

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 245

19 JUNE 2014

PAGES 30874 TO 30987



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1 [PROCEEDINGS ON 19 JUNE 2014]
 2 [10:15] CHAIRPERSON: I've been told that we had
 3 to wait for very technical problems to be ironed out, which
 4 is the reason for the delay, for which I apologise. It
 5 appears the squawking noise from earlier - but they hadn't
 6 all been sorted out. I hope we won't have that again. Mr
 7 Mathibedi, I understand that you're going to call the next
 8 witness, but before you do so – it sounds as if the
 9 sensible thing for us to do is to adjourn and come back
 10 when we receive the assurance that everything has been
 11 sorted out. There is this echo that makes it difficult to
 12 hear what's said.
 13 Alright, I don't know if the problem has been
 14 sorted out. Has it been sorted out? Yes, alright. So
 15 we'll finally be getting underway. As I said, I apologise
 16 that we started late, but the technical problems persisted
 17 until the very last minute [inaudible].
 18 Mr Mathibedi, I understand you're going to call
 19 the next witness, but before you do so I understand Mr
 20 Mpofo wishes to say something.
 21 MR MPOFU: Thank you very much,
 22 Chairperson.
 23 CHAIRPERSON: I'm sorry to interrupt, but
 24 we don't need the witness on screen during this
 25 application.

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1 (b), provide the evidence leaders and the legal
 2 representatives of the parties with a photograph of Mr X;
 3 and
 4 (c), indicate to the evidence leaders and the
 5 legal representatives of the parties all points which
 6 they'd been able to identify Mr X on video footage of the
 7 events during the period 13 to 16 August 2012.
 8 5, That the details in paragraph 4(a) to (c)
 9 above shall be disclosed only to the Commissioners, the
 10 evidence leaders and to the legal representatives who
 11 require the information in order to obtain instructions
 12 from their clients;
 13 6, That neither the name nor any information
 14 which may reveal the identity of Mr X shall be disclosed
 15 further by any party other than the SAPS, save for the
 16 purpose of obtaining instructions;
 17 7, That subject to the rulings made in paragraphs
 18 4, 5 and 6 above, in terms of sections 18 and 19 of the
 19 Witness Protection Act 112 of 1998 the following shall be
 20 prohibited –
 21 (a), the publication of any information,
 22 including any drawing, picture, illustration, painting,
 23 photograph, pamphlets, poster or other printed matter in
 24 whatever form which may disclose the place of safety or
 25 location where Mr X is or has been under protection, or

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1 MR MPOFU: Yes.
 2 MR BUDLENDER SC: There is a difficulty,
 3 Chair, that the witness is on the screen and I think it
 4 will be helpful if parties were reminded of your rulings in
 5 relation to disclosure of the identity of Mr X.
 6 CHAIRPERSON: Perhaps before Mr Mpofo
 7 speaks I should read out, to remind everybody, the rulings
 8 that I made when I considered the application for the
 9 evidence of Mr X to be heard firstly from a remote video
 10 link, or remote location, and secondly for us to be in
 11 camera. The rulings I made were the following –
 12 1, That the evidence of Mr X be presented in
 13 camera and by video link;
 14 2, That at all times during the testimony of Mr X
 15 one of the evidence leaders would be present in the room
 16 from which he testifies;
 17 3, [which means] That only the Commissioners, the
 18 parties, the legal representatives, the evidence leaders
 19 and the SAPS legal representatives shall be present in the
 20 auditorium during the testimony of Mr X;
 21 4, That at least two weeks prior to the
 22 commencement of the testimony of Mr X the SAPS legal
 23 representatives shall –
 24 (a), disclose the name of Mr X to the evidence
 25 leaders and the legal representatives of all the parties;

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1 where he has been relocated in terms of the act, the
 2 circumstances relating to his protection, the identity of
 3 any other protected person and the place of safety or
 4 location where such person is being protected or the
 5 relocation or change of identity of a protected person; or
 6 (d), any questioning of Mr X which can lead to
 7 disclosure of any of the matters referred to in paragraphs
 8 (a), (b) and (c). That's the three I've just read.
 9 That members of the public may listen to the
 10 audio transmission of the testimony of Mr X in the overflow
 11 room;
 12 That members of the media may not publish the
 13 name of Mr X or any other information which may reveal his
 14 identity;
 15 And 10, that all video recordings of the evidence
 16 of Mr X must be blurred out so as not to disclose his
 17 identity.
 18 I've decided to add a further ruling, which is as
 19 follows –
 20 That because the proceedings are I understand
 21 being broadcast, counsel shall not refer to the witness by
 22 his name during the course of his evidence, whether in
 23 chief or while he's under cross-examination. Mr Semanya?
 24 MR SEMENYA SC: Chairperson, also ex
 25 abundante cautela the statements which will be revealed on

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1 the website where they bear reference to his identity also
 2 ought to be redacted.
 3 CHAIRPERSON: Redacted in such a way that
 4 his identity is not revealed, yes. I'll make a ruling to
 5 that effect also – not only his name but other material
 6 from which his identity can be ascertained. Some of the
 7 statements which we have been given indicate details such
 8 as his address and so forth, and so obviously must also not
 9 be revealed.
 10 MR SEMENYA SC: We are indebted to you,
 11 Chair.
 12 CHAIRPERSON: Yes. Mr Mpfu.
 13 MR MPOFU: Thank you very much,
 14 Chairperson. I'm indebted to you and the Commissioners for
 15 giving me this opportunity. Let me say upfront,
 16 Chairperson, that I appeal for thorough considerations of
 17 the issues that I'm going to raise because they are quite
 18 weighty issues which I've been specifically instructed to
 19 raise before the evidence of Mr X is heard. That is so,
 20 Chairperson and Commissioners, because your rulings on this
 21 matter will have a material bearing on the nature and
 22 content of Mr X's evidence.
 23 For lack of a better word I'll call this a
 24 preliminary objection in the sense that instead of raising
 25 the objections as and when the statements which I'm going

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1 1, There are confessions which were made by some
 2 of our clients in the context of criminal proceedings which
 3 are pending before the criminal courts, and for the
 4 purposes of what I'm saying now it will not matter much
 5 whether strictly legally speaking those statements amount
 6 to confessions or mere admissions. The point is simply
 7 that they are self-incriminatory statements.
 8 These criminal cases that I've referred to,
 9 Chairperson, involve very serious charges, including
 10 attempted murder, murder, arson, public violence and the
 11 like, and in some cases the persons are implicated or
 12 implicate each other, or implicate themselves in more than
 13 one such act of either murder, arson, or public violence.
 14 In any event, it would be clear for the Commissioners, just
 15 from the nature of the kinds of issues we are dealing with
 16 in the Commission that such charges I've referred to would
 17 in any event be serious charges.
 18 It might well be important, Chairperson, to point
 19 out that there is a kind of direct relationship between
 20 those criminal cases and the proceedings of the Commission
 21 - [power outage]
 22 [10:34] Chairperson, I was just busy with my last point
 23 on what I have called the factual ground, namely that –
 24 CHAIRPERSON: Before you carry on, may I
 25 say it's not necessary for us to have the picture of Mr X

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1 to refer to are sought to be used, we thought it might be
 2 prudent and more time-saving to raise the objection in a
 3 generalised fashion upfront.
 4 The issues in the objection, Chair, relate to
 5 documents which SAPS have submitted as intended to be used
 6 in the evidence-in-chief of Mr X, and the broad issues
 7 relate to two interrelated concepts, Chairperson, of
 8 relevance and admissibility, but before I deal with those
 9 concepts I'd just like to paint very briefly the factual
 10 background which brought us to this stage.
 11 Chairperson, as you know we received last year Mr
 12 X's statement without names, with the names having been
 13 blocked out. By the names I mean the names of those people
 14 which he implicated or referred to. Eventually last week
 15 we received the unblocked statement of Mr X with the names
 16 contained. This enabled us to consult for the first time
 17 with at this stage about 15 to 20 people, individuals who
 18 are mentioned in the statements. Those consultations went
 19 on until quite late yesterday. We still have a few people
 20 outstanding, but that's not relevant for the purposes now.
 21 We also, Chairperson, had to wade through large
 22 volumes of paper which was supplied by SAPS last week. In
 23 the course of the foregoing, Chairperson, it has - in
 24 relevance to what we are raising now, it has transpired
 25 that –

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1 on the screen at the moment.
 2 MR MPOFU: Yes.
 3 CHAIRPERSON: It's gone now and it can
 4 stay away until we need it.
 5 MR MPOFU: Thank you. Thank you,
 6 Chairperson. The point that I wanted to mention was that –
 7 well, not some, all of the criminal cases that I've
 8 referred to including the big one of the 272 persons, have
 9 been postponed for trial pending the outcome of the
 10 Commission. Now with that background in mind, Chairperson,
 11 the issue really, maybe just to jump towards the end, is to
 12 request the Commission, or to uphold our objection to the
 13 use of the statements that I've described and we'll supply
 14 a short list of the statements. They're not so – but they
 15 involve about five individuals.
 16 Right, now the legal basis, Chairperson, for this
 17 is – I'd like to start by defining what I have called the
 18 related concepts of admissibility and relevance. At its
 19 most basic, as it is such Chairperson, that relevance
 20 simply means that evidence which is not relevant to the
 21 issues shall not be admitted, but in the broader sense
 22 relevance has been described as – I'm reading from
 23 Zeffert's book at 237.
 24 CHAIRPERSON: It's the latest edition of
 25 it –

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1 MR MPOFU: The latest, yes. In fact,
 2 second edition, Chairperson.
 3 CHAIRPERSON: Yes, at what page? At what
 4 page?
 5 MR MPOFU: Page 240.
 6 CHAIRPERSON: Thank you.
 7 MR MPOFU: Sorry, sorry, I'm reading at
 8 237 at this stage, 240 later. The introductory passage is
 9 simply this, Chairperson, which is just a repetition of
 10 what I've just said. "The criterion of relevance is
 11 applied to evidence in both a positive and a negative form.
 12 That is to say, it is generally true that relevant evidence
 13 is admissible and irrelevant evidence is inadmissible.
 14 Each of these propositions will need some qualification but
 15 before the two sides of the coin are examined in detail
 16 something must be said about the meaning of evidence in the
 17 law of evidence." Then under the heading "The meaning of
 18 relevance," the authors say, "Relevance is essentially a
 19 matter of reason and common sense. As Schreiner, JA said,
 20 it is 'based upon a blend of logic and experience lying
 21 outside the law.'" The American Law Institute's model Code
 22 of Evidence defines relevant evidence as "evidence having
 23 any tendency in reason to prove any material matter."
 24 And so I'm going to deal with it, as I say,
 25 Chairperson, both in its narrow context and that broader

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1 discretion, Chairperson, that we appeal in what is to
 2 follow.
 3 CHAIRPERSON: You will remember the
 4 regulations of the Commission in fact specifically vests me
 5 with the power to exclude evidence even if it is, strictly
 6 speaking, relevant if in my opinion it doesn't contribute
 7 materially to the –
 8 MR MPOFU: That's correct.
 9 CHAIRPERSON: - answering of the
 10 questions posed for our answer under the terms of
 11 reference.
 12 MR MPOFU: That's correct.
 13 CHAIRPERSON: That strengthens the point
 14 that you made from the passage you read.
 15 MR MPOFU: Thank you, Chairperson, and
 16 for convenience I might as well turn to that point there
 17 because that's the point I was going to deal with. Indeed,
 18 Chairperson, in terms of the regulations regarding the
 19 Commission of Inquiry into the tragic incidents of Marikana
 20 and so on, regulation 11 which is the one that the
 21 Chairperson was alluding to, reads as follows. "Whenever
 22 the Commission is satisfied upon evidence or information
 23 presented to it that the Commission's inquiry may adversely
 24 affect any existing instituted or pending legal proceedings
 25 or any inquiry instituted in terms of any law, evidence

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1 context as explained by Schreiner and the American Code.
 2 And if you allow me, Chairperson, just to read as from 240
 3 to 241 of the same book, it's not very long but it will
 4 save a lot of time. The authors here say, "Relevance, as
 5 the law sees it or should see it, is a function of two
 6 variables of which logical relevance, 'the tendency in
 7 reason to prove any material matter according to the common
 8 sensible present day standards based on experience' is but
 9 one. The other is the extent to which the reception of
 10 evidence is, for various reasons, undesirable. The court
 11 will require a high degree of relevance before it will
 12 receive evidence which involves a lengthy investigation of
 13 collateral issues or is likely to cause prejudice or
 14 confusion or raise difficult questions of credibility or
 15 whose reception would materially involve any other serious
 16 disadvantage. On the other hand, evidence which does not
 17 have these disadvantages will often be admitted as a matter
 18 of convenience, even though its relevance may be fairly
 19 slight. The test is essentially a practical one. The
 20 court should consider all material which may help it to
 21 reach a proper conclusion but the value of some evidence is
 22 outweighed by the problems it creates. Balancing the
 23 competing considerations is, within the limits of fairly
 24 wide general principles, a matter for the discretion of the
 25 judicial officer." And it is therefore to that wide

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1 which is relevant to such legal proceedings or inquiry
 2 shall be dealt with by the Commission in such a manner as
 3 not to affect adversely such legal proceedings or inquiry."
 4 CHAIRPERSON: That's not the regulation I
 5 referred to –
 6 MR MPOFU: Yes.
 7 CHAIRPERSON: - I'm aware of that
 8 regulation as well.
 9 MR MPOFU: Yes.
 10 CHAIRPERSON: But I can understand that
 11 regulation also has a bearing on the submissions you're
 12 going to make.
 13 MR MPOFU: Yes, thank you, Chairperson.
 14 In fact I was just about to say in addition to the general
 15 discretion that the Chairperson referred to, this one is
 16 also of relevance. Chairperson, I'm not going to waste
 17 time about the self-evident harm which might befall those
 18 people who may have made self-incriminatory statements.
 19 That, it goes without saying. What I want to refer to,
 20 Chairperson, before I refer back to this, to the
 21 regulation, is simply that our instructions – and we
 22 consulted on this very extensively yesterday – are clearly
 23 that the self-incriminatory statements that I've referred
 24 to were obtained by the use of very graphic torture. We
 25 have medical evidence in respect of some of the individuals

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| <p style="text-align: right;">Page 30886</p> <p>1 concerned who were taken last year, after their release, to 2 medical practitioners. I don't want to get into those 3 details, no doubt those issues will feature one day in a 4 trial-within-a-trial.</p> <p>5 CHAIRPERSON: Can I interrupt at this 6 stage and ask you this question? You referred to a number 7 of statements which the SAPS has given you copies of, on 8 which they intend to rely. Have you had the opportunity to 9 consult with all the persons who allegedly made the 10 statements to which you refer?</p> <p>11 MR MPOFU: Not all, Chairperson. I think 12 in terms of – I've obviously consulted with all the people 13 referred to but –</p> <p>14 CHAIRPERSON: That's what I meant, yes.</p> <p>15 MR MPOFU: Yes. Well, Chairperson, let 16 me rephrase that. I have requisitioned all the people who 17 have been mentioned in the statements. I have so far 18 consulted with about 13 to 15 of them. There are about 19 five of them outstanding but –</p> <p>20 CHAIRPERSON: Just to make sure you and I 21 are understanding each other –</p> <p>22 MR MPOFU: Yes.</p> <p>23 CHAIRPERSON: - I'm referring to people 24 who allegedly made statements upon confessions, as you call 25 them –</p> | <p style="text-align: right;">Page 30887</p> <p>1 MR MPOFU: Yes.</p> <p>2 CHAIRPERSON: - or possibly incriminating 3 admissions upon which the SAPS have indicated that they 4 propose relying on these statements. All those people, in 5 other words the –</p> <p>6 MR MPOFU: That category.</p> <p>7 CHAIRPERSON: - all those, have you 8 consulted with all of those?</p> <p>9 MR MPOFU: There is only one in that 10 category who is outstanding, Chairperson, but I've 11 consulted with some five of those in that special category.</p> <p>12 CHAIRPERSON: That I deduced – let's give 13 Mr Mahlangu a chance, I'm sorry. Carry on.</p> <p>14 MR MAHLANGU: Thank you, Chair, just 15 finished.</p> <p>16 CHAIRPERSON: So what we're really 17 talking about is six statements which are either 18 confessions or self-incriminatory admissions which you 19 contend are inadmissible because they were extracted 20 improperly.</p> <p>21 MR MPOFU: Yes.</p> <p>22 CHAIRPERSON: And which would be not 23 received in evidence in a criminal trial because of the 24 facts upon which you rely.</p> <p>25 MR MPOFU: Yes, Chairperson –</p> |
| <p style="text-align: right;">Page 30888</p> <p>1 MR MPOFU: And five of the persons you've 2 consulted with and five of them have alleged to you that 3 the statements were extracted from them in circumstances 4 such as you've mentioned and there's one person 5 outstanding, with whom I take it you're still hoping to 6 consult, is that correct?</p> <p>7 MR MPOFU: Chairperson, without revealing 8 too much I would say, instead of five, say four. There's 9 one where there's a grey area. Four of the five certainly 10 made allegations.</p> <p>11 CHAIRPERSON: There are six statements.</p> <p>12 MR MPOFU: Yes.</p> <p>13 CHAIRPERSON: You've consulted with five 14 of the persons who made the statements.</p> <p>15 MR MPOFU: Of which –</p> <p>16 CHAIRPERSON: Four of them positively 17 state that the statements were extracted from them in 18 circumstances which would render the statements 19 inadmissible.</p> <p>20 MR MPOFU: Yes.</p> <p>21 CHAIRPERSON: There is what you call a 22 grey area in respect of the fifth.</p> <p>23 MR MPOFU: Ja.</p> <p>24 CHAIRPERSON: And you're still 25 endeavouring to –</p> | <p style="text-align: right;">Page 30889</p> <p>1 MR MPOFU: That's correct.</p> <p>2 CHAIRPERSON: - consult with the sixth.</p> <p>3 MR MPOFU: That's correct.</p> <p>4 CHAIRPERSON: Yes. I don't want you to 5 say something in public which could be embarrassing for the 6 persons but I'd be grateful if you could give me, possibly 7 in writing during the adjournment, the names of the six 8 people to whom you refer.</p> <p>9 MR MPOFU: I will.</p> <p>10 CHAIRPERSON: I don't think it's 11 advisable to get into the public domain –</p> <p>12 MR MPOFU: Yes, ja.</p> <p>13 CHAIRPERSON: - that these six people 14 allegedly made confessions if in fact those confessions 15 aren't admissible.</p> <p>16 MR MPOFU: Yes.</p> <p>17 CHAIRPERSON: But if you can give them to 18 me in writing, obviously to Mr Mathibedi and Mr Semenya –</p> <p>19 MR MPOFU: Thank you, Chairperson, I 20 appreciate that.</p> <p>21 CHAIRPERSON: - that would help.</p> <p>22 MR MPOFU: Thank you very much, 23 Chairperson, yes. In fact if I may remind the Chairperson, 24 some of these people we referred to along the lines that 25 the Chairperson has said last year shortly after their</p> |

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| <p style="text-align: right;">Page 30890</p> <p>1 release when we were complaining about their torture and so 2 on in broad terms without mentioning their names. Save to 3 say, Chairperson, that Chairperson will remember that one 4 of those persons had alleged that he had been assaulted 5 until he soiled himself, another one said that his eardrums 6 were severely affected, I've not looked at the medicals 7 again, and that kind of, those kinds of allegations which 8 are already on the record. So that's the kind of 9 allegations – as I said, Chairperson, I don't want to dwell 10 into those things, they might well be, they feature in 11 trials-within-a-trial in the criminal cases at a later 12 stage but it was just broadly, those are the kinds of 13 allegations.</p> <p>14 Now, Chairperson, before I deal with the factors 15 which might be relevant to the discretion that I've 16 referred to, I just want to also specifically deal with 17 what I call relevance in the stricter sense rather than the 18 wider sense, namely this, Chairperson. In weighing up the 19 issues I'd like the Chairperson to take into account 20 whether in fact the question of, assuming the statements 21 were not even affected in the manner that I've alluded to, 22 are their contents in respect of self-incrimination and so 23 on actually relevant to the issues that the Commission has 24 to determine? And I know that, Chairperson, at face value 25 this submission might sound strange in the sense that</p> | <p style="text-align: right;">Page 30891</p> <p>1 obviously the Commission has to determine what happened 2 during that particular period and so on and also such, 3 quote/unquote, "confessions/ admissions" would be relating 4 to addressing the matters that happened in that period but 5 that is not the sense in which I'm raising this point. I'm 6 raising this point, Chairperson, in the following manner. 7 It is not the function of this Commission to pinpoint 8 specific criminal liability on the part of specific 9 individuals.</p> <p>10 CHAIRPERSON: Mr Mpofu, is that entirely 11 correct? Among the terms of reference is a request to us 12 to consider suggesting to the Director of Public 13 Prosecutions that prosecutions be considered against 14 particular individuals. That would possibly include 15 suggestions in respect of members of the police service if 16 they have behaved in a manner which would constitute a 17 criminal offence.</p> <p>18 [10:54] Equally of course the same point would apply to 19 some of the strikers if the evidence reveals that they may 20 well have committed criminal offences also. So I'm not 21 sure you're entirely correct in saying that that's beyond 22 our province. It certainly is an aspect we have to 23 consider.</p> <p>24 MR MPOFU: Yes, thanks, Chairperson. 25 Knowing you I anticipated that – the issue, Chairperson, is</p> |
| <p style="text-align: right;">Page 30892</p> <p>1 as follows. Let's take for example, I'll answer it 2 indirectly first. One of the reasons, Chairperson, that 3 for example we have been told that the shooters, as we call 4 them, are not going to be all called here individually to 5 say this is why I shot and this is how I shot and so on. 6 Is exactly because whatever the criminal liability of those 7 shooters is a matter that is separate from what the 8 commission is investigating. What the commission is really 9 investigating principally is whether there is liability on 10 the part of groups of people generically speaking. So when 11 you look at the terms of reference, and I won't read them, 12 you will see for example the commission shall enquire, make 13 findings, report and make recommendations concerning the 14 following taking into consideration the constitution and so 15 on. One, the conduct of Lonmin and then it says, the 16 conduct of Lonmin PLC, not of Mr Sinclair or Mr this and 17 that and then the conduct of AMCU and then the conduct of 18 NUM and so on and so on. And the two provisions which are 19 not, don't fall into that generic category which might be a 20 moderate answer to your question, Chairperson, are 1.6. 21 Firstly, 1.6 says one of the things that the commission 22 must investigate is the conduct of individuals and loose 23 groupings in cementing and or otherwise promoting a 24 situation of conflict and confrontation which may have 25 given rise to the tragic incident directly or indirectly.</p> | <p style="text-align: right;">Page 30893</p> <p>1 So it's confined to the cementing of a particular 2 atmosphere when it comes to that category.</p> <p>3 And then, Chairperson, paragraph 5 of the terms 4 of reference which is the one that the chairperson referred 5 to, says "the commission shall where appropriate refer any 6 matter for prosecution, further investigation or the 7 convening of a separate inquiry to the appropriate law 8 enforcement agency, government department or regulator 9 regarding the conduct of a certain person or persons." Now 10 the paragraph 5, Chairperson, exactly postulates the 11 situation where the commission would make a referral for, 12 let's say in this context, a criminal prosecution. It does 13 not, firstly, postulate where the commission itself must 14 busy itself with a determination of such criminal 15 liability. And secondly, Chairperson, and more 16 importantly, in the case of all the individuals who fall 17 into what we've called the special category criminal 18 proceedings have already been instituted. So paragraph 5 19 in respect of those individuals is irrelevant and the 20 commission is hardly going to refer them to criminal 21 prosecution when they've already been - Now that being so, 22 Chairperson, and looking at it from the point of view of, 23 remember where we started, of the weighing of the prejudice 24 versus property value and so on it would mean that either 25 at best for my argument there is no property value of the</p> |

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| <p style="text-align: right;">Page 30894</p> <p>1 evidence or at the very least it is there but it's tenuous. 2 And weighing that against the substantial prejudice and 3 harm which is self evident which would be suffered by the 4 individuals concerned, then I would appeal for the 5 commission to exercise its discretion in favour of 6 excluding the evidence. So that – sorry, Chairperson. 7 CHAIRPERSON: I'm sorry to interrupt you, 8 Mr Mpofo. Ms Tokota made a point to me which I think I'd 9 like to put to you. When you give us the names of the 10 people on the piece of paper, we've discussed it's not 11 desirable to do it in a public forum like this, it would be 12 also helpful if you could tell us the charges which have 13 been brought against those particular people because 14 clearly your point would be that if one of them is being 15 charged with a murder of Mr Twala, for example, then we 16 don't have to recommend that that should happen because 17 it's happening already. But if of course he hasn't been 18 charged with the murder of Mr Twala and the evidence 19 indicates that there is a strong case against him then that 20 would be a factor that would not be covered by your 21 argument. So it would be helpful if you could give us 22 then, not only the names, but also the charges which have 23 already been brought against them because that would have a 24 bearing on the application of the argument that you've just 25 put to us.</p> | <p style="text-align: right;">Page 30895</p> <p>1 MR MPOFU: Yes, of this particular 2 argument, yes, Chairperson. So to round off that point, 3 Chairperson, on that leg of the argument what we are simply 4 submitting is that in the weighing up process the prejudice 5 outweighs even if we concede to some tenuous property value 6 which might or might not be there. 7 CHAIRPERSON: No, I understand that. 8 MR MPOFU: The next point, Chairperson, 9 which we would appeal for you to consider is also the, it's 10 the very important issue of consistency and I've already 11 eluded to it in the context of what I call the shooters. I 12 won't repeat it, Chairperson, it's the same point that I 13 raised in respect of the shooters and how the shooters on 14 the other side would be treated in a way. 15 CHAIRPERSON: If I can put the point to 16 you as it's appeared to me from the very beginning of this 17 commission, to see whether it's the point you're making. 18 The matter of general policy, it wouldn't be advisable for 19 this commission to make positive findings of guilt against 20 particular individuals because if they were, if the 21 prosecution authorities decide not to prosecute them or if 22 they were prosecuted and acquitted they would nevertheless 23 bear the stain, as it were, of a positive finding of guilt 24 by this commission. And that as a matter of general 25 principle would not be desirable.</p> |
| <p style="text-align: right;">Page 30896</p> <p>1 MR MPOFU: Yes. So – 2 CHAIRPERSON: So it would be, it may well 3 be we could find there's a prima facie case or something of 4 that kind but positive findings of guilt I do not 5 understand to be within our terms of reference. And I can 6 understand very powerful reasons of principle why we should 7 refrain from doing that. 8 MR MPOFU: Yes. Thank you very much, 9 Chairperson. And as reference to that particular 10 constraint, Chairperson, you will remember that even I at 11 my most accusative or – 12 CHAIRPERSON: I think - 13 MR MPOFU: I - 14 CHAIRPERSON: - it's more of an adjective 15 word – 16 MR MPOFU: It is better, yes. Would've 17 said, Chairperson, for example with regard to Brigadier 18 Calitz, that we will recommend to the commission that the 19 commission must refer your case for prosecution. I could 20 never have said put to him that well because of this or 21 that concession that you have made we're going to now ask 22 this commission to say you are guilty of anything and that 23 was because of that very constraint, Chairperson. 24 Now the next point, Chairperson, is simply the 25 fact that, and this has also been made, this point has been</p> | <p style="text-align: right;">Page 30897</p> <p>1 made before. Insofar as, it's not clear to me I must 2 confess, how SAPS in any event were seeking to introduce 3 those so called concessions through the evidence of Mr X, 4 but I'm sure that's a matter which they've thought about, 5 but assuming that there was a way to do so the potential 6 prejudice, I can't put it higher than that, should also 7 take into account that where Mr X is a self confessed 8 multiple murderer himself and his motives are still going 9 to be revealed, no doubt, under cross-examination but 10 whatever they are the extent to which he implicates others 11 in gruesome and serious crimes to say the least ought 12 itself to be taken from whence it comes and to the extent 13 that he, by his own admission, is a tainted type of 14 witness. To that extent the protection of others who may 15 be innocent or at least who claim innocence, unlike him, 16 should be taken into consideration. The last consideration 17 which we would appeal for the commissioners to take into 18 account in the exercise of the discretion is that in any 19 event broadly speaking in our law pre and post 20 constitutional dispensation the right to, against self 21 incrimination is one that is always jealously guarded in 22 our system. And without going much into detail, because 23 the contents of that right is quite trite. 24 CHAIRPERSON: It's constitutionally 25 entrenched.</p> |

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1 MR MPOFU: Yes. It's constitutionally
 2 entrenched and as I said to you it existed even before
 3 that. I simply want to refer you, Chairperson, to page 582
 4 of - where it deals simply with the question of the scope
 5 and applicability of the right as follows. "As we
 6 mentioned above our courts have accepted that the privilege
 7 is not limited to criminal or civil proceedings. It is
 8 available for instance to a person called as a witness in
 9 inquest proceedings and it seems in administrative and
 10 quasi judicial hearings." The simple point being that the
 11 right against self incrimination would be applicable in
 12 proceedings such as this one. Yes, Chairperson, I think
 13 those would be the specific considerations which we would
 14 highlight. The list is not exhaustive as to the exercise
 15 of the discretion that we seek to - So all in all,
 16 Chairperson, the ruling we seek is for the exclusion of
 17 statements pertaining which are A, self incriminatory and
 18 or pertaining to persons who claim that -
 19 CHAIRPERSON: This is now B. B - A is
 20 self incriminatory.
 21 MR MPOFU: Yes, B.
 22 CHAIRPERSON: Or B -
 23 MR MPOFU: And or B, yes.
 24 CHAIRPERSON: Finish, pertaining to?
 25 MR MPOFU: Yes, Chairperson, now I've

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1 dockets that are before us?
 2 MR MPOFU: Yes. Yes, Chairperson, and
 3 one of the reasons for that, Chairperson, is the point
 4 which I -
 5 CHAIRPERSON: The interpreter gets no
 6 time -
 7 MR MPOFU: Sorry. Okay, Chairperson.
 8 CHAIRPERSON: Yes.
 9 MR MPOFU: Yes, Chairperson, I just
 10 wanted to make a -
 11 CHAIRPERSON: I take it this order is
 12 made in relation to the six people on whose behalf you -
 13 whose names you're going to give to us in writing?
 14 MR MPOFU: That's correct, Chairperson,
 15 but I might just mention, that's why I used the word
 16 "statements" instead of the persons, because some of the
 17 persons might have made one or more statements.
 18 CHAIRPERSON: Yes, yes. No, no, I
 19 understand that.
 20 MR MPOFU: Yes.
 21 CHAIRPERSON: All statements made by the
 22 six persons to whom you refer -
 23 MR MPOFU: That's correct, Chairperson.
 24 CHAIRPERSON: - who allege, or in the
 25 case of the sixth, or possibly even the fifth, allege that

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1 lost my sentence, sorry. I have just crossed it.
 2 Pertaining to persons who claim that such statements were
 3 improperly obtained. I'm just giving it in a generic kind
 4 of feel. Maybe I might add, Chairperson, to just that
 5 that's the order. I just something that I forgot to
 6 mention.
 7 CHAIRPERSON: Improperly obtained, you
 8 mean in circumstances which would render them inadmissible
 9 in the court of law?
 10 MR MPOFU: Exactly, Chairperson, in
 11 circumstances where they would, prima facie would be
 12 inadmissible. Obviously we don't have the facility of a
 13 trial within a trial in these proceedings, so one can
 14 postulate, ja.
 15 CHAIRPERSON: What exactly do you mean by
 16 exclusion?
 17 MR MPOFU: Okay.
 18 CHAIRPERSON: The reason I ask the
 19 question is we received some bundles from the police which
 20 include dockets.
 21 [11:14] Now these dockets include all sorts of
 22 statements, including the statements to which you refer,
 23 and all sorts of other statements as well. Do you submit
 24 that the exclusionary order you seek should be wide enough
 25 to involve the removal of statements of that kind from the

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1 the statements were obtained in circumstances which would
 2 render them inadmissible?
 3 MR MPOFU: Yes.
 4 CHAIRPERSON: Ja.
 5 MR MPOFU: Chairperson, if I can just
 6 mention just two quick points. One is that the dockets
 7 concerned, or rather the statements concerned were
 8 obviously obtained for the purposes of different
 9 proceedings to the current ones, and as the Chairperson has
 10 correctly alluded their admissibility or otherwise will
 11 probably be determined in those proceedings.
 12 The next point which may be of relevance is the
 13 fact that at least in the case of I think two of the
 14 individuals they indicated that they had wanted the
 15 presence of ourselves as their legal representatives, which
 16 was denied. Again I'm just mentioning that blandly,
 17 Chairperson. It's a matter that will be dealt with at the
 18 appropriate time -
 19 CHAIRPERSON: Let me make sure I
 20 understand you. This sounds like a second alternative
 21 ground of admissibility. Either the statements were
 22 extracted by force, or the threat of force, or even if
 23 there wasn't actual force or actual threat of force, the
 24 taking of the statement in the circumstances was
 25 inappropriate and therefore inadmissible because the right

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| <p style="text-align: right;">Page 30902</p> <p>1 to legal representation which was requested was not 2 accorded to the person who made the statement before the 3 statement was made, and that you will contend in the 4 alternative, as it were, in any event would be a basis for 5 excluding the statements - 6 MR MPOFU: Correct. 7 CHAIRPERSON: - in a trial, and ergo you 8 say they should be the basis for exclusion of the 9 statements here. Is that your - 10 MR MPOFU: That's exactly correct, 11 Chairperson. That's why I used the word "improperly," but 12 it would encompass those two examples most certainly. 13 Thank you, Chairperson, those are the submissions. 14 CHAIRPERSON: Thank you, Mr Mpofo. Who 15 is going to reply on behalf of the SAPS? But perhaps I 16 should also state that I'm proposing to ask the evidence 17 leaders as well, but I think after we've had the reply from 18 the SAPS. I was proposing to take the tea adjournment at 19 about this stage, lest you prefer to argue after the 20 adjournment - if you'd like to argue now I'm in your hands. 21 MR SEMENYA SC: It would be convenient to 22 do it, otherwise it's going to be an argument that is 23 interrupted by the adjournment. 24 CHAIRPERSON: Alright. Thank you, Mr 25 Semenya. We take the adjournment for 15 minutes.</p> | <p style="text-align: right;">Page 30903</p> <p>1 [COMMISSION ADJOURNS COMMISSION RESUMES] 2 [11:51] CHAIRPERSON: The Commission resumes. I 3 apologise once again for the delay, caused apparently by 4 attempts to get the audio system working. I'm assured it 5 is now working. We will see. Before Mr Semenya addresses 6 me I wish to make two announcements. 7 After Mr X has finished his evidence-in-chief the 8 evidence of the experts Mr White and I think Colonel 9 Hendrickx will be interposed. Those who wish to apply for 10 permission to cross-examine Mr White and Colonel Hendrickx 11 must please do so by the end of business on Friday, that's 12 about 4 o'clock or half past 4 on Friday, indicating the 13 topics on which they wish to cross-examine and the 14 documents on which they propose to rely, if they are given 15 permission. 16 Those who wish to apply or have applied for leave 17 to cross-examine Mr X and have not yet provided lists of 18 the documents on which they wish to rely must please do so 19 by the start of business on Monday. Mr Semenya. 20 MR SEMENYA SC: Thank you, Chair. Chair, 21 there are three direct answers to this application and they 22 are brief. The first, Chair, is that this is again an 23 anticipatory objection. We are not given the names of 24 people about whose statements there should be difficulties. 25 There are no statements of any of them who are alleging</p> |
| <p style="text-align: right;">Page 30904</p> <p>1 that the statements obtained from them were obtained under 2 circumstances that would render them inadmissible in law. 3 CHAIRPERSON: Well, to be fair, I take it 4 if they haven't yet provided the names of the persons they 5 can't also provide statements from those persons whom they 6 haven't yet named, but I take it the point you're making is 7 that in order to deal adequately with the objection you 8 really need the information that I asked for, which we will 9 be getting in due course, together with statements from 10 those persons indicating, or prima facie at least that 11 there is a reason to believe that an objection to the 12 admissibility of the evidence would be upheld at the trial 13 and therefore the consequent prejudice to which Mr Mpofo 14 has referred would be suffered if the evidence were 15 admitted here. I take it that's what you're saying. Am I 16 right? 17 MR SEMENYA SC: That is correct, Chair. 18 That's why we call it an anticipatory objection. This 19 objection, if it has merit, it must be raised at the point 20 where the admissibility of a particular statement is 21 objected to. We would know the contents of that statement. 22 We would know exactly under which circumstances it is 23 alleged that the statement was obtained under coercion or 24 on one or other ground which would render that document 25 inadmissible. But so too the way in which one meet that</p> | <p style="text-align: right;">Page 30905</p> <p>1 type of objection - 2 CHAIRPERSON: Is this your second answer? 3 You said you - 4 MR SEMENYA SC: I was still on the same 5 answer - 6 CHAIRPERSON: Still with your first 7 point. 8 MR SEMENYA SC: And hopefully still 9 brief. 10 CHAIRPERSON: Brevity is a relative 11 concept of course. 12 MR SEMENYA SC: So Mpofo would have made 13 me aware, Chair. Chair, secondly the way one deals with an 14 objection of that nature is to obtain the specificity of 15 the complaint in that statement where they say I have been 16 coerced by Sergeant X, and that would give us an 17 opportunity to go and consult with that individual against 18 whom that allegation is made. It is when you compare the 19 two that you would see whether or not the complaint is 20 sound or not sound, the objection is valid or it's not. So 21 as a matter of principle you cannot invite a ruling of the 22 Commission that unidentified statements, allegedly made on 23 a basis that renders them in law inadmissible, which is 24 just purely offered at the bar. That is the first one, 25 Chair.</p> |

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1 The second one, Chair, is that this objection
 2 confuses the nature of the forum this is. There is
 3 absolutely no jurisdiction on this Commission to convict
 4 anyone. You do not have those powers. The terms of
 5 reference tell us that your function is to investigate;
 6 it's investigative. So even to use the word like "self-
 7 incriminating" is misplaced. It's a misnomer. You cannot
 8 incriminate yourself in a Commission.
 9 But where I do know that to be accurate, Chair,
 10 is with reference to the provisions of the regulations
 11 themselves, and that's regulation 9(2) which reads as
 12 follows –
 13 "No evidence regarding questions and answers
 14 contemplated in sub-regulation (1), and no evidence
 15 regarding any fact or information that comes to light in
 16 consequence of any such questions or answers shall be in
 17 any criminal proceedings" – now that's where the complaint
 18 is. It says that fact or information, it shall be
 19 admissible in any criminal proceedings. That's what it
 20 says, except in criminal proceedings where the person
 21 concerned is charged with an offence in terms of section 6
 22 of the Commissions Act, i.e. he perjured himself. So the
 23 regulations anticipate that so that to free the hands of
 24 the Commission to investigate the facts, exclude that
 25 information that serves before the Commission in subsequent

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1 a self-confessed criminal, there's a certain degree of
 2 suspicion which attaches to anything he may say. It
 3 doesn't mean he isn't necessarily telling the truth, but it
 4 means particular caution is required, and if you approach
 5 his evidence as an accomplice you then very often look
 6 either for corroboration or some other factor which renders
 7 his evidence cogent.
 8 Now the argument will be not that you look at the
 9 statement tendered to corroborate X to see whether there's
 10 something else that corroborates X, because that's a rather
 11 contrived operation. If the so-called confession, or
 12 alleged confession of say Mr Y is corroborated by some
 13 factor, that presumably will be a factor which will in any
 14 event corroborate the evidence of Mr X in support of whose
 15 evidence the alleged confession of Mr Y is produced.
 16 So I'm not quite sure how this submission of
 17 yours works, because remember we're not looking at an
 18 alleged statement by Mr Y to see whether we can believe it
 19 on its own, as I understand it. The purpose for which
 20 these statements are to be produced, if I'm understanding
 21 this part of the case correctly, is we're looking for
 22 material which can give us the assurance that what Mr X
 23 says on a particular issue can be believed, despite the
 24 problems that I've alluded to.
 25 Now if there's something else anyway which

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1 criminal proceedings.
 2 But too, Chair, at the very highest level of
 3 powers the Commission has is to make recommendations, and
 4 if the Commission was minded to make recommendation about
 5 the prosecution of any individual it would surely be on the
 6 basis of a reasoned recommendation, and if that reason is
 7 cogent in the eyes of the National Director of Public
 8 Prosecutions then maybe that may result. That is the very
 9 highest that can come out of here if there is evidence
 10 cogent enough to support the conclusion or the
 11 recommendation.
 12 The third, which is one tangential to the second
 13 but also supportive of the second, is to consider the
 14 probative value of the evidence that is sought to be
 15 tendered. It may very well be that come argument we would
 16 be asking the Commission to say please accept that
 17 statement insofar as it is supported by independent cogent
 18 evidence, and it may very well be that Mr Mpofu might argue
 19 that absent a particular corroboration of the contents of
 20 that statement, that statement has no probative value.
 21 CHAIRPERSON: I cannot really understand
 22 quite how that argument works. Let me explain to you what
 23 my problem is. My understanding is that the statements are
 24 to be proffered to the Commission on the basis that they
 25 corroborate what Mr X says; Mr X is an accomplice, Mr X is

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1 corroborates what Y says, which in turn corroborates what X
 2 says, then you can just look at the factor relied on to
 3 corroborate what Y says for the purpose of corroborating X.
 4 So it seems a little bit contrived to approach it in the
 5 way you are, but I'm putting the problem to you because I'm
 6 not quite sure I understand the full thrust of your
 7 submission.
 8 MR SEMENYA SC: Well, Chair, maybe let me
 9 illustrate this as an example. If the statement of a
 10 particular witness says for instance I was one of the
 11 makarapas, because in itself may make him an accomplice, we
 12 may have to approach his evidence with caution. Its
 13 probative value is significantly heightened if we can see
 14 him on the video, and at the time of argument I'll be able
 15 to say to the Commission, 'Chair, you must accept him to be
 16 correct on that point, not only on the strength of what is
 17 contained in the statement, but it is independently
 18 corroborated by objective evidence.' That is the
 19 submission that I'm making, with respect, but if it is
 20 something that can be ruled upon now because you just don't
 21 have the substratum on which to base any ruling, and
 22 finally I repeat the second submission.
 23 Chair, we should not conflate the nature of these
 24 proceedings to court proceedings that are determinative of
 25 rights. This one is not, and I did not quite understand

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| <p style="text-align: right;">Page 30910</p> <p>1 the argument about relevance because those relating – 2 CHAIRPERSON: The argument was relevance, 3 as appeared in a passage in Professor Zeffert's book, was 4 that relevance in a legal context, the context of evidence 5 has got two factors. The one is whether it's relevant to 6 the issue. The other is it may be technically relevant to 7 the issue, but if its reception involves so many other 8 problems of lengthy investigation of collateral facts and 9 so on, then as a matter of legal policy the law of evidence 10 says, or the courts that developed the principles of law of 11 evidence say that this evidence isn't worth the candle. It 12 may be technically relevant, but it's not "legally 13 relevant" - that's the phraseology used - because of all 14 the attendant mischief's and nonsense and trouble in 15 arriving at proof of a fact which may not contribute 16 substantially to the issue. I think that was Mr Mpfu's 17 submission, if I understood him correctly. If I didn't he 18 will with his usual forthrightness tell me I'm wrong. 19 MR SEMENYA SC: And that is why, Chair, 20 we're making the argument that that legal proposition is 21 sound if you are confronting a forum which has the power to 22 adjudicate rights that are in contestation. Whether it's 23 the right to innocence, or whether it is a right to 24 judgment in a civil matter is a different issue, but this 25 forum does not have those powers. So the so-called</p> | <p style="text-align: right;">Page 30911</p> <p>1 prejudice or harm to which Mr Mpfu refers is not manifest. 2 It's not even palpable. It's not even demonstrable. We 3 are not even told who will suffer what harm, and be able to 4 then make a ruling whether or not there is cogency in that 5 type of submission. So we are being asked to reply blind 6 to the gravamen of the complaint because we have no details 7 of it. Those are our submissions, Chair. 8 CHAIRPERSON: I'm not sure that the 9 complaint is blind, but I would hope that any blindness 10 that may exist will be eliminated when Mr Mpfu gives us 11 the list to which I referred, and I can't see a problem in 12 the provision of statements, affidavits by the persons 13 concerned, indicating grounds prima facie why the 14 statements would be inadmissible. If Mr Mpfu does that 15 then we would have a basis, then you would be able to deal 16 with the allegations, as you say. We would have a basis 17 for saying this evidence is suspect, we'd better not 18 receive it. 19 But when you talk about prejudice, of course 20 there's a further factor which I must confess weighs with 21 me and I'd like to hear you on. It's not only prejudice to 22 people, it's prejudice to the Commission, it's prejudice to 23 the credibility of its findings. I wouldn't want the 24 impression to be created that this Commission is prepared 25 to function as a kind of star chamber.</p> |
| <p style="text-align: right;">Page 30912</p> <p>1 [12:10] Receiving all kind of suspect evidence extorted 2 by torture. If that's the case, I obviously don't know if 3 it's so, but and making findings on it that would not be 4 conducive to achieving the purposes for which the 5 commission was appointed to give an objective unbiased 6 finding of what the facts in dispute are. The star chamber 7 was rightly closed during the reign of Charles the First 8 because of all the abuses to which it gave rise and I never 9 had any ambition to preside over a revived body of that 10 kind. And I think there are very strong cogent reasons why 11 that should not be the case and if evidence is going to be 12 put before us which is suspect, suspect not because it's 13 definitely proven to have been extracted by torture but 14 it's got the taint of or as I would say prima facie taint 15 of that kind of problem, alleged problem. Then the further 16 point Mr Mpfu raises would pick up traction as it were and 17 that is the time to be spent investigating these 18 allegations would probably not be worth the candle because 19 we're at limited time here and there are many reasons why 20 it would operate in a court. I understand we're not a 21 court. I understand we have no rights to determine 22 anything, but we are required to give recommendations and 23 findings which is believed would be of assistance, not only 24 in particular disputes between some of these people and the 25 police or Lonmin but which will, it's hoped, will assist to</p> | <p style="text-align: right;">Page 30913</p> <p>1 give guidance generally in what amounts to a national 2 problem which has actually given rise to international 3 concern. And we must do nothing which would in any way 4 imperil the credibility of the commission. As you will 5 know I've lent over backwards. Some people have criticised 6 me for leaning over backwards too much but I had to choose 7 between doing things which might give rise to complaints 8 against the commission around it wasn't being fair, as 9 supposed to complaints on the other side that I was being 10 too fair, but those were valid considerations. They remain 11 valid considerations and they are to me the most important 12 factors to be considered in assessing this point that's 13 been raised by Mr Mpfu. But I would like to respond to 14 you this way by asking Mr Mpfu questions. Mr Mpfu, 15 you're going to give me a list of the six people. I take 16 it you won't have a problem giving me affidavits from them 17 indicating the basis upon which they allege their 18 statements would be ruled inadmissible in the court of law, 19 why it would be improper for even a commission of this 20 kind, upholding principles of fairness, concerned to be 21 seen to retain its credibility. If you set those facts out 22 then there will be a basis for me to exercise a discretion 23 if necessary and also I suppose an answer, a basis for the 24 police, if they can show that the allegations are clearly 25 without any merit at all, why that's a matter to be looked</p> |

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| <p style="text-align: right;">Page 30914</p> <p>1 at. I understand you to say in the case of some, at least, 2 of the people you've actually got medical reports 3 indicating these people were assaulted while they were in 4 custody which if that is so would afford some kind of prima 5 facie confirmation of their allegations. Am I correct in 6 that?</p> <p>7 MR MPOFU: Yes, Chairperson, we do.</p> <p>8 CHAIRPERSON: So what I propose to do is 9 not to make a ruling on the objection that you've raised 10 until that material is available and the police have had a 11 chance to deal with it. That seems to me to be fair to say 12 that it's difficult for the SAPS to deal with a generalised 13 attack but it's within your power and you've indicated to 14 me, as I understand you're prepared to exercise that power. 15 It's within your power to give them the wherewithal so 16 these become specific points relating to statements made or 17 allegedly made by six specific people and we can then deal 18 with it in a comprehensive and, one hopes, a satisfactory 19 basis.</p> <p>20 MR MPOFU: Well, Chairperson, here all in 21 principle I have no objection to that, Chairperson. It's 22 just unfortunate because it would be time consuming. I 23 would've thought that Mr Semenya, as a colleague, would 24 accept from the Bar when I say I've consulted with people 25 yesterday and there are, we sent them to medical for a</p> | <p style="text-align: right;">Page 30915</p> <p>1 medical examination last year and that some of the 2 allegations have already been made on the record that if 3 that is not acceptable to him then obviously I'll get the 4 people to repeat what they said to me yesterday in the 5 consultations.</p> <p>6 CHAIRPERSON: Yes, well it's not only Mr 7 Semenya's feelings on the matter or who's the matter 8 relevant, it's ours as well. I'm reluctant to just rule 9 inadmissible statements just on the say so even though it 10 comes from counsel. I understand counsel do their duty. 11 They convey their instructions to the court or the 12 commission, but I wanted something a bit more than that. 13 Anyway, I would like that done. I will not give a ruling 14 just yet. When this material you referred to has come Mr 15 Semenya will then be able to deal with it if he wishes. He 16 may well feel at that stage, sorry, I'll give Mr Mahlangu a 17 chance in a moment. He may feel at that stage that in fact 18 what will be necessary will be quite far ranging 19 investigations inter alia by the commission which may 20 render the whole exercise not worth the candle, but that's 21 something for him to decide in the light of the material 22 when it becomes available.</p> <p>23 MR MPOFU: Ja.</p> <p>24 CHAIRPERSON: Mr Budlender, is there 25 anything you wish to say at this stage or would you wish to</p> |
| <p style="text-align: right;">Page 30916</p> <p>1 keep your powder dry and use it if necessary after the 2 information Mr Mpofo has undertaken to give us is available 3 and Mr Semenya has a chance to deal with it?</p> <p>4 MR BUDLENDER SC: Chair, if there will be 5 an opportunity to address you at that stage I'm happy to 6 wait until that stage.</p> <p>7 CHAIRPERSON: I will give you that 8 opportunity and, sorry before you say something can I just 9 say something. I take it it's implicit that the statements 10 the police may wish to rely on will not be proffered until 11 such time as this matter is disposed of.</p> <p>12 MR MPOFU: Yes, thank you, Chairperson. 13 Maybe, Chairperson, what I can say which may or may not be 14 of assistance is that some of the people, at least I'm not 15 sure of the number now, have about six I'm told, but I 16 don't want to be held to that number –</p> <p>17 CHAIRPERSON: You did tell me it was six, 18 you see –</p> <p>19 MR MPOFU: Ja, no –</p> <p>20 CHAIRPERSON: - of them is one you've 21 actually -</p> <p>22 MR MPOFU: No, I'm making a different 23 point.</p> <p>24 CHAIRPERSON: A different point, sorry.</p> <p>25 MR MPOFU: Ja. Some of those six,</p> | <p style="text-align: right;">Page 30917</p> <p>1 Chairperson, some or all as I say I just didn't want to 2 commit because I'm not sure of the number. Some or all of 3 them have in any event laid charges or complaints with the 4 IPID and this also is something that I think I indicated 5 last year regarding their alleged torture. And all our –</p> <p>6 CHAIRPERSON: - that solved the problem.</p> <p>7 If you can get the dockets from IPID then –</p> <p>8 MR MPOFU: That's –</p> <p>9 CHAIRPERSON: - that saves you quite a 10 lot of other work.</p> <p>11 MR MPOFU: Yes. No, that's what I'm 12 saying, Chairperson. And I don't want to discourage this 13 break in the proceedings but just to say this, Chairperson, 14 there's only one method to test the admissibility of a 15 statement and it's called a trial within a trial. We don't 16 have that facility in these proceedings and so whatever we 17 do will have to be a compromise or some kind of 18 improvisation because –</p> <p>19 CHAIRPERSON: I don't know, you say –</p> <p>20 sorry to interrupt you, I'm not sure.</p> <p>21 MR MPOFU: Sure.</p> <p>22 CHAIRPERSON: You say we haven't got that 23 facility, we have the power to make rules for our procedure 24 and –</p> <p>25 MR MPOFU: Well –</p> |

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| <p style="text-align: right;">Page 30918</p> <p>1 CHAIRPERSON: - if it was necessary we 2 would do that. The other point you raise of course is the 3 inconvenience of embarking upon it on the series of six 4 trials within a trial may outweigh any advantage that may 5 arise from producing the statements at the end, if at the 6 end of such an enquiry or series of enquiries there was a 7 finding in favour of the police, but that's the other point 8 you make.</p> <p>9 MR MPOFU: Yes, thanks.</p> <p>10 CHAIRPERSON: I haven't overlooked.</p> <p>11 MR SEMENYA SC: Chair, I must say to Mr 12 Mpfu that I don't doubt his integrity. It is not that he 13 was not told about these tortures but torture, coercion are 14 questions of fact that must come from those who allege it 15 and the circumstances around which they contend or allege 16 that torture happened. So it is that second category to 17 which I was making reference.</p> <p>18 CHAIRPERSON: Yes, I didn't understand 19 you to be questioning Mr Mpfu's integrity at all, but 20 anyway he's very fairly conceding to give you the 21 information. There may be it comes from the IPID dockets 22 if we can get them. So and if that's so we can get them 23 sooner rather than later and we can deal with this matter 24 quite soon.</p> <p>25 MR SEMENYA SC: But secondly, Chair,</p> | <p style="text-align: right;">Page 30919</p> <p>1 secondly we will answer that when we have the information 2 but secondly the prejudice to the commission can only arise 3 if it makes its conclusions based on that type of evidence 4 around which there is concern, but if at the conclusion of 5 the commission the commission says because we were not – it 6 said –</p> <p>7 CHAIRPERSON: You mustn't make any 8 submissions so strongly, Mr Mahlangu.</p> <p>9 MR MAHLANGU: I thought it was 10 deafeningly cogent an argument to make. No, Chair, if the 11 commission came to the conclusion that because the testing 12 of the truthfulness or otherwise of these allegation is a 13 facility we did not have it is for that reason the weight 14 we attach to these documents is more or less not there 15 unless it is independently corroborated by independent 16 evidence. What could be the prejudice of the commission if 17 that happens, but it is only at that time that that may 18 raise itself as a problem.</p> <p>19 MR MPOFU: Chair –</p> <p>20 CHAIRPERSON: Yes, Mr Mpfu?</p> <p>21 MR MPOFU: Yes, Chairperson. 22 Chairperson, I think there's a fundamental 23 misunderstanding. Sorry.</p> <p>24 CHAIRPERSON: Mr Mpfu, Mr Mahlangu was –</p> <p>25 MR MPOFU: I'm sorry, yes.</p> |
| <p style="text-align: right;">Page 30920</p> <p>1 CHAIRPERSON: This commission on this 2 aspect is the interpreter has the last word and not 3 counsel.</p> <p>4 MR MPOFU: Yes. Chairperson, I just want 5 to say one thing just so that we don't misunderstand each 6 other. What we are talking about here, Chairperson, and I 7 use that word very advisably in my address, are claims of 8 impropriety of whatever type, whether it is torture or the 9 absence of legal representatives. Now those claims are 10 there and I understand Mr Semenya to accept that those 11 claims were made at least to me. Now as to the veracity of 12 the claims themselves, that's irrelevant to what the 13 objection I'm raising now. Because the veracity or 14 otherwise of those claims can only be determined by a trial 15 within a trial. Let's assume that some of them are wild 16 claims and some are true, so what? The whole point is that 17 is whether the commission is prepared against relevance 18 which is either non existent or tenuous to accept 19 statements in respect of which claims of impropriety have 20 been made. There's no other remedy or I can come to Mr 21 Semenya with 100 affidavits of people who claim that they 22 were tortured. How is it going to determine the veracity 23 thereof except through the term time tested matter of a 24 trial within a trial? There's no other acceptable means of 25 doing that. So it is either the commission accepts that</p> | <p style="text-align: right;">Page 30921</p> <p>1 these statements, firstly, are not relevant at all in which 2 case all this becomes academic or if the commission says 3 well they might be of some relevance does all this 4 including these affidavits and so on justify or rather not 5 justify the exercise of the discretion for their exclusion. 6 That really, that's my submission. So it's not so much I'm 7 going to show somebody's scar in this, that's irrelevant at 8 this stage because it's not going to assist anybody.</p> <p>9 CHAIRPERSON: If it was – Mr Mpfu, I 10 understood your submission to be as you summarise it, but I 11 did say, speaking for myself, I would prefer to see 12 affidavits by the people concerned so these are not just 13 allegations made, but these are supported by in the way of 14 factual assertions in courts and other bodies normally are 15 supported, but anyway, I think we understand what you've 16 said and I think Mr Semenya understands what you said and 17 we understand what he submitted. You understand as well. 18 So we can now get on with the main business of the morning 19 and that's hearing Mr X's evidence. Mr Mathibedi, I 20 understand you're going to call Mr X. I did indicate that 21 we wanted people who have not yet indicated documents on 22 which they will rely in cross-examination to do so at the 23 start of business on Monday and that may make it necessary 24 for you after the evidence of the experts has been 25 interposed, to reopen as it were the examination in chief</p> |

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| <p style="text-align: right;">Page 30922</p> <p>1 of the witness before cross-examination in which case you 2 will refer to the documents to which your attention 3 would've been drawn by the parties. And you will also 4 then, I would think be able to deal with these documents to 5 which Mr Mpofu has been objecting because that will be the 6 appropriate time to do it because I would hope by then be 7 able to give the ruling based on the extra information 8 you're going to get. So I take it you can proceed for the 9 moment without referring to those documents but it's only 10 six people apparently. And perhaps we can ask Mr Mpofu at 11 least to provide you with their names during the lunch hour 12 so you at least bear that in mind when you're leading the 13 evidence. But of course your rights to proffer those 14 statements at a later stage will of course be reserved 15 subject to the decision that I will have to make. But are 16 you ready to call Mr X? 17 MR MATHIBEDI SC: Thanks, Chair. For a 18 start, Chair, we start with matters of housekeeping and 19 name the – 20 CHAIRPERSON: Yes, alright matters of – 21 MR MATHIBEDI SC: - the - 22 CHAIRPERSON: - matters of housekeeping. 23 MR MATHIBEDI SC: - of Mr X. But it's 24 Bundle B. 25 CHAIRPERSON: In the index of Bundle B,</p> | <p style="text-align: right;">Page 30923</p> <p>1 documents to be used in evidence in chief of Mr X – 2 MR MATHIBEDI: That's correct. 3 CHAIRPERSON: - and the first two are – 4 the one is a manuscript statement of Mr X dated the 7th of 5 February 2013 and then number 2 is a typed version of that 6 document and then you have other statements by Mr X which 7 are described as new exhibits. That's 4, 5, 6, 7, 8, 9. 8 MR MATHIBEDI SC: It goes up to item 10, 9 Chair. 10 CHAIRPERSON: Item 10 is a typed 11 statement. What I suggest what we do is we adopt the 12 practice we've done in the past, we give a document an 13 exhibit, a number. Where we have a manuscript version as 14 well as a typed version we then put point 1 or point 2 15 after the exhibit number we've given. So that - Ms Pillay 16 will help me. What is the next exhibit number to use? 17 MS PILLAY: Chair, it's AAAA. 18 CHAIRPERSON: AAAA. So AAAA.1 – sorry. 19 AAAA1.1 will be the manuscript statement dated 7 February 20 2013. AAA, sorry, AAAA1.2 will be the typed version 21 thereof. AAAA2.1 will be the statement which is marked A44 22 in the docket of case 107/08/2012. 23 [12:30] Is that right? So is A45 a typed version? I 24 haven't looked at it, or is it a separate - alright, so it 25 will just be AAA, rather AAAA2, that's the statement of X</p> |
| <p style="text-align: right;">Page 30924</p> <p>1 marked A4-4 in docket CAS108/08/2012. And then AAAA3 will 2 be the statement of X in the same docket –5. And then 3 triple A – sorry, I always call it triple – AAAA4 will be 4 the statement of X marked A17 in docket CAS109/08/12, 2012 5 and the one, and the I take it the one marked A18 is also 6 another statement, it's not a typed one, is that right? 7 MR MATHIBEDI SC: That's correct, Chair. 8 CHAIRPERSON: Then AAAA6 will be the 9 statement marked A34, docket 111/08/2012 and AAAA7 in the 10 same docket marked A35. 11 MR MATHIBEDI SC: Item 10 we only have a 12 typed statement. 13 CHAIRPERSON: Alright, thank you. So 14 AAAA8 is the typed statement, do we know the date of the 15 statement? 16 MR MATHIBEDI SC: Unfortunately, Chair, 17 it does not have a date – 18 CHAIRPERSON: - statement number 10 in 19 bundle B. 20 MR MATHIBEDI SC: Thanks, Chair. 21 MR MPOFU: Chairperson, if I may 22 Chairperson, I know it's not my place but maybe it will 23 save us time and some ink. Would it be harmful if we just 24 call it AB1? This quadruple A is just going to – 25 CHAIRPERSON: We have already but perhaps</p> | <p style="text-align: right;">Page 30925</p> <p>1 we must bear your suggestion in mind for future exhibits. 2 MR MPOFU: Ms Pillay agrees with me, 3 Chair. 4 CHAIRPERSON: Well, perhaps she will also 5 agree with my proposal that we bear your point in mind for 6 future exhibits. I've already gone through the exercise. 7 It is a good suggestion but pity you didn't mention it 8 earlier, but thank you for it, belated though the gift is. 9 MR MATHIBEDI SC: Thanks, Chair. I beg 10 leave to call Mr X. 11 CHAIRPERSON: We won't mention his name. 12 It's available on the documents which are before us. Mr 13 Interpreter, would you please, I understand he speaks 14 Xhosa, would you please swear him in? 15 MR X: Yes, I want to take the oath. 16 MR MAHLANGU: He has sworn, so help me 17 God. 18 MR X: (sworn in through interpreter). 19 CHAIRPERSON: I'm afraid I was 20 distracted. Did you tell him he must tell the truth, the 21 whole truth and nothing but the truth? 22 MR MAHLANGU: I did exactly that. 23 CHAIRPERSON: Yes, Mr Mathibedi. 24 EXAMINATION BY MR MATHIBEDI SC: Sir, you 25 confirm that you took part in the strike that occurred</p> |

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1 during August 2012?

2 MR GOTZ: Chair, I beg your pardon. I

3 didn't hear the witness respond to the request that he tell

4 the truth, the whole truth and nothing but the truth.

5 (Inaudible) would be sworn in, he was told to do that but

6 he didn't say, I accept and agree that that would be the

7 case.

8 CHAIRPERSON: You don't have to do that.

9 All you have to do is, when you're told, you're asked to

10 swear you'll tell the truth, the whole truth and nothing

11 but the truth, you're then asked to raise your right hand

12 and say, I swear, so help me God and I understood from the

13 interpreter that that's what happened.

14 MR GOTZ: No, Chair, that's precisely my

15 objection. He did not do that.

16 CHAIRPERSON: We're having a conflict of

17 fact here. Mr Mahlangu, how do you respond to that?

18 MR MAHLANGU: Chairperson, he said it in

19 Xhosa. If you understand Xhosa, understand that

20 (inaudible) yes, it is so. Then I said, if it is so, then

21 repeat the following words, "So help me God" and he did, in

22 Xhosa.

23 MR MPOFU: Chairperson, maybe being Xhosa

24 speaking I can say that the objection, that (inaudible)

25 doesn't have to – the raising of the right hand in Xhosa –

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1 MR MATHIBEDI SC: Were you not worried

2 that you will lose your job by taking part in the

3 unprotected strike?

4 MR X: I wasn't, sir.

5 MR MATHIBEDI SC: Now sir, you are aware

6 that as a result of the unlawful activities of some of the

7 strikers, that between the 10th and the 14th of August –

8 MR MAHLANGU: The sentence? The sentence

9 is incomplete, to interpret it.

10 MR MATHIBEDI SC: I thought maybe it is

11 better if I break it into portions, two portions.

12 MR MAHLANGU: If you could repeat it

13 again, sir.

14 MR MATHIBEDI SC: You are aware that as a

15 result of the unlawful activities of some of the strikers

16 that occurred, so regard between the 10th and the 14th of

17 August 2012, 10 people lost their lives.

18 MR X: Yes, sir.

19 MR MATHIBEDI SC: There was destruction

20 of property.

21 MR X: Yes.

22 MR MATHIBEDI SC: There was intimidation.

23 MR BUDLENDER SC: Chair, I don't want to

24 be difficult but is this really a proper way to ask a

25 question of the witness. It is conclusory as to what

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1 he didn't raise his hand.

2 CHAIRPERSON: Let's solve the problem by

3 asking him to swear again. I don't have any (inaudible)

4 good or bad taken – ask him please to repeat the oath, to

5 raise his right hand and to repeat that he swears to tell

6 the truth, the whole truth and nothing but the truth.

7 Would he please raise his right hand and say, I swear – so

8 we can see his right hand on the screen.

9 MR MAHLANGU: The hand is raised,

10 Chairperson.

11 CHAIRPERSON: Can he say, I swear, so

12 help me God.

13 MR X: So help me God.

14 MR X: (sworn in through interpreter)

15 CHAIRPERSON: Yes, Mr Mathibedi, after

16 that –

17 MR MATHIBEDI SC: Thanks, Chair.

18 CHAIRPERSON: - possibly over-cautious

19 action.

20 MR MATHIBEDI SC: You confirm that you

21 took part in the strike that occurred during August 2012?

22 MR X: Yes, sir.

23 MR MATHIBEDI SC: Were you aware that the

24 strike was unprotected?

25 MR X: Yes, sir.

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1 happened, rather than evidence of what happened and what is

2 more, put in the most leading way imaginable.

3 CHAIRPERSON: It does sound a bit leading

4 –

5 MR MATHIBEDI SC: Chairperson –

6 CHAIRPERSON: - reformulate your

7 questions. Sorry, Mr Budlender, most of the points he's

8 dealt with are common cause so I take it it's a short way

9 of trying to get him to –

10 MR BUDLENDER SC: Well, Chair, there's a

11 dispute as to what the cause was of some of the lives on

12 the 13th of August. We all may have our views as to who was

13 responsible for what, but this certainly seems to be a very

14 (inaudible) – that the strikers were responsible for all of

15 the deaths that took place on the 13th of August is a matter

16 (inaudible).

17 CHAIRPERSON: (Inaudible) because it is

18 an issue which we will have to decide and make findings on

19 as to whether the deaths of the police on the 13th were

20 caused by unlawful acts by the strikers or the strikers

21 acting in self-defence or putative self-defence

22 (inaudible). It's a matter on which we haven't yet made a

23 finding and we will only do so at the end.

24 MR BUDLENDER SC: And if I may say so,

25 Chair, the strikers –

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1 CHAIRPERSON: Yes. Anyway, you said
 2 you'll reformulate the question.
 3 MR MATHIBEDI SC: Sir, were you involved
 4 in some of the killings that took place between the 10th and
 5 the 14th of August 2012?
 6 MR X: Yes, sir.
 7 MR MATHIBEDI SC: Were you involved in
 8 some of the destruction of the property that occurred
 9 between the 10th and the 14th of August?
 10 MR X: Yes.
 11 MR MATHIBEDI SC: Were you involved in
 12 some of the intimidation that occurred between the 10th and
 13 the 12th of August 2012?
 14 MR X: Yes, sir.
 15 MR MATHIBEDI SC: Are you responsible for
 16 some of the injuries that people sustained between the 10th
 17 and the 14th of August?
 18 MR X: Yes, sir.
 19 CHAIRPERSON: I want to urge people who
 20 are sitting in the chamber, it's not a laughing matter,
 21 this is not a matter for people to make (inaudible). It's
 22 a very serious matter – I'm sure they have their feelings
 23 about them but they must please keep them to themselves. I
 24 don't want to have to clear the chamber or ask people to
 25 leave because they are making a noise. They're entitled to

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1 did you attend any meeting where the plight of the RDOs was
 2 discussed?
 3 MR X: Yes, there was.
 4 MR MATHIBEDI SC: Where did the meeting
 5 take place?
 6 MR X: The first one was held in the
 7 region of Mooinooi, RDOs, there were 700 of us.
 8 MR MATHIBEDI SC: When was the meeting
 9 held?
 10 MR X: It was during the day.
 11 MR MATHIBEDI SC: Can you remember the
 12 day, the date when the meeting was held?
 13 MR X: It was the 5th or the 6th, that is
 14 the date.
 15 MR MATHIBEDI SC: Which month was that?
 16 MR X: It was during August.
 17 MR MATHIBEDI SC: What was discussed at
 18 that meeting?
 19 MR X: It was about money that we as RDOs
 20 had to receive and that we were going to meet again on the
 21 9th. The money we were going to demand was an amount of
 22 12 500.
 23 MR MATHIBEDI SC: The money was to be
 24 demanded from who?
 25 MR X: We agreed we would meet on the 9th

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1 be here, they're entitled to hear, to hear the witness, to
 2 see the witness on the screen. I hope it won't be
 3 necessary to say (inaudible).
 4 MR MATHIBEDI SC: Thank you. Sir, you
 5 are aware that losing a loved one is not something that
 6 people take lightly, it has got a serious impact on the
 7 affected family.
 8 MR X: It is so.
 9 MR MATHIBEDI SC: And you are also aware
 10 of the consequences of people losing their valuable
 11 property?
 12 MR X: Yes, sir.
 13 MR MATHIBEDI SC: And you are also aware
 14 of the consequences of people having sustained injuries.
 15 MR X: It is so.
 16 MR MATHIBEDI SC: Sir, you agree that it
 17 is very important that the affected families should know
 18 how and why their loved ones lost their lives.
 19 MR X: Yes, I do.
 20 MR MATHIBEDI SC: You are aware, sir,
 21 that you are expected to honestly, openly and truthfully
 22 testify before this Commission and to answer relevant
 23 questions.
 24 MR X: It is so.
 25 MR MATHIBEDI SC: Sir, during August 2012

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1 of the month, which was a holiday.
 2 CHAIRPERSON: You haven't answered the
 3 question. You were asked from whom was the money going to
 4 be demanded, 12 500?
 5 MR X: From the employer at the time.
 6 MR MATHIBEDI SC: The demand related to
 7 what, sir, of the 12 500?
 8 MR X: It was money where our salaries
 9 had to be raised because of the hard work that we are
 10 doing.
 11 MR MATHIBEDI SC: How was the meeting
 12 conducted? Was there any person who chaired the meeting?
 13 MR X: There was a chairperson of the
 14 meeting, yes.
 15 MR MATHIBEDI SC: Who was the chairperson
 16 of the meeting?
 17 MR X: It was Ben, Bhele, Bhele.
 18 CHAIRPERSON: How does one spell Bhele?
 19 MR MAHLANGU: Bhele is spelt B-E-L-E.
 20 I'm sorry, in Xhosa B-H-E-L-E.
 21 CHAIRPERSON: I thought there was an "h"
 22 in it.
 23 MR MATHIBEDI SC: How did it come about
 24 that Bhele should be the chairperson of the meeting?
 25 [12:50] MR X: He was elected by us.

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| <p style="text-align: right;">Page 30934</p> <p>1 MR MATHIBEDI SC: During that meeting was 2 any view expressed about the involvement or non-involvement 3 of unions in pursuing the grievances of the strikers? 4 MR X: We said we did not want the unions 5 because they did not forward our grievances. 6 MR MATHIBEDI SC: Which unions were the 7 strikers referring to? 8 MR X: NUM. 9 MR MATHIBEDI SC: How did the meeting 10 end, Sir? 11 MR X: The ending was that we would 12 discuss this amongst ourselves as workers at the different 13 working place and that a meeting would be held at Wonderkop 14 on the 9th, which would have been a holiday. 15 MR MATHIBEDI SC: Now what was going to 16 be discussed on the 9th at Wonderkop? 17 MR X: We were going to talk about the 18 12 500. 19 MR MATHIBEDI SC: On the 8th of August did 20 you go to work, Sir? 21 MR X: Yes. 22 MR MATHIBEDI SC: Did anything happen 23 whilst you were on duty? 24 MR X: Yes. 25 MR MATHIBEDI SC: Will you proceed and</p> | <p style="text-align: right;">Page 30935</p> <p>1 tell us what happened, Sir? 2 MR X: When I went on to clock for duty 3 there was a parade there and when I asked what it was about 4 I was told to go to the parade at the HR. 5 MR MATHIBEDI SC: Sorry, what do you mean 6 by HR, Sir? 7 MR X: When I clocked at my shaft there 8 was a parade and I was told to go to Boyzie. 9 MR MATHIBEDI SC: Who is Boyzie, Sir? 10 MR X: He's the HR at East Plat. He's 11 the HR at the shaft, Eastern Plats. 12 MR MATHIBEDI SC: Where is Mr Boyzie 13 employed? 14 MR X: He worked in the offices, above, 15 on the, above the shaft. 16 MR MATHIBEDI SC: The offices of which 17 company, Sir? 18 MR X: Lonmin. 19 MR MATHIBEDI SC: Did you oblige to the 20 request? 21 MR X: Yes, after clocking I went, I 22 proceeded to him. Boyzie told us that there was money that 23 had been given, that had been added for RDOs. 24 MR MATHIBEDI SC: Where did you find 25 Boyzie?</p> |
| <p style="text-align: right;">Page 30936</p> <p>1 MR X: I found him in the hall at the 2 shaft. 3 MR MATHIBEDI SC: Was he alone in the 4 hall? 5 MR X: Boyzie was alone in the hall until 6 we, the RDOs arrives and the RDAs. 7 MR MATHIBEDI SC: Roughly how many RDAs 8 and RDOs went to the hall? 9 MR X: We were many. We were all paraded 10 according to the jobs that I have referred to. 11 MR MATHIBEDI SC: Will you proceed, Sir, 12 and tell us what happened further on? 13 MR X: Boyzie told us that there was many 14 added for RDOs and also for RDAs. An RDO that works alone 15 without an assistant would receive, that he would receive 16 an amount of 750. An RDO that does work with an assistant 17 would receive 500, that the RDA would receive 250. 18 MR MATHIBEDI SC: Did the RDOs and RDAs 19 accept the proposal put forward by Boyzie? 20 MR X: We did not accept it. 21 MR MATHIBEDI SC: Were officials of any 22 union present during that discussion? 23 MR X: We asked Boyzie, "Whenever you 24 give us a report you're usually in the company of others. 25 Where are they?"</p> | <p style="text-align: right;">Page 30937</p> <p>1 MR MATHIBEDI SC: Others, to whom were 2 you referring to, Sir? 3 MR X: Whenever the HR would give us a 4 report there would be a union representative. 5 MR MATHIBEDI SC: Sir, you have already 6 testified – before that; did any of the union officials, 7 representatives appear at the meeting? 8 MR X: Boyzie said he was coming and then 9 in fact he eventually arrived. 10 MR MATHIBEDI SC: Who arrived, Sir? 11 MR X: Tshipa. Tshipa is his name. 12 MR MATHIBEDI SC: Who is Tshipa, Sir? 13 MR X: He's a shaft steward belonging to 14 a union. 15 MR MATHIBEDI SC: Which union did he 16 belong to? 17 MR X: With NUM. 18 MR MATHIBEDI SC: Sir, you have already 19 testified that the RDOs decided not to involve any union in 20 the dispute with Lonmin. Why was it necessary, or why did 21 you ask whether any union official will be present during 22 that discussion? 23 MR X: What confused us was we had been 24 discussing this thing on the other side and here of a 25 sudden we are being told by Boyzie when we went to the</p> |

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1 shaft.

2 MR MATHIBEDI SC: Sir, my question is you

3 have testified that a decision was taken that unions should

4 not be involved in the dispute. Now I would like to know

5 why was Boyzie asked if any union representative would be

6 present during the discussion that was held.

7 MR X: This is because whenever Boyzie

8 told us anything in the shaft he would not be alone. There

9 would be somebody next to him.

10 MR MATHIBEDI SC: Who would that somebody

11 be next to Mr Boyzie?

12 MR X: Management and also a rep from the

13 union.

14 MR MATHIBEDI SC: Chair, I notice it's 1

15 o'clock.

16 CHAIRPERSON: Sorry, you say the unions

17 or the union? Plural or singular? I thought you said –

18 MR MAHLANGU: He said union. Union.

19 CHAIRPERSON: Union, singular.

20 MR MAHLANGU: Yes.

21 CHAIRPERSON: There would be –

22 MR MAHLANGU: A rep from the union.

23 CHAIRPERSON: A rep from the union, and

24 that was NUM, I take it. Right, it's now just after 1

25 o'clock. We'll take the adjournment until quarter to 2.

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1 rock drilling alone.

2 MR MATHIBEDI SC: Will you describe the

3 circumstances surrounding the conditions under which you

4 are employed?

5 MR X: We work under difficult conditions

6 at dangerous places.

7 MR MATHIBEDI SC: What dangers are you

8 referring to, Sir?

9 MR X: I work underground under rocks.

10 MR MATHIBEDI SC: For how long have you

11 been working in the mining industry?

12 MR X: I started in 1990.

13 MR MATHIBEDI SC: As what when you

14 started working in the mining industry?

15 MR X: Assistant, timber.

16 MR MATHIBEDI SC: Will you please proceed

17 and tell us how you progressed in your employment?

18 MR X: I then went over to the machines

19 and eventually became an RDO.

20 MR MATHIBEDI SC: As at the time of the

21 unprotected strike, how much were you earning per month?

22 MR X: I was receiving 6 000.

23 MR MATHIBEDI SC: Now taking into account

24 the kind of job that you, the RDOs are doing and the

25 dangers attached thereto, is that money sufficient?

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]

2 [13:49] CHAIRPERSON: The commission resumes. Mr

3 Interpreter, would you please tell the witness he's still

4 under oath.

5 INTERPRETER: He's speaking but there's

6 no –

7 CHAIRPERSON: The sound doesn't appear to

8 be on. We need his microphone on otherwise we can't hear

9 his evidence.

10 INTERPRETER: Just switch on the mike.

11 MR X: I can hear you now.

12 CHAIRPERSON: We're back in business.

13 MR X: I'm still under oath, I remember.

14 CHAIRPERSON: Mr Mathibedi -

15 MR MATHIBEDI SC: Thank you.

16 CHAIRPERSON: - you're still examining in

17 chief.

18 MR MATHIBEDI SC: Thanks, Chair. Sir,

19 did Mr Boyzie give any reasons for the proposed salary

20 increase?

21 MR X: Yes, Boyzie said we are being

22 given this increase because our job is hard.

23 MR MATHIBEDI SC: What kind of job are

24 you doing, Sir?

25 MR X: I am an RDO at Lonmin. I do the

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1 MR X: It does not satisfy us.

2 MR MATHIBEDI SC: What was the attitude

3 of the RDOs and RDAs regarding the proposal that was made

4 by Mr Boyzie?

5 MR X: We said to him, Boyzie, we are not

6 accepting this. Our meeting is going to be on the 9th on

7 the holiday.

8 MR MATHIBEDI SC: Sir, on the 5th or the

9 6th of August 2012 when the RDOs and RDAs met was it the

10 first time that the issue of the salary increment cropped

11 up?

12 MR X: There was one time a meeting at

13 Karee by the RDOs there with management but I was not

14 there.

15 MR MATHIBEDI SC: Do you have an idea of

16 when that meeting was held?

17 MR X: It was during July.

18 MR MATHIBEDI SC: Which year was it?

19 MR X: 2012.

20 MR MATHIBEDI SC: Do you have any

21 knowledge as to whether before July 2012 this issue was

22 raised?

23 MR X: There was mention of it at Karee,

24 yes.

25 MR MATHIBEDI SC: With whom was this

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| <p style="text-align: right;">Page 30942</p> <p>1 issue discussed?</p> <p>2 INTERPRETER: The question is again?</p> <p>3 MR MATHIBEDI SC: With whom was this</p> <p>4 issue discussed?</p> <p>5 MR X: The RDOs at Karee were meeting</p> <p>6 with the management.</p> <p>7 MR MATHIBEDI SC: Do you know what was</p> <p>8 the outcome of the meeting?</p> <p>9 MR X: The decision made it was that we</p> <p>10 would all come together, the different RDOs from the</p> <p>11 Eastern, the Western and the Karee, that we will have to</p> <p>12 meet.</p> <p>13 MR MATHIBEDI SC: Sorry, Sir, I'm</p> <p>14 referring to the decision of the management.</p> <p>15 MR X: Management said that there's an</p> <p>16 agreement that was entered into between them and NUM which</p> <p>17 only expires in 2013.</p> <p>18 MR MATHIBEDI SC: Was that response</p> <p>19 acceptable to the RDOs and RDAs?</p> <p>20 MR X: It was not acceptable.</p> <p>21 MR MATHIBEDI SC: At that stage did you</p> <p>22 belong to any union?</p> <p>23 MR X: Yes, I was a member of the NUM.</p> <p>24 MR MATHIBEDI SC: Do you know if this</p> <p>25 issue of the salary increase increment was taken up with</p> | <p style="text-align: right;">Page 30943</p> <p>1 officials of NUM?</p> <p>2 MR X: Boyzie did call Sheba to the shaft</p> <p>3 and we asked Sheba if he knew about this. He said he did</p> <p>4 not know. We then said to him he should not sign this</p> <p>5 because our meeting would only be on the day of the</p> <p>6 holiday.</p> <p>7 MR MATHIBEDI SC: Prior to the 8th of</p> <p>8 August do you know if the issue of the increment of the</p> <p>9 salary of the RDOs and RDAs was taken up with NUM?</p> <p>10 MR X: No, we did not.</p> <p>11 MR MATHIBEDI SC: Why did the RDOs and</p> <p>12 RDAs take a stand or decision that unions will not be</p> <p>13 involved in the credence of the RDOs and RDAs?</p> <p>14 MR X: We said NUM does not forward our</p> <p>15 grievances.</p> <p>16 MR MATHIBEDI SC: Now which grievances</p> <p>17 did NUM not forward and to whom?</p> <p>18 MR X: These were about wages that we</p> <p>19 wanted as RDOs, money such as – like bonuses.</p> <p>20 MR MATHIBEDI SC: Did the officials of</p> <p>21 NUM give any reasons why the issue of the increase of the</p> <p>22 salary was not taken up?</p> <p>23 MR X: They did not give us a reason.</p> <p>24 MR MATHIBEDI SC: Prior to the RDOs and</p> <p>25 RDAs embarking on the unprotected strike, was there any</p> |
| <p style="text-align: right;">Page 30944</p> <p>1 hope that the issue of the salary increase will be</p> <p>2 resolved?</p> <p>3 MR X: Just repeat the question, Sir.</p> <p>4 MR MATHIBEDI SC: Prior to the RDOs and</p> <p>5 RDAs embarking on the unprotected strike, was there any</p> <p>6 hope that the issue of the salary increase will be</p> <p>7 resolved?</p> <p>8 MR X: There was no hope.</p> <p>9 MR MATHIBEDI SC: How did the meeting</p> <p>10 with Mr Boyzie end?</p> <p>11 MR X: The decision taken was that we as</p> <p>12 RDOs would be meeting on Thursday at Wonderkop.</p> <p>13 MR MATHIBEDI SC: Do you remember the</p> <p>14 date of the proposed meeting?</p> <p>15 MR X: Yes, I remember.</p> <p>16 MR MATHIBEDI SC: What's the date, Sir?</p> <p>17 MR X: The date was the 9th August 2012.</p> <p>18 MR MATHIBEDI SC: Was the meeting held on</p> <p>19 the 9th of August 2012?</p> <p>20 MR X: Yes, Sir.</p> <p>21 MR MATHIBEDI SC: Did you attend the</p> <p>22 meeting?</p> <p>23 MR X: I was present, Sir.</p> <p>24 MR MATHIBEDI SC: Roughly how many RDOs</p> <p>25 and RDAs attended the meeting?</p> | <p style="text-align: right;">Page 30945</p> <p>1 MR X: We were many, very many.</p> <p>2 MR MATHIBEDI SC: What was discussed at</p> <p>3 that meeting?</p> <p>4 MR X: The decision made was that on the</p> <p>5 10th, the following day, all the RDOs would come together at</p> <p>6 Wonderkop that we would not go on duty on the 10th. And</p> <p>7 that we would march to the time office.</p> <p>8 MR MATHIBEDI SC: Why was it agreed that</p> <p>9 the RDOs should not go to work on the 10th?</p> <p>10 MR X: The decision was that we would</p> <p>11 march to the time office to demand the 12 500 on the 10th.</p> <p>12 MR MATHIBEDI SC: At that meeting, was</p> <p>13 the proposal that was made by Mr Boyzie on the 8th of August</p> <p>14 2012 discussed?</p> <p>15 MR X: Yes, it was mentioned but</p> <p>16 unaccepted.</p> <p>17 MR MATHIBEDI SC: Were reasons given as</p> <p>18 to why that proposal was not acceptable to both the RDOs</p> <p>19 and RDAs?</p> <p>20 MR X: The decision that was made was</p> <p>21 that we would go personally, ourselves, to take our</p> <p>22 decision, demand to the time office.</p> <p>23 MR MATHIBEDI SC: Sir, my question is</p> <p>24 that were reasons advanced as to why that proposal that was</p> <p>25 made by Mr Boyzie not acceptable to both the RDOs and RDAs?</p> |

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1 MR X: There were no reasons given.
 2 MR MATHIBEDI SC: On the 10th of August
 3 are you aware that a meeting was held?
 4 MR X: Yes, Sir.
 5 MR MATHIBEDI SC: Did you attend the
 6 meeting?
 7 MR X: Yes, I was present.
 8 MR MATHIBEDI SC: What was discussed
 9 during the meeting?
 10 MR X: I do.
 11 MR MATHIBEDI SC: What was discussed,
 12 Sir?
 13 MR X: The decision was that we would
 14 take this demand to the time office, written on a box an
 15 amount of 12 500. That we would depart from Wonderkop.
 16 MR MATHIBEDI SC: Did you take part in
 17 the march?
 18 MR X: I was there, Sir.
 19 MR MATHIBEDI SC: Was an agreement
 20 reached as to how the grievance was going to be put forward
 21 to the management of Lonmin?
 22 MR X: A decision was that we move now to
 23 the time office with this demand. As we were proceeding
 24 towards Roland Shaft we came across the mine security. We
 25 showed them our demand as written on this cardboard, piece

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1 police, Chairperson, and they came back with the employer,
 2 speaking of the white person. He came to us and he spoke
 3 to Bhele. He said he wanted somebody that understands
 4 white man's language.
 5 MR MATHIBEDI SC: Do you know what was
 6 discussed with Bhele?
 7 MR X: They were speaking in a white
 8 man's language.
 9 MR MATHIBEDI SC: Did Bhele tell the
 10 protesters what was discussed?
 11 MR X: He said to us he had given him the
 12 demands as written on the box. The white person then
 13 proceeded to the offices.
 14 MR MATHIBEDI SC: Did you get any
 15 response from Lonmin management?
 16 MR X: Before he came back from the
 17 office, Mr Chairperson, we counted 15 minutes for him. We
 18 then started a slogan and started proceeding towards the
 19 offices. The police escorted us, they were walking in
 20 front of us towards the offices. When we arrived at the
 21 offices there was marked off with a danger tape. There
 22 were number of policemen there, government policemen,
 23 including females, who had rubber bullets along their hips.
 24 We were warned not to go over, to go across this danger
 25 tape to the other side.

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1 of cardboard.
 2 MR MATHIBEDI SC: The question is, sorry,
 3 Sir. The question is was it discussed how the demand was
 4 going to be presented to Lonmin management? Were all the
 5 strikers going to talk or what was?
 6 MR X: We elected five men to represent
 7 us. The first one was Boy Bhele, B-H-E-L-E. Another
 8 person was of Tswana speaking, his name was Andries and
 9 then there was a Sotho speaking person.
 10 MR MATHIBEDI SC: You have given us four
 11 names, do you remember the fifth name?
 12 MR X: The next one was myself.
 13 MR MATHIBEDI SC: Now during the march to
 14 time office, how was the mood of the protestors?
 15 MR X: We were very peaceful as we were
 16 proceeding. We only had some branches, we did not have –
 17 we were not armed.
 18 MR MATHIBEDI SC: Did the strikers
 19 ultimately reach time office?
 20 MR X: When we turned towards the time
 21 office we were stopped there by the government police.
 22 They said we were not allowed to go to the office in such
 23 numbers. We should tell them what our grievance is.
 24 [14:09] Bhele gave them the demands which were written on
 25 a cardboard piece. They went to the office, that is the

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1 MR MATHIBEDI SC: Who warned the strikers
 2 not to go beyond the danger tape?
 3 MR X: We were told that we are not
 4 allowed to come to the, near the offices in such numbers.
 5 MR MATHIBEDI SC: Who said so?
 6 MR X: The police who had deployed the
 7 danger tape there.
 8 MR MATHIBEDI SC: Did the strikers get
 9 any feedback from the representative of Lonmin management?
 10 MR X: That white man emerged from the
 11 office, Mr Chairperson, and he said to us, spoke to Bhele,
 12 he said that the demands would be addressed by the union in
 13 2013 and that is the agreement with the union, that we
 14 should go back to work and our strike is illegal.
 15 MR MATHIBEDI SC: Was that answer
 16 acceptable to the strikers?
 17 MR X: We did not accept it.
 18 MR MATHIBEDI SC: What transpired then,
 19 Sir?
 20 MR X: Bhele then spoke to Boy, he said
 21 to Boy "This white man is turning us into Popeyes. As he
 22 said this white man, action would be taken against the
 23 people who did not go to work today, we are taking action
 24 now."
 25 MR MATHIBEDI SC: What is your

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1 understanding of the word "Popeye"?

2 MR X: Popeye is a stupid person.

3 MR MATHIBEDI SC: Chair, I'm going to

4 refer to item 39 of bundle B, which is a new exhibit.

5 CHAIRPERSON: Item 39?

6 MR MATHIBEDI SC: That's correct, Chair.

7 CHAIRPERSON: That's the City Press

8 report?

9 MR MATHIBEDI SC: Sorry, Sir?

10 COMMISSIONER HEMRAJ: The photograph of

11 Mr X –

12 MR MATHIBEDI SC: On the 10th of August

13 2012.

14 CHAIRPERSON: Oh, the new amended – I'm

15 sorry, the new amended one. This is the new amended stuff

16 that – I was referring to the old one. You want this to be

17 an exhibit. It will be AAAA9. It's a photograph of Mr X

18 on 10 August, Mr Mathibedi?

19 MR MATHIBEDI SC: That's correct.

20 CHAIRPERSON: I take it this won't be

21 shown on the screen.

22 MR MATHIBEDI SC: Can a warning be given

23 that this photo should not be published or displayed?

24 CHAIRPERSON: I did make some suggestions

25 earlier about avoiding – members of the media would please

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1 MR MATHIBEDI SC: Thanks, Chair. Chair,

2 we've got the wrong – on the screen. 39 of bundle B. It's

3 a photo that was taken from Calitz video 00006.

4 COMMISSIONER TOKOTA: Mr Mathibedi,

5 sorry, firstly, I don't have this amended bundle B, and

6 secondly, even the Chairperson who has it, this photograph

7 of 39 is not here. This thing starts at 22 right up to 42

8 and nothing, so – I don't have this amended bundle.

9 MR MATHIBEDI SC: Chair, can we please

10 take an adjournment so that we should attend to this issue?

11 CHAIRPERSON: We've got the one that was

12 shown on the screen, which apparently is the wrong one. So

13 in order to save time we would adjourn, let's see if you

14 can sort it out, unless you can lay your hands on it

15 immediately. Have you got it to put it on the screen? You

16 can give us copies later, but let's not waste time

17 actually. [Microphone off, inaudible] otherwise look, we

18 can carry on and you could show it to him tomorrow or

19 something like that. Let's not waste time now. It doesn't

20 add materially to the narrative because he's telling a

21 story which doesn't depend upon the photograph, does it?

22 It clearly confirms his evidence, I take it you will say

23 that he was present on the day in question, but that's a

24 matter that you can sort out by tomorrow, or even after

25 tea, if necessary.

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1 note that this photograph must not be publicized, published

2 or broadcast outside. If there's a simultaneous broadcast

3 of what's happening now, then of course the bullet is

4 through the church and you can't put it back again.

5 MR MATHIBEDI SC: Sir, do you have item

6 that is exhibit AAAA9 with you there?

7 MR X: No.

8 MR MATHIBEDI SC: Mr Mokotedi, will you

9 kindly show the witness the relevant exhibit? That is item

10 39 of bundle B.

11 MR X: I see it, yes Sir.

12 MR MAHLANGU: The response was "Yes,

13 Sir."

14 MR MATHIBEDI SC: Chairperson, we're just

15 asking for a moment. Chairperson, I'm asking for a

16 direction that probably it will be best if we could put

17 this photo on the screen, but a ruling be granted that the

18 camera should be switched off so that, you know, we should

19 be in a position to can see who he identifies.

20 CHAIRPERSON: I give a ruling that the

21 broadcast camera must be turned off while the photograph is

22 put on the screen and of course the ruling I previously

23 gave relating to the prohibition of the publication of

24 photographs and so forth of the witness applies to this

25 also.

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1 MR MATHIBEDI SC: I'm going to refer to

2 item 44 of the amended bundle B. It's the video of Mr

3 Callie.

4 CHAIRPERSON: This also shows the

5 witness?

6 MR MATHIBEDI SC: That's correct, Chair.

7 CHAIRPERSON: So the ruling I gave a few

8 minutes ago at your request that the broadcast cameras must

9 be switched off and this video not be shown will apply

10 also, and I take it also applies to those in the overflow

11 room.

12 MR MATHIBEDI SC: Thanks, Chair.

13 CHAIRPERSON: [Microphone off, inaudible]

14 number?

15 MR MATHIBEDI SC: That's correct, Chair.

16 CHAIRPERSON: So it's AAAA10. How do I

17 describe it?

18 MR MATHIBEDI SC: It's video taken by Mr

19 Callie on the 10th.

20 CHAIRPERSON: Alright, video taken by Mr

21 Callie on 10 August 2012.

22 MR MATHIBEDI SC: Chairperson, as far as

23 we are concerned we've distributed this – but I'm told by

24 Mr Geoff Budlender he does not have it. Can we park it,

25 we'll come back to it?

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| <p style="text-align: right;">Page 30954</p> <p>1 CHAIRPERSON: I think that's a sensible 2 way of proceeding. 3 MR MATHIBEDI SC: Sir, how did the march 4 come to an end on the 10th? 5 MR X: When we left the time office Bhele 6 said to us, "Today we are closing the nightshift." We went 7 back to Wonderkop. 8 MR MATHIBEDI SC: Sorry, what was your 9 understanding that we – 10 CHAIRPERSON: I think he was still 11 answering, wasn't he? Was he still answering? 12 MR MAHLANGU: He was, Chairperson. 13 CHAIRPERSON: Yes. 14 MR X: The decision that was taken when 15 we arrived at Wonderkop, Sir, was that the weekend, that 16 would be the 11th, we would reassemble at the place that we 17 were. 18 MR MATHIBEDI SC: Sir, what was your 19 understanding that "We are closing the nightshift"? 20 MR X: Chairperson, the employer had said 21 action would be taken against people who were not going to 22 work and that was a decision taken. We then said to Bhele 23 "We are making a decision now that the nightshift tonight 24 will not take place." 25 MR MATHIBEDI SC: Was the decision</p> | <p style="text-align: right;">Page 30955</p> <p>1 implemented? 2 MR X: The decision was implemented yes, 3 although some did not come to know about this decision. We 4 left the stadium and went to the places of residence on the 5 10th. On the 11th we went back to the stadium. 6 MR MATHIBEDI SC: Sir, on the 10th was 7 there a discussion as to how the strike was going to be 8 implemented? 9 MR X: The nightshift, the decision taken 10 was that the nightshift would be stopped from functioning. 11 MR MATHIBEDI SC: How was that going to 12 be implemented, the stopping of people from going to work? 13 MR X: There was no mass meeting made but 14 we would have stopped it by fighting against it by 15 threatening. 16 MR MATHIBEDI SC: Can we deal with the 17 aspect of fighting and threatening? 18 [14:28] How was that to be implemented? 19 MR X: Going to hit them. 20 MR MATHIBEDI SC: Sir, Mr Magidiwana, do 21 you know him? 22 MR X: Yes, I do. 23 MR MATHIBEDI SC: Now he testified that – 24 how do you know him? 25 MR X: I know him as one of the Makarapas</p> |
| <p style="text-align: right;">Page 30956</p> <p>1 on the hill there, on the mountain. 2 MR MATHIBEDI SC: Who are the Makarapas? 3 MR X: We came to be known as Makarapas 4 for the respect of the muti that we used on the mountain, 5 we came to call it Makarapa. 6 MR MATHIBEDI SC: We will come back later 7 to this issue of the Makarapas. 8 MR MAHLANGU: Mr Mpofo has the light on, 9 Chairperson. 10 CHAIRPERSON: Mr Mpofo? 11 MR MPOFU: Yes. 12 CHAIRPERSON: He's look very – yes, how 13 can we help you, Mr Mpofo? 14 MR MPOFU: Yes, you can help me, 15 Chairperson. I think there was, not exactly a 16 misinterpretation, I think maybe it's a misunderstanding. 17 The witness is saying that they called the muti Makarapa 18 and Mr Mathibedi is referring to some people, people called 19 Makarapas. So I think there is, at this juncture, either 20 between the interpretation – but I think it's Mr Mathibedi 21 who didn't get the answer correctly. 22 CHAIRPERSON: Perhaps we can go over that 23 ground again, Mr Mathibedi – 24 MR MATHIBEDI SC: Sorry, Chairperson. 25 CHAIRPERSON: - and sort out the problem.</p> | <p style="text-align: right;">Page 30957</p> <p>1 MR MAHLANGU: May I explain? 2 CHAIRPERSON: Yes, of course, Mr 3 Mahlangu. 4 MR MAHLANGU: Yes. I agree with Mr 5 Mpofo. I said, he said because of the respect for the muti 6 that we were using on the mountain, because of the respect 7 that we had for the muti, we came to call it the Makarapa. 8 MR MPOFU: That's correct, Chair. 9 MR MATHIBEDI SC: Sir, when you talk 10 about Makarapa, who are you referring to? 11 MR MPOFU: No, Chairperson, now this is – 12 how can Mr Mathibedi do this when there's an exact 13 controversy as to whether the Makarapa is a person or a 14 thing? He asked a leading question, who are you referring 15 to? You can't, that's exactly the point we are debating. 16 CHAIRPERSON: What did you mean by using 17 the expression "Makarapa?" To what were you referring? To 18 what or to whom were you referring? 19 MR X: Chairperson, a Makarapa is 20 something that is issued when people go underground, issued 21 by the stores, PP which is known as a Makarapa. One gets 22 all the equipment from these stores, Mr Chairperson, that 23 is a Makarapa, you get the goggles, you get the – something 24 that closes the ears and you get hand gloves. 25 CHAIRPERSON: I thought he said gumboots</p> |

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| Page 30958 | Page 30959 |
| <p>1 -</p> <p>2 MR MAHLANGU: The equipment –</p> <p>3 CHAIRPERSON: I thought he said gumboots</p> <p>4 as well.</p> <p>5 MR MAHLANGU: And gumboots as well and</p> <p>6 then he added, this is equipment intended for safety.</p> <p>7 MR X: For people working inside the</p> <p>8 ground. When we speak of the mountain, Chairperson, and</p> <p>9 referring to Makarapa, we are referring to the muti that we</p> <p>10 consumed on the mountain.</p> <p>11 MR MATHIBEDI SC: We will come back to</p> <p>12 this issue of the Makarapas and muti at a later stage.</p> <p>13 Sir, I'm referring you to exhibit EEE1 of bundle A. It's</p> <p>14 the statement of Mzoxolo Magidiwana, paragraph 4. It reads</p> <p>15 as follows, "On or about the 10th or 11th of August 2012 I</p> <p>16 got wind of the fact that the rock drill operators had</p> <p>17 taken a decision to go on strike. They also appealed to</p> <p>18 other workers who were not RDOs to join the strike. Some</p> <p>19 of the workers told me that they had been stopped from</p> <p>20 going to work." I would like you to comment on the last</p> <p>21 sentence of the paragraph, "Some of the workers told me</p> <p>22 that they had been stopped from going to work."</p> <p>23 MR X: It is so.</p> <p>24 MR MATHIBEDI SC: Are you in a position</p> <p>25 to state why the workers, other workers were stopped from</p> | <p>1 going to work?</p> <p>2 MR MPOFU: Chairperson, I don't</p> <p>3 understand the evidence now. The witness has just been</p> <p>4 asked to comment on the last sentence which is that some of</p> <p>5 the workers told Magidiwana whatever they told him, and he</p> <p>6 says that it is so. What is so? Is it that some of the</p> <p>7 workers told Magidiwana that or what? And then suddenly we</p> <p>8 jump to the fact that in fact people were stopped from</p> <p>9 going to work.</p> <p>10 CHAIRPERSON: Can I ask a question?</p> <p>11 Counsel for the police put to you that Mr Magidiwana said</p> <p>12 in his statement that some of the workers told him they'd</p> <p>13 been stopped from going to work and when that passage was</p> <p>14 put to you, you agreed. Now what did you mean by saying</p> <p>15 you agree?</p> <p>16 MR X: Chairperson, the decision that was</p> <p>17 taken when we left the stadium was that we were going to</p> <p>18 close the night shift not to function and that we would</p> <p>19 come back to the stadium on the 11th. That is how it</p> <p>20 happened, sir, and then some of the people did not get this</p> <p>21 message. We woke up from the places where we are residing</p> <p>22 on the 11th and went back to Wonderkop.</p> <p>23 MR MATHIBEDI SC: Okay.</p> <p>24 MR X: On our way to Wonderkop,</p> <p>25 Chairperson, we saw mine security with certain workers,</p> |
| Page 30960 | Page 30961 |
| <p>1 escorting them on their way to work.</p> <p>2 MR MPOFU: Sorry, he said certain members</p> <p>3 of NUM.</p> <p>4 MR MAHLANGU: Oh yes, yes, I'm sorry, and</p> <p>5 officials of the NUM escorting workers who were going to</p> <p>6 work.</p> <p>7 MR MATHIBEDI SC: Were you armed when you</p> <p>8 went to the meeting?</p> <p>9 MR MAHLANGU: Is the "you" in plural or</p> <p>10 in singular?</p> <p>11 MR MATHIBEDI SC: Sorry, was the witness</p> <p>12 armed?</p> <p>13 MR X: I was unarmed. I was not armed.</p> <p>14 MR MATHIBEDI SC: Now will you proceed</p> <p>15 and tell us, you know, you say you saw NUM people on your</p> <p>16 way to work, to the meeting, what were they doing?</p> <p>17 MR X: They were at the Rowland shaft</p> <p>18 escorting people that were proceeding to work. We went</p> <p>19 past in the bus in which we were travelling and alighted at</p> <p>20 the crossing where we get taxis. We went back to the</p> <p>21 meeting place where we had been meeting in the Wonderkop</p> <p>22 stadium. The decision made there was that anybody who does</p> <p>23 not have an arm should go and get a weapon. Those of us</p> <p>24 who did not have arms when went to buy some at Nkaneng.</p> <p>25 MR MATHIBEDI SC: Sir, the issue of NUM</p> | <p>1 officials transporting people to work, was it discussed?</p> <p>2 MR X: Yes, it was said that NUM is</p> <p>3 rendering our strike ineffective, weak, they are escorting</p> <p>4 people to work.</p> <p>5 COMMISSIONER HEMRAJ: What preceded the</p> <p>6 decision to arm yourselves?</p> <p>7 MR X: Chairperson, it was decided that</p> <p>8 since NUM is escorting people, pushing them towards work,</p> <p>9 we should get weapons to go and kill NUM in the offices.</p> <p>10 MR MATHIBEDI SC: How was the killing of</p> <p>11 NUM going to be conducted?</p> <p>12 MR X: We went back to that settlement</p> <p>13 where we had gone to get weapons. We met again. We then</p> <p>14 decided now we are going to take, make a song. The song</p> <p>15 went this way, Chairperson, "How are we going to kill this</p> <p>16 NUM? We hate Zokwana." We went in through the gate, the</p> <p>17 one at the top there and we went down the hostel –</p> <p>18 MR MATHIBEDI SC: Sir, sorry –</p> <p>19 MR X: - singing the song.</p> <p>20 MR MATHIBEDI SC: As you were marching to</p> <p>21 NUM office, were you armed?</p> <p>22 MR X: Yes, all of us were armed.</p> <p>23 MR MATHIBEDI SC: With what were you</p> <p>24 armed?</p> <p>25 MR X: We had pangas, we had assegais.</p> |

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| <p style="text-align: right;">Page 30962</p> <p>1 MR MATHIBEDI SC: Where did you get the 2 weapons from? 3 MR X: Some had their weapons with them 4 when they came, some went to buy some at Nkaneng. Some 5 went to Ntshebe. 6 MR MAHLANGU: Ntshebe is spelt 7 N-T-S-H-E-B-E. It's a place at Nkaneng. 8 MR MATHIBEDI SC: You personally, where 9 did you get, where did you buy the weapons? 10 MR X: I bought mine at Nkaneng. I 11 bought a panga, bush knife and a spear. 12 CHAIRPERSON: You were asked where did 13 you get it from? Where did you acquire it? 14 MR X: I bought them at Nkaneng. 15 CHAIRPERSON: Did you buy it from a store 16 or from an individual? From whom did you buy the weapons? 17 MR X: From the shack settlements, from 18 the shack settlements. 19 MR MATHIBEDI SC: You have referred to 20 Ntshebe, who is Ntshebe? 21 MR X: A person who stays at Nkaneng, he 22 is known as – his home is known as the home of Ntshebe. 23 MR MATHIBEDI SC: Sir, Mr Mabuyakhulu 24 testified and his evidence is to be found in the transcript 25 day 48, that is page 5266, that would be from line 19. I'm</p> | <p style="text-align: right;">Page 30963</p> <p>1 going to read you the relevant evidence. "We met" – 2 MR MAHLANGU: Machine on? 3 MR MATHIBEDI SC: Sorry, starting from 4 line 19 it reads as follows, "We met again the following 5 day at about nine o'clock. I arrived there at about nine 6 in the morning. We discussed. People came with different 7 views, seeing things differently about what transpired n 8 the 10th. As a result of these discussions some people came 9 out with the idea that why don't we go to the NUM and ask 10 them why is it that they don't want the employer to talk to 11 us because the person who employs us is the employer and 12 they, the NUM, are in the offices because of us. A report 13 was also received by others who made a report that some 14 people had been shot by members of the NUM who were driving 15 in a Quantum that is owned by the mine. There were also 16 reports, Mr Chairperson, that some of the people that had 17 gathered there with us later went to the buses to go and 18 find out what is happening and when they arrived at the 19 buses they were pointed, guns were pointed at them and they 20 were told to get to work forcefully. The decision that was 21 then arrived at there was that we go to the NUM to go and 22 enquire from them as to why they do not want us, the 23 employer to talk to us." Now according to the version of 24 Mr Mabuyakhulu, the reason why the march proceeded to NUM 25 was to go and enquire from them as to why they did not want</p> |
| <p style="text-align: right;">Page 30964</p> <p>1 us, they did not want the employer to talk to them. What 2 is your comment about that? 3 MR X: No, it is not so, we had gone to 4 kill it. 5 [14:48] MR MATHIBEDI SC: During the evidence in 6 chief of Mr Zokwana that is day 46. Three reasons were 7 given, were put to him by Advocate Dali Mpofu as to why the 8 strikers marched to NUM's offices. That is to be found at 9 page 5031 from line 8. The relevant section is from line 10 15. "Exactly do what I have just said to you, one's to 11 enquire as to why all of a sudden unlike 2005, unlike all 12 these other times, the union is suddenly standing in their 13 way". This is the first reason that was given to Mr 14 Zokwana as to why the protest strikers marched to NUM's 15 office. What is your comment? Are you in a position to 16 comment, Sir? 17 MR X: If you could please repeat the 18 question, Sir. 19 MR MATHIBEDI SC: The first reason that 20 was advanced as to why the protestors marched to the office 21 of NUM was that NUM was standing in their way. 22 MR X: We had gone to Caledon office. 23 MR MATHIBEDI SC: The second reason 24 advanced, that was given to Mr Zokwana is to be found at 25 page 5032, the relevant portion thereof is to be found at</p> | <p style="text-align: right;">Page 30965</p> <p>1 lines 24 to 25 going to 5033, namely that allegations that 2 strikers had been assaulted or forced to go to work. That 3 was the reason why, the second reason why the strikers 4 marched to NUM. What is your comment? 5 MR X: Nobody was assaulted. 6 MR MATHIBEDI SC: The question that I'm 7 putting to you is that the reason, the second reason 8 advanced to Mr Zokwana as to why the protestors marched to 9 the office of NUM it's because there were allegations that 10 strikers had been assaulted or forced to go to work. What 11 is your comment? 12 MR X: No, it is not so. 13 MR MATHIBEDI SC: The last and third 14 reason advanced is to be found at page 5033 from line 1 and 15 that was one of the issues which was going to be raised. 16 And before you answer, the third issue was that if indeed 17 the union was the only conduit through which they could 18 pass their demands to the employer, then the NUM should do 19 so as it were even though they were not all NUM members. 20 What is your comment, Sir? 21 MR X: If you would repeat the question 22 again, Sir. 23 MR MATHIBEDI SC: The third reason 24 advanced as to why the strikers marched to the office of 25 NUM was because even if all the strikers did not belong to</p> |

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1 NUM, NUM was the conduit or the medium through which their
 2 concerns could be dealt with. What is your comment about
 3 that?
 4 CHAIRPERSON: I don't think that's quite
 5 a complete summary of what's said. What was said was, the
 6 third reason was that if NUM was the only conduit or the
 7 only medium through which messages could be passed to the
 8 employer then NUM should do so even if the messages they
 9 were asked to pass or the demands they were asked to pass
 10 came not from people who were members of NUM but workers
 11 who were not members of NUM.
 12 MR MATHIBEDI SC: Thank you.
 13 CHAIRPERSON: Or not all, or not - the
 14 people who the demands came were not all NUM members.
 15 MR X: We had gone to visit in the
 16 office, Chair. We were armed, Mr Chairperson, with pangas
 17 and spears. We had gone to get it in the office. Nobody
 18 has the right to go to any person's house with sharp
 19 instruments like that. If one is carrying two sticks, Sir,
 20 for instance, Chairperson, and you go into somebody's house
 21 you leave the one stick at the house before arriving at
 22 your final destination. Don't go to a person's house
 23 armed.
 24 MR MATHIBEDI SC: Sir, will you proceed
 25 and describe the events that unfolded during the march to

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1 MR X: Those are the ones I saw, yes.
 2 MR MATHIBEDI SC: Do you know if any
 3 shots were fired from within the office of NUM?
 4 MR X: I only saw these two that I've
 5 mentioned.
 6 MR MATHIBEDI SC: Now you testify, did
 7 only the way back to the koppie did you –
 8 CHAIRPERSON: He didn't say the koppie,
 9 he said back to the place where they came from. It started
 10 at the stadium.
 11 MR MATHIBEDI SC: Sorry, on your return
 12 to the meeting place did you on the way come or meet people
 13 who had sustained any injuries?
 14 MR X: Yes, I saw two people who were
 15 lying on the ground.
 16 CHAIRPERSON: That he said two people
 17 were bleeding and he said they walked passed them. He and
 18 Baai he said walked passed them. Is this perhaps a
 19 convenient stage for us to take the tea adjournment?
 20 MR MATHIBEDI SC: Thank you, Chair.
 21 CHAIRPERSON: We adjourn for quarter of
 22 an hour.
 23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [15:15] CHAIRPERSON: The Commission resumes. Mr
 25 Interpreter, would you please remind the witness he's still

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1 NUM office?
 2 MR X: Down there, as we were proceeding
 3 towards the second gate which is next to the taxi rank,
 4 some young people who were wearing security clothes
 5 appeared from the side of the offices. We heard two shots
 6 being fired in our direction. We ran away into the mining
 7 area and towards the T-E-B-A, TEBA offices situated on the
 8 mine. We went back to the place where we had originally
 9 gathered. Me and Baai went and hid behind the toilets.
 10 People who were firing ran past us. Along the way I saw
 11 two people who were lying there bleeding. We went past
 12 them to the place where we had originally met.
 13 MR MATHIBEDI SC: Sir, can you please
 14 deal with the persons that fired. Are you in a position to
 15 describe them? Do you know them?
 16 MR X: The people I saw, Chairperson,
 17 were people wearing the uniform that usually worn by the
 18 security that is buttoned up here showing in the direction
 19 of the chest.
 20 MR MATHIBEDI SC: Are you in a position
 21 to state for which company those security people are
 22 employed?
 23 MR X: Lonmin.
 24 MR MATHIBEDI SC: Are they the security
 25 people the only people that fired shots?

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1 under oath.
 2 MR X: I do remember, Chairperson.
 3 CHAIRPERSON: Mr Mathibedi.
 4 MR MAHLANGU: Mr Chairperson, may I make
 5 this following request to, in fact to all the counsel, with
 6 all due respect, that it becomes difficult in the –
 7 CHAIRPERSON: You can sit down. You
 8 don't have to address us standing.
 9 MR MAHLANGU: Yes. It becomes a bit
 10 difficult in any of the indigenous languages of South
 11 Africa to interpret a sentence that does not contain a verb
 12 and a noun. The sentence has got to be complete in order
 13 to be able to be interpreted, because the African languages
 14 are such that their word order differs from English and
 15 Afrikaans. So I'm going to ask counsel to read the whole
 16 sentence so that it's composite.
 17 CHAIRPERSON: You have that, Mr
 18 Mathibedi?
 19 MR MATHIBEDI SC: Thanks, Chair.
 20 MR MAHLANGU: Thank you, Sir. May I
 21 change with my colleague?
 22 CHAIRPERSON: I received a message in
 23 chambers to the effect that the witness wasn't feeling
 24 well. Would you like to just question him about that
 25 shortly and then we will decide whether we can continue to,

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1 should in all fairness continue today or whether we should
2 adjourn till tomorrow? But perhaps you could just ask him
3 a few questions about that first so that we can get a basis
4 for deciding whether we'll carry on or not today.

5 MR MATHIBEDI SC: Thanks, Chairperson.

6 Sir, are you in a position to – how are you feeling at the
7 moment?

8 MR X: We can proceed, Mr Chairman.

9 MR MATHIBEDI SC: Are you sure about
10 that, Sir?

11 MR X: I am sure.

12 CHAIRPERSON: That disposes of that
13 issue, but please in future make sure your questions have
14 got nouns and subjects and verbs and if necessary objects
15 as well.

16 MR MATHIBEDI SC: Thank you, Chair.

17 MR SEMENYA SC: Chair, might I – and
18 we're going to have to ask the witness straightforward. I
19 think he might be understanding us to be saying something
20 like continue with the evidence. If it is not –

21 CHAIRPERSON: This is a Commission, Mr
22 Semenya. If you'd like to ask the witness a question even
23 though Mr Mathibedi is leading his evidence, go ahead.

24 MR SEMENYA SC: Thank you, Chair. What
25 we are trying to establish is Mr Mokotedi informs us that

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1 MR X: As we were going there one of us
2 went into the shack, poured, got some water, put some water
3 and sprayed, put ntelezi, some muti into the water, called
4 ntelezi, sprayed the people who had walked at the place
5 where the injured people were for getting out, cleansing
6 them.

7 MR MATHIBEDI SC: Do you know the name of
8 the person that you've referred to?

9 MR X: No, I do not know him, but he was
10 one of us who had gathered with us there.

11 MR MATHIBEDI SC: For what was the
12 mixture of water and ntelezi intended for?

13 MR X: He was trying to cleanse them, get
14 rid of bad luck since we had walked on the path of those
15 people we walked past, lying there. The people he was
16 sprinkling with water were standing in a line, continued
17 walking up towards the koppie, had a meeting at the
18 koppie –

19 MR MATHIBEDI SC: Sorry Sir, can I refer
20 you back to the sprinkling of the water and ntelezi? How
21 was that done?

22 MR X: Went into the shacks, got some
23 water, poured ntelezi into the water, had the people
24 undress the top garments that they were wearing; they only
25 remained in their pants, and he sprinkled the water mixed

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1 you're fatigued. Is that correct?

2 MR X: Probably thinking for me.

3 MR SEMENYA SC: Is this thinking for you
4 correct though?

5 MR X: No, we may proceed.

6 CHAIRPERSON: The horse was taken to
7 water but wasn't thirsty enough. Carry on, Mr Mathibedi.

8 EXAMINATION BY MR MATHIBEDI SC (CONTD.):

9 Sir, we are at the stage where the protesters have returned
10 to where they initially met.

11 MR X: Yes, Mr Chair.

12 MR MATHIBEDI SC: Did any discussion take
13 place at the meeting place?

14 MR X: We tried to gather there but Ben
15 said we should go further up near the koppie because where
16 we were it's near the mine.

17 MR MATHIBEDI SC: What was the response
18 of the strikers that gathered at the meeting place?

19 MR X: They agreed with that proposal of
20 going further up.

21 MR MATHIBEDI SC: Further up where did
22 the strikers go?

23 MR X: We went to the koppie.

24 MR MATHIBEDI SC: Upon arriving at the
25 koppie, what happened?

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1 with ntelezi on them.

2 MR MATHIBEDI SC: Sorry Sir, I'm
3 interested in the sprinkling of the mixture, how was it
4 done.

5 MR X: They were standing in a line.

6 MR MATHIBEDI SC: Were you present at
7 that stage?

8 MR X: No, I did not go to the line. I
9 went further up to where we were going to meet.

10 MR MATHIBEDI SC: But were you present at
11 the place where the sprinkling, or the cleansing occurred?

12 MR X: No, I walked past them.

13 MR MATHIBEDI SC: And what happened
14 further, Sir?

15 MR X: When we got to the koppie at the
16 place of the meeting Ben said we should – Bhele, not Ben –
17 Bhele said we should take off the dresses and put on the
18 pants.

19 MR MATHIBEDI SC: What does that mean,
20 Sir?

21 MR X: He said, "Gentlemen, now it's time
22 we should get an inyanga, or sangoma, who is well-known,
23 who is tight."

24 MR MATHIBEDI SC: What was the response
25 of the strikers?

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| <p style="text-align: right;">Page 30974</p> <p>1 MR X: They agreed with that proposal.</p> <p>2 MR MATHIBEDI SC: Did he give the details</p> <p>3 of the inyanga?</p> <p>4 MR X: As Kaizer came up with the name of</p> <p>5 inyanga, Kaizer from Flagstaff, he said there is an inyanga</p> <p>6 from Bizana, from number 8, he said the inyanga's name is</p> <p>7 Nzabe.</p> <p>8 MR QGIRANA: Nzabe, N-Z-A-B-E.</p> <p>9 MR MATHIBEDI SC: What was your</p> <p>10 understanding that the inyanga must be tight?</p> <p>11 MR X: An inyanga would make people brave</p> <p>12 who would lead the warriors.</p> <p>13 MR MATHIBEDI SC: How was the inyanga</p> <p>14 going to make the people brave?</p> <p>15 MR X: It was decided that donations be</p> <p>16 made and the inyanga be fetched.</p> <p>17 MR MATHIBEDI SC: The question is how was</p> <p>18 the inyanga going to make the people brave?</p> <p>19 MR X: Inyanga was going to make us not</p> <p>20 be subject to being shot, locked the firearms if we are</p> <p>21 being shot at.</p> <p>22 MR MATHIBEDI SC: Sir, will you please</p> <p>23 repeat the answer?</p> <p>24 MR X: This tight inyanga, Kaizer said</p> <p>25 would make the firearm not to work.</p> | <p style="text-align: right;">Page 30975</p> <p>1 MR MPOFU: Sorry –</p> <p>2 MR X: If we're being shot at.</p> <p>3 MR MPOFU: Ja, Chairperson, he also said</p> <p>4 that the gun would be locked or jammed. I think he used</p> <p>5 the word "locked," not "jammed," but I think that's what he</p> <p>6 meant.</p> <p>7 CHAIRPERSON: Do you agree with that, Mr</p> <p>8 Interpreter?</p> <p>9 MR QGIRANA: Mr Chair, I did mention that</p> <p>10 guns would be locked.</p> <p>11 CHAIRPERSON: He already did talk about</p> <p>12 the gun being locked.</p> <p>13 MR QGIRANA: Yes.</p> <p>14 MR MATHIBEDI SC: Sir, I interjected your</p> <p>15 evidence when you were still busy talking about donation of</p> <p>16 money. Will you take off from there?</p> <p>17 MR X: Someone moved around us in the</p> <p>18 koppie collecting the donations. One would donate whatever</p> <p>19 amount he had or R20 had been donated in order to go and</p> <p>20 get the inyanga.</p> <p>21 MR MATHIBEDI SC: Did you donate any</p> <p>22 money?</p> <p>23 MR X: Yes, I donated R20.</p> <p>24 MR MATHIBEDI SC: After the donation what</p> <p>25 happened?</p> |
| <p style="text-align: right;">Page 30976</p> <p>1 MR X: The money was collected, I</p> <p>2 remember Xolani and Kaizer coming forward, going to get</p> <p>3 transport. Whilst the donations, or collecting of the</p> <p>4 donations continued they went to go and get this inyanga at</p> <p>5 number 8.</p> <p>6 MR MATHIBEDI SC: Did Kaizer and Xolani</p> <p>7 at any stage return with the inyanga?</p> <p>8 MR X: They went to Impala number 8 and</p> <p>9 came back with two boys of the inyanga.</p> <p>10 MR MATHIBEDI SC: Upon their return, what</p> <p>11 happened?</p> <p>12 MR X: Came back and said everyone of us</p> <p>13 had to have his own blades, razor blades. It was decided</p> <p>14 that men had to be chosen who had to take off their dresses</p> <p>15 and wear pants and be real men on whom the inyanga was</p> <p>16 going to work. Then he said the inyanga wanted R500. The</p> <p>17 whole amount that the inyanga wanted was R1 000 but each</p> <p>18 person that the inyanga had to work on had to pay R500.</p> <p>19 MR MATHIBEDI SC: Did you have any money</p> <p>20 with you?</p> <p>21 MR X: I contributed R500.</p> <p>22 MR MATHIBEDI SC: And what happened after</p> <p>23 the contribution of the money?</p> <p>24 MR X: Even religious people contributed</p> <p>25 the money. The money was counted, I'm not sure how much it</p> | <p style="text-align: right;">Page 30977</p> <p>1 was, the total. It was decided that we should look for a</p> <p>2 secluded place, not accessible even to a car.</p> <p>3 MR MATHIBEDI SC: Was a secluded place</p> <p>4 chosen?</p> <p>5 MR X: Yes, a secluded place was chosen</p> <p>6 on the top of the hill, bushy area where there are rocks.</p> <p>7 MR MATHIBEDI SC: Besides the area being</p> <p>8 secluded, were there any other reasons why that specific</p> <p>9 spot was chosen?</p> <p>10 MR X: It was not easy for us to be seen</p> <p>11 from that place and we can see someone approaching from far</p> <p>12 away, as well as a car approaching. We could see the</p> <p>13 police as well if they approach.</p> <p>14 MR MATHIBEDI SC: Did the strikers</p> <p>15 proceed to the secluded area?</p> <p>16 MR X: As people on whom the inyanga had</p> <p>17 to work approached that secluded place.</p> <p>18 [15:35] The others, including the religious people,</p> <p>19 remained behind.</p> <p>20 MR MATHIBEDI SC: Did the inyanga</p> <p>21 accompany the strikers to the secluded area?</p> <p>22 MR X: A committee of 15 people was</p> <p>23 chosen that was going to be in charge of this secluded</p> <p>24 place.</p> <p>25 MR MATHIBEDI SC: Who were part of the</p> |

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| <p style="text-align: right;">Page 30978</p> <p>1 committee of 15?</p> <p>2 MR X: The people were chosen five from</p> <p>3 each hostel, eastern five, western five, Karee five.</p> <p>4 MR MATHIBEDI SC: Can we first start with</p> <p>5 the committee for the eastern side? Are you in a position</p> <p>6 to give us the names of the committee members?</p> <p>7 MR X: Eastern I remember myself, Bala,</p> <p>8 Nama, two Tswana-speaking people and Otto.</p> <p>9 MR MATHIBEDI SC: Sorry, sorry, of the</p> <p>10 western hostel?</p> <p>11 MR X: From that hostel there were five.</p> <p>12 I can't remember the others, I remember Rasta or Makhubane,</p> <p>13 Kaizer and Thusi.</p> <p>14 MR MATHIBEDI SC: Sir, I see you are</p> <p>15 looking down. Do you have any problem?</p> <p>16 MR X: No, I was just sighing, Mr Chair.</p> <p>17 CHAIRPERSON: I've already spoken about</p> <p>18 people laughing. This is not a – this is a serious case.</p> <p>19 It's no case for laughter. If people want to laugh they</p> <p>20 must go outside and laugh. It's not the kind of behaviour</p> <p>21 one expects from people who are here, an important</p> <p>22 Commission like this.</p> <p>23 MR MATHIBEDI SC: Can we go to the</p> <p>24 committee of the Karee section? Who were the members?</p> <p>25 MR X: I remember Mambushe, Xolani, Anele</p> | <p style="text-align: right;">Page 30979</p> <p>1 and Bob.</p> <p>2 MR MATHIBEDI SC: What was the role of</p> <p>3 the committee of 15?</p> <p>4 MR X: Anything that was done on the hill</p> <p>5 had to be done through this committee. Even the inyanga,</p> <p>6 if they wanted anything, would talk to the committee, the</p> <p>7 committee would then tell the workers.</p> <p>8 MR MATHIBEDI SC: And after the committee</p> <p>9 of 15 was chosen, what happened?</p> <p>10 MR X: They went near this secluded place</p> <p>11 and the inyanga took out a trunk and some rags that were in</p> <p>12 the trunk. There were also some bottles in this trunk and</p> <p>13 the rags. I remember one rag had a drawing of a lion.</p> <p>14 MR MATHIBEDI SC: What happened</p> <p>15 thereafter, sir?</p> <p>16 MR X: The inyanga took out some ropes,</p> <p>17 red and yellow ropes, tied them on the trees. There were</p> <p>18 also some spoons on these ropes, spoons tied onto these</p> <p>19 ropes, yellow and red ropes.</p> <p>20 MR MATHIBEDI SC: Chair, I'm going to</p> <p>21 refer to item number 12, I mean the index of bundle A.</p> <p>22 Chair, if we could give the –</p> <p>23 CHAIRPERSON: In bundle A there is what</p> <p>24 is described as the photo of a sheet. That will be AAAA11,</p> <p>25 photo of sheet, bundle A item 12. Bundle A photo, sorry,</p> |
| <p style="text-align: right;">Page 30980</p> <p>1 item 12. I took mine out and held it up, it has on it –</p> <p>2 there you are, it's now on the screen, it's now on the</p> <p>3 screen not terribly clear. The copy that I have is in</p> <p>4 colour and it shows at least two lions on the side and one</p> <p>5 bigger lion in a circle, the head of a lion. That I've</p> <p>6 marked exhibit AAAA11.</p> <p>7 MR MATHIBEDI SC: Thanks, Chair. Can you</p> <p>8 have a look at this photo depicted on the screen?</p> <p>9 CHAIRPERSON: The screen isn't very</p> <p>10 helpful. Perhaps –</p> <p>11 MR MATHIBEDI SC: Sorry, Mr Mokotedi,</p> <p>12 will you refer the witness to the relevant photo?</p> <p>13 MR X: This is a photo, I see it.</p> <p>14 MR MATHIBEDI SC: You have referred to</p> <p>15 the sheets that were in the possession of the inyanga, do</p> <p>16 you remember that?</p> <p>17 MR X: Yes, Mr Chair.</p> <p>18 MR MATHIBEDI SC: Having had a look at</p> <p>19 this photo, are you in a position to comment?</p> <p>20 MR X: [Witness singing.] Even composed</p> <p>21 a song about it, saying this is the lion that eats people.</p> <p>22 [Witness singing.] This lion eats people, it's from Bizana</p> <p>23 somewhere, the song goes like that.</p> <p>24 MR MATHIBEDI SC: Now why was that song</p> <p>25 sung?</p> | <p style="text-align: right;">Page 30981</p> <p>1 MR X: He was singing about this lion,</p> <p>2 this is the lion from Bizana that eats people.</p> <p>3 MR MATHIBEDI SC: What was the</p> <p>4 significance of that song?</p> <p>5 MR X: The importance thereof will come</p> <p>6 out as I continue with my statement.</p> <p>7 MR MATHIBEDI SC: But are you in a</p> <p>8 position to give it to us at this present moment because</p> <p>9 you've referred us to it?</p> <p>10 MR X: I am.</p> <p>11 MR MATHIBEDI SC: Will you proceed, sir?</p> <p>12 MR X: This lion is important because on</p> <p>13 the 12th there are two securities we killed at the bus stop.</p> <p>14 We burnt one of them in the car. One security we got out</p> <p>15 of the car and tortured. There is some piece of flesh got</p> <p>16 out of this security.</p> <p>17 MR MATHIBEDI SC: Why was the flesh of</p> <p>18 the security taken?</p> <p>19 MR X: It was to make our muti strong.</p> <p>20 We had to go forward, we had to be strong so this muti was</p> <p>21 laced with human flesh.</p> <p>22 MR MATHIBEDI SC: Is there any person</p> <p>23 that told or indicated that the flesh of a person was</p> <p>24 required?</p> <p>25 MR X: The inyanga said if we go to the</p> |

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1 people we should try and get a part of a person's flesh.
 2 MR MATHIBEDI SC: Which inyanga are you
 3 referring to?
 4 MR X: The inyanga that was working on us
 5 on the day. The two young men who were sent.
 6 MR MATHIBEDI SC: Sir, in your evidence
 7 you have referred to ropes, do you still remember that?
 8 MR X: Yes, Sir.
 9 MR MATHIBEDI SC: Chair, I'm referring to
 10 amended index, bundle A item number 18. Mr Mokotedi, will
 11 you refer the witness to the relevant bundle?
 12 MR X: Yes.
 13 MR MATHIBEDI SC: Could we number the
 14 exhibit?
 15 CHAIRPERSON: It will have to be AAAA12
 16 and what do I, how do I describe it? It's a photograph
 17 taken on, at inspection in loco on 13 October 20 – which
 18 year? It doesn't say.
 19 MR MATHIBEDI SC: 2012, Chair.
 20 CHAIRPERSON: 2012 by Warrant Officer
 21 Masinya.
 22 MR MATHIBEDI SC: That's correct, Chair.
 23 Sir, are you familiar with the place referred to in this
 24 exhibit?
 25 MR X: Yes, this is the place.

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1 CHAIRPERSON: Can the witness see the
 2 screen above my head? There's a big screen above my head,
 3 then Mr Pretorius will be able to show the witness what you
 4 were unable to show him.
 5 MR X: I can see where it's being
 6 pointed.
 7 MR MATHIBEDI SC: Can you describe the
 8 object that you are seeing on the picture?
 9 MR X: Yes, I can.
 10 MR MATHIBEDI SC: What's that, that was
 11 depicted?
 12 MR X: Ntoni.
 13 MR MATHIBEDI SC: What's that?
 14 MR X: Those are bottles containing muti
 15 tied to the tree, muti that was being used by the
 16 inyanga's.
 17 MR MPOFU: Chairperson, well, the bottles
 18 are invisible to me, Chairperson.
 19 CHAIRPERSON: Well, there do appear to be
 20 shapes which look to me like bottles but –
 21 MR MPOFU: Where?
 22 CHAIRPERSON: - I wouldn't be prepared to
 23 put – perhaps we can have a better photograph. If this is
 24 a photograph that Warrant Officer Masinya took, I would
 25 have thought that we could have a better copy of it but

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1 MR MATHIBEDI SC: Will you tell us which
 2 place it is?
 3 MR X: This is the place where rags were
 4 tied up on top and there were two fires made at this place.
 5 This is where the men were made to be strong, consuming the
 6 muti.
 7 MR MATHIBEDI SC: Will you describe what
 8 is depicted in the picture?
 9 MR X: Yes, Mr Chair.
 10 MR MATHIBEDI SC: Will you proceed and
 11 tell us what is depicted in the picture?
 12 MR X: You see ropes, red and yellow
 13 ropes tied to the trees as well as some bottles also
 14 attached to these strings or ropes.
 15 MR MATHIBEDI SC: Chairperson, I'm just
 16 waiting for Mr Charles Wesley to help us with the pointer.
 17 CHAIRPERSON: I see the pointer has
 18 arrived.
 19 MR MATHIBEDI SC: Unfortunately I can't
 20 operate it, Chair. I was born before technology, I'm
 21 sorry. Thanks, Chair. I'll do it the other way. You've –
 22 CHAIRPERSON: Mr Pretorius seems to be
 23 doing quite well, shouldn't we ask him to do it for us?
 24 MR MATHIBEDI SC: Well, I don't know
 25 whether the witness will see it.

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1 perhaps that can be sorted out by tomorrow.
 2 MR MATHIBEDI SC: No, photo number 2 is
 3 much better.
 4 CHAIRPERSON: I see in the bundle there
 5 are in fact three photographs. We were looking at the
 6 first. We're now looking at the second and there do appear
 7 to be objects, they look more or less –
 8 [15:54] If the object looks a brownish sort of colour and
 9 the object appears below, you see there's a, it looks like
 10 a knot on the branch and below that is a shape which the
 11 witness says was a bottle and then if you look further down
 12 there is another piece of red rope or string of some kind.
 13 And below that there's what looks like another shape which
 14 could be a bottle of some sorts. Presumably we will get
 15 evidence, if necessary, from Warrant Officer Masinya or
 16 alternatively a better print of the photograph he took.
 17 MR MPOFU: Ja, thank you, Chairperson.
 18 To me that looks the same as the leaves that are up there,
 19 the brown leaf.
 20 CHAIRPERSON: You may be right but you
 21 may be in for a surprise with a better print of the
 22 photograph comes, or alternatively, warrant Officer Masinya
 23 comes.
 24 MR MPOFU: I'm looking for –
 25 CHAIRPERSON: Don't –

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1 MR MPOFU: No, Chairperson, I'm not
2 saying they're not there, I'm –
3 CHAIRPERSON: No –
4 MR MPOFU: - not there, I'm simply saying
5 I can't see them.
6 CHAIRPERSON: No, well I can't be sure
7 what I see but I see objects which could be the objects the
8 witness is referring to.
9 MR MATHIBEDI SC: We will return to these
10 pictures once we've obtained better pictures.
11 CHAIRPERSON: While we're at it, let's
12 look at number 3, seeing there are three pictures. Is the
13 third one any better?
14 MR MATHIBEDI SC: No, Chair. I think
15 number 2 it's a better one.
16 CHAIRPERSON: Alright. What does seem
17 clear is red string or red rope on the tree and, any how
18 this is a matter that will or will not be sorted out in due
19 course.
20 MR MATHIBEDI SC: Chairperson, I would
21 like to move to another aspect and I –
22 CHAIRPERSON: Would you like to do so
23 tomorrow morning? Mr Mathibedi, would you like to move to
24 the other, the next aspect tomorrow morning?
25 MR MATHIBEDI SC: That's correct, Chair.

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1 CHAIRPERSON: We adjourn till 9 tomorrow
2 morning.
3 MR MATHIBEDI SC: Thanks, Chair.
4 [INQUIRY ADJOURNED]
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