

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 52 22 FEBRUARY 2013 PAGES 5585 TO 5657

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 22 FEBRUARY 2013]
 2 [09:42] CHAIRPERSON: The Commission resumes.
 3 Before the witness continues with his evidence, I'd like to
 4 refer briefly to the application which we heard about
 5 yesterday, and to inform the parties that the Commissioners
 6 wish to have a meeting with senior and junior counsel for
 7 the Human Rights Commission, as well as senior counsel for
 8 the evidence leaders. Unfortunately Mr Madlanga is not
 9 available today, and I don't see Mr Malindi here either.
 10 So the meeting can only be held on Monday at the end of the
 11 evidence. I hope that the meeting will find satisfactory
 12 solutions to the various problems that were raised by the
 13 Human Rights Commission, and in the circumstances the
 14 parties do not have to file notices of intention to oppose,
 15 or affidavits, or anything of that kind, until they are
 16 informed on Tuesday morning as to the outcome of the
 17 meeting to which I have referred, and as I've said, it may
 18 well be that it will be unnecessary for any further steps
 19 to be taken in relation to the application if solutions can
 20 be found to the points that have been raised. You're still
 21 under oath to give evidence.
 22 SIPETE PHATSHA (CONTD.):
 23 CHAIRPERSON: And who is going to cross-
 24 examine first this morning? Mr Mojapelo, are you going to
 25 cross-examine before the representatives of AMCU and the

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1 family? Let's do the gentlemanly thing and ask them what
 2 they would prefer. What would you ladies prefer?
 3 MS BARNES: We have no real preference,
 4 Chair.
 5 CHAIRPERSON: Mr Mojapelo, are you happy
 6 to start?
 7 MR MOJAPELO: Yes, Chair, we are happy to
 8 start.
 9 CHAIRPERSON: Good. Very well, please do
 10 so.
 11 CROSS-EXAMINATION BY MR MOJAPELO: Good
 12 morning, Mr Phatsha.
 13 MR PHATSHA: Good morning. I'm greeting
 14 you, I agree.
 15 MR MOJAPELO: I hear that you have been a
 16 member of NUM until December 2012. That is for a period of
 17 30 years.
 18 MR PHATSHA: That is so.
 19 MR MOJAPELO: Why did you leave NUM?
 20 MR PHATSHA: It's because of being
 21 attacked by NUM.
 22 MR MOJAPELO: Okay, when did this attack
 23 on you by NUM happen?
 24 MR PHATSHA: On the 11th.
 25 CHAIRPERSON: On the 11th of which month?

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1 MR PHATSHA: 11th of August.
 2 MR MOJAPELO: Okay, did they attack you
 3 personally on that day?
 4 MR PHATSHA: I was not the one assaulted.
 5 MR MOJAPELO: And then this attack, you
 6 say it happened in August but you only resigned in
 7 December. That is four months after the attack.
 8 MR PHATSHA: That is so.
 9 MR MOJAPELO: Okay, other than the
 10 attack, did anyone promise you anything better if you leave
 11 NUM?
 12 MR PHATSHA: What made me leave it was
 13 because the other, my co-workers were assaulted.
 14 MR MOJAPELO: Okay, and then you were not
 15 assaulted?
 16 MR PHATSHA: On that day I was never
 17 assaulted.
 18 MR MOJAPELO: The strike that you joined
 19 on the 10th, do you know –
 20 CHAIRPERSON: Before you move on to that,
 21 can I ask a question following from the ones that you've
 22 asked? Have you joined another union since you resigned
 23 from NUM?
 24 MR PHATSHA: I joined AMCU.
 25 CHAIRPERSON: When did you join AMCU?

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1 MR PHATSHA: I joined in December.
 2 CHAIRPERSON: And why did you join AMCU?
 3 MR PHATSHA: I became an AMCU member
 4 because I was beaten up, assaulted by NUM.
 5 CHAIRPERSON: When were you beaten up and
 6 assaulted by NUM?
 7 MR PHATSHA: The workers were assaulted.
 8 CHAIRPERSON: No, no, you said you were.
 9 You said, "I joined AMCU because I was beaten up and
 10 assaulted by NUM." Now when were you beaten up and
 11 assaulted by NUM?
 12 MR PHATSHA: People like me were
 13 assaulted.
 14 CHAIRPERSON: You say people like you
 15 were assaulted. So do I understand when you said that you
 16 joined AMCU because you were beaten up and assaulted, you
 17 weren't expressing yourself correctly; you meant people
 18 like you were beaten up and assaulted. Is that correct?
 19 MR PHATSHA: Yes.
 20 CHAIRPERSON: So if I write down "People
 21 like me were assaulted and I was not assaulted myself,"
 22 will I be accurately recording your evidence?
 23 MR PHATSHA: That is so.
 24 CHAIRPERSON: I can understand the reason
 25 you give for resigning from NUM, but you still haven't

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1 answered the question as to why you then joined AMCU.
 2 MR PHATSHA: What made me see that I will
 3 not be suitable to be a member of NUM is because people
 4 like me were assaulted.
 5 CHAIRPERSON: You still haven't answered
 6 the question. The question was, I can understand why that
 7 made you leave NUM. The question is, why did you then join
 8 AMCU? You don't want to answer that question?
 9 MR PHATSHA: Can you repeat?
 10 CHAIRPERSON: I understand the reason you
 11 have given for leaving NUM, but the question that I've
 12 asked you is, why did you join AMCU? I see you pause and
 13 pull a face while you're thinking of an answer.
 14 MR PHATSHA: Can you repeat again?
 15 CHAIRPERSON: I said I see you pause and
 16 pull a face while you're thinking of your answer. Do you
 17 want me to repeat the question for third or fourth time?
 18 I'm happy to do so. Why did you join AMCU?
 19 MR PHATSHA: I gave the reason why I
 20 joined AMCU, that I was a member of NUM and we were then
 21 attacked by NUM.
 22 CHAIRPERSON: That's the reason for
 23 leaving NUM, but it's not necessarily a reason for then
 24 going on to join AMCU. There must be a reason, surely.
 25 MR PHATSHA: The reason why I joined AMCU

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1 is because as a NUM person I cannot be a member thereof
 2 because if I then again [he says again] repeat it [he says
 3 it] they will attack me again.
 4 CHAIRPERSON: If you repeat what?
 5 MR PHATSHA: If I join NUM again.
 6 CHAIRPERSON: Yes, then they'll attack
 7 you again. Why would NUM attack you because you rejoined
 8 them?
 9 MR PHATSHA: It's the fear I have because
 10 I used to be a NUM member.
 11 CHAIRPERSON: You know, you still haven't
 12 told me why you joined AMCU. I can understand you were
 13 unhappy with NUM because they attacked your fellow workers
 14 on the 11th of August, according to your evidence, that's
 15 why you left NUM. I can understand that, but why did you
 16 join AMCU? You still haven't told me that, Sir. There
 17 must have been a reason, surely.
 18 MR MPOFU: Chairperson, sorry, I'm sorry
 19 to interrupt the cross-examination, but I just want to
 20 explain that you know the kind of witness we are dealing
 21 with here, maybe the question should be simplified as to
 22 why he didn't join UASA or Solidarity or whatever, or why
 23 he did not remain unattached, because to repeat the
 24 question 10 times is not going to elicit a different
 25 answer. He has given the reason in the indirect way of why

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1 he left NUM, and that seems to be – otherwise we're going
 2 to be here forever. I think we can –
 3 CHAIRPERSON: Yes, I have no ambition of
 4 being here forever.
 5 MR MPOFU: Yes, thank you, Chairperson.
 6 CHAIRPERSON: I said before, I don't
 7 relish the idea of being an umpire in a timeless test.
 8 MR MPOFU: Thank you.
 9 CHAIRPERSON: But was there a particular
 10 reason why you joined AMCU?
 11 MR PHATSHA: Can you repeat so that I can
 12 understand?
 13 CHAIRPERSON: Well, after you left, after
 14 you resigned from NUM, you could either have remained a
 15 person who wasn't a member of a union at all, or you could
 16 have joined another union. Now you clearly decided that
 17 you didn't want to remain someone who wasn't a member of a
 18 union at all, so you decided to join another union. So the
 19 first question is, why did you decide to join another
 20 union, as opposed to not being a member of a union at all?
 21 MR PHATSHA: If I cannot affiliate to a
 22 union, there's no way that if I had a case that I can be
 23 defended.
 24 CHAIRPERSON: So that's why you decided
 25 to join another union. The next question is, why did you

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1 then choose AMCU as the other union? Was there a
 2 particular reason for that?
 3 MR PHATSHA: Can I explain?
 4 CHAIRPERSON: Yes, I'm asking you to
 5 explain.
 6 MR PHATSHA: If you have been beaten up
 7 by your father at home, you are able to leave him by
 8 building your own hut aside – H-U-T.
 9 CHAIRPERSON: But you see, you weren't
 10 building your own hut; you were actually going into someone
 11 else's hut. Why did you choose that particular hut to go
 12 to?
 13 MR PHATSHA: Because I wanted protection.
 14 CHAIRPERSON: Thank you, Mr Mojapelo, I'm
 15 sorry, my intervention took longer than I expected, but I
 16 don't think I have to accept all the blame for that. Would
 17 you like to continue with your cross-examination?
 18 MR MOJAPELO: Okay. Mr Phatsha, why
 19 didn't you join Solidarity or UASA or another union?
 20 MR PHATSHA: A person joins whatever he
 21 feels is right.
 22 MR MOJAPELO: Okay, I'll leave this part
 23 and go to the 10th. You said you heard about the strike and
 24 joined it on the 10th, and how did you get to know about the
 25 strike?

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1 MR PHATSHA: I was hurt because we were
 2 not receiving money, we were not getting money.
 3 MR MOJAPELO: Yes, we'll come to the
 4 money part. I just want to know, how did you know about
 5 the strike?
 6 MR PHATSHA: I got that from the RDOs,
 7 the employees.
 8 [10:02] MR MOJAPELO: Okay, where did they tell
 9 you about the strike? Was it at your workplace or at home?
 10 MR PHATSHA: I was not at my workplace; I
 11 was in the shanty.
 12 MR MOJAPELO: So they informed you about
 13 the strike at your place of residence?
 14 MR PHATSHA: Yes.
 15 MR MOJAPELO: Okay, how many people came
 16 to your place to inform you about the strike?
 17 MR PHATSHA: It was just the people who
 18 were passing in the street. When you overhear people
 19 talking, you respond to that.
 20 MR MOJAPELO: What did they say to you
 21 exactly about the strike?
 22 MR PHATSHA: It was said that a demand of
 23 R12 500 would be made to the employer [which he refers to
 24 as "mulungu."
 25 MR MOJAPELO: Okay, is that the only

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1 thing that they told you about the strike?
 2 MR PHATSHA: Yes.
 3 MR MOJAPELO: Okay, and then now that you
 4 know that the demand is for money, that is salaries, didn't
 5 you tell them that you belong to a union?
 6 MR PHATSHA: I never told them.
 7 MR MOJAPELO: Did you have any problems
 8 with the salary that you were receiving at the time?
 9 MR PHATSHA: I had a very big problem.
 10 MR MOJAPELO: Okay, and then your union
 11 at the time was NUM. Did you inform them about your
 12 problems with your salary?
 13 MR PHATSHA: I never told them.
 14 MR MOJAPELO: Is there any reason for not
 15 approaching your union about your salary concerns?
 16 MR PHATSHA: We had a problem, for years
 17 we've been complaining to NUM about money, but we have not
 18 been receiving that money.
 19 MR MOJAPELO: You complained yourself to
 20 NUM. Is that what you are saying?
 21 CHAIRPERSON: He said "we." It wasn't
 22 necessarily himself, but perhaps you could clarify what he
 23 means by "we."
 24 MR MOJAPELO: Okay. You said you as a
 25 group complained to NUM about your salaries?

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1 MR PHATSHA: Yes.
 2 MR MOJAPELO: Okay, and then when was
 3 this?
 4 MR PHATSHA: Can you repeat?
 5 MR MOJAPELO: When did you complain to
 6 NUM as a group about your salaries?
 7 MR PHATSHA: I said it has been long,
 8 it's been years we've been complaining about money.
 9 MR MOJAPELO: Okay, this complaint, was
 10 it to the shop steward or to the regional office, or to
 11 which office?
 12 MR PHATSHA: We were first approaching
 13 the shop stewards.
 14 MR MPOFU: Sorry, Chairperson, I think
 15 the union – rather the witness did not say "shop steward."
 16 I don't want to say what he said so that I'm not suggesting
 17 the answer.
 18 CHAIRPERSON: Let's just ask the question
 19 again. Whom did you first approach to complain about the
 20 salaries?
 21 MR PHATSHA: I cannot tell as to who was
 22 the first person to be approached, because I didn't even
 23 know in the office of NUM the person, the relevant person
 24 to approach.
 25 MR MOJAPELO: Can we talk about you, Mr

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1 Phatsha? Have you ever complained to anyone about your
 2 salary, including your union?
 3 MR PHATSHA: I never went and did that.
 4 MR MOJAPELO: You never even approached
 5 your shop stewards?
 6 MR PHATSHA: We would talk to the shop
 7 stewards in the mine.
 8 MR MPOFU: No, Chair, I'm sorry, now I
 9 have no choice. The witness for the second time has said
 10 "shaft steward" and the answer is translated as "shop
 11 steward." I just didn't want to say it because it would
 12 have looked like I'm suggesting the answer.
 13 CHAIRPERSON: Mr Interpreter, you heard
 14 what Mr Mpofo says. I can understand shaft steward sounds
 15 very close to shop steward, but I must say, it sounds to me
 16 as if he, the second time certainly, he said "shaft
 17 steward." Do you agree?
 18 MR HANABE: I didn't – I want to say I
 19 didn't hear that correctly. I thought perhaps he was
 20 saying "shop steward," even in-
 21 CHAIRPERSON: No, I understand. I –
 22 MR HANABE: But I can agree. I can
 23 agree, Commissioner.
 24 CHAIRPERSON: So we can move forward now
 25 on the basis that an approach was first made to the shaft

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1 stewards. Right, and while we're about it, you say you
2 didn't make the approach yourself, but did you know that
3 some of your colleagues, some of your fellow RDOs, were
4 making such an approach to the shaft stewards?
5 MR PHATSHA: Because there are many RDOs,
6 I never counted as to who went there.
7 MR MOJAPELO: Okay, I get the impression
8 that you did not get any satisfaction from NUM, your union.
9 Did you then decide to raise this issue yourself?
10 MR PHATSHA: It's because of the pain
11 that is the result of the kind of work I am doing.
12 MR MOJAPELO: So you decided to take this
13 matter, the salary issue, to the employer, without the
14 union?
15 MR PHATSHA: I don't hear well.
16 MR MOJAPELO: You said you complained to
17 the union, without satisfaction, about the salaries. Now
18 what I want to know is that was it your decision to take
19 this matter to the employer, without the involvement of the
20 union?
21 MR PHATSHA: That is so.
22 MR MOJAPELO: Okay, those – because you
23 said you joined the strike on the 10th after being told. Do
24 you know what happened to those who did not join the
25 strike, those who decided to go to work?

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1 MR PHATSHA: I don't know.
2 MR MOJAPELO: And then let's go to the
3 march on the 11th, the march to the NUM offices. How did
4 you get to know about this march to the union offices?
5 MR PHATSHA: We had met as RDOs and then
6 decided that we would approach NUM and ask them as to why
7 had they stopped the employer from talking to us.
8 MR MOJAPELO: Okay, when was this meeting
9 to prepare to go to the NUM offices? When did this meeting
10 take place?
11 MR PHATSHA: After we left the employer.
12 MR MOJAPELO: That is the day before, on
13 the 10th?
14 MR PHATSHA: Yes.
15 MR MOJAPELO: After this NUM march, you
16 say in your statement that you simply went home. Was there
17 anyone from NUM chasing you when you went home?
18 MR PHATSHA: Which date was that?
19 MR MOJAPELO: On the 11th of August, you
20 said there was a march to the NUM offices to ask the NUM
21 officials why are they stopping the employer from talking
22 to you. I want to know that after the march when you went
23 home, was there any NUM official chasing you?
24 MR HANABE: You mean them as a group or
25 particularly –

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1 MR MOJAPELO: Him.
2 MR HANABE: Okay, thank you.
3 CHAIRPERSON: "You" in English is
4 ambiguous. It could either be "thou" in the singular, or
5 "you" in the plural. So I think you must make it clear,
6 because I take it in isiXhosa there is a distinction
7 between second person singular and second person plural.
8 MR MOJAPELO: I'll do that.
9 MR PHATSHA: The people had marched to
10 the offices of NUM and there was a gunshot. By then I was
11 going, and the people at that time were on their way back,
12 they were returning.
13 MR MOJAPELO: Yes, you say in your
14 statement that you went home, you left and you went home.
15 What I want to know is you, yourself, not the group, were
16 you being chased by any of the NUM officials?
17 MR PHATSHA: I was not chased.
18 MR MOJAPELO: Were you moving freely,
19 walking freely in the streets towards your home?
20 MR PHATSHA: I was free in the sense that
21 I was not being chased.
22 MR MOJAPELO: You did not have any
23 weapons with you?
24 MR PHATSHA: I was not carrying any
25 weapons.

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1 MR MOJAPELO: Okay, and then you say
2 after that, that is after the 11th, the following day is the
3 12th, you said for the following three days you went to the
4 mountain occasionally to check on the progress.
5 MR PHATSHA: Yes, I would go there and
6 then go back home.
7 MR MOJAPELO: Okay, on the 12th when you
8 went to the mountain, did you have any weapons with you?
9 MR PHATSHA: I was not carrying weapons.
10 MR MOJAPELO: What progress were you
11 going to check in the mountain?
12 MR PHATSHA: Because I was not having any
13 intentions.
14 MR MOJAPELO: Okay, you said you were
15 going to check progress. I want to know what progress were
16 you going to check at the mountain.
17 MR PHATSHA: There was nothing in
18 particular.
19 MR MOJAPELO: Did you participate on the
20 march of the 12th of August, that is the march that was from
21 the mountain to the NUM offices?
22 MR PHATSHA: I was not there.
23 MR MOJAPELO: What time did you arrive at
24 the mountain on the 12th?
25 [10:22] MR PHATSHA: I arrived late, after

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1 sunset.

2 MR MOJAPPELO: You went to the mountain on

3 the 12th after sunset?

4 MR PHATSHA: Yes.

5 MR MOJAPPELO: Were there still people

6 there at the mountain?

7 MR PHATSHA: There were people, but the

8 others had left.

9 MR MOJAPPELO: Okay, what report did they

10 give you about what happened on the 12th?

11 MR PHATSHA: I never inquired from

12 anyone.

13 MR MOJAPPELO: Mr Phatsha, you say in your

14 statement that the reason for going to the mountain was to

15 check on any progress. On the 12th you're at the mountain,

16 it's at that time. You didn't ask any question on what

17 happened on that day?

18 MR PHATSHA: I never said I was there to

19 check the progress.

20 CHAIRPERSON: You did. You said that you

21 went on the 12th –

22 MR MPOFU: Chairperson, once again I'm

23 sorry, the translation is just – what the interpreter has

24 said is "yo wonke inkqubo yantoni" which means, what is

25 going on, and the witness is talking about something

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1 completely – or rather, the –

2 CHAIRPERSON: Let me ask the question

3 then.

4 MR MPOFU: Yes, thank you.

5 CHAIRPERSON: I hope we'll avoid the

6 difficulties which –

7 MR MPOFU: Yes, so for the progress it's

8 "inkqubela-phambili"

9 CHAIRPERSON: You said that you went to

10 the copy on the 12th, 13th and 14th. You want to check on

11 progress. So I take it that that means that on the 12th

12 when you got there after sunset, a number of people were

13 there –

14 MR PHATSHA: I didn't go there every day.

15 I only went there on the 15th.

16 CHAIRPERSON: But you told us earlier

17 that you went on the 12th, the 13th and the 14th, but you

18 said you only stayed for a short time, and you said you

19 went to check on any progress. Now that's what you said.

20 Do you now say that that's incorrect, that that's not what

21 happened?

22 MR PHATSHA: No.

23 CHAIRPERSON: So what are you saying? Do

24 you admit that you went there on the 12th in order to check

25 on any progress? Do you confirm that that's correct and

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1 that's what you said before?

2 MR PHATSHA: Can you repeat?

3 MR HANABE: Sorry, Commissioner, I also

4 have a problem with this word if I have to give a direct

5 translation of progress because if I don't try and simplify

6 and tell him if he was there to find out as to what, how

7 far were things, what was happening, because that's how I

8 put it in Xhosa, because if I say "inkqubela-phambili" it

9 will perhaps confuse him, so that –

10 CHAIRPERSON: Let's take two steps back.

11 You went on the 12th after sunset. Is that right? To the

12 koppie.

13 MR PHATSHA: Ja.

14 CHAIRPERSON: Why did you go? For what

15 purpose?

16 MR PHATSHA: Because there were

17 employees, workers were there.

18 CHAIRPERSON: Yes, but why did you go

19 there? You see, in your statement that you made, which you

20 confirmed to be correct, you said, paragraph 5, "I did not

21 observe anything of significance in the following three

22 days since I was only coming to the mountain occasionally

23 to check on any progress, without spending much time

24 there." So is that why you went to the koppie, to check on

25 any progress?

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1 MR PHATSHA: Can you repeat so I can

2 understand?

3 CHAIRPERSON: Let me read you paragraph 5

4 of the statement that you made, which you confirmed is

5 correct. You said, "I did not observe anything of

6 significance in the following three days," that means the

7 12th, 13th and 14th. "I did not observe anything of

8 significance in the following three days," translate it

9 piece by piece. So translate that bit first. I'll repeat

10 it. "I did not observe anything of significance in the

11 following three days," that's to say, the 12th, 13th and

12 14th. The statement continues, "since I was only coming to

13 the mountain occasionally to check on any progress, without

14 spending much time there." So that was the statement that

15 you confirmed is correct. Now let's concentrate for the

16 moment on the 12th, the first day you went to the koppie.

17 You say you went there after sunset and there were people

18 there, but the others had left. That's what you told us.

19 Is that right?

20 MR PHATSHA: Yes.

21 CHAIRPERSON: Now if what you told us in

22 your statement is correct and you went there to check on

23 any progress, I take it you must have asked someone you

24 found there what progress has there been, what's happened

25 today. Would that be a fair assumption?

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1 MR PHATSHA: I never had time to ask.
 2 CHAIRPERSON: Did you ask any question of
 3 anybody there when you got to the koppie?
 4 MR PHATSHA: I never asked any person.
 5 CHAIRPERSON: Why didn't you have time to
 6 ask?
 7 MR PHATSHA: I was not feeling well.
 8 CHAIRPERSON: How long did you stay
 9 there?
 10 MR PHATSHA: I spent a short time and
 11 afterward I went home.
 12 CHAIRPERSON: How long approximately did
 13 you spend on the koppie?
 14 MR PHATSHA: It could be between five and
 15 six minutes.
 16 CHAIRPERSON: And how many people were on
 17 the koppie when you got there?
 18 MR PHATSHA: There were quite a number,
 19 but not too many.
 20 CHAIRPERSON: How many approximately?
 21 Can you give us an estimate?
 22 MR PHATSHA: There could be between 10 to
 23 20.
 24 CHAIRPERSON: Can you give us the names
 25 of any of the 10 or 20 people who you saw there?

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1 MR HANABE: Commissioner, before I
 2 interpret this one, there is something he said that I did
 3 not hear clearly, that I would like him to repeat.
 4 CHAIRPERSON: Yes, right.
 5 MR HANABE: I got the clarity,
 6 Commissioner.
 7 MR PHATSHA: [He says] Because they were
 8 people from Wonderkop that I did not know, and the people
 9 in fact they had mixed there, intermingled there.
 10 MR HANABE: That's what he says.
 11 CHAIRPERSON: Yes, but you still haven't
 12 answered the question. I take it the people there were
 13 RDOs, were they?
 14 MR PHATSHA: That is so.
 15 CHAIRPERSON: Were there any RDOs from
 16 Eastern Platinum?
 17 MR PHATSHA: They were there, but I don't
 18 know their names.
 19 CHAIRPERSON: Don't you work at Eastern
 20 Platinum?
 21 MR PHATSHA: I worked at Eastern.
 22 CHAIRPERSON: And they were colleagues of
 23 yours whose names you don't know. Is that right?
 24 MR PHATSHA: Yes.
 25 CHAIRPERSON: And were there people from

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1 Karee there as well?
 2 MR PHATSHA: All the RDOs from Lonmin
 3 were there.
 4 CHAIRPERSON: All the RDOs from Lonmin
 5 couldn't have been there because there are several thousand
 6 RDOs, but most of the others weren't there; there were only
 7 10 or 20. You said the 10 or 20 were RDOs. Do you mean
 8 there were RDOs from all the shafts?
 9 MR PHATSHA: That is so.
 10 CHAIRPERSON: So there were RDOs from
 11 Karee as well?
 12 MR PHATSHA: Just because I don't know
 13 the RDOs from Karee, I will just say they were there.
 14 CHAIRPERSON: Did you recognise none of
 15 the people? Did you not recognise any of the people who
 16 were on the koppie when you got there on the evening of the
 17 12th of August?
 18 MR PHATSHA: No, because we were many.
 19 CHAIRPERSON: There were only 10 or 20.
 20 What's your answer to that?
 21 MR PHATSHA: There was a crowd on that
 22 day.
 23 CHAIRPERSON: No, no, no, but when you
 24 got there on the evening of the 12th after sunset, you
 25 already told us that the others had left, to use the phrase

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1 you used, and there were only about between 10 and 20
 2 people. Are you telling us that you weren't able to
 3 recognise any one of those, of that group, which was the
 4 group between 10 and 20 people?
 5 MR PHATSHA: No.
 6 CHAIRPERSON: Was Mambush not there?
 7 MR PHATSHA: He was not there.
 8 CHAIRPERSON: And you told us that you
 9 went there, according to your statement, to check on any
 10 progress. Do you still say that or do you withdraw that
 11 statement?
 12 MR PHATSHA: Can you repeat?
 13 CHAIRPERSON: Yes, with pleasure. You
 14 told us that you went there to check on any progress.
 15 That's what you told us before. Do you still say that, or
 16 do you withdraw that statement?
 17 MR PHATSHA: Can you repeat?
 18 CHAIRPERSON: You told us in your
 19 statement that you went to the koppie to check on any
 20 progress. Do you still say that, or do you withdraw that
 21 statement?
 22 MR PHATSHA: Where workers gather I have
 23 to go.
 24 CHAIRPERSON: Ja, does that mean that you
 25 now say that you didn't go to check on progress when you

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1 went there on the evening of the 12th?
 2 MR PHATSHA: Checking, I had to go and
 3 check.
 4 CHAIRPERSON: To check what?
 5 MR HANABE: I'm asking him to repeat the
 6 answer.
 7 MR PHATSHA: I went to inquire as to
 8 whether the employer had arrived then with an answer.
 9 CHAIRPERSON: Is that what you asked on
 10 the 12th of August when you went there?
 11 MR PHATSHA: I did ask, but the person
 12 from whom I was asking did not answer me.
 13 CHAIRPERSON: Now this was Sunday the
 14 12th. Did you expect the employer to come to the koppie on
 15 the 12th with an answer?
 16 MR PHATSHA: That is so.
 17 CHAIRPERSON: Now you see, on the 12th
 18 there was a march to the NUM office. According to the
 19 evidence, attempts were made to enter the NUM office
 20 because the windows were damages.
 21 [10:42] On the same day, according to what we've been
 22 told, there was an engagement – if that's the correct word
 23 – with security guards who were working for Lonmin; two of
 24 them were killed. Now were you told nothing about that
 25 when you went to the koppie on the evening of the 12th, that

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1 those things had happened during the day? And according to
 2 the information before us -
 3 MR PHATSHA: I never heard about such a
 4 thing.
 5 CHAIRPERSON: - a vehicle was also
 6 burned. One of the security guards was, according to what
 7 the police have said, was hacked to death and burned with a
 8 vehicle. You weren't told anything about that? In fact,
 9 according to what the police have told us, 2 to 3000
 10 protesters marched to NUM's office at about 10:30 that
 11 Sunday morning. They were stopped by the mine security.
 12 Mr Interpreter, sorry, I'm reading from exhibit L, slide
 13 25, so if that could be shown to him it will be much easier
 14 for you.
 15 MR HANABE: I got it, Commissioner.
 16 CHAIRPERSON: Right, so what we were told
 17 is that 2000 to 3000 protesters marched to NUM's office at
 18 about 10:30 on Sunday, the 12th, and they were stopped by
 19 the mine security. The mine security shot rubber bullets,
 20 but two guards were isolated, hacked to death and set
 21 alight, and two security vehicles were torched and two
 22 shotguns with ammunition were taken. None of those things
 23 were told to you, that you were told nothing. Is that what
 24 you're saying?
 25 MR PHATSHA: I heard. I heard.

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1 CHAIRPERSON: What did you hear?
 2 MR PHATSHA: I heard that there are
 3 people who got injured.
 4 CHAIRPERSON: Did you hear that on the
 5 evening of the 12th of August when you went to the koppie?
 6 MR PHATSHA: I heard that on my way. I
 7 had not yet arrived on the koppie.
 8 CHAIRPERSON: From whom did you hear it?
 9 MR PHATSHA: I cannot say so-and-so said
 10 this, but it was said by the people who were walking on the
 11 road.
 12 CHAIRPERSON: And when you went to the
 13 koppie, did you then ask the people there about what you'd
 14 been told, whether anyone could give you any further
 15 information?
 16 MR PHATSHA: I never had any question.
 17 CHAIRPERSON: Weren't you curious to know
 18 who'd been injured?
 19 MR PHATSHA: Seeing and hearing are
 20 different things.
 21 CHAIRPERSON: That doesn't answer the
 22 question. The question was, weren't you curious to hear
 23 who had been injured?
 24 MR PHATSHA: Because I was not feeling
 25 well, I didn't want to talk to anyone.

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1 CHAIRPERSON: Sir, if you weren't feeling
 2 well, you didn't want to talk to anybody, why did you then
 3 go to the koppie?
 4 MR PHATSHA: It was just for me to hear
 5 with my ears, though there's nothing I was going to do
 6 about that.
 7 CHAIRPERSON: What did you hear with your
 8 ears when you got there?
 9 MR PHATSHA: I heard that there are
 10 people who got injured.
 11 CHAIRPERSON: Anything else?
 12 MR PHATSHA: No, nothing.
 13 CHAIRPERSON: Mr Mojapelo, I'm sorry I
 14 intervened in your cross-examination. Perhaps you'd wish
 15 to continue.
 16 MR MOJAPELO: Thank you. This person
 17 that you heard talking to you, did he tell you that – I
 18 mean this person who told you about the two security guards
 19 that were killed that day on the 12th -
 20 MR PHATSHA: I heard.
 21 MR MOJAPELO: Okay, and did he also tell
 22 you that you must now start protecting yourself against
 23 NUM?
 24 MR PHATSHA: He never said that.
 25 MR MOJAPELO: Did he also tell you that

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1 there is a traditional doctor on the mountain?
 2 MR PHATSHA: No, I was never told about
 3 that.
 4 MR MOJAPELO: Did he tell you who were
 5 the leaders on the mountain?
 6 MR PHATSHA: I was never told anything
 7 about that.
 8 MR MOJAPELO: Okay, did he tell you that
 9 whatever happens or is said on the mountain is not going to
 10 be repeated elsewhere?
 11 MR PHATSHA: I never heard that.
 12 MR MOJAPELO: Is there any reason why
 13 today you don't want to tell us what happened on the
 14 mountain on the 12th?
 15 MR PHATSHA: Can you repeat?
 16 MR MOJAPELO: Is there any special reason
 17 why you don't want to tell us what happened on the mountain
 18 on the 12th?
 19 MR PHATSHA: There is no reason.
 20 MR MOJAPELO: No-one has said to you or
 21 to the people on the mountain that whatever happens on the
 22 mountain should not be repeated elsewhere?
 23 MR PHATSHA: Never heard about that.
 24 MR MOJAPELO: Okay, why is it difficult
 25 for you to just give us one name of one of the 20 people

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1 that you found on the mountain on the 12th?
 2 MR PHATSHA: Because I don't know
 3 everyone, all the people who were there.
 4 MR MOJAPELO: I'm not asking for the
 5 names of all the people, just one of them.
 6 MR PHATSHA: I don't know the people who
 7 were there. We had gathered there and then we had mixed.
 8 MR MOJAPELO: Who were the leaders on the
 9 mountain on the 12th?
 10 MR PHATSHA: I don't know the names of
 11 the leaders.
 12 MR MOJAPELO: Mr Phatsha, are you going
 13 to help us by telling us anything that you know about what
 14 happened on the mountain on the 12th?
 15 MR PHATSHA: I cannot assist you in
 16 something that I do not know.
 17 COMMISSIONER HEMRAJ: Mr Phatsha, if you
 18 were shown photographs of some of the people, would you be
 19 able to identify those persons who were the leaders on the
 20 mountain?
 21 MR PHATSHA: I cannot do that in that
 22 fashion.
 23 MR MOJAPELO: Okay, let's go to the next
 24 day, the 13th of August. What time did you arrive at the
 25 mountain on the 13th of August?

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1 MR PHATSHA: I had never arrived at the
 2 mountain.
 3 MR MOJAPELO: Okay, before we go to the
 4 13th of August, you said you arrived on the 12th after
 5 sunset. Do you know whether there were people sleeping on
 6 the mountain?
 7 MR PHATSHA: I don't know the people who
 8 were sleeping on the mountain because on our arrival they
 9 would [he says [African language] meaning there would be
 10 many people.]
 11 MR MOJAPELO: Yesterday there was a
 12 picture shown to you of naked people washing in the open
 13 veld, and your comment was that if somebody has not slept
 14 at home, he will wash themselves out in the veld. Do you
 15 remember that?
 16 MR PHATSHA: I remember that.
 17 MR MOJAPELO: Are these people who were
 18 washing themselves there, the people who were sleeping on
 19 the mountain?
 20 MR PHATSHA: The people who bath there, I
 21 don't know whether they had slept there or not.
 22 MR MOJAPELO: Are these the people that
 23 you found when you went to the mountain after sunset on the
 24 12th?
 25 MR HANABE: I missed the first part of

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1 his answer. Can I ask him to repeat, Commissioner?
 2 MR PHATSHA: Maybe the people who were
 3 bathing there are the people who had slept there, because I
 4 just arrived and immediately left.
 5 MR MOJAPELO: Okay, let's go to the 13th.
 6 What time did you arrive at the mountain on the 13th?
 7 MR PHATSHA: I turned on my way there. I
 8 turned back.
 9 MR MOJAPELO: What time was it when you
 10 turned back?
 11 MR PHATSHA: I never looked as to what
 12 time it was.
 13 MR MOJAPELO: Was it in the afternoon or
 14 was it in the morning?
 15 MR PHATSHA: It was in the afternoon.
 16 MR MOJAPELO: Did you hear that some of
 17 your fellow strikers went to K3 Shaft that day?
 18 MR PHATSHA: I heard.
 19 MR MOJAPELO: Okay, and did you hear that
 20 on their way back from the shaft there was a commotion with
 21 the police where two police officers were killed?
 22 MR PHATSHA: I never heard.
 23 MR MOJAPELO: You were never told that
 24 two police officers died on the 13th?
 25 MR PHATSHA: No.

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1 MR MOJAPPELO: This person that told you
 2 that the strikers have gone to K3 Shaft, are you going to
 3 tell us his name?
 4 MR PHATSHA: No.
 5 CHAIRPERSON: On this negative note, can
 6 we take the tea adjournment?
 7 MR MOJAPPELO: Yes.
 8 CHAIRPERSON: We'll take the tea
 9 adjournment at this stage.
 10 [COMMISSION ADJOURNS COMMISSION RESUMES]
 11 CHAIRPERSON: The Commission resumes.
 12 Before we continue with the evidence of the witness, I want
 13 to make some remarks about the present situation with
 14 conditions under which we're operating at the moment. We
 15 have, as you'll all be aware, experienced water and
 16 electricity interruptions here at the Civic Centre and
 17 these have resulted in our having temporarily to postpone
 18 the Commission's proceedings. The secretariat's office has
 19 been in constant communication with the Rustenburg Local
 20 Municipality to get these issues resolved. We're advised
 21 that a severe explosion was experienced on Tuesday, 20th
 22 February at 33 000 volts switchgear, housed at the nearby
 23 municipality electrical substation, and that two cables
 24 were burned in the process. As a consequence, the
 25 municipality is operating with an interim device that

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1 functions at very high risk. Mr Interpreter, I'll give you
 2 this document when I've finished reading it.
 3 MR MAHLANGU: Thank you.
 4 CHAIRPERSON: As a direct consequence of
 5 this explosion, sufficient water is not being pumped into
 6 the reservoirs due to the unavailability of electricity,
 7 and this has caused a less than usual supply of water to
 8 the municipal water supply infrastructure. The
 9 municipality has, however, agreed to supply us with water
 10 tanks in an attempt to address the water problems in the
 11 Civic Centre, while it has the opportunity to resolve the
 12 problems linked to the water and electricity supply. In
 13 addition, they have promised to provide us with mobile
 14 toilets. Whether these measures will sufficiently address
 15 the health problems which will inevitably follow from our
 16 having to continue to function in circumstances where the
 17 toilets are not working, is a matter which is not necessary
 18 for us to form an opinion on at the moment. What we're
 19 going to do, is we're going to sit until lunchtime. We
 20 will then adjourn until Monday morning at 10 o'clock. By
 21 that time we will have clarity as to whether the problem
 22 has been solved, or is capable of being solved in a
 23 recently short period. We will then be in a better
 24 position to decide on what will be done from Monday
 25 onwards. It may be that we will have to postpone the

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1 hearing on Monday. It may be we may have to proceed to
 2 another venue outside Rustenburg, but these are all matter
 3 upon which we can't make a decision at this stage because
 4 the full facts are not yet available to us. Mr
 5 Interpreter, the first part of what I said is on that
 6 document. The rest of it you'll have to remember what I
 7 said.
 8 MR MAHLANGU: Thank you, Chair.
 9 CHAIRPERSON: You're still under oath, Mr
 10 Phatsha.
 11 SIPETE PHATSHA (CONTD.): Yes.
 12 CHAIRPERSON: Mr Mojapelo were
 13 questioning him, I think about what happened on the 13th.
 14 I'm not sure whether you're still busy with the 13th or have
 15 gone on to the 14th yet.
 16 MR MOJAPPELO: Yes, we're still busy with
 17 the 13th.
 18 CHAIRPERSON: Alright, please proceed.
 19 CROSS-EXAMINATION BY MR MOJAPPELO (CONTD.):
 20 The two police officers who were killed on the 13th, when
 21 did you get to know about it?
 22 MR PHATSHA: Just repeat the question.
 23 MR MOJAPPELO: The two police officers who
 24 were killed on the 13th, when did you get to know about it?
 25 MR PHATSHA: What time was that?

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1 MR MOJAPPELO: Did you or did you not hear
 2 that two police officers were killed on the 13th?
 3 MR PHATSHA: I hear that.
 4 MR MOJAPPELO: Yes, what I want to know is
 5 when did you hear about it?
 6 MR PHATSHA: Just repeat again.
 7 MR MOJAPPELO: When did you get to hear
 8 about the killing of the police officers on the 13th for the
 9 first time?
 10 MR PHATSHA: Where did they die?
 11 MR MOJAPPELO: Do you know anywhere else
 12 where the police officers were killed on the 13th?
 13 MR PHATSHA: No, I don't know of any
 14 place.
 15 MR MOJAPPELO: Okay, at Lonmin area, at
 16 Marikana area on the 13th two police officers were killed.
 17 Do you know anything about it?
 18 MR PHATSHA: No, I don't know.
 19 MR MOJAPPELO: When did you first hear
 20 about it?
 21 MR PHATSHA: I wouldn't say when I heard
 22 about it because I don't know about it.
 23 CHAIRPERSON: You never heard about it?
 24 MR PHATSHA: Sharing about something that
 25 one does not know does not put a person to know that thing.

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1 CHAIRPERSON: What counsel is asking you
2 is did you hear about it at some stage? What's the answer
3 to that? Did you hear about it at some stage after the 13th
4 that two policemen had been killed?
5 MR PHATSHA: I heard about the injuries,
6 not the death.
7 CHAIRPERSON: Alright, and when did you
8 hear about those injuries?
9 MR PHATSHA: I heard it late on the 13th.
10 CHAIRPERSON: Where were you when you
11 heard it?
12 MR PHATSHA: I was in the shack.
13 CHAIRPERSON: Who told you?
14 MR PHATSHA: I heard people talking about
15 it in the street.
16 CHAIRPERSON: Yes, Mr Mojapelo.
17 MR MOJAPELO: Mr Phatsha, I'm telling you
18 on the 13th of August 2012 two police officers were killed
19 in the Lonmin/Marikana area. Are you hearing that for the
20 first time from me today?
21 MR PHATSHA: No, I heard it late.
22 MR MOJAPELO: Late when?
23 MR PHATSHA: I did not look at the time.
24 MR MOJAPELO: Which day was it?
25 MR PHATSHA: You're asking the same

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1 question that I told you about.
2 MR MOJAPELO: You said you heard late. I
3 want to know what was the day.
4 CHAIRPERSON: No, I understood him to say
5 he heard late on the 13th, unless I misheard. I thought he
6 said he heard –
7 MR PHATSHA: I said it, Chairperson.
8 He's repeating the same thing that I've said already.
9 MR MOJAPELO: Okay, I'm sorry. I thought
10 he was talking about the injuries. Do you know that these
11 police officers were killed by the strikers?
12 MR PHATSHA: I had no knowledge of that
13 because I was not at that place.
14 MR MOJAPELO: Okay, the person that told
15 you about the death of these two police officers, who did
16 he say killed the police officers?
17 MR PHATSHA: No, it wasn't somebody
18 telling me; it was somebody going past in the street.
19 MR MOJAPELO: Okay, and on the 14th, what
20 time did you arrive at the mountain?
21 MR PHATSHA: I don't remember so well
22 what time it was.
23 MR MOJAPELO: Did you find police
24 officers there at the mountain?
25 MR PHATSHA: There were policemen, yes.

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1 MR MOJAPELO: Were you armed on the 14th?
2 MR PHATSHA: I had a stick.
3 MR MOJAPELO: You didn't have your
4 "incula?"
5 MR PHATSHA: No.
6 MR MOJAPELO: And how long did you stay
7 on the mountain on the 14th?
8 MR PHATSHA: It was quite some time until
9 I left, but it was quite some time. I don't know how long.
10 MR MOJAPELO: Did you see the interaction
11 between the strikers and the police?
12 MR PHATSHA: I did not observe anything
13 that could have led to any sort of violence.
14 MR MOJAPELO: Okay, I'm not talking about
15 violence. On the 14th there were police officers talking to
16 –
17 MR PHATSHA: Yes, there were policemen.
18 MR MOJAPELO: Yes, those police officers
19 were talking to the leaders of the strike, or some of the
20 members of the strikers. Did you observe that?
21 MR PHATSHA: That I did not observe.
22 MR MOJAPELO: Where were you seated at
23 the mountain?
24 MR PHATSHA: I was right in the middle,
25 towards the back, in the middle of the many people.

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1 MR MOJAPELO: Can I refer you to L198.
2 MR PHATSHA: I can see it.
3 MR MOJAPELO: Yes, the one before, L197.
4 Do you see the –
5 CHAIRPERSON: That's a photograph taken
6 on the 16th. I thought we were talking about the 14th?
7 MR MOJAPELO: Yes, it's the photograph of
8 the 16th, but I just want him to point his position on the
9 mountain.
10 MR MAHLANGU: Am I right, Mr Chairperson,
11 on slide 197?
12 MR MOJAPELO: Okay, in fact the right
13 photo of the 14th is L89.
14 CHAIRPERSON: Perhaps he could point out
15 on 89, slide 89, more or less where he was.
16 MR MOJAPELO: Are you able to show us on
17 that photo where were you seated on the 14th on the
18 mountain?
19 MR MAHLANGU: You mean on 89?
20 MR MOJAPELO: L89.
21 MR PHATSHA: This is a dark photo. I'm
22 not very clear. I don't see very clear.
23 MR MOJAPELO: Okay, on this photo are you
24 able to see the village, Nkaneng?
25 MR PHATSHA: Yes, I'm looking at it.

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1 MR MOJAPPELO: Are you able to see three
2 kraals there?

3 MR PHATSHA: Yes, I see that.

4 MR MOJAPPELO: Okay, are you also able to
5 see a group of people next to what appears to be a big
6 rock?

7 MR PHATSHA: I see that, yes.

8 MR MOJAPPELO: That is the koppie where
9 the strikers were assembled on the 14th. What I want to
10 know is, where were you seated there where the strikers are
11 portrayed on the photo?

12 MR PHATSHA: I was in the middle.

13 MR MOJAPPELO: You were not able to see
14 the cars of the police, the hippos of the police?

15 MR PHATSHA: They were visible, yes.

16 MR MOJAPPELO: Okay, if you go back to
17 L87, this is the picture that shows naked men. Where were
18 you in relation to these naked men?

19 MR PHATSHA: On this slide?

20 MR MOJAPPELO: Yes.

21 MR PHATSHA: I don't remember exactly
22 where I was, because there were many of us.

23 MR MOJAPPELO: Do you remember seeing
24 these naked men on the 14th on the mountain?

25 MR PHATSHA: I saw them, yes.

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1 MR MOJAPPELO: Can you assist the
2 Commission, what were they doing?

3 [11:55] MR PHATSHA: They were washing.

4 MR MOJAPPELO: Okay, and do you know why
5 were they washing outside?

6 MR PHATSHA: I have no idea, Sir, but
7 people were sleeping over there.

8 CHAIRPERSON: This was about 20 past 4 in
9 the afternoon.

10 MR PHATSHA: Any person, Mr Chairperson,
11 knows what time he washes. Anybody decides he wash at his
12 own time.

13 MR MOJAPPELO: Are you saying it's normal
14 to wash –

15 CHAIRPERSON: No, he's not saying that.
16 He just says the people can decide any time they like they
17 want to wash, and apparently this group of people decided
18 at 20 past 4 in the afternoon – possibly they had been
19 sleeping overnight there and so what he's saying, it's
20 their right.

21 MR PHATSHA: I agree with the
22 Chairperson.

23 MR MOJAPPELO: Is it normal, according to
24 your experience, for people to wash in a group in front of
25 a large number of a crowd like that?

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1 MR PHATSHA: That I would not be able to
2 know.

3 CHAIRPERSON: Does that mean it's not
4 normal?

5 MR PHATSHA: What I'm saying is, I would
6 not know what the people's habits are. If a person decides
7 to wash in this manner, I wouldn't know.

8 MR MOJAPPELO: Okay, on the 14th while you
9 were still at the moment, were you told that there was a
10 dead man next to the mountain?

11 MR PHATSHA: No, I did not say so.

12 MR MOJAPPELO: I'm not saying you said it.
13 I'm just saying, did you have knowledge that there was a
14 dead man next to the mountain on the 14th?

15 MR PHATSHA: I did not hear that.

16 MR MOJAPPELO: Before today, have you ever
17 heard of a dead man next to the koppie on the 14th?

18 MR PHATSHA: After some time, yes.

19 MR MOJAPPELO: Were you one of those men
20 there that was washing naked in public?

21 MR PHATSHA: I wasn't there.

22 MR MOJAPPELO: Okay, let's go to the 15th.

23 COMMISSIONER HEMRAJ: Before that, Mr
24 Phatsha, were you one of the persons who were standing
25 around those naked men, perhaps watching what was

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1 happening?

2 MR PHATSHA: Yes, I was amongst those
3 men.

4 MR MOJAPPELO: Okay, on the –

5 CHAIRPERSON: Before you move to the 15th,
6 I'd like to ask a question of the 14th. According to the
7 evidential material before us, we've been told that the
8 police asked the representatives of the strikers to allow
9 investigating officers and crime scene personnel access to
10 the scene where a body was found near the koppie, and the
11 protesters gave feedback that police – I'm reading from
12 slide 99 – the protesters gave feedback that the police
13 could attend the crime scene and that they would not
14 interfere with the process, but they further stated they
15 did not know anything about the body or the circumstances
16 of the death. Did you know that the police had asked the
17 representatives of the strikers that investigating officers
18 be allowed access to the scene where the body was found?

19 MR PHATSHA: I wasn't there at the time.

20 MR MOJAPPELO: Since you say you were
21 observing these people, these naked men washing, I want to
22 show you a video clip that was taken by the police on that
23 day. That is L90, if they can play it. Can you see it
24 from where you are?

25 MR PHATSHA: I can see it.

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1 [VIDEO RECORDING PLAYED]
 2 MR MOJAPPELO: Can you see that there's a
 3 man there sprinkling water, spraying something over these
 4 naked men?
 5 MR PHATSHA: I'm looking at him.
 6 MR MOJAPPELO: I think the operator can
 7 stop it now. Do you call that washing?
 8 MR MPOFU: Sorry, Chairperson, this
 9 questioning, I think it's proceeding on two – I just want
 10 to check if the premise is that the picture on 87, is it of
 11 the same people as in 90, which I have a problem with, if
 12 it might be established, and secondly whether it is
 13 suggested the people in 90 are naked, or does it appear the
 14 same thing –
 15 CHAIRPERSON: They don't appear naked to
 16 me, and it's not self-evident that they are the people who
 17 were naked, visible on 87. So I think Mr Mpofo is correct.
 18 So I think you must reformulate the question in a way which
 19 avoids that objection.
 20 MR MOJAPPELO: Okay, the video that we've
 21 just observed there, how far were you from those people?
 22 MR PHATSHA: Quite a distance from them.
 23 MR MOJAPPELO: Can I refer you back to
 24 L87? You see those people who appear naked there at L87?
 25 MR PHATSHA: Yes.

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1 MR MOJAPPELO: Yes, how far were you from
 2 those people?
 3 MR PHATSHA: I am quite a distance away
 4 from them. [He indicates that's in the region of 87, where
 5 the number 87 is.]
 6 MR MOJAPPELO: Were these people in 87 the
 7 same as those ones in 90?
 8 MR PHATSHA: I would not know that.
 9 MR MOJAPPELO: If you look closely at 87,
 10 they are naked, and the video that we just observed at 90,
 11 they are in the process of wearing their clothes, and if
 12 you observe on that picture on 90, there are still some
 13 naked people. Can you see them?
 14 MR PHATSHA: I don't see naked people on
 15 slide 90.
 16 MR MOJAPPELO: Look at the screen, the
 17 operator has enlarged it. Can you see the screen?
 18 MR PHATSHA: I'm looking at it, yes.
 19 MR MOJAPPELO: Do you see naked men there?
 20 MR PHATSHA: I can see them.
 21 MR MOJAPPELO: What these people were
 22 doing that we have just observed on the video, being
 23 sprinkled by something; my question is, is that normal
 24 washing?
 25 MR PHATSHA: That I would not know.

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1 MR MOJAPPELO: Okay, I'm asking this
 2 question now for the second time. Were you told, or did
 3 you know that there was a sangoma on the mountain?
 4 MR PHATSHA: I did not see any sangoma on
 5 the mountain.
 6 MR MOJAPPELO: Do you know the person that
 7 we've just seen on the video sprinkling some liquid on the
 8 people, do you know that person?
 9 MR PHATSHA: I don't know that person.
 10 MR MOJAPPELO: Is that person a rock
 11 driller?
 12 MR MAHLANGU: A what?
 13 MR MOJAPPELO: Is that person who was
 14 sprinkling water on the people a rock driller?
 15 MR PHATSHA: Because there were so many
 16 of us there mixed up from different shafts, I wouldn't know
 17 what he is doing.
 18 COMMISSIONER HEMRAJ: Mr Phatsha, if you
 19 look at slide L86, is it easier for you to show us where
 20 you might be in that crowd of people?
 21 MR MAHLANGU: The slide on the –
 22 COMMISSIONER HEMRAJ: No, L86, the slide
 23 before that.
 24 MR PHATSHA: I was far away from them.
 25 COMMISSIONER HEMRAJ: But I mean you're

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1 unable to show us on this slide where you might have been?
 2 MR PHATSHA: I could estimate, but that
 3 would not be a sure thing.
 4 COMMISSIONER HEMRAJ: Are you able to
 5 show us on the slide, Sir, perhaps where you might have
 6 been?
 7 MR PHATSHA: As I look at the picture, I
 8 was about in the region of the corner there.
 9 COMMISSIONER HEMRAJ: Which corner?
 10 MR PHATSHA: The right-hand side.
 11 COMMISSIONER HEMRAJ: The right-hand
 12 bottom corner?
 13 MR PHATSHA: The top corner on the right
 14 side.
 15 COMMISSIONER HEMRAJ: Thank you.
 16 CHAIRPERSON: Just a question, before Mr
 17 Mojapelo continues, have you ever seen people being washed
 18 before by standing naked in front of somebody who just
 19 sprinkles them with drops of water? Is that a form of
 20 washing that you've ever seen before?
 21 MR PHATSHA: I've never observed it.
 22 CHAIRPERSON: Why do you think it's
 23 washing? It doesn't look like washing, does it?
 24 MR MPOFU: Chairperson, I think we're
 25 getting exactly into the same situation now. We are

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1 talking about the alleged washing, which is in the one
 2 slide, and the sprinkling, which is in what Mr Mojapelo
 3 showed, which we've established are two different things.
 4 CHAIRPERSON: The previous scene also
 5 involved merely sprinkling and not proper ablution, as one
 6 would normally describe it, but anyway, let's see what
 7 answer he gives.
 8 MR PHATSHA: I have been asked the
 9 question before and I responded to about what, people
 10 washing.
 11 COMMISSIONER HEMRAJ: Why, Mr Phatsha,
 12 were you standing there, watching these people? Why were
 13 you standing there, watching these people?
 14 MR PHATSHA: I was seated.
 15 COMMISSIONER HEMRAJ: Right, then why
 16 were you seated there, watching these people?
 17 MR PHATSHA: If men are washing, there is
 18 nothing wrong in other men just staring there and looking
 19 at them washing.
 20 MR MOJAPELO: Mr Phatsha –
 21 MR PHATSHA: Yes, Sir.
 22 MR MOJAPELO: Do you know any of those
 23 men that were washing, according to you?
 24 MR PHATSHA: No, I don't know anyone.
 25 MR MOJAPELO: Did you ask anyone of those

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1 men why were they washing in public?
 2 MR PHATSHA: I heard nobody asking that
 3 question.
 4 MR MOJAPELO: Mr Phatsha, is it possible
 5 that the reason why you didn't ask is because you know
 6 exactly what those people were doing?
 7 MR PHATSHA: I have no knowledge.
 8 MR MOJAPELO: And is it possible that you
 9 were one of those naked men?
 10 MR PHATSHA: Who did what, Sir?
 11 MR MOJAPELO: Who was naked there.
 12 MR PHATSHA: No, never at any stage was I
 13 naked.
 14 [12:15] MR MOJAPELO: Could you remember the
 15 colour of the clothing that you had on that day?
 16 MR PHATSHA: What I know is that I was
 17 wearing a black pants and a T-shirt with a long sleeve and
 18 that has got stripes.
 19 MR MOJAPELO: What was the colour of your
 20 T-shirt?
 21 MR PHATSHA: It looks black, but not very
 22 black, and then it has got stripes [like he indicates on
 23 the chest.]
 24 MR MOJAPELO: Is it the same shirt that
 25 you were wearing on the 16th when you were injured?

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1 MR PHATSHA: Yes.
 2 MR MOJAPELO: Okay, let's go to the 15th
 3 then. What time did you arrive at the mountain?
 4 MR PHATSHA: I'm not very certain about
 5 the time of my arrival at the mountain on the 15th.
 6 MR MOJAPELO: Okay, but it says in your
 7 statement that you spent the day at the koppie.
 8 MR PHATSHA: It's the arrival time that
 9 I'm not sure of.
 10 MR MOJAPELO: Was it in the morning or in
 11 the afternoon?
 12 MR PHATSHA: I suspect it must have been
 13 in the afternoon.
 14 MR MOJAPELO: Were you armed that day?
 15 MR PHATSHA: I had my bush knife, panga.
 16 MR MOJAPELO: The previous day, on the
 17 14th, you didn't have a bush knife when you came to the
 18 mountain. Is that correct?
 19 MR PHATSHA: I don't understand you, Sir.
 20 MR MOJAPELO: I'm saying the previous day
 21 on the 14th where we watched this, we were looking at these
 22 pictures of naked men, you did not have the bush knife when
 23 you went to the mountain?
 24 MR PHATSHA: There's a difference in this
 25 matter. This is because I had my bush knife. From the

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1 time that I carried my bush knife, there was no other way
 2 where I said I would not carry it.
 3 MR MOJAPELO: Okay, I want you to
 4 understand this question correctly. On the 14th, let's go
 5 back, on the 14th when you went to the mountain, did you
 6 carry a bush knife?
 7 MR PHATSHA: On the 14th, I'm not very
 8 sure of what one carries, whether it was a stick or the
 9 bush knife.
 10 MR MOJAPELO: Let's go back to the 15th.
 11 On the 15th, are you sure that you were carrying a bush
 12 knife?
 13 MR PHATSHA: The 15th, yes I had it.
 14 MR MOJAPELO: And what about the
 15 "incula?"
 16 MR PHATSHA: The 15th I had the bush
 17 knife. The "incula" I had on the 16th.
 18 MR MOJAPELO: Okay, on the 14th – I'm
 19 going back now, I don't want to confuse you. Do you agree
 20 with me that on the 14th you didn't have a "incula" in your
 21 hands when you went to the mountain?
 22 MR MAHLANGU: The "incula," he didn't
 23 have it?
 24 MR MOJAPELO: Yes, in his hand when he
 25 went to the mountain.

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1 MR PHATSHA: I did not have it.
 2 MR MOJAPELO: And on the 15th when you
 3 went to the mountain, you didn't have a "incula?"
 4 MR PHATSHA: Yes.
 5 MR MOJAPELO: Let's go back again to the
 6 14th. I don't want to confuse you. When you arrived at the
 7 mountain on the 14th there was the presence of the police.
 8 We've already passed that.
 9 MR PHATSHA: Yes.
 10 MR MOJAPELO: On the 15th again when you
 11 went to the mountain there were police there at the
 12 mountain?
 13 MR PHATSHA: Yes.
 14 MR MOJAPELO: And then when you go to the
 15 mountain the third time, on the 16th, now you decide to
 16 carry a sharpened weapon, the "incula."
 17 MR PHATSHA: Yes.
 18 MR MOJAPELO: What was the purpose of
 19 carrying this "incula?"
 20 MR PHATSHA: Because we all had sticks,
 21 all of us were carrying sticks.
 22 MR MOJAPELO: You heard my question
 23 correctly. I'm not talking about sticks; I'm talking about
 24 the sharpened iron.
 25 MR PHATSHA: Anybody, one carries that

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1 which he has, that which he possesses, which he can use in
 2 case there's a need for it, there's some trouble.
 3 MR MOJAPELO: Are you saying that on the
 4 16th there was going to be a need to use the "incula?"
 5 MR PHATSHA: No, I'm not saying that.
 6 MR MOJAPELO: Okay, I'm going back to my
 7 original question. What was the purpose of carrying a
 8 "incula" to the mountain?
 9 MR PHATSHA: This is because all the men
 10 were there at the place where we had our kieries.
 11 MR MOJAPELO: Are you telling this
 12 Commission that the reason why you carried a sharpened
 13 weapon was because other people were carrying it?
 14 MR PHATSHA: That is correct.
 15 MR MOJAPELO: Is there any other reason
 16 for carrying that sharpened weapon?
 17 MR PHATSHA: There's none.
 18 MR MOJAPELO: Will I be quoting you
 19 correct if I say the only reason why Mr Phatsha on the 16th
 20 went to the mountain with a "incula," a sharpened iron, was
 21 because other people were carrying their weapons?
 22 MR PHATSHA: It is so.
 23 CHAIRPERSON: If I may – did you go to
 24 the mountain on your own?
 25 MR PHATSHA: I was walking alone as such,

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1 Mr Chairperson, but there were other people walking along
 2 in the same direction.
 3 CHAIRPERSON: When did you realise that
 4 other people were taking their "inculas?"
 5 MR PHATSHA: From the time they went out
 6 of their houses they had their weapons.
 7 CHAIRPERSON: After you left your house?
 8 MR PHATSHA: I came out together with
 9 others, although there were others who were ahead of me.
 10 MR MOJAPELO: So when you came out of
 11 your home, you came out carrying a "incula," on the 16th?
 12 MR PHATSHA: Yes, I had it.
 13 MR MOJAPELO: And how did you know that
 14 the other people have their weapons?
 15 MR PHATSHA: I could see with my eyes.
 16 COMMISSIONER HEMRAJ: Isn't the question
 17 rather, how did you know before you left home that the
 18 others had their weapons? Isn't that the question?
 19 MR MOJAPELO: Yes.
 20 COMMISSIONER HEMRAJ: Do you want to
 21 rephrase it?
 22 MR PHATSHA: I went out of my house to go
 23 and urinate outside. I then realised people were carrying
 24 their weapons. I went in and then also picked up mine.
 25 MR MOJAPELO: Did I understand you

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1 correctly, you say everyone carried the weapon that they
 2 are able to use? Did I hear you correctly?
 3 MR PHATSHA: I don't understand you, Sir.
 4 MR MOJAPELO: You said everyone carries a
 5 weapon that they are able to use.
 6 MR PHATSHA: Anybody carrying anything
 7 that belongs to him knows what he intends doing with it.
 8 CHAIRPERSON: What did you intend doing
 9 with yours?
 10 MR PHATSHA: Nothing in particular.
 11 MR MOJAPELO: Okay, we'll go back to the
 12 16th. Let's just go back to the 15th. The leaders of the
 13 unions, that is President Zokwana and President Mathunjwa,
 14 came to address you on the mountain.
 15 MR PHATSHA: Yes, they arrived.
 16 MR MOJAPELO: And then both of the
 17 leaders asked you to go back home and to leave the koppie.
 18 MR PHATSHA: It was Mr Mathunjwa who said
 19 we should go back to our place of residence.
 20 MR MOJAPELO: Oh, that's Mr Mathunjwa?
 21 MR PHATSHA: Yes. We said to him we are
 22 waiting for the employer, we are not moving.
 23 MR MOJAPELO: Did he tell you – that is
 24 Mr Mathunjwa or Mr Zokwana, did any of them tell you to arm
 25 yourselves, to carry weapons?

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1 MR PHATSHA: No.
 2 MR MOJAPELO: You decided on your own to
 3 carry the weapons?
 4 MR PHATSHA: Yes.
 5 MR MOJAPELO: Your weapon, who were you
 6 going to use it against?
 7 MR PHATSHA: Just repeat the question
 8 there.
 9 MR MOJAPELO: These weapons, the "incula"
 10 that you had, you were able to use it, isn't it?
 11 MR PHATSHA: I was not expecting that I
 12 would use the sharp instrument which I had, unless there
 13 was something coming towards me.
 14 MR MOJAPELO: You say most of the people
 15 had their weapons. I assume that you are talking about the
 16 strikers?
 17 MR PHATSHA: Yes.
 18 MR MOJAPELO: Those weapons, I put it to
 19 you that they were going to be used against anyone who was
 20 opposing the strike. What is your comment?
 21 MR PHATSHA: I don't understand that
 22 question. Would you repeat it?
 23 MR MOJAPELO: I'm saying those weapons
 24 that the strikers had, including yourself, were going to be
 25 used against anyone who was opposing the strike.

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1 MR PHATSHA: That was not the intention,
 2 Sir.
 3 COMMISSIONER HEMRAJ: Prior to the 16th
 4 there were other members on the mountain who had, strikers
 5 on the mountain, who were armed, not so?
 6 MR MAHLANGU: The question was, there
 7 were other strikers on the mountain –
 8 COMMISSIONER HEMRAJ: Strikers on the
 9 mountain who were carrying arms, yes.
 10 MR PHATSHA: Anyone who was there had a
 11 weapon, who had a weapon. Those who were not carrying
 12 anything are those that don't own any.
 13 COMMISSIONER HEMRAJ: Would that be the
 14 reason that you carried a bush knife on the 15th as well,
 15 because others were carrying weapons?
 16 MR PHATSHA: It is so.
 17 COMMISSIONER HEMRAJ: And the 14th there
 18 were also people with weapons, but you did not carry your
 19 weapon with you?
 20 MR PHATSHA: It is so.
 21 COMMISSIONER HEMRAJ: So why did it
 22 become necessary then to carry the weapons on the 15th and
 23 the 16th?
 24 MR PHATSHA: Because the others had their
 25 weapons.

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1 MR MOJAPELO: You see, what is troubling,
 2 Mr Phatsha, is that on the 14th you came to the mountain
 3 without the sharpened iron, and there were police officers
 4 there. On the 15th you came again without the sharpened
 5 weapon; there were police officers there. On the 16th when
 6 you come, the police officers are still there, but this
 7 time you come with a sharpened weapon. Was it your
 8 intention to use that weapon against the police?
 9 [12:35] MR PHATSHA: That was not the intention.
 10 MR MOJAPELO: This sharpened iron rod,
 11 this "incula," where were you storing it before the 16th?
 12 MR PHATSHA: It seems as if we are now
 13 going right back. I am to repeat what I have already
 14 responded to.
 15 CHAIRPERSON: I didn't hear you
 16 answering. Before the 16th, where did you keep your
 17 "incula?" Where did you store it?
 18 MR PHATSHA: In the house, Mr
 19 Chairperson.
 20 MR MOJAPELO: So you this sharpened
 21 weapon in your house all along?
 22 MR PHATSHA: Where a man lives and he has
 23 to have his weapons there, because in the townships where
 24 we stay a whistle would be blown and one wouldn't know what
 25 the problem is.

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1 MR MOJAPELO: Is there a place where
 2 these weapons are sold?
 3 MR PHATSHA: I am unable to respond to
 4 that question you're asking me.
 5 MR MOJAPELO: Where did you get your
 6 "incula?"
 7 MR PHATSHA: I made it myself.
 8 MR MOJAPELO: Okay, I want us to come to
 9 the 16th now, but before I get to the 16th I just want to
 10 ask one question about the 15th. It looks like you sat the
 11 whole day on the koppie when Mathunjwa came to talk to you.
 12 MR PHATSHA: Mathunjwa did come.
 13 MR MOJAPELO: Okay, when Mathunjwa
 14 finished his speech, what did you do?
 15 MR MAHLANGU: The pronoun "you," is it
 16 used in its singular form or –
 17 MR MOJAPELO: Singular. Singular, sorry.
 18 MR PHATSHA: After he had left I also
 19 went away.
 20 MR MOJAPELO: What about the others, the
 21 other strikers?
 22 MR PHATSHA: Some remained there.
 23 MR MOJAPELO: Some remained?
 24 MR PHATSHA: Yes.
 25 MR MOJAPELO: And if you say some

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1 remained, it means some left?
 2 MR PHATSHA: I left. When I left, I left
 3 the people there.
 4 MR MOJAPELO: When you left, were you
 5 part of the group? Did he leave as a group?
 6 MR PHATSHA: Those who would feel hungry
 7 would leave, and leaving the others behind.
 8 MR MOJAPELO: Okay, let's go to the 16th
 9 now. What time did you arrive at the koppie on the 16th?
 10 MR PHATSHA: What date was that?
 11 MR MOJAPELO: On the 16th, on the day of
 12 the shooting.
 13 MR PHATSHA: The 16th at 2, I'd estimate
 14 at about 2.
 15 MR MOJAPELO: Can you identify where you
 16 were sitting on the 16th? I'll show you a picture now. If
 17 you go to L197, do you see that?
 18 MR PHATSHA: I see it, yes.
 19 MR MOJAPELO: Do you see there's a big
 20 yellow arrow pointing towards the left of that picture?
 21 MR PHATSHA: Yes, I see it.
 22 MR MOJAPELO: Where were you seated in
 23 relation to that arrow?
 24 MR PHATSHA: Looking at it, I was in the
 25 middle of the people there.

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1 MR MOJAPELO: Okay, can you mark with a
 2 pen where you were seated there?
 3 MR PHATSHA: The position is I'm not able
 4 to write.
 5 MR MOJAPELO: Okay, can you point where
 6 you were seated and the interpreter will mark that for us?
 7 MR PHATSHA: I was at about this region.
 8 MR MAHLANGU: I'm marking with an X on
 9 slide 197.
 10 CHAIRPERSON: Perhaps we could be shown
 11 on the various screens so that we see what the spot is.
 12 Thank you.
 13 MR MOJAPELO: The area that the witness
 14 is pointing appears to be where there's a small, or what
 15 appears to be a walking path between the two big rocks. Mr
 16 Wesley has gone to the technicians and the technicians will
 17 point it, Mr Wesley's assistant. Is that the same position
 18 you were when Mr Mathunjwa came?
 19 MR PHATSHA: Yes.
 20 MR MOJAPELO: You said in paragraph 8 of
 21 your statement that Mr Mathunjwa was pleading with you to
 22 leave the koppie.
 23 MR PHATSHA: Yes, he said we should go to
 24 the places of our residence.
 25 MR MOJAPELO: What was the reason?

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1 MR PHATSHA: Because he said the
 2 situation there was unusual.
 3 MR MOJAPELO: Didn't he say that there's
 4 going to be bloodshed if you don't leave the mountain?
 5 MR PHATSHA: There I'm not quite certain.
 6 I didn't hear him quite well.
 7 MR MOJAPELO: You say in your paragraph 8
 8 that he went on his knees, requesting you to leave the
 9 koppie.
 10 MR PHATSHA: That I did not see.
 11 MR MOJAPELO: Okay, you've made a
 12 statement to the Commission, and I take it that the
 13 statement was read back to you. In paragraph 8, if I have
 14 to read it all, this is what you say, "On 16 August 2012 I
 15 only returned to the koppie at about 14:00. I learned that
 16 Mr Mathunjwa had already been there." Are those facts
 17 correct so far?
 18 MR PHATSHA: Why I say I learned that Mr
 19 Mathunjwa had already been there is because I didn't see
 20 him when he came there for the first time.
 21 MR MOJAPELO: Yes. "I only witnessed his
 22 second address when he was pleading with us to leave the
 23 koppie and return to work."
 24 MR PHATSHA: Yes.
 25 MR MOJAPELO: "He went on his knees. His

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1 request was not accepted."
 2 MR PHATSHA: Yes, it was not accepted
 3 because we wanted to see the employer.
 4 MR MOJAPELO: Yes, I hear that, but what
 5 I want to know is that this, the contents of these
 6 paragraphs are correct?
 7 MR PHATSHA: That he was on his knees?
 8 MR MOJAPELO: Yes.
 9 MR PHATSHA: Pleading with us to leave
 10 the place because the situation is abnormal.
 11 MR MOJAPELO: Okay, you already answered
 12 the next question, which is why didn't you leave the
 13 mountain. I'm talking about you, Mr Phatsha, not the –
 14 MR PHATSHA: Just repeat the question
 15 again.
 16 MR MOJAPELO: Mr Mathunjwa has been on
 17 his knees, pleading with the strikers to leave the koppie,
 18 and you didn't leave the koppie, and I'm talking about Mr
 19 Phatsha, why didn't you leave the koppie?
 20 MR PHATSHA: I was waiting there to hear
 21 from the employer what he has to say about the employees'
 22 request about the money they wanted.
 23 MR MOJAPELO: Mr Mathunjwa spoke about
 24 blood that's going to be spilled on the mountain, blood
 25 that was going to be spilled if you did not leave the

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1 mountain. Did you think that your two weapons, that is the
 2 bush and the "incula," were going to protect you from the
 3 bloodshed that Mathunjwa was talking about?
 4 MR PHATSHA: What we were expecting there
 5 was that the employer would come out.
 6 CHAIRPERSON: Did you hear Mr Mathunjwa
 7 talk about blood being spilled, giving that as a reason why
 8 you should leave?
 9 MR PHATSHA: That I did not hear.
 10 CHAIRPERSON: Was he the only union
 11 representative who spoke to you on the 16th at the koppie?
 12 MR PHATSHA: He is the person that I
 13 heard speaking.
 14 CHAIRPERSON: Now in your statement,
 15 which is exhibit DDD4, which you made to someone from IPID,
 16 you said in the first paragraph the following, "On
 17 Thursday, 2012-08-16, at about 16:00 I was in a meeting
 18 where union representatives gave us feedback regarding a
 19 meeting they had with our employer. The representatives
 20 advised us to disperse." Is that what you said?
 21 MR PHATSHA: NUM did not come there.
 22 CHAIRPERSON: No, so the union
 23 representatives who you spoke about was obviously Mr
 24 Mathunjwa. This is your statement. This is what you said.
 25 You said, "The union representatives gave us feedback, it's

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1 on the 16th, regarding a meeting they had with our employer.
 2 The representatives advised us to disperse." Is that what
 3 Mr Mathunjwa said?
 4 MR PHATSHA: The person who was taking
 5 down this statement did not write exactly what I said to
 6 him.
 7 [12:55] CHAIRPERSON: I know, but you were asked
 8 by your counsel what aspects of the statement you did not
 9 agree with. This was not one of those passages. Is this
 10 what you told the person who took down the statement?
 11 MR PHATSHA: Chairperson, whilst he was
 12 taking this statement, some of us were under terrible pains
 13 as a result of the injuries that we had suffered.
 14 CHAIRPERSON: You're not answering my
 15 question. When Mr Mpofo asked you about the statement you
 16 said that there was something in the statement that wasn't
 17 correct, which you wanted corrected, and that related to
 18 the reference to your having been shot.
 19 MR MPOFU: In the leg, Mr Chairperson.
 20 CHAIRPERSON: In the leg, in the left
 21 leg, and you said that that was wrong, it should have been
 22 a reference to your left foot.
 23 MR PHATSHA: That is so, yes.
 24 CHAIRPERSON: That is the mistake that
 25 you referred to when Mr Mpofo took you through that

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1 statement that you made to the person from IPID.
 2 MR PHATSHA: Yes, it is.
 3 CHAIRPERSON: You in fact then said, when
 4 you pointed out the fact that he referred to your left leg
 5 on page 2, and it should have been the left foot, you said
 6 that for the rest you agreed with the statement.
 7 MR PHATSHA: Yes, it is so.
 8 CHAIRPERSON: Right, now so the person
 9 who spoke to you, the union representatives described in
 10 the statement who spoke to you and advised you to disperse,
 11 were you referring to Mr Mathunjwa?
 12 MR PHATSHA: Yes.
 13 CHAIRPERSON: Well, the statement goes
 14 on. "The representatives advised us to disperse because
 15 blood will be spilled all over." That means that you said
 16 in your statement that you were told to disperse because
 17 blood would be spilled all over. Is that correct?
 18 MR PHATSHA: That's it.
 19 CHAIRPERSON: Now Mr Mojapelo said when
 20 you were told by Mr Mathunjwa that you should leave because
 21 blood would be spilled all over, in other words there'd be
 22 bloodshed, why didn't you leave? Now what's your answer to
 23 that question?
 24 MR PHATSHA: The reason was we did not
 25 refuse going back to work. We would have gone back to

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1 work. We were only waiting for the employer there to bring
 2 us the reason, to bring us a reply on the request that we
 3 had made to him as workers.
 4 CHAIRPERSON: But Mr Mathunjwa had told
 5 you that what had happened when he spoke to the employer,
 6 he gave you the feedback, and then he said that you must
 7 disperse because blood would be spilled all over, and he
 8 actually went on his bent knees and pleaded with you to
 9 leave. Is that correct?
 10 MR PHATSHA: That is correct, that's what
 11 he said.
 12 CHAIRPERSON: Mr Mathunjwa's feedback was
 13 not that the employer was coming, but that the employer
 14 wasn't coming, is it not?
 15 MR PHATSHA: That I did not hear.
 16 CHAIRPERSON: What was the feedback?
 17 MR PHATSHA: Because of the problem that
 18 I have, the hearing problem, Mr Chairperson, I'm not quite
 19 sure of what the report-back was.
 20 CHAIRPERSON: I see, but what you can
 21 tell us, what you did hear was he advised you to disperse
 22 and he said there'd be bloodshed.
 23 MR PHATSHA: That I heard, yes.
 24 CHAIRPERSON: Mr Mojapelo, I think you
 25 can now ask the question you were busy with, before we take

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1 the adjournment.

2 MR MOJAPPELO: Do you think that the two

3 weapons that you were having in your hand, that is the

4 "incula" and the bush knife, were going to protect you from

5 the bloodshed that Mathunjwa was warning you about?

6 MR PHATSHA: I think I have responded to

7 that question.

8 MR MOJAPPELO: My question is, and I would

9 love to have an answer, you had two weapons in your hands.

10 Mr Mathunjwa has warned you that there's going to, blood is

11 going to be spilled if you don't leave the koppie. Did you

12 think that those two weapons were going to protect you

13 against the bloodshed that was warned by Mathunjwa?

14 MR PHATSHA: That was not the intention.

15 We did not think it was going to be so.

16 CHAIRPERSON: Was there something else

17 that might have protected you against the bloodshed?

18 MR PHATSHA: We did not think of any

19 other thing to protect us, Mr Chairman, because we did not

20 expect that to happen. We were expecting the employer to

21 come over to us.

22 MR MOJAPPELO: How were you expecting the

23 employer if Mr Mathunjwa has not told you that the employer

24 is coming?

25 MR PHATSHA: We were expecting them

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1 there. We were just waiting for him.

2 MR MOJAPPELO: But a leader of a union is

3 asking you and pleading with you on his knees to leave to

4 avoid bloodshed.

5 MR PHATSHA: It seems as if you're going

6 to repeat one and the same thing, Sir.

7 CHAIRPERSON: Sometimes you ask the

8 question to be repeated. Sometimes the questions are asked

9 and you don't answer them and they have to be repeated. Mr

10 Mojapelo, I suggest you, despite the complaint about

11 repetition, I suggest you repeat the question again and

12 let's see if we get an answer.

13 MR PHATSHA: What can he repeat, Mr

14 Chairperson? Because I've already responded to his

15 question.

16 CHAIRPERSON: Well, perhaps you'd like to

17 repeat your answer then.

18 MR MOJAPPELO: Repeat your answer, Mr

19 Phatsha.

20 MR PHATSHA: I don't understand you, Sir.

21 CHAIRPERSON: - you don't understand the

22 question, perhaps that's a good reason why counsel should

23 repeat it and endeavour to repeat it in a comprehensible

24 form.

25 MR PHATSHA: Let him repeat so that I can

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1 hear him.

2 MR MOJAPPELO: Okay, I'll put it in

3 another way. Mr Mathunjwa is a leader of a union.

4 MR PHATSHA: Yes.

5 MR MOJAPPELO: Mr Mathunjwa is on his

6 knees, pleading with the workers to leave the koppie to

7 avoid the bloodshed.

8 MR PHATSHA: Yes, he said that.

9 MR MOJAPPELO: Do you have any reason to

10 believe that the employer will come to the mountain?

11 MR PHATSHA: Yes, we are waiting for the

12 employer. We did not know when he was going to come, but

13 we were going to wait there for the employer until he

14 comes.

15 CHAIRPERSON: What would have happened if

16 Mathunjwa had been right and instead of the employer

17 coming, there was bloodshed?

18 MR PHATSHA: This we did not expect to

19 happen, Mr Chairperson. What we were expecting was the

20 employer to come there with a response to the request of

21 the employees.

22 CHAIRPERSON: Is this perhaps a suitable

23 stage for us to take the adjournment?

24 MR MOJAPPELO: Yes, Mr Chair.

25 CHAIRPERSON: As I've explained already,

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1 we will adjourn until Monday at 10 o'clock. 10 o'clock, I

2 said.

3 MR MAHLANGU: Monday?

4 CHAIRPERSON: 10 o'clock Monday.

5 MR MAHLANGU: What did I say?

6 CHAIRPERSON: By then we will know

7 whether the health hazard that I mentioned earlier, caused

8 by the fact that there's no water supply and the toilets

9 aren't working, will have been solved, and if it hasn't

10 been solved, when it is likely to be solved. We will then

11 be able to decide whether we can carry on with the sitting

12 of the Commission on Monday, and if we can't, what we will

13 have to do.

14 MR MPOFU: Sorry, Chairperson, I'm sorry,

15 self-appointed shaft steward – I just wanted to –

16 CHAIRPERSON: Shaft or shop?

17 MR MPOFU: Shaft. I wanted to say,

18 Chairperson, if it becomes clear, in the unlikely event

19 that it becomes clear by Sunday that it is not going to

20 happen, can Ms Kameshni with her customary efficiency just

21 email us, should it become clear –

22 CHAIRPERSON: Yes, well, if she knows on

23 Sunday what we will know on Monday, then I'm sure with the

24 efficiency to which you've referred, she will communicate

25 it to you.

1 MR MPOFU: Thank you, Chair.
2 CHAIRPERSON: But I'm going to be here at
3 10 o'clock on Monday, come what may. I will be here at 10
4 o'clock and I will then say on record what's going to
5 happen. If anybody else is here, that's something that we
6 will see, and we will now adjourn.
7 [COMMISSION ADJOURNED]
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