

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 18 22 NOVEMBER 2012 PAGES 1877 TO 2007

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 22 NOVEMBER 2012]
 2 [09:36] CHAIRPERSON: Good morning. The
 3 Commission resumes. Good morning, Bishop. We have Bishop
 4 Seoka back, I see. He's still under cross-examination.
 5 Bishop, I must remind you - it shouldn't be necessary, but
 6 I have to do it - that you're still under oath. Mr Burger,
 7 I believe you have some more questions for the bishop?
 8 MR BURGER SC: Yes, thank you, Chair.
 9 Morning, Bishop. I have asked my attorney to place before
 10 you some of the documents I want to discuss with you today.
 11 The one is your statement, which you know, that's exhibit
 12 M. The second one is the SAPS presentation, that's the
 13 bound volume, which is exhibit L. We've also placed before
 14 you the transcript of your evidence on the 14th of November,
 15 and since that day we've received a statement from General
 16 Naidoo, which I want to refer to briefly with you, and
 17 there's also a minute of a special JOCOM meeting of the 16th
 18 of August at half past 1 that day, which we have placed
 19 before you, and then I'll refer to some photographs on the
 20 screen.
 21 CHAIRPERSON: Forgive me for
 22 interrupting, it always makes it easier to follow later.
 23 May I suggest that we, those documents which have not yet
 24 been given exhibit letters, should be given exhibit letters
 25 so that you can then refer to them by means of the

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1 appropriate letter. Now according to my notes we've got to
 2 CC, which is the video clips which were handed in, relating
 3 to the 16th of August, were handed in by the evidence
 4 leaders yesterday. So how many of the documents do you
 5 have there which have not already got exhibit letters?
 6 MR BURGER SC: Three, Chair. The one is
 7 the transcript of the 14th of November –
 8 CHAIRPERSON: Well, I take it the
 9 transcript doesn't have to be an exhibit.
 10 MR BURGER SC: Then the next document is
 11 the Naidoo statement.
 12 CHAIRPERSON: So DD will then be the
 13 Naidoo statement. Yes?
 14 MR BURGER SC: And the JOCOM minute of
 15 the 16th –
 16 CHAIRPERSON: And EE, JOCOM minute of the
 17 16th of August?
 18 MR BURGER SC: Of the 16th of August.
 19 CHAIRPERSON: So let me just repeat that.
 20 DD, we already allocate the exhibit letters, will be what
 21 we can call the Naidoo statement, statement of General
 22 Naidoo, which he will presumably confirm when he gives
 23 evidence, or not, as the case may be, and EE is the JOCOM
 24 minute of the 16th of August.
 25 MR BURGER SC: Thank you, Chair.

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1 CHAIRPERSON: Do you have copies? Do you
 2 propose giving us copies of those documents, or I suppose
 3 they will be put before us eventually in due course. It's
 4 just important at this stage for –
 5 MR BURGER SC: We will place them before
 6 you in due course, probably –
 7 CHAIRPERSON: - for the witness to see
 8 it, yes.
 9 MR BURGER SC: For the convenience of the
 10 witness we made him a little parcel that he can follow the
 11 process.
 12 CHAIRPERSON: Yes, yes, I understand it.
 13 MR BURGER SC: Bishop, there's some
 14 unanswered questions from last time that I would like to
 15 revisit with you. You may remember, I put the proposition
 16 to you that it was reasonable for Lonmin not to go to the
 17 strikers to negotiate on the 16th of August this year. Do
 18 you remember that proposition I put to you?
 19 RT REV SEOKA: I remember that, Sir.
 20 MR BURGER SC: And I gave you eight
 21 reasons for that proposition. If you have a look at the
 22 transcript of your evidence, I'm not going to read it to
 23 you, but the eight reasons you will find starting at page
 24 1418. There are four pages to a page and you'll find the
 25 page numbering in the top right-hand corner. Now if you

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1 turn to page 1418, and what I put from there were the
 2 killings on the 12th, the killings on the 13th, the
 3 burnings, all these things in order to lead up to the
 4 proposition which I've put to you, that it was reasonable
 5 for Lonmin not to go back to the strikers to negotiate on
 6 the 16th of August. Your answer to that we find at 1423,
 7 and that's why I have to pick it up again with you, because
 8 you answer that proposition by not answering it. At the
 9 top of page 1423 you start with a long answer and you say
 10 inter alia, lines 2 to 4, "My comment is simply that Lonmin
 11 managers missed a golden opportunity despite what had
 12 happened to them." Then at line 11 you say, "As a clergy
 13 person you are always in the midst of thousands of people
 14 who recognise you and you cannot recognise all of them,"
 15 and then you say opposite line 20, "That is for the reason
 16 I would have thought that they recognise me and accepted me
 17 as a spiritual leader of a traditional church. I'm not a
 18 leader of a fly-by-night church." Now that was an answer
 19 unbecoming a bishop, and I want to ask you now to deal with
 20 the proposition I've put to you, Bishop. I put to you that
 21 it was reasonable for Lonmin –
 22 CHAIRPERSON: - unbecoming a bishop.
 23 That is possibly a point you may argue at the end of the
 24 case, if it's relevant to what we have to consider, but I
 25 don't think it's necessary to make statements like that and

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1 I expect you to withdraw it.
 2 MR BURGER SC: I will do so, Chair. Can
 3 I put the proposition to you seriously, Bishop, it was
 4 reasonable for Lonmin not to go to the strikers to
 5 negotiate on the 16th of August in the light of these facts?
 6 CHAIRPERSON: I think we must give the
 7 interpreter a chance to interpret.
 8 MR MAHLANGU: Thank you, Mr Chairperson.
 9 RT REV SEOKA: I hear what you say –
 10 through you, Chair – but I don't think I understand what
 11 you're saying. The fact that I met with Lonmin officials,
 12 explained why I was there, ought to have given them a sense
 13 of urgency to meet with those people and probably to find
 14 out as to why suddenly they're interested in meeting with
 15 them if they had refused to meet with them before, and I'm
 16 not aware that they did refuse to meet with them.
 17 MR BURGER SC: No, I put that proposition
 18 to you because we've since your previous evidence obtained
 19 a statement from General Naidoo, that is, Bishop, DD which
 20 is before you, exhibit DD, and you'll read on page 2 of
 21 that statement, this is what the General will come and say,
 22 we're told, and assume for present purposes that he will
 23 say this. Right at the foot of that page 2 there's an
 24 unnumbered paragraph. It starts with, "On Tuesday, the 14th
 25 of August." Do you have that?

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1 RT REV SEOKA: Yes.
 2 MR BURGER SC: Let me read that with you,
 3 and I want to put to you that there was really no
 4 opportunity to go back to the koppie for Lonmin on the 16th.
 5 The General says, "On Tuesday, the 14th of August, 2012, the
 6 additional resources arrived from the various units
 7 nationally to support the operation. The approach that was
 8 decided upon was the negotiated approach with the striking
 9 approach to lay down their weapons disperse, and conduct
 10 their labour dispute through established structures. If
 11 the negotiated approach failed, then consideration would
 12 have been given to disperse and disarm the strikers as they
 13 were armed and posed a threat to public safety and
 14 security." Now you were not aware of these facts when you
 15 spoke to the Lonmin management on the 16th of August, were
 16 you?
 17 RT REV SEOKA: I was not aware.
 18 MR BURGER SC: This was another reason
 19 why they couldn't go back to the koppie that afternoon.
 20 RT REV SEOKA: I don't know that. If
 21 they knew that I would have expected them to inform me that
 22 there was a process that was proposed in place.
 23 MR BURGER SC: What they did tell you was
 24 the following, Bishop. They said Mr Mokoena told you that,
 25 (1), it was unsafe to go and address the crowd in the light

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1 of the killings that had occurred. Is that correct?
 2 RT REV SEOKA: I don't remember that.
 3 All I remember is that the company spokesperson said they
 4 are not going to talk to these criminals and murderers,
 5 full stop. That's my knowledge. In fact, Sir, Mr Mokoena
 6 didn't have much words to say. The person that spoke most
 7 was his colleague, Mr Kgotle.
 8 MR BURGER SC: Well, you know that that
 9 is disputed by all three the gentlemen involved, but what I
 10 put to you now is what they will tell the Commission you
 11 were told, and I still want to put this to you, Mr Mokoena
 12 said to you that it was unsafe to go and address the crowd
 13 in the light of the killings that had occurred. Do you
 14 deny that, or do you simply not remember that?
 15 RT REV SEOKA: I actually deny it. I
 16 don't think I'll forget a statement like that from Mr
 17 Mokoena. I can tell you exactly what Mr Mokoena said to
 18 me.
 19 MR BURGER SC: Bishop, he secondly said
 20 to you that the conduct of the crowd was unlawful and
 21 illegal and should not be legitimised. Now do you deny
 22 that or do you not remember that?
 23 RT REV SEOKA: Words like "legitimise," I
 24 don't think I will easily forget that, and therefore it was
 25 never used in my presence on that particular day.

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1 MR BURGER SC: Then the third thing he
 2 said to you, Bishop, was that the area had been declared as
 3 a Police area and that no-one was allowed to go to the
 4 koppie. Do you remember that?
 5 RT REV SEOKA: He said that when we were
 6 leaving the command station, after having talked to Ms, to
 7 the lady in charge, and as I said previously, as we were
 8 walking towards the car park an unknown person to me, a
 9 gentleman came and spoke to Mr Mokoena. It's only after he
 10 had been with that particular person who he spoke to him,
 11 that he came and said those words to us.
 12 MR BURGER SC: We have also heard
 13 evidence since you last gave evidence, Bishop, which
 14 relates to a photograph we find in exhibit L, that's the
 15 police dossier, it's slide 168. You see the heading is,
 16 "Protester 6 addresses the crowd."
 17 RT REV SEOKA: Yes, I see that.
 18 MR BURGER SC: Now the Police's version -
 19 and let us assume that to be proved in the fullness of time
 20 - is that that person spoke after 1 o'clock on the 16th. In
 21 fact they make it 11 minutes past 1, and he said words in
 22 Xhosa to the effect, "If the Police comes today we will
 23 finish them off." You didn't know that either?
 24 RT REV SEOKA: I didn't know that.
 25 MR MPOFU: Chairperson, I don't want to

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1 interrupt my learned colleague's cross-examination. Just
 2 to place on record that that interpretation is not, the
 3 fact that we're not contesting it right now, it might be
 4 contested in what Mr Burger calls the fullness of time, but
 5 that is not the only interpretation of what was said by the
 6 –

7 CHAIRPERSON: Evidence was given, a video
 8 was shown yesterday which showed – by the evidence leaders
 9 of the Protester 6 addressing the crowd. The interpreter
 10 interpreted it - and correctly, I'm informed by the
 11 isiXhosa linguist on my left, and Mr Madlanga with his
 12 isiXhosa linguist who's present. The interpreter
 13 interpreted it and the interpretation was not challenged,
 14 so you can raise the point perhaps later, but I'm not going
 15 to stop Mr Burger. Mr Burger is perfectly entitled to put
 16 what was interpreted yesterday and accepted all round as
 17 correct. If the –

18 MR MPOFU: No, that's exactly what he's
 19 not doing. If he was putting the interpretation that was
 20 given by the interpreter I wouldn't be talking to you,
 21 Chairperson.

22 CHAIRPERSON: What's the difference?
 23 MR MPOFU: The difference is this
 24 suggestion that "We will finish them off," that was not
 25 said by the interpreter.

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1 CHAIRPERSON: My recollection I'm afraid
 2 is it was, but we will presumably, when we have yesterday's
 3 transcript – at the moment my recollection is that Mr
 4 Burger is correct and I'm supported by my Commissioners,
 5 fellow Commissioners, and I'll allow Mr Burger to proceed.

6 [09:56] MR BURGER SC: Bishop, and just to finish
 7 off on this proposition, it's for – well I'm speaking
 8 English, it's not Xhosa, so "finishing off" is quite
 9 innocent. Bishop, to conclude on this point, it is for
 10 these reasons and these multitude of facts that I will
 11 argue at the end of this inquiry that it was reasonable for
 12 Lonmin not to go to the strikers to negotiate on the 16th of
 13 August. If you want to add anything, you are welcome to,
 14 but I have to put that to you on this issue.

15 RT REV SEOKA: If I were a responsible
 16 officer of an institution, and somebody who is from a
 17 reputable institution that can be trusted and brought a
 18 message, I will be willing to listen, and probably rethink
 19 my position, alternatively I would have tried to give that
 20 person a chance and probably do some checking, how
 21 authentic the message was and try and find out what the
 22 motivation was all about, and just to give it a chance,
 23 especially if there was knowledge of the statement that you
 24 have alluded to, said in Xhosa, because you would want to
 25 create a language that is peaceful, a language that is

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1 engaging constructively so that there could be a solution
 2 to what seems to be a problem. That's why I believe that
 3 the God sent messenger could have listened at the time
 4 because he had not been part to all what had happened
 5 previously, and I didn't know all these things that you are
 6 saying, and I just got there with my companion and we did
 7 what we were asked to do.

8 You see, Mr Chair, it's actually very
 9 interesting, I'd use the word loosely, to observe that the
 10 workers on the koppie on that day in that hour I spoke to
 11 them, didn't show anger, didn't use strong language, they
 12 were wanting to reach out, but when I encountered the
 13 company's representative there was a strong language, anger
 14 and denial. You see, Sir, I didn't know what had happened.
 15 I don't know what discussion had gone on.

16 MR BURGER SC: It's common cause –
 17 RT REV SEOKA: I am talking about what I
 18 experienced on that particular time, and so my engagement
 19 with this company people was really to say to them, there's
 20 an opportunity, these people are willing to listen to you.
 21 Sir, you must remember that I said earlier on, they asked
 22 the employer to come and address them on their needs. They
 23 never said, we want to talk to the company, the Mkashe who
 24 was going to be talked to, but he was being asked to come
 25 and talk to the workers, so I saw that as an opportunity

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1 really.

2 MR BURGER SC: Bishop, the second
 3 question, I didn't get an answer to last time, we find at
 4 page 1425, let's read it together and see whether we can
 5 get a response. 1425 opposite line 13.

6 RT REV SEOKA: Which document is that?
 7 MR BURGER SC: That's the inquiry
 8 transcript, your evidence of last time. That's the
 9 document with the four pages on one.

10 MR MAHLANGU: The page number again, Sir?
 11 MR BURGER SC: 1425.
 12 RT REV SEOKA: Okay.
 13 MR BURGER SC: Line 13, "Lonmin couldn't
 14 go there," that's to the koppie, "Lonmin couldn't get there
 15 because the koppie had been cordoned off by the SAPS in the
 16 meantime." "Yes." "How do you blame Lonmin for that,
 17 meaning not going back to the koppie, as the koppie had
 18 been cordoned off, what is your answer to that
 19 proposition?" You'll see, you don't answer it, you say
 20 "give us reasons why you didn't go back?" And in the end
 21 you say, perhaps you didn't go back because it was Lonmin
 22 property. That's not the question, the question is how do
 23 blame Lonmin for not going back to the koppie which had
 24 been cordoned off by the SAPS?
 25 RT REV SEOKA: You remember, Sir, that I

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1 had said also there were police all over the place. Having
 2 spoken to the Commissioner, I would have expected that she
 3 or whoever was in charge could have said, well, look, let's
 4 hear what this man has to say, and accompany us back to the
 5 koppie. I wonder why would Mr Mokoena ask us to accompany
 6 him to the commanding station, if it was not the intention
 7 to hear what the police would advise.

8 MR BURGER SC: So was your answer that
 9 you don't blame Lonmin for not going back to the koppie but
 10 you blame Lonmin for not going to the Commissioner and ask
 11 for guidance?

12 RT REV SEOKA: The property belongs to
 13 Lonmin, the police must have been there on somebody's
 14 instruction or invitation, and I would have expected some
 15 collaboration between the two parties, that would help deal
 16 with the situation as it presented itself.

17 MR BURGER SC: Then your evidence is not
 18 a criticism of Lonmin not going back to the koppie, it is
 19 the criticism of Lonmin not trying to broker a deal with
 20 the Commissioner to go back to the koppie. Is that your
 21 evidence?

22 RT REV SEOKA: No, but the Lonmin
 23 officials took me to the Police Commissioner. I don't know
 24 why, but I still believe that as property owners, and
 25 assuming that the police were there at the company's

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1 invitation, Lonmin would have made an effort to go and
 2 address the workers, as I put the request to them.

3 MR BURGER SC: I don't understand the
 4 relevance of Lonmin being the owner, the koppie has been
 5 cordoned off by the police. What does it matter that
 6 Lonmin is the owner of the mine?

7 RT REV SEOKA: Well, in the first
 8 instance, I only knew that the place had been cordoned off
 9 by the police on our way back to the koppie. My
 10 transmission of the message, as given by the workers, was
 11 before that knowledge. I didn't know that. So, Chair,
 12 through you, from the company's office, maybe if the police
 13 had nothing to do with it, we could have been taken back to
 14 the mountain. Why do you think the company officials took
 15 us to the command station, why do you think that was the
 16 case? I don't know. I was never told.

17 MR BURGER SC: Bishop, I will at the end
 18 of this inquiry argue that you have not answered this
 19 proposition, so in fairness to, I will put it for the last
 20 time, and see whether we can get a coherent answer, and I
 21 read again to you on page 1425, line 13. I am asking you
 22 this, and I am inviting an answer. "Lonmin couldn't go
 23 there because the koppie had been cordoned off by the SAPS
 24 in the meantime, on your version." You say "yes," and I
 25 say, "How do you blame Lonmin for that?" What is your, may

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1 I interpose, short answer to that proposition?

2 RT REV SEOKA: I didn't know that before
 3 I spoke to them. I only knew about that afterwards, after
 4 I had engaged the police, after I had talked to management.
 5 So as far as I am concerned, there was still a window
 6 opened for engagement, that opportunity that I believe was
 7 missed.

8 MR BURGER SC: No, but just remember the
 9 facts, Bishop, when you walked to the parking garage that
 10 day, before the shooting occurred, you knew full well that
 11 the koppie had been cordoned off, you were told that.

12 RT REV SEOKA: In the first instance, I
 13 never went to any parking garage. I went to the parking
 14 lot.

15 MR BURGER SC: That's what I – yes, the
 16 parking lot, did I say "garage?" I am sorry, it's a rugby
 17 field.

18 RT REV SEOKA: And the second thing, what
 19 you are saying is not true.

20 CHAIRPERSON: Bishop, can I ask a
 21 question at this stage? I have the impression that you and
 22 Mr Burger may be talking at cross purposes. If I am
 23 misunderstanding you, please correct me. I understand you
 24 to be telling us this morning that your complaint against
 25 Lonmin on this part of the case, was that they didn't then,

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1 having been told that the police had cordoned off the area,
 2 didn't then go back to the police and say, never mind the
 3 fact that you cordoned it off, we have the Bishop here, who
 4 is preparing to act as a kind of a negotiator, and allow
 5 him and us to go back, under your protection as it were, to
 6 speak to the workers. Am I correct? Is that basically
 7 what you are saying?

8 RT REV SEOKA: Yes, Sir.

9 CHAIRPERSON: You see, you were asked a
 10 question at page 426, lines 12 to 14, "I don't understand
 11 why you blame Lonmin for not being willing to breach the
 12 SAPS 'no go' area. That I don't understand," that's what
 13 Mr Burger said, and then you gave the answer. Now, do I
 14 understand you to say, you didn't – or to be saying, you
 15 weren't suggesting that Lonmin should breach the SAPS "no
 16 go" area, you were suggesting that Lonmin "should use their
 17 influence," if one can use that expression, in quotation
 18 marks, with the police –

19 RT REV SEOKA: Yes.

20 CHAIRPERSON: - to persuade them to allow
 21 them and you, under police –

22 RT REV SEOKA: Protection.

23 CHAIRPERSON: - protection, to go and
 24 speak to the workers, is that really –

25 RT REV SEOKA: That's what I am trying to

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1 say.

2 CHAIRPERSON: Thank you.

3 MR BURGER SC: Bishop, but if this is

4 your version, I don't understand your evidence on page

5 1364, on page 1364, opposite the line 12, you tell us what

6 the Commissioner's view is, it's no good to go to her,

7 she's already told you, "look, Bishop, we are concerned

8 about security, you can negotiate whatever you want to

9 negotiate with management but security is not negotiable."

10 She is not going to allow anybody back to the koppie. I

11 put to you, you never considered to go back to the

12 Commissioner and never did you contemplate Lonmin to go

13 back to this, what you call angry, kort af, Commissioner.

14 RT REV SEOKA: Chair, I will change into

15 Nguni language.

16 MR MAHLANGU: And what language would

17 that be, Bishop?

18 RT REV SEOKA: Zulu.

19 MR BURGER SC: I am sure the interpreter

20 will help me, so please do, Bishop.

21 RT REV SEOKA: If you would please ask

22 that questions clearly again.

23 MR BURGER SC: Oh, okay. As I understand

24 your last answer, penultimate answer, you say what you

25 expected Lonmin to do was to go back and try to arrange

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1 with the Commissioner to be allowed to go back to the

2 koppie. Did I paraphrase that correctly?

3 [10:16] RT REV SEOKA: I just assumed that.

4 MR BURGER SC: Bishop, but I then asked

5 how could you assume that talking to the commissioner would

6 facilitate a visit to the koppie, because we know she had

7 told shortly before that security was not negotiable and

8 you told us that she was quite curt with you, quite brief,

9 quite nervous.

10 RT REV SEOKA: Yes. If you remember

11 well, we spoke to the leaders of the company there in their

12 offices, and they suggested we go to the commissioner.

13 They did not say to do what.

14 CHAIRPERSON: They did not say?

15 MR MAHLANGU: They did not say for what

16 purpose we're going there.

17 RT REV SEOKA: When we arrived, the

18 commissioner came, and we spoke to her. She did not say we

19 should not go back. It was only after the arrival of the

20 man that I said was not known to us. On our way to the

21 parking lot, to our vehicle, in order to go back to the

22 mountain. He then called Mokwena aside and spoke to him.

23 It was only then that Mokwena came to us and said, "I am

24 told you cannot go there any more, because this place is

25 now under the control of the police." Why was it not so

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1 that the commissioner herself told we cannot go back to the

2 mountain.

3 MR BURGER SC: I don't understand your

4 answer. We may have a language problem, but let me go back

5 to page 1364.

6 RT REV SEOKA: I understand what you are

7 saying, Sir, the problem you've had that you want to change

8 what I'm saying to fit that which you want to be conveyed.

9 MR BURGER SC: No, you're unkind to me,

10 Bishop.

11 RT REV SEOKA: I'm so sorry.

12 MR BURGER SC: We both speak in our

13 second languages, let's bear with each other.

14 RT REV SEOKA: I'm so sorry.

15 MR BURGER SC: Can I ask you to look at

16 page 163 and 164 of the record. 1363, 1364.

17 RT REV SEOKA: Yes.

18 MR BURGER SC: This is when you first get

19 introduced to the commissioner. That we see at line 24 on

20 page 1363. She introduced herself as Lieutenant-General

21 Mbombo.

22 RT REV SEOKA: Yes.

23 MR BURGER SC: Then you tell us in line 4

24 in English, "She is very anxious and unfriendly." And at

25 line 12, she says, "Look, Bishop, we are concerned about

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1 security. You can negotiate whatever you want to negotiate

2 with management, but security is not negotiable." Now, I

3 put to you a simple proposition. You couldn't seriously

4 contemplate that Lonmin must go back to this commissioner

5 and get permission to get onto the koppie, despite the

6 cordoning off. Your answer?

7 RT REV SEOKA: I think I've addressed

8 that issue several times now.

9 MR BURGER SC: I want to go back to the

10 timeline, because it's quite important to know when you

11 were where. On your latest version, you arrived back at

12 the JOC at about 1 o'clock and I say that if you have a

13 look at the record of your evidence at page 1394, lines 8

14 to 16. Line 8 at page 1394 says, The Reverend, "No, I did

15 not say I was at the gate at 1 o'clock, I said arrived at

16 the mine by 1 o'clock. I never said I was at the gate by 1

17 o'clock."

18 And I say, "Can I then understand where at the

19 mine did you arrive at 1? And you say, "I arrived at the

20 JOC. I believed it must have been about 1, because it was

21 eating time – people were eating. I was offered food and

22 therefore I concluded it was lunch time." Do you remember

23 that evidence?

24 RT REV SEOKA: That's true, that's true.

25 The commissioner also mentioned that she was going to look

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1 for something to eat. She left and never came back.
 2 MR BURGER SC: I'm only interested in the
 3 time now, so bear with me. Did you have lunch there?
 4 RT REV SEOKA: The chaplain gave us
 5 something to drink, cold drink. I mentioned that the first
 6 person we met there was the chaplain, Chaplain Marogwane
 7 and that he gave us something to eat. After talking to the
 8 commissioner, again we were given food, we were given
 9 sandwiches. Everyone who was there was eating. And,
 10 according to me, it was during the day and this was time
 11 that people were having lunch, it was lunch time.
 12 MR BURGER SC: No, I also get the
 13 impression from your evidence that it's reconstruction.
 14 Because lunch was being served, you assumed it was about 1
 15 o'clock, is that correct?
 16 RT REV SEOKA: I have long been saying
 17 that.
 18 MR BURGER SC: Yes, and we know now that
 19 you meet the chaplain at the JOC and the commissioner at
 20 the JOC.
 21 RT REV SEOKA: Yes.
 22 MR BURGER SC: And the three managers
 23 from Lonmin?
 24 RT REV SEOKA: No, the managers of Lonmin
 25 brought us there. We didn't find them there.

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1 MR BURGER SC: All three managers will
 2 tell the Commission that they met you at the JOC and that's
 3 where your discussion with them took place.
 4 RT REV SEOKA: That is what they are
 5 saying, it's not me who's saying that.
 6 MR BURGER SC: Bishop, I want to put to
 7 you that you came to the JOC on this occasion after 13:30,
 8 probably after 2 o'clock that afternoon. Do you accept
 9 that?
 10 RT REV SEOKA: That's what you are
 11 saying.
 12 MR BURGER SC: No, I'm asking for your
 13 comment to that.
 14 RT REV SEOKA: I've told you when I
 15 believe I was at the JOC, and I also said to you I did not
 16 look at the watch, because it wasn't actually the time that
 17 brought me there, the purpose of being there was to bring
 18 about peace. The peace would have been brought about if
 19 the people had met and had discussed. The request that I
 20 had brought there was that the employees, the workers are
 21 asking the employer to come and talk to them about their
 22 grievances.
 23 CHAIRPERSON: If I can interrupt you and
 24 Mr Burger at this stage, the point that's being discussed
 25 at the moment is the time. Now you've conceded that you

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1 estimate that it was about 1 o'clock is a reconstruction.
 2 RT REV SEOKA: Yes.
 3 CHAIRPERSON: Based mainly I think on the
 4 fact that it appeared to be lunch time, everybody was
 5 eating. Now, there has been evidence, you were shown a
 6 slide, 168, of protestor 6 addressing the crowd, now I take
 7 it protestor 6 wasn't addressing the crowd when you were
 8 there. And the police evidence is, and it may or it may
 9 not be an accurate reconstruction, but the police evidence,
 10 as I understand it, is that took place shortly after 1
 11 o'clock. Now, what essentially is being put to you is
 12 this, that if the police reconstruction as to that event,
 13 namely protestor's 6's address to the crowd having taken
 14 place after 1 o'clock, that seems to indicate that your
 15 reconstruction is possibly not correct. It is based
 16 primarily on the fact it was lunch time. If lunch was late
 17 that day and people were having lunch at say 2 o'clock,
 18 then it would be perfectly consistent with your evidence
 19 really, that you were there not at 1 o'clock, but at 2
 20 o'clock. I think that's the question that's being put to
 21 you. How do you comment on that?
 22 RT REV SEOKA: It's possible.
 23 MR BURGER SC: Bishop, what car were you
 24 driving that day?
 25 RT REV SEOKA: I was not driving, but the

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1 car in which I was, was an Audi, I think, X5.
 2 MR BURGER SC: IQ5?
 3 RT REV SEOKA: Ja, IQ5 and the car was
 4 black.
 5 MR BURGER SC: Can I show you a few
 6 photographs in order to try to plat the time when you were
 7 at the koppie, because we have a photograph of you there,
 8 and the police - we can work out the time.
 9 RT REV SEOKA: Sure.
 10 MR BURGER SC: Just before we have a look
 11 at the photographs on the screen, can I ask you to
 12 orientate ourselves as to time, to go to Exhibit L, that's
 13 the police dossier, and just have a look at slide 161.
 14 RT REV SEOKA: Yes, I can see that.
 15 MR BURGER SC: And 161, second last
 16 bullet, the police tells us that the leaders of AMCU
 17 addressed the protestors round about 12:35. Now keep that
 18 in mind, and I'm going to ask the first photograph to be
 19 shown, it is photograph DSC3655.
 20 CHAIRPERSON: If the photograph is going
 21 to be shown, it will have to become an exhibit, Mr Burger,
 22 it's not part of the - and the next exhibit then will be
 23 FF.
 24 MR BURGER SC: FF, thank you, Chair.
 25 That is Mr Mathunjwa at the koppie, Bishop, and the police,

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1 and we'll have to accept their version until they prove it,
 2 but accept for my purposes that he's talking there at
 3 13:15. But what I want to put to you for comment is, you
 4 arrived at the koppie after Mr Mathunjwa had left, do you
 5 accept that?
 6 RT REV SEOKA: Through you, Chair, I
 7 never even heard that there was a Mr Mathunjwa at the
 8 koppie. I didn't know who had addressed the workers.
 9 MR BURGER SC: No, Bishop, I'm asking
 10 something else. I'm putting to you for comment that when
 11 you arrived at the koppie, that man had already left. You
 12 met him subsequently, you know him now, he had left by the
 13 time you arrived, that's all I'm putting to you.
 14 CHAIRPERSON: I'm sorry, Mr Burger, I
 15 understood him to say he didn't see him there at all, so
 16 can't admit that he'd already left if he didn't know he was
 17 there, so I think again you're speaking past each other. I
 18 think I know what you want to establish, but I don't think
 19 you can get him to agree that Mathunjwa had already left,
 20 if, on his version, he didn't know that Mathunjwa had been
 21 there. All you can get him to say is, when he got there,
 22 Mathunjwa wasn't there, if he had been there earlier, he
 23 must have left. That's what it amounts to, surely, and
 24 furthermore, if Mathunjwa was there at 1:15, it follows
 25 that he, the bishop, was there later. He already conceded

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1 that in the response to my question that he's been
 2 reconstructing. If lunch was late, he was obviously there
 3 later, he may have been there at 14:00 or thereabouts, but
 4 – so I don't want to interrupt you unduly, but I think this
 5 point could be brought together more succinctly, with
 6 respect, than you're doing at the moment.
 7 MR BURGER SC: Shall we have a look at
 8 photograph GG. That's photograph DSC3666. You'll have to
 9 look at the screen, Bishop.
 10 RT REV SEOKA: Okay.
 11 MR BURGER SC: Is that the car in which
 12 you and your colleague arrived on that day?
 13 RT REV SEOKA: Yes.
 14 MR BURGER SC: There's nobody in that
 15 car. We've looked at it, it's empty now, but the police
 16 places that photograph being taken at 13:43, about quarter
 17 to two. Do you accept that?
 18 RT REV SEOKA: Yes.
 19 MR BURGER SC: Then HH is the next
 20 photograph, ESC3672, and that's you negotiating with those
 21 group of people you told us about, and the police put that
 22 at about 13:47.
 23 CHAIRPERSON: I don't know that
 24 negotiating is the appropriate expression. As one whose
 25 first language is English, I would say that I don't think

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1 the bishop has claimed that he was negotiating with them,
 2 he was talking to them, obtaining –
 3 MR BURGER SC: I didn't mean anything by
 4 that.
 5 CHAIRPERSON: No, I know you didn't, but
 6 in order to avoid misunderstanding later, I'm correcting
 7 you, if I may be permitted to do so.
 8 MR BURGER SC: You were interacting with
 9 the group of workers.
 10 RT REV SEOKA: Yes. I was listening to
 11 them telling me what their issues were.
 12 CHAIRPERSON: I'm sorry I didn't hear
 13 you, what time did you say that photo HH was taken,
 14 according to the police.
 15 MR BURGER SC: 13:47, Chair.
 16 [10:36] CHAIRPERSON: Thank you.
 17 MR BURGER SC: Bishop, from that it
 18 follows that you probably met the chaplain at the JOC after
 19 2 o'clock that afternoon.
 20 RT REV SEOKA: That's possible.
 21 MR BURGER SC: Yes, because we know you
 22 spent between 15 and 30 minutes with the workers at the
 23 koppie.
 24 RT REV SEOKA: That's possible, yes.
 25 MR BURGER SC: So we know by the time

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1 that you arrived at the JOC the koppie had been cordoned
 2 off because we know from an exhibit which is EE now, that
 3 there was a special JOCOM meeting on that day, EE, if
 4 you'll have a look at that. The heading is, "Special JOCOM
 5 meeting 16 August, 2012 at 13:30," and the Police's version
 6 is that this lasted till 2 o'clock. So by 2 o'clock these
 7 decisions had been taken. Do you accept that?
 8 RT REV SEOKA: I accept that, but I
 9 didn't know.
 10 MR BURGER SC: And it follows that by the
 11 time that you arrived at the JOC, the decisions recorded in
 12 paragraph 4 of EE had been taken. "Major-General Annandale
 13 informed the meeting that the approach will be as follows,
 14 communicate with the group on the koppie to again try to
 15 negotiate with them to lay down their weapons and leave the
 16 koppie. Protesters must be asked to leave their dangerous
 17 weapons on the koppie as they were leaving it. After this
 18 was done the protesters that refuse to leave will be
 19 searched on the koppie and the whole area will be swept for
 20 dangerous weapons, and finally if the protesters refuse to
 21 voluntarily lay down weapons and leave the koppie, stage 3
 22 of the operation will be implemented as a last resort."
 23 You didn't know this, and we also know from page 2 of
 24 exhibit EE that stage 3 ends off with a phase 3, which is
 25 encircle and disarm.

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1 RT REV SEOKA: I don't know that. I
 2 didn't know that.
 3 MR BURGER SC: You didn't know that. And
 4 at page 3 we are told that by 2 o'clock that afternoon
 5 Major-General Annandale had instructed Brigadier Pretorius
 6 and Lieutenant-Colonel Scott to report back at the JOC at
 7 quarter past 3 as he wanted the operation to commence at
 8 3:30. You didn't know that either?
 9 RT REV SEOKA: I didn't know that either.
 10 MR BURGER SC: But what we know is that
 11 shortly after you've spoken to the Lonmin management and
 12 the Commissioner, there was a commotion and the helicopters
 13 were lifting off at strange angles, correct?
 14 RT REV SEOKA: Yes.
 15 MR BURGER SC: Now the Lonmin management
 16 says that they met you round about 3 o'clock that afternoon
 17 at the koppie – not at the koppie, at the JOC. Do you
 18 accept in view of this timeline that that's probably
 19 correct?
 20 RT REV SEOKA: No, it's not true. We met
 21 the officials at their offices and I think that's a
 22 different place to where the police were. We together went
 23 to the, what I call the commanding station. We didn't find
 24 them there.
 25 MR BURGER SC: Bishop, the Lonmin people

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1 think you're mistaken on meeting them at what is called
 2 LPD. You met them at LPD on the next Monday, the 20th.
 3 It's on that occasion that the lady who had lost her family
 4 member was pointed out to you, on the 20th, the Monday. Her
 5 name is Constance Mgobhozi – M-G-O-B-H-O-Z-I – and it may
 6 not be necessary, but if it is necessary she's willing to
 7 come tell the Commission that she saw you on the 20th and
 8 not on the 16th. Do you accept that?
 9 RT REV SEOKA: That could be true, but
 10 I'm saying to you the first time I met these gentlemen was
 11 on the 16th at their offices at the reception area, and
 12 together we went to the Commissioner's area.
 13 CHAIRPERSON: I'm sorry, Bishop, was that
 14 a separate building?
 15 RT REV SEOKA: Yes, it was. At the
 16 offices of the company there is a reception area and we
 17 went inside into that reception area. Where we met the
 18 Police there is I think a search facility and we were
 19 standing outside. We never went into any building. We
 20 were outside.
 21 MR BURGER SC: Who took you to these
 22 managers, Bishop?
 23 RT REV SEOKA: It's the chaplain.
 24 MR BURGER SC: You didn't meet the
 25 chaplain at LPD, you met the chaplain at the JOC.

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1 RT REV SEOKA: Exactly. Exactly.
 2 MR BURGER SC: But is your version then
 3 that from the koppie you first went to the JOC and then to
 4 LPD and then back to the JOC?
 5 RT REV SEOKA: Yes. You have to recall
 6 that I had said when we left the koppie we didn't know
 7 where the offices were. We had been pointed at the
 8 facilities. So the first place we went was the place where
 9 the chaplain was, and it seems to be the same place where
 10 we met, subsequently we came back to meet with the
 11 Commissioner.
 12 MR BURGER SC: The fact remains, we'll
 13 lead the evidence on that. I don't think where you met is,
 14 for present purposes I can resolve. What we know is that
 15 you accept that you might have seen the lady who lost the
 16 family member on the Monday and not on the 16th?
 17 RT REV SEOKA: That's possible, yes.
 18 MR BURGER SC: But that means that your
 19 statement is wrong, Bishop. If you have a look at exhibit
 20 M, paragraph 10, go to page 3. It's part of paragraph 10,
 21 second line.
 22 RT REV SEOKA: What's the number of the –
 23 MR BURGER SC: It is exhibit M, page 3 of
 24 your witness statement.
 25 RT REV SEOKA: Oh, okay, sorry. Exhibit

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1 M.
 2 MR BURGER SC: Sorry, there are so many
 3 papers, Bishop.
 4 RT REV SEOKA: Yes.
 5 MR BURGER SC: Second line you say, "Mr
 6 Kgotle said that the mine management would not meet the
 7 workers because they were criminals and murderers." Now
 8 they reject that version, and we've been there. You go on,
 9 "When we asked why he called them murderers, Mr Kgotle said
 10 that they had killed their people, including security
 11 personnel. By "their people" I understood him to be
 12 referring to some of the 10 people who were killed on the
 13 13th of August. Mr Kgotle pointed out a woman at
 14 reception." Now that's not correct. I think we've agreed
 15 that that was on Monday the 20th.
 16 RT REV SEOKA: No, I said it is possible
 17 that it could have been a different date. I never said it
 18 was on – on my recollection I believe it was the first time
 19 I met Mr Kgotle, because the three gentlemen were there.
 20 If they say it's a Monday, it's possible, but my conviction
 21 –
 22 MR BURGER SC: Bishop, if I read this
 23 paragraph you suggest in this statement that you saw the
 24 lady on the 16th of August.
 25 RT REV SEOKA: Yes.

<p style="text-align: right;">Page 1909</p> <p>1 MR BURGER SC: We've now agreed you 2 didn't see her on the 16th. You accept that? 3 CHAIRPERSON: No, I understood him to say 4 that it is possible that he was mistaken, he thinks it was 5 the 16th; it could have been the 20th. I don't recall him 6 saying categorically he was wrong and it was definitely on 7 the 20th. 8 MR BURGER SC: Bishop, let's get clarity 9 on that. You said to me that may be true when I put to you 10 the lady's statement. Do you accept her statement to be 11 true that she saw you on the 20th and not the 16th? 12 RT REV SEOKA: I can't say it's true. I 13 believe that the truth is what I'm telling you, but it is 14 possible that she may have seen me on the day she claims to 15 have seen me. We never spoke to each other. She was 16 pointed at. 17 MR BURGER SC: I want on this issue also 18 to put to you what Mr Kgotle will say he did tell you at 19 the JOC on the 16th of August. Mr Kgotle will say that this 20 was his first encounter with you on the 16th and it took 21 place round about 3 o'clock, outside the JOC. 22 RT REV SEOKA: Ja, but that's Mr Kgotle's 23 version. 24 MR BURGER SC: Yes. He said both Mr 25 Mokoena and Mr Kwadi knew you, which was the impression he</p>	<p style="text-align: right;">Page 1911</p> <p>1 koppie. 2 MR BURGER SC: No, the second time. The 3 second time. 4 RT REV SEOKA: My second time going to 5 the koppie was on a Monday. 6 CHAIRPERSON: Bishop, I think what Mr 7 Burger is concerned with is you didn't return to the koppie 8 on the 16th. 9 MR BURGER SC: Yes. 10 CHAIRPERSON: You deal with that as a 11 matter of fact in paragraph 14 and following of your 12 original statement, which is exhibit M, and he wants to 13 know the full reasons as to why you didn't go back to the 14 koppie on the 16th of August. Is that correct, Mr Burger? 15 MR BURGER SC: Yes, indeed, Mr Chair. 16 Thank you. 17 RT REV SEOKA: Chair, I must say first of 18 all that I was being confused by the use of phrase "second 19 time." Now I understand the way you have put it – 20 CHAIRPERSON: That is why I intervened to 21 try to remove the confusion. 22 RT REV SEOKA: Thank you. Nobody stopped 23 me from going there initially, but the second time I went, 24 as I was preparing to go back I was then stopped. 25 MR BURGER SC: Who stopped you, Bishop?</p>
<p style="text-align: right;">Page 1910</p> <p>1 had. He said that you told them that you'd been to the 2 koppie and that the employees wanted to meet with 3 management. 4 RT REV SEOKA: I used the word "Mkashe" 5 because that's the word used by them. 6 MR BURGER SC: He then responded that for 7 safety reasons they were unable to risk their lives; 10 8 people had already lost their lives. There's an 9 established procedure and that management is happy to meet 10 with the workers within the parameters of an established 11 procedure. 12 RT REV SEOKA: That would be his words, 13 not mine. 14 MR BURGER SC: Yes. Can I deal with 15 another subject hopefully briefly, and I want to understand 16 why you didn't go back to the koppie on the second 17 occasion. We know that your first visit was without leave 18 of either the Police or Lonmin. Is that correct? 19 RT REV SEOKA: Yes. 20 MR BURGER SC: We know that for the 21 second visit you did not require the leave of Lonmin. 22 RT REV SEOKA: Yes. 23 MR BURGER SC: But you didn't go back to 24 the koppie. Why is that? 25 RT REV SEOKA: Ja, but I did go to the</p>	<p style="text-align: right;">Page 1912</p> <p>1 RT REV SEOKA: Mr Mokoena said, "You 2 cannot go back there." 3 MR BURGER SC: We've established you 4 don't need Lonmin's permission. That you've said to us 5 last time. So Mr Mokoena can't stop you. 6 RT REV SEOKA: It's true I did not need 7 permission. 8 MR BURGER SC: So why didn't you go back 9 to the koppie on the 16th for the second time? 10 RT REV SEOKA: It's because he did say 11 that I cannot go back there, and I saw him talking to this 12 man and he said to me, "You cannot go back there." He said 13 it was cordoned off by the Police and it's a security risk, 14 and I would have been naive actually to go back there when 15 I saw with my own eyes helicopters taking off and there was 16 a lot of frantic movement happening there. 17 MR BURGER SC: Bishop, I accept that. It 18 would have been a most inappropriate venture by you to try 19 to go back to the koppie at that time of that fateful 20 Thursday afternoon. I agree with that. That was because 21 the koppie had been cordoned off and the Police were moving 22 in. 23 RT REV SEOKA: That's true. 24 MR BURGER SC: And your position was 25 exactly the same as that of Lonmin at that point in time.</p>

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1 They couldn't simply go back to the koppie. It had been
 2 cordoned off and the Police were moving in.
 3 [10:56] RT REV SEOKA: In my knowledge not before
 4 we were told, because we had been there and if it had been
 5 cordoned off by the police, who were present on our
 6 arrival, they would have stopped us. They did not stop us.
 7 If the Police or anybody had said to us don't go there,
 8 it's dangerous, and indeed you can see it was dangerous and
 9 we are going to be breaking law by going there, we would
 10 not have done that because we were not there to break law.
 11 MR BURGER SC: Bishop, that doesn't
 12 answer my question, but let's go carefully on the timeline.
 13 We know that by the time that you were at the koppie,
 14 quarter to 2, the cordoning off hasn't been announced yet.
 15 That gets announced at 2 o'clock that afternoon, so it's
 16 probably not cordoned off when you were there. Chair, I
 17 have one subject, shortish, to deal with still but I won't
 18 be able to finish it before 11. Is this perhaps a
 19 convenient time?
 20 CHAIRPERSON: It is a convenient time and
 21 the Commission will adjourn for tea.
 22 [COMMISSION ADJOURNS COMMISSION RESUMES]
 23 [11:22] CHAIRPERSON: The Commission resumes.
 24 You are still under oath, Bishop. Mr Burger, you are still
 25 cross-examining.

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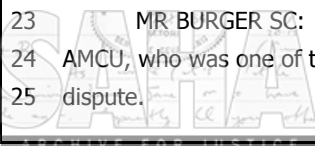
1 MR BURGER SC: Thank you, Chair. Bishop,
 2 you went to the koppie on the 16th of August as a
 3 peacemaker.
 4 RT REV SEOKA: Yes.
 5 MR BURGER SC: And a peacemaker should
 6 have many attributes, but can I just put three to you, and
 7 see whether we can agree that firstly, a peacemaker should
 8 be independent.
 9 RT REV SEOKA: Yes.
 10 MR BURGER SC: A peacemaker should listen
 11 to both sides to the dispute.
 12 RT REV SEOKA: Yes.
 13 MR BURGER SC: And the peacemaker should
 14 try to understand the background to the dispute.
 15 RT REV SEOKA: Yes.
 16 MR BURGER SC: Now let me start with the
 17 third one, first, the understanding of the background to
 18 the dispute. We know that when you went there on the 16th,
 19 you really did not know what had gone before in those
 20 fateful days starting on the 9th of August, apart from what
 21 you might have seen on the TV and read in the newspapers.
 22 RT REV SEOKA: That's true.
 23 MR BURGER SC: You had not even heard of
 24 AMCU, who was one of the main of the protagonists in the
 25 dispute.

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1 RT REV SEOKA: Yes. And it's also so
 2 with NUM.
 3 MR BURGER SC: If we look at the second
 4 prerequisite for a peacemaker that I've referred to, that
 5 is to listen to both sides, you tell us how you listened to
 6 the sides in your statement, exhibit M at page 8. This is
 7 how you listened to the striking workers. You say, "We
 8 introduced ourselves in detail, and offered whatever
 9 assistance we could give to resolve the situation."
 10 Bishop, I am wrong, it's page 2, paragraph 8, I am sorry,
 11 paragraph 8, and I read you the first sentence.
 12 MR HANABE: Which one is it? Which
 13 document are you talking about? Is that -
 14 MR BURGER SC: M.
 15 MR HANABE: Is that your statement?
 16 MR BURGER SC: No, your statement exhibit
 17 M.
 18 MR HANABE: Oh, okay. Page 2?
 19 MR BURGER SC: Page 2, paragraph 8, let
 20 me read to you again. I am really dealing with what you
 21 knew of the stances of the two sides to the dispute. I am
 22 now dealing with the striking workers, paragraph 8, let me
 23 read the whole paragraph to you, and then the interpreter
 24 can interpret it back. "We introduced ourselves in detail,
 25 and offered whatever assistance we could give to resolve

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1 the situation. The workers' leaders told us about their
 2 experiences of being shot at by the mine security personnel
 3 and NUM officials. We were informed that we should secure
 4 the attendance of Mkhwazi," loosely translated is the
 5 employer or the management, "to come to the koppie and
 6 address the workers. The second request was for food and
 7 water."
 8 RT REV SEOKA: Yes.
 9 MR BURGER SC: In fact you explain that
 10 more fully in your evidence-in-chief, if you have a look at
 11 the record, the transcription, page 1358 of the transcript,
 12 and you now give us some more detail of your discussion
 13 with the workers at the koppie. 1358, line 6, "We said to
 14 them we had seen in the television and the newspapers that
 15 there was a stand off between them and the company, and as
 16 church representatives, we wanted to know how we can help,
 17 and therefore we were in there specifically to help them
 18 communicate or deal with the issue that has brought them to
 19 the koppie," and you add, "the response was that they were
 20 at the mountain because they went to put their demands
 21 before the company, and they were met and shot at by the
 22 security personnel and some of the officials from the NUM
 23 trade union." That's very briefly what you understand from
 24 their side of the story, the workers' side, is that
 25 correct?



<p style="text-align: right;">Page 1917</p> <p>1 RT REV SEOKA: That is correct.</p> <p>2 MR BURGER SC: And Lonmin's stance, you</p> <p>3 explained to us what you knew about that, and that is in</p> <p>4 exhibit M, your statement, in that paragraph 10, that we've</p> <p>5 read before where you spoke with the Lonmin people and you</p> <p>6 told us what they told you. That's really the totality of</p> <p>7 what you had known of Lonmin's stance to the dispute?</p> <p>8 RT REV SEOKA: Yes, Sir.</p> <p>9 CHAIRPERSON: Mr Burger, I think the</p> <p>10 bishop then did go on in his statement, having said what</p> <p>11 you've referred to in para 10, about the stance of Lonmin.</p> <p>12 He dealt with it further in para 13, where he says that</p> <p>13 after those things had happened, and after they had spoken</p> <p>14 to the Commissioner of Police and so forth, and the</p> <p>15 helicopters had taken off in the air, Mr Mokoena said, "we</p> <p>16 should return to the koppie, tell the striking miners, mine</p> <p>17 management will only talk to them if firstly, they</p> <p>18 surrender their weapons, secondly they elect between five</p> <p>19 or eight to represent them, and thirdly they disperse from</p> <p>20 the koppie." So that I think is necessary for the purposes</p> <p>21 of completeness in regard to what the bishop says Lonmin's</p> <p>22 attitude was.</p> <p>23 MR BURGER SC: Let me put that to him,</p> <p>24 Chair, thank you. You've heard what the Judge has said,</p> <p>25 Bishop.</p>	<p style="text-align: right;">Page 1919</p> <p>1 paragraph 32, it limits itself to the 16th of August. Why</p> <p>2 is that if you deal with the broader moral dimension of</p> <p>3 this tragedy?</p> <p>4 RT REV SEOKA: It's because as I said, on</p> <p>5 the first day of giving my testimony, I will speak on my</p> <p>6 personal experience what I saw, what I heard and what I</p> <p>7 said. I am trying to limit myself to that experience, but</p> <p>8 broad moral issues extend beyond that, because I am looking</p> <p>9 at how this process taking place here will contribute</p> <p>10 towards harmony, co-operation and peace for the country.</p> <p>11 CHAIRPERSON: Mr Burger, you will</p> <p>12 remember that when he came to this part of his evidence, I</p> <p>13 wouldn't allow him and nor would I allow Mr Mpofu who was</p> <p>14 leading him, to cover the matter contained in paragraph</p> <p>15 32.3 and following, because I said it wasn't relevant to</p> <p>16 this phase of the proceedings, and I asked him to confine</p> <p>17 himself to the events up to the 16th, so I just mention,</p> <p>18 just remind you of that.</p> <p>19 MR BURGER SC: Chair, I am painfully</p> <p>20 aware of that, and I am only addressing 32.1 and 32.2, if</p> <p>21 you will permit me. Bishop, you are a very senior</p> <p>22 clergyman, you have been involved in this matter and you</p> <p>23 are now expressing what you term the broader moral</p> <p>24 dimension. What I would like to understand from you is why</p> <p>25 you limit this part of your evidence to the 16th of August,</p>
<p style="text-align: right;">Page 1918</p> <p>1 RT REV SEOKA: Yes.</p> <p>2 MR BURGER SC: That is also a version you</p> <p>3 give, it's disputed by the Lonmin people but that you also</p> <p>4 knew about their willingness or unwillingness to talk to</p> <p>5 the workers, and on what terms.</p> <p>6 RT REV SEOKA: Yes.</p> <p>7 MR BURGER SC: And on the third question</p> <p>8 of the independence of the peacemaker, we see that in your</p> <p>9 statement in M, in paragraph 32, you deal with the broader</p> <p>10 moral dimensions of the crises. Now this statement is made</p> <p>11 on the 12th of November 2012, correct?</p> <p>12 RT REV SEOKA: Yes.</p> <p>13 MR BURGER SC: By then, you knew about</p> <p>14 the events which preceded the 16th of August.</p> <p>15 RT REV SEOKA: Yes.</p> <p>16 MR BURGER SC: You knew that 10 people</p> <p>17 had lost their lives prior to the 16th of August?</p> <p>18 RT REV SEOKA: Yes.</p> <p>19 MR BURGER SC: By the time you make your</p> <p>20 statement, you know that of those 10 people were members of</p> <p>21 the Lonmin staff and members of the SAPS.</p> <p>22 RT REV SEOKA: I don't know the members</p> <p>23 of SAPS but am aware that there were members of Lonmin and</p> <p>24 the workers.</p> <p>25 MR BURGER SC: Now if we read your</p>	<p style="text-align: right;">Page 1920</p> <p>1 and let me be more direct, why you don't deal with the 10</p> <p>2 people who lost their lives after the 9th of August, as if</p> <p>3 that's not part of the moral challenge we face?</p> <p>4 RT REV SEOKA: I said through you, Chair,</p> <p>5 that other events I did not know except what I had seen on</p> <p>6 television and in newspapers. The experience I am</p> <p>7 presenting here, is that of the 16th.</p> <p>8 MR BURGER SC: That's not correct,</p> <p>9 Bishop, you tell us about the planting of weapons on</p> <p>10 bodies. You don't know anything about that, with the</p> <p>11 greatest of respect, but you write about that in your moral</p> <p>12 dissertation.</p> <p>13 RT REV SEOKA: That's your</p> <p>14 interpretation.</p> <p>15 MR BURGER SC: But then your answer is</p> <p>16 not correct, that you simply limit yourself to events</p> <p>17 you've witnessed. That's not correct.</p> <p>18 RT REV SEOKA: In this instance, yes.</p> <p>19 MR BURGER SC: I beg your pardon?</p> <p>20 RT REV SEOKA: In this instance, yes,</p> <p>21 because the Chairperson had told us to limit ourselves to</p> <p>22 the 16th.</p> <p>23 MR BURGER SC: No, Bishop, this side of</p> <p>24 the inquiry is concerned with the events of the 9th to the</p> <p>25 16th of December – August, the death of 44 people, that's</p>

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1 what we are concerned with.

2 RT REV SEOKA: Ja, you are right about

3 that, but my experience and my knowledge which is first-

4 hand, is that of the 16th. But when you address moral

5 issues, you need to be broader in your thinking, because

6 you are trying to point at things that should be avoided if

7 the consequences are going to be negative. And if the

8 consequences are going to be positive, they should also be

9 addressed.

10 MR BURGER SC: Bishop, what is your view

11 on the death of the people, the 10 people from the 9th to

12 the 14th of August, the moral side of that, what is your

13 view on that?

14 RT REV SEOKA: I think I should say first

15 of all that it is regrettable, and morally unacceptable.

16 Nobody has the right to take anybody's life, and for the

17 sanctity of life is a very critical thing in our moral

18 teachings.

19 MR BURGER SC: And when you considered

20 the moral and cultural dimensions of this, at the time that

21 you wrote your statement on the 12th November, you held that

22 view also in respect of those 10 people.

23 RT REV SEOKA: Yes. There I even think

24 about those people who died in the farmlands of the Western

25 Cape. That's what I referred to as broad perspective of

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1 looking at moral issues.

2 MR BURGER SC: What I don't understand is

3 that you address these moral and cultural dimensions and

4 you refer to a story you've read somewhere, of the planting

5 of weapons among dead bodies, but you do not express any

6 view on the 10 people who had lost their lives shortly

7 before the 16th which you knew about when you wrote your

8 statement. That's what I don't follow.

9 RT REV SEOKA: No, I didn't know about

10 that, except that which I saw on television and newspapers.

11 I said to you that when I was in the premises of – or in

12 the area of the mine, I never saw any signs of people

13 having killed there. Nobody pointed at any of the signs

14 that somebody was lying there dead. I only saw that when

15 you gave me this book.

16 MR BURGER SC: Bishop, will you read with

17 me your statement M, page 3, please? There you say five

18 lines from the top, you are now talking to the Lonmin

19 people on the 16th of August, exhibit M, page 3, six lines

20 from the top. "By their people, I understood him to be

21 referring to some of the 10 people who were killed on the

22 13th of August." Of course you knew about these people by

23 the 16th.

24 RT REV SEOKA: Yes, I've said that

25 repeatedly. I saw it on the television, I read about it on

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1 newspapers.

2 MR BURGER SC: Lonmin people told you

3 that 10 people had lost their lives.

4 RT REV SEOKA: Yes.

5 MR BURGER SC: Why don't you address that

6 in your moral dissertation in paragraph 32?

7 RT REV SEOKA: It's inclusive.

8 MR BURGER SC: Where is that included?

9 Let us read that, because we would be relieved to find it

10 in paragraph 32. Gives us the passage please.

11 [11:42] RT REV SEOKA: No, the passage I've just

12 given to you that even as I sit here today, prior to what

13 has happened in the Western Cape, that statement is now

14 inclusive of what is going on in our country.

15 MR BURGER SC: Bishop, we will submit at

16 the end of this half of the Commission that your paragraph

17 32 dealing with the morality of the situation is not

18 independent and it should at the least have expressed a

19 view on the moral implications of the people who lost their

20 lives between the 9th and the 14th of August, of which you

21 were aware. Do you have a comment to that?

22 RT REV SEOKA: That's your opinion. I

23 can't comment on what you think and want to say. That's

24 your choice, really.

25 MR BURGER SC: Bishop, we initially

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1 understood that you would be called by the Legal Resources

2 Centre, but when you are giving evidence now you give it on

3 behalf of what is termed "the victims." What I would like

4 to understand, those victims, do that include the 10 people

5 who died before the 16th, or do you only speak for the

6 victims of the 16th?

7 RT REV SEOKA: Yes, through you, Chair.

8 I had been given the opportunity, the massacre of the 16th

9 would not have happened if we had cooperated with each

10 other. That would have been prevented.

11 CHAIRPERSON: Yes, but Bishop –

12 RT REV SEOKA: I was not there on the

13 previous days. There was nothing I could do about it. I

14 did not intend doing anything except maybe to address that

15 on a moral basis.

16 CHAIRPERSON: Sorry, can I just put the

17 question, while I remember it. The point I think being put

18 to you is that if you'd been given – on the basis of what

19 you say, if you'd been given the opportunity to act as you

20 wanted to act on the 16th, the killings on the 16th might

21 have been avoided. But that wouldn't have detracted from

22 the fact that the 10 killings before that had already

23 happened. I think that's the thrust of what Mr Burger is

24 putting. Is that correct, Mr Burger?

25 MR BURGER SC: Indeed, Chair.

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1 CHAIRPERSON: Interpreter, you can have
 2 your chance to interpret both what was put earlier and what
 3 I've asked.
 4 MR BURGER SC: And in order to fill the
 5 silence, let me add to that. We have a statement on
 6 morality where the only two relevant states that we see is
 7 32.1 and 32.2, is pointing at Lonmin and the Police. I
 8 don't see anything in this moral statement on the
 9 advisability of an unprotected strike, of carrying weapons
 10 - which you've taken off dead policemen - onto a koppie, of
 11 mutilating security staff. I see nothing of that or the
 12 morality of those acts here, and I ask why, Bishop?
 13 RT REV SEOKA: Because I did not know in
 14 the first instance that the strike was unprotected. I
 15 didn't know that. That comes up in the process of our
 16 conversation with the three gentlemen from Lonmin.
 17 MR BURGER SC: Bishop, I must put to you
 18 that your role of peacemaker was badly undermined by your
 19 absence of trying to understand the background to the
 20 dispute when you walked in on the 16th of August.
 21 RT REV SEOKA: That's your opinion. I
 22 don't believe that.
 23 MR BURGER SC: May I just in conclusion
 24 put two short portions from two witnesses who will be
 25 called by Lonmin. One is from Mr Barnard Mokoena, and can

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1 I just put this to you. He will say that while he was at
 2 the JOC he received a call from you and you requested to
 3 meet with management. He advised you that he was at the
 4 JOC. Any comment?
 5 RT REV SEOKA: It can't be true. I never
 6 knew who Mokoena was. Where would I have gotten his
 7 number? Actually I don't even believe that Mokoena could
 8 say that under oath, now that I know who he is and I have
 9 had some dealings with him. I don't believe he could say
 10 that under oath.
 11 MR BURGER SC: Bishop, he will also deny
 12 that he told you that you should return to the koppie and
 13 tell the strikers to elect five to eight representatives,
 14 whereafter the management would meet with these
 15 representatives. He said he never said that.
 16 RT REV SEOKA: That's what he says, but
 17 that's what I have said in my statement also. So the two
 18 statements need to be tested then.
 19 MR BURGER SC: He will also tell the
 20 Commission that he knows that you had a discussion with
 21 General Mbombo, but he was not part of that discussion and
 22 he did not know what was discussed between the two of you.
 23 RT REV SEOKA: Chair, I find this really
 24 unfair on Mr Mokoena. I think it's not true. I don't
 25 believe Mokoena would say that. I really don't believe

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1 that. I'm honest about it. I think he's a man of
 2 integrity and he's not capable of that kind of untruth.
 3 MR BURGER SC: Bishop, I'm putting to you
 4 a statement signed by Mr Mokoena. Will you trust me on
 5 that and just give me your comments, please?
 6 RT REV SEOKA: I don't know. That's what
 7 you are telling me, but I'm saying to you having now known
 8 Mr Mokoena, having dealt with Mr Mokoena, I don't believe
 9 he said that.
 10 MR BURGER SC: Thank you, Chair.
 11 CHAIRPERSON: Mr Semenya, do you have
 12 cross-examination for the Bishop?
 13 MR SEMENYA SC: Yes, I do, Chair.
 14 RT REV SEOKA: Chair, I must thank Mr
 15 Burger because I thought he was finished with me the first
 16 day we had countered each other. Thank you very much for –
 17 CHAIRPERSON: As we've heard before, the
 18 expression "finished with" is ambiguous.
 19 RT REV SEOKA: I hope we are done now for
 20 good. Sorry, Sir.
 21 MR SEMENYA SC: Thank you, Bishop. Can I
 22 take you back to the evidence relating to footballers and
 23 their use of muti. You recall your evidence there?
 24 RT REV SEOKA: Yes, I do.
 25 MR SEMENYA SC: And I understood your

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1 evidence to be that they would use the muti and still lose
 2 some of the games. Is that right?
 3 RT REV SEOKA: Yes.
 4 MR SEMENYA SC: And as if that's not
 5 enough, they would go to the following game, still using
 6 the muti?
 7 RT REV SEOKA: Yes.
 8 MR SEMENYA SC: And that doesn't point to
 9 them being stupid?
 10 RT REV SEOKA: Yes.
 11 MR SEMENYA SC: Can I start with you on
 12 the light side of things. I have watched football many
 13 times, Bishop. At one point I would see a penalty taker
 14 take a cross across the chest and to look in the sky and
 15 miss the penalty. Have you observed something like that?
 16 RT REV SEOKA: Yes, that's true. The
 17 difference is though, Sir, that I've seen players doing
 18 that also when they have achieved something.
 19 MR SEMENYA SC: I'm going there.
 20 RT REV SEOKA: Okay.
 21 MR SEMENYA SC: Undeterred, in my
 22 example, they would still go the following weekend to take
 23 the penalty, still doing the cross sign. Right?
 24 RT REV SEOKA: Yes.
 25 MR SEMENYA SC: And even when they score

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1 they really look up the sky and in acknowledgement of that
 2 divine intervention.
 3 RT REV SEOKA: Yes.
 4 MR SEMENYA SC: But that does not make
 5 them stupid either, correct?
 6 RT REV SEOKA: No.
 7 MR SEMENYA SC: So it is a matter of
 8 faith in whatever the individuals have in what they are
 9 doing. Isn't that correct, Bishop?
 10 RT REV SEOKA: Not really. I think
 11 there's a difference between faith and belief.
 12 MR SEMENYA SC: At least in examples of
 13 those who look up into the sky, it is faith, right?
 14 RT REV SEOKA: For those who look up to
 15 the sky it is faith, yes I agree.
 16 MR SEMENYA SC: And those who use
 17 "Ntelezi" is belief?
 18 RT REV SEOKA: Yes.
 19 MR SEMENYA SC: But then one thing common
 20 to both of them is that their conduct is moved by their
 21 belief or their faith.
 22 RT REV SEOKA: Yes.
 23 MR SEMENYA SC: And to them there is a
 24 deep seated understanding and belief of faith that that
 25 which they do is in furtherance of their own interests.

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1 RT REV SEOKA: That's true.
 2 MR SEMENYA SC: We propose to lead an
 3 expert anthropologist who will tell us what the belief
 4 system is of those who use "Ntelezi."
 5 RT REV SEOKA: Yes.
 6 MR SEMENYA SC: That's not your area of
 7 expertise to contradict that type of evidence. Am I
 8 correct, Bishop?
 9 RT REV SEOKA: That's true.
 10 MR SEMENYA SC: And if I'm moved to go
 11 there, I will show you slides of many men on the 16th of
 12 August who were performing their rituals there. You can
 13 accept it?
 14 RT REV SEOKA: Yes. I'm not sure though,
 15 Sir, that people who use "Ntelezi," when they have achieved
 16 their goal, or if they go to war for instance, they come
 17 back and use "Ntelezi." I don't know that, but I know that
 18 Christians will make that cross in the faith of Jesus and
 19 when they have achieved what they have achieved, aimed at,
 20 they'll come back and do the same thing and be thankful to
 21 God. That much I know. So I know the benefits of having
 22 faith in Jesus, who is the Messiah. That I know. That's
 23 why I believe these people who come back and say thank you
 24 God for affording me my desires, do that. I don't know why
 25 is it that the others don't come back and use "ntelezi"

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1 after that. I know that there's always celebration,
 2 accompanied by slaughtering of a beast, but that has
 3 nothing to do with "ntelezi." Those are two different
 4 functions. I mean I'm talking now a culture.
 5 MR SEMENYA SC: This Bishop, I defer to
 6 you on matters, faith. I am prodding matters, belief, and
 7 not even culture.
 8 RT REV SEOKA: Okay. Thank you.
 9 MR SEMENYA SC: The expert will tell the
 10 Commission that once they have undergone that type of
 11 ritual they would think themselves invincible. That is not
 12 a matter you are able to contradict, Bishop. Am I correct?
 13 RT REV SEOKA: Basically speaking and in
 14 terms of my faith I can dispute that.
 15 MR SEMENYA SC: No Bishop, I'm very
 16 circumspect. I'm not testing matters faith. I am very
 17 particular that it is the matters of belief on which the
 18 evidence will be tendered. I'm saying once that evidence
 19 is given, we are not going to rely on your opinion to
 20 contradict that. Am I correct?
 21 RT REV SEOKA: That's true.
 22 [12:02] MR SEMENYA SC: Now can I move to
 23 something a little bit more serious, Bishop. You tell us
 24 that in 40 years as a priest, Police in this country can
 25 never be trusted. That's a very, very harsh and stringent

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1 opinion you express there, Bishop, isn't it?
 2 RT REV SEOKA: But I thought it's my
 3 opinion. Maybe we could qualify and say, not all of them.
 4 I know for instance a policeman – alive who – at least that
 5 what he was known for in the community. His argument was
 6 that his job is to correct the wrongs that people were
 7 doing. So not all of them fall under the same category.
 8 MR SEMENYA SC: You see, Bishop, I want
 9 to rely on your moral authority. You told us that you
 10 command that type of respect, given your position.
 11 RT REV SEOKA: Yes.
 12 MR SEMENYA SC: Now the Police have about
 13 70 000 members. You're not referring to these people as
 14 untrustworthy, are you?
 15 RT REV SEOKA: I've just said, not all of
 16 them.
 17 MR SEMENYA SC: But then, Bishop, I'm
 18 going to invite you to retract that statement you said in
 19 your evidence-in-chief, that the 40 years experience you
 20 have has brought you to the conclusion that Police in this
 21 country can never be trusted. Please withdraw that if it
 22 is not completely correct.
 23 RT REV SEOKA: Given the evidence, Sir,
 24 of what, that has been given here, it will be very
 25 difficult to do that. I can say that Police are also human

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1 beings and therefore they differ. There are good
 2 policemen, respectable, but there are also bad ones that
 3 have brought disgrace to the office of a police.
 4 MR SEMENYA SC: That, Bishop, is even
 5 pretty measured. That is tempered. What I'm putting to
 6 you is that what you said in evidence-in-chief is not
 7 tempered, is not measured, and I invite you to withdraw it.
 8 RT REV SEOKA: I have difficulty with
 9 that.
 10 MR SEMENYA SC: You do concede, don't
 11 you, that there are a whole number of people who will
 12 attest to lives saved by these men and women?
 13 RT REV SEOKA: That's true, based on what
 14 I've said about the Police community, that's true.
 15 MR SEMENYA SC: The law in this country
 16 posits the responsibility of law enforcement on these men
 17 and women. You accept that?
 18 RT REV SEOKA: Yes, I do believe that
 19 Police are there to protect people, isn't it? And to guide
 20 us, not to break the law. Actually why I said, if the
 21 Police had told me not to go back to the koppie, I would
 22 not have done that because it would be breaking the law.
 23 MR SEMENYA SC: And for that reason it is
 24 important that the people repose responsibility and trust
 25 in this single entity on which the Constitution rests the

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1 obligation, Bishop. Wouldn't you agree?
 2 RT REV SEOKA: Yes, I agree.
 3 MR SEMENYA SC: And an opinion of a
 4 bishop would be very strong in helping build confidence on
 5 an institution that has that as its responsibility. You
 6 would agree with that, Bishop?
 7 RT REV SEOKA: Yes. Let me give you an
 8 example. I go to the police station here at Marikana on a
 9 Sunday afternoon and I am told who to find and to put my
 10 request. I'm told to sit on a bench and the Police come in
 11 with a young lad and he's handcuffed and he's taken into
 12 some corner there. So I stood up and I went to the police
 13 person who was doing the writing, I said, "Surely he must
 14 be under age, isn't it? Why would you put handcuffs on
 15 him?" and the answer I got, "He runs away." The age thing
 16 was never discussed – he runs away. Now is that a good
 17 reason for handcuffing a child? It's not, and so my moral
 18 obligation is to say to the policeman, "You can do better
 19 than that." So I would want our Police to do better
 20 [inaudible] they're breaking the law themselves.
 21 MR SEMENYA SC: Bishop, I don't have any
 22 knowledge of the example you are giving us. I would
 23 implore you to stay within the focus of my questions so
 24 that I don't get myself outside my focus. Can you help me
 25 with that?

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1 RT REV SEOKA: Thank you, I'll try.
 2 MR SEMENYA SC: Second thing I would like
 3 to put to you as a proposition is that by far the majority
 4 of men and women in uniform do good work.
 5 RT REV SEOKA: Absolutely.
 6 MR SEMENYA SC: And at times at risk of
 7 life and limb to themselves.
 8 RT REV SEOKA: I agree.
 9 MR SEMENYA SC: In your evidence-in-chief
 10 you go so far as to say you wouldn't even trust them with
 11 taking your own statement down.
 12 RT REV SEOKA: Yes.
 13 MR MPOFU: Chairperson, sorry, once again
 14 I don't want to interrupt. That proposition is not
 15 correct. That statement was made under a cross –
 16 CHAIRPERSON: Sorry, Mr Mpofo, the
 17 passage to which Mr Semenya is referring is at page 1400 –
 18 MR MPOFU: Yes.
 19 CHAIRPERSON: And the passage I take it
 20 that he is specifically referring to is lines 20 to 24.
 21 MR MPOFU: Can I just –
 22 CHAIRPERSON: I suggest that you look at
 23 that passage first and then reconsider whether you wish to
 24 object, because it seems to me that what counsel is putting
 25 is a fair summary of the passage. Perhaps it would be

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1 convenient if we ask Mr Semenya to read the passage out so
 2 we know exactly what was said, and then we can proceed.
 3 MR MPOFU: No, that's not the point,
 4 Chairman. If I can finish my sentence? The proposition
 5 that was put is that what the Chairman is saying now was
 6 said in examination-in-chief, which is not correct. That's
 7 all I'm pointing out.
 8 CHAIRPERSON: Did you lead the witness,
 9 Mr Mpofo? Did you?
 10 MR MPOFU: Yes.
 11 CHAIRPERSON: Alright, now if you look at
 12 the page I referred you to, which is page 1400, you will
 13 see that the page immediately before it, which is page
 14 1399, indicates – no, I beg your pardon, you're quite
 15 right. Mr Burger was cross-examining –
 16 MR MPOFU: Thank you, Chairperson –
 17 CHAIRPERSON: And you make comments on
 18 page 1399, but that was by way of an objection. So the
 19 point you make is that it is not correct to say that was
 20 said in examination-in-chief, is correct. So to that
 21 extent your objection is upheld.
 22 MR MPOFU: Thank you, Chairperson.
 23 CHAIRPERSON: Was that the only basis of
 24 the objection?
 25 MR MPOFU: It was, Chairperson, thank

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1 you.

2 CHAIRPERSON: So we can proceed then, Mr

3 Semenya, on the basis that that's what the witness said in

4 cross-examination. I'm not sure whether it makes a

5 difference whether someone said something in cross-

6 examination or examination-in-chief, but perhaps Mr Mpfu

7 will explain to us later why there is that important

8 distinction, but would you please proceed?

9 MR SEMENYA SC: Thank you, Chair, I'm

10 enlightened. Bishop, can we go back now and deal with

11 that? The proposition I'm putting to you is that – and

12 perhaps the Chair is correct, can I read what appears as

13 your answer on page 1400 of the transcript, and perhaps can

14 I start from line 17 where you say, "Police in this

15 country, and there's enough to say about how they have

16 tried to plant things on people and change statements that

17 you have given. I personally have been to the police

18 station to make a statement. I have to ask the Police can

19 I write it myself so I can easily say to you I was not

20 there when this was written, so I don't know whether it is

21 a fact and I must tell you, I don't trust a police person."

22 I'm inviting, I'm putting it to you, Bishop, that that's

23 too strong a statement to make again from a bishop.

24 RT REV SEOKA: I actually find it very

25 difficult to argue with you, except to say that if you look

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1 at the Police in this country, in America, and in England,

2 they behave differently. In England I would stop when I

3 see a bobby and ask whatever the question is. In this

4 country I hesitate, I look for a civilian to ask a

5 question.

6 MR SEMENYA SC: It may very well be how

7 you –

8 RT REV SEOKA: So that's why I say it's

9 my opinion.

10 MR SEMENYA SC: Bishop, if that was said

11 by Joe Soap, it would not bother me. I'm troubled because

12 it is said by somebody of such moral standing and authority

13 in our civic society. That's why I'm trawling this with

14 you. Do you want to temper that statement?

15 RT REV SEOKA: You know, Chair, I

16 actually do have police who I relate to very well. I do

17 have police in my church who are lay ministers. I do have

18 police that I trust, but I do believe that most of the

19 people in this country, they don't trust the Police, and

20 I'm one of those.

21 CHAIRPERSON: Bishop, it sounds to me as

22 if you really have tempered the statement, or qualified it

23 by implication. What you said was, page 1400, line, starts

24 at line 15, "I can tell you, having been a priest for

25 almost 40 years now, police in this country can never be

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1 trusted. Police in this country, there's enough to say

2 about how they've tried to plant things on people, change

3 statements that you've given. I personally have been to

4 the police station to make a statement. I have to ask the

5 police can I write it myself so I can easily say to you I

6 was not there when this was written, so I don't know

7 whether it is a fact, I must tell you, I don't trust a

8 police person." But what you've now said means that your

9 opening statement, "Police in this country can never be

10 trusted," isn't really what you intended to say, as I

11 understand it from what you say now.

12 RT REV SEOKA: That's what I tried to –

13 CHAIRPERSON: Because you now say, I take

14 it that there are police you trust, there are policemen

15 whom you, for whom you have great respect and admiration,

16 and so forth, whom you do trust.

17 RT REV SEOKA: Yes.

18 CHAIRPERSON: So you didn't express

19 yourself, if I may so say, with the precision that one

20 expects from someone who holds your high office, and would

21 you like to respond to Mr Semenya's invitation to qualify

22 what you say and make it clear what you actually meant?

23 RT REV SEOKA: I think I did say that I

24 probably would, should have said some of them within the

25 Police family, because as I say now there are good ones and

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1 there are bad ones, as in any human being you've got good

2 people and you've got bad people. But it's what we do

3 about those kinds of people when we are dealing with them,

4 and therefore personally when I deal with the Police I

5 start from a position of suspicion, meaning –

6 MR SEMENYA SC: Those are the things that

7 trouble me, Bishop. South Africa has a fair amount of the

8 populace that is illiterate and innumerate, who take the

9 word of a bishop as good as any, as they must, and to say

10 that you can't even trust the Police in taking down a

11 statement, I put it to you and I beseech you, goes a little

12 too far than helpful. Can you temper that as well?

13 RT REV SEOKA: It could be my training,

14 because even the way I read the scriptures, I read the

15 Bible, I start from the perspective of hermeneutics of

16 suspicion in order to extract the truth. And that's an

17 acceptable practice in my discipline. It's not so for

18 other churches. There are bishops, there are clergy

19 persons, who don't approach the Bible that way.

20 [12:22] MR SEMENYA SC: If you are correct about

21 this, then it may go a long way in explaining why it is

22 that police intervention in conflict resolution is

23 frustrated because you sponsor these type of opinions.

24 RT REV SEOKA: To be honest with you, I

25 have little dealings with police except those within my

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1 church, and except just greeting them and being nice to
2 them as human beings. So I don't teach them anything, I've
3 no experience of teaching police what they need to do. In
4 actual fact I am very concerned that the clergy who are
5 chaplains, are probably not doing that [inaudible]. So I
6 am talking for myself, Sir, I am not talking for another
7 person, I am talking for myself.

8 MR SEMENYA SC: In fact, Bishop, I have
9 copies of dockets where you are a complainant yourself.

10 RT REV SEOKA: Yes.

11 MR SEMENYA SC: And those copies of
12 dockets have policemen who took your statement. You didn't
13 write it yourself.

14 RT REV SEOKA: That's true.

15 MR SEMENYA SC: So I –

16 RT REV SEOKA: I have also written a
17 statement. I have asked the police, this is not what I
18 said, can I just write it myself? Some would say yes, some
19 would say no.

20 MR SEMENYA SC: But that's not what you
21 said in cross-examination, that's my difficulty, Bishop.
22 It is better to state a balanced opinion so that those who
23 are minded to have their statements taken by the police,
24 can feel free to do so, without hanging on your evidence
25 that that statement may be twisted.

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1 RT REV SEOKA: Senior counsel, you know,
2 deep in your heart and your conscience will tell you, that
3 you yourself have defended people who have been arrested
4 unlawfully just because the statement written by the police
5 was wrong. I believe that, I am a shepherd of the flock.
6 I have had statements, I've tried to be a friend of the
7 court because the person believes that it's not what he or
8 she has written and they're in jail. You know that, it's
9 not, I am not making up a story. You as senior counsel,
10 you must have done that in your early days as an attorney
11 and I still believe you do it right now.

12 MR SEMENYA SC: Bishop, I seek no
13 confession higher than saying that there are many men and
14 women police officers who take honest statements from
15 complainants and those who are witnesses.

16 RT REV SEOKA: That I do not deny. Some
17 would actually ask you, do you agree with this statement,
18 and then he sign it. But there are those who don't really
19 care, and those are the ones that have given a bad name to
20 the security forces. I may have to ask you to defend me
21 one of these days, because already I've been stopped by
22 police, saying, you are the one that says you can't trust
23 us.

24 MR SEMENYA SC: That's precisely the
25 influence you have which bothers me, Bishop. But anyway,

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1 let us address a different subject now.

2 CHAIRPERSON: The point has now been
3 cleared up, hasn't it? He gave you the concession you
4 asked for, he accepted that the statement that was in
5 general terms, really refers to some policemen, not all
6 policemen, I think you've taken the point as far as it can
7 be taken. You made the point I think you intended to make.
8 He made the concession which I think he willingly makes, so
9 I think we can now move onto something else, unless there's
10 some aspect that I've overlooked you still need to deal
11 with on this point.

12 MR SEMENYA SC: That's why I was saying,
13 Chair, that can we move to the next point. Bishop, I want
14 us to play you some slides, some – and I will play them in
15 some sequence. If we can have on the screen played to you,
16 the mood of the crowd on the 16th of August 2010. Bishop, I
17 want you to confirm what I see.

18 [VIDEO SHOWN]

19 We are talking about a very belligerent group of
20 people there, aren't we?

21 RT REV SEOKA: Yes.

22 MR SEMENYA SC: We are not talking – we
23 are not watching traditional knobkieries only there, are
24 we?

25 RT REV SEOKA: Yes.

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1 MR SEMENYA SC: We are actually
2 witnessing people armed with seriously dangerous weapons,
3 aren't we?

4 RT REV SEOKA: Yes.

5 MR SEMENYA SC: That must be the type of
6 people you met on that day, the 16th August 2010 –

7 RT REV SEOKA: Yes.

8 MR SEMENYA SC: – 2012, rather.

9 RT REV SEOKA: Yes.

10 MR MADLANGA SC: Mr Chairman,
11 Commissioners, may I ask my learned colleague to please
12 identify the piece of footage.

13 MR SEMENYA SC: I can do with some help,
14 Chair.

15 CHAIRPERSON: It says video 00021MPS, the
16 approximate time is 13:13 on 16th August 2012, that's how it
17 begins. So I take it the reference that I've read 00021MPS
18 is what you are looking for, Mr Madlanga. I am not sure
19 whether that is already before the Commission. I don't
20 remember that precise one, if it is –

21 MR MADLANGA SC: Yesterday, it was part
22 of what was –

23 CHAIRPERSON: Well, there you are, so
24 it's already before us, you just testified what it is.

25 MR MADLANGA SC: Yes.

<p style="text-align: right;">Page 1945</p> <p>1 MR SEMENYA SC: Thank you, Mr Madlanga. 2 Bishop, I am trying to explore with you that what we have 3 now seen, is not typical labour negotiating methods 4 recognised under the law, is that? 5 RT REV SEOKA: That's true. 6 MR SEMENYA SC: And we are talking about 7 an unrest situation as opposed to the withdrawal of labour 8 power, am I right? 9 RT REV SEOKA: Yes. 10 MR SEMENYA SC: What you say in your 11 evidence, Bishop, that your intercession may have averted 12 the fatalities of the 16th, is something I want to test with 13 you. It is an opinion you expressed which is blind to a 14 whole number of factors, I want to explore those with you. 15 It is blind to the fact that there have been several 16 instances where the police were requesting that belligerent 17 group to disarm. Can you accept that? 18 RT REV SEOKA: Yes. 19 MR SEMENYA SC: It is blind to the fact 20 that even the leader, Mr Mathunjwa, could not get them to 21 disarm. Do you accept that? 22 RT REV SEOKA: I don't know about that, 23 but I know that I could have made them to leave their 24 weapons behind. 25 MR SEMENYA SC: I'll test that with you a</p>	<p style="text-align: right;">Page 1947</p> <p>1 but maybe my learned friend knows better. 2 CHAIRPERSON: I think he's putting a 3 summary of what, of the evidence led so far. I must 4 confess, I interpreted it, the question has been based on 5 evidence he proposes to lead, but in view of the fact 6 you've raised the matter pertinently, perhaps he can answer 7 it - 8 MR MPOFU: Yes, thank you. 9 CHAIRPERSON: - before he proceeds. 10 MR BIZOS SC: - really to remind our 11 learned friends, both of them, that before the death of two 12 members of the workers, generally speaking on what we saw 13 yesterday, the group as a whole was unarmed. 14 MR MPOFU: That's exactly the point I am 15 making. 16 CHAIRPERSON: We know that. Anyway the 17 point was raised by Mr Mpofu, you've added a codicil to it, 18 now let's hear what Mr Semenya has to say in reply. 19 MR SEMENYA SC: I will reformulate the 20 question, it really doesn't - your statement is blind to 21 the fact that there were numerous occasions where the 22 militant group was requested to disarm but they did not 23 heed those requests. Am I correct? 24 RT REV SEOKA: I hear you saying that, 25 that's not what I know or experienced but I would believe</p>
<p style="text-align: right;">Page 1946</p> <p>1 little later, but what we do know is for 15 to 30 minutes 2 you were on the koppie, you did not say to them, 3 "gentlemen, please disarm, and put these weapons aside, to 4 facilitate a resolution of this impasse," am I correct in 5 saying that? 6 RT REV SEOKA: You are correct in saying 7 that on that particular, but subsequently, I did. And I 8 will give you the words I used. 9 MR SEMENYA SC: In your first contact 10 with the group, you could have said to them, this is not 11 consistent with a peaceful resolution, if we are carrying 12 these dangerous weapons. 13 RT REV SEOKA: I could have said that. 14 MR SEMENYA SC: And I am putting it to 15 you, Bishop, that your belief that your intercession 16 intervention could have averted the tragedy is also blind 17 to the fact that since the 9th up to the 16th, even when you 18 were there, of August, there had been repeated requests for 19 the group to disarm. You don't know how much effort - 20 MR MPOFU: Chair, I am sorry, maybe I 21 should return the favour by asking whether my learned 22 friend is going to led that evidence, or is it just 23 speculation, that since the 9th, I think that was the 24 question, since the 9th there had been repeated requests to 25 disarm. That, as far as I am concerned is not the evidence</p>	<p style="text-align: right;">Page 1948</p> <p>1 that what may have happened prior to my encounter with 2 them. 3 MR SEMENYA SC: It is a statement blind 4 to the fact that even Mr Mathunjwa had assured the police 5 that by 9 o'clock of that morning the people will disarm 6 peacefully, and they didn't do it. You can't refute that 7 evidence tendered. 8 RT REV SEOKA: I don't know it, if you 9 show it to me, and you can prove that that's what happened, 10 I will say yes, but as of now, I am not aware that 11 happened. 12 MR SEMENYA SC: It is a statement blind 13 to the reality that the SAPS members had used professional 14 negotiators to try and persuade the group to disarm, 15 correct? 16 RT REV SEOKA: I don't know. 17 MR SEMENYA SC: You have already 18 conceded, you are not even aware that some police members 19 had been killed by some of these protesters, 20 RT REV SEOKA: On the Monday, correct. 21 MR SEMENYA SC: You are already also 22 unaware that they had through their leaders, declared war 23 with the police, you are not aware of that? 24 RT REV SEOKA: No. 25 MR SEMENYA SC: What you also said,</p>

<p style="text-align: right;">Page 1949</p> <p>1 Bishop, on the transcript at page 1400 is that I can tell 2 you under oath against line 6, the man in the green 3 blanket, the one I spoke to, was one of the most peaceful 4 people in that whole group. I'm going to ask that we play 5 you another clip showing Mr Noki. 6 [12:42] RT REV SEOKA: Okay. 7 CHAIRPERSON: Okay, Mr Madlanga will ask 8 you once the clip starts to put on record where exactly it 9 is to be found amongst the various video clips that we 10 have. 11 RT REV SEOKA: Thank you, Chair. 12 [VIDEO SHOWN] 13 MR SEMENYA SC: Hold it there. Chair, I 14 need to find the description of the tape but – 15 CHAIRPERSON: You don't have to give it 16 to us now, you can perhaps give it to us after the lunch 17 adjournment. I don't want to interrupt the flow of your 18 cross-examination, but as long as we get it, so when we 19 read the record again we will know what exactly the clip is 20 that's being shown. 21 MR SEMENYA SC: Thank you, Chair. 22 Bishop, I propose to you that is Mr Noki on the 13th of 23 August 2012. You won't refute that, will you? 24 RT REV SEOKA: No, I won't. 25 MR SEMENYA SC: You could see from that</p>	<p style="text-align: right;">Page 1951</p> <p>1 calls the gentleman, in other words one of protestors, just 2 be replayed for the benefit of the interpreter, or the 3 other interpreter who has seen it so many times, can just – 4 MR SEMENYA SC: No, Chair, Mr Mpofu will 5 redirect – 6 MR MPOFU: It was just to save time – 7 CHAIRPERSON: As far as I remember, it 8 was part of Exhibit Z that we saw the day before yesterday. 9 It's one of the clips of the 13th, isn't it? It was then 10 interpreted to us, but, in fairness, I think your request 11 should be complied with. 12 MR SEMENYA SC: No, no, Chair – 13 MR MPOFU: The bishop was not here. 14 MR SEMENYA SC: Chair - I think, Chair, 15 with all due respect, Mr Mpofu will have his opportunity to 16 re-examine his witness. I don't want to things that I 17 don't want in my cross-examination, I want to remain 18 focused with my cross, I want to point to things that are 19 important for my case and if Mr Mpofu thinks there are 20 elements which would balance that picture, he should know 21 better than I do, that he will do it. 22 CHAIRPERSON: Okay, carry on. You could 23 have the opportunity to correct any misapprehension that 24 maybe created in re-examination. 25 MR MPOFU: I know Chair, but –</p>
<p style="text-align: right;">Page 1950</p> <p>1 clip that he has in his possession a very dangerous weapon. 2 RT REV SEOKA: Yes. 3 MR SEMENYA SC: And what we see there, it 4 is a group of men hunched in [indistinct] formation, did 5 you see that? 6 RT REV SEOKA: Yes. 7 MR SEMENYA SC: And if I played the clip 8 further to you, they disobey an instruction to disarm. You 9 can accept that? 10 RT REV SEOKA: I don't know, I have not 11 seen it yet. 12 MR SEMENYA SC: Chair, this would appear 13 as Slide 50 of Exhibit L for Limo, but I will invite the 14 clip to be played forward so that the bishop can be with me 15 about these questions. 16 [VIDEO SHOWN] 17 MR HANABE: Even I couldn't get exactly 18 what he was saying, but I could hear the police, because it 19 was more louder, he said that, "All we want from you are 20 the spears and weapons." He said [African language] which 21 is the spears. "If I can only get the spears from you, 22 then I will release you, I will let you go." 23 MR MPOFU: Chairperson, I'm quite sorry, 24 I hear that the interpreter didn't hear it properly, if I 25 could just request that the part that is said by, what he</p>	<p style="text-align: right;">Page 1952</p> <p>1 CHAIRPERSON: I've given my ruling, Mr 2 Mpofu, let's – 3 MR MPOFU: Can I just explain what I was 4 doing? I'm not objecting or anything, all I'm saying it's 5 not Mr Semenya who said to the interpreter please don't 6 interpret that part, the interpreter simply said I couldn't 7 hear properly a particular part. So it's not as if it was 8 by design. 9 CHAIRPERSON: If it's an important point, 10 you can raise it again in re-examination. Let's proceed, 11 Mr Semenya. 12 MR SEMENYA SC: Thank you, Chair. Can we 13 play that video to the end? 14 [VIDEO SHOWN] 15 MR SEMENYA SC: Bishop, what we saw there 16 is a very, very militant group of people, do you agree? 17 You do? 18 RT REV SEOKA: No, I don't agree they 19 were militant. I never saw them attacking anybody. 20 Actually what I saw, it's people being respectful of the 21 officer. When he spoke to them, they sat down. That's a 22 symbol of surrendering, and then subsequent to that they 23 tried to avoid confrontation with him. They took a detour 24 in order to get to where they were going. So I never saw 25 any violence there. I did see people carrying weapons,</p>

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1 violence, I did not see.

2 MR SEMENYA SC: I didn't talk about any

3 violence, Bishop. I said they were militant.

4 RT REV SEOKA: Militancy, I didn't see

5 it. I saw people carrying and sitting and walking. They

6 never charged once at the police.

7 MR SEMENYA SC: They are being addressed

8 by General Mpmembe, who is the deputy commissioner of police

9 in the province. It is - who requests them please put your

10 weapons down. Did you hear that request?

11 RT REV SEOKA: I heard that.

12 MR SEMENYA SC: And he says to the group,

13 I won't even arrest you if you leave these weapons where

14 you are and you move on. Do you accept that?

15 RT REV SEOKA: I heard something to that effect. I

16 don't know whether he said that, but he said something to

17 that effect that I will let you pass or something like

18 that.

19 MR SEMENYA SC: The fact is also that

20 they disobeyed that instruction and went past the police

21 formation that was around them. You can accept that?

22 RT REV SEOKA: I think they avoided

23 confrontation. They then decided they would not do what

24 the police is asking, but they will continue journeying to

25 wherever they were going. I didn't hear them saying,

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1 "We're not going to do what you're asking us, I didn't hear

2 that. I saw them taking a detour rather.

3 MR SEMENYA SC: Excuse my dismay, stated

4 very - at the very lowest. The proposition I'm putting to

5 you is that a law enforcement officer is requesting them to

6 put their weapons down and proceed where they choose. That

7 lawful instruction was disobeyed. Do you want to debate

8 that with me?

9 RT REV SEOKA: No, I can't debate it,

10 because obviously, even though I did not hear them saying

11 they're not going to do what they've been asked to do, they

12 proceeded on their journey.

13 MR SEMENYA SC: I could say they did not

14 cooperate with the police. I could say that, but I'm

15 sponsoring a much further proposition, that for them to

16 avoid confrontation, the easiest would have been to put

17 those weapons down and move away.

18 MR NTSEBEZA SC: Excuse me, Chair, I

19 don't intend to disrupt my learned friend's cross-

20 examination. I think the fairest thing for any questions

21 on that clip to have been put to this witness, for any

22 inferences to be drawn there from -

23 CHAIRPERSON: Mr Ntsebeza, don't make a

24 speech, if you're objecting to a particular question -

25 MR NTSEBEZA SC: I am objecting,

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1 Chairman, to the questions that are put to the witness on

2 the basis that what is in the clip is the entire thing.

3 For instance, those -

4 CHAIRPERSON: I hear the objection, you

5 don't have to make a speech.

6 MR NTSEBEZA SC: Yes.

7 CHAIRPERSON: Mr Semenya, what do you say

8 about the objection? Please can you reformulate the

9 question in a way which avoids the objection?

10 MR SEMENYA SC: No, that's what the

11 witness said. He said there were avoiding confrontation

12 when they did not obey the instruction, and the proposition

13 I'm saying to the bishop, surely one of the easiest things

14 to do to avert confrontation, would be to put -

15 CHAIRPERSON: No, no, I heard what you

16 said. The objection is that you should put to the witness

17 that this is not necessarily a complete depiction of what

18 happened, because we see part of what happened, but there

19 may be other parts we don't see. That's the basis of the

20 objection. I would have thought that the question can be

21 reformulated without particular prejudice to your side, in

22 a way that does away with the objection so we can carry on.

23 MR SEMENYA SC: Chair, thank you. On

24 what we see, the easiest thing for this group of people to

25 avert confrontation would be leave their weapons on the

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1 ground. Can you live with that as a proposition?

2 MR NTSEBEZA SC: Mr Chairman, with great

3 respect, may I continue to object?

4 CHAIRPERSON: - ruled your objection.

5 MR NTSEBEZA SC: Can I object from

6 another basis, Mr Chairman?

7 CHAIRPERSON: - objection.

8 MR NTSEBEZA SC: On the other basis is

9 that, Mr Chairman, I've got another objection. Please,

10 with great respect. Mr Chairman, when it is put to a

11 witness who does not know - who heard everything that had

12 been said at that clip, and it is put on the basis that

13 there easiest thing that those people could have done,

14 would simply to put their weapons - it's unfair when we

15 know, you and I know that there were counterproposals that

16 they made that could have avoided the confrontation.

17 CHAIRPERSON: The question that was put

18 was on what we see, do you agree? And I haven't got a

19 problem with that. That was deliberately inserted to meet

20 the objection that you've raised earlier, which, by

21 implication, was upheld. Mr Semenya, please proceed.

22 MR SEMENYA SC: What would be your

23 answer, Bishop?

24 RT REV SEOKA: Just repeat the question

25 please.

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1 MR SEMENYA SC: On what we see, the
2 easiest way in which further confrontation could have been
3 avoided, would have been by the group placing their weapons
4 on the ground and moving.

5 RT REV SEOKA: You see, if I know what
6 the conversation was all about, I'll probably agree with
7 you. I don't know the context. I see people being asked
8 to do that. In actual fact I see only one image of a
9 policeman facing a group of people. Now if they meant to
10 be militant and violent, I'm sure they would have charged
11 at him. They're not charging at him, so I cannot speak on
12 something I do not know. If you show me a picture, I have
13 to know the context in which it was taken. I cannot just
14 say, yes, this man was at the Durban beach or he was at Sun
15 City, where they have got the waves. I can't say that.

16 MR SEMENYA SC: Would it be a convenient
17 stage to go to beach, Chair, to take the lunch adjournment?
18 I'm being flippant.

19 CHAIRPERSON: We'll stay in Rustenburg,
20 but we'll take the lunch adjournment.

21 [COMMISSION ADJOURNS COMMISSION RESUMES]
22 [14:01] CHAIRPERSON: Yes, Mr Semenya. Bishop,
23 it's not necessary of course to remind you, but I have to,
24 you're still under oath. Yes, Mr Semenya.

25 MR SEMENYA SC: Thank you, Chair,

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1 Commissioners. Bishop, we were at a point where you were
2 saying that context is everything. I just asked that they
3 play the video so that we can capture the context for my
4 further questions.

5 CHAIRPERSON: It's also to address Mr
6 Ntsebeza's objection really.

7 MR SEMENYA SC: Indeed, Chair.

8 CHAIRPERSON: And Mr Mpofu's objection
9 too, I suppose. I didn't leave you out on purpose, Mr
10 Mpofu.

11 [VIDEO SHOWN]
12 MR HANABE: The gentleman lifting up his
13 hands, now he's talking, saying [African language], "Please
14 listen to me, can you please give me an ear," in other
15 words.

16 CHAIRPERSON: Sorry, before we carry on,
17 I don't know if it's necessary for this material to be
18 interpreted into English, because we did watch the video
19 before and what was said was interpreted – which I know he
20 can, because he's an Nguni speaker and I imagine the people
21 in the auditorium can also understand it. So unless anyone
22 disagrees I would suggest we tell the interpreter he
23 doesn't have to interpret this into English, as long as
24 it's clear for the people in the auditorium to hear, and
25 also for the Bishop.

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1 MR SEMENYA SC: Okay, Bishop, what I do
2 see from what has been played, it is some members of the
3 SAPS on the side of this group in the middle of the street.
4 You share that observation with me?

5 RT REV SEOKA: Yes.

6 MR SEMENYA SC: And the General saying,
7 "All I ask of you is just to lay these weapons down."
8 RT REV SEOKA: Yes.

9 MR SEMENYA SC: And the last clip really
10 shows the group – before that perhaps, the promise that is
11 being made to the General by one of the leaders there is,
12 "Just permit us to go to the koppie." Did you hear that
13 part?

14 RT REV SEOKA: Yes.

15 MR SEMENYA SC: And the second promise
16 they may is that, "Once we are at the koppie we are going
17 to give you these weapons back." Did you hear that part as
18 well?

19 RT REV SEOKA: No, I didn't.

20 MR SEMENYA SC: Okay. And at one point
21 he says, "We only ask of you to escort us to the main
22 koppie, or to guard us," I think he uses the word.

23 RT REV SEOKA: Yes.

24 MR SEMENYA SC: What General Mpembe will
25 tell the Commission is that he acceded to this demand,

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1 cautious that stopping them would lead to great violence.
2 You can't debate that with him if he said so, Bishop, would
3 you?

4 RT REV SEOKA: I didn't hear that.

5 MR SEMENYA SC: I know, and what we do
6 know is that part of this group just moments later killed
7 two police officers brutally. So you can accept that they
8 wouldn't be even true to their own undertaking that all
9 they required really was to be escorted to the koppie.

10 RT REV SEOKA: What I heard the man say
11 is that [African language], "We're not fighting. Escort us
12 back to the koppie."

13 MR SEMENYA SC: And the proposition –
14 RT REV SEOKA: And then they request the
15 management to come and, to hear from the management. I
16 think that's something like that. What I don't understand
17 is why would they ask the Police to escort them back when
18 they intended to commit a crime? I don't understand that.

19 MR SEMENYA SC: The point, Bishop, I'm
20 making is that they can't even be trusted on their word
21 because whereas they say they have no issue with the
22 Police, moments thereafter they kill two of them very
23 brutally.

24 CHAIRPERSON: Mr Semenya, is that a fair
25 statement in the light of material before us? If you look

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1 at exhibit L, slide 47, this is –

2 RT REV SEOKA: Slide?

3 CHAIRPERSON: Slide 47. This is the

4 Police version of what happened. Perhaps I should read

5 first at the foot of 46. “Major-General Mpmembe, realising

6 that a violent” – have you got that, Bishop? It’s slide

7 46.

8 RT REV SEOKA: Yes, I do.

9 CHAIRPERSON: I’m referring to the

10 second-last paragraph there. “Major-General Mpmembe,

11 realising that a violent confrontation would take place if

12 Police attempted to disarm the protesters, allowed them to

13 proceed under Police escort.” That’s what we see on the

14 video. “The Police were to follow the armed protesters,

15 preventing them from entering an informal settlement to the

16 left of their route to prevent possible incidents of

17 looting and to safeguard innocent lives. On their way to

18 the koppies some of the protesters changed direction

19 towards the village. To prevent them from entering the

20 village, the Police used teargas and stun grenades,

21 grenades that produce two large explosive sounds, to

22 disperse the protesters, discouraging from their intended

23 path. With their dangerous weapons a group of protesters

24 turned around, charge the members behind. Two of the

25 members of the Police who died at the scene were retreating

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1 and firing at the protesters with shotgun rubber bullets

2 until they were overpowered and hacked to death.” So that

3 is the full accounts, as I understand it, according to the

4 Police of what happened. So I think that the way you put

5 it, obviously you were trying to be as brief as you could,

6 but I think that what you put may have been not entirely

7 fair reflection of what your own case is in that regard,

8 and I think in fairness to the Bishop he’s entitled to know

9 that’s effectively the Police allegation in respect of the

10 beginnings of that engagement between the protesters and

11 the Police on the 13th of August. I take it you accept

12 that?

13 MR SEMENYA SC: Chair, I do. Now Bishop,

14 that we have that fuller picture, the point I’m making is

15 the undertaking by them at its very least that they would

16 go to the koppie to go and disarm there, they have no

17 quibble with the Police, is contradicted by their

18 subsequent conduct later. You can accept that.

19 RT REV SEOKA: I have no evidence for

20 that. I hear you, but I don’t know the facts and therefore

21 I cannot support something that I don’t know.

22 MR SEMENYA SC: What I seek to achieve,

23 Bishop, is that this is not a peaceful protest as the law

24 understands it. Do you accept that? That’s the thrust of

25 my proposition.

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1 RT REV SEOKA: I couldn’t agree with you,

2 because I didn’t see anybody attacking anybody. From the

3 slide that you’ve shown me they are asking the Police

4 Commissioner, “Please escort us back to the koppie.” So I

5 can’t answer the question.

6 MR SEMENYA SC: Can I invite you to have

7 a look at exhibit L, slide 51, I mean slide 52, 53, 54, 55,

8 up to slide 56. The evidence, Bishop, will be that what

9 you’re looking at is a consequence of this group of people

10 moments after the videos that we saw, and I’m saying this

11 cannot be conduct of a peaceful protest. Do you agree,

12 Bishop?

13 RT REV SEOKA: Well, if they are the ones

14 that assaulted these people, I agree. Also you must

15 remember that I said that one of the things that made me to

16 go to the koppie the first day is what I learned from the

17 media.

18 MR SEMENYA SC: No, I accept that,

19 Bishop.

20 RT REV SEOKA: The death of those people,

21 but my experience is with the people on the 16th. So if

22 these died before then, I didn’t see them on the

23 television. I heard that people were killed and I see now

24 that these are the men that were murdered. But you see,

25 when you look at slide number 50 and contrast that slide

Page 1964

1 with the following slides, they don’t really speak to each

2 other, do they?

3 MR SEMENYA SC: Can I, Bishop, take

4 refuge behind the power of your opinion. If the evidence

5 is what I have shown you, you would condemn in the most

6 strongest this type of behaviour by the protesters?

7 RT REV SEOKA: No, I don’t do that. I’m

8 saying that my experience of the 16th, as I said on the

9 first day, was of people on the koppie there and there was

10 no violence.

11 MR SEMENYA SC: I accept that, Bishop.

12 I’m putting this is a hypothesis.

13 RT REV SEOKA: Okay.

14 MR SEMENYA SC: Should evidence reveal

15 this to be the conduct of the group of protesters, it would

16 meet with your strongest condemnation? That’s what I’m

17 asking.

18 RT REV SEOKA: Yes.

19 MR SEMENYA SC: The one thing screaming

20 about your statement, Bishop, is that it is not critical of

21 the conduct of the protesters. Is that a fair reading of

22 your statement?

23 RT REV SEOKA: It could be said it says

24 that because I had not experienced any negative behaviour

25 then. What you’re saying to me is what happened prior to

Page 1965

1 my visitation. I learned from television people had died
 2 and in order to prevent further deaths, further
 3 confrontation, we felt the church must intervene. I need
 4 to say though, that subsequent to the 16th when we learned
 5 that the workers were being accused of violence, I
 6 personally went to the veld there and I said to them,
 7 "Gentlemen, you are being accused for, of violence and I'm
 8 asking you, those of you who have weapons that are life-
 9 threatening should refrain from doing that," and I was
 10 assured by that community that their objective of being
 11 there is to negotiate a salary and therefore they would not
 12 allow themselves to be blamed of violent behaviour. That
 13 much I know because I did address it when it came to my
 14 notice.
 15 [14:21] That's why I say, through you Chair, I believe
 16 that if I were given the chance to go with management or
 17 the Police and engage the men at the koppie, that day of
 18 the 16th would have been different to what it became at the
 19 end. I believe that, because of the respect and the
 20 behaviour they showed to me when I engaged with them.
 21 MR SEMENYA SC: I'll test with you a
 22 little later, but for now can I move to a different point?
 23 RT REV SEOKA: Thank you.
 24 MR SEMENYA SC: That your assessment of
 25 the Provincial Commissioner and her conduct/behaviour on

Page 1966

1 the day is unflattering. Did I hear correctly about, on
 2 that point?
 3 RT REV SEOKA: Say that again?
 4 MR SEMENYA SC: I say your assessment of
 5 the conduct of the Provincial Commissioner is somewhat
 6 unflattering. You're not impressed by her?
 7 RT REV SEOKA: I think it was unbecoming.
 8 I thought that for a senior person like that to leave us
 9 standing when we had been brought to her, was unbecoming.
 10 As I said earlier on, I would have expected some kind of
 11 respect for civilians that had come as messengers.
 12 MR SEMENYA SC: Well, you use even much
 13 stronger words like "unbecoming, disrespectful." When the
 14 Police Commissioner testifies, she will tell the Commission
 15 she could never have meant any disrespect to you, Bishop.
 16 RT REV SEOKA: I'll appreciate that.
 17 MR SEMENYA SC: I want to share with you
 18 what was in her plate, and maybe you would be a little
 19 forgiving if you know those facts, Bishop.
 20 RT REV SEOKA: Ja.
 21 MR SEMENYA SC: After very protracted
 22 attempts at dissuading the people from the arms they had,
 23 after loss of life of 10 people, after the undertaking that
 24 the 16th by 9 o'clock the group will be disarmed, after the
 25 deployment of a whole contingent of various units, the

Page 1967

1 command had to be taken that by 15:30 the people had to be
 2 forcefully disarmed, using a continuum. Do you have that
 3 background?
 4 RT REV SEOKA: Yes, I've heard about it
 5 now. Nobody ever explained that to me before.
 6 MR SEMENYA SC: The disarming was to
 7 happen at 13:30, which was later deferred because Mr
 8 Mathunjwa was addressing the people. I'm just adding that
 9 dimension to the set of facts, Bishop. Are you with me?
 10 RT REV SEOKA: Yes, I'm listening.
 11 MR SEMENYA SC: There is also inside you,
 12 Bishop, around 14:47, addressing the group, long beyond the
 13 time which was thought by the Police prudent to disarm the
 14 crowd.
 15 RT REV SEOKA: I didn't know that, but I
 16 was there at the time that you indicate.
 17 MR SEMENYA SC: Because of the fluid
 18 nature of the situation, even the decided time of 15:30 to
 19 disarm, the Police also relaxed that as well.
 20 RT REV SEOKA: I appreciate that.
 21 MR SEMENYA SC: And by the time you were
 22 in the JOC, that was closer to 4 o'clock now.
 23 RT REV SEOKA: Maybe.
 24 MR SEMENYA SC: The anxiety with the
 25 Police is that now sunset is going to be closing in on an

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1 operation this big. Will you factor that as well, Bishop?
 2 RT REV SEOKA: You would say that, but
 3 it's, it was summertime. By that time it was still broad
 4 daylight. I believe there was still an opportunity to be
 5 seized to engage with the workers before dark fell on us.
 6 MR SEMENYA SC: I appreciate your view.
 7 I just want to give you the other side of the picture,
 8 Bishop. That at the very least time was an important
 9 factor in the operation, according to the police.
 10 RT REV SEOKA: Yes, but I don't think we
 11 should be driven by time; I think we should be driven by
 12 reason. There was a reason for us to consider the request
 13 of the people who were desperate to hear a person who
 14 employs them, speaking to them about their plight. Time,
 15 it could have been midnight, really, if you are requested
 16 to come and – as a priest I get called any time of the day,
 17 of the night, there is a person here who has been beaten,
 18 could you come and say some prayers for her. I don't
 19 hesitate to do that, so long as I'm assured that my
 20 security is guaranteed. The fact that people had died
 21 already previously on the 13th, it's all the reason why we
 22 should have reasoned together as to how we can prevent
 23 further conflict and death of people.
 24 MR SEMENYA SC: All, Bishop, I'm inviting
 25 you to do, is to say that you can concede to have no

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1 knowledge in policing and to defer to the expertise of
 2 those involved in a multi-disciplinary unit, as was the
 3 case on the day. That's all I ask of you.
 4 RT REV SEOKA: That's true. I do.
 5 MR HANABE: I didn't get that one. Can
 6 you, please Mr Semenya, repeat?
 7 MR SEMENYA SC: That to be fair, Bishop,
 8 that you don't have police expertise to interrogate the
 9 appropriateness or otherwise of the police conduct when it
 10 happened the way it did.
 11 RT REV SEOKA: But I also know that being
 12 patient with each other and talking together can bring
 13 about a solution to a problem.
 14 MR SEMENYA SC: Can I then invite you to
 15 deal with your communication with the Provincial
 16 Commissioner. She has no recollection of the conversation
 17 you testified about being civil and whether she is by
 18 affinity an [African word], etcetera. You recall that
 19 evidence?
 20 RT REV SEOKA: I can believe that,
 21 because she was a very troubled person.
 22 MR SEMENYA SC: Yes.
 23 RT REV SEOKA: I can believe that, but a
 24 person of statute and responsibility should be trained to
 25 be calm in a situation of that nature, and in fact where

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1 she was there was nothing threatening there. The threat
 2 would have been on the koppie, not where she was.
 3 MR SEMENYA SC: No but, Bishop, seriously
 4 now, the threat was of the most acute form to law and
 5 order, that had been building up from the 9th and
 6 culminating at that time with the death of 10 people. So
 7 it is not a light matter, I want to suggest to you.
 8 RT REV SEOKA: No. No, it's not light,
 9 Chair, and I'm not making it light and I would never do.
 10 The fact is, my experience at the koppie, right down to the
 11 command station, there was nothing reported that indicated
 12 there was violence. Talking to the Commissioner, she
 13 didn't say people are attacking. All I observed was just
 14 frantic movement of various people there, and she was then
 15 standing with me and then she went back, then people
 16 started even moving much faster up and down and helicopters
 17 took off. So there was no indication up to that moment in
 18 my knowledge that there was an attack, that there was
 19 violence. The picture I had is of the men at the koppie,
 20 some sitting down, some standing and singing.
 21 MR SEMENYA SC: Bishop, can I put this to
 22 you, and please correct me if I'm wrong because it's a
 23 little important for me. At no stage do you say to the
 24 Provincial Commissioner, I am here to defuse this impasse?
 25 RT REV SEOKA: I didn't use those words,

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1 but words that alluded to that will be true, that I am here
 2 as a messenger of the men at the koppie, who request that
 3 they should be addressed by "Mkashe." So my appeal to the
 4 Commissioner would have indicated that there is no violence
 5 up there, but people were sitting down as I saw them on the
 6 slides. When the policeman was addressing them, they
 7 showed some respect, they sat on the ground. They listened
 8 to what he was saying and asked that they be escorted back
 9 to the koppie. I think the same attitude would have
 10 prevailed if we had gone back to the koppie.
 11 MR SEMENYA SC: Bishop, I'm saying this
 12 is the first time since you were giving evidence that you
 13 say you conveyed that to the Provincial Commissioner.
 14 RT REV SEOKA: Because I'm answering a
 15 question that was asked to me. But all along I've been
 16 saying exactly why I went there, all along. I've not
 17 changed my statement at all.
 18 MR SEMENYA SC: No, I'm not accusing you
 19 of that. I'm saying that is what you said you said to the
 20 Lonmin people.
 21 RT REV SEOKA: Yes.
 22 MR SEMENYA SC: Not what you said to the
 23 Provincial Commissioner.
 24 RT REV SEOKA: Just say that again.
 25 MR SEMENYA SC: You testified about

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1 conveying that message to the Lonmin people. I'm saying as
 2 best as I recall it is the first time only now that you say
 3 you conveyed that request to the Provincial Commissioner.
 4 [14:41] RT REV SEOKA: Why would the Commissioner
 5 say to me you can negotiate anything with the management,
 6 but security non-negotiable because I'd put my case, I
 7 explained as to why we were there, and that was her
 8 response. You must recall that I also said, when she
 9 looked troubled to me, very anxious in a panic state, I
 10 tried to calm her down by introducing a conversation that
 11 was unrelated to our mission.
 12 MR SEMENYA SC: Lastly, Bishop, well,
 13 maybe before that, I was getting to, almost say thank you,
 14 obviously you would know that the South Africa Police
 15 Service will seek to persuade the Commission and will argue
 16 that it had come to a point where disarming the men on the
 17 koppie, it had come to a point when negotiation persuasion
 18 had failed to invoke what is called a stage 3.
 19 RT REV SEOKA: Through you, Chairperson,
 20 you see, senior counsel, I was not negotiating there, all I
 21 was appealing for is a space for the two parties to end it,
 22 to create, so that they can interact with each other.
 23 That's all I was trying to provide, that there's an
 24 opportunity to engage each other on the issue that has
 25 caused this stalemate. And I believe if the opportunity

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1 had been taken, the day would have ended differently.
 2 MR SEMENYA SC: Okay, I take it that's
 3 your opinion. At page 1368 of the transcript against line
 4 10, this is you speaking.
 5 MR HANABE: What page is that?
 6 MR SEMENYA SC: 1368.
 7 MR HANABE: Yes, thank you.
 8 MR SEMENYA SC: "As soon after entering
 9 the highway, the telephone, the cell phone rang and I
 10 answered it, because the general secretary was driving, and
 11 I was a passenger in the car, and upon answering the cell
 12 phone the voice on the other side in Xhosa language, he was
 13 saying, this is the translation, "Bishop, where are you?
 14 We are being killed by the police." This was in isiXhosa
 15 language, words to that effect. But it was clear, we are
 16 being killed and where are you? This was before four, a
 17 little after four to half-past four and we could hear on
 18 the – I could hear on the cell phone that there was some
 19 shooting going on there. There was some noise, whether
 20 from the helicopter and the screams of people and of course
 21 the phone went dead." Now the evidence is going to be that
 22 if this is reference to scene 1, the shooting occurred in
 23 approximately eight seconds, Reverend, you can't contest
 24 that, can you?
 25 RT REV SEOKA: Just say that again?

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1 MR SEMENYA SC: The evidence will be that
 2 if you are referring to scene 1, that shooting occurred in
 3 eight seconds, that is I have asked the question longer
 4 than the shooting occurred.
 5 RT REV SEOKA: I don't know, all I know
 6 is that I received the call, and the voice on the other
 7 side spoke to me, and it went dead. That much I know.
 8 MR SEMENYA SC: Had you looked at the
 9 time, that you heard them screaming?
 10 RT REV SEOKA: I didn't hear singing, I
 11 heard some screaming.
 12 MR SEMENYA SC: I said screaming.
 13 RT REV SEOKA: Yes, screaming and sounds
 14 of like ka, ka, ka, something like that. So I don't know.
 15 MR SEMENYA SC: Bishop, this account, if
 16 it really relates to scene 1, I would argue does not square
 17 with the objective evidence.
 18 RT REV SEOKA: I would reply by saying, I
 19 don't know whether it was scene 1 or scene 2 or scene 3, I
 20 was not aware of the scenes, I only now what happened that
 21 particular time.
 22 MR SEMENYA SC: Those are all the
 23 questions I have Bishop, thank you, Chair. I thank you
 24 too.
 25 CHAIRPERSON: Thank you, Mr Semenya. Any

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1 cross-examination from the side of NUM?
 2 MR TIP SC: Very briefly, Mr Chair, thank
 3 you, Bishop, I would like to get some clarification from
 4 you, on just one aspect of the statement that you've made,
 5 and that concerns paragraph 29 of it, your statement of
 6 course being exhibit M.
 7 RT REV SEOKA: Yes.
 8 MR TIP SC: It may be convenient if I
 9 just read it out and then everybody knows what I am dealing
 10 with. It reads as follows, "It was their firmly held view
 11 that the element of violence was sparked by the alleged
 12 shooting of protesters by NUM officials on 11 August 2012
 13 when they had marched to voice their dissatisfaction with
 14 the performance of that union." That's the end of the
 15 passage.
 16 RT REV SEOKA: Yes.
 17 MR TIP SC: Now, Bishop, it is of course
 18 very clear, as you've told us a few times, you were not
 19 there before 16 August 2012 and you've no personal
 20 knowledge of any of the preceding events including those on
 21 11 August.
 22 RT REV SEOKA: Yes.
 23 MR TIP SC: And the few questions that I
 24 am going to put to you now, have nothing to do with the
 25 truth or otherwise of what might have been conveyed to you

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1 on the 16th of August.
 2 RT REV SEOKA: Okay.
 3 MR TIP SC: I am merely concerned to be
 4 certain that we have the, as far as you can, your evidence
 5 in full of what was conveyed to you. Firstly, will you say
 6 it was their firmly held view, that would be a reference
 7 would it to the 6, 7 or 8 persons to whom you spoke, the
 8 leadership group, as you've described them.
 9 RT REV SEOKA: Yes.
 10 MR TIP SC: Then perhaps I should ask
 11 you, to give us any fuller description of what they had
 12 said to you, if you can, or I can put a few questions about
 13 the format of your statement in this regard.
 14 RT REV SEOKA: Two things, one, the music
 15 that was being sung there was showing some resentment and
 16 hostile behaviour towards NUM. The second thing, when they
 17 said that they were returning from the company unarmed, and
 18 that NUM shot them, I said to them, I don't believe that,
 19 because I would not expect a union to shoot at its people,
 20 as much as I would not expect parents to kill their
 21 children. And so, but they were very firm about that and
 22 as I said that they said NUM started it all. They were
 23 unarmed at the time.
 24 MR TIP SC: Bishop, the singing to which
 25 you have just referred us or the anti-NUM songs that you've

<p style="text-align: right;">Page 1977</p> <p>1 described, were those coming from the crowd as a whole, not 2 from the leadership persons to whom you were speaking? 3 RT REV SEOKA: You will recall that I 4 said some men were singing, some were seated down, and the 5 leadership was sitting just over the road there. So the 6 music was coming from the crowd. 7 MR TIP SC: And that singing was 8 independent of your discussion with the leadership group? 9 RT REV SEOKA: It had nothing to do with 10 the leadership. 11 MR TIP SC: Now, Bishop, you have 12 referred specifically in this paragraph it 11 August 2012, 13 do you recall that that was the date that was mentioned by 14 the group to you, as the one on which the shooting incident 15 had taken place? 16 RT REV SEOKA: The paragraph in my 17 statement? 18 MR TIP SC: Yes, I beg your pardon? 19 RT REV SEOKA: Just repeat your question. 20 MR TIP SC: Yes, I will certainly. In 21 paragraph 29 of your statement, the one that I've read out, 22 you refer specifically to the date 11 August 2012, do you 23 see that? 24 RT REV SEOKA: Yes. 25 MR TIP SC: And the question is merely</p>	<p style="text-align: right;">Page 1979</p> <p>1 performance of that union." 2 RT REV SEOKA: Yes. 3 MR TIP SC: Now that, I am sure that that 4 was not the language that they used to you, that's 5 presumably a précis or your own words. Can you tell us 6 quite how they put that across to you, what was it that 7 they were dissatisfied with? 8 RT REV SEOKA: They said they had gone to 9 the company, because NUM failed to speak on their behalf to 10 their employers, and also to have their demands met. If I 11 recall well they had been told that the union represents 12 them. If I remember very well then when they got there, 13 they were told that they were represented by the NUM or the 14 Union or that the company wanted to talk to NUM, but I 15 cannot say who said that. 16 MR TIP SC: But it was clear to you that 17 that they felt that NUM had not advanced their demands with 18 the vigour that they had expected. 19 RT REV SEOKA: That's what they informed 20 me. 21 MR TIP SC: Thank you, Chair. 22 CHAIRPERSON: Any cross-examination from 23 the side of AMCU? 24 MR GUMBI: Yes, Chairperson. On behalf 25 of POPCRU we would like to have some few questions.</p>
<p style="text-align: right;">Page 1978</p> <p>1 this, do you recall that that date was mentioned to you by 2 the leadership group to whom you were speaking? 3 RT REV SEOKA: I recall that. 4 MR TIP SC: You say when they had 5 marched, was a march to the employer's office, to Lonmin's 6 office, or a March to the NUM office? 7 RT REV SEOKA: From the employer's 8 offices. 9 MR TIP SC: Did you understand that they 10 were saying to you that they had left Lonmin's office and 11 had then proceeded on a march towards the NUM office? 12 RT REV SEOKA: Yes. 13 MR TIP SC: Right, I'll continue, I was 14 giving the interpreter an opportunity but – 15 MR HANABE: Yes, can you repeat that one, 16 with all due respects, sorry very much, Mr Tip. 17 MR TIP SC: Yes, my pleasure. I just put 18 to the Bishop the question whether he had understood that 19 the march of the strikers or protesters, however they may 20 be called, had proceeded from the Lonmin office towards the 21 NUM office, and that was the occasion at which this 22 incident of alleged shooting had taken place. Your 23 statement then proceeds with this description, evidently 24 intended by you to set out their intention, and I refer to 25 these words, "to voice their dissatisfaction with the</p>	<p style="text-align: right;">Page 1980</p> <p>1 CHAIRPERSON: Any cross-examination on 2 the side of AMCU. 3 MR NTSEBEZA SC: Thank you, Chairman, I 4 am standing in for Mr Bruinders, and I will put a few 5 questions, and of course for – 6 CHAIRPERSON: Proceed. 7 MR NTSEBEZA SC: - the families. Thank 8 you, Mr Chair. 9 CHAIRPERSON: You are going to cross- 10 examine for AMCU on Mr Bruinders' behalf and also for – 11 MR NTSEBEZA SC: For the families. 12 CHAIRPERSON: For the families, yes. 13 MR NTSEBEZA SC: Yes, Mr Chairman. 14 CHAIRPERSON: Alright, please proceed. 15 MR NTSEBEZA SC: Thank you. Archbishop, 16 it has been – I say Archbishop, maybe you should have been 17 one, I have been told that I am wearing purple in 18 identification with you, because you are also wearing 19 purple, but I really need to put a couple of questions to 20 you because there are sections that I really want to clear 21 insofar as it relates to your evidence, and what you say 22 you went there to do. Chair, am I allowed to take my 23 jacket off? Okay, thank you very much. 24 RT REV SEOKA: He wants the purple to 25 show.</p>

<p style="text-align: right;">Page 1981</p> <p>1 [15:01] MR NTSEBEZA SC: Bishop I understand your 2 evidence essentially to be that you came on the 16th of 3 August there because you had seen either, in the media and 4 you had become acquainted with what had happened at 5 Marikana and you thought because of your experience in 6 conflict resolution you might assist at finding a solution, 7 is that a fair summary of why you went there? 8 RT REV SEOKA: Yes, it is a fair summary 9 why I went there, if I may just put a preamble to it. Last 10 night at about 10, I was already in bed because I had been 11 advised that if you are going to testify you need to sleep 12 early. My cell phone rang and the person on the other side 13 says to me, Bishop, I'm very troubled about what is going 14 on in the world. I say well there are many things 15 happening now, what really troubles you. He said it's the 16 issue of the Israelites and the Palestines and I'm calling 17 you to find out if we shouldn't be having a public rally of 18 solidarity and I said it's difficult if you talk about 19 solidarity because there are two factions there, which side 20 are we going to be standing with. And he said no, we need 21 to think about that and I said well it's a difficult one 22 but I'm committed to it. We will talk about it and so it's 23 not like it's something that does not happen in one's life 24 to be asked to intervene and to do something about a 25 situation that presents itself at a particular time and</p>	<p style="text-align: right;">Page 1983</p> <p>1 MR NTSEBEZA SC: And in view of what you 2 had seen on television and heard about deaths that had 3 occurred to that point, and when you came to the mountain 4 according to your statement, there was a heavy police 5 presence, you must have realised that this situation was 6 tense and needed skill to deal with? 7 RT REV SEOKA: Indeed. But my faith 8 persuaded me to seek this opportunity and to use it to 9 protect further loss of life. 10 MR NTSEBEZA SC: Yes and we have already 11 heard you went to the mountain for the first time, 12 unescorted, I will not get into the detail of whether it 13 was 1 o'clock or 2 o'clock or 3 o'clock, but you went there 14 for the first unescorted? 15 RT REV SEOKA: That's true. 16 MR NTSEBEZA SC: And you state in your 17 statement that one of the reasons for that was that you 18 wanted to be sure that you get the trust of the protestors 19 and that your independence as the potential mediator would 20 not be compromised. 21 RT REV SEOKA: My experience has taught 22 me in such situations that you should not be understood or 23 be confused as having taken sides and so independence is 24 very crucial in developing trust. That's why we avoided 25 contact with anybody in that context until we engaged with</p>
<p style="text-align: right;">Page 1982</p> <p>1 that's exactly what I have been trying to say, motivated me 2 to come to Marikana. We have seen what is happening in 3 Israel right now on the television and the newspapers and 4 there are people talking about it and I think it's a 5 similar situation really to me. So you're absolutely right 6 there. 7 MR NTSEBEZA SC: Yes, in fact that leads 8 me to my next observation and that would be as I understand 9 your evidence, you were not there at the invitation of 10 anybody, certainly not at the invitation of the union that 11 my colleague represents AMCU, you had not been invited by 12 AMCU? 13 RT REV SEOKA: I was not invited by 14 anybody and nobody asked me to do that. I had had these 15 sleepless nights the night before, thinking about what I 16 had seen and read about and concern about the deaths and 17 wanting to prevent further deaths. Rather I invited people 18 to come with me and that's how the General-Secretary 19 accompanied me. 20 MR NTSEBEZA SC: Indeed when you came to 21 the mountain, you found a group of people mainly workers 22 who, I think it is incontestable now, belonged to NUM and 23 AMCU and probably others who did not belong to any union at 24 all. It was just a group of workers. 25 RT REV SEOKA: That's true.</p>	<p style="text-align: right;">Page 1984</p> <p>1 the workers, which actually leads to me say to you, Sir, 2 that the fact that the police who were present there, did 3 not stop us, it tells me that the place had not at that 4 time been cordoned off by the police. 5 MR NTSEBEZA SC: Yes, I don't want to be 6 bogged down about when exactly the cordoning off of the 7 place took place. The situation a is understand it, is 8 that you come there as a man of God and you see that there 9 is a window of opportunity to avoid further spilling of 10 blood, is that a correct assessment of your attitude? 11 RT REV SEOKA: That's true. 12 MR NTSEBEZA SC: As a person who is 13 experienced in conflict management, will you agree with you 14 and you will correct me if I'm putting a wrong position, 15 that patience is one of the ingredients that any would be 16 negotiator should have in trying to resolve, particularly a 17 potentially explosive situation? 18 RT REV SEOKA: Yes Sir, that's exactly 19 what I said to you senior counsel Semenya, that, it is just 20 like I said to Adv Semenya that patience and talking or 21 cooperation it has enough power to resolve the 22 misunderstanding, to defuse conflict. 23 MR NTSEBEZA SC: And your evidence is 24 that notwithstanding whatever plans could have been made by 25 the SAPS at resolving the dispute, notwithstanding whatever</p>

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1 could have been done by Lonmin to resolve the dispute,
 2 having come to the scene on the 16th, you were proposing
 3 that you be given an opportunity to see if your
 4 intervention could not bear fruit?
 5 RT REV SEOKA: Yes, you must recall that
 6 up to that point the church had not been involved and
 7 therefore it should have been seen as a neutral institution
 8 coming to do that which it does best, that is creating a
 9 peaceful atmosphere.
 10 MR NTSEBEZA SC: And is it your evidence
 11 based on an impression that you had that firstly management
 12 at Lonmin had apparently reached a stage where they did not
 13 want to negotiate with the workers at the koppie?
 14 RT REV SEOKA: Honestly and I must repeat
 15 it again, there was hostility. There was anger. There was
 16 strong language that was used and it was not necessary,
 17 especially because we had come and declared our intention.
 18 We had come as messengers to relay the message that
 19 Mantashe must go and engage with the workers and, so what
 20 we had then experienced is not what one would expect from a
 21 person who is in pain and who is seeking a solution to ease
 22 that pain or to end that pain.
 23 MR NTSEBEZA SC: Was it your firm
 24 impression, again you can correct me if I'm wrong, that
 25 when you got there, the management at Lonmin seemed to have

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1 made up their minds that they will not deal with whom they
 2 considered to be criminals and people who break the law?
 3 RT REV SEOKA: That was not my
 4 impression. That's what they told me and that was my
 5 experience of the management at that particular time.
 6 MR NTSEBEZA SC: Now in some of the
 7 questions that were put to you on behalf of Lonmin, there
 8 was, what I understood to be an attempt to put something
 9 else which was not as strong as you put what was said to
 10 you, that there never was stated to you that they will not
 11 deal with the people there because they are criminals. Do
 12 you still maintain your view that you were told that those
 13 people were engaged in criminal activity and therefore they
 14 could not be dealt with?
 15 RT REV SEOKA: I do.
 16 MR NTSEBEZA SC: Now Mr Chairman, I don't
 17 know where this statement is but I have been told. It has
 18 been discovered, it is a statement which purports to be by
 19 Mr Peter Fanyana Kwadi, the copy I have is unsigned and
 20 it's a witness statement and I don't know whether the
 21 evidence leaders can find this statement.
 22 CHAIRPERSON: I suggest you proceed with
 23 it in the meanwhile and when we resume tomorrow morning
 24 perhaps you want to give us more detail so that we can
 25 identify it more precisely. But let's not waste time.

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1 Just carry on with it -
 2 MR NTSEBEZA SC: Thank you, Mr Chairman.
 3 CHAIRPERSON: To save time.
 4 MR NTSEBEZA SC: Thank you, Mr Chairman,
 5 apparently there is a copy that is available that, Mr
 6 Kwadi, Peter Fanyana Kwadi in paragraph 9.7 of his
 7 statement says the following, I thereafter went to the JOC.
 8 I saw Bishop Seoka and other church leaders who came to the
 9 JOC requesting that management should go and address the
 10 crowd at the koppie. Mokoena, I suppose Mr Mokoena, dealt
 11 with this issue. I heard him telling the Bishop Seoka that
 12 1, it was unsafe to go and address the crowd in the light
 13 of the killings that has occurred, 2, the conduct of the
 14 crowd was unlawful and illegal and should not legitimised,
 15 3, the area had been declared as a police area and that no
 16 one was allowed to go to the koppie. Now is there anything
 17 else which you would like to add to what Mr Kwadi says was
 18 said by Mr Mokoena?
 19 MR BURGER SC: Chair, I don't know what
 20 the purpose of this questioning is. I put this statement
 21 in some many words to the Bishop this morning and he dealt
 22 with it, so my learned friend is reputed that and I'm
 23 really not sure why, where this leads to.
 24 CHAIRPERSON: He said is there anything
 25 else you want to add, which I take it means any

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1 qualification or extra information that you haven't given
 2 us before which is relevant to the context of that
 3 statement. Ja, I will disallow the objection and the
 4 witness may, the counsel may proceed.
 5 MR NTSEBEZA SC: Thanks, Chairman.
 6 Anything that you would like to add to what you said was
 7 said to you in that context?
 8 RT REV SEOKA: No, I can only say that
 9 the statement is a pure lie. The only thing that makes
 10 sense in that statement is the last statement that the
 11 place was cordoned off by the police.
 12 [15:21] MR NTSEBEZA SC: Now more tellingly is a
 13 document that has been discovered by AMCU, it is item 27 of
 14 AMCU's index, as amended – I'm told by my juniors, is a
 15 recording of the South African FM, called SAFM Forum at 8
 16 with Xolani Gwala, and it is relevant to the extent that
 17 your evidence which was contested by my learned friend from
 18 Lonmin, was that there was an unpreparedness on the part of
 19 Lonmin to further engage the workers for reasons that they
 20 stated. Now on page 8 of that statement, and I'm told it's
 21 been discovered, Mr Gwala says the following, "He is also,"
 22 and he refers to Mr Mathunjwa, "but what is important will
 23 be Mr Mokoena's response about the engagement," and this
 24 was on the 15th –
 25 CHAIRPERSON: Sorry, Mr Ntsebeza, just to

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1 get clarity. I take it, I think you said this is a
2 transcript of the Forum at 8 on SAFM at some stage after
3 the 16th of August.

4 MR NTSEBEZA SC: No, it was on the 15th of
5 August.

6 CHAIRPERSON: Thank you, on the 15th of
7 August, and who were the participants? Mr Xolani Gwala is
8 the presenter of the programme.

9 MR NTSEBEZA SC: He was with –

10 CHAIRPERSON: Who were his guests on the
11 programme –

12 MR NTSEBEZA SC: Thank you, Mr Chairman.
13 Thank you. These guests were Mr Senzeni Zokwana, who is
14 the President of NUM, Mr Joseph Mathunjwa - not Mathunjwa
15 as we have been calling him – AMCU President, and Mr
16 Barnard Mokoena, Lonmin mine representative.

17 CHAIRPERSON: - to put extracts from that
18 transcript to the Bishop for his comments?

19 MR NTSEBEZA SC: Indeed. Indeed, Chair.

20 CHAIRPERSON: Please proceed.

21 MR NTSEBEZA SC: Thank you. Thank you,
22 very much.

23 MR MPOFU: Chairperson, if I may, in case
24 there's more than one question from this, maybe request the
25 evidence leaders, should it be at hand, to supply a copy to

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1 the Bishop of this? It is what Ms Pillay has been doing
2 throughout, but apparently things have changed here.

3 CHAIRPERSON: Surely the cross-examiner,
4 as Mr Burger did, has copies ready to hand to the witness.
5 But anyway, this didn't happen on this occasions. Ms
6 Pillay is not here today, which – so if there aren't copies
7 they can't be provided, but it obviously would be fair if
8 the Bishop could be given a copy, but if it can't be done,
9 let's not waste time, let's carry on, and if the Bishop
10 needs a passage to be repeated, he'll ask.

11 MR MADLANGA SC: Mr Chairman, may I just
12 raise the question of marking of exhibits. I do not know
13 that the statement of Mr Fanyana Peter that Mr Ntsebeza
14 referred to is already an exhibit, or is it?

15 CHAIRPERSON: No, it isn't. I understood
16 they were going to give us the reference tomorrow morning
17 and we can then mark it.

18 MR MADLANGA SC: Okay. Okay.

19 CHAIRPERSON: And presumably the same
20 will apply to this transcript from SAFM.

21 MR MADLANGA SC: Yes, yes, and may I ask
22 colleagues there that if colleagues know beforehand that
23 they will be referring to documents, they should alert us
24 to that. With all the attributes of Houdini, even Houdini
25 may fail sometimes.

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1 CHAIRPERSON: Let's, first thing tomorrow
2 morning let's do the housekeeping and get this part of the
3 matter in order, but let's not delay now. Let Mr Ntsebeza
4 proceed with the cross-examination.

5 MR NTSEBEZA SC: Thank you, Mr Chairman.
6 I must confess to have been spoilt by a more competent
7 Houdini in the form of Ms Pillay, but that being so – on
8 page 8 of this document, Mr Gwala seems to be putting it to
9 Mr Mokoena that two weeks before that date they had heard
10 rumours that there would be a march and this is how he
11 responds, "No, no, no, he's twisting the truth at the
12 expense of 10 lives," saying the reference to the people
13 who had died up to that point. "There are no engagements.
14 We have not engaged these groups of people and it is still
15 our position; we will not engage people who engage in
16 criminal activity outside the union structures." Now as I
17 said this was on the 15th, the day before all of this.
18 Already at that stage according to, Mr Mokoena had taken a
19 legalistic view and that view was that we will not engage
20 with people who engage in criminal activities. He also
21 refers to 10 bodies. On page 23 he again says the
22 following, "I must express my horror at the amount of
23 allegations when we have 10 people dead, Xolani, and it's
24 very said, we are not giving South Africans hope. We are
25 fuelling more tensions and more violence as we sit here and

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1 throw allegations at one another." Now was it also your
2 impression that Mr Mokoena seems to have had a view that
3 because there had been people who had died to that point,
4 10 of them, there was no need anymore to engage what he
5 considered were people who were engaged in criminal
6 activity?

7 RT REV SEOKA: That is correct. That is
8 why I said there was a lot of anger as they spoke to us.

9 MR NTSEBEZA SC: And objectively by now
10 you will know, not only were Lonmin security people being
11 killed in skirmishes that had taken place a few days before
12 this programme; two police officers had also been killed,
13 and Mr Semenya referred you to those. That now you know as
14 you sit there.

15 RT REV SEOKA: That much I know yes,
16 thank you.

17 MR NTSEBEZA SC: And in an endeavour to
18 put to you what he referred to as the belligerence of the
19 workers at the railway line, Mr Semenya indicated to you
20 that very soon after that clip where they were being told
21 by General Mpembe that they should give up their arms, two
22 police officers were brutally killed. You remember that?

23 RT REV SEOKA: I remember it yes, thank
24 you.

25 MR NTSEBEZA SC: What the clip however

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1 shows, is that after there was clearly no agreement to hand
 2 over the weapons on the basis that has been indicated, that
 3 they should be escorted to the mountain and all of that,
 4 the clip shows police officers appearing to be aiming
 5 rifles at the workers as they are going. Did you see that?
 6 RT REV SEOKA: I did, Sir. Thank you.
 7 MR NTSEBEZA SC: And one gets the
 8 impression, and I'm sure I can tell you all of us got the
 9 impression, that we are going to get visuals on a second-
 10 by-second basis that show us what happened from that point
 11 on.
 12 RT REV SEOKA: I'm looking forward to
 13 that also to see that.
 14 MR NTSEBEZA SC: I'm afraid so far we
 15 have not had any footage that shows on a second-by-second
 16 basis what happens as the marchers, or the workers are
 17 being escorted, and you didn't see that in the clip that
 18 was shown to you.
 19 RT REV SEOKA: That's true.
 20 MR NTSEBEZA SC: So what was put to you
 21 did not tell you, nor did it in fact relate to any footage
 22 that you have seen to show how the conflict had come about,
 23 given that there seems to have been an agreement, whether
 24 on General Mpmembe's version or on what we see, that they
 25 would be escorted to the mountain. We don't know how those

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1 two police officers were brutally murdered.
 2 RT REV SEOKA: That's true.
 3 MR NTSEBEZA SC: Because that video
 4 footage simply cuts off.
 5 RT REV SEOKA: Yes.
 6 MR NTSEBEZA SC: And in the context of it
 7 being put to you that two police officers were brutally
 8 killed, it was not put to you, just for your information,
 9 that out of that skirmish – and it seemed now to be
 10 uncontested – three workers got killed out of that
 11 skirmish. One of them is actually reflected in slide
 12 number 55, I think, of exhibit – all three of them are
 13 depicted in slide 56 of exhibit L. Do you see that?
 14 RT REV SEOKA: Yes.
 15 MR NTSEBEZA SC: So it's not as though,
 16 however it arose, and this is the point that I seek to
 17 make, people died as a consequence of that skirmish.
 18 RT REV SEOKA: Yes.
 19 MR NTSEBEZA SC: You appreciate it. And
 20 on the Police version, just on their version, the death was
 21 occasioned because the workers – and I am putting their
 22 version as they put it in slide 47 – the workers decided to
 23 go to where they live in the informal settlements and the
 24 Police took it upon themselves to use teargas, stun
 25 grenades, which produced two large explosive sounds on

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1 their version, this being an effort to disperse the
 2 protesters, not to escort them wherever, and on their
 3 version to discourage from entering their path.
 4 MR SEMENYA SC: Chair -
 5 MR NTSEBEZA SC: Now I'm asking you as –
 6 MR SEMENYA SC: Chair, I was going to
 7 note an objection. Our version is not that they were going
 8 to where they live; it was to protect the informal
 9 settlement from possible risk.
 10 CHAIRPERSON: No, there are two points.
 11 The first is your version is not that they were going to
 12 where they lived; your version according to 47 is they
 13 changed direction towards the village. Whether they lived
 14 there or not, isn't clear from 47.
 15 MR SEMENYA SC: That's what Mr Ntsebeza
 16 said.
 17 CHAIRPERSON: What you also say on 46 is
 18 you wanted to prevent them from entering the informal
 19 settlement to prevent possible incidents of looting and/or
 20 safeguard innocent lives. So that's necessary, which has
 21 now been cleared up. But in the light, I think Mr
 22 Ntsebeza, to put it slightly, he went beyond what your case
 23 was because he said they were going to where they live, and
 24 that's not part of what appears on 47. But now that
 25 point's been taken, has been removed, perhaps Mr Ntsebeza

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1 can carry on.
 2 MR NTSEBEZA SC: Thank you, Mr Chairman.
 3 I am simply putting to you, Bishop, that it would appear on
 4 the Police version the skirmish occurred because the
 5 workers decided, or some of them decided to change
 6 direction towards the village. Did you get that?
 7 RT REV SEOKA: I got that, yes.
 8 CHAIRPERSON: And Mr Ntsebeza, that isn't
 9 even necessary, right. I mean if you look at 49, slide 49,
 10 the workers were, I take it in the vicinity of that brown
 11 triangle above the words "Mine headquarters," and if they
 12 were going from there to the koppies, which we see, in
 13 other words they were going in a north-easterly direction
 14 towards the koppies, they were going to the koppie, right.
 15 Now if they were going more or less in a straight line,
 16 they might well have gone through the informal village. So
 17 they weren't necessarily even changing direction. They may
 18 have been going from the shortest route from where they
 19 started to the koppie. So those are the two aspects that
 20 the witness has to consider, aren't they?
 21 [15:41] MR NTSEBEZA SC: Yes. Thank you very
 22 much, Chairman, and of course, Bishop, you've heard that,
 23 but so far, and in view of what was being put to you as
 24 suggestive of a belligerent group of people who were
 25 disobeying a command to hand up their weapons. We have not

<p style="text-align: right;">Page 1997</p> <p>1 been told either on the basis of this reason or unhappily 2 because we don't have footage that shows what happened. We 3 don't seem to be able to get to know whether there was an 4 engagement by the police to say, why are you now changing 5 directions? Is that right? 6 RT REV SEOKA: That's right, and also to 7 say that it puzzles one that asked to be escorted, and 8 subsequently there's a skirmish and one does not know when 9 it actually happened, and how it happened. 10 MR NTSEBEZA SC: So the only and simple 11 proposition that I want to put to you, is that we do not 12 seem to have sufficient basis on – sufficient grounds on 13 the evidence that you were referred to, as you were being 14 cross-examined by SAPS, to conclude that one, that skirmish 15 was as a consequence of a belligerent disposition on the 16 part of the workers, even on whether in fact they had 17 changed direction. What we know, is that the police 18 started to use tear gas, stun grenades to disperse 19 protesters and to discourage them from their intended path, 20 would you have a comment on that? 21 RT REV SEOKA: That's what we know from 22 the records provided to us by the police. 23 MR NTSEBEZA SC: And these are people who 24 had volunteered to be escorted. 25 RT REV SEOKA: Yes.</p>	<p style="text-align: right;">Page 1999</p> <p>1 three weeks before this event. Ms Pillay may have been – 2 it's exhibit S, I think. You may not have it before you. 3 This is what it says as a directive, from the National 4 Commissioner, sent to all provincial commissioners, all 5 divisional commissioners – 6 CHAIRPERSON: I am sorry to interrupt 7 you, this is exhibit S, letter from the National 8 Commissioner to Provincial Commissioner, the 20th of July 9 2012, exhibit S. 10 MR NTSEBEZA SC: That's the one, 11 Chairman. "All deputy National Commissioners, Chief of 12 Staff, Secretary of Police." You don't have it before you, 13 but I can tell you the Commission has it in front of them. 14 3.3 says the following which is why I asking for your 15 comment on the absence of critical video footage. "POP 16 stands for public order police. Operational Commanders 17 must ensure that video footage is taken of the crowd 18 throughout the phases and including during the use of 19 minimum force. The record keeper must also record 20 everything on the operational diary. The member who gives 21 the command for action must not take part in the action." 22 Now, let's assume that this is all we have, what we saw, is 23 all we have, and we do not have, not include the critical 24 aspect, I will ask the question that I put to you, wouldn't 25 that be remarkable in the light of an injunction that</p>
<p style="text-align: right;">Page 1998</p> <p>1 MR NTSEBEZA SC: In fact from the slides, 2 it is clear that the police were standing in a position of 3 readiness to fire. When you look at the spokesperson of 4 the workers he had his hands up, which is a sign of 5 surrender. Now in these days of cell phone footages and 6 everything else that records what happens, and given the 7 fact that we now know that this belligerent group of 8 workers on the railway line were recorded throughout what 9 they said, what they did, my learned friend even referred 10 to them sabre rattling, iron upon iron, singing, one day in 11 private company, I will even tell you what the lyrics are 12 saying. Now, I'll ask the question that I asked from 13 Colonel Botha in similar circumstances, don't you find it 14 remarkable that we don't have police or Lonmin footage from 15 the time that these people appear to be escorted, that 16 reflects on a point by point basis, how the conflict arose 17 that took away five lives. 18 RT REV SEOKA: That is what one would 19 have expected if the belief was that the situation was 20 volatile and that was potential violence, and the fact that 21 it is not there, it's puzzling and very surprising 22 actually. 23 MR NTSEBEZA SC: In fact, Bishop, there 24 is, I don't know whether it has been given an exhibit 25 number, but it is the letter of the 20th of July 2012 about</p>	<p style="text-align: right;">Page 2000</p> <p>1 please make sure is given only two weeks, two to three 2 weeks before that. 3 RT REV SEOKA: It is indeed remarkable 4 that that happened. 5 MR NTSEBEZA SC: Bishop, I share your 6 passion as a mediator alternative dispute resolution 7 mechanism, convert and a negotiator, it's my latest 8 passion. On the clip that you were shown, that clip 9 records an incident on the 13th of August, General Mpembe 10 apparently has a mandate to disarm and disperse that group 11 of people, because that's what he says. They reach the 12 point in that footage where one of the workers unarmed, you 13 can talk, you can say something about Mambush or the man 14 [African language] having gone there with still with his 15 weapons, the last person who goes to General Mpembe, he is 16 unarmed, his is young, from what I can see, [African 17 language] and he goes there, and he says, Tata, Tata. We 18 have no destroyed anybody's thing, we have not taken 19 anybody [African language] we have not, you know, all we 20 want you to do, is to escort us and when we get up there, 21 we will then hand your weapons over to you. We will never 22 know whether that would have happened. But what we see and 23 you will correct me if I am wrong, is a very impatient 24 General Mpembe, who then says, [African language] I don't 25 have a problem with you, my problem [African language].</p>

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1 Now as a negotiator, and as a conflict resolution person,
2 how would you view that as a tactic?

3 MR BURGER SC: I object to that question,
4 Chair, this witness has disavowed any reliance on being a
5 negotiator. In fact I was taken to task this morning in an
6 unguarded moment, of referring to negotiation between him
7 and the group.

8 MR NTSEBEZA SC: He has not, excuse me
9 Chairman, he had not disavowed himself of being a
10 negotiator, what he did was to say he was not negotiating
11 in the circumstances of that case in the 16th. If anything,
12 he has in fact extolled himself as a person who has been
13 involved and trained in conflict management negotiations.

14 CHAIRPERSON: It's not necessary to hear
15 you further, Mr Ntsebeza. Mr Burger, if you look at
16 paragraph 2 and 3 of exhibit M, you will see that the
17 Bishop says that he was frequently called on to avert to
18 de-escalate violent confrontations and he goes on to say,
19 "I have specialised knowledge of and experience in conflict
20 management in the mining industry." And I understood him
21 to qualify himself as an expert in this area. So in my
22 opinion, the questions he's being asked, admittedly would
23 be, the answers would be of an opinion nature, he is
24 qualified in terms of what he said to express an opinion.
25 So the objection is disallowed, you may proceed, Mr

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1 Ntsebeza but I don't know how much longer you are going to
2 be with this point, so if you could perhaps round it off at
3 the time when we normally adjourn, it might be helpful.

4 MR NTSEBEZA SC: Not very long, Mr
5 Chairman. You know, I keep my promises. Now in fact, as
6 it is just for the record, the witness has said in
7 paragraph 3 of his statement, he has specialised knowledge
8 of and experience in conflict in the mining industry. Now,
9 I was asking you for your views on, given the volatile
10 nature of that situation as you see it on the video, what
11 do you think of General Mpenbe's reaction to what seems to
12 be a proposition in a tense situation?

13 RT REV SEOKA: I think it was a desperate
14 unprofessional way of handling a situation that could
15 explode at any time, as he assumed. If I were him, I would
16 have handled it differently.

17 MR NTSEBEZA SC: Yes, I will not go into
18 how you would have dealt with it. If I heard him correctly
19 or clearly he began to count even as Xolani or the worker
20 was beginning to talk to him. He says, "I am now
21 counting," like listen, you hand over, it's my way or the
22 highway, did you observe that? When he said, I am
23 counting.

24 RT REV SEOKA: That's an indication of
25 being impatient and threatening really, if I count to this

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1 number, and have not done what I've asked of you, I will do
2 something. That's my assumption.

3 MR NTSEBEZA SC: Mr Chairman, if you
4 could give me five more minutes, just five.

5 CHAIRPERSON: I'll give you six.

6 MR NTSEBEZA SC: Now, when times were put
7 to you, as to when you came there, and what you were doing
8 with whom you were, I think part of the endeavour was to –
9 in fact I think it was put to you by SAPS that at the time
10 that you sought an intervention it was time already for
11 phase 3 to kick in, because the police had done all the
12 negotiation that could have been done, they had asked for
13 the workers to disarm themselves, but the time had now come
14 because those attempts had failed for another phase to kick
15 in, the last phase.

16 RT REV SEOKA: I think that could be true
17 because the attitude of Commissioner just walking away and
18 pretends to go and get food, and never come back would
19 indicate that she only had no time to talk to us.

20 MR NTSEBEZA SC: But is it fair to say
21 that even if that may well have been so, your coming to
22 Lonmin or Marikana on that day was by way of saying, can we
23 try another method? I am coming here as a man of God, as a
24 person experiences in conflict management, I think there is
25 a possible way in which you can deal with this.

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1 [16:01] RT REV SEOKA: That is exactly our
2 attitude and why I was there, but we also say that we had
3 experience in the mining environment, we have worked there.
4 We have trained in that context, and we have some
5 understanding and experience of the behaviour of miners.

6 MR SEMENYA SC: Indeed, as you yourself
7 say, or as it is universally accepted, you became the
8 broker of the peace deal in Marikana after all these
9 tragedies, is it not?

10 RT REV SEOKA: I believe that if the
11 church had not moved in, there would have been worse
12 situation than what we experienced.

13 MR SEMENYA SC: If I'm correct, even
14 after the events of the 16th, the workers continued to
15 assemble there, continued to carry their traditional
16 weapons, and the situation became volatile, and if I
17 understood you well, it was precisely for that reason that
18 when you intervened, you said one the bases on which any
19 agreement will be reached is when you decide to disarm
20 yourselves, is that correct?

21 RT REV SEOKA: That's correct.

22 MR SEMENYA SC: That is why in fact you
23 say you do not think that those who were seeking a solution
24 should have been driven by time, but by reason. Is that
25 what you sought to convey?

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1 RT REV SEOKA: That's exactly what I was
 2 trying to convey to those people there.
 3 MR SEMENYA SC: And finally –
 4 RT REV SEOKA: That's the nature of
 5 negotiations, that's the nature of managing conflict
 6 situations. You appeal for space rather than time.
 7 MR SEMENYA SC: And finally, you'll
 8 correct me if I'm wrong, in paragraph 31 of your statement,
 9 I know that you still regret that there was that kind of
 10 operation, because it resulted in what you say, injuries
 11 and what have you, but talking about alternatives to
 12 disarming protestors, it doesn't appear that there was no
 13 alternative to do so in the manner in which it was done on
 14 this date in September, would you agree?
 15 RT REV SEOKA: I'll agree.
 16 MR SEMENYA SC: In fact, after that raid
 17 every television programme carried large amounts of spears,
 18 pangas and assegais which had been taken from the workers.
 19 RT REV SEOKA: That is correct.
 20 CHAIRPERSON: Sir, you could have six
 21 minutes, you had, and you did say finally, I take it this
 22 is going to be the last question which is going to be
 23 preceded by the words finally, in conclusion?
 24 MR SEMENYA SC: It's the last question,
 25 Chair. I won't finish him off, but I will finish. Bishop,

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1 I have lost my track.
 2 CHAIRPERSON: Your cross-examination?
 3 MR SEMENYA SC: The bishop will be away –
 4 CHAIRPERSON: No, that's the next
 5 question I want to raise with Mr Mpofo, whose witness he
 6 is. We're not finished, we're going to have to adjourn
 7 now.
 8 MR SEMENYA SC: Alright.
 9 CHAIRPERSON: We're not finished. Is the
 10 bishop available? I suppose I should ask the bishop. Are
 11 you available tomorrow, Bishop?
 12 RT REV SEOKA: I can be available in the
 13 afternoon, but I'm sure to be available on Monday.
 14 CHAIRPERSON: The difficulty, we normally
 15 end reasonably early in the afternoon, because people have
 16 to catch aeroplanes and things –
 17 MR MPOFU: Chair, if I may, I know we are
 18 supposed to adjourn now, could – assuming that there's not
 19 much longer cross-examination, can't we just finish –
 20 CHAIRPERSON: Sorry, but Mr Bizos has
 21 still got to cross-examine him.
 22 MR MPOFU: Oh okay.
 23 CHAIRPERSON: Mr Gumbi has got to cross-
 24 examine. Yes?
 25 MR BIZOS SC: Although we don't – we want

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1 to clarify some of the things that the bishop has said,
 2 we'll wait for more involved witnesses in the affair to put
 3 our questions. We will not cross-examine the witness.
 4 CHAIRPERSON: Yes, we've also got the
 5 evidence leaders as well I think. I wonder if the best
 6 thing to do is not simply to adjourn now, I won't excuse
 7 the bishop, we won't expect him back tomorrow, and by
 8 negotiation with the evidence leaders, arrangements can be
 9 made for him to return on a date that suits everybody. I
 10 think that's the sensible way to do it, okay. So thank you
 11 bishop for your attendance today. I'm sorry we weren't
 12 able to, to use an unfortunate expression, finish you off,
 13 but you'll come back on a date in future which will be
 14 arranged with the evidence leaders and the representatives
 15 of parties.
 16 RT REV SEOKA: Thank you very much for
 17 the opportunity.
 18 CHAIRPERSON: On that basis, the
 19 Commission will adjourn until 09:30 tomorrow morning.
 20 [COMMISSION ADJOURNED]
 21 .
 22 .
 23 .
 24 .
 25 .

<p>A</p> <p>able 1913:18 1931:12 1997:3 2007:12</p> <p>absence 1925:19 1999:15</p> <p>absolutely 1935:5 1982:5</p> <p>acceded 1959:25</p> <p>accept 1898:8 1901:1,2 1901:5 1902:17 1904:7,8 1905:18 1906:8 1907:15 1909:2,10 1912:17 1930:13 1933:17 1945:17,21 1950:9 1953:14,21 1960:7 1962:11,18,24 1963:18 1964:11</p> <p>acceptable 1940:17</p> <p>accepted 1880:16 1885:16 1943:4 2004:7</p> <p>accompanied 1931:2 1982:19</p> <p>accompany 1889:4,5</p> <p>account 1974:15</p> <p>accounts 1962:3</p> <p>accurate 1899:9</p> <p>accused 1965:5,7</p> <p>accusing 1971:18</p> <p>achieve 1962:22</p> <p>achieved 1928:18 1930:15,19,19</p> <p>acknowledgement 1929:1</p> <p>acquainted 1981:4</p> <p>act 1892:4 1924:19,20</p> <p>action 1999:21,21</p> <p>activities 1991:20</p> <p>activity 1986:13 1991:16 1992:6</p> <p>acts 1925:12</p> <p>actual 1941:4 1957:8</p> <p>acute 1970:4</p> <p>add 1886:13 1916:19 1925:5 1987:17,25 1988:6</p> <p>added 1947:17</p> <p>adding 1967:8</p> <p>additional 1882:6</p> <p>address 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<p>1940:25 dealt 1917:12 1927:8 1986:14 1987:10,21 2002:18 death 1920:25 1921:11 1947:11 1962:2 1963:20 1968:23 1970:6 1994:20 deaths 1965:2 1982:16 1982:17 1983:2 debate 1954:7,9 1960:2 December 1920:25 decide 2004:19 decided 1882:8 1953:23 1967:18 1994:22 1996:5,5 decisions 1904:7,11 declared 1884:2 1948:22 1985:17 1987:15 deep 1929:24 1942:2 defend 1942:20 defended 1942:3 defer 1931:5 1969:1 deferred 1967:7 definitely 1909:6 defuse 1970:24 1984:22 delay 1991:3 deliberately 1956:19 demand 1959:25 demands 1916:20 1979:10,17 denial 1887:14 deny 1883:14,15,21 1926:11 1942:16 depicted 1994:13 depiction 1955:17 deployment 1966:25 deputy 1953:8 1999:11 described 1976:8 1977:1 description 1949:14 1976:11 1978:23 design 1952:8 desires 1930:24 desperate 1968:13 2002:13 despite 1880:11 1896:5 destroyed 2000:18 detail 1915:8,24 1916:12 1983:12 1986:24 detour 1952:23 1954:2 detracted 1924:21 developing 1983:24 de-escalate 2001:18 diary 1999:20 didn't 1883:6 1884:23 1884:24 1887:5,11,11 1887:14 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