

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 277

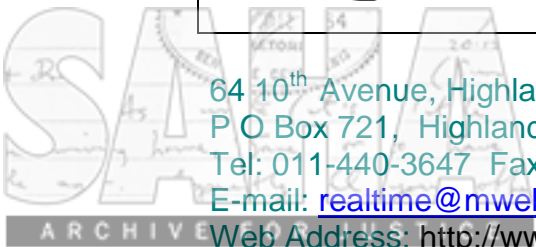
25 AUGUST 2014

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1 [PROCEEDINGS ON 25 AUGUST 2014]
 2 [09:36] CHAIRPERSON: The Commission resumes. Mr
 3 Mpofo, may we have your attention, Mr Mpofo?
 4 MR MPOFU: Sorry, Chairperson.
 5 CHAIRPERSON: Now we've got your
 6 attention we need something else from you, namely your
 7 witness.
 8 MR MPOFU: Oh yes, yes thank you,
 9 Chairperson.
 10 CHAIRPERSON: Would you please remind the
 11 witness that he's still under oath?
 12 SHADRACK ZANDISILE MTSHAMBA: [s.u.o.
 13 through interpreter]
 14 MR GOIRANA: Witness still under oath, Mr
 15 Chairperson.
 16 CHAIRPERSON: Thank you. Yes, Mr Bham,
 17 you were busy cross-examining the witness.
 18 CROSS-EXAMINATION BY MR BHAM SC (CONTD.):
 19 Thank you, Mr Chair. Good morning Mr Mtshamba.
 20 MR MTSHAMBA: Morning, Sir.
 21 MR BHAM SC: Mr Mtshamba, I just have a
 22 few more questions to go through with you. You'll recall
 23 in our brief discussion on Tuesday afternoon you stated
 24 that if you had been told that you as an RDO were getting
 25 paid what RDOs at other mines were getting paid, you would

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1 have been very happy.
 2 MR MTSHAMBA: That is so.
 3 MR BHAM SC: Thank you. And you even
 4 said to me that when you arrived back from leave and you
 5 wanted to establish what the issue about the strike was you
 6 understood that it was because the RDOs at Lonmin who were
 7 not at Karee, in other words the other RDOs had also wanted
 8 the allowance which Mr Da Costa had given to RDOs at Karee.
 9 MR MTSHAMBA: That is so.
 10 MR BHAM SC: Now Mr Mtshamba, were you at
 11 any stage ever told that the RDO allowance was an allowance
 12 that would be given to all the RDOs at Lonmin and not just
 13 to the Karee RDOs?
 14 MR MTSHAMBA: Yes, I heard that from
 15 other people when I came back from leave.
 16 MR BHAM SC: Now if that was the case,
 17 why when you went on strike when you came back, given that
 18 you would have been happy to be paid what RDOs at other
 19 mines were being paid, and given that the RDO allowance was
 20 to all the RDOs at Lonmin, why were you on strike? Where
 21 does the 12 500 come from at that point?
 22 MR MTSHAMBA: When I came back from leave
 23 the strike was already on.
 24 MR BHAM SC: So because it was on you
 25 joined the strike?

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1 MR MTSHAMBA: All the shafts were closed.
 2 CHAIRPERSON: Did you ask anybody when
 3 you came back, where did this figure of 12 500 come from?
 4 Did anybody explain to you how this particular figure was
 5 arrived at?
 6 MR MTSHAMBA: The workers I asked when I
 7 came back told me that the figure of 12 500 was a figure
 8 they suggested, not that that's the amount they wanted.
 9 CHAIRPERSON: Yes, but what did they base
 10 the suggestion on? They didn't just grab the figure out of
 11 the air, did they?
 12 MR MTSHAMBA: Mr Chair, they suggested
 13 the 12.5, expecting that through the negotiations the
 14 amount that would be decided on may be any other amount.
 15 CHAIRPERSON: Is this what was explained
 16 to you?
 17 MR MTSHAMBA: Yes.
 18 CHAIRPERSON: You see, there was a report
 19 in one of the newspapers some months ago saying that, in an
 20 article written by the general secretary of the Solidarity
 21 Trade Union, suggesting that there was a story going around
 22 that what happened was one of the workers, I assume a rock
 23 drill operator, wanted to buy a motorcar and he went to a
 24 financial institution asking if they would give him the
 25 finance and they said no, he can't get it, and he said why,

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1 and they said, you don't qualify, to qualify you've got to
 2 earn 12 500, so the article went on to say that it is
 3 believed that that's where the figure came from that he
 4 went back, this particular worker went back to his
 5 colleagues and said look here, we've got to get 12 500
 6 otherwise we won't get finance to buy motorcars. Is that,
 7 did you hear such a story? Is there any truth in that?
 8 MR MTSHAMBA: It's the first time I hear
 9 of that.
 10 MR MPOFU: Chairperson –
 11 CHAIRPERSON: There was a report that
 12 appeared in Beeld. I'm not saying it's true –
 13 MR MPOFU: Chairperson, I –
 14 CHAIRPERSON: Mr Mpofo, do me a favour;
 15 don't interrupt me. You can speak when I'm finished. I
 16 thought we'd gone over that ground before. It is –
 17 MR MPOFU: Well, you're interrupting me
 18 as well, Chairperson. I'm saying that –
 19 CHAIRPERSON: No, no, I'm busy talking.
 20 When I'm finished I'll give you a chance to talk. Two
 21 people can't talk at once. It was a report that appeared
 22 in the Rapport newspaper as just being a story which the
 23 Solidarity people had heard. All I wanted to know from you
 24 – I'm not saying it's correct or anything – I just wanted
 25 to know from you whether you'd heard that story and whether

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1 there is any substance in it, but you've answered me, you
 2 say you haven't heard it before. Yes, Mr Mpofo, you wanted
 3 to say?
 4 MR MPOFU: Yes, I don't want to interrupt
 5 the interpreter. No, I was saying, Chairperson, that I
 6 don't think it's fair to put to this witness firstly all
 7 sorts of urban legend stories or outrageous statements made
 8 by rival unionists, unless if that is going to be, if that
 9 person is going to be called here or whether that – you
 10 know, I don't even know what to call it. It's not
 11 evidence. It's certainly not evidence, but it is rumour,
 12 rumour mongering and union rivalry statements made on that
 13 basis.
 14 CHAIRPERSON: Yes, the cases on how
 15 commissions function say that commissions can use all sorts
 16 of material, including reports in newspapers. I put this
 17 to the witness in order to ascertain whether there is any
 18 substance in it. In the light of what he said I don't
 19 propose to take it any further, unless another witness
 20 comes and says it's correct.
 21 MR MPOFU: Thank you, Chairperson.
 22 CHAIRPERSON: Insofar as you raise an
 23 objection it's overruled. Let Mr Bham continue with his
 24 cross-examination.
 25 MR BHAM SC: Thank you, Mr Chairman. Mr

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1 Mtshamba, you said to us on Tuesday that you weren't part
 2 of the group of RDOs from Karee who marched to the offices
 3 of Mr Da Costa at the end of June 2012 and again during
 4 July 2012.
 5 MR MTSHAMBA: No, I was not.
 6 MR BHAM SC: Can you recall as a Karee
 7 RDO whether at any time during June 2012 or July 2012 there
 8 was any meeting held of Karee RDOs or any report back where
 9 the figure of R12 500 was discussed?
 10 MR MTSHAMBA: No, I've never heard that
 11 being mentioned in any meeting.
 12 MR BHAM SC: And during the period late
 13 June 2012 up to the end of July 2012 when you went on
 14 leave, was there any meeting called of RDOs, whether just
 15 at Karee or all the all RDOs, giving a report back on the
 16 discussions which were held with Mr Da Costa?
 17 MR MTSHAMBA: I heard about such a report
 18 from my colleagues.
 19 MR BHAM SC: What I'm asking you is
 20 whether you were present at any report back to the RDOs
 21 about the discussions with Mr Da Costa?
 22 MR MTSHAMBA: No, I was not present.
 23 MR BHAM SC: And when you had returned on
 24 the 13th of August, between the 13th and the 16th of August
 25 can you recall whether when you were on the koppie with

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1 other strikers there was any discussion or reference to the
 2 discussions which had been held with Mr Da Costa?
 3 MR MTSHAMBA: I heard about that, yes.
 4 MR BHAM SC: I'm asking – when you say
 5 you heard about it, can you explain to us how you heard
 6 about it and from whom?
 7 MR MTSHAMBA: I have a friend who's an
 8 RDO, he's my next-door-neighbour; he told me that Mr Da
 9 Costa agreed to give them 750 allowance. That's how I
 10 heard about it.
 11 MR BHAM SC: To the best of your
 12 knowledge you don't know of any report back to those who
 13 went on strike on the 9th of August about the discussions
 14 which were held between RDO representatives and Mr Da Costa
 15 from the end of June to July 2012?
 16 MR MTSHAMBA: I only heard about the
 17 allowance of R750.
 18 MR BHAM SC: But you don't know of any
 19 report back which stated that when RDO representatives
 20 approached Mr Da Costa at the end of June 2012 and during
 21 July 2012 he did discuss with them the very question of the
 22 demand on the table for R12 500?
 23 MR MTSHAMBA: No, I did not hear about
 24 the R12 500.
 25 MR BHAM SC: And did you hear about the

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1 discussions with Mr Da Costa about the R12 500 and the fact
 2 that Mr Da Costa was willing to talk to RDO representatives
 3 in that period on that very demand?
 4 MR MTSHAMBA: I'm saying, Mr Chair, I
 5 only heard about the allowance of R750. I did not hear
 6 about the 12 500.
 7 MR BHAM SC: Thank you very much. Mr
 8 Mtshamba, I just want to go on to a different topic now.
 9 When you had returned from leave on the 13th of August were
 10 you aware that on the 11th of August two people from amongst
 11 the strikers had been injured by gunshot wounds, that on
 12 the 12th of August two Lonmin security officers had been
 13 murdered, that on the same day there was a non-striker who
 14 was killed at the Karee Shaft, K4 Shaft –
 15 MR MPOFU: Chairperson, I want to object.
 16 Are we the only people who are disallowed from using the
 17 word "murder"? Because SAPS has been allowed to use it and
 18 now Lonmin is being allowed to use it.
 19 CHAIRPERSON: I didn't actually hear –
 20 forgive me, I didn't actually hear what Mr Bham said
 21 because he dropped his voice.
 22 MR MPOFU: Well, SAPS used it in exhibit
 23 L, as I pointed out, and now it's being Lonmin –
 24 MR BHAM SC: [Microphone off, inaudible]
 25 the word "kill". I don't want to offend anybody's

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1 sensibilities.

2 CHAIRPERSON: No well, the problem – no,

3 no, let's get this clear once and for all. I've ruled over

4 and over again, and I shall do so until the end of the

5 Commission if I have to, that it's not appropriate to put

6 as an established fact something which is controversial.

7 What is controversial at the moment is whether the police

8 murdered the people who died on the 16th and for that matter

9 the three persons who died on the 13th, whether they

10 murdered them, because the police have put up a defence of

11 self-defence. Whether that defence will be upheld at the

12 end of the day we do not know at this stage, but at the

13 moment it's controversial and so the principle that I

14 expounded applies, I won't allow anyone to put as an

15 established fact something which is subject to controversy

16 before this Commission. So Mr Mpofo is quite right, so as

17 far as you use the word "murder" in respect of matters

18 which are controversial then you are wise to withdraw the

19 word and substitute a new one for it.

20 MR BHAM SC: I had used it in the context

21 of the two security guards who were killed, but I'm not

22 going to take it further. I take the point. I'm going to

23 work on that basis. Were you aware of the fact that in the

24 days prior to you coming back there had been people who

25 were killed in the course of the strike?

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1 MR MTSHAMBA: I heard that on the news.

2 MR BHAM SC: You weren't told that by

3 anybody from amongst the strikers or people who were

4 leading the strike?

5 MR MTSHAMBA: No.

6 MR BHAM SC: I just want to ask you one

7 more question personally, Mr Mtshamba. You say when you

8 came back people were out on strike already and you joined

9 the strike.

10 MR MTSHAMBA: When I arrived the strike

11 was on and when I had to go and report I was told that the

12 mines are closed.

13 MR BHAM SC: What would your attitude at

14 the time have been to people who did not wish to

15 participate in the strike and wanted to go to work instead?

16 MR MTSHAMBA: There was nothing I could

17 have done about that.

18 MR BHAM SC: Mr Chairman, will you give

19 me a moment, please? Mr Chairman, I have no further

20 questions, thank you.

21 CHAIRPERSON: Thank you. Who's next to

22 cross-examine the witness?

23 MR CHASKALSON SC: Chair, there are no

24 further –

25 CHAIRPERSON: I thought not.

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1 MR CHASKALSON SC: - requests which we

2 have. It's just re-examination.

3 CHAIRPERSON: So re-examination. Mr

4 Mpofo?

5 MR MPOFU: Thank you, Chairperson.

6 Before the re-examination starts, Chairperson, there's a

7 matter which might need some debate. It's an objection

8 that my learned colleague Mr Semenya has indicated to me he

9 would raise over the weekend.

10 Just to situate the issue, Chairperson, what has

11 happened is that as one of the matters that has arisen in

12 the various cross-examinations you will recall that there

13 was the issue of the nature of injuries, people being shot

14 in the arm and chest and so on. Effectively the issue was

15 there were two approaches that were taken, one by Mr

16 Chaskalson, the other one by Mr Semenya himself.

17 Mr Chaskalson's cross-examination, if you

18 remember, Chair, was effectively that in relation to the

19 victims who died some of the injuries that the witness had

20 identified were consistent to a particular extent, or they

21 were not consistent to another particular extent, and if

22 you remember Commissioner Hemraj very correctly pointed

23 out, or asked the question to Mr Chaskalson as to whether

24 the witness had ever suggested that the people, the shots

25 that he was referring to were in respect of people who had

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1 died and the witness duly said no, he never said that. So

2 they might have died, they might not have died, and I think

3 learning from that experience Mr Semenya correctly took a

4 different approach to the matter.

5 [09:56] Which was that effectively had there been people

6 with such injuries, then if they were arrested and injured

7 they would have been my clients and therefore we would have

8 been aware of those injuries which was a legitimate line of

9 cross-examination. Now based on those two cross-

10 examinations, Chairperson, we then produced three sets of

11 affidavits from three different persons with injuries match

12 the injuries that the two cross-examiners had referred to.

13 And incidentally all of them who had survived hence we took

14 affidavits from them which is not to say that other people

15 who died, who might not have had similar injuries and

16 therefore as we should, Chairperson, we distributed those

17 affidavits on Friday in an unsigned form. We now are in

18 possession of the – over the weekend we then ensured that

19 they take them to the Marikana police station for the

20 Commissioner of Oaths. And the idea, Chairperson, if I may

21 anticipate the objection, is that those statements really

22 are being tendered merely for the purpose of saying those

23 are the injuries that were sustained by the people rather

24 than anything else really. Just to deal with that point

25 and therefore it might not, strictly speaking, be necessary

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1 to call those witnesses just to say I was shot in the arm
2 unless if there's a doubt about that.

3 And just as a precaution I've got all the three
4 people here so that they can even show their injuries to
5 the Commission. And Mr Budlender indicated to me by email
6 on Saturday, I think, that the full medical statements of
7 the persons would be required. What we have done, just at
8 short hand was simply to put a page or two from the medical
9 reports that shows that the person was admitted with these
10 injuries. So we've also complied with the request to
11 furnish the full statements and therefore as I say, I'm
12 sure Mr Semenya will have something to say to which I will
13 respond. But I just thought it's important to raise that
14 issue up front before my resubmission starts, Chairperson.

15 CHAIRPERSON: Before Mr Semenya replies
16 let me get clarity on what exactly it is that you want to
17 do. We've just been presented with a batch of documents.
18 I've quickly read the affidavits through and as far as I
19 can see there are medical reports attached. Now there are
20 two issues that would be relevant. Firstly were there
21 strikers who were arrested at koppie 3 who had injuries in
22 the arm and the hand? The answer would appear to be that
23 these three deponents whose affidavits you've put before us
24 were so injured and the medical reports appear to support
25 that. The only remaining question, therefore, is were they

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1 at koppie 3 and more particularly were they in the vicinity
2 of the witness at the time they were injured and so on.
3 They say that in their affidavits, some with more precision
4 than others. So the question really is and do I understand
5 you to be saying that you simply want to put these
6 documents before us as exhibits to establish those two
7 things. One, these were injured and arrested persons who
8 were injured in the hand or the arm and two, they were
9 arrested in the vicinity of the place where Mr Mtshamba
10 was. Is that all you want to do, am I right?

11 MR MPOFU: Yes, Chairperson and the fact
12 that they too saw people who were surrendering being shot
13 in front of them, ja.

14 CHAIRPERSON: Mr Semenya, what is your
15 attitude –

16 MR MPOFU: Just to clarify a point that
17 might be important because Mr Semenya also raised it, again
18 correctly, that what he was talking about was people who
19 were arrested and injured as you have also framed the
20 question. As it happens all the three persons were not
21 arrested and that's exactly the point, one of the points we
22 wanted to raise. You remember I said last week that the
23 mere fact that someone was injured didn't necessarily mean
24 that they were also arrested and this vindicates that
25 position. Some might have been. Now what happened in this

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1 particular case, Chairperson, I don't know if that's
2 captured in the affidavits, but I can maybe just say from
3 the bar that from my consultations with them what seems to
4 have happened is that everyone was congregated around that,
5 let's call it the arresting area where people were made to
6 face down and so on. And then the police said, I think
7 that came specifically from Mr Nova, the police the said
8 those who are injured, but are able to walk as it were must
9 go to the ambulances and then the ones who were critical
10 were airlifted and so on. So there were different
11 categories and the rest were arrested.

12 CHAIRPERSON: Mr Bettino Bennett-Nova –
13 MR MPOFU: Yes.
14 CHAIRPERSON: - he doesn't say, I read it
15 in a hurry because I only got the document this morning, he
16 doesn't say in terms that he's arrested, but I see he did
17 make an IPID statement.

18 MR MPOFU: That's correct –
19 CHAIRPERSON: Do we know whether he was
20 arrested?
21 MR MPOFU: No he was not specifically,
22 what happened, Chairperson, again and one learns as to how
23 these things worked as you go along. What seems to have
24 happened is that some of the people who were in hospital
25 were visited by IPID even though they were not –

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1 CHAIRPERSON: He says that in his
2 statement, that he was –
3 MR MPOFU: No he specifically, the others
4 were not.
5 CHAIRPERSON: Yes IPID say it was taken
6 while he was in hospital.
7 MR MPOFU: That's correct, thanks,
8 Chairperson.
9 CHAIRPERSON: These people weren't
10 arrested, but they were injured and they were on the spot
11 at the time.
12 MR MPOFU: They were on the spot. Thank
13 you, Chairperson.
14 CHAIRPERSON: All right. Mr Semenya, are
15 you in a position to deal with Mr Mpofu's submission, but
16 before you do that, the question I should have asked him
17 first. Do we know whether – I'd be grateful if what I'm
18 now asking will not be interpreted. Do we know whether
19 the present witness is able to identify any of these three
20 persons as having been on the koppie near him at the
21 relevant time?
22 MR MPOFU: No, Chairperson and the vice-
23 versa also applies. I've obviously not asked the witness
24 because he's under cross-examination, but I asked them if
25 they remembered him and nobody could remember specific

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1 people.

2 CHAIRPERSON: The point that occurs to me

3 is it necessary or even appropriate to put this to him in

4 re-examination? I can understand the force of this

5 evidential material if it's accepted, I understand that.

6 But if he doesn't know these people then he can't say they

7 were there. He in fact can add nothing to it in re-

8 examination, but you can, once he's finished his evidence,

9 I'm just putting a prima facie view to you, you can, once

10 he's finished his evidence seek to put this material before

11 us and if it goes in it could obviously corroborate the

12 evidence he's given. But if he can't specifically – he's

13 already said people near him were shot and so forth, he

14 can't add to it because he doesn't know these people you

15 tell me. So is it necessary for you at this stage to put

16 the statements in before you re-examine him, is it not

17 enough to say you are going to apply and you've given me

18 notice now you're going to apply and we may have some

19 debate about it. But can you just bear with me for a

20 moment? My colleagues want to help me, yes.

21 COMMISSIONER HEMRAJ: Mr Mpofu, isn't

22 there another point, Mr Mpofu, that – Mr Mpofu. Is there

23 another point that the witness's description of the number

24 of people that were shot in front of him is restricted to

25 two or three in his evidence and now you have a multiple

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1 number of people being shot in front of him. You might

2 want to consider that point.

3 MR MPOFU: Ja, okay well let's deal with

4 that point first. The witness has never confined the

5 number of people shot in front of him to any number.

6 COMMISSIONER HEMRAJ: He did, he

7 specifically said in answer to a question I asked him, so

8 it was three people that were shot in front of you and he

9 said yes.

10 MR MPOFU: That no one else was shot in

11 that koppie.

12 COMMISSIONER HEMRAJ: No it was in the

13 context of the injuries that he was describing and the

14 sequence in which particular people that were shot in front

15 of him were shot.

16 MR MPOFU: Yes but that's irrelevant with

17 respect, the issue here that we want to establish is that

18 some people were in the area where he was, sustained the

19 injuries that he described. That is the exact point, that

20 point is the exact point that Mr Semenya was foreshadowing,

21 when he said to the witness if there were people like that

22 then Mr Mpofu would know about them because what you are

23 saying –

24 CHAIRPERSON: Sorry to interrupt you. I

25 understand you are now addressing that point, but you had

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1 so many clients to consult with and so many factual matters

2 to traverse that you didn't have a chance to do it at the

3 time. Whether you should have done it or not is neither

4 here nor there, you've now done it and you want to put the

5 fruits of that investigation before us.

6 MR MPOFU: Yes, Chairperson, because I'm

7 not a prophet, the re-examination is only because it arose

8 from the cross-examination.

9 CHAIRPERSON: So the question that I put

10 to you, you haven't answered yet and that is – there are

11 two questions. One is whether this material should go

12 before us. The other question is, is it necessary to do

13 it, or appropriate even while this witness is being re-

14 examined because there's nothing he can add himself. This

15 material may well corroborate - but that's another matter.

16 So how do you answer that point?

17 MR MPOFU: Yes no, Chairperson, again the

18 answer is exactly in what you have just said. The only

19 value of putting this to this witness is firstly A because

20 it was in his cross-examination that it was raised. Two,

21 the very point that you are making, Chairperson, had I done

22 this beforehand then simply I would have just put it to him

23 now in re-examination and say well to go to the statement

24 of Mr so and so and he says he was shot in the arm. The

25 point of the matter is that that has not happened. So the

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1 mere fact that it did not happen because I did not

2 anticipate the cross-examination cannot disentitle me to

3 put a point that I would otherwise have been entitled to

4 put had those statements been in existence before the

5 cross-examination. That's the only point of debate here is

6 whether the statements, merely because they've only been

7 secured now, suddenly become irrelevant to the cross-

8 examination.

9 CHAIRPERSON: I'm not even sure whether

10 you've got to put it in chief. Let me remind you of

11 something. You may remember that Mr Mathibedi wanted to

12 put some statements in when he was leading Mr X and I said

13 you can't do that. Mr X can't add anything to them,

14 whether the statements go in is a different question which

15 we'll deal with it if we have to, but it's not appropriate

16 to put to the witness, here is a statement of a witness who

17 appears to corroborate you, do you agree? The witness say

18 yes he corroborates you. I wouldn't allow Mr Mathibedi to

19 do that and the impression I got is that you went along

20 with me on that one.

21 MR MPOFU: Yes well, Chair, my point –

22 CHAIRPERSON: If he had a chance to give

23 a concurring judgment he would have done so. Now does the

24 same point not apply here?

25 MR MPOFU: Sure, no, Chairperson, I think

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1 we misunderstand each other. That objection was raised by
 2 me to Mathibedi, so I'm the last one to say it was wrongly
 3 made. I'm not talking about raising the thing in chief,
 4 I'm saying I would have raised in re-examination and I
 5 would have read it in re-examination because it was raised
 6 in cross-examination. What I'm saying is that if those
 7 statements were here and let's say they were part of the
 8 material, nobody would have stopped me in re-examination to
 9 say this is what Mr Chaskalson said, this is what Mr
 10 Semenya said, go to that exhibit. The issues arose from
 11 cross-examination. The only issue that's making us have
 12 this debate is the mere fact that those statements were not
 13 in existence at the time that side -
 14 CHAIRPERSON: But you can get that - if
 15 these documents go in you can get that before the
 16 Commission, you don't need this witness -
 17 MR MPOFU: I will be using them now.
 18 CHAIRPERSON: Let's hear what Mr Semenya
 19 says, Mr Semenya.
 20 MR SEMENYA SC: Chair, if the purpose of
 21 these statements is merely to inform the Commission what
 22 injuries the various individuals had sustained there's no
 23 difficulty with that we can deal with it separately. It is
 24 certainly not a matter for re-examination.
 25 CHAIRPERSON: Yes of course, but to be

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1 fair to Mr Mpofo, there are two points that he's trying to
 2 establish. The first is that these strikers were on the
 3 koppie and they received injuries of a kind they deposed to
 4 and secondly they may well have been, perhaps to put it
 5 precisely in close vicinity to the area where this witness
 6 was. They don't say they saw him there and he apparently
 7 doesn't say he saw them either, but those are the two
 8 points which Mr Mpofo seeks to establish.
 9 MR SEMENYA SC: Secondly, if the point of
 10 this statement is intended to convey that they sustained
 11 the injuries they did in koppie 3, that's no difficulty
 12 that, we can deal with it differently. Those two are not
 13 subject matter for introducing this type of evidence in re-
 14 examination. Now Mr Mpofo tells us the only reason he's
 15 doing it is because this matter arose in cross-examination
 16 and he points to the cross-examination that I did. That
 17 also doesn't help him, Chair, you'd recall that according
 18 to the witness the surrendering individual who sustained
 19 the injuries he described is an injury that was sustained
 20 by the victim on his right arm. These statements don't
 21 speak to that, they speak about injuries to the left arm.
 22 That's the first thing, so I don't see how that can arise
 23 out of the cross-examination that I did. Further, if we
 24 look at this, Mr Mpofo tells us he wants to use the
 25 statement to corroborate that there were people who were

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1 shot at whilst surrendering. Now that is not how you
 2 introduce evidence at all, untested evidence, unless he
 3 tells us they are going provisionally because he's going to
 4 call those witnesses. Then I can understand, otherwise we
 5 may as well just produce 600 statements of SAPS members who
 6 say the contrary and give them to the Commission for
 7 consideration as evidence. That's not how it works.
 8 MR MPOFU: Chairperson, firstly SAPS has
 9 produced 600 statements from people including the IPID
 10 statements, but the point is not what Mr Semenya says is
 11 the point. On the issue of whether the people will testify
 12 or not I think we can be guided by practical consideration.
 13 That is why, Chairperson, you'll notice that I went out of
 14 my way to ensure that these people don't just give the
 15 usual witness statements, but they give sworn affidavits.
 16 And it's in the discretion of the Commission to accept that
 17 evidence and obviously with the obvious precaution. But
 18 each of the persons, in the last paragraph of each
 19 paragraph says and I'm reading now Mr Nova's one, paragraph
 20 18 just as an example. "I'm available to testify before
 21 the Commission or to be interviewed by the evidence
 22 leaders." That's what he says, so barring the practical
 23 considerations of time and so on I would glad to comply
 24 with Mr Semenya's request and just call the people to say I
 25 have an injury in such and such a place. I saw people

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1 surrendering being killed or injured or whatever and that
 2 was at koppie 3. But I think it would be - to do that,
 3 Chairperson, for the limited purpose that we've all agreed,
 4 the statements are being tendered for, would just be a
 5 waste of time with respect. And I would therefore urge
 6 that the Commission uses its discretion to accept the
 7 affidavits on that limited basis that they only establish
 8 those objective facts. If the people, they are here, all
 9 three of them, if the evidence leaders have to go and look
 10 at the injuries whether they match the medical
 11 certificates, that can also be done. I think that would be
 12 the most - that's why I said they must take a day off from
 13 work and then be here today so that it can be dealt with on
 14 that basis.
 15 MR SEMENYA SC: Chair, it would be the
 16 most prejudicial admission of adverse evidence against SAPS
 17 that we have untested account of witnesses who say they
 18 were shot while surrendering. I mean that's the most
 19 damning evidence against us that can be heard.
 20 CHAIRPERSON: - one factor and that is
 21 what this witness said while being cross-examined by Mr
 22 Chaskalson was he can't say whether the persons who shot
 23 while the - and effectively cause the injuries knew that
 24 they were firing at people who were surrendering, whether
 25 they could see them. And you will remember the evidence is

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1 quite a lot of shots were fired from some distance away by
 2 members of the K9 section, until Colonel Gaffley from the
 3 STF told them to stop firing. So my understanding of this
 4 witness's evidence is he simply says people were
 5 surrendering, or trying to surrender and while they were
 6 surrendering they were shot. He cannot in the light of the
 7 concession he made to Mr Chaskalson say that the persons
 8 who shot them shot them deliberately knowing that they were
 9 surrendering.
 10 [10:15] And we know that the evidence is a lot of shots
 11 into the bush by K9 people who were in fact further back
 12 than the STF people were. So I don't know that the – as I
 13 say I'm just expressing prima facie points, but I'm not
 14 sure that the admission of these statements would establish
 15 that people were shot while being surrendered and in
 16 circumstances where the person who shot deliberately fired
 17 at people while they were surrendering.
 18 MR SEMENYA SC: Well, that's the –
 19 CHAIRPERSON: I understand the latter
 20 point to be the point that you're complaining about. Is
 21 that not so?
 22 MR SEMENYA SC: Chair –
 23 CHAIRPERSON: It is common cause, surely,
 24 that a lot of shots were fired into the bush, inter alia by
 25 the K9 people.

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1 MR SEMENYA SC: We say so in our own
 2 opening statement. That's not the point I'm complaining
 3 about. These statements are statements of witnesses that
 4 say I was hit, I remember having next to me and we were all
 5 surrendering and we were hit. They are making direct
 6 statements of being shot at while they were surrendering,
 7 by the police. It's a completely different matter that
 8 they got injured during the shooting.
 9 CHAIRPERSON: Alright, let me take them
 10 one by one. Well, actually I must say I'm minded to rule –
 11 have you finished, Mr Mpofo?
 12 MR MPOFU: Yes, Chairperson, I just
 13 wanted to –
 14 CHAIRPERSON: No, finished with the
 15 argument. I know you haven't re-examined yet.
 16 MR MPOFU: No, Chairperson, no, I just
 17 wanted, just in fairness to Mr Semenya, one of the
 18 witnesses, I'm just checking if it's in the affidavit. No,
 19 it's not. No, it's not in the statement, Mr Chairperson,
 20 but in fairness to Mr Semenya Mr Nova, if he were to
 21 testify, he does say that one of the shots fired at him,
 22 the third one on the chest, was done by someone standing
 23 within four, five metres in front of him. So I think that
 24 – and therefore he suggests that it was being done cold-
 25 bloodedly and deliberately.

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1 COMMISSIONER TOKOTA: Sorry, Mr Mpofo, I
 2 just want to check, in the light of what you told us,
 3 namely that these people didn't really see the witness and
 4 the likelihood is that the witness also didn't see them –
 5 MR MPOFU: No, I didn't say that, Chair.
 6 COMMISSIONER TOKOTA: I'm saying
 7 likelihood, I'm not saying it didn't –
 8 MR MPOFU: Okay, alright.
 9 COMMISSIONER TOKOTA: I'm saying the
 10 likelihood is that he didn't see this. So what value can
 11 it really have if you were to put it in re-examination? I
 12 can understand you wanting to have this evidence put before
 13 the Commission. That's fair, but is it really going to
 14 help you putting it to the witness in re-examination?
 15 Because he's not going to say yes, I saw Mr Nova and –
 16 MR MPOFU: No, thank you. No, that's a
 17 fair question, Commissioner Tokota, but again let me just
 18 clarify. This is not tendered for that purpose at all.
 19 The witness has said that he was part of a group of 30 to
 20 50 people. That is a fact. The fact that he can't say
 21 this one was Mr Smith, this one was Mr this and that is
 22 neither here nor there. These people also say when these
 23 things happened they were in a group of people who were
 24 being shot, surrendering, doing all sorts of things. I
 25 think one of them even says people were piling on top of

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1 each other. The other one says somebody's blood came to
 2 his clothing. So what is clear is that on both sides of
 3 the divide these people were operating in a group. They
 4 don't then have to identify each person by name and
 5 surname. The mere fact is that it happened while they were
 6 in a group, (a); (b), that it happened in an area where it
 7 would have been visible to him and others who were in that
 8 square, so to speak, if one looks at the pictures that Mr
 9 Chaskalson has produced. That is all. So the identities,
 10 whether this one saw the one next to him is irrelevant,
 11 with respect, as long as he knows that there were people,
 12 there were human beings who were there who were shot at
 13 that time.
 14 COMMISSIONER TOKOTA: No, the crux of my
 15 question is not based on the identity of the people. It's
 16 based on the re-examination, re-examination being to
 17 clarify certain things which are not clear which arose out
 18 of cross-examination. Now you have these people
 19 independently saying that we were shot whilst we were
 20 surrendering. That's fair, he had already said so. So
 21 what value is it going to add in introducing the evidence
 22 through him? You can simply do it, you can do your re-
 23 examination on cross-examination, clarify things, and
 24 thereafter you are free to hand in these statements, or
 25 call them or whatever –

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1 MR MPOFU: No, yes, thank you, I
 2 understand that. The point is simply that the man has been
 3 cross-examined on the basis that what he's saying cannot be
 4 true because had there been such people in existence they
 5 would have been known by me, which is a fair point that was
 6 made by Mr Semenya. All I'm doing now is to say the mere
 7 fact that those statements were not raised at that
 8 particular point, as the Chairperson said, might be because
 9 of the practicality that I probably didn't speak to all the
 10 300 people, or all the ones who were not arrested and so
 11 on, and so on, but those people are here. The Commission
 12 must be seeking to establish the truth. If the truth can
 13 be established by these people coming now and saying I was
 14 injured in the arm, the Commission can't turn around and
 15 turn a blind eye to it because the Commission must want to
 16 understand exactly what happened, and this issue arose in
 17 the cross-examination.
 18 CHAIRPERSON: I'm sorry to interrupt you.
 19 You're not really answering the point that my colleague Adv
 20 Tokota –
 21 MR MPOFU: No, I've tried twice.
 22 CHAIRPERSON: Mr Mpofo, no, you haven't,
 23 you see. You haven't answered. The point is, there are
 24 two points. The one is do you put it in as part of the re-
 25 examination of the witness. The second question is even if

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1 you can't do that, does that preclude you from doing it
 2 later. Now what my colleague has put to you, he hasn't got
 3 a problem with the second question. He accepts that in the
 4 circumstances, which presumably can be explored in depth
 5 later, but it may well be you can put these statements in
 6 and these statements would then nullify the effect of the
 7 criticism which is addressed in relation to your, the way
 8 you led the evidence-in-chief. That's the second –
 9 MR MPOFU: No, yes.
 10 CHAIRPERSON: The first one, the only
 11 point he put to you was, is it appropriate to do it in re-
 12 examination. Do you have to do it in re-examination. I'll
 13 just give you an example. Assuming you have a witness who
 14 gives evidence about an event and the witness says it was
 15 raining and he's vigorously cross-examined by a cross-
 16 examiner who says it wasn't raining and a fair amount of
 17 damage is done to his evidence as to why he says it was
 18 raining. The side who called the witness have a statement
 19 of someone who was on the scene who says it was raining.
 20 That's all he says, but he says it was raining. That's
 21 enough. You don't put that in, in re-examination of the
 22 witness. You were cross-examined on the subject of
 23 raining, whether it was raining or not. Here we've got a
 24 statement by Mr Jones who will say it was raining, what do
 25 you say about that. The witness will say oh well, that's

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1 nice, it corroborates what I said. You don't do that.
 2 You'd simply call Mr Jones or you'll put his evidence in,
 3 in some other way, and you then in that way nullify the
 4 effect of the cross-examination –
 5 MR MPOFU: No, Chairperson –
 6 CHAIRPERSON: That's the point he put to
 7 you.
 8 MR MPOFU: No –
 9 CHAIRPERSON: What's your answer to that?
 10 MR MPOFU: Yes, Chairperson, I think – I
 11 don't know, I'm going to try for the third time. Once a
 12 point has been raised in cross-examination by a cross-
 13 examiner – that answers the question – it entitles you to
 14 clarify it in re-examination. That's trite. I don't think
 15 anyone in this room is going to debate against that.
 16 CHAIRPERSON: Clarified by evidence that
 17 you elicit from the witness who's giving evidence during
 18 the re-examination.
 19 MR MPOFU: Yes, of course.
 20 CHAIRPERSON: You don't clarify it by
 21 putting something to him that he doesn't know anything
 22 about. You may well be entitled to put that
 23 independently –
 24 MR MPOFU: No.
 25 CHAIRPERSON: - but that's a different

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1 matter.
 2 MR MPOFU: It's not something he doesn't
 3 know about. He's testified about people being shot
 4 surrendering. He has testified about people being shot in
 5 the arm. He has testified about people being shot in the
 6 stomach. How can he not know anything about it? We all
 7 know it from him. We don't know it from the air.
 8 COMMISSIONER TOKOTA: But he doesn't know
 9 about the person who has been shot on the –
 10 MR MPOFU: Yes –
 11 COMMISSIONER TOKOTA: - on the other
 12 side –
 13 MR MPOFU: That's the point I answered
 14 earlier. That's irrelevant. The identity of the person is
 15 irrelevant. The point is that he knows about the –
 16 COMMISSIONER TOKOTA: No, no, the
 17 statement says a different thing from what he says as to
 18 the location of the bullet when it was shot at. So that's
 19 why I'm saying is it really necessary to put it in re-
 20 examination? You can understand we want to hear this
 21 evidence. Fine, that is true. We want it, but then it's
 22 not necessary to put it to this witness.
 23 MR MPOFU: Chair, okay –
 24 COMMISSIONER TOKOTA: The way I see it.
 25 MR MPOFU: No, thank you. Thank you,

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1 Commissioner. My fourth and last attempt. If the witness,
 2 let's use the Chairperson's example. If the witness says
 3 it was raining and he's cross-examined vigorously that it
 4 was not raining, how can it not be competent in the re-
 5 examination to say here's the weatherman's report on that
 6 day and a picture of people holding umbrellas and other
 7 pictures of people in a cricket match where it was pouring,
 8 and so on. How on earth can that be, if it was raised in
 9 the cross-examination as a point of criticism to that
 10 witness? You can't say well leave it now and then much
 11 later you can call the weatherman to – honestly, if
 12 litigation was run along in those, you know –
 13 COMMISSIONER TOKOTA: But the point here,
 14 this witness is contradicting him insofar as the landing of
 15 the bullet. He says I was shot in the left arm. He says
 16 he was shot in the right-hand side.
 17 MR MPOFU: Well fine, then exclude that
 18 one if that's the problem –
 19 COMMISSIONER TOKOTA: No, but the point
 20 is you're not really clarifying; instead you are actually
 21 contradicting him.
 22 MR MPOFU: No, Chairperson, the point is
 23 not the left arm or the right arm or the middle arm. The
 24 point is that these people have injuries which are
 25 consistent with his evidence. You can't really now for

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1 someone who was being shot with bullets flying everywhere
 2 want to say well – he even said it was the hand or the arm,
 3 even in his statement. So he was contradicting himself in
 4 that narrow sense, but surely we all know that a person who
 5 was labouring under those – if it was a normal situation we
 6 would say well you can't say the arm or the hand because
 7 you much choose which one, but we all know that the man was
 8 under a hail of bullets, similarly if we're now going to
 9 say was it the right or the left and the –
 10 CHAIRPERSON: Yes, thank you, Mr Mpofu.
 11 In my opinion the evidence that Mr Mpofu proposes to elicit
 12 from this witness is evidence to which he can add no value.
 13 He cannot deal with it. He knows nothing about it himself.
 14 I don't think the evidence can appropriately be elicited in
 15 re-examination. Mr Mpofu says that's how it works in
 16 litigation, dealt with the example I gave about witness
 17 who's cross-examined about whether it was raining, and his
 18 counsel wishes to produce to him in re-examination a
 19 statement that he in fact knows nothing about, which
 20 confirms that it was raining, that's not allowed in my
 21 opinion. I've never encountered it in litigation ever and
 22 I disallow the production of this evidence at this stage as
 23 part of the re-examination.
 24 But I think there's merit in what Mr Mpofu has
 25 suggested, and that is that the evidence leaders should be

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1 asked to interview these three deponents and it may well be
 2 that after that has happened this material will be able to
 3 be put before the Commission, and if it is put before the
 4 Commission that will go very far to nullify the criticism
 5 that was directed against the manner in which the evidence
 6 was led in chief where this evidence was not led. That's
 7 my ruling on the point.
 8 MR MPOFU: Thank you, Chairperson.
 9 CHAIRPERSON: I want to say it may well
 10 be that the material, or some of it which Mr Mpofu wishes
 11 to put before us may well eventually be able to be put
 12 before us by way of agreement, particularly after the
 13 evidence leaders have interviewed the three gentlemen who
 14 have deposed to the affidavits which Mr Mpofu has. You may
 15 now commence your re-examination, Mr Mpofu.
 16 RE-EXAMINATION BY MR MPOFU: Thank you,
 17 Chairperson. In light of that ruling it might be
 18 appropriate, Mr Mtshamba, to start with soliciting your
 19 comment about what I will call the armchair approach that
 20 we might take here, you know, in these air-conditioned
 21 rooms, about what you went through. As Mr Chaskalson I
 22 think very correctly and sensitively put it that it is
 23 unimaginable, the kind of thing you went through, maybe for
 24 us - you'll forgive us – to appreciate sitting in the air-
 25 conditioned facility. I think somebody even asked you at

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1 some stage how many shots were shot from the helicopter and
 2 again you'll forgive us that because of our training we go
 3 for those kinds of details, maybe not appreciating the
 4 situation that the person is going through.
 5 What I really want to ask you to clarify to the
 6 Commission is in your own words the exact situation that
 7 you were under. You've described about putting your head
 8 down, bullets flying onto rocks and noises and all that.
 9 Can you just maybe make us appreciate what a person in that
 10 situation, what they observe and how you were feeling at
 11 the time?
 12 MR MTSHAMBA: First of all, Chairperson,
 13 I was very scared on that day. It was my first time to
 14 hear so many gunshots. I was thinking this is my last day,
 15 I'm going to die today. The running away was actually an
 16 endeavour to save my life because I had never experienced
 17 before, Chairperson, people being shot in such a hurting
 18 manner. I can't recall, remember everything that I saw on
 19 that day and talk about it. That is all.
 20 MR MPOFU: Right, again in view of what
 21 has just transpired, but I think you've already answered
 22 this question but if you'll forgive me; do you know
 23 yourself whether the people that you saw being shot which
 24 you have described died or survived?
 25 MR MTSHAMBA: If you could just repeat

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1 the question slowly, Sir?

2 MR MPOFU: Yes. Of the people whose

3 shots you have described to the Commission, who were shot

4 in the various places that you have described, do you know

5 whether they died at the scene or later or whether they

6 survived their shootings?

7 MR MTSHAMBA: Chairperson, at the time

8 that the police instructed us to raise our hands, lie on

9 the ground, move forward, there are people that remained

10 behind there. Now I wouldn't know whether they were dead

11 or whether they were still alive.

12 MR MPOFU: Thank you. And were you the

13 only person who was shot while you were surrendering, or

14 were there other people, and if so, do you know how many?

15 MR MTSHAMBA: Other people were shot at

16 different places where they were.

17 MR MPOFU: And were you able to observe

18 whether they were also shot while they were surrendering or

19 not?

20 [10:35] MR MTSHAMBA: Some were shot whilst

21 running away.

22 MR MPOFU: Yes?

23 MR MTSHAMBA: Some, those that I've

24 mentioned who were shot while with their hands raised.

25 MR MPOFU: Right, and you've – okay, you

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1 were also accused of falsifying your evidence in respect of

2 the shots that you say came from the helicopter. Do you

3 know whether or not the policemen in the helicopters were

4 shooting?

5 MR MTSHAMBA: Chairperson, I heard

6 bullets being fired from all directions. I believed that

7 they were also shooting because they were hovering over us.

8 MR MPOFU: Thank you. You've also been

9 asked by Mr Bham about the issue of the R12 500 and you

10 said that it was a starting point. Let's call it that.

11 Can you explain what you meant by that?

12 MR MTSHAMBA: When I explained to Mr

13 Bham, Sir, I was saying the 12.5 was the figure that was

14 set, that during the negotiations a certain amount would

15 then be arrived at, not necessarily the 12.5 that was

16 demanded. This was the amount suggested.

17 MR MPOFU: Thank you. Now could we go to

18 day 205, page 25294, line 14. 25294.

19 CHAIRPERSON: What line?

20 MR MPOFU: 14. Ja, there Ms Pillay was

21 cross-examining Colonel Vermaak. She says "Now in this

22 Commission we've seen" –

23 CHAIRPERSON: I think she was leading his

24 evidence actually. She didn't cross-examine him.

25 MR MPOFU: Yes.

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1 CHAIRPERSON: But we won't go there now.

2 MR MPOFU: Yes, we won't. That's

3 correct, yes. It is a peculiar circumstance, yes. She

4 says, "Now in this Commission we've seen a number of

5 photographs of the Oryx flying quite low. Was that your

6 experience of what transpired on that day?" and he says

7 yes. Now you can accept that the Oryx is the helicopter

8 that Mr Chaskalson showed to you with the NIU members I

9 think hanging their feet outside of it, and you said you

10 saw that particular helicopter. Would you agree with

11 Colonel Vermaak that it was flying quite low, that

12 particular one that Mr Chaskalson showed you that was

13 flying quite low?

14 MR MTSHAMBA: I agree it is so.

15 MR MPOFU: And there's also evidence that

16 a Sergeant Venter threw a stun grenade – I don't know if it

17 was one or more – from one of the police helicopters. I'm

18 sorry, I'm going to ask you two questions. Firstly, do you

19 know the difference between a stun grenade and any other

20 shot, and if you do, did you see any of that happening?

21 MR MTSHAMBA: I don't know the difference

22 between stun grenade and other explosives.

23 MR MPOFU: Okay.

24 CHAIRPERSON: Mr Mpofo, my recollection

25 is it wasn't over koppie 3 where the stun grenades were

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1 thrown, it was somewhere over the veld.

2 MR MPOFU: Yes.

3 CHAIRPERSON: Presumably over people who

4 were fleeing or something, but to the west, as I

5 understand.

6 MR MPOFU: That's true, Chairperson.

7 CHAIRPERSON: But in any event, I think

8 the witness has very fairly said he can't be sure it was

9 from the helicopter –

10 MR MPOFU: Yes.

11 CHAIRPERSON: - there were shots from all

12 over the show. A helicopter was flying low, which you've

13 established, so one can quite readily understand how he

14 could have come under the impression, even if it was an

15 erroneous one, that there were shots fired from a

16 helicopter. I think you – if I may say so, you've made

17 that point.

18 MR MPOFU: Yes.

19 CHAIRPERSON: And you might want to move

20 on.

21 MR MPOFU: Yes, Chairperson, no, I accept

22 that the episode was happening somewhere else. I was

23 simply saying if he had seen that, then obviously it would

24 have played in his mind that it was continuing. But I

25 won't take it further than that, Chairperson. There was

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|---|--|
| <p style="text-align: right;">Page 35436</p> <p>1 also evidence about – or rather you were cross-examined 2 about the fact that you might have found what protester 3 number 6 was saying funny or amusing. As far as you 4 remember, were you the only person who found what he was 5 saying amusing? 6 MR MTSHAMBA: Not the only person, 7 Chairperson. If one looks at the video and listens, a 8 number of people are laughing at what he's saying there. 9 MR MPOFU: And as far as you remember 10 there must have been about nine or 10 other people who 11 spoke in that period. Was there any laughter in relation 12 to any other of the nine or so people? 13 MR MTSHAMBA: Nobody laughed. 14 MR MPOFU: And you were also cross- 15 examined about the statement made by Mr Noki about two 16 bulls and one kraal. As far as you observed, what happened 17 – and you were also, I think it was pointed out to you by 18 the Chair that in that metaphor the two bulls would have 19 been the police and the strikers. Now in your experience 20 what happened to those two bulls once the barbed wire was 21 pulled? 22 MR MTSHAMBA: What became clear that the 23 bulls, the main bull was the police there because they were 24 the people who ended up killing the people. The other 25 bulls, that is us, ran away.</p> | <p style="text-align: right;">Page 35438</p> <p>1 arrows? 2 MR MTSHAMBA: No, I remained there at the 3 mountain. 4 COMMISSIONER HEMRAJ: You see in your 5 statement in paragraph 19 you say, "Most of the people who 6 were on koppie 1 managed to escape via the path to Nkaneng, 7 but those of us who were on koppie 1 took longer and walked 8 behind the leaders, including Mr Noki. We were all 9 intending to escape into Nkaneng, like the others." Would 10 you care to explain that? 11 MR MTSHAMBA: I was on the big koppie. 12 MR MAHLANGU: As he indicates on the 13 photo. 14 MR MTSHAMBA: From there I proceeded to 15 the smaller koppie. What I explained then is that the 16 people who were on koppie 1, the small one, were the first 17 to leave in that direction drawn, that we who were on the 18 big koppie took some time because we were coming behind 19 those people. 20 COMMISSIONER HEMRAJ: Behind them from 21 koppie 1 to koppie 2? 22 MR MTSHAMBA: Yes. 23 COMMISSIONER HEMRAJ: Yes, I understand. 24 And the second thing is those persons that you say were 25 shot while they were surrendering, where were they in</p> |
| <p style="text-align: right;">Page 35437</p> <p>1 MR MPOFU: Thank you. Lastly, you 2 described your experiences and as I've already said Mr 3 Chaskalson described them as traumatic, correctly. Now 4 what we know is that you and about 250 or more others were 5 then taken to various police stations and the experiences 6 that you have described, and we also know that in the 7 following day or so the members of the police who were part 8 of those experiences, the ones that you described as having 9 been bragging around and we've heard them laughing on some 10 of the videos, were taken for counselling. Were you taken 11 for counselling for your trauma? 12 MR MTSHAMBA: We were not subjected to 13 any counselling. 14 MR MPOFU: Okay, thank you, Chairperson. 15 CHAIRPERSON: Thank you, Mr Mpofu. We'll 16 now take the – oh sorry, before we take the adjournment, 17 Adv Hemraj wanted to ask some questions. 18 COMMISSIONER HEMRAJ: Mr Mtshamba, would 19 you please look at NNNN7? Could we have it up on the 20 screen, please? NNNN7, please. Mr Mtshamba, do you recall 21 indicating that that was the path that the group that was 22 sitting in the front took? 23 MR MTSHAMBA: Yes, I do, Ma'am. 24 COMMISSIONER HEMRAJ: Did you also walk 25 along the path, that path that you've indicated by the</p> | <p style="text-align: right;">Page 35439</p> <p>1 relation to you on koppie 3? 2 MR MTSHAMBA: We were at the same place, 3 just standing together. 4 COMMISSIONER HEMRAJ: So were they in 5 front of you, those of them who got shot while they were 6 surrendering? 7 MR MTSHAMBA: They were in front of me, 8 yes. 9 COMMISSIONER HEMRAJ: And how many of 10 them did you see getting shot while they were surrendering 11 with their arms up? 12 MR MTSHAMBA: I said the first one, that 13 was the one shot in the hand and then shot in the stomach 14 and the leg, the one was shot in the region of the head. 15 COMMISSIONER HEMRAJ: So would you say 16 that you only saw two people getting shot in front of you? 17 MR MTSHAMBA: Yes, Ma'am. 18 COMMISSIONER HEMRAJ: Thank you, Mr 19 Mtshamba. 20 CHAIRPERSON: The witness will be excused 21 – yes, Mr Mpofu? 22 MR MPOFU: I wanted to ask a question 23 that arose, one question. 24 CHAIRPERSON: What's the question? 25 MR MPOFU: It's in relation to the –</p> |

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1 well, I ask it and if it's disallowed –

2 CHAIRPERSON: No, no, no, you're asking

3 permission to ask a question –

4 MR MPOFU: Yes.

5 CHAIRPERSON: - which arises. You've got

6 to put it to me first and I will then –

7 MR MPOFU: Isn't it easier for me to put

8 the question, you can disallow it still? Or do I need to

9 explain it to you and then to the witness?

10 CHAIRPERSON: Just put the question to

11 me –

12 MR MPOFU: Ja.

13 CHAIRPERSON: Put the question and then

14 if I think it arises I'll allow you to ask it. [Microphone

15 off, inaudible] I won't.

16 MR MPOFU: It's about the visibility of

17 the place where the shootout, or shooting –

18 CHAIRPERSON: That's an appropriate

19 question. You can ask it.

20 MR MPOFU: Yes, thank you, Chairperson.

21 Mr Mtshamba, you heard there was a – well, it was not a

22 debate, a discussion that we had with the Chair where we

23 agreed that we will go and do an inspection in loco, and

24 having been there so many times I have certain views which

25 I will point out when we do that inspection in loco. But

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1 the question I want to put to you is if one is standing

2 somewhere in the vicinity of koppie 2, as you say you were

3 standing on top of the rocks which are there.

4 [10:55] MR MPOFU: Would something that is

5 happening along the path or near the path to Nkaneng be

6 clearly visible or not?

7 MR MTSHAMBA: It's very clear there, it's

8 very clear, Sir.

9 MR MPOFU: Thank you, Chairperson.

10 CHAIRPERSON: We'll take the short

11 adjournment now, a quarter of an hour. The witness is

12 excused on the basis that if it's necessary for you to come

13 back, you'll come back when we ask you to without having to

14 serve a subpoena upon you. If you're prepared to give that

15 undertaking you'll be excused. I take it you are prepared

16 to give the undertaking.

17 MR MTSHAMBA: I understand, I give it.

18 CHAIRPERSON: Thank you, you'll be

19 excused, thank you. We'll now take a short comfort break,

20 a quarter of an hour.

21 [COMMISSION ADJOURNS COMMISSION RESUMES]

22 [11:21] CHAIRPERSON: The Commission resumes.

23 I'm sorry it's a little bit later than I said we would, but

24 we had some housekeeping matters to attend to, as is often

25 the case. Mr Budlender, I understood you wanted to say

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1 something before the witness –

2 MR BUDLENDER SC: Chair, there are

3 certain matters which I wanted to raise, but I've had a

4 discussion with my colleague Mr Semenya and we've agreed to

5 stand it over until Wednesday and see what progress we

6 make. So –

7 CHAIRPERSON: It may be unnecessary for

8 you to raise it –

9 MR BUDLENDER SC: In which case it may be

10 unnecessary, yes.

11 CHAIRPERSON: I see. Alright, thank you.

12 Yes, Mr Mpofo.

13 MR MPOFU: Thank you, Chairperson.

14 CHAIRPERSON: We have time allocations,

15 do we not, Mr Wesley? I think you should announce them now

16 for the benefit of the parties.

17 MR WESLEY: Chair yes, thank you very

18 much. Chair, in chief - the time allocations are as

19 follows. In chief it's three hours. Then the

20 Lepaaku/Baloyi families 20 minutes, Lonmin have two hours,

21 the Monene family 40 minutes, SAPS two hours, evidence

22 leaders an hour and a half, and Mr Ramphile for Mr Mabebe

23 and Mr Mabelane's families 45 minutes, re-examination then

24 another 30 minutes.

25 CHAIRPERSON: Thank you. Yes, Mr Mpofo.

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1 MR MPOFU: Chairperson yes, I'd like to

2 find out on what basis SAPS was allocated more time than

3 what they asked for, which has not –

4 CHAIRPERSON: I looked at their list of

5 topics and came to the conclusion they couldn't cover them

6 in the time they asked for.

7 MR MPOFU: Pardon?

8 CHAIRPERSON: I looked at their list of

9 copies and came to the conclusion –

10 MR MPOFU: Okay.

11 CHAIRPERSON: - that it was an

12 unrealistic request.

13 MR MPOFU: Thank you, Chairperson.

14 CHAIRPERSON: [Microphone off, inaudible]

15 MR MPOFU: In 90 minutes, ja.

16 CHAIRPERSON: Sorry, it wasn't on record.

17 They had a whole list of things, things they wanted to

18 show, documents they want to put –

19 MR MPOFU: Yes.

20 CHAIRPERSON: I didn't think there was

21 any chance of them doing it, so rather deal with it in

22 advance than have a big fight later as to whether I should

23 give them an extension.

24 MR MPOFU: Thank you very much,

25 Chairperson. Chairperson, I call my next witness, Mr

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1 Xolani Nzuza.

2 CHAIRPERSON: Would you please swear him

3 – ask him first if he's prepared to take the oath,

4 alternatively to affirm, and then either swear him in or

5 administer the affirmation to him.

6 MR NZUZA: No objection to taking the

7 oath, Chairperson.

8 CHAIRPERSON: Will you please stand?

9 XOLANI NZUZA: [d.s.s. through

10 interpreter]

11 MR MAHLANGU: Sworn in, Chairperson.

12 CHAIRPERSON: Thank you. Do you want to

13 do some housekeeping before we hear the evidence of the

14 witness actually? I see the original witness statement is

15 exhibit HHH21.

16 MR MPOFU: Yes, the original statement,

17 yes. And then maybe Chairperson, there's a supplementary

18 statement which we could make it 21.2, or we could give a

19 new exhibit. I'm in your hands.

20 CHAIRPERSON: I must say I had a problem

21 with certain parts of the supplementary statement that seem

22 to me to include some matters which might well be

23 inadmissible, but I suppose subject to that, that there may

24 be objections to certain passages in it –

25 MR MPOFU: I'm sure there will be now,

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1 but can we label it –

2 CHAIRPERSON: Yes, yes.

3 MR MPOFU: - for now.

4 CHAIRPERSON: So what should we call it?

5 The new letter series is –

6 MR MPOFU: P.

7 CHAIRPERSON: We won't use O, shall we?

8 MR MPOFU: P.

9 CHAIRPERSON: P. Alright, so we'll make

10 the supplementary statement PPPP –

11 MR MPOFU: 1.

12 CHAIRPERSON: Yes, PPPP1.

13 MR MPOFU: Yes.

14 CHAIRPERSON: That's correct.

15 Supplementary statement by witness, and there's an IPID

16 statement as well, is there not? We've also got an IPID

17 statement that the witness made –

18 MR MPOFU: No –

19 CHAIRPERSON: Are you going to put that

20 in or are you going to leave it to someone to put it in, in

21 cross-examination?

22 MR MPOFU: I don't have it. I don't have

23 it, Chairperson.

24 CHAIRPERSON: Alright, well then you

25 won't put it in then. Okay, anything else you want to put

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1 in, in examination-in-chief? I'm rather stressed to hear

2 that you haven't got the IPID statement because –

3 MR MPOFU: Yes, so am I, Chairperson.

4 CHAIRPERSON: Well, obviously – I wonder

5 whether to be fair to you, whether it wouldn't be

6 appropriate for us to allow you to see the IPID statement

7 first –

8 MR MPOFU: And canvass it –

9 CHAIRPERSON: I must confess, I haven't

10 studied it recently, so I'm not sure whether there's

11 anything in it that will be a surprise –

12 MR MPOFU: Thank you.

13 CHAIRPERSON: - but just in case –

14 MR MPOFU: I appreciate that.

15 CHAIRPERSON: - to be fair to you, if I

16 was counsel I wouldn't like to have to lead a witness

17 knowing that there's an IPID statement floating around that

18 I haven't seen. So shall we adjourn shortly, give you an

19 opportunity –

20 MR MPOFU: A few minutes.

21 CHAIRPERSON: It may be that it's a non-

22 event, the statement, but you must satisfy yourself about

23 that.

24 MR MPOFU: Thank you, Chairperson. Thank

25 you.

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1 CHAIRPERSON: We'll take a short

2 adjournment. Please let us know when you're ready.

3 MR MPOFU: Thank you, Chairperson.

4 [COMMISSION ADJOURNS COMMISSION RESUMES]

5 [11:46] CHAIRPERSON: The Commission resumes. I

6 understand you're now ready to commence. Is that correct,

7 Mr Mpofo?

8 MR MPOFU: That's correct, Chairperson,

9 what I do want to raise just in the context of

10 housekeeping, is that I'm ready to converse the statement

11 with the witness and there are two other statements, which

12 I will hand in due course, which one is a statement that

13 says he won't make a statement. So I'm just going to hand

14 them up for –

15 CHAIRPERSON: Sorry, so housekeeping

16 shall we give them –

17 MR MPOFU: We can mark them after.

18 CHAIRPERSON: So you're handing up PPPP2

19 and PPPP3 or do you want to make it 1.1 and 1.2?

20 MR MPOFU: Yes we can make them 1.1, 1.3.

21 We can make the original 1.1 yes with 2 and 3.

22 CHAIRPERSON: What I said hasn't been

23 recorded. So the supplementary statements that we referred

24 to before the adjournment will be PPPP1.1. Then there's

25 PPPP1.2 and a PPPP1.3.

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1 MR MPOFU: Yes.

2 CHAIRPERSON: How do we describe PPPP1.2?

3 MR MPOFU: 1.2 we can call it –

4 CHAIRPERSON: Further statement –

5 MR MPOFU: It's called – it's a warning

6 statement, it's a statement regarding interview with

7 suspect.

8 CHAIRPERSON: So we'll just call it

9 Further Statement By Witness.

10 MR MPOFU: By witness, yes.

11 CHAIRPERSON: You say it's a warning

12 statement, let's call it a Warning Statement. Warning

13 Statement By Witness dated?

14 MR MPOFU: INCAS121/10.

15 CHAIRPERSON: /10/12.

16 MR MPOFU: No.

17 CHAIRPERSON: It must 12, it's 2012

18 surely. Or is 2013? It must be 1.1 10/12.

19 MR MPOFU: And the other one is –

20 CHAIRPERSON: Sorry, what's the date of

21 the statement? So it's Warning Statement INCAS121/10/12 By

22 Witness dated –

23 MR MPOFU: No I'm sorry, Chairperson, it

24 says INCAS121/08/12. There are two CAS numbers, I think

25 the operative one is 121/08/12.

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1 CHAIRPERSON: Yes I think that's right,

2 yes okay. So it's Warning Statement INCAS121/08/12 by

3 witness dated –

4 MR MPOFU: Dated 19th October.

5 CHAIRPERSON: 19/10/2012. Thank you and

6 the PPPP1.3?

7 MR MPOFU: Is the charge sheet in –

8 CHAIRPERSON: Just give the case number.

9 Charge sheet in case so and so.

10 MR MPOFU: Case number KE, RE, sorry it's

11 RE5046/12.

12 CHAIRPERSON: Where, a magistrates court

13 or a high court or what?

14 MR MPOFU: Ga-Rankuwa magistrate's court.

15 CHAIRPERSON: Oh I see Ga-Rankuwa, so

16 it's Charge Sheet, actually Ga-Rankuwa case RE5046/12.

17 MR MPOFU: That's correct.

18 CHAIRPERSON: PPPP1.1 is Supplementary

19 Statement By Witness dated 22 August 2014.

20 MR MPOFU: That's it.

21 CHAIRPERSON: And then I've already read

22 out what the description will be or is of PPPP1.2 and

23 PPPP1.3.

24 MR MPOFU: Yes thank you very much,

25 Chair.

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1 CHAIRPERSON: Are you going to be

2 referring to the IPID statement? If so we'd better give it

3 – we'd better describe it.

4 MR MPOFU: Oh yes maybe we can make it as

5 PPPP2, Chairperson.

6 CHAIRPERSON: PPPP2 IPID Statement By

7 Witness dated?

8 MR MPOFU: 02/11/2012, Chairperson.

9 CHAIRPERSON: Dated 02/11/2012, thank

10 you. Now we've got all the housekeeping done I hope, now

11 you can start dealing with the witness.

12 MR MPOFU: Okay. Good morning Mr Nzuzza.

13 Chairperson, has the witness been sworn in?

14 CHAIRPERSON: He can be reminded he is

15 still under oath.

16 MR MPOFU: Yes.

17 CHAIRPERSON: Perhaps he can be reminded

18 that he's still under oath.

19 MR MPOFU: Thank you, Chairperson. Mr

20 Nzuzza how old are you or when were you born?

21 MR NZUZA: I was born in 1985.

22 MR MPOFU: Yes. So at the time of the

23 events that we discussed in this Commission you were about

24 27 years of age.

25 MR NZUZA: 27 yes, Sir.

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1 MR MPOFU: It's common cause that you are

2 an employee of Lonmin, what work do you do there?

3 MR NZUZA: I am a winch operator. W-I-N-

4 C-H.

5 MR MPOFU: In which division of Lonmin?

6 MR NZUZA: I'm at 4 Belt Karee.

7 MR MPOFU: Okay. When did you start

8 working for Lonmin?

9 MR NZUZA: In 2007.

10 MR MPOFU: Had you ever worked before

11 that?

12 MR NZUZA: Yes in 2006, also employed by

13 Lonmin on a contract basis.

14 MR MPOFU: Yes you were working for a

15 contractor at Lonmin?

16 MR NZUZA: Yes I was employed by a

17 contractor which was doing work for Lonmin.

18 MR MPOFU: Right and when did you come to

19 the Rustenburg area and how did that come about?

20 MR NZUZA: I went to Rustenburg for the

21 first time in 2004.

22 MR MPOFU: For what reason?

23 MR NZUZA: I had to attend school there.

24 MR MPOFU: Yes and then what happened?

25 MR NZUZA: My father called me to come

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1 and attend school where he was, but I left during my
 2 studies because of ill health.
 3 MR MPOFU: Yes what was your father doing
 4 in Rustenburg?
 5 MR NZUZA: My father was employed by the
 6 mine at Karee K3.
 7 MR MPOFU: So he was also a Lonmin
 8 employee, what work was he doing?
 9 MR NZUZA: He was an RDO.
 10 MR MPOFU: When did your father stop
 11 being a RDO?
 12 MR NZUZA: Until February of 2009 when he
 13 took his money and went back home.
 14 MR MPOFU: Right, so for the period 2007
 15 to 2009 both you and your father were RDOs or rather were
 16 working for Lonmin. He as an RDO and what work were you
 17 doing –
 18 CHAIRPERSON: He didn't work for Lonmin,
 19 the witness, he worked for a contractor who had a contract
 20 with Lonmin.
 21 MR MPOFU: No I'm talking 2007,
 22 Chairperson, that happened long before that.
 23 CHAIRPERSON: Okay, all right.
 24 MR MPOFU: For the period 2009 both you
 25 and your father were working for Lonmin, he as an RDO and

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1 you as what?
 2 MR NZUZA: When my father left the mine I
 3 was still a general worker.
 4 MR MPOFU: A general worker. Okay, all
 5 right. There was some evidence given by Mr x that you come
 6 from Dudhwa, is that correct or if it's not where do you
 7 come from? Where is your original home?
 8 MR NZUZA: I am not from Dudhwa, my home
 9 is in Sterkspruit.
 10 MR MPOFU: Sterkspruit in the Eastern
 11 Cape.
 12 MR NZUZA: Yes.
 13 MR MPOFU: On the 10th of August 2012 it's
 14 common cause that there was a meeting and a march mainly by
 15 RDOs, were you part of that?
 16 MR NZUZA: I was not there.
 17 MR MPOFU: Okay, sorry maybe I should
 18 have asked this before, but which union are you a member of
 19 and when did you join that union?
 20 MR NZUZA: I'm presently a member of AMCU
 21 from 2011, before then I was a member of NUM.
 22 MR MPOFU: When did you join NUM?
 23 MR NZUZA: In 2007, Chair.
 24 MR MPOFU: Right and can you just briefly
 25 explain to the Commission what happened and what occasion

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1 you changed unions from NUM to AMCU?
 2 MR NZUZA: What happened is that in May
 3 of 2011, the first thing was the suspension of the Karee
 4 branch. There was money, Mr Chairperson, money for shares
 5 which had to be given to the employees that was there.
 6 That was the start of the whole thing. The chairperson
 7 then said the money should be paid in cheques to the
 8 employees. It was thereafter that the regions, the eastern
 9 and the western were suspended because they were not in
 10 agreement with this, the eastern and the western. NUM
 11 wanted money to be paid into the accounts of the people to
 12 be paid in terms of their – into their bank accounts. And
 13 that it was decided the money is brought to us in cheques
 14 it would be so much that we were not worth receiving so
 15 much money. Karee said the money is ours and it had to be
 16 paid to us through cheques as it was supposed to be. That
 17 is why the Karee branch that the Chairperson and the
 18 secretary were suspended. At that time Maweto Stevens was
 19 the chairperson of Karee, his secretary was Dan. All those
 20 people are not alive anymore, they passed on. As workers
 21 we then made a decision to go to the De Costa to go and
 22 find out for what reason Steve has been suspended. It
 23 became clear that Mr De Costa did not want to give us a
 24 response, a reply. The following day there was to be the
 25 municipal elections. As workers from Karee we went to shut

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1 down the voting stations. At Marikana West whilst closing
 2 down that station the police fired shots at us. We then
 3 returned back to Marikana to the hostels.
 4 CHAIRPERSON: Mr Mpofu, the matters he's
 5 now touching on, I can understand why he wants to tell us
 6 about them, but they are of peripheral importance for us as
 7 far as the main inquiry we're engaging on, so I'd
 8 appreciate it if you'd take him quickly through it without
 9 too much detail because there's quite a lot of material
 10 you've got to cover in the time we've given you.
 11 MR MPOFU: Chairperson, I thought one of
 12 the issues you are investigating is the relationship
 13 between the two unions and why people move from the one
 14 union to another. But –
 15 CHAIRPERSON: I didn't say I was going to
 16 stop you, I said I'd be grateful if you'd deal with it
 17 fairly quickly. We know a little bit about the background,
 18 about why the Karee people in particular became involved
 19 with AMCU. We have evidence about that already.
 20 MR MPOFU: It's been covered, Chair.
 21 CHAIRPERSON: I'm not stopping you, but
 22 I'm just saying I think with this witness you can deal with
 23 lightly. If NUM want to cross-examine him on it they can.
 24 I don't want to stop you but –
 25 MR MPOFU: No I appreciate it,

| | |
|---|--|
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| <p>1 Chairperson, you're quite right. It's been led before.</p> <p>2 Okay, Mr Nzuzza, after those squabbles involving the</p> <p>3 suspension of the Karee branch and so on evidence has</p> <p>4 already been led that a large number of people,</p> <p>5 particularly in Karee changed unions to AMCU. You were one</p> <p>6 of those is that correct?</p> <p>7 CHAIRPERSON: Steven was the leader was</p> <p>8 he not?</p> <p>9 MR MPOFU: Yes.</p> <p>10 CHAIRPERSON: He was the one who</p> <p>11 effectively led a lot of people at Karee into AMCU. Isn't</p> <p>12 that correct? He was later assassinated. We've had all</p> <p>13 that evidence.</p> <p>14 MR NZUZA: No it was NUM that said we are</p> <p>15 no more its members. It wasn't Steven who said so, Chair.</p> <p>16 MR MPOFU: Okay in any event did you hold</p> <p>17 any position in AMCU?</p> <p>18 MR NZUZA: No.</p> <p>19 MR MPOFU: All right. Now you've already</p> <p>20 said that you were not involved in the activities of the</p> <p>21 10th of August.</p> <p>22 MR NZUZA: I was not there, Chairperson.</p> <p>23 MR MPOFU: But were you subsequently told</p> <p>24 of what had transpired on the 11th, on the 10th rather?</p> <p>25 [12:06] MR NZUZA: I was told.</p> | <p>1 going?</p> <p>2 MR NZUZA: When I arrived there they were</p> <p>3 standing there and there was discussion taking place.</p> <p>4 MR MPOFU: And after that where did they</p> <p>5 go?</p> <p>6 MR NZUZA: As I am saying they were</p> <p>7 discussing there. It was thereafter that they went to the</p> <p>8 mountains.</p> <p>9 MR MPOFU: To the koppie?</p> <p>10 MR NZUZA: Yes, Sir.</p> <p>11 MR MPOFU: Okay, now before we then</p> <p>12 discuss what happened once you got to the koppie, can I</p> <p>13 just take one step back. You've already said – on the 10th</p> <p>14 where were you?</p> <p>15 MR NZUZA: On the 10th I had been from</p> <p>16 nightshift, Chairperson, and I was sleeping in the house.</p> <p>17 MR MPOFU: Were you on nightshift for</p> <p>18 that week?</p> <p>19 MR NZUZA: Yes.</p> <p>20 MR MPOFU: Alright, and then on the – so</p> <p>21 you went on nightshift on the evening of the 10th, when the</p> <p>22 following day would be the 11th. Is that –</p> <p>23 MR NZUZA: Sir, I'd been doing nightshift</p> <p>24 all along as until the 10th, the evening, when I was on my</p> <p>25 way to work that I came across people along the way, that</p> |
| Page 35457 | Page 35459 |
| <p>1 MR MPOFU: Okay, now the next important</p> <p>2 date then was the 11th, and there are a number of important</p> <p>3 things that happened, the first one being the march to – or</p> <p>4 rather the meeting outside of the stadium which then</p> <p>5 decided on a march, or on the people going towards the NUM</p> <p>6 offices. Did you participate in that?</p> <p>7 MR NZUZA: I wasn't there.</p> <p>8 MR MPOFU: Right, and there's evidence</p> <p>9 that after that march people were shot, at least two people</p> <p>10 were shot and others ran away. Were you part of that?</p> <p>11 MR NZUZA: I was not there, Chairperson.</p> <p>12 MR MPOFU: Okay, at what – maybe let's</p> <p>13 start by saying – alright, no, let me ask that question and</p> <p>14 then I'll go back a little bit. At what stage, if at all,</p> <p>15 did you join the protesters and on which date?</p> <p>16 MR NZUZA: On the 11th, Chairperson.</p> <p>17 MR MPOFU: What was happening when you</p> <p>18 got there?</p> <p>19 MR NZUZA: I found the people in the</p> <p>20 vicinity of the ground which is next to the settlement at</p> <p>21 Nkaneng.</p> <p>22 MR MPOFU: Is that the protesters?</p> <p>23 MR NZUZA: Yes, Sir.</p> <p>24 MR MPOFU: Were you able to make out or</p> <p>25 see where they were going or in which direction they were</p> | <p>1 was on my way from my residence. The owner of the place</p> <p>2 where I'm staying, Sir, together with another old man are</p> <p>3 both RODs of Sotho-speaking. I heard them talking and they</p> <p>4 were saying there was no, nobody was going to work. I said</p> <p>5 to them I haven't heard about this, I am going to work.</p> <p>6 There were no buses then, Chairperson, and there's a road</p> <p>7 which leads from there to the workplace and this road goes</p> <p>8 through some forests there which was the way to Fourbelt,</p> <p>9 where I was working.</p> <p>10 Along the way I met, came across four people.</p> <p>11 They asked me where I was going to. I said to them I'm</p> <p>12 going to work. One of them happened to know me. He said</p> <p>13 "I know this person." They were not standing very close to</p> <p>14 me, a distance of about five metres they stood and spoke to</p> <p>15 me. They made me pass. I was not very far away from them;</p> <p>16 after stones were thrown at me from them I turned around</p> <p>17 and ran to the house. That's where I further heard in the</p> <p>18 house that there's nobody going to work, there would be a</p> <p>19 meeting in the stadium the following morning, result of</p> <p>20 which I woke up and then went to the meeting.</p> <p>21 MR MPOFU: Thank you. Alright, and then</p> <p>22 you've already covered what then happened on the Saturday</p> <p>23 morning until you were at the koppie with the other</p> <p>24 workers.</p> <p>25 MR NZUZA: Yes.</p> |

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1 MR MPOFU: Right, you said that there was
 2 a discussion which you overheard, after which people went
 3 to the koppie. Can you remember why people wanted to go to
 4 the koppie, or what were the contents of those discussions?
 5 MR NZUZA: They were outside the stadium
 6 because the NUM did not want them in that place. It was
 7 then decided that the mountain would be the safest place to
 8 go to where nothing would happen to them.
 9 MR MPOFU: Right, and it's also common
 10 cause that there were many people who gathered there on
 11 that day.
 12 MR NZUZA: On the 11th there were not so
 13 many.
 14 MR MPOFU: Okay, when the people gathered
 15 – okay, once the people gathered there, what then happened?
 16 MR NZUZA: You mean on the mountains?
 17 MR MPOFU: Yes, at the koppie.
 18 MR NZUZA: People were seated there,
 19 waiting to get a report as to when the employer would be
 20 able to give us the money.
 21 MR MPOFU: Right, there's also, in your
 22 statement there is evidence which you have given about –
 23 sorry, Chairperson, I forgot one housekeeping issue. The
 24 statement that you have given, the original statement
 25 HHH61 –

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1 CHAIRPERSON: HHH21.
 2 MR MPOFU: 21, I'm sorry.
 3 CHAIRPERSON: Do you want him to confirm
 4 that?
 5 MR MPOFU: Yes, sorry, Chairperson –
 6 CHAIRPERSON: I think as far as the
 7 supplementary one is concerned, regard being had to the
 8 fact that there may be some objection to certain passages –
 9 MR MPOFU: Yes.
 10 CHAIRPERSON: - it's probably best he
 11 does not confirm that at this stage, but can confirm it,
 12 you know, at the end, but you can deal with it. But
 13 certain he confirms HHH21. So that's now before us, so you
 14 don't have to go through everything in it but just
 15 highlight –
 16 MR MPOFU: No, simply just that he has
 17 signed it and it's his statement.
 18 CHAIRPERSON: [Microphone off, inaudible]
 19 MR MPOFU: Ja, the statements that you
 20 have made and –
 21 CHAIRPERSON: The copy we've got, Mr
 22 Mpofo, of HHH21 is unsigned and undated, but inasmuch as
 23 he's now confirmed the contents of it I suppose that –
 24 MR MPOFU: Yes, and that will –
 25 CHAIRPERSON: - you will lead, but is

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1 there in fact a signed copy available?
 2 MR MPOFU: Yes, my understanding is that
 3 it exists, Chairperson. Can I deal with that during the
 4 break?
 5 CHAIRPERSON: Yes, yes, you can deal with
 6 it at some stage in the future.
 7 MR MPOFU: Yes.
 8 CHAIRPERSON: Presumably the exhibit
 9 that's part of the records of the Commission should ideally
 10 be the one signed and sworn to by him.
 11 MR MPOFU: That's correct, yes.
 12 CHAIRPERSON: But for our purposes as far
 13 as receiving his evidence is concerned he's confirmed the
 14 contents. So that's before us, buttressed by the oath he
 15 took this morning.
 16 MR MPOFU: Thank you, Chairperson. Ja,
 17 Mr Nzuzza, yes, I wanted to just confirm that your statement
 18 and your supplementary statement, those – well, the
 19 supplementary statement you did sign, but the first one, is
 20 it also your statement and do you confirm its contents?
 21 MR NZUZA: I do, Sir.
 22 MR MPOFU: Yes. Now in terms of your
 23 supplementary statement –
 24 CHAIRPERSON: That's exhibit PPPP1.1.
 25 MR MPOFU: Yes, thank you, Chairperson.

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1 Paragraph 4 thereof, you have indicated that you were part
 2 of, I think you've called it a four-person delegation which
 3 was tasked to fetch an inyanga. Can you explain to the
 4 Commission how that came about?
 5 MR NZUZA: Yes.
 6 MR MPOFU: Firstly because we didn't put
 7 it in the statement, could you just tell the Chairperson
 8 the names of the other persons, those that you know?
 9 MR NZUZA: Yes, Sir.
 10 MR MPOFU: Please do.
 11 MR NZUZA: What happened on that day,
 12 Sir, is the people were already discussing there, I came
 13 then stood under a tree. There were four of us elected,
 14 Bhele, one was Magcina. I was told to take them to a
 15 certain person at Karee, a person that we were to meet
 16 there. I did not know the name of the person who was at
 17 Karee and the one who was driving the vehicle.
 18 MR MPOFU: Okay, and you also explained
 19 in your supplementary statement why you did not deal with
 20 that issue in your original statement. Can you explain
 21 that to the Chairperson?
 22 MR NZUZA: I did, Sir.
 23 MR MPOFU: Yes, why?
 24 MR NZUZA: What we did there was merely
 25 consulting an inyanga. I did not regard it as being so

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1 important that I should put it in my statement. It was
 2 done openly. I did not see the need thereof that I should
 3 put it in my statement.
 4 MR MPOFU: Yes, well there have been
 5 suggestions that the beliefs of those people who consulted
 6 an inyanga have something to do with the events that
 7 transpired which are being investigated by this Commission.
 8 Do you share that view?
 9 MR NZUZA: I don't agree with that.
 10 MR MPOFU: In any event, in your
 11 experience there was the subscription, or the belief in
 12 traditional healing, was it shared by all the people there?
 13 MR NZUZA: Not everybody. Some others
 14 believed in their prayers.
 15 MR MPOFU: Yes. So if you then felt, as
 16 you say in your statement, that this was an issue that was
 17 of no relevance to the issues being investigated, what then
 18 did you regard as the issues that caused the –
 19 CHAIRPERSON: I'm not sure that this
 20 evidence is admissible, what his views are as to what
 21 caused the killings, but I can understand these are matters
 22 you will argue but I'm not sure that he's an expert who can
 23 give opinions on the matter, but I'm just expressing a
 24 prima facie view so that you can endeavour to persuade me,
 25 if you're so minded, that this evidence coming from him is

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1 indeed admissible.
 2 MR MPOFU: Well then, Chairperson, we
 3 must then let him go home because I thought the whole
 4 purpose of bringing him here is to, for someone who was
 5 involved at the level that he was involved in, is to
 6 enlighten you as to what the issues were and the connection
 7 of those issues to the issues you are investigating. If he
 8 can't help us with that then let's release him.
 9 CHAIRPERSON: He can give us a narrative
 10 of things that happened, so clearly his evidence is
 11 admissible on that. He can give evidence also on his
 12 perception of things at the time. Whether there was in
 13 fact a causal connection between the things he perceived
 14 and what happened is a matter for us to decide, assisted by
 15 argument by counsel, including you, but I'm not sure that
 16 he can go in the box and say I – who am not an expert – am
 17 of the opinion that the killings were clearly caused by
 18 such and such.
 19 MR MPOFU: No –
 20 CHAIRPERSON: I don't believe he can go
 21 that far, but he can go some of the way in the way I've
 22 indicated to you.
 23 MR MPOFU: No, no, Chairperson, I'm not
 24 asking him for a legal opinion, obviously. This is in
 25 essence just like police witnesses have said the belief in

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1 traditional medicine caused them to act in a particular
 2 way, you've heard all the stories about how they thought
 3 they were invisible and so on. I don't see how he cannot
 4 now be –
 5 CHAIRPERSON: I haven't got a problem
 6 with his answering that evidence. My complaint, if I can
 7 call it that, my concern, a perhaps more accurate word, was
 8 caused by the opening words of paragraph 5 of his
 9 supplementary statement, "In my humble view the massacre
 10 was clearly caused by," and that seemed to me to go beyond
 11 the scope of an ordinary witness. But certainly the
 12 evidence that you're now proposing to deal with is of a
 13 more limited nature. I've got no problem with that –
 14 MR MPOFU: Thank you.
 15 CHAIRPERSON: - from an admissibility
 16 point of view.
 17 MR MPOFU: Thank you, Chairperson. Okay,
 18 right, what do you think were the causes of the massacre,
 19 taking away the humility of your view?
 20 CHAIRPERSON: No, I wouldn't use the word
 21 "massacre," which I've indicated previously is a word which
 22 presupposes a finding which we may make at the end, but we
 23 may not make. So I suggest you stick to tragedy or
 24 killings.
 25 MR MPOFU: No –

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1 CHAIRPERSON: It will save time.
 2 MR MPOFU: No, Chairperson, I'm not –
 3 CHAIRPERSON: I've given a ruling to that
 4 effect –
 5 MR MPOFU: It's not me. Well, I'm using
 6 the word that the witness uses in his statement,
 7 "massacre." Or I must change his statement now?
 8 CHAIRPERSON: Well, his statement, yes,
 9 change it, he'll probably settle the statement anyway.
 10 Let's confine the evidence before us to the language that
 11 I've suggested. It won't prejudice you because if at the
 12 end of the day we are satisfied that the police were not
 13 justified in doing what they do, the description "massacre"
 14 will be appropriate.
 15 MR MPOFU: No, that's fine, I understand
 16 that, but are you saying I must not use the word he uses in
 17 his statement? Or I must change it?
 18 CHAIRPERSON: Yes.
 19 MR MPOFU: To what?
 20 CHAIRPERSON: Killings, tragedy.
 21 MR MPOFU: Ja, so in your – well, let's
 22 forget about humble, but in your view what caused the
 23 killings, or tragedy?
 24 MR SEMENYA SC: Shall we raise the same
 25 objection?

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1 CHAIRPERSON: [Microphone off, inaudible]
 2 MR SEMENYA SC: We raise the same
 3 objection.
 4 [12:26] The witness cannot offer an opinion particularly
 5 on a point directly to be determined by the Commission.
 6 That is precisely why we have the Commission. It's a
 7 conclusion which must be drawn by this Commission having
 8 heard the evidence and arguments.
 9 CHAIRPERSON: Yes, Mr Mpofu, I think you
 10 can solve by using some other phrase. My perception of
 11 things was what contributed to the killings were the
 12 following, events or something like that.
 13 MR MPOFU: Yes thank you, Chairperson.
 14 MR BHAM SC: Sorry, Mr Chairperson,
 15 before we go on. Again I'm not going to object on every
 16 occasion I just want to note that there are a number of
 17 instances here where the witness expresses opinions in his
 18 statement on matters which are directly within the remote
 19 of the Commission to make findings on. Whether the
 20 evidence goes in or not I'm not going to make an issue of,
 21 but I just want to place on record that the mere that I'm
 22 not going to object on every occasion mustn't be taken as
 23 an acceptance that this witness is entitled to express
 24 opinions you meant to make findings on.
 25 SPEAKER: Chair, on behalf of NUM I make

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1 common cause with the sentiment expressed by my learned
 2 colleague, Mr Bham, Chair.
 3 MR MPOFU: I think that almost answers
 4 the question.
 5 CHAIRPERSON: Mr Mpofu, opinions
 6 expressed by a non-expert are not admissible, but I've
 7 suggested to you a way of getting the evidence before which
 8 hopefully will meet the objections and if it doesn't meet
 9 the objections then the the objection has to be overruled.
 10 MR MPOFU: Yes thanks, Chairperson. Mr
 11 Nzuzza, as a person who we'll establish later was one of the
 12 leaders can you assist the Commission with the perceptions
 13 of what you thought were factors that constituted to the
 14 disaster that occurred?
 15 MR NZUZA: I think I would be able to
 16 assist, yes.
 17 MR MPOFU: Please assist.
 18 MR NZUZA: The cause of all what happened
 19 there is the lack of care by Lonmin and they after call us
 20 criminals. If that word had not been used this thing would
 21 not have happened, Chairperson because Lonmin said to the
 22 police, I do not know who those people are, those are just
 23 criminals.
 24 CHAIRPERSON: It's not something you know
 25 about directly from your own knowledge is it? It's

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1 evidence you heard here at the Commission. Now you are
 2 supposed to be confined to what you saw yourself and know
 3 yourself.
 4 MR NZUZA: I did not hear it in the
 5 Commission for the first time, Chairperson. It is Lonmin
 6 firstly which told the police that we are murderers.
 7 CHAIRPERSON: Were you present when
 8 Lonmin told that to the police?
 9 MR NZUZA: The police came to us on the
 10 mountain, it wasn't Lonmin, but the police.
 11 CHAIRPERSON: No I said were you present
 12 when Lonmin told the police as you say they did? That the
 13 people who were on the koppie were faceless criminals.
 14 MR NZUZA: I was not present,
 15 Chairperson, but this is what they said to Mr Mathunjwa as
 16 well. They said those people on the mountain are not known
 17 to us, they are killers.
 18 CHAIRPERSON: And you weren't present
 19 when they told that to Mr Mathunjwa either were you?
 20 MR NZUZA: I wasn't present, but he came
 21 and told us.
 22 MR MPOFU: Oh you've already answered.
 23 Mathunjwa did relate to you that's what they said about
 24 you.
 25 CHAIRPERSON: It's still hearsay even if

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1 it was said by Mr Mathunjwa.
 2 MR MPOFU: That may well be if you want
 3 to be strict, but the fact is that it came to his
 4 knowledge. That's the point I'm establishing.
 5 CHAIRPERSON: Mr Bham you want to say
 6 something.
 7 MR BHAM SC: I want to raise the point
 8 again and sooner or later, Mr Chairman, you're going to
 9 have to deal with it. You start off with evidence being
 10 given about opinions by this witness on causal connection,
 11 matters you've got to find out. You now have a basis laid
 12 for those opinions which is completely hearsay. I don't
 13 know where we're going to go to, but the objection just
 14 gets stronger, the admissibility becomes more obvious and
 15 at some point you're going to have to rule on it. But you
 16 start off with opinions which are inadmissible, you go to
 17 hearsay evidence to found that opinion –
 18 CHAIRPERSON: You're applying –
 19 MR BHAM SC: If I may finish, Mr
 20 Chairman.
 21 CHAIRPERSON: You're applying with my
 22 heffers, Mr Bham.
 23 MR BHAM SC: Pardon.
 24 CHAIRPERSON: You're applying with my
 25 heffers. But we tried to help Mr Mpofu because he wants to

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1 lead evidence from the witness which will assist and he's
 2 got some shoals that he's got to get his craft past without
 3 colliding with the rules of evidence, but I'm sure he'll do
 4 his best. Mr Mpofo –
 5 MR BHAM SC: May I just finish, Mr
 6 Chairman. You know you may take the view that you're
 7 trying to assist him to get evidence before the Commission,
 8 at some point you're going to make determinations on what's
 9 relevant and what's not relevant. Otherwise we're going to
 10 be sitting here and we're faced with a dilemma. You allow
 11 the evidence, do we sit now and engage in cross-examination
 12 on matters that are inadmissible, but you've allowed to be
 13 led. Do we just leave it at that and wait for argument?
 14 CHAIRPERSON: I'm sorry, Mr Bham, I
 15 thought I wasn't allowing the evidence. I was telling Mr
 16 Mpofo this evidence is inadmissible. I said this evidence
 17 is hearsay, this evidence is opinion evidence by a non-
 18 expert, I indicated all that and suggested to him he
 19 rather try to take the case further regard being had to
 20 those points. So I wasn't ignoring the objection, in fact
 21 I was raising it myself, but I'm fortified by the fact that
 22 you take it as well, but anyway Mr Mpofo, let's carry on.
 23 MR MPOFU: Thank you, Chairperson. And
 24 Chairperson, without giving a concurring judgment which I
 25 know is not allowed, we mustn't lose sight of the fact that

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1 this is a Commission, it's not a court of law and although
 2 - and Mr Madlanga made the point eloquently when we were in
 3 - more eloquently than me, that in a commission,
 4 Chairperson, yes of course one has to be guided by the
 5 rules of evidence, but there is a fair amount of latitude
 6 and discretion.
 7 CHAIRPERSON: I know that, but opinions
 8 by non-experts I'm not prepared to take aboard by way of
 9 latitude. But carry on, let him give his evidence. Try to
 10 avoid the problems that have been raised but you're not
 11 without substance.
 12 MR MPOFU: Yes. No that problem has
 13 already been avoided. We were now talking about hearsay,
 14 but anyway the point that I was just establishing, I think
 15 it was covered in your previous answer was the accepting
 16 that you were not present when this was said Mr Mathunjwa.
 17 Did Mr Mathunjwa relay it to you?
 18 CHAIRPERSON: It still doesn't prevent it
 19 being hearsay, Mr Mpofo. You just carry on –
 20 MR MPOFU: I'm not carrying on hearsay
 21 problems, Chairperson, with the greatest respect. All I'm
 22 doing is to establish what was operating in the mind of
 23 this person. Whether it came by means of so-called
 24 hearsay, those are rude technicalities, I just want to know
 25 what was in his mind.

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1 CHAIRPERSON: Let me cut it short. The
 2 fact that Mr Mathunjwa told you that Lonmin had accused you
 3 people on the koppie of being criminals did that cause you
 4 to do anything or refrained from doing something you
 5 otherwise would have done?
 6 MR NZUZA: The question is not very clear
 7 to me, Chairperson.
 8 MR MPOFU: Chairperson, with respect if I
 9 may, you know, honestly we can't operate like this. By
 10 changing the rules depending on which party is raising
 11 something. This has happened for too long in this
 12 Commission. We've had countless people here, coming to
 13 tell us that the people at the koppie were saying they're
 14 going to burn offices. Nobody said were you present when
 15 the person did that because this is a commission. We are
 16 trying to get, you know, evidence, as much as we can.
 17 Obviously the weight of what was said about burning
 18 offices, if it was hearsay, which it is, is something that
 19 you will assess. But if we're going to constrain and
 20 constrict ourselves with technicalities then we might as
 21 well, as I said, release all these witnesses.
 22 CHAIRPERSON: It's not a technicality.
 23 The evidence about burning and so on was direct evidence.
 24 MR MPOFU: From who? Who was present
 25 when that was said, Chairperson?

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1 CHAIRPERSON: There was evidence –
 2 MR MPOFU: Did Mr Motlogeloa attend that
 3 meeting himself and then hear that or did he say to you
 4 there was a rumour?
 5 CHAIRPERSON: In that regard the evidence
 6 was relevant not because it was true what was said, but
 7 because the actions that were taken by him and his
 8 colleagues in response to that. But let's not get involved
 9 in rulings that have been given in the past. My concern is
 10 that we should receive evidence which may well technically
 11 be hearsay, but we should receive evidence whether
 12 technically hearsay or not, which will assist us in taking
 13 the matter forward. And the fact that Lonmin told the
 14 police and told Mr Mathunjwa that the people on the koppie
 15 were criminals would only be relevant if it caused the
 16 people on the koppie to behave in a particular way or to
 17 refrain from a particular action which was the question I
 18 asked. Let me ask my question again. Did what Mr
 19 Mathunjwa told you, namely, that Lonmin had said that you
 20 people on the koppie were criminals did that cause you to
 21 act in a particular way or to refrain from acting in a
 22 particular way?
 23 MR NZUZA: We did nothing, Chairperson,
 24 we just remained on the mountain.
 25 MR MPOFU: Ja, and did Mr Mathunjwa tell

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1 you that you were called criminals as a reason why Lonmin
 2 would not talk to you?
 3 MR NZUZA: That's what was said, yes.
 4 MR MPOFU: Yes and what impact did that
 5 refusal whether it was because you were criminals or
 6 whatever did the refusal of Lonmin to talk to you, in your
 7 perception what impact did it have on the tragedy that
 8 happened?
 9 CHAIRPERSON: That's the question I've
 10 already disallowed. I won't allow that question. Move on,
 11 move onto another one.
 12 MR MPOFU: All right, well me ask you
 13 this way then. What was the – or what would have happened
 14 if Lonmin had not refused to talk to you because you are
 15 criminals?
 16 MR NZUZA: If Lonmin had come to speak to
 17 us, Chairperson, as we had requested, we would have gone
 18 back to work.
 19 MR MPOFU: Thank you. You heard the
 20 evidence of Mr X particularly when it concerns you.
 21 MR NZUZA: I did, Sir.
 22 MR MPOFU: One of things that Mr X says
 23 that you did was to give a report back about the happenings
 24 on the 12th, did you do that? More specifically the
 25 killings of the security guards.

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1 MR NZUZA: That was a lie, Chairperson.
 2 MR MPOFU: Right, okay before we go to
 3 the 12th on the 11th when did you – or did you sleep at the
 4 koppie or did you leave?
 5 MR NZUZA: I went home, went to sleep in
 6 the house.
 7 MR MPOFU: When more or less was that?
 8 MR NZUZA: I left the mountain in the
 9 region of about half past seven, went to the house.
 10 MR MPOFU: Right and – all right when you
 11 said you went to fetch – how many people came back with you
 12 from the trip to collect the Inyanga or Inyangas?
 13 MR NZUZA: There were five.
 14 MR MPOFU: And what happened to them?
 15 MR NZUZA: When I left I left together
 16 with them.
 17 MR MPOFU: Okay so that was on the 11th.
 18 MR NZUZA: That's correct.
 19 MR MPOFU: On the 12th then you said that
 20 what Mr X said about you was a lie or an untruth as it is
 21 called in the Commission.
 22 MR NZUZA: It's untrue, it is a lie.
 23 MR MPOFU: But were you present when the
 24 incident which the Commission has been told about regarding
 25 the security guards occurred?

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1 MR NZUZA: I wasn't there.
 2 MR MPOFU: When on the 12th did you get to
 3 the koppie, if at all?
 4 MR NZUZA: I did go to the mountain,
 5 Chair, and arriving there I would estimate about 12:00.
 6 MR MPOFU: Yes. Now if you arrived at
 7 that time would you have been in a position to give a
 8 report back about what had happened?
 9 MR NZUZA: I would not have had that
 10 report.
 11 MR MPOFU: And on the 12th did you stay
 12 over at the koppie and sleep there or did you go home?
 13 MR NZUZA: I slept at home.
 14 MR MPOFU: Right. On the 13th did you go
 15 to the koppie?
 16 MR NZUZA: I did, Sir.
 17 MR MPOFU: What time more or less?
 18 MR NZUZA: I arrived there around 9:00.
 19 MR MPOFU: Yes it's common cause that a
 20 group of people, of which you were a part, then broke off
 21 and went over to Karee.
 22 MR NZUZA: Yes, Sir.
 23 MR MPOFU: A group of more than 100
 24 people.
 25 MR NZUZA: Yes, Sir.

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1 MR MPOFU: Can you explain to the
 2 Commission how did it come about that you became a part of
 3 that group?
 4 MR NZUZA: What happened is that Mambush
 5 called me because he started leaving after the others
 6 started walking and then he called me and said let's go
 7 along.
 8 MR MPOFU: Yes after you joined – or
 9 maybe we should cover this aspect. Your relationship with
 10 Mambush and did you know him before the strike?
 11 MR NZUZA: I did know him, yes.
 12 MR MPOFU: How did your relationship –
 13 how could it be described and how did it develop or start?
 14 MR NZUZA: I met Mambush and the meeting
 15 happened in a soccer connection.
 16 [12:46] MR MPOFU: Alright. Okay can you explain
 17 that soccer connection?
 18 MR NZUZA: Mambush played for a team in
 19 Sterkspruit of which I was coach.
 20 MR MPOFU: No, sorry.
 21 MR NZUZA: He played for a team of which
 22 I was a coach in Sterkspruit.
 23 MR MPOFU: Where was the team based?
 24 MR NZUZA: It was a team at Karee Mine.
 25 MR MPOFU: And what was the name of the

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1 team?

2 MR NZUZA: It was known as Sterkspruit.

3 MR MPOFU: Thank you. Alright okay

4 Mambush played for a team called Sterkspruit of which you

5 were the coach?

6 MR NZUZA: Yes.

7 MR MPOFU: And so how long had you known

8 him before the strike?

9 MR NZUZA: He joined the team Sterkspruit

10 in 2011.

11 MR MPOFU: Right, okay you've testified

12 that he then asked you to join the group or come along with

13 the group that was breaking off towards Karee, on the 13th?

14 MR NZUZA: That's right.

15 MR MPOFU: What was the aim of the trip

16 to Karee?

17 MR NZUZA: We had gone to see if there

18 were workers at the shaft.

19 MR MPOFU: Right now on the way there,

20 its common cause again that you met with Lonmin security.

21 MR NZUZA: Yes, we did come across them.

22 MR MPOFU: And you were next to some

23 pipes and they were standing on a bridge near that

24 position, correct?

25 MR NZUZA: It is correct, Sir.

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1 MR MPOFU: Okay can we play, Chairman, I

2 must confess, I'm not sure if this is, my instinct feels

3 this must really be an exhibit but I'm just going to use

4 the, the [inaudible] and if it is, if it is indeed, if I'm

5 correct then I'll establish it with Ms Pillay.

6 CHAIRPERSON: Let's look at the video and

7 when Ms Pillay comes back she'll tell us if it's an exhibit

8 because that –

9 MR MPOFU: Thank you, Chairperson.

10 CHAIRPERSON: I think we have seen the

11 video on –

12 MR MPOFU: Yes.

13 CHAIRPERSON: Which one will we see?

14 MR MPOFU: I'll give it an exhibit

15 number.

16 CHAIRPERSON: Don't give it an exhibit

17 number, if, during the lunch adjournment we're going to ask

18 Ms Pillay whether –

19 MR MPOFU: To allocate –

20 CHAIRPERSON: After lunch we can then

21 give –

22 MR MPOFU: Thank you, Chairperson. In

23 the unlikely event that it is not then we'll give it an

24 exhibit number.

25 CHAIRPERSON: Yes, that's right.

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1 MR MPOFU: Thank you, Chairperson.

2 Alright, its Lonmin hard drive M2U00362 of 13 August 2012.

3 Lonmin hard drive video recorded.

4 CHAIRPERSON: After lunch we'll either

5 give it a new exhibit number or you would put on record

6 what exhibit it is.

7 MR MPOFU: Yes, thank you, Chairperson.

8 Actually just for the sake of progress even if I do it out

9 of sequence, can we just play HHH61 because this one will

10 be, its related, it comes a little bit after but I'll

11 improvise how we switch to the other one. Ja.

12 [VIDEO SHOWN]

13 CHAIRPERSON: It's stopping at 10

14 seconds, Mr Mpofu.

15 MR MPOFU: Can you just go back to let's

16 say 10:00. Yes. Mr Nzuzza, is that the group of which you

17 were a part?

18 MR NZUZA: Yes, I was amongst the group.

19 MR MPOFU: And the pipe line that we just

20 referred to, is that what can be seen there?

21 MR NZUZA: That's correct, Sir.

22 MR MPOFU: And if you look at the front

23 portion of the photograph there's a kind of structure for

24 lack of a better word, would that be part of the bridge

25 that was referred to?

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1 MR NZUZA: That's right.

2 MR MPOFU: Alright. Okay you can play

3 on.

4 [VIDEO SHOWN]

5 Okay thank you. Just pause there.

6 CHAIRPERSON: 40 seconds.

7 MR MPOFU: Yes. The video that I wanted

8 to play first was off the group while it was stationary at

9 that spot and when Mr Noki was talking. But we, this is a

10 subsequent spot where the people seem to be turning around,

11 can you explain to the Commission firstly why the group was

12 turning around?

13 MR NZUZA: Why we went back, Sir, we told

14 the Lonmin security the reason we were there. They said we

15 should go back, he would come, the security said he would

16 come back with the employer to us and he said, when we

17 turned around he said be safe.

18 MR MPOFU: Yes, evidence has been given

19 by Mr Julius Motlogeloa that the behaviour of that crowd

20 was very respectful and cooperative and very submissive,

21 would you confirm that?

22 MR NZUZA: I agree with him.

23 MR MPOFU: Right. You then, rather when

24 you were turning back as you can see on that video where

25 were you intending to go?

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1 MR NZUZA: We were going back to the
 2 mountain.
 3 MR MPOFU: Right and what happened on
 4 your way to the mountain?
 5 MR NZUZA: Something happened yes.
 6 MR MPOFU: Okay now sorry I have to do
 7 that improvisation. For the sake of completion can we just
 8 carry on for a few more seconds on this video.
 9 [VIDEO SHOWN]
 10 When people, when they did that turnaround
 11 peacefully and submissively do you know if there was any –
 12 CHAIRPERSON: We're now stopped 1:27.
 13 MR MPOFU: Yes. Were the people singing?
 14 MR NZUZA: There was singing going on
 15 yes.
 16 MR MPOFU: Right and you've already said
 17 what then happens subsequently. Can we, Chairperson, if we
 18 may then play that earlier video, the unidentified one that
 19 we'll identify during the break.
 20 CHAIRPERSON: You've still got about a
 21 minute to 1, shouldn't we rather look at it –
 22 MR MPOFU: If we can do it now,
 23 Chairperson. It's a small point.
 24 CHAIRPERSON: I'll be guided by you.
 25 MR MPOFU: Just for completion, thank

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1 you, Chair.
 2 CHAIRPERSON: The one that you mentioned
 3 earlier?
 4 MR MPOFU: Yes, I just want to complete
 5 the loop.
 6 CHAIRPERSON: Starting at nought seconds.
 7 MR MPOFU: Yes, thank you, Chairperson.
 8 [VIDEO SHOWN]
 9 [inaudible].
 10 MR MPOFU: Yes, that's fine, Chairperson.
 11 What I really wanted to –
 12 CHAIRPERSON: I don't think we have seen
 13 that, so –
 14 MR MPOFU: We haven't, yes. So then
 15 we'll make it PPPP3, Chairperson.
 16 CHAIRPERSON: PPPP3, give me the
 17 description of it again. Lonmin hard drive -
 18 MR MPOFU: Lonmin hard drive distribution
 19 video recording.
 20 CHAIRPERSON: You're talking very fast.
 21 Lonmin hard drive –
 22 MR MPOFU: I'm sorry.
 23 CHAIRPERSON: Distribution.
 24 MR MPOFU: Video recordings 13-08-2012
 25 M2U00 -

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1 CHAIRPERSON: 13-08-2012.
 2 MR MPOFU: Yes, Chairperson.
 3 CHAIRPERSON: The next?
 4 MR MPOFU: M2U.
 5 CHAIRPERSON: NMU?
 6 MR MPOFU: M for Mary.
 7 CHAIRPERSON: Yes.
 8 MR MPOFU: 2 for, number 2.
 9 CHAIRPERSON: Oh the number, the numeral.
 10 MR MPOFU: Yes. U00362 and we can label,
 11 if I can ask the question so that I'm not suggesting the
 12 answer. Who was the gentleman who was talking at the, in
 13 that tape?
 14 MR NZUZA: Amongst us?
 15 MR MPOFU: Yes.
 16 MR NZUZA: The protestors, it was
 17 Mambush.
 18 MR MPOFU: Yes, the description then,
 19 Chairperson, then would be Noki discussion with Lonmin
 20 security.
 21 MR NZUZA: That is correct.
 22 MR MPOFU: And there was another voice
 23 apart from the person who was talking, who was that?
 24 MR NZUZA: Talking from the security side
 25 or from the protestor's side?

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1 MR MPOFU: Not from the protestors, Sir.
 2 MR NZUZA: The person who is heard
 3 speaking in the Fanagalo language that is the person who
 4 was up there, the security officer.
 5 MR MPOFU: Okay and then before we break
 6 for lunch can you just, in a nutshell tell the Commission
 7 what Mr Noki was saying and what the security people were
 8 saying as you remember it.
 9 MR NZUZA: What Noki said to them was
 10 that we have come here to stop the workers from working
 11 because we want them all on the mountain, what we want is,
 12 we want money, we are demanding 12 500 from the employer
 13 and we would like the employer to come and tell us when we
 14 would get this money. That is what Noki said.
 15 MR MPOFU: Yes, and its, I think it is
 16 common cause that the security said there were no people
 17 working there, what else did they say to you?
 18 MR NZUZA: Yes, he said there were no
 19 workers working there and he's pleading with us to please
 20 go back.
 21 MR MPOFU: Which you've already described
 22 you complied with that.
 23 MR NZUZA: That we did, yes.
 24 MR MPOFU: Very respectfully, very
 25 submissively and very cooperatively.

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1 MR NZUZA: That's right.
 2 MR MPOFU: Thank you, Chairperson, we can
 3 take the lunch.
 4 CHAIRPERSON: We'll resume at 10 to 2.
 5 MR MPOFU: Thank you, Chairperson.
 6 [COMMISSION ADJOURNS COMMISSION RESUMES]
 7 [14:02] CHAIRPERSON: The Commission resumes.
 8 I'm sorry the demands of housekeeping that had to be done
 9 in the interval took us a bit longer than we thought. Mr
 10 Mpofo.
 11 MR MPOFU: Thank you, Chairperson.
 12 CHAIRPERSON: Would you please remind the
 13 witness that he's still under oath?
 14 XOLANI NZUZA: [s.u.o. through
 15 interpreter]
 16 MR GOIRANA: Witness still under oath.
 17 EXAMINATION BY MR MPOFU (CONTD.): Thank
 18 you, Chairperson. Mr Nzuzza, just to round off the point
 19 that we were busy with, without playing the video again,
 20 can you confirm that on both videos, in other words while
 21 the people were seated down and when they were turning back
 22 the strikers were singing and clicking their weapons
 23 together?
 24 MR NZUZA: Yes, I do.
 25 MR MPOFU: Right, now you were at the

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1 stage where you say you then met up with General Mzembe
 2 somewhere on your way to the koppie.
 3 MR NZUZA: Yes.
 4 MR MPOFU: Okay, now it's common cause
 5 from witnesses such as General Mzembe and Merafe and so on,
 6 and there's a transcript to the effect that the strikers
 7 said, many times said that they were not fighting, all they
 8 needed was for the employer, that the weapons should be
 9 collected from the mountain, and so on. So I'm not going
 10 to play those parts. I'll only deal with what you – it's
 11 also common cause that you spoke, you were one of the
 12 people who spoke while in that interchange with General
 13 Mzembe.
 14 MR NZUZA: That is correct.
 15 MR MPOFU: Chairperson, if we could play
 16 Z1. I think - my notes have been taken by the operators.
 17 I think it starts at about 21:00, the relevant portion
 18 where the witness is speaking, Chairperson.
 19 [VIDEO SHOWN]
 20 CHAIRPERSON: Sorry, it starts at about
 21 21:38.
 22 MR MPOFU: 21:38, yes. Go back a little
 23 bit. Okay, Chairperson, for two reasons, one –
 24 CHAIRPERSON: We've gone back to 21:31.
 25 You want to start at 21:31?

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1 MR MPOFU: We can start there, yes.
 2 CHAIRPERSON: Okay.
 3 MR MPOFU: For two reasons, Chairperson,
 4 because there is a transcript of this which is of
 5 questionable quality, but we can deal with that later maybe
 6 to get a better agreed transcript among the parties. So
 7 for that reason and also just to contextualise what he was
 8 saying I will ask him after each sentence just to say for
 9 the benefit of the Commission what it is, because he was
 10 speaking in Fanagalo mostly. Thank you. Okay, it's not
 11 long, Chairperson.
 12 [VIDEO SHOWN]
 13 CHAIRPERSON: That's you, Mr Nzuzza?
 14 MR NZUZA: Yes, yes, Mr Chair.
 15 CHAIRPERSON: Now Mr Interpreter, can you
 16 interpret from Fanagalo? Can you interpret what he said?
 17 MR GOIRANA: No, unfortunately not.
 18 CHAIRPERSON: So we've got –
 19 MR MPOFU: No, that first part is in
 20 Xhosa, so the interpreter can –
 21 CHAIRPERSON: The first bit is in Xhosa,
 22 you can do that then.
 23 MR GOIRANA: Yes, Xhosa I can do.
 24 MR MPOFU: Can you interpret from where
 25 "ncelane" and "mamela."

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1 MR GOIRANA: Please listen to me,
 2 "ncelane" and "mamela," first part.
 3 MR MPOFU: Rewind a little bit. I think
 4 start again at 21:31 and then the interpreter will, I'll
 5 indicate when to stop.
 6 [VIDEO SHOWN]
 7 MR GOIRANA: "Please listen to me, let me
 8 talk and finish. Gentlemen, right now I told you that we
 9 have asked the police from the mine, they allowed us to
 10 carry these things, go back to where we were seated. They
 11 are going to the management right now, so we are asking
 12 from you just as those police from the mine, we are not
 13 fighting with anyone. They could see that we are not
 14 fighting with anyone. They also know that there are people
 15 fighting with us from Marikana West."
 16 MR MPOFU: No. [African language]
 17 MR GOIRANA: "Even those from Marikana
 18 West know that there are people fighting with us. They are
 19 asking that we be allowed to go there. There are some of
 20 the mine police who have already reached that place, that
 21 side. They are waiting for us to" –
 22 MR MPOFU: Feedback, to get –
 23 MR GOIRANA: - "to get feedback from the
 24 management to hear what he says now we are asking. We're
 25 just asking you to release us, to guard us. We are not

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1 destroying anyone's house, we are not taking anything from
 2 anyone. All we're asking is that when we reach the koppie
 3 they will arrive also there and these things that we're
 4 carrying, we'll come to you, Sir, and" –
 5 MR MPOFU: Yes, you can just rewind
 6 because there's a bit of confusion. At that point he
 7 doesn't finish that sentence and then General Mpmembe
 8 interrupts him. So it will be obvious.
 9 MR GQIRANA: "They say release us and you
 10 will guard us, destroying anyone's house or eating anything
 11 from anyone. All we're asking is that when we reach the
 12 koppie they will come and these things that we're carrying,
 13 we will come to you, Sir, please listen to me," and Mr
 14 Mpmembe is saying, "Sir, I said I do not have a problem with
 15 you. I want [inaudible]," "Sir, we are saying," then Mr
 16 Mpmembe says, "No [inaudible]" –
 17 MR MPOFU: Sorry, Chairperson, that's not
 18 clear. It's the witness who tries to interject to say
 19 "Sir, we are saying," and then the General again
 20 interrupts. He behaves like a certain counsel.
 21 CHAIRPERSON: [Microphone off, inaudible]
 22 with that, Mr Interpreter, because you're the interpreter,
 23 not Mr Mpofo, but he's making suggestions and if you adopt
 24 them –
 25 MR GQIRANA: I would agree, Mr

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1 Chairperson.
 2 CHAIRPERSON: Then they become the
 3 interpretation.
 4 MR GQIRANA: It was not clear, that.
 5 CHAIRPERSON: He hasn't been sworn in as
 6 an interpreter, you have.
 7 MR GQIRANA: Yes.
 8 MR MPOFU: Yes, you can carry on a little
 9 bit.
 10 MR GQIRANA: "We want the spears
 11 [inaudible] everything and now, if I do not get the spears
 12 I will not release you."
 13 MR MPOFU: You can carry on.
 14 [VIDEO SHOWN]
 15 Stop there.
 16 CHAIRPERSON: 23:31.
 17 MR MPOFU: Thank you, Chairperson. Now
 18 you can see the policeman who is sort of blocking the way,
 19 wearing a blue helmet, facing your direction and pointing a
 20 gun, probably a shotgun, I think it's a POP –
 21 CHAIRPERSON: Mr Mpofo, sorry, for
 22 interrupting you. He was originally blocking the way but
 23 he then moved slightly to the left –
 24 MR MPOFU: Yes, I was coming there –
 25 CHAIRPERSON: - allowing them to pass –

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1 MR MPOFU: Yes, that's exactly the point,
 2 Chairperson. Yes, he was originally blocking the way and
 3 pointing a, probably a shotgun because he's a POP person.
 4 You can see that?
 5 MR NZUZA: Yes, I see the officer.
 6 MR MPOFU: Alright, was he the only
 7 policeman who was taking that position, who was kind of
 8 blocking the way?
 9 MR NZUZA: There is a white officer on
 10 that side –
 11 MR GQIRANA: The witness indicates to his
 12 right.
 13 MR NZUZA: - who is not visible on the
 14 video.
 15 MR MPOFU: Okay, who's not visible in
 16 that picture. Okay, were there – except for those two, the
 17 white and the black policemen, were there any other members
 18 of SAPS in that area ahead of you?
 19 MR NZUZA: No, it was this one standing
 20 in front of us, we asked him to give way. When he did
 21 there were four or five other officers who appeared.
 22 MR MPOFU: Okay, can we interpose another
 23 short video, Chairperson, just for that particular point.
 24 It's probably a new one, I think it's a new exhibit. It's
 25 an Al Jazeera, short Al Jazeera footage.

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1 CHAIRPERSON: How do I describe it? It
 2 will be PPPP4 –
 3 MR MPOFU: P4, yes, Chairperson.
 4 CHAIRPERSON: How do I describe it?
 5 Video clip Al Jazeera –
 6 MR MPOFU: We can say Al Jazeera footage
 7 of 13 August 2012 near railway line, something like that.
 8 CHAIRPERSON: I've written here video
 9 clip Al Jazeera footage of action on –
 10 MR MPOFU: 13 –
 11 CHAIRPERSON: - events, I suppose, events
 12 on 13/8/2012 near the railway line.
 13 MR MPOFU: Yes, thank you, Chairperson.
 14 CHAIRPERSON: Do we start with the
 15 nought?
 16 MR MPOFU: Yes, we start with that
 17 nought.
 18 CHAIRPERSON: It's got the Al Jazeera
 19 sign in the corner, I see.
 20 [VIDEO SHOWN]
 21 Stopped after three seconds.
 22 MR MPOFU: Three seconds, yes. Okay, if
 23 you look at the smaller screen, it's more visible. At this
 24 point you can see five policemen, who do not include that
 25 one with the helmet. Can you see that, Mr Nzuza?

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1 MR NZUZA: Yes, I see that.
 2 MR MPOFU: And the policeman to the back
 3 of the camera, can you identify that person?
 4 CHAIRPERSON: You mean with his back to
 5 the camera?
 6 MR MPOFU: With his back to the camera,
 7 yes. In other words the third policeman from the left.
 8 MR NZUZA: Yes, I see him.
 9 MR MPOFU: Who is it?
 10 MR NZUZA: That is General Mpembe.
 11 MR MPOFU: Okay, carry on.
 12 [VIDEO SHOWN]
 13 Thank you. Thank you, Chairperson, that's –
 14 CHAIRPERSON: Now stopped at six –
 15 MR MPOFU: Yes.
 16 CHAIRPERSON: - six seconds.
 17 MR MPOFU: Yes, that's all, Chairperson.
 18 It's just domestic that there were a number of other
 19 policemen in front there. Now you've testified that the
 20 policeman with the blue helmet and the other one were asked
 21 to give way, and did they give way?
 22 MR NZUZA: Yes, they did.
 23 MR MPOFU: And then can you describe to
 24 the Commission what was happening as you were proceeding on
 25 that path in relation to yourselves as the group of

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1 protesters and the police contingent that was there?
 2 MR NZUZA: Can you repeat the question,
 3 please?
 4 MR MPOFU: Alright, let's play Z2 I think
 5 to make it easier, starting at 5:29.
 6 CHAIRPERSON: What exactly are we looking
 7 at? We started at 4 seconds. What are we looking at? Z2,
 8 is it?
 9 MR MPOFU: Z2, yes, Chairperson.
 10 [VIDEO SHOWN]
 11 Okay, stop.
 12 CHAIRPERSON: 1 minute 22 seconds.
 13 MR MPOFU: Yes, Mr Nzuzza, can you
 14 describe for the Commission what we observe, who is that
 15 group of people that has emerged from the left-hand side of
 16 the photo?
 17 [14:22] The workers are walking normally, on top there,
 18 he indicates to his right, those are the police. There are
 19 also other officers behind us.
 20 MR MPOFU: Okay, carry on?
 21 [VIDEO SHOWN] Okay, stop.
 22 CHAIRPERSON: 1 minute, 33 seconds,
 23 MR MPOFU: Yes, thank, Chairperson. Ja,
 24 rather, before you reached that, from where we are, if you
 25 were on the camera person's side, before you reached the

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1 group of workers there are other people who are running in
 2 a kind of parallel lines, who are those?
 3 MR NZUZA: Those running on top there,
 4 those are the police.
 5 MR MPOFU: Okay, alright, carry on.
 6 [VIDEO SHOWN]
 7 Okay, stop.
 8 CHAIRPERSON: 1 minute 46 seconds.
 9 MR MPOFU: Thank you, Chairperson, and
 10 then you can observe in front there is a Nyala that kind of
 11 cut in front of the workers, I think before they emerged
 12 and now it is cutting back in front of them. Was anything
 13 done to that Nyala?
 14 MR NZUZA: No, it just passed, the Nyala,
 15 without doing anything to it,
 16 MR MPOFU: Okay, carry on.
 17 [VIDEO SHOWN]
 18 Okay, stop.
 19 CHAIRPERSON: 2 minutes 8 seconds.
 20 MR MPOFU: Yes. We can see what is
 21 common cause is teargas being thrown into the crowd, as we
 22 can see that smoke. What I want to know from you is,
 23 before or just before that –
 24 CHAIRPERSON: I'm sorry to interrupt Mr
 25 Mpofu, was it into the crowd or in front of the crowd?

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1 MR MPOFU: In front, let's say.
 2 CHAIRPERSON: Yes.
 3 MR MPOFU: In front, yes, to the right,
 4 slightly in front to the right of the crowd but the smoke
 5 is covering, at least partially covering the crowd. What I
 6 want to know from you is, before that event was there any
 7 deviation by the strikers from their path?
 8 MR NZUZA: No, the strikers did not do
 9 anything, they were just walking normally.
 10 MR MPOFU: Okay, carry on?
 11 [VIDEO SHOWN]
 12 Yes, thank you.
 13 CHAIRPERSON: 2 minutes 27 seconds.
 14 MR MPOFU: Yes, just before that point we
 15 see, I think two or three other objects which are thrown
 16 which look like teargas but I think it is common cause. I
 17 think Mr Mahlangu dealt with this General Mpembe. What
 18 then happened at that stage?
 19 MR NZUZA: The workers are running now
 20 because the teargas was affecting us.
 21 MR MPOFU: Okay, carry on?
 22 [VIDEO SHOWN]
 23 Stop.
 24 CHAIRPERSON: 2 minutes 38 seconds.
 25 MR MPOFU: Yes, just go back about 35, I

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1 want you to observe the policeman right at the back of the
 2 photograph, there are about two towards that three, can you
 3 go back again a little bit, who are behind the crowds, can
 4 you tell us what they are doing?
 5 MR NZUZA: The police at the back are
 6 firing, shooting.
 7 MR MPOFU: Okay, carry on.
 8 CHAIRPERSON: Are you suggesting we can
 9 see that?
 10 MR MPOFU: Ja, you can, there it is.
 11 CHAIRPERSON: But these two people just
 12 passed the pole.
 13 MR MPOFU: No, there are people, as the
 14 witness said, behind the crowd, the crowd that is running
 15 off the run –
 16 CHAIRPERSON: I can understand the
 17 witness is giving an account of what he remembers happened
 18 but all I'm saying is, I'm not sure I see that, it may be
 19 my fault.
 20 MR MPOFU: Well, I do.
 21 CHAIRPERSON: But –
 22 MR MPOFU: Okay, well, I'm sure everyone
 23 else can see it, Chairperson, except SAPS of course.
 24 MR SEMENYA SC: But Chair, maybe the
 25 objection must be made, if the witness is describing what

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1 we all can see or not see is one thing, but more critical,
 2 he must tell us whether it is an observation he made on the
 3 day. Without that it is just as good as you are –
 4 CHAIRPERSON: [Microphone off, inaudible]
 5 MR MPOFU: Well, it is not a good point.
 6 That's not my question, I'm not asking him about what he
 7 saw on the day, I'm asking what does he see on this day.
 8 CHAIRPERSON: What he sees on this day is
 9 no better than what we see, so we don't have him to see, to
 10 act as eyes for us.
 11 MR MPOFU: Well, that would be the first
 12 time we'll take that approach but it is fine.
 13 CHAIRPERSON: No, maybe we would approach
 14 all the same.
 15 MR MPOFU: Ja. Okay, SAPS and the
 16 chairperson cannot see the shooting people that we can see.
 17 CHAIRPERSON: It may have been at one
 18 point someone firing but I wasn't entirely sure. It looked
 19 like someone firing. What he was firing of course is also
 20 another matter.
 21 MR MPOFU: No, no, just rewind to 2:00?
 22 CHAIRPERSON: The person who may well be
 23 firing is about 2:29, 2:30 I think.
 24 MR MPOFU: Yes.
 25 CHAIRPERSON: What he is firing isn't

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1 quite clear but he does appear to have a firearm which –
 2 MR MPOFU: Ja, it –
 3 CHAIRPERSON: - a firearm which he is
 4 doing something with.
 5 MR MPOFU: Yes, that's fine, Chairperson.
 6 [VIDEO SHOWN] Okay, stop.
 7 Oh, ja, no, I think we've already gone past this
 8 point. Carry on? [VIDEO SHOWN]
 9 Stop.
 10 CHAIRPERSON: That's 2:31.
 11 MR MPOFU: Yes. Right, can you observe
 12 about the movement of the strikers?
 13 MR NZUZA: What I notice there is that
 14 they are running towards the shacks.
 15 MR MPOFU: Okay, carry on.
 16 [VIDEO SHOWN]
 17 And now what can you observe about the workers?
 18 MR NZUZA: I see them running.
 19 MR MPOFU: And what are the policemen
 20 doing?
 21 MR NZUZA: They are also at the back,
 22 shooting.
 23 MR MPOFU: Carry on?
 24 [VIDEO SHOWN]
 25 Stop.

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1 CHAIRPERSON: 3 minutes 3 seconds.
 2 MR MPOFU: What can you observe about the
 3 strikers now?
 4 MR NZUZA: No, I can't see the workers
 5 anymore, it is only the police you can see in that veld.
 6 MR MPOFU: Okay, carry on?
 7 [VIDEO SHOWN]
 8 Stop, can you still not see the workers?
 9 MR NZUZA: Yes, the workers are appearing
 10 now from the K4 side going towards the direction of the
 11 road in which you came.
 12 MR MPOFU: What are they doing?
 13 MR NZUZA: They are running.
 14 MR MPOFU: Okay, carry on.
 15 [VIDEO SHOWN]
 16 Alright, thank you, that's all. Now what can you
 17 tell the Commission about the role that was played by the
 18 teargas that we saw being thrown onto the marching
 19 strikers?
 20 MR NZUZA: The first time they fired the
 21 teargas we ignored it, it was landing on the sides. Now
 22 what caused us to run is when the teargas fumes affected
 23 us.
 24 MR MPOFU: Yes, what did you do, I'm now
 25 talking about you personally. We've seen that the group of

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1 strikers was running away as you've described it. What did
 2 you do?
 3 MR NZUZA: I also ran.
 4 MR MPOFU: Alright, until what happened?
 5 MR NZUZA: I ran towards the gravel road,
 6 once I was crossing to the other side of the road there was
 7 someone who was shot behind me. I turned around and went
 8 to that person. I stood over the person, raised my hands
 9 and the police were coming. We took this person, ran with
 10 him, trying to hide him in the shacks or we were going to
 11 take him to the mountain but we could not, we were unable
 12 to. We put him in a shack, tried to arrange transport for
 13 him to be taken to the hospital.
 14 MR MPOFU: Alright, did you – sorry,
 15 Chairperson.
 16 CHAIRPERSON: Did you put him in a shack
 17 because in your statement you said, we were forced to leave
 18 him next to a shack. Which of those two is correct? It is
 19 your statement HHH21, paragraph 10.
 20 MR NZUZA: I don't mean inside a shack,
 21 Mr Chair, I meant to say at the squatter camp, that is
 22 where we left him, next to a shack, not inside the shack.
 23 MR MPOFU: Chairperson, I'm sorry, I
 24 think the interpretation is not clear. What the witness
 25 was saying is that, he was saying in the shacks, not in a

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1 shack effectively.
 2 CHAIRPERSON: Do you concede that, Mr
 3 Interpreter?
 4 MR GOIRANA: Yes, that is what I just
 5 corrected, Mr Chair, thanks.
 6 CHAIRPERSON: Yes, I see, thank you.
 7 MR GOIRANA: I said in the squatter camp
 8 meaning in the shacks.
 9 CHAIRPERSON: Yes, Yes.
 10 MR GOIRANA: We left him next to a shack.
 11 MR MPOFU: Thank you, Chairperson.
 12 Alright, eventually you arrived at the koppie, what did you
 13 observe?
 14 MR NZUZA: As I remained behind, when I
 15 arrived at the koppie Mambush was talking, that is when I
 16 arrived there and also explained about the people who were
 17 injured whom we had left in the shacks or at the squatter
 18 camp.
 19 MR MPOFU: Okay, I think it is also not
 20 contested that some people were taken to the hospital. It
 21 is also common cause that five people died during the
 22 commotion. Did you observe any of that happening?
 23 MR NZUZA: Can you repeat the question,
 24 please?
 25 MR MPOFU: Five, it is accepted by

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1 everyone in the Commission that five people died during
 2 that commotion. Did you observe any of that happening, of
 3 how those people died?
 4 MR NZUZA: No, I did not observe it but I
 5 heard about it here in the Commission.
 6 MR MPOFU: Alright, and then that day did
 7 you stay at the koppie or did you leave?
 8 MR NZUZA: I stayed on the koppie.
 9 MR MPOFU: Until what time?
 10 MR NZUZA: And left the koppie late.
 11 MR MPOFU: Late, okay. Anyway, by the
 12 way what, there is also evidence, you heard Mr X said that
 13 certain people, including the leaders there stayed at the
 14 koppie from the 11th until the 16th without going home or
 15 changing their clothing. Were you here when that evidence
 16 was given?
 17 MR NZUZA: I heard him say so, yes.
 18 MR MPOFU: Was that evidence true?
 19 MR NZUZA: No, that's a lie.
 20 MR MPOFU: Did you ever send a night at
 21 the koppie?
 22 MR NZUZA: No.
 23 MR MPOFU: And in relation to the second
 24 point that Mr X mentioned about the clothing, although
 25 we've observed it in the video but can you just tell the

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1 commissioner what you were wearing on the 13th?
 2 MR NZUZA: I was wearing a black lumber
 3 jacket, khaki trousers and a diamond diced T-shirt.
 4 MR MPOFU: Yes, well, as I said that's
 5 what we observed in the video and then on the 14th, what
 6 were you wearing?
 7 MR NZUZA: That same khaki trousers, a
 8 green jersey.
 9 MR MPOFU: Yes. Right, and where did you
 10 have that change of clothing, at least on the top side?
 11 MR NZUZA: At home.
 12 MR MPOFU: Alright, now on the 14th what
 13 time more or less did you arrive at the koppie?
 14 MR NZUZA: I could have arrived there
 15 just before 9.
 16 MR MPOFU: Right, again it is common
 17 cause that later that day a group of policemen including
 18 Lieutenant-Colonel McIntosh arrived at the koppie and spoke
 19 to a group of workers. Were you part of that group?
 20 MR NZUZA: Yes, I was.
 21 MR MPOFU: Alright can you play JJJ28.
 22 [14:41] JJJ28, video O29.
 23 [VIDEO SHOWN]
 24 Chairperson, it's JJJ28.
 25 CHAIRPERSON: Thank you, we stopped at 11

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1 seconds.

2 MR MPOFU: No, Chairperson – okay, no

3 maybe I –

4 CHAIRPERSON: I’m told it’s the wrong

5 video, is it?

6 MR MPOFU: No, it’s not. I just wanted –

7 there’s a question that I should have asked. I’ll put it

8 at the right time.

9 CHAIRPERSON: Alright.

10 MR MPOFU: Okay, carry on with the video,

11 sorry.

12 [VIDEO SHOWN]

13 CHAIRPERSON: 19 seconds.

14 MR MPOFU: Okay, there’s – whichever one

15 of the interpreters understands Fanagalo.

16 MR GOIRANA: He’s saying “We come here in

17 peace.”

18 MR MPOFU: Okay, who was saying that, Mr

19 Nzuzza?

20 MR NZUZA: Someone who was in one of

21 those police cars.

22 MR MPOFU: Okay, carry on.

23 [VIDEO SHOWN]

24 Right, you can observe that there are people who

25 are topless and there’s a tub there. What was going on

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1 there?

2 MR NZUZA: Those people were washing, or

3 bathing there.

4 MR MPOFU: Yes, do you know what they

5 were doing?

6 MR NZUZA: They were protecting

7 themselves.

8 MR MPOFU: Yes, how were they protecting

9 themselves, and from what?

10 MR NZUZA: As we are there, you see us

11 there, we’re going to talk to the manager to make him

12 listen to our demands, so we were being protected there in

13 these talks to the manager and also from witchcraft.

14 MR MPOFU: Okay, carry on. You can be

15 seen somewhere – just carry on, you can identify yourself

16 when you see yourself on that video.

17 [VIDEO SHOWN]

18 MR GOIRANA: - “problem without any

19 fight. You have your problems solved without a fight. We

20 want to talk to your leaders.”

21 CHAIRPERSON: Stopping at 1 minute three

22 seconds.

23 MR MPOFU: Yes, while this is going on

24 the people in the front who were half naked, well firstly

25 can you confirm that all that was happening right in front

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1 of everyone?

2 MR NZUZA: Yes.

3 MR MPOFU: And that the position of those

4 people that you can see is in front of both koppie 1 and

5 koppie 2?

6 MR NZUZA: Yes.

7 MR MPOFU: Okay, carry on.

8 [VIDEO SHOWN]

9 MR GOIRANA: “We will see to it that your

10 leaders are safe as they come forward towards us.”

11 CHAIRPERSON: Stopped at 2 minutes 6

12 seconds.

13 MR MPOFU: Ja, well two things; one is

14 did everybody participate in the, what you call the

15 protection activities that were carrying on there?

16 MR NZUZA: No.

17 MR MPOFU: What did the majority of the

18 people do that we can see on the video?

19 MR NZUZA: Most of them believed in

20 prayers, as you see them sitting there at the back, or one,

21 whoever felt like going in front, believing in what was

22 taking place in front there, they would go.

23 MR MPOFU: Yes, and what was happening

24 there, was it a secret?

25 MR NZUZA: It was not a secret.

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1 MR MPOFU: And could the policemen who

2 were talking observe and see it, as we hear them talking to

3 you in Fanagalo?

4 MR NZUZA: They could see it.

5 MR MPOFU: Did they ever say that you

6 should stop doing the rituals that you believed in?

7 MR NZUZA: No, they did not say so.

8 MR MPOFU: Did they ever indicate that

9 they could observe anything wrong with people observing

10 their rituals?

11 MR NZUZA: They never said any of those

12 things.

13 MR MPOFU: Yes, and then the second

14 portion is the person who’s [inaudible] that we heard

15 there, wearing a green top, who is that person?

16 MR NZUZA: That is me.

17 MR MPOFU: Okay, let’s carry on. Maybe

18 we can see your head there.

19 [VIDEO SHOWN]

20 CHAIRPERSON: 2:39.

21 MR MPOFU: The person who is in front of

22 that crowd is Mr Noki. I don’t think that’s contested.

23 Can you confirm that?

24 MR NZUZA: I do.

25 MR MPOFU: Right, okay, now just briefly

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1 describe to the – this is the first encounter, as it were,
 2 between yourselves and the police. What was happening on
 3 this occasion, apart from the rituals that we've spoken
 4 about?
 5 MR NZUZA: Can you repeat the question,
 6 please?
 7 MR MPOFU: I was just saying can you just
 8 briefly capture for the Commission what was said and how
 9 that first encounter with the police happened, with the
 10 police and the group of leaders.
 11 MR NZUZA: What was happening on this
 12 video that we see now?
 13 MR MPOFU: Yes, on the video and
 14 thereafter, just what happened between the two groups.
 15 MR NZUZA: There's one thing that was
 16 happening there, the police would talk to us, to the
 17 workers, and the workers would sit and listen and basically
 18 what the police were saying is that there should be peace
 19 whilst we are there.
 20 MR MPOFU: Okay, and did you convey any
 21 message to them?
 22 MR NZUZA: Yes, we did.
 23 MR MPOFU: Yes, what was it?
 24 MR NZUZA: We said to the police as they
 25 say we should talk to each other, all we're asking from

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1 them is to bring the employer to us.
 2 MR MPOFU: Okay.
 3 MR NZUZA: That is what we told the
 4 police and they said they will go and get the employer.
 5 MR MPOFU: Okay, how did those talks end
 6 on that day?
 7 MR NZUZA: On the 14th?
 8 MR MPOFU: Yes, on the 14th.
 9 MR NZUZA: We sat down and the police
 10 stood on the other side.
 11 MR MPOFU: Okay. Then later on the 14th
 12 there is evidence that the body of Mr Twala, or a body –
 13 you might not have known the person's name – was found near
 14 the koppie. Do you remember that?
 15 MR NZUZA: I remember that.
 16 MR MPOFU: Mr X says you were involved in
 17 that incident. Can you explain what – well firstly, were
 18 you involved in the killing of Mr Twala?
 19 MR NZUZA: No, I was not there.
 20 MR MPOFU: Okay, did you see Mr Twala, or
 21 the person that we've now seen in exhibit L as Mr Twala,
 22 did you see him on that day?
 23 MR NZUZA: Yes, I saw him.
 24 MR MPOFU: What happened? Can you just
 25 briefly tell the Commission what, where you observed him

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1 and how you observed him?
 2 MR NZUZA: I did not know who he was,
 3 what his name was. I just knew that he works at Fourbelt.
 4 When I went there I arrived, sat next to Mambush, because
 5 he was standing on his feet and talking, and I just heard
 6 him saying "The person who knows me is this one, this boy
 7 sitting here. He knows where I work and so on," and that's
 8 when I said, "No, old man, don't say you know me. I only
 9 met you once, one morning when I came off duty and you
 10 wanted goggles from me, goggles or sunglasses from me," and
 11 that's when I responded to him, I said, "I only met you on
 12 that day. I did not know you and you said you'll cause me
 13 to be fired," and that's when I left, stood up and went to
 14 a place where I was having a cold drink on the side at the
 15 Wonderkop.
 16 MR MPOFU: Yes, and did you see him or
 17 talk to him or interact with him at any other stage on that
 18 day?
 19 MR NZUZA: No, I did not see him again.
 20 I just went to sit on the other side.
 21 MR MPOFU: And when the body was
 22 collected by the police later, did you see whose body it
 23 was?
 24 MR NZUZA: No, we did not see the body.
 25 MR MPOFU: Okay, so that was the 14th.

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1 Then there was also evidence that – I won't waste a lot of
 2 time on this – that on the same day you were engaged in a
 3 telephone conversation with Mr Mathunjwa while you were at
 4 the koppie.
 5 MR NZUZA: No, I have no knowledge of
 6 that.
 7 MR MPOFU: And Mr X also says that Mr
 8 Mathunjwa after your telephone discussions with him arrived
 9 at the koppie on the 14th. Do you know of any of that?
 10 MR NZUZA: There is no such.
 11 MR MPOFU: Okay, so that's the 14th. So
 12 you went home and did you come back to the koppie on the
 13 15th?
 14 MR NZUZA: Yes, I went home and came back
 15 to the koppie.
 16 MR MPOFU: Right. Okay, then let me just
 17 ask the question that I had forgotten to ask about the 13th.
 18 On the 13th when you were in that group – let me put it this
 19 way; you've seen Mr X here on that screen, correct?
 20 MR NZUZA: Yes, I saw him.
 21 MR MPOFU: On the 13th in that group of
 22 about a hundred people that went to Karee and back for a
 23 number of hours, did you see Mr X there?
 24 MR NZUZA: No, I did not see him.
 25 MR MPOFU: Okay. Right –

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1 CHAIRPERSON: Mr Mpofu, when we reach a
 2 suitable stage for a tea adjournment will you please let me
 3 know?
 4 MR MPOFU: Yes, Chairperson. Yes,
 5 Chairperson, I'm moving to the 15th. This might be a
 6 convenient stage.
 7 CHAIRPERSON: We'll take the tea
 8 adjournment now, 15 minutes.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [15:20] CHAIRPERSON: The Commission resumes.
 11 Before the witness continues his evidence I want to read
 12 out the ruling that has been prepared on the application
 13 for the withdrawal of the ruling given on the 8th of
 14 November 2012. Copies of this ruling will be made
 15 available electronically to the media in a few minutes
 16 after I have handed to the parties, few minutes after I
 17 have read it out. The evidence leaders have requested the
 18 Commission to withdraw the ruling it made on 8 November
 19 2012 to divide the hearing into two phases. The first
 20 being confined to examination on the events of 9 to 16
 21 August 2012 at Marikana regarding such aspects as the facts
 22 directly relating to and relevant to the events and the
 23 direct causes thereof as well as the legal responsibility
 24 of any party for the deaths of and the injuries to any
 25 persons and damage to property at Marikana during the

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1 period. During the second phase it was envisaged that the
 2 Commission would turn its attention to the other topics
 3 covered by its terms of reference. These included those
 4 set out in sub paras 1.1.3, 1.1.6 and 1.5 of the
 5 proclamation which set up the Commission. The portions of
 6 the proclamation which are relevant in regard to the issues
 7 raised in this application read as follows. "1, the
 8 Commission shall inquire into and making findings, report
 9 on and make recommendations concerning the following taking
 10 into consideration the constitution and other relevant
 11 legislation, policies and guidelines. 1.1 the conduct of
 12 Lonmin PLC, Lonmin in particular 1.1.3 whether it by act or
 13 commission created an environment which was conducive to
 14 the creation of tension, labour unrest, disunity among its
 15 employees or other harmful conduct. And then 1.1.6 whether
 16 by act or omission it directly or indirectly caused loss of
 17 life or damage to persons or property. 1.5 the role played
 18 by the Department of Mineral Resources or any other
 19 government department or agency in relation to the incident
 20 and whether this was appropriate in the circumstances and
 21 consistent with their duties and obligations according to
 22 law". That's the end of the quotation. The terms of
 23 reference to the Commission were amended by proclamation 30
 24 of 2014 published on 5 May 2014 which deleted paragraph
 25 1.5. As a result of this amendment the ambit of phase 2

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1 was substantially reduced. Since May 2014 the Commission's
 2 senior researcher Dr Forest has produced a preliminary
 3 report. In Cap 5 he states that at the time Lonmin's old
 4 order mineral rights were converted into new order rights,
 5 it adopted a social and labour plan in terms of which it
 6 assumed a legally binding obligation to convert its
 7 existing hostels into bachelor or family units and to build
 8 a further 5 500 houses. These processes were to be
 9 completed by September 2012.
 10 According to the report 60 hostels out of a 114
 11 were converted within the 2007 to 2011 period. These
 12 converted units could only accommodate 12.5% of the persons
 13 who were accommodated in the hostels prior to the
 14 conversion. In addition only 3 houses of the 5 500 Lonmin
 15 was obliged to build had in fact been built. Dr Forest
 16 stated further that this state of affairs had been brought
 17 about by what she called a unilateral and unambiguous
 18 repudiation by Lonmin of its legal obligations under the
 19 social and labour plan. The primary justification profit
 20 for this by Lonmin was the constraints of the economic
 21 climate after the financial crisis of 2008. She pointed
 22 out however that throughout the period when it was
 23 defaulting on the housing obligations, on its housing
 24 obligations it continued to pay dividends to its
 25 shareholders. The evidence leaders asked for a withdrawal

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1 of the November 2012 ruling because they wished to cross-
 2 examine Mrs Mokwena and Jamieson who are to testify on
 3 behalf of Lonmin about these matters so as to investigate
 4 the topic raised in sub-paragraph 1.1.3 of the Commission's
 5 terms of reference. This they say can easily be done in
 6 the time available and the witnesses should be able without
 7 difficulty to deal with the matters to be raised. Lonmin
 8 opposes the application and advances three grounds in
 9 support of its opposition.
 10 Namely 1, that to confine the phase 2 inquiry to
 11 Lonmin's noncompliance with its housing obligations under
 12 the social and labour plan would be outside the
 13 Commission's mandate. Because as it is put in Lonmin's
 14 letter of objection "the specific matters which the
 15 Commission was appointed to inquire into and to report upon
 16 are prefaced by an introductory paragraph which requires a
 17 causal link between those specific matters and the event of
 18 Marikana mine from 9 to 16 August 2012; and the letter
 19 continues, the Commission has not considered that causal
 20 link in the context of for example phase 2". That's the
 21 first ground of objection.
 22 The second ground was that Lonmin's role in
 23 providing housing to its employees cannot be considered in
 24 isolation without regard to the performance of the National
 25 and Provincial Governments and the Local Authority in the

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1 provision of housing and infrastructure development and
 2 three, the third ground of opposition that it would not be
 3 fair to do so because there's not enough time. In our view
 4 there's no substance in any of these grounds of objection.
 5 The contentions raised in support of the first ground are
 6 not in accordance with the wording of the terms of
 7 reference. The introductory paragraph does not in terms
 8 require a causal link between the matters set out and the
 9 events at Marikana during the period 9 to 16 August 2012.
 10 Nor is it necessary to imply such a requirement. Indeed
 11 the express requirement in paragraph 1.1.6 are a direct or
 12 indirect causal link between Lonmin's acts or omissions and
 13 the loss of life or damage to persons or property renders
 14 such an implication unnecessary. When the President wanted
 15 a causal link to be investigated he said so. The
 16 contentions also overlook the express wording of paragraph
 17 1.1.3 which refers to the creation of an environment which
 18 was "conducive to" the creation of tension, labour unrest,
 19 etcetera.
 20 According to the Oxford British and World English
 21 Dictionary "conducive" means "making a certain situation or
 22 outcome likely or possible" language which clearly does not
 23 require a causal link. The second contention namely that
 24 Lonmin's noncompliance with its legally binding housing
 25 obligations cannot be looked at in isolation is also

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1 patently without substance. Because Lonmin's obligations
 2 in this regard are self standing and the performance or non
 3 performance by other bodies in the area of housing
 4 provision is not relevant. As regards to the contention
 5 that an examination of the question as to whether Lonmin's
 6 failure to comply with its housing obligation was quote
 7 conducive to the creation of tension, labour unrest
 8 etcetera would be unfair in the time available. It is in
 9 our view not possible to say whether there will be
 10 unfairness. That is a question which can only be answered
 11 at the end of the inquiry. If the matter has in the
 12 opinion of the Commission been adequately canvassed it will
 13 be able to make a ruling. If not it may as Mr Ntsebeza
 14 contended consider referring the matter in terms of
 15 paragraph 5 of its terms of reference to some other body
 16 for further investigation. In the circumstances we're
 17 satisfied that it would be appropriate to grant the
 18 evidence leader's application. The following ruling is
 19 made. The ruling made on 8 November 2012 is withdrawn.
 20 As I have said copies of the ruling will be made
 21 available electronically to the media and to the parties in
 22 a few minutes. Would you please remind the witness that
 23 he's still under oath and Mr Mpofo will then continue with
 24 examination-in-chief.
 25 INTERPRETER: Witness still under oath,

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1 Mr Chair.
 2 MR MPOFU: Thank you, Chairperson. Mr
 3 Nzuzza, we were going to move to the 15th but I just want to
 4 round off, just a short clip on the 14th. Could you go to
 5 JJJ28. Video 38 I think.
 6 [VIDEO SHOWN]
 7 CHAIRPERSON: 11 seconds.
 8 MR MPOFU: We can see the five of the
 9 protestors or strikers, can you identify them for us.
 10 MR NZUZA: Yes, I can do that.
 11 MR MPOFU: Yes, please.
 12 MR NZUZA: The one at the side is
 13 [indistinct, the next one is Mpangeli and then Mambush, the
 14 one next to me, I don't know, and then it's me, the last
 15 person.
 16 CHAIRPERSON: Could you repeat the names
 17 again, I couldn't, they weren't to clear. You're going
 18 from the left are you, who is the one on the extreme left?
 19 MR NZUZA: It's me.
 20 CHAIRPERSON: No. Left on the screen.
 21 MR NZUZA: It's Charlie.
 22 CHAIRPERSON: Charlie, the second person?
 23 MR NZUZA: Mpangeli.
 24 CHAIRPERSON: Mpangele, the third?
 25 MR NZUZA: Mambush.

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1 CHAIRPERSON: The fourth?
 2 MR NZUZA: I don't know the person.
 3 CHAIRPERSON: And you're the fifth?
 4 MR NZUZA: Yes.
 5 MR MPOFU: Yes. Right, were any of those
 6 people when they went to the police, were they carrying any
 7 traditional or any other weapons?
 8 MR NZUZA: No, they were unarmed.
 9 MR MPOFU: How did it come about that
 10 they were not carrying their traditional weapon?
 11 MR NZUZA: The police had requested that
 12 when they come nearer they must put their weapons down.
 13 MR MPOFU: Yes, and what was the reaction
 14 of the protestors?
 15 MR NZUZA: Yes, they obeyed and they put
 16 their weapons down.
 17 MR MPOFU: Okay. Now while we are on
 18 that subject of those who put their weapons down. You
 19 yourself in the five days that is that, did you carry any
 20 weapons or weapon?
 21 MR NZUZA: No, there was none.
 22 MR MPOFU: Thank you. Alright and then
 23 if you could go to 00:38 of this clip. Oh you can use 39,
 24 thank you, Mr Chaskalson.
 25 [VIDEO SHOWN]

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1 CHAIRPERSON: I can't see the, where it
 2 stopped. Normally it tells me in the bottom left hand
 3 corner.
 4 MR MPOFU: It's 0022.
 5 CHAIRPERSON: Oh thank you.
 6 MR MPOFU: [inaudible].
 7 [VIDEO SHOWN]
 8 That's fine. The, on that we can still see the
 9 same five people except that you are now holding a
 10 loudhailer, is that correct?
 11 MR NZUZA: Yes, it is so.
 12 [VIDEO SHOWN]
 13 MR MPOFU: Can you interpret what was
 14 being said?
 15 INTERPRETER: Yes, the first thing that
 16 was being said in Fanagalo was that person that has got a
 17 loudhailer if he should please come nearer to us. Then
 18 they started moving forward. Where they stopped the person
 19 then said we are grateful for what you people are doing.
 20 MR MPOFU: Okay.
 21 INTERPRETER: By coming closer.
 22 MR MPOFU: Thank you and what you observe
 23 there, Mr Nzuzza, is that you come ahead of the other four
 24 with your loudhailer, is that correct?
 25 MR NZUZA: Yes, it is so.

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1 MR MPOFU: Alright now let's go to the
 2 15th. Right, I think on the video there, I think this is a
 3 new exhibit, its 0004_XZID whatever that means.
 4 CHAIRPERSON: PPPP5 and how do I describe
 5 it, shortly?
 6 MR MPOFU: Its SAPS video 15-08-2012
 7 discussions between SAPS and protestors.
 8 CHAIRPERSON: SAPS and strikers?
 9 MR MPOFU: And strikers, yes, Chair.
 10 CHAIRPERSON: SAPS video - PPPP5 is SAPS
 11 video dated 15-08-2012 which I have described as
 12 discussions between SAPS and strikers.
 13 MR MPOFU: We start at 3:54, no, no start
 14 it there. Ja.
 15 [VIDEO SHOWN]
 16 Okay this video, Chairperson, doesn't have sound.
 17 Okay stop. Alright well firstly –
 18 CHAIRPERSON: We've stopped it at 1:23.
 19 MR MPOFU: Yes. Firstly we see now that
 20 you are again wearing different clothes. Can you describe
 21 what you are wearing.
 22 [15:39] MR NZUZA: Yes, I can describe.
 23 MR MPOFU: Yes, this is your third set of
 24 clothes that we have now seen.
 25 MR NZUZA: Yes.

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1 MR MPOFU: Alright, and Mr Noki is seen
 2 having climbed on the Nyala.
 3 MR NZUZA: Yes.
 4 MR MPOFU: And then nearby there are five
 5 other persons, correct?
 6 MR NZUZA: Yes.
 7 MR MPOFU: Who are they?
 8 MR NZUZA: It's Mpangeli, Mtjali and
 9 Rasta. The other two I don't know their names.
 10 MR MPOFU: Okay, what was happening here?
 11 MR NZUZA: This is the time that the
 12 police were calling us, say they want one person to come
 13 towards them.
 14 MR MPOFU: Okay, can we go to video, or
 15 rather – ja, I think it's video 34 in that series at 1:30.
 16 [VIDEO SHOWN]
 17 Sorry, if you can just rewind a little bit and
 18 then if we can get an interpretation of what is being said.
 19 Mr Noki is speaking.
 20 CHAIRPERSON: You want to go back to the
 21 beginning of the Noki speech –
 22 MR MPOFU: No, no, just a few seconds,
 23 Chairperson, a few – if that is 26 you can – I can't see
 24 properly. Ja, you can go to 20 maybe.
 25 CHAIRPERSON: So you want to go back to

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1 1:20.
 2 MR MPOFU: Yes. Okay.
 3 [VIDEO SHOWN]
 4 MR NTJINGILA: Can be volume be –
 5 MR MPOFU: No, I think that part is
 6 inaudible. You can –
 7 [VIDEO SHOWN]
 8 MR NTJINGILA: "We are not fighting with
 9 anyone. We want money, that's what we want."
 10 MR MPOFU: Okay, maybe we can ask the
 11 witness –
 12 CHAIRPERSON: There's another person who
 13 spoke. Do you recognise that person? There was a bit by
 14 Mambush and then there was a piece by somebody else. Who
 15 is the other person? Do you recognise him?
 16 MR NZUZA: Which other one? No, I don't
 17 know the person.
 18 CHAIRPERSON: Mr Interpreter, could you
 19 hear what he said? Can you interpret it for us?
 20 MR NTJINGILA: He was a little bit down,
 21 most wasn't clear –
 22 CHAIRPERSON: If it were played again do
 23 you think it will still be inaudible?
 24 MR NTJINGILA: Maybe it can be played
 25 again.

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1 CHAIRPERSON: Let's play it again. Play
 2 it again, Sam.
 3 MR NTJINGILA: Let me try if it's played
 4 again.
 5 MR MPOFU: Okay.
 6 [VIDEO SHOWN]
 7 Stop. That person who just spoke now, do you
 8 know him?
 9 MR NZUZA: No. I know him now later.
 10 MR MPOFU: Okay, now later who do you
 11 know him as?
 12 MR NZUZA: I know him as Makaya.
 13 MR MPOFU: Chairperson, yes, the
 14 gentleman is, his name is Alfred Makaya. He's one of our
 15 clients.
 16 CHAIRPERSON: Thank you.
 17 MR MPOFU: One of the arrested and –
 18 injured and arrested.
 19 CHAIRPERSON: [Microphone off, inaudible]
 20 MR MPOFU: And – oh, yes. Can you, I
 21 think the interpreter was not able to hear him properly,
 22 but from your memory do you know what he was saying
 23 essentially?
 24 MR NZUZA: Yes, I can.
 25 MR MPOFU: Yes, what was he saying?

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1 MR NZUZA: He was saying let there be
 2 some people elected to go to speak there, let it be a
 3 Sotho-speaking, a Shangaan-speaking, to be elected that
 4 they can go and represent them.
 5 MR MPOFU: Okay, carry on.
 6 [VIDEO SHOWN]
 7 MR MAHLANGU: "There's nobody that we
 8 have a fight with. We have got no fight with any person."
 9 MR MPOFU: Okay, can he carry on?
 10 [VIDEO SHOWN]
 11 MR MAHLANGU: "The only thing we want is
 12 money." If you could just reverse a bit back.
 13 MR MPOFU: [Microphone off, inaudible]
 14 CHAIRPERSON: Should we play it again?
 15 MR MAHLANGU: Yes.
 16 [VIDEO SHOWN]
 17 CHAIRPERSON: 2:35 is where it is now.
 18 Play it from there.
 19 MR MPOFU: Maybe the witness can assist
 20 you.
 21 MR MAHLANGU: It's not clear to me what
 22 he's saying, Sir.
 23 MR MPOFU: Could you work out that part,
 24 Mr Nzuzza?
 25 MR NZUZA: Yes, he say what we want is

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1 money and underground they are working very hard with the
 2 machines.
 3 MR MPOFU: Okay, thank you. Carry on.
 4 [VIDEO SHOWN]
 5 MR MAHLANGU: "Only thing that we want
 6 here is money."
 7 CHAIRPERSON: Who is this gentleman
 8 speaking?
 9 MR NZUZA: I don't know his name.
 10 MR MPOFU: Mr Mahlangu, there's something
 11 about [African language]. Can you reverse a little bit?
 12 [VIDEO SHOWN]
 13 MR MAHLANGU: "The only thing we want
 14 here is money so that we can take our children to school.
 15 We only want money."
 16 MR MPOFU: Okay, carry on.
 17 [VIDEO SHOWN]
 18 I also couldn't hear that part.
 19 MR MAHLANGU: Ja.
 20 MR MPOFU: Okay, carry on.
 21 [VIDEO SHOWN]
 22 MR MAHLANGU: "Only thing we want is
 23 money. I end it there."
 24 [VIDEO SHOWN]
 25 MR MPOFU: That's fine. Now Mr Nzuzza, we

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1 just saw you appearing there next to that gentleman with
 2 the blue T-shirt. Is that correct?
 3 MR NZUZA: Yes.
 4 MR MPOFU: And also what can be observed
 5 there is those two white people and the other gentleman
 6 with the camera. Who are they?
 7 MR NZUZA: I don't know those guys. They
 8 are the journalists.
 9 MR MPOFU: Journalists. Were journalists
 10 moving among the strikers freely?
 11 MR NZUZA: They were moving up and around
 12 all the areas. Nothing was disturbing them.
 13 MR MPOFU: Okay, carry on.
 14 [VIDEO SHOWN]
 15 MR NTJINGILA: "The only thing that we
 16 want from this employer who doesn't want to come next to
 17 us, it's money. The police who come with something that is
 18 not understandable there, are the ones who are coming."
 19 MR MPOFU: Okay, carry on.
 20 [VIDEO SHOWN]
 21 MR NTJINGILA: "Let not it be the police
 22 that comes closer to us, coming with something that is not
 23 understandable. Let the employer come nearer to us. We
 24 want money from him."
 25 MR MPOFU: Okay, then can we go to 4 –

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1 CHAIRPERSON: This stopped at 3:34. You
 2 now want to move on to 4 minutes?
 3 MR MPOFU: Yes.
 4 CHAIRPERSON: It doesn't look as if it
 5 runs that far, Mr –
 6 MR MPOFU: No, it doesn't, Chairperson.
 7 Alright, that's fine. Can we then go to JJJ20 – or let me
 8 ask you, apart from what we have seen did anything of any
 9 significance happen on the 15th, and if not, when did you go
 10 home?
 11 MR NZUZA: I left from the mountain at
 12 about 7.
 13 MR MPOFU: Yes, in the evening it's
 14 common cause that the two union leaders, Mr Zokwana and Mr
 15 Mathunjwa arrived. What role did you play during Mr
 16 Zokwana's visit?
 17 MR NZUZA: Can you please repeat the
 18 question?
 19 MR MPOFU: When Mr Zokwana came that
 20 afternoon, did you play any role; if so, what?
 21 MR NZUZA: Yes, I did.
 22 MR MPOFU: Yes, what is it?
 23 MR NZUZA: They said they want five
 24 gentlemen to come to them so that we can talk. We realised
 25 that the Hippo that they came with is not the same as the

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1 one that they came with before, it doesn't have the bulbar
 2 so that you can step on. We asked them to come nearer to
 3 us and then we went on top of some stones there, three
 4 stones, and stand on top of the stones, or the rocks.
 5 That's what I did.
 6 MR MPOFU: Alright, Mr Chaskalson is
 7 going to give us a photo that makes the point you're making
 8 much clearer. Before we do that can we go to JJJ20 and
 9 play 0003?
 10 [VIDEO SHOWN]
 11 Can we go to 12, video 12? Yes, carry on.
 12 [VIDEO SHOWN]
 13 No, it's fine, Chairperson, that's the following
 14 day. We'll play it after –
 15 CHAIRPERSON: This is the AMCU, where one
 16 of the AMCU –
 17 MR MPOFU: Visit, ja.
 18 CHAIRPERSON: - delegation –
 19 MR MPOFU: Alright, can we have Mr
 20 Chaskalson's photo? Alright, okay, that's also not on hand
 21 now.
 22 CHAIRPERSON: Mr Mpofo, can I just
 23 interrupt you for a moment?
 24 MR MPOFU: Ja.
 25 CHAIRPERSON: Mr Wesley, how much longer

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1 has Mr Mpofo got?
 2 MR MPOFU: I have an hour, I need an
 3 hour, Chairperson.
 4 MR WESLEY: Chair, I can do a quick
 5 calculation. I apologise. It's approximately half an
 6 hour.
 7 CHAIRPERSON: Alright, so Mr Mpofo, let's
 8 adjourn now. We're not going to have the witness's
 9 evidence tomorrow because Minister Shabangu is coming.
 10 When she's finished you can then, we'll be carrying on with
 11 this witness. So this is possibly a suitable stage
 12 actually –
 13 MR MPOFU: Yes, it is.
 14 CHAIRPERSON: - to interrupt the
 15 evidence.
 16 MR MPOFU: I was about to move to –
 17 CHAIRPERSON: Then you can carry on when
 18 the Minister –
 19 MR MPOFU: On the 16th.
 20 CHAIRPERSON: Yes.
 21 MR MPOFU: Ja, there's just a small
 22 portion left on the 15th. Chairperson, if I may, can I make
 23 the appeal now? I think I'm going to need about an hour
 24 with this witness. I'll try to speed it up –
 25 CHAIRPERSON: Mr Wesley, what implication

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1 has that got for the rest of the plan?
 2 MR WESLEY: Quite significant, Chair.
 3 I've just done the calculation by the way, it's 25 minutes
 4 left.
 5 CHAIRPERSON: We'll discuss this in
 6 chambers, Mr Mpofo.
 7 MR MPOFU: Yes.
 8 CHAIRPERSON: You understand we've got
 9 limited time and – but we won't talk about it now. We'll
 10 adjourn now until 9 o'clock tomorrow morning. The witness
 11 will stand down until Minister Shabangu is finished.
 12 MR MPOFU: Wednesday morning.
 13 CHAIRPERSON: Yes, Wednesday morning.
 14 MR MPOFU: Thank you, Chairperson.
 15 [COMMISSION ADJOURNED]
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