

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 61 11 MARCH 2013 PAGES 6412 TO 6523

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 11 MARCH 2013]
 2 [10:06] CHAIRPERSON: The Commission resumes.
 3 You're still under oath to give evidence. Mr Ngalwana, I
 4 think you're still cross-examining?
 5 MR NGALWANA: Yes, thank you, Chair.
 6 CHAIRPERSON: Please, proceed.
 7 MR NGALWANA: Mr Magidiwana, you'll
 8 recall in your evidence in chief you testified a match in
 9 which Keizer Chiefs featured precipitated or recovered, do
 10 you remember that?
 11 MR MAGIDIWANA: Yes, I remember that.
 12 MR NGALWANA: Did you watch Saturday's
 13 match?
 14 MR MAGIDIWANA: Yes, I did watch it.
 15 MR NGALWANA: I take it that match must
 16 have helped you to recover somewhat from Friday's
 17 experience, not so?
 18 MR MAGIDIWANA: No, it is not like that.
 19 CHAIRPERSON: I'm not surprised, it was a
 20 very boring match, wasn't it? I do wish to have the
 21 questions directed to the terms of reference and not
 22 irrelevant.
 23 MR NGALWANA: Yes, thank you, Chair.
 24 You'll recall also in your, coming to more pertinent
 25 matters, in your evidence in chief you were asked at some

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1 stage whether you supported the actions of the RDO to which
 2 you responded, yes, you supported it because they work very
 3 hard and earn very little, do you remember that?
 4 MR MAGIDIWANA: Yes.
 5 MR NGALWANA: You were also asked what Mr
 6 Mathunjwa had said in his second address to which you
 7 responded that he asked you to go to your places of
 8 residence and that he was on his knees, you in fact
 9 repeated that in your statement at paragraph 10.
 10 MR HANABE: I could not hear the last
 11 part, Senior Counsel, that he said they should go to their
 12 places of?
 13 MR NGALWANA: Mr Mathunjwa told him he
 14 should leave the koppie and he went on his knees as he was
 15 pleading with you to leave the koppie.
 16 MR MAGIDIWANA: Yes.
 17 MR NGALWANA: Well, that's interesting
 18 and I want your comment on this because there is a witness
 19 of the police whom we term as X, who says precisely what
 20 you have said in at least those two respects. He says that
 21 the decision of demanding the salary increase was because
 22 we are working very hard and we earn a low salary.
 23 MR HANABE: This witness, Senior Counsel,
 24 I didn't hear, you said those words were uttered by this
 25 witness?

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1 MR NGALWANA: Yes, Mr X who is going to
 2 be called by the police to testify –
 3 MR HANABE: Yes?
 4 MR NGALWANA: He agrees with what Mr
 5 Magidiwana says in that the demand for a salary increase
 6 was because they are working hard and earn a low salary.
 7 He also agrees with your evidence that people were stopped
 8 from going to work as you had testified earlier that you
 9 heard some people told you, some workers told you that they
 10 were stopped from going to work. So in other words you
 11 agree with what Mr X says in those two respects. The third
 12 instance in which Mr X, in which you agree with Mr X is
 13 that Mr Mathunjwa went on his knees and asked you to leave
 14 the mountain and that you told him that you don't, you are
 15 going to remain there until your demands are met. Now
 16 these three, at least three points of agreement between
 17 yourself and Mr X are not simply a coincidence, are they?
 18 MR MAGIDIWANA: I don't know anything
 19 about the story of X, because what I said is he must give
 20 his version and I will also give my own version.
 21 MR NGALWANA: Well, I'm just giving you
 22 Mr X's versions, it is contained in his statement which has
 23 been submitted as an exhibit here. Do you agree with –
 24 CHAIRPERSON: Sorry, I don't think it is
 25 an exhibit, it was made available to the members of the

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1 Commission and the parties, but it is not yet an exhibit,
 2 so you have to alter that question.
 3 MR NGALWANA: Yes, thank you, Chair. So
 4 Mr X's evidence contained in his statement which has not
 5 yet been made an exhibit will be as I have just given to
 6 you, in those three respects you agree with him about Mr
 7 Mathunjwa, what he said and what he did on the 16th as he
 8 was addressing the crowd, that he went on his knees and
 9 that he told you to leave the koppie to avoid bloodshed.
 10 Secondly the reason for supporting the strike, he says
 11 because the RDOs were working very hard but earn very
 12 little and thirdly, that there were people who were stopped
 13 from going to work. What I am saying to you is, your
 14 evidence and Mr X's evidence in relation to those three
 15 aspects is the same or is similar. That is not a mere
 16 coincidence, is it?
 17 MR MAGIDIWANA: I don't know, Sir.
 18 MR NGALWANA: It is very simply put, you
 19 share the same view with Mr X in regards to those three
 20 issues.
 21 MR MAGIDIWANA: I can't be sure about
 22 that.
 23 MR NGALWANA: Mr Magidiwana,, I don't
 24 want to belabour the point because it is very clear, I
 25 don't want to repeat the same thing. It speaks for itself

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1 really, I'm just asking for your confirmation, you don't
2 deny everything just for the sake of denying it.

3 MR MAGIDIWANA: I heard you when you were
4 talking.

5 MR NGALWANA: I'm just looking for your
6 confirmation that what you said and what Mr X says is the
7 similar, so I can move on to the next point.

8 MR MAGIDIWANA: Regarding X's version I
9 won't answer you, say something that pertains to me and
10 then I will answer you.

11 MR NGALWANA: So you are refusing to
12 confirm that what you said in relation to Mr Mathunjwa, the
13 reason for supporting the strike and the stopping of
14 workers who are going to work, you are refusing to confirm
15 that what you said in those three respects is similar to
16 what Mr X says?

17 MR MAGIDIWANA: What I am saying to you
18 is that you must refer to the things that I said that I
19 know in fact I said. Please just put aside this issue of
20 X, but if you say to me what I said, then I will answer to
21 that.

22 MR NGALWANA: Okay, I will argue in the
23 end that you're unnecessarily evasive in confirming
24 something that really speaks for itself.

25 MR MAGIDIWANA: But also what I am saying

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1 makes sense, then tell me what will Mr X then, what will he
2 have to say when he comes here?

3 MR NGALWANA: Okay, I'll move on. Mr
4 Magidiwana, I don't want to unnecessarily stress you, but
5 this is something that we have to do and if it is not
6 necessary I'm not going to play the clip again. You will
7 recall on Friday when we adjourned we played you a clip,
8 you-you three.

9 CHAIRPERSON: You were here on Friday but
10 we adjourned on Wednesday, but if something happened on
11 Friday that we don't know about you better tell us.

12 MR NGALWANA: Yes, it was on Wednesday, I
13 think. Thank you, Chair. On Wednesday we played a clip, I
14 think it was termed, you-you free, which was a Reuter's
15 clip in which I asked you to confirm what you could see on
16 the clip.

17 MR MAGIDIWANA: Sir, I saw that thing so
18 clear.

19 MR NGALWANA: Alright, with your
20 untrammelled vision and unclouded memory can I ask you
21 without playing the tape to confirm that what you saw were
22 your group of which Mr Noki was part and that leading group
23 was charging towards the police, in other words rushing
24 towards the police and the police, that's the first thing.
25 The second thing, the police –

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1 CHAIRPERSON: You know double questions
2 normally lead, Counsel, it is difficult to the witnesses as
3 well, I suggest you put your question in separate parts
4 making it easier for the witness, otherwise you're asking a
5 whole lot of things and he says, yes, and then is he saying
6 yes to everything, is he saying yes to something, so what
7 is he saying yes to. So put it section by section, it
8 takes longer in some ways but it actually, you probably
9 save time in the process.

10 MR NGALWANA: Yes, thank you, Chair, I
11 shall do that. Do you recall seeing in the clip, you-you
12 free, the policemen shooting while retreating from an
13 advancing crowd? Sorry, that may be a double question, let
14 me just, did you see the police shooting while retreating?

15 MR MAGIDIWANA: Sir, that video, even if
16 I had not seen it, but I know exactly what happened on that
17 day, I still have that picture in me, because I was there.
18 So I know very well what happened on that day.

19 MR NGALWANA: Well, I understand that
20 because you were there.

21 CHAIRPERSON: To use the word retreat is
22 also a bit unfortunate. A person can walk backwards for
23 tactical reasons, not by way of retreat, so that implies
24 something that the witness won't necessarily agree with.
25 So I understand the question you would ask him, do you see

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1 policemen going backwards, that's the first question.
2 Then, did you see them shooting, the second question and so
3 on, but this bungling up of a number concepts into one
4 question isn't helpful in the final results, it just causes
5 further confusion and difficulty. So try to do it in a
6 structured separated way and you may get better results
7 anyway.

8 MR NGALWANA: Thank you, Chair. Mr
9 Magidiwana, I understand you will remember this as you say
10 vividly you were there, I wasn't. Please answer the
11 question as it is specifically put and this is how I phrase
12 the question, listen to the question carefully. You saw
13 the policemen go backwards, did you not?

14 MR MAGIDIWANA: I saw they were moving
15 backwards.

16 MR NGALWANA: Alright, you saw the
17 policeman who is going backwards, firing.

18 MR MAGIDIWANA: I see that he is going
19 back.

20 MR NGALWANA: Yes, you saw a group of
21 people rushing towards –

22 MR MAGIDIWANA: No, Sir, then I will not
23 allow you, when he moved - the people collapsed.

24 MR NGALWANA: Well, then you leave me
25 with no choice but –

<p style="text-align: right;">Page 6420</p> <p>1 CHAIRPERSON: No, no, Mr Ngalwana, if you 2 want to show a clip, I think one should think about it very 3 carefully because it is obvious, that is the moment when 4 his life took a dramatic turn for the worst and for the 5 rest of his life he will be suffering with the consequences 6 of that and I can imagine that watching the clip every time 7 causes enormous emotional turmoil to him, unless it is 8 absolutely necessary which at the moment I don't think it 9 is, I don't propose to let you put him through that torment 10 a further time. 11 [10:26] But I'm not saying - I'm not making a ruling on 12 that at this stage but I'm indicating a prima facie view 13 for you to deal with it if you want to but I don't know if 14 you have to do it. To make the points you want to make I 15 think you could ask it in a number of sequential questions, 16 each one dealing with a separate topic and I would think 17 that you could probably achieve what you want to achieve. 18 But you saw his reaction on Wednesday, you saw how 19 devastated he was to see what was in one sense the major 20 catastrophe in his life to be re-enacted before his eyes. 21 If you and I had gone through that we wouldn't like it 22 either. 23 MR NGALWANA: The difficulty, 24 Chairperson, before I pose a question is that the dispute 25 is about what all of us saw on the clip.</p>	<p style="text-align: right;">Page 6422</p> <p>1 Magidiwana but the evidence of Mr - 2 CHAIRPERSON: Normally I don't allow him 3 to ask questions but I'm curious to know what your answer 4 is to that question. 5 MR NGALWANA: I'm not going to answer 6 that question, Chair. 7 CHAIRPERSON: Oh alright so we've got 8 refusals to answer questions on both sides of the floor. 9 MR NGALWANA: I'm not being under oath to 10 testify, my answer to that question would be totally 11 meaningless. 12 CHAIRPERSON: I know that. Can I ask you 13 a few questions while we're on this topic? I take it you 14 agree that your group moved forward quickly, that's correct 15 isn't it? 16 MR MAGIDIWANA: The people who were with 17 me, as we were running - as they were busy running and 18 there was that confusion and we were running from those two 19 who were shooting and as we were running and then we were 20 emerging on the side of kraal, all of a sudden there were 21 then these others shooting. 22 MR MPOFU: Sorry, Sir, there is an 23 important part that was not interpreted. [African 24 language]. 25 MR HABANE: Oh, he says that there was</p>
<p style="text-align: right;">Page 6421</p> <p>1 CHAIRPERSON: We can see it on the video 2 as well, we can also interpret it. He's obviously taken a 3 position, it may well be a position to some extent dictated 4 by his own recollections of what happened but he's taking 5 the position which may or may not be correct but I don't 6 know that it helps to sort of show the clip over and over 7 again and try to force him to admit to seeing something 8 which he just doesn't see. But what might be helpful, he 9 said I don't even have to see the clip, I've got a clear 10 recollection of what happened. Maybe it's an idea to get 11 that from him first and then use that as a basis for 12 further questioning without exposing him to the emotional 13 torment that would inevitably follow from seeing this 14 cataclysmic event in his life being repeated honestly. 15 MR NGALWANA: Mr Magidiwana, I put it to 16 you that that clip shows clearly to an unbiased eye is your 17 group advancing on the police. The police shooting while 18 going backwards and a line of cars being behind the police. 19 I take it you don't want to comment. 20 MR MAGIDIWANA: I do want to answer. Do 21 you mean that, Sir, as they were, those two police officers 22 shooting near the Nyalas? If those people wanted to attack 23 the police could they not have attacked those two police 24 officers who had blocked the road or the way? 25 MR NGALWANA: Move then right along Mr</p>	<p style="text-align: right;">Page 6423</p> <p>1 these other people that we could not see. 2 MR MAGIDIWANA: At that time we had not 3 even reached the road and it is at the time when I fell 4 that my hands were then on the road. That's how I fell, my 5 hands themselves were on the road. 6 CHAIRPERSON: So we've agreed then that 7 your group was running forward. Your evidence is you were 8 running towards Nkaneng. 9 MR MAGIDIWANA: Yes. 10 CHAIRPERSON: In front of you were some 11 police. 12 MR MAGIDIWANA: Those police officials 13 that I saw - I saw were the ones who had closed that gap so 14 that we could not go to Nkaneng. 15 CHAIRPERSON: Yes they were blocking your 16 way to Nkaneng in other words as you saw it. 17 MR MAGIDIWANA: Yes I saw that. Yes I 18 saw those two but when I changed and looked at the other 19 direction then these other police officials who were many, 20 they shot and there were many of them. 21 CHAIRPERSON: Yes, yes. Now the next 22 question I'm going to ask you is did you see either on the 23 day, the 16th August or on Wednesday when you saw the clip 24 that the two policemen we saw on the clip at one point who 25 were firing were actually moving backwards as they fired?</p>

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1 Did you see that either on the 16th August or on Wednesday
2 when you saw the clip?

3 MR MAGIDIWANA: I saw them. Yes, I saw
4 them as they were shooting whilst moving backwards at the
5 same time but I think the reason why they do that was
6 because the teargas that they had fired they never wanted
7 them to affect them as much as it did with us, as they
8 fired that teargas to us.

9 CHAIRPERSON: You say that you don't
10 think they were retreating, you think they were just moving
11 backwards to escape the consequences of the teargas is that
12 -

13 MR MAGIDIWANA: It is like that, Sir.

14 CHAIRPERSON: I think we - we're starting
15 to get to - the points here we were proposing to cover have
16 been covered, of course not in the way you intended to
17 cover them but nevertheless we now have his evidence on
18 those points. Perhaps you'd like to proceed.

19 MR NGALWANA: Thank you, Chair.

20 MR MPOFU: Chairperson I just want to
21 clear up something while it's still fresh in our minds.
22 Between the Chairperson's questions and Mr Ngalwana's
23 questions I think we're talking about two different sets of
24 policemen. The Chairperson is talking about, as I
25 understand it, the two who were shooting from the side and

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1 Commission, the lot of us to believe that the police were
2 going backwards in order to avoid being affected by teargas
3 because the police have masks which they can use to avoid
4 being affected by teargas.

5 MR MAGIDIWANA: The reason why I am
6 talking like that - Sir, what I am saying to you is that if
7 indeed we had intended to attack the police officers we
8 would have attacked that other two that I saw and then why
9 would we leave those police officers and attack those
10 others who were on the other side of the road?

11 MR NGALWANA: I'm not talking about the
12 two policemen, I'm talking about the line of police you
13 were facing, your group was charging towards. You are not
14 expecting this Commission to believe that those policemen
15 who were firing while going backwards were going backwards
16 in order to avoid being affected by teargas. And the
17 reason I say this to you is police have masks that they can
18 use to avoid being affected by teargas, they wouldn't move
19 backwards in order to avoid being affected by teargas.

20 MR MAGIDIWANA: Sir, I will repeat it
21 again to you, say it again. If we wanted to attack we
22 would have attacked those ones that were on the side. In
23 fact when we ran away we were running from them because in
24 fact they were the ones, the first ones to shoot.

25 MR NGALWANA: In fact the reason the

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1 Mr Ngalwana, he can correct me if I'm wrong, was talking
2 about the ones on the main line -

3 CHAIRPERSON: The witness was certainly
4 talking about both groups of policemen, the ones on the
5 main line as you put it and the two.

6 MR MPOFU: And then the two, they were
7 certainly not retreating on the video.

8 CHAIRPERSON: The witness was, but let's
9 leave Mr Ngalwana now to carry on with his own cross-
10 examination. I hope I've clarified -

11 MR NGALWANA: Yes.

12 CHAIRPERSON: - some of the issues that
13 were not quite clear when he was asking the questions
14 earlier.

15 MR MPOFU: Thank you, Chair.

16 MR NGALWANA: Mr Magidiwana, you're not
17 suggesting that the police towards whose direction the
18 group, your group was advancing were going backwards in
19 order to avoid being affected by teargas are you?

20 CHAIRPERSON: He is suggesting, that's
21 what he said in clear terms.

22 MR NGALWANA: You don't expect the
23 Commission to believe that do you?

24 MR MAGIDIWANA: Please repeat, Sir.

25 MR NGALWANA: Are you expecting this

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1 policemen you saw on the video going backwards while firing
2 was to save themselves from being attacked by you as your
3 group was advancing towards them. That is the reason.

4 MR MAGIDIWANA: Were they saving
5 themselves or were they just brutally attacking?

6 MR NGALWANA: I've put the police version
7 to you, I'm not going to answer your questions. Okay
8 moving right along -

9 MR MAGIDIWANA: Were they or were they
10 just murdering -

11 CHAIRPERSON: No, I don't think it's
12 appropriate for you to ask these questions. Your counsel
13 will argue the points that you wish to make at the end of
14 the matter but I've given you license to ask questions when
15 particularly speaking I shouldn't have allowed you to ask
16 any questions at all. So don't abuse that, go on asking
17 questions because you're not helping. Just answer the
18 questions counsel asks you. If the questions are unfair I
19 will try and stop him, if the questions are unclear I will
20 try to get clarity but let's carry on in that fashion and
21 we'll spend the time in a fruitful way.

22 MR MAGIDIWANA: It's fine, Sir.

23 MR NGALWANA: When you saw the two
24 policemen to whom you refer, we're now not talking about
25 the line of policemen facing you, we're talking about the

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1 two you say were on the side blocking your way to Nkaneng,
2 when you saw them pointing rifles at you, I think they were
3 using rubber, you could of course have dropped your weapons
4 or raised your arms and surrender could you not?

5 MR MAGIDIWANA: It is not like that, Sir.

6 MR NGALWANA: Why not?

7 MR MAGIDIWANA: If it was like that the
8 police officers then would have said they are going to
9 shoot us if we don't want to put down the weapons and they
10 could have said put down your weapons.

11 MR NGALWANA: But the police had been
12 involved for days and negotiating, trying to get you to put
13 your arms down, got Mr Mathunjwa to go and address you
14 about leaving the koppie and putting your arms down. You
15 had sufficient time to do that. You knew what the police
16 wanted of you as a group which was armed.

17 MR MAGIDIWANA: Now talking about this
18 issue of Mathunjwa that you have just mentioned, Mr
19 Mathunjwa never said he was asked but he expressed his view
20 saying that there would be bloodshed and that a decision
21 had been made about us.

22 MR NGALWANA: You had every incentive to
23 drop your weapons because your union leader said you must
24 drop your weapons otherwise there'll be bloodshed, didn't
25 you?

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1 MR MAGIDIWANA: I said Mr Mathunjwa was
2 one of the union leaders that I did not trust because he
3 also belonged to one of the unions.

4 MR NGALWANA: We've covered this ground.
5 I'm not going to go back there.

6 MR MAGIDIWANA: It was like that then.

7 MR NGALWANA: Let me tell you what your
8 group was intent on achieving. I'm going to take you
9 through a series of propositions and ask for your comment.

10 MR MAGIDIWANA: Go on, Sir.

11 [10:46] MR NGALWANA: Mr X will testify that on
12 the Saturday the 11th August a committee of 15 was
13 appointed to represent the RDOs or the striking group.
14 There is also a group whom he says comprised about 500
15 people who were appointed and called the "Makarapa" and the
16 distinguishing features of these people were people who
17 were strong, people who were not afraid of being shot at
18 and people who are brave and people who would not run away
19 when attacked by the security or police. You were one of
20 the Makarapa Mr X will testify. Would you care to comment?

21 MR MAGIDIWANA: I said to you that this X
22 of yours is the one who must come and answer to his
23 versions and what I'm going to answer to here is my story
24 then I'm not going to comment or answer on something that I
25 do not know. Yes.

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1 MR NGALWANA: Very well.

2 CHAIRPERSON: Look what happens normally
3 in a court case or an inquiry like this is if one party is
4 going to lead evidence which contradicts the evidence of
5 another party they put it to the witness, they put it to
6 the witness what their witness will say and ask for
7 comment. Now, give the witness concerned an opportunity to
8 deal with the evidence that's going to be given later about
9 him but what is happening now is that counsel for the
10 police is saying to you, the police are going to call a
11 witness who's going to say certain things about you and
12 he's giving you an opportunity either to admit if they're
13 true or to deny them if they're untrue or possibly to
14 explain them if they require explanation so they can be
15 properly understood. Now the first proposition of this
16 kind that he's putting to you is that you were one of the
17 person who was a Makarapa and the suggestion is that that
18 the Makarapas were identified on the Saturday, that's the
19 Saturday, correct, Saturday the 11th August. Now he's
20 giving you an opportunity to deal with that. If you don't
21 want to deal with it you don't have to but inferences can
22 be drawn against you for failing to deal with it. If it's
23 untrue you haven't got a problem in saying that it's
24 untrue. It it's true again there's no reason why you
25 shouldn't admit that it's true. If it's true but it's

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1 liable to be misunderstood then you have an opportunity to
2 explain. So I think you might consider it sensible to
3 answer the questions that are put.

4 MR MAGIDIWANA: That person is lying.

5 MR NGALWANA: Very well. Mr X will also
6 testify that on the evening of the Saturday the 11th August
7 2012 rituals were performed on the committee members and
8 the Makarapa of whom you were part.

9 MR MAGIDIWANA: Sir, if something is not
10 true it is not true. I only know of one Makarapa. It is
11 the one that I put on the head when I go to the shafts.
12 This one of yours will really confuse me then or the one of
13 his. Then this Makarapa X will then confuse me.

14 MR NGALWANA: That's a curious
15 explanation because Mr Phasha gave the exact same response
16 when confronted with the term "Makarapa." Did you discuss
17 this evidence with Mr Phasha before you came to testify?

18 MR MAGIDIWANA: No, Sir, because Phasha
19 answered the questions to things that were asked directly
20 from him and I'm doing the same thing as well but I also
21 believe that, Sir, as you are there you also know that
22 there is only one Makarapa yes.

23 MR NGALWANA: When you were preparing for
24 your evidence was Mr Phasha at any stage in the same room
25 as you were?

<p style="text-align: right;">Page 6432</p> <p>1 MR MAGIDIWANA: I just met Phasha now. I 2 didn't even know Phasha. 3 MR NGALWANA: Mr X will also testify that 4 the sons of the Sangoma asked everyone to perform rituals 5 or who had performed rituals to go to a nearby river at 6 Wonderkop Skoonplaas or married quarters so they could wash 7 themselves. He will say that the sons of the Sangoma went 8 with the Makarapa and committee members to the river and 9 poured some muti in the water. Do you care to comment? 10 MR MAGIDIWANA: I said I know nothing 11 about that. 12 MR NGALWANA: He will also testify that 13 after you and your group of Makarapas had washed yourselves 14 in the river with muti you then repaired or went back to 15 the mountain and while there the cuttings or scarifications 16 or incisions on your bodies were made and muti was put on 17 those incisions. That you were part of the group that did 18 this. Would you care to comment? 19 MR MAGIDIWANA: There is no such. 20 MR NGALWANA: He will also testify that 21 before the rituals were done or performed the two sons of 22 the Sangoma said they needed two sheep, one white and 23 another black. He will testify that these two sheep were 24 organised during the night of Saturday the 11th August 2012 25 from a nearby squatter camp.</p>	<p style="text-align: right;">Page 6434</p> <p>1 the evidence has changed. 2 CHAIRPERSON: - but it's a form of co- 3 collegial assistance which is to be encouraged let's how Mr 4 Ngalwana responds to it. 5 MR NGALWANA: Thank you Chair he's right, 6 it's ear cuttings. Would you care to comment? 7 MR MAGIDIWANA: I know nothing about 8 that. 9 CHAIRPERSON: Your left ear, I can't see 10 any cuttings on your left ear have you got any cuttings on 11 either your left ear or your right ear? 12 MR MAGIDIWANA: No. 13 MR NGALWANA: Mr X will also testify that 14 the sons of the Sangoma told you, the group of Makarapa and 15 the committee who were performing this ritual that the muti 16 will prevent the bullet from penetrating your bodies and 17 that they will demonstrate it at a test on a box which they 18 did a ritual on. Let me rephrase that, use my own words. 19 The sons of the Sangoma - Mr X will testify that the sons 20 of the Sangoma told you, the Makarapa and the committee 21 members that the muti will prevent bullets from penetrating 22 your bodies. That's what Mr X will say, the sons of the 23 Sangoma told you - he will testify that this was in fact 24 demonstrated by shots being fired at a box and the bullets 25 could not penetrate the box. And that as a result of that</p>
<p style="text-align: right;">Page 6433</p> <p>1 MR HANABE: You said they were bought or 2 I didn't hear? 3 MR NGALWANA: He said they were 4 organised. 5 MR HANABE: From the nearby squatter 6 camp. 7 MR NGALWANA: Yes. They were procured I 8 would imagine would be the word. They were obtained from 9 the nearby squatter camp. 10 MR HANABE: Okay. 11 MR NGALWANA: I'm reminded that I should 12 use the term "informal settlement." He will also testify 13 that the two sheep were burnt alive and that the ashes from 14 those two sheep were mixed with muti and put on the 15 cuttings on your bodies. Would you care to comment on that 16 version of Mr X? 17 MR MAGIDIWANA: No Sir, it would be 18 irrelevant as in I know nothing about that. 19 MR NGALWANA: He will say the reason - 20 MR MPOFU: Sorry not that I want to 21 assist my learned colleague but unless X's version has 22 changed the last proposition has something to do with 23 cuttings on the ears and he has put it as bodies so I don't 24 want to take advantage of Mr X and that contradiction. 25 Maybe I should kindly assist my learned colleague, unless</p>	<p style="text-align: right;">Page 6435</p> <p>1 demonstration your group believed that the muti works. In 2 other words it would prevent the bullets from penetrating 3 the body. Comment? 4 MR MAGIDIWANA: Is that not a tale that 5 you are telling me? 6 MR NGALWANA: Do you agree with this 7 version or do you dispute it or do you want to explain the 8 version? 9 MR MAGIDIWANA: I'm hearing for the first 10 time about what you are saying. I never heard about it 11 since I was born. I think I became a human being. 12 MR NGALWANA: Mr X will say not only did 13 you believe that the muti will be so effective so as to 14 prevent the penetration of bullets into your body but that 15 you also felt very strong and aggressive as a result of 16 using the muti. Comment? 17 [11:06] MR MAGIDIWANA: I know nothing about all 18 these things that he's saying and that I know the person as 19 regarding those things that are being saying is him. 20 MR NGALWANA: Mr X will say that it was 21 agreed that you will carry your weapons at all times. 22 Comment? 23 MR MAGIDIWANA: Even that very thing is 24 not true. 25 MR NGALWANA: Mr X will testify that that</p>

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1 feeling of strength and aggression and invincibility, in
 2 other words that bullets won't penetrate you, you then
 3 decided as a group of the Makarapa and the committee on the
 4 Sunday the 12th August 2012 to go to NUM offices and you
 5 decided you were going to fight anyone who block your way
 6 there. Comment?
 7 MR MAGIDIWANA: No Sir, I know nothing
 8 about that.
 9 MR NGALWANA: He will testify that when
 10 you arrived at the first gate at Wonderkop hostel the mine
 11 security officials stopped you or blocked the road. There
 12 was an exchange of fire between the security guards and
 13 your group. You then, your group overwhelmed the security
 14 guards who ran away and you then assaulted them with your
 15 weapons. The chin and the tongue of a security guard was
 16 cut out by your group. Would you care to comment?
 17 MR MAGIDIWANA: I'm hearing for the first
 18 time about the things that you are saying.
 19 MR NGALWANA: You then went back to the
 20 koppie and the human tissues or parts that were taken from
 21 the security guard were handed to the Sangoma by one of the
 22 group. That the Sangoma told the group that the human
 23 tissue and the blood from the security guard would be mixed
 24 together with the muti so that it can make a much stronger
 25 muti so that the effect would be that even the bullets - it

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1 would be impossible for the bullets to penetrate the body.
 2 He will say that the muti was revived by the sprinkling of
 3 water on your group or the group on whom the rituals were
 4 performed. Would you care to comment?
 5 MR MAGIDIWANA: No, Sir. I'm stopping
 6 you. This what you are saying is not true. I never heard
 7 about it.
 8 MR NGALWANA: What I'm putting to you is
 9 the version to which Mr X will testify.
 10 MR MAGIDIWANA: I'll also be interested
 11 to see this Mr X.
 12 MR NGALWANA: He will testify that you
 13 then went to the K4 shaft to check who, which people were
 14 reporting for work so that you could stop them from going
 15 to work. Comment?
 16 MR MAGIDIWANA: Sir, I know nothing about
 17 that.
 18 MR NGALWANA: He will testify that the
 19 group gained access into the parking area and could see
 20 people who were going to work and that those people were
 21 chased down and assaulted by your group. And assaulted.
 22 Would you care to comment?
 23 MR MAGIDIWANA: No Sir, I know nothing
 24 about that.
 25 MR NGALWANA: Mr X will testify that on

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1 Monday the 13th August 2012 -
 2 MR MPOFU: Chairperson, I wish to object
 3 to this, those last two questions very strongly on two
 4 grounds. One is that the statement of Mr X on this
 5 particular aspect that we have received from the police
 6 still have total blanks as to who is - and I was listening
 7 carefully that it was being suggested that the witness was
 8 part of this group, in two questions it was specifically
 9 suggested. The words you and your group were used. That's
 10 number one. Secondly, Chairperson, if indeed this opens
 11 the way for Mr X to tailor his evidence according to this
 12 particularly in the light of the fact that we were given
 13 specific assurance that Mr X does not mention this witness
 14 in his statement. It was on that basis that we called this
 15 witness and the previous one. So if Mr X is going to
 16 tailor his evidence as we go along and include people for
 17 convenience then I need that to be placed on the record and
 18 therefore these questions should not even be put to this
 19 witness unless that is -
 20 CHAIRPERSON: I see it's just after
 21 quarter past 11 so perhaps it's appropriate for us to take
 22 the adjournment at this stage and you and Mr Ngalwana can
 23 discuss it over the tea adjournment and then report back to
 24 us when we resume. The Commission will now adjourn.
 25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [11:48] CHAIRPERSON: The Commission resumes. Mr
 2 Ngalwana, what do you say in response to the point that Mr
 3 Mpofo raised?
 4 MR NGALWANA: Yes, we've had a chat
 5 during the tea break. I've explained that whenever I refer
 6 to your Group, I refer to the Makaraba Group and he seems
 7 to accept it. My learned friend can confirm whether or not
 8 he does.
 9 MR MPOFU: It's not what it seems. What
 10 I accept is Mr Ngalwana's assurance that he was referring
 11 to the Makaraba Group, but what I did say to him is that he
 12 should then make the questions clear that - avoid using
 13 'you' or 'your Group' in the sense that seems to suggest
 14 that the witness -
 15 CHAIRPERSON: The question could always
 16 be along the lines of the Makaraba Group did this -
 17 MR MPOFU: Or whatever.
 18 CHAIRPERSON: Members of Makaraba Group
 19 did that. Then the problem would fall away.
 20 MR MPOFU: Thank you, Chair.
 21 CHAIRPERSON: You're happy with that, Mr
 22 Ngalwana?
 23 MR NGALWANA: Well, but it mustn't be
 24 lost, Chair, that Mr X says, the witness was part of the
 25 Makaraba Group.

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1 CHAIRPERSON: No, now you've said that,
 2 but the questions that I think – look, technically the
 3 questions you asked are in order, but if you have an
 4 agreement between counsel, I expect counsel to adhere to
 5 the agreements they've made. So I'm sure a way can be
 6 found. You put on record the point that you make. We
 7 don't have to go there again. As long as you ask the
 8 questions the way I suggested which Mr Mpofu is happy with,
 9 then we shouldn't waste any further time.

10 MR NGALWANA: So I'll refer to them as
 11 the Makaraba –

12 CHAIRPERSON: My colleague on the right
 13 wishes to say something.

14 COMMISSIONER HEMRAJ: Mr Ngalwana, I'm
 15 not sure whether the police case is that this witness was
 16 there as a part of that Group that went to the NUM offices
 17 and the K4-shaft. I don't understand that?

18 MR NGALWANA: No, the suggestion is, is
 19 that the Makaraba Group went to the NUM offices.

20 COMMISSIONER HEMRAJ: Yes, I understand
 21 that.

22 MR NGALWANA: Yes.

23 COMMISSIONER HEMRAJ: But is the
 24 suggestion that this witness was part of that Group that
 25 went to the NUM offices and the K4-shaft?

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1 MR NGALWANA: No, that's not my
 2 understanding.

3 COMMISSIONER HEMRAJ: I see. Thank you.

4 CHAIRPERSON: That seems to deal with the
 5 point. Please proceed, Mr Ngalwana. I must remind you,
 6 you're still under oath to tell the truth. You may proceed
 7 with your cross-examination.

8 MR NGALWANA: Thank you, Chair. Of
 9 course when Mr X testifies, he can add the names that he
 10 saw there. So but I'm not –

11 CHAIRPERSON: Yes, he can and he may well
 12 be subjected to cross-examination on certain points as
 13 well.

14 MR NGALWANA: Absolutely.

15 CHAIRPERSON: If not everything. So any
 16 way, that bridge we'll cross when we get there.

17 MR NGALWANA: Thank you, Chair and
 18 Commissioners. Mr Magidiwana, it is going to be the
 19 evidence of Mr X that on Monday, the 13th of August 2012, in
 20 the early hours of the morning, that Committee of 15
 21 decided that members of the Committee and the Makaraba and
 22 other striking miners would go to the Eastern Platinum
 23 shaft, so as to stop people who are reporting for work.
 24 Would you care to comment on that?

25 MR MAGIDIWANA: I – no, I don't know

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1 about that.

2 MR NGALWANA: Mr X will also testify that
 3 on its way there, the Makaraba Group and the members of the
 4 Committee and other striking miners, on their way to the
 5 Eastern Platinum shaft they came across a male, an African
 6 male, who was going in the mine, in the direction of the
 7 mine, in other words going to work and that he was
 8 assaulted and killed by the Makaraba Group and the
 9 Committee and the striking miners. Would you care to
 10 comment?

11 MR MAGIDIWANA: I know nothing about
 12 that.

13 MR NGALWANA: Then on its way to the K3-
 14 shaft, on that same day, that Group of the Makaraba, the
 15 Committee and a few striking miners were stopped by the
 16 police next to the railway line where they were addressed
 17 by General Mpembe, who implored them to part with their
 18 weapons.

19 MR MAGIDIWANA: I saw that on the video
 20 clip, but I know nothing about it.

21 MR NGALWANA: Of course we have shown you
 22 a still photograph that the police alleges is you, in other
 23 words that you were part of that Group on the 13th of
 24 August. You've denied that. I don't want us to traverse
 25 that ground again, unless you want to make a further

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1 comment?

2 MR MAGIDIWANA: I saw Karee for the first
 3 time, in fact when I went to see that place in fact I don't
 4 even know the other shafts.

5 MR NGALWANA: Mr X is not talking about
 6 you being at Karee Mine, K3 in other words. He is saying
 7 the Makaraba were on their way to K3 and were stopped by
 8 the police led by General Mpembe who implored that Group,
 9 of which you were part, according to the police, to drop
 10 your weapons there. Now would you wish to comment? I'm
 11 not talking about you knowing where Karee is and you having
 12 seen it or not.

13 MR MAGIDIWANA: No, Sir, I don't know
 14 that.

15 MR NGALWANA: Mr X will further testify
 16 that when General Mpembe and the police started counting or
 17 when General Mpembe started counting, giving you an
 18 ultimatum to put down your weapons, you nonetheless started
 19 walking through the police line, passed them, ignoring the
 20 warning to put your weapons down. What happened next is
 21 the Makaraba Group then assaulted the police, killing two
 22 of them with the weapons that General Mpembe had implored
 23 them to put down near that railway line. Would you care to
 24 comment?

25 MR MAGIDIWANA: No, I don't know that.

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1 MR NGALWANA: Mr X will also testify that
 2 on that same day, Monday, the 13th, a decision was taken at
 3 a meeting, which comprise a majority of AMCU members that
 4 people who are wearing red T-shirts of NUM were not welcome
 5 on the Koppie. The decision was that the red T-shirts must
 6 be burnt and that people must join AMCU, because AMCU is
 7 the one who wants salary increases, while NUM was taking
 8 the side of the employer.
 9 MR MAGIDIWANA: No, I don't know that,
 10 Sir.
 11 MR NGALWANA: Are you disputing it or are
 12 you saying you have no knowledge of it?
 13 MR MAGIDIWANA: I have no knowledge of
 14 it.
 15 MR NGALWANA: Mr X will also testify that
 16 on Tuesday, the 14th of August, a man was killed at the back
 17 of the Koppie and that a – well, he was accused by the
 18 Makaraba Group and the Committee members of stealing
 19 information from the striking workers on the Koppie and
 20 sharing it with NUM.
 21 MR MAGIDIWANA: I have no knowledge of
 22 that.
 23 MR NGALWANA: Perhaps this might jog your
 24 memory. May I direct your attention to Exhibit L and in
 25 particular slides 102, 103 and 104. Can you see the

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1 picture?
 2 MR MAGIDIWANA: Yes, I see them.
 3 MR NGALWANA: Do those pictures now jog
 4 your memory?
 5 MR MAGIDIWANA: No, nothing.
 6 MR NGALWANA: That is the person whom Mr
 7 X will testify, was killed in that mountain because he was
 8 accused of stealing information from the mountain and
 9 sharing it with NUM. Do you know that person?
 10 MR MAGIDIWANA: No, I don't know him.
 11 MR NGALWANA: On the 14th of August 2012,
 12 did you know that person?
 13 MR MAGIDIWANA: I don't know this man.
 14 MR NGALWANA: The proposition through
 15 which I have just gone with you, Mr Magidiwana, is to show
 16 the intent of the Makaraba Group and the Committee, of
 17 which the police allege or say you were part. The
 18 suggestion or the evidence will be that the rituals through
 19 which the Makaraba Group went to render them strong,
 20 invincible, invisible explains why that front Group of
 21 which you were part, charged at the police with sharp
 22 weapons, at the police who were carrying rifles. Would you
 23 care to comment?
 24 MR MAGIDIWANA: No, Sir, this thing that
 25 you are saying now is confusing me. I don't know about it.

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1 MR NGALWANA: Alright. Well, let me take
 2 you to your statement. In paragraph 18 of your statement,
 3 1-8, you say you could hear voices. This is now shortly
 4 after the shooting, around the kraal, you say you could
 5 hear voices of policemen approaching the place where most
 6 of you had fallen.
 7 [12:08] You say, I think in your evidence in chief, you
 8 give a more elaborate account of the police going passed
 9 you and then coming back and asking you why you were still
 10 alive and then they, you used the word 'hit', hit you in
 11 the right thigh and on the right rib. Do you remember that
 12 evidence?
 13 MR MAGIDIWANA: Then they had already
 14 shot me on my left thigh. Yes, I still remember as well
 15 that the word I used was, 'I was hit', but in fact I was
 16 referring to being shot at.
 17 MR NGALWANA: Yes. You say in paragraph
 18 20 that you sustained further shots in your abdomen and
 19 that you were shot in your testicles. You pleaded with the
 20 police to kill you.
 21 MR MAGIDIWANA: [Inaudible].
 22 MR NGALWANA: Yes, and then you say one
 23 of the policeman said, you're going to die any way and that
 24 there was no further need to finish you off?
 25 MR MAGIDIWANA: I'm still saying that.

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1 MR NGALWANA: You say as this was
 2 unfolding, the police were busy laughing at you and taking
 3 pictures with their -
 4 MR MAGIDIWANA: I'm still saying that.
 5 MR NGALWANA: And kicking bodies?
 6 MR MAGIDIWANA: It is so.
 7 MR NGALWANA: Now you will have seen, Mr
 8 Magidiwana, that the events around the kraal have been
 9 widely televised, not so?
 10 MR MAGIDIWANA: Yes, I saw that.
 11 MR NGALWANA: There were international
 12 journalists and camera people at that scene capturing the
 13 events at that scene?
 14 MR MAGIDIWANA: The thing that was
 15 happening there, until today they are not showing
 16 everything at all. If everything could have been shown,
 17 even yourself by looking at it, you could even cry. What
 18 I'm saying is that in fact the intention was that everyone
 19 should have died there.
 20 MR NGALWANA: You do accept that the
 21 television footages that we have seen were not television
 22 footages of SAPS, they were television footages of
 23 international news – I think they call news houses.
 24 CHAIRPERSON: Agencies.
 25 MR NGALWANA: Agencies. Thank you. Why

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1 would they as international journalists wish to hide
2 anything of what happened on that scene?

3 MR MAGIDIWANA: The journalists that were
4 there, that I saw in fact, because the others were chased
5 away, it was two gentlemen. It was a White gentlemen and
6 the other who was a Rastafarian and in fact they were the
7 same men who had been, according to him who had been
8 squashed. And in fact maybe the other one died, because I
9 saw this one, also a Rastafarian who had fallen. I thought
10 myself in fact, after I had regained my consciousness that
11 perhaps the man had died.

12 MR NGALWANA: Well, that's speculation.

13 CHAIRPERSON: Sorry, can I ask something.
14 Do I understand you to say that you saw two journalists on
15 the scene who fully lost consciousness. The one was a
16 white man, the other was a Rastafarian. By describing him
17 as a Rastafarian, I take it you're saying that he had
18 dreadlocks?

19 MR MAGIDIWANA: Yes.

20 CHAIRPERSON: Was he a black African
21 gentleman?

22 MR MAGIDIWANA: Yes.

23 CHAIRPERSON: And he, if he can be
24 traced, if he's still alive, he and the white journalist
25 with him, will be able to confirm your story, is that what

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1 you're saying, assaulted while you were lying on the ground
2 after you had been shot, is that correct?

3 MR MAGIDIWANA: Yes, if they have the
4 truth in them they will say that, they were left with no
5 other choice, and if the truth they are going to say that.

6 CHAIRPERSON: Where exactly were they
7 standing in relation to where you were lying?

8 MR MAGIDIWANA: They were standing before
9 – even behind the police officers.

10 CHAIRPERSON: Approximately how far away
11 from where you were lying? Could you indicate to us here
12 in the auditorium the approximate distance?

13 MR MAGIDIWANA: It was not a long
14 distance, because the police – there were police officers
15 who were standing in front and there were many others who
16 were standing behind.

17 CHAIRPERSON: - responded to my
18 invitation to indicate the distance between the journalists
19 and where you were lying, as a distance that we can see
20 here in the auditorium.

21 MR MAGIDIWANA: If I am to use this to
22 estimate, then they were standing very far, because as the
23 police officers were busy shooting me, these gentlemen were
24 standing behind them and then taking pictures. I don't
25 know whether they were videoing or in fact, but they were

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1 with their cameras.

2 CHAIRPERSON: So what you're suggesting –
3 what you're saying is that while you were being assaulted
4 in this way, the journalists concerned were either taking a
5 videograph of what was happening or at least photographs,
6 not using their cameras to take still photographs as it
7 were, or they were taking – making a video of what was
8 happening?

9 MR MAGIDIWANA: When they turned, they
10 turned to the journalists and asked them, did we not tell
11 you to leave here. The white journalist then ran away, but
12 the other journalist then fell on the side.

13 CHAIRPERSON: If we're able to trace
14 these journalists and able to trace the video that they
15 took or photographs they took, what will we see on those
16 photographs? What will – will we see the police attacking
17 you?

18 MR MAGIDIWANA: Yes, that can be seen,
19 even these videos or the clips that are being played, in
20 fact I always see that in fact the events are cut in the
21 video.

22 CHAIRPERSON: Yes, I understand that, but
23 that's a different question. What I'm concerned with is
24 we're obviously going to try to trace those journalists and
25 if we can find them and if it's correct that they have

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1 videos, videos they have made or photographs they took, we
2 want to see them, because they're very important to assist
3 us to ascertain the truth as to what happened. Now what
4 would assist in knowing from you, is if we are able to find
5 those journalists and able to find photographs they took or
6 a video they made, what will we see on those photographs?
7 Will we see the police attacking you, will we?

8 MR MAGIDIWANA: Yes.

9 CHAIRPERSON: Will we see them shooting
10 you?

11 MR MAGIDIWANA: Yes.

12 CHAIRPERSON: And will we see – did they
13 also hit you with other weapons or did they – the form of
14 the assault on you only take – be by shooting at you? They
15 did not strike you with some implement of some kind?

16 MR MAGIDIWANA: Even the very weapons
17 they would take them and then stab the people there.

18 CHAIRPERSON: I'm not interested in the
19 people, I'm interested in you. Did they – what exactly did
20 they do to you?

21 MR MAGIDIWANA: What they did to me,
22 okay, it is a painful thing, that after being shot and
23 being in pain, I was still being squashed and I was asked
24 questions as to where the Inyanga was.

25 MR HANABE: The squashing he was

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1 referring to, Commissioner, in fact refers to the shooting
 2 that was taking place, whereas they were talking at the
 3 same time. But the next thing he said is, there was also a
 4 female police official - that in fact there were some
 5 female police officers there at the same time. But he –
 6 she could not come close to come to me. They were giving
 7 cell phones to the male police officials, so that they
 8 could shoot a video of me. When I looked at myself below,
 9 but the hand of the witness is just adjacent to the private
 10 parts, he said when I looked at myself I realised that in
 11 fact I was – I was stained with blood, I had blood in me.
 12 CHAIRPERSON: These female police persons
 13 you saw, were they whites and blacks or – can you tell us
 14 the ethnic group or groups was or were to which these
 15 female police officers belonged?
 16 MR MAGIDIWANA: All I saw in fact was
 17 African female police officers, but I never saw white –
 18 CHAIRPERSON: Thank you. And you say
 19 that in your statement, paragraph 20, you talk about
 20 people, policeman laughing at you and taking pictures with
 21 his mobile phones and you also say others were kicking the
 22 bodies. Now with that theme of police laughing, taking
 23 pictures with mobile phones and kicking bodies of people
 24 lying on the ground, would those have been photographed or
 25 videographed by these two journalists to whom you referred?

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1 In other words, was that happening while these journalists
 2 were there with their cameras?
 3 MR MAGIDIWANA: At the time this was
 4 happening, in fact they had already chased away the
 5 journalists. The other one had already ran away whilst the
 6 other one in fact was lying down.
 7 CHAIRPERSON: I understand that. You see
 8 what I'm concerned about is to know if we can find the
 9 journalists and if we can find their cameras or the
 10 pictures they took, what will those pictures show us? Will
 11 they show police kicking bodies? Will they show you being
 12 assaulted? What will we see on those photographs if we can
 13 trace them?
 14 MR MAGIDIWANA: It was - what will be
 15 seen in fact was the violence which was demonstrated by the
 16 police officers.
 17 CHAIRPERSON: While you were lying on the
 18 ground?
 19 MR MAGIDIWANA: Yes.
 20 MR NGALWANA: Mr Magidiwana, that is a
 21 very elaborate story and these are very serious allegations
 22 you're making against the police, you are aware of that,
 23 aren't you?
 24 MR MAGIDIWANA: I understand what you are
 25 saying, Sir.

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1 MR NGALWANA: You do appreciate and the
 2 Chairperson has been at pains to explain to you the
 3 importance of telling the truth to the Commission?
 4 [12:28] MR MAGIDIWANA: Yes.
 5 MR NGALWANA: Are you aware that among
 6 the casualties, people who died around the kraal, there is
 7 not one journalist?
 8 MR MAGIDIWANA: Can you repeat, Sir?
 9 MR NGALWANA: Are you aware that amongst
 10 those people who died near the kraal, that no journalist
 11 was mentioned amongst those people?
 12 MR MAGIDIWANA: The Xhosa, which I spoke,
 13 did you hear me correctly?
 14 MR NGALWANA: Please answer my question.
 15 MR MAGIDIWANA: Sir, I never said that a
 16 journalist had died there.
 17 CHAIRPERSON: Correct, I seem to remember
 18 his saying that he thought he died, he referred to the fact
 19 he got down, I think, but I didn't hear that a journalist
 20 was -
 21 MR NGALWANA: I heard him say, he may
 22 have died. Let me put the question this way. You are not
 23 suggesting that there was a journalist who was killed
 24 around the kraal, on the afternoon of the 16th of August
 25 2012, are you?

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1 MR MAGIDIWANA: No.
 2 MR NGALWANA: You are simply saying that
 3 the journalist fell.
 4 MR MAGIDIWANA: Yes.
 5 MR NGALWANA: Well, on your evidence,
 6 what then happened, what then did the – what did that
 7 journalist then do after falling?
 8 MR MAGIDIWANA: I never saw him standing
 9 up. Then because at the same time, the police officials
 10 were standing.
 11 MR HANABE: He is showing with this hand,
 12 that he was standing like this, and -
 13 COURT: Describe, you better, you can
 14 just say "like this," when we read the record, we won't
 15 remember what "like this," is. Describe it.
 16 MR MAGIDIWANA: They were standing in a
 17 line.
 18 MR NGALWANA: You are also not suggesting
 19 that the police confiscated the –
 20 MR HANABE: I am sorry for interrupting,
 21 senior counsel, before he finished, there is something that
 22 he said, Commissioner, he said at that time in fact the
 23 police were standing in a line. They were busy in fact
 24 finishing, I mean, they were busy at that time shooting at
 25 the other people.

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1 MR NGALWANA: And all of this, according
2 to your evidence, was captured by either one or both the
3 journalists you say you saw on the scene.
4 MR MAGIDIWANA: Or the two of them. I am
5 saying, Sir, that what happened there in fact in line with
6 what happened, not everything is showing or is being
7 played.
8 MR NGALWANA: Yes, you've said that, it
9 must be a different point. Are you suggesting that as the
10 police, according to you, were busy shooting at people, or
11 you on the ground, these two journalists or one of them,
12 was capturing those events? That's what I am asking.
13 MR MAGIDIWANA: They were recording the -
14 MR NGALWANA: Do you want to continue?
15 MR MAGIDIWANA: But the way, the manner
16 in which they were chased away, it was indeed very bad, in
17 fact, those very two journalists that I had seen.
18 MR NGALWANA: Yes, you say they were
19 chased away after capturing what was happening to you,
20 correct?
21 MR MAGIDIWANA: What happened to me, Sir,
22 was at the time he says he was, I was being shot below, in
23 fact that other journalist had already run away. Yes.
24 CHAIRPERSON: When you say that other
25 journalist, you told us there were two journalists -

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1 MR HANABE: He is saying the other one
2 had ran away, whilst the other had fallen down.
3 CHAIRPERSON: Which was the one who had
4 ran away, and which is the one who stayed behind? Did the
5 dreadlocks journalist stay or did the dreadlocks journalist
6 run away?
7 MR MAGIDIWANA: The one I saw running,
8 was the white journalist.
9 COMMISSIONER HEMRAJ: Did you see what
10 happened to the cameras, the journalist that fell?
11 MR MAGIDIWANA: Then it was at the time
12 then that they had blocked, and I don't know how it was,
13 how -
14 MR HANABE: Before I interpret it, I
15 don't know, Commissioner, what he is referring to, whether
16 the journalist or the camera itself, but he says that "what
17 I" - because after they blocked, "I said to myself, or
18 talked to myself that perhaps what happened to us, is the
19 very same thing that happened to him."
20 CHAIRPERSON: As you say, Mr Interpreter,
21 you didn't quite understand what the witness said, perhaps
22 you should ask him to explain to you, and then to translate
23 that for us.
24 MR HANABE: Thank you, Commissioner.
25 MR MAGIDIWANA: I never in fact noticed

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1 what had happened to the camera, or where it was, but what
2 I had seen was that he had laid there, and the police at
3 the same time blocked.
4 MR HANABE: They made that line that he
5 was referring to.
6 CHAIRPERSON: I am not quite sure what
7 you mean by "blocked," in this line. Are you suggesting
8 that there was a line of policemen standing between you and
9 the journalists so that they couldn't see or photograph
10 what was happening with you?
11 MR MAGIDIWANA: The police officers, I
12 mean, the journalists were behind the police officers, and
13 there were many of them, but these journalists as they were
14 standing in front of those police officers, who were in
15 fact in front of us, the police were in front of us, and in
16 fact they were standing in the form of a line.
17 CHAIRPERSON: You were asked this
18 morning, about the soccer match on Saturday. I thought
19 what you asked about was not relevant, but perhaps it is to
20 this extent, was it like what happens when a free kick is
21 taken, that you have a line of players between the ball and
22 the player who is going to take the free kick and the goal,
23 with the object of trying to block the ball, so that it
24 doesn't get through into the goal? Is that what you are
25 trying to say? Whether these policemen were in a line,

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1 like footballers, lining up at a free kick, just to block a
2 ball? Or am I not understanding you correctly?
3 MR MAGIDIWANA: Yes, they were lining up,
4 it was in a line.
5 CHAIRPERSON: Sorry, Mr Ngalwana for
6 interrupting you but perhaps you'd like to proceed.
7 MR NGALWANA: Thank you, Chair. What now
8 emerges, Mr Magidiwana, from your evidence, is that there
9 were many journalists, not just two behind this line of
10 police.
11 MR MAGIDIWANA: Now you are confusing me
12 in what you are saying, because the other police - I mean
13 journalists were far, they were in their vehicle, and the
14 journalists who were nearby, were two journalists.
15 CHAIRPERSON: The position is, there were
16 a lot of journalists in vehicles some distance away.
17 Reasonably close to you, were these two journalists, one
18 which the dreadlocks, and between them and you was a line
19 of policemen, like a line of footballers, trying to stop a
20 free kick, is that right?
21 MR MAGIDIWANA: Yes.
22 MR NGALWANA: Well, that's what he said
23 initially, that's not what you said subsequently but I
24 don't want to belabour the point, the record will speak for
25 itself. We will argue that point. Now -

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1 COMMISSIONER TOKOTA: Sorry, Mr Ngalwana,
 2 let me just find out. Are you in a position to say what
 3 caused the falling of that journalist? Did he stumble, or
 4 did anybody push him or things like that?
 5 MR MAGIDIWANA: That journalist was never
 6 pushed but when the police officers turned, they said to
 7 them, "did you not say," –
 8 MR HANABE: But he didn't finish in fact,
 9 the witness, what was – he just said, "did you not say" –
 10 but he says at the same time, they fired, the shots were
 11 being fired.
 12 COMMISSIONER TOKOTA: Were the shots
 13 fired at him?
 14 MR HANABE: Who –
 15 COMMISSIONER TOKOTA: The journalist.
 16 MR HANABE: Okay.
 17 COMMISSIONER TOKOTA: Were the shots were
 18 fired at the journalist?
 19 MR MAGIDIWANA: The firing, in fact the
 20 shots were fired at the scene at us, and in fact, when they
 21 turned in the way in fact that was giving them no choice it
 22 was then that they said to the journalists, "did you not
 23 say leave?" It was then that the other one ran away, and
 24 the other fell.
 25 COMMISSIONER TOKOTA: So this other one,

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1 he just fell, immediately they were asked, "did we not tell
 2 you to leave?" he then fell?
 3 MR MAGIDIWANA: Immediately when the
 4 other one turned and ran away, this other journalist then
 5 fell on the other side.
 6 COMMISSIONER TOKOTA: But you must
 7 remember, you said, he was not pushed, he didn't stumble,
 8 are you suggesting that he just fell?
 9 MR MPOFU: I am sorry, Chairperson, the
 10 witness has made it clear that what he is saying that the
 11 person was not pushed, that is correct, but he says when he
 12 fell, the shooting was going on, and he says that is why he
 13 told himself, (African language) he told himself that he
 14 must have been affected by the shooting which is probably
 15 why he thought he had died.
 16 COMMISSIONER TOKOTA: Ja, but he must
 17 answer the question.
 18 MR MPOFU: Well, he has already answered
 19 it.
 20 COMMISSIONER TOKOTA: No he hasn't, he
 21 said –
 22 CHAIRPERSON: Mr Mpofo, I think the
 23 witness must be allowed to answer the question himself,
 24 without –
 25 MR MPOFU: He answered it twice,

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1 Chairperson, let the record show –
 2 CHAIRPERSON: The question is being asked
 3 again, he must be given the opportunity to answer it
 4 without assistance from anybody else, including you.
 5 MR MPOFU: Chairperson, I take strong
 6 exception to that. The witness has answered the question
 7 twice, without any assistance from anybody, I don't accept
 8 that.
 9 CHAIRPERSON: I said –
 10 MR MPOFU: That remark is, should be
 11 withdrawn, Chairperson.
 12 CHAIRPERSON: I am not prepared to
 13 withdraw the remark, I made a remark on what I saw, and –
 14 MR MPOFU: Well that is an irregular
 15 remark.
 16 CHAIRPERSON: Well, I don't agree to that
 17 either, but you've expressed your view, and I've expressed
 18 mine. The question is being asked, it's a perfectly proper
 19 question, and the witness will answer it, without
 20 assistance from anybody.
 21 MR MPOFU: Well, Chairperson, I want to
 22 make a note to say that that remark, I take it as an
 23 irregular remark because I've said that the witness has
 24 answered the question twice, he's said it in Xhosa, he
 25 said, "I told myself that because the shooting was taking

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1 place, he must have been affected by that shooting." He
 2 said it twice, in fact he said it thrice. He said it
 3 earlier to Mr Ngalwana, he said it twice now.
 4 CHAIRPERSON: But the fact –
 5 MR MPOFU: - assistance.
 6 COMMISSIONER TOKOTA: But that does not
 7 answer as to how did the journalist fell, did he fall?
 8 MR MPOFU: Because he did not know.
 9 CHAIRPERSON: Mr Mpofo, let Mr Tokota
 10 carry on with his questions.
 11 MR MPOFU: Okay.
 12 CHAIRPERSON: I think it's not necessary
 13 or desirable that altercations of this kind should take
 14 place. Anyway, let Mr Tokota carry on with his
 15 questioning, and let's leave the matter there.
 16 COMMISSIONER TOKOTA: I repeat the
 17 question again, you said the journalist didn't - was not
 18 pushed and did not stumble. Now, are you in a position to
 19 say what caused him to fall, except what you thought?
 20 MR MAGIDIWANA: There, you see the scene
 21 that occurred there, you also as being yourself, Sir, you
 22 were really going to be weak, because you would have seen
 23 that all these people were dying, that's also what I had
 24 told myself that I am going to die.
 25 [12:48] CHAIRPERSON: I understand what you told

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1 yourself, but the question is can you give an explanation
2 as to why this gentleman from the press fell, that's the
3 question you're being asked. If you can't answer it, say
4 you can't answer it, but if you can help us to understand
5 why this gentleman fell, then please tell us.

6 MR MAGIDIWANA: Sir, I also don't know.
7 Perhaps what the reason maybe, perhaps that he was also
8 shocked at what was being done to us.

9 MR NGALWANA: Thank you, Chair. Well, Mr
10 Magidiwana, there is a better explanation –

11 CHAIRPERSON: Carry on.

12 MR NGALWANA: Thank you, Chair. Mr
13 Magidiwana, there is a more plausible explanation. Well,
14 plausible explanation as regards why you are unable to
15 explain how the journalist came to fall, according to your
16 evidence. And it simply that this never happened, and
17 that's why you can't explain it.

18 MR MAGIDIWANA: Yes, you have the reason
19 to talk like that, Sir, because you defend the people that
20 you know that they were criminals.

21 CHAIRPERSON: Mr Magidiwana, I've spoken
22 to you about that before. Mr Ngalwana is here as counsel
23 appearing for clients. He's putting his case to the best
24 of his ability. It's not appropriate for you to say that
25 he knows that his clients are criminals, he knows that the

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1 counsel representing I think you call them criminals,
2 suggests to me that you were not really listening to what
3 the –

4 CHAIRPERSON: Mr Ngalwana, you're now
5 doing the very thing I was complaining to him about. Just
6 ask questions, don't make comments. He can't make comments
7 and neither may you. Please ask your questions and lets
8 get his answers.

9 MR NGALWANA: Thank you, Chair. I
10 suggested to you that the reason you cannot explain how the
11 journalist came to fall was because that never happened,
12 and I'm suggesting further that what makes it clear that
13 this never happened was, in part, because it's never
14 contained in your statement, it's not contained in the two
15 statements you made to the police, that suggests that this
16 never happened. I took you through – that's it.

17 And the events of that day, just before you
18 comment, the events of that day were fresher in your mind
19 when you made those two statements to the police, and you
20 never mentioned any of this about journalists falling and
21 journalists taking pictures.

22 MR MAGIDIWANA: Sir, please, I gave a
23 statement to one police officer. I don't know where the
24 other one is coming from. Secondly, I think that in my
25 statement that I explained the way in which I was being

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1 case he's putting up is a bad case. That's not your
2 function to do that. At the end of the day when we've
3 heard all the evidence and heard all the arguments, we will
4 decide whether the police have behaved as badly as you say
5 they have, whether they are criminals, or we may have to
6 make similar findings about other people. But it's for us
7 to make the findings at the end, it's not for you just to
8 gratuitously throw around comments like that. Please
9 answer the questions you're asked. Stay – confine your
10 answers to the questions that were asked, and don't make
11 comments of that kind again.

12 MR MAGIDIWANA: Thank you, Sir.

13 COMMISSIONER HEMRAJ: Mr Magidiwana, you
14 say that from where you lay on the ground you were able to
15 see what happened with the two journalists who were
16 standing behind the police line?

17 MR MAGIDIWANA: I said the thing I saw
18 was when the other one ran away and the other one fell.

19 COMMISSIONER HEMRAJ: Yes, and you saw

20 all of this from your position on the ground and this was
21 taking place behind the police line?

22 MR MAGIDIWANA: Yes.

23 COMMISSIONER HEMRAJ: Thank you.

24 MR NGALWANA: You see, Mr Magidiwana –
25 thank you, Commissioner. The remarks you made about

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1 turned around and being shot at. I was never asked about
2 another person. As I was being asked, I was talking about
3 myself.

4 MR NGALWANA: Not only is this new
5 version about a journalist falling around the kraal not in
6 the two statements that you made to the police, it is also
7 not in the statement that you made before this Commission,
8 it also not a version that you advance in your evidence-in-
9 chief.

10 MR NGALWANA: We had established that if
11 it was important, it would be in your statement. I take it
12 you will agree that if it is important, you would testify
13 to it in chief. You would have told your lawyers about it
14 so that they cover it with you when you testify in chief.
15 That is what would have happened if the version you now
16 give about this journalist who fell over, did in fact
17 occur. Comment?

18 MR MAGIDIWANA: Sir, what in fact I'm
19 explaining is something you asked me about what had
20 happened, especially when you repeatedly asked something
21 and I tell you that I then tell you as to how it happened,
22 or how it started, that this and that happened.

23 MR NGALWANA: All I'm saying is if this
24 indeed happened, you would have told your lawyers about it,
25 they would have taken you through your evidence on it. The

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1 fact that that didn't happen means that this, what you are
2 now saying about a journalist falling over and taking
3 photos did not happen.

4 MR MAGIDIWANA: No, Sir. When you say it
5 never happened, but I, personally, witnessed it, I was
6 seeing it. You are in a better position because you talk
7 about something that you saw on TV, but I saw it – I
8 personally saw it, directly saw, and it happened to me.

9 CHAIRPERSON: I wonder is this perhaps an
10 appropriate stage for us to take the lunch adjournment, or
11 is there some other questions on this point you want to ask
12 first?

13 MR NGALWANA: Well, there are
14 Chairperson, but judging by the exchange it's unlikely to
15 take –

16 CHAIRPERSON: Well, the impression I get
17 also, to be fair, is the witness has been agitated at this
18 point, so it might be helpful for him to have an
19 opportunity to relax over lunch and we will resume at half
20 past one.

21 [COMMISSION ADJOURNS COMMISSION RESUMES]

22 [13:38] CHAIRPERSON: The Commission resumes. Mr
23 Magidiwana, you're still under oath. Mr Ngalwana, you're
24 still cross-questioning the witness.

25 MR NGALWANA: Yes, thank you, Sir. Mr

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1 time I was shot, indicating my private parts, that does not
2 appear.

3 MR NGALWANA: I understand that you see
4 certain visuals on video or on the screen, I'm asking you a
5 different question, I'm not asking, what is it that you
6 saw. What I'm asking you because the Commission has the
7 power to either subpoena the journalist or subpoena the
8 camera so that it can find out what you're alleging
9 happened. What I am asking you and I know that you do
10 understand this question, what I'm asking you is, are you
11 saying that this journalist who ran away, ran away after he
12 had captured you being shot by the police while you were on
13 the ground?

14 MR MAGIDIWANA: I am saying whilst I was
15 lying down there I could see that something was happening,
16 that I was being shot at. The part where I was shot in my
17 private parts, that one does not appear. That is why I am
18 saying quite a number of the things that happened there do
19 not appear or they have not been brought forward, because
20 some other things happened to some other people, not only
21 to myself.

22 MR NGALWANA: You're not answering my
23 question, let me try and do it like this. You are
24 alleging, are you not, that there may well be other video
25 or still pictures depicting what happened to you which has

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1 Magidiwana, let me understand this unequivocally, are you
2 saying that the one journalist who was, in your words,
3 chased away or ran away, he ran away before or after
4 capturing on camera what you say was happening to you, in
5 other words that you were being shot while you were on the
6 ground?

7 MR MAGIDIWANA: Some of the things had
8 already taken place and some others not.

9 MR NGALWANA: Well, let's take them one
10 by one. Had he, it was a he, wasn't it?

11 MR MAGIDIWANA: It was a male person.

12 MR NGALWANA: It is not a trick question,
13 had he captured on camera where you say you had been shot
14 while lying on the ground by the police?

15 MR MAGIDIWANA: I am saying that some of
16 the things that happened to me had already occurred, some
17 had not occurred.

18 MR NGALWANA: What specifically had
19 already occurred and was captured by this journalist before
20 he ran away from the scene?

21 MR MAGIDIWANA: The taking of my stick
22 from me and when the police came and shot.

23 MR NGALWANA: Is that all that he had
24 captured before he ran away?

25 MR MAGIDIWANA: What I saw, yes, at the

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1 not been shown at this Commission, is that what you are
2 alleging?

3 MR MAGIDIWANA: I'm still saying that.

4 MR NGALWANA: Now presumably, correct me
5 if I'm wrong, you are alleging that those footages would
6 have been taken by one or both these journalists to which
7 you referred earlier?

8 MR MAGIDIWANA: I'm talking about what
9 was being done to us there.

10 MR NGALWANA: But you are not answering
11 my question. If the footage you say has not been shown
12 here, that was captured by either one or both of the
13 journalists to whom you refer then the Commission will get
14 that evidence. What I'm trying to establish from you is,
15 because we don't want to waste the Commission's time to
16 chase after evidence that doesn't exist, so that is why I
17 am trying to establish from you this, when you say one of
18 the journalists was chased away by the police, wait a
19 minute, I haven't asked my question. When you say he was
20 told to get away or, didn't I tell you to go away and not
21 to be here, something to that effect and he left, did he
22 leave after capturing on video, on camera what was
23 happening to you?

24 MR MAGIDIWANA: I am saying to you, Sir,
25 some of the things were captured but they have not been

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1 exposed as they are supposed to be in the right way, they
2 have been, to use the word, cut.

3 MR NGALWANA: Am I correct in saying you
4 do not know whether that journalist had captured what had
5 happened to you or not when he left the scene?

6 MR MAGIDIWANA: When we were being shot
7 the people were lying down, we were being finished up
8 whilst lying, when these people were being chased away how
9 could they have taken further photos whilst one was lying
10 and the other one was running away, chased away? I'm not
11 saying they moved or they walked away, I said he ran away.

12 MR NGALWANA: So in other words he ran
13 away without capturing what was happening to you?

14 MR MAGIDIWANA: He had taken.

15 MR NGALWANA: Which ones had he taken?

16 MR MAGIDIWANA: When I say, I said when
17 my stick was removed from me and when they arrived for the
18 first time and the shots were fired on me, that one
19 appears.

20 MR NGALWANA: I didn't see any footage of
21 a stick been taken from you.

22 MR MAGIDIWANA: You will see it.

23 MR NGALWANA: Alright.

24 COMMISSIONER HEMRAJ: Can I just enquire,
25 Mr Magidiwana, have you seen these footage?

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1 MR MAGIDIWANA: Yes.

2 COMMISSIONER HEMRAJ: And where was that?

3 MR MAGIDIWANA: You will have to search
4 and look around from all this, what do you call all these
5 things that have been shown here?

6 COMMISSIONER HEMRAJ: No, where did you
7 see the footage?

8 MR MAGIDIWANA: I've seen it several
9 times here when it is shown, the picture get shown and then
10 a person is stopped there at certain places you see this.

11 COMMISSIONER HEMRAJ: Are you saying here
12 during the Commission hearings?

13 MR MAGIDIWANA: Yes, I also saw it in
14 this Commission.

15 COMMISSIONER HEMRAJ: And where else did
16 you see it?

17 MR MAGIDIWANA: When my lawyers were
18 asking me where I was with these people.

19 COMMISSIONER HEMRAJ: Thank you.

20 MR NGALWANA: Thank you, Commissioner.
21 We've dealt with the journalist whom you say was chased
22 away by the police or was told to go away, now let's focus
23 on the one you say fell. Are you suggesting that he
24 managed to capture what happened to you at that scene?

25 MR MAGIDIWANA: Sir, I said after he had

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1 fallen I could not detect what the position was, the police
2 were still forming a line there. This was at that time
3 that the police were killing us, they were shoving us and
4 killing us.

5 MR NGALWANA: Let me see if I understand,
6 you are unable to say whether the journalist you say fell
7 was able to capture by camera what was happening to you at
8 that stage?

9 MR MAGIDIWANA: Because he fell I can say
10 so, because some other videos, I saw them but after he had
11 fallen and the other ones ran away I could not see anything
12 in the video about my shooting, particularly on my private
13 parts.

14 MR NGALWANA: Didn't you say that's
15 because he wasn't able to capture it?

16 MR MAGIDIWANA: Maybe the Xhosa that I
17 speak is not understandable, because I said whilst he had
18 fallen there and the police were still standing in that
19 line, the police line, I did not know whether he had been
20 befallen by what had befallen the rest of us.

21 MR NGALWANA: Mr Magidiwana, the footage
22 of you, as you allege, being shot by the police while you
23 were lying on the ground has not been seen by this
24 Commission, none of us have seen it, and you are unable to
25 say whether or not this journalist who had fallen, or the

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1 journalist who ran away managed to take those, to capture
2 what was happening.

3 MR MAGIDIWANA: I'll make it easy for
4 you, Sir, so that there is no argument. Look at the
5 picture where I was lying on my side where I was instructed
6 to remove the towel, what the police were doing at that
7 time when they instructed me to take off the towel, whether
8 there was anybody standing at that time or whether
9 everybody was lying down.

10 MR NGALWANA: Are you suggesting that the
11 video to which you refer shows the police shooting at you
12 while you're lying on the ground?

13 MR MAGIDIWANA: Yes.

14 MR NGALWANA: Well, Chairperson, I'm in a
15 bit of a quandary because the chairperson has, I don't know
16 if I can term it your ruling that we shouldn't distress the
17 witness further?

18 CHAIRPERSON: I'm concerned about the
19 actual eight seconds when the 300 odd bullets were fired,
20 the incident that we talk about having taken place at scene
21 one, that was the one that seemed to be causing him
22 distress at the moment when this great cataclysm, as I
23 described it, befell him. I don't think that the same
24 problem would necessarily arise if we were simply shown the
25 clip of him lying on the ground having asked him to remove

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1 his trousers, in any event he has referred to it and said
 2 what it also shows, it seems to me would be appropriate,
 3 for that clip to be shown, but only that one, not the
 4 preceding parts where all the bullets were fired in 8
 5 seconds, that's something which precedes what we're now
 6 talking about and I would permit you to show that clip if
 7 you want to do so for the purposes of your cross-
 8 examination.

9 MR NGALWANA: Well, I think it is the end
 10 of you, you three, if I'm not mistaken. It is the same
 11 clip we showed but a later footage of the same clip, Ms
 12 Pillay will perhaps correct me if I'm wrong.

13 ARBITRATOR: Ms Pillay, are you able to
 14 indicate to us where on that clip, the scene that the
 15 witness is now talking about takes place, so that that can
 16 be identified and shown without any of the preceding matter
 17 being seen?

18 MS PILLAY: Mr Chair, it is a bit
 19 difficult offhand to be able to give you the exact place,
 20 if we could maybe move on and I'll go and check with the
 21 technician and then we can cover this ground in a few
 22 minutes time?

23 ARBITRATOR: How long are you likely
 24 going to be? I know it is difficult to answer because you
 25 don't know how long the answers will take, but is it likely

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1 that you'll still be questioning the witness at tea time,
 2 at three o'clock?

3 MR NGALWANA: No, Chair, it is not
 4 likely.

5 [13:58] CHAIRPERSON: When you reach the end of
 6 your cross-examination we will take an adjournment,
 7 possibly even an early tea adjournment, depending on the
 8 time, so Ms Pillay can then seek to identify the exact clip
 9 that has to be shown.

10 MR NGALWANA: Thank you, Chair. I think
 11 I have just one more thing to cover.

12 COMMISSIONER HEMRAJ: Mr Magidiwana, when
 13 you say that you were shot at close range, how many
 14 policemen were shooting at you?

15 MR MAGIDIWANA: There were many policemen
 16 who came there but I wouldn't be able to say the number,
 17 but the one who was actually finishing me up, he was Xhosa
 18 speaking. The one who said to him he should stop, that was
 19 Zulu speaking.

20 COMMISSIONER HEMRAJ: And at the time
 21 that he shot you from close range how far away from you was
 22 he standing?

23 MR MAGIDIWANA: I wasn't far.

24 COMMISSIONER HEMRAJ: I beg your pardon?

25 MR MAGIDIWANA: I was not far.

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1 COMMISSIONER HEMRAJ: Could you indicate
 2 to us perhaps, please, where you are sitting and a spot in
 3 the room?

4 MR MAGIDIWANA: I would estimate the
 5 distance between where I am now to where you are,
 6 Commissioner, that would be rather far.

7 COMMISSIONER HEMRAJ: About four paces?

8 MR MAGIDIWANA: Because I could hear what
 9 he was saying at the time and he wasn't talking to any
 10 other person, he was talking directly to me.

11 COMMISSIONER HEMRAJ: And in what
 12 position were you when he was shooting at you at that close
 13 range?

14 MR MAGIDIWANA: The first time that I was
 15 shot and fell I went on my stomach, but then I got such a
 16 fright and attempted to come up but my side, my left hand
 17 side was numb, I could only manage to lie on my side, [he
 18 indicates lying on his right hand side]. That's when they
 19 were coming talking and they started shooting.

20 COMMISSIONER HEMRAJ: And how many shots
 21 were fired at you while you were lying in that position, Mr
 22 Magidiwana?

23 MR MAGIDIWANA: The one that I felt which
 24 really finished me was the one that hit me on my left
 25 elbow. The others was when they came back from the other

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1 side, I don't know what they were doing there but then they
 2 came back to where we were to come and finish me up.

3 COMMISSIONER HEMRAJ: So the policemen
 4 shot at you, went away and did something else and then came
 5 back and shot you again?

6 MR MAGIDIWANA: That is so, yes.

7 COMMISSIONER HEMRAJ: So all together how
 8 many times were you shot while you were lying on the
 9 ground?

10 MR MAGIDIWANA: Except the one bullet
 11 that went in on the, [he indicates on the left hand side],
 12 the others were shot whilst I was on the ground.

13 COMMISSIONER HEMRAJ: And how many times
 14 were you shot while you were lying on the ground? Are you
 15 able to say?

16 MR MAGIDIWANA: I forget them, but if I
 17 would undress and show you.

18 COMMISSIONER HEMRAJ: And what kind of
 19 firearm did the policemen have that were shooting at you
 20 while you were lying on the ground?

21 MR MAGIDIWANA: It was the small firearm,
 22 the one who was not shooting, that one had the big one, the
 23 long firearm.

24 COMMISSIONER HEMRAJ: Thank you, Mr
 25 Magidiwana.

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1 MR NGALWANA: Chairperson, I believe the
2 footage that the witness insisted we play is ready, it
3 might not say, UU3, but –
4 CHAIRPERSON: All the footages were
5 shown, though the footage, as we understand it, begins
6 after the eight seconds of firing had occurred and a number
7 of people had been hit while they were moving forward. The
8 footage does, I think, show pictures of bodies lying on the
9 ground, it may well be that if there are relatives or loved
10 ones of those who had seen them lying on the ground at the
11 sight of the footage may cause them distress and pain, so I
12 ask that those who will show us the footage refrain from
13 doing so for two minutes to enable anyone who feels that
14 he/she may be upset or hurt by the footage to leave the
15 auditorium.
16 MR NGALWANA: Before we watch the footage
17 can I just remind the witness why we are watching the
18 footage? You said this footage will show you being shot by
19 the police while lying on the ground.
20 MR MAGIDIWANA: It is so.
21 MR NGALWANA: Can we play the footage,
22 please?
23 [VIDEO SHOWN]
24 MR NGALWANA: That is you, correct?
25 MR MAGIDIWANA: That's me personally,

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1 yes.
2 MR NGALWANA: That footage doesn't show
3 any policeman standing with a small firearm firing at you
4 while on the ground, is that correct?
5 MR MAGIDIWANA: You see, Sir, as you can
6 see me they're to pick up me, I was shocked.
7 MR NGALWANA: Yes, Mr Magidiwana, - thank
8 you, Chair. Mr Magidiwana, we played this footage because
9 you said you saw on the footage a policeman standing above
10 you, shooting at you with a small firearm. That is the
11 purpose for which we played this footage. Now what I'm
12 asking you to do is to confirm that from that footage you
13 did not see any policeman standing above you with a small
14 firearm shooting down at you.
15 MR MAGIDIWANA: Should I speak?
16 MR NGALWANA: Go ahead.
17 MR MAGIDIWANA: I said to you one of the
18 videos was taken whilst I was lying on my side and when I
19 was instructed to take off the towel and was being shot. I
20 said to you they went pass me and later came back and the
21 one that shot me is the Xhosa speaking one, that is the man
22 who had the smaller firearm. I think what you saw over
23 there are those people standing there, they are shooting
24 and people are lying down.
25 MR NGALWANA: Are you now saying in that

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1 footage the police are busy shooting still?
2 MR MAGIDIWANA: Yes.
3 MR NGALWANA: In the same way that you
4 say there is a policeman standing on top of you or above
5 you at close range, shooting down at you with a pistol?
6 MR MAGIDIWANA: That was after they had
7 left and coming back fro the others, as they were coming
8 back, talking, that's when he shot.
9 MR NGALWANA: Are you saying that is what
10 we see on the footage?
11 MR MAGIDIWANA: I said you can see a
12 certain video in which I was shot at whilst I was lying on
13 the side, this is the video you just saw now.
14 MR NGALWANA: Mr Magidiwana, the video we
15 have just seen does not show a policeman holding a small
16 pistol firing down at you. Also, can I just finish?
17 MR MAGIDIWANA: Yes, Sir.
18 MR NGALWANA: It also doesn't show
19 policemen shooting while you are lying on the ground.
20 Isn't that what you say as well?
21 MR MAGIDIWANA: You're saying they are
22 seen not to be shooting?
23 MR NGALWANA: Remember we're talking
24 about the little, this short clip, showing you lying on the
25 ground, the short clip.

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1 MR MAGIDIWANA: What are they doing in
2 that short one?
3 MR NGALWANA: You saw what they were
4 doing.
5 MR MAGIDIWANA: Yes, they are shooting.
6 MR NGALWANA: Well, very well, we will
7 argue that the witness sees what he wants to see, something
8 which is not on the clip at all.
9 MR MPOFU: No, Chairperson, Mr Ngalwana
10 can argue whatever he wants, but what we saw and heard on
11 the video is that shots were continuing to be shot. We can
12 play it again, Chair.
13 CHAIRPERSON: Seeing there is a debate
14 about it, it doesn't take very long, let's see it again.
15 Can we see that clip again, please?
16 MR NGALWANA: Chair, can I just make it
17 clear? The witness says the police were busy shooting at
18 him, that is what we are looking at.
19 MR MAGIDIWANA: This is what I am saying,
20 that they shot me first on the arm, went pass and they came
21 back and shot, that is the one who came to finish me up.
22 MS PILLAY: Chair, if I may indicate just
23 in fairness to the witness that there were two clips shown
24 of what transpired immediately the seven seconds shooting.
25 The first is UU3 which is what we've just shown now. The

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1 second clip is AA7, which was also shown during his
2 examination in chief.

3 CHAIRPERSON: We should see both now
4 then.

5 MS PILLAY: Yes, they both need to be
6 shown.

7 CHAIRPERSON: Which is obviously quite
8 important, important for both sides as it were and in order
9 for us to get to the truth of it, we should carefully look
10 at both.

11 MR NGALWANA: Can you run this clip
12 first?

13 [VIDEO SHOWN]

14 CHAIRPERSON: Let's see it again, I'm
15 busy trying to explain to Mr Mpofo as his microphone is
16 off, so let's see it again?

17 [VIDEO SHOWN]

18 MR NGALWANA: Can we see the other clip,
19 AA7, please?

20 [VIDEO SHOWN]

21 [14:18] CHAIRPERSON: Mr Magidiwana, the person
22 being pulled, that's not you, is it?

23 MR MAGIDIWANA: It is.

24 CHAIRPERSON: Am I correct in thinking
25 that's it a suggestion that the person being pulled is the

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1 person who already had the gun, as opposed to the witness?
2 MR MPOFU: Yes Chairperson, in relation
3 to another video where we saw the two. Well the one in the
4 brown thing certainly had a gun, the other one we're not
5 sure but he was also facing the police.

6 MR NGALWANA: Chair can we remind
7 ourselves why we are watching this clip? A suggestion was
8 made that the witness is being shot while lying on the
9 ground.

10 CHAIRPERSON: I don't think we need to
11 see any more. I must tell you Mr Magidiwana I couldn't see
12 anyone shooting you nor could I hear shots being fired but
13 ja.

14 MR MPOFU: Sorry Chairperson do I take it
15 that remark relates to the second video because on the
16 first one I heard six shots being fired?

17 MR NGALWANA: No I also didn't hear
18 anything.

19 CHAIRPERSON: Because I didn't hear shots
20 in the first one if you insist there are then we must play
21 it again and we must listen very carefully.

22 MR MPOFU: Thank you.

23 MR NGALWANA: Chair, I really want to
24 finish my cross-examination it's been going on long enough.
25 Couldn't my learned friend deal with it -

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1 CHAIRPERSON: Look this is an important
2 point Mr Ngalwana, an important point for both sides. If
3 he's right it's very important for him and for the side in
4 this picture which he specifies and if in fact his
5 description of what happened with the journalists is
6 correct, that's also very important and we must leave no
7 stone unturned in endeavouring to trace those journalists
8 if they do exist. So it's important for his side, it's
9 important for you because if what he says isn't true then
10 that obviously strengthens your case but we've got to keep
11 an open mind and remember our function is to get the truth,
12 that's all. And if the truth is somehow capable of being
13 found on at least one part of the case by looking at these
14 videos then we must do so.

15 MR NGALWANA: Thank you, Chair. I
16 appreciate that. May I just ask that the witness be
17 permitted to answer questions put to him and not for
18 counsel to give evidence from the bar as he with respect
19 has just done?

20 MR MPOFU: Chairperson can I ask that the
21 volume be increased?

22 [VIDEO SHOWN]

23 CHAIRPERSON: There are at least four
24 sounds which are either gunshots or stun grenades, one or
25 the other but certainly there are shots of some kind, that

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1 is correct. No one as far as I can hear is actually being
2 shot at but that's a different matter but we we're looking
3 at it for again was whether shots were being fired and
4 certainly there are sounds when the volume is turned up
5 either of stun grenades or of firearm properties.

6 MR NGALWANA: Mr Magidiwana, from that
7 footage there was no policeman firing down at you with a
8 small firearm.

9 MR MAGIDIWANA: Sir, you see the video
10 appearing there I'm being shot in the video whilst lying
11 there, that is on the arm and then they went past. The
12 policeman did go past there but that part does not appear
13 on that video. These are some of the many things that I
14 said do not appear on this video. After going past when
15 they came back they came and shot me in front here, nobody
16 can shoot you in front while standing on the other side, he
17 was standing right in front of me.

18 MR NGALWANA: That is the part we don't
19 see on the video, correct?

20 MR MAGIDIWANA: I had already said so to
21 you, Sir, that some of the happenings have not been shown -
22 shoot me on the front.

23 MR MAHLANGU: He indicates on the front
24 of the stomach and the chest do not appear there.

25 MR MAGIDIWANA: I spoke about two

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1 incidents. The one where my stick was being taken and I
2 could see there, the last video that we had seen.

3 MR NGALWANA: So then when we went to
4 view these two videos, this is my parting shot now on this
5 issue -

6 CHAIRPERSON: Hope the expression is in
7 context -

8 MR NGALWANA: Yes sorry, Chair, I
9 apologise for that. This is the last point I wish to raise
10 with you on this issue of the video and your being shot
11 while on the ground. You have now just told the Commission
12 that the incident where you allege you were shot while you
13 were lying on the ground is not captured on either of the
14 two footages we've just shown.

15 MR MAGIDIWANA: I say Sir what happened
16 on that day not the whole of it has been exhibited and I
17 would give you reasons why it has not been shown because
18 certain parts of that visual have not been shown. I'm
19 talking about something that is there on my body. I can
20 undress and show you what I'm talking about.

21 MR NGALWANA: Mr Magidiwana, mine is a
22 very simple proposition. You took us, you took us to these
23 two footages that we've just seen. We went there because
24 you said they are going to show policemen shooting at you
25 while you're lying on the ground.

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1 MR MAGIDIWANA: The one that I spoke
2 about was the one that is clear when I'm being shot on the
3 arm. The one where that person is being put like this was
4 when the stick, where I spoke about the stick being taken
5 away. Those are the two incidents that I was referring to,
6 if you look you would see those that I referred to. Even
7 if you'd looked at the second one you will see it.

8 MR NGALWANA: Well perhaps your lawyers
9 in re-examination will help us find such a footage if it
10 does exist.

11 MR MAGIDIWANA: Thank you.

12 MR NGALWANA: But what you are now saying
13 is that the incident of the police shooting at you while
14 you were on the ground does not appear on the footages that
15 we've just seen. Yes or no. Is that correct or is that
16 incorrect?

17 MR MAGIDIWANA: The question you are
18 asking me is I explained to you that I was shot whilst
19 lying down but that has not - not everything has been shown
20 there.

21 MR NGALWANA: There is also nothing in
22 your statement about being shot in the elbow. Did you tell
23 your lawyers that you were shot in the elbow?

24 MR MAGIDIWANA: There is nothing that I
25 omitted to all the things that happened to me.

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1 MR NGALWANA: Did you tell your lawyers
2 about that fact?

3 MR MAGIDIWANA: Yes I did.

4 MR NGALWANA: We've agreed that whatever
5 was important, an important fact to you, you would have
6 told your lawyers.

7 CHAIRPERSON: Mr Ngalwana, I'm sorry to
8 interrupt you again. We were shown - I don't think it's
9 handed in as exhibits but we were given a document which
10 consists of a medical report on this witness and it shows
11 various injuries and respectively upper extremities and as
12 I say it's not been handed in as an exhibit but it is
13 before us and perhaps it will be dealt with in re-
14 examination if we don't deal with it now. Upper
15 extremities, open fracture left elbow one wound, possibly
16 entrance and exit as it is a large wound then the report
17 goes on, that indicates that there is a wound on the elbow.
18 It's true it's not dealt with in his statement but if it
19 wasn't dealt with in his statement that's an omission for
20 which he can scarcely be held responsible if in fact the
21 medical report indicates that there is an elbow wound. So
22 I don't think we should waste time if I may say so, it
23 sounds like at that point to me but if there's something in
24 it that I've not seen then you must please correct me.

25 MR NGALWANA: Thank you Chair in fact

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1 that makes a different point. If I can just make -

2 MR MPOFU: If I may, if I may Mr -

3 CHAIRPERSON: Mr Mpofo wants to say
4 something.

5 MR MPOFU: Yeah in fairness to Mr
6 Ngalwana the non-submission of that exhibit was completely
7 an oversight on my part which I thought I would rectify in
8 the re-examination but Mr Ngalwana is certainly not in
9 possession thereof. The second point Chair is that on -

10 CHAIRPERSON: He's not in possession of
11 it, I thought he was. If he's not in possession of it -

12 MR NGALWANA: We've seen medical reports
13 but -

14 MR MPOFU: Alright we'll give him a copy
15 Chairperson. The second point Chair -

16 CHAIRPERSON: Let him get the document
17 first and then you can make your second point. I was
18 simply seeking to stop cross-examination on the fact that
19 he directed to establish that he wasn't injured on his
20 elbow because it's not mentioned in the statement because
21 he clearly was and I thought I didn't want to waste half an
22 hour on a non-issue.

23 MR MPOFU: Thank you Chairperson, the
24 other point -

25 MR NGALWANA: - that's not the point that

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1 was being made at all.

2 MR MPOFU: Chairperson. Can I just

3 finish please, Mr Ngalwana? This might also help you.

4 CHAIRPERSON: Give him an opportunity to

5 make his point Mr Ngalwana and then he'll give you an

6 opportunity to make yours if you have one. Carry on.

7 MR MPOFU: The next point which might

8 also assist Mr Ngalwana in paragraph 19 of the statement it

9 says that when they got close to me I was shot again

10 several times from close range while I was on the ground.

11 Of course it doesn't say where those several shots but I

12 just wanted Mr Ngalwana to take those two things into

13 account, the medical report and paragraph 19.

14 MR NGALWANA: And I have, thank you

15 Chair.

16 CHAIRPERSON: Leave the elbow and move to

17 some other part of the anatomy.

18 MR NGALWANA: No I shall not leave the

19 elbow, Chair, there's one point that is being lost. The

20 suggestion was not a denial that he was shot in the elbow.

21 The point is where was he shot in the elbow? Was he shot

22 while he was lying on the ground or was he shot elsewhere?

23 That is the point that's being made.

24 MR MAGIDIWANA: I was saying yes whilst I

25 was lying on the ground as you also saw it on the video.

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1 MR NGALWANA: No I didn't see that on the

2 video, neither did you with respect Mr Magidiwana.

3 MR MAGIDIWANA: Well I say it's you who

4 didn't see it.

5 MR NGALWANA: Right hence my comment

6 subject to the Chair stopping me, that you see what you

7 want to see, not what is actually on the video.

8 MR MAGIDIWANA: I see what you are also -

9 what you can also see, Sir.

10 MR NGALWANA: Right we have to finish at

11 some stage. I'm moving on. You say in your statement that

12 a policeman showed some mercy and telephoned ambulances as

13 a result of which three ambulances came, correct?

14 Paragraph 22.

15 MR MAGIDIWANA: Yes, the one who asked me

16 what my name is and my surname.

17 MR NGALWANA: Yes and then you were

18 carried into one of the ambulances.

19 MR MAGIDIWANA: It is correct.

20 MR NGALWANA: By the police?

21 MR MAGIDIWANA: The ambulance people.

22 MR NGALWANA: Yes now you are not

23 suggesting that the police were on a murderous rampage or

24 all the police intended to shoot and kill you while you're

25 lying there are you?

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1 MR MAGIDIWANA: When you think, Sir, that

2 a policeman the one that I mentioned, the one who came to

3 my rescue, he did say he did not shoot people.

4 MR NGALWANA: I'm asking you a different

5 question. If there is a policeman who comes to your

6 rescue, telephones ambulances then three arrive.

7 [14:38] MR MAGIDIWANA: I am saying, Sir, that

8 policeman, his conscience made him feel guilty about what

9 they had done and then reacted thereon.

10 MR NGALWANA: One of the policemen, at

11 least one of the policemen you say shows mercy, he makes a

12 telephone call, three ambulances arrived, you are then

13 carried into the ambulances, you are taken to hospital

14 where after you're taken to several hospitals at which you

15 receive medical care. Is that the conduct of a police

16 service that is intent on murdering?

17 MR MAGIDIWANA: I once said to you, Sir,

18 on some other day, I asked you a question why they were

19 left to shoot on that day. I said the reason why was it

20 necessary for them to shoot at the people on that day.

21 There was no response to that question Sir. You didn't

22 give me any. I answered it for you, I then said the police

23 -

24 MR MAHLANGU: I'm sorry if I may ask him

25 to repeat again.

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1 MR MAGIDIWANA: I have asked that the

2 other interpreter who is still capable of listening long to

3 listen to me, the man interpreting for me is rather old and

4 he gets tired to listen.

5 MR MAHLANGU: Can I ask him to repeat the

6 question?

7 MR MAGIDIWANA: I asked a question from

8 counsel and he did not respond to it. The question was

9 what made the police stop the shooting? He said to me he

10 does not have to answer he's not going to answer my

11 question. I said to him I'm going to answer it on your

12 behalf, they got tired of shooting and the killing and they

13 decided to remove those that had been injured and to arrest

14 those that were not injured and take them to the jails. He

15 can say if that is not the truth.

16 MR NGALWANA: One you haven't answered my

17 question.

18 CHAIRPERSON: He's asked you a different

19 question. What he said to you was regarding that the fact

20 that one policeman at least showed mercy, phoned for an

21 ambulance, three ambulances came, you were carried into one

22 of them and taken to hospital. He says that indicates that

23 all the police as I understand it weren't out to murder

24 everybody. That there was - one cannot say that the police

25 were out to murder people entirely because if that were so

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1 then they wouldn't have taken you to hospital and organised
 2 medical treatment for you. I think that's basically the
 3 thrust of the question is that correct?
 4 MR NGALWANA: Yes Chair, and what's more
 5 may I add because it's important that this all goes
 6 together, I trust your memory, Mr Magidiwana, in addition
 7 to what the Chairperson has just put to you, all these
 8 things that the police have done to save your life in fact,
 9 that is inconsistent with the version you advance which is
 10 that the police were shooting at you while you're lying on
 11 the ground.
 12 MR MAGIDIWANA: No Sir. What you are
 13 saying or it is the way in which you're putting it, maybe
 14 not such a good way of putting it because I said I
 15 mentioned the policeman who came there and asked me things
 16 that I did not know. He asked me where is the - the
 17 witchdoctor. I said I don't know anything about that. He
 18 said where are the guns that were taken on the 13th. I said
 19 I don't know anything about that. The other one then came
 20 and said look if he knew about these things that you are
 21 asking him he would have said so already, leave him now.
 22 That's when I realised my bottom part, the private parts
 23 was blood soaked. I said to him the best thing is finish
 24 me up because there's no reason why you should leave me in
 25 this condition. Before he could answer, the one who had

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1 shot me, the one who was shooting he said he is going to
 2 die at any rate along the road. The person who helped me,
 3 the one who was guarding me there, the person who helped me
 4 is the only one I gave my name. Nobody else asked my name.
 5 He wrote my name and my surname.
 6 MR NGALWANA: So the policeman who helped
 7 you is not a bad cop.
 8 MR MAGIDIWANA: His conscience caught up
 9 with what they had done.
 10 MR NGALWANA: So the policeman who helped
 11 you is not a bad cop.
 12 MR MAGIDIWANA: I praised him, yes
 13 because he helped me from that lion that wanted to devour
 14 me.
 15 MR NGALWANA: So he's a good cop.
 16 MR MAGIDIWANA: I can say yes he is but
 17 he could have - they got tired of what they were doing, the
 18 killing.
 19 CHAIRPERSON: Mr Ngalwana, I don't know
 20 whether this will help you. I mean you know just this one
 21 swallow doesn't make a summer. One good cop doesn't make a
 22 whole group of angels. Implicit in the witness's evidence
 23 is that there were a whole lot of bad cops, to use your
 24 language, and at least one good cop but that seems clear
 25 from what he says. And once we've established that point

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1 is that going to help us to answer any of the questions
 2 that are contained in the terms of reference?
 3 MR NGALWANA: Chairperson, let me lead
 4 this point this way. You are not suggesting that all the
 5 policemen who were on duty at Marikana that day are bad
 6 policemen?
 7 MR MAGIDIWANA: If they are not evil
 8 people they would not have done what they did on that day.
 9 MR NGALWANA: I'll leave it. Mr
 10 Magidiwana, not only is the version that you have now
 11 advanced about your being shot while you're lying on the
 12 ground not seen on the video to which you referred us, you
 13 have also in your statement only mentioned one event or
 14 incident of shooting. You said nothing about the police
 15 coming, going away and then coming back to finish you off.
 16 If that is indeed what happened it is a very important
 17 factor of your evidence. One would have expected it
 18 reasonably to be in your statement. You told your lawyers
 19 about it presumably.
 20 MR MAGIDIWANA: I said earlier, Sir,
 21 pertaining to what happened to me there is nothing that I
 22 omitted to tell them.
 23 MR NGALWANA: So why is the second spate
 24 of shooting as you allege not in your statement?
 25 MR MAGIDIWANA: I countered or I

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1 mentioned the places where I was shot at.
 2 MR NGALWANA: But you said nothing about
 3 the police going away and coming back and finishing you
 4 off.
 5 MR MAGIDIWANA: Yes.
 6 MR NGALWANA: I suggest to you, Mr
 7 Magidiwana, that the reason it's not in your statement is
 8 because it never happened. Let me make clear what I mean.
 9 The police didn't shoot at you then go away and then come
 10 back and shoot at you again. I hope you understand what
 11 I'm saying. There is no dispute that you were shot at.
 12 MR MAGIDIWANA: How do you then say I was
 13 shot if you say it's not in dispute?
 14 MR NGALWANA: That it is incorrect that
 15 the police came, shot at you, walked away, went somewhere,
 16 then came back and shot at you at close range again. That
 17 didn't happen.
 18 MR MAGIDIWANA: I said earlier, I said I
 19 am not scared of undressing and show you the injuries. How
 20 these bullets penetrated and to show you specifically how
 21 the bullet penetrated the private parts. That would be an
 22 indication to you that I was not shot at whilst standing, I
 23 was lying.
 24 MR NGALWANA: Right, the police version
 25 will be, I'm moving onto a different point. The police

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1 version will be that when your group charged at the police
 2 line at the first incident that that group had no intention
 3 of joining up with the main route leading into Nkaneng but
 4 was intent on attacking the police.
 5 MR MAGIDIWANA: You're repeating that
 6 again. I am asking myself this question, I thought I could
 7 possibly ask you that question. Can a person run away from
 8 water and not run away from a person that's shooting?
 9 MR NGALWANA: Well I thought you could
 10 answer that question because Mr X will testify and I've
 11 linked the two, will testify that the fortitude that your
 12 group had in running towards the police with guns was you
 13 believed the bullets would not penetrate your body. You
 14 had in fact been shown a demonstration where the bullet
 15 apparently didn't penetrate the box. Now that explains,
 16 according, to Mr X this seemingly foolhardy action of
 17 rushing at police and attacking them with sharp edged
 18 weapons.
 19 MR MAGIDIWANA: No, Sir, there's no such
 20 a thing.
 21 MR NGALWANA: The group had in fact
 22 already done that on the 13th so this is nothing new.
 23 MR MAHLANGU: I'm sorry, Sir, the
 24 question again, I had to open this.
 25 MR NGALWANA: That group had already

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1 attacked the police with sharp edged weapons on the 13th
 2 which was the Monday the 13th August 2012 and so this was
 3 nothing new.
 4 MR MPOFU: Chairperson I'm sorry that
 5 question is misleading. That group what does that mean?
 6 On the 13th we know that there were about 100 people -
 7 CHAIRPERSON: I think that the question
 8 should be reformulated, I think there's substance in Mr
 9 Mpofu's point.
 10 MR MPOFU: Thank you Chair.
 11 MR MAGIDIWANA: I don't know this
 12 Makarapa that you're referring to. I know what a Makarapa
 13 is.
 14 MR NGALWANA: Chair, I just want to take
 15 some - from my team before I stop.
 16 CHAIRPERSON: It's 3 o'clock and if it's
 17 appropriate for us to take the adjournment at this stage we
 18 will do so but if you want to carry on I'm in your hands.
 19 MR NGALWANA: Yes I would go along with
 20 the Chairperson's suggestion that we take tea. It may very
 21 well be that I may not have any further questions or the
 22 team may suggest that we must cover one or two issues,
 23 Chair. I'm told by my immediate senior that we can use
 24 papers - but the Chairperson is fond of his tea.
 25 CHAIRPERSON: If my attention is drawn to

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1 that report perhaps we should carry on then.
 2 MR NGALWANA: May I take some - Chair?
 3 [COMMISSION ADJOURNS COMMISSION RESUMES]
 4 [15:18] CHAIRPERSON: The Commission resumes. Mr
 5 Ngalwana, was the time spent at tea time or have you got
 6 some more questions?
 7 MR NGALWANA: The tea time was spent,
 8 Chair. The Chairperson and the members of the Commission
 9 will be relieved to hear that I'm almost at the end.
 10 CHAIRPERSON: Yes, we've had promises
 11 like that from other people who were here before. Never
 12 mind, carry on.
 13 MR NGALWANA: Thank you, Chair. Mr
 14 Magidiwana, what is a sleep out allowance, can you just
 15 explain that briefly?
 16 MR MAGIDIWANA: You mean what is it? It
 17 is the money that you receive from not sleeping - when you
 18 don't sleep at the compound, which is the hostel, but if
 19 you sleep there in the compound, that money will be
 20 deducted from you, but you will be forced to sleep, to eat
 21 at the kitchen there. Or whether maybe you are a person
 22 who sleep there in the compound or maybe you eat there.
 23 MR NGALWANA: When you say compound, you
 24 mean the hostel?
 25 MR MAGIDIWANA: It is so, Sir.

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1 MR NGALWANA: And Nkaneng, is that one
 2 such hostel?
 3 MR MAGIDIWANA: No, Sir.
 4 MR NGALWANA: Thank you, Chair, I have no
 5 further questions.
 6 CHAIRPERSON: Mr Tip, do you have any
 7 questions on behalf of Lonmin - sorry, on behalf of NUM.
 8 MR TIP SC: On behalf of the NUM, Mr
 9 Chair, I do.
 10 CHAIRPERSON: Yes, I'm sorry, I got my
 11 order of counsel muddled up. I know you act for NUM.
 12 MR TIP SC: Thank you, Mr Chair. I have
 13 a small handful of topics and I'll try to deal with them as
 14 briefly as I can. Mr Magidiwana, you got your employment
 15 at Lonmin in the course of 2011. When about in the year
 16 was that?
 17 MR MAGIDIWANA: I don't remember well,
 18 Sir, what month it was.
 19 MR TIP SC: Well, just more or less.
 20 MR MAGIDIWANA: That would then require
 21 me to go have a look at my payslip and look at the date in
 22 each, because I used not to notice that - to look at it.
 23 MR TIP SC: This was your first
 24 employment?
 25 MR MAGIDIWANA: Yes, Sir.

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1 MR TIP SC: Although you can't remember
 2 quite when you started, it was a very important development
 3 in your life, would that be correct?
 4 MR MAGIDIWANA: When, Sir, you get
 5 employed, you don't look at those things like at the date
 6 or the month. Sir, those are the things that I don't
 7 notice. Even if perhaps I look at it, I won't keep it in
 8 my memory, then I would forget it again.
 9 MR TIP SC: Yes, we've moved on from the
 10 date question. It was a very important development in your
 11 life to obtain this first job, wasn't it?
 12 MR MAGIDIWANA: It is so, Sir.
 13 MR TIP SC: You were happy with the work
 14 and doubtless pleased to receive the salary?
 15 MR MAGIDIWANA: It is so, Sir.
 16 MR TIP SC: And from day one, is it so
 17 that you would have understood very clearly that if you
 18 stayed away from work without permission or some other
 19 lawful reason, then you could be dismissed by your
 20 employer?
 21 MR MAGIDIWANA: I was told, Sir.
 22 MR TIP SC: Yes. And that would be
 23 something that you would very dearly love to avoid,
 24 correct?
 25 MR MAGIDIWANA: Yes, Sir.

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1 MR TIP SC: I just want to try and
 2 clarify some of the chronology during the period of
 3 approximately 10, 11, 12, 13 August. You've told us that
 4 approximately on 10 or 11 August, you first got wind of the
 5 decision by the RDOs to go on strike.
 6 MR MAGIDIWANA: It is so, Sir.
 7 MR TIP SC: I'd like, if possible, for
 8 you to tell us more precisely when you first heard that,
 9 and I'm going to ask you whether you recall what shifts you
 10 worked over that period?
 11 MR MAGIDIWANA: I was working in the
 12 mornings, Sir.
 13 MR TIP SC: Right, and –
 14 MR HANABE: I'm asking the second
 15 question, senior counsel, because first of all I asked him
 16 as to what shift he was working, and then the second I'm
 17 question I'm asking was precisely at what time did he hear
 18 about this. So he has not yet answered.
 19 MR TIP SC: Yes, I'm not too concerned
 20 about precisely what time. If you say the morning shift,
 21 that's good enough.
 22 MR HANABE: Thank you, Sir.
 23 MR TIP SC: Do you recall whether you
 24 worked over weekends at that time, or whether you were
 25 supposed to work during weekends – Saturday and Sunday?

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1 MR MAGIDIWANA: Sir, in fact, what used
 2 to happen is I used also to work even on Sundays, because
 3 I'm a person who used to work overtime.
 4 MR TIP SC: Alright. So let us just try
 5 and get some content to what you've told us. You said that
 6 you first heard about the strike when you came to Nkaneng
 7 after you had been at work. Do you remember saying that?
 8 MR MAGIDIWANA: It is so, Sir.
 9 MR TIP SC: Can you perhaps recall
 10 whether that would have been on Friday, the 10th of August
 11 or Saturday, the 11th of August, or when precisely?
 12 MR MAGIDIWANA: Sir, what I can say or
 13 remember is that I in fact don't remember what day or date
 14 it was.
 15 MR TIP SC: Alright, but you do recall
 16 that it was after you had come home from work?
 17 MR MAGIDIWANA: It is so, Sir.
 18 MR TIP SC: Now, what I'm particularly
 19 interested in, Mr Magidiwana, is the evidence that you've
 20 given about the reports that you heard that certain people
 21 had been stopped from going to work, and I'm going to ask
 22 you to give us a little more detail about that, if you
 23 would. What – can you remember when you received that
 24 report and when, as a result of that, you decided not to go
 25 to work yourself anymore?

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1 MR MAGIDIWANA: I heard about it for the
 2 first time on the 10th.
 3 MR TIP SC: Yes. And was that also after
 4 you had come home from work?
 5 MR MAGIDIWANA: Yes, Sir.
 6 MR TIP SC: And was it as a result of
 7 that report that you stopped going to work after that?
 8 MR MAGIDIWANA: It is so, Sir.
 9 MR TIP SC: Now, just tell us a little
 10 more content, if you would, please, of what these
 11 colleagues of yours reported to you. You've told us that
 12 they said that they had been stopped from going to work and
 13 that you then stopped as well. What did they tell you
 14 about being stopped from going to work?
 15 MR HANABE: You mean, Sir – senior
 16 counsel, these people who told him – who spoke to him, they
 17 said they have been stopped from going to work?
 18 MR TIP SC: Yes, let me put the question
 19 again so that it's perfectly clear. The people who told
 20 you that they had been stopped from going to work, what did
 21 they tell you about that? How were they stopped?
 22 MR MAGIDIWANA: They were talking amongst
 23 each other, Sir, these people, they were not talking to me,
 24 but I was from work and passing them by – I was passing
 25 them.

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1 MR TIP SC: Yes. Well, let me just take
2 you back to paragraph 4 of your statement, there you say -
3 Mr Magidiwana, perhaps you should just get it in front of
4 you.
5 MR MAGIDIWANA: Yes.
6 MR TIP SC: Paragraph 4, the last
7 sentence, and running on to paragraph 5, you say, quote,
8 "Some of the workers told me that they had been stopped
9 from going to work. From then I also stopped going to
10 work."
11 And that statement – those portions of your
12 statement were confirmed by you in the course of your
13 evidence-in-chief. So what did you hear from these
14 workers?
15 MR MAGIDIWANA: Is that no one is going
16 to work and that all that is needed is money.
17 MR TIP SC: I'm afraid I don't understand
18 that – nobody is going to work and all that is needed to
19 money. By money do you mean the demand that the RDOs had
20 advanced of 12 500? Is that what you're talking about?
21 MR MAGIDIWANA: Yes.
22 MR TIP SC: So would – and when they
23 described how they had been stopped from going to work, did
24 they describe how that had happened?
25 MR MAGIDIWANA: I never asked as to how

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1 it was done, neither did I ask as to how that was done to
2 them.
3 MR TIP SC: Again, perhaps there's an
4 interpretation question, Mr Mpofo?
5 MR MPOFU: Thank you, Mr Tip, yes. The
6 witness said [African language], so maybe you can interpret
7 it like that.
8 MR HANABE: He says the fact what he was
9 saying that I never asked as to how it was done, which I
10 believed that the message also was conveyed in that regard.
11 MR TIP SC: Well, Mr Magidiwana, it's a
12 fairly important thing, I should've imagined, that if you
13 decided not to go to work, and therefore to expose yourself
14 to the possibility of disciplinary action, you would have
15 wanted to be satisfied that there was a good reason not to
16 go to work?
17 MR MAGIDIWANA: Sir, this reason, in
18 fact, is reasonable, it makes sense, because if a person
19 demands money, that is a very important and reasonable
20 reason for that.
21 MR TIP SC: Well, there were two very
22 important considerations here, Mr Magidiwana: the RDOs had
23 decided to go on an unprotected strike, because they had a
24 demand of 12 500, correct?
25 MR MAGIDIWANA: He said he never went to

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1 work, because they wanted R12 500.
2 MR TIP SC: The RDOs had gone on an
3 unprotected strike, because they had a demand for 12 500.
4 MR MAGIDIWANA: It is so.
5 CHAIRPERSON: I take it you understand
6 that by unprotected strike – I know you do, Mr Tip, but I'm
7 asking the witness, I take it you understand that by an
8 unprotected strike, Mr Tip is referring to a strike which
9 can lead to a dismissal of the workers?
10 MR MAGIDIWANA: Yes, it is so. If it an
11 unprotected, I know that people might be dismissed.
12 MR TIP SC: Thank you, Chair. And I
13 suppose that you had heard that the RDOs had put their
14 demand to Lonmin and that they had been unsuccessful?
15 MR MAGIDIWANA: No, Sir, I never heard
16 about that.
17 MR TIP SC: Throughout the period from
18 mid-June through July to the middle of August of 2012, you
19 never heard any word about the RDOs having put a demand to
20 Lonmin for a payment of 12 500 per month?
21 MR MAGIDIWANA: No, Sir.
22 MR TIP SC: Well, Mr Magidiwana, I'll
23 submit that that is highly improbably, but I want to move
24 on, because I want to get to the heart of this, and let me
25 just put the essence of it to you directly. You were not

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1 an RDO?
2 MR MAGIDIWANA: It is so, Sir.
3 MR TIP SC: You had never put a demand to
4 your employer, correct?
5 MR MAGIDIWANA: Sir, the workers did say
6 that - Lonmin workers, that they want money.
7 MR TIP SC: Yes, right. Well, when, on
8 your behalf, was a demand put to Lonmin for payment of R12
9 500 per month?
10 MR MAGIDIWANA: That was said by the
11 workers that as Lonmin employees we should get a wage in
12 the amount of R12 500.
13 [15:38] MR TIP SC: That was said by the workers.
14 The workers would have liked to get 12 500 a month, I'm
15 sure. My question to you is specific. When, on your
16 behalf, was a demand put to your employer, Lonmin, for
17 payment of 12 500 as your salary per month?
18 MR HANABE: When you say on your behalf,
19 you refer to him specifically?
20 MR TIP SC: On behalf of Mr Magidiwana,
21 yes.
22 MR HANABE: Thank you, senior counsel.
23 MR MAGIDIWANA: When it was first said
24 that this is now not – no longer an RDO issue, but it
25 includes every employee at Lonmin.

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1 MR TIP SC: I'll repeat the question.
 2 This will be the third repetition. When, on your behalf,
 3 was a demand put to Lonmin for payment of 12 500? When, if
 4 ever?
 5 MR MAGIDIWANA: Sir, I don't remember the
 6 time, but it was at the time the Lonmin employees records
 7 were saying one thing, supporting each other, that they
 8 want that amount of money.
 9 MR TIP SC: Well, I think the question
 10 has been put clearly enough. I'm going to move on –
 11 perhaps I just ask a supplementary question. Was there
 12 ever a meeting of workers that you attended where there was
 13 a decision to demand from Lonmin the payment of 12 500?
 14 MR MAGIDIWANA: Let me put it like this.
 15 It is when all the Lonmin employees or workers stopped
 16 going to work. I must put it then or clarify it in that
 17 way.
 18 MR TIP SC: That's not much of a
 19 clarification, given my question. Was there ever a general
 20 meeting of workers who were not RDOs, that you attended
 21 where there was a decision that a demand would be put to
 22 Lonmin for payment of 12 500?
 23 MR MAGIDIWANA: The meeting that was
 24 there is only the one where we were assaulted.
 25 MR TIP SC: Do you mean assaulted by the

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1 police on 16 August 2012, is that what you're saying?
 2 MR MAGIDIWANA: Yes, Sir.
 3 MR TIP SC: So as at 10, 11, 12 August
 4 there was never any meeting of the sort I have described?
 5 MR MAGIDIWANA: Those who held the
 6 meeting then took part in it.
 7 MR TIP SC: Mr Magidiwana, I'll resist
 8 being distracted by answers of that sort. Let me move on.
 9 Did you in the course of 10 August or 11 August or 12
 10 August hear anybody speak about the fact that Lonmin had
 11 distributed notices to the RDOs that if they were – if they
 12 continued with unprotected strike action, they would be
 13 dismissed?
 14 MR MAGIDIWANA: Never.
 15 MR TIP SC: Did you over those days, or
 16 for that matter, even thereafter, hear anything being said
 17 about the fact that Lonmin had on the afternoon of 10
 18 August 2012 obtained an order in the labour court,
 19 declaring the action taken by the RDOs to be unprotected
 20 and requiring them to return to work?
 21 MR MAGIDIWANA: Never.
 22 MR TIP SC: Nevertheless, you knew that
 23 if you did not report for work, that you were vulnerable to
 24 being dismissed by Lonmin?
 25 MR MAGIDIWANA: Yes, it is so, Sir.

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1 MR TIP SC: And had you given thought to
 2 what you were going to say to Lonmin if you were indeed
 3 subjected to disciplinary action because you failed to
 4 report for work after the 10th of August?
 5 MR MAGIDIWANA: Yes, Sir.
 6 MR TIP SC: And what were you going to
 7 say?
 8 MR MAGIDIWANA: As Lonmin employees we
 9 were on strike.
 10 MR TIP SC: And how was that going to
 11 help you, because you knew that this was an unprotected
 12 strike that the RDOs had embarked upon?
 13 MR MAGIDIWANA: Yes, it was going to help
 14 further that I had hoped, because I was not the only person
 15 who was not going to work. It was all of us. It's not
 16 like the case where I would just sit and go to – and not go
 17 to work.
 18 MR TIP SC: Were you not perhaps going to
 19 say to Lonmin that you had not reported for work because
 20 people had been stopped from going to work?
 21 MR MAGIDIWANA: I was going to say to
 22 them what I have just said to you, that as Lonmin employees
 23 we are on strike because we want money, the one that we
 24 still want even today.
 25 MR TIP SC: I'm going to suggest to you

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1 that there was by the 10th of August, there were numerous
 2 incidents of intimidation by RDOs who had decided to go on
 3 strike, of other workers who still intended to go to work.
 4 Did you hear about any of such incidents?
 5 MR MAGIDIWANA: I never heard about that,
 6 Sir.
 7 MR TIP SC: Did you hear that the NUM
 8 during the course of the evening and through the night of
 9 10/11 August had assisted people from going to work,
 10 because of the intimidation that they were encountering?
 11 MR MAGIDIWANA: I heard about that, as it
 12 was mentioned, it was being mentioned here.
 13 MR TIP SC: You mean in this Commission?
 14 MR MAGIDIWANA: It is so, Sir.
 15 MR TIP SC: Yes. Let me make it clear
 16 that all my questions are directed towards what you heard
 17 at the time, in August, not what you heard here?
 18 MR MAGIDIWANA: Sir, I could not – I was
 19 not hearing everything there.
 20 MR TIP SC: I don't follow that answer at
 21 all. I asked you a specific question, I'll repeat it. Did
 22 you at the time, that is 10, 11, 12 August 2012 hear that
 23 members of the NUM and officials had during the course of
 24 the evening of 10 and through the night of 10/11 August,
 25 assisted people to get to work, because they were being

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1 intimidated from doing so?

2 MR MAGIDIWANA: I never heard about that.

3 MR TIP SC: You never heard about any

4 report about the conduct of the NUM over that period of any

5 sort?

6 MR MAGIDIWANA: What I heard, Sir, being

7 said was that there were two employees or workers who had

8 died.

9 MR TIP SC: Yes. Well, when did you hear

10 that and precisely what had you heard?

11 MR MAGIDIWANA: It was said that they

12 were shot at by NUM people.

13 MR TIP SC: When did you hear that?

14 MR MAGIDIWANA: I think it was during

15 sunrise on that day.

16 MR TIP SC: Sunrise on what day?

17 MR MPOFU: Chairperson, I'm sorry, once

18 again, Mr – I'm sorry, Mr Tip, another interpretation issue

19 that Mr Ngalwana and I have picked up. It's the – the

20 [African language] in Xhosa means 'the following morning',

21 not the sunrise of the same day.

22 MR HANABE: On the following day, he

23 says, yes, on the following day.

24 MR TIP SC: Alright. Well, the following

25 day doesn't tell us really much. What day was that? Can

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1 you put a date to it?

2 MR MAGIDIWANA: Sir, I'm not in a

3 position to say that, because I even forget what I see on

4 my payslip when I was employed, I got employed.

5 CHAIRPERSON: According to the evidence

6 that we've heard, there was an incident near the NUM

7 offices on the 11th, which was the Saturday. Two workers

8 were shot and it was believed that they were killed. When

9 you say you heard sunrise of the following day, and if

10 you're referring to the incidents at the NUM offices, then

11 would it be correct to say that you're referring to the

12 Sunday, which was the 12th of August, the day after these

13 people were shot near the NUM office?

14 MR MAGIDIWANA: I'm saying, okay.

15 CHAIRPERSON: So by the following morning

16 you mean the Sunday morning?

17 MR MAGIDIWANA: Sir, if you then say it

18 was on Sunday, I'm saying that because I'm not disputing

19 that, because I don't know in fact what date or day it was.

20 CHAIRPERSON: Let me approach it from

21 another angle. If it's correct that the shooting of two

22 people near the NUM office happened on the Saturday, then

23 do you accept that the day when you heard about it, was the

24 Sunday?

25 MR MAGIDIWANA: Okay, I will accept it

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1 that way, Sir, because I don't – I didn't know the – I

2 don't know the day or what date it was.

3 MR TIP SC: Mr Magidiwana, let me just

4 put a different possibility to you, because it had also

5 been said that the NUM people had on the Friday, the 10th,

6 come out of their offices and shot dead two people who were

7 on their way back from a gathering at the Lonmin LPD

8 offices. Did you perhaps hear that, in which case it would

9 have been on the Saturday morning?

10 MR MAGIDIWANA: Sir, the thing I heard

11 was that the NUM people shot at the workers only.

12 MR TIP SC: You don't know quite when or

13 how?

14 MR HANABE: Can you repeat the question,

15 senior counsel?

16 MR TIP SC: You don't know quite when or

17 how?

18 MR MAGIDIWANA: No, I don't know that,

19 Sir.

20 MR TIP SC: Mr Magidiwana, I'm going to

21 take you on to the 16th of August. There are just two

22 aspects there that I'd like you please to clarify if you

23 can for the assistance of the Commission and I would like

24 you to look at Exhibit EEE7, triple E7, photo number 11.

25 INTERPRETER: Yes, we have it, senior

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1 counsel.

2 MR TIP SC: Thank you. You will see that

3 that – that consists of two photos. The one is described

4 as the rear group and that – it has been discussed here

5 already, was the – people were sitting up on the Koppie

6 itself. Do you recall that?

7 MR MAGIDIWANA: Yes, I remember when you

8 said that.

9 MR TIP SC: And then the lower of the two

10 photographs is described as the front group and you have

11 told us more than once that you were a member of that

12 group? Do you recall that also?

13 MR MAGIDIWANA: Sir, I said I was seated,

14 I was sitting in front.

15 [15:59] MR TIP SC: Yes, I'm not going to, you

16 were part of the front group, you've said so several times.

17 MR MAGIDIWANA: I don't know then, Sir,

18 how I should put it because I agreed that I was sitting in

19 front.

20 MR TIP SC: Alright, Mr Magidiwana, let's

21 just move on because I want to take your attention to a

22 particular aspect of the second of those photos and that is

23 that between what is called the front group and what is the

24 lower corner of the rear group, there is a wide expanse of

25 veld, do you see that?

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1 MR HANABE: Do you mean the second photo,
 2 photo number 2, Senior Counsel?
 3 MR TIP SC: No, sorry, I mean photo 11,
 4 the lower of the two photographs. Do you see that?
 5 MR MAGIDIWANA: I can see that, Sir.
 6 MR TIP SC: And, Chair, the Commission
 7 has seen the same thing on various other photographs and
 8 videos that show it more fully, but this is sufficient and
 9 convenient for present purposes. Now, Mr Magidiwana,
 10 you've also said to us several times that there was nobody
 11 regulating where people could sit and people could sit
 12 wherever they wish to.
 13 MR MAGIDIWANA: It is so, Sir.
 14 MR TIP SC: Now can you offer an
 15 explanation why nobody is sitting in this broad expanse of
 16 veld between the front group and the rear group?
 17 MR MAGIDIWANA: I can tell you, Sir.
 18 MR TIP SC: Please do?
 19 MR MAGIDIWANA: When I look here it was
 20 just the way it was organised or prepared, that each and
 21 every person could be free to move.
 22 MR TIP SC: Why would they need a large
 23 expanse of veld to move?
 24 MR MAGIDIWANA: Even the people who are
 25 sitting on the koppie, the mountain, you can see that the

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1 other people are sitting on the other mountain, whereas the
 2 others are sitting on the other koppie, the mountain.
 3 MR TIP SC: You see what I am going to
 4 suggest to you, Mr Magidiwana, is that that broad expanse
 5 of open area between the front group and the rear group
 6 reflects a common understanding on the part of everybody at
 7 the koppie that the front group had a special identity that
 8 it was a separate group.
 9 MR MAGIDIWANA: How are they different or
 10 separated?
 11 MR TIP SC: They are different and
 12 separate because the front group were the people who were
 13 heavily armed and those are the persons to whom reference
 14 has been made as the warrior group.
 15 MR MAGIDIWANA: And then what about those
 16 who are sitting there on the side, which people are those
 17 then?
 18 MR TIP SC: Well, it is my turn to answer
 19 questions here and perhaps that will be the concluding the
 20 exchange for the day, I see it has gone past four o'clock.
 21 The people on the side, Mr Magidiwana, you are referring to
 22 whom?
 23 MR MAGIDIWANA: It is these people that
 24 in fact you had showed me, as they are on the side and they
 25 are sitting in the same order, that's the people I'm

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1 talking about.
 2 CHAIRPERSON: I think he is referring to
 3 the front group on page 11 of Exhibit EEE7. If you look on
 4 the top right hand corner of that photograph you will see
 5 some people sitting there. Let me ask the witness. Are
 6 those the people you are referring to?
 7 MR MAGIDIWANA: Yes, Sir.
 8 MR TIP SC: Well, let me answer that
 9 question by telling you that that is the wing of the rear
 10 group and perhaps what I could to, Mr Chair, is when
 11 reconvene tomorrow morning, otherwise it is convenient at
 12 the moment to adjourn, is for a video to be played where
 13 the scene can be portrayed more broadly.
 14 CHAIRPERSON: It sounds like a good
 15 suggestion. Mr Magidiwana, do you understand, tomorrow
 16 morning you are going to see another video clip of the
 17 scene and counsel is then going to refer you precisely that
 18 those people you are referring to, he says are part of a
 19 wing of the rear group, but we'll wait to see tomorrow
 20 whether that clip shows that.
 21 MR MAGIDIWANA: So these ones in front,
 22 they are not part of those who are sitting at the back, the
 23 one you referred to as the wing?
 24 CHAIRPERSON: Well, as I understand
 25 counsel, he says those, the group that you and I refer to,

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1 he says they are part of the rear group, they're the
 2 extreme wing of the rear group and he says he is going to
 3 show us a clip tomorrow that makes that clear. So I say
 4 you and I will see tomorrow whether that's correct.
 5 MR MAGIDIWANA: Yes.
 6 CHAIRPERSON: On that note we will
 7 adjourn until half past nine tomorrow morning.
 8 [COMMISSION ADJOURNED]
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