm will

20 continue to discharge ammunition, or fire rounds in that

21 sense of the word, as long as the trigger is held back.

22

Upon release of the trigger, it will stop firing, but as long as the trigger is held towards the rear it will 23

24 continue firing rounds as long as there are rounds

remaining in the magazine.

```
ammunition does this fire?
 1
 2
            W/O WESSELS:
                                 There are various calibres
 3
    for this specific shotgun, Mr Chairperson. They range from
 4
     the smallest, which is the 410 up to quite large ones.
 5
     What we most specifically see in South Africa is the 12
 6
     gauge.
 7
            MR SEMENYA SC:
                                    We will later speak about
8
     the ammunition. In relation to the shotgun though, what
 9
     side of the firearm would a cartridge be ejected?
10
            W/O WESSELS:
                                 In most cases, Sir,
11
     depending on the specific shotgun and the shotgun depicted
12
    in this picture, ejection will be towards the right and
13
     then slightly towards the rear, depending on how quick or
14
    how hard the action is manipulated by the operator.
15
     [12:08] ADV SEMENYA SC:
                                       Subject to the state of
     maintenance of the shotgun and the used, what would be the
16
17
     bracket range of the cartridge when it's ejected?
18
            W/O WESSELS:
                                 I would expect it to be
19
     from, anywhere from one, not really further than two metres
20
     away from the shooter, or the position that he was standing
21
22
            MR SEMENYA SC:
                                    Depending on the
```

ammunition used, how far is its effective range?

effective range, again as you said, depending on

I would say the maximum

W/O WESSELS:

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23

24

rifle?

Page 2070

Page 2068 And would it emit 1 MR SEMENYA SC: 2 cartridges, and if so, in what direction? 3 W/O WESSELS: It will eject the cartridge 4 cases as the firing process continues. Normally with the 5 R4 and the R5 family of assault rifles the cartridge case is ejected slightly towards the front and towards the right 6 7 of the shooter. 8 MR SEMENYA SC: And the bracket range 9 where the cartridge would fall would be what? 10 W/O WESSELS: If we can first start with the direction, it would be in the bracket, if we're facing 11 12 12 o'clock, I would place the ejection of the cartridge 13 cases from about 1 o'clock up to about 3 o'clock and 14 sometimes even 4, depending on the factors that we 15 mentioned with the pistol, which also plays a part here. Again the ejection, or the distance of ejection could be 16 17 from about two metres up to a distance of 20 metres, 18 depending on various factors. 19 MR SEMENYA SC: And the effective range 20 of the bullet fired from this firearm? 21 W/O WESSELS: Again as is the case with 22 the pistol and the revolver, the cartridge, or the bullet 23 remains lethal for a much longer distance than what we

2 W/O WESSELS: The example shown here is a 3 bolt-action rifle, fitted with a telescopic sight. This also fired only a single shot for every single depression 5 of the trigger. It's also manually operated in the sense 6 that none, the workings of the action is not influenced by 7 the working mechanism or the gas used during the discharge 8 of the firearm, but is manually performed by the person 9 operating the firearm. It's thus necessary for the person 10 to manually lift and open the bolt, pulling, by pulling the bolt towards the rear it extracts the fired cartridge case. 11 12 By pushing the bolt forward, it will then again strip a 13 round from the magazine and load that road into the 14 chamber. These mechanisms, or motions are all performed by 15 the shooter himself. 16 MR SEMENYA SC: Just for my edification, 17 the R1 would fall in which of these two? 18 W/O WESSELS: The R1 will be the same and the operation will be very similar to that of the assault 19 20 rifle, which is the one on the left, number 4. 21 MR SEMENYA SC: I don't think there will 22 be much evidence on the rifle on 5. Shall we then talk 23 about, in short though, example number 6, the submachine 24 gun? 25 W/O WESSELS: The submachine gun is

Page 2069

would be 3 to 400 metres.

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2 MR SEMENYA SC: Anything more you can

3 tell us about the assault rifle?

> W/O WESSELS: Maybe not so much on the assault rifle, but just a slight clarification on ejection

would call the effective range. Again depending on the

training and the skill of the operator, the effective range

5

patterns, if I may. The position of the cartridge cases 6 7

can indicate to an extent where the shooter was standing.

8 However, there are other factors that should always be

9 taken into account, which may affect where the cartridge

10 case comes to a stop. Firstly, these cartridge cases are

11 cylindrical. That must mean that they can roll if there is

a slight slope. There is also other interfering objects 12

13 which may influence where the cartridge case comes to a

14 stop. If I may use the example of throwing a tennis ball

15 in a room, if I throw it towards one corner of the room it

16 can bounce off something, completely change its direction,

17 hit another wall and completely change the direction again,

18 coming to a stop which is out of all proportion of where it

19 was initially started from. This may also be a factor in

where cartridge cases are found. Another factor which can 20

21 also happen is cartridge cases being kicked around

inadvertently by people on the crime scene or on a scene. 22

23 Yes, that's basically what could influence the landing, or

24 the position where a fired cartridge case ends up.

25 MR SEMENYA SC: And the example 5 of a

Page 2071 classified again as very much the same as an assault rifle,

except that it must be capable of selective fire, which

means semi-automatic or automatic fire, and it must be

4 chambered for a pistol calibre cartridge. It is thus the

same as an assault rifle, capable of firing more than a

6 single shot with a single depression of the trigger as, in

7 full automatic mode, or in semi-automatic mode will only

8 fire a single shot for a single depression of the trigger.

It normally has a selector as the, same as the assault

10 rifle, which can be selected to which mode it is adjusted.

11 MR SEMENYA SC: Warrant Officer, I also

12 do not expect any evidence of the use of a submachine gun.

Can we talk about the example of a homemade firearm, number

14 7, as an example.

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W/O WESSELS: Homemade firearms come in all shapes and sizes, depending on the ingenuity of the person manufacturing them. The one depicted here is one commonly encountered. It is made in a backyard workshop or in, by somebody with limited amount of knowledge and a limited amount of tools. They are mostly crudely made and they use some type of mechanical action to discharge a

22 single shot. 23 MR SEMENYA SC: Yes, Warrant Officer,

24 that's what we have on the screen now.

> W/O WESSELS: That is correct, Mr

Page 2072 Page 2074 Chairperson. In this particular instance it appears to be however do not know if they are still in use. I have not a simple piece of water pipe, which will accept any number had enough experience with those kinds of things and it 2 3 actually falls out of my area of expertise. 3 of cartridges, attached to a block of wood and everything 4 wrapped together by simple tyre, or the inside inner tube 4 MR SEMENYE SC: Can we now talk about 5 of a tyre to keep it together. It appears to have a nail cartridges that appear on the next section of the slide, used as a firing pin. This would probably be either struck 6 number 8. 6 7 7 W/O WESSELS: The slide shows some of the with an object or propelled forward by use of a spring. This is, however, only one example of a vast array of most commonly encountered cartridges. It depicts from, if 8 9 homemade firearms that's commonly encountered. we start from the left hand side of the slide, what appears 10 MR SEMENYA SC: What would happen with 10 to be a 12-guaage shotgun cartridge. That is the one which 11 11 MR SEMENYE SC: the cartridge fired from a homemade firearm like that? 12 12 W/O WESSELS: Normally because the would contain pellets? 13 13 cartridge is not, there's no extractor or ejector W/O WESSELS: That is correct. 14 mechanism, it's simply a basic pipe, the cartridge case 14 MR SEMENYE SC: The second from the left. 15 also does not fit precisely as in the case of a chamber. 15 W/O WESSELS: The next two cartridges are Normally the fired cartridge case will get stuck in the end normally what we consider as bottleneck cartridges and 16 17 mostly found to be used in rifles. This could be found in 17 of the pipe and will remain there until forcefully, 18 normally forcefully or manually removed by the person doing 18 either fully automatic or semi-automatic rifles as well as 19 the shooting. 19 bolt action rifles. 20 CHAIRPERSON: Mr Semenya, am I correct in 20 MR SEMENYE SC: There will also be 21 thinking that judging what appears at slide 261 and 263 of evidence of the use of rubber bullets, those would be 21 22 exhibit L, there's no mention of homemade firearms being 22 contained in what type of cartridge? 23 retrieved by LCRC? Am I correct? 23 W/O WESSELS: They are normally contained 24 MR SEMENYA SC: 24 Well Chair, there is only in a shotgun or a 12-guage shotgun cartridge. 25 evidence, looking at the post mortem reports, of somebody 25 MR SEMENYE SC: And the example would be Page 2073 Page 2075 who would have died of pellet wounds. What type of the first one? ammunition would be fired from a homemade firearm? 2 2 W/O WESSELS: That is correct. 3 [12:28] W/O WESSELS: Just about anything, any 3 MR SEMENYE SC: To the left, okay. The 4 calibre that can be fitted into the specific device can be 4 other cartridges? 5 5 fired from it or will be attempted to fire from it. What W/O WESSELS: The other cartridges are all examples of what I would consider handgun calibre is commonly mostly found in my experience is the 12-guage 6 7 shotgun as it is easy to manufacture a firearm, or home-7 cartridges, which would mostly be found in firearms such as 8 8 made firearm that fits around the cartridge and it's easily pistols and revolvers. 9 9 found as well. MR SEMENYE SC: The next section of the 10 MR SEMENYE SC: What's a 12-guage, we 10 slide deals with cartridge cases, number 9, Warrant 11 have been using that word now for the second time, what's a 11 Officer. 12 12-quage? 12 W/O WESSELS: That is correct, Mr 13 W/O WESSELS: The 12-guage, Sir would be 13 Chairman. That also depicts the fired cartridge cases in 14 the same cartridge or a similar cartridge than the one 14 most cases. As can be seen from the circular one on, I 15 discharged by, most commonly found shotguns. 15 would call it about 9 o'clock, which shows the indentation 16 16 MR SEMENYE SC: Pellets will be on the primer in the centre of the cartridge case. Also 17 discharged out of what type of ammunition? 17 these cartridge cases do not contain any bullets which W/O WESSELS: 18 Pellets would be discharged 18 differentiate them from being cartridges. The cartridge or would be expected to be discharged from shotgun type 19 19 would contain a bullet propellant and a primer. 20 20 MR SEMENYE SC: These are sometimes 21 MR SEMENYE SC: And things like teargas 21 called spent cartridges? that would be fired out of what type of firearm? 22 W/O WESSELS: That is a commonly misused 22 W/O WESSELS: 23 23 Teargas would be fired from term. 24 especially adapted launcher, either a 40 millimetre or a 24 MR SEMENYE SC: And the next section

special adaption made towards a shotgun cartridge. I

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number 10 would be bullets, Warrant Officer?

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Page 2076 W/O WESSELS: That is correct, Mr 1 Chairperson. It shows what appears to be fired bullets. 2 CHAIRPERSON: 3 Are these ones sometimes 4 referred to as projectiles? 5 W/O WESSELS: That is correct, Mr Chairman. 6 7 CHAIRPERSON: So you have, normally you have a cartridge which is the cartridge case plus the 8 9 projectile. Once it's been fired, the projectile has been ejected, the case remains or is sometimes ejected from the 10 firing ones you've explained? 11 W/O WESSELS: 12 That is correct, Mr 13 Chairperson. 14 CHAIRPERSON: Thank you. 15 MR SEMENYE SC: And the next section, number 11, would be examples of pellets? 16 17 W/O WESSELS: That is correct. These 18 pellets are normally found, or what appears to be found in 19 the 12-guage or a shotgun type cartridge. And the next section, 20 MR SEMENYE SC: 21 number 12, called fragments, what are those, Warrant 22 Officer? 23 W/O WESSELS: Fragments are normally 24 referred to as small pieces of the bullet that has broken 25 up. This could be pieces of either the core or the jacket

Page 2078 times went on. As far as I know there are, the models are all from the 92 family but have several variations in the 3 family which starts with the normal model 92. These 4 variations, if I might quickly clarify, depends on where 5 the magazine release is situated, where the safety levers 6 on the pistol is situated as well as additional safety 7 features that was added to the range of pistols as 8 technology improved. Currently we will find the normal 92, 9 original 92, the 92S, the 92SB and just about the newest 10 version which is the 92FS currently in use. It is very 11 similar to the Vector Z88 pistol. In appearance they are 12 both the same. They function basically the same and all 13 the safety features from one, from the 92 FS are mostly 14 incorporated into the locally manufactured Vector Z88. 15 MR SEMENYE SC: So as not to deal with 16 each one of those different types of pistols that are 17 police issue, would you say that there are any marked 18 differences in terms of the direction and distance of 19 ejection of cartridges, differences with the Beretta that 20 you dealt with? 21 W/O WESSELS: There is actually another 22 model of Beretta also currently issued which is the PX4. 23 This completely differs from the 92 series in that it uses 24 a rotating barrel lock-up and also a polymer framer. It's the newest generation of Beretta pistols currently

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intended target, the forces exerted by the bullet on the 3 target and also by the target on the bullet can create the 4 bullet to break up into several smaller pieces. These 5 pieces are normally referred to as fragments. MR SEMENYE SC: That is the evidence-in-6 7 chief of the witness, Chair. 8 CHAIRPERSON: Thank you. Mr Madlanga, do 9 you wish to cross-examine?

of the bullet. Once the bullet actually strikes its

10 CROSS-EXAMINATION BY MR MADLANGA SC: Yes, thank you Mr Chairman. Warrant Officer, you said that 11

12 the firearm on the top right hand corner is a Beretta, did 13 you say so, the pistol?

14 W/O WESSELS: The Beretta, it appears to 15 be a Beretta.

16 CHAIRPERSON: The top left hand corner. 17 MR MADLANGA SC: Top left hand, yes, top

18 left hand, I'm sorry, sorry Chairperson, thank you. Can 19 you tell us what type or types of pistols are issued to the

20 South African Police? Is it Berettas or is it different

21 types? If it's different types, what types?

22 W/O WESSELS: At this moment in time. there's several different firearms issued to the police 23

24 force or the police service. Among them is the Beretta and

some of its variations. The models have adapted as the

developed.

MR SEMENYE SC:

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that, you itemised the whole range of them before my question. So what I'm trying to establish is with the ones that you itemised are there any differences in terms of distance and direction of ejection of cartridge cases? W/O WESSELS: In the 92 family and Z88 pistol, it would be very similar. As described before, the same principles will apply, also the same effects of how the firearm is maintained, how it is held and intervening objects would play the same role in all of them.

MR SEMENYE SC: Are they also similar in terms of effectiveness when it comes to being capable of killing a person, at distance that is?

W/O WESSELS: They are all in the same calibre, so yes, the effective range and will be close, very much the same.

MR SEMENYE SC: Before I interjected, you had just begun to mention a new type of pistol. Are there any differences with that one or in terms of direction of ejection, distance of ejection and effectiveness?

W/O WESSELS: Effectiveness will remain the same as the calibre remains the same. The range of ejection and the area of ejection is very similar in my experience and it would not really cause a marked effect.

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Before you deal with

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Page 2080 Page 2082 It would fall in the same bracket as the 92 series. it's Terry Motau. Chairman, we've only received a copy of 1 2 MR SEMENYE SC: the ballistic reports which we would like to consider. May You mentioned that the powder, I may not use the correct technical terminology, 3 we defer our cross-examination? 4 the residue, yes, that is discharged, it may show on the 4 [12:48] CHAIRPERSON: I understand this witness 5 victim. And you mentioned a distance of 1 centimetre to 20 5 isn't testifying to the ballistic reports, he is simply centimetres, I want to understand that, what exactly does explaining how, the different kinds of firearms and how 6 6 7 7 the 1 centimetre relate to? they work, so I think if you're going to ask questions 8 W/O WESSELS: 8 based on the ballistic reports you probably have to ask it We actually spoke about the 9 9 effect of tattooing and at what distance with this would be of another witness. The question is, do you want to ask found. Tattooing as I said before is when partially or 10 this witness anything about the evidence he has given in 10 unburnt powder particles are deposited as small wounds 11 chief? 11 12 around the entrance wound. 1 centimetre from, would in 12 MR MOTAU SC: No, Chair. 13 13 this instance describe that the barrel, the front of the CHAIRPERSON: Any questions from the AMCU 14 barrel would be within 1 centimetre of the entrance hole or 14 side? 15 MR NTSEBEZA SC: No questions, Chair. 15 from the target. 16 16 MR SEMENYE SC: Oh, so if you say within CHAIRPERSON: Any questions, Mr Bizos? 17 17 1 centimetre, that means even if it's held right against CROSS-EXAMINATION BY MR BIZOS SC: Thank 18 the flesh of the victim -18 vou. Chair. I would like to start off with the firearm 19 W/O WESSELS: It would need at least 1 19 number 3, the shotgun. The ammunition used in the 20 centimetre. 20 cartridges, on the left slide in Annexure A, am I correct? 21 21 W/O WESSELS: It appears to be the same, MR SEMENYE SC: Okay, so you don't mean 22 22 if it's 1 centimetre away from the victim. So even if it's yes. 23 23 MR BIZOS SC: Yes, and the contents of held right against. 24 24 W/O WESSELS: No, it would need to be 1 the cartridge, are they pallets as an attempt is made in 25 centimetre away. paragraph, in square 11 to depict them pictorially? Page 2083 Page 2081 W/O WESSELS: The shotgun cartridge can 1 MR SEMENYE SC: Away, away, okay. 1 2 CHAIRPERSON: Sorry, can I interpose my contain either rubber balls, it can contain pellets as 3 question? 3 depicted in number 11, it could also contain a solid bullet 4 MR SEMENYE SC: 4 commonly known as a slug. Yes, yes. 5 5 CHAIRPERSON: Am I correct in thinking MR BIZOS SC: Yes. I want for the it's 10 millimetres to 1 centimetre, is that right? purposes of my questions now to deal with pellets. Am I 6 6 7 W/O WESSELS: 7 correct in saying that there is birdshot with approximately That is correct. 8 CHAIRPERSON: So if a pistol were held 5 8 70 pellets in the cartridge, am I correct in that? 9 9 millimetres, in other words half a centimetre away from the W/O WESSELS: According to my knowledge, 10 victim and fired, will you expect to find residue? 10 Sir, that is still with these different types of cartridges 11 W/O WESSELS: I would still expect to 11 12 find residue but I would not necessarily expect to find 12 MR BIZOS SC: Yes, but let's start with 13 tattooing as there would not be enough time for the unburnt 13 birdshot? 14 particles to actually spread enough to create a circular 14 W/O WESSELS: With birdshot I would 15 tack or indicate tattooing. 15 expect more than 70 pellets -16 MR SEMENYE SC: Can you please just 16 MR BIZOS SC: How much more? 17 explain, Warrant Officer, the rate of fire of the R4 and 17 W/O WESSELS: Well, in my knowledge or my 18 the R5 say per minute, per second? 18 experience I would consider birdshot going down from about 19 W/O WESSELS: On both the R4 and the R5 number 4, in the size of the pellets, towards number 7, 20 as well as the R1, the rate of fire is between 600 to 700 20 that would be anywhere in number from about 260 to 400. 21 rounds per minute. 21 MR BIZOS SC: Yes, but the 70 is the 22 MR SEMENYE SC: 22 No further questions, minimum. 23 W/O WESSELS: 23 Commissioners, thank you. Depending on which 24 CHAIRPERSON: Any questions from Lonmin? 24 reference you use, it could still be seen as birdshot 25 MR MOTAU SC: Thank you, Mr Chairman, 25 depending on -

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1	Page 2084 MR BIZOS SC: Yes, for comparative	1	Page 2086 W/O WESSELS: Birdshot can still remain
1	• •	2	lethal at that distance, it depends on the area of the
2	purposes –	3	•
3	CHAIRPERSON: The interpreter hasn't had	4	target that it strikes. MR BIZOS SC: Yes.
4	a chance to interpret this.		
5	MR BIZOS SC: Pardon?	5	W/O WESSELS: It also depends on whether
6	CHAIRPERSON: The interpret –	6	it still has enough retained velocity, but mostly will be
7	MR BIZOS SC: Oh, I am sorry. The other	7	dependent on the area that it strikes. It would be less
8	shot in hunter's terms is buckshot, is that correct?	8	than the bigger amount or the bigger shot, such as the
9	W/O WESSELS: That is correct.	9	buckshot or the SSG, but it is still in the right
10	MR BIZOS SC: How many pellets more or	10	circumstances completely capable of being fatal.
11	less, sorry? How many pellets more or less are in the	11	MR BIZOS SC: The further it travels the
12	cartridge if it is buckshot?	12	more it spreads and the less and less damage it can do to
13	W/O WESSELS: Again there is a variety of	13	the body of a human being?
14	cartridges that all fall within a spectrum of buckshot. It	14	W/O WESSELS: That is what would be
15	could be as little as 9 or 8 pellets per cartridge up to 44	15	expected, however –
16	or up to 70, as you stated earlier.	16	MR BIZOS SC: Is that so?
17	MR BIZOS SC: Well, let us say that they	17	W/O WESSELS: That is what would be
18	are bigger than birdshot, but do you know of pellets that	18	expected, Sir, I have personally witnessed a small pellet
19	are called SSG?	19	travelling from a ricocheted, from a steal plate, coming
20	W/O WESSELS: Yes, Sir, I am familiar	20	back a distance exceeding 50 metres and still lodging with
21	with them.	21	a wound track of up to about 6 centimetres in the upper arm
22	MR BIZOS SC: How many pellets are there	22	of one of the spectators. It is thus clearly dangerous to
23	in SSG shot?	23	a much further extent and I think we should always remember
24	W/O WESSELS: I must admit it eludes me	24	that there is no non lethal ammunition. There is lethal
25	at this stage, I would expect in the region of about 28.	25	ammunition and less lethal ammunition but there is no none
	Page 2085		Page 2087
1	Page 2085 MR BIZOS SC: Well, there may be	1	Page 2087 lethal ammunition.
1 2	=	1 2	=
	MR BIZOS SC: Well, there may be		lethal ammunition.
2	MR BIZOS SC: Well, there may be differences, but generally speaking we have birdshot,	2	lethal ammunition. MR BIZOS SC: Would you consider, leaving
2	MR BIZOS SC: Well, there may be differences, but generally speaking we have birdshot, buckshot, SSG. Which pellets would be the most dangerous	2	lethal ammunition. MR BIZOS SC: Would you consider, leaving aside the special case that you mentioned of the ricochet,
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2 3 4 5	MR BIZOS SC: Well, there may be differences, but generally speaking we have birdshot, buckshot, SSG. Which pellets would be the most dangerous if used against, as we are concerned with human beings here, would be the most dangerous to direct at human	2 3 4 5	lethal ammunition. MR BIZOS SC: Would you consider, leaving aside the special case that you mentioned of the ricochet, can we as a general principle agree on this, that birdshot is the least dangerous of the other gauges that may be shot
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                                                                                                                            Page 2090
           MR BIZOS SC:
                                No, we can take the
                                                                        question as you formulated it, as long as you promise me
1
                                                                     2
                                                                        you'll carry on and deal with the rubber balls as well.
2
    adjournment now, Mr Chairman, thank you.
3
           CHAIRPERSON:
                                 We will adjourn until 1:30
                                                                     3
                                                                                MR BIZOS SC:
                                                                                                     Yes. I will deal with them.
4
    today.
                                                                         There isn't a single victim of birdshot, either in death or
           [COMMISSION ADJOURNS
5
                                         COMMISSION RESUMES1
                                                                     5
                                                                         serious wounding, except of a possibility where the post
    [13:34] CHAIRPERSON:
                                    The commission resumes.
                                                                     6
                                                                        mortem report is not very clear and we make that
6
7
           MR BIZOS SC:
                                Warrant Officer Wessels, I
                                                                     7
                                                                        concession. What is the answer to the question or do you
    think that we have agreed that the least damaging shooting
                                                                    8
8
                                                                        want me to repeat it?
                                                                     9
9
    that may be directed by members of the police force at a
                                                                               W/O WESSELS:
                                                                                                      Sir, it would be very
10
    crowd are, is the use of birdshot, would you agree?
                                                                    10
                                                                        difficult for me to agree with the assumption since I did
           W/O WESSELS:
11
                                 When we're talking about
                                                                    11
                                                                         not see what cartridges were taken up or what wounds were
    shot pellets, then it would be less likely to cause a
                                                                    12
12
                                                                        caused or what ammunition was used at the day. I cannot, I
    serious wound than the larger pellets, Mr Chair.
13
                                                                    13
                                                                         do not feel comfortable expressing whether the wounds were
14
           MR BIZOS SC:
                                You would agree, subject to
                                                                    14
                                                                        caused by birdshot or by anything else if I do not have
15
    that minor modification that you are making?
                                                                        those particular facts and I do not have the knowledge of
           W/O WESSELS:
                                 Yes I will.
                                                                        them.
16
                                                                    16
           MR BIZOS SC:
                                Yes. Where were you on the
                                                                    17
17
                                                                               CHAIRPERSON:
                                                                                                      I think you were asked to
18
    16th August?
                                                                    18
                                                                        make an assumption that no one was killed by birdshot,
19
           W/O WESSELS:
                                 Which year?
                                                                    19
                                                                         although Mr Bizos did say there's one possible exception.
20
           MR BIZOS SC:
                                This year.
                                                                    20
                                                                        So let's put the exception aside. Apart from the
21
           W/O WESSELS:
                                 If I remember correctly, Mr
                                                                    21
                                                                         exception, he says there were no, it's quite clear that no
22
                                                                        one else, no one was killed by birdshot, that's the premise
    Chairman, I was actually on leave.
                                                                    22
23
           MR BIZOS SC:
                                                                    23
                                                                        upon which the question is based. So we understand you
                                You were on leave, you were
    not in Marikana?
24
                                                                    24
                                                                        weren't there, we understand you haven't seen the PM
25
           W/O WESSELS:
                                                                        reports, we understand you're speaking from a position of
                                 No. I was never at the
                                                                                                                            Page 2091
                                                        Page 2089
    scene. As a matter of fact, I do not even know where it
1
                                                                        considerable disadvantage. But nevertheless the question's
2
    is.
                                                                         been put to you, I think you understand it, and Mr Bizos,
3
           MR BIZOS SC:
                                I want you to accept an
                                                                     3
                                                                         perhaps you could repeat the relevant part again for the
4
    assumption for the purposes of subsequent questions, that
                                                                     4
                                                                         witness so he can give us a focused answer.
5
    34 people were killed and over 80 were seriously wounded on
                                                                     5
                                                                                MR BIZOS SC:
                                                                                                     Yes.
    that day as a result of police action. Although we haven't
                                                                     6
                                                                                CHAIRPERSON:
                                                                                                      We must also give the
6
7
                                                                     7
    got a complete report from the ballistics department, from
                                                                         interpreter a chance to interpret it all.
                                                                     8
8
    the post mortem reports that we have in our possession and
                                                                                MR BIZOS SC:
                                                                                                     May I just say before I
9
                                                                     9
    the information that we have received from those that have
                                                                         repeat the question, you come from a scientific background,
10
    reports of the persons wounded, not a single one with a
                                                                    10
                                                                        Warrant Officer Wessels, you're accustomed to make an
    possible exception of one, which is not very clear, was
                                                                    11
                                                                         assumptions and express an opinion on the correctness or
11
12
    injured by birdshot. If you accept that as the facts,
                                                                    12
                                                                         otherwise the assumption. Please do not be reluctant to
13
    would you agree that the police did not appear to have used
                                                                    13
                                                                         express a view as an expert that you are if you are asked
14
    the safest way in which to control people that they wanted
                                                                    14
                                                                         to make assumptions, please. I put the question again. If
15
                                                                    15
                                                                         in fact there is no evidence except for one instance
    to disperse from a gathering?
16
           MR SEMENYA SC:
                                    Chairperson, the
                                                                    16
                                                                         possibly that anybody was killed or seriously injured as a
17
    proposition is not accurate. There was lots of rubber
                                                                    17
                                                                         result of the birdshot firing, will you agree that it is
18
    used.
                                                                    18
                                                                         apparent that the police did not use birdshot in order to
19
           MR BIZOS SC:
                                Birdshot.
                                                                    19
                                                                         disperse the crowd that they wanted to disperse on the 16th
20
           MR SEMENYA SC:
                                    No, but rubber is less -
                                                                    20
                                                                         August this year?
21
           MR BIZOS SC:
                                No, birdshot, birdshot is
                                                                    21
                                                                                W/O WESSELS:
                                                                                                      If there's no evidence of
    not rubber. We're going to come to the rubber, if the use
                                                                         birdshot being used or anybody injured then I agree that it
22
    of rubber bullets, I've said, I hope the clarification
                                                                    23
                                                                         appears that no birdshot was used on the day.
23
24
    deals with the objection, Mr Chairman.
                                                                    24
                                                                                MR BIZOS SC:
                                                                                                     Warrant Officer Wessels,
25
           CHAIRPERSON:
                                  Let the witness answer the
                                                                         you're avoiding part of the question, that it would then
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- appear that the police did not use one of the safer ways of
- 2 dismantling or dispersing the crowd, what do you say to
- 3 that?
- 4 W/O WESSELS: It would appear that no
- birdshot was used, it is a safer option than buckshot but I 5
- cannot say whether there was any other thing that were not 6
- 7 safe to use or less lethal.
- 8 MR BIZOS SC: Why don't you answer the
- 9 question?
- 10 W/O WESSELS: I have a bit of difficulty
- in understanding your question, Sir. I agree that it 11
- 12 appeared that no buckshot was used. Having no experience
- 13 in riot control or ways of dispersing a crowd, it is
- 14 difficult for me to say which would be the - and not being
- 15 on the scene at that day - would be difficult for me to
- make a statement about what would be the best. I can agree 16
- with you that it appears that no buckshot was used but 17
- 18 that's how far I can go.
- 19 MR BIZOS SC: I will not repeat the
- 20 question, Warrant Officer, but we will argue that you are
- reluctant to express an opinion in the field in which you 21
- 22 are an expert about the conduct of your colleagues.
- 23 CHAIRPERSON: Mr Bizos, you could argue
- it later, but when you argue it you have to bear in mind 24
- 25 evidence is given that he's not an expert in this

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- particular field of public order policing and crowd 1
- control. In the light of that you can still argue the 2
- 3 matter at the appropriate time.
- 4 MR BIZOS SC: I'll leave it at that, Mr
- 5 Chairman, thank you. I want to ask you what you say about
- R4 and R5? They are very powerful weapons, are they not? 6
 - W/O WESSELS: Yes they are.
- 8 MR BIZOS SC: Discharged against human
- 9 beings in a crowd, can hardly be for the purposes of
- 10 disturbing them. If they were discharged against them, it
- 11 was for the purpose of killing them.
- 12 W/O WESSELS: It's a difficult question
- 13 for me to answer, Sir. I do not pretend to know what was
- the purpose of discharging the firearm. I do know that 14
- 15 discharging a firearm of that calibre at anybody can create
- a lethal wound. 16

7

- 17 MR BIZOS SC: Again, I will ask you to
- 18 make the assumption that the reason given by your
- 19 colleagues in the police force was that they fired in order
- 20 to disperse the crowd and disarm them.

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- 21 MR SEMENYA SC: Objection. Nowhere in
- the SAPS evidence is that R5s were fired to disperse the 22
- 23
- 24 CHAIRPERSON:
- Mr Bizos, if you want to
- persist in asking the question, you'll have to give us a

- reference somewhere in the SAPS presentation to justify
- 2 the, what you've just put to the witness. In other words
- 3 I'm not disallowing the question at this stage, but I'm
- 4 saying to you if I'm going to allow it, you must, in
- fairness to what Mr Semenya said, give us the page or the
- slide where that appears. 6
 - MR BIZOS SC: Well, Mr Chairman, I can't
- 8 put my finger on the precise page or the two exhibits
- 9 produced by the police as to what they're going to contend
- 10 the events of the 16th August were. I thought that it was
- 11 common cause, both in their reports and in the, some of the
- 12 videos that we have seen, that there were shots at people.
- 13 What is the objection, that -
- 14 CHAIRPERSON: There's no problem about
- 15 that, it's quite clear, they shot at people, they killed
- 16 them.

18

21

10

- 17 MR BIZOS SC: Yes.
 - CHAIRPERSON: Mr Noki has got about eight
- 19 fatal wounds, as far as I can see.
- 20 MR BIZOS SC: Yes.
 - CHAIRPERSON: But the question that you
- 22 asked is premised on the assumption that it's the police's
- 23 version that they fired those powerful rifles at people
- 24 simply to disperse them, and that I think is the basis of
 - Mr Semenya's objection. As far as I can remember from the

- opening statement, it was said that these weapons were
- fired by the policemen concerned on the basis of private
- defence, in other words either defending themselves or
- defending their colleagues. It was not suggested, as I
- remember it, that it was, that those powerful rifles were
- 6 used simply for purposes of crowd dispersal, but if I'm
- 7
- wrong, Mr Semenya will correct me.
- 8 MR SEMENYA SC: At no stage is there a
- 9 version on the part of the police that an R5 rifle was
 - fired for dispersing the crowd, nowhere.
- 11 MR BIZOS SC: Mr Chairman, do the police
- 12 - do not admit that on scene 1 these weapons were used and
- 13 discharged against people? Whether it was self-defence or
- 14 not is another matter, we can argue about that at the end
- 15 of the case. Are they denying that they discharged these
- 16 powerful arms against the crowd?
- 17 CHAIRPERSON: Mr Bizos, I think the
- 18 answer to the question that you've addressed to Mr Semenya,
- which isn't really for me to answer, but I think the answer
- may be found in slide 283 of exhibit L. You remember the
- 21 shots were fired, as I understand it, in stage 3 and what
- 22 is said in the second bullet in slide 283 is as follows,
- 24 the use of live ammunition was never an option and the use

"Even when stage 3 of the operational plan was implemented,

of minimum force if negotiation is not successful, with the

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Page 2096 next alternative. Where encirclement and dispersion would 2 be executed by using, if necessary, water cannons, stun 3 grenades, tear grenades and rubber bullets." And then comes 4 this sentence, "The unfortunate reality was that the aggression of the crowd left the SAPS with no other choice 5 6 than to act in private defence, defending their own lives 7 and the lives of others." Now that appears to be their 8 case. Whether that's correct or not, is one of the matters 9 we have to decide. Whether the plan, operation plan was 10 flawed for various reasons, then the situation should never 11 have arisen is another question, but, which we'll have to 12 come to. But the case of the police on this point as I 13 read it, is what I read you, that they acted not to 14 disperse the people, but in private defence, defending their own lives and the lives of others. If there's 15 16 something else that I've left or I've misread it, I hope Mr 17 Semenya will correct me. 18 MR SEMENYA SC: That is indeed our case. 19 Chair. 20 MR BIZOS SC: I'll defer the question in 21 view of the objection and put something else to you, and I may return after your answers to the question. Now R4, is 22 23 it a military weapon or not? 24 W/O WESSELS: It is currently in use by 25 the South African National Defence Force.

CHAIRPERSON: Sorry to interrupt you, 1 isn't the expression assault rifle? Have you ever come across that expression, assault rifle? W/O WESSELS: Assault rifle is the 5 correct -CHAIRPERSON: 6 Now R4s and R5s assault 7 rifles? 8 W/O WESSELS: They conform to the 9 description of an assault rifle. 10 CHAIRPERSON: You use them on the battlefield to kill the enemy, don't you? 11 12 W/O WESSELS: That is correct. 13 CHAIRPERSON: Ja, I think that's what you 14 wanted to know, Mr Bizos, now we know. 15 MR BIZOS SC: Thank you, Mr Chairperson. Would you agree that because of their rapidity of fire and the devastating results that they may have if they're 17 directed against human beings, make them weapons that ought 19 not to be used for public policing, would you agree with 20 that? 21 W/O WESSELS: I do believe that, I cannot 22 completely agree with your statement, I do believe that 23 there is certain specific instances where the use of these 24 firearms is necessitated for public order policing or for policing the general public. They do have certain specific Page 2099

Page 2097 1 MR BIZOS SC: South African? 2 W/O WESSELS: National Defence Force. 3 MR BIZOS SC: Is it a military weapon? W/O WESSELS: 4 It is, it's main purpose 5 was designed for military use. MR BIZOS SC: 6 Why don't you just answer 7 the question? Is it a military weapon? Why are you so 8 afraid to admit the obvious? 9 CHAIRPERSON: Just let him answer the question. If he prevaricates and is evasive, leave it to 10 me to give him a go, don't take it upon -11 12 MR BIZOS SC: I'm sorry. 13 CHAIRPERSON: I understand one gets 14 excited sometimes and it's difficult not to be. I'm not 15 criticising you, but just carry on quietly. 16 MR BIZOS SC: Thank you. 17 CHAIRPERSON: [Latin]. 18 MR BIZOS SC: Yes. 19 [13:54] MR BIZOS SC: Yes, and what is R5, is it a military weapon? 20 21 W/O WESSELS: The term military weapon is what I am having trouble to define, Mr Chairperson. If it 22 23 means that it is in use by a military organisation or 24 institution, then yes, but I do not have a clear

clarification of what a military weapon is for myself.

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2 MR BIZOS SC: Are you aware of the 3 function, the proper function of public order policing? 4 W/O WESSELS: Only what I can, or know 5 from experience and seeing what they do from the television 6 and other -7 MR BIZOS SC: Please let us have -8 W/O WESSELS: - such cases. 9 MR BIZOS SC: Please let us have your 10 knowledge on the matter? 11 W/O WESSELS: I have not been trained in 12 public order policing or in their work, so I do not have, 13 barely but the basics knowledge of what they perform. 14 MR BIZOS SC: What do you know about 15 public policing, tell us, if a warrant officer in the 16 police doesn't know what public policing are supposed to 17 do, who do you suggest we should ask to inform the 18 commission about what their precise role is? Try and help 19 us? 20 W/O WESSELS: As much as there are 21 specific divisions or sections in the police, my main daily duties are considering the examination of ballistic 22 23 firearms and ballistic cases in casework. I have not 24 received training in any such thing as public order police. I know what happens in my work environment, I don't

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niche that they need to be used in.

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MR BIZOS SC:

CHAIRPERSON:

MR BIZOS SC:

ask your next question.

Page 2102

Page 2100 necessarily get to work with as many people from public order police or from the POP's units, if that is what you 2 3 mean. 4 MR BIZOS SC: Have you got any friends in 5 the public policing order? W/O WESSELS: Not anybody that I can call 6 7 a close friend or that I see regularly, maybe a passing 8 acquaintance. 9 MR BIZOS SC: Is there any requirement 10 amongst police officers to wear blinkers? Chair really, I mean 11 MR SEMENYA SC: 12 should ask for the witness to be protected. 13 MR BIZOS SC: No, with respect -14 CHAIRPERSON: I was waiting for you to see if you objected because I didn't want to object mero 15 moto. Mr Bizos, that's a sarcastic question which is not 16 17 worthy of you, I suggest you withdraw it and proceed to the 18 next one. You're making a point which is really a point 19 for argument. 20 MR BIZOS SC: Yes. 21 CHAIRPERSON: By mocking the witness -

Well -

- and that's not nice, so

I didn't intend to mock

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they do?

W/O WESSELS:

understand sometimes one asks questions of the first witness to get answers to embarrass later witnesses, but I don't think that this witness is of a kind to give you the 5 sort of meaningful answers with which you can embarrass any 6 of the later witnesses, so I don't know if there is a profitable line, but you must obviously follow your own course. MR BIZOS SC: Thank you, Mr Chairman, I'll just put the other, what do the tactical response team do in the police? W/O WESSELS: As far as I am aware of, the tactical response team was instituted to assist with medium risk or high risk operations. Since there is only one task force unit they might not always be quick enough to respond to a scene and at least there will be somebody there to take charge in the meantime and provide a more experienced level of knowledge that the normal policemen on the ground might not have. MR BIZOS SC: And do they use R4 and R5s? W/O WESSELS: As far as I am aware of. yes. MR BIZOS SC: And what about a national interaction unit? I beg your pardon, yes, intervention, I misread it, sorry. The national intervention unit, what do Page 2103

of subsequent witnesses who come who have knowledge. I

Page 2101 him, I hoped that he would, because I have similar 1 questions to ask him about other branches of the police, 2 3 that he may be forthcoming. What do the specialised task 4 force do in the police? 5 W/O WESSELS: As far as I have knowledge, Sir, they resolve more advanced or more dangerous type 6 7 incidents which might not be able to be handled correctly 8 by the normal policeman on the street who might not have 9 the experience or the training for such an event. 10 MR BIZOS SC: Is this hijacking, bank 11 robberies, hostage taking, that's the sort of work that 12 they -13 W/O WESSELS: That would include those 14 types of tasks, yes. 15 MR BIZOS SC: We know that they were 16 there on the 16th of August this year, armed with either R4s 17 or R5s. Would you like to answer the question, what were 18 they doing in an area where there was a labour dispute and 19 the intention was to disperse and disarm some of the people 20 of the 3 000 that were there? 21 CHAIRPERSON: But the witness has told us

he wasn't there, he was on leave. He is not an expert in

the functions of the special task force or the national

intervention unit or the tactical response team, I would

suggest that these questions can more profitably be asked

7 knowledge about. 8 MR BIZOS SC: And what does the K9 unit 9 do? 10 W/O WESSELS: K9 unit again, it makes use of dogs with the tracking of suspects, finding of various 11 12 materials and assist with any K9 operations that might be 13 needed. 14 MR BIZOS SC: Yes. Now the rifle number 15 5 on Exhibit B, what is that used for? 16 W/O WESSELS: It appears to most common 17 usage, it is for hunting purposes and sporting purposes. 18 MR BIZOS SC: I beg your pardon, I didn't 19 hear that? 20 W/O WESSELS: 21 appears there, it would be for hunting or sporting 22 purposes. 23 MR BIZOS SC: Would it also be used if 24 out, if I may use the expression, any particularly

far as I have knowledge, that they are again slightly a

step up from the tactical response team members, slightly

more advanced training, again to assist with high risk or

higher risk than again the people in the street who have

In most common usage as it

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Again as far as I know, as

there was a need for it to be used by sharp shooter to take

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[14:14] MR BIZOS SC:

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lethal.

W/O WESSELS:

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I am stated to go and

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Page 2104
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    dangerously armed individual in a crowd?
                                                                  2
2
           W/O WESSELS:
                                  Yes, that would also be
3
    another usage of it.
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4
           MR BIZOS SC:
                                 Yes, and the submachine gun
                                                                  4
5
    on paragraph 6 what is that used for?
                                                                  5
           W/O WESSELS:
                                                                  6
6
                                  Submachine guns are
7
                                                                  7
    normally used for very close quarter operations where the
8
    reduced fires of the firearm would make it a more
9
                                                                  9
    manoeuvrable in confine spaces in a situation where there
    is may be, where people need to penetrate in a house or
                                                                 10
10
    where there is a lot of work around confined spaces in and
                                                                 11
11
    out of a vehicle, those kinds of operations.
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                                                                 12
13
           MR BIZOS SC:
                                 And in square number 8, the
                                                                 13
14
    second and third, will you call them bullets?
                                                                 14
15
           W/O WESSELS:
                                  Cartridges, Sir.
                                                                 15
           MR BIZOS SC:
                                 Cartridges, are they used
16
                                                                 17
17
    in R4 and R5?
18
           W/O WESSELS:
                                  I cannot from this view
                                                                 18
    determine the calibre, the R4 and R5 rifles are 5,56 by 45
19
                                                                 19
20
    millimetre calibre rifles. Looking at a picture like this
                                                                 20
21
    it is difficult to determine but I can say they are similar
                                                                 21
                                                                     last.
    in shape than that of a 5,56 which the R4 and the R5 are,
22
                                                                 22
23
    chambered -
                                                                 23
24
           MR BIZOS SC:
                                 The ammunition used in R4
                                                                 24
25
    and R5 is it certainly lethal?
                                                                 25
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Page 2106 differences between the R4 and R5 and the AK47's? W/O WESSELS: The basic method of operation are very much the same. The biggest difference between them, Sir, is the calibre. MR BIZOS SC: They have one thing in common, to cause death? W/O WESSELS: Ja, they are certainly both capable of causing death, yes. MR BIZOS SC: Now, in connection with rubber bullets, do you know whether the courts in our country have expressed any view about the use of rubber bullets? W/O WESSELS: No, I'm not aware of any specific instance. MR BIZOS SC: Are you aware whether our courts have expressed any view about the use of lethal force? W/O WESSELS: I'm aware that it has been stated that lethal force should be a last resort, and there should be levels of escalating force and it should be used MR BIZOS SC: In your training, have you been referred to any of the passages in the Law Reports or in the Statutes of what lethal force means, what selfdefence means? Have you been trained in that at all?

W/O WESSELS:

MR BIZOS SC: Not only do they wound but they are specially designed to do damage, particularly to internal organs so that death must almost of necessity follow. W/O WESSELS: The 5,56 by 45 millimetre cartridge was developed by the US, USA for the military operations in due to the fact that it creates a severe wound and has the capability to inflict serious damage, so yes, it was designed to inflict damage. MR BIZOS SC: Why are you afraid to use the word death? W/O WESSELS: Sir, a serious wound can certainly cause death, there is however a theory from the military from the US which states that the cartridge was also designed to such a state that it would inflict such a wound that it would take two or three soldiers from the battlefield to carry the wounded soldier to the back, thus making less soldiers available on the front line and also having an effect of inducing fright to the enemy's soldier. If someone – in my instance, in my point of view, if it's just designed to kill and not just incapacitate, then it would not have the same effect.

perform my firearms competency within the next week or two, Sir, where I do believe that these subjects will be handled and be better explained to me. MR BIZOS SC: Are you aware whether there has been any controversy among lawyers, or among the police in the recent past, about the use of rubber bullets and under what circumstances they should be used? W/O WESSELS: I'm aware of a letter stating that - circulated amongst the nodal point emails, that, as far as I can remember correctly, and I'm speaking under - I might be wrong, that the use of rubber bullets should be stopped until further notice. MR BIZOS SC: Can you remember whether that was directed, if my memory serves me correctly, by the minister before or after the 16th of August? W/O WESSELS: As far as I can remember, the letter also stated, if I can just continue with me previous statement, that the use of rubber bullets should be -MR BIZOS SC: I'll help you at least revisit it. W/O WESSELS: And also it should be sorry, my English escapes me, should be authorised by the -CHAIRPERSON: - Offisier, u mag u

Are there any fundamental

Page 2105

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Yes, Sir, it is certainly

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Page 2108
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     getuienis in Afrikaans gee, as u wil, of as daar enige deel
 2
     van u getuienis is waar u onseker is oor die korrekte
 3
     Engelse uitdrukking, jy kan maar in Afrikaans oorslaan en
 4
     die tolk sal dan vir u vertolk. Biskop Seoka, toe hy
 5
     getuig het, op 'n stadium het gevra of hy in Zulu kon
 6
     voortgaan en ek het toe verlof vir hom gegee. Ek gee
 7
     dieselfde verlof vir u wat Afrikaans betref.
 8
            W/O WESSELS:
                                  Baie dankie, Mnr die
 9
     Voorsitter. As far as I can remember, Sir, I cannot really
    recollect when the letter was stated. I do remember
10
     working through it. Unfortunately there are many emails
11
12
     coming through, as far as I can remember, as I say, it
13
     needs to be authorised by the commander on site, and if I
14
     remember correctly, it did mention something of that it
15
     needs to be revisited.
16
            MR SEMENYA SC:
                                     Chair, for the
17
    correctness of the record, it is not the minister. The
18
     documents regarding the use of rubber bullets are by the
19
     Divisional Commissioner Operational Response Services,
20
     General Mawela.
21
            CHAIRPERSON:
                                  I think that that's the
22
     letter which was referred to, which we haven't got yet.
23
     The letter of the 20th December 2011, I think I'm correct,
24
     which Adv Pillay, in her capacity as clerk of the papers,
25
    is going to give us on Monday.
                                                      Page 2109
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2
    Monday.
3
            MR BIZOS SC:
                                Yes.
4
            CHAIRPERSON:
                                  It was qualified by a
    subsequent letter, which is before us, Exhibit S, which was
6
    dated the 20th of July 2012, whereas I understand, it was
7
    explained rubber was stopped altogether in December 2011
8
    and then it was subsequently qualified and rubber came back
9
    in the form, not of rubber bullets, but of rubber balls in
10
    terms of this letter of the 20th of July 2012, which was
11
    just under a month before the 16th of August. Now, that
12
    information is already before us. Now I don't know what
13
    point, with respect, is served by asking this witness,
    who's not in that division, doesn't know anything about it,
    these questions. It doesn't -
16
            MR BIZOS SC:
                                 I accept that.
17
            CHAIRPERSON:
                                  - Mr Bizos, I'm sorry.
18
            MR BIZOS SC:
                                 I accept that.
19
            CHAIRPERSON:
                                  But I'm not saying that in
20
    a critical sense, but I'm just pointing out to you my
21
    approach to the point.
22
            MR BIZOS SC:
                                 Yes, no I raised it because
23
    the witness wanted the matter of the rubber bullets in one
    of his previous answers, and that is why I raised it. How
    reliable are R4's and R5's? Do they often jam?
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the 20th of December 2011, which we're going to get on

Yes, I'm sorry that I got MR BIZOS SC: 2 the author wrong, but -3 CHAIRPERSON: In Nkosi Thomas' absence 4 you shouldn't put questions like that, particularly when 5 you're not referring to her client really, but to somebody else. 6 7 MR BIZOS SC: Yes. SPEAKER: 8 Sorry, Mr Chair, in her 9 absence, I am available to deal with certainly concern -10 CHAIRPERSON: - still represented, but 11 anyway carry on. 12 MR BIZOS SC: Thank you. It was clearly, 13 whoever, we know now in fact Mr - so maybe I'm drawing our attention as to who signed it, but it was before the 16th of 14 15 August wasn't it? W/O WESSELS: 16 I must admit I cannot 17 recollect, Sir. I cannot recollect a full date. 18 MR BIZOS SC: Yes. Can we just put the 19 date on record, with Mr Semenya's – I haven't got it handy. CHAIRPERSON: Mr Bizos, I don't want to 20 21 interrupt you unnecessarily, but you know, I don't know

that you're asking questions of someone who's really able

to answer them, but it relates to matters that are already

promised and full reference has been made to the letter of

before us. We've already got the - well, we've been

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Page 2111
           W/O WESSELS:
                                 They were designed to work
1
    under adverse conditions, and in that case they certainly
    are very reliable. Given proper maintenance, they are
    probably one of the most reliable rifles, or assault rifles
    on the market.
6
           MR BIZOS SC:
                                And not likely to jam?
7
           W/O WESSELS:
                                 Not given - not likely to
    jam given correct operation and correct maintenance.
9
           MR BIZOS SC:
                                Can you give us some idea
    of how many bullets can be discharged by an R4 or R5 in
10
11
    eight seconds, more or less?
12
           W/O WESSELS:
                                 I can quickly try and work
13
    it out.
14
           MR BIZOS SC:
                                Please try.
15
           W/O WESSELS:
                                 I would expect it anywhere
    in the region of about in eight seconds, on full automatic
17
    fire, anywhere between 30 to 70 rounds.
           MR BIZOS SC:
18
                                30 to 70, yes. I just want
    to go through the notes that I have not left anything out,
    Mr Chairman. You don't know much about the water canons,
21
    presumably, nor about gas or -
22
           W/O WESSELS:
                                 No, that's not my area of
23
    expertise, unfortunately.
24
           MR BIZOS SC:
                                I think I'll leave it
    there, Mr Chairman, thank you.
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MR MMUSI:

MR MMUSI:

MR MMUSI:

CHAIRPERSON:

CHAIRPERSON:

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Firing.

Yes.

tattooing, permit my ignorance, I don't know what is

tattooing. Now, were you involved - let me start there,

Okay.

The user of firearms?

Now, you also referred to

Page 2112 Page 2114 CHAIRPERSON: Thank you, Mr Bizos, Mr were you involved in the investigation in the activities of 1 Mmusi, are you standing - are you junior to Mr Mpofu? Have 2 the 16th at any stage after the incident? 2 3 W/O WESSELS: 3 you got any questions? Not at all, no. Now, you also explained 4 CROSS-EXAMINATION BY MR MMUSI: That is 4 MR MMUSI: 5 so, Mr Chairman, I've got a few questions. 5 tattooing, now if there was any evidence - I'm just talking CHAIRPERSON: 6 Alright, proceed. 6 if, there was any evidence of tattooing on the body of a 7 MR MMUSI: 7 Sir, you referred to residue person, would I be correct to assume that that would mean that would be left on a person when a gun is fired, do you 8 that the person would have been fired at, at a close range? 8 9 9 recall that? W/O WESSELS: That would be correct. 10 W/O WESSELS: 10 [14:34] MR MMUSI: Yes, I do. Now if you could explain tattooing in like simple language so that we understand 11 MR MMUSI: Now, does that apply to all 11 what would be the evidence of tattooing? 12 the firearms that were referred to in the document earlier? 12 13 W/O WESSELS: 13 W/O WESSELS: It applies to all of them, Tattooing, or the term 14 14 yes. tattooing, refers to small irregular shaped wounds around 15 MR MMUSI: the entrance wound on a body. These wounds are caused by Now, the residue, how do you partially burned and unburned powder particles that exit 16 obtain or get hold of the residue that is left on a person? 17 17 the barrel of the firearm. It does not always means that W/O WESSELS: The residue is collected by use of a residue or a PR collection kit. Unfortunately, 18 all of the powder charge, or the propellant charge in the 19 again, that falls under the scientific analysis unit, and 19 cartridge case is completely burned up during the firing 20 we have a basic knowledge of how it is collected, I do not 20 process. Some of it is also expelled from the barrel. 21 unfortunately know how it is analysed as it falls out of my 21 Some of them are partially burned, some are not completely 22 22 expertise, again. burned or have not started to burn at all. As you can 23 MR MMUSI: So you're able to obtain that 23 imagine, these particles are very light and as they come 24 residue within a period of how long? 24 into contact with the air they tend to have a billiard ball 25 W/O WESSELS: effect and scatter. That is why it can only be found at a As far as I have received Page 2113 Page 2115 instruction in this, it depends on a couple of factors. very close range shot. They produce small reddish brown 1 2 2 The residue is very fine. It is easily lost by wiping the wounds around the entrance hole in a dispersion patter. 3 hands against clothing, or by washing the hands. Even 3 MR MMUSI: Now I've had sight at exhibit 4 factors such as wind can determine how much can be found 4 II, your CV. Now in that exhibit II you say, "I have 5 and for how long it can be found. So it's normally received in-service training in the following aspects of forensic ballistic science." Now when you go to 2.1.12, necessary to, as quickly as possible, as far as my 6 6 7 7 you say, "Shot range determination," and then 2.1.13 you knowledge goes, to try and test for this. Is it possible to obtain 8 8 MR MMUSI: say, "Crime scene investigation and examination 9 9 techniques," and then 2.1.14, "Taking of photographs and residue on the following day? 10 W/O WESSELS: As far as my knowledge 10 documentation of the results during an investigation." Now goes, it would highly unlikely to find enough. 11 if I can just fast-forward, I just need to put this before 11 12 CHAIRPERSON: No, I'm not clear on the 12 I ask my question. At 2.5 you say, "Terminal forensic 13 question. Are you referring to residue on the hands of the 13 ballistics, the wounding effect that the bullet has on a person who fired, or residue on the body of the victim who 14 tissue (wound ballistics), the effect that the bullet has 14 15 was fired at? 15 on the target, the effect that the target has on the 16 MR MMUSI: I'm referring to residue that 16 bullet," and there you then proceed to say you visited the 17 you would find on the body of the person who was firing? 17 different places. Now what I want to probe with you is 18 CHAIRPERSON: Firing? 18 that if you look at the target that has been hit by a

19

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bullet, are you able to make a determination as to from

in two statements. It's difficult to determine from an

for this is because the skin is elastic and although the

bullet tears a certain hole through it, the skin stretches.

entrance hole itself, to determine a calibre. The reasons

Sir, yes, both yes and no.

which firearm the bullet would have been fired?

W/O WESSELS:

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Page 2118

Page 2116

- Also that we as humans are three-dimensional; we have
- curves and protrusions and angles which may affect even a 2
- 3 straight-on looking shot to have elongated area as it
- 4 passes through a roundness on the body. It would be
- 5 possible to say whether a high velocity bullet, such as a
- rifle bullet, caused a particular type of wound, versus 6
- 7 whether a handgun or a shotgun pellet or a handgun bullet
- caused a certain wound, but it would be very difficult to 8
- 9 determine a specific calibre from looking at a wound.

10 MR MMUSI: So you would be able to make a determination whether it would have been fired from a 11

12 shotgun or maybe assault rifle? Do I understand you to -

13 W/O WESSELS: It would be easy to, or

14 not, I wouldn't call it easy, but it would give a relative 15

accurate indication of whether it was a high velocity, like

a rifle bullet, or a lower velocity, like a shotgun pellet 16

17 or a handgun bullet.

18

MR MMUSI: Mr Chairman, I wish to refer

19 the witness to several photographs, three of them.

20 However, these photographs are not nice, so it's just a

21 wish that, a warning be given to. Yes, the interpreter

will interpret. At this stage we're going to refer to 22

- 23 several photographs and those photographs include those of
- 24 Mr Noki and two other bodies that I could not identify, but
- 25 those bodies that passed on, on the 16th. So the

Page 2117

- photographs are not nice, so the families of those that 1
- passed on, on the 16th, if they could, we would give them a 2
- 3 minute to leave the room.
- 4 CHAIRPERSON: If they wish, and of
- 5 course, can you identify them to this extent, can you say
- whether they were bodies found at scene 1 or scene 2? 6
- 7 Because -
- 8 MR MMUSI: It's bodies found on scene 1.
- 9 CHAIRPERSON: Anyone who thinks that he
- or she will be distressed by these pictures, will be given 10
- an opportunity to leave the auditorium. It will be for a 11
- 12 minute, starting now. - is up since the Interpreter
- 13 stopped interpreting. So I take it anyone who wanted to go
- has gone. So you may now proceed with your cross-14
- 15 examination.
- 16 MR MMUSI: I'm indebted to you, Mr
- 17 Chairman. Can you show the witness photo number 2735?
- These photos come from the SAPS hard drive, under folder 18
- 19 LCRC and then they're titled "Scene 2." Photo number 2735.
- 20 CHAIRPERSON: You said they were scene 1.
- 21 This sounds like it -
- No, that is how they are 22 MR MMUSI:
- described on the hard drive, but these are photos of scene 23
- 24 1.
- 25 CHAIRPERSON:

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I see.

MR MMUSI: When you look at that

particular photo, are you able to tell amongst the other

the velocity of the bullet or bullets that hit the body and

4 from which firearms they could have been fired from?

W/O WESSELS: If I may request, it's a

bit difficult to see from this angle. 6

MR MMUSI: Yes.

> W/O WESSELS: If we can maybe just,

9 because at this stage I'm having difficulty orientating the

10 wound on the body.

> MR MMUSI: Yes, if we can show the same

12 photo -

13 CHAIRPERSON: Warrant Officer, if you

14 want to get out of your chair for a moment and go and have a look at the screen and come back, or perhaps it might be

an idea, you're going to also save time if you're going to

17

show a number of photographs -18

MR MMUSI: That's what I'm doing -

19 CHAIRPERSON: Perhaps if you go and stand

20 near the screen, look at them and then when you've shown

the photographs, he can then return to the witness seat and

22 proceed to give his answers.

23 MR MMUSI: Yes. In fact, in order to

24 save time, we can show the witness photo number 2736.

Perhaps maybe before you respond, just for the benefit of

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- all of us, if you can be shown photo number 2739, so that
- you've got a broader perspective of these photos.
- 3 W/O WESSELS: Is that the same person?
- 4 MR MMUSI: No, that photo is not the same
- 5 person, Brigadier.
 - CHAIRPERSON: May I interrupt for a
- 7 moment? These photographs are not yet before us, are they?
- 8 They're just in the hard drive.
- 9 MS PILLAY: Ves
- CHAIRPERSON: 10 So would you please arrange
- between now and Monday to have copies made from the hard 11
- 12 drive of the photographs to which you are referring, and
- 13 then speak to Ms Pillay and she can arrange exhibit
- 14 numbers, so as part of the housekeeping exercise on Monday
- 15 they can be handed in as exhibits and duly lettered, so
- 16 that at a later stage when we revisit the evidence and read
- the transcript we'll know what exactly we're referring to. 17
- 18 MR MMUSI: I'll do so, Mr Chairman.
- 19 MR SEMENYA SC: Chair, I don't know
- whether we need to go this graphic because the post-mortem 21 reports do indicate whether these were high velocity wounds
- 22 or not. We have that evidence.
- 23 CHAIRPERSON: I'm inclined to agree with
- you, but the cross-examiner is entitled to ask questions if
 - he wants to. You know the point Mr Semenya makes, it's not

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- 1 disputed that the injuries to the people in the photographs
- 2 you are now showing were caused by high-velocity assault
- 3 rifles. That's not in issue in the case, as I understand
- 4 it, but if you have a reason other than just getting that
- 5 on record, showing these photographs to the witness and ask
- 6 him for his views, I can't stop you, but it may well be
- 7 that what you want to achieve is in fact common cause and
- 8 will be readily admitted by Mr Semenya.
- 9 MR MMUSI: Mr Chairman, I appreciate what
- 10 Mr Semenya is saying, but the witness that is before us is
- 11 an expert. So if there was anyone who could give us better
- 12 clarity, it's this witness.
- 13 CHAIRPERSON: That can't be a good point.
- 14 You can have a most difficult point which is the subject of
- 15 debate, only a highly qualified expert can give evidence on
- 16 that point, but if the other side get up and say, we admit
- that fact, then you don't need the highly qualified expert
- 18 to confirm that the admission made is correct. Now in this
- 19 case, though this is not a court case, the party concerned
- 20 on this part of the case is the Police Service. The Police
- 21 Service counsel said the facts you want to establish from
- 22 this witness by these photographs, we are prepared to
- 23 admit. That is I understand his case. So as I said to
- 24 you, if there's some reason other than simply establishing
- 25 that facts, and it's something that this witness can help
 - Page 2121
- 1 us on, I won't disallow the question, but if the only
- 2 purpose is to establish as a fact that which Mr Semenya is
- 3 prepared to admit, then I fear that the valuable time of
- 4 this Commission is being unnecessarily used up.
- 5 MR MMUSI: Yes, Mr Chairman, I'll move to
- 6 the next aspect.
- 7 CHAIRPERSON: exercising a wise
- 8 discretion.
- 9 MR MMUSI: Now if I can take you a step
- 10 back, earlier on you were asked how many shots could be
- 11 fired from the assault rifle in the space of eight seconds.
- 12 Now are you in a position to tell us in an estimated form
- 13 how many shots would be fired from the assault rifle in a
- 14 second if it is in fully automated mode?
- 15 W/O WESSELS: I would say in a second,
- 16 due to experiments that I have done myself, I have seen
- 17 that it's possible to fire about between four and seven
- 18 rounds per second.
- 19 MR MMUSI: Just one last aspect. I want
- 20 you to identify one rifle, or firearm which was not
- 21 identified. So I'd ask that you'd be shown a photo, which
- 22 appears to have been carried by the STF. If you can just
- 23 play the photos. If we can start with this one, are you
- 24 able to -
- 25 CHAIRPERSON:
- Can you identify the

- 1 picture for us, or will you be able to identify it for Ms
- 2 Pillay so that she can add it into the -
- 3 MR MMUSI: Yes, Mr Chairman, these photos
- 4 come out of a folder, they're on the SAPS hard drive. They
- 5 come out of a folder called "BBC South Africa,
- 6 Lonmin/Marikana clashes." So I would arrange, I have
- 7 already arranged them to be put on a separate folder."
- 8 W/O WESSELS: I'm sorry, Sir, are you
- 9 referring to the pistol screen fired, or the rifle?
- 10 MR MMUSI: No, this one. You'll be shown
- 11 two other photos.

12

15

18

- CHAIRPERSON: On the photographs there's
- 13 someone holding a pistol.
- 14 W/O WESSELS: Yes
 - [14:54] CHAIRPERSON: There's someone behind him
- 16 holding a rifle, the witness wants to know from you, are
- 17 you asking me about the pistol or the rifle?
 - MR MMUSI: I am asking about the pistol,
- 19 I am asking about the pistol.
- 20 W/O WESSELS: The image is slightly
- 21 small.
- MR MMUSI: Maybe just to save time I
- 23 would request that the witness be shown two other
- 24 photographs so that he is able to identify that and then we
 - can respond, because that's my final question. Can you
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- 1 play the next photo?
- 2 [VIDEO SHOWN]
- 3 And then the last photo?
- 4 [VIDEO SHOWN]
- 5 W/O WESSELS: The first firearm appears
- 6 to be a Beretta Px4 pistol.
- 7 MR MMUSI: I take it would be the one
- 8 that you indicated in your evidence in chief that, that is
- 9 one of the latest?

10

17

- W/O WESSELS: That is correct.
- 11 MR MMUSI: Does it appear in the document
- 12 that we referred to in B59 where we saw several firearms,
- 13 does it appear there?
- 14 W/O WESSELS: No, there is no photograph
- 15 of that particular firearm.
- 16 MR MMUSI: Thank you. Now the second
 - firearm on photo number 2 that you were shown, were you
- 18 able to identify which firearm is that?
- 19 W/O WESSELS: That appears to be an R5
- 20 rifle.
- 21 MR MMUSI: And then the firearm on photo
- 22 number 3?
- 23 W/O WESSELS: Sir, unfortunately that is
- 24 beyond my expertise, the Ballistic Section only works up to
- 25 a 12.7 millimetre. I unfortunately do not know a specific

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- name for it, it appears to be a full automatic canon of
- some sort. I also cannot really determine the calibre of 2
- 3 the rounds from this particular angle, unfortunately it
- 4 falls out of my scope of work again.
- 5 CHAIRPERSON: May I enquire whether it is
- suggested that that canon like firearm was used at Marikana 6
- 7 during the period covered by this inquiry, namely, the
- space of the inquiry, from the 9th to the 16th of August 8
- 9 this year?
- 10 MR MMUSI: No, that is not the evidence,
- Mr Chairman, and that concludes my cross-examination. 11
- 12 MR SEMENYA SC: Then, Chair, my objection
- 13 must be a very strong one, why are we being shown an item 14 of this type when it bears no relevance to the issues we're
- 15 dealing with?
- 16 MR MMUSI: Mr Chairman, the evidence was
- 17 shown for two reasons, that, - no, no, I am saying the
- 18 photographs were shown for two reasons. First, we earlier
- 19 on referred to B59 and took a considerable amount of time.
- 20 Now the first photograph which depicts the firearm Px4 does
- 21 not appear in B59. Now during the period of the 9th to the
- 22 16th the firearm or the machine, I don't know what it is,
- 23 which appears to have been carried by the members of the
- 24 FPF, is also not on B59. It is not for the purposes of
- 25
 - saying that it was used. Now that would tell you that B59

- during that particular period to say, in our possession
- these are the firearms that we possess. Now you would know
- that Px4 is not on -
- CHAIRPERSON: That canon like firearm,
- what, has it got anything to do with the inquiry on which
- 6 we are presently engaged with regard to the questions to 7 which we are asked to answer relating to what happened
- 8 between the 9th and the 16th at Marikana?
- 9 MR MMUSI: Mr Chairman, I would not take
- 10 it any further.

15

18

- CHAIRPERSON: 11 No, we haven't - can you
- 12 take it any distance at all? Is it proper to try to take
- it any distance at all if it creates a thoroughly
- 14 misleading impression?
 - MR MMUSI: Mr Chairman, I've been very
- clear to say that it is not our suggestion that the firearm
- 17 was used to kill the protestors. We are not saying that.
 - We are saving -
- 19 CHAIRPERSON: What are you saying then?
- 20 MR MMUSI: What we are saying is that
- during the, if I can put it in a proper context, during the 21
- 22 period of the 9th to the 16th, as it is Mr Semenya's case,
- 23 the police put certain preparations or they put certain
- 24 arrangement in place and one of those would have been that
 - weapon that is created by STF, it is not a photograph that
- Page 2125

is incomplete.

1

- 2 CHAIRPERSON: I think the objection of Mr
- 3 Semenya relates to the canon like firearm, and I understand
- 4 the point about the other firearms which were allegedly
- 5 used, admittedly used, I understand that and I don't think
- the objection relates to them, the objection relates to the 6
- 7 picture we're now seeing which has a caption, please open
- 8 fire to South African miners and there are people in, what
- 9 looks like kaki uniforms, camouflage uniforms standing on,
- 10 what I think is the back of a vehicle of some sort, with a
- 11 vehicle that looks like some kind of K canon. You are
- 12 asked, is it suggested that a weapon of that kind was used
- 13 or a canon of that kind was used at Marikana from the 9th to
- 14 the 16th of August and you say, no. So Mr Semenya says,
- 15 well, what's the point of that? It might create a
- 16 misleading impression in the media but it certainly doesn't
- 17 take the case any further as far as the inquiry in which
- we're engaged. He didn't quite say that but I think that 18
- 19 is what he was suggesting. Now do you wish to answer that
- 20 point?
- 21 MR MMUSI: Mr Chairman, I thought I
- understood the evidence of the witness to be about weapons 22
- that are being used by the South African Police Service, 23
- 24 because he is an expert. Now that would have in my view
- included that particular firearm, not that it was used

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- Page 2127 was taken elsewhere other than at the scenes of Marikana.
- Now I wouldn't understand -
- CHAIRPERSON: It has a caption that says,
- police open fire on South African miners, not that the
- police put a weapon in place or some kind of defensive
- 6 weapon, the suggestion is, police open fire on South
- 7 African miners, that's what it says and that creates an
- impression which I understand to be not an impression which
- you intend to create. You hasten to ensure us that that's
- 10 not so, so the question is, what's that doing before us?
- 11 MR MMUSI: Mr Chairman, I believe Mr
- 12 Semenya's case is going to be that we put certain, we made
- 13 certain arrangements, we called different units and one of
- 14 the units would be the STF and when they were called, that
- 15
- is what they came carrying and it does not take our case 16 anywhere, but it is a fact that during the said period,
- 17 when that photo was taken they were there. I mean I don't
- 18 understand Mr Semenya's objection really. That is all, Mr
- 19 Chairman.
- 20 CHAIRPERSON: Mr Semenya, what do you say
- 21 in response to what is now being put?
- 22 MR SEMENYA SC: Chair, in that event I
- 23 request a direction from the commission, that this
- 24 photograph must not be published in the media conveying the
 - connotation that it was used at all. It is inflammatory

Page 2128 and it is irrelevant to the proceedings. 1 2 CHAIRPERSON: I am not sure that I have 3 power to issue directions to the media as to how they are 4 to report, but what I can do is, I can say to them that we 5 expect them to maintain the high standards which we normally enjoy from the media, and that a picture of that 6 7 kind with that caption if published would create, without any further comment, would create a misleading impression 8 9 and I can say that if that were to be done, that would be improper journalism and would fall far short of the 10 standards which one has come to expect from the media in 11 12 matters of this kind. Does anyone want to add to that? 13 MR SEMENYA SC: Nothing beyond -14 CHAIRPERSON: Did I overstate the case? 15 It can still be MR SEMENYA SC: 16 overstated. 17 CHAIRPERSON: Sorry? 18 MR SEMENYA SC: It can still be 19 overstated. 20 CHAIRPERSON: No, no, overstated is like 21 I go too far, you mean I could have gone further, is that 22 what you say? Alright, the media representatives have 23 heard what I had to say. I trust you won't disappoint us. 24 Before we adjourn I just want to ask, is there anyone who 25 wants to cross-examine? You already had a chance. You Page 2129 didn't cross-examine but you were afforded the opportunity. 1 Anyway the reason I asked the question is if no one else 2 3 wants to cross-examine and there is no re-examination we can excuse the witness. If someone wants to cross-examine 4 5 it can stand over until Monday. 6 MR NTSFRF7A SC: Mr Chairman, I want to 7 cross-examine on behalf of the families, I was asked -8 CHAIRPERSON: Normally counsel who 9 appears for two parties, even temporarily, only has one bite of the cherry, but if you overlooked that I wouldn't 10 want the families to be prejudiced. We'll adjourn until 11 12 09:30, - no sorry, we'll adjourn until ten o'clock on 13 Monday and you can then cross-examine the witness, you'll 14 be back then, Warrant Officer? Thank you, the commission 15 adjourns. 16 [COMMISSION ADJOURNED] 17 18 19 20 21 22 23

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