

# 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 257

17 JULY 2014

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1 [PROCEEDINGS ON 17 JULY 2014]  
 2 [09:22] CHAIRPERSON: The Commission resumes.  
 3 Before we continue with the evidence, I did say the other  
 4 day that there's a problem in relation to one of the  
 5 receiving sets, that's a set of earphones and the actual  
 6 receiver which someone took, I'm sure inadvertently, and  
 7 didn't bring back. We have to return all these sets to the  
 8 contractor, otherwise we'll have to pay for them. Someone  
 9 obviously took it home by mistake. If that person is here  
 10 today I'd be grateful if he or she would bring it back. If  
 11 the person concerned isn't here but any of you know who he  
 12 or she is, would you please give him the message to say  
 13 it's really, I'm sure the set will be of no use to the  
 14 person who took it by mistake, but it's very important that  
 15 we get it back.  
 16 Mr Interpreter, would you please remind the  
 17 witness he's still under oath?  
 18 MR X: [s.u.o. through interpreter]  
 19 MR MAHLANGU: Confirmed, Chairperson.  
 20 CHAIRPERSON: Mr Budlender.  
 21 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):  
 22 Thank you, Chair. Mr X, good morning.  
 23 MR X: Good morning, Sir.  
 24 MR BUDLENDER SC: Could we have exhibit  
 25 AAAA34 on the screen, please? And could we go to the third

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1 slide on that sequence. Now Mr X, on the lower one of  
 2 those photographs, which is exhibit, actually exhibit  
 3 AAAA34.2, there's a man who is marked at number 4, the man  
 4 who's standing up and you have said that that is not you.  
 5 MR X: Yes, Sir.  
 6 MR BUDLENDER SC: And that is plainly  
 7 correct, that is not you. I want to put it to you that  
 8 that person, the position of the person and the clothing  
 9 which he is wearing shows that he is the same person as the  
 10 person who is number 4 on the upper photograph. It's the  
 11 same person, the same clothes, same position, same  
 12 blankets.  
 13 MR X: No, Sir, I don't agree.  
 14 MR BUDLENDER SC: Well, if the Commission  
 15 finds that it is the same person then it means that the  
 16 person who is shown in the arrow on the upper photograph is  
 17 also not you. You understand that?  
 18 MR X: That's me, Sir.  
 19 MR BUDLENDER SC: Yes, but if it's the  
 20 same person –  
 21 CHAIRPERSON: Please, I must appeal to  
 22 those present in the chamber not to talk. It's very  
 23 difficult to hear the evidence without interruption. Those  
 24 who want to have a conversation must please go outside.  
 25 Those who wish to stay must please keep quiet.

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1 MR BUDLENDER SC: What I'm saying to you,  
 2 Mr X, is that if the person marked with the arrow on the  
 3 upper photograph is the same person as the man who is  
 4 standing up on the lower photograph, then the person in the  
 5 upper photograph is not you. You accept that?  
 6 MR X: I am the one that is crouching  
 7 there, not the one who is standing.  
 8 CHAIRPERSON: That's the point Mr  
 9 Budlender is making to you. He says we understand you say  
 10 you're the person who's crouching in the top picture. What  
 11 Mr Budlender says is if – I know you don't agree with this,  
 12 but if the person who's standing up in the lower picture is  
 13 the same person, then it must mean that you aren't the  
 14 person in the upper picture. You tell us the person in the  
 15 lower picture, the person standing up is not you. In  
 16 fairness to you I think it should be explained, perhaps  
 17 [inaudible]. The question is asked on the basis that if  
 18 the Commission finds that these are the same people – we  
 19 may not find that they're the same, in which case the  
 20 question will fall away.  
 21 MR X: If the question could be repeated.  
 22 That's me, Sir.  
 23 MR BUDLENDER SC: Chair, this is really a  
 24 matter for argument –  
 25 CHAIRPERSON: Mr Budlender, I think to be

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1 fair the witness may not understand the force of a  
 2 hypothetical question.  
 3 MR BUDLENDER SC: No Chair, I thought it  
 4 was necessary for me for fairness to put the proposition to  
 5 him, but I think that can be dealt with in argument.  
 6 Mr X, what I want to say to you is that the  
 7 person marked with the arrow on the upper photograph is not  
 8 you and that your evidence pointing yourself out on the  
 9 photograph as a member of the committee is false.  
 10 MR X: I am not just putting myself in.  
 11 MR BUDLENDER SC: Yes.  
 12 CHAIRPERSON: Sorry, I just want to make  
 13 sure I understand your evidence. Do I understand you to  
 14 say you are in the top picture and the arrow with 4 at the  
 15 top of it points down to your head, but by the time I  
 16 understand you to say, and I just want to make sure I'm  
 17 right, but by the time the second photograph was taken, the  
 18 lower picture, you weren't there and that's why you say you  
 19 are not the person who's standing up with the 4 and the  
 20 arrow pointing to his head, that's someone different. So  
 21 you had left by then, left that particular area?  
 22 MR BUDLENDER SC: I don't think he said  
 23 that, Chair. I think he just said it wasn't him.  
 24 CHAIRPERSON: Alright, I got that wrong  
 25 then, but what you're saying is you were not in the second

<p style="text-align: right;">Page 32468</p> <p>1 picture, the lower picture. Is that correct? I'm not 2 saying you said that. I'm just trying to make sure that I 3 understood the evidence. 4 MR X: I don't see my picture on the 5 second photograph, Chairperson. 6 COMMISSIONER HEMRAJ: I seem to recall 7 asking the question at the last instance whether he was 8 visible on the second photograph and he said yes, but we 9 didn't get any further than that. 10 MR BUDLENDER SC: Ja, what certainly was 11 said previously was that on the lower photograph the man to 12 the left of the person who is standing is him. 13 COMMISSIONER HEMRAJ: My recollection as 14 well, yes. 15 MR BUDLENDER SC: Now he says he can't 16 see himself in the photograph. But it's all on record, 17 Chair, and I'd like to move forward – 18 CHAIRPERSON: Alright, let me just ask 19 one question for the sake of fairness to the witness. What 20 we are told is the last time you were here, or rather the 21 last time you were where you are and where your picture was 22 here, you told us that you thought you were the person on 23 the right of the person in green. That is to say the 24 person in the lower picture with the arrow with the 3 at 25 the top. Is that right or is that not right?</p>	<p style="text-align: right;">Page 32470</p> <p>1 MR X: I am saying to you, you were the 2 person who was not in that position, I was. 3 MR BUDLENDER SC: Yes, I was neither a 4 foot soldier nor a general on that day. 5 CHAIRPERSON: Or anything in between. 6 MR BUDLENDER SC: Mr X, you told the 7 Commission that all important matters were discussed and 8 decided by the committee of 15. 9 MR X: The caucus together with the 10 members of the makarapas. 11 MR BUDLENDER SC: Well, you went further 12 than that. You said that in fact – I'm not going to take 13 you back to your evidence, but you said some of the 14 makarapas sometimes attended the meeting, but all the 15 important matters were discussed and decided by the 16 committee of 15. 17 MR X: We used to meet the makarapas in 18 the committee because we had all undergone rituals. 19 MR BUDLENDER SC: Yes, but if you were 20 not a member of the committee then you weren't there when 21 those discussions were held by the committee. 22 MR X: I was there. 23 MR BUDLENDER SC: Well, I want to suggest 24 to you that your evidence about what the committee 25 discussed and decided is an invention because you weren't a</p>
<p style="text-align: right;">Page 32469</p> <p>1 MR MAHLANGU: I'm sorry, Chair, the 2 interpreter – I didn't follow the question correctly. 3 CHAIRPERSON: In the second picture, the 4 lower picture, the one on the right, what I asked, said to 5 him is as far as we can see from the transcript last time 6 he was giving evidence he said he was the person on that 7 picture who is immediately to the right of the person in 8 green. In other words he's the person with the arrow with 9 the 3 at the top of the arrow going down, pointing to the 10 top of his head. Is that correct? 11 MR X: I say I look like the person who 12 is next to Mambush. 13 CHAIRPERSON: Mambush being the one in 14 green? 15 MR X: Yes, Sir. 16 CHAIRPERSON: Thank you. 17 MR BUDLENDER SC: Now Mr X, I want to put 18 it to you that just like you falsely claimed you were a 19 member of the committee of five, you have falsely claimed 20 that you were a member of the committee of 15. 21 MR X: I am there, Sir. 22 MR BUDLENDER SC: And I want to put to 23 you that again you may have been a foot soldier on that 24 day, we don't know, but you claim that you were a general 25 on that day.</p>	<p style="text-align: right;">Page 32471</p> <p>1 member of that committee. 2 MR X: I was in the meetings and I, there 3 was a decision taken that there's a mine that is operating 4 there in the Eastern. I am the first person who went to 5 blow the whistle there alone and I called the people there 6 and told them that people wanted money, let us meet. 7 CHAIRPERSON: Before you say something – 8 or carry on with your answer. 9 MR X: I called the workers and they 10 followed me. They were just arriving and I said to them, 11 "Workers, come together. Let there be nobody working." 12 The workers supported what I was saying to them and I was 13 alone at that time. 14 MR BUDLENDER SC: Alright, let me move on 15 to another subject. 16 CHAIRPERSON: Just before you move on to 17 another subject, on this occasion you're telling us about 18 where you were alone, what day was that? When did that 19 happen? 20 MR X: It was after the date on which we 21 had met on the mountain. It was after the 16th, Mr 22 Chairperson. 23 MR BUDLENDER SC: Let me move to another 24 subject. You'll remember that on a previous day we 25 discussed – well, sorry, let me start again. You made a</p>

<p style="text-align: right;">Page 32472</p> <p>1 statement at Phokeng in February 2013. Is that right?</p> <p>2 MR X: Yes, Sir.</p> <p>3 MR BUDLENDER SC: And you'll remember</p> <p>4 that on a previous day I said to you that there were</p> <p>5 problems with that statement and one of the explanations</p> <p>6 you gave was that the person who interviewed you did not</p> <p>7 understand Xhosa. Do you remember that?</p> <p>8 MR X: He did not understand me clearly,</p> <p>9 Sir.</p> <p>10 MR BUDLENDER SC: Sorry, I missed the</p> <p>11 answer.</p> <p>12 MR MAHLANGU: He said, "He did not</p> <p>13 understand me clearly."</p> <p>14 MR X: We did not understand each other</p> <p>15 clearly.</p> <p>16 MR BUDLENDER SC: Yes, because he didn't</p> <p>17 understand Xhosa.</p> <p>18 MR X: There was a language problem</p> <p>19 between me and the others, save the person who wrote my</p> <p>20 longer statement, that is the person I understood.</p> <p>21 MR BUDLENDER SC: Let's go to the – which</p> <p>22 longer statement? The longer statement you made at</p> <p>23 Phokeng, or the longer statement you made with Mr</p> <p>24 Mathibedi?</p> <p>25 [09:42] There's a statement that I made, Ngqoko, at</p>	<p style="text-align: right;">Page 32474</p> <p>1 31985 and make sure I haven't transposed it? Could we go</p> <p>2 to 31985 please, just to make sure I haven't transposed it.</p> <p>3 No, it's not there. My apologies, Chair, I've made an</p> <p>4 error either on the day or on the page number.</p> <p>5 CHAIRPERSON: If you can, perhaps when</p> <p>6 you –</p> <p>7 MR BUDLENDER SC: This is the last</p> <p>8 subject – 31985.</p> <p>9 CHAIRPERSON: Obviously not 31985. It</p> <p>10 was suggested that it might be 31895, is that right?</p> <p>11 MR BUDLENDER SC: Sorry, one more try,</p> <p>12 31958 please.</p> <p>13 CHAIRPERSON: Oh, okay. That's 31958 on</p> <p>14 the screen.</p> <p>15 MR BUDLENDER SC: Now could we go back to</p> <p>16 31985? That is the one that I want, 31985 line 16.</p> <p>17 CHAIRPERSON: We've got it.</p> <p>18 MR BUDLENDER SC: Right. So there at</p> <p>19 line 16 the Chairperson says to you, "Well, I've asked the</p> <p>20 police to tell us to whom you made the statement, but the</p> <p>21 statement you made in February 2013 is the statement that</p> <p>22 contains the passage that I read to you from paragraph 19</p> <p>23 on page 11 of the typed version." That's the long</p> <p>24 statement that you made at Phokeng, can you see that that's</p> <p>25 what the Chairman is referring to? That's a reference to</p>
<p style="text-align: right;">Page 32473</p> <p>1 Phokeng. That was a long statement. The one Mr Mathibedi</p> <p>2 asked me, that's the person who then came to ask me</p> <p>3 questions about this. He is a captain –</p> <p>4 MR BUDLENDER SC: So you say there was no</p> <p>5 problem of misunderstanding between you and Captain Ngqoko?</p> <p>6 MR X: Yes, sir, I understood him.</p> <p>7 MR BUDLENDER SC: Because he speaks</p> <p>8 Xhosa, that's his home language.</p> <p>9 MR X: Yes, he is Xhosa.</p> <p>10 MR BUDLENDER SC: I beg your pardon?</p> <p>11 It's possible?</p> <p>12 MR MAHLANGU: He is Xhosa.</p> <p>13 MR BUDLENDER SC: He is Xhosa?</p> <p>14 MR MAHLANGU: Xhosa.</p> <p>15 MR BUDLENDER SC: Thank you. Well, let</p> <p>16 me read you what is on, what you said previously about</p> <p>17 this. Could we go to the transcript day 254 please? For</p> <p>18 those who are following, it is transcript day 254 page</p> <p>19 31895. Thank you, page 31895 please, line 16. I'm sorry,</p> <p>20 it must be day 253, my apologies.</p> <p>21 CHAIRPERSON: What's the page, by the</p> <p>22 way?</p> <p>23 MR BUDLENDER SC: 31 –</p> <p>24 CHAIRPERSON: 31895?</p> <p>25 MR BUDLENDER SC: Can we just look at</p>	<p style="text-align: right;">Page 32475</p> <p>1 the long statement which you made at Phokeng in February</p> <p>2 2013 and your answer at line 21 is, you say, "Mr Chair,</p> <p>3 that gentleman did not understand Xhosa well. He is</p> <p>4 Shangaan and I am Xhosa. There was a misunderstanding. If</p> <p>5 I say A, he would write B." And let me just show you</p> <p>6 another passage so that there can be no suggestion there's</p> <p>7 a confusion. Could we go to page 31988 please, 31988 line</p> <p>8 15? Now here the Chairperson asks you questions again. He</p> <p>9 says, "Now I'd like to ask a question. We are talking</p> <p>10 about the February 2013 statement. You say the person who</p> <p>11 took the statement didn't ask you the same questions you</p> <p>12 were asked later." And you say, "Yes, Mr Chair." And then</p> <p>13 the Chairperson says to you, "Is that the statement where</p> <p>14 you say, apart from the fact that you weren't asked</p> <p>15 questions about things so they didn't find their way into</p> <p>16 the statement, is that also the statement where things were</p> <p>17 incorrectly recorded because of language problems?" And</p> <p>18 your answer is, "We did not understand each other." The</p> <p>19 Chairperson, "Was that because the person who took the</p> <p>20 statement's home language wasn't Xhosa?" And you say,</p> <p>21 "Yes, Mr Chair." "Chairperson: How many statements did</p> <p>22 that person take from you?" And you say, "Three people</p> <p>23 took statements. It was a Tswana-speaking person, the</p> <p>24 Shangaan and the Xhosa-speaking person." And the</p> <p>25 Chairperson then says, "I want to know from you, the person</p>

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1 who took the statement, the long statement that Adv  
2 Budlender quoted you from where you, about the counting and  
3 the shooting and so on, the person who took that statement,  
4 how many statements did he take from you?" And you say,  
5 "He took one statement." Now I want to put the following  
6 to you, Mr X. You got into difficulty in explaining the  
7 long statement which you made at Phokeng in February 2013  
8 and the explanation you gave was that the person who took  
9 the statement from you didn't understand Xhosa and you  
10 didn't understand each other. And I want to say to you  
11 that that explanation was false because we know that the  
12 person who took that statement was in fact Xhosa—speaking,  
13 in fact Captain Ngqoko. Ngqoko, did I get it right?  
14 MR MAHLANGU: Ngqoko.  
15 CHAIRPERSON: I think you'd better spell  
16 it for the benefit of the transcribers.  
17 MR MAHLANGU: Ngqoko would be spelt  
18 N-Q-O, N-G-Q-O-K-O.  
19 MR BUDLENDER SC: Would you like to  
20 comment on that, Mr X?  
21 MR X: Chairperson, Captain Ngqoko isn't,  
22 by birth, Xhosa. He's not real Xhosa. He does speak Xhosa  
23 because he works with people.  
24 MR BUDLENDER SC: Well, Mr X, that's  
25 inconsistent with two things. First, it's inconsistent

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1 with the evidence you just gave in which you said he is  
2 Xhosa. Can you explain that?  
3 MR X: He is a Xhosa from Kayakulu.  
4 Kayakulu, it means it's local Xhosa, not from the Xhosa  
5 tribal areas.  
6 MR BUDLENDER SC: So we now have three  
7 explanations. He is Xhosa, he's not Xhosa and he is Xhosa  
8 but he's from a different area. Which one of those is the  
9 truth?  
10 MR X: He doesn't come from the  
11 homelands. You see in Xhosa, Mr Chairperson, there is  
12 Xhosa, there is isiMpondo and the Mpondo doesn't speak  
13 Xhosa as clear as a Xhosa-speaking person. There are  
14 Xhosas that speak very straight Xhosa. We Mpondos, we  
15 speak isiMpondo.  
16 MR BUDLENDER SC: Let's just –  
17 MR X: Those that speak pure Xhosa, the  
18 people on that side, the Ciskeian side.  
19 MR BUDLENDER SC: But you don't –  
20 MR X: We don't speak the same way.  
21 MR BUDLENDER SC: Do you say that you and  
22 Captain Ngqoko did not understand each other?  
23 MR X: We tried to understand each other  
24 though we did not really understand one very, very clearly.  
25 MR BUDLENDER SC: Alright, well, I want

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1 to tell you what – you'll remember that the Chairperson  
2 asks the South African Police Service to indicate who took  
3 that statement and what his home language was, and this is  
4 the answer which was received from the police. They said,  
5 "The statement of Mr X dated 7 February 2013 was taken by  
6 Captain MN Ngqoko." They said, "The home language of  
7 Captain Ngqoko is Xhosa" and they said that Captain Ngqoko  
8 says that you gave the statement in Xhosa, after which he  
9 translated it in English and wrote it down and that after  
10 that, the statement was read back to you in Xhosa and after  
11 that you signed it. Is that information from the SAPS  
12 correct?  
13 MR X: It is so, yes.  
14 MR BUDLENDER SC: It is correct?  
15 MR X: It is so, yes.  
16 MR BUDLENDER SC: Alright. Well, I'm  
17 going to – we're going to argue, Mr X, that your complaint  
18 about language is plainly an attempt to fabricate an  
19 explanation for the reason that some of what is said in  
20 your statement of February 2013 is plainly not correct.  
21 Would you like to comment on that?  
22 MR MAHLANGU: - 100%, the proper, he  
23 understood but it wasn't 100% understanding of the Xhosa.  
24 MR BUDLENDER SC: The thing, the issue  
25 that gave rise to this, Mr X, was your statement in

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1 February 2013 statement that the police started firing  
2 shots while General Mpembe was counting. So now I ask you  
3 to say in a language which you understand and which you're  
4 comfortable with, is it true or is it false or don't you  
5 know that the police started shooting while General Mpembe  
6 was counting?  
7 MR X: Mpembe said at Marikana, "I am  
8 going to count."  
9 MR BUDLENDER SC: That's not the  
10 question.  
11 MR X: We then immediately left where we  
12 were seated. We started singing our songs and proceeded,  
13 moving forward, moving towards the settlement.  
14 MR BUDLENDER SC: Are you finished?  
15 MR X: Yes, sir, yes, that's true.  
16 MR BUDLENDER SC: Did the police start  
17 shooting while General Mpembe was counting?  
18 MR X: They were shooting whilst we were  
19 walking towards the settlement. Whether he had finished  
20 counting or not, I don't know. The last time I heard was  
21 when he said he was going to count.  
22 MR BUDLENDER SC: So your explanation is  
23 that you don't know whether the shooting started while  
24 General Mpembe was counting. Is that what you're saying?  
25 MR X: If you would just repeat the

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1 question?

2 MR BUDLENDER SC: Is your evidence now

3 that you don't know whether the police started shooting

4 while General Mpmembe was still counting?

5 MR X: Yes, sir.

6 MR BUDLENDER SC: I want to suggest to

7 you that that's probably the truth, you don't know because

8 you weren't there. You're only relying on what other

9 people have told you.

10 MR X: No, I didn't hear about it. I

11 know everything about that, what happened on the mountain.

12 MR BUDLENDER SC: Well, I want to put it

13 to you that if you were there you would've known that the

14 police shooting only started sometime after General Mpmembe

15 finished counting. All the evidence is clear on that.

16 MR X: No, sir, I am not turning around.

17 CHAIRPERSON: Why did you say, in answer

18 to Mr Budlender's question, I know everything that happened

19 on the mountain. This incident didn't take place on the

20 mountain did it?

21 [10:02] MR X: We were going to the mountain, Mr

22 Chairperson, at Marikana when we left from where Mpmembe

23 was.

24 MR BUDLENDER SC: Mr X, there are other

25 people who want to ask you questions and I want to finish

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1 my questions. I want to put the following to you. I want

2 to say to you that it may be that parts of what you have

3 told the Commission is the truth, the problem it's

4 impossible to know which parts you actually saw and heard,

5 which parts you've been told by other people and which

6 parts you simply invented. Let me explain why I say this.

7 You've said that you were on the committee of five when in

8 fact you were not. You have said you were on the committee

9 of 15 when in fact you were not. You said that you were

10 present at the confrontation on the 13th when in fact you

11 were not. You have invented events and put them in your

12 March 2014 statement when they were not in your 2013

13 statement. Parts of your evidence are clearly not – are

14 obviously not the truth, for the example the story about Mr

15 Mathunjwa's visit, Mr Mathunjwa's visit to the koppie on

16 the 14th of August. That's plainly fabricated. And parts

17 of your evidence are contradictory and parts simply make no

18 sense at all. And so we're going to submit to the – the

19 evidence leaders are going to submit to the Commission that

20 it's simply not possible to know with any certainty which

21 parts of your evidence are the truth and which parts are

22 not. Would you like to comment on that?

23 MR X: Yes it was Mathunjwa who said he

24 wanted membership as no membership can be joined just on

25 one day. It was fraudulent, we've committed fraud there by

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1 making these people join on one day, to join Mathunjwa.

2 Mathunjwa must return back the membership to the NUM

3 because these are the people from –

4 CHAIRPERSON: Sorry, I don't want people

5 to have conversations in the chamber. If you want to have

6 conversations please go outside. If people carry on

7 talking like this I'll have to ask them to leave. I don't

8 want to do that [inaudible]. Please keep quiet.

9 MR X: These are people from Qaukeni and

10 the different areas, from Libode and he named other areas

11 Bizana, Flagstaff.

12 MR BUDLENDER SC: Have you finished your

13 answer, Mr X?

14 COMMISSIONER HEMRAJ: Sorry what did he

15 say about the people from the other areas? I didn't quite

16 understand that.

17 MR MAHLANGU: He said these people are

18 from Qaukeni and then he mentioned places like Bizana,

19 Flagstaff –

20 MR BUDLENDER SC: Lusikisiki.

21 MR MAHLANGU: Lusikisiki, Libode and

22 other areas of the –

23 CHAIRPERSON: But what did he say about

24 it, what was the relevance mentioned?

25 MR X: These are the people who are now

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1 in trouble, Chairperson, which were being used by Mr

2 Mathunjwa. I want to apologise about all this that went

3 wrong at Marikana.

4 MR BUDLENDER SC: Why is it fraudulent to

5 join a union on one day?

6 MR X: When one joins a union then you

7 are given all the contents of the Constitution, what it is

8 that the union is going to do for them and all that. We

9 let these people join just over the day, overnight.

10 MR BUDLENDER SC: And that's fraudulent,

11 who committed the fraud?

12 MR X: We, the people who are being used

13 by Mathunjwa.

14 MR BUDLENDER SC: So you defrauded Mr

15 Mathunjwa and you defrauded AMCU.

16 MR X: Because we joined Mathunjwa's

17 union because he said he wanted membership.

18 MR BUDLENDER SC: Yes but did he defraud

19 you or did you defraud him?

20 MR X: He defrauded us.

21 MR BUDLENDER SC: By asking you to join

22 the union?

23 MR X: Yes, by joining his union. The

24 workers then joined there from fear because they realised

25 there's killing that is happening here.

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1 MR BUDLENDER SC: Mr X, I don't want to  
 2 prolong this, but you seem to be very angry with Mr  
 3 Mathunjwa. You have now accused him of defrauding the  
 4 workers and you previously fabricated an incident about him  
 5 coming to the koppie. Why are you so angry with Mr  
 6 Mathunjwa?  
 7 MR X: What is important it's life than  
 8 money, people were killed for no reason at Marikana.  
 9 MR BUDLENDER SC: And you blame Mr  
 10 Mathunjwa for that?  
 11 MR X: It is him, I'm not making any  
 12 mistake.  
 13 CHAIRPERSON: I don't quite understand  
 14 that because according to the evidence we have, just before  
 15 the fatal shootings took place Mr Mathunjwa pleaded with  
 16 the people to leave the koppie, lay down their arms and go  
 17 away. And he got on his bended knees and asked them to do  
 18 that. He said otherwise you'll be killed, so he was in  
 19 fact trying, according to the evidence we've heard to  
 20 prevent the people from being killed. Isn't that correct?  
 21 MR X: What is that, Chairperson?  
 22 CHAIRPERSON: I don't understand why you  
 23 say that Mr Mathunjwa is responsible for the deaths of the  
 24 people on the 16th of August 2012 at Marikana because  
 25 according to the evidence we've heard, on that fatal

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1 afternoon he pleaded with the people on the koppie to lay  
 2 down their arms and leave. He got on his bended knees and  
 3 he told the people that the police would kill them. That's  
 4 why he asked them to put down their arms and leave.  
 5 According to the evidence we've heard he went out of his  
 6 way to try to prevent the people from being killed. That's  
 7 why I don't understand your saying that he is responsible  
 8 for the deaths of the people. Can you help me to  
 9 understand your evidence on that point?  
 10 MR X: They were together with Zokwana in  
 11 the police hippo, in the Casspir. We then said to  
 12 Mathunjwa he should come alone the following day.  
 13 Mathunjwa then came back in the morning to the mountain and  
 14 started – he then said he would go to the employer to get a  
 15 report back the morning. My question was what had  
 16 Mathunjwa gone to do early in the mountain because he knew  
 17 he would get the membership. All that happened at  
 18 Marikana, Sir, is because of Mr Mathunjwa.  
 19 MR BUDLENDER SC: Mr X, is it correct  
 20 that Mr Mathunjwa pleaded with the strikers to lay down  
 21 their arms and leave the koppie in order to prevent them  
 22 being killed?  
 23 MR X: Mathunjwa arrived in the morning  
 24 at the mountain, he said he would go to the employer to get  
 25 a response and then he later came during the day.

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1 Mathunjwa was canvassing for membership when he came back  
 2 later. If one is talking to a girl, proposing for love,  
 3 you don't talk about other men, you talk about your love  
 4 for that particular girl. Mathunjwa was using – canvassing  
 5 tactics of talking bad about the NUM, that the NUM was  
 6 eating together with the employer because he wanted  
 7 membership, membership that belongs to NUM.  
 8 MR BUDLENDER SC: Have you finished?  
 9 MR X: I am apologising to the people  
 10 from Qaukeni who got injured because of Mr Mathunjwa. It  
 11 is Mathunjwa that used us.  
 12 MR BUDLENDER SC: Can I -  
 13 CHAIRPERSON: Sorry, Mr Budlender. The  
 14 question I asked you originally was, well I referred you in  
 15 the question I asked you to the fact that according to the  
 16 evidence we've heard Mr Mathunjwa at the end of his speech  
 17 knelt down and pleaded with the people on the koppie to put  
 18 down their arms and go away. And he told them if they  
 19 didn't do that the police would kill them. So he was  
 20 trying to stop them being killed, is that correct or isn't  
 21 it?  
 22 MR X: Mathunjwa did come to us on the  
 23 mountain and spoke to us, indeed he went down on his knees,  
 24 Chairperson.  
 25 CHAIRPERSON: Did he try to get the

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1 people to lay down their arms and leave the koppie so that  
 2 they would not be killed by the police?  
 3 MR X: He said there was going to  
 4 bloodshed on the mountain.  
 5 MR BUDLENDER SC: Did he plead with the  
 6 people to leave the mountain so that they would not be  
 7 killed by the police?  
 8 MR X: He was asking us to but he was not  
 9 truthful about his play.  
 10 CHAIRPERSON: Would you repeat that last  
 11 please?  
 12 MR X: If your children makes a mistake  
 13 don't you reprimand them, do you then influence them  
 14 because Mathunjwa was influencing us. He was not warning  
 15 us or reprimanding us.  
 16 MR BUDLENDER SC: Sorry I still don't  
 17 understand the answer. Do you say it is true or it is  
 18 false that on the 16th Mr Mathunjwa pleaded with the  
 19 strikers on the koppie to lay down their arms and leave the  
 20 koppie in order to prevent them being killed by the police?  
 21 MR X: Yes he did, it is so yes.  
 22 MR BUDLENDER SC: And as far as the  
 23 deaths before the 16th are concerned there were 10 people,  
 24 strikers and members of the police who were killed before  
 25 the 16th of August.

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1 CHAIRPERSON: And workers and -  
 2 MR BUDLENDER SC: Sorry yes, strikers,  
 3 Lonmin employees and members of the police that were killed  
 4 before the 16th of August.  
 5 MR X: It is correct, Sir.  
 6 MR BUDLENDER SC: Mr Mathunjwa wasn't  
 7 involved in any of those murders was he?  
 8 MR X: He was because on the 14th he said  
 9 he wanted membership. He said he wanted membership, he  
 10 doesn't want NUM here, NUM should be killed.  
 11 CHAIRPERSON: Hang on, sorry, Mr  
 12 Budlender. The people to whom reference was made, who died  
 13 earlier with the exception of Mr Twala who died on the 14th,  
 14 I'll come to him in a moment, but the others died on the  
 15 12th and the 13th, that's before Mr Mathunjwa came. Isn't  
 16 that right? The security guards were killed on the Sunday  
 17 morning. A worker was killed on the Sunday night, Mr  
 18 [inaudible, interpreter speaking as well] was killed on the  
 19 Monday morning about 3 o'clock I think and then two  
 20 policemen were killed on the afternoon of the 13th, the  
 21 Monday afternoon, three strikers were killed and Mr Twala  
 22 was killed on the Tuesday afternoon before Mr Mathunjwa  
 23 came, according to your evidence. That's correct isn't it?  
 24 I'm afraid we can't carry on with that interruption, maybe  
 25 it stops in a minute. I was going to take the short break

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1 at quarter to eleven, but perhaps we can take it now to  
 2 give the authorities a chance to sort out the noise and the  
 3 witness can try to think about his answer to the question I  
 4 put to him.  
 5 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 6 [10:42] CHAIRPERSON: The Commission resumes. As  
 7 we can hear, the buzz that was interrupting the proceedings  
 8 before we adjourned has now disappeared. I hope it's  
 9 disappeared permanently.  
 10 MR NTSEBEZA SC: We need Mr X back, Mr  
 11 Chairman.  
 12 CHAIRPERSON: I beg your pardon?  
 13 MR NTSEBEZA SC: We need his image back,  
 14 Mr X.  
 15 CHAIRPERSON: We need his image back.  
 16 Yes, that's true. When the - oh dear, I thought things had  
 17 been sorted out. He's obviously buzzed off when the buzz  
 18 went off. Well, what is the position? It's no good us  
 19 sitting here for an hour or two waiting for him to come  
 20 back on the screen, so if he's going to come back shortly  
 21 we'll carry on. If he isn't, we'll have to take the tea  
 22 adjournment that I was proposing to take in an hour's time.  
 23 What is the position? Mr Mathibedi, this is your witness.  
 24 What's happened to him?  
 25 MR MATHIBEDI SC: Unfortunately I won't

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1 be in a position to help at this stage.  
 2 CHAIRPERSON: I think we'd better - it's  
 3 silly, it's pointless sitting here [microphone off,  
 4 inaudible] the one minute starts now, hey.  
 5 MR CHASKALSON SC: Chairperson, if I can  
 6 make a suggestion about a way of dealing with these  
 7 situations going forward; there are a range of videos that  
 8 still need to be played in Commission. Can I suggest that  
 9 the next time we have a technical interruption like this in  
 10 the evidence of Mr X we use the time to play for instance  
 11 the video of the second press conference that SAPS gave on  
 12 the 17th?  
 13 CHAIRPERSON: Alright, well may I suggest  
 14 you set it up so that if the problem arises we'll be able  
 15 to switch into video viewing mode immediately. The minute  
 16 is nearly up actually. [Microphone off, inaudible] the  
 17 minute is up, seriously, because if it is going to take  
 18 time to sort out the problem then I think we should  
 19 adjourn. On the other hand, if it's going to be sorted out  
 20 soon, in the absence of Mr Chaskalson's video we'll just  
 21 have to sit here and wait. [Microphone off, inaudible] ask  
 22 for, what's the story? How long are they going to take?  
 23 The witness is back but I'm not sure the  
 24 microphone is back. Can we find out if the microphone is  
 25 back? Can you ask him to say something? Remind him he's

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1 under oath.  
 2 MR QGIRANA: Responding, but can't hear  
 3 him.  
 4 CHAIRPERSON: Well, unless we have a lip  
 5 reader in the house we'll have to wait for the microphone  
 6 to be turned on. Look, I think that we must - I don't know  
 7 where this remote location is, but someone must get a  
 8 message to the - oh, a message has been sent by telephone.  
 9 MR MPOFU: No, I was going to say,  
 10 Chairperson, maybe it might be an opportune time to bring  
 11 that application.  
 12 MR BUDLENDER SC: It will be very  
 13 tempting to support it, Chairman.  
 14 CHAIRPERSON: I think despite what you  
 15 say, Mr Budlender, Mr Semanya may well oppose it. Can we  
 16 hear him now? If someone, I believe attempts should be  
 17 made to telephone Mr Mathibedi. Can someone please send a  
 18 carrier pigeon or something? I'm hesitant to adjourn and  
 19 walk out because the moment we walk out it will come on  
 20 again and then we'll have wasted more time, but it is very  
 21 irritating. These things are sent to try us.  
 22 MR CHASKALSON SC: Chairperson, we've got  
 23 no progress on Mr X, but we can show the press conference  
 24 of the 17th to use the time productively as we -  
 25 CHAIRPERSON: Has this already got an



<p style="text-align: right;">Page 32492</p> <p>1 exhibit number?</p> <p>2 MR CHASKALSON SC: No, we need to give it</p> <p>3 a new exhibit number –</p> <p>4 CHAIRPERSON: Well, we'll interrupt the</p> <p>5 evidence of the witness as it's been interrupted by</p> <p>6 mechanical causes beyond our control and we will hear a</p> <p>7 video, well watch a video and hopefully hear a video of the</p> <p>8 second press conference on the 17th, is it?</p> <p>9 MR CHASKALSON SC: I'm not sure about the</p> <p>10 sequence of which one came first and which one came</p> <p>11 second –</p> <p>12 CHAIRPERSON: Alright, video of press –</p> <p>13 MR CHASKALSON SC: - but this is the</p> <p>14 press –</p> <p>15 CHAIRPERSON: Video of press conference</p> <p>16 on 17 August 2012. What's the exhibit number? What will</p> <p>17 the exhibit number be? I think we were, it's part of the</p> <p>18 Minister's series really, isn't it? So I suppose, so it</p> <p>19 will be CCCC12. Still no times – we're just going to watch</p> <p>20 the whole video and hopefully hear it as well.</p> <p>21 COMMISSIONER HEMRAJ: There are still no</p> <p>22 times on the conferences, times of the conferences?</p> <p>23 MR CHASKALSON SC: Of the press</p> <p>24 conference. I think the way to identify it is it's the</p> <p>25 press conference at which Colonel Scott and Major-General</p>	<p style="text-align: right;">Page 32494</p> <p>1 these images to leave the chamber. The 30 seconds start</p> <p>2 now.</p> <p>3 The 30 seconds is up. For the benefit of those</p> <p>4 who may be puzzled why we're watching these presentations,</p> <p>5 it's important we see them because they're pre-Roots.</p> <p>6 They're a preliminary version of the police presentation</p> <p>7 made before any influences were brought to bear by what was</p> <p>8 said at Roots.</p> <p>9 [VIDEO IS SHOWN]</p> <p>10 CHAIRPERSON: I think we can have, if we</p> <p>11 can have simultaneous translation. I'm sorry to interrupt</p> <p>12 you, Mr Interpreter. I think this can be, surely this can</p> <p>13 be simultaneously translated. We know it's much quicker if</p> <p>14 we do it simultaneously.</p> <p>15 MR QGIRANA: Yes.</p> <p>16 CHAIRPERSON: No one has got any headset,</p> <p>17 his or her headset on. Is this going to be a long</p> <p>18 presentation, Mr –</p> <p>19 MR CHASKALSON SC: I think the video is</p> <p>20 in the region of about 20 minutes long –</p> <p>21 CHAIRPERSON: Of course if it's going to</p> <p>22 be interrupted by interpretation then it's going to be</p> <p>23 virtually double the time.</p> <p>24 MR QGIRANA: So the translation would be</p> <p>25 done then from the other room.</p>
<p style="text-align: right;">Page 32493</p> <p>1 Mpembe delivered their presentations.</p> <p>2 CHAIRPERSON: What I've written in my</p> <p>3 book, this will be exhibit CCCC12. It's a video of the</p> <p>4 press conference on the 17th of August 2012 where</p> <p>5 Lieutenant-Colonel Scott and Major-General Mpembe delivered</p> <p>6 their presentations.</p> <p>7 [VIDEO IS SHOWN]</p> <p>8 MR CHASKALSON SC: Sorry, Chairperson, if</p> <p>9 we can just pause. There will be some footage in the</p> <p>10 presentation that is captured on the video that requires a</p> <p>11 warning, so if we could give the warning at the start.</p> <p>12 CHAIRPERSON: Was that the voice of</p> <p>13 Colonel Scott that we heard?</p> <p>14 MR CHASKALSON SC: It was the voice of</p> <p>15 Colonel Scott.</p> <p>16 CHAIRPERSON: We're going to watch a</p> <p>17 video which contains two presentations made on 17th August,</p> <p>18 one by Lieutenant-Colonel Scott and one by Major-General</p> <p>19 Mpembe. I am informed that we will be shown some images of</p> <p>20 people who'd been killed or been seriously injured and the</p> <p>21 relatives and loved ones, friends of those people may find</p> <p>22 watching these images very distressing, so before we see</p> <p>23 the video, before it's turned on properly I ask that 30</p> <p>24 seconds should be allowed to elapse to enable those who</p> <p>25 feel that they may be emotionally distressed by looking at</p>	<p style="text-align: right;">Page 32495</p> <p>1 CHAIRPERSON: Those who haven't brought</p> <p>2 their headsets in must go there or go outside and get them</p> <p>3 and come in again.</p> <p>4 [11:02] In the interests of saving time, I suggest those</p> <p>5 who need interpretation should go – it's just the video –</p> <p>6 can go across the way to the overflow room. The equipment</p> <p>7 is set up there, I think. That would save time and once we</p> <p>8 start here again, once we get through to Mr X we will let</p> <p>9 you know and you can all come back. You can't force people</p> <p>10 to go. If they don't want to go, they don't have to go but</p> <p>11 they will realise they won't get interpretation here. If</p> <p>12 they want to understand what's being said in Xhosa then</p> <p>13 they'll have to go to the overflow room. It's just a video</p> <p>14 that will be – any evidence that will be given, we will</p> <p>15 give them an opportunity to come back, so they will miss</p> <p>16 nothing. Let's carry on then without interpretation.</p> <p>17 [VIDEO IS SHOWN]</p> <p>18 CHAIRPERSON: That was obviously General</p> <p>19 Mpembe speaking.</p> <p>20 MR BUDLENDER SC: It is, Chairperson.</p> <p>21 [VIDEO IS SHOWN]</p> <p>22 [Microphone off, inaudible] – what happens now is</p> <p>23 the whole of exhibit Z1 which spans the 10th and the 13th</p> <p>24 [indistinct] but there is some commentary from General</p> <p>25 Mpembe which makes it worth our while –</p>

<p style="text-align: right;">Page 32496</p> <p>1 [11:22] [VIDEO IS SHOWN]  2 I'm afraid that's the point at which the SABC  3 footage which we have gets scrambled, so I think we should  4 probably stop the video here.  5 CHAIRPERSON: Thank you. Is that the end  6 of the video that we have to see?  7 MR BUDLENDER SC: That is the end of the  8 video that we're going to see.  9 CHAIRPERSON: I think we now take the tea  10 adjournment. I see according to what is on the screen it  11 says, "Microphone off at other side." We'll take the tea  12 adjournment now. I hope the microphone will be turned on  13 before we come back. We won't come back until we're told  14 that the sound system is working properly but before we  15 adjourn I'd just like to ask that we get a transcript, not  16 of the bits that are on the video because those we've  17 already got because that's part of the video that's already  18 an exhibit, but the narrative given by Lieutenant-Colonel  19 Scott and General Mpenbe and I think the cameraman is also  20 heard speaking, well –  21 MR BUDLENDER SC: I think that is either  22 General Mawela or General Masemola, not the cameraman who  23 explains at a certain point.  24 CHAIRPERSON: We'd like a transcript of  25 what was said at the conference so that that can go in as</p>	<p style="text-align: right;">Page 32498</p> <p>1 MR X: Yes.  2 MR BUDLENDER SC: So you can't blame  3 those deaths on Mr Mathunjwa's visit, or alleged visit on  4 the 14th of August.  5 MR X: I blame him.  6 MR BUDLENDER SC: But they happened  7 before he arrived, as you say, so how can his arrival be  8 the cause of the deaths?  9 MR X: He was using us, Mr Chair. It was  10 well-known that we'll never get that R12 500. He was  11 playing around with this amount.  12 MR BUDLENDER SC: Mr X, you say that you  13 participated in a number of the murders before the 16th of  14 August.  15 MR QGIRANA: Before the?  16 CHAIRPERSON: The 16th.  17 MR BUDLENDER SC: Before the 16th.  18 MR X: Yes, Sir.  19 MR BUDLENDER SC: And you blame Mr  20 Mathunjwa for the fact that you killed some people?  21 MR X: That was to gain membership for Mr  22 Mathunjwa, everything that was happening there.  23 MR BUDLENDER SC: So your evidence is  24 this; I killed some people before Mr Mathunjwa arrived, but  25 I blame Mr Mathunjwa for that because he wanted more</p>
<p style="text-align: right;">Page 32497</p> <p>1 an exhibit because it may be important later when we  2 consider the events of the 13th in particular, to see what  3 the version was before anybody went to Roots. At this  4 stage we'll take the tea adjournment.  5 [COMMISSION ADJOURNS COMMISSION RESUMES]  6 [12:05] CHAIRPERSON: The Commission resumes. Is  7 the microphone working at the other side?  8 MR X: Yes, I can hear you.  9 CHAIRPERSON: Would you please remind the  10 witness he's still under oath?  11 MR X: I am still under oath.  12 CHAIRPERSON: Mr Tip, you've got one and  13 a half hour. Mr Budlender, I thought you're finished?  14 MR BUDLENDER SC: I'm trying desperately  15 to finish, Chair.  16 CHAIRPERSON: I'm sorry. Please forgive  17 me. Carry on.  18 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):  19 Mr X, let me try to bring my cross-examination to a rapid  20 close. We know that 10 people were killed before the 16th  21 of August.  22 MR X: Yes, Sir.  23 MR BUDLENDER SC: All of them were killed  24 before Mr Mathunjwa's alleged visit to the koppie on the  25 evening of the 14th of August, correct?</p>	<p style="text-align: right;">Page 32499</p> <p>1 members for AMCU. Is that your evidence?  2 MR X: People who were killed there were  3 not told there is a strike. They then had a change of mind  4 after realising that they would die, they then joined the  5 strike. If there is going to be a strike it is preceded by  6 a mass meeting, people are told about the strike, but in  7 this case there was no such meeting. People then joined  8 the strike when they realised they would die.  9 MR BUDLENDER SC: Mr X, can you just  10 answer the question, please? You have given no evidence of  11 any involvement by Mr Mathunjwa before the evening of the  12 14th of August. Correct? You've not given any evidence of  13 his involvement before the evening of the 14th of August.  14 MR X: There is something he's done.  15 MR BUDLENDER SC: Before the 14th of  16 August?  17 MR X: If Zokwana came out as we were  18 calling him, we would have killed him, but he did not come  19 out.  20 MR BUDLENDER SC: Alright. Well, I want  21 to put it to you that your attempt to blame Mr Mathunjwa  22 for what you say was murders which you committed before he  23 even allegedly arrived on the koppie is just frankly  24 fanciful. Would you like to comment on that?  25 MR X: No, I'm saying it's the truth.</p>

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1 MR BUDLENDER SC: Alright, let me finish.  
 2 I want to say this to you, Mr X; it's possible that you had  
 3 some role in those terrible events of August 2012. For  
 4 whatever reason, you have decided to give evidence about  
 5 those events. I can understand that you feel very  
 6 vulnerable. For reasons which we can try to imagine you  
 7 have found it necessary to invent evidence, but I want to  
 8 say to you that it is so clear that you had invented  
 9 evidence and you have not told the truth about some of the  
 10 evidence you've given, that it's simply impossible to know  
 11 which parts of your evidence are true and which parts are  
 12 not. Would you like to comment on that?  
 13 MR X: Mr Chair, I was involved in the  
 14 Lonmin strike. In a strike there is no leader, there is no  
 15 one forward in the forefront and no one at the back, but I  
 16 was there. When there is a fight going on you just take  
 17 part in the fight because you are not a spectator.  
 18 MR BUDLENDER SC: I thought there was a  
 19 leader. I thought there were 15 leaders and you claim that  
 20 you were one of them. Now you say there was no leader.  
 21 MR X: There was the committee on the  
 22 mountain. Whatever you wanted to do, you had to go through  
 23 that committee.  
 24 MR BUDLENDER SC: Thank you, Chair, I  
 25 have no further questions.

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1 CHAIRPERSON: Before I ask Mr Tip to  
 2 cross-examine on behalf of NUM and Mrs Fundi, there's one  
 3 question I'd like to ask the witness at this stage. You  
 4 said that there was no mass meeting that decided on the  
 5 strike. Did I understand you correctly?  
 6 MR X: Yes, Mr Chair, the only meeting  
 7 that was held was for the RDOs. There was no general  
 8 meeting for the other sectors in the workforce.  
 9 CHAIRPERSON: Thank you. Mr Tip. On our  
 10 notes you've been allocated an hour and a half. Does that  
 11 coincide with what you were told?  
 12 CROSS-EXAMINATION BY MR TIP SC: I was  
 13 told precisely that, Chair, yes, I'm very mindful of that.  
 14 Mr X, my name is Tip. I represent NUM. I also represent  
 15 Mrs Fundi, and Mrs Fundi as you know is the widow of Mr  
 16 Fundi who was one of the Lonmin security officers who was  
 17 killed on Sunday, the 12th of August.  
 18 MR X: I hear you.  
 19 MR TIP SC: Yes, Mr X, I'm going to put  
 20 questions mainly around that incident, mainly on behalf of  
 21 Mrs Fundi, and before I proceed with the questions I just  
 22 want to say this to you in general and to appeal to you to  
 23 bear that in mind in the evidence that you will give as I  
 24 question you. Mrs Fundi and her family are very anxious to  
 25 find closure here to come to terms with the loss of her

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1 husband and brother and relative. Are you following me?  
 2 MR X: I follow.  
 3 MR TIP SC: For that purpose it is very  
 4 important that they should learn as much as they can  
 5 concerning how Mr Fundi died and also the reason for him to  
 6 have been killed, and it is accordingly also important for  
 7 them that what they hear in this Commission should be the  
 8 truth, all of the truth, and nothing but the truth. So Mr  
 9 X, I am repeating the appeal that you recall the terms of  
 10 your oath that you've taken here and that when you describe  
 11 what took place there you should be careful to tell us what  
 12 it is that you are confident that you know, and if you are  
 13 not confident that you personally know details, that you  
 14 should let us know that. We understand each other?  
 15 MR X: We do.  
 16 MR TIP SC: Thank you, Mr X. Now in  
 17 order to assist both of us and the Commission in exploring  
 18 those details I'm going to hand up some additional  
 19 documents and ask the Chairperson to receive them as  
 20 exhibits. As I do so I'll request the interpreter to  
 21 convey to you what it is that I say concerning these  
 22 documents. Chair, could I ask –  
 23 CHAIRPERSON: [Microphone off, inaudible]  
 24 quadruple A, won't it?  
 25 MR TIP SC: Quadruple A, so the –

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1 CHAIRPERSON: So how many documents are  
 2 you dealing with?  
 3 MR TIP SC: Let me just describe them,  
 4 Chair. There is a set of three printouts of Google images  
 5 relating to the scene that we'll be dealing with. There  
 6 are then – perhaps they could receive numbers at this stage  
 7 and just point 1, point 2, point 3, in the customary way.  
 8 CHAIRPERSON: Alright, we'll call – as  
 9 far as I can see in the quadruple A series we got as far as  
 10 34. So these will be AAAA35.1, .2 and .3.  
 11 MR TIP SC: Thank you, Chair. Then –  
 12 CHAIRPERSON: Sorry, then you have a  
 13 statement by a security superintendent –  
 14 MR TIP SC: Yes.  
 15 CHAIRPERSON: - of Lonmin, Mr Dewald  
 16 Louw. Is that right? That will be AAAA36, statement  
 17 Dewald Louw. The next one is a statement by Joseph Masibi,  
 18 who's a security officer, that will be 37, AAA37.  
 19 MR TIP SC: AAAA37, Chair.  
 20 CHAIRPERSON: Sorry, did I not say that?  
 21 AAAA37. That's Masibi. The next one is Julius Motlagewa.  
 22 I seem to remember his name. I'm not sure – but I take it  
 23 we haven't got a statement – it's already marked.  
 24 MR TIP SC: I see that there's a JM1, but  
 25 I think that might be a Lonmin reference, Chair.

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1 CHAIRPERSON: Alright, well let's call it  
 2 AAAA –  
 3 MR TIP SC: AAAA38.  
 4 CHAIRPERSON: - 38, and if for some  
 5 reason it's a duplication that will be something that  
 6 unfortunately we'll bear with. Then we've got a statement  
 7 by Dirk Cornelius Botes. Is that not an exhibit already?  
 8 I've seen it before. I'm not sure if it's an exhibit.  
 9 We've had it before. Have we not got it before?  
 10 MR TIP SC: Chair, it may be – it was on  
 11 the –  
 12 CHAIRPERSON: Where is Ms Pillay when we  
 13 need her?  
 14 MR TIP SC: - the SAPS bundle list.  
 15 Perhaps, Chair, if we could just receive this one and I'll  
 16 explain why; these have all been extracted from the  
 17 bundle –  
 18 CHAIRPERSON: Alright, we'll put it in.  
 19 I've made it AAAA39.  
 20 MR TIP SC: 39.  
 21 CHAIRPERSON: Statement of Botes, and the  
 22 last one is a statement of Mr Fundi.  
 23 MR TIP SC: Yes.  
 24 CHAIRPERSON: That's the brother, I take  
 25 it, of the deceased, Mr Hassan Fundi. We've seen this one,

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1 but I don't think it's been an exhibit.  
 2 MR TIP SC: It has not yet been made an  
 3 exhibit.  
 4 CHAIRPERSON: That's AAAA40.  
 5 MR TIP SC: I'm indebted to you, Chair.  
 6 CHAIRPERSON: And if it turns out that Mr  
 7 Botes' statement and Mr Motlogelwa's statement have been  
 8 received before then we will just take them out and alter  
 9 the numbers of the ones after that.  
 10 MS BARNES: Chair, can we just alert Mr  
 11 Tip to the fact that none of us have the statement of Mr  
 12 Fundi. That does not appear to have made its way into our  
 13 bundle.  
 14 MR TIP SC: No, Chair, that was  
 15 distributed to everybody on –  
 16 CHAIRPERSON: Yes, some time ago we got  
 17 it, Ms Barnes.  
 18 MR TIP SC: On the 20 –  
 19 CHAIRPERSON: You may have been acting in  
 20 an elevated capacity elsewhere when that happened.  
 21 MR TIP SC: 26th of June that was  
 22 distributed to all parties here. Chair, what –  
 23 CHAIRPERSON: Sorry, whether you've got  
 24 it or not, Ms Barnes, it's quite AAAA40.  
 25 MR TIP SC: Chair, just as a matter of

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1 minor management, as I said we've extracted these  
 2 statements from the bundle that we received last week from  
 3 Lonmin. It has a separate pagination and we've adopted  
 4 that pagination for the purpose of the references that  
 5 we'll make to them in the questions that I'll put to Mr X.  
 6 So it may be convenient, even if there is some duplication,  
 7 just to retain them for that purpose.  
 8 CHAIRPERSON: Ms Barnes, may I say that  
 9 this statement that you say you haven't seen before, all  
 10 you really have to read is paragraph 5. This is the elder  
 11 brother of the deceased, Mr Hassan Fundi. They were  
 12 Muslims. In accordance with their religious observances  
 13 the body was washed before the burial and he describes in  
 14 paragraph 5 what he saw when he washed his brother's body  
 15 and he describes half the tongue had been cut out, his  
 16 lower lip and upper lip had been cut away and chin appeared  
 17 to be disfigured and some skin appeared, had been detached  
 18 on his left side and both his calves and there was severe  
 19 swelling of his forehead. That's effectively all you've  
 20 got to know about this.  
 21 MS BARNES: Thank you, Chair.  
 22 [12:24] COMMISSIONER HEMRAJ: Mr Tip, I don't  
 23 know if you're aware that there is also another statement  
 24 from Mr Motlagewa in one of the dockets, 67 of 8/2012. I  
 25 don't know if that's of any assistance to you.

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1 MR TIP SC: Thank you, Commissioner, yes.  
 2 I'm aware of that but there's just one aspect of it that is  
 3 relevant for the questions that I put to Mr X. Mr  
 4 Interpreter, you conveyed everything to Mr X?  
 5 MR MAHLANGU: Yes, I did.  
 6 MR TIP SC: Yes, thank you. Now Mr X, in  
 7 –  
 8 CHAIRPERSON: I take it that these  
 9 documents were shown to the police beforehand and they've  
 10 had an opportunity to read them to the witness because  
 11 we're told he is illiterate?  
 12 MR TIP SC: That is correct, Chair. In  
 13 any event, I propose to be quite careful to orient Mr X to  
 14 the scene that we'll be dealing with and I'd like to begin  
 15 with that immediately by looking at, if we could put on the  
 16 screen please AAAA35.2. You've got it in front of you, Mr  
 17 X?  
 18 MR X: Yes, I have it.  
 19 MR TIP SC: Alright, this is just to  
 20 remind you of the general layout of the Wonderkop area and  
 21 I'm going to, with a pointer, just trace the main tarred  
 22 road that goes through Wonderkop, do you follow it?  
 23 MR X: I see it.  
 24 MR TIP SC: That's the area of the NUM  
 25 office there.

<p style="text-align: right;">Page 32508</p> <p>1 MR X: Yes.</p> <p>2 MR TIP SC: The bus terminus area is</p> <p>3 there.</p> <p>4 MR X: Yes.</p> <p>5 MR TIP SC: The Wonderkop Stadium is</p> <p>6 there.</p> <p>7 MR X: Yes, it's up there.</p> <p>8 MR TIP SC: And then at the left-hand</p> <p>9 side of the photo you'll see that there's a dirt road</p> <p>10 leading off, I'm just tracing it with the pointer for you.</p> <p>11 CHAIRPERSON: I'm sorry, Mr Tip, would</p> <p>12 you be kind enough to describe in words what you're</p> <p>13 pointing out otherwise I have to do it. Those who are</p> <p>14 going to read the record later, including us –</p> <p>15 MR TIP SC: Yes.</p> <p>16 CHAIRPERSON: - will have a problem to</p> <p>17 understand what you meant by there and there and here and</p> <p>18 here.</p> <p>19 MR TIP SC: Yes. Chair, I appreciate</p> <p>20 that and I'll try to do that with greater diligence. I'm</p> <p>21 going to come to a more detailed photograph in a moment,</p> <p>22 Chair, and it'll be more helpful perhaps to do it but just</p> <p>23 for a general orientation, that is the dirt road that leads</p> <p>24 past Nkaneng which is a portion of, on the left-hand side,</p> <p>25 upper left-hand side of the photo, correct?</p>	<p style="text-align: right;">Page 32510</p> <p>1 way to Wonderkop and the bus terminus.</p> <p>2 MR X: Yes.</p> <p>3 MR TIP SC: And just below that island</p> <p>4 there's another bit of tarred road that runs from the main</p> <p>5 tarred road through to another tarred road that runs from</p> <p>6 top to bottom.</p> <p>7 MR X: Yes, sir.</p> <p>8 MR TIP SC: Yes, alright, thank you. Now</p> <p>9 we can get on to the events. Mr X, you've told us that on</p> <p>10 the 12th of August, that Sunday, the strikers gathered at</p> <p>11 the koppie which is where they were based then where they</p> <p>12 had, where they formed up and from the koppie they moved</p> <p>13 towards the area of Wonderkop.</p> <p>14 MR X: Yes, sir.</p> <p>15 MR TIP SC: And is it so that they would</p> <p>16 then have moved in part along that dirt road that joins up</p> <p>17 with the tarred road? I'm again pointing to it and we've</p> <p>18 referred to it already, is that right?</p> <p>19 MR X: Yes, they would walk there.</p> <p>20 MR TIP SC: Now what I want to do, Mr X,</p> <p>21 is to take you to some statements that have been placed</p> <p>22 before the Commission now this morning by certain security</p> <p>23 officers of Lonmin. These security officers will give</p> <p>24 evidence here in due course. What I'd like to do this</p> <p>25 morning is to – well, this afternoon now – is to put</p>
<p style="text-align: right;">Page 32509</p> <p>1 MR X: Yes, I see.</p> <p>2 MR TIP SC: Then if we could look in</p> <p>3 somewhat more detail at a part of this which would be on</p> <p>4 AAAA35.1. Now again I'm going to use the pointer, Mr X.</p> <p>5 Running across approximately the middle of the page, of the</p> <p>6 photo, is the same tarred road that we were looking at</p> <p>7 earlier, do you see it?</p> <p>8 CHAIRPERSON: At the top of the picture -</p> <p>9 MR X: Yes, I see it.</p> <p>10 MR TIP SC: And near the right hand top</p> <p>11 there is again the Wonderkop Stadium next to the building,</p> <p>12 to the left of the building with the red roof.</p> <p>13 MR X: I see the stadium.</p> <p>14 MR TIP SC: At the left-hand side of the</p> <p>15 photograph approximately one-third into it we see again the</p> <p>16 dirt road that leads past Nkaneng and that also then leads</p> <p>17 to the vicinity of the koppie, is that right?</p> <p>18 MR X: Yes.</p> <p>19 MR TIP SC: More or less in the middle of</p> <p>20 the photo there is what has been described in the statement</p> <p>21 I'll take you to shortly, a traffic island. I'm pointing</p> <p>22 it out, it's between two bits of tarred road.</p> <p>23 MR X: I see it.</p> <p>24 MR TIP SC: On the other side is the</p> <p>25 tarred road that we've already discussed that runs all the</p>	<p style="text-align: right;">Page 32511</p> <p>1 aspects of their statements to you for your comment. I</p> <p>2 want you to understand that I'm not necessarily saying that</p> <p>3 their statements are correct. They may be, but the point</p> <p>4 of the exercise that we're doing now is so that you can</p> <p>5 give us the benefit of your view of what is said by those</p> <p>6 officers as to whether you agree or disagree or whether</p> <p>7 you're not in a position to say anything. Are you with me,</p> <p>8 Mr X, are you following?</p> <p>9 MR X: I follow.</p> <p>10 MR TIP SC: Thank you. Then I would like</p> <p>11 please to have exhibit AAAA36 on the screen. As we see</p> <p>12 there, that is the statement by Dewald Louw, a security</p> <p>13 superintendent and I would like please to go to the</p> <p>14 following page, page 9, and if we can go down the page you</p> <p>15 will – let me just read to you. There's a last paragraph</p> <p>16 that I'll come to in a moment and just before that last</p> <p>17 paragraph, at the end of the second last paragraph on that</p> <p>18 page Mr Louw says that Mr Vorster, who was also a security</p> <p>19 officer and he "proceeded to the Wonderkop Stadium area and</p> <p>20 parked our vehicle on the traffic island due east of the</p> <p>21 tar road facing the crowd in a westerly direction." You're</p> <p>22 nodding, does that make sense to you, Mr X? Do you</p> <p>23 understand that?</p> <p>24 MR MAHLANGU: Yes, I understand what you</p> <p>25 say.</p>

<p style="text-align: right;">Page 32512</p> <p>1 MR TIP SC: I understand that they were 2 in a 4X4 vehicle but not an armoured vehicle, just an 3 ordinary 4X4. Do you remember seeing such a vehicle? 4 MR X: I remember such a vehicle. 5 MR TIP SC: And is it also so that at 6 that stage that was the only vehicle with Lonmin security 7 people in that vicinity? 8 MR X: Yes, sir. 9 MR TIP SC: Now I'm going to turn to the 10 last paragraph on that page and again I'm going just to 11 read it and the interpreter will interpret as I read. "The 12 crowd stopped about 20 metres before the traffic island. 13 They formed a crescent with us in the concave part. We got 14 out of the vehicle and faced the crowd, pointing our 15 shotguns in their direction. They stopped and assumed a 16 crouching position. I informed emergency operations of the 17 situation and asked for backup. There were two groups, a 18 smaller group in front of about 50 people and another group 19 plus-minus 20 metres behind them consisting of more than 20 1 000." 21 Now before I read the next portion I want to 22 pause and ask you whether that description is what you saw, 23 in particular the description that there were two groups, a 24 smaller one in front and then a much larger one behind. 25 MR X: Yes, sir.</p>	<p style="text-align: right;">Page 32514</p> <p>1 "One of their members" - apparently a Makarapa member, in 2 context, "One of their members wearing a white overall 3 stood up and hurled a rock at us. At that point Vorster 4 opened fire and the rest of the group charged forward to 5 attack us. I also opened fire and managed to get off two 6 shots before ordering Vorster to get back into the vehicle 7 so that we could retreat." Mr X, do you recall that taking 8 place? 9 MR X: I recall that. 10 MR TIP SC: Do you, are you able to tell 11 us who the person in the white overall was who threw this 12 rock at the security members? 13 MR X: That is Shezi. 14 MR TIP SC: Then Mr Louw goes on, "Before 15 we managed to enter the vehicle, I was hit with a 16 knobkerrie on my left shoulder and struck on the left thigh 17 by a large rock. Vorster was cut by a panga on his right 18 side all the way from the armpit to the hip." Now I'm not 19 going to ask you to confirm particular blows of that kind 20 but was there an incident of that sort where the group had 21 charged forward and where there was in fact an assault on 22 the two security officers of Lonmin? 23 MR X: Yes, there is. 24 MR TIP SC: Yes. Mr Louw then goes on to 25 describe how they managed to get away, their vehicle was</p>
<p style="text-align: right;">Page 32513</p> <p>1 MR TIP SC: Can you tell us in which 2 group you were? 3 MR X: The front group, the group of the 4 Makarapas. 5 MR TIP SC: Yes, then Mr Louw goes on to 6 say the following. "The smaller group seemed to have a 7 leader instructing them on what to do." 8 MR X: Yes, sir. 9 MR TIP SC: Is what he says there 10 correct? 11 MR X: That is correct. 12 MR TIP SC: Are you able to recall who 13 that leader was? 14 MR X: That was Mambush. 15 MR TIP SC: Then he, Mr Louw, goes on to 16 say, "During this period the smaller group continued 17 rhythmically slamming their traditional weapons together 18 and humming or chanting just loud enough to be audible." 19 Do you agree with that? 20 MR X: I agree. 21 MR TIP SC: Then if I could ask you 22 please to turn to the next page, page 10 at the top of the 23 page, the first paragraph, Mr Louw describes what happened 24 next and again I'm going to read this to you and ask for 25 your comment as to whether you agree or disagree. He says,</p>	<p style="text-align: right;">Page 32515</p> <p>1 damaged and there's no need for me to look at that sort of 2 detail with you. Now, Mr X, as far as I am aware this was 3 the first incident on Sunday the 12th of August involving 4 any kind of confrontation or violence. Would my 5 recollection be correct? 6 [12:44] MR X: That is correct. 7 MR TIP SC: Immediately after it, after 8 these Lonmin security men had managed to flee in their 9 vehicle, was there any discussion amongst members of the 10 makarapas as to what had just taken place? 11 MR X: Yes, it was said when we attack 12 somebody should be tortured. We tortured Fundi. Fundi is 13 the person whose tongue and chin were cut off. 14 MR TIP SC: Mr X, I'm going to stop you 15 there. We'll come to Mr Fundi shortly. I want you please 16 just to concentrate on the question that I've put to you 17 and to deal with that only, and I'll repeat the question. 18 MR X: Yes. 19 MR TIP SC: You've confirmed what Mr Louw 20 says that they managed to get away in their vehicle, and we 21 also know that the strikers continued through to the 22 Wonderkop Hostel area and to the Wonderkop bus terminal 23 area. 24 MR X: Yes, Sir. 25 MR TIP SC: I'll come to what took place</p>

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1 around the bus terminus in a moment, but for now I just  
 2 want to ask you this; after this confrontation with those  
 3 two security men –  
 4 MR X: Yes.  
 5 MR TIP SC: - did the makarapas pause to  
 6 take stock of what had taken place, to discuss it, or did  
 7 you all just move on, move forward?  
 8 MR X: We proceeded forward.  
 9 MR TIP SC: Thank you. Now I'm going to  
 10 go to the second major incident, and that is the one that  
 11 was in the vicinity roughly speaking of the bus terminus  
 12 and is it correct, Mr X, that you there came across a  
 13 number of Lonmin security officers?  
 14 MR X: Yes, Sir.  
 15 MR TIP SC: And again hopefully to assist  
 16 you and so that we can be sure that we follow you, could I  
 17 ask that this statement be taken off screen and that  
 18 AAAA35.2 be put up. My apologies, it must be 35.3. Yes,  
 19 Mr X, you see there that's the other end of the main tarred  
 20 road that runs through Wonderkop.  
 21 MR X: Yes, Sir.  
 22 MR TIP SC: And in the middle of this  
 23 image there is what I would describe as a loop running next  
 24 to that road. Do you see it?  
 25 MR X: I see it.

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1 MR TIP SC: Now what I'd like you to  
 2 describe for us is approximately where in your recollection  
 3 these Lonmin security people were, had positioned  
 4 themselves, and I'm going to begin by pointing in the  
 5 middle of that little loop there is a single building with  
 6 a white roof.  
 7 MR X: I see it.  
 8 MR TIP SC: Now were the Lonmin security  
 9 people to the left of that, more or less in line with it,  
 10 or to the right of this?  
 11 MR X: It was below the building because  
 12 in that area there's a shed that is used by some Shangaan  
 13 haircutters where they cut people's hair.  
 14 MR TIP SC: Alright, I'm not certain when  
 15 you say below. Let me just say, I'm pointing to that same  
 16 street that leads from the left-hand side of the image  
 17 through to the other street where the taxi rank is.  
 18 MR X: Yes.  
 19 MR TIP SC: And just for clarity, there  
 20 are a number of taxis that can be seen parked just on the  
 21 other side of that photograph.  
 22 MR X: Yes.  
 23 MR TIP SC: Is it correct that your, the  
 24 strikers were proceeding along that main tarred road?  
 25 MR X: Yes.

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1 MR TIP SC: Now I'm going to, just to  
 2 hopefully move on, with my pointer I'm just going to point  
 3 to an area. Would they have been in that vicinity? That's  
 4 roughly in line with the long building with the bluish  
 5 roof.  
 6 MR X: The two security officers who were  
 7 burned in the car were at the vicinity of the bus stop.  
 8 MR TIP SC: Can you just describe where  
 9 is the bus stop? Am I pointing at the right place?  
 10 MR X: I see the pointer. Those two  
 11 shacks, that is the bus stop.  
 12 MR TIP SC: Am I pointing to it now?  
 13 MR X: Yes.  
 14 MR TIP SC: Alright, yes.  
 15 MR X: Ja.  
 16 MR TIP SC: Thank you. So as one moves  
 17 along that street from left to right then immediately to  
 18 the left of the street, just about halfway across the image  
 19 there are two sheds right next to the street. That's the  
 20 area, that's the bus stop area?  
 21 MR X: Those two sheds are the bus stop.  
 22 As you go further down the security gate is where they're  
 23 found, then you go to the taxi rank.  
 24 MR TIP SC: Alright, well I think that  
 25 we've got enough for the purpose of my questions. I want

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1 to just take you to the second Lonmin statement that I want  
 2 to deal with. That's AAAA37 at page 29, and it is the  
 3 second-last paragraph on that page. Mr X, I'm just going  
 4 to read this. It's a general description of what happened,  
 5 and again I will then ask you whether that accords with  
 6 your recollection.  
 7 But before I read it I just want to ask you this;  
 8 as you were approaching, as you the strikers were  
 9 approaching the Lonmin security people in that area, were  
 10 you still in the front? Were you still part of the  
 11 makarapa group?  
 12 MR X: Yes, I was.  
 13 MR TIP SC: And did you have a clear view  
 14 of the Lonmin security personnel and what they were doing?  
 15 MR X: Yes, we were going towards those  
 16 security people. Their firearms were not working. We were  
 17 approaching them. Their firearms were not working.  
 18 MR TIP SC: Alright, well let me just  
 19 read to you a few lines from the statement, the second-last  
 20 paragraph there, "Some of the security team members  
 21 attempted to prevent the crowd from approaching by raising"  
 22 – well, I'm reading – "our voices in order to be heard over  
 23 the noise and from a distance," when I say "our voices," of  
 24 course it's the voices of the security personnel. "The  
 25 illegal gatherers disregarded our request," and I'll just

<p style="text-align: right;">Page 32520</p> <p>1 interpose, "a request to stop and continued moving towards 2 us, but a little slower. We realised that they were not 3 going to stop and some of my colleagues started firing 4 rubber bullets towards the illegal gatherers." Does that 5 correspond with what you saw at the time on the day? 6 MR X: Yes, Sir, it does. 7 MR TIP SC: Then over the page in the 8 same statement at numbered page 30, just to orient you 9 again, Mr X, this Mr Masibi, this security officer made a 10 statement. The Lonmin people who took the statement then 11 asked him certain questions about the character of the 12 strikers, and what he says, if you go down there's a 13 question 2, Q2, just on the left, Mr Masibi has said this 14 crowd seemed different to others in his experience. "In 15 what way were they different?" and then he said, "Their 16 ranks seemed closer than my previous experiences. They 17 reacted differently to my previous experiences. When we 18 requested them to stop they went into a crouching position 19 and continued banging their weapons together." On the 20 basis of what you saw there on the day, has Mr Masibi 21 described the position correctly? 22 MR X: It is like that, yes. 23 MR TIP SC: Then he was asked, "Did they 24 seem more organised?" and he said, "Yes." "In what way?" 25 "They acted in unison, almost as if they were trained or</p>	<p style="text-align: right;">Page 32522</p> <p>1 some kind of order, was there some kind of signal? Can you 2 tell us how that took place? 3 MR X: The sign was made by the man in 4 the white overalls when he threw the stone. The security 5 people started shooting and we were told not to shoot until 6 they do so. He was challenging them to shoot. 7 MR TIP SC: Right, Mr X, you're 8 describing what took place during the first incident when 9 there was the one security police vehicle. 10 MR X: Yes. 11 MR TIP SC: I'm now dealing with the 12 other incident, the one in which the two security police, 13 the security officers were killed. That was in the 14 vicinity of the Wonderkop bus terminus. 15 MR X: Now at that incident was there 16 some kind of order or signal or how did it happen that the 17 people in the crowd or the Makarapas actually charged those 18 security people? 19 MR X: The inyangas' instruction was that 20 we go forward. When we go forward we don't retreat. 21 MR TIP SC: Sorry, you don't what? 22 MR MAHLANGU: We don't retreat, we just 23 go forward. 24 MR TIP SC: Oh, you don't retreat, 25 alright. Now the position was that as I understand it and</p>
<p style="text-align: right;">Page 32521</p> <p>1 coached as to what to do." Were you indeed as a group 2 acting in an organised fashion and almost in unison? 3 MR X: Yes, Sir, we were following the 4 inyanga's instruction. 5 MR TIP SC: Chair, I'm going on to 6 another statement. I see it is 1 o'clock – 7 CHAIRPERSON: I was proposing to take the 8 lunch adjournment as soon as you're finished. So we'll now 9 take the lunch adjournment and we'll start again at quarter 10 to 2. 11 [COMMISSION ADJOURNS COMMISSION RESUMES] 12 [13:54] CHAIRPERSON: The Commission resumes. 13 Please tell the witness, remind the witness he is still 14 under oath. 15 MR X: (s.u.o.) 16 CHAIRPERSON: Mr Tip? 17 CROSS-EXAMINATION BY MR TIP SC (CONTD.): 18 Thank you, Chair. Mr X, we were just at a point where the 19 strikers were proceeding towards the bus terminus vicinity 20 and the Lonmin security personnel were, had taken up 21 positions across the road. 22 MR X: Yes, sir. 23 MR TIP SC: Now I want just in 24 particular, the charge of the strikers on the security 25 personnel, how did that, how was that initiated? Was there</p>	<p style="text-align: right;">Page 32523</p> <p>1 you can correct me if I'm wrong, Mr X, that the Lonmin 2 security personnel who were there did their best to run 3 away once it was clear that they would not be able to stop 4 the crowd. 5 MR X: No, they did run away. 6 MR TIP SC: Yes, and in particular Mr 7 Fundi and his colleague Mr Mabelane, the two people who 8 died there, had managed to get into their car, is that 9 correct? 10 MR X: Yes, sir. 11 MR TIP SC: So clearly they were trying 12 to get out of your way, they were trying to escape. 13 MR X: Yes, they were trying to escape 14 but their car wouldn't start. 15 MR TIP SC: Well, Mr X, given that they 16 were trying to escape, why was it nevertheless necessary 17 for them to be attacked and killed? 18 MR X: The fight was on at that stage, 19 the muti made their car not to start. They were already in 20 the car, yes. The one was taken out of the car. 21 MR TIP SC: Just explain that a little 22 more if you will, Mr X, so that we can all understand what 23 was happening and who was giving the orders. The inyanga 24 was on the mountain, wasn't he? He was not with you on 25 this march to the NUM office.</p>



<p style="text-align: right;">Page 32524</p> <p>1 MR X: The inyanga had given us the 2 instruction before we left the mountain that we should not 3 before these people or the security people fired first, 4 they had to fire first. If we fired first, their firearms 5 would work but if they fired first their firearms wouldn't 6 work. 7 MR TIP SC: Let me try and get a little 8 more detail from you on exactly how the sequence of events 9 there took place and again it will be convenient I think if 10 I refer you to another statement from one of the security 11 personnel of Lonmin and that is Mr Botes, AAAA39. It's on 12 the screen already, thank you, and the relevant parts are 13 at page 57 through to 58. We do have time constraints. 14 I'm going to summarise part of what he says. Mr Botes 15 describes that he came to that scene after there had been a 16 report of an attack on the security personnel – he went to 17 the scene in an armoured personnel carrier of Protea Coin. 18 Do you remember seeing an armoured vehicle at the scene at 19 the time? 20 MR X: Yes, I do. 21 MR TIP SC: Mr Botes says that when he 22 first arrived on the scene he saw that a VW Polo belonging 23 to Lonmin had been set alight but that the Livina in which 24 Mr Fundi and Mr Mabelane were travelling had not yet been 25 set alight.</p>	<p style="text-align: right;">Page 32526</p> <p>1 set alight. 2 MR TIP SC: Yes, now the particular point 3 that I'm wanting to get your comment on is that according 4 to Mr Botes, when he arrived at the scene that Livina had 5 not been set alight and neither Mr Mabelane nor Mr Fundi 6 had suffered any burn wounds. I'm extrapolating from the 7 paragraph. 8 MR X: Yes, that is correct, sir. Mr 9 Fundi is the person who was taken out of the car and the 10 second man was in the car. 11 MR TIP SC: Yes. Now Mr Botes describes 12 the attack that you say, the attack on them that you say 13 you were part of – do I follow you correctly? When I say 14 them I mean Mr Botes and the others in the armoured 15 vehicle. 16 MR X: Yes, I was one of them. 17 MR TIP SC: Do you recall, Mr X, whether 18 Mr Botes and his colleagues took any action to defend 19 themselves? 20 MR X: Repeat the question? The other 21 security people ran away, only these two remained. 22 MR TIP SC: Which two are you referring 23 to? 24 MR X: Mr Fundi and Mabelane. 25 MR TIP SC: I'm going to come back to</p>
<p style="text-align: right;">Page 32525</p> <p>1 MR X: That is so. 2 MR TIP SC: And at that stage he saw that 3 Mr Fundi and Mr Mabelane were next to the vehicle, that 4 they had been severely wounded and that when he wanted to 5 get out of his vehicle to go to them to see whether they 6 were still alive, the vehicle, the Mamba the armoured 7 vehicle was attacked, again by a small group with a larger 8 group behind them. 9 MR X: That is so. 10 MR TIP SC: Just to cross-reference, 11 Chair, I'm looking at the middle of paragraph 23. Now Mr 12 X, you agree with that description given by Mr Botes but I 13 need to establish from you, where were you at that 14 particular time? 15 MR X: I was in the front group, the 16 Makarapa group. 17 MR TIP SC: And in particular do you 18 confirm that at that stage the Livina had not yet been set 19 alight? 20 MR X: Repeat the question? 21 MR TIP SC: Yes. I'm talking about the 22 Livina, I hope that that makes sense to you, that the 23 vehicle in which Mr Fundi and Mr Mabelane had travelled, 24 the one that they were in at the time. 25 MR X: Yes, that's the vehicle that was</p>	<p style="text-align: right;">Page 32527</p> <p>1 them shortly but what I'm dealing with at the moment is 2 what Mr Botes says, he is a different person. He says that 3 he arrived there in an armoured vehicle and that there was 4 an attack on them, the people in the armoured vehicle, not 5 Mr Fundi and Mr Mabelane at that stage. 6 MR X: They tried shooting but their 7 firearms did not work. 8 MR TIP SC: Yes. Alright, well, that is 9 what Mr Botes in fact says. Shots were fired at the 10 attackers, on the – the armoured vehicle with rubber 11 bullets and he fired some birdshot at the legs but that 12 didn't deter the attack. That you recall, Mr X? 13 MR X: Yes, sir. 14 MR TIP SC: Now Mr Botes goes on in his 15 statement to say that they fled the scene as well, they 16 only came back later and at that stage they saw that the 17 Livina had also been set alight and that Mr Fundi had been 18 moved away from the vehicle. 19 MR X: That is so. 20 MR TIP SC: Chair, I want to show slide 21 L29, it was displayed earlier today. Certainly as far as 22 Mr Fundi is concerned there's no need for a warning. Could 23 we show L29 please? Now just to put that in context, Mr X, 24 that is what Mr Botes says he found when he returned to 25 that scene and we see there the body of Mr Fundi, correct?</p>

<p style="text-align: right;">Page 32528</p> <p>1 MR X: Yes, sir.</p> <p>2 MR TIP SC: And if you look at the</p> <p>3 photograph you can see that there are drag marks all the</p> <p>4 way from the vehicle to where Mr Fundi is lying.</p> <p>5 MR X: Yes, he was taken out of the car</p> <p>6 and dragged.</p> <p>7 MR TIP SC: Mr X, can you tell us by whom</p> <p>8 he was dragged and whether you were part of that process?</p> <p>9 MR X: I am one of the people who were</p> <p>10 fighting there.</p> <p>11 MR TIP SC: Well, I'm asking not</p> <p>12 generally about who was fighting, I want to know</p> <p>13 particularly about who dragged Mr Fundi from the car to</p> <p>14 there.</p> <p>15 MR X: The people who burnt the car is</p> <p>16 Bhele, Baai, those are the people I remember. Mambush took</p> <p>17 the cell phone and the radio, Anele took the firearm.</p> <p>18 MR TIP SC: Mr X, I'm asking a specific</p> <p>19 question about the dragging of Mr Fundi. Now were you part</p> <p>20 of that?</p> <p>21 [14:13] MR X: Bhele dragged and we cut him.</p> <p>22 MR TIP SC: Were you – or let me ask you</p> <p>23 this; what was the purpose of dragging Mr Fundi to that</p> <p>24 position?</p> <p>25 MR X: So that he could be tortured,</p>	<p style="text-align: right;">Page 32530</p> <p>1 MR TIP SC: Yes.</p> <p>2 CHAIRPERSON: [Microphone off, inaudible]</p> <p>3 quite important what exactly is the word the witness used,</p> <p>4 and how, I take it some of these words have got several</p> <p>5 meanings –</p> <p>6 MR TIP SC: Yes.</p> <p>7 CHAIRPERSON: But what appears to be the</p> <p>8 appropriate meaning and the context?</p> <p>9 MR MPOFU: The closest, Chairperson,</p> <p>10 would be to interrogate. Interrogate.</p> <p>11 MR TIP SC: Well Mr Chair, it's precisely</p> <p>12 because of this debate that I've come to it because on</p> <p>13 record it says tortured and my understanding is that there</p> <p>14 are a number of nuances and it wouldn't be right to have a</p> <p>15 word like that on the record if it doesn't belong here. So</p> <p>16 Mr X, let me just ask you, put it this way; if in English</p> <p>17 we use the word tortured, generally we mean that we</p> <p>18 inflicted pain on somebody who was alive.</p> <p>19 MR X: I understand as you interpret it.</p> <p>20 MR TIP SC: Yes, and let me just ask you</p> <p>21 directly, at the time that the lips and the tongue were cut</p> <p>22 out from Mr Fundi, was he alive or was he dead?</p> <p>23 MR X: He was dead.</p> <p>24 MR TIP SC: Incidentally Chair, I think</p> <p>25 that that should be noted for correction of the record</p>
<p style="text-align: right;">Page 32529</p> <p>1 pieces of flesh could be removed, taken to the mountain to</p> <p>2 make the men strong.</p> <p>3 MR TIP SC: Mr X, I just want to pause</p> <p>4 for a moment. I want to be sure that we understand part of</p> <p>5 your evidence correctly. In your evidence-in-chief earlier</p> <p>6 today and now again the word "tortured" is being used in</p> <p>7 the interpretation of what you say.</p> <p>8 MR X: Yes, he was cut.</p> <p>9 MR TIP SC: Yes, well what I'm really</p> <p>10 interested in is a question that I asked so that your</p> <p>11 evidence is clear and is recorded fairly to you, and if</p> <p>12 you'll forgive me I'm going to use just the Xhosa word that</p> <p>13 I understand that you used in your evidence-in-chief, which</p> <p>14 is "ukucwina." Do you recall using that word?</p> <p>15 MR X: Yes, "ukucwina" is the removal of</p> <p>16 parts of his flesh –</p> <p>17 COMMISSIONER TOKOTA: Sorry, sorry Mr</p> <p>18 Tip. Mr Ntsebeza and Mr Mpofo, "ukucwina," is it to</p> <p>19 torture in Xhosa? That's the thing, that's my problem.</p> <p>20 MR MPOFU: No –</p> <p>21 COMMISSIONER TOKOTA: "Ukucwina" is to</p> <p>22 interrogate.</p> <p>23 MR MPOFU: Yes. It's to interrogate, or</p> <p>24 to [inaudible] -</p> <p>25 CHAIRPERSON: [Microphone off, inaudible]</p>	<p style="text-align: right;">Page 32531</p> <p>1 because that's how it stands at the moment –</p> <p>2 CHAIRPERSON: Yes, I understand. I'm</p> <p>3 trying to think of what the appropriate English translation</p> <p>4 would be to convey that nuance. Mutilate, possibly.</p> <p>5 MR TIP SC: Mutilate, yes. But in any</p> <p>6 event –</p> <p>7 CHAIRPERSON: There are a number of Xhosa</p> <p>8 linguists in the house.</p> <p>9 MR TIP SC: In any event, let me proceed.</p> <p>10 We'll come back to that. I'm just flagging it, but –</p> <p>11 CHAIRPERSON: I see Mr Mpofo is nodding</p> <p>12 his head and Mr Ntsebeza is raising his hand, so perhaps,</p> <p>13 so we've got some Xhosa, I don't know whether you're Pondo-</p> <p>14 speakers or –</p> <p>15 MR MPOFU: Not hundred percent.</p> <p>16 CHAIRPERSON: Uthingo-speakers, but what</p> <p>17 exactly –</p> <p>18 MR NTSEBEZA SC: No, Mr Chairman, you</p> <p>19 wouldn't say "ukucwina" when you meant mutilation. The</p> <p>20 closest in terms of assonance to cake, like C you would</p> <p>21 come to is when you wanted to say the person has been</p> <p>22 mutilated, you would say ukucwiyo, ukucwiya, U-K-U-C-W-I-Y-</p> <p>23 A. Now the context in which the evidence was given gives</p> <p>24 the impression that what he meant is either torture, which</p> <p>25 would not be appropriate, or interrogation. When you are</p>

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1 interrogating a person, just I suppose given where we come  
 2 from, interrogation and torture were synonymous and used  
 3 interchangeably – well, not used interchangeably but it was  
 4 in the process, but when once you say – what was the word  
 5 that the witness used? Ukucwina, there are two words, in  
 6 fact there are two translations, ukucwina, it has got a  
 7 different meaning, namely to grow, and then ukucwina, it  
 8 also means, you know, to interrogate, vigorously question.  
 9 CHAIRPERSON: Can you ask the interpreter  
 10 –  
 11 COMMISSIONER TOKOTA: [African language]  
 12 MR X: Mr Chair, I'm Pondo-speaking and  
 13 Mr Mpofo is Xhosa-speaking. We don't use the same words.  
 14 COMMISSIONER TOKOTA: [African language]  
 15 MR X: He was using the word that was  
 16 used now, "ukucwiya," which was interpreted to mutilate.  
 17 CHAIRPERSON: Can those words please be  
 18 spelt for the benefit of the transcribers? Some of them  
 19 were spelt by Mr Ntsebeza but others weren't. The  
 20 transcriber is going to have a terrible job, so can those  
 21 words that were used please be spelt?  
 22 MR QGIRANA: Ukucwiya, U-K-U-C-W-I-Y-A.  
 23 MR TIP SC: Chair, can I re-enter this  
 24 debate?  
 25 CHAIRPERSON: I hadn't known that you

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1 left it.  
 2 MR TIP SC: Just because we are talking  
 3 about context and Mr X, I've got a transcript of the Xhosa  
 4 that you used in your evidence-in-chief and I'm going to  
 5 read you a sentence, if I may, in my poor Xhosa, that you  
 6 used at the time, which will show what you had in mind,  
 7 with respect. After describing how you had taken Mr Fundi  
 8 – of course you didn't refer to him by name, but "That  
 9 security guard out," you said, "Ikono inyama desai cweyayo  
 10 security." And Mr X, I hope you're able to follow my  
 11 effort, but clear what you were saying there was that there  
 12 was flesh that was cut from that security.  
 13 MR X: Yes, Sir.  
 14 MR TIP SC: And you were certainly not  
 15 interrogating or torturing him.  
 16 MR X: Yes, we "cweyayo," we mutilated.  
 17 MR TIP SC: Now Mr X, I just need to  
 18 understand something, and again as I told you right at the  
 19 beginning it is something important for Mrs Fundi to  
 20 understand also in terms of what happened to her husband.  
 21 You've told us that Mr Fundi was dead at the time that we  
 22 see him here on this slide, correct?  
 23 MR X: Yes, he was.  
 24 MR TIP SC: You have told us in your  
 25 evidence-in-chief that there was a bullet wound of his

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1 head.  
 2 MR X: Yes, Mr Chair, those people were  
 3 shot, hacked with the pangas. He sustained wounds, that  
 4 man.  
 5 MR TIP SC: Alright. Well, let me just  
 6 put it to you shortly. The post mortem report does not  
 7 reflect a bullet wound, but what it does reflect is a  
 8 fracture of the skull and a fracture of the jaw. Are you  
 9 able to tell us when and how Mr Fundi sustained those  
 10 injuries?  
 11 MR X: He sustained those injuries when  
 12 we attacked them, when they were in that car, or at that  
 13 car.  
 14 MR TIP SC: Did you see anybody strike Mr  
 15 Fundi on the head with sufficient force to fracture his  
 16 skull?  
 17 MR X: Mr Chair, I saw Makubane.  
 18 MR TIP SC: Doing what?  
 19 MR X: He hacked him.  
 20 MR TIP SC: Are you talking about the  
 21 injury to the jaw, or the injury to the skull?  
 22 MR X: Excuse me, Mr Chair, these people  
 23 say I should call them by names here in the Commission. Or  
 24 rather they are complaining that I'm calling them by names  
 25 here in the Commission.

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1 CHAIRPERSON: Who was this you're talking  
 2 about? Are you suggesting members of the public or some of  
 3 the parties perhaps who are sitting in the chamber – it  
 4 can't be members of the public, it's got to be parties who  
 5 are in the chamber, made comments now? What exactly are  
 6 you talking about?  
 7 MR X: Yes, Mr Chair, these people I'm  
 8 talking about normally do attend the Commission, Makubane  
 9 and the like. Xolani is normally also there in the  
 10 Commission, as well as Anele and Booi.  
 11 CHAIRPERSON: How do you know that?  
 12 MR X: I know this man.  
 13 CHAIRPERSON: No, how do you know –  
 14 MR X: I know these people.  
 15 CHAIRPERSON: How do you know that they  
 16 attend the Commission?  
 17 MR X: I see them here on the television.  
 18 Those buses were normally two, now I see it's only one bus.  
 19 MR TIP SC: Mr X, let me just ask you to  
 20 focus on me for a moment. Still in connection with Mr  
 21 Fundi and Mr Mabelane, can you tell us whether when the  
 22 strikers reached their car, whether those two security  
 23 officers had the opportunity to say anything or to plead  
 24 for their lives or anything of that sort?  
 25 MR X: No, Mr Chair, they only

<p style="text-align: right;">Page 32536</p> <p>1 apologised, but no one listened to them. We were just 2 killing. 3 MR TIP SC: What do you mean by 4 apologised? 5 MR X: They apologised from inside the 6 car. That car was damaged. We did not listen, we were 7 just attacking. 8 MR TIP SC: Mr X, I'm going to deal with 9 another topic shortly and that is something quite 10 different. You mentioned in your evidence-in-chief that 11 NUM had refused to listen to a demand for 12 and a half 12 thousand rand. Do you recall giving that evidence? 13 MR X: Yes, Sir. 14 MR TIP SC: As I followed your evidence 15 you had not personally ever been at a meeting where a 16 demand of that sort was put to NUM officially. Is that 17 correct? 18 MR X: No, I never heard NUM being told 19 about that. 20 MR TIP SC: Yes, and let me just put one 21 or two further questions around that to you. Did you 22 attend any mass meetings during 2011 leading up to the wage 23 agreement that was concluded in December 2011? 24 MR X: Repeat your question. Mr Chair, 25 there is a meeting round about the 5th and the 6th, I don't</p>	<p style="text-align: right;">Page 32538</p> <p>1 MR X: Yes there were such meetings. 2 CHAIRPERSON: That's what you wanted to 3 know, Mr Tip. 4 MR TIP SC: Thank you, Chair. 5 CHAIRPERSON: So according to the time- 6 keeping you've got five minutes, but I'll give you an extra 7 five because five minutes was spent in linguistic debate 8 which is very valuable, it's not fair to debit you with 9 that. 10 MR TIP SC: Well I'm grateful for that, 11 Chair. Mr X, I just want to put it to you shortly, I've 12 follow your evidence and tell you that evidence has been 13 placed before this Commission by NUM officials including Mr 14 Pile Chana. Do you know of him? 15 MR X: That's the security. 16 MR TIP SC: No. Never mind. I'll just 17 put it to you shortly that there is evidence that NUM 18 properly obtained mandates from the RDO leading up to the 19 conclusion of an agreement at the end of 2011, a wage 20 agreement. You're not able to dispute that are you? 21 MR X: No I won't. 22 MR TIP SC: And there was also evidence 23 that the R12 500 was not raised with NUM beforehand. 24 You're also not in a position to dispute that? 25 MR X: No, I cannot.</p>
<p style="text-align: right;">Page 32537</p> <p>1 remember the date correctly. That was about the RDOs 2 demanding R12 500. 3 [14:33] But this thing of Lonmin, what happened around 4 about 95 at Anglo? 5 MR TIP SC: Mr X, forgive me I think 6 you're referring to the meeting of the 5th or 6th of August 7 2012 where the RDO spoke about R12 500, is that so? 8 MR X: Yes that's the meeting on the 7th. 9 CHAIRPERSON: Yes what Mr Tip is asking 10 you about is what happened the previous year. Did you know 11 that the previous year in 2011 there was a wage agreement 12 between NUM representing the workers on the one hand and 13 Lonmin the employer on the other? It was concluded the 14 year before in 2011, did you know that? I think it was 15 R12 500 at that stage. All he's being asked about is 16 whether he was aware of the fact that the year before, 2011 17 there was a wage agreement negotiated between NUM acting 18 for the workers and Lonmin. 19 MR X: No I don't remember such a thing. 20 CHAIRPERSON: You see because the next 21 question that arises, what Mr Tip wants to know did you 22 attend any mass meetings in 2011 where wages were discussed 23 and what NUM was going to try to achieve by way of 24 negotiation with Lonmin? Were you at any such mass 25 meetings?</p>	<p style="text-align: right;">Page 32539</p> <p>1 MR TIP SC: Thank you, Mr X, those are 2 our questions. 3 CHAIRPERSON: Thank you, Mr Tip. Mr 4 Gumbi you've got half an hour on behalf of the Lepaaku 5 families and Mr Baloyi. 6 MR GUMBI: Yes thank you very much, 7 Chairperson. Maybe if I can begin with housekeeping 8 issues. I do have a post-mortem report of the late Warrant 9 Officer Lepaaku. I don't know whether the Chairperson and 10 the Commissioners they are in possession of – 11 CHAIRPERSON: I must confess I thought 12 that the post-mortem reports were already before the 13 Commission. That's an aspect of the matter which Mr Wesley 14 has been looking after. Mr Wesley have you slipped up, up 15 to now not put the Lepaaku's post-mortem report before the 16 Commission? 17 MR WESLEY: No Chair, it's part of 18 exhibit A. I'll check on the index on exhibit A which is 19 the first part of the document to see exactly where it is 20 in exhibit A, but it is there. 21 MR GUMBI: Yes, Chairperson. 22 CHAIRPERSON: Apparently that exhibit is 23 here already. Any other document you want to put in that's 24 not before us already? 25 MR GUMBI: That's the only document, Mr</p>

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1 Chair.

2 CHAIRPERSON: All right, so you can carry

3 on.

4 MR GUMBI: Thank you very much,

5 Chairperson. Good afternoon, Mr X.

6 MR X: Good day, Sir.

7 MR GUMBI: Let me explain my role to you

8 in this Commission. I represent the family of the late

9 Warrant Officer Lepaaku, the police officer that was killed

10 on the 13th of August 2012 near the railway line. I also

11 represent Lieutenant Baloyi. I'm going to ask questions on

12 behalf of the family of the late Warrant Officer Lepaaku

13 and Lieutenant Baloyi because the family of the late

14 Warrant Officer Lepaaku and Lieutenant Baloyi himself they

15 also want to know the circumstances surrounding the killing

16 of the late Warrant Officer Lepaaku and the injury of

17 Lieutenant Baloyi, do you understand that? And the reason

18 why I will ask you the question on behalf of the family of

19 the late Warrant Officer Lepaaku and Lieutenant Baloyi it's

20 because if this Commission finds that on the 13th of August

21 2012 you were near the railway line they wanted me to pose

22 second question on their behalf.

23 MR X: Okay, Sir.

24 MR GUMBI: The first topic I wanted to

25 converse with you, Mr X, there are not that much, there are

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1 very, very few. First of all I would like to deal with the

2 source of dangerous weapons you were in possession of on

3 the 13th of August 2012. And the second topic I'm going to

4 deal with is the attack of the late Warrant Officer Lepaaku

5 and Lieutenant Baloyi. On the 19th of June 2014 when you

6 were led in evidence in chief by the counsel for the SAPS,

7 Mr Mathibedi and when you were questioned by the

8 Chairperson you said you acquired or you bought your

9 dangerous weapons from the place called [inaudible]

10 settlement. Do you still remember that?

11 MR X: Yes, Sir.

12 MR GUMBI: Can you tell me when did you

13 purchase your dangerous weapons you were in possession of,

14 you Mr X?

15 MR X: I bought my weapon on the 11th.

16 MR GUMBI: And do you have knowledge if

17 other protestors were in possession of dangerous weapons as

18 to when did buy their dangerous weapons?

19 MR X: They bought the weapons on the

20 11th. Anyone who did not have a weapon at Wonderkop near

21 the stadium was told to go and get one. When we are

22 attacking the NUM officers we were already in possession of

23 the weapons. We were then stopped by the security

24 personnel and ran to the mountain. We have consumed this

25 muti the whole night on the mountain, that was on the

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1 Sunday the 12th. We were now men, real men.

2 MR GUMBI: Do you have knowledge, Mr X,

3 where you bought your dangerous weapons whether those

4 dangerous weapons they were manufactured there where you

5 bought it?

6 MR X: Those weapons are manufactured in

7 the engineering sector of the mine. They are sold there in

8 Nkaneng Settlement.

9 MR GUMBI: So before the 11th of August

10 2012 these dangerous weapons were manufactured and they

11 were sold around Nkaneng. Is that correct?

12 MR X: That is so, Sir.

13 MR GUMBI: I have a statement of Mohammed

14 Cassimere, that's exhibit AAA7.3, Chairperson. He is the

15 owner of a hardware around Nkaneng. It's before the

16 Commission his statement. In his statement he says,

17 paragraph 3 of that statement on the 11th of August 2012 at

18 about 9 o'clock he was on duty at his shop when he opened

19 and up to 10 males – I'm paraphrasing, up to 10 males were

20 buying pangas from him and they bought almost 30 pangas.

21 He's supermarket is R&H Supermarket or Hardware. Do you

22 know this hardware or supermarket?

23 MR X: I know it and I saw Jiman, a man

24 known by the name Jiman who was buying a panga there.

25 MR GUMBI: And that guy you are talking

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1 about is part and parcel of Makarapa group.

2 MR X: Yes, Sir.

3 MR GUMBI: When did he buy this dangerous

4 weapon?

5 MR X: On the 11th, the day when I also

6 went looking for a weapon and bought one at Nkaneng. This

7 man I'm talking about is from Ntabankulu.

8 MR GUMBI: Other strikers were they

9 purchasing their dangerous weapons from this shop also?

10 MR X: Yes, Sir. Various weapons were

11 being bought there publicly, not concealed or wrapped in

12 papers or anything.

13 MR GUMBI: Do you have a knowledge, Mr X,

14 whether those dangerous weapons they were also manufactured

15 from that hardware?

16 MR X: No the shop owner was just selling

17 these things, selling the pangas.

18 MR GUMBI: Will I be correct that he

19 selling those dangerous weapons even before the 11th of

20 August 2012?

21 MR X: Yes, Sir.

22 MR GUMBI: And was ever a decision taken

23 or was any instruction issued by Inyanga that you must go

24 and buy dangerous weapons from these two sources, from

25 Bonjele and from this hardware?

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1 MR X: No, it was just that one who  
2 doesn't have a weapon should get one. The Inyanga gave us  
3 instructions that we are going to attack. He did not say  
4 we must go and buy the weapons.

5 MR GUMBI: Do you have a knowledge, Mr X,  
6 if I sum up this point, whether the police were aware that  
7 strikers or people who are staying around Nkaneng were buy  
8 dangerous weapons from these two sources, from hardware and  
9 from Bonjele?

10 MR X: No, they did not know.

11 MR GUMBI: Okay, let us focus on the  
12 incident of the 13th near the railway line. It was your  
13 testimony that before you confronted the police near the  
14 railway line you elected three members to talk on behalf of  
15 the group. Do you still remember that, Sir?

16 MR X: Yes, Sir.

17 MR GUMBI: And you said those members  
18 were Kumusutu, Mambush and Xolani.

19 MR X: Yes, Sir.

20 MR GUMBI: When you elected those members  
21 did you discuss the plan to attack the police when the  
22 police fired back at you?

23 MR X: Yes, it was said that when we go  
24 near the police we should not all talk and we should not  
25 shoot first before they shoot.

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1 MR GUMBI: And the plan to rob the police  
2 officer was it discussed among yourselves?

3 MR X: Yes, that was discussed.

4 MR GUMBI: And will I be correct, Mr X,  
5 that the plan to attack and rob the police was discussed  
6 with the whole group, not to certain individuals?

7 MR X: Yes, Sir.

8 MR GUMBI: You further testified that on  
9 the 13th of August you also robbed the police officer of  
10 their service pistol or firearms. Do you still remember  
11 that?

12 MR X: Yes, Sir.

13 MR GUMBI: And would I be correct that  
14 the plan to rob the police officers was discussed with the  
15 whole group not with certain individuals?

16 MR X: Yes, Sir.

17 MR GUMBI: So before you attacked the  
18 police near the railway line will I be correct, Mr X, that  
19 the police officers they were following you the group  
20 before you attacked them, they were forming a police line  
21 behind the group?

22 [14:53] MR X: Yes, Sir.

23 MR GUMBI: During the attack, in your  
24 evidence-in-chief you testified that you chased one of the  
25 police officers who was running towards the police car, or

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1 Nyala, and you injured that police officer on the leg. You  
2 still remember that?

3 MR X: Yes, Sir.

4 MR GUMBI: And will I be correct, Mr X,  
5 that the police officer you attacked near the railway line  
6 on the 13th was wearing police uniform? Is it not so?

7 MR QGIRANA: Warrant?

8 MR GUMBI: Was wearing a police uniform.

9 MR X: Yes, Sir.

10 MR GUMBI: Before you attacked that  
11 police officer did you see that police officer alighting  
12 from one of the Nyalas or one of the police cars before the  
13 attack ensued?

14 MR X: He was running towards the police  
15 cars. Two officers remained on the ground. One of those  
16 two police officers was still moving and the other one was  
17 already dead.

18 MR GUMBI: Let us focus on the police  
19 officer you attacked on the 13th of August.

20 MR X: Yes, Sir.

21 MR GUMBI: Will I be correct that the  
22 only time you observed this police officer, it was the  
23 moment while you were busy chasing him, not so?

24 MR X: Yes, Sir. Yes.

25 MR GUMBI: And you didn't see that police

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1 officer alighting from one of the Nyalas before you  
2 attacked him, not so?

3 MR X: Yes, I did not see him alighting  
4 from a car. I saw him walking on the ground.

5 MR GUMBI: That police officer you were  
6 chasing on that day, did you see that police officer firing  
7 a stun grenade or teargas during that attack in self-  
8 defence?

9 MR X: He was trying to defend himself,  
10 Mr Chair. There is another officer who was now firing with  
11 a firearm, but the firearm wouldn't work. We could not be  
12 shot.

13 MR GUMBI: The police officer you were  
14 chasing, were you the only one who was chasing that police  
15 officer or there were other strikers who were also chasing  
16 that police officer?

17 MR X: There are other strikers. I was  
18 not the only one.

19 MR GUMBI: Is it possible to tell this  
20 Commission how many strikers that they were pursuing that  
21 police officer you were attacking, besides you?

22 MR X: No, I cannot say, but we were  
23 quite a number, many of us.

24 MR GUMBI: Seeing that that police  
25 officer was running away, can you tell us what was the

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1 motivation of pursuing further that police officer?  
 2 MR X: What needed to be taken was the  
 3 firearm. Because it was clear to us the firearm could not  
 4 work we had to take the firearm away from them.  
 5 MR GUMBI: Was it not further your  
 6 intention to kill that police officer?  
 7 MR X: Yes, he was going to be killed but  
 8 by God's grace he survived.  
 9 MR GUMBI: When you were chasing that  
 10 police officer, you testified that among the group, your  
 11 group on the 13th of August near the railway line there were  
 12 other members of the group that they were in possession of  
 13 firearms. You still remember that?  
 14 MR X: Yes, Sir.  
 15 MR GUMBI: And when you were leading  
 16 evidence-in-chief you even testified, you even mentioned  
 17 those members who were in possession of firearms. Among  
 18 them is Mambush, Bhele, Baai and Anele. You still remember  
 19 that?  
 20 MR X: Yes, Sir.  
 21 MR GUMBI: Will I be correct that some of  
 22 the firearms that they were in possession of they were  
 23 taken, or they were robbed from the security officers that  
 24 they were killed on the 12th of August 2012?  
 25 MR X: That is so, Mr Chair. The firearm

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1 I remember which Bhele had is the red one, the one which  
 2 was painted red.  
 3 MR GUMBI: Okay, while you were still  
 4 busy focusing on that police officer you were chasing on  
 5 that day, while you were busy chasing or attacking that  
 6 police officer you injured on that day, did you see any of  
 7 those members pointing a firearm at that police officer you  
 8 were chasing?  
 9 MR X: Mr Chair, there were firearms in  
 10 possession of the strikers. I did not notice who pointed a  
 11 firearm at the police officer or at whom at that stage, but  
 12 amongst the two police officers one was shot and the other  
 13 one was hacked on the head.  
 14 MR GUMBI: While you were –  
 15 CHAIRPERSON: Mr Gumbi, I'm sorry to  
 16 interrupt you. I was proposing to take the tea adjournment  
 17 shortly. When you reach a convenient stage you can –  
 18 MR GUMBI: Yes, I think we can take it  
 19 now, Chairperson, shortly, because –  
 20 CHAIRPERSON: We can take tea? Very  
 21 well, we'll now take the tea adjournment.  
 22 MR GUMBI: Yes, Sir.  
 23 CHAIRPERSON: 15 minutes.  
 24 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 25 [15:20] CHAIRPERSON: The Commission resumes.

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1 Please remind the witness he's still under oath.  
 2 MR X: [s.u.o. through interpreter]  
 3 CHAIRPERSON: Mr Gumbi, you've got eight  
 4 minutes left.  
 5 CROSS-EXAMINATION BY MR GUMBI (CONTD.):  
 6 Thanks very much, Chairperson. Mr X, before we adjourned,  
 7 you know, you still remember I asked you whether you can  
 8 identify whether you saw certain members pointing firearms  
 9 at the police officer you were attacking. Still remember?  
 10 MR X: Yes, I remember.  
 11 MR GUMBI: And you said you could not  
 12 identify them. Still remember?  
 13 MR X: Yes, but they had firearms in  
 14 their possession.  
 15 MR GUMBI: Did you see anyone pointing a  
 16 firearm at the police officer you were attacking?  
 17 MR X: Yes, there were such people.  
 18 MR GUMBI: Can you name those people who  
 19 were pointing a firearm at the police officer you were  
 20 attacking, or any of the police officers you were attacking  
 21 on that day?  
 22 MR X: I remember Bhele and Mambush had  
 23 firearms.  
 24 MR GUMBI: Were they pointing those  
 25 firearms at the police officer you were attacking?

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1 MR X: Yes, they had the firearms pointed  
 2 at the police, they had the firearms in their hands,  
 3 removed from their waist.  
 4 MR GUMBI: Is it also possible to name  
 5 other protesters that they were chasing other police  
 6 officers, or the police officers you were attacking on the  
 7 13th?  
 8 MR X: Yes, there are other strikers.  
 9 MR GUMBI: Is it possible to name them?  
 10 MR X: Bhele and Makubane, Anele. I was  
 11 also there.  
 12 MR GUMBI: Okay. Are you still  
 13 answering, Mr X, or –  
 14 MR X: I will recognise them if I say  
 15 them. I just forget their names.  
 16 MR GUMBI: Okay. Let us focus on you.  
 17 In evidence-in-chief you testified that you hit one of the  
 18 police officers with a panga. Still remember?  
 19 MR X: Yes, the officer who was running  
 20 towards the cars.  
 21 MR GUMBI: You said you hit that police  
 22 officer in the region of the forehead. You still remember?  
 23 MR X: No, I hit the policeman on the  
 24 left leg. There were many of us who attacked. Other  
 25 people also hit the policeman, I do not know where on his

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1 body.

2 MR GUMBI: But the police officer you

3 attacked, were you the first person to attack or to inflict

4 injury on that police officer?

5 MR X: No, I'm not the first one to

6 inflict injury on the officer. I hit him whilst he was

7 running towards the car, hit him somewhere on the leg.

8 MR GUMBI: Will it be correct that when

9 you inflict your injury the other strikers were already

10 attacking that police officer, or they had already attacked

11 that police officer?

12 MR X: Yes, Mr Chair, and I apologise, to

13 attack someone and that person survives and then you

14 eventually kill that person, that is painful.

15 MR GUMBI: No, I understand that. What

16 I'm saying, when you inflict your injury that police

17 officer was already under attack, or he had already been

18 attacked when you inflict your injury?

19 MR X: Yes, Sir.

20 MR GUMBI: Let us briefly focus to other

21 police officer that they were attacked and killed on that

22 day. Did you see how the other police officers, how were

23 they attacked by the strikers near the railway line?

24 MR X: Yes, Sir.

25 MR GUMBI: Can you tell the Commission

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1 how were they attacked, the other police officers?

2 MR X: They were hacked. There is an

3 officer who was hacked at the back of the head.

4 MR GUMBI: How many times did you – for

5 how long did you observe that attack, if I can put it in

6 that way?

7 MR X: It hurts to think about the

8 injuries of that gentleman. I'm just apologising to the

9 family for that man who was hacked badly.

10 MR GUMBI: Do you know those people who

11 were attacking that police officers you observed? Did you

12 see them?

13 MR X: I know one of them, Makubane is

14 the one who hacked that police officer on the head, the

15 place that he's touched on his head.

16 MR GUMBI: And he hacked him with a

17 panga. Is it not so?

18 MR X: Yes, Sir.

19 MR GUMBI: How many times?

20 MR X: I don't remember, but he hacked

21 them I don't know how many times. He's the one who caused

22 those serious injuries.

23 MR GUMBI: Other strikers they were not

24 stabbing that police officer?

25 MR X: Yes, they stabbed him.

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1 MR GUMBI: How many times did you observe

2 them stabbing the police officer?

3 MR X: They had surrounded him. There

4 were quite a number surrounding him. I wouldn't know how

5 many times he was stabbed.

6 MR GUMBI: And that police officer was

7 lying down, is it not so?

8 MR X: Yes, even when he was lying on the

9 ground.

10 MR GUMBI: While these police officers

11 were being attacked, will I be correct there was firing of

12 teargas and stun grenade from the police?

13 MR QGIRANA: There was?

14 MR GUMBI: Was there firing of stun

15 grenade and teargas from the police?

16 MR X: Yes, Sir.

17 MR GUMBI: Were you going to mutilate

18 that police officer if you had opportunity to mutilate him?

19 Is it possible?

20 MR X: No, Mr Chair, we only mutilated Mr

21 Fundi. We were not going to mutilate the police. We only

22 took their firearms.

23 MR GUMBI: The police officer, the other

24 police officers who were there, will I be correct that they

25 chased you away from attacking these police officers you

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1 were attacking on that day?

2 MR X: Yes, the police followed us but

3 they then stopped following us, took the police officers

4 who were injured and we also took our people who were

5 injured. Those are the people who had not been that

6 makarapa group –

7 MR MPOFU: No, that's not –

8 MR X: Or, the people who had not –

9 CHAIRPERSON: Mr Mpofo wants to say

10 something.

11 MR X: - taken the muti –

12 MR MPOFU: Yes.

13 MR X: - are some of our people who were

14 injured.

15 MR MPOFU: Chairperson, ja, the witness

16 said it's the people who did not go to makarapa, which is

17 now explained to mean those are the people who did not take

18 the muti. Again it's that subtle difference between

19 calling them the makarapas and saying they had taken

20 makarapa, which we'll deal with later, but I just want it

21 to be recorded correctly. Thank you, Chairperson.

22 CHAIRPERSON: Thank you. Please proceed,

23 Mr Gumbi.

24 MR GUMBI: Thanks very much, Chairperson.

25 During the attack how possible it is that you observed the



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1 attack of other police officers, because there was teargas  
2 and stun grenade that was fired by the police? Is it easy  
3 to see the attack?  
4 MR X: I did not have my eyes closed. I  
5 was looking. When you're fighting you don't close your  
6 eyes, you look.  
7 MR GUMBI: So the teargas did not affect  
8 you at all, or stun grenade?  
9 MR X: No, those did not work.  
10 MR GUMBI: So the weapon you used when  
11 you attacked the police officer, what did you do with that  
12 weapon? Did you hand it over to the police?  
13 MR X: We did not hand over the weapons  
14 to the police. We took those to the mountain.  
15 MR GUMBI: I'm referring to your weapon.  
16 MR X: No, I did not hand it over to the  
17 police.  
18 MR GUMBI: What happened to it?  
19 MR X: Those weapons were taken on the  
20 16th, they were burned there on the mountain.  
21 MR GUMBI: Who took those dangerous  
22 weapons on the 16th?  
23 MR X: As we were going to the police to  
24 attack them, those weapons were taken on the 16th but other  
25 people got away with their weapons. Those weapons were

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1 collected, put together on the mountain and burned –  
2 MR GUMBI: Yes, I'm saying who  
3 collected –  
4 MR X: - some of them.  
5 MR GUMBI: I'm sorry. My question is who  
6 collected those weapons and who burned them and why they  
7 were burned on that day?  
8 MR X: The weapons were taken by the  
9 police. Some people were arrested, their weapons take away  
10 from them, but we did not, were not arrested, we ran away,  
11 and the people who were detained were not locked up with  
12 their weapons. Those weapons were confiscated.  
13 MR GUMBI: They were taken by the –  
14 CHAIRPERSON: Mr Gumbi, your time is up.  
15 MR GUMBI: Yes, Chairperson, I'm quite  
16 aware that my time is up. With your leave, Chairperson,  
17 again requested by the family of the late Mr Eric Mabebe to  
18 pose one question on behalf of the family and Ms Fundi, if  
19 you, Chairperson, you can give me two minutes to do that.  
20 CHAIRPERSON: Okay, easier to give you  
21 permission to ask the question than have you argue for two  
22 minutes as to why you should get permission. Ask the  
23 question.  
24 MR GUMBI: Yes, only two questions.  
25 CHAIRPERSON: Yes.

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1 MR GUMBI: Mr X, I'm done with my  
2 clients, that is the late Warrant Officer Lepaaku and  
3 Lieutenant Baloyi. I've got a question for you on behalf  
4 of the family of the late Mr Eric Mabebe who was killed on  
5 the 12th of August 2012. The widow of the late Mr Eric  
6 Mabebe - the sister, I mean the sister, she wanted to know  
7 why Mr Eric Mabebe was killed on the 12th of August 2012,  
8 the reason why he was killed.  
9 MR X: Just repeat the question.  
10 MR GUMBI: He was killed at K4 Shaft on  
11 the 12th of August.  
12 MR X: It's because he went to work  
13 whilst we were on strike. He was not supporting the  
14 strike.  
15 MR GUMBI: That's the only reason why he  
16 was killed?  
17 MR X: Yes, he went to work whilst we  
18 were not. Those people were not told that we were on  
19 strike, the reason that made them to come and join the  
20 strike, it's when they saw people being killed.  
21 MR GUMBI: Does the same apply with Mr  
22 Fundi who was killed, the security officer?  
23 CHAIRPERSON: Your time is up. You said  
24 you wanted to ask one question. A question has been asked  
25 already on behalf of Mrs Fundi, so your cross-examination

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1 has now ended. I call upon Ms Masebe to cross-examine on  
2 behalf of the Monene family.  
3 MR GUMBI: Thanks.  
4 CROSS-EXAMINATION BY MS MASEBE: Good  
5 afternoon, Mr X. My name is Tsakane Masebe. I represent  
6 the family of Warrant Officer Monene. Warrant Officer  
7 Monene, just for introduction, is the officer who was  
8 killed on the 13th of August near the railway line. Mr X,  
9 in your statement LLL26, page 12, paragraph 19 thereof, you  
10 described Warrant Officer Monene as the police officer who  
11 is light in complexion. Do you remember that?  
12 MR X: Yes.  
13 MS MASEBE: And Mr X, I just want to  
14 remind you just briefly that Warrant Officer Monene is the  
15 police officer who in addition to being hacked by sharp  
16 weapons was also shot. Do you remember that?  
17 [15:39] MR X: Yes, Ma'am, I remember and I  
18 apologise. I am sorry because those officers, police  
19 officers were on duty and we were not on duty.  
20 MS MASEBE: Yes, Mr X, I think I'll give  
21 you an opportunity to say whatever that you want to say to  
22 the family, but first let's help this family understand how  
23 he was killed, right? Yes, Mr X, I would like to refer you  
24 to exhibit MM, which is a photo which depicts the gunshot  
25 wound, one of the gunshot wounds that Warrant Officer

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1 Monene suffered.  
 2 CHAIRPERSON: Shouldn't we give a  
 3 warning?  
 4 MS MASEBE: Chairperson, the family's  
 5 aware that this picture will be shown.  
 6 CHAIRPERSON: I see.  
 7 MS MASEBE: It's a very, it focuses  
 8 straight on the wound –  
 9 CHAIRPERSON: Alright, okay. Well, carry  
 10 on.  
 11 MS MASEBE: So I don't think it would –  
 12 CHAIRPERSON: While we're busy with it,  
 13 we have on the screen LLL26, but we have the redacted  
 14 version of the statement. It doesn't matter at the moment,  
 15 I don't think, but next time that exhibit goes up I think  
 16 we should have the proper version which doesn't contain the  
 17 blanks. But anyway, please proceed with your cross-  
 18 examination.  
 19 MS MASEBE: Yes, Chairperson, I would  
 20 like – yes, that is the correct one. Mr X, can you see the  
 21 gunshot wound that I'm referring you to?  
 22 MR X: Yes.  
 23 MS MASEBE: Yes, Mr X, and you've  
 24 testified before this Commission that you observed when  
 25 this Warrant Officer was being attacked and killed. Is

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1 that correct?  
 2 MR X: Yes.  
 3 MS MASEBE: Yes, and Mr X, we enquired on  
 4 the 26th of November before this Commission, that is the  
 5 26th of November 2012 before this Commission when Warrant  
 6 Officer Wessels, Albert Wessels was giving evidence before  
 7 this Commission, as to the distance from which this shot  
 8 was fired. Warrant Officer Wessels, who's the forensic  
 9 science expert, informed us that this gunshot wound was  
 10 actually fired just about touching the skin, or touching  
 11 the person. Actually let me read what he said  
 12 specifically. He said, "It appears that the barrel of the  
 13 specific firearm was actually just about touching the skin  
 14 or touching the person." And Chairperson, that evidence is  
 15 found on page 2186, line number 6 to 9 of the record. Now  
 16 Mr X, what I would like to know from you is that who shot  
 17 Warrant Officer Monene from such a close range?  
 18 MR X: Must I call them by name?  
 19 MS MASEBE: Yes.  
 20 MR X: I wish to apologise, Mr  
 21 Chairperson. The men said I should not point them out here  
 22 in the Commission.  
 23 MS MASEBE: Mr X, we don't have a lot of  
 24 time. If you can give us the name of the person who shot  
 25 Warrant Officer Monene at such close range?

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1 MR X: The person I saw shooting is  
 2 Bhele.  
 3 MS MASEBE: Thank you.  
 4 CHAIRPERSON: Who said you mustn't point  
 5 people out?  
 6 MR X: Mr Chairperson, these men know me.  
 7 They know I'm here. We phone each other with the men in  
 8 Marikana, then they must tell the truth. They'd also been  
 9 to my home –  
 10 CHAIRPERSON: I didn't ask you that  
 11 question, I asked you something else. I said who told you,  
 12 you mustn't point them out here?  
 13 MR X: Makubane and others.  
 14 CHAIRPERSON: Did they tell you directly  
 15 or did you get a message via somebody else?  
 16 MR X: Through a message.  
 17 CHAIRPERSON: When did you get the  
 18 message?  
 19 MR X: During that long weekend or time I  
 20 was given to mourn a death in the family.  
 21 CHAIRPERSON: I see.  
 22 MS MASEBE: Now Mr X, can you tell us if  
 23 you know Bhele's full names, his name and surname? I've  
 24 heard you in this Commission before referring to his name  
 25 and surname. Can you repeat those for the Commission?

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1 MR X: His name that appears in his ID  
 2 book is Tholagele. I don't know whether that's his first  
 3 name or his surname, but the name Bhele does not appear in  
 4 his ID book.  
 5 MS MASEBE: Now Mr X, according to the  
 6 post mortem report of Warrant Officer Monene - it's found,  
 7 Chairperson, in annexure A, it's DR556/2012, it states that  
 8 Warrant Officer – that is on page 2, paragraph 4, it states  
 9 that Warrant Officer Monene suffered two gunshot wounds.  
 10 Can you see that?  
 11 MR X: Yes, I do.  
 12 MS MASEBE: Now Mr X, who then fired the  
 13 second shot?  
 14 MR X: Mr Chair, it's painful because all  
 15 these people are from my place at Qaukeni, so I'm not  
 16 calling their names. I am also from Qaukeni.  
 17 MS MASEBE: Mr X, may I remind you that  
 18 you have taken an oath to speak the truth, the whole truth,  
 19 nothing else but the truth? So now can you please tell us  
 20 the second name?  
 21 MR X: It's Baai.  
 22 MS MASEBE: Do you know Baai's full  
 23 names?  
 24 MR X: His name is Bongani.  
 25 MS MASEBE: His surname?

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1 MR X: I do not know his surname.  
 2 MS MASEBE: Thank you. And then Mr X, I  
 3 would like to move to another topic now, but then before I  
 4 do that, Mr X, who hurt my client on the head? That is  
 5 Warrant Officer Monene.  
 6 MR X: Makubane from Flagstaff.  
 7 MS MASEBE: Did he attack him alone?  
 8 MR X: He was with Anele.  
 9 MS MASEBE: And Mr X, the post mortem of  
 10 Warrant Officer Monene suggested that he stab wounds. Who  
 11 stabbed Warrant Officer Monene?  
 12 MR X: There were many of them, Mr Chair.  
 13 I remember Makubane, Anele and this gentleman from Thaba  
 14 Nkulu.  
 15 MS MASEBE: Now Mr X, I would like us to  
 16 talk about the events before the police were attacked.  
 17 When you had left the railway line and when the police were  
 18 escorting you, you testified before this Commission that  
 19 the firing of teargas caused the police to attack you. Am  
 20 I correct?  
 21 MR X: Yes.  
 22 MS MASEBE: Now Mr X, who gave you the  
 23 instructions – by you I'm referring to the group – to  
 24 attack the police?  
 25 MR X: That instruction came from the

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1 inyanga that we should attack when the police fire, no  
 2 matter what they fire, whether even if it's a rubber  
 3 bullet, but we should not attack before or fire before the  
 4 police start shooting.  
 5 MS MASEBE: Mr X, was there nobody in the  
 6 group that reiterated it to you that this is the time now  
 7 to attack the police just before you could attack them?  
 8 MR X: Mambush was our leader there.  
 9 MS MASEBE: So did he specifically give  
 10 you instructions to attack the police at that stage?  
 11 MR X: There is a song we composed there,  
 12 it goes like "Tighten your balls, boy, you'll never make  
 13 it."  
 14 MS MASEBE: But then, Mr X, I'm talking  
 15 about the instruction to attack the police. Did anybody  
 16 give you the instruction to attack the police?  
 17 MR X: Mambush did.  
 18 MS MASEBE: Yes. Now Mr X, can we  
 19 quickly go to BBB3, that is annexure BBB3, that is the  
 20 statement of Simphiwe Booi, page – I would like to refer to  
 21 page 7, paragraph 34. Now just so that I can paraphrase,  
 22 this gentleman states how the police, how live ammunition  
 23 was used and thereafter that there was a confrontation and  
 24 specifically in paragraph 34 he says that, "The shooting  
 25 which started the violence was completely unnecessary and

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1 all the deaths should accordingly be laid squarely at the  
 2 door of the SAPS." In other words he says all the blame  
 3 for the deaths that occurred on the 13th should be on the  
 4 police. Can you see that? Now do you agree that the  
 5 deaths that occurred on the 13th should be blamed on the  
 6 police?  
 7 MR X: Mr Chair, I apologise. We are  
 8 responsible for this. Our strike was illegal. We did not  
 9 have a certificate. Everything that we did was out of  
 10 order.  
 11 MS MASEBE: Now, Mr X, these acts of  
 12 violence, the killing of people and so on that you  
 13 participated in from the 12th and the 13th and so on, why  
 14 didn't you disassociate yourself from them when you  
 15 realised that they were wrong?  
 16 MR X: Mr Chair, we had started this as  
 17 RDOs. The other people were just hijacked. I am one of  
 18 the RDOs. If I wanted to appear as being clever at that  
 19 time I would have been killed on the mountain.  
 20 CHAIRPERSON: Sorry, I don't understand  
 21 your answer. You were asked by Ms Masebe why you didn't  
 22 disassociate yourself from what was happening. Did you  
 23 know that what was happening was wrong? The violence and  
 24 the assaults and the damage to property and so on, did you  
 25 know that was wrong?

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1 MR X: I realised it was wrong.  
 2 CHAIRPERSON: Why didn't you disassociate  
 3 yourself? Was there a reason why you didn't disassociate  
 4 yourself from it?  
 5 MR X: If I had removed myself from this,  
 6 Mr Chair, I would have been hurt, I would have been killed.  
 7 CHAIRPERSON: But you were a member of  
 8 the committee, weren't you? I'm sorry.  
 9 MR X: But after the strike I  
 10 disassociated myself with this and I went back to NUM.  
 11 CHAIRPERSON: Carry on.  
 12 MR X: Because what happened there at  
 13 Lonmin, I know this, this happened in 1999 with the Anglo,  
 14 also the RDOs were involved then and I was working there.  
 15 This is exactly what happened again this time at Marikana.  
 16 This was mouthpiece, union called mouthpiece, which just  
 17 disappeared and I realised this was also going to disappear  
 18 as time goes on.  
 19 [15:59] CHAIRPERSON: But what I don't understand  
 20 is, I can understand that you felt yourself forced to go  
 21 along with what was happening because it was dangerous for  
 22 you if you didn't. You might be killed, as you say. But  
 23 why did you allow yourself to be elected to the committee?  
 24 MR X: Repeat the question. The reason  
 25 why I agreed to be elected to the committee is because when

<p style="text-align: right;">Page 32568</p> <p>1 they chose me they must have seen something, they saw  2 something in me. I had no right to say no, I cannot stand  3 for the position they were electing me for. So I knew I  4 would just take the position and I knew when I will get out  5 and how I was going to get out. I was not even going to  6 tell a friend. My friend is myself.  7 CHAIRPERSON: When you were put forward  8 for the committee did the other people there, the people  9 who put you forward for the committee, did they know that  10 you're a member of NUM?  11 MR X: Yes, they knew. I was known as a  12 member.  13 CHAIRPERSON: I see. Thank you. Sorry,  14 Ms Masebe, before you ask your next question, Adv Hemraj  15 wants to ask a question. You've got 10 minutes left. We  16 won't adjourn now; we'll finish, or proceed until your  17 cross-examination – I beg your pardon, I'm incorrect,  18 you've got five minutes left, but we'll carry on until  19 you've finished your cross-examination, or alternatively  20 till your five minutes is up. But Adv Hemraj is going to  21 ask a question first, which won't count as part of your  22 five minutes.  23 COMMISSIONER HEMRAJ: Mr X, not everyone  24 participated in the stabbing and the hacking. Why did you?  25 MR X: Because when there's a fight I do</p>	<p style="text-align: right;">Page 32570</p> <p>1 the children, or said the children would grow up without –  2 MR OGIRANA: Without fathers, yes.  3 MR X: Those people were killed for  4 nothing. Money is not as important as life itself. I  5 sincerely apologise, Mr Chair. Even the people who took  6 part in these acts with me, they do not understand what the  7 Commission is about. These are judges.  8 MS MASEBE: Thank you, Mr X, and Mr  9 Chairperson, thank you, that would be our questions.  10 CHAIRPERSON: Very well. We will adjourn  11 now and resume at 9 o'clock tomorrow morning. Oh, and  12 despite what I said earlier, we will be adjourning at 1  13 o'clock tomorrow.  14 [COMMISSION ADJOURNED]  15 .  16 .  17 .  18 .  19 .  20 .  21 .  22 .  23 .  24 .  25 .</p>
<p style="text-align: right;">Page 32569</p> <p>1 not become a spectator, I take part.  2 COMMISSIONER HEMRAJ: So you were not in  3 a position of being intimidated or anything at that stage?  4 MR X: What would I say to these people  5 if I was just standing there and not take part in the  6 stabbing and the hacking? What would I say to them? They  7 would accuse me of taking information away of what was  8 happening.  9 COMMISSIONER HEMRAJ: Thank you.  10 MS MASEBE: Now Mr X, I said I will give  11 you an opportunity to can say whatever that you wanted to  12 say when you spoke about forgiveness and other things.  13 What I would like you to know is that the family of Warrant  14 Officer Monene and other families, or other members of  15 other families who you participated in killing their loved  16 ones are present before this Commission today. Now what  17 would you like to say to them?  18 MR X: Mr Chair, I apologise for what  19 happened there. There are people who are going to,  20 children who are going to grow up with their fathers  21 because we have killed these fathers for money. Money is  22 not important, certainly not important than life itself.  23 MR NGALWANA: Sorry, Chairperson, the  24 witness said "without fathers."  25 CHAIRPERSON: It is obviously you meant</p>	

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