

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 26 4 DECEMBER 2012 PAGES 2676 TO 2789

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 4 DECEMBER 2012]
 2 [09:33] CHAIRPERSON: The commission resumes, I
 3 did say it yesterday, but for the benefit of those who
 4 weren't here yesterday, we will be taking a short lunch
 5 hour today and resuming again at half past one, because we
 6 are going to stop some time after 3, because we are not
 7 sitting from tomorrow onwards for a week. Mr Mathunjwa,
 8 you are still under oath.
 9 MR MATHUNJWA: Thank you.
 10 CHAIRPERSON: Mr Ntsebeza, I think you
 11 said you wanted to ask him some questions in cross-
 12 examination.
 13 MR TIP SC: Mr Chair, sorry may I
 14 intervene and seek your leave to put just a few formal
 15 propositions that I omitted to do yesterday afternoon, it
 16 will be a few minutes.
 17 CHAIRPERSON: Mr Ntsebeza with his usual
 18 charm and affability won't object so I suggest that you, I
 19 am right about your affability and charm, Mr Ntsebeza?
 20 MR NTSEBEZA SC: Indeed, Mr Chair.
 21 CHAIRPERSON: Mr Tip, carry on.
 22 MR TIP SC: That's modesty acknowledged.
 23 Mr Mathunjwa, I have just a few questions for you which I
 24 should have put before we concluded yesterday, I am sorry
 25 that I am still going to address you but all that I am

1 doing is to take half a dozen of the paragraphs in your
 2 statement and just to indicate where my clients say that
 3 the facts are a bit different and essentially if you would
 4 just indicate whether you agree or whether you disagree.
 5 If it is really essential then of course you could add
 6 something. But it won't be necessary to repeat any of the
 7 evidence that you have given. It will probably be useful
 8 for you to have your statement in front of you, I think you
 9 do, that's exhibit NN.
 10 And if you go first of all to paragraph 24, you
 11 deal there with a meeting, what Mr Kwadi told you about the
 12 meeting that had taken place on the 12th of August and you
 13 say there that, that was attended by the leadership of NUM,
 14 Solidarity and UASA, do you see that?
 15 MR MATHUNJWA: Yes, Sir.
 16 MR TIP SC: And my instructions are
 17 simply that it was a meeting between NUM representatives
 18 and Lonmin management only and it was made on that day, the
 19 meeting was convened on that day at the request of Mr
 20 Zokwana. I appreciate that you weren't at the meeting, but
 21 I just have to put to you that version. Are you able to
 22 comment at all on that?
 23 MR MATHUNJWA: Yes, I was referring to
 24 this meeting to the leaders based on the information during
 25 my conversation with Mr Kwadi, if you say that is not the

1 case, I won't argue further because I was not there, I was
 2 told.
 3 MR TIP SC: Yes. And then if you go to
 4 paragraph 38, you deal there with an account of what the
 5 general, General Mzembe said at the briefing meeting on 15
 6 August 2012 and there is reference to him saying that four
 7 leaders had been identified, two of them were NUM, two of
 8 them were AMCU and all that I am putting to you is that Mr
 9 Zokwana will say that he didn't recall the general dealing
 10 at all with leadership issues. And that, that is not
 11 reflected in the transcript. Any comment on that?
 12 MR MATHUNJWA: My recollection on that is
 13 that when Mr Zokwana was saying he is not prepared to go to
 14 the mountain it is when then General Mzembe advise him that
 15 through their intelligence, if I am not mistaken they have
 16 identified four, those are regarded as the leaders of the
 17 strike. Two them is AMCU and two of them is for NUM,
 18 therefore he has to go to the mountain.
 19 MR TIP SC: Then paragraphs 41 and 42 of
 20 your statement.
 21 CHAIRPERSON: You put it to him that the
 22 transcript doesn't reflect that the General dealt with
 23 leadership issues. Well, I am not sure that, that
 24 statement that you put to him is entirely correct. If you
 25 have regard to page 2 of the transcript which is exhibit

1 004, you will see that General Mzembe addressing both the
 2 leaders of the two unions said, line 15 and following, "my
 3 request is 1, we need both your intervention, operations
 4 have reached a sensitive stage, that we might be, and we
 5 might go and lose more lives."
 6 Then he goes on about that and then he goes on to
 7 say on the following page, "we need these people, they need
 8 to be told. So it is my humble request, I hope that it
 9 will be understood." Then he goes on about that. So, I
 10 would have thought, that that request following as it was
 11 upon the statement that their information was that some of
 12 the people on the koppie belong to both unions. He then
 13 makes this request to the leaders of the two unions and he
 14 talks about both your intervention and so forth. I would
 15 have thought that, that could fairly be described as
 16 discussing leadership matters. I am not sure that the
 17 statement that you made was entirely correct.
 18 MR TIP SC: Mr Chair, we are not putting
 19 that leadership issues were not discussed, it is this
 20 specific point of the composition. That's really the only
 21 -
 22 CHAIRPERSON: - was that you put that Mr
 23 Zokwana doesn't recall the general dealing with leadership
 24 issues which are not reflected in the transcript. That's
 25 what I wrote down, if I incorrectly recorded what you put

1 then I apologise.

2 MR TIP SC: Mr Chair, I did preface it

3 with the observation that the General had said there were

4 two leaders from AMCU, two leaders from NUM. But perhaps I

5 should have made it more clear.

6 CHAIRPERSON: Yes, I think the question

7 can just be reformulated. What you are doing is you want

8 to make it clear what your case is in respect of what this

9 witness says and so obviously I must give you a chance to

10 do that. But if you put your case you must put it

11 correctly

12 MR TIP SC: Thank you, Mr Chair.

13 CHAIRPERSON: Can I also refer to page

14 11, where the general is speaking after Mr Zokwana has

15 spoken and he says at the foot of the page, line 22, "we

16 are having a negotiating team of the police," it says from,

17 but according the actual recording, "and when we are having

18 a negotiating team we are thinking that part of the

19 strategy people they see you, they will still respect you

20 because you still remain their leader." And that theme was

21 actually taken up later by Mr Mathunjwa who said that we

22 are leaders we are not just leaders in the boardroom. We

23 have to be leaders in the koppie as well. So questions of

24 leadership were discussed and General Mpmembe actually made

25 the point in the passage I read. So just – you know by all

1 means put your case, but put it based on a correct summary.

2 MR TIP SC: Mr Mathunjwa, let me revisit

3 that, the proposition that I was putting to you, was

4 intended to address only the aspect of whether the general

5 said that of the four leaders two were AMCU, two were NUM.

6 That's the only aspect, we don't suggest in any way that

7 the leadership question did not arise. Just the 2, 2

8 feature of it.

9 MR MATHUNJWA: According to my

10 recollection that is what has been told in that meeting of

11 the 15th.

12 MR TIP SC: Thank you, then if we could

13 go to paragraph 41 and 42, you deal there with the caucus

14 that NUM had after the initial discussion and you said

15 there that the NUM delegation went out and that the AMCU

16 delegation waited for 5 minutes and nobody came back. Do

17 you recall that?

18 MR MATHUNJWA: Yes, I recall that.

19 MR TIP SC: Mr Zokwana differs from you

20 and says that the NUM caucus was in fact a brief one and

21 that they returned to the boardroom after the caucus had

22 taken place.

23 MR MATHUNJWA: I will differ with that,

24 reason being, I even phoned Joe Kwadi asking him where are

25 they and then they said we must join them at the JOC. Then

1 we did find them, that was SAPS at the JOC management.

2 Then we did find them, that was SAPS at the JOC, management

3 and the NUM.

4 MR TIP SC: Then lastly, paragraph 57,

5 you deal there with what Mr Kwadi informed you about

6 concerning the press conference that had been arranged by

7 SAPS and you indicate in that paragraph that you considered

8 that NUM had been a participant in that press conference.

9 My –

10 CHAIRPERSON: Sorry, I don't understand

11 him to say that. He is not saying that NUM was a

12 participant, his point was that there was a police press

13 conference to which NUM had been invited but AMCU wasn't

14 and I understood the substance of the point being that

15 there was discrimination as it were between the two trade

16 unions, the one was invited to the press conference and the

17 other was ignored, not. That I understood to be the point

18 he was making, if I misunderstood him he will correct me.

19 MR MATHUNJWA: Yes, I did ask that why

20 are we not invited and why NUM is there because they were

21 there at the foyer.

22 MR TIP SC: That is my understanding of

23 what you were saying there and what I want to put to you in

24 that regard is simply this, that my instructions are that

25 NUM was in fact not aware of that press conference and that

1 it did not attend it.

2 MR MATHUNJWA: I will say they were

3 present where the conference was held.

4 MR TIP SC: Mr Chair, those are the only

5 propositions that I wish to make, I appreciate the

6 indulgence.

7 CHAIRPERSON: Thank you, Mr Tip. Mr

8 Ntsebeza.

9 MR NTSEBEZA SC: Thank you, Mr Chairman.

10 Mr Mathunjwa, I think it is, before I put any questions to

11 you, it is appropriate that I should indicate that I have

12 come to know you in the course of these proceedings. Is

13 that true?

14 MR MATHUNJWA: That is correct, Sir.

15 MR NTSEBEZA SC: Your organisation, AMCU

16 is represented in these proceedings by a colleague who is

17 instructed by SERI, the Socio-Economics Rights Institute.

18 Is that correct?

19 MR MATHUNJWA: I don't know whether he

20 said it correctly.

21 MR NTSEBEZA SC: No, it is Socio-Economic

22 Rights Institute.

23 CHAIRPERSON: The abbreviation or the

24 acronym SERI. S-E-R-I.

25 MR MATHUNJWA: That is correct.

1 MR NTSEBEZA SC: You are also aware that
 2 I represent families of those who died, also on
 3 instructions from SERI.
 4 MR MATHUNJWA: That is correct.
 5 MR NTSEBEZA SC: Now, you may or may not
 6 know, I now represent all 34, I mean families of all the 34
 7 people who died on the 16th of August.
 8 MR MPOFU: What happened to my police
 9 members, Chair.
 10 CHAIRPERSON: The 16 – he refers to the
 11 16 miners who were killed on the koppie, scene 1 or scene
 12 2, he represents their families, all of them. Other
 13 people, no policemen died on the 16th but other counsel
 14 represent the families of the policemen who died, and
 15 others represent the families of the security officials of
 16 Lonmin who died. I don't know if that's – and there was a
 17 suggestion that AMCU people had died earlier, but that
 18 suggestion has been withdrawn. So those people who
 19 allegedly died are not represented because they didn't die.
 20 MR MPOFU: My mistake, Chair.
 21 MR NTSEBEZA SC: Well I don't understand
 22 what the dialogue was, Mr Chairman, but I was listening and
 23 I was putting a question to –
 24 CHAIRPERSON: The objection that was
 25 impliedly overruled.

1 MR NTSEBEZA SC: I think the point,
 2 Chair, is that, I don't know if you know that as I sit here
 3 today I am told that of the 34 people who died on the 16th
 4 of August I represent families of 34 of those who died on
 5 that day. Did you know that?
 6 MR MATHUNJWA: No, not all of them.
 7 MR NTSEBEZA SC: And I am telling you
 8 this because from what I am told these employees at the
 9 time of their death 17 of them were AMCU members. Do you
 10 follow that?
 11 [09:53] MR MATHUNJWA: I follow that one.
 12 MR NTSEBEZA SC: 10 of them were NUM
 13 members, 10. You follow that?
 14 MR MATHUNJWA: I follow that.
 15 MR NTSEBEZA SC: And seven of them were
 16 ununionised. Now that's the best information that we have
 17 at present, and you don't dispute that, do you?
 18 MR MATHUNJWA: No, I don't dispute that.
 19 MR NTSEBEZA SC: Now the families are
 20 obviously keen - and which is why I want to put questions
 21 to you – they're obviously keen to get to the bottom of how
 22 their relatives met with their deaths, and - assist us in
 23 doing so. Do you appreciate that?
 24 MR MATHUNJWA: Yes, I do appreciate that.
 25 MR NTSEBEZA SC: And you would

1 appreciate, I'm sure, that my duty would be to try and
 2 assist this Commission without fear, failure or prejudice,
 3 which is why I said even though I know you, I want you to
 4 understand what my task is today. You appreciate that?
 5 MR MATHUNJWA: Yes, I do appreciate that.
 6 MR NTSEBEZA SC: Now over the last few
 7 days, one of which I was not present but I'm familiar with
 8 what has been taking place, certain questions have been put
 9 to you that at their highest suggested that you instigated
 10 the deaths of those people at the mine because you made
 11 inflammatory statements at the koppie on the 16th. You are
 12 aware of that?
 13 MR MATHUNJWA: Yes, I'm aware of that.
 14 MR NTSEBEZA SC: At their lowest the
 15 suggestions have been that you and your organisation did
 16 not help much in trying to quell the trouble, especially on
 17 the 16th at the mountain, because you kept on demonising
 18 the National Union of Mineworkers as the culprit, and being
 19 general about it – you are aware of that?
 20 MR MATHUNJWA: Yes, I'm aware of that.
 21 MR NTSEBEZA SC: I'm also aware of the
 22 responses that you have made to both counsel for SAPS,
 23 counsel for Lonmin, and counsel for NUM, but I think I want
 24 to satisfy myself and assist the Commission in getting a
 25 sense of exactly what your position is, especially because

1 the families have also heard what was alleged to your role
 2 in not assisting the resolution of the events of the 16th.
 3 Now at some stage later on in the proceedings in the course
 4 of my asking you questions I will cause our opening
 5 statement to be distributed and to be made an exhibit
 6 because I do not think that it is an exhibit at this stage,
 7 but I do not want that to detain us. What I do want to
 8 indicate to you is that in that statement we as the
 9 families hold the SAPS and Lonmin to be responsible, or to
 10 be liable for the deaths that were caused to our families.
 11 Do you understand that?
 12 MR MATHUNJWA: I do follow that.
 13 MR NTSEBEZA SC: And in the light of what
 14 has been put to you as a role that amounts to you having
 15 been also liable to a degree, you will appreciate why I
 16 need to put questions to you?
 17 MR MATHUNJWA: Yes, I do appreciate.
 18 MR NTSEBEZA SC: Now towards the end of
 19 your testimony whilst you were being cross-examined by
 20 counsel for Lonmin, you were asked as to whether you had
 21 been an office bearer for the NUM. Do you recall that
 22 question?
 23 MR MATHUNJWA: Yes, I do.
 24 MR NTSEBEZA SC: And you answered that
 25 you had been.

1 MR MATHUNJWA: Yes.

2 MR NTSEBEZA SC: You were also asked

3 about a person called Steve. I didn't get his surname. I

4 suspected that it was intended to say his surname is

5 Khululekile.

6 MR MATHUNJWA: Yes, I think that's the

7 one.

8 MR NTSEBEZA SC: Khululekile for the

9 record will be spelt K-H-U-L-U-L-E-K-I-L-E, and you

10 explained that whereas it was put to you that he was an

11 office bearer for AMCU, he was actually an official and you

12 tried to make that distinction.

13 MR MATHUNJWA: That's correct.

14 MR NTSEBEZA SC: Now I was quite curious

15 to find out what your position was in NUM, and I'll tell

16 you why. Maybe let me tell you first why it is so.

17 Yesterday it was indicated to you that your speech,

18 particularly at the mountain, was not helpful because you

19 kept on in some wise demonising the NUM. Do you remember

20 that?

21 MR MATHUNJWA: Yes.

22 MR NTSEBEZA SC: I'm aware of your

23 responses, but that's not my inquiry now. You tried to

24 show that in some instances, and you referred to an

25 incident in Dundee, the Dundee coal mines, that NUM and

1 AMCU actually cooperate and work together.

2 MR MATHUNJWA: That's correct.

3 MR NTSEBEZA SC: But I'm afraid that for

4 a different reason I want to be able to submit to the

5 Commission at the end that in the days leading to the 16th,

6 whatever the position may be elsewhere, Dundee, it does

7 appear that there was no love lost between AMCU and NUM,

8 and I'm not blaming anyone at the moment; I'm simply saying

9 I will make that submission. Would it be a fair submission

10 to make?

11 MR MATHUNJWA: I don't think the

12 interpretation is accurate. Through you, Chairman, I think

13 maybe if you can ask the question, because you suggest that

14 there was no love between two unions. I stand to be

15 corrected, but I don't think it's what I heard coming –

16 CHAIRPERSON: I think that he means the

17 members. I mean, you know, the union is an artificial

18 person. There's no question apparently that the members,

19 what's put to you is that in that period running up to the

20 16th there was no love lost, in fact I think counsel would

21 probably agree if I summarise what he said by saying there

22 was animosity –

23 MR NTSEBEZA SC: Between members.

24 CHAIRPERSON: - between AMCU members and

25 NUM members. Is that fair, Mr Ntsebeza? Is that what

1 you're putting to him?

2 MR NTSEBEZA SC: Well, between the

3 leadership.

4 CHAIRPERSON: Between the leadership.

5 MR MATHUNJWA: Okay, would you please

6 repeat again –

7 MR NTSEBEZA SC: Yes, I'm saying between

8 the leadership of AMCU and NUM there was no love lost

9 between the two unions. For instance in a debate on the

10 15th of August it is very manifest there that you don't see

11 eye to eye with the leadership of NUM. Would that be

12 correct?

13 MR MATHUNJWA: Not in person, but on the

14 issue that was, yes we had different –

15 MR NTSEBEZA SC: Yes, perhaps let me

16 clarify this position right from the beginning, because in

17 two encounters I've seen that it has been made an issue and

18 I think it is unfair that it should be. English is not

19 your first language. It's not your mother tongue, is it

20 not?

21 MR MATHUNJWA: That's correct.

22 MR NTSEBEZA SC: Neither is it mine, and

23 as the counsel for Lonmin indicated, it is also not his

24 mother tongue.

25 MR MATHUNJWA: Yes, Sir.

1 MR NTSEBEZA SC: It is the language that

2 we use because in the occupations in life in which we are

3 involved it is the language that is being used to

4 communicate.

5 MR MATHUNJWA: Yes.

6 MR NTSEBEZA SC: And you do not profess

7 even to speak it well. You are not a grammarian. You

8 know, you just use it as a tool to communicate. Is that

9 right?

10 MR MATHUNJWA: That is correct, Sir.

11 MR NTSEBEZA SC: Yes, and in two

12 instances, which I'll refer to, there seemed to be an issue

13 as to whether you had expressed yourself correctly, and I

14 want to clarify those instances. But is it accepted at

15 this stage that you are using English as best as you know

16 how?

17 MR MATHUNJWA: That is correct.

18 MR NTSEBEZA SC: And between you and me,

19 in ordinary circumstances you would express yourself in

20 isiZulu and I would express myself in isiXhosa and we'd

21 better understand each other if we did that.

22 MR MATHUNJWA: Yes, it would be better

23 than English.

24 MR NTSEBEZA SC: But although for

25 purposes of practicality and because this Commission

1 doesn't have forever, we have been trying to communicate in
 2 the language, that we not cause a multiplicity of
 3 interpretations or interpreters.
 4 MR MATHUNJWA: That is correct. If I may
 5 be allowed, I even appreciated to my counsel that even
 6 though I don't know much about English, but to save time
 7 and I will try my level best to communicate in English.
 8 MR NTSEBEZA SC: Do you then accept –
 9 don't take this as a criticism, even the best of us, and I
 10 consider myself as one of those, but I've had to be told
 11 that there's a difference between expedience and
 12 expedition. Now Mr Mathunjwa, that having been settled, I
 13 say when you were asked as to whether you had been an NUM
 14 office bearer, and I began to look at your evidence that
 15 you led, I became curious to know a lot about you and your
 16 involvement in NUM, and I have caused an article to be
 17 printed, which I will ask the Commission to take in as an
 18 exhibit and there are a number of these articles that have
 19 been written about you, but this one is entitled, "The Rise
 20 and Rise of AMCU." Ms Pillay, I've arranged for – Mr
 21 Chairman, I've arranged for those items –
 22 CHAIRPERSON: - Pillay tells us how we
 23 can mark them, then you can hand them in.
 24 MS PILLAY: Chair, it will be QQ1.
 25 [10:13] CHAIRPERSON: Thank you. It's an article

1 that originally appeared in the Mining Yearbook on August
 2 the 2nd, and that was reprinted, it looks like on the 18th
 3 of August in City Press. Is that correct, Mr Ntsebeza?
 4 MR NTSEBEZA SC: Yes, Mr Chairman. Now
 5 just to clear the air, Mr Mathunjwa, so that you should
 6 know, do you know the gentleman called Gwede Mantashe?
 7 MR MATHUNJWA: Yes, I do know him.
 8 MR NTSEBEZA SC: Just so that there are
 9 no surprises, he comes from the same district that I come
 10 from. He is my home boy, so you should know that.
 11 MR MATHUNJWA: Yes, Sir.
 12 MR NTSEBEZA SC: Now I just want to
 13 confirm, or correct some of the impressions that were given
 14 in this article about you and about your organisation. The
 15 article in paragraph 3 says something happened in September
 16 1999 at Douglas Colliery where there was a 3000-strong
 17 workforce protest against the dismissal of one Joseph
 18 Mathunjwa, chair of the local branch of the National Union
 19 of Mineworkers. Is that correct?
 20 MR MATHUNJWA: Yes, sounds correct.
 21 MR NTSEBEZA SC: The articles says, "The
 22 strike was unprotected and lasted for two weeks, during
 23 which the mine's underground section was occupied for 10
 24 days." Is that correct?
 25 MR MATHUNJWA: Yes, Sir.

1 MR NTSEBEZA SC: And in paragraph 3, or
 2 whatever, the paragraph says, "The dispute was only
 3 terminated once Mathunjwa got reinstated, but he then faced
 4 a second hurdle which a NUM disciplinary hearing for
 5 bringing the union into disrepute."
 6 MR MATHUNJWA: That's correct.
 7 MR NTSEBEZA SC: Now I'll skip the
 8 commentary in the next paragraph, but the next paragraph
 9 says, "Archie Palane," P-A-L-A-N-E, "at the time deputy
 10 secretary, general secretary of the NUM, was sent to
 11 investigate the charge against Mathunjwa, but found the
 12 local chair had done nothing wrong and other officials from
 13 Johannesburg were sent for the same reason but he also
 14 found no reason to discipline Mathunjwa." Is that correct?
 15 MR MATHUNJWA: Yes, that is correct.
 16 Maybe from there that it says Johannesburg, it might be
 17 referring to Rustenburg. I think it was Thato Mboti. I
 18 think by that time he was around Rustenburg, but I stand to
 19 be corrected. Whether he was in head office or what, I'm
 20 not quite sure, but that is correct, the sequence of
 21 events.
 22 MR NTSEBEZA SC: The next paragraph says
 23 there, "However, the then union's general secretary
 24 insisted that Mathunjwa should appear before a disciplinary
 25 hearing that he, Mr Mantashe, would chair."

1 MR MATHUNJWA: That is correct.
 2 MR NTSEBEZA SC: The next paragraph says,
 3 "Mathunjwa refused as he had previously clashed with
 4 Mantashe over the handling of money paid by employers to a
 5 job creation trust. Mathunjwa insisted that an independent
 6 person should chair the hearing."
 7 MR MATHUNJWA: That is correct.
 8 MR NTSEBEZA SC: What then happened after
 9 you had refused to be disciplined with Mr Mantashe as
 10 chair?
 11 CHAIRPERSON: Mr Ntsebeza, it looks as if
 12 there's a page missing because the next page begins with
 13 something which doesn't follow immediately on what is said
 14 in the last paragraph of the first page. I'm not sure if
 15 it's relevant. I take it this disciplinary body presided
 16 over by Mr Mantashe against whom he'd objected, found him
 17 guilty, he was expelled from the union. I take that's what
 18 it says, but it looks to me as if there's a page missing.
 19 MR NTSEBEZA SC: I suspect so, Mr
 20 Chairman, and I will try –
 21 CHAIRPERSON: Then he started AMCU, I
 22 take it, and the bit about that, and then of course we go
 23 on to the page that we have is what's ostensibly the second
 24 page, but if it's not complete it would be helpful if we
 25 got the missing page because –

1 MR NTSEBEZA SC: No, I meant to submit
 2 complete copies, whether, whatever they're saying. I will
 3 make sure, I thought that – I'm sorry about this, Mr
 4 Chairman. But are you able to tell us what then happened?
 5 Actually it appears to be, to have Mr Mantashe as your
 6 chair in the disciplinary hearing.
 7 MR MATHUNJWA: My recollection, I was
 8 called by management and then they informed me that my
 9 membership has been terminated from NUM. Then I asked, but
 10 there was no much explanation, that is the instruction from
 11 NUM. Then I never made any appeal and so forth. I took as
 12 it is.
 13 CHAIRPERSON: That doesn't mean that what
 14 I guessed was on the missing second page was incorrect.
 15 There wasn't actually a disciplinary hearing, you were just
 16 expelled from NUM without having even appeared before the
 17 disciplinary tribunal. Is that what you're telling us?
 18 MR MATHUNJWA: That is correct. They
 19 called a disciplinary, was to be chaired by Mr Gwede
 20 Mantashe. Then I disputed that he cannot be chairman
 21 because I had some engagement with him. Then he refused to
 22 excuse himself. Then subsequent I don't know what happened
 23 to their head office, until such time I was called by the
 24 management of the mine that my membership from NUM has been
 25 terminated.

1 CHAIRPERSON: I understand.
 2 MR NTSEBEZA SC: Is your evidence that
 3 you were told by management that your membership of a union
 4 in which you were a chair in that mine had been terminated
 5 by the NUM without you ever having been brought before a
 6 disciplinary hearing by NUM?
 7 MR MATHUNJWA: That is correct. That was
 8 confirmed by my salary advice, or my payslip that there was
 9 no longer a deduction towards NUM.
 10 MR NTSEBEZA SC: And is it your evidence
 11 that the union from head office never formally advised you
 12 that you are no longer a member of the NUM?
 13 MR MATHUNJWA: As far as I remember I
 14 don't recall receiving anything from them.
 15 MR NTSEBEZA SC: Now you are unionless.
 16 What happened to you?
 17 MR MATHUNJWA: Then I remained the
 18 employee of the company and thereafter there was a meeting
 19 that was called as a mass meeting, then I informed my
 20 constituency that I'm, I've been terminated as a member of
 21 NUM, therefore I couldn't continue doing all the duties
 22 that were obligated to me by the membership. If I
 23 remember, in the very –
 24 MR NTSEBEZA SC: Yes? What was the
 25 reaction of the members?

1 MR MATHUNJWA: My recollection it says
 2 that the members in that meeting, they spoke many things,
 3 but at the end of the day they said an injury to one is an
 4 injury to all. Then in one voice they're saying they are
 5 leaving NUM, resigning from them, which indeed they signed
 6 resignation form. They submitted to the main offices. If
 7 I'm not mistaken, some they took it to the regional offices
 8 of the NUM.
 9 MR NTSEBEZA SC: On the page that follows
 10 the first page there is, the first paragraph seems to
 11 indicate that from the time that a new union AMCU was
 12 formed, it began to grow phenomenally in those areas that
 13 are indicated, where you are according to this article as
 14 an organisation, currently the representative of workers at
 15 various mines in Mpumalanga, including coal, chrome and
 16 platinum mines, as well as coal mines in KwaZulu Natal. It
 17 also has members at chrome and platinum mines in Limpopo,
 18 Two Rivers and Modikwa. Is that correct?
 19 MR MATHUNJWA: Yes, at Modikwa I think
 20 we're still having a organisational rights dispute.
 21 MR NTSEBEZA SC: In paragraph 3 on that
 22 page there seems to be a direct quote from you, namely,
 23 "Mpumalanga is our strongest union, but I think North West
 24 is going strongly. The numbers there may soon overtake the
 25 membership in Mpumalanga."

1 MR MATHUNJWA: That's correct.
 2 MR NTSEBEZA SC: Now what obviously is of
 3 concern to us as families is the paragraph that begins
 4 with, "AMCU was widely blamed for the devastating strike in
 5 February and March, and the accompanying violence." You
 6 see that?
 7 MR MATHUNJWA: Yes, I see that.
 8 MR NTSEBEZA SC: And then let's also look
 9 at the paragraph that follows. "It was recruiting members
 10 at the gates of some of the Implats subs prior to the
 11 strike, only to be removed by security personnel. There
 12 was also ample evidence of discontent and even open revolt
 13 against the NUM against some workers, such as the rock
 14 drill operators, 4 300 of them who initiated the strike
 15 after they learned about an 18% bonus increase that was
 16 given to workers in the higher category jobs." You see
 17 that? Now, then can I ask questions -
 18 [10:33] CHAIRPERSON: I'm sorry, Mr Ntsebeza,
 19 just to make it clear, I'm not sure if the people in the
 20 auditorium who haven't got the article before them, perhaps
 21 to reference what happened at Impala Platinum earlier this
 22 year, is that correct, Mr Mathunjwa?
 23 MR MATHUNJWA: Sorry Sir, can you repeat?
 24 CHAIRPERSON: The paragraph that was put
 25 to you from the article about the strike in February and

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1 March and the rock drill operators who were unhappy because
2 an 18% bonus increase had been given to workers in higher
3 category jobs, that was with reference to what happened at
4 Impala Platinum earlier this year, the first half of this
5 year. Is that correct?

6 MR MATHUNJWA: Yes.

7 MR NTSEBEZA SC: Now this is, as the
8 Chairman has been assisting, this would be in reference to
9 what was debated in the last few days, reference being to
10 what was called R700 that was paid to rock drill operators
11 outside the structures of – is that the one?

12 CHAIRPERSON: Mr Ntsebeza, I'm sorry to
13 interrupt you. My understanding was that the R700 increase
14 was an offer made by Lonmin after this trouble arose at
15 Impala Plats and Impala Plats gave an increase to some of
16 their –

17 MR NTSEBEZA SC: Oh, I see.

18 CHAIRPERSON: Apparently Amplats did the
19 same and then the rock drill operators – we had evidence I
20 think in your absence – the rock drill operators at Lonmin
21 were unhappy because they thought they should get something
22 similar. The suggestion was, and this is a point made by
23 the witness, was that the Lonmin people then negotiated
24 directly with the rock drill operators, which he felt was
25 wrong and in fact said so very strongly, and offered them

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1 saying AMCU had nothing to do with that?

2 MR MATHUNJWA: AMCU has nothing to do
3 with that.

4 MR NTSEBEZA SC: Then there is the
5 paragraph that I would like to get your comment that
6 follows that, which says, "These events," that is now the
7 whole question of the bonus, 18% bonus increase, etcetera,
8 "may have ignited the February/March strike, but the
9 stoppage was probably the outcome of problems that had been
10 simmering for years. One such issue was an agreement
11 signed between the NUM and Implats in 2007, which
12 stipulated the 50% plus one member threshold for
13 recognition, practically making Implats a closed shop where
14 minority unions had no rights."

15 MR MATHUNJWA: No, I think here is a
16 person who was writing the article, that is his feelings.
17 So I don't agree with that. That is his sentiment.

18 MR NTSEBEZA SC: Yes, now whilst it may
19 well belong to another phase of this Commission's hearings,
20 and I do not know if we have had any views about it, can I
21 take advantage of your being on the stand as the leader of
22 AMCU and get what your opinions are, if you have any, on
23 what the author here says is practically making the mines a
24 close shop. In other words the whole 50 plus one
25 principle. Do you have any views about that generally? It

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1 700, which they rejected. So it wasn't actually paid to
2 them, as I understand it. There was an offer on the table.
3 I think that's correct, Mr Mathunjwa. Have I got it right?

4 MR MATHUNJWA: Yes, that's what I believe
5 it was.

6 CHAIRPERSON: Alright, so now we've
7 clarified it with the basic facts. Now you can carry on
8 with your questions.

9 MR NTSEBEZA SC: Thank you. Thank you
10 very much. But are you, what's your comment on that
11 passage then, relevant to what it says in the context of
12 AMCU and its activities?

13 MR MATHUNJWA: No, I don't agree that
14 AMCU should be associated with what has transpired at
15 Impala. It has got nothing to do with AMCU, and again it
16 is of importance that one of the business, a business
17 newspaper, yes, it's the Business Day, there was a magazine
18 whereby Mr Paul Dunn of Impala – I think it's more senior
19 person at Impala – he was explaining what led to the strike
20 of Impala. So therefore this is not founded that AMCU was
21 part of this violent strike.

22 MR NTSEBEZA SC: Do I understand you to
23 be saying to the extent that this article also says you
24 were blamed also for the violence that took place, that
25 accompanied the strike in February and March, you are

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1 may not belong to this part of the hearing –

2 CHAIRPERSON: Mr Ntsebeza, is it helpful
3 – is it going to assist us on this phase of the inquiry to
4 have evidence on it? Because if he gives evidence on it
5 then other people will be provoked into answering and then
6 we'll have a long debate on the matter.

7 MR NTSEBEZA SC: Oh, yes.

8 CHAIRPERSON: I could assume that if he's
9 got less than 50% plus one at Lonmin, he wouldn't like that
10 principle, that those of 50 plus one have exclusive rights.
11 So I think without his even saying it we could assume
12 that's what he says and we may go into that in the second
13 phase.

14 MR NTSEBEZA SC: Yes.

15 CHAIRPERSON: But I don't want to let
16 that genie out of this particular box at the moment because
17 I will have difficulty putting it back while we're busy
18 with phase 1, and you and I are going to have a debate
19 about restricting phase 1 at a later stage anyway. So
20 let's not get involved in that now.

21 MR NTSEBEZA SC: Mr Chairman, I'm quite
22 prepared not to pursue that line. Mr Mathunjwa, you've
23 heard the Chairman. I don't want you to get into that
24 debate.

25 MR MATHUNJWA: Thank you.

1 MR NTSEBEZA SC: I believe that there is
2 an article now that probably gives us the page that we were
3 looking for.

4 CHAIRPERSON: It's replaced the original
5 copies of exhibit QQ1 with a new one.

6 MR NTSEBEZA SC: Indeed, Mr Chairman.

7 MR TIP SC: Mr Chair, it would be very
8 useful – forgive me, Mr Chair – it would be very useful for
9 the participants, the parties to get a copy of this as
10 well. It makes it easier to follow whatever might be said,
11 not –

12 CHAIRPERSON: - I don't have to – Mr Tip,
13 you're getting another one anyway.

14 MR TIP SC: One has emerged from the back
15 rows, Mr Chair. Thank you.

16 MR NTSEBEZA SC: Mr Chairman, I had asked
17 that an adequate number of copies, about 20 should be made
18 available to the Commission, but –

19 CHAIRPERSON: Mr Tip's problem has
20 disappeared, so you can carry on.

21 MR NTSEBEZA SC: Thank you, Mr Chairman.
22 I now sit without the City Press one. Anyway, now I'm
23 going on the original copy, the last page thereof. Mr
24 Mathunjwa –

25 CHAIRPERSON: I don't think you should do

1 agree with this, you know, but the author says, "The NUM
2 was originally born out of the lowest job categories of
3 South African mineworkers, mainly from the gold mines.
4 More than 60% of its members are foreigners, mostly
5 illiterate migrant labourers who are not interested in a
6 career path."

7 MR MATHUNJWA: I cannot agree with it
8 entirely, but yes, there were gold mines, yes they are
9 immigrant workers, but not that they were not prepared to
10 be capacitated. I don't agree with that.

11 MR NTSEBEZA SC: By the way, you don't
12 have to agree or disagree with it. I just was calling for
13 your comments insofar as you are involved in that area of
14 your organisation. Now it says, "Nowadays that number has
15 dropped to below 40%. An increasing portion of NUM's
16 membership comes from what can be described as white collar
17 mining staff. The local NUM structures in Rustenburg, like
18 the branch office bearers and shop stewards, are dominated
19 by skilled higher level workers. They are literate, well-
20 spoken and wealthy, compared to the general workers and
21 machine operators underground." What's your comment on
22 that?

23 MR MATHUNJWA: I won't be in the position
24 to comment on that.

25 MR NTSEBEZA SC: Yes. Now you may or may

1 that because the original copy presumably is now going to
2 go into the dustbin. So shouldn't you find the passage in
3 the new one –

4 MR NTSEBEZA SC: Which I don't have.

5 CHAIRPERSON: Well, you can have my copy.
6 I can't expect Mr Tip to give you his, but you can have
7 mine.

8 MR NTSEBEZA SC: Alright. Something is
9 happening at the back. It's probably – oh, it's Mr Mpofo
10 who's sitting there. No, anyway, in the replaced copy of
11 exhibit QQ1, it will be the third paragraph from the bottom
12 where it starts, "The NUM was originally," do you see that?
13 Mr Mathunjwa?

14 MR MATHUNJWA: That is page?

15 MR NTSEBEZA SC: The third page on this
16 new exhibit QQ1 –

17 CHAIRPERSON: Do you see the page which
18 begins with the word "Companies?" That's the page that
19 counsel has in mind.

20 MR MATHUNJWA: Yes.

21 CHAIRPERSON: And he wants you to look at
22 the third-last paragraph on that page which begins, "The
23 NUM was originally born out of."

24 MR MATHUNJWA: Thank you.

25 MR NTSEBEZA SC: Now you may or may not

1 not have been involved as a union or as a structure or as a
2 person in what follows, but the next paragraph says,
3 "During wage negotiations in September 2011 Implats wanted
4 to give rock drill operators a higher increase than the
5 rest of the workforce, but a committee of shop stewards of
6 the NUM demanded money to be split among the whole
7 workforce. Needless to say, there wasn't a single rock
8 drill operator on the shop stewards' committee. The NUM
9 moved quickly after the strike to correct the situation,
10 but it was too late."

11 MR MATHUNJWA: I cannot comment on that.
12 I was not party to it. The only thing that I know, as I
13 referred earlier on, was that magazine from Business Day
14 where Paul Dunn was saying what transpired, or what led to
15 the strike at Impala.

16 MR NTSEBEZA SC: Yes. Now the last
17 paragraph, I'd like to hear your views thereon. "AMCU is
18 here to stay. It has a formidable opponent in the NUM, but
19 Mathunjwa has proven that he and his national office
20 bearers are up for the task."

21 MR MATHUNJWA: My comment would be, we
22 are not opponents to NUM, but yes, the stakeholders has to
23 recognised AMCU as a trade union in the industry, but not
24 that AMCU is an opponent of NUM.

25 MR NTSEBEZA SC: Now I was interested in

1 your origins in the NUM and in the central position you now
 2 play in AMCU because as I've indicated to you, at the end
 3 of the day for us as families we need to know whether we
 4 can submit to the Chair and the Commissioners at the end of
 5 the day that all those families whose members died, who
 6 belonged to AMCU, to NUM, and some were not even unionised,
 7 can look at the president of AMCU as having been
 8 responsible for their deaths, or can look, as we said in
 9 our opening statements, elsewhere. Do you appreciate that?
 10 [10:53] MR MATHUNJWA: Yes, I'll appreciate – if
 11 I may be allowed by the Commissioner just to revert back to
 12 the earlier question of a comment, where it reads, "AMCU is
 13 here to stay. It has a formidable opponent in the NUM."
 14 What I wanted, not that, what I was trying to say here is
 15 an opponent not in the sense of rivalry; it's an, it can
 16 be, my comment will be the opponent in the sense of
 17 competition, not in the bad way. That is what I wanted to
 18 clear. I was trying, on your earlier comment of the
 19 English.
 20 MR NTSEBEZA SC: You are trying to
 21 explain English [inaudible].
 22 MR MATHUNJWA: Yes.
 23 MR NTSEBEZA SC: Yes, quite seriously, it
 24 is very important for us to understand what you see the
 25 relationship between AMCU and NUM to be. Is it a

1 relationship where you compete through ideas for membership
 2 in the workplace, or is it the kind of competition which
 3 has been portrayed here, which sometimes is engaging
 4 recklessly, irrespective of what the consequences may be?
 5 CHAIRPERSON: Mr Ntsebeza, may I
 6 interpose at this stage? I just want to make it clear to
 7 the witness, we're going to take the tea adjournment now
 8 anyway, but I want to make this clear to you. If at any
 9 stage in your evidence you are at loss for the correct
 10 English word and there's something you want to say and
 11 you're not quite sure how to say it in English, please say
 12 it in isiZulu because we have a very competent capable
 13 interpreter who understands, I think all the vernacular
 14 languages in South Africa, plus English and Afrikaans, and
 15 he will be able to interpret it for you into English. So
 16 I'm not suggesting that you switch over to the vernacular
 17 completely. You're entitled to do that if you wish, but if
 18 you carry on in English and there's some point that you
 19 feel you're not doing justice to in your English, then say
 20 it in isiZulu and the interpreter will express it very
 21 accurately in English for you. Okay? But is this a
 22 suitable stage to take the adjournment?
 23 MR NTSEBEZA SC: It is, Mr Chair.
 24 CHAIRPERSON: The Commission will take
 25 the short adjournment.

[COMMISSION ADJOURNS COMMISSION RESUMES]
 1 [11:22] CHAIRPERSON: The Commission resumes. Mr
 2 Mathunjwa, you're still under oath.
 3 MR MATHUNJWA: Yes, Sir.
 4 CHAIRPERSON: Mr Ntsebeza, now that
 5 you've finished your tea, are there anymore questions?
 6 MR NTSEBEZA SC: Thank you, Mr Chairman.
 7 I just drank the last. Now Mr Mathunjwa, I just want to
 8 give you one more opportunity to clarify for me what has
 9 become I think an embarrassing rumour for all us, and that
 10 is the two miners who until the 16th were believed by many
 11 of your comrades to have been killed. Now you were asked
 12 about that yesterday by my learned friend from NUM. Do you
 13 recall that?
 14 MR MATHUNJWA: Yes, that's correct.
 15 MR NTSEBEZA SC: And I think you were
 16 referred to exhibit OO9 where it was put to you that you
 17 had said it was confirmed that the two miners had been
 18 killed by NUM members in the context of them going either
 19 to or past the offices of NUM. You remember that?
 20 MR MATHUNJWA: Yes, I do remember that.
 21 MR TIP SC: Just for the record, that was
 22 not OO9. The debate about the confirmation arose out of
 23 LL, the SAFM interview.
 24 CHAIRPERSON: They actually concerned

1 what was said in the SAFM interview, but also that
 2 statement was made elsewhere in the hearing and the topic
 3 was discussed not only with reference to LL but other
 4 exhibits as well. But I don't know that anything turns on
 5 the point. We understand what Mr Ntsebeza's saying.
 6 MR NTSEBEZA SC: Yes. No, it was
 7 actually OO9, but as you say Mr Chairman, I am aware of LL
 8 and I will refer to LL first. But the point here, is it
 9 correct that both in OO9 in the text that was not read to
 10 you as the question was put to you because it ended at
 11 confirmed, you did give an explanation which is an
 12 explanation that actually is in OO9, namely that you had
 13 heard this allegation of two people having been killed from
 14 your officials and that it was something that was being
 15 said generally that two miners had been killed in your
 16 view.
 17 MR MATHUNJWA: Yes, that is correct.
 18 MR NTSEBEZA SC: Now I know that you were
 19 not involved in these events until the 15th, but just to
 20 find what your attitude is, there is a transcript of the
 21 confrontation at that railway line on the 13th of August
 22 2012, which I would like to draw your attention to. I have
 23 arranged for copies to be circulated, Mr Chairman.
 24 CHAIRPERSON: Thank you. We don't have
 25 to make it an exhibit obviously, but if you can perhaps

1 call out the page number in the transcript, which will make
 2 it helpful when we read the record later.
 3 MR NTSEBEZA SC: Thank you, Mr Chairman.
 4 Now on page 9 thereof, do you have a copy?
 5 CHAIRPERSON: Mr Ntsebeza, you don't
 6 understand me. If it's a transcript of what was said here,
 7 it will be helpful if you gave us from that page 9 the
 8 transcript page where the passage that you're going to put
 9 to the witness appears.
 10 MR NTSEBEZA SC: It's a separate
 11 transcript, from what I'm told, Mr Chairman.
 12 CHAIRPERSON: If it isn't part of the
 13 official transcript that we've had so far, then we have to
 14 give it an exhibit number. If it is taken from that
 15 official transcript then all we need is the page numbers.
 16 MR NTSEBEZA SC: I'm made to understand
 17 that it is a transcript of the video clip.
 18 CHAIRPERSON: But if it isn't in the
 19 transcript already then let's give it an exhibit number.
 20 If Ms Pillay will be kind enough to tell us what we must
 21 call it, we will then do what she tells us to do.
 22 MR NTSEBEZA SC: I would prefer it to be
 23 so, that we give it an exhibit number.
 24 MS PILLAY: Mr Chair, the exhibit will be
 25 QQ2.

1 CHAIRPERSON: Thank you, Ms Pillay.
 2 Perhaps also for the sake of good order, tell us either now
 3 or later which video it is, you know, the various reference
 4 numbers to it, so that it can be identified. You don't
 5 have to tell us now if you haven't got the information
 6 available to you, but at some stage perhaps when we resume
 7 next week you can give us that information for the sake of
 8 good housekeeping.
 9 MR NTSEBEZA SC: Mr Chairman, I usually
 10 rely on those who assist me when it comes to these
 11 technical things, but I'm sure they will come to my rescue
 12 as far as that is concerned.
 13 CHAIRPERSON: You've got a week to get
 14 the necessary information.
 15 MR NTSEBEZA SC: Thank you, Mr Chairman.
 16 Now, and I have to apologise for having marked the copy
 17 from which all the copies have been made, but page 9, do
 18 you see page 9 of exhibit QQ2?
 19 CHAIRPERSON: If this is the passage
 20 you're going to refer to then we would have marked it
 21 anyway, so you've very kindly done it for us in advance.
 22 MR NTSEBEZA SC: Yes, it's between lines,
 23 about one, two, 16, 17, 18, 19, 20, 21, 22.
 24 MR MATHUNJWA: Yes, I see page 9.
 25 MR NTSEBEZA SC: Now it would appear -

1 you will disagree with me if you want to - it would appear
 2 that as early as the 13th, and you were not involved in any
 3 way with this thing at that date -
 4 MR MATHUNJWA: That's correct.
 5 MR NTSEBEZA SC: If you read there, it
 6 says, "On Saturday," this is one of the Lonmin workers
 7 talking to General Mzembe and the Police contingent who
 8 were there. He says, "On Saturday when we came back the
 9 mine security shot at us, together with the people from
 10 NUM, and killed two of our people. That is the reason we
 11 are carrying these weapons. We are not fighting with
 12 anybody. We did not fight with anybody." Now two things,
 13 two points are made there. Firstly it speaks to what you
 14 were saying about how the story about the death of the two
 15 people got disseminated. Do you agree?
 16 MR MATHUNJWA: Yes.
 17 MR NTSEBEZA SC: And it seems, does it
 18 not, that if there were suggestions - and I cannot put it
 19 higher than that - but if there were suggestions that you
 20 were the author of these rumours, it seems these were
 21 rumours that were disseminated by the workers themselves
 22 based on what they believed had happened.
 23 MR MATHUNJWA: That's correct.
 24 MR NTSEBEZA SC: Now the second thing
 25 that it seems to say, and I would like you to comment on

1 that if you are able to, is the fact that - as it was put
 2 to you - the workers in that confrontation purported to
 3 give reasons why they are carrying what has since been
 4 referred to as dangerous weapons. I'm not saying they were
 5 right or wrong, I'm simply saying it does appear that they
 6 are giving a reason why they are carrying weapons.
 7 MR MATHUNJWA: Yes.
 8 MR NTSEBEZA SC: Now I want to understand
 9 you in the light of submissions that I may make on behalf
 10 of all the families which I said I represent. You yourself
 11 did not seem to be unduly perturbed that the workers were
 12 carrying spears and assegais, and you talked about culture.
 13 MR MATHUNJWA: Yes.
 14 MR NTSEBEZA SC: And you even suggested
 15 that we shouldn't read more into what my learned friend for
 16 SAPS had referred to as [inaudible], the clashing of the
 17 metal by the workers, both at the railway and at the koppie
 18 when you went there.
 19 MR MATHUNJWA: Yes, that's correct.
 20 MR NTSEBEZA SC: Why do you consider that
 21 it is not something to be unduly concerned about when
 22 people are -
 23 MR MATHUNJWA: It's because, I mean where
 24 I'm coming from, and as it's December now I will be going
 25 home and there I'll be attending more ceremony, cultural

1 ceremony [African language]. I'm referring, Mr Chairman,
2 to where I come from. As it is December now, I'll be going
3 back home where I will take my stick, known in Zulu as
4 "upogo," it's a sharpened stick, and continue and go to
5 such cultural ceremonies as – and as we sing there and
6 dance, these happenings you are experiencing every time.
7 As we sing and dance there, he indicates there's clapping
8 of this traditional weapons, is something that you see
9 every time, as we sing.

10 MR NTSEBEZA SC: And I understood you to
11 say if they had nothing in their hands they would be
12 clapping hands.

13 MR MATHUNJWA: That is correct.

14 MR NTSEBEZA SC: And if they had sticks
15 they would be clashing sticks, stick upon stick.

16 MR MATHUNJWA: It is correct, and even
17 though that they have got a shield - those who have got
18 shields would do the same.

19 MR NTSEBEZA SC: Now you have referred to
20 ceremonies in KwaZulu Natal. Have you had occasion to see
21 the King of the Zulu in ceremonies where starting with
22 himself, the weapons that they had, weapons and goods, are
23 fairly dangerous?

24 MR MATHUNJWA: Yes, I remember when I was
25 still at school Mr Chairman, when we attended a ceremony in

1 Stanger where I happened to see His Majesty, the King of
2 the Zulus, called [African language].

3 MR NTSEBEZA SC: Now I mean all
4 situations differ for different purposes. Is it your
5 evidence that it was possible that even though those people
6 were armed with pangas and assegais, the situation could
7 have been resolved without any loss of life if there had
8 been a proper negotiation, and the fact that they were
9 carrying those spears and pangas was inconsequential?

10 [11:42] MR MATHUNJWA: This is my belief.

11 MR NTSEBEZA SC: I don't know in Zulu
12 culture, but I know that in another, Nguni, the isiXhosa
13 culture, people do attend even initiation ceremonies armed,
14 sometimes to the teeth, and nothing ever happens.

15 MR MATHUNJWA: Yes, that could be
16 possible.

17 MR NTSEBEZA SC: But in some situations,
18 if truth be told, there usually are fights, sticks, stick
19 fights, and people do get injured.

20 MR MATHUNJWA: That's correct. Yes, we
21 refer to that as [African language], a stick fighting
22 exercise.

23 MR NTSEBEZA SC: Now from objective
24 evidence, starting from exhibit QQ2, it seems to me that
25 between the 13th and the 16th we know that those

1 mineworkers were armed with assegais and pangas.

2 MR MATHUNJWA: That's correct.

3 MR NTSEBEZA SC: And from the footage
4 that we have seen, and I will not refer to footage which we
5 have not seen, but the footage that we have seen,
6 particularly the footage at the railway line, we have not
7 seen an engagement between the Police and the workers that
8 shows us how the deaths of three miners on that day and two
9 policemen occurred, how did it start, how did it go
10 through, and how do we now end with three miners killed and
11 two policemen killed.

12 MR MATHUNJWA: That's correct.

13 MR NTSEBEZA SC: What we do know from a
14 presentation that was given to us by SAPS, was that the
15 miners –

16 CHAIRPERSON: Which slide are you
17 referring to, Mr Ntsebeza?

18 MR NTSEBEZA SC: I'm trying to get there,
19 I think it would be slide 46, is it? 46, Chairman and
20 Commissioners.

21 CHAIRPERSON: Thank you.

22 MS PILLAY: Chair, if I may just mention
23 for the purposes of the record that the video clip that was
24 referred to in relation to QQ2 is Z1, exhibit Z1. It's Z1.

25 CHAIRPERSON: Thank you, Ms Pillay. So

1 the video is Z1. Z for Zodwana?

2 MS PILLAY: That's correct, yes.

3 MR NTSEBEZA SC: The video that I refer
4 to now is exhibit L, and we have slide 46 which gives us an
5 idea of General Mpembe as to what happened there. Now I'm
6 not asking you to agree or disagree with General Mpembe.
7 What I'm seeking to find out from you is whether you agree
8 with an impression I have of that presentation, that it
9 doesn't actually tell us how those deaths occurred. We do
10 not seem to have an indication as to who started what, and
11 how.

12 CHAIRPERSON: Mr Ntsebeza, if you go over
13 the page to slide 47 I think you may find the information
14 you're looking for.

15 MR NTSEBEZA SC: Oh, yes. On slide 47,
16 bullet 3, we are told that a group of protesters with their
17 dangerous weapons, turned around and charged at the members
18 behind them. Do you see that?

19 MR MATHUNJWA: Yes, I do.

20 MR NTSEBEZA SC: But to the extent that
21 that seeks to tell a story of what happened, we have not
22 seen a video footage of that happening, certainly to this
23 point, and to you, no video footage of the mineworkers
24 turning around and charging at the police has been shown to
25 you?

1 MR MATHUNJWA: It is correct. The only
2 session that I saw when it was played, it's while they were
3 still next to the railway line, General Mpembe talking to
4 the strikers.

5 CHAIRPERSON: Mr Ntsebeza, if you don't
6 want me to make this point, I won't, but if you look at the
7 second bullet, there is an explanation given by the Police.
8 It appears that the protesters who were on their way to the
9 koppie, it's put that they changed direction towards the
10 village. I'm not sure if that's right because if you look
11 at the photograph it looks as, if you draw a straight line
12 from where they were to the koppie you pass through the
13 informal settlement anyway, but anyway, be that as it may,
14 "To prevent them from entering the village the Police used
15 teargas and stun grenades, grenades that produce two large
16 explosive sounds, to disperse the protesters, discouraging
17 them from their intended path." So the inference is they
18 thought they were being attacked and they then appeared to,
19 they defended themselves or done what they thought was
20 necessary to defend themselves. So there is an explanation
21 of sorts in slide 47, but you're quite correct in saying we
22 haven't got a video clip that actually shows us that
23 happening, but presumably one or other of the survivors of
24 that group on the 13th may be able to give evidence and
25 explain to us what happened.

1 MR NTSEBEZA SC: No, I'm quite happy with
2 that indication, Chair. What I want to be able to get from
3 you so that I can make a submission if it is possible to do
4 so, is whether I understand you to be saying the mere fact
5 that people are armed with assegais and spears and pangas,
6 in and of itself is no indication that they are a violent
7 people.

8 MR MATHUNJWA: It is correct in general.

9 MR NTSEBEZA SC: Now what is the role of
10 song in these cultural events?

11 MR BURGER SC: Chair, can my learned
12 friend just explain for my benefit what he refers to as a
13 cultural event?

14 MR NTSEBEZA SC: Maybe let me rephrase.
15 What do you understand to be a role of song in situations
16 where people are gathered?

17 MR BURGER SC: Can I just be assisted
18 here, because I'm trying to follow the debate and I don't.
19 Is that gathering for a sports meeting, or is it part of a
20 political meeting, or is it at the koppie, or – can my
21 learned friend put it into context, please, then I can try
22 to follow.

23 CHAIRPERSON: Following on from what Mr
24 Burger says, you talked about a ceremony. Now what
25 ceremony was being performed by the railway line? What

1 ceremony was being performed at the koppie? I can
2 understand people carry spears at ceremonies. I don't know
3 what the position is with the Xhosa speaking people, but in
4 Swaziland they have spears at weddings and in fact for the
5 marriage to be valid I understand the spear has to strike
6 the ground, so one can understand there are ceremonial
7 reasons for having spears, but what ceremonial reason is
8 suggested was present on the occasion that you're talking
9 about and putting to the witness?

10 MR NTSEBEZA SC: That's why, Mr Chair, I
11 withdrew the word "ceremony" or "cultural event." I'm
12 asking the witness if the witness knows what the role of
13 song is at gatherings. Now my learned friend wants to know
14 whether I'm talking about sports gatherings or a gathering
15 such as we are dealing with here –

16 CHAIRPERSON: I don't know that the
17 question relates to, I mean the objection relates to the
18 question as you've reformulated it. So you put the
19 question. I don't see Mr Burger's microphone light turned
20 on, so let's hear what the witness has to say in answer to
21 the question you've asked.

22 MR NTSEBEZA SC: Yes.

23 MR BURGER SC: No, in fact, Chair, I
24 raised an objection against the gathering. I don't know
25 whether it's a gathering at Loftus, or a gathering at the

1 koppie, or a gathering at a political party, and if I don't
2 understand that context I won't follow the answer to be
3 given.

4 CHAIRPERSON: Mr Ntsebeza, perhaps you
5 should make it clear what kind of gathering you're talking
6 about. If you're talking about gatherings in general, the
7 answer may differ from the answer that you may get if you
8 define the gathering more closely.

9 MR NTSEBEZA SC: Perhaps let me just ask
10 a direct question, Chair, so that there is no debate about
11 where I'm getting to. Questions were put to you yesterday
12 and there was a reference to a clip, or to the transcript
13 of a clip where a song, which you testified later on, or
14 earlier on which you had testified you had expressed a view
15 that it should no longer be sung because it might be
16 misunderstood, you said there, it was put to you that the
17 song was not helpful in quelling the situation because the
18 song was saying "iNUM," which is "Bulala kanyani," "How are
19 we going to kill the NUM?" You remember that question?

20 MR MATHUNJWA: That's correct.

21 MR NTSEBEZA SC: And that was at the
22 gathering on the koppie.

23 MR MATHUNJWA: That's correct.

24 MR NTSEBEZA SC: And part of your answer
25 – correct me if I'm wrong – seemed to be suggesting that

1 the song was not suggesting that NUM members must be killed
 2 physically or literally. Did I get you right?
 3 MR MATHUNJWA: That is correct.
 4 MR NTSEBEZA SC: In fact you in its words
 5 it says, "How are we going to kill NUM?" Is that not it?
 6 MR MATHUNJWA: That's correct.
 7 MR NTSEBEZA SC: And therefore, please
 8 correct me if I'm wrong, would it be – are you seeking to
 9 convey that the members there were saying how can we
 10 destroy the effectiveness or leadership or leadership role
 11 of NUM as a union in this mine?
 12 MR MATHUNJWA: That is correct. If I
 13 remember, I referred as a competition, to kill a
 14 competition.
 15 MR NTSEBEZA SC: And to take a leave out
 16 of my learned friend for Lonmin's book about sport
 17 gatherings, this is the kind of language that is used when
 18 rival teams like Orlando Pirates and Kaizer Chiefs play,
 19 [African language]. Isn't it?
 20 [12:02] MR MAHLANGU: "Wafa Wafa" in English
 21 would be "Die, die, they are dying here."
 22 MR NTSEBEZA SC: No, we are not being
 23 facetious. And there would be songs at sport stadia by
 24 rival groups, at which we say we are going to kill you
 25 here, we are going to finish you here.

1 MR MATHUNJWA: Yes, that's correct,
 2 Chair.
 3 MR NTSEBEZA SC: And in that context,
 4 just as there would have been footages – the bellicose
 5 people, there would be people who would even run their
 6 fingers across their neck to its rival team, indicating
 7 that it's the end of you in this tournament. You have seen
 8 that?
 9 MR MATHUNJWA: Yes, I've seen that.
 10 MR NTSEBEZA SC: To be sure, even in
 11 those games there have been scenes of violence, but is it a
 12 suggestion that it will be too farfetched to then say
 13 because there had been violence then it is clear that the
 14 indications of "wafa," or "sizankwedala" were meant to
 15 suggest that the intention or those who made those gestures
 16 were to kill their opponents?
 17 MR MATHUNJWA: No, it's not.
 18 MR NTSEBEZA SC: Now is song even in
 19 tense situations, like the situation at the railway line,
 20 also intended to give courage to those who feel, or who
 21 face a confrontation situation? Is it also used in that?
 22 MR MATHUNJWA: That's correct.
 23 MR NTSEBEZA SC: Yes, and again I don't
 24 want to be making facetious, in football as well as in the
 25 – and I will come to the situation at the railway line -

1 when a situation is tense, people resort to song. Students
 2 used to do it when they were surrounded by Police at
 3 colleges, with dogs and whatever, they would resort to
 4 song, "We shall overcome," this, that, and the next thing.
 5 MR MATHUNJWA: Yes, they sign songs.
 6 MR NTSEBEZA SC: I hesitate to introduce
 7 this exhibit, but it is relevant to song that was sung at
 8 the railway line, and if we can have those exhibits, Mr
 9 Chairman, it's an exhibit that would follow the one that
 10 has already been – it is QQ3.
 11 CHAIRPERSON: It's a transcript also of
 12 one of the video clips we saw?
 13 MR NTSEBEZA SC: Yes, yes.
 14 CHAIRPERSON: Again for, next to the
 15 railway line. Is this also, is it still Z1?
 16 MS PILLAY: Chair, we will confirm once
 17 we see the transcript. We just haven't seen it as yet.
 18 CHAIRPERSON: We will discover in due
 19 course what, how the video may be described. Ja, thank
 20 you.
 21 MR NTSEBEZA SC: Now the whole question
 22 of killing the boers has been a subject of debate in the
 23 country since the trial in the South Gauteng High Court in
 24 the matter which I think is still a subject matter of
 25 appeal, but – and I believe it's been settled, but it is a

1 song that continues to be sung in those kinds of
 2 situations, without necessarily suggesting that there is an
 3 imminent intention of killing anyone. Is that what you are
 4 saying?
 5 MR BURGER SC: I object to this question,
 6 Chair. This is really not advancing the debate before you.
 7 My learned friend is giving the evidence and he's not
 8 sworn, so we can't ask him questions. The witness is not
 9 called as an anthropologist or an expert on cultural songs
 10 in this country. I object to that question.
 11 CHAIRPERSON: What do you say about that
 12 objection, Mr Ntsebeza?
 13 MR NTSEBEZA SC: Thank you, Mr Chairman.
 14 This witness in cross-examination yesterday was asked, and
 15 it was suggested to him that as a leader he allowed songs
 16 to be sung, which as a responsible leader he didn't seem to
 17 say anything about to the people, and one of those songs
 18 was the one that appeared to be demonising the NUM.
 19 CHAIRPERSON: The witness did say that,
 20 he conceded that objectively viewed the songs were menacing
 21 and terrifying to NUM persons who would have heard them.
 22 He conceded that. He said he felt uncomfortable about
 23 them, that he actually spoke to the person who had sung the
 24 song afterwards and said he shouldn't have done it. That
 25 was his evidence. You're now seeking to ask him questions

1 effectively as an expert on songs, trying to establish, as
2 far as I can see, that they aren't as menacing and as
3 terrifying as he conceded yesterday they were. So I'm
4 inclined to think that the objection is well-founded, but,
5 because the evidence you're now seeking to obtain from him
6 is, as it were, general expert evidence about the nature of
7 songs of this kind in general. That's not the evidence he
8 gave yesterday. I've repeated to you what he said
9 yesterday.

10 MR NTSEBEZA SC: Chairman, I won't push
11 it.

12 CHAIRPERSON: You've exercised a wise
13 decision. I suggest you move on to the next point.

14 MR NTSEBEZA SC: I may just make
15 submissions later on about it. Now we have established
16 through you that the belief –

17 CHAIRPERSON: I'm sorry to interrupt. I
18 take it that exhibit QQ3 then disappears and we will
19 reserve that designation for some other exhibit that you
20 may or may not present later?

21 MR NTSEBEZA SC: It may at some other
22 time, but my learned friend for Lonmin has effectively
23 expunged it from the – he's killed it. I accept that. He
24 just missed the wisdom of some of the words –

25 CHAIRPERSON: Everyone will be pleased

1 that the third song has been expunged.

2 MR NTSEBEZA SC: Yes. Maybe that's what
3 I wanted to get to, Mr Chairman, but I think I will be able
4 to get it. Now I have already put the proposition to you
5 that I understand you when you say what you say on the
6 mountain, or at the mountain, namely that NUM people had
7 killed your members, is something that as early as the 13th
8 of August 2012, the miners themselves were saying openly,
9 in this case to the Police themselves.

10 MR BURGER SC: That was not the evidence
11 of the witness. The witness arrived at the scene on the
12 15th under the misapprehension of that version which he got
13 from his officials. He was quite unaware at that point in
14 time of what had been said at the railway lines, Chair.

15 CHAIRPERSON: - uphold the objection. I
16 mean you've established the point that the miners already
17 believed that on the 13th. That point you've already got
18 on record. You don't have to make it again. Sometimes
19 it's not a good idea to try to remake a point that's
20 already – sometimes you lose it. You've got the point on
21 record. It didn't add anything to what this particular
22 witness was saying at the time when he was at the mountain
23 on the 15th. So I suggest you move on to something
24 slightly different.

25 MR NTSEBEZA SC: Thank you, Mr Chairman.

1 I do accept this. You did mention it to also having
2 something that the media had been talking about, did you
3 not? Yesterday when you were asked.

4 MR MATHUNJWA: Referring to which one?

5 MR NTSEBEZA SC: The fact that there had
6 been two people who had been killed as they were going past
7 the offices of the NUM.

8 MR TIP SC: Mr Chairman, I object to that
9 proposition. I don't recall any evidence from the witness
10 yesterday that he had heard it from the media that two
11 people had been killed on the way to the NUM office, or
12 past the NUM office.

13 CHAIRPERSON: Yes, again I'm inclined to
14 uphold that objection too. Mr Ntsebeza, I don't quite
15 understand what you're getting at. I think you've
16 established that he believed that that was true, but he'd
17 been told that by one of his officials. You've also
18 established – not that it's relevant to his state of mind –
19 that the miners already believed that on the 13th. I don't
20 remember any evidence about it being in the media, but even
21 if it was in the media, how would that take the case any
22 further? It seems to me that you've made the point that I
23 think you're trying to make and I don't know how that point
24 can be taken further. The point is made, and you can, so
25 for what it's worth, and you can move on to something else,

1 unless there's some point that I missed that you want, that
2 is important for you – mentioned in the media, I don't
3 think appears from anything that was said yesterday.

4 MR NTSEBEZA SC: Well, Mr Chair and
5 Commissioners, I stand to be corrected. That's my
6 recollection of what he said, but it's not something that I
7 will go to war with. As far as that goes and to the extent
8 that –

9 CHAIRPERSON: To use a metaphor, Mr
10 Ntsebeza.

11 MR NTSEBEZA SC: Mr Chairman, that seems
12 to be the tapering end of my – now it was put to you that
13 you should have gone to the mountain, addressed 3 000 to 4
14 000 people who were not members of your organisation, and
15 whom you had not met, a large number of them you had not
16 met, who were on the mountain in an unprotected strike, and
17 that you should have gone there and said listen here,
18 disarm, go back to work. Now I know you gave answers to
19 that, but I just want to be comfortable in understanding
20 what your position is. Why didn't you do that?

21 MR MATHUNJWA: It was not easy to do
22 that, reason being, (1), the company has reneged from its
23 previous night's commitment. (2), I don't have any
24 security next to me, no Police around me. I'm not in an
25 armoured vehicle, as it was arranged the previous night

1 that no-one should using his private vehicle to get to the
2 koppie. Then I had to use the wisdom that prevailed to me
3 in that instance, how can I put it?

4 [12:22] MR NTSEBEZA SC: Would it be fair to say
5 that you used the best method that you know of, both from
6 practice in how to negotiate in circumstances as volatile
7 as we have been led to believe, on the day?

8 MR MATHUNJWA: Just all what I was doing
9 as I am saying, was out of my best to win the trust and
10 also to bring hope to them, that even this is the situation
11 but it can be dealt in the better way in the –within labour
12 framework. That's how then it has happened that I
13 addressed them in that fashion.

14 MR NTSEBEZA SC: Thank you, Mr Chairman.

15 CHAIRPERSON: Mr Ntsebeza.

16 MR TIP SC: Mr Chair -

17 CHAIRPERSON: Yes?

18 MR TIP SC: - before the next cross-
19 examiner or re-examiner comes into the picture –

20 CHAIRPERSON: Well, before we go – let's
21 see whether any more cross-examiners, before we get to re-
22 examination.

23 MR TIP SC: Mr Chair, it's pertinent for
24 me to raise it because it arises –

25 CHAIRPERSON: I am not going to stop you,

1 examiners, hopeful cross-examiners so far. Any others?

2 Right, so now we know.

3 CHAIRPERSON: You want to deal Mr Tip,
4 with a matter that's dealt with by Mr Ntsebeza the
5 immediately preceding cross-examiner. Would you tell me
6 what it is?

7 MR TIP SC: I would be grateful. Mr
8 Chair, Commissioners, you will recall that a good deal of
9 the evidence took the form of extracting comments from Mr
10 Mathunjwa in the City Press article called "The Rise and
11 Rise of AMCU," and there were two aspects of that that –

12 CHAIRPERSON: I understand what you want
13 to deal with, you may do so.

14 MR TIP SC: Yes.

15 CHAIRPERSON: Before we have the other
16 four cross-examinations that we are going to hear in due
17 course.

18 MR TIP SC: I am grateful to you, Mr
19 Chair. The two aspects, the one aspect was the paragraphs
20 dealing in detail with the situation at Amplats concerning
21 the composition of shop steward councils of NUM, whether or
22 not there were RDOs as members of it, how debate on
23 increases arose and was or was not processed, those
24 paragraphs, Mr Mathunjwa fairly said that he could comment,
25 offer no comment. He was unaware of them, and I really

1 I just want to know whether there are going to be any more
2 cross-examiners before we go onto re-examination, and I
3 understand you want to deal with an aspect that arose in Mr
4 Ntsebeza's cross-examination –

5 MR TIP SC: Yes.

6 CHAIRPERSON: - and I propose, depending
7 on what it is, I think may well allow you to do so but
8 let's just find out if there's anyone else who wants to
9 cross-examine. If somebody wants to cross-examine from the
10 back row, I suggest he comes to the front, so we can see
11 him and there isn't – yes?

12 MR MPOFU: Mr Chairman.

13 CHAIRPERSON: Mr Mpofo is next, then Mr –
14 Mr Mpofo, do you want to cross-examine?

15 MR MPOFU: Chair, we will cross-examine
16 but we don't mind –

17 CHAIRPERSON: Okay, you want to cross-
18 examine, - wants to cross-examine too? Anybody else want
19 to cross-examine? Mr Gumbi do you want to cross-examine?

20 MR GUMBI: Yes, I want to cross-examine.

21 CHAIRPERSON: Then we've got, anybody
22 else?

23 MS MASEBE: And then on behalf of Monene
24 family we would like to cross-examine as well.

25 CHAIRPERSON: Alright, that's four cross-

1 just seek the guidance of the Commission here, whether we
2 can –

3 CHAIRPERSON: The article isn't before us
4 as evidence. It performed the basis for questioning the
5 witness and asking, seeking to elicit his comments on
6 certain points –

7 MR TIP SC: Yes.

8 CHAIRPERSON: - if he didn't comment on
9 them or wasn't able to adopt them and confirm them as part
10 of his evidence, then I don't think that you have to deal
11 with them.

12 MR TIP SC: Yes.

13 CHAIRPERSON: But if you want to very
14 shortly to state in a sentence or two what your client's
15 attitude in relation to those points, I won't stop you.

16 MR TIP SC: Well, I appreciate that, but
17 Mr Chair, we would really need to take detailed
18 instructions on that level of the action at Impala –

19 CHAIRPERSON: The problem is we haven't
20 really got this evidence before us at the moment. The
21 Amplats situation may well be relevant at the second stage.
22 I am not sure whether it's relevant in relation to the
23 events of the 9th to the 16th.

24 MR TIP SC: Yes.

25 CHAIRPERSON: And you will have

1 opportunity obviously before we get to the second phase to
2 go into those matters because it may well be contended that
3 a ball was set rolling by Amplats which should have
4 perhaps, I am not saying it is so, I am just raising a
5 point we may hear more of, that Lonmin should therefore
6 have acted in respect of that, and the NUM should also it
7 may well be contended, have taken action as well. But I am
8 not sure that it's an issue at this stage. So I don't
9 think you need take the instructions while this witness is
10 still at the witness stand.

11 MR TIP SC: Thank you, that was really
12 the guidance we sought. Mr Chair, you will recall that we
13 have said that the high headlines, if I can put it that
14 way, of what took place at Amplats, may have played some
15 kind of demonstration role at Lonmin, but those were
16 headlines, and certainly not to this step, so that we will
17 as presently advised, not burden the Commission with
18 further investigation and evidence at that level of detail.
19 That's the one aspect. The second aspect is that Mr
20 Mathunjwa has give evidence in response to this article and
21 competently so, because they affected him, and that deals
22 with the manner of the termination of his membership of
23 NUM, his, the termination of his role as Chairperson, the
24 formation of AMCU, that is a matter about which we do need
25 to take instructions. It may be that the instructions will

1 spot for after the other three cross-examiners. They've
2 indicated that they will be prepared to do so. There's
3 just one aspect that I need to clarify, because I wasn't
4 here yesterday with my learned junior.

5 CHAIRPERSON: Anyway, you don't have to
6 do that in the Commission's time as it were. Let's –

7 MR MPOFU: Yes, we will do it during the
8 break.

9 CHAIRPERSON: Alright.

10 MR MPOFU: Thank you, Chairperson.

11 CHAIRPERSON: Who is going to cross-
12 examine now?

13 CROSS-EXAMINATION BY MR RAMPHELE: Thank
14 you, Chair, it will be, Tshepiso Ramphele. Thank you,
15 Chair. Mr Mathunjwa, you understand that I represent
16 families of two security officers, Mr Fundi, the late Mr
17 Fundi and Mabelane, and Mr Mabebe in this matter. You
18 would also understand that the families, especially the
19 children, in these families would also like to find
20 restoration and justice, as well as the truth in this.

21 MR MATHUNJWA: That's correct.

22 MR RAMPHELE: I do not think that we will
23 have a confrontational engagement because I think you will
24 agree with a lot of the propositions that I will put to
25 you.

1 suggest that we don't agree with everything that he has
2 said. Even then-

3 CHAIRPERSON: May I make a suggestion?
4 Make your investigations, and if you've considered it
5 appropriate to apply for him to be recalled, deal with that
6 matter. We can deal with, you can apply –

7 MR TIP SC: Yes.

8 CHAIRPERSON: - we can consider the
9 application, it may be opposed, you may not make the
10 application. If you make it, it may be opposed. We can
11 then decide if we have to, what to do, but that's the way
12 forward, I would suggest on that.

13 MR TIP SC: That corresponds, with
14 respect, fully with what I was going to suggest, and that
15 is that even if we find that we don't agree with all
16 aspects, we may nevertheless conclude that it's not really
17 relevant again to burden the Commission, in which case we
18 won't ask for him to be recalled.

19 CHAIRPERSON: It may not be relevant at
20 phase 1, it may not even be relevant in phase 2, but that's
21 a matter that we will deal with in the fullness of time, if
22 we have to. Mr Mpofo, I think it's your turn, if you want
23 to cross-examine.

24 MR MPOFU: Yes. Chairperson, if I could
25 just ask for an indulgence. We would like to defer our

1 MR MATHUNJWA: Yes.

2 MR RAMPHELE: I am convinced because from
3 what I've heard, you are not just a leader, but you have
4 very strong principles.

5 MR MATHUNJWA: That is correct.

6 MR RAMPHELE: And you also, as I do,
7 believe that people have the right to hold a different
8 view.

9 MR MATHUNJWA: Yes.

10 MR RAMPHELE: And that as a leader if you
11 start an organisation and lobby for support, you try and
12 sort of disseminate your views to your followers.

13 MR MATHUNJWA: Yes, what they call it,
14 objectives.

15 MR RAMPHELE: I am correct if I say that
16 by around August 2011 you had about a thousand followers or
17 members in Lonmin.

18 MR MATHUNJWA: That could be, but –

19 MR RAMPHELE: You are not sure –

20 MR MATHUNJWA: I cannot vouch -

21 MR RAMPHELE: You would also agree with
22 me that even though, I am talking about the incident of the
23 12th of August, even though we have not touched it much
24 here, but the same people that were involved on the 16th
25 that you spoke to, were also the same people that were

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1 involved with my clients on the 12th of August.
 2 MR MATHUNJWA: - get your question, could
 3 you please repeat again?
 4 COMMISSIONER HEMRAJ: Would he know that?
 5 Would the witness know that, the people that were involved
 6 on the 12th, would he know that they're the same people?
 7 MR RAMPHELE: Well, I assume that the
 8 composition of strikers did not change over time,
 9 Chairperson, unless there's information to that effect.
 10 MR MATHUNJWA: No, I wouldn't know.
 11 MR RAMPHELE: Now, I'll sort of give you
 12 an indication of why I say so, because I think that from
 13 answers that were given, like why they were carrying
 14 weapons, for instance. The answer that was given was that,
 15 we are carrying weapons in order to defend ourselves
 16 because we are being attacked. And that was in relation to
 17 what happened before.
 18 MR MATHUNJWA: Yes, that was said.
 19 MR RAMPHELE: So you agree with me, by
 20 and large maybe one or two people might have left by and
 21 large it is the same people that started on the 9th because
 22 it was clear, and it is on record over the media that there
 23 was a grievance by RDO operators in Lonmin.
 24 MR MATHUNJWA: I suggest that, though I
 25 was not there.

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1 MR RAMPHELE: Will I also be correct if I
 2 were to say that, and I think I have heard you give that
 3 answer that as AMCU you felt that you had members there,
 4 and you had to go and address them.
 5 MR MATHUNJWA: Yes, and as per their
 6 invitation also.
 7 MR RAMPHELE: And that unlike NUM, I
 8 don't know but I think unlike NUM you were almost received
 9 by the strikers, when you addressed them, and this is
 10 subject to correction.
 11 CHAIRPERSON: That's common cause, the
 12 NUM president was actually chased away and the men who were
 13 on the koppie, said to him, come back tomorrow, so we can
 14 see you face to face in the daylight
 15 MR RAMPHELE: Yes.
 16 CHAIRPERSON: So what you are saying is
 17 entirely correct -
 18 MR RAMPHELE: It is common cause.
 19 CHAIRPERSON: - it's common cause.
 20 MR MATHUNJWA: As the chairman said.
 21 MR RAMPHELE: And therefore, an 18 year
 22 old of Fundi or Mabele, would look at it and say AMCU was
 23 well received by the strikers.
 24 MR MATHUNJWA: I want to get a question,
 25 I didn't - I don't understand, I don't follow it.

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1 MR RAMPHELE: I am saying it would be
 2 reasonable for any person sort of following this to say
 3 yes, of the two unions, AMCU was well received by the
 4 strikers
 5 MR MATHUNJWA: That is true, but also I
 6 think it is proper to say what was the reason behind,
 7 because it was not just being received without amplifying
 8 why they are receiving us. I think they mentioned that NUM
 9 has killed two of our colleagues.
 10 MR RAMPHELE: Now, the reason why I am
 11 asking you this is because I want you as a leader of AMCU,
 12 who is very principled to at least take some of the
 13 responsibility of what happened on the 12th of August.
 14 [12:42] MR BRUINDERS SC: I object to that
 15 question, there is no basis laid for it at all, in fact.
 16 CHAIRPERSON: Ask if he is prepared to
 17 accept responsibility he can say yes or no, I don't
 18 understand the problem. The question can be put whether it
 19 will get the answer that the question expects we will see.
 20 MR MATHUNJWA: AMCU regrets any loss of
 21 lives, but we cannot say that AMCU must take responsibility
 22 of what was happening there because this was a worker's
 23 strike, it was not AMCU's strike. And I have said earlier
 24 on that any member who happened to be found that has done
 25 anything wrong lawfully, the law must take its course.

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1 MR RAMPHELE: This happened on the 12th
 2 and it was at least known to you that you had members at
 3 Lonmin and that some of your members were aggrieved and
 4 that their grievance was related to the strike that started
 5 on the 9th.
 6 MR MATHUNJWA: Yes, that is common that
 7 our members were part of the strike.
 8 MR RAMPHELE: So important was this that
 9 you also did a letter to say this is an issue that I think
 10 we would have a forum to discuss even if I don't have
 11 bargaining rights.
 12 MR MATHUNJWA: Yes, we suggested for a
 13 meeting to be called to discuss this.
 14 MR RAMPHELE: So even though AMCU knew
 15 that they did not have bargaining rights and that this was
 16 not happening within the collective bargaining realm AMCU
 17 was prepared to engage in order to address the grievances
 18 of the members? So AMCU felt that it was its
 19 responsibility to take some of the responsibility of
 20 presenting the grievance of its workers?
 21 MR MATHUNJWA: Yes, the worker's
 22 grievances have to be addressed that's why we suggested for
 23 the forum.
 24 MR RAMPHELE: Now, this is my proposal,
 25 similarly the worker's conduct at least, and I am not

1 saying you are fully responsible, I am saying you cannot
 2 say the worker's conduct I am completely divorced from it.
 3 MR MATHUNJWA: As a trade union that is
 4 known to the mine if our members are part of any
 5 wrongdoings we cannot say you are divorcing yourself from
 6 such. That doesn't mean that you agree with their conduct.
 7 MR RAMPHELE: Yes, that is actually what
 8 I am trying to get from you, because you see, I am sure as
 9 a leader if members of your organisation do wrong you don't
 10 just want to run away from it, you want to also say I want
 11 to take part of this responsibility because these are the
 12 members that follow me that are involved in this.
 13 MR MATHUNJWA: I think for the time where
 14 I was officially called at the mine I have shown that
 15 leadership.
 16 MR RAMPHELE: Which is what I appreciate
 17 otherwise I would not be asking you to say that as AMCU we
 18 really feel that our members were involved in this and as a
 19 trade union, even though we distance ourselves from what
 20 they did but we cannot divorce ourselves completely because
 21 our members are involved.
 22 MR MATHUNJWA: I confirm and I have said
 23 it in some of the meetings that I had in some of the
 24 boardrooms, that we cannot be seen as the leaders when we
 25 are in the boardrooms, so we have to be seen as leaders

1 when there are challenges. As you have seen that even
 2 though at a later stage of my intervention when I was not
 3 provided with any security around me, but I went to that
 4 mountain and talked to the workers, irrespective of
 5 affiliation and association. And that is actually what
 6 gave me courage to come and say to you as a person that is
 7 principled and probably with very significant contribution
 8 you can make in the leadership of this country, but if your
 9 followers are out of step you can actually come out and say
 10 these are my followers and I am going to chastise them but
 11 as an organisation I am not going to divorce myself from
 12 this that happened. Yes, I mean I have reprimanded if you
 13 see the script from the 15th going down to the 16th, that
 14 is what I was doing.
 15 Now, I am going to make a request to AMCU
 16 leadership spoke in very specific terms about other people
 17 that perished in this tragedy. But in general terms about
 18 the security and Mabebe that died on the 12th. In general
 19 terms, like when I say in general terms I say the response
 20 that AMCU has given is, we do not support violence without
 21 actually saying in relation to Fundi, in relation to
 22 Mabelane, in relation to Mabebe, as AMCU we actually say
 23 these deaths are wrong.
 24 MR MATHUNJWA: My recollection in a media
 25 statement I did extend the condolences for all the people

1 that were lost, I never said any section, I don't recall
 2 mentioning names of the individuals, but we condemned, we
 3 even further say that there is no means of violence that
 4 can achieve anything. We believe in the proper structures
 5 of dispute and engagement. For that matter for your
 6 information AMCU is in the process with the attorneys to
 7 establish a trust fund that will engage each and every life
 8 that was lost at Marikana, irrespective of affiliation.
 9 That will be open for everyone but it depends of the
 10 families whether they want to be part because some they
 11 belong to different association and affiliation, but it
 12 will be, they will be canvassed to come in.
 13 CHAIRPERSON: I understand you to say
 14 that the beneficiaries of the trust that you are setting up
 15 will be the next of kind of those who died, irrespective of
 16 whether they were members of AMCU, members of NUM or non-
 17 unionised employees, is that what you are saying?
 18 MR MATHUNJWA: That is correct.
 19 CHAIRPERSON: It will not only be limited
 20 to the people who died on the 16th but also the people who
 21 died in the run up, the 10 people who died before this
 22 incident, including Mr Ramaphele's clients. Is that what
 23 you are saying?
 24 MR MATHUNJWA: That is what I believe, I
 25 don't have much details but I believe that the loss of life

1 at Marikana. So that mustn't be suggested that it is an
 2 admission of any wrongdoing at Marikana.
 3 MR RAMPHELE: Ja, sometimes you don't
 4 have to say, but I believe that, that gesture just gives an
 5 indication of the type of leadership that I thought you
 6 were, Mr Mathunjwa, that you would be a humane leader that
 7 will ensure that the families that I represent have
 8 restoration and justice. Thank you, Chair.
 9 CHAIRPERSON: Mr Gumbi, I think you are
 10 next but I think we will take you at half past 1.
 11 MR GUMBI: No problem.
 12 CHAIRPERSON: The Commission will adjourn
 13 till half past 1.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [13:36] CHAIRPERSON: The Commission resumes. Mr
 16 Gumbi, you're next, aren't you?
 17 MR GUMBI: Thank you very much,
 18 Chairperson.
 19 CHAIRPERSON: Mr Mathunjwa, you're still
 20 under oath.
 21 MR MATHUNJWA: Yes, thank you.
 22 MR GUMBI: Thanks, Chairperson. Mr
 23 Mathunjwa, let me introduce myself firstly to you. My name
 24 is Louis Gumbi, instructed by Mofomme Attorneys. I
 25 represent POPCRU in these proceedings, that is a Police

1 union, specifically the police officers that were injured
 2 on the 13th of August 2012, that is Warrant Officer Baloyi,
 3 I mean Lieutenant Baloyi and Warrant Officer Lepaaku.
 4 MR MATHUNJWA: Thank you.
 5 MR GUMBI: Mr Mathunjwa, my line of
 6 cross-examination firstly, I wanted to focus on your role
 7 as AMCU in defusing the situation from the 10th of August,
 8 leading up to the 14th of August. In doing so, I will also
 9 canvass your knowledge of labour laws of this country, then
 10 we'll tackle your role as AMCU conductor. Mr Mathunjwa, as
 11 a point of entry, you don't dispute that AMCU members
 12 participated in this strike action from the 10th of August,
 13 leading to the 14th of August specifically? You don't
 14 dispute that?
 15 MR MATHUNJWA: That's correct.
 16 MR GUMBI: Around July and August 2012,
 17 are you in the position to tell us whether AMCU members in
 18 Lonmin, they were in minority or they were in majority as
 19 compared to NUM members?
 20 MR MATHUNJWA: According to my
 21 information AMCU was the minority.
 22 MR GUMBI: After the 15th of August,
 23 maybe up to date, are you majority or are you still in
 24 minority compared to NUM?
 25 MR MATHUNJWA: I believe there are stop

1 orders that have been submitted and there is an increase of
 2 membership, but as of today I don't know what could be the
 3 status.
 4 MR GUMBI: So in other words, since
 5 August 2012 membership of AMCU has increased significantly,
 6 it's increased on daily basis?
 7 MR MATHUNJWA: AMCU keeps on submitting
 8 stop orders any time they're received, but surely they are
 9 increasing.
 10 MR GUMBI: Mr Mathunjwa, as a union
 11 leader - I understand that you are an experienced union
 12 leader - can I assume that you are familiar with labour
 13 laws of this country? I understand that you are not a
 14 labour lawyer expert here, I mean a labour lawyer or an
 15 expert when it comes to issues of labour law, but you ought
 16 to be familiar with labour laws of this country.
 17 MR MATHUNJWA: Fairly.
 18 MR GUMBI: There is one legal principle
 19 that I wanted to put to you, and I will expect you to
 20 respond on that one. Are you aware that as a union, in
 21 terms of our law the union can be held liable for action of
 22 their members during the strike action? It's a basic
 23 principle. You ought to know about this.
 24 MR BRUINDERS SC: Chair, our learned
 25 friend is now entering a very complicated and complex area

1 of, I think what he calls labour law that goes to the
 2 liability of trade unions for the conduct of their members,
 3 and it depends on varied things, such as whether the union
 4 called the strike, whether it supported the strike,
 5 etcetera. So I'm not sure that this is a terrain that Mr
 6 Mathunjwa should be questioned about, particularly since
 7 our learned friend accepts that he's not a legal expert.
 8 The courts grapple with this issue. Why Mr Mathunjwa
 9 should on the - what is it? Seventh day of his evidence?
 10 - is really not apparent to us.
 11 CHAIRPERSON: Mr Gumbi, you've heard what
 12 Mr Bruinders said. How do you respond to that?
 13 MR GUMBI: Yes, Chairperson, with this
 14 issue, I'm not intending to deal with deep understanding of
 15 the principle. You know, I'm just sitting these issues up,
 16 above. I know that he's not a labour lawyer in this
 17 proceedings -
 18 CHAIRPERSON: Yes, so what's the point of
 19 asking him about the principles of labour law that apply to
 20 a situation such as this? If you were in the witness box
 21 and I asked you a [inaudible] and your knowledge of that,
 22 how would that help?
 23 MR GUMBI: But I'm still going to ask
 24 other question, Chairperson, that will give -
 25 CHAIRPERSON: Yes, so do you abort the

1 question that's given rise to the objection?
 2 MR GUMBI: Yes, that will give a clear
 3 indication where I'm coming from. I'm quite aware that Mr
 4 Mathunjwa is not a labour lawyer.
 5 CHAIRPERSON: I think the objection
 6 raised by Mr Bruinders - but if you withdraw the question
 7 that you asked and you carry on with [inaudible] -
 8 MR GUMBI: Yes, Chairperson.
 9 CHAIRPERSON: If you want to defend the
 10 question and ask me to overrule the objection, then you
 11 must tell me why I must overrule the objection. But if you
 12 are not persisting in resisting the objection then we can
 13 move on.
 14 MR GUMBI: We can move on and approach
 15 from the other end. Let's deal about the role of AMCU on
 16 the 10th of August 2012, Mr Mathunjwa. According to SAPS,
 17 the information at SAPS disposal, it indicates that on the
 18 10th of August two persons were wounded during a clash of
 19 rival unions between, they say the clash of rival unions.
 20 MR MATHUNJWA: No, you may show me where
 21 it's said.
 22 MR GUMBI: I'm saying the SAPS according
 23 to evidence, they are saying - I hope you're not going to
 24 dispute that - they are saying that on the 10th of August
 25 2012 two persons were wounded around Marikana. Can you

1 dispute that?

2 MR MATHUNJWA: I was not there. If that

3 happened, it happened.

4 MR GUMBI: On the 10th of August, Mr

5 Mathunjwa, did you issue any press statement as AMCU,

6 condemning any violence around that particular day?

7 MR MATHUNJWA: Maybe I should ask by

8 saying I didn't issue any press statement. However, I

9 wrote a letter to management after I've been notified by

10 management that there will be a march of a memorandum to be

11 hand over, and I think that letter is part of the exhibit

12 in the Commission.

13 MR GUMBI: As AMCU did you convene a

14 meeting of your general membership, wherein you instructed

15 your members to refrain from any violence, specifically on

16 the 10th of August 2012?

17 MR MATHUNJWA: No, there was no meeting.

18 MR GUMBI: Let's move on, on the 11th of

19 August 2012, and we have another information from SAPS.

20 They are saying that five people were wounded on that day

21 and the other three marchers were also wounded during a

22 march on that day. Are you aware of that?

23 MR MAHLANGU: The question, Sir, that

24 five people were dead, five people died?

25 MR GUMBI: Five people were wounded and

1 another three people were also wounded during a march.

2 MR MATHUNJWA: Your question?

3 MR GUMBI: Are you aware of that

4 information, or as a union leader you ought to have been

5 aware of this information.

6 MR MATHUNJWA: When was that?

7 MR GUMBI: On the 11th of August 2012.

8 MR MATHUNJWA: No, I was not aware.

9 MR GUMBI: Furthermore, on that

10 particular point, can I assume that AMCU didn't issue any

11 press statement condemning any violence on that specific

12 day?

13 MR MATHUNJWA: It is correct, and you

14 need to be reminded that I'm still waiting for the response

15 from the management of the letter of the 10th.

16 MR GUMBI: On the 11th of August 2012 you

17 as AMCU, did you convene any meeting of your general

18 members wherein you instructed your members to refrain from

19 any violence?

20 MR MATHUNJWA: No, I don't have

21 recollection of that meeting.

22 MR GUMBI: Even on the 12th of August,

23 the day when the two security officers were killed, can I

24 also assume that you didn't issue any press statement

25 condemning violence on that day?

1 MR MATHUNJWA: On that event I was not

2 there.

3 MR GUMBI: And also can I assume that

4 AMCU, you didn't convene a meeting of your members wherein

5 you instructed your members to refrain from violence on the

6 12th of August 2012?

7 MR MATHUNJWA: I don't have recollection

8 of that meeting.

9 MR GUMBI: Let's move on the 13th of

10 August 2012, the day two police officers were killed and

11 one was wounded by armed protesters. Mr Mathunjwa, you saw

12 that video clip that was played by the counsel for SAPS

13 when he was busy cross-examining you? Still remember?

14 MR MATHUNJWA: Yes.

15 MR GUMBI: And you saw those armed

16 protesters there, and can I assume also again that it's

17 possible that there were AMCU members in that group?

18 MR MATHUNJWA: Yes.

19 MR GUMBI: And the police officers, they

20 pleaded with those protesters to hand over their

21 traditional weapon. You saw that?

22 MR MATHUNJWA: That's correct.

23 MR GUMBI: And also again those

24 protesters, not a single of those protesters handed over

25 traditional weapon to those police officers. You saw that?

1 MR MATHUNJWA: Yes. But what I saw,

2 there was negotiations taking place there.

3 MR GUMBI: But you didn't see the

4 exchange of traditional weapons between those protesters

5 and the police. You agree with me?

6 MR MATHUNJWA: You are correct, because I

7 don't know what the end result of that negotiation, what

8 the outcome of that negotiation were.

9 MR GUMBI: The counsel for SAPS indicated

10 to you that after that negotiation you saw on that day two

11 police officers were killed and the other one was severely

12 wounded. Still remember that?

13 MR MATHUNJWA: That's correct.

14 MR GUMBI: And he even made reference to

15 exhibit N, slide number 51, 53 and 54 and 55 of those

16 police officers who were killed after that negotiations.

17 MR MATHUNJWA: That is correct. Can I

18 check with you, is it, they were killed just after the

19 negotiations?

20 MR GUMBI: Yes, that's the evidence.

21 After that negotiations the police tried to disperse that

22 group and those protesters –

23 CHAIRPERSON: That's not correct. What

24 happened was after negotiations they walked off in the

25 direction of the koppie, carrying their weapons, not having

1 handed their weapons over. The Police escorted them. When
2 they changed direction, or some of them changed direction
3 towards the informal settlement, then the Police tried to
4 prevent them from entering the village – this is according
5 to the Police presentation, slide 47. They used teargas
6 and stun grenades to disperse them and discourage them from
7 what’s described as their intended path. A group of them
8 turned around, charged at members of the Police Service
9 behind them and two members of the Police Service died at
10 the scene and one was injured. That’s what happened
11 according to slide 47. So what you’ve put isn’t quite
12 correct.

13 MR GUMBI: Yes, Chairperson. I am
14 indebted to you, Chairperson, for putting it into details.
15 That’s where I was going to, Chairperson. Yes, as the
16 Chairperson has correctly put it that immediately after
17 those events two police officers were killed.

18 MR MATHUNJWA: Yes, I mean that scene,
19 I’ve never seen there but as it was read here, that’s what
20 happened.

21 MR GUMBI: Mr Mathunjwa, as the union
22 leader I hope you are aware that in this country we have a
23 high rate of police killings.

24 MR MATHUNJWA: Yes, through the media we
25 here.

1 with all stakeholders, after receiving the memorandum.
2 There was no response to that effect, and then we received
3 a call on Monday, the 13th, from management, asking our
4 intervention, which indeed we did that.

5 MR GUMBI: There’s nothing that would
6 have prevented you to issue a press statement, specifically
7 on the 13th of August 2012.

8 MR MATHUNJWA: We are an organisation.
9 As we are an organisation, we’d been invited by management.
10 We made that intervention. You cannot just go to press
11 without having information from where you’ve been invited.
12 You will appreciate as you are present here, that after we
13 received the debriefing in the Monday, on the Monday of the
14 14th, that very same afternoon we made sure that we called
15 a press conference –

16 CHAIRPERSON: The 14th is the Tuesday.
17 13th is the Monday. I want to ask you, did you learn on
18 the 13th, the Monday, about what had happened earlier that
19 day? When did you first hear about what happened, the
20 killing of the two policemen and the killing of three
21 civilians?

22 MR MATHUNJWA: That we heard from the
23 debriefing that there was – when the management invited us
24 they just said there’s a violence. They never, they just
25 want our intervention. Then I requested the general

1 MR GUMBI: And you cannot even dispute it
2 if I put it to you that in every 10 days in South Africa
3 the police officer is killed in the line of duty.

4 [13:56] MR MATHUNJWA: That is information, I
5 won’t dispute it.

6 MR GUMBI: In fact the latest figures
7 show that since 2005 up to date almost approximately 690
8 police officers have been killed in the line of duty. You
9 cannot dispute that?

10 MR MATHUNJWA: If that is information, I
11 mean I’m not in a position to dispute it.

12 MR GUMBI: On the 13th of August 2012, Mr
13 Mathunjwa, I wanted to know, AMCU, your organisation, did
14 you issue any press statement condemning those killings?

15 MR MATHUNJWA: On the 13th?

16 MR GUMBI: Yes.

17 MR MATHUNJWA: The press statement
18 follows on the 14th.

19 MR GUMBI: What prevented AMCU to issue a
20 press statement on the 13th of August 2012, condemning
21 police killing on that day?

22 MR MATHUNJWA: AMCU wrote a letter on the
23 10th –

24 MR GUMBI: AMCU?

25 MR MATHUNJWA: Yes, proposed a meeting

1 secretary and the national organiser to went there. That
2 was all. Then until the following day, Tuesday the 14th
3 when the debriefing was made in our office, and subsequent
4 to that then we called the press conference.

5 MR GUMBI: But Mr Mathunjwa, I don’t want
6 to argue with you on this aspect. The police killing on
7 the 13th of August 2012 was broadcast to media, and I’m
8 putting to you that you ought to have been aware of that
9 and you ought to have issued a press statement on the 13th
10 –

11 CHAIRPERSON: Mr Gumbi, when was it
12 broadcast? The incident took place some time in the
13 afternoon. There’s no evidence before us as to when it was
14 broadcast by the media. Unless you can establish that he
15 heard of it through the media at a time when it was still
16 possible for him to issue a press statement on the 13th,
17 then the question is not a fair one.

18 MR GUMBI: Yes, Chairperson, let me move
19 to another aspect. Mr Mathunjwa, can I also move to the
20 14th of August 2012 briefly. Can I refer to exhibit L,
21 slide number 86 and 87. Do you see those two slides?

22 MR MATHUNJWA: Yes, I see.

23 MR GUMBI: According to the SAPS they
24 observed those strikers that are depicted on those slides,
25 performing ritual practice on the 14th of August, around

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1 15:23, and can I assume that it's possible that there were
2 AMCU members who were there? Also again you cannot deny
3 that because AMCU members participated in this strike
4 action.

5 MR MATHUNJWA: That has been mentioned
6 many times, and I haven't denied that, but AMCU members
7 they were part of the strike.

8 MR GUMBI: On the 14th of August 2012
9 were you informed of these rituals performed around
10 Marikana?

11 MR MATHUNJWA: Not that I know of, except
12 I think there was a general secretary of NUM who was many
13 times in the media saying he's got information that there's
14 a "inyanga." That's what I –

15 CHAIRPERSON: According to exhibit L,
16 slides 86 and 87, the photographs we see there according to
17 the corrected time were taken at 16:21.

18 MR MATHUNJWA: Yes.

19 CHAIRPERSON: And according to slide 85,
20 it was seen from the police helicopter earlier at 15:23
21 that some of the people on the koppie were undergoing a
22 ritual. So if the Police first heard about this, or saw it
23 just before half past 3 in the afternoon and photographs
24 were taken at 21 minutes past 4, I don't know if there was
25 much time for the witness to hear about it on that day or

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1 information, these strikers killed a supervisor. There was
2 a body of the supervisor killed there. Can I refer you to
3 slide number 100? Do you see protesters on Koppie 1 there,
4 the red circle?

5 MR MATHUNJWA: Yes, the circle on, with
6 red mark?

7 MR GUMBI: Yes. Do you see the body of a
8 supervisor marked there with yellow lines?

9 MR MATHUNJWA: Yes, I see a body of
10 supervisor and the arrow showing down.

11 MR GUMBI: On the 14th of August 2012,
12 were you aware that there was a body of a supervisor just
13 behind those protesters on the koppie?

14 MR MATHUNJWA: I was not aware. I've
15 said earlier that I think there was a number of bodies. I
16 think this body that we are referring to is the one that
17 made up to 10, then I said I heard it from the media and I
18 even said I think it was during the interview with Xolani
19 Gwala on the 15th, in the morning of the 15th.

20 MR GUMBI: Can I also assume, Mr
21 Mathunjwa, that on the 14th of August 2012 AMCU did not
22 convene a meeting of general membership wherein you
23 instructed your members to refrain from any violence?

24 MR MATHUNJWA: There was no meeting.
25 There was a media briefing on the 15th which denounces any

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1 to issue a statement or do anything else about it. So is
2 this line of questioning going to help us?

3 MR GUMBI: If you can allow me,
4 Chairperson, to rephrase my question. Mr Mathunjwa,
5 according to SAPS observation, on the 14th of August around
6 15:23 they observed this group of armed protesters
7 performing a ritual practice around Marikana. When did you
8 become aware about this ritual that was performed on the
9 14th of August 2012?

10 MR MATHUNJWA: I was not aware of any
11 specific ritual that was conducted at Marikana, or by the,
12 but what I've said earlier on, I kept on hearing the
13 general secretary of NUM in many media stations, talking
14 about the "inyanga," that there's "inyanga" somewhere in
15 the mountain, but not on that specific day.

16 MR GUMBI: When was it? Was it on the
17 14th of August or on the 15th of August when you heard
18 about this "inyanga" performing rituals around -

19 MR MATHUNJWA: I don't have any specific
20 date, but that's what I'm saying, that I don't remember on
21 that specific date you are mentioning, but I'm simply
22 saying I heard the general secretary of NUM when he's on
23 media, talking about the "inyanga" in the mountain.

24 MR GUMBI: Also again, Mr Mathunjwa, on
25 the 14th of August, between 14 and 16 according to SAPS

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1 form of violence. On the 15th I was with the SAFM. After
2 the interview I went to Marikana LPD.

3 MR GUMBI: So in conclusion, Mr
4 Mathunjwa, as AMCU do you condemn police killing in this
5 country?

6 MR MATHUNJWA: Of course. Any life, not
7 only police, for any person, for any citizen for that
8 matter.

9 MR GUMBI: Thanks very much, Chairperson,
10 I don't have any further question.

11 CHAIRPERSON: Thank you. Now we have Mr
12 Masevhe, I think it is, for the widows. Is that correct?

13 MS MASEVHE: Chairperson, that's correct.
14 My name is Takalani Masevhe. I represent the Monene
15 family.

16 CHAIRPERSON: Sorry, I should have called
17 you Ms Masevhe. Forgive me. Yes, please proceed.

18 MS MASEVHE: Thank you, Chairperson. Mr
19 Mathunjwa, I believe you can see me from where I'm sitting.
20 Can you?

21 MR MATHUNJWA: As long as they don't
22 close that gap.

23 CHAIRPERSON: I suggest that you come
24 forward and sit where Mr Gumbi was sitting, between Ms
25 Nkosi-Thomas and Mr Semenya. You'll be in good company.

1 MS MASEVHE: Now Mr Mathunjwa, I believe
 2 you can see me.
 3 MR MATHUNJWA: Not to mention.
 4 MS MASEVHE: Well Chairperson, for the
 5 record, my name is Takalani Masevhe and I represent the
 6 Monene family in these proceedings. Mr Mathunjwa, as from
 7 the 15th of August you knew with certainty that two police
 8 officers were killed on the 13th of August. Is that
 9 correct?
 10 MR MATHUNJWA: That's correct.
 11 MS MASEVHE: Yes, now those two police
 12 officials who were killed, it was Warrant Officer Monene
 13 and Warrant Officer Lepaaku. Now Mr Mathunjwa, you just
 14 testified before this Commission that when you went to the
 15 koppie on the 16th of August there was no police escort
 16 because the Police had refused to give you police escort to
 17 the koppie; you went there on your own.
 18 MR MATHUNJWA: Yes, no escort was
 19 provided.
 20 MS MASEVHE: Now at the mountain there
 21 was a protester who spoke before you could and the
 22 translation of what he said is found in exhibit OO9, and
 23 that protester, if I can read from the translation of what
 24 he said, he says towards the end of his speech –
 25 MR MATHUNJWA: What page is that?

1 MS MASEVHE: The first page.
 2 MR MATHUNJWA: Can you take us to, where
 3 do you start?
 4 MS MASEVHE: Yes, that protester says, "A
 5 police officer from the homelands, if he or she was fetched
 6 to come here, will be left here. He or she will not enter
 7 the hippo," and then we see the employees laughing there
 8 and then he continues and he says, "We will finish them
 9 here. They must leave here."
 10 [14:16] Chairperson, it's exhibit OO9, that is the
 11 transcription of Mr Mathunjwa's address at the koppie. It
 12 starts with a translation of what a speaker said. I don't
 13 know if –
 14 MR MATHUNJWA: On what page?
 15 MS MASEVHE: On the first page before we
 16 can start with where the speaker says that it has to be
 17 respected, but then there's a page before then.
 18 Chairperson, I beg leave to hand up one of our copies here.
 19 I believe that the Commission might not have the specific
 20 page. Unfortunately we only have that page.
 21 CHAIRPERSON: It's a single page, as you
 22 say. I haven't seen this before, I don't think. There's
 23 a, it's in two columns. The left column is in isiXhosa, I
 24 take it isiXhosa, and the right column is the translation
 25 to English.

1 MS MASEVHE: That is correct,
 2 Chairperson.
 3 CHAIRPERSON: It doesn't indicate, the
 4 heading is "Marikana CAS138/08/12," and below that is
 5 00020, so I don't know where that is. I seem to remember
 6 that video clip was shown to us, but the transcription in
 7 isiXhosa and in English hasn't been before us yet. So
 8 shall we give that an exhibit number?
 9 MS PILLAY: Chair, that is the first page
 10 of the exhibit that Ms Masevhe is referring to. It's 0009,
 11 sorry, 009.
 12 CHAIRPERSON: 009 hasn't got that on the
 13 first page, not on my copy.
 14 MR BURGER SC: I think it depends on the
 15 copy, Chair. We have it as our first page, and I always
 16 assumed that that speaker is Mr Dumisani, and you can pick
 17 that up from the second page.
 18 CHAIRPERSON: I see. So this is really a
 19 page previous to the one we have. Look, only to save time,
 20 let her put the question. You can put the question.
 21 MS MASEVHE: Thank you, Chairperson.
 22 CHAIRPERSON: And at some stage when we
 23 resume next week we will be given the exact –
 24 MR MMUSI: Mr Chairman, if I can be of
 25 assistance. The same speaker appears on exhibit L at slide

1 number 168.
 2 CHAIRPERSON: So it's Protester 6. It's
 3 Protester 6, and there was cross-examination about it and
 4 it was referred to. I remember that in evidence. I don't
 5 remember that we were given a transcript of the isiXhosa
 6 with an English translation. My recollection was when
 7 Protester 6, that clip which is dealt with in slide 168 was
 8 shown, the interpreter interpreted what Protester 6 was
 9 saying. All I'm saying is, that reference we can get when
 10 we resume next week. Let's now proceed with the cross-
 11 examination and the housekeeping can be done later.
 12 MS MASEVHE: Thank you, Chairperson. Mr
 13 Mathunjwa, maybe I should just read what I read again. He
 14 says towards the end of his address, "A police officer from
 15 the homelands, if he or she was fetched to come here, will
 16 be left here. He or she will not enter that hippo," and
 17 then the transcription says, "The employees laugh," and
 18 then he goes further to say that, "We'll finish them here.
 19 They must leave here." And Mr Mathunjwa, you were present
 20 when that statement was said. Is that correct?
 21 MR MATHUNJWA: Yes.
 22 MS MASEVHE: Now Mr Mathunjwa, you then
 23 addressed the crowd and then you leave the koppie and you
 24 go to the JOC. Is that correct?
 25 MR BRUINDERS SC: Objection. He doesn't,

1 that's not strictly accurate. He doesn't then address the
 2 crowd. In fact there are people who speak before Mr
 3 Mathunjwa.
 4 MS MASEVHE: Well Chairperson, I would
 5 say –
 6 CHAIRPERSON: Possibly you can
 7 reformulate your question so that you render the objection
 8 irrelevant.
 9 MS MASEVHE: Thank you, Chair. I will do
 10 just that. Mr Mathunjwa, after this has been said, there
 11 were other speakers who addressed the crowd. Before you
 12 could speak after this protester has spoken, then there
 13 were other speakers who addressed the crowd. Is that
 14 correct?
 15 MR MATHUNJWA: Yes.
 16 MS MASEVHE: Now you then addressed the
 17 crowd.
 18 MR MATHUNJWA: Yes.
 19 MS MASEVHE: Now Mr Mathunjwa, after you
 20 finished addressing the crowd, you then left for the JOC.
 21 MR MATHUNJWA: I didn't only address the
 22 crowd. I reprimanded and then yes, the next step, we had
 23 to go back to the JOC.
 24 MS MASEVHE: Yes.
 25 MR MATHUNJWA: But not for this specific

1 he came out from that boardroom or operational room, the
 2 first thing he said to me, "Mr Mathunjwa, as I explained to
 3 you, I'm no longer in charge of this operation. It's
 4 Provincial Commissioner Mbombo, as I explained earlier in
 5 the morning." Then I requested to see her. Then he told
 6 me that she is not around, she went for ANC torch bearer
 7 ceremony. Remember, all those things happened in a short
 8 space. You talk, we talk, we talk, we talk, we talk, so he
 9 showed that he doesn't want to take anything from me, then
 10 he said, "Let me phone Commissioner Mbombo." Then we wait
 11 some few minutes and then I waited, I waited, I waited.
 12 No-one came back. Then I went to try to get hold of the
 13 management. So in short maybe my run of patience, there
 14 was no, there was a protocol that has to be observed and to
 15 be followed, based on that operation. Thank you.
 16 MS MASEVHE: Mr Mathunjwa, you've just
 17 testified that you were told that the Provincial
 18 Commissioner was not there. Whether she had gone to see a
 19 police official at the hospital or whether she went to the
 20 torch bearing ceremony is not material at this stage. But
 21 then what I want to know from you is that didn't you find
 22 it important to tell whoever was second in charge from the
 23 Provincial Commissioner, who was not present, that there is
 24 a risk that people, or police might be injured if they go
 25 to the koppie, after there was such a threat?

1 person who was speaking there.
 2 MS MASEVHE: Now Mr Mathunjwa, when you
 3 get to the JOC you then have a conversation with General
 4 Mpembe.
 5 MR MATHUNJWA: When I arrive at the JOC,
 6 yes, if you summarise, yes. I met General Mpembe.
 7 MS MASEVHE: Now Mr Mathunjwa, at that
 8 stage you knew that three police officers, actually two
 9 police officers were killed on Monday by the protesters and
 10 one had been injured by the protesters and seriously
 11 injured.
 12 MR MATHUNJWA: Not only three, about 10
 13 lives that has been lost by that time.
 14 MS MASEVHE: Now after you had heard this
 15 protester saying that the Police will be finished at the
 16 koppie, why didn't you then tell General Mpembe that there
 17 has been that threat and people should be careful when they
 18 go to the koppie? Why didn't you find it important to warn
 19 the SAPS that the protesters are saying that the Police
 20 will be finished at the koppie?
 21 MR MATHUNJWA: Let me maybe assist you.
 22 When we arrived at the JOC we waited for couple of minutes
 23 before we get hold of Mr Mpembe. I requested one lady
 24 officer there to ask for Mpembe and he later came out from
 25 what I think was an operational room, or boardroom, and as

1 MR MATHUNJWA: For the safety you will
 2 appreciate that from the mountain I started looking for the
 3 person whom was introduced to me as the person in charge,
 4 and during that morning there was General Naidoo, General
 5 Annandale, General Mpembe, and Provincial Commissioner.
 6 Neither of the three was introduced to me as a second-in-
 7 charge. If Mr Mpembe, as he was the one who was in charge
 8 the previous night, he could have just said give me the
 9 response from the mountain, but he never wanted because he
 10 said, "As I've mentioned to you that I'm not in charge of
 11 the operation." So what I was supposed to do then?
 12 MS MASEVHE: Mr Mathunjwa, there was an
 13 exchange of an SMS between you and General Annandale and
 14 General Mpembe. Now why didn't you include this vital
 15 piece of information in those SMSs to these two senior
 16 police officials?
 17 MR MATHUNJWA: It never crossed my mind
 18 because I was supposed to report to the Provincial
 19 Commissioner who was stationed for the operation, and for
 20 that matter, when they SMS'd me back saying General,
 21 Provincial Commissioner, or they're around where the, I
 22 think there's an SMS saying, "Yes Mr Mathunjwa, we are
 23 around." There was no-one there. We were there and then
 24 they SMS saying "We are around," but at the very same place
 25 there was no-one.

1 MS MASEVHE: Now let me inform you, Mr
 2 Mathunjwa, that at the end of this Commission we are going
 3 to argue that you did not act responsibly by not telling
 4 the senior leadership of the SAPS that there's a threat
 5 looming at the koppie, after you had heard this protester
 6 saying that the Police will be finished if they go to the
 7 koppie.

8 MR MATHUNJWA: I will dispute that, and
 9 subsequent to that I think you will realise that there was
 10 no Police killed on that 16th after I left the JOC. It's
 11 only workers that were killed.

12 MS MASEVHE: Well, I'm talking about the
 13 threat that the protesters had issued to the Police, but
 14 then on that note I'd like to move on. Now on the 15th of
 15 August you had heard that two security officials were
 16 killed on the 12th and then two police officials were
 17 killed on the 13th, one was seriously injured, and other
 18 civilians were also killed. Now Mr Mathunjwa, these people
 19 who were killed, that is like the 10 people who were killed
 20 prior to the 15th, are all breadwinners and mostly fathers.
 21 Now Mr Mathunjwa, what I want to know from you is that
 22 reading from your address of the 15th of August, you say in
 23 very broad terms that protesters must desist from violence,
 24 but then you don't specifically mention that they should
 25 resist the temptation of killing Police and security

1 officials. Why is that?

2 MR MATHUNJWA: By denouncing violence I
 3 said, as I've said earlier on I respect life, whether it's
 4 a Police, whether it's a security, whether the civilian.
 5 No-one should be killed.

6 MS MASEVHE: Now on the 16th of August
 7 you go to the mountain again and then you address the
 8 people and in your address, on page 9 of the transcript of
 9 your address you say the following. Can I refer you to
 10 page 9? Are you there, Mr Mathunjwa?

11 MR MAHLANGU: It was on page number 9?

12 MS MASEVHE: Page number 9.

13 MR MAHLANGU: Of which exhibit?

14 MS MASEVHE: Exhibit OO9.

15 MR MAHLANGU: Yes, we are there.

16 MS MASEVHE: Mr Mathunjwa, as you have
 17 said that you respect life and you wouldn't be specific
 18 about the killing of the people, but we hear you here on
 19 the second paragraph, that is line 5 of the very same
 20 paragraph where it says, "President," and then you start
 21 saying, "Comrade," and then comma, have you found it?
 22 [14:36] MR MAHLANGU: Yes, Ma'am.

23 MS MASEVHE: Well, you go there and you
 24 say, "The killing of people started on Friday where
 25 employees were marching to the stadium to talk about their

1 views and rights, where we were told yesterday here members
 2 of NUM office came out holding guns and shot at you and two
 3 employees were killed. Power," and then the employee says,
 4 "It's ours." You continue and you say, "We send our
 5 condolences to those families. As AMCU we will come closer
 6 to the families. We'll help where we can so that they
 7 could be laid to rest with dignity, as AMCU will do that.
 8 Power." Mr Mathunjwa, I'm aware that the press statement
 9 that was issued on the 9th, you mention that you condemn
 10 violence. However, my question is this, now you were in
 11 front, when you mentioned this you were in front of the
 12 protesters. Now why didn't you send condolences to the
 13 family of the Police, to the families of the security
 14 guards, and to the families of other civilians who had
 15 died?

16 MR MATHUNJWA: I think we have released
 17 that press statement on the 14th with regard to the loss of
 18 life for everyone.

19 MS MASEVHE: Now why then don't you
 20 specifically mention in the rest of your speech that you
 21 condemn Police killing?

22 MR MATHUNJWA: I've said we condemn any
 23 killing of any citizen, which I believe police form part of
 24 that group.

25 MS MASEVHE: Well, Chairperson, I don't

1 have any further questions for this witness, thank you.

2 CHAIRPERSON: Mr Mpofu?

3 MR MPOFU: Thank you, Chairperson. Yes,
 4 chairperson, sorry, I wasn't here in the morning, I just
 5 want to confirm that we are adjourning at three?

6 CHAIRPERSON: We're proposing to go on a
 7 bit longer after three, to enable you to finish your cross-
 8 examination and Mr Bruinders to do his re-examination, if
 9 necessary we can go until half past three, not thereafter.

10 CROSS-EXAMINATION MR MPOFU: Yes, no,
 11 that's why I am asking because I am certainly not going to
 12 finish in 20 minutes, so if I just have one second,
 13 Chairperson. Thank you, Chairperson. Mr Mathunjwa, is it
 14 correct that the gathering of people that you addressed on
 15 the 16th, would it be correct to describe it as having been
 16 multi cultural, multi lingual and maybe even multi
 17 religious or belief system?

18 MR MATHUNJWA: That's correct.

19 MR MPOFU: You yourself are obviously a
 20 Christian.

21 MR MATHUNJWA: That's correct.

22 MR MPOFU: I've counted in your address
 23 that you made at 009, that you mentioned the word, God,
 24 about ten times and for the eleventh time you say, we need
 25 a strategy from heaven.

1 MR MATHUNJWA: That's correct.
 2 MR MPOFU: Did anyone make any objections
 3 when you seemed to be exhibiting your Christianity?
 4 MR MATHUNJWA: No.
 5 MR MPOFU: And did you ever get any
 6 impression whatsoever that that large group of 3 000 people
 7 had one set of beliefs similar to or rather common to all
 8 of them?
 9 MR MATHUNJWA: As I was talking about
 10 God, there was no objection.
 11 MR MPOFU: Yes, you described yourself as
 12 a slave of God, you described the crowd as God's children
 13 and the nation of God.
 14 MR MATHUNJWA: Yes.
 15 MR MPOFU: You also, you've been a
 16 mineworker yourself and worked in the mining environment
 17 for how long?
 18 MR MATHUNJWA: I think I would say over
 19 25 years.
 20 MR MPOFU: And in that 25 years have you
 21 ever seen or experienced anything that would make you
 22 believe that a large group of 3 000 people would believe
 23 that bullets will not kill them or that they would be
 24 invincible or that they would be invisible, whichever one
 25 will be finally chosen?

1 MR MATHUNJWA: No, I never had such
 2 belief.
 3 MR MPOFU: Sorry, just to move to
 4 something else, you have testified about a letter which you
 5 wrote on the 10th to Lonmin management asking for a
 6 meeting, is that correct?
 7 MR MATHUNJWA: Yes, there is a letter of
 8 such.
 9 MR MPOFU: Just to paraphrase what was
 10 the reason of your central request in that letter?
 11 MR MATHUNJWA: It was explicit, it was to
 12 call a meeting, an urgent meeting.
 13 MR MPOFU: Okay, sorry, I think I didn't
 14 ask the question properly, I know that you asked for a
 15 meeting and we also know that the meeting did not take
 16 place. I guess what I am asking you is, had your request
 17 for a meeting been acceded to, what would you have put on
 18 the table?
 19 MR MATHUNJWA: If that meeting was held,
 20 firstly we would communicate what are the issues of the
 21 workers.
 22 MR MPOFU: And would your objective in
 23 that meeting have been to defuse the situation?
 24 MR MATHUNJWA: Yes, to ask, to gather the
 25 heads together and see how can we work the way forward with

1 other parties. As I've said all the parties should be part
 2 of that.
 3 MR MPOFU: Have you ever been given a
 4 reason why that meeting was declined?
 5 MR MATHUNJWA: No, we never received a
 6 response to that effect.
 7 MR MPOFU: To your knowledge, were some
 8 of the workers who were gathered in the mountain from the
 9 Karee Mine?
 10 MR MATHUNJWA: Yes.
 11 MR MPOFU: And isn't it correct that in
 12 respect of the Karee Mine at least you had full negotiating
 13 rights?
 14 MR MATHUNJWA: We'll say we've got
 15 limited organisational rights, not for bargaining.
 16 MR MPOFU: Okay, can you for the
 17 uninitiated like me unpack what specifically those limited
 18 rights entailed, to what extent would you have been able to
 19 represent the workers at Karee Mine at least?
 20 MR MATHUNJWA: Maybe on top of my head it
 21 will be issues like working in for holidays, maybe
 22 disciplinary processes, just to mention a few, I cannot
 23 have them on my mind.
 24 MR MPOFU: Alright, but yes, I am sure
 25 we'll get, we actually do have copies of all the

1 recognition agreements and all that, but really –
 2 MR BRUINDERS SC: If I could be of some
 3 assistance to my learned friend, it is Exhibit 0012.
 4 MR BURGER SC: Yes, I may help my learned
 5 friend, the witness explained this to us with reference to
 6 0012, Chair.
 7 MR MPOFU: Thank you, I am indebted to my
 8 colleagues, but really all I want to have said is that you
 9 were in a position to represent the workers in relation to
 10 some of the working conditions. On, I think it is page 28,
 11 page 28 of Exhibit LL, that's the SAFM interview, after
 12 you, - well, you didn't testify, after you mentioned this
 13 issue of the urgent meeting which you had proposed, which
 14 had never materialised, are we together, on page 28 of LL,
 15 Exhibit LL, have you got it?
 16 MR MATHUNJWA: Yes, yes.
 17 MR MPOFU: You'll see, where it says Mr
 18 Mathunjwa, from about line 4, you talk about the letter
 19 that we've already discussed and that you asked for an
 20 urgent meeting two weeks ago and so on and it never
 21 materialised, and then Mr Nqakula says, so in other words
 22 you are blaming the company for the ten people that are
 23 dead, and then you said, I mean I will squarely, I mean
 24 blame them, and so on, we advised them that they must call
 25 a meeting two weeks ago, nothing happened. They engaged

1 those RDO delegations and by their permission they made an
 2 offer to them outside the structures, I mean of the union.
 3 Ja, you remember that part?
 4 MR MATHUNJWA: Yes, I do.
 5 MR MPOFU: Okay, now the question is,
 6 would it be correct that from a reading of this passage,
 7 what you are saying is that had the meeting request been
 8 granted the ten dead might not have happen, is that a good
 9 reading of the passage?
 10 MR MATHUNJWA: That's my belief, yes.
 11 MR MPOFU: Now do you remember that Mr, I
 12 think Mr Mokoena during that interview also said that the
 13 police had been there and had been called by them, but had
 14 been present, as he put it from the word go, in other words
 15 from the Friday events until out, but do you remember that?
 16 MR MATHUNJWA: I think that is correct
 17 because it was also mentioned during my conversation with
 18 him that the memorandum will be received by the police,
 19 that surely means that the police were already there.
 20 CHAIRPERSON: I think the passage you're
 21 looking for is at page 27.
 22 MR MPOFU: 27, yes, I found it, -
 23 CHAIRPERSON: Line 12, I think -
 24 [14:56] MR MPOFU: - thank you, Mr Chairman. It
 25 is on page 27, Mr Mathunjwa, sorry for that confusion, and

1 it reads like this, Mr Mokoena says, you had made the
 2 accusation that, something about the police, and then he
 3 says, again it is amazing that Joseph makes such
 4 allegations. We had police in the morning, Friday morning
 5 we called the police and we wanted the police to do their
 6 job. There are people marching illegally and all that, the
 7 police were there from the word go, early Friday morning at
 8 the stadium, that's one and then secondly, and then he
 9 talks about something else. Now once again, although you
 10 had said you blame Lonmin squarely, would it be fair to,
 11 reading from this passage, to say that the police would
 12 also have been expected to have prevented some, if not all,
 13 of the violence?
 14 MR MATHUNJWA: Yes, according to this
 15 management called them surely to do some jobs there as it
 16 is explained here.
 17 MR MPOFU: Alright, would it be fair to
 18 say that this situation that you attended to, sorry, I am
 19 jumping to something else, that you attended to on the 16th
 20 was quite a serious and tense affair?
 21 MR MATHUNJWA: Yes.
 22 MR MPOFU: Now a lot has been made about
 23 the address made by the person now known as protestor
 24 number 6, on the front of 009, do you remember that? Do
 25 you remember -

1 MR MATHUNJWA: Yes -
 2 MR MPOFU: Remember, [African language]
 3 we'll finish them here and then said, they must leave here?
 4 Chairperson, if I may just offer my interpretational
 5 services, I think that last sentence, unless it was an
 6 objection, should really read, they must leave this place,
 7 not they must leave here.
 8 MR MAHLANGU: Where are you reading?
 9 MR MPOFU: In other words they must leave
 10 this place. I see Commissioner Tokota is nodding.
 11 CHAIRPERSON: Mr Tokota who is a isiXhosa
 12 linguist agrees with your interpretation.
 13 MR MPOFU: Okay, now I'll take the new,
 14 remember anyway, nothing turns on that now, I just wanted
 15 to assist the commission. I am talking about that
 16 particular protestor, protestor number 6 is that person who
 17 said those things.
 18 MR MATHUNJWA: Ja.
 19 MR MPOFU: Ja, and the point I really,
 20 want to make really is that even though you've testified
 21 that you were in the middle of this serious situation, when
 22 that protestor made those remarks the employees laughed.
 23 Do you remember that?
 24 MR MATHUNJWA: Yes.
 25 MR MPOFU: And in fact although it is not

1 reflected on this transcript, even after he said the second
 2 part, they must leave here, we'll finish them here, there
 3 was more laughter, you can accept that for now, I'll show
 4 it to the commission later.
 5 MR MATHUNJWA: There was that.
 6 MR MPOFU: Well, to me that sort of
 7 reaction should indicate that the crowd that was there did
 8 not take those statements seriously, what would be your
 9 comment?
 10 MR SEMENYA SC: Objection, Chair, Mr
 11 Mpofo is not going to testify. MR MPOFU: Fair
 12 enough -
 13 CHAIRPERSON: If he wants to be sworn in
 14 to testify later, he may, but he is not testifying at the
 15 moment.
 16 MR MPOFU: Well, Chairperson, having
 17 served as a counsellor and as an interpreter I might as
 18 well be a witness.
 19 CHAIRPERSON: You'll be cross-examined.
 20 MR MPOFU: Yes, Mr Semanya is right, ja.
 21 Evidence will be led that the laughter that you hear in
 22 the, or rather that you see or hear in the videos was an
 23 indication that employees or the workers did not take those
 24 statements seriously. Would you, what impression did you
 25 get as the person who was there? I am talking specifically

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1 about the laughter, of the reaction.

2 MR MATHUNJWA: I would say that to my

3 best knowledge will be saying, it is in the interpretation

4 of the individual when he is listening to that.

5 MR MPOFU: Further evidence will be that

6 at some stage one or two of the workers simply went up and

7 grabbed the loud hailer and spoke. Did you observe that?

8 MR MATHUNJWA: Yes, I think it was played

9 here, if I am not mistaken.

10 MR MPOFU: And that in particular

11 protestor number 6 was one of those people who uninvited

12 had simply gone to grab the mike and speak?

13 MR MATHUNJWA: Yes.

14 MR MPOFU: There is something that I just

15 want you to please explain to the commission. Your left

16 out with your first visit on the 16th, what level of

17 cooperation did you get from the police, because from the

18 pictures we can see you with the police, even as you are

19 addressing the people, did you, was this visit pre-

20 arranged? Was the visit pre-arranged with the police or

21 did they just see you arriving there and assisted you

22 spontaneously, if you know what I mean?

23 MR MATHUNJWA: Maybe what I would say,

24 since they were there at the night they heard that I will

25 be coming back the following day.

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1 MR MPOFU: Oh, I see, yes, on the 15th

2 you had gone with the police?

3 MR MATHUNJWA: Yes, we were escorted with

4 the armoured vehicle.

5 MR MPOFU: Alright, and they were aware

6 of the arrangement that you had made with the workers that

7 you would be back at nine o'clock or thereabout the

8 following day?

9 MR MATHUNJWA: Yes, and it was further

10 confirmed in the debriefing.

11 MR MPOFU: Okay, you've given some

12 extensive evidence about what happened in the morning, but

13 if you can just assist me, between the first and the second

14 visit you went back, firstly you went back to Lonmin,

15 correct?

16 MR MATHUNJWA: Yes, firstly in the

17 morning I spotted to the Lonmin offices, and subsequent to

18 that to the JOC and then from the JOC to the mountain, that

19 was my first visit, that one.

20 MR MPOFU: Okay, before I resume where I

21 left off, when you left or anyway at any stage did you have

22 occasion to observe or see Bishop Seoka?

23 MR MATHUNJWA: No.

24 MR MPOFU: Well, from the evidence that

25 has been led it would seem that he arrived there somewhere

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1 between your two visits and where I am getting at is, when

2 you – after you finished your first visit where did you go?

3 MR MATHUNJWA: We went straight to the

4 JOC.

5 MR MPOFU: And what was the reaction of

6 Lonmin or the police, whoever you addressed there about the

7 message that you were bringing?

8 MR MATHUNJWA: One, there was no time to

9 give them the feedback, the police, because the police that

10 happened to be available was General Mpembe who reminded me

11 that he is not in charge of the operation.

12 MR MPOFU: Yes, okay, sorry, I don't want

13 to read all that, we've heard it many times. Where I am

14 getting at is, what prompted your second visit and how was

15 it executed?

16 MR MATHUNJWA: Do you mean back to the

17 koppie?

18 MR MPOFU: Yes, Sir.

19 MR MATHUNJWA: To me it was prompted by

20 trying to go and tell the workers that they should disperse

21 and explain what I've seen regarding non cooperation, so

22 therefore I fear for the worst but before I proceeded to

23 these workers I happened to see two black officers, one in

24 light complexion and I asked him who was in charge of this

25 operation. Then he pointed to me one white male officer

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1 and I explained to him that I am from the JOC, there is no

2 cooperation, hence I mentioned to him that the provisional

3 commissioner also was not there to the ceremony, as I've

4 mentioned earlier on. No, the explanation of the

5 whereabouts of the provisional commissioner was

6 communicated to the official in charge of the operation,

7 not to those two first officers and he said I have to wait

8 a few minutes, he will call General Naidoo and then –

9 COMMISSIONER HEMRAJ: Mr Mpofo, this

10 evidence was given at great length.

11 MR MPOFU: Yes.

12 COMMISSIONER HEMRAJ: And traversed in

13 cross-examination, do you really want the witness to repeat

14 everything?

15 MR MPOFU: No, I don't, that's why I am

16 trying to, thank you, Commissioner. Sorry, Mr Mathunjwa, I

17 am sure I've asked the question, you know to an open ended

18 question, let me put it this way. Having made the decision

19 which you have explained, to go back for the second time, I

20 just want the mechanics of how that visit was arranged,

21 whether it was arranged only by you or by you and the

22 police or by you and somebody else, just explain to the

23 commission how it came about, having made that decision,

24 how did you then implement that decision to effect the

25 second visit?

1 MR MATHUNJWA: No, that decision we made
 2 it by ourselves, there was no police involved and then we
 3 had to try and execute that communication to the workers.
 4 CHAIRPERSON: Mr Mpofo, have you got many
 5 more questions, because you're not going anywhere at the
 6 moment, as far as I see. Are you likely to finish by half
 7 past three?
 8 MR MPOFU: No, Chairperson.
 9 CHAIRPERSON: Oh, well, in that event
 10 there is no, it doesn't seem any point in, I was intending
 11 to adjourn at quarter past, but I am prepared to sit until
 12 half past if we're finished but we obviously can't, so we
 13 will adjourn until next Wednesday morning, not tomorrow but
 14 the following Wednesday, the 12th of December at ten
 15 o'clock.
 16 MR MPOFU: Chairperson, I am sorry, just
 17 with your permission, one more question just so that I
 18 finish this topic, just one question. Mr Mathunjwa, you've
 19 now explained how you executed the second visit and where I
 20 was going is, did anybody or any policeman stop, try to
 21 stop you or prevent you from entering the parameter of the
 22 mountain?
 23 MR MATHUNJWA: No, there was no one.
 24 MR MPOFU: Thank you, Chairperson.
 25 CHAIRPERSON: The commission will adjourn

1 and resume on Wednesday, the 12th of December at ten
 2 o'clock.
 3 [COMMISSION ADJOURNED]
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