

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

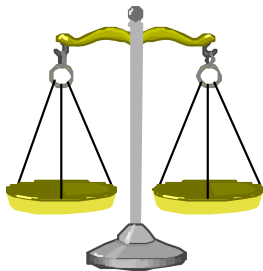
THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON  
MR TOKOTA SC  
MS HEMRAJ SC

#### HELD ON

DAY 269

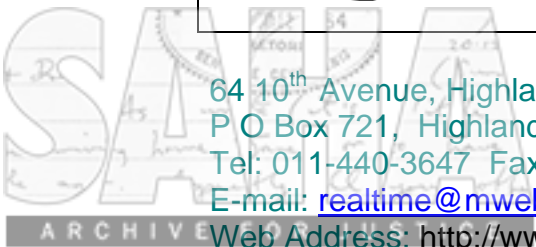
7 AUGUST 2014

PAGES 34158 TO 34301



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1 [PROCEEDINGS ON 7 AUGUST 2014]  
 2 [09:33] CHAIRPERSON: The Commission resumes. We  
 3 continue with the evidence, we haven't yet got Mr X on  
 4 screen. I find in my table in front of me a witness  
 5 statement by Makhili Ntshebe Mpfana. Mr Mpfu, is this an  
 6 exhibit or does it have to be marked?  
 7 MR MPOFU: Sorry, Chairperson, what is  
 8 it? Oh, yes, it will be, Chairperson, yes. I'll introduce  
 9 the –  
 10 CHAIRPERSON: It is a statement Makhili  
 11 Ntshebe Mpfana.  
 12 MR MPOFU: Yes, it will be –  
 13 CHAIRPERSON: Is it an exhibit already?  
 14 MR MPOFU: Not yet, Chairperson. It will  
 15 be introduced during the course of the evidence.  
 16 CHAIRPERSON: So do you want it to be an  
 17 exhibit?  
 18 MR MPOFU: It is –  
 19 CHAIRPERSON: Remind me what letters we  
 20 were using for Mr X –  
 21 MR MPOFU: We were using triple A, I  
 22 think – I mean quadruple A, Chairperson.  
 23 MS PILLAY: No, quadruple A, yes.  
 24 CHAIRPERSON: Sorry?  
 25 MR MPOFU: Quadruple A.

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1 CHAIRPERSON: Quadruple A. What is the  
 2 next quadruple A number?  
 3 MS PILLAY: Chair, we're on 44 at the  
 4 moment, but I think Mr Mpfu has another exhibit that he  
 5 wants to introduce first –  
 6 MR MPOFU: That it's reserved for.  
 7 MS PILLAY: And then it will be Mr – so  
 8 it will be AAAA44, affidavit –  
 9 CHAIRPERSON: Hang on. Let me get this.  
 10 Right, so I've written in my book Mr X continue, and I've  
 11 written down cross-examine Mpfu continue. Now what  
 12 exhibits should we put in while we're waiting to see if Mr  
 13 X has reached the remote venue from which he is testifying?  
 14 MS PILLAY: Chair, I believe there's an  
 15 affidavit by Mr Madumbe which would be AAAA44.  
 16 CHAIRPERSON: AAAA44. How do you spell –  
 17 affidavit by who?  
 18 MR MPOFU: M-A-D-U-M-B-E.  
 19 CHAIRPERSON: M-A-D-U-M-B-E, affidavit by  
 20 – okay, I've got that. AAAA44?  
 21 MS PILLAY: That's correct. AAAA44.1,  
 22 Chair, would be the photograph of Mr Madumbe. You will  
 23 recall when Mr Mpfu was cross-examining the last time he  
 24 brought his client –  
 25 CHAIRPERSON: Well surely the affidavit

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1 is 44.1 and then 44.2 –  
 2 MS PILLAY: And the affidavit of Mr  
 3 Mpfana would be AAAA45.  
 4 CHAIRPERSON: Ms Pillay.  
 5 MR MPOFU: Chairperson, for the sake of  
 6 completion we can make the photograph of Mr Madumbe 44.1.  
 7 CHAIRPERSON: No, no, you weren't  
 8 listening again. 44.1 is the affidavit, 44.2 is his  
 9 photograph.  
 10 MR MPOFU: Ja, I'm sorry, Chairperson.  
 11 We make the photo 44.2, thank you.  
 12 CHAIRPERSON: Yes, and then 45, AAAA45 is  
 13 the affidavit of Makhili Ntshebe Mpfana. So we're now  
 14 ready to receive the image of Mr X on the screen if he is  
 15 sitting at the remote venue from which he was testifying.  
 16 MR MPOFU: The image is there.  
 17 CHAIRPERSON: He is on the side screen,  
 18 he is not on the one in front of me. So – there we go,  
 19 everything is now in order. He's now on the screen in  
 20 front – would you remind the witness he's still – in view  
 21 of the delay, not the delay, the interval, would you ask  
 22 him to rise and will you swear him in, please? He must  
 23 swear that the evidence that he will continue to give  
 24 before this Commission will be the truth, the whole truth,  
 25 and nothing but the truth. Ask him to raise his right hand

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1 and say, "I swear, so help me God," in Xhosa.  
 2 MR X: [d.s.s. through interpreter]  
 3 MR MAHLANGU: Sworn in, Chairperson, in  
 4 Xhosa.  
 5 CHAIRPERSON: He may be seated. Mr  
 6 Mpfu.  
 7 CROSS-EXAMINATION BY MR MPOFU (CONTD.):  
 8 Thank you, Chairperson. Good morning, Mr X.  
 9 MR X: Morning, Sir.  
 10 MR MPOFU: Just to recap where we were  
 11 before you had your stomach ache, you remember that I was  
 12 saying that I was going to go day by day to show  
 13 inconsistencies, or contradictions in your evidence, and we  
 14 were just about to start with the 11th. I'm just reminding  
 15 you so that you remember where we were.  
 16 CHAIRPERSON: I'm sorry, Mr Mpfu, are we  
 17 going to get to Mr Madumbe's statement soon? Because we  
 18 haven't got copies here at the moment. They've already  
 19 been handed in, but if you're going to deal with it in  
 20 cross-examination a bit later on –  
 21 MR MPOFU: I can do it after tea, Chair.  
 22 CHAIRPERSON: Alright.  
 23 MR X: I remember that.  
 24 MR MPOFU: Thank you. Thank you, Mr X.  
 25 We had just finished dealing with the 10th, but there's just

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1 one more little issue that I want to deal with on the 10th  
2 before we go back to the 11th. Your evidence is that on the  
3 10th the protesters handed in a document to management. Is  
4 that correct?

5 MR X: Yes, Sir.

6 MR MPOFU: Well, I want to suggest that  
7 that is not true because my instructions from the people  
8 that I represent are that they did not hand in any  
9 document. In fact they told management that they were not  
10 educated and therefore they could not hand in any document.

11 MR X: We did issue a document.

12 MR MPOFU: So then you say some of the  
13 people I represent who have informed me that they did not  
14 produce it are making a mistake?

15 MR X: They are lying.

16 MR MPOFU: They are lying? Okay, yes,  
17 well unfortunately then their version is also corroborated  
18 by Mr Sinclair because Mr Sinclair says at paragraph 23 of  
19 his statement FFFF1, he says, "I also requested their  
20 demands in writing, to which they responded that they were  
21 illiterate and could not write down their demands." So it  
22 would look like if someone is lying it's not them or Mr  
23 Sinclair. It must be you.

24 MR X: We had our demands written on a  
25 cardboard box. The police went inside, they came out with

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1 the employer, the white person, and he was handed over  
2 these papers.

3 MR MPOFU: Ja, but that [inaudible,  
4 speaking simultaneously with witness]

5 MR X: [Inaudible] -

6 MR MPOFU: I'm sorry. I'm sorry, Mr X, I  
7 didn't realise you have not finished.

8 MR X: The white man took the paper and  
9 went inside, the paper that we gave him at the crossing.

10 MR MPOFU: Yes, Mr X, I'm sorry to  
11 interrupt you. What I was saying, the white man according  
12 to the evidence was Mr Sinclair and he says he was not  
13 given any documentation, but he's asking for it.

14 MR X: We had written on a piece of  
15 cardboard box when we went to this white man and that is  
16 the document we showed him.

17 MR MPOFU: Okay, well I'll leave that,  
18 we'll leave that for argument, Mr X -

19 CHAIRPERSON: Sorry, you talk about a  
20 document. You also talk about a cardboard box. Was the  
21 gentleman who came out and spoke to you, was he given the  
22 cardboard box?

23 MR X: A piece such as about the size of  
24 the one that I'm now displaying, of a cardboard box.

25 MR MPOFU: Ja, but your evidence just now

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1 was that you showed them the cardboard box and you gave  
2 them a piece of paper. Correct? And that's what is in  
3 your statement as well, that you approached them with "a  
4 paper of our demands."

5 MR X: I am not turning. I'm saying what  
6 I'm saying.

7 MR MPOFU: Alright, that's fine.

8 CHAIRPERSON: Sorry, Mr Mpofo. What was  
9 written on the cardboard box that was handed to the  
10 gentleman who came out?

11 MR X: The 12 500 was there.

12 CHAIRPERSON: Was there anything else  
13 written on it, or just those figures?

14 MR X: There was written, it was written,  
15 yes, Chairperson.

16 CHAIRPERSON: What else was written on  
17 it?

18 MR X: We had written the amount, the  
19 12 500 on that box. This was written with a marking pen.

20 MR MPOFU: And on the piece of paper,  
21 what was written?

22 MR X: 12 500.

23 MR MPOFU: On both the paper and the  
24 cardboard box?

25 MR X: The box which we had on our hand

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1 on, that was the box on which the 12 500 was written.

2 MR MPOFU: Alright, I'll leave that for  
3 argument. Your evidence a few questions ago was that there  
4 was a box and a paper, but that's fine. I was just  
5 rounding off the 10th. We now go back to the 11th. Who is  
6 Mbhele?

7 MR X: Mbhele is Tholagele.

8 MR MPOFU: And who is Bhele?

9 MR X: That is Tholagele. Bhele is  
10 Tholagele.

11 MR MPOFU: And who is Tholagele? Is it  
12 Bhele or Mbhele?

13 MR X: Tholagele is Bhele.

14 MR MPOFU: Yes, and who is Mbhele?

15 MR X: That is the man who was speaking  
16 at the time office, Bhele.

17 MR MPOFU: Okay, okay, and then who is  
18 Mbhele?

19 MR X: There is another person Mbhele.

20 MR MPOFU: Where does he work?

21 MR X: Mbhele is employed by Karee Shaft  
22 in Lonmin.

23 MR MPOFU: And Bhele, where does he work?

24 MR X: He's at Rowland Shaft.

25 MR MPOFU: Right, and who are the people

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1 who represented Karee in the committee of 15?  
 2 MR MAHLANGU: Karee? Did you say Karee,  
 3 Sir?  
 4 MR MPOFU: Yes.  
 5 MR X: Bhele and Bhayi.  
 6 MR MPOFU: Yes? Who else?  
 7 MR X: Those I still remember.  
 8 MR MPOFU: But I thought Bhele, you just  
 9 said Bhele works at Rowland Shaft. How could he be a  
 10 representative of Karee?  
 11 MR X: The 15 was only elected at the  
 12 mountain. When we went to the time office five people had  
 13 been elected and Bhele is the person that spoke at the time  
 14 office.  
 15 MR MPOFU: Ja, okay, sorry Mr X, I think  
 16 maybe it's my problem. We're finished about the 10th now.  
 17 We're now talking about the committee that was chosen at  
 18 the mountain, you're right, and I was saying of that  
 19 committee of 15 who represented Karee and you said it was  
 20 Bhele and Bhayi, and you said you can't remember the  
 21 others. Now I'm simply asking you how is it possible that  
 22 Bhele, whom you have identified as having been working at  
 23 Rowland Shaft, was a representative of Karee, if you can  
 24 explain that.  
 25 MR X: It's his job. He does his job at

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1 the Rowland Shaft. That's where he works.  
 2 MR MPOFU: So why did you identify him as  
 3 being a representative of Karee? That's the question.  
 4 MR X: It's Makubane, Makubane works at  
 5 Lonmin 3 Shaft, but he was representing the other side.  
 6 MR MPOFU: What other side? Whose  
 7 representative was Makubane?  
 8 [09:53] MR X: Because of him staying at Nkaneng  
 9 he was – and working at Lonmin, he was representing Lonmin.  
 10 MR MPOFU: No.  
 11 MR X: We – Mr Chairperson, people  
 12 employed by Lonmin, different shafts, we are mixed.  
 13 MR MPOFU: Yes, but you say that there  
 14 were five delegates from Karee, five from Western and five  
 15 from Eastern, that's how the input was made.  
 16 MR X: Yes, sir.  
 17 MR MPOFU: So I'm asking you a simple  
 18 question, let's start with Karee. Who, which five people  
 19 represented Karee?  
 20 MR X: The two people I remember is Bhele  
 21 and Baai, Bongani.  
 22 MR MPOFU: And so your evidence is that  
 23 Bhele was representing Karee even though he was working at  
 24 Rowland shaft, which is Eastern?  
 25 MR X: Bhele, it's the shaft that he was

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1 working in that I call Rowland.  
 2 MR MPOFU: Mr X, what you are saying now  
 3 is, you're saying things that you said in your statement  
 4 which is paragraph 7 of AAAA1.2 and at least – well, when I  
 5 say it's the same thing I'm being generous. I'm just, when  
 6 it comes to Bhele you have identified Bhele as one of the  
 7 people there and I put it to you that that cannot be  
 8 because Bhele could not be representing Karee when he  
 9 worked at Rowland.  
 10 MR X: But I'm not saying – I'm saying  
 11 what I'm saying. You are saying that.  
 12 MR MPOFU: Okay. Who were the people who  
 13 were representing Eastern shaft, which Bala comes from?  
 14 MR X: I was present there representing  
 15 Eastern shaft, Bala, Nzama, those are the people I  
 16 remember, I am not sure of their surnames.  
 17 MR MPOFU: And Bhele was not representing  
 18 Eastern?  
 19 MR X: Bhele was in our group,  
 20 Chairperson, as we formed the committee.  
 21 MR MPOFU: I know that. You've already  
 22 said he was representing Karee, is that correct?  
 23 MR X: Should I, if the question could be  
 24 repeated, sir?  
 25 MR MPOFU: Ja. We've already gone

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1 through that. You said Bhele was representing Karee, isn't  
 2 it?  
 3 MR X: Yes, sir.  
 4 MR MPOFU: That's what I'm saying, he was  
 5 not representing his own shaft, which is Eastern.  
 6 MR X: That whole area, all three shafts  
 7 are owned by Lonmin. A person working at Lonmin, at Karee,  
 8 is also employed at the other shafts because of being  
 9 employed by Lonmin.  
 10 MR MPOFU: Okay and you are sure that  
 11 Baai was also representing Karee?  
 12 MR X: Yes, he was at Lonmin and he was  
 13 transferred to the Karee.  
 14 MR MPOFU: I'm asking whether, in the  
 15 committee of 15, he was representing Karee or not?  
 16 MR X: He came from Karee as a worker,  
 17 but he was representing Lonmin.  
 18 MR MPOFU: Do you know which of the three  
 19 shafts he was representing in the committee of 15 or are  
 20 you sticking with your evidence that he was representing  
 21 Karee?  
 22 MR X: I am sticking to that.  
 23 MR MPOFU: Okay, and –  
 24 CHAIRPERSON: Are you moving away from  
 25 this point now?

<p style="text-align: right;">Page 34170</p> <p>1 MR MPOFU: No, Chairperson, I'm just 2 going to round it off. And you also say you don't which 3 shaft in the committee of 15 Makubane was representing or 4 do you know? 5 MR X: Makubane works at 3 shaft, that's 6 where I know him to be working. 7 MR MPOFU: Where, is that Karee, Western 8 or Eastern? 9 MR X: Western. 10 MR MPOFU: Okay. Well, okay, I think I'm 11 just going to take a shortcut here. I put it to you that 12 this evidence shows that you, firstly you were not a member 13 of the committee of 15. 14 MR X: You are saying that, sir, but I am 15 saying otherwise. 16 MR MPOFU: Secondly, it also shows you 17 that somebody must have given you the names of the 18 committee members because what you are saying now 19 contradicts what you said in your statement. 20 MR MATHIBEDI SC: Sorry, Chairperson, 21 before the witness answers I think it must be put to him 22 who that somebody is. 23 CHAIRPERSON: Mr Mpofo, what do you say 24 to that? 25 MR MPOFU: Yes, Chairperson, a somebody I</p>	<p style="text-align: right;">Page 34172</p> <p>1 mountain. 2 MR MPOFU: Okay. 3 MR X: On the 11th. 4 CHAIRPERSON: Can I ask a question? Can 5 I ask a question? If someone represents the Karee shaft, 6 doesn't he have to report back from time to time to his 7 colleagues at the Karee shaft? 8 MR X: Nobody on that day went back to 9 make a report back to the workers, Chairperson. 10 CHAIRPERSON: But when he was chosen, as 11 you say he was, to represent Karee shaft, wasn't the idea 12 that he would from time to time report back to the people 13 from the Karee shaft about what was happening? 14 MR X: That is how it was supposed to be, 15 Chairperson, if there was order right from the beginning 16 but there was no order at the beginning. 17 CHAIRPERSON: Yes, but how could he 18 report back to the people at Karee shaft if he was working 19 at Rowland shaft? 20 MR X: The reason was that the workers 21 had not been told that there was a strike. Our strike was 22 not legal. 23 MR MPOFU: Just to save time I will 24 ignore that answer which has nothing to do with what the 25 Chairperson was asking you.</p>
<p style="text-align: right;">Page 34171</p> <p>1 don't know. 2 MR MATHIBEDI SC: Sorry, Chairperson, 3 then what's the basis of putting this proposition to the 4 witness? 5 CHAIRPERSON: No, counsel can say on 6 circumstantial evidence basis, I infer from all the facts 7 that you must have got the information from somebody else, 8 I don't know who it is but you couldn't have got it 9 yourself because you then would have all the names at your 10 fingertips, or words to that effect. So think it's a 11 permissible question and I will allow it. 12 MR MPOFU: Thank you, Chair, and – Mr 13 Mathibedi is right that I have to justify the statements 14 that I'm making. The first reason is that when you made 15 your statement that I referred you to, you listed all the 16 people who made up the committee of 15. You are – 17 MR X: I accept that. 18 MR MPOFU: And you said Bhele, as you've 19 said again now, was representing Karee. And that is not 20 possible. My instructions from Mr Dlunga are that he could 21 not have been a representative of Karee because he works at 22 Eastern shaft. 23 MR X: How it works, Chairperson, because 24 people that went to the time office were only RDOs. The 25 other workers joined us when we were already at the</p>	<p style="text-align: right;">Page 34173</p> <p>1 MR MATHIBEDI SC: Sorry, Chairperson, I 2 would like to put it on record that as at this stage we 3 don't have the statement from Mr Tholakele Dlunga, I hope 4 we'll get that in due course. 5 MR MPOFU: Chairperson, we don't need a 6 statement. The witness himself has said that Mr Dlunga 7 works at Eastern shaft. 8 CHAIRPERSON: Do we not have an exhibit 9 provided to the evidence leaders by Lonmin giving the names 10 of all the injured and arrested persons, including the 11 gentleman about whom you are talking, which indicates in 12 one of the columns the shaft at which he works? 13 MR MPOFU: We do, Chairperson, and also I 14 think there's another similar exhibit from Mr Tip, the NUM, 15 that's correct. 16 CHAIRPERSON: That seems to solve the 17 problem. Let's carry on, Mr Mpofo. 18 MR MPOFU: Thank you, Chairperson. In 19 any event, I'm going to the second reason. In your 20 statement you also put Mr Dlunga or Bhele as a 21 representative of Eastern shaft, contrary to what your 22 evidence was now, that he was not representing Eastern 23 shaft but only Karee. Do you understand? That's in your 24 statement. 25 MR X: Yes, sir, he was a member of the</p>

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1 committee.

2 MR MPOFU: Ja, no, I'm not disputing

3 that. I'm saying that you have put him in your statement

4 as being a representative of Karee, as you have testified,

5 and you've also put him as being the representative of

6 Eastern and I asked, that is why I asked you whether he

7 represented both and you said no, he was only representing

8 Karee.

9 MR X: He was representing not a specific

10 shaft, he was representing Lonmin, the whole Lonmin.

11 MR MPOFU: Okay, so that's a third

12 version now. First you said he was only representing

13 Karee, in your statement you said he was representing Karee

14 and Eastern, now you are saying he was representing the

15 whole of Lonmin. Which of those three versions is it?

16 MR X: He was representing all of us at

17 the time office, Chairperson, because he was the only

18 person who spoke on our behalf.

19 MR MPOFU: I'm talking about the 11th, Mr

20 X, when the committee of 15 was being – you know what we

21 are discussing. We are discussing the committee of 15

22 which, according to your statement, was five, five, five

23 from each shaft.

24 MR X: Just repeat the question, sir?

25 MR MPOFU: You know the question. I said

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1 we are talking about the 11th at the mountain when the 15

2 people were chosen, according to your statement,

3 representing five of each of the three shafts.

4 MR X: When the people were chosen at the

5 mountain, they included five that they were already chosen

6 when we went to the time office.

7 MR MPOFU: Okay, again just to save time

8 I'll move on to another reason. I was giving you the

9 reasons why I've made the accusation which I made to you.

10 MR X: It is the truth that I'm saying,

11 Chairperson, I am not turning away from it.

12 MR MPOFU: Which one are you not turning

13 away from of the separate versions?

14 MR X: I am under oath as it is, Mr

15 Chairperson, I am talking the truth and I'm not turning

16 away.

17 MR MPOFU: Okay, the third reason is that

18 despite what you are saying now, that Baai was representing

19 Karee, in your statement you said Baai was representing

20 Western.

21 MR X: Are you referring to Baai?

22 MR MPOFU: Yes, I'm referring to Baai.

23 MR X: Baai was working at the Eastern,

24 he was then an RDO and then transferred to Karee.

25 MR MPOFU: Okay, but according to your

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1 statement he was not representing any of those two. You

2 say he was transferred to Eastern and he went to Karee but

3 according to your statement he was representing Western

4 shaft, none of that.

5 MR X: He was representing Lonmin, that

6 was all Lonmin involved there.

7 MR MPOFU: So again this is now a

8 different version. In your statement you say he was

9 representing Western shaft, now you are saying he was

10 representing the whole of Lonmin. Which one is the truth?

11 MR X: That's one mine.

12 MR MPOFU: Which one is one mine, Western

13 or Lonmin?

14 MR X: Lonmin.

15 [10:13] The Western and so on are just names of areas,

16 but that whole area is Lonmin.

17 MR MPOFU: So your version now is that

18 you are not representing Western, but Lonmin.

19 MR X: Yes, Lonmin that whole area what

20 is Lonmin.

21 MR MPOFU: Okay well that's the second

22 reason. You are again contradicting your statement and you

23 are also contradicting the objective that the documents

24 that the Chairperson was referring to will show that Mr

25 Mehlomkomo was not working at Western shaft.

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1 MR X: I don't remember that name

2 Mehlomkomo.

3 MR MPOFU: Mr Mehlomkomo is the gentleman

4 who died two weeks ago called Bhayi -

5 MR X: He was transferred, we were told

6 he was going to Karee.

7 MR MPOFU: Yes, but that's what I'm

8 saying, Mr X. On this new version you are saying he worked

9 at Eastern, was transferred to Karee and in your document

10 you say he was representing Western, none of the two, from

11 where he was transferred or to where he was transferred -

12 MR X: He was working at the Eastern, he

13 got a transfer there. At the time office he was in the

14 front line, he was representing all of us on that day.

15 Bhayi was standing at the danger tape on that day. He was

16 wearing a pink T shirt and he had his jacket over his

17 waist.

18 MR MPOFU: Okay, that is a third or

19 fourth reason. The next reason is that Makubane or Rasta

20 works at Eastern, do you know that?

21 MR X: He is at 3 Shaft, that's where he

22 works.

23 MR MPOFU: Ja I don't know 3 Shaft, is

24 that Western, Karee or Eastern?

25 MR X: It's the one that is towards as

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1 one proceeds to Brits, part of Lonmin mine.  
 2 MR MPOFU: And it falls under Eastern  
 3 Shaft.  
 4 MR X: It falls under Lonmin.  
 5 MR MPOFU: Ja well they all fall under  
 6 Lonmin. I'm asking of the Lonmin divisions does it fall  
 7 under Eastern Shaft?  
 8 MR X: Yes, the Eastern.  
 9 MR MPOFU: That's what I'm saying and yet  
 10 you put Makubane or Rasta, another person that you falsely  
 11 implicated in all sorts of things, you put him under  
 12 Western Shaft which is false.  
 13 MR X: I'm not accusing him that's the  
 14 shaft where he's working Makubane. He is the chairperson  
 15 in that shaft.  
 16 MR MPOFU: Ja what we want to know is  
 17 what that shaft is. When you say he's the chairperson of  
 18 that shaft are you talking about Eastern or Western?  
 19 MR X: It's the 3 Shaft I'm speaking  
 20 about.  
 21 MR MPOFU: Which we have established  
 22 falls under Eastern.  
 23 MR X: That's all Lonmin, Chairperson, it  
 24 is all Lonmin.  
 25 CHAIRPERSON: No but the question you

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1 were asked is a reasonable question. What you called 3  
 2 Shaft is that Eastern, Western or Karee? Which of the  
 3 three is it? I know they're all Lonmin these have been  
 4 accepted, but Lonmin divides the shafts up into Eastern,  
 5 Western and Karee. What Mr Mpofo would like to know is the  
 6 shaft you refer to as number 3 is that Eastern, Western or  
 7 Karee?  
 8 MR X: The Eastern.  
 9 MR MPOFU: Yes and in your statement you  
 10 have put him under Western Shaft.  
 11 MR X: It's the truth, it is so.  
 12 MR MPOFU: Okay, okay I'll move on again.  
 13 Who were the people who were asked to fetch the Sangoma?  
 14 MR X: Kolani, Sir. Kaizer knows the  
 15 Sangoma, he stayed with us in the same area at Quakeng.  
 16 Kaizer is alive, he's still working at Rowland Shaft. He  
 17 stays over there, he stays at Nkaneng. He's staying with a  
 18 girl, the girl is Pukasa, I can even name her.  
 19 MR MPOFU: And who works at Eastern  
 20 Shaft, Kaizer works at Eastern Shaft.  
 21 MR X: No he's an RDO at Rowland Shaft.  
 22 MR MPOFU: Yes Rowland Shaft is Eastern  
 23 isn't it?  
 24 MR X: This is known as 4 Shaft. Rowland  
 25 is the known as 4 Shaft.

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1 MR MPOFU: My mistake Rowland Shaft falls  
 2 under Western. Okay in any event you say that Mr – was it  
 3 only those two Kaizer and Kolane who fetched the Sangoma?  
 4 MR X: They were two yes, Kolani is from  
 5 Idutshwa and Kaizer is from Quakeng.  
 6 CHAIRPERSON: Forgive me for  
 7 interrupting. The question is how many of the strikers  
 8 went to fetch the Sangoma?  
 9 MR X: There were four people.  
 10 CHAIRPERSON: Who were the four?  
 11 MR X: Kolani whose name I still  
 12 remember, Kaizer, Bhele.  
 13 MR MPOFU: That's Mr Zongwa?  
 14 MR X: Yes, Sir.  
 15 MR MPOFU: Tholagele, is that him?  
 16 MR X: Chairperson, yes Sir.  
 17 MR MPOFU: So why in your statement –  
 18 MR X: Those are the names that I still  
 19 remember, the sound is fading a bit here.  
 20 MR MPOFU: Yes, but in your statement you  
 21 didn't say Mr Tholagele Zongwa was there, you said it was  
 22 Kaizer, Kolani and Mbele whom you said is a different  
 23 person. Yes, you did not include Mr Tholagele Zongwa.  
 24 Why?  
 25 MR X: I said, Chairperson, the people

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1 that I still remember who fetched the Sangoma, Kolani,  
 2 Kaizer and Bhele.  
 3 MR MPOFU: Okay well as I say you did not  
 4 include Mr Zongwa, you're only including him now and you  
 5 never mentioned that there was a fourth person as you have  
 6 just have done now. So I think it's also another  
 7 fabrication.  
 8 MR X: Is Bhele not in that statement?  
 9 MR MPOFU: Yes Mbele is there. You said  
 10 it was a different person to Bhele. Remember that?  
 11 MR X: Yes they are different people.  
 12 MR MPOFU: Yes and which one of the two  
 13 different people fetched the Sangoma?  
 14 MR X: It was Mbele.  
 15 MR MPOFU: So it's no longer Mr Tholagele  
 16 Zongwa.  
 17 MR X: Sir, those are the people that  
 18 fetched the Sangoma, there they are.  
 19 MR MPOFU: Ja it can't help to say –  
 20 MR X: The person who knew the Sangoma is  
 21 Kaizer because the Sangoma stays in Bizana. The persons  
 22 from those other sites, Kolani who is from Idutshwa, he  
 23 wouldn't know a Sangoma, in Bizana.  
 24 MR MPOFU: On the 16th who had firearms  
 25 among yourselves?

<p style="text-align: right;">Page 34182</p> <p>1 MR X: There were many who had arms.  2 Those that I still remember are Bhele has got a firearm,  3 his is red in colour, Mambush also had a firearm, Anele has  4 one.  5 MR MPOFU: Are those the firearms that  6 you saw in possession of the protestors on the 16th or are  7 there others?  8 MR X: There were others whose names I  9 don't remember.  10 MR MPOFU: Are you sure?  11 MR X: Yes, it was not the only people  12 that I mentioned, there were others as well.  13 MR MPOFU: Well again I'm going to put it  14 to you that the late Mr Mehlokomo whom you have implicated  15 falsely in many things and who was killed two weeks ago,  16 according to your statement was one of those people. But  17 now you are not counting him which indicates that –  18 MR X: He was in the group that I  19 mentioned whose names I had forgotten.  20 MR MPOFU: Well how can you forget him  21 you were saying his name for more than 100 times? And you  22 were implicating him falsely in criminal acts, you've now  23 forgotten. And he's dead now.  24 MR X: Chairperson, if the person is now  25 late the mention of his name is hurting the families of the</p>	<p style="text-align: right;">Page 34184</p> <p>1 evidence, as one of the possibilities.  2 MR X: I feel hurt.  3 MR MPOFU: Do you feel hurt by falsely –  4 CHAIRPERSON: Do you understand what Mr  5 Mpofo is putting to you. What Mr Mpofo is suggesting to  6 you, it is possible that the reason why Bhayi was killed a  7 fortnight ago was because had heard you accusing him of  8 being one of the killers involved in the events that we're  9 busy investigating and decided to assassinate him because  10 of that. That's what he's suggesting to you. He's  11 suggesting it to you merely as a possibility.  12 MR X: I understand it's possibly so.  13 MR MPOFU: And when you say you feel –  14 you say it is so and when you're saying you feel bad do you  15 feel bad because of what I've just put to you that it might  16 possibly – might possibly be the reason for his death?  17 MR X: It is very hurting, yes it is so.  18 MR MPOFU: And I put it to you that what  19 should make you feel even worse is the fact that it's not  20 only possible that he died because of your evidence but  21 your evidence in respect of him is false.  22 [10:32] MR X: The reason he was killed is, was  23 after I had mentioned his name that he did not want to come  24 and give evidence before this Commission.  25 MR MPOFU: Well, okay. That's even –</p>
<p style="text-align: right;">Page 34183</p> <p>1 late person.  2 MR MPOFU: How many times this morning  3 have you mentioned Bhayi?  4 MR X: This is because Mr Mpofo is  5 questioning me about it.  6 MR MPOFU: So you didn't mind earlier to  7 hurt his family by mentioning him.  8 MR X: But the person who's causing all  9 this is Mr Mpofo. I have to respect this person, he is  10 only being buried the coming weekend.  11 MR MPOFU: How can you refer to him when  12 he might have been killed because of your false  13 accusations?  14 MR MATHIBEDI SC: - Mr Chairperson, I  15 think there's no basis to use that allegation.  16 CHAIRPERSON: Mr Mpofo, I don't think  17 it's appropriate to be asking –  18 MR MPOFU: That's how you do it –  19 CHAIRPERSON: There is not evidence that  20 that was the reason why he was assassinated. There are a  21 number of reasons that occurs to one. It's possible of  22 each one of them, you can't put it higher than that.  23 MR MPOFU: Yes possible and might go  24 together, Chairperson, that's why I used the word might. I  25 said that when he might have been killed because of your</p>	<p style="text-align: right;">Page 34185</p> <p>1 CHAIRPERSON: I'm told that the  2 interpretation is incorrect, that what he said was the  3 reason he was killed was that they did not want him to come  4 and give evidence. I'm told that that is the correct  5 translation –  6 MR MAHLANGU: That's what he said.  7 CHAIRPERSON: Then you said he. I think  8 it was a slip of the tongue. You said he, I think you said  9 he did not want to come. Mr Tokota tells me that what the  10 witness said was that they did not want him to come.  11 MR MAHLANGU: They did not want to come  12 and give evidence, not him.  13 CHAIRPERSON: Yes, that's right. They  14 didn't want him to come and give evidence. It was a slip  15 of the tongue on your part, it's been sorted out now. You  16 can carry on, Mr Mpofo.  17 MR MPOFU: Yes, I can confirm.  18 MR MAHLANGU: My colleagues are  19 correcting, yes. They say that they did not want him to  20 come and give evidence before the Commission.  21 MR MPOFU: Yes.  22 MR MAHLANGU: That's correct.  23 MR MPOFU: That's fine. Okay, look, I'm  24 not going to go into who they are and so on. The point I  25 was making to you is simply this; it's all very well as you</p>



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1 are saying if he was killed because of your evidence and  
 2 they, whoever they might be, did not want him to come and  
 3 give evidence here, that might well be, but the point is  
 4 that your evidence for which he might possibly have been  
 5 killed was false. That's the point I'm making to you.  
 6 CHAIRPERSON: Mr Mpofo, have we got a  
 7 statement by a witness who says that that's so? You can't  
 8 just put something to this witness unless there is a  
 9 witness who will come, or a witness who's already come to  
 10 say that what the witness says in that regard is untrue.  
 11 MR MPOFU: But Chairperson, what witness?  
 12 I've just demonstrated to this witness that his evidence is  
 13 false in one respect. I'm going to another respect. I  
 14 don't have to  
 15 CHAIRPERSON: No, no, but –  
 16 MR MPOFU: I don't need a witness for  
 17 that.  
 18 CHAIRPERSON: You put a general  
 19 proposition that your evidence is false, which winds up  
 20 everything he said about the person. If you're limiting it  
 21 to a statement which you've already established, that  
 22 there's a likely contradiction, then the question can  
 23 proceed.  
 24 MR MPOFU: Yes, thank you, Chairperson,  
 25 and just on that point, Chairperson, let's – because you're

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1 right, Chairperson, what I'm making is a serious accusation  
 2 so I need to back it up. Apart from what I've already just  
 3 said to you, another accusation that you make about Mr  
 4 Mehlomkomo, the late Mr Mehlomkomo, is that he shot Mr  
 5 Fundi on the 12th. Correct?  
 6 MR X: Yes, Sir. I'm not just falsely  
 7 accusing him. If I'm just falsely accusing him that  
 8 wouldn't be true, but I'm telling the truth.  
 9 MR MPOFU: Unfortunately I'll –  
 10 Chairperson, I'll produce these, Ms Pillay is helping me to  
 11 access the document, which I will give after the tea break.  
 12 CHAIRPERSON: Probably you could move on  
 13 to another topic and come back to this one after – or  
 14 alternatively, I was proposing, because we started at just  
 15 after half past 9 I was proposing to take the first comfort  
 16 break at quarter to 11, but if it will be convenient for  
 17 you if I took it now I'll do so. I'm in your hands.  
 18 MR MPOFU: Yes, or Chairperson, if you'll  
 19 allow me to put the proposition and then –  
 20 CHAIRPERSON: I think it will be better  
 21 if we have the documents before the proposition is put.  
 22 Damage is done sometimes –  
 23 MR MPOFU: Okay, Chairperson, just  
 24 housekeeping; I seem to think that Mr Tip entered Mr  
 25 Fundi's brother's affidavit and Ms Pillay thinks it was

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1 not. So we can sort that out –  
 2 CHAIRPERSON: We definitely had the  
 3 affidavit –  
 4 MR MPOFU: Yes.  
 5 CHAIRPERSON: - of Mr Fundi's elder  
 6 brother who washed the body before burial.  
 7 MR MPOFU: Yes.  
 8 CHAIRPERSON: We've also of course got  
 9 the post mortem report which would indicate the nature of  
 10 his injuries. So –  
 11 MR MPOFU: Exhibit A40, thank you,  
 12 Chairperson.  
 13 CHAIRPERSON: The post mortem report is  
 14 also one of the A's, it's A something. The actual  
 15 exhibit –  
 16 MR MPOFU: Quadruple A. I always make  
 17 this mistake. Quadruple A –  
 18 CHAIRPERSON: No, no, single A was as far  
 19 as I can recall a whole pile of post mortem reports.  
 20 MR MPOFU: Yes.  
 21 CHAIRPERSON: And Mr Fundi's post mortem  
 22 report is among those. That will indicate the nature of  
 23 the injuries. Then we also had the affidavit –  
 24 MR MPOFU: Of the brother.  
 25 CHAIRPERSON: - from the elder brother,

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1 which is definitely an exhibit, where he describes the way  
 2 the body was mutilated and how he washed the body before  
 3 burial.  
 4 MR MPOFU: Yes.  
 5 CHAIRPERSON: If you need time to look at  
 6 it perhaps we should take the adjournment now and then get  
 7 all your ducks in a row, as people say, and then put the  
 8 question directly to the witness. It's your cross-  
 9 examination, not mine. I'm just making an offer that you  
 10 may –  
 11 MR MPOFU: Yes, Chairperson –  
 12 CHAIRPERSON: - [inaudible] if you wish.  
 13 MR MPOFU: Yes, I'm caught between  
 14 needing time, which it looks like I do, and rounding off  
 15 this point so that we break at a particular point.  
 16 CHAIRPERSON: Yes, well I'm in your  
 17 hands. It's your cross-examination.  
 18 MR MPOFU: Yes, thank you, Chairperson,  
 19 we are now ad idem with Ms Pillay. Can you put up AAAA38?  
 20 Thank you. Thank you very much. Ja, that's the one. Now  
 21 I'm saying the reason why I'm saying you once again falsely  
 22 accused the late Mr Bhayi Mehlomkomo is that neither the –  
 23 or well, let me put it this way; there's no evidence that  
 24 Mr Fundi was shot at all by anybody, let alone Bhayi. So  
 25 your evidence that Bhayi, or Mr Mehlomkomo shot him is once

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1 again false.

2 CHAIRPERSON: You've got to put the

3 evidence to him which indicates that he wasn't shot either

4 at all or by Bhayi. So that's why I suggest you use the

5 post mortem report, which is in the A series.

6 MR MPOFU: Yes, well let's start with the

7 brother's evidence and –

8 CHAIRPERSON: You can run your own cross-

9 examination.

10 MR MPOFU: Chairperson, the issues – it's

11 difficult to prove a negative. What I'm putting to the

12 witness is simply that there is no mention in this

13 statement of a gunshot wound. So I can't refer him to a

14 paragraph.

15 CHAIRPERSON: Yes, yes, I understand.

16 That's why I thought, I'm not sure that [inaudible,

17 speaking simultaneously with interpreter] but that's why I

18 suggested you use the post mortem report.

19 MR MPOFU: As well, yes.

20 CHAIRPERSON: The post mortem report will

21 definitely tell you what the injuries were.

22 MR MPOFU: Yes.

23 CHAIRPERSON: I think we should take the

24 adjournment at this stage. It's now 20 to 11, and we take

25 the adjournment for 15 minutes. It will give you

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1 opportunity to get the post mortem report of Mr Fundi and

2 get any other documents that you need for –

3 MR MPOFU: That might help, thank you,

4 Chairperson, yes.

5 CHAIRPERSON: Let's make a vigorous

6 effort to be back here in quarter of an hour.

7 [COMMISSION ADJOURNS COMMISSION RESUMES]

8 [11:02] CHAIRPERSON: The Commission resumes.

9 The microphone is off at the other side but in the

10 meanwhile I can ask Mr Mpofo, are you ready Mr Mpofo, when

11 the microphone at the other side comes on, to continue with

12 your cross-examination? You've got all the things that you

13 wanted to get in order, have you?

14 MR MPOFU: Yes. Chairperson, if I – yes,

15 we might as well then do the, I'm trying to call it up.

16 It's exhibit A, I am told, page 755.

17 CHAIRPERSON: What is happening at the

18 other side, Mr Mathibedi, is there, at this remote – it

19 looks as if – kindly remind the witness that he is still

20 under oath.

21 MR X: (s.u.o. through interpreter)

22 MR MAHLANGU: Confirmed, sir.

23 CHAIRPERSON: Thank you. Baai, how many

24 times – did he shoot Mr Fundi?

25 MR X: He shot him inside the vehicle,

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1 the bullet hit him.

2 CHAIRPERSON: How many times did he shoot

3 him?

4 MR X: I heard the one shot.

5 CROSS-EXAMINATION BY MR MPOFU (CONTD.):

6 Yes. Chairperson –

7 CHAIRPERSON: What exhibit do you want to

8 look at? Here is the post-mortem.

9 MR MPOFU: It's exhibit A, Chairperson.

10 CHAIRPERSON: Yes, I know, I told you it

11 was A. It's A755, it's page 74 of 103 pages, is that

12 right?

13 MR MPOFU: Yes, Chairperson, and just for

14 –

15 CHAIRPERSON: Let's look at the injuries

16 of Mr Fundi.

17 MR MPOFU: It does, Chairperson, but

18 maybe before we do that I see that Mrs Fundi is here, if

19 maybe a warning can be given Chair, for what it's worth.

20 CHAIRPERSON: What are you going to do?

21 Are you just going to refer to the post-mortem report or

22 are you going to refer to photographs as well? I don't

23 know that you need a photograph for the point you're

24 making.

25 MR MPOFU: No, no, I don't need

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1 photographs. I'm just saying –

2 CHAIRPERSON: It's perhaps the contents

3 of the post-mortem. Mrs Fundi, you heard what Mr Mpofo has

4 said. He is going to cross-examine on the details of the

5 post-mortem report, the autopsy on your late husband and he

6 feels that I should warn you that that's going to happen

7 and he feels it may cause you emotional distress and pain.

8 He wants to give you an opportunity to leave the chamber if

9 you wish to do so. So if you wish to leave, Mr Mpofo won't

10 cross-examine until you've gone. On the other hand, if you

11 want to stay of course we'll understand. What do you want,

12 are you prepared to stay?

13 MR MPOFU: She has indicated,

14 Chairperson, to me that she will stay, yes.

15 CHAIRPERSON: Thank you.

16 MR MPOFU: Yes and again so that we don't

17 get to the gory details really, what I'm going to put to

18 you, Mr X, is that the post-mortem of Mr Fundi does not

19 indicate any gunshot wounds –

20 MR X: I heard the gunshot.

21 MR MPOFU: No, no, Mr X. I'm not talking

22 about a gunshot, that the medical evidence from the post-

23 mortem and also the evidence of Mr Fundi junior who washed

24 the body, both do not indicate any gunshot wounds so your

25 evidence that the late Mr Mehlomkomo shot Mr Fundi is

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1 untrue, it's a lie.

2 MR X: Mehlomkomo had a gun and he did

3 fire the gun. The securities were inside the vehicle,

4 Fundi was taken out.

5 MR MPOFU: Mr X, do you understand the

6 gravity of accusing somebody of having shot and possibly

7 killed a person if they shot them in the head and what you

8 are now saying about a gun that just went off randomly?

9 MR X: These people were shot inside the

10 vehicle. Fundi was taken out of the vehicle. The one

11 security officer remained inside, was left inside the

12 vehicle, that is the one who was burned.

13 MR MPOFU: You see, Mr X, you have

14 conceded that Mr Mehlomkomo may have been killed because of

15 your evidence. You even added that somebody might have

16 wanted him not to come and testify. Now I spoke to Mr

17 Mehlomkomo about two or three weeks before he was killed

18 and he told me that wherever you implicate him, those were

19 hallucinations, in fact he laughed it off. And obviously

20 when he was laughing it off, little did he know that he

21 might be killed for that and it was on the strength of

22 discussions with people like him that we came to this

23 Commission to say that you needed to be observed before you

24 could implicate people and violate their rights. By then

25 we were talking about their rights of dignity, we didn't

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1 realise it included the right to life. I think it is now

2 clear that most of your evidence on the crucial issues that

3 I've cross-examined you on is fabrications and

4 hallucinations and this is one of them where you have

5 implicated Mr Mehlomkomo in the so-called shooting of Mr

6 Fundi when the objective evidence shows that he was not

7 shot, not by Mr Mehlomkomo, by not anyone on that day. Do

8 you have any comment?

9 MR X: It's the truth that I am telling

10 this Commission, sir.

11 MR MPOFU: Yes, but which one is the

12 truth? Is the truth what you have just said now that a gun

13 went off, or is the truth what you have said before, that

14 Mr Mehlomkomo shot Mr Fundi?

15 MR X: The person who had a gun, Mr

16 Mehlomkomo had a gun. He took out a gun and shot at the

17 vehicle in which these people were.

18 MR MPOFU: And in that vehicle there were

19 –

20 MR X: Fundi, after the [inaudible] of

21 these people, Fundi was taken and dragged out into the

22 road. There he was put to a place that has got some wall

23 where people usually relieve themselves and they sit there.

24 That is where Fundi was left lying. He was not burnt in

25 the fire that resulted from the burnt vehicle. Only one

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1 person was burnt there.

2 MR MPOFU: I don't know what that,

3 anything to do with what I'm asking to you. Anyway I put

4 it to you, Mr X, that your evidence implicating the people,

5 well firstly the late Mr Mehlomkomo or Baai as well as the

6 other people that have been implicated, including

7 Mathunjwa, Makubane and all the people that were mentioned,

8 Mr Noki, all the people you have implicated, living and

9 deceased, is false and is a fabrication.

10 MR X: It is the truth I am saying.

11 Mathunjwa did go to the mountain.

12 MR MPOFU: And I put it to you further

13 that because of what you have already conceded of the

14 connection between your evidence and, the possible

15 connection between your evidence and Mr Mehlomkomo, all the

16 people that you have implicated, including Mr Mathunjwa,

17 are now fearing for their lives because of you. Comment?

18 MR X: If a hen starts cackling then the

19 egg that would be found there belongs to that one.

20 MR MPOFU: Mr X, I'm putting to you that

21 the people who were also implicated, are fearing for their

22 lives. I don't know what that has to do with "nkuku."

23 MR X: I'm just giving an example, Mr

24 Chair.

25 MR MPOFU: Well, can you answer the

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1 question without making an example or a riddle.

2 CHAIRPERSON: It sounds like an idiom of

3 some kind, I imagine –

4 MR MPOFU: I know, Chairperson, I know

5 it.

6 CHAIRPERSON: Probably a Xhosa idiom.

7 MR MPOFU: I know it very well. It's

8 irrelevant to what I'm asking him. What are you suggesting

9 about the people that I say, (a) you have falsely

10 implicated, and (b) are fearing for their lives?

11 MR X: No, it is the truth that I have

12 spoken, Mr Chairperson.

13 MR MPOFU: Now we were, before we left I

14 was talking to you about the 11th, you remember? And I said

15 you left, when you left home in the morning you did not

16 know that you were not going to come back.

17 MR X: Yes, sir.

18 MR MPOFU: What were you wearing?

19 MR X: I had a jean on.

20 MR MPOFU: What colour?

21 MR X: It was a bit of a strong colour.

22 MR MPOFU: What strong colour? Strong

23 black, blue, brown?

24 MR X: Green.

25 MR MPOFU: Okay, green jeans and what did

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1 you have above the jeans, the green jean?  
 2 MR X: I don't remember what I was  
 3 wearing.  
 4 MR MPOFU: You don't remember the top  
 5 part?  
 6 MR X: I don't remember so well, sir.  
 7 MR MPOFU: And what else were you  
 8 wearing?  
 9 MR X: What I do – I don't remember well  
 10 but what I do remember is that I got an overall on that  
 11 day.  
 12 MR MPOFU: You got it? What do you mean,  
 13 were you wearing it or did you just get it?  
 14 MR X: These are the overalls that we  
 15 use, we change into the overalls when we go to work.  
 16 MR MPOFU: Was it also green? What did  
 17 it look like?  
 18 MR X: It's white overalls with the  
 19 reflectors that would make us visible when working at  
 20 night, this shining thing when light is reflected on it and  
 21 then it reflects –  
 22 MR MPOFU: Yes.  
 23 MR X: - so that a person is visible.  
 24 MR MPOFU: No, we know what that is. And  
 25 were you carrying the overall or were you wearing it?

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1 MR X: I had the overalls in a bag, in a  
 2 smallish bag.  
 3 MR MPOFU: What colour was the bag?  
 4 MR X: I have forgotten.  
 5 MR MPOFU: You have forgotten. At the  
 6 mountain was there a storeroom where you put your bag?  
 7 MR X: No, there was no storeroom.  
 8 MR MPOFU: So what did you do with your  
 9 bag when you were doing the activities at the mountain?  
 10 MR X: It was put on one side whilst we  
 11 were performing the rituals.  
 12 MR MPOFU: Yes and after – Did you take a  
 13 blanket with you?  
 14 [11:22] MR X: Yes, there was a blanket.  
 15 MR MPOFU: What colour?  
 16 MR X: Pink.  
 17 MR MPOFU: Pink? You're sure about that?  
 18 MR X: Yes, it has a pink colour, this  
 19 blanket has a pink colour.  
 20 MR MPOFU: Ja, did it just have a pink  
 21 colour or was it a plain pink blanket?  
 22 MR X: It has some colour, yes, in it.  
 23 MR MPOFU: Yes, I know it had some  
 24 colour. Was it plain pink or did it just have a pink  
 25 colour?

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1 MR X: The whole blanket was pink and  
 2 then it had some other colour.  
 3 MR MPOFU: What was the other colour?  
 4 MR X: I do not remember so well what  
 5 colour it was.  
 6 MR MPOFU: You don't remember your  
 7 blanket?  
 8 MR X: I'm saying the blanket was pink.  
 9 What and what and what I don't remember.  
 10 CHAIRPERSON: How long did you own the  
 11 blanket?  
 12 MR X: It wasn't very long, Chairperson.  
 13 CHAIRPERSON: How long have you had the  
 14 blanket –  
 15 MR X: I did not know that I would have  
 16 to be questioned about it later.  
 17 CHAIRPERSON: I understand that, but I  
 18 still want to know how long have you had the blanket,  
 19 approximately?  
 20 MR X: Some time, Chairperson.  
 21 CHAIRPERSON: It sounds a very vague  
 22 answer [inaudible, speaking simultaneously with  
 23 interpreter].  
 24 MR X: It wasn't long that I had this  
 25 blanket, Chairperson.

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1 CHAIRPERSON: It's an equally vague  
 2 answer. Was it a matter of weeks or months or a year, two  
 3 years? How long was it about? We're waiting for your  
 4 answer.  
 5 MR X: I cannot guess, Sir. I would be  
 6 making a mistake.  
 7 COMMISSIONER HEMRAJ: Are you able to  
 8 tell us whether it had a pattern on the blanket or it was  
 9 just plain colours?  
 10 MR X: There was some pattern on the  
 11 blanket, Commissioner.  
 12 MR MPOFU: Okay, now when the person that  
 13 you identified as yourself was not wearing – that's Mr  
 14 Madumbe – the person –  
 15 CHAIRPERSON: I'm sorry, Mr Mpofu, you  
 16 remember he identified himself on two photographs –  
 17 MR MPOFU: Yes.  
 18 CHAIRPERSON: - one on the 13th and one on  
 19 the 15th.  
 20 MR MPOFU: Ja.  
 21 CHAIRPERSON: I think you must make it  
 22 clear to which you're referring to.  
 23 MR MPOFU: Ja, Mr Madumbe is the only one  
 24 in respect of whom he identified himself on the 15th. The  
 25 person that you identified yourself as, whatever his name

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1 is, was not wearing green jeans. What do you say about  
2 that?

3 MR X: That is a jean there. It's a jean  
4 appearing.

5 MR MPOFU: Ja, it is a jean, but it's not  
6 a green jean like yours.

7 MR X: If a green jeans is being washed  
8 from time to time the colour starts fading.

9 MR MPOFU: Anyway –

10 CHAIRPERSON: I think it's important to  
11 place on record that when he gave the colour of his jeans  
12 he used the English word "green" and he didn't use the  
13 Xhosa word which is capable of meaning either green or  
14 blue, which is why one talks sometimes with a witness of  
15 this kind you mean blue as the grass or green as the sky,  
16 but he actually used the English word "green." Now I think  
17 it's important to put that on record.

18 MR MPOFU: Thank you, Chairperson. And  
19 you said it was green.

20 MR X: Yes, this is something like this.

21 MR MPOFU: That's right.

22 MR X: I'm showing that it's green.

23 MR MPOFU: Good.

24 CHAIRPERSON: What he shows us is  
25 something that is green.

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1 MR MPOFU: Yes.

2 CHAIRPERSON: I would say green-green.

3 MR MPOFU: That's green-green. Thank  
4 you. Like Mr Noki's blanket, that green, correct?

5 MR X: Yes, yes Sir.

6 MR MPOFU: Ja, okay. Anyway –

7 MR X: Something green, yes, like Noki's  
8 blanket.

9 MR MPOFU: Thank you. Now that's very  
10 clear to all of us now. Anyway, we'll come back to that.  
11 How much money were you carrying? You said you were coming  
12 back home.

13 CHAIRPERSON: Sorry, Mr Mpofo, the  
14 question isn't clear to me. Do you mean how much money  
15 were you carrying when you left home –

16 MR MPOFU: Yes.

17 CHAIRPERSON: - on the morning of the  
18 11th?

19 MR MPOFU: That's correct, Chairperson.

20 MR X: It was R500.

21 MR MPOFU: Why were you carrying R500?

22 MR X: I don't go about with empty  
23 pockets. I always carry money.

24 MR MPOFU: Okay, when you got to the  
25 mountain – you were only carrying that R500, correct?

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1 MR X: I had R500 in my pocket, yes.

2 MR MPOFU: Yes, and the next time that  
3 you came home was on the –

4 MR MATHIBEDI SC: Chairperson –

5 MR MPOFU: Sorry.

6 MR MATHIBEDI SC: Chairperson, I think  
7 the witness said that "I recall," "endi kumbulayo."

8 MR MPOFU: That's fine.

9 CHAIRPERSON: [Microphone off, inaudible]

10 MR MPOFU: Ja, whatever. I didn't hear  
11 him, but I'll accept that.

12 MR MAHLANGU: My colleague says he did.  
13 He said at the end, "endi kumbulayo, "I had R500, which I  
14 remember."

15 MR MPOFU: Right, that's fine. And the  
16 next time you came back home was on the 16th. Correct?

17 MR X: It is so, yes.

18 MR MPOFU: Now you say that on the 11th  
19 before you went to the mountain, before the group – when I  
20 say "you" I mean the group – before the group went to the  
21 mountain – or no, no, no, you say the exact opposite. You  
22 say that before you went to the NUM offices there was a  
23 break where people were asked to go and fetch weapons from  
24 home or to buy them. Correct?

25 MR X: Yes, they said those who don't

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1 have them should go and look for them.

2 MR MPOFU: How long was this break? Did  
3 people go home? How far? As far as Karee or Marikana  
4 township?

5 MR X: I think it was some time, about 15  
6 minutes or so.

7 MR MPOFU: To go to their homes and fetch  
8 their arms, after taking a couple of hours?

9 MR X: No, not hours.

10 MR MPOFU: But where you were buying, you  
11 bought yours from Ntshebe's place, correct?

12 MR X: Yes, that's where I bought it.

13 MR MPOFU: So there must have been a  
14 queue there.

15 MR X: No, some other people were getting  
16 them from some other shacks. There were many shacks in the  
17 vicinity.

18 MR MPOFU: Ja, but when you were buying  
19 from Ntshebe's place how many people were there?

20 MR X: I did not count how many people  
21 there were.

22 MR MPOFU: Okay, I put it to you that  
23 that evidence is also false because all the evidence of  
24 either the people I represent or the security guards who  
25 were watching this event, does not say that there was any

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1 such break which was taken. There was a meeting and the  
 2 people proceeded to the NUM. What do you say to that?  
 3 MR X: The security men saw us when we  
 4 were gathered there and we started singing and going down.  
 5 MR MPOFU: And I'm going to suggest that  
 6 this is not just an oversight; it's a sinister untruth  
 7 because you want to suggest that the people when they were  
 8 marching to the NUM they were armed with dangerous weapons,  
 9 which is false.  
 10 MR X: We were armed when we went to the  
 11 NUM offices and singing how are we going to kill the NUM.  
 12 MR MPOFU: Yes. No, I'm saying it is  
 13 true that we, the people I represent are not going to deny  
 14 that at some time that morning there was a decision taken  
 15 for people to go and arm themselves. All I'm saying is  
 16 that that decision was not taken at the time that you  
 17 suggest. It was taken when people had fled to the  
 18 mountain, after the NUM march.  
 19 CHAIRPERSON: You said "fled the  
 20 mountain." You mean "fled to the mountain."  
 21 MR MPOFU: Fled to the mountain, yes,  
 22 after the march to the NUM. That's the issue, it was  
 23 after.  
 24 MR X: When we went to the NUM offices we  
 25 were armed, Chairperson, we had spears and we also had

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1 pangas, called bush knives. You don't go to a person's  
 2 home peacefully when you are armed.  
 3 MR MPOFU: The second reason is that we  
 4 have a statement here – do you know this gentleman?  
 5 MR X: I don't know him, Sir.  
 6 CHAIRPERSON: Is the camera placed in  
 7 such a way that the witness –  
 8 MR MPOFU: Yes.  
 9 CHAIRPERSON: - can see the gentleman  
 10 who's standing up? What's your name, Sir?  
 11 MR X: I can see, yes I can see him in  
 12 the camera.  
 13 MR MPOFU: He says, Chairperson, his name  
 14 is Makhili Mpfana. He's known as Ntshebe.  
 15 CHAIRPERSON: He is the gentleman who is  
 16 the deponent to the affidavit you handed in at the  
 17 beginning of –  
 18 MR MPOFU: That's correct, Chairperson.  
 19 CHAIRPERSON: - today's sitting, which is  
 20 AAAA45.  
 21 MR MPOFU: Yes.  
 22 CHAIRPERSON: You may sit down, Mr  
 23 Mpfana.  
 24 MR MPOFU: Well, the gentleman that you  
 25 say you are seeing for the first time here is the person

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1 who owns the place called KwaNtshebe. In fact it's named  
 2 after him. His name is Ntshebe [inaudible, speaking  
 3 simultaneously with interpreter] and Mr Mpfana, or  
 4 otherwise known as Ntshebe, says, has submitted a statement  
 5 which says where your evidence about people buying arms  
 6 from his place is false. He says he has a license to sell  
 7 liquor and that is all he sells there and nobody on that  
 8 particular date came to his place to buy any arms, and he  
 9 was there.  
 10 MR X: We did buy arms from his shack,  
 11 Chairperson. Some others had their arms –  
 12 MR MPOFU: No, I'm sorry, the  
 13 interpretation was not correct, Chairperson. He didn't say  
 14 they bought from his shack, he said they bought from the  
 15 shack.  
 16 MR X: We bought the spears from shacks,  
 17 not one place.  
 18 MR MPOFU: Mr X –  
 19 MR X: Sir?  
 20 MR MPOFU: Let's forget about all the  
 21 other people who may or may not have bought arms from the  
 22 shacks. You said you bought yours from Mr Ntshebe's place.  
 23 MR X: It was the shack from which I  
 24 bought the, my arms was Ntshebe's place.  
 25 MR MPOFU: Okay, I'm putting to you –

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1 CHAIRPERSON: I think in fairness to the  
 2 witness you just handed the statement to us this morning.  
 3 Was it made available to the police beforehand? Was it  
 4 read to the witness? Because if it wasn't –  
 5 MR MPOFU: Yes.  
 6 CHAIRPERSON: - he should get an  
 7 opportunity to – I know it's not a very long statement.  
 8 MR MPOFU: Yes.  
 9 CHAIRPERSON: He should be given an  
 10 opportunity to [inaudible, speaking simultaneously with  
 11 interpreter]  
 12 MR MPOFU: It was, Chairperson.  
 13 CHAIRPERSON: Was it? It was. So he  
 14 knows what's in the statement?  
 15 MR MPOFU: Yes. Do you have any comment?  
 16 MR X: Which question, Sir?  
 17 MR MPOFU: That this is a second reason –  
 18 I've given you the first reason why I say your evidence is  
 19 false that the arming happened before the NUM march, the  
 20 fact that it does not accord with the evidence of the  
 21 people I represent and the evidence given by security  
 22 guards. I'm now giving you a second reason, which is that  
 23 the only place known as KwaNtshebe in Nkaneng belongs to  
 24 the gentleman that I showed you and he says your evidence  
 25 is false in that regard.

<p style="text-align: right;">Page 34210</p> <p>1 [11:42] MR X: We were armed when we went to the 2 NUM offices, Chairperson. We were singing a song, how we 3 are going to kill Zokwana, we are going to kill him with 4 our bare hands.</p> <p>5 MR MATHIBEDI SC: Chairperson, I think 6 with regard to the issue of whether the strikers were armed 7 or not when they marked to NUM office, I think the whole 8 picture should be put to the witness because I think my 9 colleague should take into account the evidence of Mr 10 Setelele who testified –</p> <p>11 CHAIRPERSON: Mr Mathibedi, what you're 12 really saying is what you're going to deal with in re- 13 examination. Mr Mpofo is entitled to put his case, the 14 witness stands his ground as he has done so far and says 15 what I said was right and what you're putting to me – if 16 you think there are extra factors which should be drawn to 17 his attention in re-examination which will buttress the 18 evidence he's given, you can do so but you can't object now 19 on the basis of that you want to put in re-examination 20 should be put by Mr Mpofo. So I deny your objection.</p> <p>21 MR MATHIBEDI SC: Chairperson, with due 22 respect, all I'm saying is that there is that evidence 23 before this Commission of Mr Setelele. We have got the 24 statement of Mr Debukwane dealing with this aspect that the 25 strikers, at the time that they went to NUM's offices, they</p>	<p style="text-align: right;">Page 34212</p> <p>1 Chairperson.</p> <p>2 MR MPOFU: No, I'm not talking about who 3 stopped you. I'm talking about who shot the two people.</p> <p>4 MR X: The security who had guns were 5 shooting there, people wearing security clothing.</p> <p>6 MR MPOFU: When did you hear that it was 7 NUM who shot the people?</p> <p>8 MR X: I heard it from Mr Mpofo as he is 9 putting it to me.</p> <p>10 MR MPOFU: For the first time?</p> <p>11 MR X: Now that he's asking me questions, 12 sir, that it was the NUM that shot the people.</p> <p>13 MR MPOFU: Are you hearing for the first 14 time from Mpofo?</p> <p>15 MR X: I am saying it's the security that 16 fired the shots but I heard it before my coming back today 17 from Mr Mpofo that it was NUM –</p> <p>18 MR MPOFU: Yes, that's what I am saying. 19 I am the first person in your life who ever said that.</p> <p>20 MR X: Yes, in this Commission.</p> <p>21 MR MPOFU: Then why did you say in your 22 statement, supplementary statement LLL26, your 23 supplementary statement before you ever met Mr Mpofo –</p> <p>24 CHAIRPERSON: Which paragraph are you 25 referring to?</p>
<p style="text-align: right;">Page 34211</p> <p>1 were armed. So all I'm saying is that the whole picture 2 should be put to the witness.</p> <p>3 CHAIRPERSON: Mr Mathibedi, you're quite 4 correct. There was evidence given by some of the NUM 5 people at the NUM office that there were arms but I'm not 6 sure that a cross-examiner has got to put that. He puts 7 his version. If he doesn't agree with that evidence he's 8 entitled to put what his instructions are and the party 9 calling the witness is entitled in re-examination, if 10 appropriate, to put the other evidence but it's not a good 11 ground for objection to the question.</p> <p>12 MR MPOFU: Thank you.</p> <p>13 CHAIRPERSON: I disallow the objection. 14 You can carry on. Implicit in what I say, of course, is 15 that you'll have the opportunity, Mr Mathibedi, in re- 16 examination to put that. The witness in any event doesn't 17 appear to be [indistinct] unfairly. He's stood his ground 18 in the face – what's that noise?</p> <p>19 MR MPOFU: Thank you, Chairperson. The 20 third reason why your evidence is, I will argue that your 21 evidence is false in this regard, is that you seem intent 22 on absolving the NUM by saying that the people were shot by 23 the security when again all the objective evidence - and 24 it's common cause that they were shot by NUM officials.</p> <p>25 MR X: We were stopped by the security,</p>	<p style="text-align: right;">Page 34213</p> <p>1 MR MPOFU: Paragraph 11, Chairperson.</p> <p>2 CHAIRPERSON: Thank you.</p> <p>3 MR MPOFU: "As the strikers ran away 4 because of the shooting that was done by Lonmin security 5 personnel, I went through the hostel and saw two people 6 lying on the ground with blood on their clothes. I did not 7 see any NUM officials shooting at the strikers using 8 firearms." When you made this statement you had not met Mr 9 Mpofo, correct?</p> <p>10 MR X: It is so, yes.</p> <p>11 MR MPOFU: So it's untrue that the first 12 person ever to tell you that NUM security shot the people 13 was Mr Mpofo.</p> <p>14 CHAIRPERSON: I'm sorry, I don't see that 15 in paragraph 11. It's obvious he's asked whether it's true 16 that that happened and what he says is, "I did not see any 17 NUM officials shooting at the strikers using firearms." 18 You'd be on stronger ground if you'd put the paragraph 12.</p> <p>19 MR MPOFU: No, Chairperson, I think you 20 don't understand the issue. I have asked him when did 21 anyone ever suggest that NUM shot the people. He says the 22 first time he heard that was from Mr Mpofo.</p> <p>23 CHAIRPERSON: All I'm saying to you, that 24 paragraph 11 you refer to doesn't say what you –</p> <p>25 MR MPOFU: No, it says, "I did not see</p>

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1 any NUM" –

2 CHAIRPERSON: If you look over the page

3 and you look at paragraph 12, cross-examined in paragraph

4 12, you may be more successful.

5 MR MPOFU: I don't think I need any –

6 CHAIRPERSON: If you don't want to do it,

7 I'll do it. Paragraph 12 of the statement says –

8 MR MPOFU: There's a limit to how much

9 success I can get, Chairperson.

10 CHAIRPERSON: I won't comment. At

11 paragraph 12 it reads as follows, of your supplementary

12 statement, "At the koppie Bhele further said that we should

13 take off the dresses and put on trousers – to intensify our

14 action in order to achieve our goal. Bhele reported,"

15 continues your statement, "that two of the strikers were

16 shot dead as a result of the attack that was launched from

17 inside NUM's offices by persons who were dressed in clothes

18 embroidered with the name NUM." It follows from that

19 passage that the first person who told you that people from

20 among, that people from the strikers were shot by NUM

21 people, was Bhele – that seems to be what the statement

22 says. Do you wish to comment on that?

23 MR X: Bhele came to the mountain and

24 said we should put off the dresses, get trousers and become

25 men and stop becoming women. What he was, what he meant by

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1 so saying is that we should stop being cowards.

2 CHAIRPERSON: Yes, I understand that but

3 he then went on to say, according to your statement, that

4 two of the strikers were shot dead as a result of an attack

5 launched from inside NUM's offices by persons who were

6 dressed in clothes with the name NUM, or is that a mistake

7 in the statement? That's what your statement says but is

8 that a mistake, did Bhele not say that?

9 MR X: Yes, sir.

10 CHAIRPERSON: It's now 10 to 12, I'm

11 proposing to take the tea adjournment now. The witness

12 does look tired and I think he's probably not the only one

13 so we'll take the tea adjournment now for 15 minutes.

14 [COMMISSION ADJOURNS COMMISSION RESUMES]

15 [12:14] CHAIRPERSON: The Commission resumes.

16 Please remind the witness he's still under oath.

17 MR X: [s.u.o. through interpreter]

18 MR MAHLANGU: Confirmed.

19 CHAIRPERSON: We've got some more

20 documents that's been given to us.

21 MR MPOFU: Chairperson, don't mark them

22 yet.

23 CHAIRPERSON: Carry on.

24 CROSS-EXAMINATION BY MR MPOFU (CONTD.):

25 Thank you. Mr X, your evidence is that you've been using

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1 intelezi for most of your life. Correct? I don't think

2 the connection is established.

3 MR X: Yes, Sir.

4 MR MPOFU: And you would agree that it's

5 used for protection, for self protection, correct?

6 MR X: Yes, Sir.

7 MR MPOFU: And you've also, in your work

8 life you've also used makarapa, correct? The hard hat.

9 MR X: Yes, Sir.

10 MR MPOFU: And it's also used for

11 protection, correct?

12 MR X: Yes.

13 MR MPOFU: Yes, and intelezi is never

14 used to make people invisible, but it is to protect them,

15 correct?

16 MR X: Yes, Sir. They would even ask the

17 culprit where is Mr X, asking me, and I'll say no, he went

18 that way.

19 MR MPOFU: With respect, that is

20 nonsense, Mr X. If they're asking you that means they can

21 see you, correct?

22 MR X: They would ask me, Mr X, where is

23 Mr X, not knowing they're asking the very same person.

24 MR MPOFU: Ja, but if they're asking Mr X

25 where is Mr X, that means they can see Mr X.

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1 MR X: People would argue in my presence

2 and I would be safe and they would kill each other for that

3 matter.

4 MR MPOFU: Yes, well I'm just going to

5 short-circuit this and say to you that to your knowledge

6 the use of intelezi at the mountain is nothing unusual and

7 it was to protect the people against what they felt were

8 going to be further attacks upon them.

9 MR X: Yes, Sir.

10 MR MPOFU: Thank you, and now let's –

11 another part of your evidence was that there was an

12 experiment, to put it mildly, which was done on the box to

13 demonstrate that the bullets won't penetrate, correct?

14 MR X: Yes, Sir.

15 MR MPOFU: And you said the same rituals

16 that were done on you were done on the box.

17 MR X: No, they were not made. Those

18 rituals were not made. The box was only smeared.

19 MR MPOFU: Chairperson, just bear with

20 me. Mr X, it's true that the – well, I wanted to know when

21 you say the rituals were done on the box, you're not

22 suggesting that the box was, that they made cuttings on the

23 box as well, correct?

24 MR X: There were no cuttings with a

25 blade on the box.



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1 MR MPOFU: And also the blade was not  
2 made to eat the ashes – the box, sorry.  
3 MR X: No, Sir.  
4 MR MPOFU: And yet when, although the box  
5 had a different treatment you believed that it – you say  
6 that the bullet was shot and it stuck on the surface of the  
7 box. Is that correct?  
8 MR X: Yes, it got stuck on the surface  
9 of the box.  
10 MR MPOFU: And you believed that although  
11 the box had performed different rituals from you it was  
12 going to protect you when you were being shot?  
13 MR X: Yes, Sir.  
14 MR MPOFU: Don't you think that was  
15 foolish?  
16 MR X: No, it was the truth, Mr Chair.  
17 MR MPOFU: And your testimony is also  
18 that on the 12th you actually saw people being shot and the  
19 bullets were sticking on their skin or their clothes,  
20 correct?  
21 MR X: Yes, Sir, that is like this.  
22 MR MPOFU: How many people did you see  
23 with bullets stuck on their skins or their clothes?  
24 MR X: I did not count them.  
25 MR MPOFU: Were they many?

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1 MR X: I did not count them.  
2 MR MPOFU: More than 10?  
3 MR X: I did not count them.  
4 MR MPOFU: Okay, more than one?  
5 MR X: More, because –  
6 MR MPOFU: Yes, more than five?  
7 MR X: I did not count whether they were  
8 more than five or not.  
9 MR MPOFU: You shouldn't be laughing, Mr  
10 X. I think it is a rather serious matter. But again you  
11 think, you believed in the muti more when you saw these  
12 people with floating bullets on their clothes?  
13 MR X: I did believe, yes.  
14 MR MPOFU: Can you identify any of these  
15 people who had these floating bullets?  
16 MR X: The one who was killed is Bhayi.  
17 MR MPOFU: He was one of the people who  
18 had bullets stuck on their clothes or their skin?  
19 MR X: Yes, Sir.  
20 MR MPOFU: Who else?  
21 MR X: I can only give a directive using  
22 him, Bhayi.  
23 MR MPOFU: Okay, well Mr X, again just to  
24 cut it short the evidence that will be led in the  
25 Commission is that as you have confirmed the only rituals

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1 that were performed were the use of intelezi for  
2 protection.  
3 MR X: Mr Chair, the evidence before the  
4 Commission will be out –  
5 MR MATHIBEDI SC: Sorry, Chairperson, it  
6 was put to the witness that the intelezi was only used for  
7 protection. I think it's only fair if more details are  
8 being put to the witness as to the kind of protection that  
9 was envisaged.  
10 CHAIRPERSON: I think that's correct. In  
11 fairness to the witness you must give him the full details  
12 so he can deal with it adequately.  
13 MR MPOFU: I've already done that,  
14 Chairperson. The witness has confirmed, (a), that he has  
15 used intelezi all his life; (b), it was used for  
16 protection; (c), it was used on that day for protection  
17 against any impending attacks. What more must I do? He  
18 has confirmed all those things.  
19 CHAIRPERSON: I must say it's not clear  
20 to me what kind of protection is envisaged.  
21 MR MPOFU: Well, okay, let's go through  
22 this again, Mr X. You have confirmed that the reason for  
23 using intelezi was to protect themselves, for the  
24 protesters to protect themselves against any possible  
25 attacks, further attacks, correct?

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1 MR X: Yes, Sir.  
2 MR MPOFU: Ja, I don't know what more,  
3 Chairperson. This is the third time –  
4 MR MATHIBEDI SC: Chairperson, I think it  
5 must be put to the witness what kind of protection, and  
6 protection against who, Chairperson.  
7 MR MPOFU: Attack and –  
8 MR MATHIBEDI SC: And what type of  
9 attack, and how is the protection going to manifest itself  
10 from –  
11 MR MPOFU: Okay, that's fine. That's  
12 fine.  
13 CHAIRPERSON: I think it's important for  
14 us to know whether the protection was designed to afford,  
15 intelezi was designed to afford protection against bullets  
16 as well, whether it was specific attackers or attackers in  
17 general. I think those are points that should be  
18 canvassed.  
19 MR MPOFU: Mr X, you said you used  
20 intelezi in 1999 before, correct?  
21 MR X: Yes, Sir.  
22 MR MPOFU: For protection?  
23 MR X: Yes, Sir.  
24 MR MPOFU: From attacks, correct?  
25 MR X: Yes, when there's a fight, yes.

<p style="text-align: right;">Page 34222</p> <p>1 MR MPOFU: What kind of protection was 2 the intelezi going to afford you? 3 MR X: In a fight when I'm being shot it 4 would make shooting ineffective. I could not be shot at. 5 MR MPOFU: And those fights that were 6 happening there, did they also involve traditional weapons? 7 MR X: A fight involving a firearm. 8 MR MPOFU: Yes. 9 MR X: Or firearms. 10 MR MPOFU: And you have accepted that, 11 well, whatever the weapon is, that intelezi was used for 12 protection, correct? 13 MR X: Yes, Sir. 14 MR MPOFU: Right. Now I want to put it 15 to you that the – 16 MR MATHIBEDI SC: Chairperson, with due 17 respect, Mr Mpofo referred the witness to an incident of 18 1999. My concern is in relation to the period at Marikana, 19 why was the, against what was the intelezi or the rituals, 20 you know, being used for, and especially by his clients. 21 We expect that that version should be put to the witness, 22 Chairperson. 23 CHAIRPERSON: What do you say about that, 24 Mr Mpofo? 25 MR MPOFU: Well, Chairperson, I think</p>	<p style="text-align: right;">Page 34224</p> <p>1 MR MPOFU: I'm now going further on. I 2 don't understand this – 3 CHAIRPERSON: If you're going to indicate 4 against what they wish to be protected, against what 5 precisely they're using intelezi, then it's in order. But 6 I think the point taken by Mr Mathibedi is correct. 7 MR MPOFU: Okay, I must confess I don't 8 understand this. Mr X, do you – 9 CHAIRPERSON: I think you must try. 10 MR MPOFU: Ja, you have agreed that at 11 the mountain the intelezi was being used for protection. 12 Was it also used to make people to feel strong? 13 MR X: Yes, Sir, you drink it to make you 14 brave. 15 MR MPOFU: Was it also used to cleanse 16 people who might have walked next to those who had been 17 shot? 18 MR X: Yes, if they had walked past a 19 place that had some kind of a danger. 20 MR MPOFU: And there were also fears that 21 there might be further attacks on the people at the 22 mountain by NUM, correct? 23 MR X: Yes, Sir. 24 MR MPOFU: And as I was saying to you. 25 [12:34] One of the witnesses I am going to call, he's</p>
<p style="text-align: right;">Page 34223</p> <p>1 it's a waste of my time, quite frankly. I've just said it 2 doesn't matter what weapons were being used, the witness 3 has conceded that both intelezi and the makarapa, as he has 4 even said that they were our instruments of protection. I 5 was doing that exactly to lay the foundation. 6 CHAIRPERSON: Mr Mpofo, it's more 7 complicated than that. This witness has given evidence 8 about muti which was used for specific purposes. Now I 9 think it's relevant for the police to know what precisely 10 you admit in relation to what he says and what precisely 11 you deny. You put a vague admission to him without 12 specifying specifically what about his evidence in relation 13 to the muti you deny, and I think he's entitled to know 14 that. 15 MR MPOFU: No, Chairperson, but honestly, 16 that's why I'm saying it's a waste of my time. I started 17 exactly by saying the people, the evidence is going to be 18 led, and then I'm obviously on that track. So I don't 19 understand what the problem is. 20 CHAIRPERSON: What exactly do they say? 21 Do they say that they use intelezi only for purposes – 22 MR MPOFU: Well, should I say it all in 23 one sentence? I've said it in segments. I've said they 24 use it for protection; the witness has agreed – 25 CHAIRPERSON: Yes, he –</p>	<p style="text-align: right;">Page 34225</p> <p>1 going to say those were the sole purposes of using ntelezi 2 and it was a usual occurrence that when there's a perceived 3 danger people use it general protection and safety as some 4 people use prayer to do that. 5 MR MATHIBEDI SC: Sorry Chair, I think 6 before the witness answers I think it should be 7 specifically put to him who that witness is so that the 8 witness can deal with what is put to him. 9 CHAIRPERSON: We as the Commission is 10 also entitled to know which witness will be called will be 11 called to say what – 12 MR MPOFU: Mr Xolani Nzuzza. 13 MR MATHIBEDI SC: Chairperson, I think it 14 should be put to the witness what kind of protection did Mr 15 Nzuzza expect the ntelezi was going to offer them. 16 CHAIRPERSON: I must confess I though Mr 17 Mpofo had done that. He said he wanted general protection, 18 make him strong and protect him against any attacks, 19 particularly from NUM. I think that's the way it's put. 20 MR MPOFU: In the same way as others' 21 prayer would do before going to fight a battle and the 22 witness I think has agreed. 23 CHAIRPERSON: No I that question to be 24 particularised – 25 MR MPOFU: Thanks, Chair.</p>

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1 MR MATHIBEDI SC: Chairperson, I think  
 2 with due respect, the witness testified that one of the  
 3 reasons why rituals were used was to protect them against  
 4 bullets, so this aspect should come on because I think it's  
 5 a very critical, you know, point in this Commission.  
 6 CHAIRPERSON: Yes, Mr Mpofu, you'll get  
 7 there.  
 8 MR MPOFU: I am getting there,  
 9 Chairperson.  
 10 CHAIRPERSON: All right get there.  
 11 MR MPOFU: Please, ja. In fact I put it  
 12 to you that a further witness that we are talking to who's  
 13 an expert in traditional medicine why says that your  
 14 version that there is such medicine that makes people  
 15 invisible or impenetrable by bullets is nonsense.  
 16 CHAIRPERSON: Again I don't say – I don't  
 17 think that's enough. If you're going to call a witness to  
 18 say something then you must tell us who the witness is and  
 19 what he'll say. You can't come with a sort of optimistic  
 20 thing. We're talking to someone and if we call him he may  
 21 say this. I know you didn't put it quite -  
 22 MR MPOFU: That's fine, Chairperson, then  
 23 we'll recall Mr X, I was making it easier so that we don't  
 24 have to recall him by summarising so that he can deny and  
 25 then we know that we have put it. Fine then we'll recall

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1 you Mr X when and if that witness submits a statement.  
 2 CHAIRPERSON: I don't know if it's  
 3 necessary to recall him. His evidence is that that was the  
 4 muti that they used. That's what they used it for and that  
 5 evidence stands. You may well be able to contradict it by  
 6 leading evidence along the lines that you've outlined, but  
 7 I don't know if it will be necessary for him to repeat what  
 8 he said earlier. Anyway carry on for the moment.  
 9 MR MPOFU: Okay let me put it this way.  
 10 Both Mr Nzuzza –  
 11 MR MATHIBEDI SC: With due respect,  
 12 Chairperson –  
 13 MR MPOFU: Sorry.  
 14 MR MATHIBEDI SC: Chairperson, we  
 15 indicated from the [inaudible] there that it is very  
 16 critical that all the information that parties are going to  
 17 rely on, you know in the cross-examination of this witness  
 18 should be made available to us. Now if that report is  
 19 going to be made available it certainly might criticise us  
 20 because we don't know what's going to be contained and we  
 21 would have missed that opportunity of discussing it with Mr  
 22 X and to just recall Mr X to deal with this aspect which  
 23 could have been dealt with. We respectfully submit,  
 24 Chairperson, it –  
 25 CHAIRPERSON: Well there are a number of

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1 issues that arise. The one is whether he'll have to come  
 2 back. The second is whether I'll allow them to put  
 3 something which was not the subject of earlier statements  
 4 which were filed with us before the witness was called.  
 5 These are all matters that will be dealt with in due  
 6 course. But at the moment I am resistant to any  
 7 proposition being put on the basis we may have a witness  
 8 who may say this, this is what he may say. That I'm  
 9 certainly not going to allow. We've worked out a procedure  
 10 in this Commission whereby in order to prevent ambushes and  
 11 people being taken by surprise and so forth we've insisted  
 12 that statements be lodged to see what witnesses will say.  
 13 If there's no statement lodged setting out what Mr Mpofu  
 14 puts and therefore in terms of the rules that we worked out  
 15 would apply - it won't be allowed.  
 16 MR MATHIBEDI SC: Thanks, Chairperson.  
 17 MR MPOFU: Well thank you, Chairperson.  
 18 You might be surprised to learn that I'm trying to save the  
 19 time of the Commission by putting this provisionally.  
 20 Obviously if I don't call the witness then the thing will  
 21 fall away, but I left it the hard way – Mr X, I put it to  
 22 you that in any event Mr Nzuzza who also has been working in  
 23 the mines for a long time is going to say that the evidence  
 24 that there is, such medicine or belief about  
 25 impenetrability of bullets is nonsense.

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1 CHAIRPERSON: That's actually a double  
 2 question. There are two points here, the first –  
 3 MR MPOFU: Well can I go –  
 4 CHAIRPERSON: I think they should be put  
 5 separately. The first is whether there is such medicine  
 6 available, the second is whether, even if there isn't such  
 7 medicine available, there's a belief. I think the question  
 8 should be put separately. Mr Semenya?  
 9 MR SEMENYA SC: Chair, I think the thrust  
 10 of the objection is not properly understood. We have a  
 11 Commission where at least 34 people are killed. The  
 12 version that is given by the police and this witness is to  
 13 explain what absent and expectation is inexplicable how  
 14 people can almost walk in the line of fire as they did.  
 15 That's a very critical element of this. Now it seems to  
 16 that Mr Mpofu said I accept that a muti would give you  
 17 general protection. If we do not distil what is understood  
 18 and how the protection manifests a very big opportunity is  
 19 lost. Now the version that has been given by the witnesses  
 20 it manifests by way of making bullets disappear or made you  
 21 invincible or made you invisible. Now clearly Mr Mpofu's  
 22 witnesses do not agree to those manifestations of the  
 23 protection. Then the witness must be given an opportunity  
 24 to tell us what in Mr Mpofu's witnesses would be the  
 25 manifestation of that protection. It's very critical to

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1 what we have been doing for almost two years.  
 2 CHAIRPERSON: Mr Mpofu, we've been given  
 3 Mr Nzuzza's statement a long time ago. I don't remember, I  
 4 may be wrong, but I don't remember dealing with this  
 5 aspect. If he's going to deal with these matters then a  
 6 supplementary statement should be filed before this witness  
 7 –  
 8 MR MPOFU: Ja but, Chairperson, that is  
 9 not - I didn't know that Mr X will say the things that he's  
 10 saying, so that's why I'm putting it to him, he's here now.  
 11 CHAIRPERSON: No, no come on. The  
 12 statement we got to Mr X a long time ago –  
 13 MR MPOFU: Well I'm using his – you know,  
 14 Chairperson, I am actually using Mr X's own statement for  
 15 this cross-examination. That's the third part and his  
 16 concession that he has made, three or four questions ago.  
 17 I don't know what more am I expected to do. I'm not using  
 18 anything further than what he has said.  
 19 CHAIRPERSON: I think the point is you  
 20 must demarcate clearly the line of difference between your  
 21 witness, Mr Nzuzza and this witness for two reasons.  
 22 Firstly to give the witness an opportunity to answer. It  
 23 is said that Mr Nzuzza challenges or is going to challenge  
 24 his evidence despite the fact that we haven't seen a  
 25 statement to that effect yet. But the second point is the

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1 police may wish, in the light of the issue that arises,  
 2 possibly to provide further evidence whether by affidavit  
 3 or by oral evidence. So in fairness to the police, they're  
 4 entitled to know what is the case that you are seeking to  
 5 bring against them on this regard and I think to be fair  
 6 there's substance in what Mr Semenya says, but he doesn't  
 7 what exactly it is he's got to deal with.  
 8 MR MPOFU: Okay I'll confine myself to Mr  
 9 X's own statement. Can we go to paragraph 15 of LLL26?  
 10 You say there, you say you have been taking part in muti  
 11 and ritual practises since childhood which includes usage  
 12 of ntelezi, making cuttings on certain parts of the body  
 13 and putting muti on those parts of the body. And then you  
 14 say you believed that muti properly used and instructions  
 15 followed, the purposes, objectives for which the muti and  
 16 ritual practises are used can be achieved. And you say you  
 17 have successfully used muti to prevent being bewitched  
 18 which I will argue that of the protective uses thereof.  
 19 And then you say in 1999 I was involved in faction fighting  
 20 and the group that I was part of used muti to protect  
 21 ourselves. And as you have already established elsewhere  
 22 you say it was used to cleanse people who had walked next  
 23 to people who had been shot. Now all I'm saying to you,  
 24 which has caused a big rumpus, is that the muti called  
 25 ntelezi is used only for these kinds of protective purposes

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1 that you have attested to. Much the same way as people  
 2 going to battle might use prayer to strengthen themselves  
 3 so that they might survive the battle.  
 4 MR SEMENYA SC: Chair, there is a very  
 5 sharp question which is screaming for an answer on this  
 6 issue. Mr Mpofu's client contends that the type of  
 7 protection of making people imperious to bullets is  
 8 nonsense, that is what he's telling us. Now we want to  
 9 know on that version how is that protection going to  
 10 manifest. It's very sharp. The one that we are offering  
 11 we are told is nonsense.  
 12 CHAIRPERSON: Mr Mpofu there are two  
 13 problems.  
 14 MR MPOFU: No Chairperson, with the  
 15 greatest respect I've changed the question. I can't be  
 16 answering things -  
 17 CHAIRPERSON: You haven't –  
 18 MR MPOFU: I'm not asking that question  
 19 now, I've withdrawn that question.  
 20 CHAIRPERSON: You haven't heard what the  
 21 second problem is.  
 22 MR MPOFU: Yes but I've withdrawn the  
 23 question.  
 24 CHAIRPERSON: The second part is Mr  
 25 Nzuzza's statement we've just looked at, it doesn't a word

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1 about it.  
 2 MR MPOFU: I have said that as well. I  
 3 said I'm not a prophet. It was in that context that I was  
 4 saying that. It's all these things, this is just a waste  
 5 of my time.  
 6 CHAIRPERSON: If you withdraw the  
 7 question you can then carry on with other questions.  
 8 MR MPOFU: Mr X, Chairperson, with the  
 9 greatest respect surely I'm allowed to ask Mr X about his  
 10 own statement which is what I'm doing now.  
 11 CHAIRPERSON: I didn't ask if you would  
 12 like to ask him about his own statement. The objection  
 13 related to what you said your people are going to say.  
 14 MR MPOFU: Earlier on which I've  
 15 withdrawn.  
 16 CHAIRPERSON: If you withdraw that there  
 17 may be certain consequences flowing from that withdrawal,  
 18 but you're certainly entitled to ask him about his own  
 19 beliefs and what he says.  
 20 MR MPOFU: Thank you very much,  
 21 Chairperson.  
 22 CHAIRPERSON: But I don't understand the  
 23 objection to be against it.  
 24 MR MPOFU: Well that's exactly what I'm  
 25 busy with and that's what the objection was directed to.

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1 It is what I'm doing, Chairperson. I don't know if I must  
2 do something different now.

3 CHAIRPERSON: Mr Mpofu, I've said you can  
4 carry on -

5 MR MPOFU: Thank you.

6 CHAIRPERSON: - asking the witness about  
7 his own statement.

8 MR MPOFU: Thank you very much. I'm  
9 indebted to you, Chair.

10 CHAIRPERSON: I indicated to you that  
11 your withdrawal of other questions that you put  
12 [inaudible]. The objection wasn't for asking the witness  
13 about his own statement -

14 MR MPOFU: It was, Chairperson, it was  
15 just after I've asked these questions, that was what the  
16 objection was, maybe you were not listening, Chairperson.  
17 That's what the objection was. I said Mr X go to paragraph  
18 15 of your statement.

19 CHAIRPERSON: I'm aware of it, but the  
20 objection wasn't related to that so much as it related to  
21 other matters, but anyway now you've made it clear so that  
22 even I can understand that you're not going to put anything  
23 further in regard to what your own clients say with regard  
24 to muti and ntelezi and so forth. You're going to question  
25 this witness about his own statement, so now that's clear

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1 to me you can carry on.

2 MR MPOFU: Mr X, again I've read you  
3 paragraph 15 where you say that since your childhood you  
4 have ntelezi and you have suggested that you've used it for  
5 protective reasons. You've also used to prevent being  
6 bewitched and it was used to prevent or rather to protect  
7 your group from a rival group. And I'm saying to you that  
8 those are the only purposes for which ntelezi was used on  
9 that day were purposes that you confirm in your statement  
10 which are protective. The only other additional one is the  
11 one where people walked next to people who had been shot,  
12 were being cleansed which is contained in paragraph 12 of  
13 your statement which I'm not going to read. Do you agree  
14 with that?

15 MR X: I hear you, Sir.

16 CHAIRPERSON: This faction fighting that  
17 you talk about in paragraph 15 and the group, I think there  
18 are some words missing. It says the group that I was part,  
19 oh I see - the group that I was part of used to muti to  
20 protect ourselves against the rival group. We believed the  
21 muti worked. Now this faction fighting you were involved  
22 in, people against whom, the rival groups, the people  
23 against whom you were fighting in the faction fighting,  
24 what weapons did they have?

25 MR X: They had pangas and spears, but

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1 they gave way to us and they ran all over the place. It  
2 seems like it was two groups there, it was a group that  
3 split into two just like this AMCU which is also going to  
4 split into two. These were tribes that were fighting this  
5 fight of 1991, it was Mpondos and Mbanas.

6 CHAIRPERSON: When you say 1991 do you  
7 mean 1999?

8 MR X: 1999, I'm sorry. 1999, the  
9 Mpondos and the Mbanas.

10 MR MPOFU: Yes okay we heard what -

11 CHAIRPERSON: Did you believe that the  
12 pangas, bush knives and so forth that they were carrying  
13 would be rendered ineffective by the muti that you used?

14 MR X: We believed, Mr Chair. We used  
15 this ntelezi on the Mpondos. We were not mixed with any  
16 other tribes.

17 [12:54] This Kolani that you people is from mentioning is  
18 from Idutywa, he does not know anything about muti.

19 MR MPOFU: Okay. Can I put it like this,  
20 Mr X, maybe just so that we can move on? You remember, you  
21 have now repented, you no longer believe in muti even  
22 though you are still wearing that black jacket.

23 MR X: Yes, that is where I'm headed to,  
24 converting. You don't just convert in one day.

25 MR MPOFU: Yes, okay. When you reach

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1 your destination of full conversion, is it true that if you  
2 are going into your battle now, instead of using intelezi  
3 you would pray?

4 MR X: If that situation comes I will put  
5 the Bible aside, take the intelezi, use it. After the  
6 battle or the problem that I'm facing, go back to the  
7 Bible.

8 CHAIRPERSON: [Microphone off, inaudible]  
9 first time in the history of the country that sort of thing  
10 happened.

11 MR MPOFU: Thank you, Mr X, but your  
12 evidence is that other people who were real Christians at  
13 the mountain did not take intelezi. They obviously relied  
14 on other means of protection.

15 MR X: Sir, do you understand what I'm  
16 saying? As I'm saying I am converting but if a fight would  
17 arise, I would put the Bible aside, use intelezi and I'll  
18 see the Bible later.

19 MR SEMENYA SC: Chair, for the record,  
20 that was the evidence of Bishop Seoka that even when he  
21 administered these burials, they would do the Christian  
22 rites and leave the family to perform the rituals.

23 MR MPOFU: Chairperson, with the greatest  
24 respect, why is my cross-examination being interrupted?  
25 This is argument. Mr Semenya will have a long time to

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1 argue the case at the end of the case, really man.  
 2 CHAIRPERSON: Mr Semanya, I'm afraid the  
 3 point taken by Mr Mpofo is correct and you've said it  
 4 anyway but I disallow it. Carry on, Mr Mpofo.  
 5 MR MPOFU: Thank you, Chairperson. Is  
 6 your evidence, Mr X, that some of the protesters who were  
 7 Christians chose not to use the intelezi on the day, on the  
 8 11th, correct?  
 9 MR X: Yes, sir.  
 10 MR MPOFU: Okay, thank you. There's also  
 11 – do you know that the koppie area, you remember you gave  
 12 evidence about woollen ropes and strings and multicoloured  
 13 strings?  
 14 MR X: Yes, sir.  
 15 MR MPOFU: Do you know that the area that  
 16 you call the mountain, the koppie area is used by,  
 17 particularly on weekends, by various religious groups and  
 18 for different people to perform rituals?  
 19 MR X: Yes, I know.  
 20 MR MPOFU: Thank you. Your other  
 21 evidence is that the instructions of the inyanga for people  
 22 not to change their clothes was strictly adhered to by the  
 23 committee and the makarapas, correct?  
 24 MR X: Some adhered to the instructions,  
 25 others did not.

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1 MR MPOFU: But you adhered to it, you  
 2 were still wearing the same clothes that you used when you  
 3 were doing the rituals, correct?  
 4 MR X: I followed the instructions  
 5 because if you have something that you need to do, you use  
 6 this –  
 7 MR QGIRANA: The witness picked up  
 8 something from the table.  
 9 MR MPOFU: Sorry, we can't see it  
 10 properly. Can you show the Chairperson the thing that you  
 11 use for muti?  
 12 MR X: Here it is.  
 13 MR MPOFU: What –  
 14 MR X: You put this thing in your mouth  
 15 and you chew it and if you have carried a box or you walk  
 16 in a certain place that you're not supposed to, you put it  
 17 in your hands and you smear it in your face –  
 18 CHAIRPERSON: What he's indicating –  
 19 MR X: - chew it and –  
 20 CHAIRPERSON: - he's washing his hands,  
 21 rubbing his hands on his face – doing, bringing his two  
 22 hands, the palms of his hands down over his face. That's  
 23 what he's demonstrating.  
 24 MR QGIRANA: That is so.  
 25 CHAIRPERSON: What is the object that you

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1 were holding up?  
 2 MR X: It's called "isiqongo", some type  
 3 of a grass that is also, you get it in the veld. It is  
 4 also used to roof the houses and then you take the stem off  
 5 this grass.  
 6 CHAIRPERSON: So it's the stem, it's a  
 7 grass stem, is it?  
 8 MR QGIRANA: Yes.  
 9 MR MPOFU: Chairperson – are you right,  
 10 Mr X?  
 11 MR X: Mr Mpofo will not know this  
 12 because this is from Ciskei. It is Mpondos who use this.  
 13 MR MPOFU: Ja –  
 14 CHAIRPERSON: On that regional note,  
 15 shall we take the lunch adjournment, or do you want to make  
 16 some other point before we do that?  
 17 MR MPOFU: Yes, Chairperson, I just  
 18 wanted to – can I just ask one more question?  
 19 CHAIRPERSON: One as in one?  
 20 MR MPOFU: Yes. We'll come back to this  
 21 after lunch but why are you carrying this? Does it also  
 22 work for the Commission?  
 23 MR X: I'm just making an example, Mr  
 24 Chair, it doesn't work.  
 25 MR MPOFU: Thank you, Chairperson, we can

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1 have the lunch adjournment.  
 2 CHAIRPERSON: We'll only know whether  
 3 it's worked for the Commission at the end of everything  
 4 when we give in the report. We'll now adjourn for lunch  
 5 and reassemble at quarter to two.  
 6 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 7 [13:56] CHAIRPERSON: The Commission resumes.  
 8 Please remind the witness he's still under oath. Mr Mpofo.  
 9 MR X: Yes, Sir. [through interpreter]  
 10 CROSS-EXAMINATION BY MR MPOFU (CONTD.):  
 11 Mr X, I want to round off this issue by saying to you that  
 12 the intelezi, as I've already suggested, was used for  
 13 protective reasons and none of, all your evidence about  
 14 black sheep that was buried there and blood and human  
 15 tissue mixtures and invisibility and all that is false.  
 16 That was never even discussed there.  
 17 MR X: No, Mr Chair, intelezi is used to  
 18 make a firearm ineffective.  
 19 MR MPOFU: And also that the evidence  
 20 about people being ordered not to change their clothing is  
 21 also false.  
 22 MR X: No, Mr Chair, we were told you'll  
 23 only change after seven days and I would then take a bath.  
 24 MR MPOFU: Because you yourself when you  
 25 identify yourself you are wearing different types of

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1 clothing.

2 MR X: No, that's a jean I was wearing.

3 MR MPOFU: And you told us that there was

4 no storeroom where you would put other clothes, like your

5 overall, which means they would have been on you at all

6 times.

7 MR X: No, at times I would take off the

8 overall and remain with the jeans.

9 MR MPOFU: But was the instruction not

10 that you must keep the clothes which you had on when the

11 rituals were being made?

12 MR X: Overalls are just like a jacket.

13 You can wear an overall on top of the trousers.

14 MR MPOFU: And when you were not wearing

15 it where was it?

16 MR X: I put it in the bag and put it

17 aside.

18 MR MPOFU: The bag whose colour you don't

19 know?

20 MR X: Yes, Sir.

21 MR MPOFU: And also the evidence – well,

22 the people who were the leaders had to follow the rules

23 even more strictly than others, correct?

24 MR X: It depends on how brave one is,

25 how much one can tolerate or endure the situation.

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1 MR MPOFU: You were already shown in

2 another cross-examination that Mr Noki can be seen wearing

3 different things on different days, and I put it to you

4 that Xolani, whom you identify as a leader, was also

5 wearing different clothes on different days, which is

6 inconsistent with your evidence.

7 MR X: Mr Chair, those people probably

8 don't understand how the muti works. They obviously did

9 not follow the instructions.

10 MR MPOFU: Yes, but the issue is that you

11 who understands the muti would have taken them to task

12 because they were putting your life in danger if you could

13 see them every day having disobeyed the instructions.

14 MR X: If I make an example about the

15 incident of 1999, our group did not have clothes on the top

16 and the other group of people who had their clothes on so

17 that they can see each other.

18 MR MPOFU: Okay, that has nothing to do

19 with what I asked you. I'm saying that the evidence of Mr

20 Noki wearing different things and also Mr Nzuzwa wearing

21 different things is inconsistent with what, the impression

22 you've given to this Commission and that evidence is

23 therefore false and you have identified both gentlemen as

24 the paramount leaders.

25 MR X: They did not follow the

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1 instructions.

2 MR MPOFU: Also one of the most – would

3 it be correct to say that the episode where you allegedly

4 had to eat the ashes from the human tissue must have been

5 something very enduring and significant in your life, that

6 was a bit of a shock?

7 MR X: Yes, that man was strengthening

8 his muti, making it strong to work.

9 MR MPOFU: Yes, I understand that. I'm

10 saying this was something that is unforgettable, it's

11 something that is quite unusual and something which you

12 could not forget.

13 MR X: I can forget it because I'm not

14 going to always be remembering these things.

15 MR MPOFU: Wasn't it something, one of

16 the important things that even led you to do what you are

17 doing, which is to give evidence? Wasn't that something

18 that you found very unacceptable?

19 MR X: Repeat the question.

20 MR MPOFU: I'm saying the episode which

21 you have described, which amounts to cannibalism, is not

22 something you can forget easily.

23 MR X: Yes, I hear you.

24 MR MPOFU: Do you agree?

25 MR X: I agree and I hear you.

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1 MR MPOFU: Yes, so something of that

2 magnitude and of that significance, why did you not mention

3 it in your first statement if it happened?

4 MR MATHIBEDI SC: Chairperson, I think to

5 avoid any ambiguity I'll appreciate it if he can be told

6 which statement reference is being made to.

7 CHAIRPERSON: Yes, give the exhibit

8 numbers. The first statement is the one taken by the

9 Xhosa-speaking captain [inaudible] others as well.

10 MR MPOFU: Yes.

11 CHAIRPERSON: But the second one is the

12 one that Mr Mathibedi was involved with.

13 MR MPOFU: Yes.

14 CHAIRPERSON: So give the two exhibit

15 numbers and then –

16 MR MPOFU: Ja. The first statement I'm

17 referring to you is AAAA1.2.

18 CHAIRPERSON: That was the one taken by –

19 MR MPOFU: Mr Ngqoko.

20 CHAIRPERSON: Captain Ngqoko [inaudible]

21 and the second statement to which Mr Mpofo referred was the

22 statement that you made in March of this year and Adv

23 Mathibedi was involved in interviewing you in getting some

24 of the extra information which found its way into the

25 statement. That's correct, Mr Mathibedi?

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1 MR MATHIBEDI SC: That's correct.

2 CHAIRPERSON: And those are the two

3 statements that Mr Mpofu is asking about.

4 MR MPOFU: Yes.

5 CHAIRPERSON: He suggests to you that the

6 experience of eating the ashes taken from the dead body of

7 one of the security guards was something of such a striking

8 nature that you would have remembered it and mentioned it

9 in your first statement and he wants to know why you

10 didn't.

11 MR X: Mr Chair, at school you'll be

12 taught something today and tomorrow you forget it and the

13 teacher will remind you.

14 MR MPOFU: Ja, which teacher reminded you

15 so for you to suddenly remember it for the second

16 statement?

17 MR X: I'm making an example, Mr Chair.

18 You'll be told something today, forget it tomorrow, until

19 you are reminded of it.

20 MR MPOFU: Yes, that's what I'm saying.

21 So if you take that example of yours to this situation it

22 means you forgot this unforgettable event in your first

23 statement and some "teacher" reminded you for the second

24 statement. Who was that "teacher?"

25 MR X: I mentioned earlier on that Mr

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1 Ngqoko did not take me through the statement like Mr

2 Mathibedi did, who went through the statement thoroughly

3 with me and I've remembered things that I forgot, about

4 things that I'd forgotten earlier on.

5 MR MPOFU: Well, there are two remarks

6 about that. One is that as the Chairperson indicated to

7 you earlier, what seems to have happened is that you were

8 giving your account of what had happened to the various

9 people, but secondly you have said that this thing of

10 eating ashes from human tissue is so striking and

11 unforgettable that it, and I'm going to argue that if it

12 was true you could not have forgotten it.

13 MR X: It happened and I forgot about it.

14 MR MPOFU: And in fact in that statement

15 you say the following, "The blood and human tissues or

16 parts" – I'm sorry, Chairperson, I'm reading from paragraph

17 13 of AAAA2.1.

18 CHAIRPERSON: Thank you.

19 MR MPOFU: 1.2, not 2.1. AAAA1.2. You

20 say, "The blood and human tissues or parts were handed to

21 one of sangomas by Bhele." I've cross-examined you on this

22 in a different context, and then you say, "We were told

23 that the human tissues and the blood are going to be mixed

24 together to make a much stronger muti by the sangoma."

25 You've already contradicted yourself in respect of that

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1 because later you said you saw this happening with your own

2 eyes, but that's not what I'm talking about now.

3 MR X: Yes, we were told something that I

4 could see happening.

5 MR MPOFU: Okay, that's a third version,

6 but we're not there now. What I'm saying is that you then

7 say, "There were rituals" – I suppose "There were rituals

8 which were performed to us which was the one of sprinkling

9 with water to revive the muti which was already inserted to

10 us to be more stronger and stronger." So that's different,

11 to revive the muti with water is far different than to

12 revive it with cannibalism, and it is in that passage where

13 if this was true you would have inserted the fact that you

14 were made to eat the so-called ashes. Any comment?

15 MR X: If Mr Mpofu was a hunter, a wasp

16 would be killed, mixed with the dog food, given to the dogs

17 to make the dog vigil in hunting.

18 MR MPOFU: Are you alright, Mr X?

19 MR X: Mr Chair, human flesh was used as

20 rituals, in the rituals on these people at Marikana. Those

21 people did not listen.

22 [14:15] Because I did not want his evidence here. No-one

23 would allow your child to be cut and pieces of his flesh to

24 be eaten like that.

25 MR MPOFU: Ja – sorry.

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1 MR X: This person that was mutilated was

2 not even tested to see whether he was positive or not and

3 if he was positive, all those people who consumed part of

4 his flesh are positive today.

5 MR MPOFU: And if they are not then it

6 further proves that this did not happen, you are making it

7 up and if, as I say, the gist of what I'm saying is that if

8 it had happened you would have put it in the paragraph that

9 I've just read to you.

10 MR X: Mr Chair, I'm saying the last man

11 who helped me through the statement did that thoroughly,

12 although the first one just did a half job. Mr Mpofu, you

13 tell your child something today and tomorrow the child

14 won't know it and won't remember it.

15 MR MPOFU: Anyway, okay. Well, I put it

16 to you that the so-called eating of flesh from human tissue

17 is another hallucination, a figment of your imagination.

18 MR X: Now if that is the case, Mr Mpofu,

19 why are parts of that man's flesh cut?

20 MR MPOFU: Ja, well, let's talk about

21 that.

22 MR X: I am [indistinct] statement, it is

23 just like that.

24 MR MPOFU: You said that you cut Mr

25 Fundi's body near his mouth or face, correct? No, sorry,



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1 sorry, it was him – not the plural.  
 2 MR X: Mr Chair, even if the picture of  
 3 Mr Fundi can be shown you will see that he had been cut in  
 4 the area indicated on the sides of the mouth, around the  
 5 lips. I did not cut him but I hacked him. No-one would  
 6 let their child be cut like that.  
 7 MR MPOFU: Yes, Mr X, please answer the  
 8 question. Did you stab Mr Fundi somewhere on the mouth or  
 9 face?  
 10 MR X: Yes, somewhere near the face I  
 11 just hacked, I did not – I was not a spectator.  
 12 MR MPOFU: And on his mouth?  
 13 MR X: Whilst I could be standing there  
 14 and to watch, what would I be watching?  
 15 MR MPOFU: Mr X, did you cut, did you  
 16 stab Mr Fundi on his mouth or face?  
 17 MR X: On the face, I hit him on the  
 18 face.  
 19 MR MPOFU: On the mouth?  
 20 MR X: I hit him on the face.  
 21 MR MPOFU: Are you sure you didn't cut  
 22 him on the mouth?  
 23 MR X: The mouth is on the face, where is  
 24 the mouth?  
 25 MR MPOFU: Yes. Did you therefore stab

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1 him on the mouth or his face? Simple question.  
 2 MR X: On the face.  
 3 MR MPOFU: Mr X, to cut it short,  
 4 paragraph 12 of AAAA1.2 you say that, "I saw two security  
 5 officials try to get into their vehicles and we blocked  
 6 them and assaulted with our weapons. I personally stabbed  
 7 one of the security officials somewhere on the mouth or  
 8 face." Do you stand by that evidence? And you say, "I  
 9 stabbed him with a butcher knife I had with me." Do you  
 10 stand by that statement?  
 11 MR X: Yes, I do.  
 12 MR MPOFU: Well, I put it to you that the  
 13 only facial injuries that Mr Fundi suffered were on his  
 14 mouth, which were consistent with the stabbing or cutting  
 15 and that you must have been the person who cut him if you  
 16 were there.  
 17 MR X: No, Bhele cut Mr Fundi on the  
 18 mouth.  
 19 MR MPOFU: Mr Dlunga denies that but I'm  
 20 putting to you now that the only person who cut Mr Fundi in  
 21 the area where he was cut is you.  
 22 MR X: Sir, Mr Chair, Mr Mpofo's denial  
 23 of this aspect is in vain. I'm saying it's Bhele who cut  
 24 Mr Fundi.  
 25 CHAIRPERSON: Mr Mpofo, the way to solve

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1 this problem is two things, one is the post-mortem report  
 2 which will show us, will tell us what injuries were on his  
 3 face and, secondly, if you look at slide 30 of exhibit L,  
 4 which is the photograph.  
 5 MR MPOFU: Chairperson, I am aware. To  
 6 avoid giving a warning, I know the picture that the  
 7 Chairperson is talking about.  
 8 CHAIRPERSON: Put the post-mortem report  
 9 on the screen. We've had it before, I can –  
 10 MR MPOFU: I've got it. Yes, it was  
 11 A755.  
 12 CHAIRPERSON: A7 –  
 13 MR MPOFU: A755.  
 14 CHAIRPERSON: A755.  
 15 MR MPOFU: Onwards.  
 16 CHAIRPERSON: "Lacerations of left  
 17 parietal area measuring four centimetres above the left  
 18 eye, five centimetre laceration above the right eye, Y-  
 19 shaped. Three by four centimetre lacerations, lower lip.  
 20 10 centimetres by five millimetres. Fractures of the lower  
 21 jaw, open fracture."  
 22 MR MPOFU: Yes.  
 23 CHAIRPERSON: Then there's reference to  
 24 the mouth, tongue and pharynx which is described. Any more  
 25 on the next page?

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1 MR MPOFU: No, Chairperson, I think  
 2 that's –  
 3 CHAIRPERSON: No, that's it.  
 4 MR MPOFU: Yes, on the facial –  
 5 CHAIRPERSON: If one looks – and then  
 6 under "Mouth, tongue and larynx" it says, "Examined and had  
 7 laceration on lower lip, 10 centimetres by five  
 8 millimetres." If one looks at the photograph which we  
 9 don't want to put up, it appears there are injuries to the  
 10 mouth and lips and also on, above the mouth actually, near  
 11 – I think it's the lower part of the left nostril.  
 12 MR MPOFU: Yes, Chairperson.  
 13 CHAIRPERSON: That's what one sees in the  
 14 photograph.  
 15 MR MPOFU: Yes and if you go to the, I  
 16 think the next, on the post-mortem report it says, "The  
 17 tongue with multiple lacerations and laceration on the  
 18 lower lip," ja.  
 19 CHAIRPERSON: Also the other injuries  
 20 near the eyes would be part of – and the forehead and also  
 21 if one looks at the photograph there is what appears to be  
 22 a wound below, I think the left nostril above the mouth.  
 23 That's what I can see on the photograph.  
 24 MR MPOFU: Yes. Chairperson, the point  
 25 I'm simply making is that the – I don't know if there were

<p style="text-align: right;">Page 34254</p> <p>1 other lacerations or whatever but I'm saying the serious 2 cut consistent with what the witness seems to talk about, 3 is around the mouth area and that's really what I'm saying 4 and he has already conceded that the mouth is on the face, 5 so it could have been – 6 CHAIRPERSON: - it's on the face but he 7 says the face, it seems clear from the way he answered his 8 question – 9 MR MPOFU: No, that's fine – 10 CHAIRPERSON: - with the mouth. 11 MR MPOFU: Chairperson, ja, I don't – 12 CHAIRPERSON: The laceration left or 13 right, above the left eye and the right eye – 14 MR MPOFU: I'm putting to you – 15 CHAIRPERSON: - those would all be 16 injuries on the face. 17 MR MPOFU: Chairperson, really, I mean if 18 there are small lacerations and scratches also, I'm talking 19 about a butcher knife, a blow with a butcher knife which 20 this witness has testified about but anyway, I don't want 21 to waste more time on this. I put it to you Mr – 22 CHAIRPERSON: It seems to be a point for 23 argument. I take it – 24 MR MPOFU: Yes. 25 CHAIRPERSON: - you've got the material</p>	<p style="text-align: right;">Page 34256</p> <p>1 There is a trail that indicates that he was dragged to 2 reach that place. 3 MR MPOFU: Anyway Mr X, I'm going to 4 argue that the account of events is something you did not 5 witness or something that did not happen and it is another 6 figment of your imagination. 7 MR X: I'm not imagining this, I can 8 state it in court, Chair. I am not scared of these charges 9 by AMCU. 10 MR MPOFU: Did you participate in 11 dragging Mr Fundi? 12 MR X: Yes, I participated. I was not a 13 spectator, there was a fight going on. 14 MR MPOFU: Who else was pulling Mr Fundi 15 apart from you? 16 MR X: Bhele dragged him. 17 MR MPOFU: Why did you say in your 18 statement that it was Mr Mehlokomo who pulled him and you 19 did not put Bhele nor yourself? 20 MR X: Mehlokomo removed him from the 21 car. 22 MR MPOFU: And you and Bhele pulled him? 23 MR X: Mr Chair, we were not helping each 24 other with that man, only – there was no need for all of us 25 to drag him, only two people dragged him.</p>
<p style="text-align: right;">Page 34255</p> <p>1 on record. 2 MR MPOFU: I do. 3 CHAIRPERSON: You can argue – 4 MR MPOFU: That's correct, Chairperson, 5 thank you. 6 CHAIRPERSON: - at the end of the matter. 7 MR MPOFU: Yes. 8 CHAIRPERSON: Whether it's a good point 9 or bad point we'll have to decide – 10 MR MPOFU: At the time. Yes, I put it to 11 you, Mr X, that the only person who seems to have visited 12 Mr Fundi with a heavy blow on the face is you. 13 MR X: I hear what you say but I'm saying 14 Bhele cut Mr Fundi. Mr Mpofu was not there on that day. 15 MR MPOFU: Okay. After Bhele cut him 16 did, what then happened? What did Anele do? 17 MR X: He hacked him with the panga. 18 MR MPOFU: On the face as well? 19 MR X: I can't remember clearly where but 20 he also hacked him with the panga. Then he took some of Mr 21 Fundi's blood and put it in a plastic bag. 22 MR MPOFU: Did Anele hack or stab Mr 23 Fundi after Bhele? 24 MR X: No, before. Anele – when Mr Fundi 25 was lying, he was dragged to that place. He was not alive.</p>	<p style="text-align: right;">Page 34257</p> <p>1 MR MPOFU: Who were those two people? 2 MR X: I know Bhele and Baai. 3 MR MPOFU: But you said Baai did not 4 pull, did not drag the man, he only took him out of the 5 vehicle. Are you changing now? 6 MR X: No, I don't understand what Mr 7 Mpofu is asking. 8 MR MPOFU: Who are the two persons who 9 dragged the body of Mr Fundi? 10 MR X: Baai removed him from the car. 11 MR MPOFU: Yes? 12 MR X: Bhele dragged him, cut him. It's 13 Bhele who cut Mr Fundi there. 14 MR MPOFU: Did you listen to the 15 question? Who dragged the body of Mr Fundi, Mr X? 16 MR X: It's Baai who got him out of the 17 car. 18 MR MPOFU: Yes, and who dragged the body 19 to the place you said earlier you can see the trail, that 20 the body was dragged, which is true. Who did that? 21 MR X: He got him out of the car, Bhele 22 dragged him and turned him over, he was lying on his back, 23 and cut. 24 MR MPOFU: You said he was dragged by two 25 people. Who are those two people, Mr X?</p>

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1 MR X: I told Mr Mpofu who dragged that  
2 man. What does Mr Mpofu want from me? You are humiliating  
3 the family of the deceased.  
4 CHAIRPERSON: Mr Mpofu is entitled – Mr  
5 Mpofu is entitled to test the accuracy of your memory, he's  
6 entitled to ask you the question again to see whether you  
7 can remember accurately, you can give the same answer as  
8 you gave last time. If I allow the question, please answer  
9 it.  
10 MR X: Okay.  
11 [14:35] MR MPOFU: Alright, Mr X, you will be  
12 happy to know I'm going to - I think it's clear that you  
13 don't have a clue of what you're talking about. I'll move  
14 to another thing. Yes, now –  
15 MR X: How do you say I am the one who  
16 cut him if again you say I have no knowledge of what I'm  
17 talking about?  
18 MR MPOFU: No, you're the one who said  
19 you stabbed him on the mouth or face, not me.  
20 MR X: Mr Mpofu, what do you do with a  
21 panga? Do you stab or you hack?  
22 MR MPOFU: I never used a panga. But  
23 let's move to the other point –  
24 MR X: Can one stab or hack with a panga?  
25 MR MPOFU: You can hack, as you did to Mr

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1 Fundi.  
2 MR X: I just want to rectify that aspect  
3 of stabbing and so on. Now Mr Mpofu wants me to agree with  
4 what he's saying and I'm not changing my story.  
5 MR MPOFU: Alright –  
6 MR X: He can say this is a figment of my  
7 imagination. I'm not turning from what I said.  
8 MR MPOFU: Okay, fine. Another thing  
9 that I'm going to argue is a figment of your imagination is  
10 the claim you made that you joined AMCU at the mountain.  
11 MR X: Why would I not join AMCU when  
12 they said they do not want NUM there? Most of them died on  
13 the mountain.  
14 CHAIRPERSON: You've got three exhibits  
15 that you want to put in; I take it they will be AAAA46.1, 2  
16 and 3.  
17 MR MPOFU: That will be 40?  
18 CHAIRPERSON: AAAA46.1, 2 and 3.  
19 MR MPOFU: Yes, Chairperson.  
20 CHAIRPERSON: They are all, it looks like  
21 essentially stop order authorisation forms.  
22 MR MPOFU: That's correct, Chairperson.  
23 CHAIRPERSON: The first one is dated the  
24 19th of –  
25 MR MPOFU: With an AMCU logo, yes.

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1 CHAIRPERSON: Well, the order in which  
2 you pinned them together, stapled them together, the first  
3 one is dated 19 September 2012. The second is dated –  
4 MR MPOFU: 14/12.  
5 CHAIRPERSON: It looks like 14/12/2012,  
6 and the third one is dated, it looks like 3 May 2012.  
7 MR MPOFU: That's correct, Chairperson.  
8 What we have done, Chairperson, just for clarity –  
9 CHAIRPERSON: Well, I can see what it is.  
10 The exhibit –  
11 MR MPOFU: Yes, that –  
12 CHAIRPERSON: - 46.3 is in point in time  
13 the earliest, that's –  
14 MR MPOFU: Ja, I'm not even going to use  
15 those ones, Chairperson.  
16 CHAIRPERSON: Well, we were given –  
17 MR MPOFU: Yes, but –  
18 CHAIRPERSON: The 3rd of May 2012 is a NUM  
19 one. The one of the 19th of September is an AMCU one and  
20 the one of the 14th December 2012 is another NUM one.  
21 MR MPOFU: Thank you, Chairperson.  
22 CHAIRPERSON: Are there copies of these  
23 documents in the remote venue where the witness is?  
24 MR MPOFU: Chairperson, yes, that's what  
25 I was trying to explain to you. What we've done,

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1 Chairperson, is we supplied this document to SAPS some  
2 weeks ago and what we've done now for the purposes of today  
3 is to give to the Commissioners a copy that has crosses  
4 next to certain portions and then to give operator a copy  
5 that is now on the screen, which has been blackened. So  
6 wherever the Commissioners have an X it's been blackened so  
7 that his identity should not be seen by the people in the  
8 auditorium.  
9 CHAIRPERSON: No, I was going to ask that  
10 you do that. I'm pleased that you have done it.  
11 MR MPOFU: Thank you, Chairperson, yes.  
12 CHAIRPERSON: Now the one we're looking  
13 at, at the moment, the first one –  
14 MR MPOFU: Yes, 46.1.  
15 CHAIRPERSON: 46.1.  
16 MR MPOFU: That's correct.  
17 CHAIRPERSON: That's an AMCU application  
18 for membership/stop order authorisation –  
19 MR MPOFU: That's correct.  
20 CHAIRPERSON: - form, and it bears the  
21 date, I take it that hasn't been redacted. I think you  
22 must go up a bit, we can't see the date. So could it  
23 please be – there we are. The date is the 19th of September  
24 2012.  
25 MR MPOFU: That's correct, Chairperson.

1 Can you just leave it there? Don't go back to page 1  
2 because there's something which I notice there which might  
3 compromise the identity. Let's leave it there. The  
4 Chairperson asked you, I think it was your evidence-in-  
5 chief where in one of your statements you said you joined  
6 AMCU with effect from October and you said, the Chairperson  
7 said that must be a mistake, it must be August, and you  
8 agreed with that. You remember that?

9 MR X: Sir, I joined AMCU on the  
10 mountain. The stop order, or the indication on the stop  
11 order should have been visible after we had come back to  
12 work because that person could not take the stop order from  
13 the mountain after we join and take it to the office.

14 MR MPOFU: Yes, what I'm canvassing with  
15 you, Mr X, I'm saying that evidence is false. You did not  
16 join AMCU on the mountain. Here's your form which you  
17 signed and it shows that you joined on the 19th of September  
18 2012.

19 MR X: Mr Chair, I joined AMCU on the  
20 mountain.

21 MR MPOFU: I'm putting it to you that the  
22 Lonmin records also show that your stop order facilities  
23 started in October and November for AMCU, which is  
24 consistent with this joining form.

25 MR X: I hear what you say.

1 Mathunjwa, you being forced to join AMCU at the mountain,  
2 is patently false when confronted with this objective  
3 evidence.

4 MR X: Mr Chair, it's Mr Mathunjwa who  
5 said he wanted the membership. Everyone on the mountain  
6 had to join AMCU. They did not want NUM there. That's  
7 Taozela who said people should join AMCU. He is light in  
8 complexion, thick lips.

9 MR MPOFU: Yes, anyway the evidence will  
10 speak for itself there. The other figment of your  
11 imagination is about the hole that you say was dug there to  
12 bury some sheep where the dog when he went there tried and  
13 tried and found nothing.

14 MR X: When we went there the place had  
15 been dug open. They made a mistake, because if you put  
16 muti in a hole you do not close the hole again, you leave  
17 it open.

18 MR MPOFU: But your evidence is that you  
19 closed that hole, you or out of your group closed that hole  
20 on the 11th, isn't it?

21 MR X: Yes, it was closed.

22 MR MPOFU: Yes, there's evidence which  
23 shows that on the 16th that hole was already there and it  
24 was open. It had nothing to do with burying of black sheep  
25 or white sheep or "wat nogal."

1 MR MPOFU: And if you go just a little  
2 bit further down – sorry, no, no, go up. In that part it  
3 says "I [and then it gives your name] hereby revoke my  
4 membership of NUM by giving one month notice ending  
5 30/09/2012," and it says, "Please resume AMCU deduction as  
6 from 1st October 2012," and then it has your signature and  
7 it's dated, and another witness and then it's dated 19th  
8 September 2012. So there's no doubt that you joined on the  
9 19th of September, long after the activities at the mountain  
10 were terminated.

11 MR X: Mr Chair, I completed that form on  
12 the mountain. That person just wrote whatever he wanted to  
13 write. I completed the form, or joined the union on the  
14 mountain. Those dates could have been inserted there when  
15 the form was taken to the office.

16 MR MPOFU: And then the other documents  
17 show that you joined NUM in December. I think that one  
18 you'll agree with. That's consistent with your evidence.  
19 You left AMCU and went back to NUM round about the 14th of  
20 December of 2012, correct?

21 MR X: I just left the payslip on the  
22 surface, went underground, so that they could fill in the  
23 form and then when I came back I signed the form.

24 MR MPOFU: Anyway, the point of the  
25 matter is that your evidence around the arrival of Mr

1 MR X: Mr Chair, I was not the security  
2 of that place. I did not guard that place.

3 MR MPOFU: Chairperson, I don't know if  
4 it has been marked; there's an album which we handed up  
5 which you can show up – it was not today, Chairperson.  
6 Photo album with photos, okay yes, we've got it up there,  
7 even if you can't find it for now, Chairperson.

8 CHAIRPERSON: It's already been marked?

9 MR MPOFU: Yes, can we call it triple A –

10 CHAIRPERSON: It's already been marked.

11 According to the screen it's AAAA16.1.

12 MR MPOFU: Yes, thank you. Thank you,  
13 that's fine. If you go to page 2, well ja, page 1 is, this  
14 is the, this shows the hole when you went there, Mr X, with  
15 the police and other people. Then go to the next page.  
16 That is the same hole on the 16th at 4 o'clock. It was  
17 open. Again on the 16th, the next page, that is the same  
18 hole, and then the next page, on the 17th at 9:25, that is  
19 the same hole, and the next page and the next page is also  
20 on the 17th. The long and short of it is that by the 16th  
21 when the shooting happened that hole was open and there was  
22 not even any soil visible next to it, which suggests that  
23 it has always been there.

24 MR X: That hole was dug open on the  
25 night of the 11th. As to who closed it I wouldn't know, I

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1 was not a security guard for that hole. What Mr Mpofo is  
 2 saying is not real, it is just [African language].  
 3 MR MPOFU: Yes, Mr X, after the shootings  
 4 of the 16th – well, let's start here. On the 18th your  
 5 evidence is that you went around to ask people at Eastern  
 6 Platinum that they must not go to work until the demands  
 7 are met, correct?  
 8 MR X: Which date? The 18th?  
 9 MR MPOFU: 18th of August 2012.  
 10 CHAIRPERSON: The Saturday after the –  
 11 the shooting is on the Thursday the 16th, and the 18th is  
 12 the Saturday, two days later.  
 13 MR X: Mr Chair, it was the Sunday, I was  
 14 alone, I went through the compound, told the workers that  
 15 let's meet, let's talk about this.  
 16 MR MPOFU: Yes, that's fine, whenever it  
 17 was, it was that you can – that was because you believed it  
 18 would have been wrong to go back to work at that stage when  
 19 people had died and when the demands had not been met,  
 20 correct?  
 21 [14:55] MR X: Mr Chair, those people would not  
 22 have gone back to work if – even those people who were  
 23 arrested would not have been released. I am the one who is  
 24 responsible for uniting these people, people have to stand  
 25 united and be strong.

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1 MR MPOFU: Yes, no, that I accept. I'm  
 2 saying to you that – alright, let's do it this way. After  
 3 the shootings of the 16th you must have been quite shocked.  
 4 MR X: Very much so. There had never  
 5 been such a big number of people, casualties in South  
 6 Africa.  
 7 MR MPOFU: Yes and it looks like everyone  
 8 was shocked. On the 17th what did you do before convincing  
 9 those people of Eastern?  
 10 CHAIRPERSON: - the Friday, the day after  
 11 the shooting?  
 12 MR MPOFU: The Friday, yes, Chairperson.  
 13 MR X: I had to think of a way how to  
 14 solve this because the people who were working had to be  
 15 stopped and we had to take care of the people who were  
 16 injured.  
 17 MR MPOFU: Yes, okay so you were, on the  
 18 17th you were pondering about this and then you implemented  
 19 it the following day by convincing people not to go to  
 20 work.  
 21 MR X: Yes, I blew the whistle, told them  
 22 we should come together, put our heads together. I told  
 23 them they should not go to work whilst other people are not  
 24 working, let us resolve our problems first -  
 25 MR MPOFU: And when was the first time

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1 that you – sorry, when was the first time that you went to  
 2 work after the shootings?  
 3 MR X: We went back to work after the  
 4 issue of Marikana had been solved, resolved.  
 5 MR MPOFU: Yes, that's sometime in  
 6 September.  
 7 MR X: I don't even remember the month.  
 8 MR MPOFU: Okay. Mr X, were you a police  
 9 informer at the mountain?  
 10 CHAIRPERSON: Before we get, proceed to  
 11 that question, when was the first time that you went  
 12 underground after the shootings on the 16th – underground -  
 13 MR X: On a day when the strike was over  
 14 after we had gone back to work. I'd left my clock card on  
 15 the shaft and I found it exactly where I left it.  
 16 CHAIRPERSON: Was that the first time you  
 17 went underground for any purpose between the day of the  
 18 shooting on the 16th August and the day after the strike  
 19 that you talk about?  
 20 MR X: Mr Chair, that happened when we  
 21 all returned to work as Lonmin employees.  
 22 MR MPOFU: Thank you. Mr X, were you a  
 23 police informer at the koppie?  
 24 MR X: I was not a police informer, I  
 25 also wanted money.

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1 MR MPOFU: Yes, informers also want money  
 2 but anyway, Mr X, I'm going to demonstrate again that your  
 3 evidence on this is false, but also suggests something  
 4 sinister.  
 5 CHAIRPERSON: Mr Mpofo, it sounds to me  
 6 as if it's going to take a couple of minutes so would it be  
 7 convenient for us to take the tea adjournment now and then  
 8 after the tea adjournment we'll start again at about  
 9 quarter past three, you can then proceed with this part of  
 10 your cross-examination.  
 11 MR MPOFU: That is fine, yes, thank you  
 12 Chairperson. Shouldn't I just put the proposition?  
 13 CHAIRPERSON: If you want to.  
 14 MR MPOFU: Yes.  
 15 CHAIRPERSON: You will remember that your  
 16 cross-examination is going to end quarter of an hour before  
 17 four o'clock because Mr Mathibedi is going to re-examine.  
 18 As long as you bear that in mind but put whatever you want  
 19 to put now.  
 20 MR MPOFU: Yes, Chair, thanks. Mr X,  
 21 before we go to tea I want to put to you, you must think  
 22 about this over tea, that objective evidence we have  
 23 obtained from Lonmin shows that less than 24 hours after  
 24 the people were killed, on the 17th, you went to work on the  
 25 17th of August 2012, you went to work at 6:39 and knocked

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1 off at 10:55. So if you were convincing people not to go  
2 to work, that would be very strange because you yourself  
3 were defying the strike.  
4 MR VAN AS: Chairperson, the clocking  
5 history reveals that Mr X clocked in and clocked out at  
6 those times. It doesn't necessarily reveal that he went to  
7 work.  
8 MR MPOFU: Ja, well –  
9 CHAIRPERSON: In fact he – if he did go  
10 to work, he only went to work for a relatively short time  
11 but the point is he went underground.  
12 MR MPOFU: Yes.  
13 CHAIRPERSON: On the 17th and I think this  
14 is the time for us to mark the exhibit.  
15 MR MPOFU: Yes.  
16 CHAIRPERSON: So that the witness can  
17 study it over the tea adjournment.  
18 MR MPOFU: It will be, I think 47,  
19 Chairperson.  
20 CHAIRPERSON: Yes, it is. AAAA47. How  
21 do I describe this document –  
22 MR MPOFU: Clocking history, Mr X  
23 clocking history August to September.  
24 CHAIRPERSON: Alright, I've marked the  
25 exhibit, I've marked it AAAA47. Let me try again, I've

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1 marked the exhibit AAAA47. I've described it as "Clocking  
2 history, Mr X, 1 August '12 to 28 September '12."  
3 MR MPOFU: That's correct, Chair.  
4 CHAIRPERSON: You have a copy of the  
5 document, do you, in the remote venue where you are and  
6 have a look at it over the tea adjournment and Mr Mpofo  
7 will ask you some questions about it.  
8 MR MPOFU: Yes.  
9 CHAIRPERSON: We now adjourn until 17  
10 minutes past three.  
11 [COMMISSION ADJOURNS COMMISSION RESUMES]  
12 [15:23] CHAIRPERSON: The Commission resumes.  
13 You're still under oath, Mr X. Mr Mpofo.  
14 MR NTJINGILA: Mr Chairperson, it seems  
15 that the mike is off that side, or it doesn't –  
16 MR MPOFU: Chairperson – okay, no, I  
17 wanted to negotiate something but maybe –  
18 CHAIRPERSON: I know what you want and  
19 you can't. The microphone is off apparently at the other  
20 end, so I don't know what we must do about that. Can we  
21 send a carrier pigeon to the remote venue to tell them to  
22 turn the mike on?  
23 MR X: [s.u.o. through interpreter]  
24 MR NTJINGILA: Under oath.  
25 CROSS-EXAMINATION BY MR MPOFU (CONTD.):

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1 Mr X, during the tea break you – or rather before the tea  
2 break I had said to you for someone who was worried about  
3 people who have been killed and who on the 18th or so went  
4 around telling people that it would be wrong to go back to  
5 work because the demands were not met and so on, as you  
6 testified, then it would be dishonest of you to have gone  
7 underground on the 17th as this document suggests. Do you  
8 have a comment? It can only be explained if you were going  
9 to report back to your handlers.  
10 MR MATHIBEDI SC: Sorry, Chairperson, who  
11 was the witness's handlers?  
12 CHAIRPERSON: Well yes, Mr Mpofo, that  
13 question was asked about 10 questions too early. You  
14 haven't laid a foundation for what you're going to ask, but  
15 can I just ask the witness some questions first –  
16 MR MPOFU: Okay, Chairperson.  
17 CHAIRPERSON: Did you have a chance  
18 during the tea break to look at exhibit AAAA47, which  
19 apparently is your clocking history from the 1st of August  
20 2012 to the 28th of September 2012? Did you have a chance  
21 to look at this document?  
22 MR X: No, I didn't have a chance to look  
23 at it, my clock card. I used to leave it at the shaft.  
24 CHAIRPERSON: I'm talking about now. You  
25 were given a document and you were asked to look at it

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1 during the tea adjournment today, your clocking history  
2 from the period the 1st of August 2012 to the 28th of  
3 September 2012. This is the document that we have. Can  
4 you see it on your screen?  
5 MR X: No, I didn't check it.  
6 CHAIRPERSON: Can you see it on the  
7 screen in front of you?  
8 MR X: Yes, I can see it.  
9 CHAIRPERSON: Will the operator please  
10 scroll down a bit, please, until we get to – there are  
11 numbers in the left-hand corner, a little bit further down,  
12 please. Here we are. Entry on the – no, it's entry 29.  
13 29, yes. The first is 27. Entry number 27 indicates that  
14 you went to the bus turnstiles on the 13th, that's the  
15 Monday the 13th at 6:21 and you left the bus turnstiles  
16 again at 8:48. You see that? That's entries 27 and 28.  
17 I'm sorry, I beg your pardon. That's entries 27 and 28.  
18 You see those? What did he say?  
19 MR X: Yes, I can see that, but my clock  
20 card I used to leave it by the window in shaft, so maybe  
21 somebody took the card then went inside, looking for what  
22 he was looking for and left the clock card there again.  
23 CHAIRPERSON: Well the next entry is 29,  
24 it's the 17th of August. It indicates, or appears to  
25 indicate that at 6:23 in the morning you went to the bus

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1 turnstiles again and the next entry, number 30 indicates  
 2 6:39 you went underground. The next entry 31, 10:55  
 3 indicates that you were still underground. I take it that  
 4 means you were coming up again and then the next entry,  
 5 number 32 indicates at 11:13 you were at the bus turnstiles  
 6 again and you are reflected as off. So it appears from  
 7 this that you, if you were the one who was using this card  
 8 at the time, went to the bus turnstiles at 6:23 on the  
 9 morning of the 17th, that's the day after the shooting, went  
 10 underground, were underground for just over four hours and  
 11 then came up again and were at the bus turnstiles at 11:13.  
 12 That's what Mr Mpofo wants to cross-examine you about.

13 MR MPOFU: Correct, Chairperson.

14 MR X: Yes, I can see that, but I was in  
 15 the mountain by that time. Maybe somebody took my clock  
 16 card because I used to leave my clock card there. Maybe  
 17 somebody took the clock card and went in there to do  
 18 whatever he wanted to do. The clock card cannot refuse if  
 19 it is used by somebody else and say no, you are not my  
 20 owner. It just clocks in and out.

21 MR MPOFU: Yes, so according to that  
 22 theory then somebody who did not know that one day you  
 23 would be a witness, you yourself did not know you were a  
 24 witness, and this somebody somehow wanted you to earn money  
 25 that you didn't work for?

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1 MR X: Can you please repeat the  
 2 question?

3 MR MPOFU: Ja, I see that you are  
 4 laughing –

5 CHAIRPERSON: Before we get, you get to  
 6 Mr Mpofo's next question, when did you lose your card? Or  
 7 I believe you said you left it somewhere. When did you  
 8 leave it? When? What date approximately?

9 MR X: I left it on that day that I last  
 10 went to work.

11 CHAIRPERSON: When was that?

12 MR X: It was on the 8th, on that day.

13 CHAIRPERSON: On the 8th, I see.

14 MR X: I used to leave it in the shaft.  
 15 I didn't take it to my house because it can get lost, so I  
 16 leave it in the shaft.

17 CHAIRPERSON: In the shaft?

18 MR X: Yes.

19 CHAIRPERSON: Was this on the 8th of – the  
 20 8th was the Tuesday. Remember there was – no, the 8th was  
 21 the Wednesday. 8th was a Wednesday. The 9th was a public  
 22 holiday, I always remember, and the 10th was the day when  
 23 the people went to the time office. So the day you left it  
 24 at the shaft, was that the 8th, the Wednesday, the day  
 25 before the public holiday, the meeting on the public

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1 holiday?

2 MR X: Yes, when I went to work I used to  
 3 leave it there. Even on that day I left it there.

4 CHAIRPERSON: I see, and then when did  
 5 you get it back again?

6 MR X: I found it when we went back to  
 7 work on the same place where I left it. I didn't even know  
 8 that somebody was using it.

9 CHAIRPERSON: And when was that?

10 MR X: It was after the strike.

11 CHAIRPERSON: It looks as if –

12 MR X: Ja, thieves who steal cables  
 13 underground, they gain access through the cards of the  
 14 people who leave their cards there.

15 CHAIRPERSON: Would it be round about the  
 16 20th of September, after the strike? Because there's a gap  
 17 in usage, you see, between the 8th of September and the 20th  
 18 of September. So the strike was over by the 20th of  
 19 September, was it?

20 MR X: I left it there. I find it after  
 21 we returned back to work.

22 CHAIRPERSON: Tell me, did you go to the  
 23 hostel clinic at all during that period?

24 MR NTJINGILA: Can you repeat the  
 25 question, please Chairman?

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1 CHAIRPERSON: Did you go to the hostel  
 2 clinic at all during that period?

3 MR X: Yes, I used to go to the clinic to  
 4 collect some medication at the wellness clinic.

5 CHAIRPERSON: I see. So they'd have an  
 6 entry there that you collected your medication, when you  
 7 went? If you got the medicine you would have had to sign  
 8 for it and they'd tick it off if they'd issued the medicine  
 9 to you. The card indicates that you went to the hostel –  
 10 or no, sorry, the card was used to gain access to the  
 11 hostel clinic on the 8th of August and again on the 20th of  
 12 September.

13 MR MPOFU: Okay, thank you. Well, the  
 14 evidence of the – or let me put it this way. It is true  
 15 that for you to come out, when you go out of work you have  
 16 to use your clock card, correct?

17 MR X: Yes, but the window that I'm  
 18 talking about, you clock and pass the place where you are  
 19 clocking and then you leave the card at the window, or when  
 20 you come back you take the card, you clock, then you pass  
 21 through.

22 MR MPOFU: No, Mr X, maybe I didn't ask  
 23 the question clearly. I'm asking you that when you leave  
 24 your work you exit using the clock card. Is that correct?  
 25 Whatever window you use, it doesn't matter, but you submit

<p style="text-align: right;">Page 34278</p> <p>1 your clock card.</p> <p>2 MR X: Yes, you use the card. If you</p> <p>3 don't have the card you call so that they can organise for</p> <p>4 you a temporary card.</p> <p>5 MR MPOFU: Yes, so if you use the card to</p> <p>6 exit the workplace then you can't exit the workplace if</p> <p>7 your card is left behind in the shaft, correct?</p> <p>8 MR X: Yes, you can't leave without the</p> <p>9 clock card, but if you don't have your clock card you call</p> <p>10 somebody else, you use his or her card so that you can</p> <p>11 exit.</p> <p>12 MR MPOFU: And you did not do this. You</p> <p>13 used your own clock card to exit before the strike,</p> <p>14 correct?</p> <p>15 MR X: Sir, I was on strike.</p> <p>16 MR MPOFU: Yes, I'm saying the last time</p> <p>17 you went to work before you joined the strike you used your</p> <p>18 clock card.</p> <p>19 MR X: Yes, I used my clock card and</p> <p>20 leave it in the shaft. I didn't take it to my house.</p> <p>21 MR MPOFU: Mr X, that's exactly the point</p> <p>22 I'm making, that what you are saying is an impossibility</p> <p>23 from what you've described, because if you used your clock</p> <p>24 card to exit during your last working period before you</p> <p>25 joined the strike, then the clock card would have been with</p>	<p style="text-align: right;">Page 34280</p> <p>1 parade. Somebody can use it to enter and use it to exit</p> <p>2 and put it back to where I left it.</p> <p>3 COMMISSIONER HEMRAJ: Sir, but if you</p> <p>4 arrive at work can you have access to your clock card</p> <p>5 before going through the entrance point?</p> <p>6 MR X: Can you repeat the question?</p> <p>7 COMMISSIONER HEMRAJ: If you arrived at</p> <p>8 work, can you pick up your card from wherever it is that</p> <p>9 you had left it, before you go through the entrance?</p> <p>10 MR X: Yes.</p> <p>11 COMMISSIONER HEMRAJ: Thank you.</p> <p>12 MR MPOFU: Anyway you agree that for you</p> <p>13 to have been reflected as having worked if you were not</p> <p>14 there would amount to fraud. Are you a fraudster?</p> <p>15 MR X: Yes, I do understand.</p> <p>16 MR MPOFU: Yes, I'm asking you that</p> <p>17 question because there's also evidence that you committed</p> <p>18 massive fraud on people and promised them that you would</p> <p>19 find employment for them. You are aware of that?</p> <p>20 MR MATHIBEDI SC: Chairperson, I mean we</p> <p>21 are hearing this for the first time. It was not even –</p> <p>22 CHAIRPERSON: A statement that's been</p> <p>23 filed –</p> <p>24 MR MATHIBEDI SC: - the evidence in chief</p> <p>25 of the witness.</p>
<p style="text-align: right;">Page 34279</p> <p>1 you. It can't have been – you can't leave it in the shaft</p> <p>2 and you exit without it.</p> <p>3 MR X: Mr Mpofo has never worked in the</p> <p>4 mines. You can use somebody else's clock card and the</p> <p>5 clock card will not refuse and say no, you are not my</p> <p>6 owner. You can use –</p> <p>7 MR MPOFU: Yes, but you did not do that.</p> <p>8 You did not use anyone else's clock card yourself, correct?</p> <p>9 MR X: I was using my own clock card.</p> <p>10 It's only that somebody else used my clock card, pretending</p> <p>11 to be me.</p> <p>12 MR MPOFU: Yes, and as I'm saying that is</p> <p>13 so absurd and farfetched, because that person would have,</p> <p>14 the only thing they would have achieved is for you to earn</p> <p>15 working hours when you were not working. Why would someone</p> <p>16 want to do that? And it would be fraud.</p> <p>17 MR X: That is somebody who was just</p> <p>18 doing whatever he wanted.</p> <p>19 COMMISSIONER HEMRAJ: Mr X, where in</p> <p>20 relation to the entry and exit point was your clock card</p> <p>21 left?</p> <p>22 [15:43] MR X: A window is just next to the gate,</p> <p>23 on that place where even if you were outside, they say</p> <p>24 you've got parade you can just show your face through the</p> <p>25 window and report that you are there, you've got the</p>	<p style="text-align: right;">Page 34281</p> <p>1 CHAIRPERSON: You say there's evidence.</p> <p>2 There is no evidence to that effect.</p> <p>3 MR MPOFU: There will be.</p> <p>4 CHAIRPERSON: No, but you can't put it on</p> <p>5 the basis, put it to the witness on the basis that there</p> <p>6 will be evidence. You can only put the question when there</p> <p>7 is evidence. I disallow –</p> <p>8 MR MPOFU: Well, can I ask him, did you</p> <p>9 run a racket of promising people work and running away with</p> <p>10 their money?</p> <p>11 MR X: There is nothing like that. I</p> <p>12 don't employ people, I am not HR department.</p> <p>13 MR MPOFU: Okay, Chairperson, I know that</p> <p>14 there's a statement in that regard which the families will</p> <p>15 submit but I can't use it for the reasons that have been</p> <p>16 explained. Mr X, just to round off another issue that we</p> <p>17 dealt with earlier, very quickly. There is evidence that –</p> <p>18 you remember we spoke about the hole where the black or</p> <p>19 white sheep were allegedly buried.</p> <p>20 MR X: Yes.</p> <p>21 MR MPOFU: We have now found further</p> <p>22 evidence that that hole was there as long ago as 2011. I'm</p> <p>23 going to put up a picture which we'll use in support of</p> <p>24 that.</p> <p>25 CHAIRPERSON: Has it got an exhibit</p>



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1 number or –

2 MR MPOFU: A new one.

3 CHAIRPERSON: Oh, this is – is this an

4 exhibit?

5 MR MPOFU: It's a Google – it's a new,

6 yes Chairperson, we can link it to the, I think it was 47,

7 that photo album. Maybe let's make it, what is –

8 CHAIRPERSON: No, 47 is the clocking

9 history. This will be AAAA48. What is it? Image of?

10 MR MPOFU: 24 August 2011. 24 October,

11 it's 24/10.

12 CHAIRPERSON: 2011, is it?

13 MR MPOFU: Yes, correct.

14 CHAIRPERSON: Google Earth image 24

15 October 2011, AAAA48.

16 MR MPOFU: Ja. Anyway Mr X, you cannot

17 dispute the fact that the hole was there since 2011, can

18 you?

19 MR X: We made that hole in 2012.

20 MR MPOFU: Chairperson, if I can either

21 zoom it or leave it for argument. Yes –

22 CHAIRPERSON: We have to see it and the

23 witness has to see it –

24 MR MPOFU: Thank you, Chairperson, yes.

25 Okay, can you zoom closer to the –

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1 CHAIRPERSON: They can take a screenshot

2 of it and save it. Time is up but let's just finish this

3 point quickly. Look, if you can't find it now you'll just

4 have to show it to us later on.

5 MR MPOFU: We will, Chairperson, yes,

6 just to save time.

7 CHAIRPERSON: The witness has already

8 said that that hole –

9 MR MPOFU: He said it was dug on the 11th.

10 CHAIRPERSON: Okay, alright, that's your

11 cross-examination.

12 MR MPOFU: No, Chairperson.

13 CHAIRPERSON: Your time's up.

14 MR MPOFU: But Chairperson, honestly, my

15 time was taken up by all sorts of interruptions from all

16 quarters. Can I just round up? I can't be the only person

17 to whom the guillotine just comes on the clock,

18 Chairperson.

19 CHAIRPERSON: No, you're not the only

20 person –

21 MR MPOFU: - anyway, well, I've never

22 seen anyone in cross-examination who was cut like this,

23 never.

24 CHAIRPERSON: I do it – well, stick

25 around. How long do you need?

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1 MR MPOFU: I need, well –

2 CHAIRPERSON: And when is Mr Mathibedi

3 going to do his re-examination?

4 MR MPOFU: Well, it looks like the re-

5 examination can't be done today anyway, Chairperson, so –

6 CHAIRPERSON: I'm sorry, today is the day

7 when the witness is giving his evidence, full stop. That's

8 the programme we've arrange and I'm sorry, that's the way

9 it's going to happen. So just round off your cross-

10 examination quickly and let Mr Mathibedi re-examine.

11 MR MPOFU: Okay. Thank you, Chairperson.

12 CHAIRPERSON: Five minutes.

13 MR MPOFU: Mr X, it's correct, isn't it,

14 that for you to come here to be a witness here, there are

15 three organisations that were part of bringing you here.

16 The first organisation you approached was the NUM, correct?

17 MR X: I was never being in contact with

18 the NUM organisation.

19 MR MPOFU: I thought your evidence is

20 that you went to the NUM and then they took you to the

21 Lonmin security who then took you to the police. That is

22 to report the intimidation, you remember?

23 MR X: Sir, I got out of the shaft on the

24 10th of January. When I was at the bus stop Nzama and Bala

25 arrived.

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1 MR MPOFU: Chairperson, I'm sorry I have

2 to interrupt. The witness is going on a –

3 CHAIRPERSON: Mr X –

4 MR MPOFU: After all that, did you go to

5 the NUM?

6 CHAIRPERSON: Mr X, listen quietly. In

7 your first statement you told us that on the 10th of January

8 2013 you were confronted by Bala Nkonyane and Nzama and

9 they said you know all the secrets and they'll visit you at

10 your place and kill you. You said that you then went and

11 reported the matter at the NUM offices at block 6 and the

12 security officials came – that is, I take it, the Lonmin

13 security officials – a statement was taken and you were

14 then taken by the security officials to the Bethanie South

15 African Police Service station where a case was opened.

16 That's the evidence, that's what you said in paragraph 31

17 of your first statement. That's correct, isn't it?

18 MR X: Yes.

19 CHAIRPERSON: - that you first went to

20 NUM, then you spoke to the security officials of Lonmin and

21 then you went to the police station at Bethanie, is that

22 right?

23 MR X: Yes, I had to go because according

24 to South African law, I should report before the 24 hours

25 expires.

<p style="text-align: right;">Page 34286</p> <p>1 MR MPOFU: Yes, and for a week you were 2 staying at Lonmin premises and going to work in between, 3 correct? 4 MR X: I didn't stay there in Lonmin 5 premises for the whole week. 6 MR MPOFU: Ja, for however long you 7 stayed there, were you going to work and coming back to 8 that place? 9 MR X: Yes, I used to be taken and 10 escorted by security. They took me to the shaft and when I 11 knock off I will report to the shift bosses*12-11 who will 12 contact security to come and collect me, until I was 13 changed from the place I was residing. I was following 14 instructions that I must report so that I must use the car 15 that was allocated to escort me, I must not use any public 16 transport. 17 MR MPOFU: And how long did that go on 18 for, how many days? 19 MR X: I didn't count the days but it was 20 not for the whole week. 21 MR MPOFU: Yes and the reason you had, 22 you went back to the NUM was because you were scared of 23 going to jail, correct? 24 MR X: It's because I returned to be an 25 NUM member. As a member I should report to my</p>	<p style="text-align: right;">Page 34288</p> <p>1 MR MPOFU: I'm going to argue that that 2 reason which sparked your so-called return to NUM is the 3 same reason which has sparked you to give false evidence 4 here, hoping that that will get you out of jail for the 5 crimes you've committed. Any comment? 6 MR X: Can you repeat, sir, that question 7 please? 8 MR MPOFU: I'm saying that we have 9 established that you contacted the NUM, you contacted the 10 security and you contacted the police. I'm saying your 11 path that has led you to be here, to be testifying here 12 today, started with your so-called return to the NUM which 13 you say was motivated by your, by thinking that doing so 14 would get you out of jail, wrongly. 15 MR X: The reason for me to be here 16 giving this evidence is because I want Lonmin to be 17 defended because the strike that we were engaging in was 18 illegal. 19 CHAIRPERSON: You've put your case to him 20 on it, you can argue the rest. 21 MR MPOFU: On that point, Chairperson, 22 yes – 23 CHAIRPERSON: That's it, that's it. It's 24 now four o'clock and Mr Mathibedi must – Mr Mathibedi? 25 RE-EXAMINATION BY MR MATHIBEDI SC:</p>
<p style="text-align: right;">Page 34287</p> <p>1 organisation. 2 MR MPOFU: Mr X, was the reason you went 3 back to NUM that you were scared of going to jail for the 4 crimes you had committed? 5 MR X: I knew what happened there at 6 Lonmin in '99. The evidence was not out, though the death 7 of so many people and that thing was illegal. 8 MR MPOFU: Okay, let me – 9 MR X: And I didn't want the police to 10 waste their petrol looking for me. I had to go to them 11 myself so that – 12 MR MPOFU: I'm not talking about the 13 police, I'm talking about the NUM. At paragraph 30 of your 14 statement, do you stand by the following evidence which you 15 gave there, of AAAA1.2, Chairperson. You said, "During 16 December 2012 I then decided to go back to NUM and I 17 completed the application form. The reason for me to go 18 back to NUM was that I was following the proceedings of the 19 Marikana Commission and I realised or concluded on my own 20 that after the Commission, many people will go to jail for 21 a long time." Was that the reason you went back to the NUM 22 which then kick-started all the things we have discussed? 23 MR X: It's like that because the people 24 who did almost the same thing in 1999 they are still in 25 jail, even today.</p>	<p style="text-align: right;">Page 34289</p> <p>1 Chairperson, thanks. Mr X, you testified and told this 2 Commission that prior to the rituals that were performed at 3 the koppie, a host of instructions or regulations were laid 4 down by – or rules, not regulations – were laid down by the 5 inyanga. Do you still remember that? 6 MR X: Yes, I do remember. 7 MR MATHIBEDI SC: Now up to so far, the 8 only challenge to your evidence is that Mr Noki, the late 9 Noki and Xolani Nzuzza did not put on the same clothing on, 10 you know, more than one day. Do you remember that? 11 MR X: Yes, I remember that. 12 MR MATHIBEDI SC: Now you still stand by 13 your evidence that those rules were laid down by the 14 inyanga. 15 MR X: Yes, it was the inyanga who laid 16 down the rules. 17 CHAIRPERSON: Mr Mathibedi, that's not 18 re-examination to put to a witness what he said in 19 examination-in-chief and say, "do you still stand by that?" 20 Re-examination is to clear up points that are left unclear 21 in the course of cross-examination. 22 [16:02] MR MATHIBEDI SC: Thanks, Chairperson. 23 Whose responsibility was it to ensure that the rules and 24 instructions of the inyanga are being followed? 25 MR X: It's us who have consumed the</p>

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1 muti, the group of makarapas and the committee who had to  
2 make sure that all the rules are followed.

3 MR MATHIBEDI SC: Now with regard to  
4 scene 2, although you did not go there was there any  
5 discussion during the course of the day on the 16th relating  
6 to scene 2? That is koppie 3.

7 MR X: I don't remember, Sir.

8 MR MATHIBEDI SC: Sir, it was put to you  
9 that the only time that the police interfered with the  
10 activities of the strikers was on the 13th. Do you remember  
11 that?

12 MR X: Yes, I do remember.

13 MR MATHIBEDI SC: You have testified that  
14 on the 10th in the vicinity of LPD office and on your way to  
15 the office the strikers met the police. Do you remember  
16 that?

17 MR X: Yes.

18 MR MATHIBEDI SC: What was the attitude  
19 of the police about the march?

20 MR X: The police were not against,  
21 fighting against us because we were not armed, but they  
22 couldn't allow people who are armed to roam around.

23 MR MATHIBEDI SC: But did the police say  
24 anything about the march?

25 MR X: They told us we are not allowed to

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1 come nearer the offices in our great numbers, we must  
2 better go next to the crossing.

3 MR MATHIBEDI SC: What was the attitude  
4 of the strikers to what the police said?

5 MR X: We listened and we stayed, but  
6 after some time we firstly went back to the offices.

7 MR MATHIBEDI SC: It was put to you that  
8 the current position is that you have a long face. You  
9 remember that?

10 MR X: Yes.

11 MR MATHIBEDI SC: And that the person  
12 that you identified as yourself on the 13th has a long face  
13 – sorry, has a round face.

14 MR X: Yes.

15 MR MATHIBEDI SC: It's common cause that  
16 currently you are living a very lonely life.

17 MR MPOFU: Chairperson, firstly –

18 MR MATHIBEDI SC: I'll rephrase the  
19 question.

20 CHAIRPERSON: I don't think the  
21 question –

22 MR MATHIBEDI SC: I'll rephrase the  
23 question.

24 CHAIRPERSON: It will be much quicker,  
25 let him ask the question and get the answer.

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1 MR MPOFU: Pardon?

2 CHAIRPERSON: I say I know where he's  
3 going. Let him ask the question and get the answer and we  
4 carry on.

5 MR MATHIBEDI SC: Let me rephrase it.  
6 Sir, when last did you see your family members?

7 MR X: It was December 2012. Where I'm  
8 staying at the moment I don't have anyone to talk to. I  
9 don't even explain who am I. That's the laws of witness  
10 protection. Even if I eat the food that I'm eating cannot  
11 be the right delicious food because I'm lonely. I'm  
12 lonely.

13 MR MATHIBEDI SC: Sir, the kind of life  
14 that you are leading at this moment, does it have any  
15 effect on your weight?

16 MR MPOFU: No, Chairperson, I'm sorry,  
17 how does that arise from the cross-examination, firstly?  
18 And why is it called re-examination –

19 CHAIRPERSON: No, he was cross-examined  
20 about the fact that his –

21 MR MPOFU: The weight loss has nothing to  
22 do with the cross-examination, or gain.

23 CHAIRPERSON: No, no, he was cross-  
24 examined about the photograph, which he said was a  
25 photograph of him, of a round-face person, his is a long

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1 face and this is an attempt – how successful it would be is  
2 another matter – to explain the change in appearance.

3 MR MPOFU: Oh, I see. He used to have a  
4 round face. Okay.

5 MR MATHIBEDI SC: What is your answer,  
6 Sir?

7 MR NTJINGILA: Mr Chairperson, I didn't  
8 put the question, so can you repeat it?

9 MR MATHIBEDI SC: Sorry, Sir. Because of  
10 the kind of life that you are leading, did that have a  
11 bearing on your body weight?

12 MR X: Yes, it can have a bearing because  
13 I can even lose weight because I'm always thinking.

14 MR MATHIBEDI SC: Sir, you were asked  
15 about your evidence where you indicated that all men were  
16 expected to be at the koppie in support of the strike. Do  
17 you remember that?

18 MR X: Yes.

19 MR MATHIBEDI SC: I'm going to refer you  
20 to exhibit L, slide 156, which reads as follows, "Reports  
21 were received about a group of women with placards that  
22 indicated that all men in the village had to join the men  
23 on the koppie." Now the question is that did you see any  
24 women carrying placards indicating that all men should go  
25 to the koppie?

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1 MR X: Yes, there are some that were  
2 singing.

3 CHAIRPERSON: [Microphone off, inaudible]  
4 MR NTJINGILA: I didn't get the question,  
5 Mr Chair.

6 CHAIRPERSON: Were you in the village  
7 when you saw these women with the placards?  
8 MR X: I was there where the men were.  
9 They were there in front, not mixed up with us.

10 MR MATHIBEDI SC: Now where were these  
11 women who were carrying placards?  
12 CHAIRPERSON: Mr Mathibedi, how does this  
13 arise from cross-examination?  
14 MR MATHIBEDI SC: It arises from the fact  
15 that, you know, the witness was told that what he said in  
16 evidence-in-chief that all men were expected to be at the  
17 koppie is not correct. So that's what I'm dealing with.

18 CHAIRPERSON: I'm sorry, I don't  
19 understand the point. I disallow the question. Please  
20 proceed.

21 MR MATHIBEDI SC: Sorry, Chair?  
22 CHAIRPERSON: I don't think it arises  
23 from cross-examination. I disallow the question. Please  
24 proceed.

25 MR MATHIBEDI SC: About all the men being

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1 expected to be at the koppie?  
2 CHAIRPERSON: That wasn't dealt with in  
3 cross-examination and it doesn't arise, it's not a matter  
4 that can be dealt with in re-examination.

5 MR MATHIBEDI SC: [Microphone off,  
6 inaudible]  
7 CHAIRPERSON: That's my ruling.  
8 MR MATHIBEDI SC: Chairperson, this is a  
9 point that was raised by Adv Budlender. You will remember  
10 that he was told that according to his statement –  
11 CHAIRPERSON: Ask the question. It's  
12 quicker to ask the question than arguing –  
13 MR BUDLENDER SC: Chair, can I just  
14 record that's not actually what I said. The witness had  
15 said that they were planning to kill everybody at the  
16 koppie – everyone in the village who's drinking beer, and I  
17 said well why were they planning to do that, they weren't  
18 on strike and they weren't required to go on strike. So,  
19 and the witness agreed, so I'm not – but I –  
20 CHAIRPERSON: It doesn't arise –  
21 MR BUDLENDER SC: I don't want to get in  
22 the way –  
23 CHAIRPERSON: It doesn't arise from  
24 cross-examination. I repeat my disallowance of the  
25 question. Please move on to something else.

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1 MR MATHIBEDI SC: Thanks, Chairperson.  
2 Sir, you testified about the statement that was taken by  
3 Lieutenant Tsomela, the police officer who was speaking in  
4 Tsonga. You remember that?  
5 MR X: Yes.  
6 MR MATHIBEDI SC: Now I would like to  
7 know when did Captain Ngqoko intervene; during the making  
8 of that statement, or was it afterwards?  
9 MR X: It was after the statement has  
10 been taken, it was another day, but I don't remember which  
11 day was it.  
12 CHAIRPERSON: What was first? Did you  
13 speak to the Shangaan policeman first before you spoke to  
14 the captain, or did you speak to the captain first and then  
15 speak to the Shangaan officer?  
16 MR X: I spoke first with the policeman  
17 who was speaking in Shangaan first.  
18 CHAIRPERSON: Now in that statement that  
19 you made therefore in 2013, paragraph 7, having spoken  
20 about the mixing of the flesh and the blood taken from the  
21 security officer, you then said "The flesh and blood were  
22 mixed with muti and we all licked it." Is that right? And  
23 you then also said in para 8, "I also undergone," I think  
24 you mean underwent, "ritual, licked the muti mixed with  
25 human tissues and blood because I was afraid for my life."

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1 Is that what you said?  
2 MR X: Yes, I said that.  
3 CHAIRPERSON: So you did make the point  
4 about licking the muti mixed with the blood and flesh and  
5 so on in 2013, shortly after you came into police custody.  
6 Is that right?  
7 MR X: What does he do, Mr Chairperson?  
8 CHAIRPERSON: It was put to you in cross-  
9 examination that you mentioned licking the muti which was  
10 mixed with the blood and flesh parts of one of the security  
11 guards, you mentioned that the first time when you spoke to  
12 Mr Mathibedi earlier this year. In fact you mentioned  
13 that –  
14 MR MPOFU: No, Chairperson –  
15 CHAIRPERSON: Yes, he did. You mentioned  
16 that in 2013 when you spoke to the Shangaan-speaking  
17 policeman. Is that right?  
18 MR X: That should be a mistake if it  
19 doesn't appear in that statement that I wrote with Captain  
20 Ngqoko.  
21 MR MPOFU: Chairperson, well it doesn't  
22 refer to my cross-examination. That's exactly, I carefully  
23 asked those questions specifically to avoid what the  
24 Chairperson is suggesting now. I said he left it out of  
25 AAAA1.2. That's all I said.

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1 CHAIRPERSON: No, no, no –  
 2 MR MPOFU: I never said he mentioned for  
 3 the first time –  
 4 CHAIRPERSON: No, I'm aware of that,  
 5 but –  
 6 MR MPOFU: - or the second time or the  
 7 third time.  
 8 CHAIRPERSON: It's a permissible question  
 9 to make a point that he had mentioned it at that time,  
 10 albeit in another statement.  
 11 MR MPOFU: Which – yes. I never said he  
 12 mentioned it for the first time –  
 13 CHAIRPERSON: No, no, no, if I misstated  
 14 what you had done I apologise, you're quite right.  
 15 MR MPOFU: Thank you, Chairperson.  
 16 CHAIRPERSON: Yes, Mr Mathibedi, anymore  
 17 questions?  
 18 MR MATHIBEDI SC: Yes, Chairperson, I do  
 19 have questions. Sir, after the strikers defied General  
 20 Mpmembe on the 13th next to the railway line did you look  
 21 back to check whether General Mpmembe was busy counting or  
 22 not?  
 23 MR X: No, I didn't look back.  
 24 MR MATHIBEDI SC: Sir, on the 13th when  
 25 the strikers met the police next to the railway line did

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1 you expect that the police will allow the strikers to  
 2 publicly carry –  
 3 CHAIRPERSON: Does this arise from cross-  
 4 examination, Mr Mathibedi?  
 5 MR MATHIBEDI SC: Yes, Chairperson. I  
 6 mean he was asked about what happened –  
 7 CHAIRPERSON: No, was he asked about what  
 8 his expectations were in relation to that issue? I can't  
 9 remember that.  
 10 MR MATHIBEDI SC: No, I'll leave that  
 11 question, Chair. On the 16th you testified about a Nyala  
 12 that deployed barbed wire. Do you still remember that?  
 13 MR X: Yes.  
 14 MR MATHIBEDI SC: Where did that Nyala,  
 15 the one that was deploying barbed wire, where did it come  
 16 to a standstill?  
 17 MR X: It ended up stopping next to the  
 18 kraal and we turned around that other side of the kraal,  
 19 going to the police who were on that other side.  
 20 MR MATHIBEDI SC: Now after you've turned  
 21 around the kraal going to the police that were on the other  
 22 side, what happened? What did the police do?  
 23 MR MPOFU: No, Chairperson, the witness  
 24 says he turned around. I don't know what –  
 25 CHAIRPERSON: I know he's changing, if he

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1 goes the line you're wanting him to go [inaudible] story  
 2 quite dramatically, so [inaudible] cross-examination  
 3 [inaudible] sounds like [inaudible] what he'd said earlier,  
 4 so [inaudible] say something different and he testified  
 5 about in cross-examination, so the questions you asked seem  
 6 to be designed to, not necessarily deliberately, but  
 7 designed, or calculated to get him to change his story,  
 8 then that's not permissible [inaudible].  
 9 MR MATHIBEDI SC: So Mr X, now where the  
 10 Nyala came to a standstill next to the kraal, what happened  
 11 there?  
 12 MR X: Yes, some of us turned around to  
 13 that other side of the kraal to the police, some of us fell  
 14 down and turned around and ran back.  
 15 MR MATHIBEDI SC: Thanks, Chairperson, no  
 16 further questions.  
 17 CHAIRPERSON: Thank you, Mr Mathibedi.  
 18 I've got one point I want to put to you. You told us that  
 19 Mr Mathunjwa came to the koppie on the Tuesday evening.  
 20 Was he the first person from AMCU, that's from the head  
 21 office of AMCU, to come to the koppie while you were on it?  
 22 MR X: Yes.  
 23 CHAIRPERSON: Yes, thank you. That is  
 24 your evidence. Mr X, you're excused from further  
 25 attendance, in the virtual way that you are attending, and

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1 we will now adjourn until 9 o'clock tomorrow morning.  
 2 [NO FURTHER QUESTIONS – WITNESS EXCUSED]  
 3 [COMMISSION ADJOURNED]  
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