

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 260

22 JULY 2014

PAGES 32771 TO 32807



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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@mweb.co.za
Web Address: <http://www.realtimesa.co.za>



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1 [PROCEEDINGS ON 22 JULY 2014]
 2 [09:08] CHAIRPERSON: The Commission resumes. As
 3 soon as the microphone comes on, on the other side, would
 4 you please tell the witness that he's still under oath, and
 5 then Mr Mpofu will continue with his cross-examination.
 6 MR X: [s.u.o. through interpreter]
 7 MR MAHLANGU: Confirmed, Chairperson.
 8 CHAIRPERSON: Thank you, Mr Interpreter.
 9 Mr Mpofu.
 10 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 11 Thank you, Chairperson. Good morning, Sir.
 12 MR X: Morning.
 13 MR MPOFU: How are you today?
 14 MR X: I am right, Mr Mpofu. How are
 15 you?
 16 MR MPOFU: I am also well, thanks.
 17 Right, Mr X, yesterday I suggested that –
 18 CHAIRPERSON: Excuse me, Mr Mpofu, I'm
 19 sorry, but could that light be turned off? I understand
 20 why the TV people would like it, but in fact it's very
 21 disturbing for us. Yes, I'm sorry, I hope it doesn't
 22 interfere with the quality of the pictures that you're
 23 taking. Yes, Mr Mpofu, I'm sorry for interrupting. Thank
 24 you for turning out the light.
 25 MR MPOFU: Thank you, Chairperson. I was

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1 saying, Mr X, yesterday I suggested that the bulk of my
 2 cross-examination is going to be about showing that you
 3 have been called by the police purely as a public relations
 4 exercise, which I might add has turned sour and they're
 5 quiet, and in that you don't have much to contribute to the
 6 core business of the Commission, and I'm just going to
 7 continue with that, and I started by dealing with what I
 8 called the core events of the Commission, which are the
 9 events of the 16th, the core but not the only event
 10 concerning the Commission, which are the events of the 16th,
 11 and without summarising the evidence of yesterday but
 12 coming from it I will argue that as suggested you have
 13 nothing to contribute in respect of either scene 1 or scene
 14 2, in other words of any of the 34 deaths of the 16th. I
 15 just want to put that issue into perspective with you
 16 before I ask you questions. You understand that?
 17 MR X: I do not understand what Mr Mpofu
 18 is talking about, Mr Chairperson.
 19 MR MPOFU: Okay. You know that, or you
 20 may or you may not know that the Commission concerns 44
 21 deaths of various people. Or you might not know the
 22 number, but you know that the Commission concerns the
 23 deaths of people who died in that period from round about
 24 the 9th or 10th up to the 16th, correct?
 25 CHAIRPERSON: There are certain deaths we

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1 are concerned with which were on the 11th, Sunday the 11th,
 2 and the last one, as you say, on the 16th. I've got it
 3 wrong. The first deaths were on the 12th and the last
 4 deaths were on the 16th, but there were events prior to the
 5 12th which we also have to investigate in respect of which
 6 we received evidence.
 7 MR MPOFU: You understand?
 8 MR X: Yes, that is what I was
 9 explaining, how those people died.
 10 MR MPOFU: Yes, now what I'm saying to
 11 you is this; of those deaths, of those 44 deaths only 37
 12 are blamed on the police directly.
 13 MR X: The police are innocent about the
 14 deaths of these people, Chair.
 15 MR MPOFU: Yes, no we'll come to that.
 16 MR X: [Inaudible, speaking
 17 simultaneously with interpreter]
 18 MR MPOFU: Ja, so we're going to get to
 19 that, ja. So whether they are blamed rightly or wrongly is
 20 another matter. I'm simply saying that of those 44 deaths
 21 the police are directly implicated in the deaths of 37 of
 22 those people.
 23 MR X: Sir, the police are innocent about
 24 the Marikana happenings. I don't agree to that. I do not
 25 agree with you.

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1 MR MPOFU: And Mr Budlender - and I will
 2 deal with this later – demonstrated clearly – and I will,
 3 as I say I will deal with it – that you were not, you were
 4 possibly not present on the 13th of, or in the incident that
 5 happened on the 13th of August in which three of the deaths
 6 implicating the police were involved.
 7 MR X: The person who wasn't there is
 8 this Mpofu. I have already explained that before. Mr
 9 Mpofu shouldn't go back.
 10 MR MPOFU: And therefore the 34 deaths,
 11 in respect of the 34 deaths of the 16th and the three
 12 additional deaths on the 13th, making up the 37 that I spoke
 13 about, you have nothing whatsoever to contribute. And I
 14 want to put it plainly that in respect of the remaining
 15 seven deaths you also have nothing to contribute because
 16 when we argue at the end we are going to concede that
 17 those, at least five of those deaths can be placed at the
 18 door of the protesters, generally speaking, which, because
 19 – and let me explain that.
 20 Our case will be that the deaths on the 13th, all
 21 five deaths on the 13th, even those that might have been
 22 perpetrated by the protesters should be laid at the door of
 23 SAPS, which triggered that event, and that then leaves out
 24 the deaths of Mr Fundi, Mr Mabelane, Mr Mabebe, Mr Langa
 25 and Mr Twala. In respect of those deaths, as I have

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1 already said, it would seem that those deaths can be placed
 2 at the door of the protesters. Which of the protesters and
 3 under what circumstances is not a matter for this
 4 Commission to determine.
 5 CHAIRPERSON: I don't know whether you're
 6 correct in saying it's not for us to determine under what
 7 circumstances, but I take it what you mean –
 8 MR MPOFU: By that I mean the
 9 legalities –
 10 CHAIRPERSON: What you're really
 11 suggesting is that it's only for us to make prima facie
 12 findings and make recommendations for consideration of
 13 prosecution and so on. I know one of your arguments will
 14 be, which you've foreshadowed already, that in the case of
 15 prosecutions already pending –
 16 MR MPOFU: That's where I'm going.
 17 CHAIRPERSON: - that's something we can
 18 surely deal with.
 19 MR MPOFU: Yes, Chairperson, that's
 20 correct. Maybe I was summarising it too much. When I say
 21 the circumstances I mean the legalities, whether it was in
 22 self-defence and all that, the conviction or acquittal of
 23 those people. I said firstly the identification of which
 24 specific persons and also whether they are indeed guilty is
 25 not a concern of this Commission.

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1 CHAIRPERSON: But you'll forgive me for
 2 saying this, but it's a rather long speech you made to the
 3 witness. I understand sometimes it's necessary to do that
 4 so the witness will follow the question you're going to
 5 ask.
 6 MR MPOFU: Yes.
 7 CHAIRPERSON: But I'm afraid he may not
 8 have followed at all. But anyway, perhaps you could come
 9 to your question now and if we see he doesn't follow,
 10 hasn't followed, then we may have to step back a bit, as
 11 you like to say –
 12 MR MPOFU: Ja. No, that's why –
 13 CHAIRPERSON: - and give him an
 14 explanation.
 15 MR MPOFU: Thank you, Chairperson.
 16 That's why every now and again I'm testing him by asking if
 17 he understands. And as the Chairperson has already
 18 alluded, which I was coming to, in fact in respect of
 19 those, or maybe to be safe let me say most of those five
 20 deaths specific protesters have already been charged, and
 21 so the Commission factually will not and cannot be called
 22 upon to recommend the prosecution of people when they have
 23 already been prosecuted, and whether, as I said, whether
 24 they're going to be found guilty or not guilty is a
 25 separate matter.

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1 So the real issue then to come to the, cut to the
 2 chase, is that in respect of the 37 or 39 deaths that SAPS
 3 will be blamed for, by us at least, directly, you have
 4 absolutely nothing to offer the Commission.
 5 CHAIRPERSON: Perhaps you should explain
 6 that that's a conclusion that you make. I think you –
 7 MR MPOFU: That I will argue, yes.
 8 CHAIRPERSON: - it's important to explain
 9 the basis for it so he can deal with it, but he can deal
 10 with just a conclusionary statement like that –
 11 MR MPOFU: Fair enough. Fair enough.
 12 Ja, and this, what I'm saying, Mr X, is again as I started
 13 with you yesterday, showing you where I'm going to go with
 14 the cross-examination, so that is what I'm going to argue
 15 in relation to why I accepted that you're being called here
 16 knowingly, knowing that you cannot contribute to assist
 17 SAPS in any of its, that it is blamed for, purely as a
 18 public relations exercise, which turned to be a public
 19 relations disaster. And as I said, the tragedy is that
 20 even in respect of the deaths where you participated your
 21 evidence, the quality of your evidence is such that it can
 22 only be a source of further trauma to those families
 23 because it's so riddled with contradictions and –
 24 CHAIRPERSON: You made all those points,
 25 or endeavoured to make them yesterday. I don't know that

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1 time is profitably being spent in repeating them. I was
 2 going to allow you a certain amount of leeway to sort of –
 3 MR MPOFU: I'm rounding off, Chairperson.
 4 The –
 5 CHAIRPERSON: Ja, okay, when've you've –
 6 MR MPOFU: Cutting to the chase means I'm
 7 finishing.
 8 CHAIRPERSON: Yes, well. Okay.
 9 MR MPOFU: Okay. Alright, and we will
 10 deal later with the only possible issue of relevance that
 11 you might have been brought here for is the question of the
 12 use of muti and I will show that even on that issue the
 13 quality of your evidence is completely, amounts to a
 14 nullity.
 15 So let's now move – yesterday we dealt with what
 16 you may or may not have been able to observe on the 16th.
 17 I'm now going to go and deal brick by brick, as it were,
 18 with the other dates, which is the starting from the 10th up
 19 to the 16th.
 20 On the 10th, I've already suggested that you lied
 21 about being in the committee of five. You remember that?
 22 CHAIRPERSON: Mr Mpofo, we've had this
 23 before. Some judicial officers sometimes allow counsel to
 24 put to witnesses they've lied. I don't. You gave
 25 inaccurate evidence; what you said wasn't true, that you

1 can put. I don't like the use of the word "lie."
 2 [09:28] MR MPOFU: Okay, because the Chairperson
 3 doesn't like a certain word. Your evidence on your
 4 involvement in the committee of five was false, the
 5 question was, you remember that I suggested it, I didn't
 6 want to –
 7 CHAIRPERSON: He's starting to answer I
 8 think, you can't stop him. Yes, what do you want to say Mr
 9 X about what counsel has put to you?
 10 MR MPOFU: Do you remember that I
 11 suggested that yesterday?
 12 MR X: I don't understand what Mr Mpofu
 13 is saying, Chairperson. Mr Mpofu is trying to smear the
 14 police with these things, the police are not guilty of
 15 these things of Marikana, they are innocent.
 16 CHAIRPERSON: Mr X, never the speech Mr
 17 Mpofu made earlier, he's now finally cut to the chase as he
 18 puts it. The question he asked you was – he didn't deal
 19 with that topic, what he said to you was what you had said
 20 about being a member of a committee on the 10th was not
 21 correct.
 22 MR X: I was, Mr Chairman, I was.
 23 MR MPOFU: Okay well let's – maybe let me
 24 just indulge you with what you – what the Chairperson calls
 25 a speech which I was asking you to put your evidence in

1 perspective about, it's meant to show exactly what – your
 2 mission, you seem to be very determined that your mission
 3 here is to show that the police were innocent, correct?
 4 Right?
 5 MR X: Just repeat the question, I don't
 6 understand you clearly.
 7 MR MPOFU: Your main mission for coming
 8 here is to demonstrate that the police were innocent, as
 9 you have said about ten times. Correct?
 10 MR X: I said I've come to explain
 11 everything. The mine is innocent, I've come to explain it
 12 thoroughly.
 13 MR MPOFU: Yes well the so-called –
 14 MR X: The mine is innocent –
 15 MR MPOFU: And the police –
 16 MR X: - and the police are also
 17 innocent.
 18 MR MPOFU: Well ja the "speech" was meant
 19 to assist the Commission to understand that that mission is
 20 mission impossible because you are unable as a person
 21 objectively to constitute anything to show whether the
 22 police are innocent or guilty. You just did not observe
 23 the relevant events for which the police are blamed by
 24 people like myself.
 25 MR X: To me it is clear, it is to Mr

1 Mpofu that it is not clear, Chairperson.
 2 CHAIRPERSON: Mr X, the point Mr Mpofu is
 3 putting to you is that on your own evidence you weren't at
 4 scene 2, the koppie behind where a number of the strikers
 5 were shot by the police and you admitted yesterday you
 6 can't help us about because you weren't there. So what Mr
 7 Mpofu is saying on that issue as far as scene, what we call
 8 scene 2 is concerned you can't give evidence to us because
 9 you don't know. It's not your fault, you weren't there,
 10 you don't know. And he's putting, I think he's going to
 11 put it again to you to give you a chance to answer it a
 12 similar point in relation to scene 1.
 13 MR X: I have explained this thing
 14 already, Chairperson, that it is us who attacked the
 15 police. The police are innocent about this thing now of
 16 Marikana. If the police would agree as Mr Mpofu is saying
 17 there will be no fathers to support the children. They
 18 will eat from the mothers.
 19 MR MPOFU: No that is -
 20 MR X: I suggest that Mr Mpofu gets
 21 another person to represent those Marikana people because
 22 it seems as if he is not in a position to. May I also add,
 23 Chairperson, that that expression children only eat from
 24 the mothers, means it's something that is not possible to
 25 happen?

1 CHAIRPERSON: Would you listen to me
 2 please? You are here to answer questions that you are
 3 asked by counsel, you're not here to make comments about
 4 counsel or what their clients should do or who should
 5 appear here for them, that's not your business. Please
 6 refrain from doing that and just answer the questions that
 7 are being asked.
 8 MR X: Thank you, Chairperson, I'm sorry.
 9 MR MPOFU: Yes, no, Mr X, I'm going to be
 10 very patient with you.
 11 MR MATHIBEDI SC: Chairperson, I think
 12 that comment is uncalled for. These are the kinds of
 13 comments that sometimes you know the witness to conduct –
 14 CHAIRPERSON: I didn't quite grasp what
 15 the comment was, but I think the answer is that we don't
 16 need comments from counsel or from the witness. We need
 17 questions from counsel and answers from the witness. We'll
 18 go on much quicker if we do that. I did think it
 19 appropriate for Mr Mpofu to set the scene as it were so
 20 that the question could continue with everybody
 21 understanding and following, but that's now behind us. If
 22 he will ask the questions and the witness will provide
 23 answers we'll all get through this task of ours much
 24 quicker and if the witness misbehaves I will speak to him
 25 again as I have done a moment ago. He has apologised and

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1 I've accepted his apology and let's just carry on with –
 2 MR MPOFU: Chairperson, I promise to be
 3 patient with Mr X, but I will not be patient with
 4 interruptions that are directed at me by people who have
 5 allowed their witness to abuse me despite my patience. If
 6 they are not able to bring their witness into order from
 7 what he has been doing since yesterday which I've patiently
 8 ignored then they're the last people to come and lecture me
 9 –
 10 CHAIRPERSON: I hear you but you'll
 11 forgive me when I say that kind of comment from whomever it
 12 comes raises the temperature and doesn't bring it down.
 13 Let's keep the temperature down, I have a few minutes ago
 14 said something to the witness which was designed to protect
 15 you.
 16 MR MPOFU: You have.
 17 CHAIRPERSON: Thanks, let's proceed.
 18 MR MPOFU: Thanks, Chairperson. You've
 19 also confirmed in your statement that on the 10th the march
 20 was peaceful, correct?
 21 MR X: It is so.
 22 MR MPOFU: You can also confirm that the
 23 employer said they would have preferred to talk to you via
 24 the NUM.
 25 CHAIRPERSON: Do you understand the

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1 question? What Mr Mpofu is saying is – he wants to know
 2 whether you can confirm, in other words whether you agree
 3 with what he's putting to you, that when you people went
 4 peacefully as you say to the time office on Friday the 10th
 5 and wanted to speak to the employer about this wage
 6 increase that you wanted, because essentially rock drill
 7 operators who were there and the employer said we don't
 8 want – we would prefer to speak to the representatives of
 9 the recognised trade union which acts for the miners,
 10 namely, the National Union of Mine Workers, NUM and he's
 11 asking you to confirm that that's what the employer said.
 12 MR X: The employer said there are people
 13 they are discussing with, they don't talk to us.
 14 MR MPOFU: Yes that's good enough. And
 15 you confirm that you and others at that stage had lost all
 16 confidence in NUM.
 17 MR X: What is he saying? I don't hear
 18 you.
 19 CHAIRPERSON: What he is saying is, I
 20 think he's referring more specifically to the rock drill
 21 operators, but you and your colleagues had lost confidence
 22 in the NUM. You weren't confident that they were able to
 23 present your case properly in respect of wage increases.
 24 Now divide the question in two. Let's leave you out of it
 25 for the moment, your colleagues that you spoke to, who

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1 marched with you, were they not happy to have NUM
 2 representing them in presenting their wage demands? Is
 3 that correct? In fact that's in fact why they went as
 4 you've explained.
 5 MR MPOFU: Is there an answer?
 6 CHAIRPERSON: He's sitting thinking about
 7 it. Are you ready to give your answer yet Mr X?
 8 MR X: I'm still thinking about it,
 9 Chairperson. I don't understand it clearly.
 10 MR MPOFU: Do you understand the one from
 11 the Chairperson?
 12 MR X: If you just repeat it, Sir.
 13 CHAIRPERSON: All right let me try again.
 14 A whole number of you, I'm not sure of the exact number,
 15 but a lot of you, hundreds if not more than a thousand rock
 16 drill operators went on the Friday morning to the time
 17 office to ask for more wages, increase in wages. You
 18 didn't ask your NUM shop stewards to go and present the
 19 demands to the employers, you went yourselves. Is that
 20 correct?
 21 MR X: It is correct, Chairperson.
 22 CHAIRPERSON: Now why did you people go
 23 yourselves and not let your shop stewards go for you, the
 24 NUM shop stewards to present your wage demands? There must
 25 have been a reason.

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1 MR X: It was a mistake, Chairperson.
 2 CHAIRPERSON: Before you went to the time
 3 office you had a meeting at the stadium didn't you?
 4 MR X: It is correct, Chair.
 5 CHAIRPERSON: And at that meeting you
 6 decided that you wanted this increase to 12 500 a month, is
 7 that right?
 8 MR X: Yes, Chair.
 9 CHAIRPERSON: That wasn't a NUM meeting
 10 that you had at the stadium was it? It was a rock drill
 11 operator's meeting.
 12 MR X: Yes, Chair.
 13 CHAIRPERSON: And normally when you want
 14 more wages, you want an increase in wages, normally that's
 15 a matter that's dealt with by the trade union on your
 16 behalf. Is that correct?
 17 MR X: Yes, Sir.
 18 CHAIRPERSON: You didn't do it this time.
 19 You say it was a mistake, I understand you to be saying
 20 that by which I take it you mean you think now you should
 21 have gone through the union, but there must have been a
 22 reason for making this mistake. Now what was that? Are
 23 you able to give me an answer, Mr X? Before Mr Mpofu asks
 24 the next question you must answer this one.
 25 MR X: My response is that AMCU was

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1 there, NUM also was there. It was AMCU that made use of
 2 us. They used us because each and every person has got his
 3 own organisation.
 4 CHAIRPERSON: I tried to do your cross-
 5 examination, I didn't succeed very much –
 6 MR MPOFU: If you go to LLL26 which is
 7 your statement you said, I'm sorry paragraph 4, I'll read
 8 this out and then you tell me if you still stand by that
 9 evidence. You said "The RDOs did not accept the reason
 10 advanced by NUM that it could not negotiate a salary
 11 increase because of the two year agreement that had been
 12 concluded with Lonmin management. The perception was that
 13 NUM was in cahoots with Lonmin management."
 14 [09:48] And in fact that sentiment seems to be – or no,
 15 it is the next sentiment which I've been – I might as well
 16 put it now. Firstly, do you still stand by your evidence
 17 as in your statements?
 18 MR X: I say it, Sir.
 19 MR MPOFU: Yes, and that the implications
 20 of that sentiment is contained in an article which I will
 21 distribute during the tea break, but I want your comment
 22 on.
 23 MR MATHIBEDI SC: Chairperson, I have not
 24 seen the article. I think the same should apply to the
 25 witness. So I have not –

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1 MR MPOFU: No, it's not necessary.
 2 MR MATHIBEDI SC: No Sir, it's not a
 3 question of it's not necessary. I think it's not fair to
 4 put an article to the witness that the witness has not
 5 seen.
 6 MR MPOFU: The witness is illiterate
 7 [inaudible, speaking simultaneously with interpreter] –
 8 CHAIRPERSON: Mr Mpofu, no, no, that's
 9 not an answer. We have adopted a practice in this
 10 Commission from early on that if a witness is to be cross-
 11 examined on a document the document is to be shown to the
 12 witness before the cross-examination begins and those
 13 leading the witness are to be entitled to put the document
 14 to the witness. That's what we've done. That's
 15 practically followed throughout.
 16 MR MPOFU: That's fine.
 17 CHAIRPERSON: The way to deal with it,
 18 occasionally documents have come to light when cross-
 19 examination has already commenced. The way we've dealt
 20 with that is we've said the, in those special circumstances
 21 we've allowed counsel leading the witness to consult with
 22 the witness –
 23 MR MPOFU: Okay, Chairperson.
 24 CHAIRPERSON: - even though the cross-
 25 examination has commenced. If you want that to happen I'll

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1 allow it, otherwise I'm afraid I won't.
 2 MR MPOFU: No, okay, forget the article.
 3 Would you agree with a view that we're going to argue that
 4 a flexible approach to the wage negotiations during the
 5 strike at Lonmin Marikana might have averted the tragedy on
 6 August the 16th when the police shot 34 people?
 7 CHAIRPERSON: I think that question may
 8 be difficult for the witness to understand. Do you
 9 understand what Mr Mpofu is putting to you? Well, when
 10 it's been translated you can just –
 11 MR MAHLANGU: I had not even translated
 12 the question.
 13 CHAIRPERSON: No, no, it's my fault.
 14 Translate it and then ask him my question whether he
 15 understands what Mr Mpofu is putting.
 16 MR MAHLANGU: Yes, if the question would
 17 again be repeated for me –
 18 CHAIRPERSON: The question was does he
 19 agree with the proposition that a more flexible attitude
 20 towards the negotiations relating to the wages would have
 21 averted the tragedy and not led to the deaths of 34 people.
 22 Do you understand the question?
 23 MR X: I understand, Sir.
 24 CHAIRPERSON: Now what do you say about
 25 it? Do you agree with the proposition that - obviously the

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1 people to be flexible would have been the employers, so do
 2 you agree that if Lonmin had been more flexible in the
 3 negotiations regarding the wage demand the tragedy might
 4 have been averted?
 5 MR X: If the question could be repeated.
 6 MR MPOFU: Chairperson, can I just
 7 simply –
 8 CHAIRPERSON: It's your question, Mr
 9 Mpofu, so if you would repeat it. I've tried to explain
 10 it –
 11 MR MPOFU: Yes.
 12 CHAIRPERSON: - in a way that I hoped he
 13 would understand.
 14 MR MPOFU: Yes.
 15 CHAIRPERSON: Perhaps you could plough
 16 further on the field that I've already tried –
 17 MR MPOFU: I will, Chairperson. Thank
 18 you. I'll simplify it and then I'll move on if it's still
 19 not answered. The point I'm making, remember we're still
 20 talking about the 10th. Ja, so I'm going to simplify it by
 21 referring it in relation to the 10th, which is what we are
 22 discussing. Would you agree that if, let's say for example
 23 if on the 10th the management had agreed to engage with your
 24 peaceful group of marchers about your concerns about wages
 25 and working hard and so on, that the events which unfolded

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1 after that might have been avoided, instead of taking the
 2 position that they would not talk to you?
 3 MR X: We were already told by the mines
 4 that we are going to be given increases of between 750 and
 5 500. The mine said then to us at the time office that
 6 there's an agreement which is still existing, which will
 7 only be, will come up for discussion in 2013. The mine
 8 told us clearly at the time office.
 9 MR MPOFU: Yes, and you think that that
 10 stance of saying there's a two-year agreement and we can
 11 only talk through the NUM did not contribute, or was the
 12 correct thing to do and did not contribute to the events
 13 that followed in the next five or six days?
 14 MR X: That's what the mine told us and
 15 it's something that we knew, that the agreement could only
 16 be discussed the following year. The management also
 17 indicated there are people they talk to about such issues,
 18 there is an agreement that was entered into; let us go back
 19 to work, and they told us our strike is illegal. If we had
 20 gone back to work nothing would have happened at Marikana,
 21 Chairperson.
 22 MR MPOFU: Alright, and so if what the
 23 management was saying was reasonable then why did you not
 24 go back to work?
 25 MR MAHLANGU: I'm sorry, the pronoun

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1 "you," is it used with reference to him?
 2 MR MPOFU: Yes. No, it's confusing. No,
 3 I meant it in the singular.
 4 MR MAHLANGU: In singular?
 5 CHAIRPERSON: Mr X, I notice that you're
 6 lowering your head. Are you feeling tired? Would you like
 7 me to take the short adjournment now [inaudible, speaking
 8 simultaneously with interpreter]?
 9 MR X: Oh, it's my stomach that's giving
 10 me problems. I'm suffering from my stomach.
 11 CHAIRPERSON: Would you like me to
 12 adjourn for quarter of an hour to [inaudible, speaking
 13 simultaneously with interpreter]?
 14 MR X: It's running, my stomach is –
 15 CHAIRPERSON: Yes, no, no, I understand.
 16 If we adjourn for 15 minutes that will give you opportunity
 17 to attend to that. Would you prefer that, take a 15-minute
 18 adjournment now? Would you want me to do that then you can
 19 attend to the problem you mentioned? Would you like that?
 20 You nod your head. That means yes, does it?
 21 MR MAHLANGU: He is nodding his head,
 22 yes.
 23 CHAIRPERSON: Alright, you have been
 24 doing it for some time, but [inaudible, speaking
 25 simultaneously with interpreter] you now indicated what the

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1 problem is, so we'll adjourn for 15 minutes.
 2 [COMMISSION ADJOURNS COMMISSION RESUMES]
 3 [10:53] CHAIRPERSON: The Commission resumes.
 4 Would you, (a), remind the witness he is still under oath,
 5 and (b), ask him whether he is now ready to proceed? If
 6 the problem has been satisfactorily dealt with.
 7 MR X: I was given some tablets, I'm
 8 feeling better, Chair.
 9 CHAIRPERSON: Good, Mr Mpofo?
 10 MR MPOFU: Thank you, Chairperson. Mr X,
 11 are you feeling a bit better now, Mr X?
 12 MR X: Yes, I'm alright.
 13 MR MPOFU: Okay, you don't want to
 14 possibly come into the hall here to give evidence from
 15 here?
 16 MR MATHIBEDI SC: Sorry, Chairperson, I
 17 think that's not proper.
 18 CHAIRPERSON: No, I don't think that's an
 19 appropriate question, I disallow it, let's carry on.
 20 MR MPOFU: Why, Chairperson?
 21 CHAIRPERSON: He is giving evidence in
 22 terms of the order that I gave in terms of the video link
 23 and what he feels about the matter is not important to me
 24 at this stage.
 25 MR MPOFU: Ja, but that order was given

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1 on the basis of his wishes, I must be able to test those
 2 wishes.
 3 CHAIRPERSON: Not only his wishes but the
 4 fears –
 5 MR MPOFU: Ja, but mainly his wishes.
 6 CHAIRPERSON: No, no, mainly the fears
 7 expressed by Mr X and the evidence that they've put
 8 forward, so let's not spend time on that. I suggest you
 9 carry on with the rest of your cross-examination.
 10 MR MPOFU: Alright, now let's go then,
 11 we're done with the 10th now, let's go to the 11th.
 12 CHAIRPERSON: No, you're finished with
 13 the 10th?
 14 MR MPOFU: Yes, Chairperson.
 15 CHAIRPERSON: Well, I would like to ask a
 16 question about the 10th.
 17 MR MPOFU: Okay.
 18 CHAIRPERSON: Do I understand you to say
 19 that you were one of the five representatives who went into
 20 the time office to speak to the employer?
 21 MR X: Yes.
 22 CHAIRPERSON: Now if you look at your
 23 statement, I think it is Exhibit AAAA1.2, it is the lengthy
 24 statement you made in February 2013. Now if you look at
 25 the foot of page 2, paragraph 5, you say the police, the

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1 penultimate line on that page, "The police and the security
 2 requested us to send our delegates of five members as they
 3 are already nominated. The five delegates preceded forward
 4 to meet the police and security. It was said that our
 5 delegates were going to meet with the employer, accompanied
 6 by the police and security. Our delegates came back
 7 accompanied by a white guy, the white guy had our paper
 8 demands on his hands." You don't suggest passage that you
 9 were one of the delegates?
 10 In fact it appears clear from what you've said
 11 that you were not because you say they came back, so they
 12 came back to where you were. What do you say about that?
 13 MR X: I was explaining, Sir, what
 14 happened because we were stopped there at the crossing, the
 15 police said we have no right to get near the area there.
 16 He went inside and fetched the employer. They came back
 17 with him. The white person then took the demands which
 18 were written on a cardboard box. He went into the offices.
 19 Before he came back from the office we counted for 15
 20 minutes and then started approaching the offices. The
 21 police stood in front of us at the time office and when we
 22 arrived there they had already placed the danger tape
 23 through which we could not go. The people who had been
 24 with him when he came out of the office who came with us
 25 were Bhele and Booi. I'm not changing from there, I'm

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1 standing by what I said.
 2 CHAIRPERSON: The point that I put to you
 3 was that according to your statement, the passage I read to
 4 you, you didn't suggest that you were one of the delegates
 5 who went to meet this employer and then came back, the way
 6 you put it in your statement is apparent, it is clear in
 7 fact, that you were not one of the delegates and it is
 8 fair, isn't it, you weren't?
 9 MR X: Only two people spoke when we came
 10 to the time office, but that white man came out to us and
 11 we proceeded towards him.
 12 CHAIRPERSON: The white man came out and
 13 you proceeded towards him. Did you then speak to him
 14 outside the time office?
 15 MR X: Yes, we were inside and then we
 16 came out with him.
 17 CHAIRPERSON: So you actually went
 18 inside, did you?
 19 MR X: The other did not enter there,
 20 inside the house, they spoke to him outside.
 21 CHAIRPERSON: I see, thank you.
 22 MR MPOFU: Thank you, Chairperson. On
 23 the same vein as the chairperson has asked you, if you go
 24 to the supplementary statement, LLL26, page 3 thereof,
 25 paragraph 8, you say there, "Noting that our

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1 representatives were not returning the strikers became
 2 impatient and wanted to go inside the office to establish
 3 what was happening," is that what happened?
 4 MR MAHLANGU: He asked me to repeat the
 5 question, Chairperson.
 6 MR X: No, I don't understand that,
 7 Chairperson.
 8 MR MPOFU: Your statement says the
 9 following and do you stand by that evidence that, "Noting
 10 that our representatives were not returning the strikers
 11 became impatient and wanted to go inside the office to
 12 establish what was happening," do you stand by that
 13 evidence?
 14 MR X: We counted for this white person
 15 from, coming from the corner, we were standing at the
 16 crossing, Chairperson, he came to us at the crossing, the
 17 white man, when realising from the crossing where we were
 18 seated that the white man wasn't coming after 15 minutes,
 19 we then got impatient and then when we proceeded, that's
 20 when the police blocked us.
 21 MR MPOFU: Okay.
 22 MR X: We did not fight on that day.
 23 MR MPOFU: Alright, I'll take that as a,
 24 yes. Now would you agree therefore that that, this
 25 impatience that you are talking about is something that you

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1 yourself witnessed, correct?
 2 MR X: Can the question again be
 3 repeated? Yes, it was hot outside.
 4 MR MPOFU: Yes, it was hot outside, okay.
 5 Ja, no, that's the point, so that impatience and that heat
 6 outside could only be experienced by someone who was
 7 outside and not inside?
 8 CHAIRPERSON: What is your answer to
 9 that?
 10 MR X: Yes.
 11 MR MPOFU: Thank you, okay, let's to the
 12 11th. Now when you left home on the 11th, in your mind you
 13 were just going to a meeting near the stadium, correct?
 14 MR X: Yes, Sir.
 15 MR MPOFU: You did not know at that stage
 16 that you are going to be away for many days?
 17 MR X: I don't understand the question.
 18 MR MPOFU: That's fine, I'll ask you
 19 another question.
 20 CHAIRPERSON: I asked the question, I
 21 think it is the one that you, did you in fact go, after you
 22 left home on the morning of the 11th, that's the Saturday,
 23 when did you finally go back home?
 24 MR X: The agreement that was made there
 25 during the time where the charge office, - the change at

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1 the time office was that we were going to close the night.
 2 CHAIRPERSON: No, you're not answering my
 3 question, sorry, Mr X, Mr X, you are not answering my
 4 question, let me repeat my question. You say you left home
 5 on the morning of the 11th, the Saturday, is that right?
 6 Never mind what happened in the meanwhile, when did you go
 7 back home?
 8 MR X: I did not go back home.
 9 CHAIRPERSON: No, you would finally go
 10 back home, that obviously means you didn't go back on the
 11 11th, the Saturday. On what day did you go back home?
 12 MR X: I went home after the 16th,
 13 Chairperson.
 14 CHAIRPERSON: Now you can ask your next
 15 question, Mr Mpofo.
 16 MR MPOFU: Thank you. When you left home
 17 what were you wearing, seeing that you were just going to a
 18 meeting?
 19 CHAIRPERSON: Mr X, are you able to carry
 20 on or do you want an adjournment?
 21 MR X: My stomach is worrying me,
 22 Chairperson, it is really worrying me, my stomach.
 23 CHAIRPERSON: Alright, we will adjourn
 24 and when you are ready to carry on with your evidence we'll
 25 proceed, and will you please, members of the audience in

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1 the chamber, please keep quiet, don't make noises and
 2 comments, it doesn't help. We will adjourn now until we're
 3 told he is fit to carry on.
 4 [COMMISSION ADJOURNS COMMISSION RESUMES]
 5 [13:17] CHAIRPERSON: The Commission resumes. Mr
 6 Mathibedi, have you got any news for us as to the condition
 7 of Mr X?
 8 MR MATHIBEDI SC: Thanks, Chair. Mr X
 9 was taken to the doctor; he's been booked off for today and
 10 tomorrow because of the –
 11 CHAIRPERSON: I was told Thursday as
 12 well.
 13 MR MATHIBEDI SC: No, not Thursday.
 14 CHAIRPERSON: Not Thursday?
 15 MR MATHIBEDI SC: No.
 16 CHAIRPERSON: Just today and tomorrow?
 17 MR MATHIBEDI SC: Today and tomorrow.
 18 CHAIRPERSON: Thank you. Mr Budlender,
 19 have you any suggestions as to the way forward?
 20 MR BUDLENDER SC: Yes, Chair, I propose
 21 the following way forward: firstly that the evidence of Mr
 22 X should be stood down until he is able to resume, or to a
 23 date to be arranged, and I say that subject to something
 24 I'm going to say in a moment. Secondly, that tomorrow we
 25 will then have the evidence, the continued evidence of Mr

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1 Da Costa who will I hope complete his cross-examination and
 2 his evidence-in-chief, he's available, and we've asked
 3 Lonmin to arrange –
 4 CHAIRPERSON: Sorry, you say his
 5 evidence-in-chief. You mean his re-examination?
 6 MR BUDLENDER SC: Yes, I beg your pardon,
 7 his cross-examination and re-examination.
 8 CHAIRPERSON: Yes, thank you.
 9 MR BUDLENDER SC: We've asked Lonmin to
 10 arrange that the next Lonmin witness is available tomorrow
 11 in case Mr Da Costa finishes tomorrow. We'll have further
 12 Lonmin evidence on Thursday. As you know on Friday there
 13 are two members of the SAPS to give evidence in relation to
 14 the recording of the meeting of the night before the 16th,
 15 and we propose that Mr X's evidence should for the moment
 16 stand down till Friday after that evidence has been
 17 completed. If we complete that evidence sufficiently early
 18 we may be able to get in an hour or two of Mr X's evidence,
 19 which would be to everyone's advantage.
 20 So our proposal is the following; that you
 21 adjourn till tomorrow morning at 9 o'clock, that Mr X's
 22 evidence is stood down until Friday at this stage and that
 23 tomorrow we'll proceed with the evidence of Mr Da Costa.
 24 CHAIRPERSON: Mr Budlender, perhaps you
 25 could tell us who the Lonmin witnesses will be. You said

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1 Mr Da Costa's at the moment being cross-examined, so he
 2 will continue his cross-examination you say, and then the
 3 re-examination will take place. That's for tomorrow. You
 4 then have another witness, who is that going to be, from
 5 Lonmin?
 6 MR BUDLENDER SC: Can I just get my
 7 email, Chair? The next witness after Mr Da Costa will be
 8 Mr Dewald Louw. After Mr Louw the next witness will be Mr
 9 Motlogelwa, after him Mr Masibi, after him Mr Botes, and
 10 after him Mr Sinclair.
 11 CHAIRPERSON: So these are all people on
 12 the security side, as it were, of Lonmin's operations.
 13 MR BUDLENDER SC: These are all people on
 14 the security side of Lonmin. Mr Sinclair is no longer
 15 employed by Lonmin, but he was employed within the security
 16 department at that time.
 17 CHAIRPERSON: Yes, and who are the
 18 witnesses who it is envisaged you will be calling on Friday
 19 from the South African Police?
 20 MR BUDLENDER SC: I'll ask Mr Chaskalson
 21 to deal with that.
 22 MR CHASKALSON SC: Chair, the two
 23 witnesses who we would like to call on Friday are Major
 24 Letloko and Brigadier Mahlalela, who are the two members of
 25 SAPS responsible for the recording of the proceedings of

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1 the National Management Forum meeting on the 15th of August.
 2 CHAIRPERSON: The evening of the 15th of
 3 August.
 4 MR CHASKALSON SC: The evening of the 15th
 5 of August.
 6 CHAIRPERSON: I see. I only have to make
 7 two orders, or rulings now, or first is we postpone until 9
 8 o'clock tomorrow morning and the second is that the witness
 9 presently giving evidence, Mr X, stands down, I suppose I
 10 shouldn't fix a date because we don't know when precisely
 11 he will recover, and (b), whether he will be able to be
 12 fitted in on Friday the 25th, depending on the length of the
 13 testimony of the two witnesses to who Mr Chaskalson has
 14 referred.
 15 MR BUDLENDER SC: Chair, can I suggest
 16 that it be stood down until Friday in the expectation that
 17 there will be some time available, but on the basis that
 18 his evidence will not thereafter proceed because we will
 19 then go through with the Lonmin witnesses who've been lined
 20 up and their counsel have been arranged for those days, and
 21 Mr X will have to come back at some future date.
 22 CHAIRPERSON: Sorry, yes Mr Mpofu, you
 23 turned your light on.
 24 MR MPOFU: Yes, Chairperson. Ja, no this
 25 last part is not what I had understood was the arrangement

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1 with the evidence leaders. If it's not proposed to proceed
 2 with Mr X then he should be called whenever he's called.
 3 We can't be doing this stop/start two hours on Friday and
 4 then another, you know.
 5 CHAIRPERSON: Mr Mathibedi turned his
 6 light on. Do you have some contribution to make, Mr
 7 Mathibedi?
 8 MR MATHIBEDI SC: Chair, I think probably
 9 the remaining portion of the evidence of Mr X should be
 10 heard uninterrupted, so I suggest that probably we make
 11 other arrangements.
 12 CHAIRPERSON: I'm reluctant to lose any
 13 time on Friday, but it sounds to me, Mr Budlender, as if
 14 what Mr Mpofu and Mr Mathibedi said has a lot of sense
 15 attached to it. Is that correct?
 16 MR BUDLENDER SC: With respect, I
 17 disagree. We've got to use all the time we've got. We're
 18 under extreme time pressure. If there is material time
 19 available for Mr X and Mr X is available then we should
 20 surely hear his evidence, particularly having regard,
 21 Chairperson, to what has happened with his evidence so far,
 22 which has been a good deal of it has been stop/start and if
 23 it's going to be heard in smaller chunks that may be to the
 24 advantage of the proceedings.
 25 MR MATHIBEDI SC: Chair –

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1 CHAIRPERSON: It sounds to me as if –
 2 yes, Mr Mathibedi?
 3 MR MATHIBEDI SC: Chairperson, maybe we
 4 should start with Mr X Friday morning and then we can hear
 5 the evidence of the other two police officials at a later
 6 stage, because the other thing that we need to bear in
 7 mind, Chair, is that there are financial implications for
 8 transporting Mr X to the Commission.
 9 CHAIRPERSON: No, Mr X mustn't get
 10 transported to the Commission. Or not to my knowledge,
 11 unless you want me to amend the order I made.
 12 MR MATHIBEDI SC: I'm sorry about that,
 13 Chair.
 14 MR MPOFU: To the remote location, not so
 15 remote.
 16 CHAIRPERSON: What do you say, Mr Mpofu?
 17 MR MPOFU: I was saying to the remote
 18 relocation, which is obviously not so remote, Chairperson.
 19 CHAIRPERSON: Alright, I don't know
 20 anything about that, but I thought you were supporting an
 21 application that I thought Mr Mathibedi was making –
 22 MR MPOFU: Yes, no, Chairperson, I want
 23 to just say this, just from my point of view. It's going
 24 to be very impossible for me to now prepare for Mr Da
 25 Costa, these other three witnesses and Mr X all for this

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1 week. I mean that means all –
 2 CHAIRPERSON: Mr Mpofu, I'm sorry to
 3 interrupt you. You prepared for Mr X surely.
 4 MR MPOFU: Ja, but it doesn't work like
 5 that, Chairperson, as you know. Every time I have to
 6 cross-examine the witness I can't just sleep all night on
 7 the basis that I've prepared. You know, whichever material
 8 comes – what I'm saying is that I'm going to have to be
 9 dealing with four different witnesses at the same time when
 10 I'm working on my own. That's really it.
 11 CHAIRPERSON: I think the way forward is
 12 for me to –
 13 MR BUDLENDER SC: May I ask a question,
 14 Chair –
 15 CHAIRPERSON: You may.
 16 MR BUDLENDER SC: - which may be able to
 17 resolve it. Can I ask from the police whether they can
 18 confirm that Brigadier Mahlalela and Major Letloko are
 19 available on Friday, for Friday?
 20 CHAIRPERSON: Both of them?
 21 MR BUDLENDER SC: Both of them.
 22 MR MATHIBEDI SC: Chair, they are
 23 available.
 24 CHAIRPERSON: Both of them?
 25 MR MATHIBEDI SC: That's correct.

1 CHAIRPERSON: Right.
2 MR BUDLENDER SC: Chair, in order to –
3 and I've just been discussing with Mr Chaskalson if both of
4 them are available he thinks the whole morning is likely to
5 be consumed with them, so I may have raised that for no
6 purpose, so I withdraw the suggestion that Mr X stands down
7 till Friday. I suggest that Mr X's evidence stands down to
8 a date to be arranged and that on Friday we will have the
9 evidence of Major Letloko and Brigadier Mahlalela.

10 CHAIRPERSON: Yes, well I don't have to
11 make a ruling to that effect. The hare can be put back
12 into the jug or whatever, wherever hares are normally kept
13 in. All I rule now is we postpone till 9 o'clock tomorrow
14 morning with the resumption of Mr Da Costa's evidence and
15 that the evidence of Mr X stands down until further
16 arrangements are made. We will now adjourn.

17 [COMMISSION ADJOURNED]

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