

# 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 279

27 AUGUST 2014

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<p style="text-align: right;">Page 35762</p> <p>1 [PROCEEDINGS ON 27 AUGUST 2014]  2 [09:12] CHAIRPERSON: The Commission resumes.  3 Please remind the witness he's still under oath.  4 XOLANI NZUZA: [s.u.o. through  5 interpreter].  6 MR MAHLANGU: Confirmed, Chairperson.  7 CHAIRPERSON: Thank you. Mr Mpofu, you  8 want to continue now with your examination-in-chief. I  9 understand that you've succeeded in obtaining an extra half  10 hour from Mr Bham. We did try to see what we could do in  11 relation to the evidence of Mr Blaauw to see whether we  12 could find some extra time for you. I'm afraid we weren't  13 able to do so, but we did try very hard. But please try to  14 get as much evidence-in-chief as you can in the time that's  15 now available to you.  16 MR MPOFU: Okay, thank you, Chairperson.  17 Before we start, Chairperson, I need to place something on  18 the record which I should have done on Monday I think, and  19 that is that as we said through Mr Mtshamba on the Monday  20 that on the Wednesday last week, on the 20th, when the  21 Commission was not sitting we were going to Ga Rankuwa  22 Magistrate's Court in respect of the arrested persons, that  23 what happened on that day was that the charges, which is  24 something relevant to the Terms of Reference, the charges  25 of those who were arrested were withdrawn, the remaining</p>	<p style="text-align: right;">Page 35764</p> <p>1 matters were all postponed for the 11th of February next  2 year, pending the outcome of the Commission and the  3 prosecutor, I think I should place on record, candidly  4 disclosed that those people were charged mainly on the  5 basis of what Mr X, of the allegations that Mr X had made  6 against them and that they would await the assessment of Mr  7 X's evidence and credibility and so on, and hopefully,  8 depending on that assessment, then decisions will be made  9 at that stage as to whether to proceed or not with those –  10 and that includes Mr Nzuzza. Thank you, Chairperson.  11 MR WESLEY: Chair, if I could just place  12 on record – sorry – Mr Mpofu in terms of the time allocated  13 had 24 minutes left, but he has been granted an extra 30  14 minutes for chief.  15 CHAIRPERSON: Perhaps you can mention the  16 other time allocations now so that the parties can now what  17 they are.  18 MR WESLEY: Yes, we can do that, Chair.  19 I'll do it in order of sequence as well. For cross-  20 examination of Mr Nzuzza chief will be followed by the  21 evidence leaders with 90 minutes, SAPS with two hours, then  22 Mr Ramphile for the Mabebe/Mabelane families 45 minutes,  23 then the representatives for Warrant Officers Lepaaku and  24 Baloyi for 20 minutes, followed by the Monene group for 40  25 minutes, and then Lonmin will be coming last with 90</p>
<p style="text-align: right;">Page 35763</p> <p>1 charges.  2 You'll remember, Chairperson, that the murder  3 charges were provisionally withdrawn in September 2012.  4 What happened on the 20th of August 2014, the remaining  5 charges, that is the Gatherings Act, public violence and  6 possession of dangerous weapons, those remaining charges  7 were withdrawn, which obviously the arrested persons are  8 quite happy about because it was quite a burdensome  9 consequence upon them.  10 But of course the issue of whether or not the  11 arrests was justified in the first place and so on, the  12 Commission, we will still argue those issues in the  13 Commission, but insofar as it is ongoing it has now become  14 – that issue is "resolved."  15 CHAIRPERSON: Thank you for bringing that  16 fact to our attention.  17 MR MPOFU: Thank you. And then,  18 Chairperson, you will also remember that during the course  19 of the Commission there were several arrests of one  20 accused, two accused here and there, some of whom we have  21 supplied the Commission with IPID statements of those  22 people who had said they had been tortured and so on. In  23 respect of those cases, I think there are about four or  24 five separate murder charges related to those small  25 clusters of accused, the prosecutor – or rather those</p>	<p style="text-align: right;">Page 35765</p> <p>1 minutes.  2 CHAIRPERSON: Thank you, Mr Wesley.  3 MR MPOFU: Thank you, Chairperson. I  4 must also place on record that I'm indebted to my learned  5 friend Mr Bham for Lonmin for having shared his 30 minutes.  6 He indicated that he had applied for one and a half hours  7 anyway, but he was granted two hours so he gave it back to  8 me. Thank you, Chairperson.  9 EXAMINATION BY MR MPOFU (CONTD.): Okay,  10 we can start now. Mr Nzuzza, because the time that we  11 thought we have is not there, so we're going to cut some of  12 the events and some of the videos that we were going to  13 play, except for those of the crucial date of the 16th, and  14 so when we left off we were just finishing off the 15th I  15 think, but I think we'll leave that off.  16 CHAIRPERSON: I'm sorry, Mr Mpofu, is  17 there ANY housekeeping you want to do, or have you got all  18 the exhibits in that you want in for the witness's  19 evidence?  20 MR MPOFU: No, Chairperson, except for  21 the, there's that one-pager with Bishop's numbers. I don't  22 know if they've been handed up. Yes.  23 CHAIRPERSON: Yes, you have us a piece of  24 paper.  25 MR MPOFU: That's the only housekeeping,</p>

<p style="text-align: right;">Page 35766</p> <p>1 Chairperson.</p> <p>2 CHAIRPERSON: So that would be – we go</p> <p>3 back to the letter P.</p> <p>4 MR MPOFU: Yes.</p> <p>5 CHAIRPERSON: This will be, according to</p> <p>6 my notes will be PPPP6. Is that correct?</p> <p>7 MR MPOFU: 6, yes.</p> <p>8 CHAIRPERSON: Let's ask Ms Pillay. She –</p> <p>9 MS PILLAY: That's correct, Chair.</p> <p>10 CHAIRPERSON: So how do I describe it?</p> <p>11 Note –</p> <p>12 MR MPOFU: Handwritten note of –</p> <p>13 CHAIRPERSON: Note given by Bishop Seoka?</p> <p>14 MR MPOFU: Yes.</p> <p>15 CHAIRPERSON: To – who did he give it to?</p> <p>16 To strikers?</p> <p>17 MR MPOFU: I'm not quite sure if it was –</p> <p>18 CHAIRPERSON: We'll just say to strikers.</p> <p>19 MR MPOFU: I'm not quite sure whether the</p> <p>20 witness wrote the numbers or the Bishop. I think the</p> <p>21 witness wrote the numbers, if I – so it's note, Nzuza's</p> <p>22 note containing Bishop Seoka's details, or particulars.</p> <p>23 CHAIRPERSON: Alright, I'll describe it</p> <p>24 as witness's note of Bishop Seoka's details.</p> <p>25 MR MPOFU: Yes.</p>	<p style="text-align: right;">Page 35768</p> <p>1 MR NZUZA: At about 1 o'clock the Bishop</p> <p>2 arrived. We did not have time. We did not have a watch.</p> <p>3 MR MPOFU: Yes, you did not know the</p> <p>4 exact time, ja. Okay, alright, once again it's the</p> <p>5 evidence which has not been contradicted is that the Bishop</p> <p>6 then spoke to a group of you, five or six.</p> <p>7 MR NZUZA: Yes, Sir.</p> <p>8 MR MPOFU: And he asked what assistance</p> <p>9 he can give. What answer did you give to him when he said</p> <p>10 what assistance can he give?</p> <p>11 MR NZUZA: We asked him if he could get</p> <p>12 some food for us and water. We also said to him we are</p> <p>13 interested there in seeing the employer. He asked who it</p> <p>14 is.</p> <p>15 MR MPOFU: Yes, and you gave him the name</p> <p>16 of the employer, and then?</p> <p>17 MR NZUZA: We did, Sir.</p> <p>18 MR MPOFU: Right, then can you just</p> <p>19 explain how it is that you took the details of the Bishop?</p> <p>20 MR NZUZA: He explained his name, he told</p> <p>21 us who he is, but because we did not know him we wanted him</p> <p>22 to give us his full particulars and hence this was written.</p> <p>23 We also asked for his ID, which he did not have. He</p> <p>24 produced his driver's licence from which we noted the</p> <p>25 names.</p>
<p style="text-align: right;">Page 35767</p> <p>1 CHAIRPERSON: That's all we need, and</p> <p>2 that's PPPP6.</p> <p>3 MR MPOFU: That's correct, Chairperson.</p> <p>4 Thank you, Chairperson. Right, so I was saying then, Mr</p> <p>5 Nzuza, can we then quickly jump to the 16th. Some of the</p> <p>6 details that we are jumping are in any event contained in</p> <p>7 your statement, and which you have already confirmed. Now</p> <p>8 you'll remember that on the 15th we had left on the basis</p> <p>9 that Mr Mathunjwa had been asked to come back the following</p> <p>10 day at 9 o'clock and so on, because it was dark. So now on</p> <p>11 the 16th, when did you get to the koppie?</p> <p>12 MR MAHLANGU: When did the witness get</p> <p>13 there?</p> <p>14 MR MPOFU: The witness.</p> <p>15 MR NZUZA: I arrived there at about 9, Mr</p> <p>16 Chairperson.</p> <p>17 MR MPOFU: Alright, again I'll jump some</p> <p>18 of the things in your statement that there was some</p> <p>19 interaction with the police, out of which nothing much came</p> <p>20 out and Mr Mathunjwa it's common cause arrived for the</p> <p>21 first time and without much news, and then he arrived again</p> <p>22 for the – or rather after Mr Mathunjwa's departure what</p> <p>23 then happened, after the first visit?</p> <p>24 MR NZUZA: You mean on the mountain?</p> <p>25 MR MPOFU: Yes, who then came there?</p>	<p style="text-align: right;">Page 35769</p> <p>1 MR MPOFU: Yes, thank you. And then how</p> <p>2 did it come about that you produced this note that I've</p> <p>3 just referred to, to the Chairperson?</p> <p>4 MR NZUZA: I kept it in my possession,</p> <p>5 Sir, as evidence.</p> <p>6 MR MPOFU: And when did you hand it up to</p> <p>7 me?</p> <p>8 MR NZUZA: Whilst the Commission was</p> <p>9 still sitting in Rustenburg I gave it to my advocate.</p> <p>10 MR MPOFU: Yes, thank you. Chairperson,</p> <p>11 I'm not addressing the witness now. The significance of</p> <p>12 this note, apart from the fact that the witness wrote it,</p> <p>13 was of course that you'll remember that the Bishop was</p> <p>14 quite traumatised by the fact that he thought that the</p> <p>15 person who had called him was Mr Noki and it was after he</p> <p>16 gave that evidence that the witness remembered and brought</p> <p>17 this, and I actually brought it to the attention of the</p> <p>18 Bishop, to his relief, although he was still obviously,</p> <p>19 he's still at consternation, but we then assured him that</p> <p>20 the person that called him was Mr –</p> <p>21 CHAIRPERSON: Well, as far as I can</p> <p>22 remember from the evidence it seemed that Mr Noki must have</p> <p>23 been dead already by the time that the call was made.</p> <p>24 MR MPOFU: Yes.</p> <p>25 CHAIRPERSON: That caused a further</p>

<p style="text-align: right;">Page 35770</p> <p>1 problem –</p> <p>2 MR MPOFU: Yes.</p> <p>3 CHAIRPERSON: - I understand the cause of</p> <p>4 the stress on the part of the Bishop.</p> <p>5 MR MPOFU: He was quite relieved when</p> <p>6 this note was produced. Okay, alright, now let's go back</p> <p>7 to the events of the 16th. I'm now going to, with the</p> <p>8 assistance of Mr Mahlangu I'm going to play a series of</p> <p>9 the, I think there were about nine persons who spoke.</p> <p>10 Fortunately they all spoke for a short while, but I need</p> <p>11 you and Mr Mahlangu to explain to the Commission what those</p> <p>12 people were saying. If we can go to JJJ20, can you start</p> <p>13 with 003, rather 00:03 I think.</p> <p>14 [VIDEO IS SHOWN]</p> <p>15 It's 21, I think. Ja, 29 seconds to 33, it's</p> <p>16 quite a short one.</p> <p>17 [VIDEO IS SHOWN]</p> <p>18 Okay, pause. On the left of that picture we can</p> <p>19 see you there, Mr Nzuzza.</p> <p>20 MR NZUZA: That's correct, Sir.</p> <p>21 MR MPOFU: You've already testified that</p> <p>22 on neither of, or on any of those days were you in</p> <p>23 possession of any arms of any sort. The position that you</p> <p>24 are in there, is that how you were all the time?</p> <p>25 MR NZUZA: Correct, Chair.</p>	<p style="text-align: right;">Page 35772</p> <p>1 I'm sorry, Mr Mahlangu, it was only the previous</p> <p>2 video where I said don't worry about what is being said.</p> <p>3 Insofar as you can make out can –</p> <p>4 CHAIRPERSON: There is a transcript, I</p> <p>5 think, of a translation of this speech, so perhaps Mr</p> <p>6 Mahlangu can just give us a summary.</p> <p>7 MR MPOFU: A summary, yes.</p> <p>8 CHAIRPERSON: Unless there's something</p> <p>9 you want to point out.</p> <p>10 MR MPOFU: Yes when there's something in</p> <p>11 particular I want to point out I'll indicate to you. Thank</p> <p>12 you, Chairperson, but otherwise you can summarise when the</p> <p>13 speaker finishes.</p> <p>14 [VIDEO SHOWN]</p> <p>15 MR MAHLANGU: I'm sorry, Chair, it really</p> <p>16 wasn't clear. He spoke so fast that –</p> <p>17 MR MPOFU: All right, so we can move on,</p> <p>18 the next one.</p> <p>19 MR MAHLANGU: The date that he's talking</p> <p>20 about –</p> <p>21 MR MPOFU: Yes insofar as you can pick up</p> <p>22 –</p> <p>23 CHAIRPERSON: Do you know who the person</p> <p>24 was who was speaking? Or perhaps you know, Mr Mpofo.</p> <p>25 MR NZUZA: I don't know the person.</p>
<p style="text-align: right;">Page 35771</p> <p>1 MR MPOFU: Okay, and were there other</p> <p>2 people on the koppie who were not in possession of any</p> <p>3 arms, even knobkieries?</p> <p>4 MR NZUZA: There were, yes, Sir.</p> <p>5 MR MPOFU: Yes, okay. Right, now on the</p> <p>6 16th, before we get to the speakers, how was the attendance</p> <p>7 at the koppie, compared to other days?</p> <p>8 MR NZUZA: There were more people than</p> <p>9 the other days.</p> <p>10 MR MPOFU: Okay, do you know why there</p> <p>11 were more people than the other days on the 16th?</p> <p>12 MR NZUZA: We had asked Mr Mathunjwa to</p> <p>13 go to the employer and these people were interested in the</p> <p>14 report back as to what it is he was going to say.</p> <p>15 MR MPOFU: Okay, now I'm going to play a</p> <p>16 series of speeches that were made during Mr Mathunjwa's</p> <p>17 visit.</p> <p>18 CHAIRPERSON: His first visit or his</p> <p>19 second? Mr Mpofo, is this his first visit or his second</p> <p>20 visit, Mr Mathunjwa's? I take it –</p> <p>21 MR MPOFU: I think it was the first</p> <p>22 visit, Chairperson. If my information is incorrect I'll</p> <p>23 verify. It's the first one.</p> <p>24 [09:31] Oh I'm sorry, can we go to video 12?</p> <p>25 [VIDEO SHOWN]</p>	<p style="text-align: right;">Page 35773</p> <p>1 MR MPOFU: Okay.</p> <p>2 CHAIRPERSON: I seem to remember it was –</p> <p>3 MR MPOFU: Yes I can confirm, it's the</p> <p>4 same gentleman that we spoke about whenever I last spoke to</p> <p>5 Mr Makaya, he's one of my clients.</p> <p>6 CHAIRPERSON: One of your clients.</p> <p>7 MR MPOFU: Yes. Alfred, his first name</p> <p>8 is Alfred Makaya. I'm not sure which shaft he comes from.</p> <p>9 All right can you play video 14 please?</p> <p>10 [VIDEO SHOWN]</p> <p>11 MR MPOFU: Okay stop.</p> <p>12 MR MAHLANGU: He's speaking in Sotho.</p> <p>13 Very briefly he is saying to the workers we have been to</p> <p>14 the employer, he doesn't want to talk to us instead he sent</p> <p>15 us his [African language] an assistant.</p> <p>16 MR MPOFU: Okay, that must be Mr</p> <p>17 Sinclair. All right can we continue?</p> <p>18 [VIDEO SHOWN]</p> <p>19 MR MAHLANGU: He said we should write, we</p> <p>20 told him we are not educated, he should write the letter.</p> <p>21 We are surprised today that he is referring to us as</p> <p>22 criminals. He refused to speak to us. We came to the</p> <p>23 mountain here because our demand is money and we have asked</p> <p>24 him to come and speak to us at the mountain. We told him</p> <p>25 how much it is that we wanted. What he's saying is that</p>

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1 no-one of us would be fired whilst we are here. They will  
 2 finish or close Lonmin.  
 3 MR MPOFU: Okay next one, 15. Sorry, Mr  
 4 Nzuzza, in similar fashion who was that gentleman?  
 5 MR NZUZA: I know him only as Andries.  
 6 MR MPOFU: Okay. Did you know him at the  
 7 time?  
 8 MR NZUZA: I did not know him at the  
 9 time.  
 10 MR MPOFU: Okay, but his first name is  
 11 Andries. Next one is video number 15. You can summarise  
 12 this one at the end.  
 13 [VIDEO SHOWN]  
 14 CHAIRPERSON: His speech was very  
 15 important and he feels that the whole thing should be  
 16 interpreted.  
 17 MR MPOFU: Okay.  
 18 CHAIRPERSON: I'm not sure we've had a  
 19 transcript of it, I'm sorry, if I'd realised at the time  
 20 I'd have asked that they stop the video along, but I think  
 21 we'll have to play it again and stop and – stop every now  
 22 and again and you –  
 23 MR MPOFU: No, thank you, Chairperson –  
 24 CHAIRPERSON: But before we do that who  
 25 is the speaker, do you know? Mr Nzuzza do you know who the

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1 gentleman is who is speaking?  
 2 MR NZUZA: I did not know him at that  
 3 time, Mr Chairperson.  
 4 CHAIRPERSON: Do you know him now?  
 5 MR NZUZA: That's Bhele.  
 6 CHAIRPERSON: Is it Bhele or Mbele?  
 7 MR NZUZA: Bhele.  
 8 CHAIRPERSON: Bhele, I see. Thank you.  
 9 MR MAHLANGU: Bhele. B-H-E-L-E.  
 10 MR MPOFU: I'm sorry I wasn't listening.  
 11 Did he give his real name?  
 12 CHAIRPERSON: He said he didn't know him  
 13 at the time, but he now knows who he is. He said it was  
 14 Bhele and Mr Mahlangu then spelt it for us. B-H-E-L-E.  
 15 MR MPOFU: No okay fine, then I should  
 16 add that Bhele is the person whose real name has already  
 17 been explained as Tolake Dlunga, D-L-U-N-G-A.  
 18 MR MAHLANGU: He started by saying be  
 19 strong workers, be strong.  
 20 MS PILLAY: Chair, just to indicate that  
 21 slide 164 of exhibit L is a version of this video with the  
 22 translation at the bottom of the slide and that's how we  
 23 have this particular speech translated on the record.  
 24 CHAIRPERSON: Slide 160?  
 25 MS PILLAY: 164.

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1 CHAIRPERSON: 164. In other words are  
 2 you telling us that if we see slide 164 we'll have the  
 3 translation?  
 4 MS PILLAY: Slide 164 is a video and if  
 5 you play that video at the bottom of it is the translation.  
 6 CHAIRPERSON: Yes, so are you suggesting  
 7 that instead of playing this exhibit we should see it in  
 8 the form – we should look at slide 164 of exhibit L and  
 9 we'll get the translation at the same time? Is that what  
 10 you're saying?  
 11 MS PILLAY: It might save time, Chair  
 12 because it's got the translation there already.  
 13 CHAIRPERSON: Do you mind that, Mr Mpofo?  
 14 MR MPOFU: No I agree with that,  
 15 Chairperson, in fact what will then happen if there's a  
 16 particular thing which might have been missed in that  
 17 translation then we'll point out. But it will save time.  
 18 CHAIRPERSON: That's a sensible  
 19 suggestion. It's important we save time, Mr Mpofo.  
 20 MR MPOFU: I'm a fast learner,  
 21 Chairperson.  
 22 MR MAHLANGU: I just want to say,  
 23 Chairperson, if I remember I was asked at one stage to make  
 24 the translation of this video.  
 25 CHAIRPERSON: Advocate Hemraj suggests

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1 that we ask Mr Mahlangu to listen very carefully because if  
 2 it's not accurate on the slide then we'll ask him to give  
 3 us a translation because it's important, it may well be  
 4 important what precisely was said and in the interests of  
 5 getting to the truth.  
 6 MR MPOFU: Thank you, Chairperson.  
 7 CHAIRPERSON: I'm not saying that the  
 8 version on the slide is wrong, but it's just in case it is.  
 9 MR MPOFU: There might one or two –  
 10 CHAIRPERSON: We'll be ready to deal with  
 11 it that way.  
 12 MR MPOFU: All right can we carry on so  
 13 long to the next one?  
 14 CHAIRPERSON: I think Ms Pillay's gone to  
 15 help the operator. She holds two fingers in the air which  
 16 I take it is two minutes.  
 17 MR MPOFU: Possibly two seconds.  
 18 CHAIRPERSON: It can't mean two seconds.  
 19 I hope it doesn't mean two hours.  
 20 MR MPOFU: Okay I'll carry on,  
 21 Chairperson. Can you go to –  
 22 CHAIRPERSON: - another slide and then  
 23 we'll come back to this one when they're ready.  
 24 MR MPOFU: Yes.  
 25 CHAIRPERSON: Well okay that's a sensible

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1 way of proceeding.  
 2 MR MPOFU: So let's see number 16. 16,  
 3 one six.  
 4 [VIDEO SHOWN]  
 5 CHAIRPERSON: Sorry, who is this  
 6 gentleman now, do we know? Who is this gentleman, do you  
 7 know, Mr Nzuzza, can you help us?  
 8 MR NZUZA: I don't know him.  
 9 CHAIRPERSON: Can you help us, Mr Mpofo?  
 10 MR MPOFU: No I can't. All I can say is  
 11 he was, if you remember from the last time someone had said  
 12 people from different language groups, he was the one who  
 13 was speaking Shangaan.  
 14 CHAIRPERSON: Oh this is the Shangaan  
 15 speaking, Madodo, what's the - of Mdodo?  
 16 MR MPOFU: Ndoda.  
 17 CHAIRPERSON: So this the Shangaan  
 18 speaking Ndoda. At least we know what language group he  
 19 belongs to.  
 20 MR MPOFU: And that's relevant because  
 21 there is something that is going to happen which is related  
 22 to the language issue. Okay.  
 23 VIDEO SHOWN  
 24 MR MAHLANGU: He asks please allow me to  
 25 speak. The Shangaan is now going to speak. I want

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1 everybody to hear. Workers, we are losing it now. Let us  
 2 stop disturbing, allow a person to speak in the manner he  
 3 wants to. If you are making a noise and saying he should  
 4 move away from there, he should keep quiet you are starting  
 5 what is known as apartheid where you don't want other  
 6 people to speak. If this man had to speak, even if you are  
 7 Xhosa speaking we know he's Shangaan. Please give him a  
 8 chance.  
 9 MR MPOFU: Just rewind that. We see Mr  
 10 Noki coming to you and then what he says is inaudible.  
 11 I'll ask you later to -  
 12 [VIDEO SHOWN]  
 13 MR MAHLANGU: Let us interpret it. Wait  
 14 for him -  
 15 MR MPOFU: Okay what just happened there?  
 16 We heard your intervention and then Mr Noki came to you.  
 17 MR NZUZA: He spoke there, Sir.  
 18 MR MPOFU: Who?  
 19 MR NZUZA: That Shangaan man.  
 20 MR MPOFU: What did Mr Noki say to you?  
 21 MR NZUZA: He said to me the workers have  
 22 understood, let's give this man a chance to speak.  
 23 MR MPOFU: Okay. All right then maybe  
 24 let's play, you'll just summarise, Mr Mahlangu. It's a bit  
 25 longish. Okay carry on please.

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1 [VIDEO SHOWN]  
 2 MR MAHLANGU: It is not NUM that we want  
 3 here, nor is it AMCU that we  
 4 want here, we want the employer to come and speak  
 5 to us. As we are staying here we don't see the employer.  
 6 We want to tell him what the problem is with him, what the  
 7 problem we have with NUM. It is not us that have thrown  
 8 NUM away, it is NUM that dumped us that is why we say we  
 9 want to see the employer. So there's something they want  
 10 to tell AMCU, but it's not clear what it is he said. It's  
 11 not clear there.  
 12 [09:51] The person we want to see is not coming to us.  
 13 He does not to give us, that we want from him. Let us  
 14 fight for our rights. We are dying in the safety. Things  
 15 that we want to - in the money that we are demanding.  
 16 MR MPOFU: Thank you, number 18.  
 17 CHAIRPERSON: You will get in your  
 18 [inaudible] saw you wearing before.  
 19 MR MPOFU: Yes. Okay, just start it  
 20 again.  
 21 [VIDEO SHOWN]  
 22 MR MAHLANGU: What is it that we are  
 23 sitting here for? What is it that we want? We are here  
 24 because do not want the organisation that does not want us.  
 25 MR MPOFU: I don't think that translation

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1 was correct.  
 2 MR MAHLANGU: It could be played back,  
 3 Sir.  
 4 MR MPOFU: The first one about the  
 5 organisation.  
 6 MR MAHLANGU: It is not the organisation  
 7 that doesn't want us that we want, we want to see the  
 8 management. He must come and stand here like the people  
 9 from AMCU. He's going to say what it is that he's going to  
 10 say. We are not going anywhere until - if that could be  
 11 repeated about the five Madoda? We sent the five Madoda to  
 12 go and talk to the police. They are sending the police to  
 13 come and kill us. We are not going away, we have not got  
 14 what it is that we want. We are going to remain as we are  
 15 till the management comes here.  
 16 MR MPOFU: Okay, till the management  
 17 comes here. Alright, then can we go to number 19.  
 18 [VIDEO SHOWN]  
 19 CHAIRPERSON: Is it Mr Noki?  
 20 MR MPOFU: That's correct, Chairperson.  
 21 CHAIRPERSON: It looks like him.  
 22 MR MAHLANGU: That's correct, Chair. We  
 23 are getting tired of waiting here. Either we go away or  
 24 the police.  
 25 MR MPOFU: I am sorry, Chairperson, no

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1 that translation is not correct. [African language].  
 2 CHAIRPERSON: Sorry, there's a debate as  
 3 to the correct translation. Let's play this from the  
 4 beginning and I'll ask Mr Tokota, who's listening very  
 5 carefully as well, and if there's a dispute between Mr –  
 6 MR MPOFU: No, it's not a dispute, they  
 7 only made a mistake.  
 8 MR MAHLANGU: The word [vernacular] has  
 9 been used, but I just want to contextualise it. Yes, it  
 10 will depend who is going to remain here, whether it's us or  
 11 the police.  
 12 MR MPOFU: Okay, thank you.  
 13 [VIDEO SHOWN]  
 14 MR MAHLANGU: That wasn't clear to me.  
 15 It's not very clear.  
 16 CHAIRPERSON: Could we have it again?  
 17 Perhaps, is it possible play back something slightly more  
 18 slowly, so that it doesn't distort the sound, but  
 19 nevertheless helps Mr Mahlangu to follow.  
 20 MR MPOFU: This one is very important,  
 21 Chairperson.  
 22 [VIDEO SHOWN]  
 23 MR MAHLANGU: It's definitely not clear  
 24 to me.  
 25 MR MPOFU: Mr Mahlangu still can help.

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1 Alright, carry on.  
 2 CHAIRPERSON: If there's a dispute about  
 3 it, we can have that settled outside the chamber with an  
 4 agreed transcript.  
 5 MR MPOFU: We can.  
 6 CHAIRPERSON: Sometimes these things have  
 7 to listen again and again for an accurate translation.  
 8 MR MPOFU: It happens, yes.  
 9 CHAIRPERSON: You say this is very  
 10 important, so clearly that exercise must be done.  
 11 MR MPOFU: Yes, can we do the next  
 12 segment, so that we can get that out of the way in normal  
 13 mode?  
 14 MR MAHLANGU: If you could, yes, play it  
 15 again from the beginning.  
 16 MR MPOFU: No, we don't have time. Carry  
 17 on.  
 18 [VIDEO SHOWN]  
 19 Alright, we'll do it some other time,  
 20 Chairperson. That's the part about the two bulls in one  
 21 kraal, that we will deal with it some other time. Okay,  
 22 now, can we then move to JJJ21, video 20.  
 23 [VIDEO SHOWN]  
 24 CHAIRPERSON: Sorry, once again, who is  
 25 this?

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1 MR MAHLANGU: These police have got  
 2 safety.  
 3 MR MPOFU: I only know his first name,  
 4 Chairperson, it's Kayesa.  
 5 CHAIRPERSON: Kayesa. Do you know Mr  
 6 Kayesa's surname, Mr Nzuzza.  
 7 MR NZUZA: I don't know it.  
 8 MR MAHLANGU: If the police have safety,  
 9 he said, let get them go and do that safety to the white  
 10 man. Let them go and do the safety to the white men who  
 11 sent them to come here. We are not moving from here until  
 12 we get what we want. Let them move this minute. If the  
 13 policemen who has been fetched from the homelands to come  
 14 here, will remain here, we'd not be able to get into that  
 15 Hippo. We'll finish up here and let them go away from  
 16 here.  
 17 MR MPOFU: Okay, as it was indicated,  
 18 there was laughter in between those last remarks, but  
 19 that's been recorded before. Thank you, Chairperson.  
 20 MR MAHLANGU: That is so. Immediately he  
 21 finished, there was that laughter that could be heard.  
 22 MR MPOFU: Okay, carry on. Now, Mr  
 23 Nzuzza, there were nine speakers, including yourself, who  
 24 made inputs there. In general, what was the message that  
 25 was being given to the workers?

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1 MR NZUZA: We insisted that the person we  
 2 wanted was only the employer, that was that. And that we  
 3 wanted money, that is all we wanted.  
 4 MR MPOFU: Yes. And then we hear that  
 5 the last gentleman, there was laughter after he spoke. Can  
 6 you remember that?  
 7 MR NZUZA: Yes.  
 8 MR MPOFU: Can you remember why?  
 9 MR NZUZA: Yes, I do.  
 10 MR MPOFU: Yes?  
 11 MR NZUZA: That person, Mr Chairperson,  
 12 is a person that's full of jokes. Everything he says is  
 13 just about jokes, things that are laughable.  
 14 MR MPOFU: And the other eight people who  
 15 spoke before him, was there any laughter following their  
 16 speeches?  
 17 MR NZUZA: There was none.  
 18 MR MPOFU: Right. Now, can you then tell  
 19 us, we know what then happened, Mr Mathunjwa spoke and so  
 20 on about the traps, that you are going to be killed and so  
 21 on.  
 22 CHAIRPERSON: Is that the end of the  
 23 video clips you want to show?  
 24 MR MPOFU: Yes, Chairperson. I'd like to  
 25 ask that a transcript be prepared with a translation. It

<p style="text-align: right;">Page 35786</p> <p>1 may require Mr Mahlangu, I'd like him to do it if he can,  2 it may require him listening to it over and over again, but  3 I think in the light of what you tell us it's very  4 important. So I ask direct that that be done.  5 MR MAHLANGU: I'll do that.  6 MR MPOFU: Thanks, Chairperson. Right,  7 what then happened after Mr Mathunjwa addressed you for the  8 last time and he went into his car?  9 MR NZUZA: Is it the last time that he  10 was there?  11 MR MPOFU: Yes, if that was the first  12 visit. Yes, I'm talking about after the second visit.  13 MR NZUZA: Chairperson, what was  14 happening, after he had left the workers were singing,  15 going up and then coming down again, and going down and so  16 on, singing. I was on top of the koppie there and then I  17 saw Lonmin busses bringing police, and also the Midbank  18 busses and Quantums. What I saw was that some papers were  19 being given to the police. The policeman would be given a  20 paper. He would take it, run to the Nyala, and take a gun  21 and then they started pulling the razor wire. It was at  22 that time that the workers started walking downwards  23 towards Nkaneng.  24 MR MPOFU: Yes.  25 MR NZUZA: Chairperson, as they were</p>	<p style="text-align: right;">Page 35788</p> <p>1 already, Chairperson.  2 [10:11] CHAIRPERSON: Well, let's just check  3 that. Ms Pillay, am I correct in thinking this is already  4 an exhibit? JJJ61169.  5 MR MPOFU: This series, this particular  6 series is not an exhibit, Chairperson.  7 CHAIRPERSON: Alright, if it's not an  8 exhibit we must make it one, I would say.  9 MR MPOFU: Yes, we might as well.  10 CHAIRPERSON: Well, let's ask Ms Pillay  11 whether – she's the one I always depend on –  12 MR MPOFU: The photos might be in for  13 another purpose, but we'll make it an exhibit for this  14 purpose, Chairperson.  15 MS PILLAY: Chair, I'm not sure if Mr  16 Mpofo wants to make the presentation an exhibit or the  17 individual photographs, because if they've got JJJ6-numbers  18 then they already are exhibits before the Commission.  19 CHAIRPERSON: It sounds as if they are  20 already and you're going to show them to us now, but if  21 they're already part of the record we don't have to have  22 them twice.  23 MR MPOFU: That's fine. I'm happy with  24 that, Chairperson.  25 CHAIRPERSON: It's a compilation of</p>
<p style="text-align: right;">Page 35787</p> <p>1 proceeding towards Nkaneng, the fourth Nyala, which was  2 facing in a different direction, turned its direction  3 coming towards the kraal. It was closing that gap. The  4 workers then turned – he indicates with his left-hand side  5 – towards the other side of the kraal. From the side on  6 which they appeared on the other side of the kraal, just  7 beyond the road, there were these members of the police  8 that uses berets on their heads. Just as they appeared  9 from the kraal, before the workers came up to the road, I  10 saw a lot of dust. The beret police then proceeded towards  11 the protestors up to the road. As they were going towards  12 the road, that's where I heard gunshots and some of the  13 protestors then turned around and ran back. There were  14 Hippos that were driving past the people and at that time I  15 was still up on the hill. Everything that was happening  16 there, I could see clearly, because I was still on the  17 koppie. When I realised people had fallen there, I also  18 started moving. I ran towards the koppie behind us.  19 MR MPOFU: Alright. That part, can you  20 just have that series of photos there, please? The correct  21 description, Chairperson, is JJJ6, point 1169, Captain  22 Nel's photos.  23 CHAIRPERSON: It is an exhibit. It's  24 JJJ6, point 1169?  25 MR MPOFU: Yes, that should be, it is</p>	<p style="text-align: right;">Page 35789</p> <p>1 photographs which had been put in, I think –  2 MR MPOFU: Yes.  3 CHAIRPERSON: - as a collective exhibit.  4 MR MPOFU: That's correct, and I'll just  5 – okay, if I can just give a description, Chairperson?  6 Chairperson, can I just give a description?  7 CHAIRPERSON: Yes, certainly. Please do.  8 MR MPOFU: Yes, what we can see on that,  9 if you can confirm, there's a large group of people behind  10 koppie 2 and they form a line and then it sort of deviates  11 towards koppie 3. Is that correct, Mr Nzuzza?  12 MR NZUZA: What is the question again,  13 Sir?  14 MR MPOFU: Alright, carry on.  15 CHAIRPERSON: Your time is up, Mr Mpofo,  16 but how much longer do you think you'll need? This is  17 obviously important evidence.  18 MR MPOFU: It is, Chairperson. I can try  19 and squeeze it in 20 minutes tops, Chairperson.  20 CHAIRPERSON: I've discussed it with my  21 colleagues briefly. What we propose doing is the  22 following. We will take a shorter lunch break, we'll come  23 back at half past 1 and we'll sit, if necessary, until  24 quarter past 4.  25 MR MPOFU: Thank you, Chairperson.</p>



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1 CHAIRPERSON: That gives us an extra half  
 2 an hour which I present you. Please use it as  
 3 economically –  
 4 MR MPOFU: Thank you.  
 5 CHAIRPERSON: Now you've asked for 20  
 6 minutes, I'm giving you half an hour.  
 7 MR MPOFU: I'm grateful, Chairperson,  
 8 yes. Thank you very much.  
 9 CHAIRPERSON: That's all I've got, you  
 10 understand?  
 11 MR MPOFU: Yes.  
 12 CHAIRPERSON: So I don't want any scenes  
 13 after that –  
 14 MR MPOFU: On the father and son  
 15 principle, the R1 000. I'm saying on the father and son  
 16 principle –  
 17 CHAIRPERSON: Yes, I hear what you say.  
 18 Yes, you reminded me very apposite –  
 19 MR MPOFU: Thank you, Chairperson. Yes,  
 20 I'm very indebted to the Chairperson and the Commissioners.  
 21 Alright, Mr Nzuzza, can we show the next picture so that we  
 22 use the time profitably? Next one. Next one. Next one.  
 23 Next one. Next one, please. Okay, this is not using the  
 24 time profitably. Alright, can you zoom in and focus on  
 25 where Mr Nzuzza is? Zoom further in. Okay, Mr Nzuzza, can

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1 you identify yourself in that picture?  
 2 MR NZUZA: Yes, I do.  
 3 MR MPOFU: And there's something else  
 4 using a pointer. Can you confirm that the person being  
 5 pointed –  
 6 CHAIRPERSON: There's someone with a –  
 7 MR MPOFU: With a cursor.  
 8 CHAIRPERSON: - a tracksuit top which is  
 9 green, or partly green.  
 10 MR MPOFU: Yes.  
 11 CHAIRPERSON: I think that's the person  
 12 you're referring to.  
 13 MR MPOFU: Okay, next photo.  
 14 CHAIRPERSON: Do you confirm that that's  
 15 you? With the brown trousers.  
 16 MR NZUZA: That's correct, Chair.  
 17 MR MPOFU: Yes, next photo. Next one.  
 18 Next. Okay, zoom in. Just before – ja, no just behind  
 19 that group, further back. No further, to the right –  
 20 CHAIRPERSON: If you go to the right.  
 21 MR MPOFU: Ja, there.  
 22 CHAIRPERSON: He's now in the picture,  
 23 yes.  
 24 MR MPOFU: Thank you. Can you zoom?  
 25 CHAIRPERSON: You see the man with the

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1 brown trouser and the tracksuit top which is green –  
 2 MR MPOFU: Yes.  
 3 CHAIRPERSON: - at the top of the –  
 4 MR NZUZA: I do, Sir, I see that person.  
 5 CHAIRPERSON: [Microphone off, inaudible]  
 6 MR MPOFU: Is that you, Mr Nzuzza, the one  
 7 I'm pointing at, the big one?  
 8 MR NZUZA: That is me appearing there  
 9 where the pointer is.  
 10 CHAIRPERSON: The person again with a  
 11 tracksuit top, the upper part of which is green and the  
 12 lower part appears to be black, or some dark colour. The  
 13 trousers are brown and behind that person's right shoulder  
 14 is a gentleman wearing a tracksuit top which is blue.  
 15 MR MPOFU: Okay.  
 16 CHAIRPERSON: So that, you confirm that's  
 17 you, Mr Nzuzza?  
 18 MR NZUZA: That is so.  
 19 MR MPOFU: Okay, next photo, please.  
 20 Quickly. Alright, can you zoom?  
 21 MS PILLAY: Chair, for the purposes of  
 22 the record could we request Mr Mpofo to indicate the JJJ6-  
 23 number of the particular photograph because otherwise it's  
 24 going to be meaningless on the record.  
 25 CHAIRPERSON: May I suggest that – he's

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1 passed some of it already. May I suggest that during the  
 2 interval –  
 3 MR MPOFU: Yes.  
 4 CHAIRPERSON: - before tomorrow that  
 5 exercise can be performed and we can, the information can  
 6 be read into the record. Let's not stop now.  
 7 MR MPOFU: No.  
 8 CHAIRPERSON: Once again we see that  
 9 unmistakable green and dark tracksuit top –  
 10 MR MPOFU: And white shoes.  
 11 CHAIRPERSON: - brown trousers, and I now  
 12 see white shoes as well. That's you, Mr Nzuzza?  
 13 MR NZUZA: Yes, Sir, that's me.  
 14 MR MPOFU: Yes, and that –  
 15 CHAIRPERSON: Where exactly is this now?  
 16 Is it at the koppie –  
 17 MR MPOFU: Yes, that's what I was going  
 18 to deal with now.  
 19 CHAIRPERSON: Okay.  
 20 MR MPOFU: Thank you, Chairperson. Now  
 21 two things that I want to point out with this photo. One  
 22 is where is this in relation to koppie 3?  
 23 MR NZUZA: This is the beginning of  
 24 koppie 3.  
 25 MR MAHLANGU: And he indicates it

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1 stretches towards the left-hand side.  
 2 MR MPOFU: Yes, the beginning of koppie 3  
 3 from which side? From the Nkaneng side or from the  
 4 Marikana town side?  
 5 MR NZUZA: Going towards Marikana.  
 6 MR MPOFU: From Nkaneng?  
 7 MR NZUZA: Yes, coming from Nkaneng,  
 8 going towards Marikana.  
 9 MR MPOFU: Thank you. The second thing  
 10 is, which will help us to locate this place, is that,  
 11 Chairperson, that – can you recognise that hole there?  
 12 CHAIRPERSON: Hole where?  
 13 MR MPOFU: I'm sorry, there.  
 14 MR NZUZA: I saw it yes, now during the  
 15 sitting of this Commission.  
 16 MR MPOFU: Which evidence of which  
 17 witness?  
 18 CHAIRPERSON: "That hole there" means  
 19 nothing on the record. It's the bottom left-hand corner of  
 20 the photographs. There's a gentleman whose back we can  
 21 see, who's facing away from the camera, wearing a red top  
 22 and as previously indicated it's below him on the  
 23 photograph. If you can give a better description than  
 24 that, go ahead.  
 25 MR MPOFU: Thank you, yes. I'm happy

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1 with that.  
 2 MR NZUZA: That's right.  
 3 MR MPOFU: Ja, which witness was giving  
 4 evidence when you heard something about that hole?  
 5 MR NZUZA: It was Mdea.  
 6 MR MPOFU: Okay, let's move on.  
 7 MS PILLAY: Chair, before we move on,  
 8 just for the record, that was JJJ6.1203.  
 9 CHAIRPERSON: We have a zoomed-in picture  
 10 of that area, one can see a hole, an excavation of some  
 11 kind –  
 12 MR MPOFU: Ja.  
 13 CHAIRPERSON: - which is clearer when  
 14 that section is zoomed in.  
 15 MR SEMENYA SC: It may have been  
 16 inadvertent –  
 17 CHAIRPERSON: [Microphone off, inaudible]  
 18 MR MPOFU: Chairperson –  
 19 CHAIRPERSON: [Microphone off, inaudible]  
 20 MR MPOFU: Can I just –  
 21 CHAIRPERSON: Hang on.  
 22 MR MPOFU: I know what Mr Semenya is  
 23 going to say. Can I –  
 24 CHAIRPERSON: I wanted to say to him  
 25 don't draw attention to it.

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1 MR MPOFU: Yes, I was going to say.  
 2 Okay, thank you.  
 3 CHAIRPERSON: Mr Semenya has his light  
 4 on. Mr Semenya, you've turned it off again, so –  
 5 MR SEMENYA SC: Well, I was saying it may  
 6 have been inadvertent, but if Mr Mpofo can be sufficiently  
 7 alert we may not get to where my phobia lies.  
 8 CHAIRPERSON: Yes, we –  
 9 MR MPOFU: Chairperson, I'd rather –  
 10 honestly, I think the best thing is for Mr Semenya, neither  
 11 Mr Semenya nor myself to say anything. Let's just move on.  
 12 CHAIRPERSON: Yes, let's move on.  
 13 MR MPOFU: Because then we're just going  
 14 to make the problem worse. I think that's pouring water,  
 15 or petrol over the fire.  
 16 CHAIRPERSON: Two points; one is we will  
 17 excise that answer from the record, and secondly I'd be  
 18 grateful if –  
 19 MR MPOFU: I will deal with it during the  
 20 break, Chairperson.  
 21 CHAIRPERSON: Speak to the witness during  
 22 the break time and just –  
 23 MR MPOFU: Yes.  
 24 CHAIRPERSON: - tell him –  
 25 MR MPOFU: Thank you.

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1 CHAIRPERSON: I take it we can assume it  
 2 was inadvertent.  
 3 MR MPOFU: Yes.  
 4 CHAIRPERSON: But inadvertence of that  
 5 kind must be –  
 6 MR MPOFU: Yes, absolutely. Thank you,  
 7 Chairperson. Alright, from this point – I'm not going to  
 8 use the photos now. I'm just going to ask you to – we  
 9 leave you at the point at which you are at a place where  
 10 you say is the entrance, or the beginning of koppie 3. Can  
 11 you then tell the Commission your movement from that point  
 12 onwards?  
 13 MR NZUZA: I was there. When I left that  
 14 mountain there was an oldish Sotho-speaking person who was  
 15 wearing a green blanket, who died. He died there. He  
 16 advised me to remove the jersey I was wearing and he said  
 17 he doesn't see Mambush and the others, it could be that the  
 18 helicopter that is hovering over us is looking for me. I  
 19 removed my jersey. There was another young man who gave me  
 20 his jersey, which I then put on.  
 21 CHAIRPERSON: You talk about a jersey.  
 22 As far as we could see you were wearing a tracksuit top, so  
 23 it's just a matter of words but do you mean a tracksuit top  
 24 or do you actually mean a jersey?  
 25 MR NZUZA: That's what exactly I'm

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1 saying. When I speak of a jersey I mean the top of a  
 2 tracksuit.  
 3 CHAIRPERSON: Yes, thank you.  
 4 MR NZUZA: I went inside the koppie,  
 5 removed my top and then put on the one that I was given by  
 6 the young man. I went up, intending to go to Marikana, but  
 7 I saw I could not see there because there were police who  
 8 were standing in front of us there. I then turned and  
 9 proceeded downwards. This was coming back to Nkaneng.  
 10 That is the direction in which I ran, which was the  
 11 shortest to the settlement.  
 12 MR MPOFU: Okay, right, well we know then  
 13 what transpired thereafter. On the following few days did  
 14 the workers go back immediately or were there still  
 15 activities in that area?  
 16 MR NZUZA: Some of us went out, Mr  
 17 Chairperson, but quite a number returned back to the koppie  
 18 and remained there.  
 19 MR MPOFU: Yes, can you just explain  
 20 something; it might be in relation to what you've just  
 21 said. We did an exercise, which we confirmed with our  
 22 colleagues from SAPS, of one of those pictures where you  
 23 can see the crowd between koppie 2 and koppie 3 and we did  
 24 a headcount, unscientific. We came to I think about 430  
 25 people, but we know that there were 270 people who were

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1 arrested. Can you explain, did you see anybody apart from  
 2 yourself also escaping, managing to escape, as it were?  
 3 MR NZUZA: Not many people managed to go  
 4 out there. I ran up to reach Nkaneng whilst the other  
 5 people were there. Some ran in the direction of Marikana.  
 6 MR MPOFU: Do you know the –  
 7 CHAIRPERSON: I'm sorry, Mr Mpofu, before  
 8 you carry on –  
 9 MR MPOFU: Yes.  
 10 CHAIRPERSON: - I just want to say this  
 11 while I think of it. This essentially is a picture of  
 12 people going to koppie 3 before what happened at koppie 3.  
 13 MR MPOFU: Yes.  
 14 CHAIRPERSON: And I don't expect you to  
 15 be able to give me the answer, but I think it would be  
 16 helpful if we could be given the answer at some stage at  
 17 what time this photograph was taken.  
 18 MR MPOFU: Yes.  
 19 CHAIRPERSON: eTV time. If you can tell  
 20 me the answer –  
 21 MR MPOFU: Ja, with the help of Mr  
 22 Chaskalson –  
 23 CHAIRPERSON: - tell me the answer now  
 24 you can, but normally Mr Chaskalson is the one who tells us  
 25 these things and he's not here today.

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1 MR MPOFU: Yes.  
 2 CHAIRPERSON: But I think we should, that  
 3 may be an important fact, but we can get that later.  
 4 MR MPOFU: Yes, to time those pictures.  
 5 CHAIRPERSON: Sorry to interrupt you.  
 6 MR MPOFU: Thank you, Chairperson. When  
 7 we do the exercise that we spoke about we'll also try and  
 8 put the times. Thank you. Now very quickly there are two  
 9 quick things that I want to deal with. You were arrested  
 10 sometime in October 2012 during the –  
 11 CHAIRPERSON: Mr Mpofu, it sounds to me  
 12 as if you're moving on to a totally different topic.  
 13 MR MPOFU: Yes.  
 14 CHAIRPERSON: It's nearly half past 10.  
 15 MR MPOFU: It will help me a lot,  
 16 Chairperson, because I just want to round off a few  
 17 things –  
 18 CHAIRPERSON: If you'd like us to take  
 19 the short comfort break now –  
 20 MR MPOFU: That will help me,  
 21 Chairperson. Then I can round off the –  
 22 CHAIRPERSON: Alright, we'll adjourn for  
 23 15 minutes, give you a chance to get your ducks in a row,  
 24 as people say –  
 25 MR MPOFU: Yes.

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1 CHAIRPERSON: - and then you can –  
 2 MR MPOFU: Use the 15 minutes.  
 3 CHAIRPERSON: Yes.  
 4 MR MPOFU: Thank you, Chairperson.  
 5 CHAIRPERSON: So we'll adjourn now for 15  
 6 minutes.  
 7 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 8 [10:56] CHAIRPERSON: The Commission resumes.  
 9 More housekeeping matters I'm afraid kept us, but that had  
 10 the advantage of giving Mr Mpofu more time. Mr Mpofu, are  
 11 you in a position to proceed now with the examination-in-  
 12 chief?  
 13 MR MPOFU: Yes, I am, Chairperson. I'm  
 14 just putting on my stopwatch.  
 15 CHAIRPERSON: That's Mr Wesley's job.  
 16 EXAMINATION BY MR MPOFU (CONTD.): No, Mr  
 17 Wesley – thank you, Chairperson. Mr Nzuzza, we're just  
 18 going to go through some of the topics very, very briefly.  
 19 In your supplementary statement there are IPID statements  
 20 and statements like that, warning statements that are  
 21 attached. In them I will use when we argue the case at the  
 22 end certain parts that relate to people who say where the  
 23 strikers were headed to when they were shot at scene 1, but  
 24 according to you where were the strikers going to?  
 25 MR NZUZA: They were going towards

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1 Nkaneng.

2 MR MPOFU: And when you say that the

3 Nyala 4 closed the gap, what gap was it and what were the

4 strikers trying to do when Nyala 4 closed that gap?

5 MR NZUZA: The protesters were going

6 through the, on the road that proceeds to Nkaneng.

7 MR MPOFU: Okay, thank you. And then –

8 CHAIRPERSON: [Microphone off, inaudible]

9 MR SEMENYA SC: It was inadvertent.

10 MR MPOFU: Yes, thank you. By the way,

11 Chairperson, I also dealt with that other matter during the

12 break.

13 CHAIRPERSON: Thank you.

14 MR MPOFU: Thank you. Then at what stage

15 in your movement that you described, at what stage did you

16 call the Bishop and what did you say to him?

17 MR NZUZA: There's an open veld beyond

18 koppie 3, that's where I was running when I phoned the

19 Bishop. I said to him, "Bishop, what has happened? You

20 came here and immediately you leave we are being killed.

21 What is happening?"

22 MR MPOFU: Did you establish where the

23 Bishop was?

24 MR NZUZA: On my side there were the

25 gunshots which were being fired, it wasn't very clear and

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1 he did not say exactly where he was. The communication

2 wasn't very clear.

3 MR MPOFU: Okay, then in one of the IPID

4 statements – and this is said by one of the policemen – it

5 is said that the situation at the mountain was peaceful

6 until about half past 3. Is that your experience as well?

7 MR NZUZA: Yes, he's telling the truth.

8 MR MPOFU: And what can you tell the

9 Commission about the movement of journalists? We saw it in

10 the videos of the 9th, but the movement of journalists in

11 front of or among the strikers, how was it?

12 MR NZUZA: The reporters were walking

13 there freely amongst us.

14 MR MPOFU: Right, then there was also a

15 suggestion that on the 13th – going back to the 13th, I just

16 want to clarify something. There was a suggestion that –

17 we've already dealt with the issue of whether you deviated

18 or not, but there was a suggestion that there was a fear

19 that you would attack people in the settlement or

20 settlements that were on your way. What is your comment

21 about that?

22 MR NZUZA: Chairperson, there was no such

23 a thing. On our way to Karee, that is we went through that

24 place. Nobody was attacked and that is the same way in

25 which we were travelling back.

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1 MR MPOFU: Okay, and can we show AAAA33?

2 Craig.

3 CHAIRPERSON: According to my notes we've

4 got 33.1, .2, .3, .4. So which one do you want?

5 MR MPOFU: Oh yes, yes probably .1. Yes,

6 can you – next one. Next one. Next one, ja. Alright,

7 that is a slide that was prepared by Mr Budlender during

8 the cross-examination of Mr X. It has a gentleman whose

9 face is surrounded by a square, a red square.

10 CHAIRPERSON: Rectangle.

11 MR MPOFU: Ja.

12 CHAIRPERSON: A square has got four equal

13 sides.

14 MR MPOFU: Oh, they look equal to me,

15 Chairperson. Okay, but anyway, ja, that gentleman, have

16 you seen him before?

17 MR NZUZA: Yes, I was with him on the

18 13th.

19 MR MPOFU: Do you know that gentleman?

20 Do you know his name?

21 MR NZUZA: I don't know what his name is.

22 MR MPOFU: Is that Mr X? I think you've

23 seen Mr X here on the screen.

24 MR NZUZA: No, that's not him.

25 MR MPOFU: Did you have anything – apart

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1 from being with this gentleman in that small group of

2 protesters on the 13th, did you have anything to do with him

3 on the day?

4 MR NZUZA: He was together with me on the

5 13th when we were looking for transport, arranging transport

6 to take the people to hospital, and he was one of the

7 people that accompanied the vehicle that went to fetch the

8 people that we had left in the shack settlement.

9 MR MPOFU: Okay, thank you very much.

10 And the other gentleman, Mr Madumbe - I don't have the

11 exhibit now – who came here, did you remember him from the

12 koppie?

13 MR NZUZA: I saw him on the mountain.

14 MR MPOFU: Is he Mr X?

15 MR NZUZA: No, Madumbe is not Mr X.

16 MR MPOFU: Okay, then you were charged

17 sometime in October and you were taken to a police station

18 and you have alleged in your statement, IPID statement,

19 that you were tortured. Can you explain to the Chairperson

20 very briefly the nature of how and when you were tortured

21 and by whom?

22 MR NZUZA: I'll explain to the

23 Commission, Sir.

24 MR MPOFU: Yes.

25 MR NZUZA: I was arrested on my way from

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1 work. It was in the morning at about 7 when I knocked off.  
 2 There was a parade where I was told I'm wanted by the  
 3 Commission. I went to my captain's office and asked who is  
 4 it that wanted me; he said the Commission. Two Lonmin  
 5 security officers arrived. When I arrived at the office I  
 6 was told I'm wanted at Number 1. I said if I'm wanted at  
 7 Number 1 I'm prepared to go there with the two people, the  
 8 secretary of the shaft and the chairman. I was then told  
 9 that I'm being suspended from Lonmin.  
 10 MR MPOFU: Okay, sorry to interrupt that  
 11 story, but it might help me to cover my next point. Apart  
 12 from you, there was evidence that was shown here that you  
 13 were suspended among other things for being a leader of the  
 14 strike. Do you know anyone else of those 3 000 people who  
 15 were suspended for being a leader of the strike?  
 16 MR NZUZA: No, there's none.  
 17 MR MPOFU: Okay, now can you go to the  
 18 stage where you say you were tortured in the police  
 19 station? Oh sorry, Chairperson, Mr Semenya –  
 20 MR SEMENYA SC: Chair, can I raise two  
 21 things for the record. The one is obviously the statement  
 22 of the witness which contains inadmissible evidence is not  
 23 evidence because it is in an exhibit. The second one, this  
 24 evidence relating to the torture that happened in October  
 25 somewhere, maybe if you can give us guidance, Chair, to

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1 properly deal with that evidence we would have to go in a  
 2 similar trial-within-a-trial basis and I don't know that we  
 3 even have the time to do that.  
 4 CHAIRPERSON: Mr Mpofu, what I was going  
 5 to ask you was how do you envisage our dealing with this  
 6 matter, if at all, in our report? Clearly it could be the  
 7 subject of other investigation elsewhere. If the witness  
 8 was tortured, as he says he was, that means that those  
 9 responsible for the torture are guilty of criminal offences  
 10 and that should be investigated then if necessary, and if  
 11 it's considered appropriate the people concerned should be  
 12 prosecuted. But I don't think that this – this is a prima  
 13 facie view I'm expressing. I don't think this is a matter  
 14 that we will consider it appropriate to deal with in our  
 15 report. It's not really covered by the Terms of Reference.  
 16 So that's my prima facie view. How do you react to that?  
 17 MR MPOFU: Yes, thank you, Chairperson.  
 18 Well firstly the, what Mr Semenya is saying does not apply  
 19 to this kind of questioning. A trial-within-a-trial is a  
 20 tool that is used to determine whether or not a statement  
 21 was made freely and voluntarily –  
 22 CHAIRPERSON: No, you're correct. A  
 23 trial-within-a-trial isn't appropriate –  
 24 MR MPOFU: Ja, it's got nothing to do  
 25 with it.

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1 CHAIRPERSON: But inasmuch –  
 2 MR MPOFU: These are just claims.  
 3 CHAIRPERSON: Inasmuch as it raises an  
 4 issue –  
 5 MR MPOFU: Yes.  
 6 CHAIRPERSON: - that if we're going to  
 7 look into the issue and the police say the evidence has  
 8 been led, we want to deal with it because otherwise –  
 9 MR MPOFU: No, fair enough.  
 10 CHAIRPERSON: - there may be a finding  
 11 against it –  
 12 MR MPOFU: Yes.  
 13 CHAIRPERSON: Speaking for myself I'd be  
 14 inclined simply to say he made these allegations, we  
 15 consider that they should be investigated if they haven't  
 16 been, with a view to appropriate action being taken. I  
 17 don't think we would go further than that. Do you agree  
 18 with that? We wouldn't go further than that now.  
 19 MR MPOFU: Ja.  
 20 CHAIRPERSON: We have enough other issues  
 21 to deal with. Certainly –  
 22 MR MPOFU: I understand –  
 23 CHAIRPERSON: Certainly the allegations  
 24 are serious. If they're true they require appropriate  
 25 action, there's no question about that. But I don't think

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1 we can take it further than that.  
 2 MR MPOFU: No, Chairperson, I understand  
 3 that. In fairness to you, the issue of recommending  
 4 investigations, you already did that when we brought the  
 5 issues to your attention in Rustenburg. That's not the  
 6 purpose of this. The relevance of this is that after this  
 7 torture and everything Mr Nzuzza, that's why we gave his  
 8 PPPP1.3 or 1.4, following directly on this he was charged  
 9 with the murder of Mr Twala, which is relevant to your  
 10 Terms of Reference. That's the only connection, and he was  
 11 also, according to the statement while he was being  
 12 tortured there was a fishing expedition, as it were. He  
 13 was tortured for the security guards and then he was  
 14 tortured for the police and eventually he was not charged  
 15 for that. So that's the only relevance that I'm leading  
 16 the evidence for. It's because it relates to the murders  
 17 that are the subject matter of the Commission.  
 18 CHAIRPERSON: I still don't think that  
 19 this evidence really throws any light upon those issues.  
 20 The only light it could throw is if the police were to seek  
 21 to rely upon statements that he made, you would say as a  
 22 result of torture, to ask us to make findings –  
 23 MR MPOFU: Recommendations, yes.  
 24 CHAIRPERSON: - recommendations.  
 25 MR MPOFU: That's exactly what I'm aiming

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1 at.

2 CHAIRPERSON: Ja, but if the police

3 aren't going to adopt that it seems implicit in what Mr

4 Semenya says because he said otherwise we'll have to have,

5 they will have to lead evidence in rebuttal and that will

6 take time –

7 MR MPOFU: Yes.

8 CHAIRPERSON: - which we haven't got.

9 MR MPOFU: No, no, no, Chairperson –

10 CHAIRPERSON: So the impression I get

11 from that is that he's not going to try to argue, try to

12 confront Mr Nzuzza with statements he made to which Mr Nzuzza

13 is going to say they're inadmissible, I was assaulted.

14 MR MPOFU: Yes.

15 CHAIRPERSON: If I'm right in thinking

16 that then the point falls away, doesn't it?

17 MR MPOFU: No, absolutely. Chairperson,

18 let me put it this way; if Mr Semenya is not going to rely

19 on the statements which allege torture to ask you to make a

20 recommendation at the end of the inquiry for criminal

21 charges to be preferred, then I will stop this line of

22 questioning –

23 CHAIRPERSON: I think the practical way

24 to do it is this –

25 MR MPOFU: Ja.

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1 CHAIRPERSON: Leave it where it is now.

2 MR MPOFU: Yes.

3 CHAIRPERSON: If he does try to cross-

4 examine on that you can then raise the point. You reserve

5 your right –

6 MR MPOFU: I do.

7 CHAIRPERSON: - if that should happen to

8 then lead further evidence from him on that issue.

9 MR MPOFU: Yes, and –

10 CHAIRPERSON: So that point may never

11 arise, so let's move on. Your time is actually up, but –

12 or it's five minutes to go, I think, Mr Wesley?

13 MR MPOFU: Five, yes.

14 CHAIRPERSON: But anyway, try to use the

15 five minutes –

16 MR MPOFU: I will. I will, Chairperson.

17 Thank you very much. Right, Mr Nzuzza, on the basis of the

18 discussion I will not go into detail of the allegations in

19 your IPID statement.

20 CHAIRPERSON: The IPID statement is

21 before us as PPPP2.

22 MR MPOFU: 2, and if –

23 CHAIRPERSON: There are a number of

24 allegations there about the bag and water and all that, a

25 plastic bag and water –

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1 MR MPOFU: Yes, and they'll be

2 resuscitated or not resuscitated, depending.

3 CHAIRPERSON: Yes. Yes. Speaking for

4 myself, and my colleagues agree prima facie at this stage,

5 we don't propose doing anymore than drawing attention that

6 the allegations were made. Whether there's any substance

7 in them is not a matter on which we make any finding at

8 all, and the authorities must do what is appropriate in

9 investigating these allegations.

10 MR MPOFU: Yes, thank you. Thank you,

11 Chairperson.

12 CHAIRPERSON: They may have done already,

13 I don't know.

14 MR MPOFU: Yes, and I've already

15 indicated to the – insofar as you were charged at the end

16 of all what we have just cut out now, I've already

17 indicated to the Chairperson that last week you were

18 present in court when the prosecutor said that whether or

19 not those charges would be pursued would depend on Mr X's

20 evidence. You remember that?

21 MR NZUZA: I was there, yes Sir.

22 MR MPOFU: Yes, now because there's not

23 much time I'd just like you to use the next few minutes to,

24 as a person who was -

25 [11:15] Who observed these events, who was a leader there

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1 and you saw some of your colleagues including Mr Noki with

2 whom you had a special relationship which you have

3 described to the Commission and various other things that

4 have happened, arrests of people, the injury of people.

5 Can you tell the Commission how all these things have made

6 you to feel?

7 MR NZUZA: It makes me feel very bad,

8 Chairperson, after all what has happened. Last week when

9 we went to court it became clear that people were being

10 arrested for no reason. People were arrested, tortured and

11 thereafter the case against them was withdrawn. After two

12 years of going through the hardships of not knowing what

13 was going to happen to them. Some of them are unemployed

14 today as a result of those cases. Some left the jobs

15 because of the torture that they experienced during their

16 arrest. It makes me feel bad, Sir, because now we can see

17 there was no truth in them being arrested, they were just

18 arrested for no reason.

19 MR MPOFU: Yes and those who lost their

20 lives?

21 MR NZUZA: What is very hurting,

22 Chairperson, people died there who had done nothing wrong

23 who did wrong things by not listening to what others were

24 advising them to do. I'm hurt about the security officers

25 who died, who were placed there where they were not

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1 supposed to have been and some other people were removed  
 2 there and new people were put in. I would be happy, Sir,  
 3 if the people who killed the securities would be arrested.  
 4 I also refer to the deaths of the other people. If it is  
 5 found that the police were wrong in doing this they should  
 6 also be prosecuted because for two years now I was made to  
 7 go to a police station to sign for something that I had not  
 8 done wrong.  
 9 MR MPOFU: Thank you, and if the people  
 10 who killed the two policeman and Mr Langa and Mr Mabebe are  
 11 found what should be done to them if they are correctly  
 12 identified?  
 13 MR NZUZA: The people that killed the  
 14 police and the security officers with the evidence who it  
 15 is should be arrested, Chairperson.  
 16 MR MPOFU: And did you, as the people who  
 17 were leaders there at the koppie, at any stage ask or allow  
 18 anybody to commit criminal offences?  
 19 MR NZUZA: Not at all, Chairperson, I  
 20 make this example. People did certain things, but we  
 21 always stood by what we said, that we are fighting nobody.  
 22 MR MPOFU: Thank you, Chairperson, I have  
 23 nothing further.  
 24 CHAIRPERSON: Thank you, Mr Mpofo. Mr  
 25 Budlender, I understand you're going to cross-examine on

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1 behalf of the evidence leaders. Is that correct?  
 2 MR BUDLENDER SC: That's correct, Chair.  
 3 CROSS-EXAMINATION BY MR BUDLENDER SC:  
 4 Good morning, Mr Nzuzza.  
 5 MR NZUZA: Good morning, Sir.  
 6 MR BUDLENDER SC: Mr Nzuzza, other cross-  
 7 examiners will deal with the events of the 13th and the 16th  
 8 of August. I'm going to deal with some other aspects of  
 9 the matters which the Commission is investigating. Now  
 10 you've explained that were second in charge of the strikers  
 11 committee, is that correct?  
 12 MR NZUZA: Yes according to how things  
 13 were done, yes.  
 14 MR BUDLENDER SC: And how many members of  
 15 that committee were there?  
 16 MR NZUZA: I wouldn't say exactly in  
 17 numbers because people would be selected to go and do a  
 18 specific thing and then come back and so on.  
 19 MR BUDLENDER SC: Wasn't there an overall  
 20 group who were leading and in charge?  
 21 MR NZUZA: No.  
 22 MR BUDLENDER SC: But you were a senior  
 23 leader, you were the second in command.  
 24 MR NZUZA: That's correct.  
 25 MR BUDLENDER SC: Now could we have a

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1 look at the photograph AAAA34? If we could look at slide  
 2 number 2 of the series please? Slide number 2, Mr Nzuzza,  
 3 has two photographs on it and the – first let me ask you  
 4 this. Mr X said that this was a meeting of the committee  
 5 together with certain other members of the strikers, what  
 6 do you say to that?  
 7 MR NZUZA: That's what he says.  
 8 MR BUDLENDER SC: No I know that's what  
 9 he says, I'm asking you what you say.  
 10 MR NZUZA: This was a group of people  
 11 that was chosen for a specific thing that we see happening.  
 12 We would then go and discuss it, not amongst the group.  
 13 MR BUDLENDER SC: I understand. While  
 14 we're on that photograph the photograph on the right-hand  
 15 side you'll see on the right-hand side of that photograph  
 16 there's a man who's standing up, he's wearing blue jeans  
 17 and a dark top and he has a beige blanket over his left  
 18 shoulder. Do you see him?  
 19 MR NZUZA: I can see that person.  
 20 MR BUDLENDER SC: Do you know who that  
 21 person is?  
 22 MR NZUZA: I do.  
 23 MR BUDLENDER SC: Who is he?  
 24 MR NZUZA: I have known him as Patasile.  
 25 MR BUDLENDER SC: Do you know him by any

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1 other name?  
 2 MR NZUZA: It's only now that I came to  
 3 the Commission that I came to discover what his name is.  
 4 MR BUDLENDER SC: And what is that name?  
 5 MR NZUZA: Madumbe.  
 6 MR BUDLENDER SC: Thank you. Now you  
 7 mentioned that certain strikers were chosen for specific  
 8 tasks and I've been told that Mr Andries Msenyeno was  
 9 chosen for the specific task of discipline. Is that  
 10 correct?  
 11 MR NZUZA: I'm not aware of it.  
 12 MR BUDLENDER SC: You don't know. Do you  
 13 know whether anybody was responsible for discipline during  
 14 the strike?  
 15 MR NZUZA: I know of no such a person.  
 16 MR BUDLENDER SC: Although you were the  
 17 second in charge you know nothing about that.  
 18 MR NZUZA: No there was no such person.  
 19 CHAIRPERSON: Does that mean that no-one  
 20 was chosen to be in charge of discipline, no-one chosen to  
 21 look after discipline or does it mean that there could have  
 22 been, but you don't know?  
 23 MR NZUZA: No there was no such a thing,  
 24 Chairperson.  
 25 MR BUDLENDER SC: I'm sorry, I missed the

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1 answer.

2 MR NZUZA: There was no such a thing.

3 MR BUDLENDER SC: There was no such

4 thing. Now moving on, during a strike the workers power

5 lies in the fact that they've withdrawn their labour.

6 Would you agree with that?

7 MR NZUZA: If you could just repeat the

8 question, Sir.

9 MR BUDLENDER SC: Let me put it

10 differently. During a strike the workers withdraw their

11 labour to put pressure on the employer to negotiate.

12 MR NZUZA: It's clear to me what you're

13 telling me.

14 MR BUDLENDER SC: What is the reason why

15 workers stop working during a strike?

16 MR NZUZA: They wanted money.

17 MR BUDLENDER SC: But why do they stop

18 working, why don't they continue working and demand more

19 money?

20 MR NZUZA: The money we are getting is

21 little and the employer did not respond.

22 MR BUDLENDER SC: No I understand that,

23 Mr Nzuzza, what I'm suggesting to you is that the reason

24 that workers stop working is to say to the employer if you

25 don't negotiate and give us money then you will have no

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1 profits at all because we won't be working.

2 MR NZUZA: That is so, yes because when

3 we don't have any other power save to withdraw our labour.

4 MR BUDLENDER SC: No I understand that,

5 we then understand each other. So when a strike happens

6 it's in the interests of the strikers to keep the strike

7 going until the matter is settled because that's what puts

8 the pressure on the bosses.

9 MR NZUZA: Yes.

10 MR BUDLENDER SC: If the strikers go back

11 to work then that takes the pressures off the employer.

12 MR NZUZA: Yes once we go back there is

13 none.

14 MR BUDLENDER SC: Yes and if Lonmin had

15 agreed to talk to you, you would have had to keep the

16 strike going until the negotiations were completed so that

17 you could keep the pressure on them.

18 MR MAHLANGU: I'm sorry, Sir, I didn't –

19 MR BUDLENDER SC: I'm sorry, that's a

20 very complicated question. If Lonmin had agreed to

21 negotiate with you, you would have had to continue with the

22 strike during the negotiations to keep the pressure on.

23 MR NZUZA: The question is not very clear

24 to me.

25 MR BUDLENDER SC: Let's say that Lonmin,

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1 that the management agrees to negotiate – or let me take a

2 step back. Let's say there is a strike, the management

3 agree to negotiate, the strikers have to continue striking

4 to keep the pressure on management during the negotiations.

5 MR NZUZA: Again the question is still

6 not very clear to me.

7 MR BUDLENDER SC: I don't know how else

8 to ask it, Mr Nzuzza. What I want to say to you is when

9 management agrees to talk to you that's no reason to go

10 back to work. The reason to go back to work is when they

11 give you what you're demanding.

12 MR NZUZA: That is correct, if we get

13 what we are demanding.

14 MR BUDLENDER SC: Yes indeed. Now during

15 a strike the strength of the workers arises from their

16 unity.

17 MR NZUZA: That is correct.

18 MR BUDLENDER SC: If some of the workers

19 do not join the strike that weakens the strike.

20 MR NZUZA: That is correct.

21 MR BUDLENDER SC: Now do you believe that

22 during a strike any worker who wants to go to work has the

23 right to do so?

24 MR NZUZA: Yes.

25 MR BUDLENDER SC: And did you say to your

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1 followers at the koppie anyone who wants to work has got

2 the right to do so?

3 MR NZUZA: What's the question again,

4 Sir?

5 MR BUDLENDER SC: Did you say to your

6 followers at the koppie anyone who wants to work has the

7 right to do so?

8 MR NZUZA: We did not stop anybody from

9 going, so I cannot speak on behalf of those that chose to

10 go to work.

11 MR BUDLENDER SC: No, Mr Nzuzza, I'm

12 asking you did you say to people at the koppie if any of

13 the other workers want to work they have a right to do so?

14 MR NZUZA: There was no reason to say

15 such a thing.

16 MR BUDLENDER SC: Surely it was very

17 important to say to your followers we are not going to

18 force people to join the strike.

19 MR NZUZA: Nobody was forced to.

20 MR BUDLENDER SC: Surely it was important

21 to say to your followers we are not going to force anybody

22 to strike.

23 MR NZUZA: My response is that we did not

24 force anybody.

25 MR BUDLENDER SC: Mr Nzuzza, you're not



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1 answering the question and you know that. I'm asking you  
 2 surely it was important to say to your followers at the  
 3 koppie we are not going to force anybody to join this  
 4 strike.  
 5 MR NZUZA: I am unable to respond to  
 6 that.  
 7 MR BUDLENDER SC: Why are you unable to  
 8 respond to it?  
 9 MR NZUZA: Because that is how you see  
 10 it.  
 11 MR BUDLENDER SC: I'm asking you whether  
 12 you agree with, do you agree with me that it was important  
 13 to say to your co-strikers we are not going to force anyone  
 14 to join the strike?  
 15 MR NZUZA: My response was that nobody  
 16 was forced not to go to work.  
 17 MR BUDLENDER SC: Would you not like to  
 18 tell the Commission why you didn't say that to your co-  
 19 strikers?  
 20 MR MPOFU: I'm sorry, Chairperson, I  
 21 don't want to interrupt. I've been trying to hold myself  
 22 back. Maybe the problem is whether this statement that Mr  
 23 Budlender is canvassing for was supposed to be aimed at co-  
 24 strikers as he says or directed to other people who might  
 25 want to work, because I think this merry-go-round is

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1 because the witness is take about the strikers.  
 2 [11:35] And maybe Mr Budlender is talking about other  
 3 people who might have wanted to go to work.  
 4 MR BUDLENDER SC: No, I'm talking about  
 5 strikers, Chair.  
 6 MR MPOFU: Well, the strikers could not  
 7 be told – unless if you're saying the strikers were forced.  
 8 They were already on strike. Why would you tell them –  
 9 CHAIRPERSON: Mr Budlender, I've got  
 10 another problem with the question you put, as long as it  
 11 raises an objection, but in fact he said no one was being  
 12 forced. So his answer presumably is the reason we didn't  
 13 tell people you mustn't force anyone is no one was being  
 14 forced. That may be implicit in his answer, to be fair.  
 15 MR BUDLENDER SC: Well Chair, I've asked  
 16 him a simple question. I've asked him why did he not – and  
 17 I asked him several times – why did you not say to your co-  
 18 strikers, we are not going to force other people to join  
 19 the strike. That's the question.  
 20 MR MPOFU: No –  
 21 MR BUDLENDER SC: I asked it several  
 22 times. The record will show that.  
 23 MR MPOFU: No, with respect,  
 24 Chairperson –  
 25 CHAIRPERSON: I heard - sorry, Mr Mpofu –

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1 MR MPOFU: That's exactly, he's  
 2 introducing the words "other people" for the first time and  
 3 that's exactly what was the ambiguity.  
 4 CHAIRPERSON: Alright, Mr Mpofu –  
 5 MR MPOFU: I was trying to assist. If  
 6 you are talking about other people, that's fine, but if you  
 7 are talking about the strikers it's a redundant question  
 8 because they're already on strike.  
 9 MR BUDLENDER SC: Alright, can I ask it  
 10 the way Mr Mpofu wants me to –  
 11 CHAIRPERSON: I suggest you do that, then  
 12 he won't be able to object to it.  
 13 MR BUDLENDER SC: Why did you not say to  
 14 your co-strikers, we are not going to force other people to  
 15 join the strike?  
 16 MR NZUZA: Because, Sir, because there  
 17 was no reason to do so. People were already on the strike  
 18 there, coming on their own. There was no reason for us to  
 19 tell them that they are not being forced, that they are not  
 20 forced not to go to work.  
 21 MR BUDLENDER SC: Mr Nzuzza, listen to me  
 22 carefully. Let me try once more. Why did you not say to  
 23 your co-strikers, we are not going to force other people to  
 24 join the strike?  
 25 MR NZUZA: That's how you see it. We did

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1 not see the necessity of doing that.  
 2 MR BUDLENDER SC: Alright, let me move  
 3 on. During a strike do you think it is acceptable for the  
 4 strikers to try to close down part of the mine so that no  
 5 one can go to work then?  
 6 MR NZUZA: The question is again?  
 7 MR BUDLENDER SC: During a strike do you  
 8 think it is acceptable for the strikers to try to close  
 9 down part of the mine so that no one can go to work then?  
 10 MR NZUZA: No, it's not supposed to be  
 11 done that way.  
 12 MR BUDLENDER SC: Yes. Now on the 13th of  
 13 August, you told this Commission that on the 13th of August  
 14 the strikers decided that a small group should go to the K3  
 15 Shaft to request the mine management to close the mine.  
 16 Remember that?  
 17 MR NZUZA: Yes.  
 18 MR BUDLENDER SC: How big was this group  
 19 that was sent to the K3 Shaft?  
 20 MR NZUZA: I'm unable to estimate.  
 21 MR BUDLENDER SC: Well, you said in your  
 22 evidence it was more than a hundred people. Remember that?  
 23 MR NZUZA: That was just an estimation.  
 24 MR BUDLENDER SC: Do you think more than  
 25 a hundred people is a small group?

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1 MR NZUZA: Yes.

2 MR BUDLENDER SC: Alright. What was the

3 purpose of sending more than a hundred people to go to

4 speak nicely to the management?

5 MR MAHLANGU: What was the purpose of

6 sending?

7 MR BUDLENDER SC: Sending more than a

8 hundred people.

9 MR MAHLANGU: To go and speak?

10 MR BUDLENDER SC: To speak nicely to the

11 management.

12 MR NZUZA: Because we were interested in

13 money.

14 MR BUDLENDER SC: Why did you need so

15 many people to go and talk to the management?

16 MR NZUZA: Please repeat the question

17 again.

18 MR BUDLENDER SC: Why did you need so

19 many people to go and speak to the management?

20 MR NZUZA: As workers on the mountain we

21 did not want to go, we did not all want to go there.

22 MR BUDLENDER SC: I'm asking why you

23 needed such a large group as more than a hundred.

24 MR NZUZA: It wasn't said how many people

25 should go there. It was only said people who want to go

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1 there should do so. People decided on their own.

2 MR BUDLENDER SC: What would have

3 happened if you had gone there to K3 and you had found that

4 people were working there?

5 MR NZUZA: Nothing would have happened.

6 MR BUDLENDER SC: What would you have

7 done?

8 MR NZUZA: We would have just told them

9 we want money.

10 MR BUDLENDER SC: If you had said to the

11 management we want you to close the shaft and management

12 had refused, what would you have done?

13 MR NZUZA: Nothing would have happened.

14 MR BUDLENDER SC: What would you have

15 done?

16 MR NZUZA: We would have done nothing.

17 MR BUDLENDER SC: You would have said, oh

18 that's fine, and you would have gone back again?

19 MR NZUZA: Yes, we would have gone back.

20 MR BUDLENDER SC: And the more than a

21 hundred of you would have just quietly gone back and said

22 that's fine, if management wants to keep the shaft open,

23 that's fine?

24 MR NZUZA: Yes.

25 MR BUDLENDER SC: And if your co-workers

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1 had wanted to continue striking – I'm sorry, if some of

2 your co-workers at K3 had wanted to continue working, the

3 more than a hundred of you would have just gone back and

4 said, oh well that's fine?

5 MR NZUZA: Yes, we would have done so.

6 MR BUDLENDER SC: No one would have been

7 threatened and no one would have been killed?

8 MR NZUZA: No, none.

9 MR BUDLENDER SC: Now if I understand him

10 correctly, your counsel has accepted that some of your

11 followers killed Mr Fundi and Mr Mabelane.

12 MR MPOFU: No, Chairperson –

13 MR BUDLENDER SC: Let me put it

14 differently. If I understood him correctly, your counsel

15 has accepted that some of the strikers killed Mr Fundi and

16 Mr Mabelane. Has that been agreed?

17 MR NZUZA: Counsel said so. I didn't say

18 that.

19 MR BUDLENDER SC: Well, do you agree with

20 it? Do you think it was some of the strikers who killed Mr

21 Fundi and Mr Mabelane?

22 MR NZUZA: I don't know that.

23 MR BUDLENDER SC: Who do you think killed

24 Mr Fundi and Mr Mabelane?

25 MR NZUZA: I wasn't there, so I'm not

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1 able to know.

2 MR BUDLENDER SC: But Mr Nzuzza, you sat

3 in the Commission for a great deal of the hearings. You've

4 sat in the Commission –

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

6 to object to this question. Every time I've asked people

7 things when they were not there I was told by you that I

8 mustn't ask them. This witness has said in chief and now

9 again in cross-examination that he was not there when the

10 events of the 12th that are being discussed happened, so I

11 don't know on what basis he can be questioned about them.

12 MR BUDLENDER SC: Chairman, I'm not

13 suggesting, because I don't know, that Mr Nzuzza was part of

14 the murders, or the killings. I'm asking him whether – I'm

15 going to ask him about the evidence that was given here and

16 whether he, what his opinion is in that regard.

17 CHAIRPERSON: You see one problem is that

18 when people are being asked for their opinions in the past

19 about events that took place objection has been taken and

20 the objection has been upheld. So the mere fact that he

21 holds an opinion is ruled irrelevant. There may be some

22 other basis for saying that his opinion, contrary to the

23 opinion of all the others, is relevant, but if the question

24 simply relates to his opinion then I think consistently

25 with what I've ruled earlier I must uphold the objection.

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1 But if there's an exceptional basis on which his opinion is  
 2 relevant, not in order perhaps to assist us to find what  
 3 happened but for some other reason, then obviously that's  
 4 it.  
 5 MR BUDLENDER SC: Let me approach it from  
 6 a different direction –  
 7 CHAIRPERSON: But maybe you can approach  
 8 this from a different angle.  
 9 MR BUDLENDER SC: Were you present at any  
 10 time during any discussion on the koppie amongst the  
 11 strikers when it was mentioned that Mr Fundi and Mr  
 12 Mabelane had been killed?  
 13 MR NZUZA: No, I didn't hear anything.  
 14 MR BUDLENDER SC: You never heard anyone  
 15 mention that Mr Fundi and Mr Mabelane had been killed?  
 16 MR NZUZA: I only heard over the TV that  
 17 people had been killed and they were mentioning quite a  
 18 number of people.  
 19 MR BUDLENDER SC: Yes, and when you heard  
 20 over the TV, was it at the time during the period when the  
 21 strikers were on the koppie, or was it later?  
 22 MR NZUZA: They were still on the  
 23 mountain.  
 24 MR BUDLENDER SC: And no one ever  
 25 discussed in your presence the fact that two of your co-

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1 workers had been killed?  
 2 CHAIRPERSON: If by co-workers you mean  
 3 Mabelane and Fundi –  
 4 MR BUDLENDER SC: Employees of Lonmin.  
 5 CHAIRPERSON: Yes, yes, fellow employees,  
 6 not co-miners but security guards working for the same  
 7 employer.  
 8 MR BUDLENDER SC: Let me put it more  
 9 clearly. You never heard anyone mention at any time on the  
 10 koppie that two Lonmin security officials had been killed?  
 11 MR NZUZA: I did not hear it.  
 12 MR BUDLENDER SC: And you never heard –  
 13 did you ever hear anyone at any time on the koppie say that  
 14 Mr Langa had been killed?  
 15 MR NZUZA: Not at all.  
 16 MR BUDLENDER SC: Did you ever hear  
 17 anyone on the koppie mention that Mr Mabebe had been  
 18 killed?  
 19 MR NZUZA: I did not, Sir.  
 20 MR BUDLENDER SC: Did you ever hear  
 21 anyone mention on the koppie that Mr Twala had been killed?  
 22 MR NZUZA: I heard that from the police.  
 23 MR BUDLENDER SC: So these five people,  
 24 five Lonmin employees were killed during the course of the  
 25 strike and you never heard any striker ever mention the

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1 fact that this had happened?  
 2 MR NZUZA: I did not hear that.  
 3 CHAIRPERSON: Can I interrupt for a  
 4 moment? You were asked about Mr Fundi and Mr Mabelane.  
 5 Were you ever told when you were on the koppie that any  
 6 security guard, without their names being mentioned, had  
 7 been killed?  
 8 MR NZUZA: I'm saying, Chairperson, no, I  
 9 did not hear that.  
 10 MR BUDLENDER SC: You never heard of that  
 11 at all, other than – you never heard at all being discussed  
 12 at the koppie?  
 13 MR NZUZA: I did not, Sir, not on the  
 14 mountain.  
 15 MR BUDLENDER SC: Could we have HHH21 on  
 16 the screen, please? HHH21, paragraph 5, please.  
 17 CHAIRPERSON: Paragraph 5?  
 18 MR BUDLENDER SC: Paragraph 5. This is  
 19 your statement.  
 20 CHAIRPERSON: I think the statement can  
 21 be shown in such a way that the bottom of the first page  
 22 and the top of the second page is shown so we see the whole  
 23 of paragraph 5.  
 24 MR BUDLENDER SC: Let me read to you  
 25 what's in paragraph 5. "On 12 August 2012 I also arrived

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1 in the late morning, but before midday. I was informed  
 2 that earlier that morning the strikers had decided to march  
 3 back to the NUM offices so as to find out why the NUM was  
 4 killing them." Now I'll miss the next sentence, and then,  
 5 "Before reaching the NUM offices the protesters had  
 6 reportedly been attacked by mine security, after which a  
 7 skirmish had ensued with further fatalities of security  
 8 guards." Were you told that on the 12th of August?  
 9 MR NZUZA: I wasn't told that then. I  
 10 heard about it later.  
 11 MR BUDLENDER SC: But your statement says  
 12 you were told then.  
 13 MR MPOFU: No, Chairperson, with the  
 14 greatest respect –  
 15 MR NZUZA: I didn't hear it then –  
 16 MR MPOFU: Mr Budlender must not, you  
 17 know, make a quantum leap in logic. If it says  
 18 "reportedly," he was right to pursue when that reportedly  
 19 must have happened and the witness has just said when it  
 20 happened. When does the statement say that it was said  
 21 then?  
 22 CHAIRPERSON: No, Mr Mpofo, I don't think  
 23 that objection can be upheld. The –  
 24 MR MPOFU: Well, the objection, the  
 25 question, Chairperson, says the statement says ABC. The

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1 statement doesn't say ABC.  
 2 CHAIRPERSON: I was going to read the  
 3 statement.  
 4 MR MPOFU: Yes.  
 5 CHAIRPERSON: "On 12 August I arrived in  
 6 the early morning. I was informed that earlier that  
 7 morning," and it goes on. So perhaps if Mr Budlender puts  
 8 the question in the form of the ipsissima verba of the  
 9 statement then your objection will fall away.  
 10 MR MPOFU: Yes, Chairperson, please, I  
 11 don't think you understand what I'm saying. I'm not  
 12 objecting to that part. That part I accept, as you  
 13 correctly put it. The part that is being cross-examined on  
 14 is now "Before reaching the NUM offices, they had  
 15 reportedly been attacked," and the question was asked when  
 16 did he hear about it. He says he heard it much later, and  
 17 Mr Budlender says no, but your statement says you heard it  
 18 on that day, which is not in the statement.  
 19 CHAIRPERSON: Well, it looks like all the  
 20 same report, but anyway, let Mr Budlender continue in a way  
 21 which –  
 22 MR BUDLENDER SC: Mr Chair, with great  
 23 respect, it's for the witness to interpret the statement,  
 24 not for his counsel to do so –  
 25 MR MPOFU: No, no, no, that's not fair,

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1 Mr Budlender. It's not for you to say something that is  
 2 not in the statement.  
 3 CHAIRPERSON: [Microphone off, inaudible]  
 4 MR MPOFU: Ja well, he mustn't lecture me  
 5 when he has told the witness that something which is not in  
 6 the statement.  
 7 CHAIRPERSON: Whether people are being  
 8 lectured or not is neither here nor there. Interruptions  
 9 are not permitted.  
 10 MR MPOFU: No, but he's suggesting that  
 11 I'm answering for the witness when I'm pointing out,  
 12 assisting him to say that there is something in the  
 13 statement which is not what he says is there. He must lay  
 14 the basis. It's fine, the question is acceptable, but he  
 15 must lay the basis as to when that report was made. That's  
 16 simple.  
 17 MR BUDLENDER SC: Mr Chairman, I'm very  
 18 grateful –  
 19 CHAIRPERSON: I'm busy with another point  
 20 about interruptions. But anyway, Mr Budlender, if you can  
 21 proceed –  
 22 MR BUDLENDER SC: I'm grateful that my  
 23 questions, to my colleague. Let me try again. You say,  
 24 "On 12 August 2012 I also arrived in the late morning, but  
 25 before midday." You say, "I was informed that earlier that

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1 morning the workers had decided to march back to the NUM  
 2 offices so as to find out why the NUM was killing them."  
 3 When were you informed of that?  
 4 MR NZUZA: It was long after the 16th.  
 5 MR BUDLENDER SC: So when you say you  
 6 arrived that morning and you were informed that earlier the  
 7 morning something had happened, what you mean is you were  
 8 informed four days later, or five days later?  
 9 MR NZUZA: It's something that was  
 10 mentioned that it had happened on the morning of the 12th.  
 11 MR BUDLENDER SC: But you were only  
 12 informed about it several days later?  
 13 MR NZUZA: Yes.  
 14 [11:55] CHAIRPERSON: When were you told that?  
 15 When was this several days later? When were you told about  
 16 it?  
 17 MR NZUZA: I don't remember exactly,  
 18 Chairperson, either shortly before the 16th or when –  
 19 shortly after the 16th or when.  
 20 CHAIRPERSON: Who told you about it?  
 21 MR NZUZA: It's something that was being  
 22 discussed there, but most of it was on TV.  
 23 CHAIRPERSON: No, I'm interested in what  
 24 was being discussed. Was it being discussed on the koppie?  
 25 MR NZUZA: There were so many people on

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1 the koppie, Chairperson, people who would say anything that  
 2 they have overheard.  
 3 CHAIRPERSON: The answer it was being  
 4 discussed on the koppie then, is that right?  
 5 MR NZUZA: The strike was still going on,  
 6 but we had left the main place where we were. We were in  
 7 the mountain lower where I heard this being discussed.  
 8 CHAIRPERSON: Now, are you saying that on  
 9 the morning of the 12th, that's the Sunday morning, when you  
 10 got there no one said anything about the fact that some of  
 11 the strikers had gone to the NUM office earlier that day?  
 12 Is it something that happened?  
 13 MR NZUZA: No, I wasn't told.  
 14 CHAIRPERSON: Not at all, not a word  
 15 about it?  
 16 MR NZUZA: Not on that day.  
 17 CHAIRPERSON: I see.  
 18 COMMISSIONER HEMRAJ: When you arrived at  
 19 the koppie, Mr Nzuzza, the group that had gone to the NUM  
 20 offices, were they still away or had they already returned  
 21 to the koppie?  
 22 MR NZUZA: They were already back on the  
 23 mountain.  
 24 COMMISSIONER HEMRAJ: Thank you.  
 25 CHAIRPERSON: How did you know that?

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1 MR MPOFU: No, Chairperson, please before  
 2 you ask the question predictably, that answer was not  
 3 properly translated. What he says is [African language],  
 4 which I don't want to –  
 5 MR NZUZA: When I arrived, there were  
 6 people already on the mountain.  
 7 CHAIRPERSON: Well, then my question –  
 8 that wasn't the question that he was asked. So perhaps the  
 9 question should be asked again and he can answer it this  
 10 time.  
 11 COMMISSIONER HEMRAJ: When you arrived at  
 12 the koppie late that morning on the 12th, the group that had  
 13 gone to the NUM offices, had they returned to the koppie  
 14 already, or were they still away?  
 15 MR NZUZA: What I'm saying, Chairperson,  
 16 there were so many people on the mountain, I do not know  
 17 who it is that had left earlier to go to the NUM offices.  
 18 COMMISSIONER HEMRAJ: You did know that a  
 19 group had gone to the NUM offices on the 12th?  
 20 MR NZUZA: I did not know then.  
 21 COMMISSIONER HEMRAJ: Thank you.  
 22 MR BUDLENDER SC: And you didn't find  
 23 out, even on the 12th, that a group of strikers had gone to  
 24 the NUM offices?  
 25 MR NZUZA: No.

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1 MR BUDLENDER SC: No one informed you of  
 2 that on the 12th?  
 3 MR NZUZA: That is why I kept on saying I  
 4 heard it later.  
 5 MR BUDLENDER SC: Alright.  
 6 CHAIRPERSON: Are moving onto another  
 7 topic?  
 8 MR BUDLENDER SC: I am moving onto  
 9 another topic, Chairperson.  
 10 CHAIRPERSON: Perhaps this an appropriate  
 11 stage to take tea. We'll take tea, quarter of an hour.  
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 13 [12:16] CHAIRPERSON: The Commission resumes.  
 14 Please remind the witness he's still under oath.  
 15 CROSS-EXAMINATION BY MR BUDLENDER SC [CONTD]:  
 16 Mr Nzuzza, on the 30th of July this year your counsel cross-  
 17 examined Mr Botes of Lonmin. On the 30th of July this year  
 18 your counsel cross-examined Mr Botes of Lonmin and he said  
 19 the following about the deaths of Mr Mabelane and Mr Fundi,  
 20 the security officers. Chair, I'm not going to go to the  
 21 script, but may I just give a reference, it's day 266, page  
 22 33677, line 14. 33677, line 14 and you'll see at line 12  
 23 Mr Mpofu had been dealing with various criticisms of the  
 24 conduct of Lonmin in the context of the deaths of Mr  
 25 Mabelane and Mr Fundi and then he says "All right so those

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1 are the reasons in respect of which I will say that those  
 2 deaths should be laid at the door of Lonmin." And in  
 3 summary I think it's fair to say the reasons he gave was  
 4 that Lonmin didn't take adequate steps to protect them.  
 5 MR NZUZA: Yes.  
 6 MR BUDLENDER SC: Now I want to ask you  
 7 this, is that also your view? Do you also criticise Lonmin  
 8 and its officials for not protecting Mr Mabelane and Mr  
 9 Fundi?  
 10 MR NZUZA: Yes it is.  
 11 MR BUDLENDER SC: You criticise Lonmin  
 12 for not protecting Mr Mabelane and Mr Fundi from being  
 13 killed by strikers.  
 14 MR NZUZA: I don't understand the  
 15 question.  
 16 MR BUDLENDER SC: You criticise Lonmin  
 17 for not protecting Mr Mabelane and Mr Fundi from being  
 18 killed by strikers.  
 19 MR NZUZA: That part, I do not know that  
 20 part that they were killed by the strikers.  
 21 MR BUDLENDER SC: Well your counsel has  
 22 accepted that they were killed by strikers.  
 23 MR NZUZA: He is the one who accepted  
 24 that.  
 25 MR BUDLENDER SC: And there has been

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1 direct evidence that they were killed by strikers.  
 2 MR NZUZA: Yes, but that has nothing to  
 3 do with me.  
 4 MR BUDLENDER SC: It has a lot to do with  
 5 you. I'll show you why. But you accept that there has  
 6 been evidence given that it was strikers who killed Mr  
 7 Mabelane and Mr Fundi.  
 8 MR NZUZA: Yes, but I'm saying I have no  
 9 knowledge of that –  
 10 MR BUDLENDER SC: Yes I understand that.  
 11 MR NZUZA: I cannot respond to that.  
 12 MR BUDLENDER SC: And you blamed Lonmin  
 13 for those murders.  
 14 MR NZUZA: Yes.  
 15 MR BUDLENDER SC: That you do know about.  
 16 MR NZUZA: Yes.  
 17 MR BUDLENDER SC: You don't know about  
 18 the conduct of the strikers of whom you were a leader, but  
 19 you do know about the conduct of Lonmin.  
 20 MR NZUZA: Repeat the question.  
 21 MR BUDLENDER SC: Never mind. Did I  
 22 understand your evidence correctly, your evidence in chief  
 23 that the deaths of the 10 people before the 16th of August  
 24 were caused by Lonmin's refusal to talk to the strikers?  
 25 MR NZUZA: Yes.

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1 MR BUDLENDER SC: You say if Lonmin had  
 2 talked to the strikers none of those 10 deaths would have  
 3 occurred.  
 4 MR NZUZA: Yes no-one would have died.  
 5 MR BUDLENDER SC: Well let's talk about  
 6 Mr Langa. Mr Langa was killed when he was on the way to  
 7 work. Can you explain to the Commission how his death was  
 8 caused by Lonmin's refusal to talk to the strikers?  
 9 MR NZUZA: I never spoke about Langa.  
 10 MR BUDLENDER SC: You spoke about the 10  
 11 deaths, one of those was Mr Langa.  
 12 MR NZUZA: I did not mention names.  
 13 MR BUDLENDER SC: You spoke about the 10  
 14 deaths.  
 15 MR NZUZA: Yes.  
 16 MR BUDLENDER SC: You said those 10  
 17 deaths would not have happened if Lonmin had spoken to the  
 18 strikers.  
 19 MR NZUZA: That is so.  
 20 MR BUDLENDER SC: So I'm asking you how  
 21 would Lonmin speaking to the strikers have avoided the  
 22 death of Mr Langa who was one of those 10?  
 23 MR NZUZA: I cannot answer that.  
 24 MR BUDLENDER SC: How would Lonmin  
 25 talking to the strikers have prevented the deaths of Mr

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1 Mabelane and Mr Fundi?  
 2 MR NZUZA: Repeat the question.  
 3 MR BUDLENDER SC: How Lonmin talking to  
 4 the strikers have prevented the deaths of Mr Mabelane and  
 5 Mr Fundi?  
 6 MR NZUZA: I said I'm not going to answer  
 7 that because I do not know that it is the strikers that  
 8 killed those people.  
 9 MR BUDLENDER SC: Mr Nzuzza, I'm talking  
 10 about your evidence. You say that none of those 10 deaths  
 11 would have occurred if Lonmin had spoken to the strikers,  
 12 that's your evidence.  
 13 MR NZUZA: Lonmin would have used the  
 14 strikers that Da Costa usually spoke to, the strike  
 15 continued after Da Costa spoke to them.  
 16 MR BUDLENDER SC: And how would that have  
 17 prevented the deaths of those 10 people?  
 18 MR NZUZA: It would be prevented in the  
 19 sense that he would have spoken to the workers, discuss how  
 20 they were going to get their money.  
 21 MR BUDLENDER SC: So those 10 people were  
 22 killed because Lonmin was refusing to talk to the strikers,  
 23 is that right?  
 24 MR NZUZA: I did not get the question.  
 25 MR BUDLENDER SC: Is it correct that

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1 those 10 people were killed because Lonmin refused to talk  
 2 to the strikers?  
 3 MR NZUZA: Yes, it is so.  
 4 MR BUDLENDER SC: But who killed them?  
 5 MR NZUZA: I do not know.  
 6 MR BUDLENDER SC: What is the connection  
 7 between a refusal of Lonmin to talk to the strikers and the  
 8 killing of those 10 people?  
 9 MR NZUZA: I didn't get the question.  
 10 MR BUDLENDER SC: What is the connection  
 11 between Lonmin's refusal to speak to the strikers and the  
 12 killing of those people?  
 13 MR NZUZA: Those people who died, were  
 14 workers of Lonmin, they were working for Lonmin.  
 15 MR BUDLENDER SC: And who killed them?  
 16 MR NZUZA: I do not know.  
 17 MR BUDLENDER SC: But they were killed  
 18 because Lonmin wasn't talking to the strikers.  
 19 MR NZUZA: That's why I'm saying I do not  
 20 know who killed them.  
 21 MR BUDLENDER SC: But you say in your  
 22 evidence that they lost their lives because Lonmin refused  
 23 to talk to the strikers.  
 24 MR NZUZA: That's what I'm saying.  
 25 MR BUDLENDER SC: In what manner did the

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1 refusal to talk to the strikers cause those deaths?  
 2 MR NZUZA: I'm saying they are Lonmin  
 3 employees.  
 4 MR BUDLENDER SC: In what manner – listen  
 5 to my question carefully please. In what manner did the  
 6 refusal to talk to the strikers cause the deaths of those  
 7 people?  
 8 MR NZUZA: I do not know how they were  
 9 killed.  
 10 MR BUDLENDER SC: I think you do know, Mr  
 11 Nzuzza, that's the problem.  
 12 MR NZUZA: Then you can explain how I  
 13 know.  
 14 MR BUDLENDER SC: You know that some of  
 15 the strikers were trying to enforce the strike and that's  
 16 why some of those people lost their lives.  
 17 MR NZUZA: I do not know about that.  
 18 MR BUDLENDER SC: And if Lonmin had  
 19 spoken to the strikers then the strike might have been  
 20 called off then they wouldn't have lost their lives because  
 21 no-one would have enforced the strike.  
 22 MR NZUZA: Yes, if Lonmin had spoken to  
 23 the protestors the strike would have ended.  
 24 MR BUDLENDER SC: And then no-one would  
 25 have tried to enforce the strike. Correct?

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1 MR NZUZA: Yes, and you're also saying  
 2 that –  
 3 MR BUDLENDER SC: And then no-one would  
 4 have been killed.  
 5 MR NZUZA: By whom?  
 6 MR BUDLENDER SC: By the people who were  
 7 enforcing the strike.  
 8 MR NZUZA: I cannot answer that because I  
 9 do not know who the people were enforcing the strike.  
 10 MR BUDLENDER SC: All right let me move  
 11 on. Your counsel also said that Mr Ramaphosa is to be  
 12 blamed for the killings that were carried out by the  
 13 strikers. Do you agree with that?  
 14 MR NZUZA: Yes, but before I speak I want  
 15 to bring to the Commission's attention that they lady is  
 16 laughing, every time I speak she is laughing. I don't know  
 17 what she's laughing at. The lady with the yellow jersey.  
 18 MR BUDLENDER SC: I'm sure she'll  
 19 restrain herself.  
 20 CHAIRPERSON: I didn't notice anybody  
 21 laughing, but if the lady concerned is laughing she must  
 22 please desist from doing so.  
 23 MR BUDLENDER SC: So do you agree that Mr  
 24 Ramaphosa is to be blamed for the killings which took place  
 25 before the 16th of August?

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1 MR NZUZA: Yes, he's the one who did  
 2 that.  
 3 MR BUDLENDER SC: So you say that it's  
 4 Lonmin's fault and it's Mr Ramaphosa's fault that Mr  
 5 Mabebe, Mr Mabelane, Mr Fundi and Mr Langa lost their  
 6 lives.  
 7 MR NZUZA: Yes, it's their fault, Lonmin  
 8 and Mr Ramaphosa.  
 9 MR BUDLENDER SC: But as you're concerned  
 10 none of the strikers can be blamed for those deaths.  
 11 MR NZUZA: I said in my evidence whoever  
 12 could be identified and linked to those killings should be  
 13 blamed.  
 14 MR BUDLENDER SC: I'll come to that in a  
 15 moment. I'm asking you is it correct to say that your  
 16 evidence is that on what you know. Mr Ramaphosa must be  
 17 blamed for the deaths, Lonmin must be blamed for the  
 18 deaths, but there's no blame to be laid at the door of the  
 19 strikers.  
 20 MR NZUZA: People who should do what,  
 21 which people?  
 22 MR BUDLENDER SC: You don't think the  
 23 strikers are in – from what you know you don't think any of  
 24 the strikers – you have no knowledge and no information  
 25 which suggests that any of the strikers are responsible for

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1 any of the deaths.  
 2 MR NZUZA: I said I have no knowledge as  
 3 to who killed those people.  
 4 MR BUDLENDER SC: All right.  
 5 MR MPOFU: Thank you, Chairperson. No I  
 6 was just saying, Chairperson, the witness has asked a  
 7 question, he asked the question which people and I think  
 8 that although Mr Budlender is not obliged to answer the  
 9 question, the point of the matter is that he can't simply  
 10 just refer to the people. Remember that some of the people  
 11 who died were strikers themselves. So when the witness  
 12 says which people I think, even though strictly speaking Mr  
 13 Budlender has no obligation to answer his questions, it  
 14 begs the very point that to put it as some of the people,  
 15 when we are talking about 10 people we include policemen,  
 16 strikers and what have you, it's just –  
 17 CHAIRPERSON: Okay Mr Budlender has been  
 18 asking you about the 10 people that you spoke about whose  
 19 deaths you said were caused by the reluctance of Lonmin to  
 20 speak to the strikers. These 10 people were the following.  
 21 There were two security guards who were killed on the  
 22 Sunday morning, Mr Fundi and Mr Mabelane. There were two  
 23 workers who were killed one on Sunday night, Mr Mabebe and  
 24 one on Monday morning when he was going to work, Mr Langa.  
 25 On the Monday afternoon, the 13th, five people died. Two

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1 policemen and three strikers all flowing from events that  
 2 took place near the railway line and the 10th person who  
 3 died was Mr Twala whose dead body was found behind the  
 4 koppie on the Tuesday afternoon the 14th. Those are the 10  
 5 people that Budlender is asking about.  
 6 MR NZUZA: I did not hear Mr Budlender  
 7 naming them.  
 8 CHAIRPERSON: It's because he didn't name  
 9 them that I named them. Mr Budlender, I think the witness  
 10 will now understand which 10 people you are referring. He  
 11 was referring to also when he spoke earlier in his  
 12 evidence.  
 13 [12:36] MR MPOFU: Chairperson, I'm sorry, that's  
 14 got nothing to do with the objection I was raising. What  
 15 Mr Budlender was saying is whether the witness is  
 16 disputing, I can't remember the exact words, that some of  
 17 the people, in other words some of those 10, might have  
 18 been killed by the strikers. Now, what I was saying, he  
 19 must specify which of those some. I'm not saying what he  
 20 did was –  
 21 CHAIRPERSON: Your point's been taken,  
 22 and Mr Budlender, I am sure, will bear it in mind, when he  
 23 asks his next question.  
 24 MR BUDLENDER SC: No, I actually want to  
 25 move on, Chair. I think it's –

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1 CHAIRPERSON: - this point off quickly.  
 2 MR BUDLENDER SC: Alright, let me ask you  
 3 this, Mr Nzuzza, is it your evidence under oath that as far  
 4 as you're, that from what you know, there is no reason to  
 5 blame any of the strikers for the death of Mr Mabelane, Mr  
 6 Fundi, Mr Langa, Mr Mabebe or Mr Twala?  
 7 MR NZUZA: I said if there is evidence  
 8 indicating the section workers or strikers killed those  
 9 people, then they can be blamed for that.  
 10 MR BUDLENDER SC: Mr Nzuzza, let me just  
 11 stay with those five people for the moment. Mr Mabelane,  
 12 Mr Fundi, Mr Langa, Mr Mabebe and Mr Twala. You were the  
 13 second in charge at the koppie, is that correct?  
 14 MR NZUZA: Ja.  
 15 MR MAHLANGU: The first in charge was Mr  
 16 Noki who was killed on the 16 of August. Correct?  
 17 MR NZUZA: Yes.  
 18 MR BUDLENDER SC: So you are the most  
 19 senior survivor, is that correct?  
 20 MR NZUZA: I cannot answer that.  
 21 MR BUDLENDER SC: The first person in  
 22 charge was killed, and you were number 2 in charge, so  
 23 you're the most senior survivor.  
 24 MR NZUZA: At what stage now?  
 25 MR BUDLENDER SC: You, today, are the

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1 most senior survivor of the leadership of the strikers.  
 2 MR NZUZA: Yes.  
 3 MR BUDLENDER SC: Now, I want you to  
 4 think again about Mr Mabelane, Mr Fundi, Mr Langa, Mr  
 5 Mabebe, and Mr Twala, and about their family members who  
 6 lost their loved ones during that week. Are you willing,  
 7 even at this late stage, to apologise to them for the  
 8 deaths of their loved ones?  
 9 MR NZUZA: Can you repeat the question  
 10 please?  
 11 MR BUDLENDER SC: Thinking of those five  
 12 people who lost their loved ones during that week, you are  
 13 the most senior survivor of the strikers, are you willing  
 14 to apologise to them for the deaths of their loved ones?  
 15 MR NZUZA: Apologise for what? What  
 16 shall I have done in order to apologise?  
 17 MR BUDLENDER SC: Mr Nzuzza, people have  
 18 come here and have made apologies for the events of that  
 19 week in which they were involved.  
 20 MR MPOFU: Sorry, Chairperson, which  
 21 people are these?  
 22 MR BUDLENDER SC: There's a string of  
 23 people, Chairman.  
 24 MR MPOFU: I don't remember anyone –  
 25 MR BUDLENDER SC: If you don't remember

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1 it – Chair - questions.  
 2 MR MPOFU: No, no, Chairperson, with the  
 3 greatest respect, you can't make statements, if they can't  
 4 be substantiated. If there are those people, it must be  
 5 said. It's not Mr Mpofu, it's Mr Budlender who made that  
 6 claim.  
 7 MR BUDLENDER SC: Can I withdraw that in  
 8 order to save time, because I actually would like to finish  
 9 my cross-examination. Mr Nzuzza, I'm asking you a simple  
 10 question, and you can answer either yes or you can answer  
 11 no, or you can give a qualified answer, but you can't ask  
 12 another question in your answer to my question. You are  
 13 the most senior survivor of the leadership of the strikers.  
 14 I want you to think of the families of Mr Mabelane, Mr  
 15 Fundi, Mr Langa, Mr Mabebe, and Mr Twala. And I ask you  
 16 again are you willing to apologise to them for the loss of  
 17 their loved ones?  
 18 MR NZUZA: On what grounds should I  
 19 apologise?  
 20 MR BUDLENDER SC: Does that mean no? I'm  
 21 just asking you whether you're willing to apologise, yes or  
 22 no?  
 23 MR NZUZA: I did not say so, apparently  
 24 did not say no, all I want to know is why? On what grounds  
 25 should I apologise?

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1 MR BUDLENDER SC: It's for you to search  
 2 your conscience, Mr Nzuzza. All I'm asking you is, are you  
 3 willing to apologise to them, yes or no?  
 4 MR NZUZA: But before I apologise, I need  
 5 to know what I've done wrong.  
 6 MR MAHLANGU: Mr Nzuzza, it's for you to  
 7 search your conscience and think about whether you have  
 8 anything which you ought to apologise for? All I'm asking  
 9 you is, are you willing to apologise to them, yes or no?  
 10 Answer the question please.  
 11 MR NZUZA: In order to answer that  
 12 question, I asked you on what grounds should I apologise.  
 13 If you give me a reason, then I'll know if I can apologise  
 14 or not.  
 15 MR BUDLENDER SC: Are you saying you are  
 16 not aware of any reason why you should apologise to them?  
 17 MR NZUZA: Like what?  
 18 MR BUDLENDER SC: I'm asking you are you  
 19 aware of any reason why you should apologise to the  
 20 families, yes or no?  
 21 MR NZUZA: I'm not going to answer that  
 22 question.  
 23 MR BUDLENDER SC: No, I'm going to insist  
 24 that you answer it. Are you aware of any reason why you  
 25 should apologise to them?



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1 MR NZUZA: Can you please explain to me  
 2 the reason why I should be apologising?  
 3 CHAIRPERSON: No, he's not putting a  
 4 reason to you, he's asking you a different question. He's  
 5 saying do you, as you sit there, know of any reason why you  
 6 should apologise? If the answer is you don't know of any  
 7 reason, then you can say so.  
 8 MR NZUZA: What reason?  
 9 CHAIRPERSON: I told you he's not  
 10 suggesting a reason to you, he's asking you whether you  
 11 yourself, as you sit there, know of any reason? So, if you  
 12 don't know of any reason, you can say so.  
 13 MR NZUZA: But one apologises for  
 14 something that they know.  
 15 CHAIRPERSON: If you don't know, then you  
 16 don't have to apologise, do you? That's why he asked you  
 17 do you know of any reason why you should apologise?  
 18 MR NZUZA: But I'm told or asked to  
 19 apologise for their deaths. I do not know how they died,  
 20 how can I apologise?  
 21 MR BUDLENDER SC: Mr Nzuzza, I'm not  
 22 asking you to apologise for their deaths. I'm asking you  
 23 whether you know of any reason, you know of any reason why  
 24 you should apologise?  
 25 MR NZUZA: I said I have no knowledge of

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1 how they died, but I said also earlier on today that if  
 2 there is anyone who can be linked to the deaths of the  
 3 security people and all the other people who died, those  
 4 people should be arrested.  
 5 MR BUDLENDER SC: Yes, well, let's move  
 6 on to that. So you agree that the people who carried out  
 7 the killings of the security guards, the Lonmin workers and  
 8 the police should be prosecuted, and if they are convicted,  
 9 they must go to jail?  
 10 MR NZUZA: Yes.  
 11 MR BUDLENDER SC: Do you feel very  
 12 strongly about that?  
 13 MR NZUZA: Yes.  
 14 MR BUDLENDER SC: People who do things  
 15 like that are criminals?  
 16 MR NZUZA: Yes.  
 17 MR BUDLENDER SC: What have you done to  
 18 assist the police to catch those criminals?  
 19 MR MPOFU: Chairperson, again, I would  
 20 have expected you, as you always do, to make it clear that  
 21 this witness is a lay person. He cannot be expected to  
 22 distinguish between people who have already been convicted  
 23 and those who are being accused and those who are already  
 24 criminals or such facts and all those kinds of things. So  
 25 to use this kind of terms liberally, as you have said to

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1 us, when we use attempted murder and so on, would, I  
 2 suggest, need you intervention, Chairperson.  
 3 CHAIRPERSON: The question can be  
 4 reformulated as follows, have you done anything to assist  
 5 the police to identify and to, if they are identified, to  
 6 arrest the people who were responsible for those deaths?  
 7 MR NZUZA: I did not get the question.  
 8 CHAIRPERSON: Have you done anything to  
 9 help the police to identify the people who were responsible  
 10 for those deaths, and if they are identified, to arrest  
 11 them?  
 12 MR NZUZA: There's nothing I could have  
 13 done, when I did not know who killed them.  
 14 MR BUDLENDER SC: Are you willing to  
 15 speak to your co-strikers and say to them that those who  
 16 know about who did the killings should come forward and  
 17 give evidence to the police?  
 18 MR NZUZA: I did not get the question.  
 19 MR BUDLENDER SC: It took you a long time  
 20 to work out that you didn't know what the question was, but  
 21 let me ask you again.  
 22 MR MPOFU: Chairperson, I'm sorry, once  
 23 again, whenever we make comments after questions, you will  
 24 reprimand us. I think that rule should apply to everybody  
 25 in this room, there should favouritism when that rule

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1 applies.  
 2 CHAIRPERSON: There's no favouritism  
 3 intended. It depends on the nature of your comment. I  
 4 reminded myself to put on record that there was quite an  
 5 appreciable delay before that answer was given. Mr  
 6 Budlender gave it, made it unnecessary for me to do it. Mr  
 7 Budlender, please don't make comments like that in future,  
 8 rely on me to put matters of that kind on record.  
 9 MR BUDLENDER SC: Chair, just no, it's  
 10 not a gratuitous comment, it's a comment so that's on the  
 11 record, so that it's recorded what happened.  
 12 CHAIRPERSON: I had intended to say, as I  
 13 sometimes do, we're waiting for your answer. I note there  
 14 is delay in answering it, that kind of thing. Mr Mpofo is  
 15 right, strictly speaking I should do it not you, but anyway  
 16 let's carry on.  
 17 MR BUDLENDER SC: Mr Nzuzza, are you  
 18 willing to speak to your co-strikers and urge them that if  
 19 they have any information about who killed these people,  
 20 they should give it to the police?  
 21 MR NZUZA: That is not my duty.  
 22 MR BUDLENDER SC: You want them to be  
 23 arrested and prosecuted, but you don't want to do anything  
 24 to ensure that they are arrested and prosecuted?  
 25 MR NZUZA: Because it is not my duty.

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1 MR MAHLANGU: You are the senior  
 2 surviving person from the striker's committee, from the  
 3 leadership of the strikers, do you not accept that you have  
 4 some responsibilities flowing from that?  
 5 MR NZUZA: Responsibilities like?  
 6 MR BUDLENDER SC: Responsibility like  
 7 leading your followers.  
 8 MR NZUZA: That is not my duty, I don't  
 9 have followers right now.  
 10 MR BUDLENDER SC: Do you think that the  
 11 killing of those people was wrong? I'm just talking now  
 12 about the five people for the moment, five people whose  
 13 names I've mentioned. Do you think the killing of – from  
 14 what you've heard, was the killing wrong?  
 15 MR NZUZA: I cannot answer that question,  
 16 because it hurts me when you segregate against people.  
 17 MR BUDLENDER SC: You said that you  
 18 wanted - your evidence this morning was, I would be happy  
 19 if the people who killed the security were arrested, that  
 20 was what you said. Those are your words.  
 21 MR NZUZA: Yes, and I included everybody  
 22 who died on the mountain during the strike, I did not  
 23 choose certain and leave others.  
 24 MR BUDLENDER SC: Would you be happy if  
 25 the people who killed the securities were arrested?

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1 MR NZUZA: Yes, I said so.  
 2 MR BUDLENDER SC: What are you prepared  
 3 to do to assist the police to do that, so that you'll then  
 4 be happy?  
 5 MR NZUZA: That is not my part to work  
 6 with the police.  
 7 MR BUDLENDER SC: You don't think, as a  
 8 citizen, you've got a duty to assist the police to arrest  
 9 and prosecute people who carried out murder?  
 10 MR NZUZA: No, that is not my  
 11 responsibility.  
 12 MR BUDLENDER SC: Can I summarise your  
 13 evidence as follows, you say that the killings – let's just  
 14 stick with the security guards. The killings of the  
 15 security guards were the fault of Lonmin?  
 16 MR NZUZA: Yes.  
 17 MR BUDLENDER SC: The killings of the  
 18 security guards were also the fault of Mr Ramaphosa?  
 19 MR NZUZA: Yes.  
 20 MR BUDLENDER SC: The killing of the  
 21 security guards was wrong and the people who did it should  
 22 be arrested and prosecuted?  
 23 MR NZUZA: Yes, they should be arrested.  
 24 MR BUDLENDER SC: But you are not  
 25 prepared to do anything to assist to make that happen.

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1 [12:55] MR NZUZA: Because that is not my duty to  
 2 investigate.  
 3 MR BUDLENDER SC: And you've been unable  
 4 after many questions to think of any reason why you've got  
 5 something to apologise for?  
 6 MR NZUZA: I won't apologise for  
 7 something I do not know who the author of is who did the  
 8 wrong. I can't apologise for a wrong that's done by  
 9 someone I do not know.  
 10 MR BUDLENDER SC: And you also say that  
 11 if Lonmin had spoken to the strikers those security guards  
 12 would not have been killed.  
 13 MR NZUZA: Yes, I'm saying so.  
 14 MR BUDLENDER SC: But you're not willing  
 15 to accept that the strikers are in any way responsible for  
 16 the deaths of those people, it's Lonmin and Mr Ramaphosa  
 17 who must be blamed?  
 18 MR NZUZA: I said I do not know about  
 19 that aspect that the protesters committed the murders.  
 20 MR BUDLENDER SC: I have no further  
 21 questions –  
 22 MR NZUZA: I do not know about that.  
 23 MR BUDLENDER SC: Thank you, Chair, I  
 24 have no further questions.  
 25 CHAIRPERSON: Thank you, Mr Budlender.

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1 It's now 1 o'clock. The next cross-examiner is going to be  
 2 Mr Semenya, but I take it he'd like to start after the  
 3 lunch adjournment. I said we'd take lunch until half past  
 4 1, so that's one of the ways we created extra time for Mr  
 5 Mpfu, so we'll adjourn now till half past 1.  
 6 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 7 [13:33] CHAIRPERSON: The Commission resumes.  
 8 Please remind the witness he's still under oath. Mr  
 9 Semenya.  
 10 XOLANI NZUZA: [s.u.o. through  
 11 interpreter]  
 12 MR MAHLANGU: Confirmed, Chairperson.  
 13 CROSS-EXAMINATION BY MR SEMENYA SC:  
 14 Thank you, Chair. Mr Nzuza, August 2012 you were a winch  
 15 operator, am I right?  
 16 MR NZUZA: Yes, Sir.  
 17 MR SEMENYA SC: You were not an RDO,  
 18 correct?  
 19 MR NZUZA: I was not, Sir.  
 20 MR SEMENYA SC: There was no problem  
 21 relating to the working conditions of winch operators,  
 22 right?  
 23 MR NZUZA: The question is?  
 24 MR SEMENYA SC: There were no issues  
 25 around the working conditions of winch operators?

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1 MR NZUZA: The question is not clear with  
 2 me. Like what for instance, what issues?  
 3 MR SEMENYA SC: Every and all, there were  
 4 no problems relating to the working conditions of winch  
 5 operators?  
 6 MR NZUZA: The question is not very clear  
 7 to me, Sir. I don't know what is intended to be conveyed  
 8 here.  
 9 MR SEMENYA SC: There was nothing winch  
 10 operators wanted to discuss with the employer.  
 11 MR NZUZA: When, Sir?  
 12 MR SEMENYA SC: When they were on the  
 13 mountain.  
 14 MR NZUZA: Lonmin had all the workers,  
 15 were not selecting which workers were there.  
 16 MR SEMENYA SC: I'll try again. The  
 17 strikers on the koppie where you were did not want to  
 18 discuss with the employer anything relating to winch  
 19 operators?  
 20 MR NZUZA: What I'm saying, Sir, is that  
 21 people who had gathered there were all workers. We were  
 22 not selecting winch operators or what grade of person.  
 23 MR SEMENYA SC: 12 500 was for the RDOs,  
 24 correct?  
 25 MR NZUZA: When, Sir?

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1 MR SEMENYA SC: 12 500 that was demanded  
 2 by the strikers was for RDOs. Am I right?  
 3 MR NZUZA: It was a demand of all the  
 4 workers.  
 5 MR SEMENYA SC: All of them?  
 6 MR NZUZA: All those who worked  
 7 underground.  
 8 MR SEMENYA SC: You're the first person  
 9 to say so after two years. You know that? So all  
 10 categories of underground workers wanted 12 500?  
 11 MR NZUZA: Those of us who worked hard  
 12 underground, not the officials.  
 13 MR SEMENYA SC: All of you?  
 14 MR NZUZA: Yes.  
 15 MR SEMENYA SC: Okay. You know I  
 16 listened to your evidence, Mr Nzuzza. On the 10th you were  
 17 on your way to work.  
 18 MR NZUZA: Yes.  
 19 MR SEMENYA SC: And you were confronted  
 20 by a group of strikers. Am I right?  
 21 MR NZUZA: I said I came across people  
 22 and I'm not speaking of, I didn't speak of strikers.  
 23 MR SEMENYA SC: You meet a group of  
 24 people.  
 25 MR NZUZA: That's correct, Sir.

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1 MR SEMENYA SC: They ask you where you're  
 2 going and you tell them you're going to work.  
 3 MR NZUZA: Yes.  
 4 MR SEMENYA SC: And they stone you.  
 5 MR NZUZA: Those who were asking me where  
 6 I was going to did not do so. I said to them I was going  
 7 to work. It's not the people who asked me where I was  
 8 going to who stoned me.  
 9 MR SEMENYA SC: You get stoned.  
 10 MR NZUZA: This was in the forest, yes.  
 11 I just felt the stones being thrown.  
 12 MR SEMENYA SC: So that you don't go to  
 13 work.  
 14 MR NZUZA: I did not go to work.  
 15 MR SEMENYA SC: You are being stoned to  
 16 stop you from going to work.  
 17 MR NZUZA: That I don't know.  
 18 CHAIRPERSON: What time did you try to go  
 19 to work on the Friday night?  
 20 MR NZUZA: It was in the region of about  
 21 past 9 the evening.  
 22 CHAIRPERSON: What time was your shift  
 23 going to start?  
 24 MR NZUZA: 10.  
 25 CHAIRPERSON: I see.

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1 MR SEMENYA SC: As a result of being  
 2 stoned you decided not to go to work.  
 3 MR NZUZA: I did not go, Sir.  
 4 MR SEMENYA SC: I know you didn't. Did  
 5 you make a decision as a consequence of being stoned?  
 6 MR NZUZA: Yes.  
 7 MR SEMENYA SC: Had you not been stoned  
 8 you would have merrily proceeded to work?  
 9 MR NZUZA: Yes.  
 10 MR SEMENYA SC: So you say you don't know  
 11 anybody who was threatened for going to work?  
 12 MR NZUZA: That's right.  
 13 MR SEMENYA SC: Not even you?  
 14 MR NZUZA: I was not threatened.  
 15 MR SEMENYA SC: Even with the stones?  
 16 MR NZUZA: No, that was not threatening.  
 17 If a person threatens you he comes straight to you and  
 18 tells you what it is.  
 19 MR SEMENYA SC: So it would have been  
 20 okay for those who were on the koppie to just throw stones  
 21 and not come straight to you?  
 22 MR NZUZA: Which people?  
 23 MR SEMENYA SC: On the koppie, the people  
 24 you were with on the koppie.  
 25 MR NZUZA: That I don't know, Sir.

<p style="text-align: right;">Page 35866</p> <p>1 MR SEMENYA SC: You found it acceptable 2 that you were stoned on your way to work? 3 MR NZUZA: That place is some forest, 4 Sir. One doesn't know whether these were just tsotsis or 5 crooks. 6 MR SEMENYA SC: Sorry? 7 MR NZUZA: That place is a forest. One 8 did not know whether these were tsotsis or just crooks. 9 MR SEMENYA SC: Oh, the tsotsis are the 10 ones who stoned you whilst you were on your way to work? 11 MR NZUZA: I am not saying that. 12 MR SEMENYA SC: What are you saying? 13 MR NZUZA: What is the question, Sir? 14 MR SEMENYA SC: The interpreter will give 15 it to you again. 16 MR NZUZA: I don't understand that 17 question. 18 MR SEMENYA SC: You don't hear the 19 question or you don't understand it? 20 MR NZUZA: You asked the question, Sir, 21 so I want to hear from you what it is that you are asking 22 me. 23 MR SEMENYA SC: The tsotsis were throwing 24 stones at you, right? 25 MR NZUZA: I am saying I don't know</p>	<p style="text-align: right;">Page 35868</p> <p>1 that. 2 MR SEMENYA SC: Oh, so I see. That is 3 how truthful, and as such truthful as you can get, Mr 4 Nzuza. Am I right? 5 MR NZUZA: Like saying what? 6 MR SEMENYA SC: That you have never 7 described yourself as second-in-charge. 8 MR NZUZA: Not myself. 9 MR SEMENYA SC: Can we look at PPPP1, 10 which is your supplementary statement. 11 CHAIRPERSON: I take it, it's PPPP1.1 12 that you're referring to? 13 MR SEMENYA SC: Yes. Can we go to page 6 14 of that document? Is that signature recognisable to you? 15 MR NZUZA: Yes. 16 MR SEMENYA SC: You signed that statement 17 because its contents is correct? 18 MR NZUZA: Yes. 19 MR SEMENYA SC: Having discussed it with 20 your legal team, am I right? 21 MR NZUZA: Yes, Sir. 22 MR SEMENYA SC: And intending to tell the 23 complete truth around the issues contained in that 24 document? 25 MR NZUZA: That's right.</p>
<p style="text-align: right;">Page 35867</p> <p>1 whether these were tsotsis or what. I did not say these 2 were directly tsotsis. 3 MR SEMENYA SC: People who could have 4 been tsotsis were throwing stones at you? 5 MR NZUZA: Yes, Sir. 6 MR SEMENYA SC: Now I'm correct, Mr 7 Nzuza, am I not, that despite being a winch operator you 8 became the leader of the people who were striking for the 9 increase of the salary of RDOs? 10 MR NZUZA: I wasn't the leader. 11 MR SEMENYA SC: Okay, let's call it 12 second-in-command. I know you called yourself a leader, 13 but second-in-command? 14 MR NZUZA: I wasn't a commander. 15 MR SEMENYA SC: Second-in-charge? 16 MR NZUZA: According to what is being 17 said in the Commission, yes. 18 MR SEMENYA SC: Not according to what you 19 tell the Commission? 20 MR NZUZA: I found that to be the case in 21 the Commission. 22 MR SEMENYA SC: You have never described 23 yourself as a second-in-charge? 24 MR NZUZA: I did not refer to myself as 25 such. I heard it in the Commission when Mr X mentioned</p>	<p style="text-align: right;">Page 35869</p> <p>1 MR SEMENYA SC: And under oath you say 2 you confirm this is a correct statement of yours? 3 MR NZUZA: The question is? 4 MR SEMENYA SC: And under oath you 5 confirmed this is a true account of things as you know 6 them? 7 MR NZUZA: I did, Sir. 8 MR SEMENYA SC: Can I invite you to look 9 at paragraph 2 of that statement? It opens, "It is true 10 that I was the de facto 'second-in-charge,' with Mr Noki 11 being de facto overall and most visible leader of the 12 striking group." 13 MR NZUZA: As you can see this is an 14 addition to my statement, it's supplementary. It's things 15 that I'd heard being said in this Commission that I added 16 to the statement. 17 MR SEMENYA SC: I don't know what you're 18 responding to, but you call yourself second-in-charge, that 19 it is true. 20 MR MPOFU: Chairperson – 21 MR NZUZA: This is what is being said in 22 the Commission. 23 MR MPOFU: Yes, Chairperson, I think in 24 fairness Mr Semenya must indicate that what he's quoting is 25 put in inverted commas, which must suggest something, the</p>

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1 only thing in that whole statement that's put in inverted  
 2 commas, and that's why the witness is saying that that's  
 3 what was being said.  
 4 MR SEMENYA SC: Chair, what is in  
 5 inverted commas, the witness tells us it's true.  
 6 MR MPOFU: No, but he also tells us that  
 7 he, where it comes from. That explains the inverted  
 8 commas. That's the only point I'm making.  
 9 CHAIRPERSON: Let me ask a question. Are  
 10 you saying you weren't really the second-in-charge, it's  
 11 only something you heard here at the Commission? Is that  
 12 what you're saying?  
 13 MR NZUZA: Yes.  
 14 CHAIRPERSON: Well then how do you  
 15 explain what's contained in the rest of that paragraph;  
 16 "These positions," that's the position of -  
 17 MR MPOFU: Also in inverted commas.  
 18 CHAIRPERSON: I know, Mr Mpofu. "These  
 19 positions" - that's referring to your position as de facto  
 20 "second-in-charge" and Mr Noki being de facto overall and  
 21 most visible leader of the striking group - "These  
 22 positions' were never formally declared, but it is simply  
 23 how things turned out. As such I would have been aware of  
 24 any major decisions taken by the strikers or the  
 25 leadership." And then you go on in paragraph 3 to say

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1 this, "I wish to make it clear that my leadership role at  
 2 the koppie happened purely by default and coincidence," and  
 3 then you go on to say certain other things in paragraph 3.  
 4 MR MPOFU: I think you should read on,  
 5 Chairperson, from where you left off.  
 6 CHAIRPERSON: Alright. Well, I'll read  
 7 on. This is poor Mr Semenya's cross-examination time.  
 8 "I've never held any leadership position in any union or  
 9 workers' activities," and you go on to talk about your  
 10 being a soccer coach, Mr Noki being one of your players and  
 11 you go on, "In view of this Mambush (Mr Noki) firstly asked  
 12 me to assist in bringing the inyanga when requests to that  
 13 effect were made, following the 11 August attack by NUM  
 14 members on the strikers. Next and on 13 August 2012 when  
 15 the group was asked to go to K3 Mr Noki asked me to join  
 16 the group. After the police attack of that day I found Mr  
 17 Noki giving a report back at the koppie and I also gave a  
 18 further report on the injured people. I can safely say  
 19 that it was only at that point that I received any  
 20 recognition from the crowd. When on 14 August the SAPS  
 21 negotiators asked for five representatives it was the first  
 22 time that I was formally nominated into a semi-formal role,  
 23 which I assumed until the day of the massacre and  
 24 thereafter." In the light of that how can you say that it  
 25 was only at the Commission that you heard that you were in

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1 this de factor second in charge position?  
 2 [13:53] MR NZUZA: The question is not very clear  
 3 to me, Sir.  
 4 CHAIRPERSON: I beg your pardon? I  
 5 directed a question to you. I read your statement to you.  
 6 I asked you how you could say in the light of what was in  
 7 the statement that it was only at this Commission that you  
 8 heard that you were de facto -  
 9 MR MPOFU: Mr Chairperson, with the  
 10 greatest respect I don't, I mean if I was the witness I  
 11 would be more bemused by this. The statement, all I was  
 12 saying is that the mere fact that the scene was put in  
 13 inverted commas and that's why I asked you to read on, that  
 14 is the context in which he explains this so-called position  
 15 as he puts it. He is saying it was not the formal  
 16 position, he heard it in the Commission and how it  
 17 happened, he was playing soccer with somebody and so on.  
 18 That's all. I do not know where the puzzlement comes from.  
 19 CHAIRPERSON: It wasn't the question I  
 20 asked but anyway.  
 21 MR MPOFU: Well you, you know your  
 22 question implies that what you read says the opposite of  
 23 what it says. What you read says he was not, he never had  
 24 a formal position, he never led any union or workers  
 25 activities.

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1 CHAIRPERSON: Mr Mpofu, are you answering  
 2 the question on behalf of the witness?  
 3 MR MPOFU: No, I'm not. Well, how can I  
 4 answer on behalf of the witness when the witness doesn't  
 5 know what the question is. I'm saying that the, what you  
 6 have read implies the exact opposite of what you are  
 7 putting to the witness. If the statement says in so many  
 8 words in black and white I was never a leader in the  
 9 workers activities then how can you imply that it means the  
 10 opposite.  
 11 CHAIRPERSON: Mr Mpofu, you're not  
 12 strengthening the credibility of your witness by making  
 13 these interventions.  
 14 MR MPOFU: No -  
 15 CHAIRPERSON: I put him a question, I  
 16 asked him to explain something. Whether something was  
 17 implied in that, is neither here nor there, I asked him to  
 18 explain what he said in his statement. If you object to my  
 19 giving him an opportunity to explain well then I won't  
 20 proceed with the point.  
 21 MR MPOFU: Chairperson, no. No,  
 22 Chairperson, with respect all I'm saying is that your  
 23 question is prefaced by the words in the light of what I've  
 24 read to you. All I'm saying is that that logical  
 25 connection that you are drawing is illogical, if I may.

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1 CHAIRPERSON: That's not a valid or a  
 2 logical objection. I put to the witness what he said in  
 3 his statement and I said in light of that now can you  
 4 explain something, he's got to say in the light of that I  
 5 do explain it or what you're suggesting isn't correct. He  
 6 can give whatever answer he likes. It not appropriate for  
 7 you to suggest answers to him - what you were doing.  
 8 MR MPOFU: No, Chairperson.  
 9 CHAIRPERSON: I've withdrawn the  
 10 question.  
 11 MR MPOFU: No, Chairperson.  
 12 CHAIRPERSON: I have withdrawn the  
 13 question.  
 14 MR MPOFU: Chairperson, this kind of  
 15 remarks you know stay on the record. What am I doing to  
 16 suggest an answer.  
 17 CHAIRPERSON: Well you –  
 18 MR MPOFU: I'm simply saying to you, I'm  
 19 not talking to the witness that the logical conclusion you  
 20 are drawing is illogical because what you have read implies  
 21 the exact opposite. What answer am I sponsoring, you can't  
 22 make that kind of remark about me as a professional,  
 23 literally.  
 24 CHAIRPERSON: There are a number of  
 25 different points here.

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1 MR MPOFU: And I would like that remark  
 2 to be withdrawn.  
 3 CHAIRPERSON: Everything is on record. I  
 4 withdraw nothing. The –  
 5 MR MPOFU: Well –  
 6 CHAIRPERSON: I do say what you suggested  
 7 amounted to suggesting answers to the witness. I also say  
 8 that there was no illogicality in my question. I put a  
 9 passage in his statement to him. I said in the light of  
 10 that –  
 11 MR MPOFU: Ja but –  
 12 CHAIRPERSON: - give whatever answer he  
 13 wish.  
 14 MR MPOFU: Shut up.  
 15 CHAIRPERSON: I beg your pardon.  
 16 MR MPOFU: - with me.  
 17 MR BUDLENDER SC: Chairperson, what I  
 18 said to my colleague is don't interrupt you.  
 19 MR MPOFU: Ja but don't –  
 20 MR BUDLENDER SC: Don't interrupt –  
 21 MR MPOFU: I'm busy talking. You are  
 22 interrupting me.  
 23 MR BUDLENDER SC: Chairperson, may I have  
 24 a chance to speak. You were speaking and my learned  
 25 friend's interrupted you for the umpteenth time and I

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1 turned to him and said don't interrupt him.  
 2 MR MPOFU: Ja.  
 3 MR BUDLENDER SC: He then said to me shut  
 4 up.  
 5 MR MPOFU: So you solved that problem by  
 6 interrupting me. Chairperson the point –  
 7 CHAIRPERSON: I -  
 8 MR MPOFU: I was making –  
 9 CHAIRPERSON: I've withdrawn the  
 10 question. Mr Semenya, you can carry on.  
 11 MR SEMENYA SC: Mr Wesley, I think will  
 12 accommodate me down the line. You heard Mr X call you  
 13 second in charge?  
 14 MR NZUZA: Yes, he said so.  
 15 MR SEMENYA SC: And you say you agree  
 16 with that definition that as a matter of fact you were  
 17 second in charge?  
 18 MR NZUZA: I see counsel laughing at me,  
 19 it seems as if he's making a joke and I'm not going to  
 20 respond to that question.  
 21 MR SEMENYA SC: I'll ask the question  
 22 again. You agree with Mr X that as a matter of a fact you  
 23 were second in charge?  
 24 MR NZUZA: I am unable to answer the  
 25 question, chairperson, because I'm being looked on as a

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1 fool by senior counsel who asked a question and then laughs  
 2 at me.  
 3 MR SEMENYA SC: I disabuse your mind. I  
 4 don't think you are a fool. I actually think you are a  
 5 very smart person. Now can I go back and ask the question.  
 6 The way X describes you as second in charge. You say as a  
 7 matter of fact that its true?  
 8 MR NZUZA: I do not agree with  
 9 Nkosinathi.  
 10 MR SEMENYA SC: When he says you're  
 11 second in charge?  
 12 CHAIRPERSON: Start it again please.  
 13 That's to be, that's to be, the answer is too excised from  
 14 the record and the media are reminded that the ruling I  
 15 gave at the beginning, that nothing is to published which  
 16 indicates [inaudible] still stands.  
 17 MR SEMENYA SC: In your own words when Mr  
 18 X describes you as second in charge you say it is factually  
 19 true?  
 20 MR NZUZA: Again, Sir, as I say counsel  
 21 was laughing at me, I don't think I should answer this  
 22 question.  
 23 MR SEMENYA SC: Are you unwilling to  
 24 answer it or unable to answer it?  
 25 MR NZUZA: I am saying I'm not responding

<p style="text-align: right;">Page 35878</p> <p>1 to this question because when you asked that question you 2 were laughing at me, showing that you are not serious about 3 it. 4 MR SEMENYA SC: Okay, unwilling. 5 CHAIRPERSON: That's not a good reason 6 for refusing to answer the question. If counsel asks a 7 question and I don't withdraw the question you must answer 8 it. 9 MR NZUZA: I'm saying, Mr Chairperson, I 10 can't respond to the question because counsel laughs at me 11 when I answer it. 12 CHAIRPERSON: I say to you that the 13 question was asked with my approval and you must answer it. 14 MR MPOFU: Chairperson, are you really 15 not going to address the complaints of the witness about 16 the laughing on such a serious occasion. 17 CHAIRPERSON: I didn't see Mr Semenya 18 laughing. 19 MR MPOFU: Well I suppose if you didn't 20 see it, does it mean it did not happen, Chairperson, 21 because the witness said it happened, you could simply ask 22 Mr Semenya, he's still here with us. 23 CHAIRPERSON: Alright. Mr Semenya did 24 you laugh? 25 MR MPOFU: And I saw him.</p>	<p style="text-align: right;">Page 35880</p> <p>1 charge and the many answers to those questions you gave 2 earlier in the day, you're accepting as a matter of fact 3 that you were second in charge? 4 MR NZUZA: How did I accept it? 5 MR SEMENYA SC: Is that your best answer 6 to that question? 7 MR NZUZA: No, I just want to know what 8 is it that I accepted? 9 MR SEMENYA SC: To the many questions Mr 10 Budlender put to you as second charge and to all the 11 responses you gave to those questions. You were accepting 12 were you not that you were second in charge? 13 MR NZUZA: To which things did I, which 14 questions that he put to me did I accept it? 15 MR SEMENYA SC: Alright. Let's move on. 16 Can we now look at HHH21. The copy I have is unsigned but 17 you have just confirmed under oath that this is your 18 statement, correct? 19 MR NZUZA: If it is not signed by me then 20 it might not be mine. 21 MR SEMENYA SC: Shall we have the one 22 HHH21, I have now a signed one. Can you go to page 8 of 23 that document. 24 CHAIRPERSON: When you gave your 25 evidence-in-chief you were being led by Mr Mpofo, did you</p>
<p style="text-align: right;">Page 35879</p> <p>1 MR SEMENYA SC: Chair, I was smiling, 2 talking to Ms Baloyi, it has nothing to do with this 3 witness. But in any event whatever you think I was 4 laughing is withdrawn, is retracted. I have no such 5 intention. Can I now invite you to perhaps answer the 6 question. 7 CHAIRPERSON: Perhaps repeat the question 8 without a smile. Let's see what answer we get. 9 MR SEMENYA SC: Where Mr Noki describes 10 your role as second in charge would you say in your own 11 words, when Mr X describes you as second in charge you say 12 as a matter of fact it is true, you were that. 13 MR NZUZA: No, that's not true. That is 14 what was said to me by you. 15 MR SEMENYA SC: So where, sorry? 16 MR NZUZA: That was what was put to me by 17 yourself, Counsel. 18 MR SEMENYA SC: So where your statement 19 which you confirm under oath to be correct statement helped 20 and drafted by your legal team, you say I won't find that 21 type of assertion in it? 22 MR NZUZA: You will find that. 23 MR SEMENYA SC: That sounds correct. Can 24 I invite you to look at HHH21. Just before we do though. 25 To many questions that Mr Budlender put to you as second in</p>	<p style="text-align: right;">Page 35881</p> <p>1 not confirm the statement as being correct? 2 MS PILLAY: Chairperson, just to indicate 3 that I was this morning given a copy of a signed version of 4 HHH21. So the evidence leaders do have that in their 5 possession. 6 MR MPOFU: Chairperson, also the 7 Commissioners would have been given that, if you remember 8 on, whenever the last day was, I had said that we had 9 omitted - 10 CHAIRPERSON: You've got a signed - 11 MR MPOFU: Yes, Chairperson. 12 CHAIRPERSON: What is the date of the 13 signed statement, is the date with the signature on or was 14 it just signed? 15 MS PILLAY: The one, the one we have, 16 Chairperson, is dated the 25th of August 2013. 17 CHAIRPERSON: Thank you. 18 MR MPOFU: 2014, Chairperson, sorry it's 19 my mistake, if everyone can just change it to - 20 CHAIRPERSON: Okay. 21 MR MPOFU: It was just signed on - 22 CHAIRPERSON: The point is it was signed. 23 MR MPOFU: On the day - 24 CHAIRPERSON: Relatively recently within 25 a period that he can still remember.</p>

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1 MR MPOFU: On Monday, yes.  
 2 MR SEMENYA SC: I'm interested in exhibit  
 3 HHH21 which is your statement, am I right?  
 4 MR NZUZA: Yes.  
 5 MR SEMENYA SC: And you intended writing  
 6 on that document again the truth as you knew it?  
 7 MR NZUZA: What is the question again,  
 8 Sir?  
 9 MR SEMENYA SC: Do me the favour, Mr  
 10 Interpreter, repeat it for him.  
 11 MR NZUZA: I do not understand that  
 12 question.  
 13 MR SEMENYA SC: And we must take it  
 14 serious, Mr Nzuzza, that you don't understand that question?  
 15 That you intended telling the truth when you wrote the  
 16 statement?  
 17 MR NZUZA: That is correct.  
 18 MR SEMENYA SC: Why did you write the  
 19 statement if you did not know that it is a statement you  
 20 write with an intention of telling the truth about the  
 21 accounts in the statements?  
 22 MR MPOFU: Chairperson, I don't know  
 23 where that comes from. The witness has just said he wrote  
 24 the statement with an intention to tell the truth. How can  
 25 he ask him the opposite. What kind of question is that?

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1 CHAIRPERSON: Mr Semenya?  
 2 MR SEMENYA SC: Mr Chairman, I intend to  
 3 put questions to this witness which are as wrong as they  
 4 can get and the witness has a right in answer to tell me  
 5 totally wrong. It's not a ground for an objection. Even  
 6 if I can tell him today is Saturday if the witness is -  
 7 will tell me no Mr Semenya wrong it is not a Saturday  
 8 today.  
 9 MR NZUZA: I would not agree to -  
 10 MR MPOFU: Can I reply.  
 11 MR NZUZA: It being a Saturday if it is  
 12 not and knowing that it is not.  
 13 MR MPOFU: Chairperson, I mean honestly.  
 14 What Mr Semenya is really saying by that analogy is that he  
 15 can ask anything and we must wait for the answer and then  
 16 we must object. I'm not objecting to the answer, I'm  
 17 objecting to the question. So if he says its Saturday, I  
 18 have a right to object to the question, I can't wait for  
 19 the witness to first say no its not -  
 20 CHAIRPERSON: His answer to your  
 21 objection was its perfectly proper to put a question to the  
 22 witness of something that is in fact not true and say is  
 23 this true then adding the thing that isn't true and the  
 24 witness then it opens the witness to say that that's not  
 25 true.

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1 MR MPOFU: No.  
 2 CHAIRPERSON: That's his answer. I don't  
 3 think there is a problem with it. He may, objection is  
 4 disallowed, he may ask the question.  
 5 MR MPOFU: Chairperson, can I just say  
 6 something please. Of course if that was his answer that  
 7 would be perfectly true. That's not what I'm saying. All  
 8 I'm saying, if you're saying this is proper I would like  
 9 you to say, understanding what the issue is. Mr Semenya  
 10 says to the witness did you sign the statement knowing that  
 11 it should contain the truth and the witness says yes.  
 12 COMMISSIONER TOKOTA: No, he didn't  
 13 understand.  
 14 MR MPOFU: No, at first he says he  
 15 doesn't, the record will show that at, well let's play the,  
 16 let's play the record, the last answer was that yes I don't  
 17 understand the question. Then Mr Semenya says should we  
 18 take that seriously, I'm almost for sure what I'm saying is  
 19 verbatim what the record will show.  
 20 COMMISSIONER TOKOTA: No, no Mr Semenya  
 21 was asking him if we can take him seriously -  
 22 MR MPOFU: When he says he doesn't  
 23 understand the and then the witness says yes he understands  
 24 or rather that yes it -  
 25 COMMISSIONER TOKOTA: The question was

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1 twofold.  
 2 MR MPOFU: Okay.  
 3 COMMISSIONER TOKOTA: So it was not clear  
 4 to -  
 5 MR MPOFU: Maybe, ja.  
 6 COMMISSIONER TOKOTA: That's all you can  
 7 say.  
 8 MR MPOFU: Maybe that's the danger. Well  
 9 if its twofold then I can, ja -  
 10 CHAIRPERSON: Let Mr Semenya ask a  
 11 question which is not a double, not a twofold question and  
 12 we can carry on. We'll save a lot of time that way.  
 13 MR SEMENYA SC: Mr Nzuzza, you make the  
 14 statement with the whole serious intention of it embodying  
 15 the truth, correct?  
 16 MR NZUZA: I said yes.  
 17 MR SEMENYA SC: Okay. Can we go to  
 18 paragraph 3 of that statement. There you deal with the  
 19 events of Saturday the 11th, am I correct?  
 20 MR NZUZA: Yes.  
 21 MR SEMENYA SC: And in paragraph 4 then  
 22 you say how the day of 11 August ended.  
 23 [14:13] MR NZUZA: Yes, Sir.  
 24 MR SEMENYA SC: In paragraph 5 you deal  
 25 with the events of the 12th.



<p style="text-align: right;">Page 35886</p> <p>1 MR NZUZA: Yes.</p> <p>2 MR SEMENYA SC: And in paragraph 6 you</p> <p>3 talk about the events of the 13th.</p> <p>4 MR NZUZA: Yes.</p> <p>5 MR SEMENYA SC: Let us see what you say</p> <p>6 about the events of the 12th in paragraph 5. The first you</p> <p>7 say on that day you arrived in the late morning, but before</p> <p>8 midday, right?</p> <p>9 MR NZUZA: The time is not mentioned, the</p> <p>10 exact time is not stated on the statement. You say in</p> <p>11 paragraph 5 that on the day of 12 August you arrived late</p> <p>12 in the morning, but before midday.</p> <p>13 MR NZUZA: That's when I arrived, yes.</p> <p>14 MR SEMENYA SC: And you are describing</p> <p>15 the events of the day, am I right?</p> <p>16 MR NZUZA: Yes.</p> <p>17 MR SEMENYA SC: And it is on that day</p> <p>18 when you are informed that earlier that morning the workers</p> <p>19 had decided to march back to the NUM offices.</p> <p>20 MR NZUZA: The question is not clear,</p> <p>21 Sir.</p> <p>22 MR SEMENYA SC: It is at the time of your</p> <p>23 arrival on the koppie when you are informed that earlier</p> <p>24 that morning the workers had decided to march back to the</p> <p>25 offices of NUM.</p>	<p style="text-align: right;">Page 35888</p> <p>1 told us that you heard this after the 16th.</p> <p>2 MR NZUZA: Yes, Sir.</p> <p>3 MR SEMENYA SC: So I'm saying in</p> <p>4 paragraph we know you are dealing with the events of the</p> <p>5 12th of August, we have passed that point.</p> <p>6 MR NZUZA: I say that is what I heard,</p> <p>7 yes.</p> <p>8 MR SEMENYA SC: Am I correct we just</p> <p>9 earlier said paragraph 5 deals with the events of the 12th?</p> <p>10 MR NZUZA: Yes I heard that these were</p> <p>11 the happenings of the 12th.</p> <p>12 MR SEMENYA SC: No I'm saying you are</p> <p>13 writing in your statement in paragraph 3 about the events</p> <p>14 that occurred on the 11th.</p> <p>15 MR NZUZA: Yes.</p> <p>16 MR SEMENYA SC: Not things that you heard</p> <p>17 had happened on the 11th.</p> <p>18 MR NZUZA: Yes, I'm saying this is what</p> <p>19 happened on the 11th.</p> <p>20 MR SEMENYA SC: And on paragraph 5 you</p> <p>21 are telling us about things you heard after the 16th.</p> <p>22 MR NZUZA: I've responded to that</p> <p>23 question already.</p> <p>24 MR SEMENYA SC: Please favour me with an</p> <p>25 answer, I just want clarity.</p>
<p style="text-align: right;">Page 35887</p> <p>1 MR NZUZA: I did not hear that, Sir.</p> <p>2 MR SEMENYA SC: Okay I'll get the</p> <p>3 interpreter to interpret what you say in this sentence. We</p> <p>4 have agreed you arrived on the koppie before midday then</p> <p>5 you say you were then informed that earlier that morning –</p> <p>6 MR NZUZA: I was informed.</p> <p>7 MR MPOFU: Chairperson, Mr Semenya must</p> <p>8 not add words to words he is reading. The word then is not</p> <p>9 there, it's his.</p> <p>10 MR SEMENYA SC: Mr Nzuzza, you say you</p> <p>11 arrived at the koppie before midday.</p> <p>12 MR NZUZA: I said so.</p> <p>13 MR SEMENYA SC: You also say you were</p> <p>14 informed that earlier that morning, earlier that very</p> <p>15 morning the workers had decided to go to the NUM office.</p> <p>16 MR NZUZA: I don't know it that way, Sir.</p> <p>17 MR SEMENYA SC: You don't know it –</p> <p>18 MR NZUZA: I don't know what it is that</p> <p>19 you're saying. I said I heard it later, not then.</p> <p>20 MR SEMENYA SC: No we are talking about</p> <p>21 something different, earlier. I'm talking about the</p> <p>22 information relating to the fact that earlier that morning</p> <p>23 workers had decided to go to the NUM office.</p> <p>24 MR NZUZA: I said I heard it later.</p> <p>25 MR SEMENYA SC: I know, Mr Nzuzza. You</p>	<p style="text-align: right;">Page 35889</p> <p>1 MR NZUZA: I said yes I heard this later.</p> <p>2 MR SEMENYA SC: So you intended to tell</p> <p>3 us nothing about what happened on the 12th of August except</p> <p>4 that you came there just before midday.</p> <p>5 MR NZUZA: There's nothing else.</p> <p>6 MR SEMENYA SC: Everything that happened</p> <p>7 on the 12th you were not meaning to tell the Commission when</p> <p>8 you wrote this statement. Except as I say that you arrived</p> <p>9 at the koppie at midday and you left for home in the</p> <p>10 evening.</p> <p>11 MR NZUZA: I'm saying there is none,</p> <p>12 nothing.</p> <p>13 MR SEMENYA SC: Okay. Now if I</p> <p>14 understood your evidence earlier you're not able to dispute</p> <p>15 the evidence of Mr X about how, listen to the question,</p> <p>16 about how Mr Fundi was killed. You simply can't, you were</p> <p>17 not there.</p> <p>18 MR NZUZA: I'm saying I wasn't there.</p> <p>19 MR SEMENYA SC: So you can't dispute when</p> <p>20 he described to this Commission how he was killed.</p> <p>21 MR NZUZA: That is his say, not mine.</p> <p>22 MR SEMENYA SC: Out of own knowledge you</p> <p>23 can't say he is wrong.</p> <p>24 MR NZUZA: I'm saying I don't know,</p> <p>25 that's his.</p>

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1 MR SEMENYA SC: But there's no doubt in  
 2 your mind that Mr X knows you very well, so you him.  
 3 MR NZUZA: No there he's definitely  
 4 lying, he doesn't even know where I come from.  
 5 MR SEMENYA SC: He'll be able to identify  
 6 you if he met you, correct?  
 7 MR NZUZA: No he would not be.  
 8 MR SEMENYA SC: Will you be able to  
 9 recognise him?  
 10 MR NZUZA: Yes.  
 11 MR SEMENYA SC: He can't recognise you.  
 12 MR NZUZA: Because he doesn't know me.  
 13 MR SEMENYA SC: He won't be able to  
 14 recognise you if he sees you on TV.  
 15 MR NZUZA: The question, Sir, was?  
 16 MR SEMENYA SC: He won't be able to  
 17 recognise you if he saw you.  
 18 MR NZUZA: Only now after he had seen me  
 19 on TV.  
 20 MR SEMENYA SC: Are you serious?  
 21 MR MPOFU: No he said [African language].  
 22 MR NZUZA: Only that you people have  
 23 shown me, indicated me on TV, have identified me on TV.  
 24 MR SEMENYA SC: Oh that's how Mr X knows  
 25 you.

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1 MR NZUZA: Yes.  
 2 MR SEMENYA SC: Until that time he didn't  
 3 know you.  
 4 MR NZUZA: He did not know me.  
 5 MR SEMENYA SC: Couldn't recognise you.  
 6 MR NZUZA: No he wouldn't have been –  
 7 MR SEMENYA SC: He didn't know you were  
 8 Xolani.  
 9 MR NZUZA: Yes he didn't.  
 10 MR SEMENYA SC: Okay, let us look at the  
 11 reverse side of this coin. Mr X is absolutely truthful  
 12 that you helped an injured person on the 13th.  
 13 MR NZUZA: At that point he is lying.  
 14 MR SEMENYA SC: That you'd arranged  
 15 transport for this injured person to be taken to hospital.  
 16 MR NZUZA: Just repeat the question  
 17 again, Sir.  
 18 MR SEMENYA SC: Do me the favour, Mr –  
 19 MR NZUZA: If the question could come  
 20 direct from counsel, Chair.  
 21 MR SEMENYA SC: Mr Interpreter please  
 22 repeat the question for the witness –  
 23 MR NZUZA: Again I'm asking that the  
 24 question not be interpreted by Mahlangu but be repeated by  
 25 Counsel Semenya.

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1 CHAIRPERSON: That's not a valid reason  
 2 not to answer the question. Mr Semenya originally asked  
 3 the question, it was interpreted to you by Mr Mahlangu, he  
 4 repeated it again, there's no reason for Mr Semenya to  
 5 repeat the question. It's been repeated to you a number of  
 6 times, please answer it.  
 7 MR NZUZA: Because even if it's  
 8 interpreted I don't really understand what is intended in  
 9 this question.  
 10 CHAIRPERSON: It was asked by Mr Semenya  
 11 in English, so I take it, it has to be interpreted for you  
 12 to understand it in any event.  
 13 MR MPOFU: Chairperson, what's so  
 14 difficult about repeating the question like all of us have  
 15 been doing for the past two years if the witness doesn't  
 16 understand?  
 17 CHAIRPERSON: That's not the point. If  
 18 the question is repeated by Mr Semenya it will in any event  
 19 have to be interpreted by Mr Mahlangu, so his request that  
 20 Mr Semenya ask the question first in English so that Mr  
 21 Mahlangu can repeat it again in Xhosa when it had already  
 22 been given to him in Xhosa then it is something that I  
 23 don't understand.  
 24 MR MPOFU: He says he still doesn't  
 25 understand it you know and this comes from Mr Mahlangu. So

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1 what's so difficult about repeating it? Isn't that what  
 2 happens all the time.  
 3 CHAIRPERSON: What don't you understand  
 4 about the question?  
 5 MR NZUZA: I say it's the question I  
 6 don't understand.  
 7 CHAIRPERSON: Yes I know, I say what  
 8 don't you understand about the question?  
 9 MR NZUZA: I am saying I don't understand  
 10 it that is why I am asking for it to be repeated, Mr  
 11 Chairperson.  
 12 MR SEMENYA SC: If I repeat the question  
 13 the interpreter will repeat it to you, it can't be clearer  
 14 therefore, Mr Nzuza.  
 15 CHAIRPERSON: Repeat the question, let Mr  
 16 Mahlangu repeat the translation and then let's see what the  
 17 witness says.  
 18 MR SEMENYA SC: Mr X is correct that you  
 19 helped the injured striker to be taken to hospital with  
 20 transport.  
 21 MR NZUZA: He is lying there, Sir.  
 22 MR SEMENYA SC: On the 13th you did not  
 23 have an injured transported to hospital?  
 24 MR NZUZA: I think X who was here should  
 25 have been the person to answer those questions.

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1 CHAIRPERSON: It's a simple question.  
 2 Let me ask the question. Did you help an injured person to  
 3 go to hospital on the 13th? Did you arrange transport for  
 4 an injured person on the 13th to go to hospital?  
 5 MR NZUZA: Sir, we did not make  
 6 arrangements, I did not help him by transport. What we did  
 7 was to help remove him from the place where there were  
 8 policemen.  
 9 MR SEMENYA SC: Please repeat that  
 10 answer.  
 11 MR NZUZA: I've responded to the  
 12 question.  
 13 MR SEMENYA SC: I just want to make sure  
 14 that I don't argue against something that you didn't say.  
 15 Can you please repeat your answer?  
 16 MR NZUZA: I have responded to the  
 17 question.  
 18 MR SEMENYA SC: So you won't.  
 19 MR NZUZA: I have responded to the  
 20 question.  
 21 MR SEMENYA SC: So you won't repeat your  
 22 answer.  
 23 MR NZUZA: I am here to answer questions  
 24 and not to repeat questions.  
 25 CHAIRPERSON: Well if Mr Semenya says

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1 that he's not sure that he understood you correctly and he  
 2 wants you to repeat the question to make sure that he does  
 3 understand you, to repeat your answer. I don't understand  
 4 correctly, what's wrong with that. Why do you refuse,  
 5 can't you remember the answer yourself?  
 6 MR NZUZA: If you could ask me the  
 7 question again so for me to respond.  
 8 MR SEMENYA SC: Mr X says you helped an  
 9 injured person on the 13th with transport so that he can be  
 10 taken to hospital. Mr X's account on that version is  
 11 accurate.  
 12 MR NZUZA: What I did, Sir, was to remove  
 13 that person from where he was to the shack settlement.  
 14 MR SEMENYA SC: So Mr X is incorrect if  
 15 he said you arranged transport for the person to take him  
 16 to hospital.  
 17 MR NZUZA: Yes, because he is lying.  
 18 MR SEMENYA SC: And anyone else would be  
 19 lying, to use your language, where they say you helped with  
 20 transport that the injured person be taken to hospital.  
 21 MR NZUZA: Saying what, Sir?  
 22 MR SEMENYA SC: Anyone like Mr X who  
 23 ventured to say that you assisted an injured person with  
 24 transport so that he be taken to the hospital would be, to  
 25 use your language, lying.

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1 MR NZUZA: That would be his response,  
 2 not mine.  
 3 MR SEMENYA SC: And it would be  
 4 untruthful.  
 5 MR NZUZA: That is your way you see it,  
 6 not mine.  
 7 MR SEMENYA SC: And I would be  
 8 [14:33] If I say it, would I be untruthful? You were  
 9 there; you know the facts.  
 10 MR NZUZA: You don't ask me what I  
 11 observed with my own eyes, Counsel, you ask me about X and  
 12 I can't –  
 13 MR SEMENYA SC: Yes, X tells us that he  
 14 saw you arrange transport for an injured person to be taken  
 15 to hospital, and I'm asking you, that account must be  
 16 correct, must it not?  
 17 MR NZUZA: I said I'm not prepared to  
 18 respond on what Mr X says, Mr Chairperson.  
 19 MR MPOFU: Chairperson –  
 20 MR SEMENYA SC: Even if it is factually  
 21 correct?  
 22 MR MPOFU: I'm sorry, maybe it might  
 23 assist if Mr Semenya takes us to this passage where X  
 24 supposedly says this, that this witness did whatever he's  
 25 alleging.

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1 MR SEMENYA SC: No, Chair, I'm interested  
 2 in the witness's own observations. He can say Mr X is  
 3 wrong or he's right or he's whatever.  
 4 MR MPOFU: Please, can I reply?  
 5 CHAIRPERSON: I think Mr Semenya is  
 6 entitled to ask the question the way he wants. I don't  
 7 think there's anything misleading or unclear about the  
 8 question –  
 9 MR MPOFU: No –  
 10 CHAIRPERSON: - or the manner in which  
 11 he's formulating it.  
 12 MR MPOFU: No, it's got nothing to do  
 13 with the clarity. He's saying Mr X said ABC. I'm saying  
 14 he must show us where Mr X says it.  
 15 MR SEMENYA SC: If Mr –  
 16 MR MPOFU: What's unclear is nothing –  
 17 MR SEMENYA SC: If Mr X says that –  
 18 MR MPOFU: If. Oh well, that's a  
 19 different question then.  
 20 MR SEMENYA SC: Can you give me an  
 21 answer?  
 22 MR NZUZA: What is said by Mr X I can't  
 23 answer to it.  
 24 MR SEMENYA SC: If Mr P was to say so,  
 25 would that accord with your observations?

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1 MR NZUZA: That is from Mr P, not what I  
2 know.

3 MR SEMENYA SC: Would it be consistent  
4 with what you observed, is the question?

5 MR NZUZA: That is from Mr X and Mr P.

6 MR SEMENYA SC: So you're not prepared to  
7 answer whether that account would be accurate or incorrect?

8 MR NZUZA: I say what is from Mr X I  
9 won't be able to answer it. I'm not going to answer it.

10 MR SEMENYA SC: If anybody, anybody said  
11 they saw you help an injured person on the 13th with  
12 transport so that he can be taken and rushed to hospital,  
13 you'd say that account is correct?

14 MR NZUZA: I say those people you are  
15 mentioning, it's from them, it's not from me. I don't  
16 know.

17 MR SEMENYA SC: So it is not from you?

18 MR NZUZA: I say I don't know what you  
19 are saying, say comes from Mr X.

20 MR SEMENYA SC: So that would be  
21 inaccurate, any account of you helping an injured person  
22 with transport that he be taken to hospital?

23 MR NZUZA: The only person I helped was  
24 the one that I removed from there to the shack settlement.

25 MR SEMENYA SC: The answer?

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1 MR NZUZA: I have answered.

2 MR SEMENYA SC: Okay. I'll be walking  
3 dangerous territory if I ask you to repeat. I didn't hear  
4 you, I'm sorry.

5 MR NZUZA: I answered, Sir, and I said  
6 the person that I assisted was the one that I removed from  
7 there to the shacks.

8 MR SEMENYA SC: Can I ask you to look at  
9 HHH21, which is your statement, and can we look at  
10 paragraph 10. Two sentences to the end of that paragraph  
11 you say, "Some of us assisted the injured back to the  
12 koppie and they were rushed to the hospital." Is that part  
13 of the statement correct?

14 MR NZUZA: Yes, I'm not saying me. I'm  
15 saying some of us.

16 MR SEMENYA SC: That's your answer?

17 MR NZUZA: Yes, I'm saying some of us,  
18 not me.

19 MR SEMENYA SC: Shall we ask that we call  
20 up page 35504 of the transcript? It's day 277, whilst you  
21 were giving evidence-in-chief, and I want us to start at  
22 line 3 – well, maybe if we start the page before, 35502, Mr  
23 Mpofo says against line 24, "Yes, what did you do? I'm not  
24 talking about you personally. We've seen that the group of  
25 strikers was running away, as you described it. What did

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1 you do?" Your answer, "I also ran." Mr Mpofo then asks,  
2 "Alright, until what happened?" "I ran towards the gravel  
3 road. Once I was crossing to the other side of the road  
4 there was someone who was shot behind me. I stood over the  
5 person, raised my hands and the police were coming. We  
6 took this person" – who are we? Do you include yourself or  
7 you're talking about the others?

8 MR NZUZA: I say we, there were two of  
9 us, that's myself and the person that Mr X claimed in this  
10 Commission to have been himself.

11 MR SEMENYA SC: Ja, but the "we" there  
12 includes you? Is that fair to say?

13 MR NZUZA: Yes, I was there.

14 MR SEMENYA SC: "We took this person, ran  
15 with him, trying to hide him in the shacks or, we were  
16 going to take him to the mountain but we could not. We  
17 were unable to." Now listen to this; you continue and you  
18 say, "We put him in a shack, tried to arrange transport for  
19 him to be taken to the hospital." That was your evidence.

20 MR NZUZA: That's me saying that, yes.

21 MR SEMENYA SC: Chair, we normally take  
22 the tea, though we started half an hour earlier.

23 CHAIRPERSON: Yes, you're right. We  
24 normally take it an hour and a quarter after we started and  
25 we started at half past. So you're quite right. Is this a

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1 convenient stage for us to take the tea adjournment?

2 MR SEMENYA SC: It is. It is, Chair.

3 CHAIRPERSON: We take the tea  
4 adjournment, 15 minutes.

5 [COMMISSION ADJOURNS COMMISSION RESUMES]

6 [15:08] CHAIRPERSON: Please tell the witness  
7 he's still under oath.

8 XOLANI NZUZA: [s.u.o. through  
9 interpreter]

10 MR NTJINGILA: Confirmed, Mr Chair.

11 CHAIRPERSON: And Mr Semanya?

12 MR SEMENYA SC: Thank you, Chair.

13 MR MPOFU: Chair, I asked Mr Semanya to  
14 give me half a second before he starts.

15 CHAIRPERSON: [Microphone off, inaudible]

16 MR MPOFU: Chairperson, no, I had a  
17 discussion with my learned colleague Mr Budlender over the  
18 break and I said to him that I would capture part of what I  
19 said to him at that time on the record. Since the matter  
20 happened on the record I think it's proper that it's done  
21 that way, and what I said to him and conveyed to you was  
22 that I wanted to withdraw and apologise for my part in that  
23 exchange, that heated exchanged, without going into the  
24 merits of who was right, who was wrong. I think that will  
25 remain between me and him, but it's just from a

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<p>1 collegiality point of view, Chairperson, and to clear the 2 air.</p> <p>3 CHAIRPERSON: Thank you, Mr Mpofu. Mr 4 Budlender, do you wish to make any comment?</p> <p>5 MR BUDLENDER SC: No, thank you, Chair.</p> <p>6 CHAIRPERSON: Thank you. Yes, thank you, 7 Mr Mpofu. Mr Semenya?</p> <p>8 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.): 9 Thank you, Chair. Mr Nzuzza, you tell us that muti offers 10 protection against witchcraft.</p> <p>11 MR NZUZA: Yes.</p> <p>12 MR SEMENYA SC: Just educate us; how does 13 that work?</p> <p>14 MR NZUZA: I can't educate you, I can 15 just explain.</p> <p>16 MR SEMENYA SC: Please.</p> <p>17 MR NZUZA: I'm not here to educate with 18 muti, I'm here to answer the questions.</p> <p>19 MR SEMENYA SC: How does muti protect 20 against witchcraft?</p> <p>21 MR NZUZA: Muti is just like the prayer.</p> <p>22 MR SEMENYA SC: Well, I've never 23 understood prayer to protect people against witchcraft.</p> <p>24 MR NZUZA: Each and everyone believes to 25 his beliefs, just like you say that you have never heard</p>	<p>1 at the koppie?</p> <p>2 MR NZUZA: I was also there.</p> <p>3 MR SEMENYA SC: You were a leader at the 4 koppie, were you not?</p> <p>5 MR NZUZA: I was there. I could speak 6 what needed to be spoken.</p> <p>7 MR SEMENYA SC: You deny having been in a 8 leadership position at the koppie?</p> <p>9 MR NZUZA: I say I was there amongst the 10 people that were there.</p> <p>11 MR SEMENYA SC: But unlike others you 12 were in the leadership of the group, were you not?</p> <p>13 MR NZUZA: I don't understand the 14 question.</p> <p>15 CHAIRPERSON: Let me ask the question. 16 Did you play a leadership role at the koppie?</p> <p>17 MR NZUZA: I don't understand that 18 question.</p> <p>19 CHAIRPERSON: The question is based upon 20 a paragraph in your own, a sentence in your own affidavit 21 where you said in the first sentence of paragraph 3 of 22 exhibit PPPP1.1, "I wish to make it clear that my 23 leadership role at the koppie happened purely by default 24 and coincidence." So when I asked you did you play a 25 leadership role at the koppie I was quoting your own words.</p>
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<p>1 somebody saying that the prayer protects against 2 witchcraft.</p> <p>3 MR SEMENYA SC: So we can accept those 4 who say muti also protects against bullets?</p> <p>5 MR NZUZA: I can't answer that. I don't 6 know it.</p> <p>7 MR SEMENYA SC: You know those who hold 8 that view?</p> <p>9 MR NTJINGILA: Can you repeat?</p> <p>10 MR SEMENYA SC: Do you know those who 11 hold that view?</p> <p>12 MR NZUZA: Which one?</p> <p>13 MR SEMENYA SC: Tell me, Mr Nzuzza, if we 14 go on, you were a leader because you were amongst others 15 responsible for the conduct of your followers?</p> <p>16 MR NZUZA: I was not responsible for 17 others' conduct.</p> <p>18 MR SEMENYA SC: No, you were leading 19 them. That's the point I'm making.</p> <p>20 MR NZUZA: I was not leading the people.</p> <p>21 MR SEMENYA SC: You were never a leader 22 at the koppie there?</p> <p>23 MR NZUZA: Can you repeat the question, 24 please?</p> <p>25 MR SEMENYA SC: You were never a leader</p>	<p>1 So do you not understand your own words?</p> <p>2 MR NZUZA: I say I was just like a 3 leader, not that I was a leader.</p> <p>4 MR SEMENYA SC: Okay –</p> <p>5 CHAIRPERSON: The question I asked you 6 was, did you play a leadership role at the koppie. What's 7 your answer to that?</p> <p>8 MR NZUZA: I say I was not playing a role 9 of leadership. I was there just like a leader.</p> <p>10 CHAIRPERSON: Now in paragraph 31 of your 11 first statement, which is HHH21, in the first sentence of 12 that paragraph you say, paragraph 31, "As a leader of the 13 gathering I would have known if there was any plan to 14 attack the police." Do you now say that you did not play a 15 leadership role and that you were not a leader of the 16 gathering?</p> <p>17 MR NZUZA: I say I was there. The 18 leadership I'm talking about is just to look at the people 19 that they don't get out of the way.</p> <p>20 MR SEMENYA SC: Okay, did the followers 21 listen to the leaders?</p> <p>22 MR NZUZA: I don't understand.</p> <p>23 MR SEMENYA SC: Followers, did they 24 follow the leadership?</p> <p>25 MR NZUZA: Following is in different</p>

<p style="text-align: right;">Page 35906</p> <p>1 ways. I don't know in which sense are you meaning 2 followers. 3 MR SEMENYA SC: Did the people do what 4 the leaders said they must do? 5 MR NZUZA: Things like what? 6 MR SEMENYA SC: What you told them to do. 7 You tell them they must listen to somebody address them and 8 they were to listen to you, for example. 9 MR NZUZA: Yes, they listened. 10 MR SEMENYA SC: And when late Mr Noki 11 says they must do this they would also listen? 12 MR NZUZA: I can't answer example, I 13 don't know the certain things. 14 MR SEMENYA SC: No, I'm repeating your 15 evidence. Mr Noki comes to you whilst you're having a 16 megaphone and your answer to the question around it was 17 that Mr Noki says "Now they are ready to listen." So you'd 18 follow the instructions of the leader? 19 MR NZUZA: They listened when we said 20 they must listen. 21 MR SEMENYA SC: And you would act, all of 22 you, as a group in concert with what is being suggested the 23 group must do? 24 MR NZUZA: Everyone there in the mountain 25 had the right to say or to tell the people to listen or to</p>	<p style="text-align: right;">Page 35908</p> <p>1 home in Nkaneng where he was living and staying quite the 2 opposite direction. 3 MR NZUZA: I don't know now where are you 4 going to say he was staying because you are also not sure 5 and I won't answer that one. 6 MR SEMENYA SC: Mr Twala gets killed 7 shortly after you were speaking to him as well? 8 MR NZUZA: I don't know at what time was 9 he killed. 10 MR SEMENYA SC: But you remember when you 11 were told the police want permission to come and fetch a 12 body, it was not long after you were speaking to Mr Twala? 13 MR NZUZA: What I said, it was in the 14 morning the time I was talking to him. I couldn't estimate 15 how long time has passed after spoken to him. 16 MR SEMENYA SC: Among the things that you 17 witness is Mr Twala being asked and his cell phone taken 18 from him, right? 19 MR NZUZA: I didn't see any of this. 20 MR SEMENYA SC: You didn't see that? 21 MR NZUZA: I didn't see anything. 22 MR SEMENYA SC: And he's also 23 interrogated and asked questions. That you witnessed? 24 MR NZUZA: I was not there at the time he 25 was being asked questions.</p>
<p style="text-align: right;">Page 35907</p> <p>1 sit down. 2 MR SEMENYA SC: And when everybody told 3 everybody to listen or to sit down, everybody would act in 4 concert with each other for that purpose? 5 MR NZUZA: Yes, they would listen. 6 MR SEMENYA SC: Now Mr Noki says on the 7 16th they must go to Nkaneng. 8 MR NZUZA: Yes. 9 MR SEMENYA SC: And they listen. 10 MR NZUZA: Yes, they listened to him. 11 MR SEMENYA SC: Mr Noki does not live in 12 Nkaneng – was not living in Nkaneng at the time. Am I 13 right? 14 MR NZUZA: I don't know where he was 15 living. 16 MR SEMENYA SC: The evidence is that he 17 was staying in the Karee side. That's not towards Nkaneng. 18 Am I right? 19 MR NZUZA: Just because they say it was, 20 he was living in that side of Karee, they are not sure, I 21 can't answer. 22 MR SEMENYA SC: He couldn't have been 23 going home if he was living the opposite direction. 24 MR NZUZA: Can you repeat the question? 25 MR SEMENYA SC: Couldn't have been going</p>	<p style="text-align: right;">Page 35909</p> <p>1 MR SEMENYA SC: Sorry, I apologise again. 2 Even if the interpreter was to repeat it I would be much 3 obliged. What was the answer, Mr Interpreter? 4 MR NZUZA: No, I didn't see when he was 5 being asked questions. 6 MR SEMENYA SC: At all? 7 MR NZUZA: When what was happening? 8 MR SEMENYA SC: You did not witness Mr 9 Twala being asked questions? 10 MR NZUZA: I didn't see him being asked 11 questions. 12 MR SEMENYA SC: Okay, you answered about 13 you knowing Mr Twala in his presence. 14 MR NZUZA: It's him who said I know him. 15 MR SEMENYA SC: To which question? 16 MR NZUZA: I don't know the question. I 17 would like to know the question. 18 MR SEMENYA SC: Okay, play it out for us. 19 Mr Twala comes to the leadership group voluntarily, on his 20 own, without invitation whatsoever? 21 MR NZUZA: I don't know about that. 22 MR SEMENYA SC: And you say to the people 23 speaking to Mr Twala that he nearly caused you to be 24 discharged from work. Did I follow your evidence 25 correctly?</p>

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1 MR NZUZA: You are mistaken. You didn't  
 2 hear me clearly.  
 3 MR SEMENYA SC: Okay, correct me. What  
 4 did you say when you were asked about Mr Twala?  
 5 MR NZUZA: I said I don't know him.  
 6 MR SEMENYA SC: Is that all?  
 7 MR NZUZA: I said I don't know him, I  
 8 knew him on such a day when I saw him at work. It was on a  
 9 Saturday.  
 10 MR SEMENYA SC: And? That's all?  
 11 MR NZUZA: What is your question again?  
 12 MR SEMENYA SC: That's all you say about  
 13 Mr Twala?  
 14 MR NZUZA: I told him I knew him on that  
 15 day, "I met you and you said I must put on my goggles. I  
 16 refused and then you said I must be fired from work." Then  
 17 I left him there.  
 18 MR SEMENYA SC: But I've just said that a  
 19 little earlier, not in such precise words, that you  
 20 disclosed that he nearly caused you to be fired.  
 21 [15:27] MR NZUZA: You said I was being asked by  
 22 the workers, you didn't say the way you said now.  
 23 MR SEMENYA SC: You knew making such a  
 24 disclosure would, was pretty dangerous for Mr Twala, né?  
 25 MR NZUZA: It was not dangerous.

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1 MR SEMENYA SC: Can you think of any  
 2 reason other than that? Mr Twala being asked questions and  
 3 you disclosing that it nearly caused you to be fired, for  
 4 his killing?  
 5 MR NZUZA: I said when I arrived there, I  
 6 didn't say when I arrived there were questions being asked.  
 7 MR SEMENYA SC: Anything that you saw Mr  
 8 Twala do to warrant his brutal killing, as far as you could  
 9 see?  
 10 MR NZUZA: I've seen nothing.  
 11 MR SEMENYA SC: As far as you were  
 12 concerned he was innocent of any wrong and didn't deserve  
 13 to be killed as far as you could see?  
 14 MR NZUZA: Can you repeat the question.  
 15 MR SEMENYA SC: As far as you could  
 16 observe, you could see nothing Mr Twala did to attract the  
 17 brutal killing he suffered?  
 18 MR NZUZA: I said there is nothing.  
 19 MR SEMENYA SC: There is nothing you  
 20 could see him do to deserve the brutal killing he suffered,  
 21 I just don't want you leaving the answer hanging.  
 22 MR NZUZA: I said there is nothing.  
 23 MR SEMENYA SC: That you could see to  
 24 warrant his, him being killed?  
 25 MR NZUZA: I've answered this question.

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1 I said there is nothing that I've seen, I saw.  
 2 MR MPOFU: Chairperson, I can understand  
 3 Mr Semenya's problem. I think that answer maybe Mr Tokota  
 4 can also assist, can be also translated to satisfy Mr  
 5 Semenya as to say there isn't any because he is saying  
 6 [African language] and the interpreter is saying [African  
 7 language] which is also correct. But I think the, it can  
 8 also be interpreted to say there isn't any, there isn't  
 9 anything that I saw blah, blah whatever Mr Semenya said.  
 10 I'm asking Mr Tokota, Commissioner Tokota is nodding.  
 11 MR SEMENYA SC: I can ask the question  
 12 differently.  
 13 CHAIRPERSON: He didn't turn on his  
 14 microphone.  
 15 MR SEMENYA SC: Okay there was nothing in  
 16 your view to explain the killing of Mr Twala at all?  
 17 MR NZUZA: Yes.  
 18 MR SEMENYA SC: You saw him being  
 19 searched for a cell phone, did you witness that?  
 20 MR NZUZA: I said I didn't see.  
 21 MR SEMENYA SC: Even where the evidence  
 22 is that you are the one who was searching him?  
 23 MR NZUZA: Whose evidence?  
 24 MR SEMENYA SC: It doesn't matter whose  
 25 evidence, whatever, who says that you say it is incorrect?

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1 MR NZUZA: If it's not important what I'm  
 2 being asked I won't answer it.  
 3 MR SEMENYA SC: Ja, I'm, I've resisted  
 4 the temptation to say, Mr Nzuzza, I am going to argue most  
 5 strongly that your [inaudible] and posture of being  
 6 difficult on every question must point adversely to your  
 7 credibility.  
 8 MR NZUZA: It's you who is saying that.  
 9 MR SEMENYA SC: People were not allowed  
 10 to carry cell phones on the koppie, is that correct?  
 11 MR NZUZA: I don't know about that.  
 12 MR SEMENYA SC: And that Mr Twala's thing  
 13 was that he also had airtime. That type of evidence you  
 14 can't contradict, am I right?  
 15 MR NZUZA: I don't know that.  
 16 MR SEMENYA SC: If the Commission finds  
 17 that evidence credible that you said Mr Twala was a spy,  
 18 that would have been a death warrant for him, correct?  
 19 MR NZUZA: If Mr Twala was a –  
 20 CHAIRPERSON: The evidence is that you  
 21 said that Twala was a spy. That would have amounted to his  
 22 death warrant, that's the question.  
 23 MR NZUZA: I don't know him, I don't know  
 24 about him being a spy and that I don't know what led to his  
 25 death.

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1 MR SEMENYA SC: Yes. If you had said Mr  
 2 Twala was a spy on the koppie that day it would certainly  
 3 have resulted in harm to him?  
 4 MR NZUZA: I don't know about that.  
 5 CHAIRPERSON: Change the question  
 6 slightly. If anybody had said on the koppie that day that  
 7 he, Mr Twala, was a spy would have that led to his  
 8 suffering harm?  
 9 MR NZUZA: I don't know about that.  
 10 CHAIRPERSON: Were you people on the  
 11 koppie, or were the people on the koppie concerned that  
 12 some of the people there might have been spies reporting  
 13 via their, by means of their cell phones to either the  
 14 police or to NUM or to Lonmin?  
 15 MR NZUZA: No there was nothing like  
 16 that.  
 17 MR SEMENYA SC: Did the evidence that Mr  
 18 Noki took Mr Twala's firearm did you witness that, no?  
 19 MR NZUZA: What is evidence, I can't  
 20 answer that is evidence, not knowing whose evidence is  
 21 that.  
 22 MR SEMENYA SC: Did you witness Mr Noki  
 23 take a firearm belonging to Mr Twala, disarming of his  
 24 firearm?  
 25 MR NZUZA: That evidence I won't answer

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1 it, the person who saw it or witnessed it will answer to  
 2 it.  
 3 MR SEMENYA SC: Is that your answer to my  
 4 question?  
 5 MR NZUZA: I won't answer because I don't  
 6 know whose evidence is that.  
 7 CHAIRPERSON: Never mind whose evidence  
 8 it was, you were on the koppie. You saw Twala at one point  
 9 on the koppie. Did you see anybody taking the firearm from  
 10 him?  
 11 MR NZUZA: I said I didn't see anything  
 12 like that. I don't know whose evidence is that.  
 13 MR SEMENYA SC: Let's expand this. The  
 14 second in command did not see or did not witness any  
 15 killing of the ten people before the 16th?  
 16 MR NZUZA: I don't know this question. I  
 17 don't know the commander you're talking about or you are  
 18 making laughing stock of Mambush.  
 19 MR SEMENYA SC: In the leadership role  
 20 you played. You were not a witness to any of the death, 10  
 21 deaths that happened before the 16th?  
 22 MR NZUZA: There is none.  
 23 MR SEMENYA SC: And we cannot benefit –  
 24 CHAIRPERSON: Sorry, you say you saw none  
 25 of the ten people being killed or injured, I've added them

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1 all into, did you see any of the, none of the ten being  
 2 killed or injured?  
 3 MR MPOFU: Chairperson, I'm sorry –  
 4 CHAIRPERSON: I said I added to this –  
 5 MR MPOFU: Yes, but don't say you said,  
 6 it's a new question.  
 7 CHAIRPERSON: - if I did say you said,  
 8 but let me rephrase the question. Do I understand you to  
 9 say that you did not see any of the ten being killed or  
 10 injured?  
 11 MR NZUZA: Being killed by who, I want it  
 12 to be clarified?  
 13 CHAIRPERSON: By anybody or injured by  
 14 anybody.  
 15 MR NZUZA: The one that was shot by the  
 16 police, the one that I took away, is the one I saw.  
 17 CHAIRPERSON: That's on the 13th, the  
 18 Monday, so you did see one of the ten being shot by the  
 19 police, I'm just making sure I understand what's been said.  
 20 MR MPOFU: You clearly don't. The person  
 21 that you're talking about is not one of the ten,  
 22 Chairperson. He said he picked somebody who was injured on  
 23 the 13th, there's never been any suggestion that that  
 24 injured person was one of the so-called ten, at least not  
 25 in this commission.

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1 CHAIRPERSON: I was referring to the  
 2 person who was found in the shacks. One of the three  
 3 strikers who was found near the shacks.  
 4 MR MPOFU: Yes.  
 5 CHAIRPERSON: On the 13th.  
 6 MR MPOFU: Yes.  
 7 CHAIRPERSON: I understood him to say, I  
 8 may have misunderstood him but I understood him to say he  
 9 tried to assist that person but he couldn't, he had to  
 10 leave him in the shack and I assumed that that was one of  
 11 the 10, it wasn't intended to be a hostile question, but in  
 12 fairness I thought there was a misunderstanding.  
 13 MR MPOFU: Yes, no I understand.  
 14 CHAIRPERSON: When he was focusing on  
 15 answering questions about the ten –  
 16 MR MPOFU: No, fair enough.  
 17 CHAIRPERSON: He had forgotten for the  
 18 moment that three of them were strikers and one of them may  
 19 well be the person whom he helped to take to the shack.  
 20 MR MPOFU: No, I accept that,  
 21 Chairperson, yes. I think all that needs to be done is to  
 22 establish that the, if you are correct that the person that  
 23 he assisted was the same one who was left there and so on.  
 24 Yes. Then I understand, Chairperson, I had forgotten that  
 25 linkage of the third one being found next to a shack.



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1 CHAIRPERSON: In an endeavour to be fair  
 2 to the witness, I take it you're not objecting to that.  
 3 The, remember you carry, you helped to assist one of the  
 4 injured people on the 13th and you, so you and some of your  
 5 companions were forced to leave them next to a shack, do  
 6 you remember that?  
 7 MR NZUZA: Yes, it's like that.  
 8 CHAIRPERSON: And do you know whether  
 9 that person whom you tried to help was the third striker  
 10 who died on the 13th among the shacks at the informal  
 11 settlement as opposed to the place where the shooting  
 12 happened?  
 13 MR NZUZA: No, that is not the one.  
 14 CHAIRPERSON: I see.  
 15 MR SEMENYA SC: Did you witness this, I'm  
 16 asking did you witness, you did not witness how ten people  
 17 were killed or did you before the 16th that is?  
 18 MR NZUZA: No, I didn't see.  
 19 MR SEMENYA SC: All of them, you did not  
 20 see how they met their death?  
 21 MR NZUZA: Yes.  
 22 MR SEMENYA SC: And you give us that as a  
 23 serious answer?  
 24 MR NZUZA: Yes.  
 25 MR SEMENYA SC: In your statement where

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1 you tell us you saw the police shoot at somebody, it would  
 2 be something you did not witness?  
 3 MR NZUZA: You didn't say people being  
 4 shot, you said people being killed.  
 5 MR SEMENYA SC: Oh that one, the one you  
 6 saw the police shoot?  
 7 MR NZUZA: Yes.  
 8 MR SEMENYA SC: You're not able to help  
 9 us from your own observation to contradict the evidence on  
 10 how Mabebe was killed?  
 11 MR NZUZA: I don't know about that  
 12 evidence you are talking about.  
 13 MR SEMENYA SC: You can't contradict the  
 14 account on how he, Mr Mabebe was killed, you can't  
 15 contradict that account?  
 16 MR NZUZA: I don't know the account which  
 17 he met his death.  
 18 MR SEMENYA SC: Neither through your own  
 19 knowledge can you contradict the evidence before this  
 20 Commission on how Mr Langa was killed?  
 21 MR NZUZA: I can't answer anything from  
 22 that because I know nothing about that.  
 23 MR SEMENYA SC: At the koppie after,  
 24 whilst the various speakers were speaking the 16th you do  
 25 hear, don't you somebody say that we must sign a paper with

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1 the police?  
 2 [15:47] MR NZUZA: I didn't hear about that.  
 3 MR SEMENYA SC: But you listened  
 4 attentively, you were part of those who were addressing the  
 5 crowd, correct?  
 6 MR NZUZA: I say I didn't hear that part.  
 7 MR SEMENYA SC: So when the speaker says  
 8 "We must show the rest of the world that we're going to  
 9 kill each other today," you don't hear that, do you?  
 10 MR NZUZA: No, I didn't hear that part.  
 11 MR SEMENYA SC: If uttered, it would not  
 12 have been a joke?  
 13 MR NZUZA: Uttered by who?  
 14 MR SEMENYA SC: Sorry?  
 15 MR NZUZA: Uttered by who?  
 16 MR SEMENYA SC: If uttered, it would not  
 17 be a joke; it would be the most threatening statement  
 18 inciting violence against the police as well, right?  
 19 MR NZUZA: I don't know that. It is not  
 20 in my statement.  
 21 MR SEMENYA SC: I know it's not in your  
 22 statement, but you were there when it was uttered.  
 23 MR NZUZA: I want to know who said that.  
 24 MR SEMENYA SC: In the meantime I'll ask  
 25 the operator to find us the video clip of –

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1 COMMISSIONER HEMRAJ: Mr Lunga.  
 2 MR SEMENYA SC: - protester number 6, I  
 3 think it is. I'm advised by Mr Mpofo it's JJJ21, video 20  
 4 I'm told.  
 5 [VIDEO IS SHOWN]  
 6 COMMISSIONER HEMRAJ: It's number 15 that  
 7 you're looking for, Mr Semenya. It's video number 15.  
 8 CHAIRPERSON: We think it's protester 2  
 9 on slide 164. There it is in the corner. That's Mr Bhele.  
 10 MR SEMENYA SC: Thank you, Chair, I'm  
 11 indebted.  
 12 CHAIRPERSON: Lunga is Bhele.  
 13 [VIDEO IS SHOWN]  
 14 CHAIRPERSON: That's not the passage we  
 15 had in mind, but I understand from Mr Tokota – Mr Tokota,  
 16 you tell me what you want to tell me on the record.  
 17 COMMISSIONER TOKOTA: No, I'm not quite  
 18 sure now what I was – I just wanted the first part of this  
 19 whole thing. I concentrated on the interpretation, not on  
 20 what he was saying.  
 21 MR SEMENYA SC: No Chair, we may find it,  
 22 but can I invite the operator to give us slide 192 of the  
 23 exhibit L?  
 24 COMMISSIONER TOKOTA: Ja, but I just want  
 25 to hear what this man was saying in the beginning.

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1 CHAIRPERSON: What I understand Mr Tokota  
 2 to be saying is he wants - the striker described as  
 3 protester 2 apparently at the very beginning of his speech  
 4 he said something which is not reflected, or so Mr Tokota  
 5 tells me that is his impression; he said something which is  
 6 not in the translation, the subtitles as it were, on the  
 7 slide as it is in exhibit L.  
 8 MR MPOFU: Chairperson –  
 9 CHAIRPERSON: That's what I'm told.  
 10 MR MPOFU: Yes. No, I just want to say  
 11 that before we play it, just in support of Mr Tokota, now  
 12 that I've seen that running commentary then it means we  
 13 have to do that exercise that you recommended in the  
 14 morning. It's very bad.  
 15 CHAIRPERSON: Ja.  
 16 MR MPOFU: Thank you, Chair.  
 17 [VIDEO IS SHOWN]  
 18 COMMISSIONER TOKOTA: Stop there. Stop  
 19 there, because what I want the interpreters to do is to  
 20 interpret from that portion where he says these policemen  
 21 were brought in here by the Boers, in English, and then  
 22 right up to there, interpret that one.  
 23 CHAIRPERSON: We must go back a bit in  
 24 the clip to the reference of the policemen being brought by  
 25 the Boers, and from that point on until the point which

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1 we've just been looking at we want to have a translation.  
 2 Is that correct? Right, so we've got to go back a bit on  
 3 the clip. We'll have to indicate from where we're starting  
 4 so that –  
 5 [VIDEO IS SHOWN]  
 6 MR SEMENYA SC: Stop, interpret.  
 7 INTERPRETER: I am referring to the black  
 8 policeman who called themselves, I'm referring to the black  
 9 man who called themselves policemen who have been deceived  
 10 by Boers and Englishmen to come and kill us here.  
 11 MR SEMENYA SC: Yes.  
 12 [VIDEO SHOWN]  
 13 Right, right.  
 14 INTERPRETER: It is fine for them to kill  
 15 but they must sign that before an hour –  
 16 MR SEMENYA SC: Yes.  
 17 [VIDEO SHOWN]  
 18 INTERPRETER: To see what is going to  
 19 happen within an hour here.  
 20 [VIDEO SHOWN]  
 21 INTERPRETER: Lonmin will not have anyone  
 22 else except us.  
 23 CHAIRPERSON: You say it's time to sign a  
 24 paper, what's the IsiXhosa meaning?  
 25 INTERPRETER: [African language] let them

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1 sign to see what's going to happen within an hour.  
 2 MR SEMENYA SC: That you heard Mr Nzuza?  
 3 MR NZUZA: Which one?  
 4 MR SEMENYA SC: About signing and they'll  
 5 see what will happen within an hour?  
 6 MR NZUZA: That cannot be answered by me.  
 7 I can hear it being said there but it's not me who's saying  
 8 that.  
 9 MR SEMENYA SC: Did you hear it?  
 10 CHAIRPERSON: Did you hear it, on the 16th  
 11 of August when you were there did you hear it being said?  
 12 MR NZUZA: His question first he said we  
 13 must sign to kill each other [inaudible] the question.  
 14 MR SEMENYA SC: Did you hear it?  
 15 CHAIRPERSON: I want to know, is did you,  
 16 who was the person speaking there, you've described as  
 17 protestor number two, who is this person? Do you know or  
 18 did you know him?  
 19 MR NZUZA: I know him now.  
 20 CHAIRPERSON: Who is he?  
 21 MR NZUZA: Its Bele.  
 22 CHAIRPERSON: So did you hear Bhele's  
 23 speech through the loudhailer when you were there on the  
 24 16th of August 2012?  
 25 MR NZUZA: I was on the side backwards

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1 there, I didn't hear him clearly.  
 2 MR SEMENYA SC: Can I invite the operator  
 3 we go to day 260 page 32774.  
 4 CHAIRPERSON: What page did you want, Mr  
 5 Semenya?  
 6 MR SEMENYA SC: 32774.  
 7 CHAIRPERSON: That's the page we're got  
 8 on the screen. What line?  
 9 MR SEMENYA SC: From line 1, said Mr  
 10 Mpofo there and Mr Budlender and just for context, this is  
 11 the cross-examination of Mr X. Mr Mpofo says "and Mr  
 12 Budlender and I will deal with this later, demonstrated  
 13 clearly and I will as I say, I will deal with it, that you  
 14 were not, you were possibly not present on the 13th of or in  
 15 the incident that happened on the 13th of August in which  
 16 three of the deaths implicating the police were involved"  
 17 do you see that?  
 18 MR NZUZA: Who is saying that?  
 19 MR SEMENYA SC: You didn't tell Mr Mpofo  
 20 that X was actually there on the 13th.  
 21 MR NZUZA: X was?  
 22 MR SEMENYA SC: Was there on the 13th.  
 23 MR NZUZA: Where?  
 24 MR SEMENYA SC: I have no further  
 25 questions, there's no point.

<p style="text-align: right;">Page 35926</p> <p>1 CHAIRPERSON: Yes, thank you, Mr Semenya.</p> <p>2 COMMISSIONER HEMRAJ: Mr Nzuzza, with</p> <p>3 regard to the incident with Mr Twala, to whom did you</p> <p>4 address the comment that he was the person who almost got</p> <p>5 you fired?</p> <p>6 MR NZUZA: Can you repeat the question</p> <p>7 please?</p> <p>8 COMMISSIONER HEMRAJ: Yes. You said to</p> <p>9 someone that Mr Twala was the person who had almost got you</p> <p>10 fired at some stage. To whom did you say that?</p> <p>11 MR NZUZA: I was answering him, Mr Twala.</p> <p>12 COMMISSIONER HEMRAJ: And who else was</p> <p>13 close to the two of you when you were talking to him?</p> <p>14 MR NZUZA: There were workers in that</p> <p>15 area, many of them.</p> <p>16 COMMISSIONER HEMRAJ: And this</p> <p>17 conversation was just between the two of you and nobody</p> <p>18 else was included in it?</p> <p>19 MR NZUZA: Can you repeat the question.</p> <p>20 COMMISSIONER HEMRAJ: The conversation</p> <p>21 was just between you and Mr Twala and nobody else was part</p> <p>22 of the conversation?</p> <p>23 MR NZUZA: I say we were in the middle of</p> <p>24 workers. He is the one who was saying how I knew him.</p> <p>25 COMMISSIONER HEMRAJ: To whom did he say</p>	<p style="text-align: right;">Page 35928</p> <p>1 of some of the documents he requested during the tea break.</p> <p>2 I mean during lunch.</p> <p>3 MR MPOFU: Yes, we have.</p> <p>4 MR GUMBI: Okay, thanks very much,</p> <p>5 Chairperson. For record, Chairperson I have 35 minutes.</p> <p>6 [16:07] My learned colleague Ms Masevhe has given me an</p> <p>7 extra 15 minutes.</p> <p>8 CHAIRPERSON: No, no, she can't just give</p> <p>9 it to you. She's got to get my permission. I haven't been</p> <p>10 asked to give permission. I was asked to give you 20</p> <p>11 minutes, which I've given you.</p> <p>12 CROSS-EXAMINATION BY MR GUMBI: Yes,</p> <p>13 Chairperson. Good afternoon, Mr Nzuzza.</p> <p>14 MR NZUZA: Good afternoon, Sir.</p> <p>15 MR GUMBI: I hope you are quite aware</p> <p>16 that I represent the late Warrant Officer Lepaaku who was</p> <p>17 killed on the 13th of August near the railway line. I also</p> <p>18 represent the injured police officer, Lieutenant Baloyi.</p> <p>19 MR NZUZA: I'm listening.</p> <p>20 MR GUMBI: Yes, as a point of entry, Mr</p> <p>21 Nzuzza, will you agree with me if I put the following</p> <p>22 proposition to you; that as you are testifying before this</p> <p>23 Commission, especially about the incident of the 13th that</p> <p>24 I'll be focussing on, you are approaching this Commission</p> <p>25 with clean hands, honestly, that whatever you are saying in</p>
<p style="text-align: right;">Page 35927</p> <p>1 how you knew him?</p> <p>2 MR NZUZA: He is the one who said this</p> <p>3 person, pointing the witness knows me.</p> <p>4 COMMISSIONER HEMRAJ: Yes, to whom did he</p> <p>5 say that?</p> <p>6 MR NZUZA: He was saying it to me when I</p> <p>7 arrived.</p> <p>8 COMMISSIONER HEMRAJ: Was Anele there in</p> <p>9 close proximity to the two of you?</p> <p>10 MR NZUZA: I didn't see Anele.</p> <p>11 COMMISSIONER HEMRAJ: Kaiser?</p> <p>12 MR NZUZA: I don't know Kaiser.</p> <p>13 COMMISSIONER HEMRAJ: Thank you.</p> <p>14 CHAIRPERSON: Mr Ramapela you've got, all</p> <p>15 together you've got 25 minutes, would you like to spend,</p> <p>16 would you like to use up ten of it now before we adjourn?</p> <p>17 MR RAMAPELA: Mr Chair, I've arranged</p> <p>18 with the evidence leaders that Mr Gumbi will come first and</p> <p>19 then –</p> <p>20 CHAIRPERSON: Alright. Mr Gumbi would</p> <p>21 you like, you've got twenty minutes would you like to use</p> <p>22 up 10 of them now?</p> <p>23 MR GUMBI: Mr Chairperson, as far as the</p> <p>24 housekeeping issue is concerned, I'm not sure whether my</p> <p>25 learned colleagues, Ms Ketse, whether she's in possession</p>	<p style="text-align: right;">Page 35929</p> <p>1 this Commission, you don't care whether it implicate SAPS,</p> <p>2 Lonmin, AMCU, NUM, whoever, you are leaving to the</p> <p>3 Commission to decide?</p> <p>4 MR NZUZA: Yes, I said the Commission</p> <p>5 will take decision.</p> <p>6 MR GUMBI: Yes, let's focus on the 13th.</p> <p>7 On the 13th of August 2012, will I be correct, Mr Nzuzza,</p> <p>8 that you joined the strikers, that group of more than a</p> <p>9 hundred men that went to K3 Shaft? The majority of the</p> <p>10 group you joined of that armed men, they were armed with</p> <p>11 dangerous weapons?</p> <p>12 MR NZUZA: Yes.</p> <p>13 MR GUMBI: And you were not armed with</p> <p>14 any dangerous weapon?</p> <p>15 MR NZUZA: Yes, I was not carrying any</p> <p>16 weapon.</p> <p>17 MR GUMBI: Were you aware that some of</p> <p>18 the strikers, they were armed with firearm?</p> <p>19 MR NZUZA: I don't know that.</p> <p>20 MR GUMBI: Mr X who testified before this</p> <p>21 Commission, he testified that dangerous weapons, they were</p> <p>22 purchased from Gwantshebe near Nkaneng. Still remember</p> <p>23 that evidence?</p> <p>24 MR NZUZA: That is from him.</p> <p>25 MR GUMBI: Ja, I understand that. I'm</p>

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1 saying you hear that evidence being adduced by Mr X here?  
 2 MR NZUZA: I can't answer anything from  
 3 Mr X. That's for him.  
 4 MR GUMBI: On the 13th were you aware that  
 5 some of the strikers were armed? I understand you were not  
 6 armed. Were they purchasing their dangerous weapon, pangas  
 7 and spears somewhere around Nkaneng?  
 8 MR NZUZA: I don't know about that.  
 9 MR GUMBI: Because you were among the  
 10 group of armed strikers, is it possible to tell this  
 11 Commission why were you not armed, the reason why were you  
 12 not armed?  
 13 MR NZUZA: Can you repeat the question,  
 14 please?  
 15 MR GUMBI: I'm saying you were in company  
 16 of protesters who were armed with dangerous weapons, pangas  
 17 and spears. Do you understand me on that?  
 18 MR NZUZA: Yes, I was with them.  
 19 MR GUMBI: And you were not armed?  
 20 MR NZUZA: Yes.  
 21 MR GUMBI: My question is, is it possible  
 22 to tell this Commission why you were not armed  
 23 specifically?  
 24 MR NZUZA: I felt like not arming.  
 25 Nobody was forced to carry weapons.

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1 MR GUMBI: On the 13th of August, General  
 2 Mpembe testified about this incident; he said near the  
 3 railway line he counted 10 times to allow the protesters to  
 4 hand over their dangerous weapons to police, or did you –  
 5 MR MPOFU: That's not true.  
 6 CHAIRPERSON: He was going to count up to  
 7 10 and he said by the time he got to 3 people got up and  
 8 walked away. That's his evidence.  
 9 MR GUMBI: Yes. The incident of counting  
 10 – I'm indebted to the Chairperson for correcting me on  
 11 that. He counted near the railway line. Still remember  
 12 that evidence of Mr Mpembe?  
 13 MR NZUZA: Yes.  
 14 MR GUMBI: Did you see General Mpembe  
 15 counting near the railway line on the 13th?  
 16 MR NZUZA: I saw him.  
 17 MR GUMBI: Immediately after he counted,  
 18 will I be correct that you didn't disperse? The strikers  
 19 didn't disperse?  
 20 MR NZUZA: We walked.  
 21 MR GUMBI: And you didn't hand over any  
 22 dangerous weapon to him?  
 23 MR NZUZA: Can you repeat –  
 24 MR GUMBI: You didn't witness any of the  
 25 strikers handing a dangerous weapon to General Mpembe near

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1 the railway line?  
 2 MR NZUZA: No, they didn't give it to  
 3 him.  
 4 MR GUMBI: General Mpembe further  
 5 testified before this Commission that he decided to escort  
 6 the strikers from the railway line to the mountain. Still  
 7 remember that?  
 8 MR NZUZA: I don't know about that.  
 9 MR GUMBI: Okay, fair enough, but he  
 10 further testified that he instructed the police to form the  
 11 police line behind the strikers while escorting them on  
 12 their way to the koppie. So my question is, did you see  
 13 the police forming the police line behind you while you  
 14 were heading towards the koppie, near the railway line?  
 15 MR NZUZA: I didn't see them making any  
 16 line.  
 17 MR GUMBI: But the police were following  
 18 you on foot on your way to the koppie?  
 19 MR NZUZA: Yes, they were following us.  
 20 MR GUMBI: And they were not far away  
 21 from you. They were at a short distance, following you?  
 22 MR NZUZA: Yes.  
 23 MR GUMBI: Before the firing of teargas  
 24 or stun grenade, will I be correct, as you testified  
 25 evidence-in-chief, that there was a police Nyala that

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1 passed you, then they blocked you strikers from going to  
 2 the settlement?  
 3 MR NZUZA: The part that it block us from  
 4 going to the settlement, I don't know about it.  
 5 MR GUMBI: But you were heading toward  
 6 the settlement when that Nyala blocked you. Is that  
 7 correct?  
 8 MR NZUZA: Yes.  
 9 MR GUMBI: That Nyala that blocked you,  
 10 will I be correct also that it was your observation that a  
 11 uniform police officer alighted from that Nyala?  
 12 MR NZUZA: Yes. We've already passed  
 13 where the police was.  
 14 CHAIRPERSON: Mr Gumbi, when it's  
 15 convenient for you we'll take the adjournment till tomorrow  
 16 morning, but if you want to round off a point before we do  
 17 that, go ahead.  
 18 MR GUMBI: Yes, Chairperson, if I can  
 19 pose one question, then I will wrap up this point.  
 20 Immediately after that police officer alighted from the  
 21 Nyala then the teargas and stun grenade were fired. Is  
 22 that correct?  
 23 MR NZUZA: Yes.  
 24 MR GUMBI: Yes, Chairperson, maybe we can  
 25 adjourn on that note.

1 CHAIRPERSON: At this point we'll adjourn  
2 till 9 o'clock tomorrow morning.  
3 [COMMISSION ADJOURNED]  
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<b>AAAA33</b> 35804:1	<b>advantage</b> 35801:10	<b>amounted</b> 35875:7	35801:21 35810:11	35891:23 35893:10
<b>AAAA34</b> 35816:1	<b>adversely</b> 35913:6	35913:21	35894:14 35913:4	35896:15 35912:10
<b>ABC</b> 35833:25 35834:1	<b>advised</b> 35797:16	<b>analogy</b> 35883:14	<b>arises</b> 35820:15	35918:16
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35890:13,16 35898:9	<b>afraid</b> 35762:12	35909:12 35911:25	<b>arms</b> 35770:23 35771:3	<b>assaulted</b> 35810:13
35919:8	35801:9	35924:6	<b>arrange</b> 35894:3	<b>assertion</b> 35879:21
<b>absolutely</b> 35797:6	<b>African</b> 35773:15	<b>answering</b> 35822:1	35896:14 35900:18	<b>assessment</b> 35764:6,8
35810:17 35891:11	35782:1 35838:3	35835:11 35857:14	<b>arranged</b> 35891:14	<b>assist</b> 35824:5 35830:2
<b>accept</b> 35834:12	35890:21 35912:6,6	35873:1 35917:15	35895:15 35927:17	35855:18 35856:4
35841:5 35858:3	35923:25	35926:11	<b>arrangements</b> 35894:6	35859:3,8,25
35860:15 35880:4,14	<b>afternoon</b> 35848:25	<b>answers</b> 35874:7	<b>arranging</b> 35805:5	35871:12 35896:23
35903:3 35917:20	35849:4 35928:13,14	35875:7 35880:1	<b>arrest</b> 35813:16	35912:4 35917:9
<b>acceptable</b> 35825:3,8	<b>agree</b> 35776:14	<b>anybody</b> 35799:1	35856:6,10 35859:8	35918:3
35835:14 35866:1	35808:17 35812:4	35814:18 35817:13	<b>arrested</b> 35762:22,25	<b>assistance</b> 35768:8,10
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