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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 40 30 JANUARY 2013 PAGES 4274 TO 4395

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 30 JANUARY 2013]
 2 [09:36] CHAIRPERSON: The Commission resumes. Mr
 3 Madlanga, you're going to continue with your cross-
 4 examination, I take it, but before you do so I have a duty
 5 to perform. You're still under oath.
 6 SAZISO ALBERT GEGELEZA (CONTD):
 7 MR MADLANGA SC: I have no further
 8 questions to put to the witness, Mr Chairman, thank you.
 9 CHAIRPERSON: Ms Barnes?
 10 MR TIP SC: Chair, forgive me, I just
 11 want to place on record my appreciation to my learned
 12 friend Mr Madlanga who, you will recall, approached me at
 13 the end of the proceedings yesterday to discuss the matter
 14 and for his professionalism and courtesy.
 15 CHAIRPERSON: Your discussions have been
 16 fruitful because it gives Ms Barnes a chance to ask the
 17 first questions in cross-examination this morning.
 18 MR TIP SC: Indeed.
 19 MS BARNES: Thank you, Chairperson.
 20 CROSS-EXAMINATION BY MS BARNES: Mr
 21 Gegeleza, would you perhaps start by helping us, if you
 22 could have a look at exhibit YY2.1? Do you have that in
 23 front of you?
 24 MR MAHLANGU: YY2.1, is it a Google map?
 25 MS BARNES: Yes, that's right. If you

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1 could please tell us where on that map we would find the
 2 Wonderkop hostel C5?
 3 MR GEGELEZA: When you proceed from
 4 street B –
 5 MS BARNES: If you could please –
 6 MR GEGELEZA: - if you proceed from
 7 street B to the right hand side, there's a red arrow which
 8 indicates, the first building would be the place you're
 9 asking.
 10 MS BARNES: If you could please mark it
 11 on the map for us, that would be useful. And this would be
 12 C5 that you've marked, is that right?
 13 MR MAHLANGU: As indicated on the map.
 14 CHAIRPERSON: Ms Barnes, may I suggest
 15 that you ask him to look at YY2.2? I think it's also –
 16 what he's now shown us appears to be clearer on that one,
 17 if we understand him correctly.
 18 MS BARNES: Yes, that would be helpful.
 19 Thank you, Chair. If you could look at YY2.2, if you could
 20 just also please mark on that map the hostel C5.
 21 MR GEGELEZA: Again the block just above
 22 street C, as it appears on the map.
 23 MS BARNES: If you would mark it on the
 24 map, please, for us?
 25 MR MAHLANGU: As indicated on the map, Mr

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1 Chairperson.
 2 CHAIRPERSON: Thank you.
 3 MS BARNES: Thank you, sir. Do you know
 4 where something called the boilermaker store is in the
 5 Wonderkop, in this area that we're looking at now?
 6 MR GEGELEZA: It's boilermaker store. I
 7 don't know that one. The one that I know is actually the
 8 Schagan workshop.
 9 MS BARNES: So you think the boilermaker
 10 store might be in the Schagan workshop, is that right?
 11 MR GEGELEZA: I don't know because I've
 12 never been inside the Schagan building.
 13 MS BARNES: Alright, that's fine, thank
 14 you. Now, you testified that the striking workers that
 15 approached the NUM office on the 11th of August 2012 were
 16 carrying weapons. Perhaps you can interpret that part.
 17 MR MAHLANGU: The question again was,
 18 the?
 19 MS BARNES: You testified yesterday that
 20 the striking – the large group of striking workers that
 21 approached the NUM office on Saturday the 11th of August
 22 were carrying various weapons.
 23 MR GEGELEZA: It is so.
 24 MS BARNES: And you testified that those
 25 weapons included knobkerries, sticks, assegais and pangas.

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1 That's what you said yesterday, is that correct?
 2 MR GEGELEZA: It is so.
 3 MS BARNES: Are you certain that those
 4 striking workers were carrying pangas on that day?
 5 MR GEGELEZA: It is so.
 6 MS BARNES: I'd like you to look at page
 7 4, paragraph 17 of your statement, that's exhibit ZZ2. Do
 8 you have that?
 9 MR GEGELEZA: I've got it.
 10 MS BARNES: In that paragraph, in
 11 reference to the group of striking workers, you say, "They
 12 were armed with knobkerries and sticks and I could see that
 13 several of them had assegais." Do you see that?
 14 MR GEGELEZA: It is so.
 15 MS BARNES: You don't say there that the
 16 workers were carrying pangas, do you?
 17 MR GEGELEZA: I'd mentioned it. Possibly
 18 a mistake was made by omitting it here.
 19 MS BARNES: I'd like you to look at Mr
 20 Dibakwane's statement, that's exhibit ZZ3, if you'd look at
 21 page 2, paragraph 2.9. This is the statement from the
 22 Lonmin security guard, Mr Dibakwane, and he says the
 23 following. "At that time I observed that some members of
 24 the marching crowd were carrying traditional weapons such
 25 as sticks and spears. I did not, however, observe any

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1 pangas or fire weapons." Do you see that?
 2 MR GEGELEZA: I cannot give evidence as
 3 to what it is that he observed. I was nearer to these
 4 people.
 5 MS BARNES: Now, I understood your
 6 evidence yesterday to be that the group of striking workers
 7 threw stones at the group of NUM officials and NUM members
 8 in the vicinity of the NUM office, is that correct?
 9 MR GEGELEZA: I said the group of NUM
 10 officials who were behind the NUM offices, not in front.
 11 That is where I was also present.
 12 MS BARNES: Yes, that's exactly what I'm
 13 trying to clarify. My note of your evidence yesterday
 14 says, "Stones were thrown but by then we were at the back."
 15 Is that what you said yesterday?
 16 MR GEGELEZA: What I said, yes, and then
 17 we also approached them.
 18 MS BARNES: So by "at the back" you mean
 19 you were behind the NUM office at that time, is that
 20 correct?
 21 MR GEGELEZA: That's correct.
 22 MS BARNES: So did you actually see the
 23 group of striking workers throwing stones?
 24 MR GEGELEZA: It is so.
 25 MS BARNES: Alright, now you're aware of

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1 the fact that two people, two people who were members of
 2 the group of striking workers were shot by the group of NUM
 3 officials and members on Saturday the 11th of August, is
 4 that correct?
 5 MR GEGELEZA: I came to know about that
 6 when – a few days after, when the company made this
 7 information available.
 8 MS BARNES: And cases of attempted murder
 9 were opened in respect of those two individuals and the
 10 dockets in respect of those cases are before the
 11 Commission.
 12 MR GEGELEZA: I have no idea.
 13 MS BARNES: I'd like you to go to exhibit
 14 XX5 which is the first of these dockets.
 15 MR GEGELEZA: I don't have it before me.
 16 MS BARNES: If the witness could please
 17 be provided with the exhibit.
 18 MR MAHLANGU: My colleague is looking for
 19 it. Thank you, Mr Chairperson, I've got it now.
 20 MS BARNES: Perhaps before we look at the
 21 docket, you said a few moments ago that you heard from the
 22 company about the striking workers that had been shot.
 23 MR GEGELEZA: It is so.
 24 MS BARNES: Please tell us what you were
 25 told by the company and when?

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1 MR GEGELEZA: We work in the offices and
 2 there were e-mails sent to our computers to report how many
 3 incidents of injuries were there.
 4 MS BARNES: Are you saying that there was
 5 a specific e-mail sent in relation to these two individuals
 6 who were shot by your group on the 11th of August?
 7 MR GEGELEZA: Not only the two incidents
 8 but all the injuries in the different shafts.
 9 MS BARNES: I'm not asking about any of
 10 the other injuries, I'm asking was there a specific e-mail
 11 that you received in relation to these two individuals, Mr
 12 Ngema and Mr Mabuyakhulu?
 13 MR GEGELEZA: No names of individuals are
 14 mentioned but the numbers of people. They would for
 15 instance – so many people were injured at western, so many
 16 people were injured at the eastern and so many people at
 17 such and such a shaft.
 18 MS BARNES: What was the information that
 19 you received about what had happened on the 11th of August?
 20 MR GEGELEZA: On the 11th I did not
 21 receive any information because I did not go to a shaft.
 22 MS BARNES: No, I'm not asking about
 23 information that you received on the 11th, I'm asking about
 24 information that you received at any time about what had
 25 happened on the 11th.

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1 MR GEGELEZA: Except what I observed at
 2 the time of the confrontation with the strikers, that is
 3 all I know. I did not hear anything.
 4 MS BARNES: So you in fact received no
 5 information from the company subsequently about the
 6 injuries that had taken place on the 11th, is that correct?
 7 MR GEGELEZA: No information was
 8 received.
 9 MS BARNES: So you didn't know how many
 10 people had been injured or the nature of their injuries, is
 11 that correct?
 12 MR GEGELEZA: It is so.
 13 MS BARNES: And you still do not know the
 14 names of the people or the nature of their injuries, is
 15 that right?
 16 MR GEGELEZA: I do not know them.
 17 MS BARNES: Alright, if you could look
 18 now at exhibit XX5, if you could go to page 9 of that
 19 document. The pages aren't numbered but if you could just
 20 page to page 9 and that - you'll find on page 9 the J88
 21 form. Do you see that?
 22 [09:56] MR GEGELEZA: Yes, I see it.
 23 MS BARNES: Now this is the – this is in
 24 respect of the docket of Mr Bongani Ngema and the nature of
 25 his injury is indicated on this document and it says,

<p style="text-align: right;">Page 4282</p> <p>1 "Entrance wound right lateral lower back at level 3 to 4 2 level." Do you see? 3 CHAIRPERSON: Ms Barnes, I notice that 4 according to the document that you're referring to, the 5 bullet was seen on x-ray. The docket doesn't tell us, 6 though, whether the bullet was extracted and whether any 7 ballistics have been done but possibly that's a matter for 8 a possible criminal trial, if there is one, and not for us 9 – but anyway, I just mention it to you because it may well 10 be worth following up, I don't know. 11 MS BARNES: Thank you, Chair. 12 MR GEGELEZA: I'm hearing this for the 13 first time today, Mr Chairperson. I have no idea what 14 happened. 15 MS BARNES: So Mr Ngema was shot in the 16 back, do you see that? 17 MR GEGELEZA: I cannot comment here 18 because I did not see him, I did not even see him. 19 MS BARNES: It would appear then that Mr 20 Ngema was shot while he was running away from your group, 21 is that correct? 22 MR TIP SC: Chair, I object to that. 23 CHAIRPERSON: I don't think, Ms Barnes, 24 that that's correct. Obviously I must hear the objection 25 but as I read his statement A2, it's not clear that that's</p>	<p style="text-align: right;">Page 4284</p> <p>1 MS BARNES: The point is really that it 2 seems unlikely that Mr Ngema would've been facing his 3 shooter at the time that he was shot, isn't that correct? 4 MR GEGELEZA: Turning to the shooting, 5 really I have no idea. I cannot give evidence there. 6 MS BARNES: Alright, if you could go now 7 to exhibit – 8 CHAIRPERSON: It's all really speculation 9 that if there were three shots and this was the third shot, 10 he might well have turned round when he heard the first 11 shot, I mean, but we don't know, it's all speculation. If 12 he's called to give evidence, maybe we can take these 13 points further but I'm not sure that we're getting 14 anywhere, with respect, with this particular point but I'm 15 sure you've got better points that you're going to make 16 now. 17 MS BARNES: If we could turn now to 18 exhibit XX6, that is the docket in respect of the other 19 gentleman, Mr Mabuyakhulu, who was also shot on that day, 20 if you could go to page 7 of that document, which is also 21 the J88 and you see there that this gentleman was also shot 22 in the back. "Entrance wound right lower back at L4/5 23 level." Do you see that? 24 MR GEGELEZA: Yes, I see it. 25 MS BARNES: And it appears that this</p>
<p style="text-align: right;">Page 4283</p> <p>1 the case at all. I mean obviously on this witness's 2 version it may be clear that he was running away but on his 3 own statement he may have been somebody who was – one can't 4 talk about cross-fire because it's not suggested there were 5 shots being fired both ways but on his version, as I read 6 his statement, he was walking along – he says on his way to 7 the stadium and while walking – then he talks about the 8 gunshot and so on. So he doesn't admit to be running away. 9 He doesn't even admit, on his statement, to have been a 10 member of the group that was approaching the NUM workshop. 11 So I think – I haven't given you a chance to answer yet but 12 I think it may be – unless you want to address me on the 13 point, I think it might be sensible to reformulate the 14 question. Was that your objection, Mr Tip, or do you have 15 another one? 16 MR TIP SC: That was the essence of it 17 but also coupled with the fact that the J88 says, "Entrance 18 wound right lateral lower back" and I understand the word 19 "lateral" to signify on the side, as distinct from the word 20 "posterior." So that it's not clear. 21 CHAIRPERSON: Lateral back – [inaudible]. 22 MR TIP SC: Well, yes. 23 CHAIRPERSON: Let's see how Ms Barnes 24 deals with the two points. I'm not sure that mine is 25 necessarily the point she's going to make.</p>	<p style="text-align: right;">Page 4285</p> <p>1 gentleman was also hit with a knobkerrie, if you could go 2 to page 3 of the docket and have a look at his statement, 3 I'm going to read the relevant portion of the statement. 4 It's the third paragraph on that page, it says, "Before 5 they approached us they shot through to hit to us and 6 hit others with knobkerrie and we ran away and I was shoot 7 at the back and the bullet struck me and I fall and after 8 that they came to me and asked where I am working and I 9 said Karee and then they hit me on the head and I moved 10 towards the fence." Do you see that? 11 MR GEGELEZA: I did not observe that. 12 MS BARNES: So he doesn't in fact say 13 that he was hit with a knobkerrie, but he says that he was 14 hit on the head and then he refers to other people being 15 hit with a knobkerrie, do you see that? 16 MR GEGELEZA: I have no idea. 17 MS BARNES: There's also, in the same 18 document if you go on to page 5 there's a statement there 19 from the police officer who found this gentleman and the 20 statement from the police confirms that he had a head 21 injury as well as the bullet wound in his back. 22 MR GEGELEZA: I have no knowledge of 23 that. 24 MS BARNES: At the bottom of page 5 the 25 police statement says, "there was injury on his head and on</p>

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1 the right side" and then it says, "and on the top of his
2 waist next to the spinal cord there was the gun wound."
3 MR GEGELEZA: I have no idea.
4 MS BARNES: What's also apparent from
5 this docket at page 10 is that Mr Mabuyakhulu was initially
6 –
7 MR GEGELEZA: May I explain something
8 here, Mr Chairperson?
9 CHAIRPERSON: Do so.
10 MR GEGELEZA: May I explain, Chairperson,
11 that I understand this person is working at Karee and Karee
12 has its own facilities, it's got its own clinic over there
13 and people who are working at Karee would be taken
14 necessarily to those facilities and it would be difficult
15 for me to know what is happening over there because I am in
16 a different unit.
17 MS BARNES: Alright, well, I'm simply
18 putting to you that this gentleman was initially admitted
19 to the Andrew Saffi Hospital on the Lonmin premises.
20 MR GEGELEZA: I did not hear anything
21 about that.
22 MS BARNES: And then this gentleman was
23 thereafter transferred to the Ferncrest Hospital in
24 Rustenburg and he was placed in ICU, in intensive care.
25 That appears on page 10 of the docket.

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1 MR GEGELEZA: I have no knowledge of
2 that.
3 MS BARNES: And similarly, Mr Ngema was
4 also admitted initially to the Andrew Saffi Hospital and
5 then transferred to the Ferncrest Hospital in Rustenburg
6 and that appears at page 4 and 5 of his docket.
7 MR GEGELEZA: I have no idea.
8 CHAIRPERSON: It appears from the docket
9 that he was working at Karee but he was found at the place
10 that was described, the workshop. He was seriously injured
11 because he was shot, amongst other things, he was shot in
12 the back. So the nearest hospital was Saffi, so he was
13 then taken by ambulance to Saffi and thereafter he was
14 transferred to the other hospital which is referred to by
15 counsel. Is it Fern what?
16 MS BARNES: It's Ferncrest Hospital.
17 CHAIRPERSON: The Ferncrest Hospital. So
18 the fact that he originally came from Karee is not relevant
19 in relation to the hospital he was taken to. He was
20 injured, taken to the nearest hospital and thereafter
21 transferred to another hospital for further treatment, so I
22 think that's a dead-end, if I may say so.
23 MR GEGELEZA: Chairperson, I can't
24 comment on that because I have no idea how many people are
25 being admitted per day in any hospital.

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1 MS BARNES: Now you've stated earlier
2 that you received no report from the company about these
3 people and what had happened to them, is that correct?
4 MR GEGELEZA: I said, Mr Chairperson,
5 information was received later that during the
6 confrontation between the strikers and the NUM people, two
7 people were injured but it ended there.
8 MS BARNES: Was that information received
9 after the 16th of August?
10 MR GEGELEZA: Though I do not remember
11 the exact date, but I think it was before the 16th of
12 August.
13 MS BARNES: But the information wasn't
14 received immediately, it was some days after the incident,
15 is that correct?
16 MR GEGELEZA: If you remember well, after
17 the confrontation of the 11th and that on the 12th, we were
18 then removed from there to a place of safety where we were
19 being transported by vehicle to the place where we worked.
20 CHAIRPERSON: Ms Barnes, I think this –
21 because there's no exit wound so a laparotomy was done.
22 The report says that no bullet was visualised on x-ray but
23 I take it, it may well have been that – I'm not sure
24 whether it's for us to investigate it. It may be something
25 to be done elsewhere but it looks as if the bullet may well

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1 have been removed during the laparotomy and presumably
2 ballistic evidence may well be able to link it to a weapon,
3 if a weapon is in the possession of the police, but these
4 are matters which we obviously can't deal with at the
5 moment but they may well be worth looking into.
6 MS BARNES: Now sir, isn't it correct
7 that if there was no immediate report about what had
8 happened to these people and if they were no longer on the
9 premises of Lonmin, that people may have believed that they
10 had died?
11 CHAIRPERSON: Ms Barnes, isn't that
12 speculation? I mean we can speculate as well as anybody
13 else can. If we're going to have lots of – if this
14 could've happened, is this possible, may this be the case,
15 in respect of matters which are really inferences from
16 facts that are established, I think we're going to spend a
17 lot of time unfruitfully. I don't want to stop you if you
18 have a particular focused reason for asking the question,
19 but I have indicated my attitude to that kind of question.
20 MS BARNES: Chair, I won't take it any
21 further. Isn't it correct, sir, that prior to the incident
22 which happened on the 11th of August, the striking workers
23 would gather at the vicinity of the Wonderkop Stadium? Is
24 that right?
25 MR GEGELEZA: I saw them on Saturday.

<p style="text-align: right;">Page 4290</p> <p>1 MS BARNES: And after the incident they 2 started gathering on the koppie instead, is that correct? 3 MR GEGELEZA: I did not see where they 4 were, whether they were in the shack settlement or 5 wherever, I did not see them. 6 MS BARNES: Well, you heard that after 7 the incident they began to gather on the koppie, isn't that 8 correct? 9 MR GEGELEZA: Yes. 10 MS BARNES: Chair, I have no further 11 questions. 12 CHAIRPERSON: Mr Mpofo, are you going to 13 cross-examine? Do you wish to cross-examine next? 14 MR MPOFU: I do wish, Chair. 15 CHAIRPERSON: Please do so. 16 CROSS-EXAMINATION BY MR MPOFU: Mr 17 Gegeleza – 18 MR GEGELEZA: Sir? 19 MR MPOFU: You like the NUM very much, 20 don't you? 21 MR GEGELEZA: It is so. 22 MR MPOFU: You're prepared to do anything 23 for it. 24 MR GEGELEZA: Only which is good. 25 MR MPOFU: You're also prepared to lay</p>	<p style="text-align: right;">Page 4292</p> <p>1 MR GEGELEZA: It is so. 2 MR MPOFU: And is it so that RDOs work 3 under very bad and difficult conditions? 4 MR GEGELEZA: It is so. 5 MR MPOFU: Is it also correct that they 6 are extremely underpaid? 7 MR GEGELEZA: I agree. 8 MR MPOFU: Is it correct that they should 9 be paid more than what they are being paid? In other 10 words, in respect to wages, that they have a legitimate 11 cause for complaint. 12 MR GEGELEZA: I agree that all the people 13 employed by the mines work under difficult circumstances, 14 not only the machine operators. 15 MR MPOFU: Is it correct that some of the 16 conditions that RDOs work under seriously impair their 17 dignity, human dignity? 18 MR GEGELEZA: I agree. 19 MR MPOFU: Is it correct that they are 20 still referred to as they were under apartheid, as machine 21 boys, irrespective of their age? 22 MR GEGELEZA: It is still being used, 23 yes. 24 MR MPOFU: Now, on the 11th, is your 25 testimony that you were on your way – on the 11th of August,</p>
<p style="text-align: right;">Page 4291</p> <p>1 down your life for it, according to your evidence, correct? 2 [10:16] MR GEGELEZA: It can be so, yes. 3 MR MPOFU: And you didn't like something 4 bad to happen to the NUM, correct? 5 MR GEGELEZA: That is correct. 6 MR MPOFU: You also wouldn't like an 7 adverse finding from this Commission against the NUM, would 8 you? 9 MR GEGELEZA: I cannot change the finding 10 of the Commission, it would be the Commission's finding. 11 MR MPOFU: No sir, just answer the 12 question. I'm asking about you. Would you wish that there 13 is no adverse finding against the NUM? 14 MR GEGELEZA: No, it is not so. 15 MR MPOFU: Would you wish that there is 16 an adverse finding? 17 MR GEGELEZA: If they have done anything 18 wrong, let it come out. 19 MR MPOFU: Good. And do you think the 20 NUM did something bad on the 11th? 21 MR GEGELEZA: I see nothing wrong. 22 MR MPOFU: It only did good things? 23 MR GEGELEZA: I would say so, yes. 24 MR MPOFU: Okay. You are an RDO 25 yourself, correct?</p>	<p style="text-align: right;">Page 4293</p> <p>1 sorry Mr Chairman, 2012 – your testimony is that you were 2 on your work to work in the morning, correct, and you were 3 stopped by shop stewards, these people who were known to 4 you? 5 MR GEGELEZA: Yes. 6 MR MPOFU: These are your comrades from 7 the NUM, you know them very well. 8 MR GEGELEZA: It is so. 9 MR MPOFU: You know their names. 10 MR GEGELEZA: Some of them, yes, not all 11 of them. We also refer to one another by nicknames. 12 MR MPOFU: Okay, you know all their names 13 or their nicknames? 14 MR GEGELEZA: All those with whom I was, 15 yes. 16 MR MPOFU: Yes. And these are the same 17 people who made up the group of 30 that gathered at the NUM 18 office, you know all their names? 19 MR GEGELEZA: It is so. 20 MR MPOFU: Okay. Now, when you were – 21 you went back to the office, as I understand it, and then 22 is it correct that the security officials at Lonmin advised 23 your group to vacate the offices? 24 MR GEGELEZA: No, it is not so. 25 MR MPOFU: Okay, well, that was the</p>

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1 evidence of Mr Setelele, I think, that you were advised to
2 vacate the office.

3 MR GEGELEZA: I wasn't present when he
4 spoke to the security officers, I don't know if that was
5 mentioned.

6 MR MPOFU: But he must have come back to
7 report to the group of about 30 people.

8 MR GEGELEZA: What he did report was that
9 information was given that the strikers were coming to
10 attack the office.

11 MR MPOFU: Okay. Well, in any event,
12 your evidence was that there was a big debate about whether
13 to go or to stay, correct?

14 MR GEGELEZA: It is so.

15 MR MPOFU: So that debate, for someone
16 who must not there, there must have been a group of people
17 who were saying they should leave and another group that
18 they were saying we must stay.

19 MR GEGELEZA: No, it is not so.

20 MR MPOFU: Well then, what was the nature
21 of the debate?

22 MR GEGELEZA: The decision was made, was
23 that we go outside the office so that we are not being
24 attacked whilst inside the office.

25 MR MPOFU: If you'd just bear with me, Mr

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1 Chairman. Okay, I'll come back to that. I'm looking for a
2 passage in your statement that was put to Mr Setelele.

3 CHAIRPERSON: Which statement are you
4 looking for –

5 MR MPOFU: Well, I was looking at ZZ2,
6 which is this witness's statement, but the information I'm
7 looking for might be in Mr Setelele's statement, which is –

8 CHAIRPERSON: What's the information
9 you're looking for? You can tell us in one sentence.

10 MR MPOFU: Chair, well, it's the issue we
11 are debating which is that there was a debate inside the
12 NUM office, some people saying they should vacate the
13 offices and the others saying they must stay.

14 CHAIRPERSON: I don't see anything
15 directly in those terms. By inference it's there, because
16 what you have is, in Mr Setelele's statement YY1 at para 17
17 –

18 MR MPOFU: Para 17, thank you, Chair.

19 COMMISSIONER HEMRAJ: I think it was
20 paragraph 15 of Mr Gegeleza's statement.

21 MR MPOFU: Yes.

22 CHAIRPERSON: That's correct, there was a
23 lot of anxious discussion about what we should do.

24 MR MPOFU: Yes Chair –

25 CHAIRPERSON: ZZ2, para 15, line 3.

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1 MR MPOFU: Thank you very much, my pages
2 are copied on both sides, which makes it difficult. Thank
3 you very much, Chair.

4 CHAIRPERSON: Adv Hemraj decided for us.

5 MR MPOFU: Thank you very much, I'm
6 indebted to the commissioner. Ja, well, you've now just
7 said that there was no such – the debate that I postulated
8 to you did not take place. Can I read what you said in
9 paragraph 15 of your statement?

10 MR TIP SC: Chair, I object to that. The
11 witness's answer must be treated fairly. He put it in
12 chronological order. It had been suggested that there was
13 a big debate inside the office. He said no, we moved out
14 of the office. And paragraph 15 must be put fairly. "We
15 then all moved out of the office and onto the road" and
16 then there is a description of what took place thereafter
17 and it must be put on that basis, with respect.

18 CHAIRPERSON: Mr Mpofo, it does seem as
19 if Mr Tip is correct. I don't know that it necessarily
20 affects the point you're making, so may I suggest you
21 reformulate your question and move on? Where the debate
22 took place is neither here nor there. Your point is, there
23 was a debate and the decision was taken.

24 MR MPOFU: That's correct.

25 CHAIRPERSON: Put it correctly and then

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1 we -

2 MR MPOFU: The objection is not well-
3 founded but I'll let it go. I'll reformulate.

4 CHAIRPERSON: I think it is well-founded
5 but never mind, carry on.

6 MR MPOFU: Yes, thanks. Mr Gegeleza, do
7 you remember that you and I agreed that there was a big
8 debate, correct?

9 MR GEGELEZA: Yes, there were big
10 discussions.

11 MR MPOFU: Right. The only point about
12 which you and I differed –

13 MR MAHLANGU: No, let me correct this.
14 He says it wasn't very deep discussions.

15 MR MPOFU: Was it a debate?

16 MR GEGELEZA: Just telling one another we
17 have to leave the office, that the strikers should not find
18 us inside the office.

19 MR MPOFU: Yes. No, no, I know. That's
20 what I'm saying, my – what I'm putting to you is that the
21 debate was about whether to vacate the office and flee, s
22 it were. You are saying no, the debate was whether you
23 must stay inside the office or outside the office. Do I
24 understand our difference correctly?

25 MR GEGELEZA: The decision was – the

<p style="text-align: right;">Page 4298</p> <p>1 discussion was that we should not be found inside the house 2 when there's an attack, we should be somewhere outside and 3 we also said we should not be inside the yard but outside 4 where it would be safe. 5 MR MPOFU: Yes. In other words, you'd 6 think there was no debate concerning leaving and fleeing 7 altogether and running away – 8 CHAIRPERSON: No – no. I don't think 9 that's what he's saying. What he's saying is, the first 10 question was, do we stay in the office? 11 MR MPOFU: Yes. 12 CHAIRPERSON: There appeared to be 13 unanimity that that's not a good idea, we'll be trapped in 14 the office. So they all agreed and they went out. 15 MR MPOFU: Yes. 16 CHAIRPERSON: They decided not even to be 17 trapped in the yard but to go outside. They went outside 18 onto this rough piece of ground that Mr Tip spoke about. 19 Then there was a debate and what was described as an 20 anxious discussion, which may have been a deep debate or 21 not – anxious discussion, do we stay here or do we go? 22 Some of them left, that's what he says, some of them left, 23 did in fact leave, and others stayed. And that's the point 24 really from which you're proposing to move on, as I 25 understand it, but please –</p>	<p style="text-align: right;">Page 4300</p> <p>1 Mr – the late Daluvuyo Bongo. They suggested to him that 2 we should close the office and move away because the 3 strikers were in the vicinity. Mr Bongo asked them if they 4 would protect our office. 5 MR MPOFU: Okay, let's approach it like 6 this. Whether it was Mr Bongo, Mr Setelele or whoever, did 7 more than 10 people leave as a result of the call to vacate 8 and flee? 9 MR TIP SC: Chair, I object to that. 10 There is now being put to the witness that there was a call 11 to vacate and flee. Now that's not present in the evidence 12 at all and if Mr Mpofu is going to lead evidence to that 13 effect then he must make that clear but it's not correct to 14 say to the witness and to require him to deal with a call 15 to do something. The limitations and the parameters of 16 what took place there are clear from the statement, with 17 respect, they don't extend to a call to flee. 18 MR MPOFU: Okay. 19 CHAIRPERSON: Mr Mpofu? 20 MR MPOFU: Chair, yes. Mr Chair, once 21 again and for the sake of progress I'll just refer the 22 witness to the statement. Mr Setelele, let's just look at 23 what you say. 24 CHAIRPERSON: Gegeleza. 25 MR MPOFU: Mr Gegeleza, sorry – thank</p>
<p style="text-align: right;">Page 4299</p> <p>1 MR MPOFU: No, I'm sorry, Chair – 2 CHAIRPERSON: - your cross-examination 3 unduly. 4 MR MPOFU: No, thank you Chair, no, I'm 5 not talking about what he says in the statement, Chair, I'm 6 talking about what he said now in evidence. 7 CHAIRPERSON: I didn't understand him to 8 say anything different but I don't know that it matters, 9 really. I suppose it's the point you're trying to make but 10 let me not stop you unduly. 11 MR MPOFU: Mr Gegeleza, was there any 12 debate on the 11th at any time whatsoever about whether you 13 should vacate and leave the office altogether or stay and 14 defend it? 15 MR GEGELEZA: Nobody mentioned that we 16 should flee. 17 MR MPOFU: Thank you, and that's how I 18 understood the difference between you and me. Now, what I 19 want to put to you is in your statement, as the Chairperson 20 has already said, in your statement you say that there was 21 such a debate and in fact some people left, more than 10, 22 as I understand it. Is that correct? 23 MR GEGELEZA: If you're looking at my 24 statement, a van arrived there, a Lonmin van with two 25 security officers inside. They called the branch secretary</p>	<p style="text-align: right;">Page 4301</p> <p>1 you, Chair. Although - Mr Brown is Mr Setelele. You say 2 at paragraph 15, "Although many people spoke in favour of 3 remaining and trying to protect the office, it was clear 4 that most of us, if not all, were very afraid of the 5 strikers, given the information we had received. Several 6 of those present did in fact leave." And then you were 7 asked at some stage how many and said it was more than 10, 8 do you remember that? 9 [10:36] MR GEGELEZA: I want to make it very 10 clear, nobody decided to leave after we had received the 11 information. I must state that after the arrival – I must 12 say, sir, that after the arrival of the security officers 13 and they had given this information, at that time the 14 strikers were already in the vicinity, they were near. The 15 securities left and only then did some of our people decide 16 to flee. 17 MR MPOFU: Okay, so when those people 18 decided to flee, were the people who were left, less than 19 20? 20 MR GEGELEZA: Possible. 21 MR MPOFU: Well, you say in the 22 statement, "By the time strikers arrived there was less 23 than 20 people who had remained in the office." You know, 24 what do you mean it can be possible? 25 MR GEGELEZA: Remember that what I said</p>

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1 here and the evidence I'm giving here is based on an
2 estimation, I didn't actually count the people.
3 MR MPOFU: Okay, can –
4 CHAIRPERSON: I don't know that it's a
5 point worth investigating further. It was about 20.
6 Whether he said exactly it was less than 20 or no, it was
7 possible, doesn't really matter for our purposes. For our
8 purposes there were about 20 there and then something
9 happened and that's what you're interested in, is it?
10 MR MPOFU: Okay. Thank you, Chair.
11 Okay, fair enough, let's accept then what you say in your
12 statement, that less than 20 people remained. Now, of
13 those less than 20 people, you broke off from the others
14 with a group of about five, correct?
15 MR GEGELEZA: It is so.
16 MR MPOFU: What happened to the other
17 less than 15 people?
18 MR GEGELEZA: They were standing in the
19 road there.
20 MR MPOFU: Were they in the front of the
21 office?
22 MR GEGELEZA: Yes.
23 MR MPOFU: And you were at the back of
24 the office?
25 MR GEGELEZA: That's correct.

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1 MR MPOFU: You could not see the other 14
2 or 15?
3 MR GEGELEZA: Some were visible, we did
4 not see others.
5 MR MPOFU: In any event, the group of
6 five that you were part of was armed with a few knobkerries
7 and one spear.
8 MR GEGELEZA: It is so.
9 MR MPOFU: And it is that group of five
10 that, as it were, stood toe-to-toe with this crowd?
11 MR GEGELEZA: We asked the other group to
12 move towards the satellite police station so that there's
13 no group that would approach us from that side.
14 MR MPOFU: Good. So that group then went
15 to what's in front of the satellite police station.
16 MR GEGELEZA: That happened, yes.
17 MR MPOFU: And now they were completely
18 invisible to you from where you were behind the NUM office.
19 MR GEGELEZA: That is correct.
20 MR MPOFU: So what you're telling the
21 Commission is that, not knowing where those other 15 people
22 were, the five of you with one – a couple of sticks and a
23 knobkerrie and a spear, stood and were prepared to resist
24 the crowd which has been estimated at about 2 000 to 3 000
25 people.

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1 MR GEGELEZA: In answering your question,
2 the others that had gone on the other side had also gone to
3 do exactly the same thing, they wouldn't just stand there
4 and everything was happening very fast at the time.
5 CHAIRPERSON: May I ask a question, Mr
6 Mpofo?
7 MR MPOFU: Yes, thank you.
8 CHAIRPERSON: In your statement you refer
9 to a large group of strikers coming around the corner of
10 the road from the hostel and standing – moving in your
11 direction. Can you give us an estimate of how many there
12 were, or is it not possible?
13 MR GEGELEZA: I would not be able to say
14 how many, Mr Chairperson, but there were quite many.
15 MR MPOFU: Okay. Well, the reason why I
16 used between 2 000 and 3 000 is because Mr Dibakwane
17 estimated them at 3 000 and the other gentleman who made a
18 statement estimated them at 2 000, I think it's Motlogeli -
19 Motlogeloa.
20 CHAIRPERSON: Motlogeloa in ZZ4 –
21 MR MPOFU: Yes, that's -
22 CHAIRPERSON: At paragraph 7 –
23 MR MPOFU: Correct, Chair.
24 CHAIRPERSON: - puts them at more or less
25 2 000.

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1 MR MPOFU: And Dibakwane at –
2 CHAIRPERSON: At paragraph 2.22 –
3 MR MPOFU: 2.22.
4 CHAIRPERSON: Of Mr Dibakwane's
5 statement, exhibit ZZ3, he puts them at approximately
6 3 000.
7 MR MPOFU: 3 000.
8 CHAIRPERSON: He says he doesn't know the
9 NUM but there were a lot.
10 MR MPOFU: Yes.
11 CHAIRPERSON: We don't need the number
12 for the purposes of this part of the case.
13 MR MPOFU: No, that's exactly why I
14 framed the question, when I said the crowd estimated at
15 between 2 000 and 3 000. The gist, really, of what I'm
16 saying to you is, the five of you standing there with one
17 spear and a stick or two were prepared to have a face-off
18 with this group estimated – of thousands of people.
19 MR GEGELEZA: It is so.
20 MR MPOFU: And you say that in your mind,
21 one of the things that fortified you to do this act of
22 bravery is that the other 14 or 15 were not just going to
23 stand there, as you say.
24 MR GEGELEZA: It is so.
25 MR MPOFU: Well, what were they carrying?

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1 MR GEGELEZA: Sticks, as I have said,
 2 there was just one assegai and one panga which had been
 3 taken from the strikers, which was found from the strikers.
 4 MR MPOFU: Alright, so the other unit or
 5 battalion had one stick – rather, a couple of sticks, one
 6 panga and one assegai.
 7 MR GEGELEZA: All the others were
 8 carrying sticks.
 9 MR MPOFU: Yes, and with this one panga,
 10 one spear and a couple of sticks, they were not just going
 11 to stand there. What were they going to do?
 12 MR GEGELEZA: Let me explain it this way.
 13 At the place where I grew up, I had never been told that
 14 fighting depends on numbers. What I know is that if there
 15 are two groups facing one another, one would lose the
 16 fight. That is exactly what happened on that day.
 17 MR MPOFU: I see. So numbers don't
 18 matter?
 19 MR GEGELEZA: From the time of my birth,
 20 Mr Chairperson, up to now, it depends – I was never told
 21 fighting depends on numbers.
 22 MR MPOFU: In other words, what you are
 23 telling the Commission is that in your mind, despite the
 24 fact that there were five of you and maybe 14 or so on the
 25 other side, because where you've come from you've never

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1 heard of, that fighting has anything to do with numbers,
 2 you were confident that you would repel the attack of these
 3 thousands?
 4 MR GEGELEZA: Yes, it is so.
 5 MR MPOFU: You were not scared?
 6 MR GEGELEZA: A bit scared, I was a bit
 7 scared.
 8 MR MPOFU: Was part of the reason that
 9 you were scared, the fact that there were these multitudes
 10 coming in, armed multitudes?
 11 MR GEGELEZA: It is so.
 12 MR MPOFU: Oh, okay. I thought the
 13 numbers do not affect you.
 14 MR BURGER SC: Chair, with respect, like
 15 my learned friend Mr Bizos, I want to ask rhetorically,
 16 what are we busy with? There was a stand-off on the 11th,
 17 two groups had a fight, two people were injured.
 18 MR MPOFU: I object to that interruption,
 19 unnecessary interruption, Chair.
 20 CHAIRPERSON: I think I can see the point
 21 Mr Mpofo is trying to make. I don't think I should say
 22 what it is because it will spoil the effect of his cross-
 23 examination. I think it is relevant to the big issues in
 24 this case. If you want to, I'll tell you at tea-time what
 25 it is, but I don't think I can stop the cross-examination

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1 at this point but I'm conscious of the point you're making
 2 and I'm trying to keep things as short as I can but Mr
 3 Mpofo may have a good point, let's see.
 4 MR MPOFU: Thank you, Chair. I'll also
 5 tell my learned friend over tea, Mr Chair, thanks.
 6 CHAIRPERSON: You may receive different
 7 information.
 8 MR BURGER SC: We only have 15 minutes,
 9 Chair.
 10 MR MPOFU: Thank you, Chairperson. We're
 11 wasting time now, definitely, ja. Thank you, thank you, Mr
 12 Burger.
 13 [10:48] MR MPOFU: I've now lost my train of
 14 thought, unfortunately. Anyway, let me just put it to you
 15 to shorten things up, ja. I want to put to you that the
 16 only explanation – or maybe let me ask you a question. Did
 17 you see any guns on that day on the side of the NUM
 18 members?
 19 MR GEGELEZA: I did not see any guns.
 20 MR MPOFU: Do you know now that there
 21 were shots fired by the NUM members?
 22 MR GEGELEZA: I personally do not.
 23 MR MPOFU: Till today?
 24 MR GEGELEZA: Yes.
 25 MR MPOFU: So you still, as you are

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1 sitting there now, you're still wondering where the shots
 2 came from?
 3 MR GEGELEZA: It is so.
 4 MR MPOFU: And when - you saw somebody
 5 who was shot near Schagan workshop, correct?
 6 MR GEGELEZA: I saw a person there, I did
 7 not know that he had been shot at.
 8 MR MPOFU: He was injured.
 9 MR GEGELEZA: It looks as though he had
 10 been injured.
 11 MR MPOFU: Apart from the initial act of
 12 bravery of the five members, you decided also to chase the
 13 multitudes.
 14 MR GEGELEZA: Not only the five of us but
 15 together with the others indeed we did chase them.
 16 MR MPOFU: Less than 20?
 17 MR GEGELEZA: Even amongst those, when
 18 they realised the strikers were running away, they joined
 19 us.
 20 MR MPOFU: So are you saying that of the
 21 10 people who had fled earlier, when they saw that these
 22 people are running they came back and joined your chase?
 23 MR GEGELEZA: It is so, they were coming
 24 behind us.
 25 MR MPOFU: Alright. And did – you didn't

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1 know that these other people were chasing, is that correct?

2 MR MAHLANGU: I beg your pardon, sir?

3 MR MPOFU: In other words – okay, sorry.

4 There are now three groups. There's the 14 or 15, there's

5 five and then there's the other 10 who have changed their

6 mind.

7 MR GEGELEZA: If I could show you, sir,

8 on – if I could show you on exhibit YY2.2.

9 MR MPOFU: Yes, sir.

10 MR GEGELEZA: Everything led us to meet

11 at street B. I said those that had turned around and us,

12 all came to meet street B and I went through that point

13 that I indicated by the mark. As I said, whilst the

14 strikers were being chased, they were chased down the

15 street, some to go through the main gate and some were

16 going through that opening which I indicated. At that time

17 it wasn't only the five of us.

18 MR MPOFU: Okay, so part of the group

19 went through the gap in the stop nonsense, that's the group

20 that you were part of, the chasing group?

21 MR GEGELEZA: Yes, and the reason was

22 that there were some of the strikers who went through this

23 opening and we were then to push them to go further.

24 MR MPOFU: And you successfully pushed

25 them right up to the stadium, several hundred metres.

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1 MR GEGELEZA: It is so.

2 MR MPOFU: Okay. Now the other chasing

3 group carried on, on street B, correct?

4 MR GEGELEZA: That is correct, the others

5 were coming down, chasing them down street B whilst we were

6 coming on the other side. We all met there and chased them

7 into street A.

8 MR MPOFU: Okay, now all the chasers at

9 some stage were in street A?

10 MR GEGELEZA: That is correct.

11 MR MPOFU: And the protesters had also

12 run through the gap and also on street B.

13 MR GEGELEZA: Mr Chairperson, as they

14 were being chased they ran in different directions. There

15 are four buildings there in bluish colour, one, two, three,

16 four. They met at the end of that. Those who were coming

17 from street A and those that had gone through the opening

18 in the stop nonsense came up there and they all met as a

19 group.

20 MR MPOFU: And others might have

21 continued running to street B towards the hospital

22 direction, correct?

23 MR GEGELEZA: A few, very few.

24 MR MPOFU: Right. So while you were

25 chasing, there were some of the protesters that were

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1 behind?

2 MR GEGELEZA: I did not see them.

3 MR MPOFU: No. I thought we've just

4 agreed that some of the people did not run like cars and

5 just turn at the T-junction but ran, might have run

6 straight through towards the hospital side.

7 MR GEGELEZA: The people staying in the

8 hostel were standing outside and watching – and watching

9 what was happening. There were many people outside who

10 were observing what was happening.

11 MR MPOFU: No sir, I don't know what,

12 that has anything to do with my question. All I'm asking

13 you, is it possible that when you were running up street A

14 towards the stadium, that some of the protesters were

15 behind?

16 MR TIP SC: Chair, objection to the

17 question. "Behind" is really something that requires

18 proper identification.

19 MR MPOFU: Okay.

20 MR TIP SC: The witness has said that

21 very few people were running towards the hospital. That

22 has now become "they were behind."

23 MR MPOFU: Okay.

24 MR TIP SC: And that requires

25 clarification, with respect.

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1 CHAIRPERSON: Yes, yes. I think, Mr Tip

2 – Mr Mpofo, I think Mr Tip is right. The people running to

3 the hospital presumably continued running down street B

4 after the T-junction –

5 MR MPOFU: Yes.

6 CHAIRPERSON: - formed by street A and

7 street B.

8 MR MPOFU: Yes.

9 CHAIRPERSON: So according – so the

10 picture we get is, some of them at the T-junction didn't

11 turn right and go down street A, they continued down street

12 B on the way to the hospital.

13 MR MPOFU: Yes.

14 CHAIRPERSON: But if you're interested in

15 them you can carry on, perhaps – I think this -

16 MR MPOFU: Let me just round off this

17 point, Chair, if I may.

18 MR GEGELEZA: No, they were not behind

19 us.

20 MR MPOFU: The people – let's start with

21 the people who went through the gap. The evidence has been

22 that they ran, once they got into the gap they ran in all

23 directions within the hostel complex. Can you dispute that

24 or did they run in one line?

25 MR GEGELEZA: What they ran, they ran

<p style="text-align: right;">Page 4314</p> <p>1 through those buildings and at the last building, the end, 2 there is an opening there, they went through. That is 3 where they came together and that is where they joined 4 street A. 5 MR MPOFU: Yes. No, I accept that, sir. 6 All I'm saying is that not all of them – some were hiding 7 behind, among those buildings in all directions. 8 MR GEGELEZA: I don't – I went through in 9 front of the building towards street A, so if there were 10 people hiding there I did not see them. I only saw those 11 who were running. 12 MR MPOFU: Yes, but it's possible that 13 they were there. 14 MR GEGELEZA: I can't say whether they 15 were or not. 16 MR MPOFU: Thank you, Chair. This is 17 going to be directed to my next point – 18 CHAIRPERSON: Well, how long is your next 19 point going to be? 20 MR MPOFU: It's not that long, Chair, I 21 can take it. 22 CHAIRPERSON: Let's take it and then 23 enjoy our tea the more. 24 MR MPOFU: Yes, especially since we have 25 some duties to perform. Mr Gegeleza, do you – your</p>	<p style="text-align: right;">Page 4316</p> <p>1 MR GEGELEZA: They could. 2 MR MPOFU: Chair, I think it is the 3 appropriate time. 4 CHAIRPERSON: The Commission will take 5 the tea adjournment. 6 [COMMISSION ADJOURNS COMMISSION RESUMES] 7 [11:30] CHAIRPERSON: The Commission resumes. 8 You're still under oath. Mr Mpofo, I take it you still 9 have further questions. 10 MR MPOFU: I do, Chair, yes thank you. 11 SAZISO ALBERT GEGELEZA (CONTD): 12 CROSS-EXAMINATION BY MR MPOFU (CONTD): 13 Mr Gegeleza, thank you. Before tea we had established that 14 after the long chase you observed that the strikers went 15 into the direction of the koppie, is that correct? 16 MR GEGELEZA: No, it's not so. 17 MR MPOFU: You did not know which 18 direction they went to? 19 MR GEGELEZA: I saw them going towards 20 the settlement, the shack settlement. 21 MR MPOFU: Not the direction of the 22 koppie? 23 MR GEGELEZA: Not towards the koppie. 24 CHAIRPERSON: It says in paragraph 30 of 25 his statement that he later heard that they'd taken</p>
<p style="text-align: right;">Page 4315</p> <p>1 evidence is that this whole attack on the strikers, and for 2 now I'm not debating whether it's an attack or a counter- 3 attack but let's call it – this whole confrontation was 4 motivated by one thing and one thing only and that was to 5 protect the NUM office, correct? 6 MR GEGELEZA: Also our lives. 7 MR MPOFU: So you were chasing those 8 people to protect your lives? 9 MR GEGELEZA: It is so. 10 MR MPOFU: What, sir, I'm going to argue 11 at the end of the case and I want to give you a chance to 12 comment, is that this pursuit of yours for several hundred 13 metres is not consistent with this desire to protect the 14 office because you left the office there and there was 15 nobody in the office. What do you say to that? 16 MR GEGELEZA: We were protecting the 17 office because we did not want them to plan another attack 18 whilst inside the hostel. 19 MR MPOFU: Sir, if – they could plan 20 another attack as long as they were not inside the hostel? 21 MR GEGELEZA: That is why, after some 22 time, we marched to see what they were planning and where 23 they were. 24 MR MPOFU: And so could they not plan 25 another attack from the koppie, for example?</p>	<p style="text-align: right;">Page 4317</p> <p>1 occupation of the koppie. 2 MR MPOFU: 13? 3 CHAIRPERSON: Paragraph 30, exhibit ZZ2. 4 I don't know if that's the only passage but that – 5 MR MPOFU: No, it's not. There is a 6 place, reference - Thank you, sir, thank you very much. 7 CHAIRPERSON: And then he also deals with 8 it in 34 where he said he received a telephone call - 9 MR MPOFU: Yes. 10 CHAIRPERSON: - from a friend who 11 informed him that - this was on the 12th, the following day, 12 that a large group of people was gathering on the koppie. 13 MR MPOFU: Yes, yes sir. 14 MR GEGELEZA: It is so, Mr Chairperson. 15 MR MPOFU: Okay, but anyway the point is, 16 wherever they went to they could have planned another 17 attack, which is what you feared, is that correct? 18 MR GEGELEZA: Possible. 19 MR MPOFU: So if that is so, as you've 20 now conceded, then would you agree with me therefore that 21 it was illogical to chase them for almost a kilometre and 22 leave the office vulnerable to an attack? 23 MR GEGELEZA: There was a reason. 24 MR MPOFU: You also testified that at the 25 time when the strikers were approaching, some of them had</p>

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1 gone down street B – not B, street C.
 2 MR GEGELEZA: It is so.
 3 MR MPOFU: And you don't know what
 4 happened to those who had gone down street C?
 5 MR GEGELEZA: They came across these
 6 comrades who were in front of the satellite police station.
 7 MR MPOFU: Sir, you don't know what
 8 happened to the people who went down street C?
 9 MR GEGELEZA: What I know is that after
 10 the gunshots were heard, those who were in street C and the
 11 other street all went back.
 12 MR MPOFU: Yes, but since you could not
 13 see there, it's possible that some of them did not run
 14 back, is that correct?
 15 MR GEGELEZA: No, there was no way in
 16 which I could not see them because as they were coming,
 17 they had not been obscured as yet by the satellite police
 18 station.
 19 MR MPOFU: But there were many, according
 20 to what you said yesterday.
 21 MR GEGELEZA: It is so.
 22 MR MPOFU: So your evidence therefore is
 23 that none of the protesters were closer to the NUM office
 24 than the junction between street B and street C.
 25 MR GEGELEZA: It is so, yes.

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1 MR MPOFU: And so there's no stage at
 2 which the protesters encircled the NUM office?
 3 MR GEGELEZA: No, at no stage did they
 4 surround.
 5 MR MPOFU: They did not even partially
 6 encircle it?
 7 MR GEGELEZA: It is so.
 8 MR MPOFU: You don't know where Mr Tip
 9 got this idea that the office was encircled?
 10 MR TIP SC: Mr Chair, I object to that.
 11 CHAIRPERSON: I think counsel is quoting
 12 from the exhibit YY3.
 13 MR MPOFU: YY3.
 14 CHAIRPERSON: It's what you are recorded
 15 as having said on the video clip VTS021, it's page 6 of
 16 that, the foot of page 6 of that particular transcript,
 17 continued on page 7. That's what counsel is putting.
 18 Perhaps you could read it quietly and then we can proceed
 19 with your objection if you wish to pursue it.
 20 MR TIP SC: I wish to pursue it. There's
 21 no need for me to read it quietly, I'm well aware of what I
 22 said and I'm well aware of the fact that at the time I made
 23 it absolutely clear that I was not giving evidence, that
 24 was the basis upon which anything was said in that vicinity
 25 –

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1 CHAIRPERSON: Yes, yes, I'm sorry.
 2 MR TIP SC: Yes.
 3 CHAIRPERSON: What counsel is putting is,
 4 you were obviously putting what were – something based on
 5 your instructions and his question is based upon the fact
 6 that those were apparently your instructions. So perhaps
 7 he can repeat the question and we can both listen carefully
 8 and see whether it's objectionable in the light of what
 9 I've put to you.
 10 MR MPOFU: Yes, thank you Chairperson.
 11 Mr Gegeleza, you do understand that all of us here this
 12 side of the table were not there n the 11th or any of the
 13 days?
 14 CHAIRPERSON: I don't know if the people
 15 on this side of the table are in the same position, but I
 16 don't know if that helps.
 17 MR MPOFU: I just want to explain to him
 18 –
 19 CHAIRPERSON: I don't know that he was at
 20 the inspection in loco so he doesn't know what was put by
 21 Mr Tip. So what would be helpful would be put to him, read
 22 to him what was put by Mr Tip, then ask the questions you
 23 want to ask and if they're objectionable we will hear from
 24 Mr Tip and I'll have to rule.
 25 MR MPOFU: Okay, Chair. That's fine, I'm

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1 happy to do it that way. I just wanted to explain to him
 2 the idea of giving instructions but I'll take your, the
 3 Chair's advice. This is what the NUM representative Mr Tip
 4 said at the inspection in loco. And before I read it out I
 5 want to, in fairness to Mr Tip, to say that on page 8 he
 6 did say that, he said "The gentleman was not here at the
 7 time of the shots and we are not considering this to be
 8 evidence." So that I understand. It's line 7 Chair, of
 9 [inaudible]. Okay, but whether it's evidence or not, this
 10 is what Mr Tip said and I'm now going to read it to you,
 11 that "On the 11th there was a very large march which came
 12 down from the direction of the stadium and came to the NUM
 13 offices and partially encircled it, surrounded it and there
 14 were NUM people who were present and who came out to defend
 15 and disperse the crowd and some shots were fired by NUM
 16 officials."
 17 CHAIRPERSON: Then read on about from
 18 line 6.
 19 MR MPOFU: From line 6? Oh yes. Okay, I
 20 said "and some shots were fired by NUM officials." And
 21 that is, "Perhaps our commentator can just confirm if I
 22 have understood it correctly," and then Mr Daluvuyo Bongo
 23 says, "No, you understand it correctly, it is what we are
 24 saying." Do you understand?
 25 CHAIRPERSON: Then you read on from line

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1 9 to –

2 MR MPOFU: To 13, Chair?

3 CHAIRPERSON: Ja.

4 MR MPOFU: Yes.

5 CHAIRPERSON: Or actually it's beyond

6 that, it's 9 to about –

7 MR MPOFU: 16.

8 CHAIRPERSON: To about 16.

9 MR MPOFU: Yes, I'll read that whole

10 excerpt. Then Mr Tip says, "It is." And then Mr, the late

11 Mr Daluvuyo Bongo then says, "Because they came there, when

12 they came here we were in the office, inside the office.

13 We ran outside the office because there were security

14 officers who came to us and said we must run away because

15 these people are coming, they will burn the office and kill

16 us. Then we went out of the office. By the time we went

17 out the office they were already there and then there is

18 this mess-up. It is where we heard the shotgun, the

19 gunshot." And the Chairperson says, "Okay, shots were

20 fired by NUM people." Mr Bongo says, "No, I'm not" – and I

21 suppose he was going to say "I'm not sure." Yes.

22 CHAIRPERSON: You've now put, Mr Mpofo,

23 you've now put what was said at the inspection in loco.

24 MR MPOFU: Yes.

25 CHAIRPERSON: And now it's appropriate –

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1 and in fairness to the witness he now understands the

2 context in which the question is being asked.

3 MR MPOFU: Yes.

4 CHAIRPERSON: Now you can proceed and if

5 you proceed objectionably you'll hear from Mr Tip.

6 MR MPOFU: Thank you, Chairperson. I'm

7 indebted to the Chairperson for the guidance. You

8 understand what has been translated to you, sir?

9 MR GELELEZA: It is so.

10 MR MPOFU: So you understand that – well,

11 firstly let's start with Mr Tip. What I want to propose is

12 that Mr Tip, what Mr Tip puts about the office being

13 encircled and surrounded must have come from somebody. Can

14 we just accept that?

15 MR TIP SC: I object.

16 CHAIRPERSON: The problem is that Mr

17 Bongo then said – sorry, Mr Tip, I'm obviously prepared to

18 hear you out but it's not as simple as that because what Mr

19 Bongo then said after you'd put it and you said, "Perhaps

20 our commentator can just confirm if I've understood it

21 correctly," and Mr Bongo said "No, you understand it

22 correctly, it is what we are saying." So it's a little bit

23 further than what you said but if you still have an

24 objection in the light of that –

25 MR TIP SC: Yes, I do.

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1 CHAIRPERSON: I'd be happy to listen to

2 you.

3 MR TIP SC: Yes. I'd like to complete

4 the objection and get a ruling on it. Mr Chairperson, what

5 was happening at that inspection and it is clearly apparent

6 from YY3, is that it was more than once made clear inter

7 alia, with respect, by yourself as the Chairperson and the

8 person conducting the affairs there, that this was not an

9 evidence gathering matter, it was to point out spots and in

10 that context I had heard – with great difficulty because I

11 was at the back of the throng and I happened to be able to

12 make my way forward a little and heard something being said

13 about the 12th and in that context I said, has something

14 been said about the 11th, and I was informed that there

15 wasn't. And I then gave a broad description so that there

16 would be a context and I used the language, more than once,

17 that what I was doing was to give a broad context of what

18 was happening. You will see that at page, numbered page 6

19 of YY3 at the top, Chairperson, you addressed me because

20 I've now raised the fact that there was an incident on the

21 11th. You say, "Something else happened at the NUM office

22 on the 11th." I say, "On the 11th." You say, "On the 11th."

23 I say "That is correct, yes." "Now maybe, maybe – now

24 remember you are not giving evidence now, that will come

25 later but you were asked to point out spots now and

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1 identify them. Are there any spots that you want him here,

2 you want him to point out?" I then observe that that

3 witness, as I understood it at the time, was not

4 continuously there and I then proceed to give a broad

5 outline so that the Commission was informed that, as a

6 matter of pointing out, at this NUM office there had been

7 an incident which had given rise to some shots being fired

8 by NUM members.

9 Now, for that to be translated into an assumption

10 that I had at that stage obtained full instructions on what

11 had taken place in that vicinity, is an assumption which I

12 do not accept and if I have to give evidence about the

13 level of my instructions as at the 2nd of October 2012 then

14 I will make that clear. But when I am told, as I was, that

15 I was not giving evidence, then I proceeded to speak on the

16 assumption that we were pointing out spots. The

17 representatives from AMCU then took up the baton, as it

18 were, and said well, that is where one person died and that

19 is where another person died. And again it was a matter

20 that that is a pointing out and it is not evidence and if

21 people want to describe what took place, they will give

22 evidence.

23 I am now confronted with a situation where, quite

24 unfortunately, with respect, my version is being put as

25 though I have given evidence in these proceedings or have

1 filed a statement in these proceedings on the basis of
2 which this witness can be asked to comment on where I might
3 have obtained that view and he has just put – and this is
4 the crux of the objection – he has just put that it was
5 assumed that I had full instructions. And that is the
6 basis of the objection, I object to this line of enquiry
7 entirely.

8 CHAIRPERSON: Mr Mpofu, what do you say
9 about Mr Tip's objection?

10 [11:50] MR MPOFU: Well, Chairperson, with the
11 greatest respect, I don't understand the objection. I have
12 never – and if I did, I apologise – suggested that Mr Tip
13 made statements or gave evidence or anything of the sort.
14 All I'm suggesting, Chair, is that Mr Tip, like me, when he
15 puts a proposal about something that has happened, must
16 have got it from somebody. I do accept, without
17 reservation, that at that stage – and the Chair said this
18 repeatedly during the inspection – that this is not
19 evidence in the true sense of the word but surely,
20 Chairperson, I must be entitled to assume that a legal
21 representative of one of the parties who puts something
22 and, as the Chairperson pointed out, is now confirmed by an
23 eye witness on the spot, that it's not just a simple matter
24 of just a legal representative, whatever qualifications he
25 might have put, but that this statement has now actually

1 been confirmed by some – an eye witness who unfortunately
2 is no longer with us. Then the very minimum that I must be
3 entitled to, Chair, is that somebody must have said this to
4 Mr Tip. He didn't just wake up one day and think the
5 office was encircled and surrounded.

6 CHAIRPERSON: Do you wish to reply?

7 MR TIP SC: No thank you, Mr Chair.

8 CHAIRPERSON: I don't think that, in the
9 light particularly of what Mr Tip had said, appearing at
10 the time of the inspection, that he – it was a broad
11 outline, he didn't have full instructions, you should rely
12 upon what he said, but inasmuch as the admission appears to
13 be made – it's true, people were told this isn't evidence
14 but it doesn't matter, if an admission was made on the
15 scene by a witness, admittedly who's now deceased but the
16 strict rules of evidence don't apply at a Commission – an
17 admission made by a witness which happened to be recorded
18 at the inspection, would, can appropriately be put as
19 evidence of an admission made by the same person away from
20 the inspection somewhere else on another occasion. So I'll
21 allow you to put the question in relation to what Mr Bongo
22 said but I don't think we can take it any further on the
23 basis of what Mr Tip said because, to be fair to him, he
24 did say, both on page 7 and on page 8, that he didn't have
25 precise instructions and so forth and it wouldn't be fair

1 to him if you were to put it on that basis but put it on
2 the basis of what Mr Bongo said. The fact that he said it
3 at an inspection doesn't make, differ – doesn't make it in
4 any way different from whether he said it on some other –

5 MR MPOFU: I understand, Chairperson, I
6 understand. Thank you, Chairperson, I think that's an
7 elegant solution. Mr Gegeleza –

8 CHAIRPERSON: Sorry, there's one further
9 point. I'm reminded of the fact that Mr Tip also did say
10 that – page 6, "This witness, I think" – this is line 11 –
11 "This witness, I think, was not continuously here during
12 the event." So I think that should be put as well, that it
13 was said, Mr Bongo said something but it was said that he
14 wasn't continuously there. I think if the full totality of
15 that is put to the witness, the questions won't be unfair
16 and you can carry on.

17 MR MPOFU: Yes. Thank you, Chairperson,
18 I think that's a useful way of dealing with it and I want
19 to put it on the record, Chair, that this is not any
20 aspersion against Mr Tip. I know Mr Tip very well. All
21 I'm putting emphatically is that – and I'll only confine it
22 now to Mr Bongo as the Chair has suggested. Mr Gegeleza,
23 at the inspection in loco as you've heard the debate now,
24 Mr Bongo confirmed that the NUM office were partially
25 encircled and surrounded.

1 MR GEGELEZA: If it only could be made
2 clear on what day did you say this happened.

3 MR MPOFU: No, I'm sorry.

4 CHAIRPERSON: Let's give him the
5 information he wants. This was said at an inspection in
6 loco on the 2nd of October last year in the vicinity of the
7 NUM office and what –

8 MR GEGELEZA: The question was, Mr
9 Chairperson –

10 CHAIRPERSON: I want to finish. Mr Bongo
11 said it on the 2nd of October last year in the vicinity of
12 the NUM office at an inspection in loco. He was talking
13 about what had allegedly happened on the 11th of August.

14 MR GEGELEZA: Nobody, Mr Chairperson,
15 encircled the office on the 11th. May I also mention, Mr
16 Chairperson, that at the time of this confrontation Mr
17 Daluvuyo Bongo was not there. He had taken his vehicle to
18 Brits.

19 MR MPOFU: Oh, so there's a group – the
20 other group was even minus Mr Bongo, it was even smaller
21 than my estimation?

22 MR GEGELEZA: At that time he wasn't
23 there, he had taken his vehicle. He only arrived later
24 when we were chasing the strikers already.

25 MR MPOFU: Okay. In any event, when you

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1 came back to the office was the whole situation and
 2 confrontation discussed? There was a kind of debriefing.
 3 MR GEGELEZA: It is so.
 4 MR MPOFU: And the details of what had
 5 happened and who ran where were discussed in that meeting?
 6 MR GEGELEZA: With us it was just the
 7 happiness about defeating the people who had come to attack
 8 us, that was the main discussion.
 9 MR MPOFU: Okay. Well, apart from the
 10 happiness, did you discuss the event itself?
 11 MR GEGELEZA: We did not speak about the
 12 event. What happened is, the branch chairperson then said
 13 he would go to management to go and ask for permission to
 14 go and hold a mass meeting about what had just transpired.
 15 He then left together, accompanied by other members of the
 16 branch. We, the stewards, then remained in the office and
 17 had ordinary discussions.
 18 MR MPOFU: And you also said that since
 19 that time you and the other – I don't want to call them
 20 attackers – the other NUM members involved in this, were
 21 kept at a place of safety, is that correct?
 22 MR TIP SC: Objection. It must be put
 23 accurately. The evidence was that there was a decision
 24 taken on the 12th of August 2012 that, for their own safety,
 25 NUM shop stewards across Lonmin would be removed from the

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1 premises and given places of safety. It was not confined
 2 to the persons who were in the office on the 11th of August
 3 2012 and I'd appeal for the questions to be put with
 4 accuracy.
 5 CHAIRPERSON: That sounds like
 6 [inaudible].
 7 MR MPOFU: Okay. Some of the people who
 8 were part of your group of less than 20 were shop stewards,
 9 correct, NUM shop stewards?
 10 MR GEGELEZA: Yes.
 11 MR MPOFU: Were those shop stewards part
 12 of the group that was taken to a place of safety after the
 13 12th?
 14 MR GEGELEZA: It is so.
 15 MR MPOFU: And you said - how long have
 16 you been at the place of safety? Are you still there now?
 17 MR GEGELEZA: We are staying there, yes,
 18 even now.
 19 MR MPOFU: So in a space of about six
 20 months surely you must have discussed the events of the 11th
 21 with those people, apart from the meeting you had on the
 22 day?
 23 MR GEGELEZA: What happened is our
 24 branch, together with other branches, would from time to
 25 time go to speak to the strikers' representatives and many

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1 of us would go to work as usual and then come back.
 2 MR MAHLANGU: I'm sorry, Chairperson, he
 3 says – I'm saying our branch would meet other branches.
 4 They would go and discuss about wages and they would also
 5 go and talk to the people representing the strikers and
 6 then we will go to our places of work as usual.
 7 MR MPOFU: I'm sorry, maybe you didn't
 8 understand the question and it might be my fault. What I'm
 9 saying to you, Mr Gegeleza, is that even if one were to
 10 accept that on that, on the 11th you only discussed
 11 happiness and you did not talk about the incident – which
 12 is unlikely, in my view – the fact that you have spent the
 13 past six months in the company of those people you call
 14 part of your group, I don't want to colour it –
 15 CHAIRPERSON: Sorry, Mr Mpofo, he didn't
 16 say that. He didn't say they were all in one place of
 17 safety. He said they were in places of safety. You
 18 haven't established that he and his colleagues who have
 19 left the premises and moved to safety are all under the same
 20 roof and have regular discussions after dinner every night
 21 about what happened. I think that kind of foundation
 22 should be laid, if it can be laid, before you can proceed
 23 with this questioning.
 24 MR MPOFU: Thank you, Chair.
 25 MR GEGELEZA: We are all at the same

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1 place.
 2 MR MPOFU: Thank you. Yes, thank you.
 3 Now that that's behind us, the proposition I was putting to
 4 you was this, even if you didn't discuss it on that day,
 5 you have now had an opportunity for six months staying with
 6 the same people who were part of the attack, to have
 7 discussed it in some kind of detail, surely. What do you
 8 say to that?
 9 MR GEGELEZA: No, we just do our work as
 10 we do our job in the different structures of the NUM. We
 11 did not meet to discuss the events of the day in question.
 12 MR MPOFU: And you yourself have never
 13 asked these other gentlemen where the shots came from?
 14 MR GEGELEZA: No, I did not do that.
 15 MR MPOFU: And you, sitting there, you
 16 still don't know where the guns came from?
 17 MR GEGELEZA: It is so.
 18 CHAIRPERSON: You say "guns," it's not
 19 clear – it's not perhaps necessarily in the plural. It
 20 might just have been one. There may have been one, there
 21 may have been more but we don't know.
 22 MR MPOFU: Well – okay, let me put it
 23 this way. You don't where the shots emanated from?
 24 MR GEGELEZA: It is so.
 25 MR MPOFU: So as far as you know the

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1 shots might even have been coming from the protesters.
 2 MR GEGELEZA: I would not be able to say
 3 so. I really do not know where the shots came from.
 4 MR MPOFU: Yes, no, I accept that but I'm
 5 saying therefore it is possible that the shots might even
 6 have come from the protesters.
 7 MR GEGELEZA: I only heard the shots.
 8 Where they came from, from which direction I am not – up to
 9 today I do not know.
 10 MR MPOFU: Mr Gegeleza, do you seriously
 11 want the Commission to believe that you were chasing these
 12 thousands of people who might have been shoot –
 13 CHAIRPERSON: He doesn't say there were
 14 thousands. He doesn't know the number, you remember? He
 15 said it was a large group. You put the numbers to him that
 16 were given in the statements of the security guards, 2 000
 17 says the one, 3 000 says the other one. So he doesn't know
 18 if that's right, all he knows is it was a lot of people.
 19 So you can't put that it was thousands, certainly on the
 20 basis of what he says.
 21 MR MPOFU: Yes. Okay, I was abbreviating
 22 what happened in the morning but I'll go through it again.
 23 The crowd of people which was estimated by two observers –
 24 CHAIRPERSON: He doesn't know whether
 25 that estimation is correct –

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1 MR MPOFU: Ja, I'm not saying it's
 2 correct either –
 3 CHAIRPERSON: He says it was a large
 4 group. All you need is a large group, for your question.
 5 Let's not get involved in side issues that don't help us –
 6 MR MPOFU: Mr Gegeleza, you're saying
 7 that you were chasing this large group of people in a
 8 situation where it was possible, according to your
 9 evidence, that they were armed with guns and your group of
 10 five or 15 or whatever, was not armed with guns?
 11 MR GEGELEZA: We did chase the people,
 12 that is true, but whether one or the other had a gun, I
 13 have no idea.
 14 MR MPOFU: What are the names of the
 15 people who remained and did not flee when the others, more
 16 than 10, left - in other words of the less than 20 people.
 17 [12:10] MR GEGELEZA: I don't remember their
 18 names.
 19 MR MPOFU: All of them?
 20 MR GEGELEZA: What I need to do is,
 21 possibly to go and sit with them and ask them.
 22 MR MPOFU: Ask them what, their names?
 23 MR GEGELEZA: No, just to remind myself
 24 who was it of those who did not run away.
 25 MR MPOFU: What were the names of those

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1 who ran away?
 2 MR GEGELEZA: I don't remember their
 3 names, all of them, but there are some that I remember.
 4 MR MPOFU: What are the names of the five
 5 who were with you on street B?
 6 MR GEGELEZA: You know the reference to
 7 names of people, that is not contained in my statement. I
 8 don't know, Mr Chairperson, how much that might endanger
 9 the safety of that person.
 10 MR MPOFU: Okay, fair enough. Now you've
 11 – those are two different things. Do you know the names of
 12 these people I've asked you about and do not wish to
 13 imperil their safety or, as you said earlier, you do not
 14 remember them, you have to meet with them or whatever you
 15 said?
 16 MR GEGELEZA: These are shop stewards
 17 with whom I worked and I know them.
 18 MR MPOFU: Have you been questioned in
 19 connection with an attempted murder case?
 20 MR GEGELEZA: It is so.
 21 MR MPOFU: Have you appeared in court?
 22 MR GEGELEZA: Since my birth I've never
 23 been before court.
 24 MR MPOFU: Okay. Do you know if anybody,
 25 any of these people that you don't want to name, have

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1 appeared before the court in connection with an attempted
 2 murder case?
 3 MR TIP SC: I object to that, Mr Chair.
 4 What is the relevance of pursuing this kind of enquiry in
 5 the context of this Commission? There is a particular
 6 concern in this Commission which is, inter alia, that Mr
 7 Bongo was assassinated three days after the pointing out on
 8 2 October 2012. It has come up for discussion previously
 9 and if there is a basis upon which Mr Mpofu is pursuing the
 10 question of names and the like, then he must deal with the
 11 issue of safety squarely. What happened –
 12 CHAIRPERSON: Before you continue can I
 13 ask you a question? The two dockets we've got, if they're
 14 complete dockets – I'm not sure they are but if they are
 15 complete dockets, the important point is that there's no
 16 accused's name there, there is no mention anywhere in the
 17 investigation diary of a suspect having been identified.
 18 So as far as I can see – but on the information before us,
 19 the persons responsible haven't been identified by the
 20 police who are investigating the case, in which case it's a
 21 line that's probably going to get Mr Mpofu nowhere, but I'm
 22 also alive to the point that if, in fact, there's more to
 23 it than appears from the dockets before us, then the
 24 concerns that you've raised are relevant. But let's see
 25 what Mr Mpofu says about that, unless you want to add

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1 something first before he takes – before he replies.
 2 MR TIP SC: Yes, I just want to add that
 3 we – or perhaps the interpreter should just, what I wanted
 4 to add –
 5 CHAIRPERSON: Perhaps I should say, my
 6 attention is drawn to the fact that one person is mentioned
 7 as a suspect in one of the dockets, but it's not suggested
 8 he's an accused, it's not suggested he was warned or
 9 anything of that kind which normally happens if it's
 10 accepted that a case against someone should be taken
 11 further, he should actually be prosecuted. So I did put
 12 that incorrectly but there may be more to it, as I said,
 13 than what we can see from the docket but please continue
 14 what you were going to say and then Mr Mpofo can reply.
 15 MR TIP SC: What I wanted to add, Mr
 16 Chair, was that NUM placed these two dockets before the
 17 Commission in the course of the evidence of Mr Gcilitshana
 18 in order to establish the extent of the enquiries that NUM
 19 had made in relation particularly not to the fact of there
 20 being those dockets, but there being the absence of dockets
 21 relating to fatalities. That was really the thrust of it.
 22 If Mr Mpofo can give an assurance that none of the
 23 questions which he is now intending to pursue are
 24 calculated to seek from this witness some information about
 25 names, which may compromise their safety, then I withdraw

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1 any complaint about what he was doing, save that how an
 2 examination of what has taken place in respect of the
 3 criminal investigation of this witness can assist the
 4 Commission is obscure to me.
 5 MR MPOFU: Chairperson, maybe just to
 6 short-circuit this. I thought I had made it clear that
 7 what they talked about, safety of people, I accepted that
 8 immediately and I asked him whether that was the only
 9 reason or was it also because he would need to meet with
 10 them, and I didn't pursue the issue of names. What I'm
 11 doing now – so the assurance I'm giving that Mr Tip seeks,
 12 unreservedly, as far as the names issue is concerned. But
 13 apropos the objection, two points, Chair. One is that – I
 14 forgot to explain this to the witness – I represent the
 15 injured, as everybody knows. Some of those injured include
 16 the people who were injured on the 11th. Now, as far as the
 17 – and in fact we intend, I informed Mr Tip this morning to
 18 call one of them, one of the ones who got injured on the
 19 11th in particular –
 20 CHAIRPERSON: In other words, what you're
 21 saying is the two complainants in these two cases, the
 22 dockets of which are XX5 and XX6, those two complainants
 23 are both among your clients.
 24 MR MPOFU: That's correct, Mr Chair.
 25 CHAIRPERSON: Not number 1? Can I ask

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1 you – it can't be a secret – which of the two do you
 2 propose calling?
 3 MR MPOFU: Mr Mabuyakhulu.
 4 CHAIRPERSON: Mister?
 5 MR MPOFU: Mabuyakhulu. That's one of
 6 the ones that were shot at the back.
 7 CHAIRPERSON: He is the one who is in
 8 XX6?
 9 MR MPOFU: Yes, the one who – where the
 10 bullet was not found.
 11 CHAIRPERSON: Well – yes, sorry, carry
 12 on.
 13 MR MPOFU: Chairperson, that's number 1.
 14 Number 2, as far as the issue of relevance is concerned
 15 clearly –
 16 CHAIRPERSON: That wasn't the question.
 17 Your question to which objection was taken was, did anybody
 18 appear in court as an accused –
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: In connection with either
 21 of these two attempted murder cases.
 22 MR MPOFU: Yes, correct.
 23 CHAIRPERSON: Now, what is the relevance
 24 of that? The point taken by, or made – whether correctly
 25 or not is another matter – the point raised by Mr Tip is

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1 that that information isn't going to help us one way or
 2 t'other to answer the questions that the President has
 3 posed for our answer under the terms of reference. That's
 4 his point really. Now what do you say about that?
 5 MR MPOFU: Yes, that's the one I'm
 6 addressing, Chair. Number 2, relevance. If, Chairperson,
 7 you accept that I represent these people and they, like the
 8 President or anybody else, would like to find out the truth
 9 about the circumstances under which they or their loved
 10 ones sustained some severe injuries, as the evidence will
 11 show, Chair, then one of the ways in which the questions
 12 around their injuries could or might be answered is either
 13 through this process or a criminal case or any other, any
 14 other process. So if their impression is that the people
 15 who shot their loved ones or themselves – in this case
 16 themselves as victims – have not been called to account in
 17 terms of the law, surely that is one of the relevant issues
 18 insofar as this Commission, in the preamble, is meant to
 19 determine the events that led to, inter alia, the injuries
 20 – the injured people, let's call it that. Then surely
 21 those injured people, insofar as they are parties to this
 22 Commission, are entitled to know whether or not their case
 23 is being pursued with any vigour or at all –
 24 CHAIRPERSON: Mr Mpofo, can I put a point
 25 to you?

<p style="text-align: right;">Page 4342</p> <p>1 MR MPOFU: Yes.</p> <p>2 CHAIRPERSON: Whether someone has</p> <p>3 appeared in court as an accused in respect of either of</p> <p>4 these two charges of attempted murder, is a fact that we</p> <p>5 can ascertain objectively by enquiring from the police. We</p> <p>6 don't have to spend time asking this witness about whether</p> <p>7 he's been to court, whether he knows anybody who's been</p> <p>8 charged or anything of that kind. If that's all you want</p> <p>9 to know, has anyone been charged with this, that we can</p> <p>10 find out without asking this witness –</p> <p>11 MR MPOFU: Well, Chair, no –</p> <p>12 CHAIRPERSON: - wasting time on that.</p> <p>13 MR MPOFU: I'm sorry, Chair – well, it</p> <p>14 might be a waste of time for some, Chair, but for the</p> <p>15 injured people it's not. The third issue that I wanted to</p> <p>16 raise, Chair, is that in this docket which has now been</p> <p>17 pointed out, what it says on XX5 is that the suspect here</p> <p>18 in this particular attempted murder case is Mr Brown and</p> <p>19 his other seven NUM members – I'm sorry, Mr Tip, it's XX5,</p> <p>20 the last two pages, the second – the last batch.</p> <p>21 CHAIRPERSON: 35 of the investigation</p> <p>22 diary.</p> <p>23 MR MPOFU: 35 of that, thank you. And it</p> <p>24 says –</p> <p>25 CHAIRPERSON: Sorry, that's the note in</p>	<p style="text-align: right;">Page 4344</p> <p>1 doesn't know whom the colonel, Colonel Mokwena, suspected</p> <p>2 on the 12th of August. Whether there's been any</p> <p>3 investigation thereafter, whether Colonel Mokwena's</p> <p>4 suspicions are shown to have any basis at all is something</p> <p>5 we don't know and he certainly can't help us on that, can</p> <p>6 he?</p> <p>7 MR MPOFU: Okay, Chair. My last</p> <p>8 submission. Number 8 of that same 7, same page, it says</p> <p>9 there, the Colonel says "Mr Julius as well as Brown should</p> <p>10 be thoroughly interrogated to clear as to who was part of</p> <p>11 the people who" –</p> <p>12 CHAIRPERSON: This witness isn't Mr</p> <p>13 Brown.</p> <p>14 MR MPOFU: [inaudible]</p> <p>15 CHAIRPERSON: This witness isn't Mr</p> <p>16 Brown.</p> <p>17 MR MPOFU: He might be one of the seven.</p> <p>18 CHAIRPERSON: Or he might not be but</p> <p>19 anyway, he says he hasn't been interrogated.</p> <p>20 MR MPOFU: Anyway, that's fine, Chair –</p> <p>21 okay.</p> <p>22 CHAIRPERSON: The Colonel said – and Mr</p> <p>23 Julius is, I think, one of the security people and that,</p> <p>24 Motlogeloa whose statement is exhibit ZZ4 and he may – he</p> <p>25 apparently is going to come and give evidence. So the</p>
<p style="text-align: right;">Page 4343</p> <p>1 the colonel's handwriting in the investigation diary and as</p> <p>2 far as I can see, that's the note dated the 12th of August.</p> <p>3 MR MPOFU: That's correct, Chair.</p> <p>4 CHAIRPERSON: The person appears to have</p> <p>5 thought that the person you mentioned was a suspect, others</p> <p>6 were – whether there was further investigation thereafter,</p> <p>7 we do not know but the point is if the people affected want</p> <p>8 to know what happened or is going to happen, that</p> <p>9 information can be obtained, not by asking this witness but</p> <p>10 by finding out from the police. I don't see any purpose in</p> <p>11 asking this witness these questions. If this information</p> <p>12 is important for us it can be obtained far more easily than</p> <p>13 by wasting time asking this witness.</p> <p>14 MR MPOFU: Chairperson, the last thing –</p> <p>15 I accept that, Chair.</p> <p>16 CHAIRPERSON: Alright, okay. Shall we</p> <p>17 move on?</p> <p>18 MR MPOFU: What I'm saying is that when</p> <p>19 here they talk about seven NUM members, this witness may or</p> <p>20 may not be one of those seven members. Surely I must be</p> <p>21 entitled, Chair – if this witness was there and it is said</p> <p>22 here that there are seven suspects, eight suspects actually</p> <p>23 –</p> <p>24 CHAIRPERSON: Does he know? He says he's</p> <p>25 never been interrogated by the police about this. He</p>	<p style="text-align: right;">Page 4345</p> <p>1 relevance of this line of questioning, if you were to ask</p> <p>2 Mr Julius about it, can be debated then but we don't have</p> <p>3 to debate it now with this witness.</p> <p>4 MR MPOFU: Okay, that's fine, Chair.</p> <p>5 CHAIRPERSON: Commissioner Hemraj says</p> <p>6 that I was incorrect in saying that he said he hadn't been</p> <p>7 interrogated.</p> <p>8 MR MPOFU: Yes, Chair.</p> <p>9 CHAIRPERSON: He did say he'd never</p> <p>10 appeared in court.</p> <p>11 COMMISSIONER HEMRAJ: Yes.</p> <p>12 MR MPOFU: Yes, he said he was</p> <p>13 interrogated, Chair.</p> <p>14 CHAIRPERSON: Alright, then I'm</p> <p>15 correcting a mistake that I made, but anyway I understood</p> <p>16 you to say you were going to move on to another point. Did</p> <p>17 I understand you correctly?</p> <p>18 MR MPOFU: Chair, I don't - we've</p> <p>19 already, I don't – we've spent enough time on this. I</p> <p>20 think the point is made. All I wanted to establish is that</p> <p>21 this witness is possibly one of the seven people and if he</p> <p>22 has not been pursued, as it were, that is something that my</p> <p>23 clients have an interest in, if this case has just been</p> <p>24 left to rot, as it were –</p> <p>25 CHAIRPERSON: Well, we don't know, we</p>

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1 don't know that.

2 MR MPOFU: That's the line. I'm just

3 saying the relevance, I don't know it either.

4 CHAIRPERSON: He doesn't know whether the

5 case has been left to rot, does he, so what's the point of

6 asking him? There's something else I wish to point out

7 before we move on and that is Mr Brown, maybe that's the –

8 actually the name of Mr Setelele, he's given evidence, has

9 he not? And he was never asked about these things. No

10 suggestions of the kind that you're now making in relation

11 to him were made to him when he was in the witness box to

12 answer them. So that's another – so in fairness it should

13 be pointed out that when he gave his evidence no suggestion

14 of that kind was ever addressed to him and –

15 MR MPOFU: Ja. Well –

16 CHAIRPERSON: Let that be on record and

17 that those persons who are present hearing the debate

18 between us should be, are aware of that fact.

19 MR MPOFU: Yes.

20 CHAIRPERSON: Let's move on to the next

21 point.

22 MR MPOFU: Thank you, Chair, but the

23 record should also show that I was asking him in respect of

24 the other seven, not Mr Brown, but be that as it may. Were

25 you aware of the – I'm sorry if actually you've have

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1 answered this, something tells me you might have – were you

2 aware of the advice of the security personnel at Lonmin

3 that your group should all vacate the offices?

4 CHAIRPERSON: He did say that. In fact

5 you'll find that in paragraph, round about 16 in his

6 statement.

7 MR MPOFU: Yes, that's probably where,

8 Chair.

9 CHAIRPERSON: That point's been covered.

10 MR MPOFU: Yes, okay Chair.

11 CHAIRPERSON: So perhaps you can cover

12 another one.

13 MR MPOFU: Yes. You've testified that

14 one of the reasons that you – okay no, let's start with

15 this. The weapons that were in the office, according to

16 your understanding, had been confiscated from strikers, is

17 that correct?

18 MR GEGELEZA: That's how I was told, yes.

19 MR MPOFU: Do you know from subsequent

20 discussions whether or not there was any violence

21 associated with that confiscation?

22 MR GEGELEZA: I did not hear anything

23 pertaining to that.

24 MR MPOFU: Okay, so it's possible that

25 these people just happily and voluntarily handed them over.

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1 CHAIRPERSON: Possible but not very

2 likely.

3 MR MPOFU: Thank you, Chair. My point

4 exactly, thank you.

5 MR GEGELEZA: I don't know, I wasn't

6 there.

7 MR MPOFU: Okay, I'll leave it at that.

8 I think General Mpembe can learn a lot from NUM about the

9 handing over of weapons.

10 [12:30] CHAIRPERSON: Mr Mpofu –

11 MR MPOFU: Yes, Chair?

12 CHAIRPERSON: You make remarks like that,

13 people will – you're setting a bad example and some of your

14 younger colleagues may follow and I don't want them to

15 encourage them to do that. Have you finished your cross-

16 examination?

17 MR MPOFU: No.

18 CHAIRPERSON: Carry on then.

19 MR MPOFU: Chair, and my apologies to the

20 younger colleagues.

21 CHAIRPERSON: And to the older ones.

22 MR MPOFU: No, the older ones can look

23 after themselves. Chairperson, I would like to ask the –

24 I've asked Ms Pillay to find one of the videos, a short one

25 – I think it's X3, Ms Pillay.

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1 CHAIRPERSON: Mr Tip, do we know what it

2 is? Does it have to have – does it need an exhibit number

3 or –

4 MS PILLAY: Chair, as I understand it,

5 it's X3, and the clip that was shown yesterday and before

6 that as well.

7 CHAIRPERSON: I see, fine. I think to be

8 fair, I don't think this witness saw it, did he?

9 MS PILLAY: He did –

10 CHAIRPERSON: Then what –

11 MR MPOFU: It was played for him by Mr

12 Tip.

13 CHAIRPERSON: I see. Alright, okay, well

14 carry on.

15 [VIDEO IS SHOWN]

16 MR MPOFU: We are apparently in the wrong

17 place.

18 CHAIRPERSON: That was – you showed X3.

19 MS PILLAY: I think Mr Mpofu's probably

20 referring to X1 then, Chair.

21 CHAIRPERSON: Alright let's have a look

22 at X1 and let's hope that that's the one you want.

23 MR MPOFU: It's quite short, thanks.

24 [VIDEO IS SHOWN]

25 MR MPOFU: And if I can – can I indicate

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1 when you can pause after?
 2 CHAIRPERSON: It'll be helpful to pause
 3 at some stage so we can count the number of people –
 4 MR MPOFU: Yes, I thought of that. Can
 5 you pause – now there's a tree. No, just ahead of that a
 6 little bit, yes.
 7 CHAIRPERSON: We don't have to count them
 8 while we're sitting, someone can count them during the
 9 lunch adjournment.
 10 MR MPOFU: Yes.
 11 CHAIRPERSON: And the parties can agree.
 12 I mean anyway, let's carry on.
 13 MR MPOFU: Let's carry on, Chair.
 14 [VIDEO IS SHOWN]
 15 MR MPOFU: Can you pause? Mr Gegeleza,
 16 can you see the part that has been paused?
 17 MR GEGELEZA: I see it, yes.
 18 MR MPOFU: I just want to assist the
 19 Commission by pointing out that, or rather asking you
 20 whether in front of that tree, is that where the gap is
 21 visible, the gap in the stop nonsense?
 22 MR GEGELEZA: That is the place, yes.
 23 MR MPOFU: And just for clarity's sake,
 24 the – alright, can you just play on a little bit?
 25 [VIDEO IS SHOWN]

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1 MR MPOFU: Right. That, is that place
 2 where you saw another street perpendicular to the one where
 3 they were marching, leading us to street C?
 4 MR GEGELEZA: It is so.
 5 MR MPOFU: Were you part of that group?
 6 MR GEGELEZA: It is correct.
 7 MR MPOFU: Would it be fair to say that
 8 you were singing happily?
 9 MR GEGELEZA: Every day [inaudible] is if
 10 you sing union songs.
 11 MR MPOFU: Where were you coming from?
 12 MR GEGELEZA: We were returning from
 13 where we had been chasing the strikers.
 14 MR MPOFU: You remember that you marched
 15 again at about one o'clock towards the Wonderkop Stadium?
 16 MR GEGELEZA: It is correct.
 17 MR MPOFU: So this is not that return?
 18 MR GEGELEZA: No, this is not. This is
 19 the one when we were returning from chasing the strikers.
 20 MR MPOFU: Now, is this – is it this,
 21 during this march that you saw the injured person?
 22 MR GEGELEZA: No, I saw him during the
 23 chase, during the chase of the strikers. When we came back
 24 I did not see him.
 25 MR MPOFU: Okay, I asked this question

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1 differently from Mr Gcilitshana but have you ever taken any
 2 interest as to who that person was and whatever happened to
 3 him?
 4 MR GEGELEZA: I would not have had any
 5 interest in a person who had come to attack me.
 6 MR MPOFU: So you know the gentleman?
 7 Did he come to attack you?
 8 MR GEGELEZA: He was together with the
 9 strikers.
 10 MR MPOFU: When did you see him with the
 11 strikers?
 12 MR GEGELEZA: I saw him there next to
 13 Schagan. They were surrounding him and when we approached
 14 them they left him there. He was trying to creep under the
 15 fence to go into the Schagan premises.
 16 MR MPOFU: Well, for what it's worth, I
 17 don't know if you do, whether you are interested or not but
 18 the gentleman will come and give evidence that he was
 19 indeed, he received a shot from the back and it protruded
 20 through his stomach, which is even currently bulging and
 21 bloated and you can almost see his intestines.
 22 MR GEGELEZA: I have no idea. The only
 23 thing I can say, I heard shots but who was shot and by
 24 whom, I don't know.
 25 MR MPOFU: Okay. Anyway, were you aware

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1 of the rumour that was doing the rounds thereafter that two
 2 people had been killed?
 3 MR GEGELEZA: I heard it from the
 4 strikers when they spoke to the reporters. This was on the
 5 koppie.
 6 MR MPOFU: Sorry, this would be the
 7 period between the 11th and the 16th?
 8 MR GEGELEZA: It is correct.
 9 MR MPOFU: Finally, when you had this
 10 encounter with the protesters did you ever get an
 11 impression that they thought that the bullets would not
 12 injure them or affect them?
 13 MR GEGELEZA: It never appeared to me
 14 like that. I don't know much about bullets, I only heard
 15 the shots, the gunshots.
 16 MR MPOFU: In fact it is correct, is it
 17 not, that as soon as they heard those gunshots they ran for
 18 their lives?
 19 MR GEGELEZA: It is so.
 20 MR MPOFU: Thank you, Chairperson, I have
 21 nothing further.
 22 CHAIRPERSON: Ms Barnes – sorry, Ms
 23 Lewis, are you going to cross-examine on behalf of the
 24 families?
 25 MS LEWIS: Mr Chair, no, no questions on

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1 behalf of the families.
 2 CHAIRPERSON: Thank you. Mr Burger, do
 3 you wish to cross-examine?
 4 MR BURGER SC: We have no questions to
 5 the witness, Mr Chair.
 6 CROSS-EXAMINATION BY MR SEMENYA SC:
 7 Thank you, Chair, I do. Mr Gegeleza, you are Pondo, am I
 8 right?
 9 MR GEGELEZA: It is correct.
 10 MR SEMENYA SC: And as you say, from
 11 where you come, people don't easily balk at a good fight,
 12 right?
 13 MR GEGELEZA: It sometimes happens, yes,
 14 that men don't run away, they take part in the fight.
 15 MR SEMENYA SC: It's actually considered
 16 very manly and brave to engage with a good fight, right?
 17 MR GEGELEZA: Yes, it is so.
 18 MR SEMENYA SC: And even regardless of
 19 numbers of opposition, that is not a factor to deter good
 20 one, a good fight, am I right?
 21 MR GEGELEZA: It is correct.
 22 MR SEMENYA SC: All you know is that one
 23 side is going to lose but you don't run away from a good
 24 fight.
 25 MR GEGELEZA: It is correct.

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1 MR SEMENYA SC: And surely in the Eastern
 2 Cape when these confrontations are held, they can be fatal.
 3 MR GEGELEZA: That's correct.
 4 MR SEMENYA SC: That, as a consequence,
 5 is also not enough to deter you from getting into a good
 6 combat, am I right?
 7 MR GEGELEZA: It will depend on another
 8 person but pertaining to myself, yes, that is the position.
 9 It doesn't matter what has happened to the next person.
 10 MR SEMENYA SC: And in fact before, at
 11 times, going into these combats, it is not unusual for
 12 people to apply traditional medicine, right?
 13 MR GEGELEZA: There I have not been to
 14 that, I don't have the experience.
 15 MR SEMENYA SC: You are from the Eastern
 16 Cape, aren't you?
 17 MR GEGELEZA: Yes, it is so but in the
 18 years past in the area where I come from there hasn't been
 19 some fighting going on there.
 20 MR SEMENYA SC: No, just trust us a
 21 little bit. You've just told us where you come from nobody
 22 runs from a good fight.
 23 MR GEGELEZA: I'm still saying the same
 24 thing that I was there but, however, you would have people
 25 running away.

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1 MR SEMENYA SC: But you can't then at the
 2 same time say you've never seen a fight.
 3 MR GEGELEZA: It is so.
 4 MR SEMENYA SC: So give us background
 5 about your – your home background. You do know there is
 6 occasion, there are occasions when they use traditional
 7 medicine, not correct?
 8 MR GEGELEZA: The only – the only
 9 medical, the only medicine that was used was to attract
 10 girlfriends, that is all.
 11 MR SEMENYA SC: Okay. Now, when you do,
 12 when you do use that medicine to get girlfriends, you do
 13 that truly believing that having applied this medicine,
 14 that will stand you in good stead to get these girlfriends,
 15 right?
 16 MR GEGELEZA: It is so.
 17 MR SEMENYA SC: And there are others who
 18 use the medicine for making them strong.
 19 [12:50] MR GEGELEZA: I do not have an idea there
 20 because I have never seen or experienced a person who uses
 21 such medicine.
 22 MR SEMENYA SC: You haven't been exposed,
 23 you say, to anybody who is using medicine for the purposes
 24 of making themselves strong?
 25 MR GEGELEZA: It is so. I cannot speak

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1 about rumours.
 2 MR SEMENYA SC: Okay. You see it is not
 3 a rumour, we have post-mortem reports of people who were
 4 killed in Marikana, some of whom have fresh cut wounds,
 5 incisions like these traditional incisions.
 6 MR GEGELEZA: I cannot respond to that.
 7 I would not be able to say what the medicine applied for
 8 was, whether to make them strong or for whatever reason.
 9 MR SEMENYA SC: Do you know the practice
 10 of these incisions at all?
 11 MR GEGELEZA: I know that.
 12 MR SEMENYA SC: Apart from girlfriends,
 13 what do these incisions – what are they done for?
 14 MR GEGELEZA: Sometimes they're to
 15 protect the people against creatures such as Tokoloshe.
 16 MR SEMENYA SC: Okay, we're making
 17 progress. At least it is used for self-protection, this
 18 medicine.
 19 MR GEGELEZA: That's correct, yes.
 20 MR SEMENYA SC: And if they're good
 21 against Tokoloshe they would be even better against a human
 22 being, I would guess.
 23 MR GEGELEZA: I am not sure if that is
 24 the position and if – what I know is that it does have an
 25 effect on Tokoloshes.

<p style="text-align: right;">Page 4358</p> <p>1 MR SEMENYA SC: Oh, that you know as a 2 fact?</p> <p>3 MR GEGELEZA: That is our belief, yes.</p> <p>4 MR SEMENYA SC: And it is that type of 5 practice which would have 10 people confront a crowd of 3- 6 odd thousand or more of you, or a large crowd, as you used 7 the expression. Am I wrong?</p> <p>8 MR GEGELEZA: I cannot respond to that 9 one because I don't know, I've never used that kind of 10 medicine that strengthens me</p> <p>11 MR SEMENYA SC: You see we're trying to 12 understand how it is that a show of police force as large 13 as was in Marikana, was not a sufficient deterrent. Are 14 you able to help us?</p> <p>15 MR GEGELEZA: I was far away from 16 Marikana at the time the police were there.</p> <p>17 MR SEMENYA SC: Yes, I know but given 18 your background, how you approach conflict and if you were 19 there you would still have braved your way through these 20 numbers of police, is that right?</p> <p>21 MR GEGELEZA: I am not sure because I've 22 never used this kind of stuff that makes you 23 confrontational towards other people.</p> <p>24 MR MPOFU: Chairperson, I have to object. 25 I'm sorry, I don't want to interrupt my learned colleague</p>	<p style="text-align: right;">Page 4360</p> <p>1 happened in respect of which no doubt evidence will be led 2 but no such evidence has yet been led. There's no evidence 3 yet of a breach or –</p> <p>4 CHAIRPERSON: Perhaps the proposition can 5 be put on a conditional basis, that the factual findings 6 contended for are accepted and then your objection will 7 fall away. I did say to Mr Semenya I didn't think the 8 point should be unduly lengthened because this isn't an 9 expert on human reactions in the face of this kind of 10 situation but he is an amaPondo and so he can help us a 11 little bit. Mr Semenya, please proceed. We'll carry on 12 for about 15 minutes for a convenient stage for the 13 adjournment. Perhaps you can round this point off before 14 we take the lunch adjournment.</p> <p>15 MR SEMENYA SC: Okay, let's take two 16 steps back. If necessary, I will show you visuals of men 17 who are nude, who are standing at the koppie and to whom it 18 appears there is application of some must.</p> <p>19 MR MPOFU: No Chair, I'm sorry. It 20 appears to whom? No, Chairperson, I'm very sorry.</p> <p>21 CHAIRPERSON: - show the videos in which 22 it appears – to him. I think "it appears" as he used it in 23 general means it appears to everyone who sees it. He says 24 he's going to do that. Whether the video does that is a 25 matter we can debate later but let's not waste time on</p>
<p style="text-align: right;">Page 4359</p> <p>1 and I've tried to exercise some restraint. I just want to 2 maybe establish, because our evidence which we suggest that 3 the people were actually running away and that we even saw 4 that from the helicopter, ran away either towards the 5 shacks or towards other directions, so I don't know where 6 this evidence or where Mr Semenya bases this confrontation 7 of a large force of -</p> <p>8 MR SEMENYA SC: Chair, we have seen the 9 visuals of the first breach, of the second breach, 10 culminating in the unfortunate shooting, so I don't know 11 what -</p> <p>12 CHAIRPERSON: I'll allow you to put this 13 cross-examination but I don't think it should be unduly 14 lengthened.</p> <p>15 MR SEMENYA SC: I didn't threaten to make 16 it lengthy, Chair.</p> <p>17 CHAIRPERSON: It's a pre-emptive strike 18 on my part.</p> <p>19 MR SEMENYA SC: Are you able to explain 20 and help us? The visuals we see are of people who, despite 21 an evident display of force, show some group of people 22 nevertheless seeking to penetrate that police line. Can 23 you explain why that arises?</p> <p>24 MS BARNES: Chair, I'm sorry, I need to 25 object now. That is a particular interpretation of what</p>	<p style="text-align: right;">Page 4361</p> <p>1 that.</p> <p>2 MR SEMENYA SC: Chair, may we perhaps 3 take the lunch adjournment, I'll get the video clip and it 4 will probably appear to the witness.</p> <p>5 CHAIRPERSON: I hope that during the 6 lunch adjournment we'll also [inaudible] repeat of the 7 video clip we saw. We will now adjourn for lunch.</p> <p>8 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>9 [14:03] CHAIRPERSON: The Commission resumes. 10 You're still under oath. Mr Semenya, I see we've been 11 given another piece of paper to look at during the 12 adjournment. The covering sheet is not very clear but I 13 take it that's not important, but are you going to continue 14 with your cross-examination?</p> <p>15 SAZISO ALBERT GEGELEZA (CONTD): 16 CROSS-EXAMINATION BY MR SEMENYA (CONTD): 17 Yes Chair, thank you and I'll deal with this document 18 further down the line. For now, I would wish the witness 19 to be shown the clips and video footages. If you can zoom 20 in just so that we can see that with some greater clarity, 21 if you can.</p> <p>22 MS PILLAY: Chair, for the purposes of 23 the record, this is slide 86 from exhibit L.</p> <p>24 MR SEMENYA SC: Mr Gegeleza, if you don't 25 mind you may leave your witness stand, go closer and see</p>

<p style="text-align: right;">Page 4362</p> <p>1 what appears on that video. 2 [VIDEO IS SHOWN] 3 MR BURGER SC: Chair, just before my 4 learned friend shows this video, may I raise an objection 5 or a question on this part of the evidence? 6 My learned friend for the police, Mr Semenya, has 7 offered us an expert report by, I think, a social 8 anthropologist on muti and the meaning of muti in the 9 particular culture. We haven't seen that report, no doubt 10 that may be relevant when it is filed. When Bishop Seoka 11 gave evidence on muti and expressed strong views, my 12 learned friend cross-examined him and, in our submission, 13 quite correctly. The Bishop abandoned his views and 14 conceded that he was a lay witness, he couldn't assist the 15 Commission. This witness has told the Commission that he 16 doesn't know about muti in the context of fight and being 17 either invisible or strong or whatever. I do not know how 18 this is going to advance us, especially in the absence of 19 the expert report which is to be furnished to us to tell us 20 what muti is all about. 21 CHAIRPERSON: Mr Burger, when I came back 22 here - I mentioned it when I spoke to Mr Semenya - when I 23 came back here onto the podium, whatever you call it where 24 I am, I found in front of me the expert report. So I 25 haven't read it but I assume that it contains material, I</p>	<p style="text-align: right;">Page 4364</p> <p>1 MR BURGER SC: Thank you, Chair. 2 MR MPOFU: Sorry Chairperson, I'm sorry 3 to butt in before Mr Burger finishes but I just want to 4 place on record that from our point of view, the mere fact 5 that someone is Mpondo or Mthembu or whatever, is 6 completely and utterly irrelevant to the issues that are 7 being debated here. In fact, we take strong objection to 8 any insinuation that that somehow qualifies anybody about 9 the issues facing this Commission. 10 CHAIRPERSON: If it is - I don't know 11 whether it is, Mr Semenya will tell us - but if it is his 12 case that particularly people from Pondoland, or some of 13 them or a number of them, have particular views, he is - 14 and rock drill operators in particular from Pondoland - if 15 he has a rock drill operator from Pondoland in the witness 16 box he can legitimately ask questions. There may well be a 17 time, depending on the answers he gets, when he will not be 18 able to proceed any further but I think it's premature for 19 us at this stage to say that these questions can't be 20 asked. So let's - you can't have a sort of anticipatory 21 objection to questions which you think may be asked even if 22 you don't know what the answer is going to be. So let's 23 see how it develops. I understand your point about 24 strongest objection and things being placed on record and 25 so forth. They are on record but let Mr Semenya proceed.</p>
<p style="text-align: right;">Page 4363</p> <p>1 take it, about Pondo people and the situation in Pondoland 2 and I take it that Mr Semenya's intention is to put to the 3 witness, as an amaPondo, certain things that are going to 4 be dealt with by his witnesses in relation to that. If he 5 goes beyond permissible limits you will obviously object at 6 that point, but I'm not going to be reading it while the 7 cross-examination continues, so perhaps if someone can take 8 you my copy in the meanwhile, which you can look at, 9 because you won't have to listen attentively to each answer 10 as I have to - or as attentively to each answer as I have 11 to. 12 MR BURGER SC: Thank you, Chair. 13 CHAIRPERSON: Mr Burger's been given - I 14 can keep mine. Alright, so I take the point that you make. 15 This gentleman is an amaPondo so he can be asked about the 16 situation relating to the people from his ethnic group and 17 it may be that if Mr Semenya gets a series of [indistinct] 18 answers he may have to not proceed further with the cross- 19 examination, but we can only see as the cross-examination 20 proceeds, but obviously it will be open to you and to 21 others to object if you consider the questions asked are 22 objectionable, but I don't think I can make any ruling at 23 this stage but you've very helpfully alerted us to the 24 problem and particularly to the fact that you were not 25 initially in possession of an expert statement.</p>	<p style="text-align: right;">Page 4365</p> <p>1 MR SEMENYA SC: Mr Gegeleza, the visual 2 you are watching now was taken on the 14th of August 2012, 3 just around 16:21 in the afternoon. 4 MR HANABE: Around? 5 MR SEMENYA SC: 16:21. Was it your 6 observation that there are men who are standing in line and 7 naked? 8 MR GEGELEZA: That is so. 9 MR SEMENYA SC: I request that you show 10 another image which is slide 87. 11 [VISUAL IS SHOWN] 12 MR SEMENYA SC: If you want to take the 13 opportunity to look at it closer, you may, Mr Gegeleza. 14 MR GEGELEZA: I can see clearly from 15 here. 16 MR SEMENYA SC: That also is a visual 17 taken on the 14th of August 2012 around the same time. 18 Okay, can we request that you be shown slide 90? Can that 19 be played so that we see what appears there? It's a short 20 one. 21 [VIDEO IS SHOWN] 22 MR SEMENYA SC: Okay, thank you. Now, Mr 23 Gegeleza, it is not often happening during work as miners 24 that you see men just being naked like that, am I right? 25 MR GEGELEZA: That is so.</p>

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1 MR SEMENYA SC: Or it's not the usual
2 practice under normal circumstances to find them urinating
3 on some stuff, am I right?
4 MR GEGELEZA: A person can urinate
5 anywhere, there's no specific place where a person has to
6 urinate.
7 MR SEMENYA SC: That clip is an unusual
8 sight, that's all I'm trying to establish with you.
9 MR GEGELEZA: Yes, what I see there is
10 unusual because I see people who are armed. I further saw
11 people who were naked.
12 MR SEMENYA SC: To the proposed evidence
13 that will say this is a ritual being performed, from your
14 background would you be able to comment?
15 MR GEGELEZA: I cannot comment, I cannot
16 comment because I didn't see them doing anything, I just
17 saw them naked. Perhaps if I was nearer to them then I
18 would have been able to comment.
19 MR SEMENYA SC: But you are able to tell
20 us that's an unusual sight that you are seeing of men being
21 naked like that, right?
22 MR GEGELEZA: That is so.
23 MR SEMENYA SC: Do you know Ntelezi?
24 MR GEGELEZA: Yes.
25 MR SEMENYA SC: Just educate us, what is

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1 it?
2 MR GEGELEZA: Where I am coming from we
3 usually sow or plant it in the yard and sometimes we place
4 it on rooftops and when you are having a belief or you are
5 of the belief that you are being attacked by some things or
6 certain animals, then you can take it and then use it to
7 bath.
8 MR SEMENYA SC: Use it?
9 MR GEGELEZA: To bath, to take a bath.
10 MR SEMENYA SC: The purpose being to
11 achieve what?
12 MR GEGELEZA: So that whatever it is that
13 perhaps you felt in the body or anything that was attacking
14 you, that it might not attack you again. For example, if
15 one has bad dreams we use it, when you have strange dreams
16 you use it bath.
17 MR SEMENYA SC: If you want to make
18 yourself fearless?
19 MR GEGELEZA: I've never reached that
20 one, that level.
21 MR SEMENYA SC: And do you know what, in
22 Pondoland, is called the Indlavini?
23 MR GEGELEZA: That's so.
24 MR SEMENYA SC: The expert we propose to
25 call says this about them – let me test with you whether

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1 that is correct. Chair, I propose using this report, I
2 don't know whether we need to give it an exhibit number now
3 or perhaps later.
4 CHAIRPERSON: I take it you're just going
5 to put statements from it.
6 MR SEMENYA SC: That's right.
7 CHAIRPERSON: It hasn't got any extra
8 status at this stage, it's just propositions you're putting
9 to the witness, with which he'll either agree or not.
10 MR SEMENYA SC: Correct, Chair.
11 CHAIRPERSON: And when the witness, if
12 you call him, comes, then you can put the statements and
13 then we'll give it an exhibit number.
14 MR SEMENYA SC: I'd think it appropriate
15 that way, Chair, thank you. I just want to share with you
16 what we have as a report by a Prof Lamla. If you go to
17 page 4 of that document, the professor will say that – and
18 I'm reading at the top of the page – it says, "Also in
19 Pondoland there is a class of militant young men called
20 Indlavini (rascals). These follows are usually organised
21 in all male gangs." Would that be an accurate -
22 MR GEGELEZA: I disagree.
23 MR SEMENYA SC: Then the professor will
24 say, "They do not only clash with rival gangs of ruffians
25 but sometimes terrorise villagers as well." Would that be

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1 your experience?
2 MR GEGELEZA: I don't know if – okay, or
3 if you can just afford me an opportunity to explain to you
4 exactly what Indlavini (rascals) means, perhaps this person
5 would see it differently.
6 MR SEMENYA SC: Okay.
7 [14:23] MR GEGELEZA: There in Pondoland the
8 rascal, which is Indlavini, is a person who has in fact
9 been called a young man. He has passed the level of
10 boyhood and there's another person also who is referred to
11 as Imbola. Indlavini and Imbola are in equal state.
12 However, they don't do or perform the same duties or do the
13 same things. The third one is referred to as Swenka.
14 Indlavini is not a person who likes, who is bellicose, who
15 likes to fight. A person who is bellicose is Imbola.
16 Swenka is a kind of person who dances where there's
17 singing. That is how things are in Pondoland.
18 MR SEMENYA SC: So the professor will say
19 that an Indlavini would look at the defeat as one big
20 humiliation.
21 MR GEGELEZA: It's not normal to hear in
22 Pondoland that Indlavini has taken part in a fight. People
23 who usually fight are those who are referred to as Imbola.
24 Indlavini is known as an entertainer, the person who
25 entertains.

<p style="text-align: right;">Page 4370</p> <p>1 MR SEMENYA SC: Okay, let's talk about 2 the Imbola, do they – 3 MR MPOFU: No – no, Chairperson, I'm so 4 sorry. This is all entertaining and so on but what has it 5 got to do with the Commission? No basis has been laid, 6 Chairperson, about whether those people in those pictures 7 are, one, either from Pondoland, two, are so-called 8 Indlavinis. So where are we going with this? 9 MR SEMENYA SC: I assume – let's give Mr 10 Semenya a chance to try to lay the foundation. 11 MR MPOFU: To lay the basis, okay, thank 12 you Chair. 13 CHAIRPERSON: There is evidence that a 14 lot of the RDOs come from Pondoland, Lusikisiki and 15 Flagstaff and places like that, but I must assume that when 16 counsel asks questions of this kind he is not just wasting 17 our time, he's got a purpose in doing it. If it becomes 18 clear that I'm wrong in that assumption then we'll have to 19 deal with it appropriately. 20 MR MPOFU: Okay. 21 CHAIRPERSON: It's premature at this 22 stage. 23 MR MPOFU: Yes, thank you Chair. All I 24 just want to establish is, the people – the naked, so- 25 called naked people, if there's a basis to suggest that</p>	<p style="text-align: right;">Page 4372</p> <p>1 with that comment? 2 CHAIRPERSON: It's been put, it's been 3 suggested to me by my isiXhosa-speaking interpreter, sorry, 4 isiXhosa-speaking assessor – I'll get it right the third 5 time, isiXhosa-speaking commissioner, that your 6 interpretation wasn't entirely correct on that, on the last 7 bit. So perhaps if the witness could repeat what he said 8 about lovemaking and so forth and then you can interpret it 9 again and we have those isiXhosa-speaking people here – if 10 my commissioner is correct, we'll get the correct 11 interpretation. Mr Madlanga is also here but I don't want 12 to reflect on you because for all I know your 13 interpretation was correct, but it may be that what was 14 said is also possible capable of being interpreted in 15 another way. So perhaps let's have another go again, get 16 the answer and then the interpretation and the isiXhosa- 17 speaking people, of whom there are many here today, will be 18 able to tell us whether we've got the right interpretation. 19 MR SEMENYA SC: No, it was your answer 20 that was interpreted. 21 MR GEGELEZA: We never – the issue of 22 making love is never mentioned there. I never even heard 23 about that. 24 MR SEMENYA SC: Okay. On page 6 of that 25 document –</p>
<p style="text-align: right;">Page 4371</p> <p>1 they are from Pondoland or so-called Indlavinis, then this 2 questioning might have some relevance. 3 MR SEMENYA SC: Mr Gegeleza, let's talk 4 about the Imbola then. Would they naturally look at a 5 defeat in a clash to be a big humiliation? 6 MR GEGELEZA: That's correct. 7 MR SEMENYA SC: So they would fight very 8 fiercely to avoid a defeat? 9 MR HANABE: They will fight? 10 MR SEMENYA SC: Fiercely, 11 fiercely. 12 CHAIRPERSON: - fearlessly. It's a 13 terrible language, isn't it? Fearlessly. 14 MR SEMENYA SC: Fearlessly, okay. My 15 English is not as good as Mr Ntsebeza. 16 MR GEGELEZA: No-one ever fights without 17 having fear in him because he knows that he might even die. 18 MR SEMENYA SC: The professor also says – 19 at least maybe you may agree with him here – that the 20 Indlavinis are also known for lovemaking. 21 MR GEGELEZA: In Pondoland there's never 22 any mention about making love. 23 MR SEMENYA SC: Okay, but the professor 24 then makes the point that to an Mpondo, killing a person in 25 a fight does not mean much. Would you associate yourself</p>	<p style="text-align: right;">Page 4373</p> <p>1 CHAIRPERSON: Mr Mahlangu has now stepped 2 forward and he may, if there's a dispute between 3 Commissioner Tokota and the interpreter, maybe we must 4 submit it to the arbitrament of Mr Mahlangu who can tell us 5 what's going on. 6 MR MAHLANGU: Chairperson, let me say the 7 interpretation has been, to an extent, quite correct but 8 what the interpreter is endeavouring to do is to use what 9 is called in Xhosa, [indistinct] language, avoiding the use 10 of the word "sex" because it's just very rarely used in 11 public amongst the Pondo-speaking people. 12 CHAIRPERSON: An interesting, totally 13 irrelevant byway. I suggest we move on. 14 MR MPOFU: I don't know how this 15 lovemaking thing is relevant to the Commission, honestly, 16 Chair. 17 CHAIRPERSON: Well – 18 MR MPOFU: Whichever – whether it's taboo 19 or not. 20 CHAIRPERSON: This Commission is not 21 about lovemaking. 22 MR MPOFU: Thank you, Chair. 23 MR SEMENYA SC: Shall we go to page 6 of 24 the report, Mr Gegeleza? 25 CHAIRPERSON: Can we now come back to the</p>

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1 point? Ask your next question. I don't understand the
 2 lovemaking point but I'm not sure that I have to understand
 3 it because I'm not sure it's relevant, so can we carry on?
 4 MR SEMENYA SC: I've pointed the witness
 5 to page 6 of the report. I want to point you to the
 6 penultimate paragraph on that page. The professor will
 7 say, speaking about these warriors, that sometimes warriors
 8 may be sprinkled with water mixed with Ntelezi, while
 9 jumping over the sacred fire. They have to be naked,
 10 perhaps this is to cleanse them. Have you observed any
 11 similar practice?
 12 MR GEGELEZA: I have answered and said
 13 I've never come across such places.
 14 MR SEMENYA SC: Okay, let's go back to
 15 the 11th now, of August 2012. Before the shooting of the
 16 protesters by NUM leaders, there were only at that time
 17 mere sporadic incidents of intimidation, am I right?
 18 MR GEGELEZA: I never heard it said that
 19 NUM leaders shot, fired shots, but what I heard was just
 20 the shots that were being fired, it's something I heard.
 21 And I never heard it said that there was intimidation
 22 except on the night of the 10th and people who were
 23 intimidated were those who were going to work.
 24 MR SEMENYA SC: Yes, that's what I'm
 25 saying, that before the shooting that you heard there were

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1 just sporadic incidents of intimidating those who sought to
 2 go to work.
 3 MR GEGELEZA: That is so.
 4 MR SEMENYA SC: And at that time the
 5 discontent among those who were protesting was really not a
 6 tension between NUM members and non-NUM members, am I
 7 right?
 8 MR GEGELEZA: It is possible and,
 9 further, there were some people who were not members of NUM
 10 because the strikers were from Karee and that there were
 11 two unions.
 12 MR SEMENYA SC: Well, simply put, some of
 13 the protesters were NUM members, correct?
 14 MR GEGELEZA: That is so.
 15 MR SEMENYA SC: Some of the protesters
 16 were belonging to other unions or non-unionised, am I
 17 right?
 18 MR GEGELEZA: It's possible because other
 19 people were not affiliated to any other unions.
 20 MR SEMENYA SC: But up to that point,
 21 there were no tensions between discernible groups like NUM
 22 is fight non-NUM members or non-NUM members are fighting
 23 NUM members, there was no such pattern visible.
 24 MR GEGELEZA: That is true because when
 25 we fought with the strikers we didn't know whether they

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1 were members of NUM or any other union, we just saw
 2 strikers.
 3 MR SEMENYA SC: Now, the protesters who
 4 were coming to the NUM office had intended, didn't they, to
 5 engage the NUM leadership as well?
 6 MR GEGELEZA: I'm not sure if it is like
 7 that.
 8 MR SEMENYA SC: But they were never given
 9 a chance to come and present their concerns, if they had
 10 any.
 11 MR GEGELEZA: Because of the information
 12 that was given before their arrival.
 13 MR SEMENYA SC: So you agree with me,
 14 they were not given an opportunity to express themselves if
 15 they had anything to express at all?
 16 MR GEGELEZA: That is so.
 17 MR SEMENYA SC: You were operating on the
 18 reports given to you by the security, that they were coming
 19 to burn the office. Am I right?
 20 MR GEGELEZA: That's correct.
 21 MR SEMENYA SC: Now, Mr Gegeleza, this is
 22 important for me. It was available to all those people who
 23 were in the NUM office to simply lock the office and leave,
 24 right?
 25 MR HANABE: It was? Do you mean it was

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1 available?
 2 MR SEMENYA SC: It was open to them to
 3 just lock the office and leave, on the advice of the
 4 security.
 5 MR GEGELEZA: When we heard that the
 6 office is about to be destroyed or there's no way that we
 7 can just - or there's no way we could leave that office, so
 8 we saw it fit to protect the office as well as our lives.
 9 MR SEMENYA SC: I'm going to ask the
 10 question again. It was physically possible for all of you
 11 to just lock the office and save your lives that way?
 12 MR GEGELEZA: It never crossed my mind to
 13 leave or to lock the office of the NUM and let it be
 14 attacked, whereas I was there.
 15 [14:43] CHAIRPERSON: I must appeal to members of
 16 the - people who are sitting in the auditorium, to please
 17 remain quiet. It only disturbs the proceedings if they
 18 make comments and interject while the witness is giving
 19 evidence and while his evidence is being interpreted. And
 20 if conduct of that kind continues, I may have to exclude
 21 certain people from the auditorium. I don't want to do
 22 that but I may have to do it if it continues, and let that
 23 be understood.
 24 MR SEMENYA SC: Are you saying it was not
 25 physically possible to just walk away and leave the office?

<p style="text-align: right;">Page 4378</p> <p>1 MR GEGELEZA: Personally I never thought 2 of such a thing. 3 CHAIRPERSON: You're not answering the 4 question. What counsel asks you is, was it possible in the 5 sense of physically possible for you to walk away? You 6 could walk away, there was nothing stopping you, tying you 7 down, keeping you in the office. If you had wanted to walk 8 away you could have done so. That's the question, what's 9 the answer? 10 MR GEGELEZA: What made me, or made me 11 not be able to think in that fashion was the fact that I 12 felt like we were being disrespected when we heard that our 13 office would just be attacked. That's why such a thing 14 never crossed my mind and no reasons were advanced as to 15 why we were going to be attacked. 16 CHAIRPERSON: You're still not answering 17 the question that counsel asked you. Repeat the question, 18 Mr Semenya? 19 MR SEMENYA SC: There was nothing to 20 impede any one of you from just locking the office and 21 walking away. 22 MR GEGELEZA: That is so. 23 MR SEMENYA SC: And had you done that, 24 your lives would not have been in danger, am I right? 25 MR GEGELEZA: I'm not sure if it was</p>	<p style="text-align: right;">Page 4380</p> <p>1 was used. 2 MR SEMENYA SC: The fight would include, 3 not by any surprise to you, gunfire that you heard. 4 MR GEGELEZA: I don't know who was in 5 possession of the firearm. As I said, I just heard 6 gunshots. 7 MR SEMENYA SC: No, I'm not suggesting 8 you knew who possessed a firearm. I'm saying the fight you 9 contemplated, it didn't surprise you that a firearm was 10 used in it. 11 MR GEGELEZA: Yes, I was surprised and I 12 was also startled when I heard the gunshots. 13 MR SEMENYA SC: Okay. Now, there is a 14 point at which, after the fired - after the shots were 15 fired, that you see the people dispersing away from the NUM 16 office. 17 MR GEGELEZA: Yes, it was all that 18 strikers. They went back, they ran away. 19 MR SEMENYA SC: So at that point we know 20 that the NUM office is not under attack anymore, right? 21 MR GEGELEZA: Yes, at that stage there 22 were no attacks in the office because at that time we were 23 pursuing them. 24 MR SEMENYA SC: And at the time when you 25 were pursuing them your lives were not in danger, am I</p>
<p style="text-align: right;">Page 4379</p> <p>1 going to be like that because the strikers were closer. 2 MR SEMENYA SC: No, Mr Gegeleza, you told 3 us some 10-odd people left. Their lives were not in danger 4 when they did. 5 MR GEGELEZA: But I was determined to 6 protect the office and my life. It was the same with the 7 other comrades, though we never discussed or talked about 8 that. 9 MR SEMENYA SC: Had you left, your life 10 would not have been threatened in anyway, am I right? 11 MR GEGELEZA: It could be so. 12 MR SEMENYA SC: But instead, you wanted 13 to fight off the people who were coming to the office, am I 14 right? 15 MR GEGELEZA: We had also heard that they 16 were coming to attack us. 17 MR SEMENYA SC: And you were going to 18 fight them off? 19 MR GEGELEZA: That is so. 20 MR SEMENYA SC: By using dangerous 21 weapons. 22 MR GEGELEZA: As we were carrying them. 23 MR SEMENYA SC: Including the firearm 24 that was used. 25 MR GEGELEZA: I don't know which firearm</p>	<p style="text-align: right;">Page 4381</p> <p>1 right? 2 MR GEGELEZA: Had they turned, then it 3 was possible that our lives would have been in danger. 4 MR SEMENYA SC: Ja, you were inviting the 5 danger, that's what I'm saying. You have managed to repel 6 this group. 7 MR GEGELEZA: I disagree with you. 8 MR SEMENYA SC: Ja, tell me why? 9 MR GEGELEZA: The aim was that we wanted 10 to, as we were pursuing them, to chase them out of the 11 hostels so that we could see the direction to which they 12 would be running and the aim was to avoid any attack that 13 they might plan. 14 MR SEMENYA SC: So not only did you 15 intend to protect your life, protect the NUM office, you 16 also wanted them out of the hostel complex. 17 MR GEGELEZA: Yes, we had already 18 protected the NUM office as well as our lives, so we wanted 19 them – we wanted to see them as they were running, to see 20 as to where they were heading for or running to, so that 21 they could not plan any further attack. 22 MR SEMENYA SC: So you were aggressors by 23 this time, correct? 24 MR TIP SC: Chair, with respect, there's 25 an objection to that and the objection is that the witness</p>

<p style="text-align: right;">Page 4382</p> <p>1 has on several occasions explained that the purpose of the 2 pursuit was to keep the strikers who had attacked the 3 office on the move in order to prevent them reforming 4 another attack. Now that is part, with respect, of a 5 defensive move rather than a conversion into aggression. 6 CHAIRPERSON: The witness can give the 7 answer instead of you. Mr Semenya, please proceed with the 8 cross-examination. 9 MR SEMENYA SC: Thank you, Chair. You 10 are now being aggressors, with these people fleeing evident 11 to you and you're pursuing them like that. 12 CHAIRPERSON: Do you agree that you were 13 aggressors at that point? 14 MR GEGELEZA: I disagree with you in 15 that, but anyone who was not present there, he could view 16 or see it that way but to me, a person who was present 17 there, I don't see it that way. I disagree. If that 18 person were to see those people being pursued he would say, 19 here are the aggressors. 20 MR SEMENYA SC: He wouldn't look at the 21 pursuers as people who are protecting their lives, right? 22 MR GEGELEZA: Because that person did not 23 see what had happened. He would see just people pursuing 24 others and assume that they were aggressors. 25 MR SEMENYA SC: And we're going to argue</p>	<p style="text-align: right;">Page 4384</p> <p>1 and a problem at Western Platinum and further that they 2 were blaming, they were blaming everyone. 3 MR SEMENYA SC: Sorry, I meant the South 4 African Police Service were not a problem as far as they 5 were concerned. 6 MR GEGELEZA: I cannot – I disagree that 7 they didn't have, when it is said that they didn't have a 8 problem with the police because when the police were saying 9 some things to them they were not compliant, they didn't 10 comply. 11 MR SEMENYA SC: Let me finally establish, 12 nobody in NUM had asked any of you to spend and put life at 13 risk in the protection of the building, am I right? 14 MR GEGELEZA: Yes, there's no – yes, no- 15 one. 16 MR SEMENYA SC: Those are the questions I 17 have for the witness, Chair. 18 CHAIRPERSON: Thank you, Mr Semenya. 19 This is an appropriate stage to take the tea adjournment. 20 Before we do so, may I enquire which of the parties' 21 representatives wishes to cross-examine after we resume? 22 Anybody? 23 MR TIP SC: Just in that respect, Mr 24 Power who was – 25 CHAIRPERSON: Oh, Mr Power, I beg your</p>
<p style="text-align: right;">Page 4383</p> <p>1 that that is the turning point in this whole episode when 2 the strikers see NUM being opposition, people who are 3 responsible for the attack on them. 4 MR GEGELEZA: It's possible that the 5 problem, in fact, started on the 10th when the workers or 6 employees were being escorted to work. Perhaps it could be 7 possible that that started on a Saturday perhaps, it never 8 worked well with the RDOs, the fact that people were being 9 escorted to work. So what drove them to the office could 10 have been the anger after seeing people being escorted to 11 work. Those are my views. 12 MR SEMENYA SC: Aggravated, no doubt, by 13 then seeing you chasing them in hot pursuit, as you were 14 doing, and they perceiving – as the evidence later will 15 reveal – that they're being shot at by leadership of NUM. 16 MR GEGELEZA: It's possible that perhaps 17 it really aggravated. 18 MR SEMENYA SC: Yes, because even on the 19 13th when some groups of protesters are confronted by 20 General Mpembe and the other police, they say the police 21 are not an issue here. With that evidence, the point I'm 22 making is they see their "enemy", in quotes, being NUM. 23 MR GEGELEZA: I disagree then when you 24 said they didn't have a problem with the police. In fact 25 there were already security personnel that had passed away</p>	<p style="text-align: right;">Page 4385</p> <p>1 pardon. 2 MR TIP SC: - who was here for the LRC, 3 asked me to place on record that they had no questions. 4 CHAIRPERSON: Thank you, alright. 5 MR MPOFU: Chairperson? 6 CHAIRPERSON: Yes? 7 MR MPOFU: If I may, with your 8 permission, if you may give – after the break – I have 9 literally just one proposition which I forgot to put. It 10 won't be more than three or four questions. 11 CHAIRPERSON: "Literally" is a dangerous 12 word sometimes. 13 MR MPOFU: Well, I withdraw it. I 14 withdraw just that word. 15 CHAIRPERSON: We'll take the adjournment 16 and after the adjournment, before Mr Tip re-examines I'll 17 give you the opportunity to ask five questions. 18 MR MPOFU: Thank you, Chairperson. 19 [COMMISSION ADJOURNS COMMISSION RESUMES] 20 [15:24] CHAIRPERSON: The Commission resumes. 21 You're still under oath. Mr Mpfu, let's hear your five 22 questions. 23 SAZISO ALBERT GEGELEZA (CONTD): 24 MR HANABE: Can I say something before? 25 Mr Mahlangu has asked me to ask those who want Tswana</p>

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1 translation to proceed to the media room.
 2 CHAIRPERSON: Alright. So shall we wait
 3 for the Tswana speakers to proceed to the media room before
 4 we carry on or have they all gone? Alright, it looks as if
 5 we can proceed. Mr Mpofo?
 6 FURTHER CROSS-EXAMINATION BY MR MPOFU:
 7 Thank you, Chair. Mr Gegeleza, I want to put a proposition
 8 to you which I did put to Mr Gcilitshana to some extent,
 9 which I omitted to put to you earlier and for which I
 10 apologise, and it is that – and I'm inviting your comment –
 11 we're going to argue at the end of the case that this
 12 confrontation, as you call it, was, as Mr Semanya says, a
 13 turning point in two important respects, one being the type
 14 of weaponry which was carried by the strikers thereafter,
 15 two, being the place where they would usually meet. And
 16 I'd like to invite your comment for that.
 17 MR GEGELEZA: As I said earlier on that
 18 the possible thing is that what really angered them is what
 19 happened on the 10th of August when they saw that the
 20 workers were being escorted to their work. And further the
 21 other possible thing is what happened on Saturday.
 22 MR MPOFU: Thank you. So it's possible
 23 that that is what angered them. The second issue which I
 24 want to raise with you is that you have testified and Mr
 25 Setelele, or Mr Brown, has also testified that on the – at

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1 about 4 o'clock I think is your estimation, he just says in
 2 the afternoon – the NUM held a meeting near the Wonderkop
 3 Stadium which, according to Mr Setelele, was attended by
 4 1 000 people. Am I correct that we are talking about the
 5 same meeting? In other words, sorry, the meeting that he
 6 talks about of over 1 000 people near Wonderkop is the same
 7 meeting that you place at about 4 o'clock?
 8 MR GEGELEZA: That is so.
 9 MR MPOFU: The evidence will be that that
 10 meeting took place at the same place outside the Wonderkop
 11 Stadium, you know where there are those green pipes, that
 12 the protesters had hitherto used as their meeting place.
 13 Can you confirm that?
 14 MR GEGELEZA: That is so.
 15 MR MPOFU: Now, from that – just that
 16 information which you've just confirmed, we're going to
 17 argue at the end of the case that, among other things, this
 18 confrontation resulted in a territorial occupation, for
 19 lack of a better word, by yourselves as the NUM, of the
 20 usual meeting place of the protesters so that they could no
 21 longer meet there and they, as a result, from that point on
 22 started meeting at the koppie.
 23 MR GEGELEZA: There was no confrontation
 24 at that time because at that time that Brown had addressed
 25 the meeting, there was no-one there except the workers who

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1 had come to listen to what Brown had to say but no-one was
 2 ever expelled from that place.
 3 MR MPOFU: Yes, I accept that. My point
 4 is simply that by the time you had your meeting there, the
 5 successful eviction of the protesters who had been meeting
 6 there had occurred permanently and they, from that point,
 7 started to meet at the koppie. And I've run out of
 8 questions so I'll have to live by your answer. Thank you,
 9 Chair.
 10 MR GEGELEZA: I disagree with you in
 11 that.
 12 CHAIRPERSON: If there's a supplementary
 13 question you have to ask so that we get the full picture
 14 before us, I will give you permission to ask it.
 15 MR MPOFU: Chairperson, I'm indebted.
 16 Can I bank that permission for some other time? I'll use
 17 those questions when I'm not supposed to.
 18 CHAIRPERSON: If you need to draw on that
 19 account at this stage, you don't have to.
 20 MR MPOFU: Thank you very much,
 21 Chairperson, I appreciate the indulgence. Thank you, thank
 22 you, Chair.
 23 CHAIRPERSON: Before the adjournment when
 24 I asked if anyone else had questions to ask there was no
 25 response. Ramaphele – Mr Ramaphele, sorry. Did you

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1 indicate?
 2 MR RAMAPHELE: Yes.
 3 CHAIRPERSON: If you want to ask some
 4 questions, please come to one of the seats in front so we
 5 can see you. Yes, Mr Ramaphele?
 6 CROSS-EXAMINATION BY MR RAMAPHELE: Thank
 7 you, Chairperson. Mr – is it Gegeleza – I represent two of
 8 the securities and one of your members that were killed on
 9 the 12th and one of the issues that I would to bring to the
 10 Commission is to establish the extent to which unions,
 11 including your union, might or might not have contributed
 12 to the deaths of my clients. Now, the first question that
 13 I would like to ask is, in the evidence that you gave about
 14 protecting the office were you, the decision that you were
 15 taking was it a personal decision or were you acting as
 16 leaders of the union?
 17 MR GEGELEZA: It was just a personal
 18 decision and something which I believed was done by the
 19 other comrades but no-one said nothing to me in that
 20 regard.
 21 MR RAMAPHELE: Many of you, of the 20 or
 22 so that were at the office, were shop stewards?
 23 MR GEGELEZA: That is so.
 24 MR RAMAPHELE: Will I be right if I say
 25 that shop stewards are at a level of leadership – maybe not

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1 very high leadership, but level of leadership in the union?
 2 MR GEGELEZA: Yes, yes, it is so. In
 3 unions they have their positions according to the
 4 structures of that union.
 5 MR RAMAPHELE: Now the – you have just
 6 said that it could be that the strikers became angered by
 7 incidents a day or two before this particular one. Would
 8 you say that it was prudent for you to actually take the
 9 position of defending an office? As leadership, not as
 10 you, as leadership of the union?
 11 MR GEGELEZA: Because we had already
 12 received a report that the office was about to be attacked,
 13 so to me it was a right decision to make to protect myself
 14 and the office.
 15 MR RAMAPHELE: Are you saying that you
 16 did not have trust in the law enforcement authorities to
 17 protect your office, because I believe there's a satellite
 18 police station just a few steps away from it?
 19 MR GEGELEZA: They don't stay, in fact,
 20 in that office in that satellite police station. It's just
 21 a building, a structure.
 22 MR RAMAPHELE: Are you saying that it was
 23 not possible to contact the police and say, "We have
 24 information that our office is likely to be attacked, we
 25 would like police protection?"

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1 MR GEGELEZA: Normally if there is a
 2 problem then NUM will tell that to the company and the
 3 company is the one that, in turn, will send their security
 4 personnel. It is not normal for NUM to just approach the
 5 police in the first instance.
 6 MR RAMAPHELE: So your first port of call
 7 in relation to security is the mine and the security of the
 8 mine came and advised that you should vacate.
 9 MR GEGELEZA: That's correct.
 10 MR RAMAPHELE: And you did not vacate?
 11 MR GEGELEZA: That is so, yes, because
 12 when they were also asked by the secretary, they said they
 13 will not protect the offices of the union.
 14 MR RAMAPHELE: Now, let's go to these two
 15 sides and you've elaborated in very well terms what your
 16 view is in relation to a side and dying in a side. Now,
 17 these two sides, the large group that you saw and the 30,
 18 who would you say was more prepared for a fight?
 19 MR GEGELEZA: I can say all of us because
 20 as the miners were approaching they had already prepared
 21 themselves and so, upon hearing that they were coming, we
 22 also prepared ourselves.
 23 MR RAMAPHELE: Of the 30 or so that were
 24 at the office, how many were injured in this confrontation?
 25 MR GEGELEZA: None of the people who were

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1 in the office got injured, none of them got injured.
 2 MR RAMAPHELE: And as you have heard,
 3 there were two from this large group that was prepared for
 4 a fight that were badly injured.
 5 MR GEGELEZA: I never heard about the
 6 extent of his injuries but what I heard was that there were
 7 people in fact who were injured.
 8 [15:44] MR RAMAPHELE: Now let me make a
 9 proposition to you. It was the 30 that was more prepared
 10 for the fight than the large group that, when the 30
 11 attacked, turned back and fled. What would you say to
 12 that?
 13 MR GEGELEZA: I disagree with you in that
 14 because on the 10th there were some weapons that were taken
 15 from the strikers that clearly shows that they also had
 16 weapons.
 17 MR RAMAPHELE: Further, that open
 18 violence, open injury to individuals actually started after
 19 this incident. That is why the counsel say it became a
 20 turning point.
 21 MR TIP SC: Mr Chair, before the answer
 22 is given – and I'm reluctant to interfere at all with my
 23 learned friend's cross-examination but there is already
 24 evidence before the Commission in respect of events of
 25 intimidation and that there had been reports of assaults on

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1 persons in the course of the night of the 10th/11th and that
 2 open violence, whatever that means, had not surfaced for
 3 the first time on the morning of the 11th.
 4 MR RAMAPHELE: Well, I can rephrase. You
 5 see, what we have seen as public killing of people, of your
 6 members, started from the time when this confrontation
 7 happened, Madibi was killed and then the two securities
 8 were killed, one of whom was a member of NUM.
 9 MR GEGELEZA: That is so.
 10 MR RAMAPHELE: So I think as a leader of
 11 the union, a shop steward, you're supposed to – if you
 12 agree – say that what happened, that confrontation might
 13 have contributed.
 14 MR GEGELEZA: That is so.
 15 MR RAMAPHELE: No, I thank you. Thank
 16 you, Chair.
 17 CHAIRPERSON: If there's no-one else who
 18 wishes to cross-examine, Mr Tip are you ready to re-
 19 examine?
 20 MR TIP SC: I'm to re-examine, though I'm
 21 happy to tell you that we have no questions for the
 22 witness.
 23 CHAIRPERSON: Nothing? Alright, thank
 24 you. Do you want anything else –
 25 COMMISSIONER HEMRAJ: No.

1 CHAIRPERSON: Do you want to ask
 2 anything? Do you know whether the shop stewards at the –
 3 at Lonmin, NUM shop stewards at Lonmin, have licensed
 4 firearms in their possession?
 5 MR GEGELEZA: I never heard anything
 6 about the firearms or regarding the firearms in that
 7 office.
 8 CHAIRPERSON: Thank you. Sorry?
 9 MR HANABE: You were saying thank you,
 10 Commissioner, and I was saying it in isiXhosa, enkosi.
 11 CHAIRPERSON: Yes, it's been interpreted
 12 already. Thank you for your evidence, you'll be excused.
 13 [NO FURTHER QUESTIONS - WITNESS EXCUSED]
 14 CHAIRPERSON: Yes, Mr Tip?
 15 MR TIP SC: Mr Chair, we propose to call
 16 our next witness, being the president of NUM, Mr Senzeni
 17 Zokwana, but may I respectfully suggest that it may be
 18 appropriate for us to make a fresh start with him at 9.30
 19 tomorrow morning?
 20 CHAIRPERSON: Yes, certainly. We already
 21 have his statement.
 22 MR TIP SC: You have the statement. The
 23 statement has been in circulation –
 24 CHAIRPERSON: Yes.
 25 MR TIP SC: - since well before the end

1 of last year.
 2 CHAIRPERSON: We've already had the
 3 statement. Will he be the last witness you're calling?
 4 MR TIP SC: Certainly that's our present
 5 intention, subject to matters that may arise, but that
 6 would complete the NUM parcel that we wish to place before
 7 the Commission at this time, Chair.
 8 CHAIRPERSON: Yes. Then the Commission
 9 will adjourn until 9.30 tomorrow morning.
 10 [COMMISSION ADJOURNED]
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