

TRUTH AND RECONCILIATION COMMISSION

AMNESTY HEARING

DATE: 31-01-2000

HELD AT: WITBANK

NAME: PHILIP MAKWALE NYALUNGA

MATTER: WITBANK BOMBING

DAY: 1

-----CHAIRPERSON: Good morning to you all. Today is the 31st of January 2000. We are here to hear the applications of Philip Makwale Nyalunga, John Ithumeleng Dube in relation to an incident referred to as the Witbank Bomb Blast.

My name is Judge Sisi Khampepe, I will be chairing these proceedings. On my right-hand side is Judge Motata, on my left-hand side is Judge de Jager. This will be the Panel that will sit to consider these two applications.

I am now going to request the legal representatives who are going to appear on behalf of the applicants and the victims to kindly place their names on record.

MR MBETHE: My name is Mr Mbethe, Mr S T R Mbethe and I'm from Mbethe attorneys...(indistinct - mike not on). I represent the Msina family. Sorry and also Mr Diyale.

CHAIRPERSON: Thank you Madam Chair. My name is Andre Steenkamp, I will be the Evidence Leader in this matter. Thank you.

CHAIRPERSON: Thank you Mr Steenkamp.

MR SCHULTZ: Madam Chair, my name is Conrad Schultz, I'm from the firm of attorneys Potgieter Coetzee in Witbank. I act on behalf of 15 of the victims.

MR KOOPEDI: Thank you Madam Chairperson. My name is Brian Koopedi. I appear on behalf of the two applicants in this matter. May I point out at this moment Madam Chairperson, that I was missing one of my applicants, but he is here and we are ready to proceed.

CHAIRPERSON: Thank you Mr Koopedi. Mr Steenkamp, how many victims are involved in this incident?

MR STEENKAMP: Madam Chair, at this moment, if I'm not mistaken, I think it's more or less 30. A list of victims has been prepared, it's in the process of being copied and it will be handed to you during the hearing and the full details of all the victims will be handed

to you as required by the Act. Madam Chair if I may at this time just ask, there's a household matter. I've been requested by my learned colleagues if they will be allowed to remove their jackets during the time of this Hearing. Thank you Madam Chair.

CHAIRPERSON: They may do so, Mr Steenkamp. Can an indication be given to this Committee whether all the victims were notified in terms of Section 19(4)?

MR STEENKAMP: Indeed Madam Chair. It is my humble submission that the requirements of Section 94 were indeed met. All victims were notified. Those who were not notified, efforts were undertaken to notify them. The Investigator in this matter, Captain Moyma is present. If any questions arise in any notification, any victims or implicated people were done, I can just maybe indicate at this stage the specific building owners of the Nedbank and the Standard Bank and the NBS branches were also notified and they have indicated that they are not interested in attending this hearing whatsoever and for that reason, Madam Chair, I will suggest that this specific requirements were met and the Chair can proceed with this Hearing. Thank you Madam.

CHAIRPERSON: Thank you. Mr Koopedi, are we in a position to commence?

MR KOOPEDI: Indeed we are, Chairperson and perhaps may I point out that the two applicants will not be calling any victims so their application will consist mainly of ...(intervention)

CHAIRPERSON: Any witnesses?

MR KOOPEDI: Yes, no witnesses. Their application will consist solely of their two testimonies and the first person to be called, if you will allow us, would be Philip Makwale Nyalunga and he's ready to be sworn in Chairperson.

CHAIRPERSON: What language will he be testifying in?

MR KOOPEDI: He will testify in English, Chairperson.

PHILIP MAKWALE NYALUNGA: (sworn states)

MR KOOPEDI: Thank you Chairperson, may we proceed?

CHAIRPERSON: You may proceed Mr Koopedi.

MR KOOPEDI: Thank you. We seem to have a problem with the mike. I can't have my mike and his on at the same time.

CHAIRPERSON: We'll require the technician to come to your assistance.

MR KOOPEDI: We have been assisted, thank you.

EXAMINATION BY MR KOOPEDI: Mr Nyalunga, is it correct that you are an applicant in this matter?

MR NYALUNGA: Yes.

MR KOOPEDI: Is it also correct that Mr Dube is your co-applicant?

MR NYALUNGA: Yes.

MR KOOPEDI: I will refer you to page 3 of the bundle of documents which this Honourable Committee has in front. Is this your application form?

MR NYALUNGA: Yes.

MR KOOPEDI: The said form is signed on page 8 of this same bundle of documents. Would this be your signature?

MR NYALUNGA: Yes.

MR KOOPEDI: Now, you were involved in this incident, the car bomb blast at Witbank, is that correct?

MR NYALUNGA: Yes.

MR KOOPEDI: Would you briefly tell this Honourable Committee as to what was your involvement?

MR NYALUNGA: I joined the ANC in 1979, January in Swaziland. I did military training in Angola and specialised in GDR. In 1981 I joined the special operations ...(intervention)

CHAIRPERSON: Mr Nyalunga, we are going to ask you to try and speak at a pace that will enable our translators to translate to the many victims that you see sitting here in different languages and also afford us an opportunity to be able to take down what you are saying.

MR NYALUNGA: Okay.

CHAIRPERSON: Thank you.

JUDGE DE JAGER: Mr Koopedi, I note he's reading from a paper. Haven't you got copies available for us?

MR KOOPEDI: I'm afraid not. He's reading from a statement which we just prepared. It is hand-written and we do not have copies. If we had, we would have loved to supply the Honourable Committee members and my learned friends that side, but we do not have.

CHAIRPERSON: You may proceed.

MR KOOPEDI: Thank you, Chairperson.

MR NYALUNGA:

In 1981 I joined Special Operations Unit based at Maputo. I was infiltrated into the country during December of 1987. I became a member of an underground unit of MK based at Vosloorus. Thabang Kholile Sam was my Commander and I was the Commissar of the Unit. The Unit comprised only of the two of us but we would recruit people to assist us on an operation to operation basis. Thabang advised me that he has considered the police headquarters in Witbank as a target for bombing.

CHAIRPERSON: Who advised you?

MR NYALUNGA: Thabang.

CHAIRPERSON: What's his surname? Surname?

MR NYALUNGA: His real name is Kholile Sam.

CHAIRPERSON: That's your Commander?

MR NYALUNGA: Ja, That's my Commander.

CHAIRPERSON: Yes?

MR NYALUNGA:

He undertook to do the necessary entails of checking out the area and getting the necessary material for the creation of the bomb. On one or two occasions I went on a reconnaissance trip with Thabane. He showed me a building in the town which he told me was the Headquarters of the Security Police in Witbank. Thabang advised me that he will also get Comrade Silver, my co-applicant to join us in this operation, as he was an expert in the connection of the remote control device.

On a Sunday evening Comrade Thabang and Silver came to my place and picked me up. We proceeded to Witbank. We slept at a house in Witbank. It was my sister's house. Thabang had the keys to the house, my sister and her husband knew Thabang very well. Thabang advised us that we were going to plant the bomb the following morning and told us further that all the necessary material was in the house.

On Monday morning I saw that there was a Ford Cortina car in the garage and we started to assemble the bomb in the boot of the Cortina as Thabang ordered. We took turns in providing security ...(intervention).

JUDGE DE JAGER: Sorry, was this car in your sister's garage?

MR NYALUNGA: Yes.

JUDGE DE JAGER: Were they at home or were they away?

MR NYALUNGA: No, they were not there.

We took turns in providing security by going outside and checking for passers by. Thabang did the real assembling and we assisted and then Comrade Silver connected the remote control gadget. During that very morning, Thabang asked to proceed as this was the day the Security Police and their friends were going to get the shock of their lives. Thabang ordered me to drive the Mazda, the vehicle which we used to go to Witbank the previous night. He ordered Silver to come with me in the Mazda.

Thabang further told me that I should follow him into town and when we reached the taxi rank we should stop and that after parking that bomb car, he will return to us on foot. The taxi rank, if I remember well, was on the same street as the Special Branch Offices.

CHAIRPERSON: What car was Thabang driving?

MR NYALUNGA: A Cortina.

I indeed followed Thabang's car and parked at the taxi rank. ... (indistinct) proceed and parked the car and he walked back to us. He told me to drive off, which I did. As I was driving, he pressed the button on the remote control gadget and I heard an explosion. Smoke was visible from the direction of the said offices. I was told to go straight to Bigaiwe and we went to Vosloorus.

I'd like to thank the Committee for giving me the opportunity to appear and I'd like to apologise to the innocent people who were caught during the cross-fire who were not the intended targets and I would like to apologise for those who got arrested for this matter. Thank you.

MR KOOPEDI: Now, Mr Nyalunga, do you regard this action as having been politically motivated, despite the fact that you were acting under orders of someone senior to you? Do you regard this matter as having been politically motivated?

MR NYALUNGA: Yes, I do.

MR KOOPEDI: What would have been the political motivation?

MR NYALUNGA: I think basically to know that by then the Special Branch were the cutting edge for the Government of the day, they were the people who were used to oppress all political discontent in the country and therefore, by virtue of their role, they were a target and that was political.

MR KOOPEDI: Okay.

CHAIRPERSON: May I interpose Mr Koopedi?

MR KOOPEDI: Yes, Madam Chair.

CHAIRPERSON: In your evidence-in-chief you have just stated that Kholile or Thabang as you have referred to him, was the one who selected the target. Were you aware of the what the target was?

MR NYALUNGA: Yes, because at one point I went to check out the place.

CHAIRPERSON: So you knew that this was ...(intervention)

MR NYALUNGA: That these were the offices ...(intervention)

CHAIRPERSON: The offices of the ...(intervention)

MR NYALUNGA: The offices of the Special Branch.

CHAIRPERSON: Yes. Mr Koopedi, that should come to our assistance.

MR KOOPEDI: Yes, thank you, Chairperson. Now in as far as you can recall, do you think you have told this Honourable Committee all there is to tell? That is you have fully disclosed what your involvement has been or was in this operation?

MR NYALUNGA: Yes, I think I've done it.

MR KOOPEDI: Now did you receive any personal gain? Were you paid? Did you receive anything materially for having participated in this operation?

MR NYALUNGA: Not at all. MK was not - was a volunteer, I never used to get any salaries, it was only your dedication that counted.

MR KOOPEDI: Chairperson that will be the evidence for the applicant. Thank you.

NO FURTHER QUESTIONS BY MR KOOPEDI

CHAIRPERSON: Thank you Mr Koopedi. Mr Mbethe, do you have any questions to put to Mr Nyalunga?

CROSS-EXAMINATION BY MR MBETHE: Yes Madam Chair and my first question relates to what Mr ...

CHAIRPERSON: Nyalunga.

MR MBETHE: Nyalunga stated before he finished, the fact that he knew the target and he had seen the target before. Now my question is, did you at any stage, or rather maybe my question should be phrased this way, on what day in particular of the week, did you yourself go and see the target? Do you remember whether it was during the week or it was on a weekend?

MR NYALUNGA: No, it was during the week. I cannot be exact to the day.

MR MBETHE: And I will tell you why I'm asking you this question, the reason is you have told this Committee already that when you went to Witbank it was on a Sunday and when you placed the bomb, it was on a Monday. Now you know everyone would know that the conditions and the situation and the environment would not be the same in the vicinity if it is in a Sunday, than it would be if it is a Monday, so basically my question is related to you having checked the target and having satisfied yourself that the target is a proper one, so have you done enough research or have you seen enough of the target to can decide whether it was indeed a proper target?

MR NYALUNGA: I didn't go to Witbank on that Sunday, I've been to Witbank on other occasions. When we went to Witbank on Sunday it was on the final date of the operation.

MR NYALUNGA: I think maybe I didn't make my question clear. My question is, we know that the conditions would not be the same on a Sunday than they would be on a Monday. In other words, there would be people on a Monday, it's a working day. People would be moving up and down. Now have you familiarised yourself with the conditions as they would be on the day when the bomb would have to go off?

CHAIRPERSON: Mr Mbethe, I thought he had responded to that question and his response was pertinently that he went there during the week, not on a Sunday.

MR MBETHE: Yes.

CHAIRPERSON: When he accompanied Thabang on that reconnaissance mission.

MR MBETHE: Thank you Madam Chair. Now, I think you have been told already that none of the people that were targeted, this is the Security Forces, were affected by the bomb and in fact innocent people were the ones who were targeted. Do you now in retrospect still believe that enough research was done by yourself and your Commander as to the properness of the place that you had targeted?

MR NYALUNGA: I have no idea with regards of the casualties that were involved but in our consideration of the case will be that the possibilities might be there of innocent people being killed, but the main target was the offices of the Special Branch, I don't know whether there were no people by then because according to what we checked out, there were people in the building. If they were not hurt, I don't know how come.

MR MBETHE: Do you remember exactly what time the bomb was to take off, or to explode?

MR NYALUNGA: I can't remember the exact time, but it was in the morning hours.

MR MBETHE: We know now that you were involved in the setting up of the bomb itself. What type of a bomb was it? Was it a time bomb, or what type?

MR NYALUNGA: I think I've explained that Thabane detonated the bomb to a remote control mechanism. It's a remote control which would detonate immediately you want it to detonate.

MR MBETHE: And nothing was said as to when the remote control should be made ready for the bomb to explode, this is when you were busy assembling the bomb?

MR NYALUNGA: No there was a time device, that is for protection, for transportation, during the process of transporting the bomb so that nothing happens, but immediately that it's armed, depended on the remote control mechanism.

CHAIRPERSON: But you were aware that the bomb would be detonated during that morning?

MR NYALUNGA: Yes.

MR MBETHE: So basically the consideration was that the bomb should not explode whilst you were still travelling to the place. But what happened thereafter, there doesn't seem to have been consideration thereof, would this be a correct assessment?

CHAIRPERSON: I don't get your question Mr Mbethe.

MR MBETHE: He already, Madam Chair, has said that there were devices that were put in the bomb for it not to explode whilst they were travelling towards the place. Now my question relates to what happened thereafter, you know, as to what time the bomb would go off, you know, as soon as they had left, that was never discussed and it was never a consideration.

CHAIRPERSON: Hasn't his response in that regard been made by him, over discussion around when the bomb would be detonated, was made and the discussion was it would be detonated during that morning.

MR MBETHE: Yes, Madam Chair, but ...(intervention)

CHAIRPERSON: You want to know the precise hour?

MR MBETHE: Yes, morning is a very long time.

MR KOOPEDI: If I could interpose, Chairperson? The witness has testified that a remote control gadget was used. This bomb was to be detonated by way of a remote control. I think it should be clear in terms of his, of the applicant's testimony, that this was not a bomb that was to be left without caring as to what will happen when.

CHAIRPERSON: I think Mr Mbethe is aware of that. He's quite aware of the Mr Koopedi. He wants to know whether there was a time limit specifically put to when the detonation would be made by the one who was going to handle the remote control.

MR KOOPEDI: Okay Chairperson.

MR NYALUNGA: Thank you. I've explained, immediately the bomb was in place next to the target, from then onwards the person who was in command could detonate it, there was no specific time, that 11 or 12 or whatever, but immediately the bomb was in place.

MR MBETHE: In other words, Mr Nyalunga, is that you assembled this device during the morning.

MR NYALUNGA: Yes.

MR MBETHE: And you left towards the targeted place.

MR NYALUNGA: Yes.

JUDGE MOTATA: But could you give an indication when you left for the actual target and left the car there and detonated? That's what I think Mr Mbethe is looking for. Would I be correct?

MR MBETHE: Thank you, Mr Chair, yes, that is true.

MR NYALUNGA: I think it was between 8 and 9 somewhere.

MR MBETHE: So your involvement in the whole incident simply to assemble the bomb and leave the area and there was someone who was to see to the explosion or to the time period as to when exactly this bomb would explode, would I be understanding you correct if I say that?

MR NYALUNGA: I think I explained that he immediately parked the car, came back and joined us in the other vehicle and immediately detonated the bomb, we were together in the same car driving off.

MR MBETHE: So when the bomb was exploding, all of you were in a car and you were driving out of Witbank?

MR NYALUNGA: Yes.

MR MBETHE: In that case Mr Nyalunga, did you, did any of you, yourself or the other two comrades that you've told us about, not foresee that some innocent people might be killed by the bomb?

MR NYALUNGA: That we did consider that the possibilities are there. There was no way we could avoid it.

MR MBETHE: And in fact we know now that indeed innocent people were the ones who were affected by the bomb. Now, I would assume, I am not necessarily well-versed with the operations in the military, but seeing that it was not in the field where two sets of armies were fighting, this was a place which would have casual people who would not even know about the bomb being in the place. What is it that either you yourself or the other people who were involved in the car did in order to make sure that even though we don't have victims, that we must not have too much casualties, so to put it?

MR NYALUNGA: I think we are talking about a situation that is completely different. We were involved in an urban guerrilla warfare, it's not a situation where the enemy is that side and we are this side and you'll find that the enemy has placed itself in buildings,

that there are civilian offices underneath. We did consider that well other people will be injured, but there was no way you are going to stand there and write there "Warning important, people not to pass there" because that is going to happen, otherwise we won't achieve our goal, we are sorry for those who passed there during that time.

MR MBETHE: So basically what you are saying is there were no rules as to how this whole thing had to be done.

MR NYALUNGA: I do not understand the question you ask.

MR MBETHE: You've already alluded to the fact that there was a possibility that innocent people would be killed. Now I would assume an operation like that one could have casualties, people who are innocent, but the target, at least the bomb should do the damage to the target. Now the way I understand it, whilst you did consider that some innocent people might be injured ...(indistinct), but there were no particular steps that were taken in order for it to, or for you people to make sure that the real target is hit.

MR NYALUNGA: I think that was considered by the mere fact of the time that was chosen, by that I mean, it was not yet that busy, particularly in that area.

MR MBETHE: In the morning?

MR NYALUNGA: In that time in the morning, particularly down in that area next to those offices.

JUDGE DE JAGER: Wouldn't that be the time when all the people are going to work between 8 and 9, still moving in the streets towards their offices?

MR NYALUNGA: Yes, that will be the time but I think if it would have gone off later, it would have been worse, so during that morning, according to the information that we had, is that the intended targets report in the morning to get their task and then go out, so ...(indistinct) during the day you would find very few of them.

MR MBETHE: According to the information that you had, who gave you this information?

MR NYALUNGA: I think I did explain to ...

CHAIRPERSON: The Commander, Mr Mbethe.

MR MBETHE: Yes, but my question essentially relates to the fact that whilst you had made considerations and you had taken steps to assure or to ensure that the target that you had was going to be there at the time or the people who you were targeting were going to be there at the time, but we know now that none of those people were hit by the bomb, so what I'm asking you is, did this not - did you not think about this prior?

MR NYALUNGA: Did I not think about what?

MR MBETHE: About the fact that innocent people, between 8 and 9 o'clock, this is the time when people are going to work.

MR NYALUNGA: That was considered.

CHAIRPERSON: Can I rephrase your question, Mr Mbethe?

MR MBETHE: Thank you, Madam Chair.

CHAIRPERSON: What Mr Mbethe is trying to find out is whether there were any steps that were taken to minimise casualties around the target, bearing in mind that the bomb was going to be placed in a busy area, frequented not only by the intended target, but by a number of civilians at about 8 to 9 in the morning.

MR NYALUNGA: I think that was considered. If the bomb was planted earlier in the morning, particularly in those offices, the people who were reporting in the morning were the police at that time and not necessarily civilians, civilians who will be caught in the cross-fire would be people who are passing, but these would not be intended targets, it's just unfortunate that some of them died, but that was considered.

JUDGE DE JAGER: Did you have any knowledge that the police would only report for work as late as between 8 and 9 in the morning and not at 8 o'clock or earlier? Later than 8 o'clock?

MR NYALUNGA: According to the reconnaissance that we have done before, we could see that their cars start, because in the area that the car was parked, because it was above written, parking reserved for police vehicles only, it would start filling up from half-past 7 upwards, but if you go there during the day, you will find that these cars, they are not there, they have gone out maybe for duties or whatever, so we thought the appropriate time would be when they are reporting in order to get whatever task that they are supposed to be doing.

CHAIRPERSON: Mr Mbethe?

MR MBETHE: Just one more question. Did you know the magnitude of the bomb? Was it clear to you yourself as to how big an area this bomb would damage if it went off?

MR NYALUNGA: Well, the problem is the explosive, it can not be detonated, because it depends whether it's a built-up area or it's an open area or whatever, but at least you should have had more or less knowledge as to if we put this bomb here, this area, this circumference of the area would at least be affected.

MR NYALUNGA: I wouldn't be exact on that one.

MR MBETHE: Do you agree with me that the place where the bomb was placed is inside town and it's between buildings, or there are buildings surrounding the area?

MR NYALUNGA: Yes.

MR MBETHE: Not only is there a building as you have already stated, that was used by the Security Forces, but there were other buildings that were in the area?

MR NYALUNGA: Yes.

MR MBETHE: Now what were your - what did you think about that, that in other buildings where there would be normal and casual people, in those buildings, what did you think of it, did you try to possibly warn those people and in the other buildings that look, something like this might happen? Could you have done that?

MR NYALUNGA: That wouldn't indeed have been possible.

MR MBETHE: You wouldn't have warned the people of that, even if you wanted to, it wouldn't have been possible. As it pleases the Committee, Madam Chair, no further questions.

NO FURTHER QUESTIONS BY MR MBETHE

CHAIRPERSON: Thank you Mr Mbethe. Mr Schultz?

MR SCHULTZ: Thank you Madam Chair.

CROSS-EXAMINATION BY MR SCHULTZ: Mr Nyalunga, just to go back to your infiltration into the country during 1987, did I hear correctly that you had joined this Special Op Unit in which country?

MR NYALUNGA: Maputo, Mozambique.

MR SCHULTZ: And were you infiltrated from Mozambique into South Africa?

MR NYALUNGA: No. Is this relevant to the case?

CHAIRPERSON: Are you in a position to respond to that Mr Nyalunga? We will determine the relevance or otherwise of that question.

MR NYALUNGA: No from Botswana.

MR SCHULTZ: So you were infiltrated from Botswana. At that stage did you go directly as you said to Vosloorus where you became a member of the underground unit?

MR NYALUNGA: Yes.

MR SCHULTZ: When you came to Vosloorus, did you know this person known as Thabang already, or did you only meet him there?

MR NYALUNGA: We infiltrated together with him.

MR SCHULTZ: So the two of you came together from Botswana.

MR NYALUNGA: Yes.

MR SCHULTZ: What was the extent of your training regarding bombs, the building and the placing of bombs? Did you receive any specific training in that regard?

MR NYALUNGA: Yes, I did.

MR SCHULTZ: What did it consist of?

MR NYALUNGA: Engineering military ...(indistinct)

MR SCHULTZ: Were you taught how to wire up a bomb, to put it that way?

MR NYALUNGA: Yes.

MR SCHULTZ: Were you also taught how to connect a bomb to a timing device?

MR NYALUNGA: Yes.

MR SCHULTZ: I didn't quite catch Thabang's real name, what was his real name?

MR NYALUNGA: Kholile Sam.

MR SCHULTZ: And Thabang was a pseudonym.

MR NYALUNGA: Thabang was a pseudonym.

JUDGE DE JAGER: Would you kindly repeat his real name again.

MR NYALUNGA: Kholile Sam.

JUDGE DE JAGER: Kholile ...

MR NYALUNGA: Kholile Sam.

JUDGE DE JAGER: Sam.

MR NYALUNGA: Yes.

JUDGE DE JAGER: Thank you.

MR SCHULTZ: Now did you and Thabang both undergo the same training with regards to specifically the making of bombs and the placing of bombs?

MR NYALUNGA: I cannot confirm that because we trained during different time, different countries.

MR SCHULTZ: Now the underground unit to which you belonged in Vosloorus, how many members did it consist of?

MR NYALUNGA: I think I've state, myself and Thabang.

CHAIRPERSON: Two.

MR SCHULTZ: Now you are aware that two persons were found guilty of 70 charges relating to the specific bomb explosion during 1990, Joseph Vilakazi and Ramuede Mabuya. What was their involvement in all the circumstances surrounding the explosion of the bomb?

MR NYALUNGA: I think I've explained here what happened on the day of the explosion of the bomb. They are involved as far - because they were people who were handled by Thabang as the Commander of which I did not know anything about them. There are things that he did, that I did not have to know about them.

MR SCHULTZ: So the way, if I understand you correctly, the way in which it worked was that you knew as few people as possible.

MR NYALUNGA: Yes and besides, I'm from the area, I had to play a low profile. He's not from that area.

MR SCHULTZ: You did not for instance know that the two persons who were found guilty as I stated, were the persons who collected the components of the bomb from the so-called dead letter box where the components were kept?

MR NYALUNGA: I was not there ...(indistinct) do that.

MR SCHULTZ You've never met these people?

MR NYALUNGA: No, I've known them, I've seen them, but I didn't know they are involved.

CHAIRPERSON: Did you know about their involvement with regard to the collection of ...

MR NYALUNGA: No I was not aware with whom he went to collect those things, I only learned of it later.

MR SCHULTZ: Do you know what or where Thabang is?

MR NYALUNGA: He's dead.

MR SCHULTZ: Do you know when he died?

MR NYALUNGA: Yes.

MR SCHULTZ: When was that?

MR NYALUNGA: It was November 7, 1998.

MR SCHULTZ: Do you know how he died?

MR NYALUNGA: I heard recently there were people applying for amnesty for his death.

MR SCHULTZ: Was he killed by the police?

MR NYALUNGA: So it was confirmed here in this hearing.

MR SCHULTZ: Is that what you heard?

MR NYALUNGA: That's what I heard.

JUDGE DE JAGER: Sorry, was it 19?

MR NYALUNGA: 1988.

JUDGE DE JAGER: 1988.

MR NYALUNGA: Yes.

JUDGE DE JAGER: Thank you.

MR SCHULTZ: You said that you went on a reconnaissance with Thabang once or twice to Witbank, do I understand that correctly?

MR NYALUNGA: Yes.

MR SCHULTZ: Now was it once or was it twice?

MR NYALUNGA: It's more than once.

MR SCHULTZ: Was it more than twice?

MR NYALUNGA: It could have been more than twice, but it's more than once.

MR SCHULTZ: If you have to speculate about how many times exactly, how many times would you state that you went on reconnaissance to Witbank?

MR NYALUNGA: I cannot remember exactly, it could have been thrice or four times.

MR SCHULTZ: Now every time when you went on reconnaissance, was it just - did you every time go together with Thabang, or did you go with different people?

CHAIRPERSON: I think the evidence is specific that he went with Thabang.

MR SCHULTZ: Thank you Madam Chair. Now, can you explain exactly what you did when you did this reconnaissance of the area where the bomb was to be placed? How did you go about it?

MR NYALUNGA: ...(indistinct) the area during different times of the day, going around the shops opposite there and check what's happening. That was the best we could do because we couldn't just get in there and check inside what's happening.

MR SCHULTZ: And do I understand also correctly that you did not only look at the area itself? Did you also look at the movements of the police and civilians in this area?

MR NYALUNGA: We checked the building and that building was used by the police mostly.

MR SCHULTZ: During the course of your reconnaissance, did you notice that this building is not only occupied by the police?

MR NYALUNGA: Yes, we did.

MR SCHULTZ: Did you notice that the police actually occupied only a small portion of the building?

MR NYALUNGA: I was not sure about the portion, how big it is that they were occupying.

MR SCHULTZ: Did you notice that one portion of the building was taken up by the NBS Bank?

MR NYALUNGA: Yes.

MR SCHULTZ: And another portion by Protea Furnishers, a furniture shop.

MR NYALUNGA: I cannot recall how far it was or how close it was, but I remember there was a furniture shop somewhere.

MR SCHULTZ: Did you notice that part of the building was taken up by a Doctor's surgery?

MR NYALUNGA: I can't remember that.

MR SCHULTZ: Now what can you remember exactly about this building?

MR NYALUNGA: No, that there was a bank, I remember that, but these other business premises, I cannot recall all of them, Santam Bank.

MR SCHULTZ: Now your reconnaissances to this area where the bomb was to be placed, it took place on different days and different times. What were the times which you can remember when you visited these premises or checked out these premises, to put it that way?

MR NYALUNGA: From the morning hours.

MR SCHULTZ: Sorry?

MR NYALUNGA: Morning hours.

MR SCHULTZ: Was it mostly in the morning hours?

MR NYALUNGA: Morning hours day and afternoons.

MR SCHULTZ: Now can you just explain again, there's one aspect that I don't quite understand. Why specifically was it decided that the bomb would explode in the morning?

MR NYALUNGA: That was according to what we found out is that the police report there for duty in the morning and then they go out into foreign tasks, so the morning part was a time when you get the majority of them going there.

MR SCHULTZ: Is that also the reason why a Monday morning was chosen?

MR NYALUNGA: On the particular day, I'm not sure, I don't think there was any particular reason whether it could have been a Monday or Wednesday, I don't know.

MR SCHULTZ: Now, as you previously stated, there was definite danger for civilians, innocent civilians to be injured and killed in this bomb explosion. Did you, during the course of your reconnaissance, take note of times when there probably would be the least civilians present when a bomb could explode?

MR NYALUNGA: I think I did explain that earlier, that we, to an extent, we did consider that the civilians will be hit during the courses.

MR SCHULTZ: That is indeed what you said, but that's not my question. My question is did you take note of times when the least possible civilian casualties or injuries would be caused by the explosion of the bomb?

MR NYALUNGA: According to our analysis of the situation, at that time of the morning, it was not yet that easy. If it would have happened a bit later, I think we would have had more civilian casualties.

CHAIRPERSON: So you did take note?

MR NYALUNGA: Ja, we did.

CHAIRPERSON: In thought.

MR SCHULTZ: Are you aware now that this bomb exploded at 8.14 exactly on that morning of the 24th of October?

MR NYALUNGA: I cannot comment on the exact time.

JUDGE DE JAGER: 1 - 4, 14, date.

MR NYALUNGA: 1 - 4.

JUDGE DE JAGER: Thanks.

CHAIRPERSON: Yes, Mr Schultz.

MR SCHULTZ: Thank you Madam Chair. You, when you reconnoitred the area, you were aware that civilians would be injured. How did you feel at that stage in 1988 about innocent civilians doing their banking business, probably being killed, or seriously injured by this explosion?

MR NYALUNGA: The main consideration was our target and then the civilians, we thought about them, but if we were intending solely to kill civilians, we would have placed the bomb somewhere else and targeted civilians, but that civilians were not our target, it's just unfortunate that we could not avoid the death of innocent people.

MR SCHULTZ: Mr Nyalunga, I want to refer you to your application for amnesty, specifically on page 5, going over to page 6 of the bundle of documents, specifically question 10 (a) where you have to state the political objectives sought to be achieved by this act. You say there:

"To kill all those who associated and enforced the policies
of the previous government"

and then in 10 (b) I take it that you say that the police force members were regarded as enemies of the people, so your main objective was to kill police force members?

MR NYALUNGA: Yes.

MR SCHULTZ: Was there not, in your opinion, another way to kill police force members without the risk or with lessening of the risk of killing innocent civilians?

MR NYALUNGA: I think on this one, we know for a fact that previously, the Special Branch particularly, had hired offices in premises that are business premises and our people were being tortured in those buildings and they're using those premises in order to avoid being erased. At one point in time we had to target those buildings.

MR SCHULTZ: Was it your specific intention to kill members of the Special Branch of the police or would any member of the police have done?

MR NYALUNGA: Can you repeat your question?

MR SCHULTZ: Was it your specific intention to kill members of the Special Branch of the police, or would you have been satisfied to kill any member of the South African Police?

MR NYALUNGA: Both.

CHAIRPERSON: Mr Schultz, is this emanating from what you've referred him to, pertinently page 6 and paragraph 10 (b)?

MR SCHULTZ: That is correct. That is correct, Madam Chair.

CHAIRPERSON: Yes, hasn't he been specific in that regard, that all police force members and army personnel, he's given a wider category of the people that were the intended targets?

MR SCHULTZ: Thank you Madam Chair, I appreciate you showing me that. There is one question following from all of this which I would ask in finalisation of this specific matter. Sir, Mr Nyalunga, could you not have placed a bomb at the Witbank Police Station which was further away from the centre of town, the centre of business?

MR NYALUNGA: I was not making the decisions, I had a Commandeer.

MR SCHULTZ: Was this not discussed at all?

MR NYALUNGA: He took the final decision.

CHAIRPERSON: Was this discussed at all? That was the question.

MR NYALUNGA: No, it was never discussed.

MR SCHULTZ: And the Commander to which you refer?

MR NYALUNGA: Thabane, Kholile Sam.

MR SCHULTZ: Just to get to the assembling of the bomb itself, you said that you were present there when the bomb was assembled in the car and you and Comrade Silver, your co-applicant, took turns watching out for passing civilians or passers by. What exact part did you take in the assembling of the bomb itself, what exactly did you do?

MR NYALUNGA: I mean we had to put things in order in the boot, so that the whole thing doesn't shake, assist there and in connecting certain wires, we would assist there.

MR SCHULTZ: Both of you?

MR NYALUNGA: Ja and then in turns go out and whilst the other one is outside, the other one is inside.

MR SCHULTZ: No, if you can just refresh my memory, who connected the timer device to the bomb?

MR NYALUNGA: I think straight to that ...(indistinct) of the remote control mechanism that was to be used which we are not familiar with, myself and Thabang. It was Comrade Silver who specifically did that.

CHAIRPERSON: And by Comrade Silver you mean John Ithumeleng Dube?

MR NYALUNGA: Yes.

CHAIRPERSON: Can you, just for purposes of our proceedings, simply refer to him as Mr Dube?

MR NYALUNGA: Okay.

MR SCHULTZ: Was it early on the Monday morning that the bomb was so put together?

MR NYALUNGA: Yes.

MR SCHULTZ: Did Thabang drive the bomb vehicle by himself, or was there someone with him in the vehicle?

MR NYALUNGA: No, he drove it by himself.

MR SCHULTZ: And did both of you, you and your co-applicant, follow him in another vehicle?

MR NYALUNGA: Yes.

MR SCHULTZ: Did I also understand correctly that you waited for Thabang at the taxi rank?

MR NYALUNGA: Yes.

MR SCHULTZ: That is the taxi rank further down the street, about 500 metres from where the bomb exploded.

MR NYALUNGA: I'm not sure about the distance.

MR SCHULTZ: How far were you away from the taxi rank when the bomb exploded?

MR NYALUNGA: We were on our way to the highway when it exploded. We were far from the taxi rank.

MR SCHULTZ: Was it exploded by remote control or by a timing device.

MR NYALUNGA: Remote control, as stated before.

MR SCHULTZ: Who handled the remote control.

MR NYALUNGA: Thabang as the Commander of the Unit.

MR SCHULTZ: And who was driving, let's call it the get-away car?

MR NYALUNGA: I did.

MR SCHULTZ: I want to refer you to page 60, sorry page 70 and further of the first bundle of documents which contains the Judgment in the criminal matter which followed from this explosion. In this Judgment there is reference to one Steve Nyalunga, is that you?

MR NYALUNGA: Yes.

MR SCHULTZ: And you spoke about your sister and your brother-in-law, what are their names?

MR NYALUNGA: Lere Ngala.

MR SCHULTZ: And her husband's name is...

MR NYALUNGA: Thabe

MR SCHULTZ: Thabe Ngala.

MR NYALUNGA: Yes.

MR SCHULTZ: What was their involvement in the whole matter? Did their involvement only go so far as to provide a place for the bomb to be put together?

MR NYALUNGA: They are not involved, we only used their house.

MR SCHULTZ: Did they know that you are going to use their house? Did you ask them to use their house?

MR NYALUNGA: I do not know what arrangements Thabang made with them because when we went there it was Thabang who had arranged already and he had familiarised himself with my sister and my brother-in-law.

MR SCHULTZ: And all the times when - first let me ask you that, let me just rephrase. How many times were you there when you visited Witbank during the reconnaissance and the building of the bomb. How many times did you visit your sister's house?

MR NYALUNGA: I never specifically visited her for the planting of the bomb or reconnaissance, I used to visit her just as a sister, nothing else. I can't remember how many times.

CHAIRPERSON: But during the reconnaissance, did you ever go past her place?

MR NYALUNGA: Ja, I would pass her place, she would not know whether I'm from reconnaissance or what, I used to visit her as a sister.

JUDGE DE JAGER: How did she come to know Thabang, or how did Thabang...?

MR NYALUNGA: No, she came to know Thabang through me.

JUDGE DE JAGER: So you introduced them?

MR NYALUNGA: Yes.

JUDGE DE JAGER: When was that?

MR NYALUNGA: It was some time early in 88.

JUDGE DE JAGER: Was that after you started planning the bomb?

MR NYALUNGA: Not yet.

CHAIRPERSON: Was it before the target was even selected by Thabang?

MR NYALUNGA: Ja, it was long before.

CHAIRPERSON: Mr Schultz.

MR SCHULTZ: Thank you, Madam Chair. When you arrived there together with Thabang to build the bomb there at your sister's house, how did you gain entrance into the house? Were you in possession of keys? Was Thabang in possession of keys?

MR NYALUNGA: Thabang had arranged prior before and he picked up the key under the dustbin and he left it there when he left.

MR SCHULTZ: Now your sister ...(intervention)

CHAIRPERSON: Mr Schultz, is this line of cross-examination getting us anywhere with regard to the pertinent issues we have to decide in considering whether Mr Nyalunga qualifies for amnesty or not?

MR SCHULTZ: I think I will leave it there, thank you Madam Chair.

CHAIRPERSON: Yes.

MR MBETHE: Madam Chair, sorry, with the permission of the Tribunal, I would like to just put one final question which was left over in my cross-examination.

CHAIRPERSON: You will be allowed, but Mr Schultz is still conducting his cross-examination.

MR MBETHE: Oh, sorry, I thought he said that was the last, sorry.

CHAIRPERSON: No, he was simply abandoning the line of cross-examination he had started embarking upon.

MR MBETHE: Sorry.

CHAIRPERSON: You may proceed Mr Schultz.

MR SCHULTZ: Thank you Madam. You did not see yourself, Mr Nyalunga, where specifically the car was parked, the bomb vehicle was parked?

MR NYALUNGA: It was parked next to the building, just where there was a board written: "S A P vehicles parking only".

MR SCHULTZ: Did you see it being parked there?

MR NYALUNGA: Yes.

MR SCHULTZ: And did you see Thabang returning from the parked vehicle?

MR NYALUNGA: Okay, yes.

MR SCHULTZ: Now the people who were killed during this bomb explosion, I'm specifically referring to a Mr Jacob Masuku, a Mr Jacob Samuel Masuku, he was on his way to doing his banking business on this morning. If you could speak to his family, his wife and his four children and say to them, and say anything to them with regards to his death on this morning of the 24th of October, what would you say to them?

MR NYALUNGA: I would very much apologise to them, he was not our intended target, it's just unfortunate that he passed there when this thing happened.

MR SCHULTZ: I have no further questions at this stage, thank you Madam Chair.

CHAIRPERSON: Thank you Mr Schultz. Mr Mbethe we'll now afford you an opportunity to put one question which you omitted to put to Mr Nyalunga.

MR MBETHE: Thank you Madam Chair. Madam Chair my question in a way relates to what Mr Schultz just asked now, but I will just put the question.

CHAIRPERSON: And has it not been covered?

MR MBETHE: No, Madam Chair, I think it has not been covered.

CHAIRPERSON: Yes, you may proceed.

FURTHER CROSS-EXAMINATION BY MR MBETHE: In retrospect Mr Nyalunga, do you think that you made a mistake the way that you planted the bomb and if so, would you have done it differently? Thank you.

MR NYALUNGA: It's a difficult question to answer, whether I would have done it differently, because those were different times by then and now you are asking me this question at this point in time.

CHAIRPERSON: The question is, do you think you made a mistake by planting the bomb where you planted it at that time?

MR NYALUNGA: I do not think we have made a mistake.

CHAIRPERSON: Yes. Mr Mbethe.

MR MBETHE: Thank you Madam Chair, nothing further.

NO FURTHER QUESTIONS BY MR MBETHE

CHAIRPERSON: Mr Koopedi, do you want to re-examine?

MR KOOPEDI: Nothing in re-exam thank you Chairperson.

NO QUESTIONS BY MR KOOPEDI

CHAIRPERSON: Mr Motata do you wish to put any questions to Mr Nyalunga?

JUDGE MOTATA: None, Madam Chair.

CHAIRPERSON: Sorry, Judge Motata. Judge de Jager?

JUDGE DE JAGER: Did you use explosive, loose explosives to make the bomb or was the bomb already pre-prepared like a limpet mine or a personal mine?

MR NYALUNGA: ...(indistinct) and concentrated charges.

JUDGE DE JAGER: Sorry.

MR NYALUNGA: ... (indistinct) elongated and concentrated charges.

JUDGE DE JAGER: Oh. How many kilograms did you use?

MR NYALUNGA: I cannot remember exactly how many kgs we used.

JUDGE DE JAGER: Approximately?

MR NYALUNGA: Above 20.

JUDGE DE JAGER: Above 20. This building, is it a single story or a double story building?

MR NYALUNGA: It's not a single story. I cannot remember whether it's more than three stories or whatever.

JUDGE DE JAGER: Where were the offices of the police?

MR NYALUNGA: I think they were on the second floor.

JUDGE DE JAGER: On the second floor. Why didn't you consider planting a bomb for instance in the lavatories on the second floor?

MR NYALUNGA: I think that maybe it was not possible, but all the decisions came from my Commander.

JUDGE DE JAGER: Yes, but you say it wasn't possible, so tell me why wasn't it possible?

MR NYALUNGA: I think maybe the security inside, to go inside with an explosive into a police ...

JUDGE DE JAGER: At night time?

MR NYALUNGA: At night time I don't think there will be access because there wasn't anyone there except for people who are guarding the building.

JUDGE DE JAGER: You see, if you target specific people, we've got 30, 40 people injured here. Not a single policeman.

JUDGE MOTATA: My colleague cannot be correct in that respect, if he has regard to the bundle, the second bundle where you have statements, 58, there is a policeman Zondi who was walking out and he was injured. There was another policeman who was across the building doing some business and he was injured by ...(indistinct)

MR KOOPEDI: And if I may, Chairperson, just to add on what Judge Motata has said, I believe there are about three or four people who were at that time employed by the SAPS who were either in the offices or have just left the offices. One was going to his car, who was also injured, so I am backing what Judge Motata says.

JUDGE DE JAGER: Could you kindly give me the reference.

MR KOOPEDI: I will start with, on page 22, I ...(indistinct - mike not on) I mean 27,

INTERPRETER: The speaker's mike.

CHAIRPERSON: Your microphone Mr Koopedi.

MR KOOPEDI: Sorry, Chairperson. On page 27, there was a female constable Roelene Stiglingh, if I'm pronouncing it correctly,

CHAIRPERSON: Yes.

MR KOOPEDI: If you could bear with me Chairperson, I will find these people.

CHAIRPERSON: Yes, whilst you are still trying to find more names, can you give a number to this bundle? Can you refer to this bundle containing statements of witnesses at the criminal court as Bundle B.

MR KOOPEDI: Thank you.

CHAIRPERSON: And the application documents as Bundle A?

MR KOOPEDI: Thank you, Chairperson. On page 5 also, page 5 Bundle B. 58, Zondi ...(indistinct- mike not on). 58 on Bundle B.

CHAIRPERSON: Are you still looking, Mr Koopedi?

MR KOOPEDI: I am Chairperson.

JUDGE DE JAGER: Yes, you could perhaps give it to her, so I will continue with my next question. Three people killed, Dinah Elizabeth Mula, Elias Msina and Jacob Masuku, is there any evidence that they've been connected with the police?

MR NYALUNGA: I don't know that, I never knew that.

JUDGE DE JAGER: Did you also foresee that women and children could be killed in this attack?

MR NYALUNGA: Yes, that we did know.

JUDGE DE JAGER: Were there any steps taken to avoid that or did you regard it as, well they may be killed, it wouldn't matter?

MR NYALUNGA: It's what I've said earlier that according to our assessment, if it could have gone off later, more civilians would have been killed, that is why it was considered.

JUDGE DE JAGER: Well the great majority of the people who were injured were civilians.

MR NYALUNGA: That's what I'm made to understand.

CHAIRPERSON: Mr Koopedi, I note that you are still locating the other pages. In order to facilitate these proceedings, we'll afford you to continue doing so and once we come back from lunch, you can then be in a position to simply tell us the pages, if you have located other pages which will have reference to other policemen who were killed in this incident.

MR KOOPEDI: Chairperson, I'm prepared to concede to the three that we've referred to at the moment. Should I find any other, I will bring that to the attention of this Committee.

CHAIRPERSON: You can bring it up during your legal argument.

MR KOOPEDI: Yes, I'll do that, Chairperson.

CHAIRPERSON: Yes. Mr Nyalunga, I'm aware that you only accompanied your Commander after the target had been selected. Is my assessment correct of your evidence in that regard?

MR NYALUNGA: Yes.

CHAIRPERSON: You did not therefore take part in the actual selection of the target, that was done by Kholile all by himself.

MR NYALUNGA: Yes.

CHAIRPERSON: Was it, to your knowledge, customary for a Commander to undertake some kind of reconnaissance before selecting a target?

MR NYALUNGA: Yes.

CHAIRPERSON: I didn't get your response.

MR NYALUNGA: I said yes.

CHAIRPERSON: Did you know with regard to this particular incident whether Kholile or Thabang, as he has been referred to in these proceedings, had undertaken such reconnaissance prior to him advising you of the target that had been selected?

MR NYALUNGA: I didn't have that information, but I thought maybe he should have done that before. I didn't know that.

CHAIRPERSON: Yes. Were you able to deduce from what you knew to have happened in the past, that you don't select a target unless you have conducted some kind of reconnaissance?

MR NYALUNGA: Yes, I thought maybe he got some information from somewhere. Maybe he's done his reconnaissance before he informed me.

CHAIRPERSON: So you only accompanied him after you had been informed of the selected target?

MR NYALUNGA: Yes.

CHAIRPERSON: Once you were informed of the selected target, was the reconnaissance you conducted in his company, did that reconnaissance follow immediately after the target had been selected, or to your knowledge, after he had informed you of the selected target, he conducted some kind of reconnaissance all by himself before you also participated in the further reconnaissance that you've evinced before this Committee?

MR NYALUNGA: I think yes, he must have reconnaissance prior to informing me because he was not familiar with the area which means he had been to the area prior before informing me of the area of the target.

CHAIRPERSON: What I want to know is, after you had been informed of the selected target, did you immediately accompany him during the reconnaissance that you've referred to in your evidence?

MR NYALUNGA: No, it was not done immediately. He informed me until we started doing it a bit later.

CHAIRPERSON: How long after you had been informed of the selected target, did you personally accompany him to those reconnaissances you've referred to?

MR NYALUNGA: I think it's about a month or so.

CHAIRPERSON: And how long did it take for the operation to be ultimately executed after the target had been selected?

MR NYALUNGA: I cannot be exact because there were other technicalities which had to be fixed before the target could be ...(indistinct)

CHAIRPERSON: Yes. Can you not approximate whether, after you had been informed, it took six weeks, or more than six weeks, for the operation to be ultimately executed?

MR NYALUNGA: It took more than 4 months.

CHAIRPERSON: 4 Months.

MR NYALUNGA: Yes.

CHAIRPERSON: Thank you. Mr Koopedi, emanating from questions from the Bench, do you have any questions you want to clear with Mr Nyalunga?

MR KOOPEDI: No questions, thank you Chairperson.

NO FURTHER QUESTIONS BY MR KOOPEDI

CHAIRPERSON: Yes. That closes Mr Nyalunga's application.

MR KOOPEDI: That is his application, Chairperson, thank you.

WITNESS EXCUSED

CHAIRPERSON: Yes. Are we in a position to proceed with the Evidence-in-Chief of Mr Dube?

MR KOOPEDI: Yes we are Chairperson.

CHAIRPERSON: Yes, you may proceed.

MR KOOPEDI: Thank you Chairperson.

NAME: JOHN ITHUMELENG DUBE

MATTER: WITBANK BOMBING

JOHN ITHUMELENG DUBE: (sworn states)

MR KOOPEDI: Thank you Chairperson, we beg leave to proceed.

CHAIRPERSON: You may.

INTERPRETER: I beg your pardon, Madam Chair. Unfortunately we don't have a Zulu interpreter.

CHAIRPERSON: Oh. Mr Koopedi, we seem to be having a slight translation problem with our Zulu translation.

INTERPRETER: Chairperson, it would appear as if no arrangement was made for the presence of a Zulu interpreter, no notification was received for a Zulu interpreter, that is why there is no Zulu interpreter here.

CHAIRPERSON: This is a serious omission. Mr Steenkamp, can any reason be advanced why there was no arrangement for a Zulu translator when many of the applications that will be heard by this Panel were names that really sound like Zulu speaking applicants?

MR STEENKAMP: Madam Chair, I was only informed this morning by the logistical officer that certain arrangements,

apparently in the meantime, were made for Zulu interpretation. I'm not quite sure exactly what the position now is, but I was informed this morning that there will be certain, certain people will be testifying in Zulu. I can pick it up with the logistical officer just quickly.

CHAIRPERSON: But why were you able to pick it up this morning and not before when this hearing was being arranged?

MR STEENKAMP: Madam Chair, to be honest, the documents I received, none of them were in Zulu and I was never informed by any of the lawyers representing the applicants that any of them will be needing the services of a Zulu interpreter because that is the standard practice.

CHAIRPERSON: The surname Nyalunga is Zulu. The surname Dube is Zulu and we have quite a number of other applicants who were scheduled to have been heard this morning. Mr Buthelezi, surely one must know that that's a Zulu surname, it doesn't take anyone to second guess what language the applicant would be testifying in.

MR STEENKAMP: Madam Chair, I'm sure that the problem can be remedied quite easily if we can just get, I'm sure arrangements were made in the meantime. I've been just informed that there will be a Zulu interpreter here within a jiffy, that problem has already been dealt with by the logistical officer as it is, but I was definitely not informed by any of the lawyers that they will be using, I was of the understanding that both the applicants were testifying in English.

CHAIRPERSON: I'm also worried that you know no care seems to have been taken to have particular regard to the interest of the victims who might actually wish to express themselves in a language other than Sotho and any other language that seems to have been catered for.

MR STEENKAMP: Again this morning, Madam Chair, none of the victims or the lawyers informed me that the services of a specific Zulu interpreter will be needed. I specifically, I asked for that when we spoke to them this morning. But I'm sure certain arrangements can be made quite easily.

CHAIRPERSON: I think at this stage I must express my apologies to the many victims who are sitting here who surely must be Zulu speaking, who have not been able to follow these proceedings for which they've travelled so much far to be part of because

of this lack of translation. I wasn't aware of this. Nobody brought it to my attention, otherwise I probably would have even come up with a different consideration that we do not proceed until and unless the Zulu translation is also available, because I know that quite a number of people in Witbank are Zulu speaking. This being the case, I think this will be an appropriate time to take a lunch adjournment for 45 minutes. Mr Steenkamp, are we to take it that when we come back, we'll have the Zulu translation to enable Mr Dube to proceed with his application?

MR SCHULTZ: Madam Chair, if I might just say something with your permission. I was also not aware that there would not be a Zulu interpreter. I can however tell the Tribunal that I was informed by my clients that they can follow the proceedings, they will however, when given the chance to give evidence, obviously request the evidence to be given in Zulu or the language of their choice.

CHAIRPERSON: Thank you, Mr Schultz. Mr Steenkamp, can we adjourn on the understanding that when we reconvene we'll have a Zulu translation? We cannot allow these proceedings to be delayed, because every second counts.

MR STEENKAMP: Madam Chair, with all respect, I do apologise, but I was never put in a position by anybody to understand that a Zulu interpreter will be used or will be facilitated, but I'm sure we will make a facilitation for that immediately. Thank you Madam Chair.

CHAIRPERSON: So can we have your undertaking that when we reconvene after 45 minutes, there will be a Zulu translator? That's what I want to know.

MR STEENKAMP: Madam Chair, it was just indicated to me that a Zulu interpreter is on his way. He or she will probably be here at the latest, I would guess, in about an hours' time, between 45 minutes and an hour. That's unfortunately the best I can do in the circumstances. I didn't arrange personally for the translator to be here, the logistical officer did, but I was under the impression that person will actually be here by now, but I will inform the Committee the moment that person has arrived.

CHAIRPERSON: We'll adjourn for 45 minutes.

MR STEENKAMP: Thank you Madam Chair.

COMMITTEE ADJOURNS

ON RESUMPTION

CHAIRPERSON: Thank you. Mr Steenkamp, are we in a position to proceed?

MR STEENKAMP: Madam Chair, I am instructed that we have a person who is prepared to translate now in Zulu. There is however still another Zulu interpreter on the way, but I've been informed that the problem has been solved. I've seen and I've also arranged for the people to get head gear and head sets to hear the translations, I've made arrangements with Mr Brian Koopedi that the translator is not available if the applicant

is still in the position that he wants to testify in Zulu. So that is the position now. The translator will be sitting in the first booth and translating from English into Zulu.

CHAIRPERSON: Yes.

MR STEENKAMP: Thank you, Madam Chair.

CHAIRPERSON: I note that quite a number of people are without head phones. Is it because we have run out of headphones or people do not mind listening to evidence without the use of head phones?

Mr Schultz, you gave us an indication that quite a number of victims are in a position, notwithstanding the lack of translation, are in a position to follow the proceedings.

MR SCHULTZ: That is correct, Madam Chair.

CHAIRPERSON: Yes. We nevertheless apologise for all these inconveniences. Mr Koopedi, are we in a position to proceed with the evidence-in-chief of Mr Dube?

MR KOOPEDI: Indeed we are, Chairperson.

CHAIRPERSON: You may proceed.

MR KOOPEDI: Thank you Chairperson. I believe the witness has been sworn in.

JOHN ITHUMELENG DUBE: (s.u.o.)

CHAIRPERSON: He has.

MR KOOPEDI: That's right.

CHAIRPERSON: He now has to commence his evidence-in-chief.

MR KOOPEDI: Thank you Chairperson.

EXAMINATION BY MR KOOPEDI: Mr Dube, is it correct that you are a co-applicant in this matter?

MR DUBE: That is true.

MR KOOPEDI: And that the previous applicant was your accomplice or was with you during this incident?

MR DUBE: That is true.

MR KOOPEDI: On page 10 to page 6 of Bundle A, Madam Chairperson, of the documents before this Honourable Committee, is an application form. Is this your application form?

MR DUBE: That is correct, Sir.

MR KOOPEDI: And on page 15 of that application form, the signature, do you recognise the signature?

MR DUBE: Yes, Sir.

MR KOOPEDI: Is it your signature?

MR DUBE: Yes, it's my signature.

MR KOOPEDI: Now is it also correct that this incident refers to the bomb blast that took place in Witbank, during 1998, 1988?

MR DUBE: That is correct Sir.

MR KOOPEDI: Now would you briefly tell this Honourable Committee what your involvement was with this bomb and perhaps start where you joined the ANC, how and where you got your military training?

MR DUBE: Madam Chairperson, a statement similar to the one the previous applicant had is before the applicant. Unfortunately we still have not made copies for the Honourable Panel and even my Learned Friends on the other side. The statement was prepared in English. With your permission we would ask that this portion of his evidence be rendered in English as it will be quicker since the statement has been prepared in English.

CHAIRPERSON: Yes, you may proceed.

MR KOOPEDI: Thank you Chairperson. Please go ahead.

MR DUBE:

"I joined the ANC in 1980 at Swaziland. I became a member of MK and I got my military training in the former USSR, the former German Democratic Republic, and Angola.

I became a member of the Special Ops machinery in 1986. It was at a time when I was based at Lusaka in Zambia. I was infiltrated into the country late in 1986. I had the mandate to form a number of my own unit, which I did and these units were operating in the former PWV area.

During 1988, it may be around August, September, a comrade of mine, Comrade Valdez, a former MK Commander also, who operated from the East Rand, requested me to assist in the assembling of a bomb that was to be detonated in Witbank next to the offices of the Security Police. Comrade Valdez wanted me to assist mainly with the connection of the remote control gadget. Although I was a Commander in my unit, Thabang was more senior and he was the Commander of the operation itself.

CHAIRPERSON: You are referring to ...(intervention)

INTERPRETER: The speaker's mike is not on.

CHAIRPERSON: You have referred to one Valdez and you are now referring to one Thabang. Are these one and the same person?

MR DUBE: It's one and the same person. The name Valdez is the name that he was using out in exile, it's one and the same person.

CHAIRPERSON: You may proceed.

MR DUBE:

On a Sunday afternoon, I went to Thabang's place in the East Rand into the house where he was staying. I found him and then we then left to another house where we picked up Steven, my co-applicant. We then proceeded to Witbank. We were driving in a Mazda motor vehicle.

We went to a house in Witbank which I gathered that it belonged to Steve's relatives. We slept there and in the morning we woke up and Comrade Valdez said we should start preparing for the preparation of the bomb. The car and the explosive devices were already in that house, a Ford Cortina. It was parked in the garage of that house.

We then started assembling the bomb. Valdez did the main assembling. Myself and Steve, we were taking turns in providing security and helping. After the bomb was fully assembled, I then connected the remote control gadget. Valdez then told Steve to drive the Mazda and that I should go into Steve's car. Whilst he was driving, we followed Thabang's car, in the Cortina, until to the taxi rank, nearer to the target. We then parked the car and secured the Late Comrade Valdez.

CHAIRPERSON: Where did you park the car?

MR DUBE: Around the taxi rank.

Then Comrade Valdez proceeded. After some time, he came back, he joined us into the car.

CHAIRPERSON: Do you know where he proceeded to?

MR DUBE: He proceeded to the target.

CHAIRPERSON: Yes.

MR DUBE: ...(ethnic)

CHAIRPERSON: ...(ethnic)

MR DUBE:

After having parked the car he came back to us and got inside the Mazda. After Steve driving off, Comrade Valdez then detonated from the remote device and there was a large explosion and we then drove straight to Vosloorus, back to our base.

MR KOOPEDI: Now your involvement in this whole affair, was it only related to the time period from Sunday until Monday when the bomb was detonated?

MR DUBE: I arrived on Sunday, that's when I was involved, until Monday.

MR KOOPEDI: Now, do you think that if they did not enlist your assistance, would they have had a problem with assembling the bomb or even the detonating device?

MR DUBE: They were going to have a problem because they did not have any knowledge regarding that gadget.

MR KOOPEDI: It was a new ...(intervention)

CHAIRPERSON: Which gadget are you referring to?

MR DUBE: The remote control gadget.

CHAIRPERSON: Thank you.

MR KOOPEDI: It was a new gadget.

MR DUBE: I could say that most Comrades were not ...

MR KOOPEDI: Would it be correct to say that when you got to know about this gadget, or when you got your training on this gadget, they had already completed their training? I'm referring in this instance to both the late Kholile Sam and your co-applicant.

CHAIRPERSON: And by the gadget are you referring to ...

MR KOOPEDI: The remote.

CHAIRPERSON: The particular remote control device?

MR KOOPEDI: Yes, I am.

CHAIRPERSON: Yes.

MR DUBE: Please repeat your question, Mr Koopedi.

MR KOOPEDI: I will let the question pass.

JUDGE MOTATA: No, no.

CHAIRPERSON: No, repeat it.

JUDGE MOTATA: They didn't get your question from the box, they say repeat it.

MR KOOPEDI: Okay. My question was, this remote control gadget, would I be correct to say that the reason why perhaps the Kholile Sam and your co-applicant would have had a problem with it was that when it was introduced, they had already finished their training?

MR DUBE: That might be correct. That might be so.

CHAIRPERSON: Is it something that's within your personal knowledge, or you are speculating?

MR DUBE: What I'm saying is, they did not know about it.

CHAIRPERSON: For whatever reason, you are aware that they would not have been able to set the remote control device without your particular assistance?

MR DUBE: That is correct, I discussed that with Valdez.

CHAIRPERSON: Yes.

MR KOOPEDI: I'm indebted Chairperson. Now Mr Dube, do you think that you have fully disclosed all the material facts relating to your involvement in the Witbank bomb blast?

MR DUBE: Yes, I have fully disclosed about the role that I played in this bomb blast in Witbank, but there is something that I would like to highlight or mention. This happened because of the situation that was prevailing at that time. It was a war situation, that's why this bomb blast, therefore I would like to request the people or it must be understood that all the people who were victimised in that situation, it was not for my own personal gain, but I just laid a route into what the liberation of this country and to be in this present dispensation, therefore I'd like to request all the families of the victims and the people who died, I regret that but if it was not due to the apartheid regime, this wouldn't have happened.

MR KOOPEDI: Do you regard this action as having been politically motivated?

MR DUBE: That is correct.

MR KOOPEDI: Now did you receive anything financially? Did you have any personal gain after having participated in this operation?

MR DUBE: No, I did not do this for any financial gain. As I have mentioned, I got nothing as a reward.

MR KOOPEDI: Chairperson, that will be the evidence of the applicant. Thank you.

NO FURTHER QUESTIONS BY MR KOOPEDI

CHAIRPERSON: Thank you Mr Koopedi. Mr Schultz, maybe let's start with you now. Do you have any questions to put to Mr Dube in cross-examination?

MR SCHULTZ: Thank you Madam Chair.

CROSS-EXAMINATION BY MR SCHULTZ: Mr Dube, I want to refer you firstly to page 14 of Bundle A. I want to specifically refer you to point D there where you state - where the question is: "Explain the nature and extent of such benefits which would have been obtained from this action." You wrote there: "Political benefits." What do you mean specifically by that?

MR DUBE: I have just explained now that there was a war that was prevailing at that time and we were trying our best to liberate this country, that is what I was trying to say in that answer.

MR SCHULTZ: Could you, is it possible for you to be more specific? From this specific bomb explosion, what political benefits did you foresee would emanate from that?

MR DUBE: Firstly, that place was being used by the government, the police were stationed there.

MR SCHULTZ: Then I want to refer you to question 11 A where you, where it was asked of you from whom approval was obtained for this ...(intervention)

JUDGE DE JAGER: You asked him what benefits did he - followed on this operation and the answer was the police were stationed there. I - what was the benefits you expected to gain from the operation? We know the police were stationed there.

MR DUBE: I repeat by saying that that area was used by the Security Police or the building and such a place was being considered as a target.

JUDGE DE JAGER: Yes and by attacking the police there, would you curb the police activity? They wouldn't be able, they would be - their minds would be distracted, they wouldn't follow up things, they would be engaged in trying to find you and they wouldn't find other people, that kind of thing that would benefit your political party?

MR DUBE: At that time the police were serving the government and moreover the Security Police were killing our people and oppressing them.

JUDGE DE JAGER: Ja, thank you.

MR SCHULTZ: To return to question 11 A on the said page 14, you speak here of the approval of your immediate Commander. Who was your immediate Commander? Was that Thabang to whom you referred, Comrade Valdez?

MR DUBE: That is correct, Sir.

MR SCHULTZ: Were you at all involved in the reconnaissance of the place where the bomb was to be detonated?

MR DUBE: No, Sir.

MR SCHULTZ: Now what exact approval did you have to get from Comrade Valdez? Wasn't he the man who gave the order in any case, for the bomb?

MR DUBE: At that time I was a soldier and I was taking instructions and my Commander issued the instruction.

CHAIRPERSON: By approval, you mean an order?

MR DUBE: He gave me an order to come and play a role.

CHAIRPERSON: Yes, when you use the word approval in the paragraph that Mr Schultz has referred you to, that word is used as though it's an order, is it not so? Because it doesn't make sense. This is what he's trying to ascertain from you. You did not get an approval, you in fact, according to your evidence-in-chief got an order from Valdez.

MR DUBE: Let me try and explain it myself. Perhaps this is due to my understanding of the English language but it was meant to be order not approval.

CHAIRPERSON: Yes, Mr Schultz.

MR SCHULTZ: Now in Paragraph 11 B the word approval is also used and it is asked who - the name and address of the person or persons who gave such order or approval. Do you take that word approval in that paragraph also to mean order?

MR DUBE: That is correct, Sir.

MR SCHULTZ: And your answer here was: "Chris. The address is not available." Who is the Chris to whom you are referring here?

MR DUBE: I am referring to Chris which was a name that was also used by Valdez.

MR SCHULTZ: So Valdez had, he was known as Valdez, he had his real name and he was known as Thabang and as Chris, do I understand that correctly?

MR DUBE: At that time we were working underground and we were using different names for security reasons.

JUDGE DE JAGER: Yes, but why should you use different names here in your application? At that time it might have been necessary but why should you testify about Valdez and Thabang and Chris, why don't you use one name?

MR DUBE: My problem is that I was used to calling him with all these names.

CHAIRPERSON: Yes, Mr Schultz.

MR SCHULTZ: Now before this Sunday when you went to Witbank where the bomb was to be assembled, were you previously in Witbank before this date?

MR DUBE: No Sir.

MR SCHULTZ: You did not know the people whose house was to be used for the assembly of the bomb?

MR DUBE: Yes, I did not know them Sir.

MR SCHULTZ: Was it told to you by anybody, either by Thabang or by your co-applicant whose house this is?

MR DUBE: No Sir.

MR SCHULTZ: Why didn't you - or did you ask whose house it is?

MR DUBE: I never asked Sir.

MR SCHULTZ: Why is that?

MR DUBE: We were operating on a need-to-know basis.

CHAIRPERSON: May I interpose Mr Schultz. When you gave your evidence-in-chief, when you used the words: "I gathered the house that we went to in Witbank belonged to Steve's relatives", what did you mean by that statement? At which stage did you gather that the house belonged to Steve's relatives?

MR DUBE: Steven told me on our arrival that night.

CHAIRPERSON: So in fact your response to Mr Schultz's question then is apposite because you were informed prior to the execution of the operation that the house belonged to Steve's relatives?

MR DUBE: If I heard him thoroughly, his question was: "Is there somebody else other than Steve and Valdez who told you whose house was that?" and that is why I answered, I said: "Nobody else, other than these two told me, but on our arrival that night, Steve told me."

CHAIRPERSON: If that's what you heard, then the translation was definitely wrong, because that's not the question that was put to you by Mr Schultz. What he wanted to elicit from you was whether anyone had told you that the house belonged to Steve's relatives and by anyone, that included Valdez and Steve.

MR DUBE: Steven told me.

CHAIRPERSON: Mr Schultz.

MR SCHULTZ: Thank you Madam. Were you told the name of the person whose house it is by Steve or by Comrade Valdez?

MR DUBE: Steve said it's his sister's house.

MR SCHULTZ: Did you or do you know at this stage the two persons who were found guilty in 1990 on charges relating to this bomb explosion, Joseph Mandlankosi Vilakazi and Ramuede Steven Mabuza?

MR DUBE: I did not know them at that time.

MR SCHULTZ: Did you get to know them at a later stage?

MR DUBE: Maybe I did not respond well, but it's people that were not known to me.

MR SCHULTZ: Did you - let me refer you to page 75 of Bundle A. On this page a reference is made to a person who gave evidence before the Supreme Court in 1990, one Anna Mahlangu, a resident of Witbank. Do you know Anna Mahlangu?

MR DUBE: You asked me whether I know Witbank or not and I told you I do not know, but my response is, it was my first time going to Witbank, therefore my response is no, I do not know that person.

MR SCHULTZ: Can you give any reaction to the allegations contained on page 75 with regards to the fact that Anna Mahlangu was to a great extent motivated by revenge ...

CHAIRPERSON: Extreme hatred. Is it not extreme hatred and revenge for the police?

MR SCHULTZ: Sorry, I could not hear, Madam Chair.

CHAIRPERSON: Was he not motivated by extreme hatred and revenge?

MR SCHULTZ: Can you give any reaction? Was there any mention made of revenge for a killing by the Witbank Security Police during your assembly of the bomb?

CHAIRPERSON: By whom? By Valdez?

MR SCHULTZ: By Valdez or the co-applicant.

MR DUBE: I do not know Anna Mahlangu, as I've already said, it was only the three of us.

CHAIRPERSON: The question is, did Valdez ever mention Anna Mahlangu and if he did, did he ever express the fact that Anna Mahlangu hated the police and wanted to revenge against the police?

MR DUBE: Valdez never told me anything about Anna Mahlangu, I do not know her.

MR SCHULTZ: Were you told by Valdez where exactly the bomb would be placed, meaning would it be placed in front of the entrance of the police offices or would it be placed further down the street?

MR DUBE: I did mention earlier on that my role was just to assemble the remote control device.

CHAIRPERSON: Mr Dube, it's going to be very easy for us if you respond to such easy questions, not referring us to your previous answers and questions.

MR SCHULTZ: Shall I repeat the question, Mr Dube?

CHAIRPERSON: He has responded to your question by saying no, he had not been told by Valdez where the bomb would be place for detonation.

MR SCHULTZ: Thank you Madam Chair. On the morning when the bomb was now taken to the place where it was to be detonated, you waited there at the taxi rank. Did you see where Valdez went to park the vehicle, the Cortina vehicle to which you referred?

MR DUBE: Yes, we were watching him so we saw where he parked the car.

MR SCHULTZ: Now, what was the scene like there? Were there a lot of people moving around at that time before the bomb was placed?

MR DUBE: I will respond by saying that it was my first time coming to Witbank, therefore I cannot explain exactly how was the situation at that time.

JUDGE MOTATA: May I just come in Mr Schultz? The question is very simple. Did you see a lot of people moving around? It doesn't have a question of whether you've been at Witbank at first or not. When you were parked at the taxi rank, did you see a lot of people moving around? That's a very simple question, it doesn't need prior knowledge.

MR DUBE: I would say that I cannot remember. There were not many people.

JUDGE DE JAGER: Can you remember or don't you know whether - you say you can't remember and the next moment you say there weren't many people. Can you remember or can't you remember?

MR DUBE: I am just estimating, as I said.

CHAIRPERSON: Mr Schultz.

MR SCHULTZ: Thank you. Now, can you remember how late it was that you stopped there at the taxi rank?

MR DUBE: I would say as Steve has already pointed out, it could have been around past eight.

MR SCHULTZ: Was there, during the assembly of the bomb at this house in Witbank, any discussion between the three participants about the fact that innocent people may be killed or injured by the detonation of this bomb?

MR DUBE: You mean us?

CHAIRPERSON: Yes, you, Steve and Valdez. You are the ones who were responsible for the assembling of the bomb, is it not so? There was nobody else apart from the three of you.

MR DUBE: Okay. We did make mention or discuss the possibility of innocent people getting caught in the cross-fire because an explosion uses waves so to say.

MR SCHULTZ: And when you discussed this, was your decision, or the decision of the three of you to proceed regardless of this possibility?

MR DUBE: We were receiving instructions from our Commander.

MR SCHULTZ: What was at that stage your own opinion regardless of your instructions from your Commander, what was your opinion about the fact that innocent civilians might be killed or injured? How did you feel about it?

MR DUBE: As a person who had knowledge of explosives, I knew that there's a possibility of people getting injured or dying and one other thing is that was not my operation, it was Valdez's operation.

MR SCHULTZ: So what - if I understand you correctly, what you are saying is you simply followed orders, you did not think about the loss of innocent life?

MR DUBE: I would again say that I am a soldier and we are following the rules to the effect that we have to follow the words of the Commander, that is as a disciplined soldier.

MR SCHULTZ: And interesting question Sir, can you say why this bomb was placed on a Monday morning and not, for instance, a Sunday morning?

CHAIRPERSON: Is that a fair question to ask of this witness who really had no part in the reconnaissance that was conducted around the place and neither did he also take part in the selection of the target but was pulled in merely to come in and put this remote control device and simply to be there to make sure that the bomb does not detonate before it can be done so by Valdez after they had pulled over?

MR SCHULTZ: Madam Chair, my respectful submission is that this question flows from the previous questions regarding the discussion around the possibility that innocent people may be killed. Perhaps if you would allow me the opportunity, I should rephrase the question, to put it in the same way, whether such a discussion round about that took place.

CHAIRPERSON: Yes, if you rephrase it and put it in that fashion, I think it will be fair and legitimate a question to put to this witness.

MR SCHULTZ: Thank you Madam. Sir I want to then ask you at the time when the assembly of the bomb took place, did any discussion take place regarding the fact that the bomb was to be detonated on a Monday and say for instance not on a Sunday when the street might be emptier of civilians?

MR DUBE: Let me answer by saying that I did not participate in the reconnaissance. The reconnaissance had already been carried out, I just had to put together the remote control.

CHAIRPERSON: Did you or did you not discuss when that detonation would take place and why it would take place on that particular day or time? Did you or did you not have such a discussion? That is the question. Whether you took part in the reconnaissance or whatever is not the question that is being put to you.

MR DUBE: No.

MR SCHULTZ: When the bomb was detonated, was there a line of sight between the place where your vehicle was at that stage and where the bombing vehicle was placed? Could you see the area where the vehicle was placed, in other words?

MR DUBE: Yes.

MR SCHULTZ: Thank you Madam Chair.

NO FURTHER QUESTIONS BY MR SCHULTZ

CHAIRPERSON: Thank you Mr Schultz. Mr Mbethe?

MR MBETHE: Thank you Madam Chair.

CROSS-EXAMINATION BY MR MBETHE: Mr Dube, so all in all, what you're saying to us today here is that your involvement was simply in placing the remote control into the device into the bomb otherwise anything else that flows from the incident, you have no knowledge. Would I be understanding you correctly in saying this?

MR DUBE: I was also part of security.

CHAIRPERSON: When you say you were also part of the security, are you referring to the instance when you had to be part of the security according to your evidence-in-chief, during the assembling of the bomb in Witbank?

MR DUBE: Yes, when we assembled the bomb because we would watch over the place in turns.

MR MBETHE: Now if you had - okay, let me ask the question this way. Was there a possibility that you could basically disagree or object to the manner in which the bomb or to the place where the bomb was placed and if you could, what would have happened if you did so?

CHAIRPERSON: I didn't get your question.

MR MBETHE: Thank you Madam Chair. The question is, could you at the time have objected to the manner or to the place where the bomb was placed?

MR DUBE: No I didn't have that authority.

MR MBETHE: Now can you give us an indication as to - you've already, you know, talked about the remote control, how far from this place would you have to be in order for the remote control to detonate the bomb, in other words, could you have been in Jo'burg and have detonated the remote control and the bomb would have gone off as well?

MR DUBE: No, one would not have detonated it from a distance of Johannesburg. The device that we were using could only be active within a 25 kilometre range.

MR MBETHE: So when you detonated, or when you made the bomb to explode, were you standing or were you driving on your way to Vosloorus? Were you still standing watching the place where the bomb would explode? Was it still in your vicinity?

CHAIRPERSON: In your view?

MR MBETHE: In your view, yes.

MR DUBE: No, there were buildings, so we were on our way to Vosloorus so that that place was not within our view, what we could only see was a smoke.

MR MBETHE: Did you actually wait to see the bomb going off or were you - did you leave immediately after the car had been placed?

MR DUBE: It was detonated by pressing a button on the remote control, that led to the explosion, that is after which Steve drove away.

CHAIRPERSON: I'm not on the same wavelength with this particular part of your evidence. I was under the impression when you were giving your evidence-in-chief that the detonation took place after Valdez had got into your car and the car had actually pulled over and Steve was driving away from the taxi rank. What I seem to be understanding in your evidence now in response to Mr Mbethe's question to be is that you actually detonated the device prior to Steve driving away from the taxi rank and I need clarity with regard to that particular issue.

MR DUBE: Okay. We waited for Valdez to get into the car. After that Steve started the car and he started driving away and as we were just about to get into the freeway, that is when Valdez detonated the bomb.

CHAIRPERSON: How far or after how many minutes would you estimate that Valdez detonated the bomb from the time when Steve pulled away from the taxi rank? Did you take a few seconds, a few minutes? If you say a few minutes, less than two minutes? Less than five minutes or more than five minutes after you had driven away from the taxi rank?

MR DUBE: No, there's something that I didn't understand. Will you please repeat your question?

CHAIRPERSON: After how many minutes you had pulled away, or second you had pulled away from the taxi rank, did Valdez detonate the bomb? Was it a few seconds after you had moved away from the taxi rank, or was it a few minutes? If it's few minutes, was it less than two minutes, or was it more than two minutes?

MR DUBE: I am not quite sure about that. I cannot recall. I'll give you a rough estimation. About three to four minutes.

CHAIRPERSON: Yes. Mr Mbethe.

MR MBETHE: Thank you Madam Chair. Now can you just explain to us if you can, if you cannot if you'll say so, do you have any knowledge why Witbank and in particular the place where the bomb was placed, was chosen as the target?

CHAIRPERSON: Is that a fair question to put to him, having regard to the evidence that's before us?

MR MBETHE: Thank you Madam Chair, I will ...(intervention)

CHAIRPERSON: And flowing particularly from the questions put by Mr Schultz around this issue?

MR MBETHE: Thank you Madam Chair. Mr Dube, do you agree with me that - Mr Dube you've already stated that you think you have fully disclosed your participation in this matter and you were present when your co-applicant was giving evidence. It seems to me the bulk of the important evidence would lie with Valdez. In that instance and we know for a fact that Valdez is no longer present with us, he has died, in that instance, I will ask you a question. Do you think after all is said and done and we go home today in this Tribunal, would we know the true facts or the true events that took place on that day, because as I say, everything is attributed to Valdez and Valdez is not here to say and to testify for himself?

MR DUBE: What I can say to you is that I said exactly what happened and that is that which I recall.

MR MBETHE: My final question would be, it's a question that I asked the first applicant and I will ask it to you again, in retrospect knowing what you know now and the facts that you know, do you think the placing of the bomb the way it was placed, was a mistake and if so, with the knowledge that you have, if you were given a chance, would you have done the same thing that you did on the day in question?

CHAIRPERSON: Which knowledge are you presupposing he now has? He did not participate in the reconnaissance.

MR MBETHE: Madam Chair, the knowledge I am talking about is the fact that innocent people were killed in the incident and none of those people were connected with the Security Forces.

CHAIRPERSON: Yes.

MR MBETHE: So my question is, knowing what happened after the bomb went off, does he firstly think that the way the bomb was placed and the place where it was placed, was a mistake and secondly, if he was given a chance to do - would he do the same thing that he did at the time that it was done?

CHAIRPERSON: I am most reluctant to allow this kind of cross-examination because it really doesn't ventilate on the issues that we have to deal with. You are asking him to speculate with hindsight, what he would have done. I don't know whether it will take us anywhere, but nevertheless, in as much as I am very tempted not to allow this kind of cross-examination to take place, I think in the interest of fairness I will allow it, but I want it recorded, I don't think it is a fair question, it doesn't assist us in coming to a decision in terms of the Act in deciding whether to grant or refuse amnesty to these applicants.

MR MBETHE: Thank you Madam Chair.

JUDGE MOTATA: Is it not a fact that his involvement is the remote control and it doesn't appear that he knew where they were going to, other than him being driven by the first applicant, Mr Nyalunga and Mr Valdez or Comrade Valdez was the one who was going to place the car at the targeted place and should he now go back, Mr Mbethe, and say I would have stopped Comrade Valdez to go there because he says, because of his knowledge and which knowledge he acquired which the others did not know of the remote control, can we really ask him a question of that nature? I would urge you Chairperson that this question not be allowed.

MR MBETHE: Thank you Madam Chair. I will abandon that question. In fact, Madam Chair, that will be my last question to this witness.

CHAIRPERSON: If you really feel hard pressed to abandon the question, I will allow you. I was - I would have been in a position to say we'll concede and allow you, I will prevail on my brother to allow you to ask that question, but you are aware that if you ask that question, you actually are asking the witness to speculate and that is not the kind of evidence you can use in evaluating the facts before us, in trying to come to a determination whether we should grant or refuse him amnesty. As a lawyer you should know that. That's not the kind of evidence we would be interested in.

MR MBETHE: It is true Madam Chair and I agree with the question. Maybe I should ask my question this way. We have today in front of us victims that flow directly from the incident that took place in 1988, I know you've already apologised and you've said you are sorry, what - is there anything else that you can say to these victims today in relation to the participation that you contributed or your participation in the event itself?

CHAIRPERSON: His participation in relation ...(intervention)

MR MBETHE: Meaning the remote - the connection of the remote control. Basically what I want to find out is whether he feels remorseful of what he did on this particular day. Whilst I know for a fact Madam Chair that remorse is not part of the requirements in terms of this Act, but I feel on behalf of the victims, it is important for the victims to find

out if they do forgive this person, they would forgive him on the basis of the person having shown remorse, other than apologising.

CHAIRPERSON: I really do not understand what you are trying to get from this applicant. I think we are here to make sure that we conduct these proceedings in a proper decorum. He has given an apology.

MR MBETHE: Madam Chair ...(intervention)

CHAIRPERSON: If your clients - I'm still talking.

MR MBETHE: Sorry, Madam Chair.

CHAIRPERSON: If your instructions are that the victims are not happy with the apology tendered by him, you can put it to him, I don't think you can actually draw blood from a stone, you can't actually force him to tender any apology other than the one he has tendered, bearing in mind, of course, that apology or any kind of remorse or contrition is not a requirement to us granting him or refusing him amnesty. We would very much like to see you concentrating on the issues that are important and necessary to enable us to decide whether we should grant him amnesty or not.

MR MBETHE: Madam Chair, with respect, whilst I've already stated that I know that the requirements of the applicants getting amnesty do not include apology, but Madam Chair it is true that the name of the Act that we are here about is called the Truth and Reconciliation Act, now the second part of the name of the Act. Reconciliation, it is my humble submission that it involves two people, one, Madam Chair, accepting and showing remorse and the other based on that, Madam Chair, forgiving the person who has asked for apology, so basically what I'm asking is the spirit of the Act itself is ...(intervention)

JUDGE DE JAGER: We understand your arguing. Do you feel remorseful or not?

MR DUBE: What I can say here is that during those apartheid days, you see I cannot regret for having done that. I have explained that it was the circumstances that drove us into doing what we did. Personally I do not regret, but I apologise to those who suffered a loss.

MR MBETHE: Thank you Madam Chair. No more further questions.

NO FURTHER QUESTIONS BY MR MBETHE

CHAIRPERSON: Mr Koopedi, before we afford you an opportunity to re-examine, just to try and facilitate these proceedings, we are going to ask questions of clarity of clarity from the Bench and having ...(indistinct) that process, we will then afford you such an opportunity to re-examine so that your re-examination can also take account of what would have been examined by the Bench.

MR KOOPEDI: Thank you, I agree with that Chairperson.

CHAIRPERSON: Mr Dube, Judge Motata would like to put a few questions of clarity.

JUDGE MOTATA: Thank you, Chairperson. Mr Dube, you said that when you parked your car, in your evidence-in-chief, you thereafter secured Comrade Valdez. Do you recall your evidence in that respect? That is at the taxi rank. That is the Mazda, when you parked with Comrade Steve.

MR DUBE: I said we, Steve is the one who was driving the vehicle.

JUDGE MOTATA: Then I say, do you recall that when you said after you parked, that's the crux of what I want to know from you, that you secured Comrade Valdez.

MR DUBE: Yes, I recall that.

JUDGE MOTATA: How did you secure because he had to park the Cortina next to the building and leave it there? How did you secure Comrade Valdez?

MR DUBE: I had a firearm. Secondly I had to make sure that he doesn't experience any trouble. I would shoot if I had to.

JUDGE MOTATA: Is that whilst you were seated in the Mazda at the taxi rank?

MR DUBE: Yes. Yes, I was inside the car and watching over ...

JUDGE MOTATA: And that is the securing you are referring to?

MR DUBE: Yes.

JUDGE MOTATA: Thank you Madam Chair.

CHAIRPERSON: Mr Koopedi do you have any re-examination?

MR KOOPEDI: Nothing.

CHAIRPERSON: Really, do you want to re-examine?

MR KOOPEDI: Nothing in re-exam Chairperson, thank you.

CHAIRPERSON: Where does this take us to? Are you closing your case?

MR KOOPEDI: In the event there aren't any other questions to this witness, like I said ...(intervention)

CHAIRPERSON: I wouldn't have allowed you to re-examine after having made that arrangement, if there were any other questions from the Bench. There are no other questions from the Bench.

MR KOOPEDI: And none from my Learned Colleagues I take it. In that event ...(intervention)

CHAIRPERSON: They've had their opportunity, they've cross-examined, do you want to give them a second chance?

MR KOOPEDI: I've seen them come back again and ask questions after they've concluded.

CHAIRPERSON: No they have specifically, humbly requested an opportunity to do so.

MR KOOPEDI: Chairperson, that will be the evidence of this applicant and this will conclude all the evidence we wish to adduce for the two applicants. This will be their application.

CHAIRPERSON: Yes.

MR KOOPEDI: Thank you Chairperson.

WITNESS EXCUSED

CHAIRPERSON: Mr Schultz and Mr Mbethe, this being the case, I'm aware of your precarious position that you are on a watching brief. You are opposing and your opposition is based on the requirement of full disclosure. What do you propose doing now? What are your instructions?

MR MBETHE: Madam Chair, with indulgence from this Tribunal, I would like to consult with my clients and get a full, you know, instruction from them as to whether they do believe that from the evidence that has been led here, full disclosure has been made. If we could just - I think maybe 5 minutes would do.

CHAIRPERSON: Yes. Now we'll give you whatever time you think is reasonable, for you to take proper instructions.

MR MBETHE: Thank you Madam Chair.

CHAIRPERSON: Mr Schultz?

MR SCHULTZ: Madam Chair, I would also request an adjournment. Most of my instructions I received only this morning. I will obviously need a lot more than five minutes to obtain final instructions.

CHAIRPERSON: Yes. Can you give the indication to the Bench of how much time you would require to take proper instructions?

MR SCHULTZ: I should think at least three quarters of an hour to an hour Madam Chair. I have at least 15 people to consult with.

JUDGE DE JAGER: Could I suggest that in case you propose to lead evidence, perhaps you could ask your clients whether they can consult amongst themselves and sort of

nominate a delegate to give evidence or two or so, so that we need not hear the same evidence from 15 different people?

MR SCHULTZ: Madam Chair, that is indeed my intention, it's certainly not to call all the victims, but certain of the victims will definitely be called.

CHAIRPERSON: In the event you may decide to do so?

MR SCHULTZ: That is correct.

CHAIRPERSON: Mr Steenkamp?

MR STEENKAMP: Madam Chair, I've listened to the evidence. I just want to put on record that the actual investigating officer who investigated this case, ...(indistinct) Lombard is available today. I could hear there were certain questions surrounding specifics like the bomb, the vehicle, where the vehicle was standing, where it was parked, he's available, I think his testimony, if required, will take about 5 minutes and probably I would suggest in the interest of the victims, they could probably know what to the - what type of bomb was used, if it's ...(indistinct) and secondly maybe it's a bit late now, but I've heard the evidence of the last applicant and he was also referring to the possession of a firearm. Now I don't see anything in his amnesty application about that and maybe that can also be cleared up in the meantime. I'm not quite sure what exact position that firearm was.

CHAIRPERSON: Are we in a position to clear anything or the law requires us to confine ourselves with the acts for which amnesty has been sought, notwithstanding what the applicant said.

MR STEENKAMP: I withdraw that, Madam.

CHAIRPERSON: If Mr Koopedi who is representing them, has chosen not to bring any act or omission that would have qualified for amnesty, emanating from this incident, I think we would not be too happy to have you as our Evidence Leader, ...(intervention)

MR STEENKAMP: No, Madam Chair, I'm actually raising it ...(intervention)

CHAIRPERSON: Accommodating them.

MR KOOPEDI: If I may clarify the issue. This applicant is not making any application for the possession of a firearm, Chairperson.

CHAIRPERSON: Yes.

MR STEENKAMP: I was only raising it, Madam Chair, because if the investigating officer is going to testify by your indication, there's a possibility such evidence may be led, that's the only reason why I was just raising it. Thank you Madam Chair.

CHAIRPERSON: Thank you. We'll take a 30 minute adjournment. In the event of both Mr Mbethe and Mr Schultz requiring further time to consult with a view of taking proper

instructions from their clients, they will give an indication to Mr Steenkamp who will then give an indication to us and we'll only be too happy to give you more time. I just don't want us to adjourn with a view of coming 45 minutes to an hour, when possibly your instructions are going to take far much less than that. As you are aware, we are a Committee which is always hard-pressed for time. We have a matter which is actually standing down, which should have actually commenced at 2 o'clock but has not been able to commence, so we'll give you 30 minutes to take proper instructions, but as I say, if you want to have more time, just give Mr Steenkamp an indication and we'll accordingly oblige.

COMMITTEE ADJOURNS

ON RESUMPTION

CHAIRPERSON: Between Mr Schultz and Mr Mbethe, who wishes to commence with regard to giving us directions as to how we are going to move from here?

MR SCHULTZ: Madam Chair, I thank you for the opportunity. I've had opportunity to consult with all my clients. My instructions are at this stage not to adduce any evidence from the victims as such but to simply request you for an opportunity to prepare argument with regards to the application.

CHAIRPERSON: Yes.

MR SCHULTZ: I will leave it in your hands with regards to how the argument should be addressed, but obviously at this stage I am not yet ready to give argument.

CHAIRPERSON: Yes. Would you wish to submit written heads or you want to be given an opportunity to prepare in order to give us oral argument?

MR SCHULTZ: I think that written Heads would be suitable in this instances.

CHAIRPERSON: How much time do you require to sufficiently prepare your Heads?

MR SCHULTZ: I would need at least a day to prepare everything.

CHAIRPERSON: Mr Mbethe, what is your position?

MR MBETHE: Madam Chair, thank you for the opportunity. I have also consulted with my clients and Madam Chair, I am also not going to lead any evidence from the victims, but I am immediately going to go to the stage of legal argument. I think I would be prepared to give my legal argument orally today.

CHAIRPERSON: Okay.

MR MBETHE: So there is absolutely no need for me to ask for a postponement.

CHAIRPERSON: Yes. Mr Koopedi, what is your situation with regard to legal argument?

MR KOOPEDI: We are ready to proceed with legal argument. We have a very brief legal argument to present before you, so any time, we can do it now if it's expedient, if not, one could reduce it to writing, whichever direction this Panel leads us, I am ready.

CHAIRPERSON: Yes. We are in a position to give our ruling in respect of the request made by Counsels representing the victims with regard to, in particular, Mr Schultz. With regard to having to file your argument a day later than today, we are going to give you until Wednesday to file your written Heads. Will you please make sure that the Heads are sent here, because we will be sitting here until Friday, in order to enable Mr Koopedi to also get a copy of your Heads of Argument and Mr Mbethe must also get a copy of your Heads of Argument. Mr Koopedi, in that case we will afford you an opportunity to do a reply if need be and to file it by Friday, which will be the last day on which we will be sitting here at this venue listening to applications brought this week. Is that sufficient?

MR KOOPEDI: I can only hope that I would not have to replicate. I may be tied up in a matter in Bisho from the 3rd to the 4th, but I believe I would not have to reply. If I do, I will make means of getting his argument, working on it and sending it over in my absence.

CHAIRPERSON: Without prejudging the issues, I don't think we are dealing with matters that are going to require you to go back to any lengthy record for you to go through in order for you to file your replication.

MR KOOPEDI: I believe so.

CHAIRPERSON: I think Friday should be more than reasonable a time, we just don't want to sit with matters which are going to entail this matter not being capable of being disposed of immediately. We would like to give our decision as soon as possible, in the interest of allowing all parties concerned to move forward with their lives. We don't want the victims to sit here waiting for this Panel to come up with a decision and also having the applicants waiting for us to come with a decision. We'd like to have a decision ready within a week from today whilst the facts are still fresh in our minds, so we'll urge you to make sure that you have your replication, if need be, if you are going to have to replicate, by Friday.

MR KOOPEDI: I will.

CHAIRPERSON: That being the case, we are going to afford Mr Koopedi an opportunity to present us with his oral argument after which we'll give an opportunity to Mr Mbethe to answer.

MR KOOPEDI IN ARGUMENT: Thank you Chairperson, if I may proceed.

As I have indicated, my presentation argument to you is a very brief one. Chairperson, Honourable Committee Members, you've had before you two applicants. At the outset I wish to point out that these are two applicants who had no pressure on them to come before you or to even apply for amnesty. It is common cause that there are people who

have been arrested, charged and convicted for this offence and they could have kept quiet and not proceeded with it. I am referring to the applicants.

It is my belief that these two people came to you genuinely, like I said, with no pressure. It is my further submission to you that in so doing, they fully disclosed all the material facts available or known to them, taking into consideration the length of time that has lapsed from the time when this incident occurred, to today.

Madam Chairperson, Honourable Committee Members, I would briefly want to take you through the situation or the circumstances as it was, on the first applicant, Mr Nyalunga. Much as he was a senior person within MK ranks, he was trained and had all sorts of knowledge, political knowledge, military knowledge, he was at this point, that is when he got involved in the Witbank bomb, acting under orders from a superior, the late Mr Kholile Sam. It is those circumstances that to a very large extent, put him in a position where he became a foot soldier more than the Commissar he was. All he did was in terms of an order from a superior person from him, or a superior person to him. There have been questions asked and particularly to him as to the issue of people who could have been in the vicinity, the fact that perhaps you know the intended targets were not actually hit, may I ask this Committee to look at his responses to those questions as purely being speculative in that he was not the one who made the decision, he was not the one who gave any order, he was merely doing what he was ordered to do.

With regards to the applicant ...(intervention).

CHAIRPERSON: But in taking part in the reconnaissance, wasn't he by implication?

MR KOOPEDI: Well, I would concede that by implication, if he took part in the reconnaissance, this put him at a certain level, but may I remind this Honourable Committee that this would only pertain to reconnaissance and whatever that was found on reconnaissance, would not necessarily mean that an order would be given or would be reversed. It has been evidenced, the evidence before you is that the late Kholile Sam had considered this place as a possible target. When he came to ...(intervention)

CHAIRPERSON: Not as a possible, as a target.

MR KOOPEDI: Excuse me. As a target. When he spoke to the first applicant here, Mr Nyalunga, he told him so, which would mean that his involvement in terms of reconnaissance, I'm now referring to the first applicant, his involvement was merely you know a person following what his Commander wanted him to do, to accompany him, to go for a reconnaissance of a target already concluded upon. Yes, it is on those basis that I say that I would ask this Committee to consider his responses to that line of questioning as merely speculative. We are here dealing with a foot soldier, somebody who acted under orders to do all that he did.

May I then move to the second applicant? The second applicant did not particularly or *per se* belong to this unit. However, the second applicant was co-opted, requested, to assist this unit. He possessed certain expertise which this unit did not have. In as far as the command of this operation is concerned, I think it is common cause that the command rested squarely on the late Kholile Sam, he was the Commander of this

operation and in fact the Commander of this unit, the unit responsible for the Witbank car bomb blast. The second applicant was only requested to come and assist with the fitting of the remote control device or gadget.

I also wish to say that he' one witness, or he's one applicant who has come before you without any pressure really. He could have stayed away and not come here and I believe that by coming before you, there would then be no other reason for him or even the first applicant, not to tell the whole truth. Perhaps finally, I would wish to say that both applicants before you gave the whole truth. They have been subjected to cross-examination, I believe what came out of the cross-examination was a further enlightening of the truth, nothing to show us that they were not giving full disclosure.

I also wish to submit that the question of personal gain is common cause. We do not have any evidence that contradicts the fact that they did not have personal gain and it is against those basis Madam Chairperson, Honourable Committee members, that I would ask that the two applicants be granted amnesty for the Witbank car bomb blast. Thank you.

CHAIRPERSON: You state that the second applicant was co-opted or requested to assist in the unit, obviously because as the evidence has shown, because of his pertinent skills with regard to the remote control device. If that is so, can you submit that he was acting under orders of Kholile Sam, who was a Commander of a unit to which he did not belong?

MR KOOPEDI: I will indeed submit so, Madam Chairperson. The second applicant did not belong to this unit. He had his other units, which units he Commanded. It is his evidence that he was asked in this particular instance, to come and assist on this remote control gadget. He had no knowledge as to where the bomb would be planted. He had no knowledge of the reconnaissance. The only - His involvement was just where he was needed, just where his expertise was needed and I wish to submit that at no stage did this unit lose command, what I'm saying is the late Kholile Sam was the Commander of this unit from the inception of the idea of putting a bomb in Witbank, until it's conclusion. The second applicant's arriving on the scene, it's my submission, does not tamper with the command. The command still rests with the late Kholile Sam and I would therefore submit that any person who involved himself or herself with this operation which was commanded by Kholile Sam would then be acting under his orders.

CHAIRPERSON: Yes.

JUDGE MOTATA: Now in respect of Mr Nyalunga, he said at first that is the evidence, at first he was not involved in the reconnaissance because he was known in Witbank and subsequently he was invited also to partake in the reconnaissance, does that not suggest that if you partake in the reconnaissance, that you have to put in a word or two as to what the situation is like, because I'm a little uncomfortable to dismiss that as speculative when he was cross-examined on that aspect.

MR KOOPEDI: Well, if I followed correctly, my response would be that if he was asked to go on a reconnaissance of a target which has already been concluded upon, my

submission would be that his word would not weigh much particularly because when he went to the reconnaissance, he was not alone, or he was not given a unit to go with, which he supervised, it would not be really incumbent upon him to make a decision about the target. The target had already been identified and concluded upon. More than anything else, in the reconnaissance, he was accompanying his Commander, more than him conducting a reconnaissance. In his evidence, he did not have to come back to the Commander or any other person and report about what he saw in reconnaissance and a decision then made on the basis of what he says he saw in reconnaissance. I would therefore still go back to my argument that even if he went to reconnaissance, even if he participated in the reconnaissance, he was merely following his Commander. He was ...(intervention)

JUDGE DE JAGER: They were only two members in the unit.

MR KOOPEDI: That is indeed so, but ...(intervention)

JUDGE DE JAGER: They weren't actually the foot soldier and the Commander, they were two partners.

MR KOOPEDI: If I may explain this part? His evidence was that there were two people in this unit, a Commander who was the late Kholile Sam himself, he was a Commissar and they would recruit people on an operation to operation basis.

CHAIRPERSON: Yes.

JUDGE DE JAGER: Ja.

MR KOOPEDI: which would mean that they would not be the only two people, if this was a unit as we normally know them.

CHAIRPERSON: Yes, Well, as the criminal - I think the Judgement indicates with regard to the involvement of Mr Mabuya and Mr Vilakazi.

MR KOOPEDI: That is so. If we look at the trial judges' recordings, there are a number of other people to whom reference is being made but the evidence before you now is that none of these two applicants are familiar with any of these people, particularly as them having been members of this unit, for this operation. It's my submission that both applicants will not deny that any one person could have been involved in this operation, they cannot deny that.

CHAIRPERSON: So what you are basically saying to what Judge Motata has put to you is that in as much as he might have participated in the reconnaissance, your argument firstly is that he was really accompanying his Commander in the reconnaissance, he had no control over the reconnaissance, he didn't have to submit any report and secondly the fact that he participated in the reconnaissance, does not give him any decision-making powers that would have put him in a position where he could have contravened or said anything against the target that had already been selected by the Commander.

MR KOOPEDI: Chairperson, I think you have accurately captured it and I'm indebted.

CHAIRPERSON: I hope I'm not doing your job.

MR KOOPEDI: Well, as it happens.

CHAIRPERSON: Yes. In terms of Section 20 (i) of the Act, what specific provisions would you be relying upon with regard to Mr Nyalunga first and secondly with regard to Mr Dube?

MR KOOPEDI: I'm going to need assistance as to the wording of Section 20.

CHAIRPERSON: Don't you have your Act?

MR KOOPEDI: No, I do not have the Act with me and I must be honest I have never addressed any Panel on that particular section, unless it has escaped my mind.

CHAIRPERSON: Section 20 (ii), from (a) to (f).

MR KOOPEDI: I do not have the Act with me Ma'am, and I'm unable to check and see what it contains.

JUDGE DE JAGER: They were members of the party, both of them. They acted against the enemy as they saw it, or it was intended to act against the enemy, so they would fall within the ambit of (ii).

CHAIRPERSON: A O D. That's what we want to know. Are you going to have reliance on Section 20 (ii) (a), or are you going to rely on Section 20 (ii) (d). Let me give you my Act so that you can address us pertinently on that issue.

MR KOOPEDI: I'm indebted again for the copy of this Chairperson. I must say, I have a great difficulty in determining where, which Section would we rely on, but it is my submission at this stage that we would rely on Section 20 (i)(a), I think I've quoted it correctly. Yes.

CHAIRPERSON: Chairperson, 20 (ii).

MR KOOPEDI: (ii) (a)

CHAIRPERSON: (a).

MR KOOPEDI: Yes.

CHAIRPERSON: In both instances, that is in relation to both Mr Nyalunga and Mr Dube.

MR KOOPEDI: That is indeed so Chairperson.

CHAIRPERSON: Yes. And in terms of Section 20 (iii), you are seeking to rely on 20 (iii) (e)?

MR KOOPEDI: I have not checked that one also. i am not in a position to commit myself to 20 (e).

CHAIRPERSON: Yes. ...(indistinct - mike not on)

MR KOOPEDI: That is indeed so, Chairperson.

CHAIRPERSON: ... (indistinct - mike not on) - what legal conditions you are seeking to rely upon ... (indistinct) legal argument, you are only confined to ...(indistinct)

MR KOOPEDI: I agree.

CHAIRPERSON: But I think you will be relying on Section 20 (iii) (e) because you are saying your submission is that they are acting under orders.

MR KOOPEDI: That's right, Chairperson.

CHAIRPERSON: Which is what (e) addresses,

"Whether the act, omission or offence was committed in the execution of an order of or on behalf of or with the approval of the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter."

So you will seek reliance ...(intervention)

MR KOOPEDI: On (e). I agree, Chairperson.

JUDGE DE JAGER: As far as your request for amnesty is concerned, would that relate to the offence in the indictment on page 58, 60, well it's more than - 68 almost. Would that cover what you're asking for? The three murders, the damage of property and the ...

CHAIRPERSON: Attempt.

JUDGE DE JAGER: Ja.

MR KOOPEDI: That is indeed so, Chairperson, the amnesty relating to the Witbank Bomb would cover those criminal charges but perhaps before I get off the mike, I had promised to give to this Honourable Committee certain pages where we would find ...(intervention)

CHAIRPERSON: Yes, before you come to that, we'll come to that just now. With regard to the acts for which amnesty is sought, you will request amnesty for murder?

MR KOOPEDI: Yes, three murders.

CHAIRPERSON: And attempted murder. That is the murder in terms of - and attempted murder and malicious damage to property.

MR KOOPEDI: That's right.

JUDGE MOTATA: I see there's a theft as well, you wouldn't be relying on the theft, charge 70?

MR KOOPEDI: Chairperson, charge 70 we would distance ourselves from it, we have no knowledge, we don't know what happened.

CHAIRPERSON: Yes.

MR KOOPEDI: May I also perhaps say, we were in possession of explosives, Chairperson, if it would meet with your approval for us to also ask for amnesty for having been in possession of explosives material, that is when we were in the process of preparing and making the bomb.

CHAIRPERSON: Well, the whole offences emanated as a result of possession and usage therefor, isn't it?

MR KOOPEDI: That is indeed so.

CHAIRPERSON: That should be quite cardinal to the offences for which you should seek amnesty.

MR KOOPEDI: I concede.

CHAIRPERSON: Would it be your submission that that would flow from the incident itself, even though you've not specifically made mention thereof in your written application?

MR KOOPEDI: That is so, I initially thought that it flows, but as we were talking I thought that perhaps we might also need to mention the fact that we were in possession of the explosive.

CHAIRPERSON: Yes. What I'm saying is, will you argue before us that even though you have not in your written application in response to paragraph 9 (a), even though you've not specified all these separate offences, the fact that you've referred to the incident in general terms should allow you to succeed in respect of these separate offences.

MR KOOPEDI: I agree with you, Chairperson, especially when one looks at ...(intervention)

CHAIRPERSON: I don't want you to agree with me, I want your contention, not your submission.

MR KOOPEDI: Yes. My submission would be that if you look at what is written in the application forms, it would start by saying it refers to a bomb.

CHAIRPERSON: To the incident in general.

MR KOOPEDI: Yes and the word bomb is used. I wish then to believe that it is common cause that it would cover the explosives issue.

CHAIRPERSON: Yes. Yes. Then coming to the question that was reserved for you to address us on during your argument with regard to the number of police officers, which are casualty to this operation, are you in a position to enlighten us more on the number and the relevant pages in terms of Bundle B?

MR KOOPEDI: I think that some eight employees of the SAP then, were involved or harmed by this bomb. Some of them were not directly or physically injured by this bomb, but these are people who heard this loud and violent explosion, these are people who had parked cars outside and in the vicinity of the area where the bomb went off. I will perhaps take you through them page by page. The first one ...(intervention)

CHAIRPERSON: Mr Koopedi, I don't think we'd be interested in the people who are not victims, who did not fall casualty to the operations, because that was not the issue which was under discussion.

MR KOOPEDI: My submission firstly would be that anyone who has made a statement to the police, who would refer to this explosion as a violent explosion, was indeed harmed by ...(intervention)

JUDGE DE JAGER: There must have been hundred in Witbank who heard this violent explosion and they didn't suffer any injuries. We're concerned about the people ...(intervention)

CHAIRPERSON: Unless it's your submission that there was some emotional trauma which- we don't want to make an issue out of this,, we merely want you to - because you had already started identifying certain pages and according to my notes you had identified page 27, page 57 and page 8 as being the relevant pages for us to refer to to see how many of the personnel employed by the SA Police Services were affected by this incident as defined in terms of the Act.

MR KOOPEDI: Page 5 of Bundle B. We have a person who was an Adjutant-Officer in the SAPS.

CHAIRPERSON: Will that be Bundle B?

MR KOOPEDI: Bundle B, page 5, who was in his office, who heard this violent explosion outside the building and as a result of this explosion both his ears were affected and he felt pain.

CHAIRPERSON: Yes.

MR KOOPEDI: On page 6.

CHAIRPERSON: Yes.

MR KOOPEDI: We have a person who was a Sergeant in the SAP, with the Security Branch in Witbank.

CHAIRPERSON: Yes.

MR KOOPEDI: He was hit by a flying piece of glass.

CHAIRPERSON: Yes and attended to by Dr Clarke. Yes.

MR KOOPEDI: That's right. On page 9, we have a person who worked with the police, I cannot see his rank here.

CHAIRPERSON: He's a Constable.

MR KOOPEDI: Oh, baie dankie. He was not in the Police Station or in the building, the targeted building, he was in another building at a shop in the nearby and he was also injured. You have taken note of page 27, Chairperson.

CHAIRPERSON: Yes.

MR KOOPEDI: You also have taken care of page 58.

CHAIRPERSON: I hadn't.

MR KOOPEDI: Page 58 is where you have Zondi. I think that's your 57.

CHAIRPERSON: Yes.

MR KOOPEDI: It's - on my Bundle it's 58 where we have Zondi and not 57. Thulane Harry Humphrey Zondi.

CHAIRPERSON: Yes.

MR KOOPEDI: That's right. Now, I would also wish to take you through page 92. This is not particularly a person who was injured but I think this would assist this Committee in coming to a good conclusion or any conclusion as to the type of target. On page 92 there is an affidavit by a Constable Breytenbach who says he was responsible for the state motor vehicles in and around the area. He has given a description of the damage on the vehicles, the state vehicles. He has numbered the vehicles that could be repaired. He has numbered the vehicles that could not be repaired and he has actually placed the damages suffered by the State on the vehicles at R87 200,99. I will take you to page 96 and perhaps this is where I will pick up a problem. On page 96 we have a Constable who was also an investigator. He heard this loud explosion, he went outside, he was in the office of the Security Police, he went outside and he found that his bakkie, his motor vehicle, was also damaged.

CHAIRPERSON: Yes, that's a victim, he has suffered damages.

MR KOOPEDI: That's right. And also page 98, these are the people I was referring to say they did not actually get physical injuries on them, but they heard this explosion and some of their properties were damaged, which properties I'm referring to cars which were in the vicinity. The last one I'd like to refer you to is page 98. We have a Constable Diyale who also was in that building. She heard this explosion. She saw the windows getting damaged, she - the windows of the premises. She went outside and she found part of the canopy of her bakkie on fire and has even put a value to the damages and these are about the only incidences I can refer you where direct employees of the SAP were hurt or where they suffered damages.

CHAIRPERSON: Yes, that concludes your argument.

MR KOOPEDI: Indeed that does, thank you Chairperson.

CHAIRPERSON: Mr Mbethe.

MR MBETHE IN ARGUMENT: Thank you Madam Chair. I think I must start by saying that when we came to this Tribunal this morning, my instructions were to do what is called a watching brief and in fact I was told in no uncertain terms by members of the family that they do not oppose the application for amnesty by the two applicants. The reason why they wanted to be here is because they wanted to hear what actually took place at the place and at the time which the bomb went off, so Madam Chair, my legal argument is not necessarily going to be in opposition to what my learned friend has already stated here, but I am just going to raise concerns that have been uttered by the members of the families that I am here on behalf of. Before I can go on, I just want to correct one other mistake that I heard my

Learned Friend stating there, the fact that Constable Diyale is a she. He is in fact a he and he is in fact one of the people that I am actually here on behalf of.

JUDGE DE JAGER: I don't think he intended to discriminate against ...

MR MBETHE: Thank you. Madam Chair, it is true that there are requirements stated in the Act for any person who is applying for amnesty to get such that the person must satisfy. Now I will start with the financial requirement. Madam Chair, in so far as this requirement is concerned, the family members have instructed me that whilst it is true what my learned friend has said, they have no knowledge as to whether there was any financial benefit and the evidence that has been led in this Tribunal has not made them to be in a position to can know that - whether there was that financial benefit. Secondly, on the basis of the requirement of whether this was done for any political purpose, there again Madam Chair, we do not dispute, in fact we are indifferent in so far as to state categorically whether this was done for political purpose or not. The part that the family have instructed me to have a problem with is in the part of disclosure. Madam Chair, it is true that as my Learned Friend has already stated, the two applicants have stated their version of the case in so far as they feel that they were involved. However, it cannot be ignored that there are issues that have not been clarified to the members of the family. We have been told that the order to go and detonate the bomb at the place where it was detonated, was given by one Kholile Sam and Kholile Sam is not in front of

this Court today, so it's not clear and we cannot make an assessment as to whether this indeed is an order that came from Kholile Sam. Secondly, there is also ...(intervention)

JUDGE DE JAGER: Sorry, could you suggest anything on which we could base a finding that it did not come from Kholile Sam?

MR MBETHE: Thank you Madam Chair. Again there is no specific evidence that shows that this disorder did or did not come from Kholile Sam.

JUDGE DE JAGER: Well, the only evidence before us is that it did come from Kholile Sam.

MR MBETHE: There is evidence, Madam Chair, I'm sorry, there is evidence that comes from the applicant that it came from Kholile Sam, but it is true that Kholile Sam is actually not here and there is no opportunity that the lawyers can get in order to ascertain with certainty whether indeed this order came from Kholile Sam. So Madam Chair, be that as it may, it is indeed true that we will have to accept as the legal representative and the family, that indeed it might have come from Kholile Sam but what we're saying is, he is not here and there is absolutely no opportunity for the legal representative to ascertain that matter from him.

CHAIRPERSON: Is there anything to suggest that Kholile Sam was never a Commander of a unit as alleged, or even a member of the Umkhonto weSizwe as the evidence has shown?

MR MBETHE: Madam Chair, there is no evidence to suggest that, but there is only evidence that was given by the first applicant, and this evidence is to the effect that he and Kholile Sam were the members of the unit that was operating in Witbank. Now, I know it has already been canvassed that Kholile Sam was higher in rank than applicant number 1, so basically applicant number 1 had to follow an order that came from Kholile Sam, so what I'm saying basically Madam Chair is we are hearing this from the applicant and we have no way of ascertaining whether it is indeed true, so we will leave that with the Committee to decide whether indeed on the evidence that has been led, it is true.

CHAIRPERSON: And it's not only for the Committee to decide. Unfortunately the evidence that is before this Committee, that includes lawyers, is that Kholile Sam was the Commander and there is no other contradictory evidence on which a different finding can be made by this Committee, is there?

MR MBETHE: That is true Madam Chair. I just want to repeat again, when I started I said I am actually not going to oppose the application, I'm not going to suggest that what we have been told here is not true, but I'm just going to voice out the concerns that the family have in so far as disclosure is concerned, so in so far as Kholile Sam is concerned, I am saying or I am submitting to this Tribunal that it is not clear to the family members because the Kholile Sam that has been referred to as the Commander is nowhere to be found or he already is deceased so there is no way that that information can be found from him. With the permission of the Chairman, I would like to pass this issue of Kholile Sam. I do not think that it is necessarily very important in the family's concern.

The second issue is the fact that there were two people who were accused of having committed this crime and I would like to again remind the Tribunal that I am voicing the concerns of the family and the concerns are that there were two people who were convicted of the offence. It is not clear to the family even now as to the extent to which these two convicts, or people who were convicted was in the assembling and as well as the placing of the bomb at the place that it was.

Furthermore, in the document that is here Bundle A where there is the application itself, there is also Judgment that was given by, if I'm not mistaken, Judge de Klerk and in that Judgment a certain name of a certain Anna Mahlangu and the fact that she stated that she wanted to pay revenge as against the police for whatever they would have done to her or to the member of the family, that again Madam Chair, has not been clarified to the family.

CHAIRPERSON: By whom, because the applicants do not know Anna Mahlangu. They are in no position to put the families in any better position.

MR MBETHE: Thank you Madam Chair for that comment, but basically as I have already say, I am just stating the concerns of the family as have been given to me.

CHAIRPERSON: Yes.

MR MBETHE: It is not clear to them how Anna Mahlangu's involvement is or what Anna Mahlangu's involvement is in this incident.

CHAIRPERSON: Wasn't she involved with Mr Mabuya and Mr Vilakazi?

MR MBETHE: That might be Madam Chair.

CHAIRPERSON: Isn't that what is in the Judgment? You've read the Judgment.

MR MBETHE: Madam Chair that is true, but the fact that we came here, the family thought that perhaps amongst or either one of the applicants would clarify that fact to them especially because, Madam Chair, this person is known to the victims, the Msina victims and they have been attending court proceedings when the two gentlemen were found accused of the crime they were accused of having committed, so again at this stage of the proceedings, they still are not clear as to what involvement Anna Mahlangu had in the case. I accept that we cannot expect the two applicants to know about Anna Mahlangu if they do not know, as Madam Chair has already alluded to the fact that maybe the two accused who were convicted of the offence, might have the knowledge. We now know that ...(intervention)

JUDGE DE JAGER: According to the finding of the Judge and that's not been put to the witnesses, they were both, well Steve and Thabang were both introduced to Anna by the sister Mary but that wasn't canvassed with the applicants, so we can't make any conclusions from that.

MR MBETHE: Yes, I agree, Mr Chairman.

JUDGE DE JAGER: Further Mr Chairman, I am still again on the concerns of the family.

CHAIRPERSON: Yes.

MR MBETHE: And other concern is it is still not clear to the members of the family why a Monday, as the day of the bombing of the place, was chosen. In fact, in particular to the time period that was chosen, 8.30, it is an undisputed and a known fact that 8.30 is the time when most people go to work and this area is an area which is in the centre of the CBD area, so I, on behalf of the family, cannot come to understand why it is said that 8.30 would be the time when casualties would be minimal. In fact, the evidence that has been led in this Tribunal, suggests otherwise, it suggests that the bomb was placed there precisely for the fact that there would be people that would be going to work or would be doing their normal errands. 8.30 is not the time when one would say: "I am doing this in order to minimise casualties". If for instance, maybe the bomb was placed between 11 and 12, when people are already at work, that would be understandable, or it I do not think that anyone can say 8.30 or 5 o'clock for that matter is a time when you can place a bomb and you can minimise the casualties, so that is another point that is still not clear to the victims and I'm only talking about the issues that are not clear to the victims and I'm not again opposing the application of the two applicants, I'm leaving that to the Tribunal itself to decide whether they have done sufficient or they've given sufficient evidence for that purpose.

Applicant number 2 has stated in this Tribunal that they arrived at the place, at applicant number 1's sister's place on a Sunday and he has stated that when they came on a Sunday, the car which is a Ford Cortina, was already in the place at the first applicant's sister's place and he again stated that when they went with and they were travelling in a Mazda, the first applicant has said or has informed this Court that the people who stayed in the house, did not know anything about the operation. The operation apparently I assume was discussed between the three, Valdez, the first applicant and the third applicant. Now it is not clear to us or to the members of the family who brought the car there at the first applicant's sister's place and when he brought the car, what did he say the car was for. Now I find it very strange that a car can be parked in my garage as the owner of the house and in the car there would be bomb material that can be used to you know bomb a certain place and I myself would take no care in going to find out and see what car is this that is placed in my garage and who brought the car there. We know now for a fact that this was the sister to applicant number 1, but we do not know the relation of the person who brought the car to the sister's place in relation to the sister herself. That has not been conveyed to this court. One thing that we know is the person who had a relationship with the sister is applicant number one, so I would assume that if the car was brought at the sister's place, it would have to be brought by applicant number 1 or in the presence of applicant 1. We do not know who brought the car. That evidence has not been led. We have not been told who brought the car to this place.

Madam Chair, that I submit, would be the concerns of the family and again I would like to reiterate it's not the intention of the family members as they instructed me to oppose the application. It is true that there are issues that have not been clarified today, so basically they are in the same position that they were when they came this morning, that is not knowing what exactly took place in that. Thank you Madam Chair.

CHAIRPERSON: Thank you. Mr Steenkamp.

MR STEENKAMP: Thank you Madam Chair, I have no further to ask, no comments thank you.

CHAIRPERSON: Yes. Mr Koopedi, do you have any response?

MR KOOPEDI: A brief one and I will try and start where he ended and go back upwards.

CHAIRPERSON: Yes.

MR KOOPEDI IN REPLY: My Learned Friend says the victims have a problem as to who brought the car to one of the applicant's sister's premises. He also says he would have a problem as to you know a car full of bombs or loaded with bombs in this premises. I submit there hasn't been any evidence that the bombs were in the car when the car was put there. Further, my submission is that the two applicants are before you and not the sister of the first applicant. We do not know whether the owners of that house were on a long leave of absence, the evidence which

was not challenged, which is before this Honourable Committee was that the late Kholile Sam who was referred to as Thabang, had made the arrangements. We are therefore not privy to the discussions that went on between the late Kholile Sam and the owners of the house. There was another question asked by my Learned Friend ...(intervention)

CHAIRPERSON: May I just quickly respond? The reason there are concerns about the lack of detail with regard to the discussion which took place between Thabang, who is now late unfortunately, and first applicant's brother-in-law and sister.

MR KOOPEDI: That is right.

CHAIRPERSON: And they raise this as a concern.

MR KOOPEDI: That is right and perhaps one was going to round off that by referring to - the same answer would still obtain for why 8.30? Why on a Monday? It is my humble submission that if we were privileged to have had Kholile Sam with us today as a co-applicant, we would have someone to ask these questions, but my submission is that the applicants before you do not have answers to those. It is not because they do not want to clarify the victims as to the exact roles played by people and the chronological order of things. It was stated that their knowledge and in particular the first applicant, he only knew certain things about this operation, he was not there when it all started. There was, on the full disclosure, there was a contention from my Learned Friend that there is no corroboratory evidence as to the fact that Kholile Sam was the person who masterminded or made a decision on this bomb. For assistance to my Learned Friend and the victims we had, I think it was during December in this very hall in what is known as the De Kock 6, this is where we had applicants applying for the murder of Kholile Sam and the reason why they applied for his murder was that they said he had masterminded the Witbank bomb blast.

CHAIRPERSON: Was that the application by members of the Security Force?

MR KOOPEDI: That is indeed so. It was heard in this very hall. So I am mentioning this fact to try and assist my learned friend and the victims in terms of whether that is corroboratory or not. I will rest there, thank you Chairperson.

CHAIRPERSON: Yes. Well we have come to the conclusion of this matter today, obviously taking note of the fact that Mr Schultz's written Heads are still going to follow before this matter can be disposed of. We therefore are unable to pronounce any decision in respect of the two applications made by the applicants appearing before us today.

We however wish to express our gratitude to the victims for

having made an extra-ordinary effort to attend this Hearing which obviously is a painful hearing as it is a reminder of the trauma that they have suffered together with their loved ones, but have done so in order to hear for themselves as to what led to the commission of this incident and to hear for themselves as to why the offences for which amnesty is being sought by the two applicants, were committed and the reasons which led to the commission of those offences and more pertinently how those offences were committed, which is the information that can be obtained only from the applicants as the people who perpetrated the deed that the victims are now carrying emotional scars for the rest of their lives.

We hope that the evidence that has been led before this Committee will go a long way in assuaging and ameliorating your pain, notwithstanding the concerns which have been raised by the legal representatives appearing for some of you. We hope that the fact that today has been the day when such evidence has, for the first time, been led in your presence, will definitely assist and enable you to at least close a chapter, a painful chapter in your lives so that you can start a difficult start of living a normal life. We thank you for attending.

We will then adjourn until tomorrow morning at 9 o'clock when other applicants will be heard who are applying for amnesty.

Thank you.

COMMITTEE ADJOURNS

TRUTH AND RECONCILIATION COMMISSION

AMNESTY HEARING

DATE: 31-01-2000

HELD AT: WITBANK

NAME: PHILIP MAKWALE NYALUNGA

MATTER: WITBANK BOMBING

DAY: 1

-----CHAIRPERSON: Good morning to you all. Today is the 31st of January 2000. We are here to hear the applications of Philip Makwale Nyalunga, John Ithumeleng Dube in relation to an incident referred to as the Witbank Bomb Blast.

My name is Judge Sisi Khampepe, I will be chairing these proceedings. On my right-hand side is Judge Motata, on my left-hand side is Judge de Jager. This will be the Panel that will sit to consider these two applications.

I am now going to request the legal representatives who are going to appear on behalf of the applicants and the victims to kindly place their names on record.

MR MBETHE: My name is Mr Mbethe, Mr S T R Mbethe and I'm from Mbethe attorneys...(indistinct - mike not on). I represent the Msina family. Sorry and also Mr Diyale.

CHAIRPERSON: Thank you Madam Chair. My name is Andre Steenkamp, I will be the Evidence Leader in this matter. Thank you.

CHAIRPERSON: Thank you Mr Steenkamp.

MR SCHULTZ: Madam Chair, my name is Conrad Schultz, I'm from the firm of attorneys Potgieter Coetzee in Witbank. I act on behalf of 15 of the victims.

MR KOOPEDI: Thank you Madam Chairperson. My name is Brian Koopedi. I appear on behalf of the two applicants in this matter. May I point out at this moment Madam Chairperson, that I was missing one of my applicants, but he is here and we are ready to proceed.

CHAIRPERSON: Thank you Mr Koopedi. Mr Steenkamp, how many victims are involved in this incident?

MR STEENKAMP: Madam Chair, at this moment, if I'm not mistaken, I think it's more or less 30. A list of victims has been prepared, it's in the process of being copied and it will be handed to you during the hearing and the full details of all the victims will be handed to you as required by the Act. Madam Chair if I may at this time just ask, there's a household matter. I've been requested by my learned colleagues if they will be allowed to remove their jackets during the time of this Hearing. Thank you Madam Chair.

CHAIRPERSON: They may do so, Mr Steenkamp. Can an indication be given to this Committee whether all the victims were notified in terms of Section 19(4)?

MR STEENKAMP: Indeed Madam Chair. It is my humble submission that the requirements of Section 94 were indeed met. All victims were notified. Those who were not notified, efforts were undertaken to notify them. The Investigator in this matter,

Captain Moyma is present. If any questions arise in any notification, any victims or implicated people were done, I can just maybe indicate at this stage the specific building owners of the Nedbank and the Standard Bank and the NBS branches were also notified and they have indicated that they are not interested in attending this hearing whatsoever and for that reason, Madam Chair, I will suggest that this specific requirements were met and the Chair can proceed with this Hearing. Thank you Madam.

CHAIRPERSON: Thank you. Mr Koopedi, are we in a position to commence?

MR KOOPEDI: Indeed we are, Chairperson and perhaps may I point out that the two applicants will not be calling any victims so their application will consist mainly of ...(intervention)

CHAIRPERSON: Any witnesses?

MR KOOPEDI: Yes, no witnesses. Their application will consist solely of their two testimonies and the first person to be called, if you will allow us, would be Philip Makwale Nyalunga and he's ready to be sworn in Chairperson.

CHAIRPERSON: What language will he be testifying in?

MR KOOPEDI: He will testify in English, Chairperson.

PHILIP MAKWALE NYALUNGA: (sworn states)

MR KOOPEDI: Thank you Chairperson, may we proceed?

CHAIRPERSON: You may proceed Mr Koopedi.

MR KOOPEDI: Thank you. We seem to have a problem with the mike. I can't have my mike and his on at the same time.

CHAIRPERSON: We'll require the technician to come to your assistance.

MR KOOPEDI: We have been assisted, thank you.

EXAMINATION BY MR KOOPEDI: Mr Nyalunga, is it correct that you are an applicant in this matter?

MR NYALUNGA: Yes.

MR KOOPEDI: Is it also correct that Mr Dube is your co-applicant?

MR NYALUNGA: Yes.

MR KOOPEDI: I will refer you to page 3 of the bundle of documents which this Honourable Committee has in front. Is this your application form?

MR NYALUNGA: Yes.

MR KOOPEDI: The said form is signed on page 8 of this same bundle of documents. Would this be your signature?

MR NYALUNGA: Yes.

MR KOOPEDI: Now, you were involved in this incident, the car bomb blast at Witbank, is that correct?

MR NYALUNGA: Yes.

MR KOOPEDI: Would you briefly tell this Honourable Committee as to what was your involvement?

MR NYALUNGA: I joined the ANC in 1979, January in Swaziland. I did military training in Angola and specialised in GDR. In 1981 I joined the special operations ...(intervention)

CHAIRPERSON: Mr Nyalunga, we are going to ask you to try and speak at a pace that will enable our translators to translate to the many victims that you see sitting here in different languages and also afford us an opportunity to be able to take down what you are saying.

MR NYALUNGA: Okay.

CHAIRPERSON: Thank you.

JUDGE DE JAGER: Mr Koopedi, I note he's reading from a paper. Haven't you got copies available for us?

MR KOOPEDI: I'm afraid not. He's reading from a statement which we just prepared. It is hand-written and we do not have copies. If we had, we would have loved to supply the Honourable Committee members and my learned friends that side, but we do not have.

CHAIRPERSON: You may proceed.

MR KOOPEDI: Thank you, Chairperson.

MR NYALUNGA:

In 1981 I joined Special Operations Unit based at Maputo. I was infiltrated into the country during December of 1987. I became a member of an underground unit of MK based at Vosloorus. Thabang Kholile Sam was my Commander and I was the Commissar of the Unit. The Unit comprised only of the two of us but we would recruit people to assist us on an operation to operation basis. Thabang advised me that he has considered the police headquarters in Witbank as a target for bombing.

CHAIRPERSON: Who advised you?

MR NYALUNGA: Thabang.

CHAIRPERSON: What's his surname? Surname?

MR NYALUNGA: His real name is Kholile Sam.

CHAIRPERSON: That's your Commander?

MR NYALUNGA: Ja, That's my Commander.

CHAIRPERSON: Yes?

MR NYALUNGA:

He undertook to do the necessary entails of checking out the area and getting the necessary material for the creation of the bomb. On one or two occasions I went on a reconnaissance trip with Thabane. He showed me a building in the town which he told me was the Headquarters of the Security Police in Witbank. Thabang advised me that he will also get Comrade Silver, my co-applicant to join us in this operation, as he was an expert in the connection of the remote control device.

On a Sunday evening Comrade Thabang and Silver came to my place and picked me up. We proceeded to Witbank. We slept at a house in Witbank. It was my sister's house. Thabang had the keys to the house, my sister and her husband knew Thabang very well. Thabang advised us that we were going to plant the bomb the following morning and told us further that all the necessary material was in the house.

On Monday morning I saw that there was a Ford Cortina car in the garage and we started to assemble the bomb in the boot of the Cortina as Thabang ordered. We took turns in providing security ...(intervention).

JUDGE DE JAGER: Sorry, was this car in your sister's garage?

MR NYALUNGA: Yes.

JUDGE DE JAGER: Were they at home or were they away?

MR NYALUNGA: No, they were not there.

We took turns in providing security by going outside and checking for passers by. Thabang did the real assembling and we assisted and then Comrade Silver connected the remote control gadget. During that very morning, Thabang asked to proceed as this was the day the Security Police and their friends were going to get the shock of their lives. Thabang ordered me to drive the Mazda, the vehicle which we used to go to Witbank the previous night. He ordered Silver to come with me in the Mazda.

Thabang further told me that I should follow him into town and when we reached the taxi rank we should stop and that after parking that bomb car, he will return to us on foot. The taxi rank, if I remember well, was on the same street as the Special Branch Offices.

CHAIRPERSON: What car was Thabang driving?

MR NYALUNGA: A Cortina.

I indeed followed Thabang's car and parked at the taxi rank. ... (indistinct) proceed and parked the car and he walked back to us. He told me to drive off, which I did. As I was driving, he pressed the button on the remote control gadget and I heard an explosion. Smoke was visible from the direction of the said offices. I was told to go straight to Bigaiwe and we went to Vosloorus.

I'd like to thank the Committee for giving me the opportunity to appear and I'd like to apologise to the innocent people who were caught during the cross-fire who were not the intended targets and I would like to apologise for those who got arrested for this matter. Thank you.

MR KOOPEDI: Now, Mr Nyalunga, do you regard this action as having been politically motivated, despite the fact that you were acting under orders of someone senior to you? Do you regard this matter as having been politically motivated?

MR NYALUNGA: Yes, I do.

MR KOOPEDI: What would have been the political motivation?

MR NYALUNGA: I think basically to know that by then the Special Branch were the cutting edge for the Government of the day, they were the people who were used to oppress all political discontent in the country and therefore, by virtue of their role, they were a target and that was political.

MR KOOPEDI: Okay.

CHAIRPERSON: May I interpose Mr Koopedi?

MR KOOPEDI: Yes, Madam Chair.

CHAIRPERSON: In your evidence-in-chief you have just stated that Kholile or Thabang as you have referred to him, was the one who selected the target. Were you aware of the what the target was?

MR NYALUNGA: Yes, because at one point I went to check out the place.

CHAIRPERSON: So you knew that this was ...(intervention)

MR NYALUNGA: That these were the offices ...(intervention)

CHAIRPERSON: The offices of the ...(intervention)

MR NYALUNGA: The offices of the Special Branch.

CHAIRPERSON: Yes. Mr Koopedi, that should come to our assistance.

MR KOOPEDI: Yes, thank you, Chairperson. Now in as far as you can recall, do you think you have told this Honourable Committee all there is to tell? That is you have fully disclosed what your involvement has been or was in this operation?

MR NYALUNGA: Yes, I think I've done it.

MR KOOPEDI: Now did you receive any personal gain? Were you paid? Did you receive anything materially for having participated in this operation?

MR NYALUNGA: Not at all. MK was not - was a volunteer, I never used to get any salaries, it was only your dedication that counted.

MR KOOPEDI: Chairperson that will be the evidence for the applicant. Thank you.

NO FURTHER QUESTIONS BY MR KOOPEDI

CHAIRPERSON: Thank you Mr Koopedi. Mr Mbethe, do you have any questions to put to Mr Nyalunga?

CROSS-EXAMINATION BY MR MBETHE: Yes Madam Chair and my first question relates to what Mr ...

CHAIRPERSON: Nyalunga.

MR MBETHE: Nyalunga stated before he finished, the fact that he knew the target and he had seen the target before. Now my question is, did you at any stage, or rather maybe my question should be phrased this way, on what day in particular of the week, did you yourself go and see the target? Do you remember whether it was during the week or it was on a weekend?

MR NYALUNGA: No, it was during the week. I cannot be exact to the day.

MR MBETHE: And I will tell you why I'm asking you this question, the reason is you have told this Committee already that when you went to Witbank it was on a Sunday and when you placed the bomb, it was on a Monday. Now you know everyone would know that the conditions and the situation and the environment would not be the same in the vicinity if it is in a Sunday, than it would be if it is a Monday, so basically my question is related to you having checked the target and having satisfied yourself that the target is a proper one, so have you done enough research or have you seen enough of the target to can decide whether it was indeed a proper target?

MR NYALUNGA: I didn't go to Witbank on that Sunday, I've been to Witbank on other occasions. When we went to Witbank on Sunday it was on the final date of the operation.

MR NYALUNGA: I think maybe I didn't make my question clear. My question is, we know that the conditions would not be the same on a Sunday than they would be on a Monday. In other words, there would be people on a Monday, it's a working day. People would be moving up and down. Now have you familiarised yourself with the conditions as they would be on the day when the bomb would have to go off?

CHAIRPERSON: Mr Mbethe, I thought he had responded to that question and his response was pertinently that he went there during the week, not on a Sunday.

MR MBETHE: Yes.

CHAIRPERSON: When he accompanied Thabang on that reconnaissance mission.

MR MBETHE: Thank you Madam Chair. Now, I think you have been told already that none of the people that were targeted, this is the Security Forces, were affected by the bomb and in fact innocent people were the ones who were targeted. Do you now in retrospect still believe that enough research was done by yourself and your Commander as to the properness of the place that you had targeted?

MR NYALUNGA: I have no idea with regards of the casualties that were involved but in our consideration of the case will be that the possibilities might be there of innocent people being killed, but the main target was the offices of the Special Branch, I don't know whether there were no people by then because according to what we checked out, there were people in the building. If they were not hurt, I don't know how come.

MR MBETHE: Do you remember exactly what time the bomb was to take off, or to explode?

MR NYALUNGA: I can't remember the exact time, but it was in the morning hours.

MR MBETHE: We know now that you were involved in the setting up of the bomb itself. What type of a bomb was it? Was it a time bomb, or what type?

MR NYALUNGA: I think I've explained that Thabane detonated the bomb to a remote control mechanism. It's a remote control which would detonate immediately you want it to detonate.

MR MBETHE: And nothing was said as to when the remote control should be made ready for the bomb to explode, this is when you were busy assembling the bomb?

MR NYALUNGA: No there was a time device, that is for protection, for transportation, during the process of transporting the bomb so that nothing happens, but immediately that it's armed, depended on the remote control mechanism.

CHAIRPERSON: But you were aware that the bomb would be detonated during that morning?

MR NYALUNGA: Yes.

MR MBETHE: So basically the consideration was that the bomb should not explode whilst you were still travelling to the place. But what happened thereafter, there doesn't seem to have been consideration thereof, would this be a correct assessment?

CHAIRPERSON: I don't get your question Mr Mbethe.

MR MBETHE: He already, Madam Chair, has said that there were devices that were put in the bomb for it not to explode whilst they were travelling towards the place. Now my question relates to what happened thereafter, you know, as to what time the bomb would go off, you know, as soon as they had left, that was never discussed and it was never a consideration.

CHAIRPERSON: Hasn't his response in that regard been made by him, over discussion around when the bomb would be detonated, was made and the discussion was it would be detonated during that morning.

MR MBETHE: Yes, Madam Chair, but ...(intervention)

CHAIRPERSON: You want to know the precise hour?

MR MBETHE: Yes, morning is a very long time.

MR KOOPEDI: If I could interpose, Chairperson? The witness has testified that a remote control gadget was used. This bomb was to be detonated by way of a remote control. I think it should be clear in terms of his, of the applicant's testimony, that this was not a bomb that was to be left without caring as to what will happen when.

CHAIRPERSON: I think Mr Mbethe is aware of that. He's quite aware of the Mr Koopedi. He wants to know whether there was a time limit specifically put to when the detonation would be made by the one who was going to handle the remote control.

MR KOOPEDI: Okay Chairperson.

MR NYALUNGA: Thank you. I've explained, immediately the bomb was in place next to the target, from then onwards the person who was in command could detonate it, there was no specific time, that 11 or 12 or whatever, but immediately the bomb was in place.

MR MBETHE: In other words, Mr Nyalunga, is that you assembled this device during the morning.

MR NYALUNGA: Yes.

MR MBETHE: And you left towards the targeted place.

MR NYALUNGA: Yes.

JUDGE MOTATA: But could you give an indication when you left for the actual target and left the car there and detonated? That's what I think Mr Mbethe is looking for. Would I be correct?

MR MBETHE: Thank you, Mr Chair, yes, that is true.

MR NYALUNGA: I think it was between 8 and 9 somewhere.

MR MBETHE: So your involvement in the whole incident simply to assemble the bomb and leave the area and there was someone who was to see to the explosion or to the time period as to when exactly this bomb would explode, would I be understanding you correct if I say that?

MR NYALUNGA: I think I explained that he immediately parked the car, came back and joined us in the other vehicle and immediately detonated the bomb, we were together in the same car driving off.

MR MBETHE: So when the bomb was exploding, all of you were in a car and you were driving out of Witbank?

MR NYALUNGA: Yes.

MR MBETHE: In that case Mr Nyalunga, did you, did any of you, yourself or the other two comrades that you've told us about, not foresee that some innocent people might be killed by the bomb?

MR NYALUNGA: That we did consider that the possibilities are there. There was no way we could avoid it.

MR MBETHE: And in fact we know now that indeed innocent people were the ones who were affected by the bomb. Now, I would assume, I am not necessarily well-versed with the operations in the military, but seeing that it was not in the field where two sets of armies were fighting, this was a place which would have casual people who would not even know about the bomb being in the place. What is it that either you yourself or the other people who were involved in the car did in order to make sure that even though we don't have victims, that we must not have too much casualties, so to put it?

MR NYALUNGA: I think we are talking about a situation that is completely different. We were involved in an urban guerrilla warfare, it's not a situation where the enemy is that side and we are this side and you'll find that the enemy has placed itself in buildings, that there are civilian offices underneath. We did consider that well other people will be injured, but there was no way you are going to stand there and write there "Warning important, people not to pass there" because that is going to happen, otherwise we won't achieve our goal, we are sorry for those who passed there during that time.

MR MBETHE: So basically what you are saying is there were no rules as to how this whole thing had to be done.

MR NYALUNGA: I do not understand the question you ask.

MR MBETHE: You've already alluded to the fact that there was a possibility that innocent people would be killed. Now I would assume an operation like that one could have casualties, people who are innocent, but the target, at least the bomb should do the damage to the target. Now the way I understand it, whilst you did consider that some innocent people might be injured ...(indistinct), but there were no particular steps that were taken in order for it to, or for you people to make sure that the real target is hit.

MR NYALUNGA: I think that was considered by the mere fact of the time that was chosen, by that I mean, it was not yet that busy, particularly in that area.

MR MBETHE: In the morning?

MR NYALUNGA: In that time in the morning, particularly down in that area next to those offices.

JUDGE DE JAGER: Wouldn't that be the time when all the people are going to work between 8 and 9, still moving in the streets towards their offices?

MR NYALUNGA: Yes, that will be the time but I think if it would have gone off later, it would have been worse, so during that morning, according to the information that we had, is that the intended targets report in the morning to get their task and then go out, so ...(indistinct) during the day you would find very few of them.

MR MBETHE: According to the information that you had, who gave you this information?

MR NYALUNGA: I think I did explain to ...

CHAIRPERSON: The Commander, Mr Mbethe.

MR MBETHE: Yes, but my question essentially relates to the fact that whilst you had made considerations and you had taken steps to assure or to ensure that the target that you had was going to be there at the time or the people who you were targeting were going to be there at the time, but we know now that none of those people were hit by the bomb, so what I'm asking you is, did this not - did you not think about this prior?

MR NYALUNGA: Did I not think about what?

MR MBETHE: About the fact that innocent people, between 8 and 9 o'clock, this is the time when people are going to work.

MR NYALUNGA: That was considered.

CHAIRPERSON: Can I rephrase your question, Mr Mbethe?

MR MBETHE: Thank you, Madam Chair.

CHAIRPERSON: What Mr Mbethe is trying to find out is whether there were any steps that were taken to minimise casualties around the target, bearing in mind that the bomb was going to be placed in a busy area, frequented not only by the intended target, but by a number of civilians at about 8 to 9 in the morning.

MR NYALUNGA: I think that was considered. If the bomb was planted earlier in the morning, particularly in those offices, the people who were reporting in the morning were the police at that time and not necessarily civilians, civilians who will be caught in the cross-fire would be people who are passing, but these would not be intended targets, it's just unfortunate that some of them died, but that was considered.

JUDGE DE JAGER: Did you have any knowledge that the police would only report for work as late as between 8 and 9 in the morning and not at 8 o'clock or earlier? Later than 8 o'clock?

MR NYALUNGA: According to the reconnaissance that we have done before, we could see that their cars start, because in the area that the car was parked, because it was above written, parking reserved for police vehicles only, it would start filling up from half-past 7 upwards, but if you go there during the day, you will find that these cars, they are not there, they have gone out maybe for duties or whatever, so we thought the appropriate time would be when they are reporting in order to get whatever task that they are supposed to be doing.

CHAIRPERSON: Mr Mbethe?

MR MBETHE: Just one more question. Did you know the magnitude of the bomb? Was it clear to you yourself as to how big an area this bomb would damage if it went off?

MR NYALUNGA: Well, the problem is the explosive, it can not be detonated, because it depends whether it's a built-up area or it's an open area or whatever, but at least you should have had more or less knowledge as to if we put this bomb here, this area, this circumference of the area would at least be affected.

MR NYALUNGA: I wouldn't be exact on that one.

MR MBETHE: Do you agree with me that the place where the bomb was placed is inside town and it's between buildings, or there are buildings surrounding the area?

MR NYALUNGA: Yes.

MR MBETHE: Not only is there a building as you have already stated, that was used by the Security Forces, but there were other buildings that were in the area?

MR NYALUNGA: Yes.

MR MBETHE: Now what were your - what did you think about that, that in other buildings where there would be normal and casual people, in those buildings, what did you think of it, did you try to possibly warn those people and in the other buildings that look, something like this might happen? Could you have done that?

MR NYALUNGA: That wouldn't indeed have been possible.

MR MBETHE: You wouldn't have warned the people of that, even if you wanted to, it wouldn't have been possible. As it pleases the Committee, Madam Chair, no further questions.

NO FURTHER QUESTIONS BY MR MBETHE

CHAIRPERSON: Thank you Mr Mbethe. Mr Schultz?

MR SCHULTZ: Thank you Madam Chair.

CROSS-EXAMINATION BY MR SCHULTZ: Mr Nyalunga, just to go back to your infiltration into the country during 1987, did I hear correctly that you had joined this Special Op Unit in which country?

MR NYALUNGA: Maputo, Mozambique.

MR SCHULTZ: And were you infiltrated from Mozambique into South Africa?

MR NYALUNGA: No. Is this relevant to the case?

CHAIRPERSON: Are you in a position to respond to that Mr Nyalunga? We will determine the relevance or otherwise of that question.

MR NYALUNGA: No from Botswana.

MR SCHULTZ: So you were infiltrated from Botswana. At that stage did you go directly as you said to Vosloorus where you became a member of the underground unit?

MR NYALUNGA: Yes.

MR SCHULTZ: When you came to Vosloorus, did you know this person known as Thabang already, or did you only meet him there?

MR NYALUNGA: We infiltrated together with him.

MR SCHULTZ: So the two of you came together from Botswana.

MR NYALUNGA: Yes.

MR SCHULTZ: What was the extent of your training regarding bombs, the building and the placing of bombs? Did you receive any specific training in that regard?

MR NYALUNGA: Yes, I did.

MR SCHULTZ: What did it consist of?

MR NYALUNGA: Engineering military ...(indistinct)

MR SCHULTZ: Were you taught how to wire up a bomb, to put it that way?

MR NYALUNGA: Yes.

MR SCHULTZ: Were you also taught how to connect a bomb to a timing device?

MR NYALUNGA: Yes.

MR SCHULTZ: I didn't quite catch Thabang's real name, what was his real name?

MR NYALUNGA: Kholile Sam.

MR SCHULTZ: And Thabang was a pseudonym.

MR NYALUNGA: Thabang was a pseudonym.

JUDGE DE JAGER: Would you kindly repeat his real name again.

MR NYALUNGA: Kholile Sam.

JUDGE DE JAGER: Kholile ...

MR NYALUNGA: Kholile Sam.

JUDGE DE JAGER: Sam.

MR NYALUNGA: Yes.

JUDGE DE JAGER: Thank you.

MR SCHULTZ: Now did you and Thabang both undergo the same training with regards to specifically the making of bombs and the placing of bombs?

MR NYALUNGA: I cannot confirm that because we trained during different time, different countries.

MR SCHULTZ: Now the underground unit to which you belonged in Vosloorus, how many members did it consist of?

MR NYALUNGA: I think I've state, myself and Thabang.

CHAIRPERSON: Two.

MR SCHULTZ: Now you are aware that two persons were found guilty of 70 charges relating to the specific bomb explosion during 1990, Joseph Vilakazi and Ramuede Mabuya. What was their involvement in all the circumstances surrounding the explosion of the bomb?

MR NYALUNGA: I think I've explained here what happened on the day of the explosion of the bomb. They are involved as far - because they were people who were handled by Thabang as the Commander of which I did not know anything about them. There are things that he did, that I did not have to know about them.

MR SCHULTZ: So the way, if I understand you correctly, the way in which it worked was that you knew as few people as possible.

MR NYALUNGA: Yes and besides, I'm from the area, I had to play a low profile. He's not from that area.

MR SCHULTZ: You did not for instance know that the two persons who were found guilty as I stated, were the persons who collected the components of the bomb from the so-called dead letter box where the components were kept?

MR NYALUNGA: I was not there ...(indistinct) do that.

MR SCHULTZ: You've never met these people?

MR NYALUNGA: No, I've known them, I've seen them, but I didn't know they are involved.

CHAIRPERSON: Did you know about their involvement with regard to the collection of ...

MR NYALUNGA: No I was not aware with whom he went to collect those things, I only learned of it later.

MR SCHULTZ: Do you know what or where Thabang is?

MR NYALUNGA: He's dead.

MR SCHULTZ: Do you know when he died?

MR NYALUNGA: Yes.

MR SCHULTZ: When was that?

MR NYALUNGA: It was November 7, 1998.

MR SCHULTZ: Do you know how he died?

MR NYALUNGA: I heard recently there were people applying for amnesty for his death.

MR SCHULTZ: Was he killed by the police?

MR NYALUNGA: So it was confirmed here in this hearing.

MR SCHULTZ: Is that what you heard?

MR NYALUNGA: That's what I heard.

JUDGE DE JAGER: Sorry, was it 19?

MR NYALUNGA: 1988.

JUDGE DE JAGER: 1988.

MR NYALUNGA: Yes.

JUDGE DE JAGER: Thank you.

MR SCHULTZ: You said that you went on a reconnaissance with Thabang once or twice to Witbank, do I understand that correctly?

MR NYALUNGA: Yes.

MR SCHULTZ: Now was it once or was it twice?

MR NYALUNGA: It's more than once.

MR SCHULTZ: Was it more than twice?

MR NYALUNGA: It could have been more than twice, but it's more than once.

MR SCHULTZ: If you have to speculate about how many times exactly, how many times would you state that you went on reconnaissance to Witbank?

MR NYALUNGA: I cannot remember exactly, it could have been thrice or four times.

MR SCHULTZ: Now every time when you went on reconnaissance, was it just - did you every time go together with Thabang, or did you go with different people?

CHAIRPERSON: I think the evidence is specific that he went with Thabang.

MR SCHULTZ: Thank you Madam Chair. Now, can you explain exactly what you did when you did this reconnaissance of the area where the bomb was to be placed? How did you go about it?

MR NYALUNGA: ...(indistinct) the area during different times of the day, going around the shops opposite there and check what's happening. That was the best we could do because we couldn't just get in there and check inside what's happening.

MR SCHULTZ: And do I understand also correctly that you did not only look at the area itself? Did you also look at the movements of the police and civilians in this area?

MR NYALUNGA: We checked the building and that building was used by the police mostly.

MR SCHULTZ: During the course of your reconnaissance, did you notice that this building is not only occupied by the police?

MR NYALUNGA: Yes, we did.

MR SCHULTZ: Did you notice that the police actually occupied only a small portion of the building?

MR NYALUNGA: I was not sure about the portion, how big it is that they were occupying.

MR SCHULTZ: Did you notice that one portion of the building was taken up by the NBS Bank?

MR NYALUNGA: Yes.

MR SCHULTZ: And another portion by Protea Furnishers, a furniture shop.

MR NYALUNGA: I cannot recall how far it was or how close it was, but I remember there was a furniture shop somewhere.

MR SCHULTZ: Did you notice that part of the building was taken up by a Doctor's surgery?

MR NYALUNGA: I can't remember that.

MR SCHULTZ: Now what can you remember exactly about this building?

MR NYALUNGA: No, that there was a bank, I remember that, but these other business premises, I cannot recall all of them, Santam Bank.

MR SCHULTZ: Now your reconnoissances to this area where the bomb was to be placed, it took place on different days and different times. What were the times which you can remember when you visited these premises or checked out these premises, to put it that way?

MR NYALUNGA: From the morning hours.

MR SCHULTZ: Sorry?

MR NYALUNGA: Morning hours.

MR SCHULTZ: Was it mostly in the morning hours?

MR NYALUNGA: Morning hours day and afternoons.

MR SCHULTZ: Now can you just explain again, there's one aspect that I don't quite understand. Why specifically was it decided that the bomb would explode in the morning?

MR NYALUNGA: That was according to what we found out is that the police report there for duty in the morning and then they go out into foreign tasks, so the morning part was a time when you get the majority of them going there.

MR SCHULTZ: Is that also the reason why a Monday morning was chosen?

MR NYALUNGA: On the particular day, I'm not sure, I don't think there was any particular reason whether it could have been a Monday or Wednesday, I don't know.

MR SCHULTZ: Now, as you previously stated, there was definite danger for civilians, innocent civilians to be injured and killed in this bomb explosion. Did you, during the course of your reconnaissance, take note of times when there probably would be the least civilians present when a bomb could explode?

MR NYALUNGA: I think I did explain that earlier, that we, to an extent, we did consider that the civilians will be hit during the courses.

MR SCHULTZ: That is indeed what you said, but that's not my question. My question is did you take note of times when the least possible civilian casualties or injuries would be caused by the explosion of the bomb?

MR NYALUNGA: According to our analysis of the situation, at that time of the morning, it was not yet that easy. If it would have happened a bit later, I think we would have had more civilian casualties.

CHAIRPERSON: So you did take note?

MR NYALUNGA: Ja, we did.

CHAIRPERSON: In thought.

MR SCHULTZ: Are you aware now that this bomb exploded at 8.14 exactly on that morning of the 24th of October?

MR NYALUNGA: I cannot comment on the exact time.

JUDGE DE JAGER: 1 - 4, 14, date.

MR NYALUNGA: 1 - 4.

JUDGE DE JAGER: Thanks.

CHAIRPERSON: Yes, Mr Schultz.

MR SCHULTZ: Thank you Madam Chair. You, when you reconnoitred the area, you were aware that civilians would be injured. How did you feel at that stage in 1988 about innocent civilians doing their banking business, probably being killed, or seriously injured by this explosion?

MR NYALUNGA: The main consideration was our target and then the civilians, we thought about them, but if we were intending solely to kill civilians, we would have placed the bomb somewhere else and targeted civilians, but that civilians were not our target, it's just unfortunate that we could not avoid the death of innocent people.

MR SCHULTZ: Mr Nyalunga, I want to refer you to your application for amnesty, specifically on page 5, going over to page 6 of the bundle of documents, specifically question 10 (a) where you have to state the political objectives sought to be achieved by this act. You say there:

"To kill all those who associated and enforced the policies
of the previous government"

and then in 10 (b) I take it that you say that the police force members were regarded as enemies of the people, so your main objective was to kill police force members?

MR NYALUNGA: Yes.

MR SCHULTZ: Was there not, in your opinion, another way to kill police force members without the risk or with lessening of the risk of killing innocent civilians?

MR NYALUNGA: I think on this one, we know for a fact that previously, the Special Branch particularly, had hired offices in premises that are business premises and our people were being tortured in those buildings and they're using those premises in order to avoid being erased. At one point in time we had to target those buildings.

MR SCHULTZ: Was it your specific intention to kill members of the Special Branch of the police or would any member of the police have done?

MR NYALUNGA: Can you repeat your question?

MR SCHULTZ: Was it your specific intention to kill members of the Special Branch of the police, or would you have been satisfied to kill any member of the South African Police?

MR NYALUNGA: Both.

CHAIRPERSON: Mr Schultz, is this emanating from what you've referred him to, pertinently page 6 and paragraph 10 (b)?

MR SCHULTZ: That is correct. That is correct, Madam Chair.

CHAIRPERSON: Yes, hasn't he been specific in that regard, that all police force members and army personnel, he's given a wider category of the people that were the intended targets?

MR SCHULTZ: Thank you Madam Chair, I appreciate you showing me that. There is one question following from all of this which I would ask in finalisation of this specific matter. Sir, Mr Nyalunga, could you not have placed a bomb at the Witbank Police Station which was further away from the centre of town, the centre of business?

MR NYALUNGA: I was not making the decisions, I had a Commandeer.

MR SCHULTZ: Was this not discussed at all?

MR NYALUNGA: He took the final decision.

CHAIRPERSON: Was this discussed at all? That was the question.

MR NYALUNGA: No, it was never discussed.

MR SCHULTZ: And the Commander to which you refer?

MR NYALUNGA: Thabane, Kholile Sam.

MR SCHULTZ: Just to get to the assembling of the bomb itself, you said that you were present there when the bomb was assembled in the car and you and Comrade Silver, your co-applicant, took turns watching out for passing civilians or passers by. What exact part did you take in the assembling of the bomb itself, what exactly did you do?

MR NYALUNGA: I mean we had to put things in order in the boot, so that the whole thing doesn't shake, assist there and in connecting certain wires, we would assist there.

MR SCHULTZ: Both of you?

MR NYALUNGA: Ja and then in turns go out and whilst the other one is outside, the other one is inside.

MR SCHULTZ: No, if you can just refresh my memory, who connected the timer device to the bomb?

MR NYALUNGA: I think straight to that ...(indistinct) of the remote control mechanism that was to be used which we are not familiar with, myself and Thabang. It was Comrade Silver who specifically did that.

CHAIRPERSON: And by Comrade Silver you mean John Ithumeleng Dube?

MR NYALUNGA: Yes.

CHAIRPERSON: Can you, just for purposes of our proceedings, simply refer to him as Mr Dube?

MR NYALUNGA: Okay.

MR SCHULTZ: Was it early on the Monday morning that the bomb was so put together?

MR NYALUNGA: Yes.

MR SCHULTZ: Did Thabang drive the bomb vehicle by himself, or was there someone with him in the vehicle?

MR NYALUNGA: No, he drove it by himself.

MR SCHULTZ: And did both of you, you and your co-applicant, follow him in another vehicle?

MR NYALUNGA: Yes.

MR SCHULTZ: Did I also understand correctly that you waited for Thabang at the taxi rank?

MR NYALUNGA: Yes.

MR SCHULTZ: That is the taxi rank further down the street, about 500 metres from where the bomb exploded.

MR NYALUNGA: I'm not sure about the distance.

MR SCHULTZ: How far were you away from the taxi rank when the bomb exploded?

MR NYALUNGA: We were on our way to the highway when it exploded. We were far from the taxi rank.

MR SCHULTZ: Was it exploded by remote control or by a timing device.

MR NYALUNGA: Remote control, as stated before.

MR SCHULTZ: Who handled the remote control.

MR NYALUNGA: Thabang as the Commander of the Unit.

MR SCHULTZ: And who was driving, let's call it the get-away car?

MR NYALUNGA: I did.

MR SCHULTZ: I want to refer you to page 60, sorry page 70 and further of the first bundle of documents which contains the Judgment in the criminal matter which followed from this explosion. In this Judgment there is reference to one Steve Nyalunga, is that you?

MR NYALUNGA: Yes.

MR SCHULTZ: And you spoke about your sister and your brother-in-law, what are their names?

MR NYALUNGA: Lere Ngala.

MR SCHULTZ: And her husband's name is...

MR NYALUNGA: Thabe

MR SCHULTZ: Thabe Ngala.

MR NYALUNGA: Yes.

MR SCHULTZ: What was their involvement in the whole matter? Did their involvement only go so far as to provide a place for the bomb to be put together?

MR NYALUNGA: They are not involved, we only used their house.

MR SCHULTZ: Did they know that you are going to use their house? Did you ask them to use their house?

MR NYALUNGA: I do not know what arrangements Thabang made with them because when we went there it was Thabang who had arranged already and he had familiarised himself with my sister and my brother-in-law.

MR SCHULTZ: And all the times when - first let me ask you that, let me just rephrase. How many times were you there when you visited Witbank during the reconnaissance and the building of the bomb. How many times did you visit your sister's house?

MR NYALUNGA: I never specifically visited her for the planting of the bomb or reconnaissance, I used to visit her just as a sister, nothing else. I can't remember how many times.

CHAIRPERSON: But during the reconnaissance, did you ever go past her place?

MR NYALUNGA: Ja, I would pass her place, she would not know whether I'm from reconnaissance or what, I used to visit her as a sister.

JUDGE DE JAGER: How did she come to know Thabang, or how did Thabang...?

MR NYALUNGA: No, she came to know Thabang through me.

JUDGE DE JAGER: So you introduced them?

MR NYALUNGA: Yes.

JUDGE DE JAGER: When was that?

MR NYALUNGA: It was some time early in 88.

JUDGE DE JAGER: Was that after you started planning the bomb?

MR NYALUNGA: Not yet.

CHAIRPERSON: Was it before the target was even selected by Thabang?

MR NYALUNGA: Ja, it was long before.

CHAIRPERSON: Mr Schultz.

MR SCHULTZ: Thank you, Madam Chair. When you arrived there together with Thabang to build the bomb there at your sister's house, how did you gain entrance into the house? Were you in possession of keys? Was Thabang in possession of keys?

MR NYALUNGA: Thabang had arranged prior before and he picked up the key under the dustbin and he left it there when he left.

MR SCHULTZ: Now your sister ...(intervention)

CHAIRPERSON: Mr Schultz, is this line of cross-examination getting us anywhere with regard to the pertinent issues we have to decide in considering whether Mr Nyalunga qualifies for amnesty or not?

MR SCHULTZ: I think I will leave it there, thank you Madam Chair.

CHAIRPERSON: Yes.

MR MBETHE: Madam Chair, sorry, with the permission of the Tribunal, I would like to just put one final question which was left over in my cross-examination.

CHAIRPERSON: You will be allowed, but Mr Schultz is still conducting his cross-examination.

MR MBETHE: Oh, sorry, I thought he said that was the last, sorry.

CHAIRPERSON: No, he was simply abandoning the line of cross-examination he had started embarking upon.

MR MBETHE: Sorry.

CHAIRPERSON: You may proceed Mr Schultz.

MR SCHULTZ: Thank you Madam. You did not see yourself, Mr Nyalunga, where specifically the car was parked, the bomb vehicle was parked?

MR NYALUNGA: It was parked next to the building, just where there was a board written: "S A P vehicles parking only".

MR SCHULTZ: Did you see it being parked there?

MR NYALUNGA: Yes.

MR SCHULTZ: And did you see Thabang returning from the parked vehicle?

MR NYALUNGA: Okay, yes.

MR SCHULTZ: Now the people who were killed during this bomb explosion, I'm specifically referring to a Mr Jacob Masuku, a Mr Jacob Samuel Masuku, he was on his way to doing his banking business on this morning. If you could speak to his family, his wife and his four children and say to them, and say anything to them with regards to his death on this morning of the 24th of October, what would you say to them?

MR NYALUNGA: I would very much apologise to them, he was not our intended target, it's just unfortunate that he passed there when this thing happened.

MR SCHULTZ: I have no further questions at this stage, thank you Madam Chair.

CHAIRPERSON: Thank you Mr Schultz. Mr Mbethe we'll now afford you an opportunity to put one question which you omitted to put to Mr Nyalunga.

MR MBETHE: Thank you Madam Chair. Madam Chair my question in a way relates to what Mr Schultz just asked now, but I will just put the question.

CHAIRPERSON: And has it not been covered?

MR MBETHE: No, Madam Chair, I think it has not been covered.

CHAIRPERSON: Yes, you may proceed.

FURTHER CROSS-EXAMINATION BY MR MBETHE: In retrospect Mr Nyalunga, do you think that you made a mistake the way that you planted the bomb and if so, would you have done it differently? Thank you.

MR NYALUNGA: It's a difficult question to answer, whether I would have done it differently, because those were different times by then and now you are asking me this question at this point in time.

CHAIRPERSON: The question is, do you think you made a mistake by planting the bomb where you planted it at that time?

MR NYALUNGA: I do not think we have made a mistake.

CHAIRPERSON: Yes. Mr Mbethe.

MR MBETHE: Thank you Madam Chair, nothing further.

NO FURTHER QUESTIONS BY MR MBETHE

CHAIRPERSON: Mr Koopedi, do you want to re-examine?

MR KOOPEDI: Nothing in re-exam thank you Chairperson.

NO QUESTIONS BY MR KOOPEDI

CHAIRPERSON: Mr Motata do you wish to put any questions to Mr Nyalunga?

JUDGE MOTATA: None, Madam Chair.

CHAIRPERSON: Sorry, Judge Motata. Judge de Jager?

JUDGE DE JAGER: Did you use explosive, loose explosives to make the bomb or was the bomb already pre-prepared like a limpet mine or a personal mine?

MR NYALUNGA: ...(indistinct) and concentrated charges.

JUDGE DE JAGER: Sorry.

MR NYALUNGA: ... (indistinct) elongated and concentrated charges.

JUDGE DE JAGER: Oh. How many kilograms did you use?

MR NYALUNGA: I cannot remember exactly how many kgs we used.

JUDGE DE JAGER: Approximately?

MR NYALUNGA: Above 20.

JUDGE DE JAGER: Above 20. This building, is it a single story or a double story building?

MR NYALUNGA: It's not a single story. I cannot remember whether it's more than three stories or whatever.

JUDGE DE JAGER: Where were the offices of the police?

MR NYALUNGA: I think they were on the second floor.

JUDGE DE JAGER: On the second floor. Why didn't you consider planting a bomb for instance in the lavatories on the second floor?

MR NYALUNGA: I think that maybe it was not possible, but all the decisions came from my Commander.

JUDGE DE JAGER: Yes, but you say it wasn't possible, so tell me why wasn't it possible?

MR NYALUNGA: I think maybe the security inside, to go inside with an explosive into a police ...

JUDGE DE JAGER: At night time?

MR NYALUNGA: At night time I don't think there will be access because there wasn't anyone there except for people who are guarding the building.

JUDGE DE JAGER: You see, if you target specific people, we've got 30, 40 people injured here. Not a single policeman.

JUDGE MOTATA: My colleague cannot be correct in that respect, if he has regard to the bundle, the second bundle where you have statements, 58, there is a policeman Zondi who was walking out and he was injured. There was another policeman who was across the building doing some business and he was injured by ...(indistinct)

MR KOOPEDI: And if I may, Chairperson, just to add on what Judge Motata has said, I believe there are about three or four people who were at that time employed by the SAPS who were either in the offices or have just left the offices. One was going to his car, who was also injured, so I am backing what Judge Motata says.

JUDGE DE JAGER: Could you kindly give me the reference.

MR KOOPEDI: I will start with, on page 22, I ...(indistinct - mike not on) I mean 27,

INTERPRETER: The speaker's mike.

CHAIRPERSON: Your microphone Mr Koopedi.

MR KOOPEDI: Sorry, Chairperson. On page 27, there was a female constable Roelene Stiglingh, if I'm pronouncing it correctly,

CHAIRPERSON: Yes.

MR KOOPEDI: If you could bear with me Chairperson, I will find these people.

CHAIRPERSON: Yes, whilst you are still trying to find more names, can you give a number to this bundle? Can you refer to this bundle containing statements of witnesses at the criminal court as Bundle B.

MR KOOPEDI: Thank you.

CHAIRPERSON: And the application documents as Bundle A?

MR KOOPEDI: Thank you, Chairperson. On page 5 also, page 5 Bundle B. 58, Zondi ...(indistinct- mike not on). 58 on Bundle B.

CHAIRPERSON: Are you still looking, Mr Koopedi?

MR KOOPEDI: I am Chairperson.

JUDGE DE JAGER: Yes, you could perhaps give it to her, so I will continue with my next question. Three people killed, Dinah Elizabeth Mula, Elias Msina and Jacob Masuku, is there any evidence that they've been connected with the police?

MR NYALUNGA: I don't know that, I never knew that.

JUDGE DE JAGER: Did you also foresee that women and children could be killed in this attack?

MR NYALUNGA: Yes, that we did know.

JUDGE DE JAGER: Were there any steps taken to avoid that or did you regard it as, well they may be killed, it wouldn't matter?

MR NYALUNGA: It's what I've said earlier that according to our assessment, if it could have gone off later, more civilians would have been killed, that is why it was considered.

JUDGE DE JAGER: Well the great majority of the people who were injured were civilians.

MR NYALUNGA: That's what I'm made to understand.

CHAIRPERSON: Mr Koopedi, I note that you are still locating the other pages. In order to facilitate these proceedings, we'll afford you to continue doing so and once we come back from lunch, you can then be in a position to simply tell us the pages, if you have located other pages which will have reference to other policemen who were killed in this incident.

MR KOOPEDI: Chairperson, I'm prepared to concede to the three that we've referred to at the moment. Should I find any other, I will bring that to the attention of this Committee.

CHAIRPERSON: You can bring it up during your legal argument.

MR KOOPEDI: Yes, I'll do that, Chairperson.

CHAIRPERSON: Yes. Mr Nyalunga, I'm aware that you only accompanied your Commander after the target had been selected. Is my assessment correct of your evidence in that regard?

MR NYALUNGA: Yes.

CHAIRPERSON: You did not therefore take part in the actual selection of the target, that was done by Kholile all by himself.

MR NYALUNGA: Yes.

CHAIRPERSON: Was it, to your knowledge, customary for a Commander to undertake some kind of reconnaissance before selecting a target?

MR NYALUNGA: Yes.

CHAIRPERSON: I didn't get your response.

MR NYALUNGA: I said yes.

CHAIRPERSON: Did you know with regard to this particular incident whether Kholile or Thabang, as he has been referred to in these proceedings, had undertaken such reconnaissance prior to him advising you of the target that had been selected?

MR NYALUNGA: I didn't have that information, but I thought maybe he should have done that before. I didn't know that.

CHAIRPERSON: Yes. Were you able to deduce from what you knew to have happened in the past, that you don't select a target unless you have conducted some kind of reconnaissance?

MR NYALUNGA: Yes, I thought maybe he got some information from somewhere. Maybe he's done his reconnaissance before he informed me.

CHAIRPERSON: So you only accompanied him after you had been informed of the selected target?

MR NYALUNGA: Yes.

CHAIRPERSON: Once you were informed of the selected target, was the reconnaissance you conducted in his company, did that reconnaissance follow immediately after the target had been selected, or to your knowledge, after he had informed you of the selected target, he conducted some kind of reconnaissance all by himself before you also participated in the further reconnaissance that you've evinced before this Committee?

MR NYALUNGA: I think yes, he must have reconnaissance prior to informing me because he was not familiar with the area which means he had been to the area prior before informing me of the area of the target.

CHAIRPERSON: What I want to know is, after you had been informed of the selected target, did you immediately accompany him during the reconnaissance that you've referred to in your evidence?

MR NYALUNGA: No, it was not done immediately. He informed me until we started doing it a bit later.

CHAIRPERSON: How long after you had been informed of the selected target, did you personally accompany him to those reconnaissances you've referred to?

MR NYALUNGA: I think it's about a month or so.

CHAIRPERSON: And how long did it take for the operation to be ultimately executed after the target had been selected?

MR NYALUNGA: I cannot be exact because there were other technicalities which had to be fixed before the target could be ...(indistinct)

CHAIRPERSON: Yes. Can you not approximate whether, after you had been informed, it took six weeks, or more than six weeks, for the operation to be ultimately executed?

MR NYALUNGA: It took more than 4 months.

CHAIRPERSON: 4 Months.

MR NYALUNGA: Yes.

CHAIRPERSON: Thank you. Mr Koopedi, emanating from questions from the Bench, do you have any questions you want to clear with Mr Nyalunga?

MR KOOPEDI: No questions, thank you Chairperson.

NO FURTHER QUESTIONS BY MR KOOPEDI

CHAIRPERSON: Yes. That closes Mr Nyalunga's application.

MR KOOPEDI: That is his application, Chairperson, thank you.

WITNESS EXCUSED

CHAIRPERSON: Yes. Are we in a position to proceed with the Evidence-in-Chief of Mr Dube?

MR KOOPEDI: Yes we are Chairperson.

CHAIRPERSON: Yes, you may proceed.

MR KOOPEDI: Thank you Chairperson.

NAME: JOHN ITHUMELENG DUBE

MATTER: WITBANK BOMBING

JOHN ITHUMELENG DUBE: (sworn states)

MR KOOPEDI: Thank you Chairperson, we beg leave to proceed.

CHAIRPERSON: You may.

INTERPRETER: I beg your pardon, Madam Chair. Unfortunately we don't have a Zulu interpreter.

CHAIRPERSON: Oh. Mr Koopedi, we seem to be having a slight translation problem with our Zulu translation.

INTERPRETER: Chairperson, it would appear as if no arrangement was made for the presence of a Zulu interpreter, no notification was received for a Zulu interpreter, that is why there is no Zulu interpreter here.

CHAIRPERSON: This is a serious omission. Mr Steenkamp, can any reason be advanced why there was no arrangement for a Zulu translator when many of the applications that will be heard by this Panel were names that really sound like Zulu speaking applicants?

MR STEENKAMP: Madam Chair, I was only informed this morning by the logistical officer that certain arrangements,

apparently in the meantime, were made for Zulu interpretation. I'm not quite sure exactly what the position now is, but I was informed this morning that there will be certain, certain people will be testifying in Zulu. I can pick it up with the logistical officer just quickly.

CHAIRPERSON: But why were you able to pick it up this morning and not before when this hearing was being arranged?

MR STEENKAMP: Madam Chair, to be honest, the documents I received, none of them were in Zulu and I was never informed by any of the lawyers representing the applicants that any of them will be needing the services of a Zulu interpreter because that is the standard practice.

CHAIRPERSON: The surname Nyalunga is Zulu. The surname Dube is Zulu and we have quite a number of other applicants who were scheduled to have been heard this morning. Mr Buthelezi, surely one must know that that's a Zulu surname, it doesn't take anyone to second guess what language the applicant would be testifying in.

MR STEENKAMP: Madam Chair, I'm sure that the problem can be remedied quite easily if we can just get, I'm sure arrangements were made in the meantime. I've been just informed that there will be a Zulu interpreter here within a jiffy, that problem has already been dealt with by the logistical officer as it is, but I was definitely not informed by any of the lawyers that they will be using, I was of the understanding that both the applicants were testifying in English.

CHAIRPERSON: I'm also worried that you know no care seems to have been taken to have particular regard to the interest of the victims who might actually wish to express themselves in a language other than Sotho and any other language that seems to have been catered for.

MR STEENKAMP: Again this morning, Madam Chair, none of the victims or the lawyers informed me that the services of a specific Zulu interpreter will be needed. I specifically, I asked for that when we spoke to them this morning. But I'm sure certain arrangements can be made quite easily.

CHAIRPERSON: I think at this stage I must express my apologies to the many victims who are sitting here who surely must be Zulu speaking, who have not been able to follow these proceedings for which they've travelled so much far to be part of because of this lack of translation. I wasn't aware of this. Nobody brought it to my attention, otherwise I probably would have even come up with a different consideration that we do not proceed until and unless the Zulu translation is also available, because I know that quite a number of people in Witbank are Zulu speaking. This being the case, I think this will be an appropriate time to take a lunch adjournment for 45 minutes. Mr Steenkamp, are we to take it that when we come back, we'll have the Zulu translation to enable Mr Dube to proceed with his application?

MR SCHULTZ: Madam Chair, if I might just say something with your permission. I was also not aware that there would not be a Zulu interpreter. I can however tell the Tribunal that I was informed by my clients that they can follow the proceedings, they will however, when given the chance to give evidence, obviously request the evidence to be given in Zulu or the language of their choice.

CHAIRPERSON: Thank you, Mr Schultz. Mr Steenkamp, can we adjourn on the understanding that when we reconvene we'll have a Zulu translation? We cannot allow these proceedings to be delayed, because every second counts.

MR STEENKAMP: Madam Chair, with all respect, I do apologise, but I was never put in a position by anybody to understand that a Zulu interpreter will be used or will be facilitated, but I'm sure we will make a facilitation for that immediately. Thank you Madam Chair.

CHAIRPERSON: So can we have your undertaking that when we reconvene after 45 minutes, there will be a Zulu translator? That's what I want to know.

MR STEENKAMP: Madam Chair, it was just indicated to me that a Zulu interpreter is on his way. He or she will probably be here at the latest, I would guess, in about an hours' time, between 45 minutes and an hour. That's unfortunately the best I can do in the circumstances. I didn't arrange personally for the translator to be here, the logistical officer did, but I was under the impression that person will actually be here by now, but I will inform the Committee the moment that person has arrived.

CHAIRPERSON: We'll adjourn for 45 minutes.

MR STEENKAMP: Thank you Madam Chair.

COMMITTEE ADJOURNS

ON RESUMPTION

CHAIRPERSON: Thank you. Mr Steenkamp, are we in a position to proceed?

MR STEENKAMP: Madam Chair, I am instructed that we have a person who is prepared to translate now in Zulu. There is however still another Zulu interpreter on the way, but I've been informed that the problem has been solved. I've seen and I've also arranged for the people to get head gear and head sets to hear the translations, I've made arrangements with Mr Brian Koopedi that the translator is not available if the applicant is still in the position that he wants to testify in Zulu. So that is the position now. The translator will be sitting in the first booth and translating from English into Zulu.

CHAIRPERSON: Yes.

MR STEENKAMP: Thank you, Madam Chair.

CHAIRPERSON: I note that quite a number of people are without head phones. Is it because we have run out of headphones or people do not mind listening to evidence without the use of head phones?

Mr Schultz, you gave us an indication that quite a number of victims are in a position, notwithstanding the lack of translation, are in a position to follow the proceedings.

MR SCHULTZ: That is correct, Madam Chair.

CHAIRPERSON: Yes. We nevertheless apologise for all these inconveniences. Mr Koopedi, are we in a position to proceed with the evidence-in-chief of Mr Dube?

MR KOOPEDI: Indeed we are, Chairperson.

CHAIRPERSON: You may proceed.

MR KOOPEDI: Thank you Chairperson. I believe the witness has been sworn in.

JOHN ITHUMELENG DUBE: (s.u.o.)

CHAIRPERSON: He has.

MR KOOPEDI: That's right.

CHAIRPERSON: He now has to commence his evidence-in-chief.

MR KOOPEDI: Thank you Chairperson.

EXAMINATION BY MR KOOPEDI: Mr Dube, is it correct that you are a co-applicant in this matter?

MR DUBE: That is true.

MR KOOPEDI: And that the previous applicant was your accomplice or was with you during this incident?

MR DUBE: That is true.

MR KOOPEDI: On page 10 to page 6 of Bundle A, Madam Chairperson, of the documents before this Honourable Committee, is an application form. Is this your application form?

MR DUBE: That is correct, Sir.

MR KOOPEDI: And on page 15 of that application form, the signature, do you recognise the signature?

MR DUBE: Yes, Sir.

MR KOOPEDI: Is it your signature?

MR DUBE: Yes, it's my signature.

MR KOOPEDI: Now is it also correct that this incident refers to the bomb blast that took place in Witbank, during 1998, 1988?

MR DUBE: That is correct Sir.

MR KOOPEDI: Now would you briefly tell this Honourable Committee what your involvement was with this bomb and perhaps start where you joined the ANC, how and where you got your military training?

MR DUBE: Madam Chairperson, a statement similar to the one the previous applicant had is before the applicant. Unfortunately we still have not made copies for the Honourable Panel and even my Learned Friends on the other side. The statement was prepared in English. With your permission we would ask that this portion of his evidence be rendered in English as it will be quicker since the statement has been prepared in English.

CHAIRPERSON: Yes, you may proceed.

MR KOOPEDI: Thank you Chairperson. Please go ahead.

MR DUBE:

"I joined the ANC in 1980 at Swaziland. I became a member of MK and I got my military training in the former USSR, the former German Democratic Republic, and Angola.

I became a member of the Special Ops machinery in 1986. It was at a time when I was based at Lusaka in Zambia. I was infiltrated into the country late in 1986. I had the mandate to form a number of my own unit, which I did and these units were operating in the former PWV area.

During 1988, it may be around August, September, a comrade of mine, Comrade Valdez, a former MK Commander also, who operated from the East Rand, requested me to assist in the assembling of a bomb that was to be detonated in Witbank next to the offices of the Security Police. Comrade Valdez wanted me to assist mainly with the connection of the remote control gadget. Although I was a Commander in my unit, Thabang was more senior and he was the Commander of the operation itself.

CHAIRPERSON: You are referring to ...(intervention)

INTERPRETER: The speaker's mike is not on.

CHAIRPERSON: You have referred to one Valdez and you are now referring to one Thabang. Are these one and the same person?

MR DUBE: It's one and the same person. The name Valdez is the name that he was using out in exile, it's one and the same person.

CHAIRPERSON: You may proceed.

MR DUBE:

On a Sunday afternoon, I went to Thabang's place in the East Rand into the house where he was staying. I found him and then we then left to another house where we picked up Steven, my co-applicant. We then proceeded to Witbank. We were driving in a Mazda motor vehicle.

We went to a house in Witbank which I gathered that it belonged to Steve's relatives. We slept there and in the morning we woke up and Comrade Valdez said we should start preparing for the preparation of the bomb. The car and the explosive devices were already in that house, a Ford Cortina. It was parked in the garage of that house.

We then started assembling the bomb. Valdez did the main assembling. Myself and Steve, we were taking turns in providing security and helping. After the bomb was fully assembled, I then connected the remote control gadget. Valdez then told Steve to drive the Mazda and that I should go into Steve's car. Whilst he was driving, we followed Thabang's car, in the Cortina, until to the taxi rank, nearer to the target. We then parked the car and secured the Late Comrade Valdez.

CHAIRPERSON: Where did you park the car?

MR DUBE: Around the taxi rank.

Then Comrade Valdez proceeded. After some time, he came back, he joined us into the car.

CHAIRPERSON: Do you know where he proceeded to?

MR DUBE: He proceeded to the target.

CHAIRPERSON: Yes.

MR DUBE: ...(ethnic)

CHAIRPERSON: ...(ethnic)

MR DUBE:

After having parked the car he came back to us and got inside the Mazda. After Steve driving off, Comrade Valdez then detonated from the remote device and there was a large explosion and we then drove straight to Vosloorus, back to our base.

MR KOOPEDI: Now your involvement in this whole affair, was it only related to the time period from Sunday until Monday when the bomb was detonated?

MR DUBE: I arrived on Sunday, that's when I was involved, until Monday.

MR KOOPEDI: Now, do you think that if they did not enlist your assistance, would they have had a problem with assembling the bomb or even the detonating device?

MR DUBE: They were going to have a problem because they did not have any knowledge regarding that gadget.

MR KOOPEDI: It was a new ...(intervention)

CHAIRPERSON: Which gadget are you referring to?

MR DUBE: The remove control gadget.

CHAIRPERSON: Thank you.

MR KOOPEDI: It was a new gadget.

MR DUBE: I could say that most Comrades were not ...

MR KOOPEDI: Would it be correct to say that when you got to know about this gadget, or when you got your training on this gadget, they had already completed their training? I'm referring in this instance to both the late Kholile Sam and your co-applicant.

CHAIRPERSON: And by the gadget are you referring to ...

MR KOOPEDI: The remote.

CHAIRPERSON: The particular remote control device?

MR KOOPEDI: Yes, I am.

CHAIRPERSON: Yes.

MR DUBE: Please repeat your question, Mr Koopedi.

MR KOOPEDI: I will let the question pass.

JUDGE MOTATA: No, no.

CHAIRPERSON: No, repeat it.

JUDGE MOTATA: They didn't get your question from the box, they say repeat it.

MR KOOPEDI: Okay. My question was, this remote control gadget, would I be correct to say that the reason why perhaps the Kholile Sam and your co-applicant would have had a problem with it was that when it was introduced, they had already finished their training?

MR DUBE: That might be correct. That might be so.

CHAIRPERSON: Is it something that's within your personal knowledge, or you are speculating?

MR DUBE: What I'm saying is, they did not know about it.

CHAIRPERSON: For whatever reason, you are aware that they would not have been able to set the remote control device without your particular assistance?

MR DUBE: That is correct, I discussed that with Valdez.

CHAIRPERSON: Yes.

MR KOOPEDI: I'm indebted Chairperson. Now Mr Dube, do you think that you have fully disclosed all the material facts relating to your involvement in the Witbank bomb blast?

MR DUBE: Yes, I have fully disclosed about the role that I played in this bomb blast in Witbank, but there is something that I would like to highlight or mention. This happened because of the situation that was prevailing at that time. It was a war situation, that's why this bomb blast, therefore I would like to request the people or it must be understood that all the people who were victimised in that situation, it was not for my own personal gain, but I just laid a route into what the liberation of this country and to be in this present dispensation, therefore I'd like to request all the families of the victims and the people who died, I regret that but if it was not due to the apartheid regime, this wouldn't have happened.

MR KOOPEDI: Do you regard this action as having been politically motivated?

MR DUBE: That is correct.

MR KOOPEDI: Now did you receive anything financially? Did you have any personal gain after having participated in this operation?

MR DUBE: No, I did not do this for any financial gain. As I have mentioned, I got nothing as a reward.

MR KOOPEDI: Chairperson, that will be the evidence of the applicant. Thank you.

NO FURTHER QUESTIONS BY MR KOOPEDI

CHAIRPERSON: Thank you Mr Koopedi. Mr Schultz, maybe let's start with you now. Do you have any questions to put to Mr Dube in cross-examination?

MR SCHULTZ: Thank you Madam Chair.

CROSS-EXAMINATION BY MR SCHULTZ: Mr Dube, I want to refer you firstly to page 14 of Bundle A. I want to specifically refer you to point D there where you state - where the question is: "Explain the nature and extent of such benefits which would have been obtained from this action." You wrote there: "Political benefits." What do you mean specifically by that?

MR DUBE: I have just explained now that there was a war that was prevailing at that time and we were trying our best to liberate this country, that is what I was trying to say in that answer.

MR SCHULTZ: Could you, is it possible for you to be more specific? From this specific bomb explosion, what political benefits did you foresee would emanate from that?

MR DUBE: Firstly, that place was being used by the government, the police were stationed there.

MR SCHULTZ: Then I want to refer you to question 11 A where you, where it was asked of you from whom approval was obtained for this ...(intervention)

JUDGE DE JAGER: You asked him what benefits did he - followed on this operation and the answer was the police were stationed there. I - what was the benefits you expected to gain from the operation? We know the police were stationed there.

MR DUBE: I repeat by saying that that area was used by the Security Police or the building and such a place was being considered as a target.

JUDGE DE JAGER: Yes and by attacking the police there, would you curb the police activity? They wouldn't be able, they would be - their minds would be distracted, they wouldn't follow up things, they would be engaged in trying to find you and they wouldn't find other people, that kind of thing that would benefit your political party?

MR DUBE: At that time the police were serving the government and moreover the Security Police were killing our people and oppressing them.

JUDGE DE JAGER: Ja, thank you.

MR SCHULTZ: To return to question 11 A on the said page 14, you speak here of the approval of your immediate Commander. Who was your immediate Commander? Was that Thabang to whom you referred, Comrade Valdez?

MR DUBE: That is correct, Sir.

MR SCHULTZ: Were you at all involved in the reconnaissance of the place where the bomb was to be detonated?

MR DUBE: No, Sir.

MR SCHULTZ: Now what exact approval did you have to get from Comrade Valdez? Wasn't he the man who gave the order in any case, for the bomb?

MR DUBE: At that time I was a soldier and I was taking instructions and my Commander issued the instruction.

CHAIRPERSON: By approval, you mean an order?

MR DUBE: He gave me an order to come and play a role.

CHAIRPERSON: Yes, when you use the word approval in the paragraph that Mr Schultz has referred you to, that word is used as though it's an order, is it not so? Because it doesn't make sense. This is what he's trying to ascertain from you. You did not get an approval, you in fact, according to your evidence-in-chief got an order from Valdez.

MR DUBE: Let me try and explain it myself. Perhaps this is due to my understanding of the English language but it was meant to be order not approval.

CHAIRPERSON: Yes, Mr Schultz.

MR SCHULTZ: Now in Paragraph 11 B the word approval is also used and it is asked who - the name and address of the person or persons who gave such order or approval. Do you take that word approval in that paragraph also to mean order?

MR DUBE: That is correct, Sir.

MR SCHULTZ: And your answer here was: "Chris. The address is not available." Who is the Chris to whom you are referring here?

MR DUBE: I am referring to Chris which was a name that was also used by Valdez.

MR SCHULTZ: So Valdez had, he was known as Valdez, he had his real name and he was known as Thabang and as Chris, do I understand that correctly?

MR DUBE: At that time we were working underground and we were using different names for security reasons.

JUDGE DE JAGER: Yes, but why should you use different names here in your application? At that time it might have been necessary but why should you testify about Valdez and Thabang and Chris, why don't you use one name?

MR DUBE: My problem is that I was used to calling him with all these names.

CHAIRPERSON: Yes, Mr Schultz.

MR SCHULTZ: Now before this Sunday when you went to Witbank where the bomb was to be assembled, were you previously in Witbank before this date?

MR DUBE: No Sir.

MR SCHULTZ: You did not know the people whose house was to be used for the assembly of the bomb?

MR DUBE: Yes, I did not know them Sir.

MR SCHULTZ: Was it told to you by anybody, either by Thabang or by your co-applicant whose house this is?

MR DUBE: No Sir.

MR SCHULTZ: Why didn't you - or did you ask whose house it is?

MR DUBE: I never asked Sir.

MR SCHULTZ: Why is that?

MR DUBE: We were operating on a need-to-know basis.

CHAIRPERSON: May I interpose Mr Schultz. When you gave your evidence-in-chief, when you used the words: "I gathered the house that we went to in Witbank belonged to Steve's relatives", what did you mean by that statement? At which stage did you gather that the house belonged to Steve's relatives?

MR DUBE: Steven told me on our arrival that night.

CHAIRPERSON: So in fact your response to Mr Schultz's question then is apposite because you were informed prior to the execution of the operation that the house belonged to Steve's relatives?

MR DUBE: If I heard him thoroughly, his question was: "Is there somebody else other than Steve and Valdez who told you whose house was that?" and that is why I answered, I said: "Nobody else, other than these two told me, but on our arrival that night, Steve told me."

CHAIRPERSON: If that's what you heard, then the translation was definitely wrong, because that's not the question that was put to you by Mr Schultz. What he wanted to elicit from you was whether anyone had told you that the house belonged to Steve's relatives and by anyone, that included Valdez and Steve.

MR DUBE: Steven told me.

CHAIRPERSON: Mr Schultz.

MR SCHULTZ: Thank you Madam. Were you told the name of the person whose house it is by Steve or by Comrade Valdez?

MR DUBE: Steve said it's his sister's house.

MR SCHULTZ: Did you or do you know at this stage the two persons who were found guilty in 1990 on charges relating to this bomb explosion, Joseph Mandlankosi Vilakazi and Ramuede Steven Mabuza?

MR DUBE: I did not know them at that time.

MR SCHULTZ: Did you get to know them at a later stage?

MR DUBE: Maybe I did not respond well, but it's people that were not known to me.

MR SCHULTZ: Did you - let me refer you to page 75 of Bundle A. On this page a reference is made to a person who gave evidence before the Supreme Court in 1990, one Anna Mahlangu, a resident of Witbank. Do you know Anna Mahlangu?

MR DUBE: You asked me whether I know Witbank or not and I told you I do not know, but my response is, it was my first time going to Witbank, therefore my response is no, I do not know that person.

MR SCHULTZ: Can you give any reaction to the allegations contained on page 75 with regards to the fact that Anna Mahlangu was to a great extent motivated by revenge ...

CHAIRPERSON: Extreme hatred. Is it not extreme hatred and revenge for the police?

MR SCHULTZ: Sorry, I could not hear, Madam Chair.

CHAIRPERSON: Was he not motivated by extreme hatred and revenge?

MR SCHULTZ: Can you give any reaction? Was there any mention made of revenge for a killing by the Witbank Security Police during your assembly of the bomb?

CHAIRPERSON: By whom? By Valdez?

MR SCHULTZ: By Valdez or the co-applicant.

MR DUBE: I do not know Anna Mahlangu, as I've already said, it was only the three of us.

CHAIRPERSON: The question is, did Valdez ever mention Anna Mahlangu and if he did, did he ever express the fact that Anna Mahlangu hated the police and wanted to revenge against the police?

MR DUBE: Valdez never told me anything about Anna Mahlangu, I do not know her.

MR SCHULTZ: Were you told by Valdez where exactly the bomb would be placed, meaning would it be placed in front of the entrance of the police offices or would it be placed further down the street?

MR DUBE: I did mention earlier on that my role was just to assemble the remote control device.

CHAIRPERSON: Mr Dube, it's going to be very easy for us if you respond to such easy questions, not referring us to your previous answers and questions.

MR SCHULTZ: Shall I repeat the question, Mr Dube?

CHAIRPERSON: He has responded to your question by saying no, he had not been told by Valdez where the bomb would be place for detonation.

MR SCHULTZ: Thank you Madam Chair. On the morning when the bomb was now taken to the place where it was to be detonated, you waited there at the taxi rank. Did you see where Valdez went to park the vehicle, the Cortina vehicle to which you referred?

MR DUBE: Yes, we were watching him so we saw where he parked the car.

MR SCHULTZ: Now, what was the scene like there? Were there a lot of people moving around at that time before the bomb was placed?

MR DUBE: I will respond by saying that it was my first time coming to Witbank, therefore I cannot explain exactly how was the situation at that time.

JUDGE MOTATA: May I just come in Mr Schultz? The question is very simple. Did you see a lot of people moving around? It doesn't have a question of whether you've been at Witbank at first or not. When you were parked at the taxi rank, did you see a lot of people moving around? That's a very simple question, it doesn't need prior knowledge.

MR DUBE: I would say that I cannot remember. There were not many people.

JUDGE DE JAGER: Can you remember or don't you know whether - you say you can't remember and the next moment you say there weren't many people. Can you remember or can't you remember?

MR DUBE: I am just estimating, as I said.

CHAIRPERSON: Mr Schultz.

MR SCHULTZ: Thank you. Now, can you remember how late it was that you stopped there at the taxi rank?

MR DUBE: I would say as Steve has already pointed out, it could have been around past eight.

MR SCHULTZ: Was there, during the assembly of the bomb at this house in Witbank, any discussion between the three participants about the fact that innocent people may be killed or injured by the detonation of this bomb?

MR DUBE: You mean us?

CHAIRPERSON: Yes, you, Steve and Valdez. You are the ones who were responsible for the assembling of the bomb, is it not so? There was nobody else apart from the three of you.

MR DUBE: Okay. We did make mention or discuss the possibility of innocent people getting caught in the cross-fire because an explosion uses waves so to say.

MR SCHULTZ: And when you discussed this, was your decision, or the decision of the three of you to proceed regardless of this possibility?

MR DUBE: We were receiving instructions from our Commander.

MR SCHULTZ: What was at that stage your own opinion regardless of your instructions from your Commander, what was your opinion about the fact that innocent civilians might be killed or injured? How did you feel about it?

MR DUBE: As a person who had knowledge of explosives, I knew that there's a possibility of people getting injured or dying and one other thing is that was not my operation, it was Valdez's operation.

MR SCHULTZ: So what - if I understand you correctly, what you are saying is you simply followed orders, you did not think about the loss of innocent life?

MR DUBE: I would again say that I am a soldier and we are following the rules to the effect that we have to follow the words of the Commander, that is as a disciplined soldier.

MR SCHULTZ: And interesting question Sir, can you say why this bomb was placed on a Monday morning and not, for instance, a Sunday morning?

CHAIRPERSON: Is that a fair question to ask of this witness who really had no part in the reconnaissance that was conducted around the place and neither did he also take part in the selection of the target but was pulled in merely to come in and put this remote control device and simply to be there to make sure that the bomb does not detonate before it can be done so by Valdez after they had pulled over?

MR SCHULTZ: Madam Chair, my respectful submission is that this question flows from the previous questions regarding the discussion around the possibility that innocent people may be killed. Perhaps if you would allow me the opportunity, I should rephrase the question, to put it in the same way, whether such a discussion round about that took place.

CHAIRPERSON: Yes, if you rephrase it and put it in that fashion, I think it will be fair and legitimate a question to put to this witness.

MR SCHULTZ: Thank you Madam. Sir I want to then ask you at the time when the assembly of the bomb took place, did any discussion take place regarding the fact that the bomb was to be detonated on a Monday and say for instance not on a Sunday when the street might be emptier of civilians?

MR DUBE: Let me answer by saying that I did not participate in the reconnaissance. The reconnaissance had already been carried out, I just had to put together the remote control.

CHAIRPERSON: Did you or did you not discuss when that detonation would take place and why it would take place on that particular day or time? Did you or did you not have such a discussion? That is the question. Whether you took part in the reconnaissance or whatever is not the question that is being put to you.

MR DUBE: No.

MR SCHULTZ: When the bomb was detonated, was there a line of sight between the place where your vehicle was at that stage and where the bombing vehicle was placed? Could you see the area where the vehicle was placed, in other words?

MR DUBE: Yes.

MR SCHULTZ: Thank you Madam Chair.

NO FURTHER QUESTIONS BY MR SCHULTZ

CHAIRPERSON: Thank you Mr Schultz. Mr Mbethe?

MR MBETHE: Thank you Madam Chair.

CROSS-EXAMINATION BY MR MBETHE: Mr Dube, so all in all, what you're saying to us today here is that your involvement was simply in placing the remote control into the device into the bomb otherwise anything else that flows from the incident, you have no knowledge. Would I be understanding you correctly in saying this?

MR DUBE: I was also part of security.

CHAIRPERSON: When you say you were also part of the security, are you referring to the instance when you had to be part of the security according to your evidence-in-chief, during the assembling of the bomb in Witbank?

MR DUBE: Yes, when we assembled the bomb because we would watch over the place in turns.

MR MBETHE: Now if you had - okay, let me ask the question this way. Was there a possibility that you could basically disagree or object to the manner in which the bomb or to the place where the bomb was placed and if you could, what would have happened if you did so?

CHAIRPERSON: I didn't get your question.

MR MBETHE: Thank you Madam Chair. The question is, could you at the time have objected to the manner or to the place where the bomb was placed?

MR DUBE: No I didn't have that authority.

MR MBETHE: Now can you give us an indication as to - you've already, you know, talked about the remote control, how far from this place would you have to be in order for the remote control to detonate the bomb, in other words, could you have been in Jo'burg and have detonated the remote control and the bomb would have gone off as well?

MR DUBE: No, one would not have detonated it from a distance of Johannesburg. The device that we were using could only be active within a 25 kilometre range.

MR MBETHE: So when you detonated, or when you made the bomb to explode, were you standing or were you driving on your way to Vosloorus? Were you still standing watching the place where the bomb would explode? Was it still in your vicinity?

CHAIRPERSON: In your view?

MR MBETHE: In your view, yes.

MR DUBE: No, there were buildings, so we were on our way to Vosloorus so that that place was not within our view, what we could only see was a smoke.

MR MBETHE: Did you actually wait to see the bomb going off or were you - did you leave immediately after the car had been placed?

MR DUBE: It was detonated by pressing a button on the remote control, that led to the explosion, that is after which Steve drove away.

CHAIRPERSON: I'm not on the same wavelength with this particular part of your evidence. I was under the impression when you were giving your evidence-in-chief that the detonation took place after Valdez had got into your car and the car had actually pulled over and Steve was driving away from the taxi rank. What I seem to be understanding in your evidence now in response to Mr Mbethe's question to be is that you actually detonated the device prior to Steve driving away from the taxi rank and I need clarity with regard to that particular issue.

MR DUBE: Okay. We waited for Valdez to get into the car. After that Steve started the car and he started driving away and as we were just about to get into the freeway, that is when Valdez detonated the bomb.

CHAIRPERSON: How far or after how many minutes would you estimate that Valdez detonated the bomb from the time when Steve pulled away from the taxi rank? Did you take a few seconds, a few minutes? If you say a few minutes, less than two minutes? Less than five minutes or more than five minutes after you had driven away from the taxi rank?

MR DUBE: No, there's something that I didn't understand. Will you please repeat your question?

CHAIRPERSON: After how many minutes you had pulled away, or second you had pulled away from the taxi rank, did Valdez detonate the bomb? Was it a few seconds after you had moved away from the taxi rank, or was it a few minutes? If it's few minutes, was it less than two minutes, or was it more than two minutes?

MR DUBE: I am not quite sure about that. I cannot recall. I'll give you a rough estimation. About three to four minutes.

CHAIRPERSON: Yes. Mr Mbethe.

MR MBETHE: Thank you Madam Chair. Now can you just explain to us if you can, if you cannot if you'll say so, do you have any knowledge why Witbank and in particular the place where the bomb was placed, was chosen as the target?

CHAIRPERSON: Is that a fair question to put to him, having regard to the evidence that's before us?

MR MBETHE: Thank you Madam Chair, I will ...(intervention)

CHAIRPERSON: And flowing particularly from the questions put by Mr Schultz around this issue?

MR MBETHE: Thank you Madam Chair. Mr Dube, do you agree with me that - Mr Dube you've already stated that you think you have fully disclosed your participation in this matter and you were present when your co-applicant was giving evidence. It seems to me the bulk of the important evidence would lie with Valdez. In that instance and we know for a fact that Valdez is no longer present with us, he has died, in that instance, I will ask you a question. Do you think after all is said and done and we go home today in this Tribunal, would we know the true facts or the true events that took place on that day, because as I say, everything is attributed to Valdez and Valdez is not here to say and to testify for himself?

MR DUBE: What I can say to you is that I said exactly what happened and that is that which I recall.

MR MBETHE: My final question would be, it's a question that I asked the first applicant and I will ask it to you again, in retrospect knowing what you know now and the facts that you know, do you think the placing of the bomb the way it was placed, was a mistake and if so, with the knowledge that you have, if you were given a chance, would you have done the same thing that you did on the day in question?

CHAIRPERSON: Which knowledge are you presupposing he now has? He did not participate in the reconnaissance.

MR MBETHE: Madam Chair, the knowledge I am talking about is the fact that innocent people were killed in the incident and none of those people were connected with the Security Forces.

CHAIRPERSON: Yes.

MR MBETHE: So my question is, knowing what happened after the bomb went off, does he firstly think that the way the bomb was placed and the place where it was placed, was a mistake and secondly, if he was given a chance to do - would he do the same thing that he did at the time that it was done?

CHAIRPERSON: I am most reluctant to allow this kind of cross-examination because it really doesn't ventilate on the issues that we have to deal with. You are asking him to speculate with hindsight, what he would have done. I don't know whether it will take us anywhere, but nevertheless, in as much as I am very tempted not to allow this kind of cross-examination to take place, I think in the interest of fairness I will allow it, but I want it recorded, I don't think it is a fair question, it doesn't assist us in coming to a decision in terms of the Act in deciding whether to grant or refuse amnesty to these applicants.

MR MBETHE: Thank you Madam Chair.

JUDGE MOTATA: Is it not a fact that his involvement is the remote control and it doesn't appear that he knew where they were going to, other than him being driven by the first applicant, Mr Nyalunga and Mr Valdez or Comrade Valdez was the one who was going to place the car at the targeted place and should he now go back, Mr Mbethe, and say I would have stopped Comrade Valdez to go there because he says, because of his knowledge and which knowledge he acquired which the others did not know of the remote control, can we really ask him a question of that nature? I would urge you Chairperson that this question not be allowed.

MR MBETHE: Thank you Madam Chair. I will abandon that question. In fact, Madam Chair, that will be my last question to this witness.

CHAIRPERSON: If you really feel hard pressed to abandon the question, I will allow you. I was - I would have been in a position to say we'll concede and allow you, I will prevail on my brother to allow you to ask that question, but you are aware that if you ask that question, you actually are asking the witness to speculate and that is not the kind of evidence you can use in evaluating the facts before us, in trying to come to a determination whether we should grant or refuse him amnesty. As a lawyer you should know that. That's not the kind of evidence we would be interested in.

MR MBETHE: It is true Madam Chair and I agree with the question. Maybe I should ask my question this way. We have today in front of us victims that flow directly from the incident that took place in 1988, I know you've already apologised and you've said you are sorry, what - is there anything else that you can say to these victims today in relation to the participation that you contributed or your participation in the event itself?

CHAIRPERSON: His participation in relation ...(intervention)

MR MBETHE: Meaning the remote - the connection of the remote control. Basically what I want to find out is whether he feels remorseful of what he did on this particular day. Whilst I know for a fact Madam Chair that remorse is not part of the requirements in terms of this Act, but I feel on behalf of the victims, it is important for the victims to find

out if they do forgive this person, they would forgive him on the basis of the person having shown remorse, other than apologising.

CHAIRPERSON: I really do not understand what you are trying to get from this applicant. I think we are here to make sure that we conduct these proceedings in a proper decorum. He has given an apology.

MR MBETHE: Madam Chair ...(intervention)

CHAIRPERSON: If your clients - I'm still talking.

MR MBETHE: Sorry, Madam Chair.

CHAIRPERSON: If your instructions are that the victims are not happy with the apology tendered by him, you can put it to him, I don't think you can actually draw blood from a stone, you can't actually force him to tender any apology other than the one he has tendered, bearing in mind, of course, that apology or any kind of remorse or contrition is not a requirement to us granting him or refusing him amnesty. We would very much like to see you concentrating on the issues that are important and necessary to enable us to decide whether we should grant him amnesty or not.

MR MBETHE: Madam Chair, with respect, whilst I've already stated that I know that the requirements of the applicants getting amnesty do not include apology, but Madam Chair it is true that the name of the Act that we are here about is called the Truth and Reconciliation Act, now the second part of the name of the Act. Reconciliation, it is my humble submission that it involves two people, one, Madam Chair, accepting and showing remorse and the other based on that, Madam Chair, forgiving the person who has asked for apology, so basically what I'm asking is the spirit of the Act itself is ...(intervention)

JUDGE DE JAGER: We understand your arguing. Do you feel remorseful or not?

MR DUBE: What I can say here is that during those apartheid days, you see I cannot regret for having done that. I have explained that it was the circumstances that drove us into doing what we did. Personally I do not regret, but I apologise to those who suffered a loss.

MR MBETHE: Thank you Madam Chair. No more further questions.

NO FURTHER QUESTIONS BY MR MBETHE

CHAIRPERSON: Mr Koopedi, before we afford you an opportunity to re-examine, just to try and facilitate these proceedings, we are going to ask questions of clarity of clarity from the Bench and having ...(indistinct) that process, we will then afford you such an opportunity to re-examine so that your re-examination can also take account of what would have been examined by the Bench.

MR KOOPEDI: Thank you, I agree with that Chairperson.

CHAIRPERSON: Mr Dube, Judge Motata would like to put a few questions of clarity.

JUDGE MOTATA: Thank you, Chairperson. Mr Dube, you said that when you parked your car, in your evidence-in-chief, you thereafter secured Comrade Valdez. Do you recall your evidence in that respect? That is at the taxi rank. That is the Mazda, when you parked with Comrade Steve.

MR DUBE: I said we, Steve is the one who was driving the vehicle.

JUDGE MOTATA: Then I say, do you recall that when you said after you parked, that's the crux of what I want to know from you, that you secured Comrade Valdez.

MR DUBE: Yes, I recall that.

JUDGE MOTATA: How did you secure because he had to park the Cortina next to the building and leave it there? How did you secure Comrade Valdez?

MR DUBE: I had a firearm. Secondly I had to make sure that he doesn't experience any trouble. I would shoot if I had to.

JUDGE MOTATA: Is that whilst you were seated in the Mazda at the taxi rank?

MR DUBE: Yes. Yes, I was inside the car and watching over ...

JUDGE MOTATA: And that is the securing you are referring to?

MR DUBE: Yes.

JUDGE MOTATA: Thank you Madam Chair.

CHAIRPERSON: Mr Koopedi do you have any re-examination?

MR KOOPEDI: Nothing.

CHAIRPERSON: Really, do you want to re-examine?

MR KOOPEDI: Nothing in re-exam Chairperson, thank you.

CHAIRPERSON: Where does this take us to? Are you closing your case?

MR KOOPEDI: In the event there aren't any other questions to this witness, like I said ...(intervention)

CHAIRPERSON: I wouldn't have allowed you to re-examine after having made that arrangement, if there were any other questions from the Bench. There are no other questions from the Bench.

MR KOOPEDI: And none from my Learned Colleagues I take it. In that event ...(intervention)

CHAIRPERSON: They've had their opportunity, they've cross-examined, do you want to give them a second chance?

MR KOOPEDI: I've seen them come back again and ask questions after they've concluded.

CHAIRPERSON: No they have specifically, humbly requested an opportunity to do so.

MR KOOPEDI: Chairperson, that will be the evidence of this applicant and this will conclude all the evidence we wish to adduce for the two applicants. This will be their application.

CHAIRPERSON: Yes.

MR KOOPEDI: Thank you Chairperson.

WITNESS EXCUSED

CHAIRPERSON: Mr Schultz and Mr Mbethe, this being the case, I'm aware of your precarious position that you are on a watching brief. You are opposing and your opposition is based on the requirement of full disclosure. What do you propose doing now? What are your instructions?

MR MBETHE: Madam Chair, with indulgence from this Tribunal, I would like to consult with my clients and get a full, you know, instruction from them as to whether they do believe that from the evidence that has been led here, full disclosure has been made. If we could just - I think maybe 5 minutes would do.

CHAIRPERSON: Yes. Now we'll give you whatever time you think is reasonable, for you to take proper instructions.

MR MBETHE: Thank you Madam Chair.

CHAIRPERSON: Mr Schultz?

MR SCHULTZ: Madam Chair, I would also request an adjournment. Most of my instructions I received only this morning. I will obviously need a lot more than five minutes to obtain final instructions.

CHAIRPERSON: Yes. Can you give the indication to the Bench of how much time you would require to take proper instructions?

MR SCHULTZ: I should think at least three quarters of an hour to an hour Madam Chair. I have at least 15 people to consult with.

JUDGE DE JAGER: Could I suggest that in case you propose to lead evidence, perhaps you could ask your clients whether they can consult amongst themselves and sort of

nominate a delegate to give evidence or two or so, so that we need not hear the same evidence from 15 different people?

MR SCHULTZ: Madam Chair, that is indeed my intention, it's certainly not to call all the victims, but certain of the victims will definitely be called.

CHAIRPERSON: In the event you may decide to do so?

MR SCHULTZ: That is correct.

CHAIRPERSON: Mr Steenkamp?

MR STEENKAMP: Madam Chair, I've listened to the evidence. I just want to put on record that the actual investigating officer who investigated this case, ...(indistinct) Lombard is available today. I could hear there were certain questions surrounding specifics like the bomb, the vehicle, where the vehicle was standing, where it was parked, he's available, I think his testimony, if required, will take about 5 minutes and probably I would suggest in the interest of the victims, they could probably know what to the - what type of bomb was used, if it's ...(indistinct) and secondly maybe it's a bit late now, but I've heard the evidence of the last applicant and he was also referring to the possession of a firearm. Now I don't see anything in his amnesty application about that and maybe that can also be cleared up in the meantime. I'm not quite sure what exact position that firearm was.

CHAIRPERSON: Are we in a position to clear anything or the law requires us to confine ourselves with the acts for which amnesty has been sought, notwithstanding what the applicant said.

MR STEENKAMP: I withdraw that, Madam.

CHAIRPERSON: If Mr Koopedi who is representing them, has chosen not to bring any act or omission that would have qualified for amnesty, emanating from this incident, I think we would not be too happy to have you as our Evidence Leader, ...(intervention)

MR STEENKAMP: No, Madam Chair, I'm actually raising it ...(intervention)

CHAIRPERSON: Accommodating them.

MR KOOPEDI: If I may clarify the issue. This applicant is not making any application for the possession of a firearm, Chairperson.

CHAIRPERSON: Yes.

MR STEENKAMP: I was only raising it, Madam Chair, because if the investigating officer is going to testify by your indication, there's a possibility such evidence may be led, that's the only reason why I was just raising it. Thank you Madam Chair.

CHAIRPERSON: Thank you. We'll take a 30 minute adjournment. In the event of both Mr Mbethe and Mr Schultz requiring further time to consult with a view of taking proper

instructions from their clients, they will give an indication to Mr Steenkamp who will then give an indication to us and we'll only be too happy to give you more time. I just don't want us to adjourn with a view of coming 45 minutes to an hour, when possibly your instructions are going to take far much less than that. As you are aware, we are a Committee which is always hard-pressed for time. We have a matter which is actually standing down, which should have actually commenced at 2 o'clock but has not been able to commence, so we'll give you 30 minutes to take proper instructions, but as I say, if you want to have more time, just give Mr Steenkamp an indication and we'll accordingly oblige.

COMMITTEE ADJOURNS

ON RESUMPTION

CHAIRPERSON: Between Mr Schultz and Mr Mbethe, who wishes to commence with regard to giving us directions as to how we are going to move from here?

MR SCHULTZ: Madam Chair, I thank you for the opportunity. I've had opportunity to consult with all my clients. My instructions are at this stage not to adduce any evidence from the victims as such but to simply request you for an opportunity to prepare argument with regards to the application.

CHAIRPERSON: Yes.

MR SCHULTZ: I will leave it in your hands with regards to how the argument should be addressed, but obviously at this stage I am not yet ready to give argument.

CHAIRPERSON: Yes. Would you wish to submit written heads or you want to be given an opportunity to prepare in order to give us oral argument?

MR SCHULTZ: I think that written Heads would be suitable in this instances.

CHAIRPERSON: How much time do you require to sufficiently prepare your Heads?

MR SCHULTZ: I would need at least a day to prepare everything.

CHAIRPERSON: Mr Mbethe, what is your position?

MR MBETHE: Madam Chair, thank you for the opportunity. I have also consulted with my clients and Madam Chair, I am also not going to lead any evidence from the victims, but I am immediately going to go to the stage of legal argument. I think I would be prepared to give my legal argument orally today.

CHAIRPERSON: Okay.

MR MBETHE: So there is absolutely no need for me to ask for a postponement.

CHAIRPERSON: Yes. Mr Koopedi, what is your situation with regard to legal argument?

MR KOOPEDI: We are ready to proceed with legal argument. We have a very brief legal argument to present before you, so any time, we can do it now if it's expedient, if not, one could reduce it to writing, whichever direction this Panel leads us, I am ready.

CHAIRPERSON: Yes. We are in a position to give our ruling in respect of the request made by Counsels representing the victims with regard to, in particular, Mr Schultz. With regard to having to file your argument a day later than today, we are going to give you until Wednesday to file your written Heads. Will you please make sure that the Heads are sent here, because we will be sitting here until Friday, in order to enable Mr Koopedi to also get a copy of your Heads of Argument and Mr Mbethe must also get a copy of your Heads of Argument. Mr Koopedi, in that case we will afford you an opportunity to do a reply if need be and to file it by Friday, which will be the last day on which we will be sitting here at this venue listening to applications brought this week. Is that sufficient?

MR KOOPEDI: I can only hope that I would not have to replicate. I may be tied up in a matter in Bisho from the 3rd to the 4th, but I believe I would not have to reply. If I do, I will make means of getting his argument, working on it and sending it over in my absence.

CHAIRPERSON: Without prejudging the issues, I don't think we are dealing with matters that are going to require you to go back to any lengthy record for you to go through in order for you to file your replication.

MR KOOPEDI: I believe so.

CHAIRPERSON: I think Friday should be more than reasonable a time, we just don't want to sit with matters which are going to entail this matter not being capable of being disposed of immediately. We would like to give our decision as soon as possible, in the interest of allowing all parties concerned to move forward with their lives. We don't want the victims to sit here waiting for this Panel to come up with a decision and also having the applicants waiting for us to come with a decision. We'd like to have a decision ready within a week from today whilst the facts are still fresh in our minds, so we'll urge you to make sure that you have your replication, if need be, if you are going to have to replicate, by Friday.

MR KOOPEDI: I will.

CHAIRPERSON: That being the case, we are going to afford Mr Koopedi an opportunity to present us with his oral argument after which we'll give an opportunity to Mr Mbethe to answer.

MR KOOPEDI IN ARGUMENT: Thank you Chairperson, if I may proceed.

As I have indicated, my presentation argument to you is a very brief one. Chairperson, Honourable Committee Members, you've had before you two applicants. At the outset I wish to point out that these are two applicants who had no pressure on them to come before you or to even apply for amnesty. It is common cause that there are people who

have been arrested, charged and convicted for this offence and they could have kept quiet and not proceeded with it. I am referring to the applicants.

It is my belief that these two people came to you genuinely, like I said, with no pressure. It is my further submission to you that in so doing, they fully disclosed all the material facts available or known to them, taking into consideration the length of time that has lapsed from the time when this incident occurred, to today.

Madam Chairperson, Honourable Committee Members, I would briefly want to take you through the situation or the circumstances as it was, on the first applicant, Mr Nyalunga. Much as he was a senior person within MK ranks, he was trained and had all sorts of knowledge, political knowledge, military knowledge, he was at this point, that is when he got involved in the Witbank bomb, acting under orders from a superior, the late Mr Kholile Sam. It is those circumstances that to a very large extent, put him in a position where he became a foot soldier more than the Commissar he was. All he did was in terms of an order from a superior person from him, or a superior person to him. There have been questions asked and particularly to him as to the issue of people who could have been in the vicinity, the fact that perhaps you know the intended targets were not actually hit, may I ask this Committee to look at his responses to those questions as purely being speculative in that he was not the one who made the decision, he was not the one who gave any order, he was merely doing what he was ordered to do.

With regards to the applicant ...(intervention).

CHAIRPERSON: But in taking part in the reconnaissance, wasn't he by implication?

MR KOOPEDI: Well, I would concede that by implication, if he took part in the reconnaissance, this put him at a certain level, but may I remind this Honourable Committee that this would only pertain to reconnaissance and whatever that was found on reconnaissance, would not necessarily mean that an order would be given or would be reversed. It has been evidenced, the evidence before you is that the late Kholile Sam had considered this place as a possible target. When he came to ...(intervention)

CHAIRPERSON: Not as a possible, as a target.

MR KOOPEDI: Excuse me. As a target. When he spoke to the first applicant here, Mr Nyalunga, he told him so, which would mean that his involvement in terms of reconnaissance, I'm now referring to the first applicant, his involvement was merely you know a person following what his Commander wanted him to do, to accompany him, to go for a reconnaissance of a target already concluded upon. Yes, it is on those basis that I say that I would ask this Committee to consider his responses to that line of questioning as merely speculative. We are here dealing with a foot soldier, somebody who acted under orders to do all that he did.

May I then move to the second applicant? The second applicant did not particularly or *per se* belong to this unit. However, the second applicant was co-opted, requested, to assist this unit. He possessed certain expertise which this unit did not have. In as far as the command of this operation is concerned, I think it is common cause that the command rested squarely on the late Kholile Sam, he was the Commander of this

operation and in fact the Commander of this unit, the unit responsible for the Witbank car bomb blast. The second applicant was only requested to come and assist with the fitting of the remote control device or gadget.

I also wish to say that he' one witness, or he's one applicant who has come before you without any pressure really. He could have stayed away and not come here and I believe that by coming before you, there would then be no other reason for him or even the first applicant, not to tell the whole truth. Perhaps finally, I would wish to say that both applicants before you gave the whole truth. They have been subjected to cross-examination, I believe what came out of the cross-examination was a further enlightening of the truth, nothing to show us that they were not giving full disclosure.

I also wish to submit that the question of personal gain is common cause. We do not have any evidence that contradicts the fact that they did not have personal gain and it is against those basis Madam Chairperson, Honourable Committee members, that I would ask that the two applicants be granted amnesty for the Witbank car bomb blast. Thank you.

CHAIRPERSON: You state that the second applicant was co-opted or requested to assist in the unit, obviously because as the evidence has shown, because of his pertinent skills with regard to the remote control device. If that is so, can you submit that he was acting under orders of Kholile Sam, who was a Commander of a unit to which he did not belong?

MR KOOPEDI: I will indeed submit so, Madam Chairperson. The second applicant did not belong to this unit. He had his other units, which units he Commanded. It is his evidence that he was asked in this particular instance, to come and assist on this remote control gadget. He had no knowledge as to where the bomb would be planted. He had no knowledge of the reconnaissance. The only - His involvement was just where he was needed, just where his expertise was needed and I wish to submit that at no stage did this unit lose command, what I'm saying is the late Kholile Sam was the Commander of this unit from the inception of the idea of putting a bomb in Witbank, until it's conclusion. The second applicant's arriving on the scene, it's my submission, does not tamper with the command. The command still rests with the late Kholile Sam and I would therefore submit that any person who involved himself or herself with this operation which was commanded by Kholile Sam would then be acting under his orders.

CHAIRPERSON: Yes.

JUDGE MOTATA: Now in respect of Mr Nyalunga, he said at first that is the evidence, at first he was not involved in the reconnaissance because he was known in Witbank and subsequently he was invited also to partake in the reconnaissance, does that not suggest that if you partake in the reconnaissance, that you have to put in a word or two as to what the situation is like, because I'm a little uncomfortable to dismiss that as speculative when he was cross-examined on that aspect.

MR KOOPEDI: Well, if I followed correctly, my response would be that if he was asked to go on a reconnaissance of a target which has already been concluded upon, my

submission would be that his word would not weigh much particularly because when he went to the reconnaissance, he was not alone, or he was not given a unit to go with, which he supervised, it would not be really incumbent upon him to make a decision about the target. The target had already been identified and concluded upon. More than anything else, in the reconnaissance, he was accompanying his Commander, more than him conducting a reconnaissance. In his evidence, he did not have to come back to the Commander or any other person and report about what he saw in reconnaissance and a decision then made on the basis of what he says he saw in reconnaissance. I would therefore still go back to my argument that even if he went to reconnaissance, even if he participated in the reconnaissance, he was merely following his Commander. He was ...(intervention)

JUDGE DE JAGER: They were only two members in the unit.

MR KOOPEDI: That is indeed so, but ...(intervention)

JUDGE DE JAGER: They weren't actually the foot soldier and the Commander, they were two partners.

MR KOOPEDI: If I may explain this part? His evidence was that there were two people in this unit, a Commander who was the late Kholile Sam himself, he was a Commissar and they would recruit people on an operation to operation basis.

CHAIRPERSON: Yes.

JUDGE DE JAGER: Ja.

MR KOOPEDI: which would mean that they would not be the only two people, if this was a unit as we normally know them.

CHAIRPERSON: Yes, Well, as the criminal - I think the Judgement indicates with regard to the involvement of Mr Mabuya and Mr Vilakazi.

MR KOOPEDI: That is so. If we look at the trial judges' recordings, there are a number of other people to whom reference is being made but the evidence before you now is that none of these two applicants are familiar with any of these people, particularly as them having been members of this unit, for this operation. It's my submission that both applicants will not deny that any one person could have been involved in this operation, they cannot deny that.

CHAIRPERSON: So what you are basically saying to what Judge Motata has put to you is that in as much as he might have participated in the reconnaissance, your argument firstly is that he was really accompanying his Commander in the reconnaissance, he had no control over the reconnaissance, he didn't have to submit any report and secondly the fact that he participated in the reconnaissance, does not give him any decision-making powers that would have put him in a position where he could have contravened or said anything against the target that had already been selected by the Commander.

MR KOOPEDI: Chairperson, I think you have accurately captured it and I'm indebted.

CHAIRPERSON: I hope I'm not doing your job.

MR KOOPEDI: Well, as it happens.

CHAIRPERSON: Yes. In terms of Section 20 (i) of the Act, what specific provisions would you be relying upon with regard to Mr Nyalunga first and secondly with regard to Mr Dube?

MR KOOPEDI: I'm going to need assistance as to the wording of Section 20.

CHAIRPERSON: Don't you have your Act?

MR KOOPEDI: No, I do not have the Act with me and I must be honest I have never addressed any Panel on that particular section, unless it has escaped my mind.

CHAIRPERSON: Section 20 (ii), from (a) to (f).

MR KOOPEDI: I do not have the Act with me Ma'am, and I'm unable to check and see what it contains.

JUDGE DE JAGER: They were members of the party, both of them. They acted against the enemy as they saw it, or it was intended to act against the enemy, so they would fall within the ambit of (ii).

CHAIRPERSON: A O D. That's what we want to know. Are you going to have reliance on Section 20 (ii) (a), or are you going to rely on Section 20 (ii) (d). Let me give you my Act so that you can address us pertinently on that issue.

MR KOOPEDI: I'm indebted again for the copy of this Chairperson. I must say, I have a great difficulty in determining where, which Section would we rely on, but it is my submission at this stage that we would rely on Section 20 (i)(a), I think I've quoted it correctly. Yes.

CHAIRPERSON: Chairperson, 20 (ii).

MR KOOPEDI: (ii) (a)

CHAIRPERSON: (a).

MR KOOPEDI: Yes.

CHAIRPERSON: In both instances, that is in relation to both Mr Nyalunga and Mr Dube.

MR KOOPEDI: That is indeed so Chairperson.

CHAIRPERSON: Yes. And in terms of Section 20 (iii), you are seeking to rely on 20 (iii) (e)?

MR KOOPEDI: I have not checked that one also. i am not in a position to commit myself to 20 (e).

CHAIRPERSON: Yes. ...(indistinct - mike not on)

MR KOOPEDI: That is indeed so, Chairperson.

CHAIRPERSON: ... (indistinct - mike not on) - what legal conditions you are seeking to rely upon ... (indistinct) legal argument, you are only confined to ...(indistinct)

MR KOOPEDI: I agree.

CHAIRPERSON: But I think you will be relying on Section 20 (iii) (e) because you are saying your submission is that they are acting under orders.

MR KOOPEDI: That's right, Chairperson.

CHAIRPERSON: Which is what (e) addresses,

"Whether the act, omission or offence was committed in the execution of an order of or on behalf of or with the approval of the organisation, institution, liberation movement or body of which the person who committed the act was a member, an agent or a supporter."

So you will seek reliance ...(intervention)

MR KOOPEDI: On (e). I agree, Chairperson.

JUDGE DE JAGER: As far as your request for amnesty is concerned, would that relate to the offence in the indictment on page 58, 60, well it's more than - 68 almost. Would that cover what you're asking for? The three murders, the damage of property and the ...

CHAIRPERSON: Attempt.

JUDGE DE JAGER: Ja.

MR KOOPEDI: That is indeed so, Chairperson, the amnesty relating to the Witbank Bomb would cover those criminal charges but perhaps before I get off the mike, I had promised to give to this Honourable Committee certain pages where we would find ...(intervention)

CHAIRPERSON: Yes, before you come to that, we'll come to that just now. With regard to the acts for which amnesty is sought, you will request amnesty for murder?

MR KOOPEDI: Yes, three murders.

CHAIRPERSON: And attempted murder. That is the murder in terms of - and attempted murder and malicious damage to property.

MR KOOPEDI: That's right.

JUDGE MOTATA: I see there's a theft as well, you wouldn't be relying on the theft, charge 70?

MR KOOPEDI: Chairperson, charge 70 we would distance ourselves from it, we have no knowledge, we don't know what happened.

CHAIRPERSON: Yes.

MR KOOPEDI: May I also perhaps say, we were in possession of explosives, Chairperson, if it would meet with your approval for us to also ask for amnesty for having been in possession of explosives material, that is when we were in the process of preparing and making the bomb.

CHAIRPERSON: Well, the whole offences emanated as a result of possession and usage therefor, isn't it?

MR KOOPEDI: That is indeed so.

CHAIRPERSON: That should be quite cardinal to the offences for which you should seek amnesty.

MR KOOPEDI: I concede.

CHAIRPERSON: Would it be your submission that that would flow from the incident itself, even though you've not specifically made mention thereof in your written application?

MR KOOPEDI: That is so, I initially thought that it flows, but as we were talking I thought that perhaps we might also need to mention the fact that we were in possession of the explosive.

CHAIRPERSON: Yes. What I'm saying is, will you argue before us that even though you have not in your written application in response to paragraph 9 (a), even though you've not specified all these separate offences, the fact that you've referred to the incident in general terms should allow you to succeed in respect of these separate offences.

MR KOOPEDI: I agree with you, Chairperson, especially when one looks at ...(intervention)

CHAIRPERSON: I don't want you to agree with me, I want your contention, not your submission.

MR KOOPEDI: Yes. My submission would be that if you look at what is written in the application forms, it would start by saying it refers to a bomb.

CHAIRPERSON: To the incident in general.

MR KOOPEDI: Yes and the word bomb is used. I wish then to believe that it is common cause that it would cover the explosives issue.

CHAIRPERSON: Yes. Yes. Then coming to the question that was reserved for you to address us on during your argument with regard to the number of police officers, which are casualty to this operation, are you in a position to enlighten us more on the number and the relevant pages in terms of Bundle B?

MR KOOPEDI: I think that some eight employees of the SAP then, were involved or harmed by this bomb. Some of them were not directly or physically injured by this bomb, but these are people who heard this loud and violent explosion, these are people who had parked cars outside and in the vicinity of the area where the bomb went off. I will perhaps take you through them page by page. The first one ...(intervention)

CHAIRPERSON: Mr Koopedi, I don't think we'd be interested in the people who are not victims, who did not fall casualty to the operations, because that was not the issue which was under discussion.

MR KOOPEDI: My submission firstly would be that anyone who has made a statement to the police, who would refer to this explosion as a violent explosion, was indeed harmed by ...(intervention)

JUDGE DE JAGER: There must have been hundred in Witbank who heard this violent explosion and they didn't suffer any injuries. We're concerned about the people ...(intervention)

CHAIRPERSON: Unless it's your submission that there was some emotional trauma which- we don't want to make an issue out of this,, we merely want you to - because you had already started identifying certain pages and according to my notes you had identified page 27, page 57 and page 8 as being the relevant pages for us to refer to to see how many of the personnel employed by the SA Police Services were affected by this incident as defined in terms of the Act.

MR KOOPEDI: Page 5 of Bundle B. We have a person who was an Adjutant-Officer in the SAPS.

CHAIRPERSON: Will that be Bundle B?

MR KOOPEDI: Bundle B, page 5, who was in his office, who heard this violent explosion outside the building and as a result of this explosion both his ears were affected and he felt pain.

CHAIRPERSON: Yes.

MR KOOPEDI: On page 6.

CHAIRPERSON: Yes.

MR KOOPEDI: We have a person who was a Sergeant in the SAP, with the Security Branch in Witbank.

CHAIRPERSON: Yes.

MR KOOPEDI: He was hit by a flying piece of glass.

CHAIRPERSON: Yes and attended to by Dr Clarke. Yes.

MR KOOPEDI: That's right. On page 9, we have a person who worked with the police, I cannot see his rank here.

CHAIRPERSON: He's a Constable.

MR KOOPEDI: Oh, baie dankie. He was not in the Police Station or in the building, the targeted building, he was in another building at a shop in the nearby and he was also injured. You have taken note of page 27, Chairperson.

CHAIRPERSON: Yes.

MR KOOPEDI: You also have taken care of page 58.

CHAIRPERSON: I hadn't.

MR KOOPEDI: Page 58 is where you have Zondi. I think that's your 57.

CHAIRPERSON: Yes.

MR KOOPEDI: It's - on my Bundle it's 58 where we have Zondi and not 57. Thulane Harry Humphrey Zondi.

CHAIRPERSON: Yes.

MR KOOPEDI: That's right. Now, I would also wish to take you through page 92. This is not particularly a person who was injured but I think this would assist this Committee in coming to a good conclusion or any conclusion as to the type of target. On page 92 there is an affidavit by a Constable Breytenbach who says he was responsible for the state motor vehicles in and around the area. He has given a description of the damage on the vehicles, the state vehicles. He has numbered the vehicles that could be repaired. He has numbered the vehicles that could not be repaired and he has actually placed the damages suffered by the State on the vehicles at R87 200,99. I will take you to page 96 and perhaps this is where I will pick up a problem. On page 96 we have a Constable who was also an investigator. He heard this loud explosion, he went outside, he was in the office of the Security Police, he went outside and he found that his bakkie, his motor vehicle, was also damaged.

CHAIRPERSON: Yes, that's a victim, he has suffered damages.

MR KOOPEDI: That's right. And also page 98, these are the people I was referring to say they did not actually get physical injuries on them, but they heard this explosion and some of their properties were damaged, which properties I'm referring to cars which were in the vicinity. The last one I'd like to refer you to is page 98. We have a Constable Diyale who also was in that building. She heard this explosion. She saw the windows getting damaged, she - the windows of the premises. She went outside and she found part of the canopy of her bakkie on fire and has even put a value to the damages and these are about the only incidences I can refer you where direct employees of the SAP were hurt or where they suffered damages.

CHAIRPERSON: Yes, that concludes your argument.

MR KOOPEDI: Indeed that does, thank you Chairperson.

CHAIRPERSON: Mr Mbethe.

MR MBETHE IN ARGUMENT: Thank you Madam Chair. I think I must start by saying that when we came to this Tribunal this morning, my instructions were to do what is called a watching brief and in fact I was told in no uncertain terms by members of the family that they do not oppose the application for amnesty by the two applicants. The reason why they wanted to be here is because they wanted to hear what actually took place at the place and at the time which the bomb went off, so Madam Chair, my legal argument is not necessarily going to be in opposition to what my learned friend has already stated here, but I am just going to raise concerns that have been uttered by the members of the families that I am here on behalf of. Before I can go on, I just want to correct one other mistake that I heard my

Learned Friend stating there, the fact that Constable Diyale is a she. He is in fact a he and he is in fact one of the people that I am actually here on behalf of.

JUDGE DE JAGER: I don't think he intended to discriminate against ...

MR MBETHE: Thank you. Madam Chair, it is true that there are requirements stated in the Act for any person who is applying for amnesty to get such that the person must satisfy. Now I will start with the financial requirement. Madam Chair, in so far as this requirement is concerned, the family members have instructed me that whilst it is true what my learned friend has said, they have no knowledge as to whether there was any financial benefit and the evidence that has been led in this Tribunal has not made them to be in a position to can know that - whether there was that financial benefit. Secondly, on the basis of the requirement of whether this was done for any political purpose, there again Madam Chair, we do not dispute, in fact we are indifferent in so far as to state categorically whether this was done for political purpose or not. The part that the family have instructed me to have a problem with is in the part of disclosure. Madam Chair, it is true that as my Learned Friend has already stated, the two applicants have stated their version of the case in so far as they feel that they were involved. However, it cannot be ignored that there are issues that have not been clarified to the members of the family. We have been told that the order to go and detonate the bomb at the place where it was detonated, was given by one Kholile Sam and Kholile Sam is not in front of

this Court today, so it's not clear and we cannot make an assessment as to whether this indeed is an order that came from Kholile Sam. Secondly, there is also ...(intervention)

JUDGE DE JAGER: Sorry, could you suggest anything on which we could base a finding that it did not come from Kholile Sam?

MR MBETHE: Thank you Madam Chair. Again there is no specific evidence that shows that this disorder did or did not come from Kholile Sam.

JUDGE DE JAGER: Well, the only evidence before us is that it did come from Kholile Sam.

MR MBETHE: There is evidence, Madam Chair, I'm sorry, there is evidence that comes from the applicant that it came from Kholile Sam, but it is true that Kholile Sam is actually not here and there is no opportunity that the lawyers can get in order to ascertain with certainty whether indeed this order came from Kholile Sam. So Madam Chair, be that as it may, it is indeed true that we will have to accept as the legal representative and the family, that indeed it might have come from Kholile Sam but what we're saying is, he is not here and there is absolutely no opportunity for the legal representative to ascertain that matter from him.

CHAIRPERSON: Is there anything to suggest that Kholile Sam was never a Commander of a unit as alleged, or even a member of the Umkhonto weSizwe as the evidence has shown?

MR MBETHE: Madam Chair, there is no evidence to suggest that, but there is only evidence that was given by the first applicant, and this evidence is to the effect that he and Kholile Sam were the members of the unit that was operating in Witbank. Now, I know it has already been canvassed that Kholile Sam was higher in rank than applicant number 1, so basically applicant number 1 had to follow an order that came from Kholile Sam, so what I'm saying basically Madam Chair is we are hearing this from the applicant and we have no way of ascertaining whether it is indeed true, so we will leave that with the Committee to decide whether indeed on the evidence that has been led, it is true.

CHAIRPERSON: And it's not only for the Committee to decide. Unfortunately the evidence that is before this Committee, that includes lawyers, is that Kholile Sam was the Commander and there is no other contradictory evidence on which a different finding can be made by this Committee, is there?

MR MBETHE: That is true Madam Chair. I just want to repeat again, when I started I said I am actually not going to oppose the application, I'm not going to suggest that what we have been told here is not true, but I'm just going to voice out the concerns that the family have in so far as disclosure is concerned, so in so far as Kholile Sam is concerned, I am saying or I am submitting to this Tribunal that it is not clear to the family members because the Kholile Sam that has been referred to as the Commander is nowhere to be found or he already is deceased so there is no way that that information can be found from him. With the permission of the Chairman, I would like to pass this issue of Kholile Sam. I do not think that it is necessarily very important in the family's concern.

The second issue is the fact that there were two people who were accused of having committed this crime and I would like to again remind the Tribunal that I am voicing the concerns of the family and the concerns are that there were two people who were convicted of the offence. It is not clear to the family even now as to the extent to which these two convicts, or people who were convicted was in the assembling and as well as the placing of the bomb at the place that it was.

Furthermore, in the document that is here Bundle A where there is the application itself, there is also Judgment that was given by, if I'm not mistaken, Judge de Klerk and in that Judgment a certain name of a certain Anna Mahlangu and the fact that she stated that she wanted to pay revenge as against the police for whatever they would have done to her or to the member of the family, that again Madam Chair, has not been clarified to the family.

CHAIRPERSON: By whom, because the applicants do not know Anna Mahlangu. They are in no position to put the families in any better position.

MR MBETHE: Thank you Madam Chair for that comment, but basically as I have already say, I am just stating the concerns of the family as have been given to me.

CHAIRPERSON: Yes.

MR MBETHE: It is not clear to them how Anna Mahlangu's involvement is or what Anna Mahlangu's involvement is in this incident.

CHAIRPERSON: Wasn't she involved with Mr Mabuya and Mr Vilakazi?

MR MBETHE: That might be Madam Chair.

CHAIRPERSON: Isn't that what is in the Judgment? You've read the Judgment.

MR MBETHE: Madam Chair that is true, but the fact that we came here, the family thought that perhaps amongst or either one of the applicants would clarify that fact to them especially because, Madam Chair, this person is known to the victims, the Msina victims and they have been attending court proceedings when the two gentlemen were found accused of the crime they were accused of having committed, so again at this stage of the proceedings, they still are not clear as to what involvement Anna Mahlangu had in the case. I accept that we cannot expect the two applicants to know about Anna Mahlangu if they do not know, as Madam Chair has already alluded to the fact that maybe the two accused who were convicted of the offence, might have the knowledge. We now know that ...(intervention)

JUDGE DE JAGER: According to the finding of the Judge and that's not been put to the witnesses, they were both, well Steve and Thabang were both introduced to Anna by the sister Mary but that wasn't canvassed with the applicants, so we can't make any conclusions from that.

MR MBETHE: Yes, I agree, Mr Chairman.

JUDGE DE JAGER: Further Mr Chairman, I am still again on the concerns of the family.

CHAIRPERSON: Yes.

MR MBETHE: And other concern is it is still not clear to the members of the family why a Monday, as the day of the bombing of the place, was chosen. In fact, in particular to the time period that was chosen, 8.30, it is an undisputed and a known fact that 8.30 is the time when most people go to work and this area is an area which is in the centre of the CBD area, so I, on behalf of the family, cannot come to understand why it is said that 8.30 would be the time when casualties would be minimal. In fact, the evidence that has been led in this Tribunal, suggests otherwise, it suggests that the bomb was placed there precisely for the fact that there would be people that would be going to work or would be doing their normal errands. 8.30 is not the time when one would say: "I am doing this in order to minimise casualties". If for instance, maybe the bomb was placed between 11 and 12, when people are already at work, that would be understandable, or it I do not think that anyone can say 8.30 or 5 o'clock for that matter is a time when you can place a bomb and you can minimise the casualties, so that is another point that is still not clear to the victims and I'm only talking about the issues that are not clear to the victims and I'm not again opposing the application of the two applicants, I'm leaving that to the Tribunal itself to decide whether they have done sufficient or they've given sufficient evidence for that purpose.

Applicant number 2 has stated in this Tribunal that they arrived at the place, at applicant number 1's sister's place on a Sunday and he has stated that when they came on a Sunday, the car which is a Ford Cortina, was already in the place at the first applicant's sister's place and he again stated that when they went with and they were travelling in a Mazda, the first applicant has said or has informed this Court that the people who stayed in the house, did not know anything about the operation. The operation apparently I assume was discussed between the three, Valdez, the first applicant and the third applicant. Now it is not clear to us or to the members of the family who brought the car there at the first applicant's sister's place and when he brought the car, what did he say the car was for. Now I find it very strange that a car can be parked in my garage as the owner of the house and in the car there would be bomb material that can be used to you know bomb a certain place and I myself would take no care in going to find out and see what car is this that is placed in my garage and who brought the car there. We know now for a fact that this was the sister to applicant number 1, but we do not know the relation of the person who brought the car to the sister's place in relation to the sister herself. That has not been conveyed to this court. One thing that we know is the person who had a relationship with the sister is applicant number one, so I would assume that if the car was brought at the sister's place, it would have to be brought by applicant number 1 or in the presence of applicant 1. We do not know who brought the car. That evidence has not been led. We have not been told who brought the car to this place.

Madam Chair, that I submit, would be the concerns of the family and again I would like to reiterate it's not the intention of the family members as they instructed me to oppose the application. It is true that there are issues that have not been clarified today, so basically they are in the same position that they were when they came this morning, that is not knowing what exactly took place in that. Thank you Madam Chair.

CHAIRPERSON: Thank you. Mr Steenkamp.

MR STEENKAMP: Thank you Madam Chair, I have no further to ask, no comments thank you.

CHAIRPERSON: Yes. Mr Koopedi, do you have any response?

MR KOOPEDI: A brief one and I will try and start where he ended and go back upwards.

CHAIRPERSON: Yes.

MR KOOPEDI IN REPLY: My Learned Friend says the victims have a problem as to who brought the car to one of the applicant's sister's premises. He also says he would have a problem as to you know a car full of bombs or loaded with bombs in this premises. I submit there hasn't been any evidence that the bombs were in the car when the car was put there. Further, my submission is that the two applicants are before you and not the sister of the first applicant. We do not know whether the owners of that house were on a long leave of absence, the evidence which

was not challenged, which is before this Honourable Committee was that the late Kholile Sam who was referred to as Thabang, had made the arrangements. We are therefore not privy to the discussions that went on between the late Kholile Sam and the owners of the house. There was another question asked by my Learned Friend ...(intervention)

CHAIRPERSON: May I just quickly respond? The reason there are concerns about the lack of detail with regard to the discussion which took place between Thabang, who is now late unfortunately, and first applicant's brother-in-law and sister.

MR KOOPEDI: That is right.

CHAIRPERSON: And they raise this as a concern.

MR KOOPEDI: That is right and perhaps one was going to round off that by referring to - the same answer would still obtain for why 8.30? Why on a Monday? It is my humble submission that if we were privileged to have had Kholile Sam with us today as a co-applicant, we would have someone to ask these questions, but my submission is that the applicants before you do not have answers to those. It is not because they do not want to clarify the victims as to the exact roles played by people and the chronological order of things. It was stated that their knowledge and in particular the first applicant, he only knew certain things about this operation, he was not there when it all started. There was, on the full disclosure, there was a contention from my Learned Friend that there is no corroboratory evidence as to the fact that Kholile Sam was the person who masterminded or made a decision on this bomb. For assistance to my Learned Friend and the victims we had, I think it was during December in this very hall in what is known as the De Kock 6, this is where we had applicants applying for the murder of Kholile Sam and the reason why they applied for his murder was that they said he had masterminded the Witbank bomb blast.

CHAIRPERSON: Was that the application by members of the Security Force?

MR KOOPEDI: That is indeed so. It was heard in this very hall. So I am mentioning this fact to try and assist my learned friend and the victims in terms of whether that is corroboratory or not. I will rest there, thank you Chairperson.

CHAIRPERSON: Yes. Well we have come to the conclusion of this matter today, obviously taking note of the fact that Mr Schultz's written Heads are still going to follow before this matter can be disposed of. We therefore are unable to pronounce any decision in respect of the two applications made by the applicants appearing before us today.

We however wish to express our gratitude to the victims for

having made an extra-ordinary effort to attend this Hearing which obviously is a painful hearing as it is a reminder of the trauma that they have suffered together with their loved ones, but have done so in order to hear for themselves as to what led to the commission of this incident and to hear for themselves as to why the offences for which amnesty is being sought by the two applicants, were committed and the reasons which led to the commission of those offences and more pertinently how those offences were committed, which is the information that can be obtained only from the applicants as the people who perpetrated the deed that the victims are now carrying emotional scars for the rest of their lives.

We hope that the evidence that has been led before this Committee will go a long way in assuaging and ameliorating your pain, notwithstanding the concerns which have been raised by the legal representatives appearing for some of you. We hope that the fact that today has been the day when such evidence has, for the first time, been led in your presence, will definitely assist and enable you to at least close a chapter, a painful chapter in your lives so that you can start a difficult start of living a normal life. We thank you for attending.

We will then adjourn until tomorrow morning at 9 o'clock when other applicants will be heard who are applying for amnesty.

Thank you.

COMMITTEE ADJOURNS