

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 254

3 JULY 2014

PAGES 31955 TO 32035



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1 [PROCEEDINGS ON 3 JULY 2014]
 2 [09:12] CHAIRPERSON: The Commission resumes.
 3 Would you please tell the witness he's still under oath?
 4 MR X: [s.u.o. through interpreter]
 5 MR MAHLANGU: Confirmed.
 6 CHAIRPERSON: Mr Budlender.
 7 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):
 8 Thank you, Chair. Good morning, Mr X.
 9 MR X: Good morning, Sir.
 10 MR BUDLENDER SC: I wanted to ask you a
 11 preliminary question. You told the Commission that you
 12 were instructed that for the muti to work you must not
 13 change your clothes.
 14 MR X: Yes, Sir.
 15 MR BUDLENDER SC: And we know that you
 16 wanted the muti to work.
 17 MR X: Yes, I want it to work.
 18 MR BUDLENDER SC: So I take it that you
 19 obeyed the instruction that you must not change your
 20 clothes?
 21 MR X: Yes, I did.
 22 MR BUDLENDER SC: Right, thank you. Now
 23 can we go to the transcript of day 248, page 31196, line 2,
 24 and you'll see what's happening there is the Chairperson is
 25 referring to the speech that Mr Noki made at the meeting

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1 with the police on the 13th of August. We had just been
 2 listening to the recording of Mr Noki speaking at that
 3 event and –
 4 MR X: Yes.
 5 MR BUDLENDER SC: I'm sorry. And the
 6 Chairperson then says, line 5 he says, line 5 it says,
 7 "Come back with the boss that hired us so he can give us
 8 the response we want from him," and then the Chairperson
 9 says to you, "Is that the passage we just heard, I take
 10 it?" and you say, "That's correct, Chair, that is so." Do
 11 you remember that?
 12 MR X: I do remember.
 13 MR BUDLENDER SC: And then Mr Mathibedi
 14 says, "Thanks, Chair. Sir, what would have happened had
 15 the police succeeded in bringing a representatives of
 16 Lonmin at the koppie to address the strikers and give a
 17 negative response about the demand of the strikers?" and
 18 your answer is, "We would have killed that white man." You
 19 remember that?
 20 MR X: I remember that.
 21 MR BUDLENDER SC: So what you say is that
 22 if the management hadn't given you what you wanted you
 23 would have killed them?
 24 MR X: We would have killed him, yes Sir,
 25 because we wanted money.

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1 MR BUDLENDER SC: Yes, that's very
 2 important information. Do you agree? It is very important
 3 information that you would have killed management if they
 4 hadn't given you the money.
 5 MR X: If he had brought something that
 6 did not satisfy us, yes.
 7 MR BUDLENDER SC: Yes, but what I'm
 8 saying to you is that it's important that anybody who wants
 9 to know about what happened, that should know that your
 10 plan was to kill the management if they didn't give you the
 11 money.
 12 MR X: If the question could be repeated?
 13 I did not regard it as being important that we should kill
 14 him.
 15 MR BUDLENDER SC: And it was unimportant
 16 – you say it was not important that you decided to kill the
 17 management if they didn't give you the money?
 18 MR X: It wasn't an important thing
 19 because we were being under the control of the muti.
 20 MR BUDLENDER SC: Mr X, let me ask you
 21 the question again, make sure that you understand what I'm
 22 saying. You say you decided that if the management didn't
 23 give you the money, you were going to kill them. Is that
 24 correct?
 25 MR X: Yes, Sir.

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1 MR BUDLENDER SC: And what I'm saying to
 2 you is this; anybody who wanted to understand what happened
 3 that week needed to know that your plan was to kill the
 4 management if they didn't give you the money.
 5 MR X: If that could be repeated again?
 6 MR BUDLENDER SC: Anybody who wanted to
 7 understand what happened that week needed to know that your
 8 plan was to kill the management if they didn't give you the
 9 money.
 10 MR X: Yes.
 11 MR BUDLENDER SC: You didn't mention this
 12 in your statement which you made in February 2013. Why is
 13 it not mentioned there?
 14 MR X: Which statement, Sir?
 15 MR BUDLENDER SC: The statement which you
 16 made to the Phokeng Police in February 2013. You didn't
 17 mention that your plan was to kill the management if they
 18 didn't give you the money. Why didn't you mention it?
 19 MR X: This is because the person who
 20 took my first statement did not question me extensively
 21 like the person who asked me questions later.
 22 MR BUDLENDER SC: The person who asked
 23 you questions later was Mr Mathibedi.
 24 MR X: Yes, Sir.
 25 MR BUDLENDER SC: Did you tell Mr

<p style="text-align: right;">Page 31959</p> <p>1 Mathibedi about this? Did you tell him that your plan was 2 to kill the management if they didn't give you the money? 3 MR X: Yes. 4 MR BUDLENDER SC: Then why is it not in 5 the statement which he took from you in March 2014? Can 6 you explain that? 7 MR X: I don't hear, you can repeat that 8 question? 9 MR BUDLENDER SC: You say you gave Mr 10 Mathibedi this important information. If that is so, why 11 is it not in the statement which Mr Mathibedi took? I'm 12 sorry – 13 MR X: I said so – 14 MR BUDLENDER SC: I'm sorry, I'm sorry, I 15 am mistaken, it is in the statement. I withdraw that. My 16 apologies. My apologies to Mr Mathibedi and the witness 17 and the Commission. 18 MR MATHIBEDI SC: It's at page 20, 19 paragraph 38. 20 MR BUDLENDER SC: My apologies. Alright, 21 let's move on. 22 CHAIRPERSON: No, no, no, page 20, 23 paragraph 38 – 24 MR BUDLENDER SC: That's a different 25 thing, yes.</p>	<p style="text-align: right;">Page 31961</p> <p>1 demand and if our demand is not met that day there was 2 going to be bloodshed." Admittedly it doesn't say whose 3 blood was going to be shed, but there is a statement along 4 those lines. 5 MR BUDLENDER SC: I'll move on, Chair. 6 Mr X, you say that on the 16th of August the committee 7 decided that the police were a stumbling block to the 8 attainment of your demand, so they must be attacked and 9 removed. Correct? 10 MR X: Yes, Sir. 11 MR BUDLENDER SC: That also is not in 12 your February 2013 statement, the one which you made at 13 Phokeng. Correct? 14 MR X: The person who was taking that 15 statement did not question me extensively like the person 16 asking me questions later. 17 MR BUDLENDER SC: It was a policeman who 18 was questioning you. You were telling him the story of 19 what happened and you never mentioned to him that your plan 20 on the 16th was to attack the police. 21 MR X: This was because of the language 22 difficulty. We did not understand each other in languages. 23 MR BUDLENDER SC: Alright, and I want to 24 put to you that the reason you give for this alleged 25 decision to attack the police makes no sense. Your demand</p>
<p style="text-align: right;">Page 31960</p> <p>1 CHAIRPERSON: - doesn't say that at all. 2 Page 20, paragraph 38 says this, "While we waited for 3 Mathunjwa to return and address us a car approached the 4 koppie and two gentlemen alighted. One of them appear to 5 be a priest. Mambush, Xolani, Bhele, Anele and Kaizer 6 approached the gentlemen, one of whom we were later told 7 they had discussions with them but we were not advised of 8 what transpired. In the presence of the bishop the 9 strikers openly displayed an assortment of dangerous 10 weapons in their possession, chanted songs that they were 11 going to kill NUM and its members. The bishop never 12 returned and either the bishop or Mathunjwa returned to 13 Lonmin management and gave feedback to the effect if the 14 strikers' demands had not been met Lonmin representatives 15 would have been violently attacked in the presence of" - 16 [microphone off, inaudible]. 17 MR BUDLENDER SC: I think my apology is 18 to be withdrawn, but I'll move on. I'll move on. It 19 speaks for itself and can be dealt with [inaudible]. 20 CHAIRPERSON: [Microphone off, inaudible] 21 that may be half of the proposition [inaudible]. Paragraph 22 37 on page 19 says, "On the 16th of August 2012, noting that 23 Mathunjwa did not give us a concrete response from Lonmin 24 management, the committee of 15 met and decided that the 25 employer had been given sufficient time to address our</p>	<p style="text-align: right;">Page 31962</p> <p>1 was that the management must come to the koppie and speak 2 to you and must agree to pay you R12 500 per month. 3 MR X: Yes. 4 MR BUDLENDER SC: And I put to you that 5 the police were not a stumbling block to the attainment of 6 that demand, for three reasons. Firstly they actually said 7 that they would talk to the management and ask them to come 8 to speak to you. Is that not correct? 9 MR X: We said he should bring the 10 management along and not speak to management. 11 MR BUDLENDER SC: Is it correct that the 12 police said to you "We will speak to the management and ask 13 them to speak to you"? 14 MR X: Yes, that's what they were saying. 15 We said the person we are interested in is the employer to 16 come to us. 17 MR BUDLENDER SC: Yes, and the police 18 said they would try to get the employer to come and speak 19 to you. Correct? 20 MR X: It is so, Sir. 21 MR BUDLENDER SC: And the police never 22 said to management don't pay them R12 500 a month. That's 23 correct? 24 MR X: No, they did not say that. 25 MR BUDLENDER SC: And the police</p>

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1 interfered with your activities only on one occasion. That
 2 was on the 13th of August when you met General Mpmembe.
 3 MR MAHLANGU: If you could repeat the
 4 question?
 5 MR BUDLENDER SC: The police interfered
 6 with your activities only on one occasions. That was on
 7 the 13th of August when you met General Mpmembe.
 8 MR X: Yes, Sir.
 9 MR BUDLENDER SC: And on that occasion
 10 they actually did what you wanted them to do; they
 11 accompanied you while you went towards the koppie with your
 12 dangerous weapons. Is that not correct?
 13 MR X: Yes, yes, Sir.
 14 MR BUDLENDER SC: So the reason you give
 15 for the decision to kill the police, the alleged decision
 16 to kill the police makes no sense because they weren't
 17 obstructing you in the attainment of your demand. Is that
 18 not correct?
 19 MR X: They shot at us. They shot at us
 20 with rubber bullets, Chairperson.
 21 MR BUDLENDER SC: On the 13th?
 22 MR X: Yes, they shot with rubber bullets
 23 on the 13th.
 24 MR BUDLENDER SC: Yes, there was a
 25 confrontation on the 13th.

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1 MR X: Yes, there was a fight that took
 2 place.
 3 MR BUDLENDER SC: Yes.
 4 CHAIRPERSON: May I ask a question at
 5 this point? Dealing with this fight, you told us that the
 6 police, that was in fact General Mpmembe was counting. You
 7 remember that?
 8 [09:32] And what you say in paragraph 19 of your first
 9 statement, page 11 – sorry, am I interrupting -
 10 MR BUDLENDER SC: [Microphone off,
 11 inaudible]
 12 CHAIRPERSON: - well, I won't persist
 13 with it. I thought it fitted in here but I'll obviously
 14 not interfere with your plan.
 15 MR BUDLENDER SC: Thank you, Chair. I
 16 just want to put it to you, Mr X, that the reason you give
 17 for this alleged decision to attack the police makes no
 18 sense and one doubts whether there ever was such a
 19 decision, particularly given that you didn't tell the
 20 police about it at Phokeng. Would you like to comment on
 21 that?
 22 MR X: This is because the person – this
 23 is because the person who was taking down that statement on
 24 the 13th from me didn't ask me questions and there was that
 25 language difficulty.

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1 MR BUDLENDER SC: Fine, let's move on to
 2 another subject.
 3 MR MATHIBEDI SC: Sorry, Chairperson.
 4 The witness said, the witness said in English he was not
 5 questioned like the one – sorry – stated that the last
 6 portion, that the questioning that was done on the 13th did
 7 not happen like which was done at a later stage. I think
 8 Mr Mahlangu missed that last portion.
 9 MR MAHLANGU: I think he spoke of the
 10 language difficulty. He said there was that language-
 11 CHAIRPERSON: The suggestion is that the
 12 way he was questioned was different from what happened
 13 later and Mr Mathibedi, I must confess I didn't hear it but
 14 Mr Mathibedi says he actually heard it in English being
 15 said by the witness, is that correct?
 16 MR MATHIBEDI SC: I was translating what
 17 he said in Xhosa.
 18 CHAIRPERSON: Oh, you were translating –
 19 MR MATHIBEDI SC: Yes.
 20 CHAIRPERSON: - into English from Xhosa.
 21 MR MAHLANGU: I didn't hear him say that
 22 but what I'm sure was the last thing he said was because of
 23 the language difficulty. May I ask that my colleague take
 24 over for a minute?
 25 MR BUDLENDER SC: For my part I accept

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1 that he has said, the witness has said on many occasions,
 2 he's given two reasons, one is the language issue and the
 3 other is he says he wasn't asked as Mr Mathibedi asked.
 4 CHAIRPERSON: Yes. Do I understand you
 5 to say that the long statement which you made in February
 6 2013, which was written out in handwriting and later typed
 7 for us, 24 pages, that that statement was taken by someone
 8 who wasn't a Xhosa speaker, there was a language problem –
 9 it was in respect of that statement that there's a language
 10 problem. Is that what you're saying?
 11 MR X: Yes, Mr Chair.
 12 MR BUDLENDER SC: I'd like to move on,
 13 Chair. I think that's a matter for argument ultimately.
 14 CHAIRPERSON: Because there was certainly
 15 a statement, another statement which he referred to where
 16 he said it was taken by someone who was a Shangaan speaker
 17 but my recollection was that it wasn't this one, it was
 18 another one. Anyway that's a matter that can perhaps be
 19 clarified in evidence later.
 20 MR BUDLENDER SC: Yes. Right, now Mr X,
 21 I want to start by showing you the two shots, pictures from
 22 the video of the 13th on which you identified yourself.
 23 Could we go to the – I've given the operators photographs
 24 of Mr X on the 13th, the ones taken from the video, we've
 25 extracted them from the video. Could we have those two,

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1 please? This is photographs of Mr X on the 13th. Could we
 2 have the first one? This is part of an exhibit already but
 3 I think we should give this its own exhibit number which
 4 will be –
 5 CHAIRPERSON: This will be AAAA31.
 6 MR BUDLENDER SC: AAA33 I'm told, Chair.
 7 AAAA, rather.
 8 CHAIRPERSON: Oh, I thought it was 31 but
 9 if Ms Pillay knows what 31 and 32 are then I'll bow to her
 10 superior knowledge.
 11 MS PILLAY: Chair, I've just reserved
 12 those two exhibit numbers for the cell phone records of Mr
 13 Mathunjwa and Mr Nzuzi –
 14 CHAIRPERSON: Oh, I see, alright. Okay,
 15 so we will make this AAA, sorry, AAAA33. Extract from –
 16 are these stills that you're showing or actual clips?
 17 MR BUDLENDER SC: Chair, this is a still
 18 extracted from the video which has been shown.
 19 CHAIRPERSON: Still extracted from, from
 20 what video?
 21 MR BUDLENDER SC: From the video HHH61.
 22 CHAIRPERSON: Video HHH61. Before you
 23 carry on can I ask Mr Mathibedi to do something for me?
 24 Would you please tell, inform the evidence leaders and us
 25 who took the statement which was the February 2013

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1 statement, whose handwriting it is and what his home
 2 language is and what languages does he speak and whether an
 3 interpreter was used.
 4 MR MATHIBEDI SC: Thanks, Chair.
 5 MR BUDLENDER SC: Right, now you see that
 6 photograph?
 7 MR X: I see it.
 8 MR BUDLENDER SC: When you gave your
 9 evidence in chief you identified the man with the pinkish
 10 blanket as you. Can you see him?
 11 MR X: Yes, I see that.
 12 MR BUDLENDER SC: That is correct, isn't
 13 it, that is the man you identified as yourself?
 14 MR X: Yes, Mr Chair.
 15 MR BUDLENDER SC: And if we look at the
 16 trousers which that man is wearing, his trousers are white.
 17 He's either got white trousers or white overalls on, do you
 18 see that?
 19 MR X: That's my work, the work overall.
 20 MR BUDLENDER SC: Yes and then if we go
 21 to the – can we go to the next photograph?
 22 MR MATHIBEDI SC: Chair, I think in
 23 fairness if Mr Budlender can point the trouser on the
 24 screen, I think that would be helpful.
 25 MR BUDLENDER SC: Has somebody got a

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1 pointer?
 2 CHAIRPERSON: You can point it but is it
 3 necessary, you can see the pink blanket and immediately
 4 below the pink blanket you see white trousers or overalls.
 5 There are, below that you see at least one boot. Maybe the
 6 witness has got colour issues, maybe he's colour blind, Mr
 7 Budlender – see how he can identify himself.
 8 MR BUDLENDER SC: Mr X, I'm now pointing
 9 to a person who is on the left hand, towards the left-hand
 10 side of the photograph, he is wearing a pinkish blanket and
 11 we see that his overalls are, or his trousers are white or
 12 light coloured.
 13 MR X: Yes, I see it.
 14 MR BUDLENDER SC: I think those are
 15 actually overalls, not trousers, is that right?
 16 MR X: Yes, Mr Chair, as you are
 17 searching, looking for me on that photo, on the 10th we had
 18 not used the muti, we were sleeping at our places,
 19 respective places. That was still the case on the 11th
 20 because on the 11th, the morning of the 11th I woke up from
 21 my place and went to the meeting.
 22 MR BUDLENDER SC: Yes.
 23 MR X: Only after I had started using the
 24 muti, I did not go to my place.
 25 MR BUDLENDER SC: Yes, you used – sorry.

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1 MR X: That is all, thank you.
 2 MR BUDLENDER SC: So you used the muti on
 3 the 11th. That photograph was, that film was taken on the
 4 13th so that's after you used the muti.
 5 MR X: Yes, Mr Chair.
 6 MR BUDLENDER SC: Then can we go to the
 7 next photograph which you also identified as yourself.
 8 CHAIRPERSON: Mr Budlender, do we make
 9 this one AAAA33.2 and the previous one 33.1?
 10 MR BUDLENDER SC: I think that would be
 11 convenient, Chair.
 12 CHAIRPERSON: So this is still an extract
 13 from what, what exhibit?
 14 MR BUDLENDER SC: This is also an extract
 15 from video material of the 13th of August.
 16 CHAIRPERSON: Yes, but what's the exhibit
 17 number?
 18 MR BUDLENDER SC: It's described as
 19 exhibit Z1, Chair.
 20 CHAIRPERSON: Thank you. A still, so
 21 exhibit AAAA33.2 is a still extracted from video exhibit
 22 Z1.
 23 MR BUDLENDER SC: Thank you, Chair. And
 24 you'll see towards the right-hand side of that photograph
 25 is the man you identified as yourself. I'm marking it with

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1 the laser.

2 CHAIRPERSON: Is that correct? That's

3 you, the person you identified as yourself?

4 MR X: I'm behind the Sotho-speaking man

5 who was wearing a torn T-shirt.

6 MR BUDLENDER SC: Can you see the man

7 that I'm pointing out?

8 MR X: Yes, that thing is pointed at me.

9 CHAIRPERSON: Just for the benefit of

10 those who are going to read the record in after years, the

11 bottom right hand corner of the photograph is a man with a

12 black jacket, it looks like an anorak maybe, with a white

13 and black striped T-shirt and behind his right shoulder is

14 the person being pointed out.

15 MR BUDLENDER SC: And the picture we can

16 see is probably a bit clearer than the one you can see,

17 that one also shows the pinkish blanket and the light or

18 whitish trousers or overall pants. Do you see that?

19 MR X: Yes, Mr Chair, but that photo was

20 taken on the 13th because on the 13th we first stood there

21 and caucused near some water pipes, namely that when we met

22 the police we should not all speak, only three people

23 should speak. We appointed Xolani and Mosotho, the one who

24 is burning there with the T-shirt, those people were to

25 speak, not all of us.

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1 CHAIRPERSON: Yes. The previous

2 photograph we saw, which is exhibit AAAA33.1, according to

3 Mr Budlender was also taken on the 13th August and one would

4 naturally expect you to be wearing the same clothes.

5 MR X: Okay, Mr Chair, I see.

6 MR BUDLENDER SC: Right, now I'd like you

7 to look at a photograph of the committee caucusing on the

8 15th. It's AAAA25. For convenience sake, well yes, AAAA25

9 yes. Now there is, the arrow shows the person you

10 identified as yourself, do you see that? Right?

11 MR X: I see.

12 MR BUDLENDER SC: That person is wearing

13 dark trousers, can you see that? Blue jeans, it's blue

14 jeans. Can you see that? We can see it clearly on the

15 small screen.

16 MR X: I see that, Mr Chair. I was

17 wearing the overalls on top of the pants. I did not change

18 the pants.

19 MR BUDLENDER SC: So where are your

20 overalls on that picture?

21 MR X: Mr Chair, if you take off the

22 overalls and put it aside, I was only wearing the trousers,

23 it was hot.

24 MR BUDLENDER SC: So you changed your

25 clothes, you took off your overalls?

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1 MR MATHIBEDI SC: Chair, that is not

2 change of –

3 MR BUDLENDER SC: It's not for Mr

4 Mathibedi to answer that, Chair – he can argue later –

5 CHAIRPERSON: Yes, Mr Budlender, I think

6 it would be fair, if you take off your overalls that you've

7 got on over – what's the answer? What's the answer? What

8 is he saying?

9 MR QGIRANA: The witness is breaking up.

10 I can see he is talking but –

11 CHAIRPERSON: Alright.

12 MR MATHIBEDI SC: Chair, Chair I think

13 with due respect, I think if I object I think that the

14 proper way of dealing with the objection, unlike you know,

15 Mr Budlender you know, coming – no, no, Chair with – no,

16 no, Chair, I think –

17 CHAIRPERSON: Give me an opportunity to

18 say something first. I was on the point of ruling on your

19 objection and upholding it, as a matter of fact, when the

20 witness started saying something and I requested that what

21 he said be interpreted. So don't fight with me. I think I

22 was actually saying to Mr Budlender that if you take your,

23 if your overalls are on over your trousers and you take

24 them off you're not changing clothes. So I was upholding

25 the objection you were making, so don't fight with me – but

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1 the witness then said something which had not yet been

2 interpreted and I asked that that happen.

3 MR MATHIBEDI SC: Chair, I'm not

4 objecting to what the Chair is saying. All I'm saying,

5 Chair, is that if I make an objection I think there's a

6 proper way of that objection to be dealt with and this is

7 not the first time. Each, there are times when I make

8 objections, I mean, when Mr Budlender looks back at me and

9 howls at me. That's the complaint, Chair. I mean if they

10 object I don't do that, Chair.

11 CHAIRPERSON: Mr Budlender, I know

12 advocates sometimes get excited in the course of cross-

13 examination but Mr Mathibedi is correct, you don't have to

14 turn around and glare at him just because he's raised an

15 objection but anyway let's move on. Can we please hear –

16 MR BUDLENDER SC: I'll try to restrain

17 myself, Chair. Can I ask, is this a ruling by the Chair

18 that when a man is wearing overalls and takes them off,

19 he's not changing his clothes?

20 CHAIRPERSON: When he takes his overalls

21 off and the trousers are underneath, is not changing his

22 clothes, yes, that's my ruling but let's hear what he said

23 that wasn't interpreted.

24 [09:52] MR X: Mr Chair, I was saying I took off

25 the overalls and put it aside and reduced the number of the

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1 things that I was wearing.
 2 COMMISSIONER TOKOTA: You must also
 3 interpret that [African language].
 4 MR QGIRANA: Yes.
 5 MR X: And I was wearing at times overall
 6 on top of what I was wearing.
 7 CHAIRPERSON: And what did you have on
 8 your feet?
 9 MR X: I was wearing boots.
 10 CHAIRPERSON: So what happened to the
 11 boots?
 12 MR X: It's the boots, pair of boots that
 13 I'm wearing.
 14 MR BUDLENDER SC: Are you saying that
 15 those, the equipment on your – let's look at where your
 16 foot is. I'm pointing to your foot. Are you saying that
 17 is the same footwear as the gumboots you were wearing on
 18 the previous photograph? Or did you change your shoes?
 19 MR X: Let me explain. As we were told
 20 not to have a change of clothes, as you see me now wearing
 21 this black jacket, you have to stay for seven days without
 22 a bath after using this muti. We must count when the seven
 23 days expires from the 11th until the 16th, after having used
 24 the muti on the mountain. So what I'm trying to say, this
 25 jacket for instance, ever since I started attending the

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1 Commission I've never changed this jacket. I'm wearing
 2 this jacket every day. I do not wash or take a bath. I
 3 only wipe certain parts of the body.
 4 CHAIRPERSON: Yes, I understand that and
 5 perhaps you'll be asked about that later, but what you were
 6 asked about was those are shoes that one can see clearly on
 7 the screen, or as far as I can see, and if I'm wrong you
 8 must tell me.
 9 MR BUDLENDER SC: The point is on this
 10 photograph on the 15th you are wearing shoes. On the
 11 photograph on the 13th you are wearing gumboots. How do you
 12 explain that?
 13 MR X: I hear you.
 14 MR BUDLENDER SC: And what's your
 15 explanation?
 16 MR X: I was wearing these shoes, Mr
 17 Chair.
 18 MR BUDLENDER SC: Yes, and on the 13th you
 19 were wearing gumboots.
 20 MR X: I was wearing gumboots, the
 21 overall, no, no, no, no. I was wearing like this [pointing
 22 to the picture].
 23 MR BUDLENDER SC: Let's go back to the
 24 photograph of the 13th then. The first of the photographs
 25 on the 13th, could we have that?

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1 CHAIRPERSON: That's AAAA33.1.
 2 MR BUDLENDER SC: AAAA33.1. There's the
 3 photograph of you and we can see that you are wearing
 4 gumboots, not shoes.
 5 MR X: No, that is not gumboots.
 6 MR BUDLENDER SC: You say these are just
 7 ordinary shoes?
 8 MR X: Mr Chair, we were in a bushy area,
 9 that is the socks that you see up the sleeve of the
 10 overall. I tucked the legging of the overall inside the
 11 socks to keep the overalls clean.
 12 COMMISSIONER HEMRAJ: Mr Budlender, does
 13 it not look like there are laces there on that leg just
 14 above the foot? It really does look like a knot of a lace.
 15 MR BUDLENDER SC: I can't see that,
 16 Commissioner, but that's no evidence that they're not
 17 there.
 18 COMMISSIONER HEMRAJ: It's perhaps
 19 clearer on our screen.
 20 MR BUDLENDER SC: Yes.
 21 COMMISSIONER HEMRAJ: But it does look
 22 like the bow of a lace tied.
 23 MR BUDLENDER SC: Well, let me move on
 24 from this. I want to look more closely at the person in
 25 the video of the 13th. Could we go back to the sequence of

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1 the 13th, please? Now I want to look at the third
 2 photograph in the sequence of the 13th. Could you show
 3 that, please? That will be exhibit AAAA33.3, and we can
 4 see you in the bottom right-hand picture of the photograph
 5 looking directly at the camera.
 6 MR X: Yes.
 7 MR BUDLENDER SC: And then the next one
 8 is a bit clearer than that. We see you again looking
 9 directly at the camera, wearing your pinkish blanket.
 10 MR X: Yes.
 11 MR BUDLENDER SC: I have to say to you
 12 that I'm not an expert on, none of us is an expert on
 13 faces, but that face looks very different from your face.
 14 That's a round face. Yours is a long face.
 15 MR X: No, Mr Chair, that is me.
 16 MR BUDLENDER SC: The person that we see
 17 on that photograph has got no gap in his front teeth. Do
 18 you see that? Can you see that?
 19 MR X: I also don't have a gap.
 20 MR BUDLENDER SC: Have you got a gap – do
 21 you see that person has no gap in his front teeth?
 22 CHAIRPERSON: Would you smile for us and
 23 show us your front teeth? Could you smile and show us your
 24 front teeth? There's a gap in between your two front
 25 teeth –

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1 MR BUDLENDER SC: Give us a nice smile,
 2 Mr X. There is a gap in your front teeth. Why is that not
 3 in the picture? Mr X, I want to –
 4 CHAIRPERSON: He's trying to say
 5 something.
 6 MR BUDLENDER SC: Well, I'm waiting.
 7 CHAIRPERSON: I think we must give him an
 8 opportunity.
 9 MR BUDLENDER SC: Sure.
 10 MR X: No, I don't agree with you.
 11 MR BUDLENDER SC: The Commissioners can
 12 make their own observation as to whether you have a gap in
 13 your front teeth, which is different from what we see on
 14 the photograph.
 15 CHAIRPERSON: Mr Budlender, is it
 16 possible for us to unzoom the picture we're looking at, or
 17 possibly to have a clearer picture of his face? Because I
 18 notice he has what looks like a scar in a bone-shape from
 19 the top of the middle of his nose above his right, halfway
 20 above his right eye, and if that isn't – the picture isn't
 21 very clear. I can't see it on this picture, but to be fair
 22 this picture may not be clear enough to see it. Are there
 23 other pictures of the same person, perhaps –
 24 MR BUDLENDER SC: We have the one which
 25 is on the screen at the moment, Chair, and then we have the

Page 31980

1 next one, point 4, which is a close-up. Let me tell you,
 2 Mr X, what I think the problem is. I don't think that's
 3 you on that photograph, and I'll tell you another reason
 4 why I think that. I don't think you were there on the 13th
 5 and the reason I don't think you were there on the 13th is
 6 that you don't know what happened – is that in February
 7 last year you didn't know what happened on the 13th. Let
 8 me –
 9 MR X: Let me explain it this way. Take
 10 my number, go to Lonmin - my company number, go to Lonmin,
 11 check what my position is there. I'm an RDO, and secondly,
 12 go and ask the Lonmin people who were striking on that day
 13 at Lonmin, who are the people who went to time office to
 14 demand R12 500. That is how it is.
 15 CHAIRPERSON: How many RDOs work for
 16 Lonmin?
 17 MR X: I do not know, Mr Chair, but
 18 Lonmin has three hostels, it's Karee, Western and Eastern.
 19 CHAIRPERSON: And some of the RDOs also
 20 live in the informal settlement, don't they?
 21 MR X: The hostel issue is now over. A
 22 person gets hired then he would stay outside, what we call
 23 living out.
 24 CHAIRPERSON: Yes, alright. What I want
 25 to know, according to the evidence we've had there was

Page 31981

1 something like 3 000 – I think there were probably more,
 2 but let's stick to 3 000 at the moment – something like
 3 3 000 RDOs working for Lonmin who were on strike, who were
 4 on the koppie. They weren't there all the time, anyway.
 5 MR BUDLENDER SC: Chair, I think there
 6 were 3 000 strikers on the koppie, but I don't think they
 7 were all RDOs. There were some hundreds of RDOs.
 8 CHAIRPERSON: Perhaps the Lonmin people
 9 can tell us, how many RDOs did you have working for you at
 10 Lonmin?
 11 MR YEATES: Chair, just for the record,
 12 my name is Michael Yeates for Lonmin.
 13 CHAIRPERSON: Yes.
 14 MR YEATES: I'll get an instruction from
 15 Lonmin on exactly how many people were on strike on –
 16 CHAIRPERSON: And never mind how many
 17 were on strike. We want to know how many RDOs there were
 18 who were on strike.
 19 MR YEATES: Yes, we'll get those
 20 instructions.
 21 CHAIRPERSON: Alright. Well according to
 22 the evidence there were a substantial number of RDOs on
 23 strike, who worked for Lonmin and who were on strike and
 24 only 200 of them were at the railway line on the 13th. So
 25 the fact that you're an RDO and the fact that you were on

Page 31982

1 strike - I take it those two facts are correct – doesn't
 2 prove you were at the railway line. What do you say about
 3 that?
 4 MR X: Repeat the question.
 5 CHAIRPERSON: With pleasure. The
 6 evidence indicates that there were quite a big number of
 7 RDOs who were on strike, well over a thousand, and on the
 8 13th only about 200 people, strikers, were at the railway
 9 line near Donkerkop on the 13th. So if one accepts that you
 10 are an RDO, if one accepts that you were on strike, it
 11 doesn't follow that you necessarily were at the railway
 12 line on the 13th of August. What's the answer to that?
 13 MR X: I was there.
 14 MR BUDLENDER SC: Mr X, there are two
 15 reasons why I suspect that you weren't there. The first
 16 reason is that I suggest to you the person you show on the
 17 photograph is not you. We've been through that. I'm not
 18 going to go there again.
 19 The second reason is that when you made your
 20 statement in February 2013 at Phokeng you did not know what
 21 had happened on the 13th. Let me read you your statement
 22 and I'll show you why. Could we have AAAA1.2, page 12, and
 23 we go to the sixth line. This is what you said in your
 24 statement in February 2013; you say, "The tall police
 25 officer said that he was going to start counting and that

Page 31983

1 we must disperse and surrender our weapons. The police
2 then started counting from 1 and before he could finish
3 shooting I hear some gunshots being fired from the side of
4 the police." Sorry, I misread it.

5 CHAIRPERSON: [Microphone off, inaudible]
6 exhibit at page 11, para 19 near the foot of, four lines
7 from the foot of the page. It appears differently on the
8 screen, but that's the passage you're reading.

9 MR BUDLENDER SC: I must have misread it.

10 CHAIRPERSON: [Microphone off, inaudible]
11 said he was going.

12 MR BUDLENDER SC: Yes.

13 CHAIRPERSON: That according to the
14 koppie we were given by the police, the typed copy, is page
15 11 of 18, paragraph 19, four lines from –

16 MR BUDLENDER SC: Oh, alright. Thank
17 you. So let's just read it again. "The tall police
18 officer said that he was going to start counting and that
19 we must disperse and surrender our weapons. The police
20 then started counting from 1 and before he could finish
21 counting I hear some gunshots being fired from the side of
22 the police. I also saw Mambush and Baai shooting at the
23 police. The police first shoot upwards there.
24 [10:11] Thereafter I was caught or affected by tear smoke
25 and started running around looking for cover." So what you

Page 31984

1 – sorry. So what you said in your statement is that the
2 police started shooting while General Mpembe was counting,
3 do you see that? Now we know that's not true, so why did
4 you say that in your statement in February 2013?

5 MR X: Mr Chair, in the scenario of that
6 tall policeman there was a man who nearer to us. We walked
7 past that man without him firing. He pointed a firearm at
8 us but did not shoot. We were waiting for him to fire.

9 MR BUDLENDER SC: That's not an answer to
10 the question, Mr X. In your statement in 2013 you said
11 that the police started shooting while General Mpembe was
12 counting. That's not the truth. I'm putting – sorry?

13 MR X: No, Chair. General Mpembe did
14 count. He said we are not going to go through with these
15 things that we were carrying. He then started counting.
16 We had already stood up and we walked against his wishes,
17 whatever he was saying.

18 MR BUDLENDER SC: What your statement
19 says is, "The police then started counting from one and
20 before he could finish counting I hear some gunshots being
21 fired from the side of the police."

22 CHAIRPERSON: What we've seen on the
23 video is that he counted, he didn't count to 10, he counted
24 to three. At that point the strikers stood up, walked
25 away, asked the man by the rock for the gun, they walked

Page 31985

1 for at least 100 yards, I think it was about 300 yards and
2 it was only at that point after a teargas canister was
3 fired and there was a stun grenade, that the police started
4 firing shots in response to attacks from the strikers.
5 That's what we've seen on the video. Now it's possible
6 that you thought that the stun grenades were actually shots
7 being fired with live ammunition but that was not while
8 General Mpembe was still counting. It was after the
9 strikers walked away in the direction of the koppie for, I
10 think it was something like 300, over 100 metres.

11 MR X: In which statement did I mention
12 that, Mr Chair?

13 CHAIRPERSON: In statements which you
14 made in February 2013.

15 MR X: The one I made to Mr Chomela.

16 CHAIRPERSON: Well, I've asked the police
17 to tell us to whom you made the statement, but the
18 statement you made in February 2013 is the statement that
19 contains the passage that I read to you from paragraph 19
20 on page 11 of the typed version.

21 MR X: Mr Chair, that gentleman did not
22 understand Xhosa well. He is Shangaan and I am Xhosa.
23 There was a misunderstanding. If I say A, he would write
24 B.

25 MR BUDLENDER SC: Mr X, you made a

Page 31986

1 statement under oath, is that correct?

2 MR X: I did not take the oath, I just
3 gave a statement.

4 MR BUDLENDER SC: Oh, you didn't take the
5 – so the Captain is wrong when he says you took the oath?
6 Is he lying?

7 MR X: To raise your hand like this, is
8 it not so? That I did not do. I just made a statement to
9 that gentleman.

10 MR BUDLENDER SC: So –

11 MR X: They had to arrange a Xhosa-
12 speaking person or person who understood Xhosa, to whom I
13 made a statement and we understood each other.

14 MR BUDLENDER SC: Was the statement read
15 to you and interpreted to you before you signed it or put
16 your thumb prints on it?

17 MR X: Yes, it was read to me, read back
18 to me.

19 MR BUDLENDER SC: And it was read to you
20 in a language which you understood?

21 MR X: Yes, Mr Chair.

22 MR BUDLENDER SC: And you didn't say to
23 them, no, this statement is wrong, the shooting started
24 later, not while the counting was taking place?

25 MR X: No, Mr Chair, I was not asked when

Page 31987

1 the shooting started. I just mentioned in my statement
 2 that the police started counting, then there was some
 3 shooting. The gentleman to whom I made a statement later
 4 asked me thoroughly and asked me at what point was the
 5 shooting, whether the counting was still on, how many
 6 minutes had the counting been going on when the shooting
 7 started.

8 MR BUDLENDER SC: Mr X, we know –
 9 MR MPOFU: Sorry, sorry, Mr Budlender.
 10 No, he also said that he was confused. That's very
 11 important.

12 MR X: The gentleman who took the initial
 13 statement did not lead me thoroughly like the gentleman who
 14 took the later statement. He did not ask me how long did
 15 the counting go on. He did not ask me for how long did the
 16 counting go on, yes.

17 CHAIRPERSON: Mr Interpreter, there are
 18 two points. The one is I'm told that you said to him at
 19 one stage that he's talking too fast, you can't interpret,
 20 you talk much –

21 MR QGIRANA: That is correct.
 22 CHAIRPERSON: You mustn't do that, you
 23 mustn't say anything to him that we haven't said or if you
 24 do say something to him, you must interpret what you've
 25 said as well, you know, I have said to him –

Page 31988

1 MR QGIRANA: I understand.
 2 CHAIRPERSON: You mustn't just do – I'd
 3 like to ask a question.
 4 MR MPOFU: Sorry, I'm sorry, Chairperson,
 5 to do this. Just in case – it's a separate thing – there
 6 is still a part where the witness, which I would like to be
 7 confirmed with him which was not interpreted, not because
 8 of the fault of the interpreter, because he went on for a
 9 long time and things obviously were left out but the one
 10 part that I do not want to be left out is where he says,
 11 and at that stage he was still confused and he was not
 12 under police protection. That's going to be important for
 13 us.

14 MR QGIRANA: That is correct.
 15 CHAIRPERSON: That is correct. Now I'd
 16 like to ask a question. We're talking now about the
 17 February 2013 statement. You say the person who took the
 18 statement didn't ask you the same questions you were asked
 19 later.

20 MR X: Yes, Mr Chair.
 21 CHAIRPERSON: Is that the statement where
 22 you say, apart from the fact that you weren't asked
 23 questions about things so they didn't find their way into
 24 the statement, is that also the statement where things were
 25 incorrectly recorded because of language problems?

Page 31989

1 MR X: We did not understand each other.
 2 CHAIRPERSON: Was that because the person
 3 who took the statement's home language wasn't Xhosa?
 4 MR X: Yes, Mr Chair.
 5 CHAIRPERSON: How many statements did
 6 that person take from you?
 7 MR X: Three people took statements. It
 8 was a Tswana-speaking person, the Shangaan and the Xhosa-
 9 speaking person.

10 CHAIRPERSON: I want to know from you,
 11 the person who took the statement, the long statement that
 12 Adv Budlender quoted you from where you, about the counting
 13 and the shooting and so on, the person who took that
 14 statement, how many statements did he take from you?
 15 MR X: He took one statement.
 16 CHAIRPERSON: Was there only one
 17 statement therefore which was taken from you by someone who
 18 wasn't able to communicate properly with you because of
 19 language difficulties, that's this long statement that Adv
 20 Budlender quoted you from?
 21 MR X: Yes, Mr Chair.
 22 CHAIRPERSON: You see, previously when
 23 you gave evidence and were being led by Mr Mathibedi, you
 24 referred to another statement which contained wrong
 25 information which you said was caused by the fact that it

Page 31990

1 was taken by this person where there was a language problem
 2 and that was the statement – I didn't mark my one, Ms
 3 Pillay will tell us what it is – it's the statement from
 4 the docket in Marikana CAS205/08/2012 and in that statement
 5 in paragraph 6 you describe what happened on the hill on
 6 the 11th of August when the – I see it's AAAA8 – you
 7 described how the sangoma and another man came. They were
 8 the sons, they described, introduced themselves as the sons
 9 of the traditional healer. You talk about the test that
 10 was done on the box and then you say, then the statement
 11 says this, "He displayed a test on the box, which he did
 12 ritual on it, as well as two goats and he fired shots at
 13 them and bullets could not penetrate them or injure them."
 14 And you said the reference to the goats was not correct,
 15 that was not what you said and that was caused by the fact
 16 that there was this language difficulty between you and the
 17 person who took that statement. It's a different statement
 18 from the statement from which Mr Budlender was quoting to
 19 you. You said there was only one statement taken where
 20 there was a language problem and that, according to what
 21 you told us previously, was the statement which had this
 22 incorrect reference to goats. That's not the statement
 23 from which Mr Budlender quoted to you, the long statement
 24 and the reference to the counting and the shots being fired
 25 while the counting was still going on. What do you say

Page 31991

1 about that?

2 MR X: Can you repeat the question,

3 please?

4 CHAIRPERSON: Certainly. You told us

5 that you only, there was only one statement in respect of

6 which there were language problems with the statement was

7 taken. You told us previously when Mr Mathibedi was

8 leading your evidence that the statements in respect of

9 which there were problems because of language difficulties,

10 was exhibit AAAA8 where there's an incorrect statement in

11 relation to goats, where the statement that.

12 [10:31] As I read it, that shots were fired at a box as

13 well as the two goats and the bullets couldn't penetrate

14 the goats or injure them. Now you explained that there was

15 no mention of goats and there were no goats at which shots

16 were fired which couldn't penetrate. That was a mistake,

17 and that mistake got into the statement because the person

18 who took it couldn't speak Xhosa properly, and you said

19 there was only one statement in respect of which there were

20 language difficulties and it was the statement about the

21 goats.

22 Mr Budlender was quoting to you from another

23 statement you made, a long statement you made in February

24 2013, which contained the averment that shots were fired by

25 the police while General Mpembe was still counting. From

Page 31992

1 what you told us that's not the statement in respect of

2 which there was a language problem. So how do you explain

3 the inaccuracy in that statement which Mr Budlender put to

4 you?

5 MR X: General Mpembe when we met him he

6 said he is counting. He asked us to put the weapons down

7 and said we cannot go through with the weapon. He said

8 "Now I'm counting." He said "I'm counting." We then

9 started moving from this place where we were seated and he

10 said he was counting. Now I don't know at what stage did

11 the shots rang off, because we did not have watched on the

12 mountain.

13 CHAIRPERSON: No, I understand you didn't

14 have watches, but you'd walked for quite a distance, hadn't

15 you, before any shots were fired? You don't have to have a

16 watch on your arm to know how far you've walked. So how

17 far had you walked?

18 MR X: Yes, Mr Chair, we had started

19 moving from the place where we were seated initially. Now

20 I did not look at the distance we had covered, how long we

21 walked, because we realised now there will be a fight.

22 CHAIRPERSON: But the counting had

23 stopped before the shots came?

24 MR X: Mr Chair, I do not know, Mr Chair,

25 the last I heard was when he said he's counting. I don't

Page 31993

1 know how far he counted because there was then a fight.

2 CHAIRPERSON: Do you know whether he was

3 still counting when the first shots came from the side of

4 the police?

5 MR X: He said "Now I'm counting."

6 CHAIRPERSON: You haven't answered the

7 question. I'll ask it again –

8 MR X: And we had left that place,

9 beating the weapons against each other, ululating, and then

10 there was a sound of shots.

11 CHAIRPERSON: The question I asked you,

12 which I'll repeat for the last time, was do you know

13 whether he was still counting when the shots were fired?

14 MR X: No, I did not notice whether he

15 was finished or not.

16 CHAIRPERSON: I see. Well, we'll take

17 the first comfort break at this stage.

18 [COMMISSION ADJOURNS COMMISSION RESUMES]

19 [11:01] CHAIRPERSON: Mr Interpreter, would you

20 please tell the witness that he's still under oath? Mr

21 Budlender, you may continue with your cross-examination.

22 MR QGIRANA: Yes, Mr Chair.

23 MR X: (s.u.o.)

24 COMMISSIONER HEMRAJ: Mr Budlender, am I

25 correct that there's no suspect statement taken from this

Page 31994

1 witness with regard to the events of the 13th?

2 MR BUDLENDER SC: Commissioner, I'm not

3 aware of one.

4 COMMISSIONER HEMRAJ: Because I haven't

5 seen it in the documents that have been provided and all

6 the other dates and events seem to be put to him and in

7 respect of which he's given suspect statements between the

8 26th and the 29th January, there's nothing on the events

9 after the railway line episode on the 13th.

10 MR BUDLENDER SC: I believe that's

11 correct, Commissioner.

12 CHAIRPERSON: Mr Mathibedi and Mr

13 Pretorius can investigate that and if there is a suspect

14 statement relating to those events they can tell us, but as

15 far as I can recall also, I haven't seen one although I've

16 worked through that police docket. Anyway, but it may well

17 be that there is a statement either that I've missed or

18 alternatively there's one that wasn't in the docket but was

19 left out by mistake, in which case Mr Mathibedi will be

20 able to give us that information in due course.

21 MR MATHIBEDI SC: Thanks, Chair, we'll

22 check.

23 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):

24 Now Mr X, I just want to finish off this topic briefly and

25 then move on to something else. When you were asked to

<p style="text-align: right;">Page 31995</p> <p>1 explain your statement that you made at Phokeng, you said 2 that you were confused and you were not under police 3 protection, is that correct? 4 MR X: Repeat the question? 5 MR BUDLENDER SC: When you were asked to 6 explain your statement which you made at Phokeng, you said 7 that at the time that you made that statement you were 8 confused and you were not under police protection. 9 MR X: At that time, Mr Chair. 10 MR BUDLENDER SC: Yes, at that time in 11 February 2013. 12 MR X: Yes, Mr Chair, because I was from 13 the security, mine security on my way to Phokeng. 14 MR BUDLENDER SC: Yes, that's right and 15 you said that, you said this morning that when you made 16 that statement at Phokeng you were not under police 17 protection. 18 MR X: I was put under the police 19 protection on that day when I made the statement. 20 MR BUDLENDER SC: Were you confused when 21 you made the statement? 22 MR X: Mr Chair, the cause for my 23 confusion was the death of a child back home and the police 24 even brought me to Pretoria to my uncle here. 25 MR BUDLENDER SC: So you were confused.</p>	<p style="text-align: right;">Page 31997</p> <p>1 statement which you made to Mr Mathibedi or with Mr 2 Mathibedi's assistance and questioning, you did not say 3 that the shots were fired while General Mpembe was 4 counting. 5 MR X: I did not change the statement, I 6 said they counted or he counted. 7 CHAIRPERSON: What you had said in the 8 first statement, was it before he finished counting the 9 police shots were fired, whereas you didn't say that in 10 your later statement, March 2013? That's correct, isn't 11 it? 12 MR X: Mr Chair, the gentleman asked 13 where were we going to when the police fired, then we said 14 we were going towards the settlement. 15 MR BUDLENDER SC: Alright, I'm not going 16 to – the statements will speak for themselves, Chair. Mr 17 X, let me sum up on this point. When the Commission hears 18 argument at the end of its hearings we are going to submit 19 that there are three reasons while you were probably not 20 present on the 13th. Let me say at least three reasons. 21 The first reason is that you are not in the photograph 22 which you pointed out as yourself. The second reason is 23 that you did know what actually happened on the 13th of 24 August until after you'd been taken into police protection 25 and, thirdly, your answers to the Chairperson this person</p>
<p style="text-align: right;">Page 31996</p> <p>1 MR X: Yes, I was confused because of 2 that reason. 3 MR BUDLENDER SC: And then after you made 4 the statement, the Phokeng statement, you were taken into 5 police protection. 6 MR X: Yes, Mr Chair. 7 MR BUDLENDER SC: And sometime after that 8 you made the further statement in which you changed what 9 you had said. You no longer said that the shots were fired 10 while the General was counting. 11 MR X: No, I've never changed it, Mr 12 Chair. I just wrote what I was supposed to write. 13 MR BUDLENDER SC: Alright, well, the 14 statements will speak to themselves – 15 CHAIRPERSON: I think to be fair, there 16 may be a misunderstanding. He thinks you're suggesting 17 that he actually physically changed the earlier statement. 18 That's not what you mean but I think he didn't fully – 19 MR BUDLENDER SC: Perhaps I should 20 clarify. Thank you, Chair. What I mean, Mr X, is that 21 when you made your later statement in March 2014 you no 22 longer said that the shots were fired while General Mpembe 23 was counting. 24 MR X: I said he counted. 25 MR BUDLENDER SC: Yes, but in your</p>	<p style="text-align: right;">Page 31998</p> <p>1 show that even now you don't know what actually happened on 2 the 13th. Would you like to comment on any of that? 3 MR X: No, Chair. I was there, I know 4 what happened. 5 MR BUDLENDER SC: Right, then I'm going 6 to move on to a different subject. Now as you've told the 7 Commission, this year you consulted with Adv Mathibedi to 8 prepare your evidence to the Commission, correct? 9 MR X: Yes, Mr Chair. 10 MR BUDLENDER SC: You went through your 11 Phokeng statement with him and you prepared a supplementary 12 statement. Is that correct? 13 MR X: It is still the same statement of 14 Phokeng, I did not change anything. 15 MR BUDLENDER SC: Yes, you went through 16 your Phokeng statement with Mr Mathibedi and you prepared a 17 supplementary statement. 18 MR QGIRANA: The witness is breaking at 19 some points, but what I could hear, I told Mr Mathibedi as 20 I have told them at Phokeng. We did not change anything. 21 MR BUDLENDER SC: Mr X, please listen to 22 the question, this is not a trick question. 23 CHAIRPERSON: No, no, sorry. We think 24 there may be a problem with the sound because just before 25 the interpreter interpreted what had been said, there was a</p>

<p style="text-align: right;">Page 31999</p> <p>1 noise which wasn't something he said and his voice fades. 2 It may not be his fault – 3 MR BUDLENDER SC: No, I'm not suggesting 4 it is, Chair. 5 CHAIRPERSON: No, no, what I'm suggesting 6 is that we adjourn for a couple of minutes so that the 7 sound system can be tested, so we can then carry on. 8 [COMMISSION ADJOURNS COMMISSION RESUMES] 9 [11:58] CHAIRPERSON: When I came into the 10 chamber to announce that we had to take the tea adjournment 11 early because there was a mechanical problem and predicted 12 that we might only start at 12 noon, I didn't realise the 13 prediction would be fulfilled. The Commission resumes. 14 Would you please tell the witness he's still under oath? 15 MR X: [s.u.o. through interpreter] 16 MR QGIRANA: Yes, Mr Chair. 17 CHAIRPERSON: Mr Budlender. 18 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.): 19 Thank you, Chair. Mr X, let's go back a little bit. We 20 know that you consulted this year with Adv Mathibedi about, 21 to prepare your evidence to the Commission. 22 MR X: Yes. 23 MR BUDLENDER SC: Did you go through your 24 February 2013 statement, the Phokeng statement, with him? 25 MR X: Yes, we did.</p>	<p style="text-align: right;">Page 32001</p> <p>1 provide. 2 MR X: I did not get the question 3 clearly. 4 MR BUDLENDER SC: I say I'm sure you 5 went, with him you went carefully through the Phokeng 6 statement to see what additional information you needed to 7 provide. 8 MR X: Okay, now I understand. 9 MR BUDLENDER SC: So is that correct? Is 10 it correct that you went through your Phokeng statement 11 carefully with him to see what additional information must 12 be provided? 13 MR X: Yes, Sir. 14 MR BUDLENDER SC: And if you had seen 15 anything in your Phokeng statement which was wrong, you 16 would have told him. 17 MR X: Yes, Sir. 18 MR BUDLENDER SC: Right, now can we have 19 that statement up on the screen? It's AAAA1.2, I'd like to 20 look at paragraph 4. Now this is what the statement says. 21 It talks about the march to the time office on the 10th of 22 August. Then it says, "There were a lot of people, about 5 23 to 8 000 people and we were now joined by people of other 24 sections or departments, but all mineworkers." It says, 25 "There were five members who were nominated to represent us</p>
<p style="text-align: right;">Page 32000</p> <p>1 MR BUDLENDER SC: And with him you 2 prepared a supplementary statement? 3 MR X: Yes, Chair. 4 MR BUDLENDER SC: The purpose of the 5 supplementary statement was to add to your Phokeng 6 statement. 7 MR X: To add? Just repeat that. 8 MR BUDLENDER SC: The purpose of your 9 supplementary statement was to add to your Phokeng 10 statement. 11 MR X: No, I was not adding, I was saying 12 the same thing, the same and one thing that I've said 13 earlier. 14 CHAIRPERSON: What you were doing though, 15 you were also answering questions which Mr Mathibedi asked 16 you, which you told us had not been asked you by the 17 previous person who'd taken your earlier statement, so you 18 were making a statement containing additional material in 19 answer to questions which you hadn't been asked before, you 20 say, which were now asked by Mr Mathibedi. That's correct, 21 isn't it? 22 MR X: Yes, Chair. 23 MR BUDLENDER SC: Thank you, Chair. So 24 I'm sure you went through the Phokeng statement carefully 25 with him to see what additional information you should</p>	<p style="text-align: right;">Page 32002</p> <p>1 when talking to the employer about our demands." And then 2 it says, "We nominated one Baai, Bhele, two Lesotho 3 nationals, and one Setswana-speaking person." Now is that 4 statement correct? 5 MR X: Yes, that is so. 6 MR BUDLENDER SC: Right, now I want to go 7 to your evidence to the Commission. Could we go to day 8 245, page 30947, line 6, or perhaps we start with line 2. 9 Mr Mathibedi asks you, "The question is – sorry, Sir – the 10 question is, was it discussed how the demand was going to 11 be presented to Lonmin management? Were all the strikers 12 going to talk, or what was it?" and your answer was, "We 13 elected five men to represent us. The first one was Booi, 14 Bhele [B-H-E-L-E], another person was Tswana-speaking, his 15 name was Andries, and then there was a Sotho-speaking 16 person," and then Mr Mathibedi asks you, "You have given us 17 four names. Do you remember the fifth name?" and your 18 answer was, "The next one was myself." Do you hear what 19 I've said? 20 MR X: I hear you, Sir. 21 MR BUDLENDER SC: Now if your Phokeng 22 statement is the truth, then the evidence which you gave to 23 the Commission last week is not the truth because you were 24 not elected to that committee. Do you agree with that? 25 MR X: No Sir, I was there.</p>

<p style="text-align: right;">Page 32003</p> <p>1 MR BUDLENDER SC: Were you a member of 2 the committee of five? 3 MR X: No, Mr Chair, I was a member of 4 that committee. What happened is when we went to the time 5 office the other people who had been chosen the previous 6 day, or previous night, had not arrived, had not come to 7 the place where the majority of people were. There were 8 many of us, other people were standing, on the way, the 9 others had arrived. Booi was late but he eventually came 10 and he represented someone who did not make it to the time 11 office. 12 MR BUDLENDER SC: Mr X, who were the 13 workers who were chosen to represent the workers on that 14 day, the 10th of August? 15 MR X: The person who was talking at the 16 time office on that day was Bhele, and Booi and Baai were 17 standing next to him. 18 MR BUDLENDER SC: No, that's not what I'm 19 asking you, Mr X. 20 MR X: And I was also present. 21 MR BUDLENDER SC: Mr X, please listen to 22 the question. You've told this Commission that five people 23 were chosen to represent the workers in talking to 24 management. Who were the five people who were chosen? 25 MR X: The person who spoke at the time</p>	<p style="text-align: right;">Page 32005</p> <p>1 Baai, and Booi. 2 CHAIRPERSON: Who were the other two? 3 Did you know their names? Do you know which language they 4 spoke? 5 MR X: I know them, but even if they are 6 not Xhosa-speaking, they do speak Xhosa because these 7 languages are easier for them, unlike us Xhosa-speaking 8 people, other languages are not easy. 9 MR BUDLENDER SC: So what you're telling 10 the Commission is that the people who were chosen were 11 Bhele, Baai, Booi and two men whose names you don't know, 12 but they were able to speak Xhosa? 13 MR X: Repeat the question. 14 MR BUDLENDER SC: You just told the 15 Commission that the people who were elected to the 16 committee or to speak on behalf of the workers were Bhele, 17 Baai, Booi, and two men whom you know, you don't know their 18 names but they do speak Xhosa. 19 MR X: Yes, Sir, that is so. That's what 20 I'm saying. 21 CHAIRPERSON: I understood you to say – I 22 may have misunderstood you. I understood you to say that 23 the other two whose names you can't remember, though they 24 could speak Xhosa it wasn't their, Xhosa wasn't their home 25 language, or their first language. Did I understand you</p>
<p style="text-align: right;">Page 32004</p> <p>1 office is Bhele. 2 MR BUDLENDER SC: Mr X, please listen to 3 the question. I'm asking you again. I'm not asking you 4 who spoke. I'm asking you who were the five workers who 5 were chosen by the strikers to speak to management on their 6 behalf? 7 MR X: The names I remember is Bhele and 8 Booi and Baai, yes. 9 MR BUDLENDER SC: Bhele and Booi and 10 Baai. 11 MR X: Yes, the people who spoke, yes. 12 MR BUDLENDER SC: No, I'm not asking you 13 who spoke. I'm asking you who was chosen as the committee. 14 MR X: Yes, I'm talking about the people 15 who were chosen the previous day, the 9th, who were going to 16 speak on the 10th with the employer. Then these people who 17 eventually spoke with the employer came up. 18 CHAIRPERSON: The question you were asked 19 is who were the people who were chosen. What you said in 20 your evidence previously was you said "We elected five men 21 to represent us," and what Mr Budlender wants to know from 22 you is this; who were the five men whom you elected to 23 represent you - you being the strikers, elected to 24 represent you? 25 MR X: Yes, Sir. I remember Bhele, and</p>	<p style="text-align: right;">Page 32006</p> <p>1 correctly, or did I misunderstand you? 2 MR X: Yes, Sir. 3 CHAIRPERSON: Do you know what their 4 first languages were? There were two of them. Was the 5 first language of both of these people the same, or did one 6 of them have one first language and the other another? 7 MR X: They speak all these languages. 8 You won't understand whether a person is Xhosa or what. 9 MR BUDLENDER SC: Mr X, you've now 10 confirmed that you were not one of the five people who were 11 chosen to speak on behalf of the workers. 12 MR X: No Sir, I was present. I was 13 there. 14 MR BUDLENDER SC: No Mr X, you are not 15 Bhele. 16 MR X: No, Sir, I was present amongst the 17 five. 18 MR BUDLENDER SC: Just answer the 19 question. Are you Bhele? 20 MR X: No, I'm not Bhele, I'm Mr X. 21 MR BUDLENDER SC: Yes. 22 CHAIRPERSON: Repeat the answer. 23 MR X: No, I'm not Bhele, I'm Mr X. 24 CHAIRPERSON: Yes, good answer. 25 MR BUDLENDER SC: Are you Baai?</p>

Page 32007

1 MR X: I'm not Baai.

2 MR BUDLENDER SC: Are you Booi?

3 MR X: No, I'm not Booi.

4 MR BUDLENDER SC: Are you a person whose

5 name you don't know?

6 MR X: No, I know my name but for the

7 purposes of the Commission I'm Mr X.

8 MR BUDLENDER SC: Yes, but if you're

9 not –

10 CHAIRPERSON: We don't want you to tell

11 us your name either.

12 MR BUDLENDER SC: But if you're not one

13 of those people whom I've just listed, then you weren't a

14 member of that group who were chosen. Why can't you just

15 admit that?

16 [12:18] MR X: No sir, I'm saying to you I was

17 there.

18 CHAIRPERSON: You may have been there but

19 the question is whether you were one of the five who was

20 elected and you've given us five names and your name is not

21 one of them. That's correct, isn't it?

22 MR X: No, I was there.

23 CHAIRPERSON: No, I don't think you've

24 understood the question, let me put it to you again. I

25 understand you say you were there. There were a lot of

Page 32008

1 other people there as well but you were there, you say, but

2 what you've said in your evidence is that five men were

3 elected to represent the strikers. You've given the names

4 of three of them and you say you don't know the names of

5 the other two. So quite clearly you weren't one of the

6 five. That must be right, surely?

7 MR X: Mr Chair, I am amongst the five.

8 You see on the 9th we elected Bhele and Baai but now Booi

9 did not pitch up on the 10th, or rather Booi was not elected

10 on the 9th, he was only elected on the 10th when we realised

11 other people did not come that were chosen.

12 CHAIRPERSON: How many people didn't come

13 who should have come, who were elected? How many people

14 who were elected to be representatives didn't come on the

15 10th?

16 MR X: They came but they were late, we

17 were already in the meeting when they came.

18 CHAIRPERSON: How many people were late?

19 MR X: But now when the employer came, we

20 decided certain people should go and talk to him, we cannot

21 all talk to the employer.

22 CHAIRPERSON: Yes, no, I understand that

23 but you haven't answered my question. How many people who

24 were elected came late?

25 MR X: People who were elected but came

Page 32009

1 late, five people were elected but during the discussions

2 at the time office Bhele and Booi did the talking.

3 CHAIRPERSON: You still haven't answered

4 my question so I'll ask it to you again. You told us that

5 five people were elected, I think you said on the 9th, the

6 Thursday, the public holiday, to represent the strikers and

7 on the Friday you said not all five came. There were some

8 who were late and I want to know how many were late? We're

9 waiting for your answer. Still waiting. We're still

10 waiting.

11 MR X: Sir, what I'm saying about these

12 people who were late, the people who came early is Bhele

13 and Booi.

14 CHAIRPERSON: Are you saying the other

15 three were late?

16 MR X: No, the person who came early is

17 Bhele, he was there when we had the meeting. There we

18 elected Booi to stand, to go and talk to this employer.

19 MR BUDLENDER SC: Mr X, I don't want to

20 waste more time on this. I want to put it to you that your

21 claim in your evidence to the Commission that you were one

22 of the five elected is clearly false. It's contradicted by

23 your Phokeng statement and it's contradicted by the

24 evidence you've given this morning. Would you like to

25 comment on that?

Page 32010

1 MR X: No, sir, I'm saying I was there

2 and I'm telling the truth. I'm not changing from that.

3 MR BUDLENDER SC: I want to suggest to

4 you that you have made a false statement that you were one

5 of representatives elected by the workers in order to

6 exaggerate your own importance in these events. You were a

7 foot soldier but you want to present yourself as a general.

8 MR QGIRANA: The witness is lost.

9 MR BUDLENDER SC: Would you like to

10 answer that? Let me put it differently. You may have been

11 a foot soldier but you claim that you were a general.

12 MR X: No, I was there in front.

13 MR BUDLENDER SC: Alright, I'll move on.

14 Now the exhibit which we saw this morning, AAAA25, is a

15 photograph of the committee which was caucusing in front of

16 the koppie. That was on the 14th of August, correct – 15th,

17 I'm sorry, it's 15th of August.

18 MR X: Yes, on the day when the two

19 presidents arrived there.

20 MR BUDLENDER SC: The photograph is on

21 the screen and there's an arrow pointing at the person that

22 you identified as you, as a member of the committee.

23 MR X: Yes, sir.

24 MR BUDLENDER SC: That is the person that

25 we have allocated a number 4, you'll see there's a number.

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1 I don't know whether you are numerate but we've called him
2 number 4 in the key to that photograph.
3 CHAIRPERSON: Let me ask you a question
4 first before you proceed. Do you see at the top of the
5 photograph there are numbers – there are names, do you see
6 them?
7 MR X: Yes, I see –
8 CHAIRPERSON: 15 on the extreme left, six
9 on the extreme right, can you see that?
10 MR X: I see them.
11 CHAIRPERSON: Now you'll see the fourth
12 number from the right is 4, do you see that? 6, 7, 5 and
13 4, do you see that? Do you see that?
14 MR X: Which number? Number 4.
15 CHAIRPERSON: Yes. Now you see there's a
16 – sorry?
17 MR X: Yes, I see it.
18 CHAIRPERSON: Alright.
19 MR X: I see.
20 CHAIRPERSON: And then there's a yellow
21 arrow that goes down from the 4 and the arrowhead is on the
22 top of someone's head and that's the person on the
23 photographs that you say is you, is that correct?
24 MR X: Yes, I see.
25 MR BUDLENDER SC: And that person has a

Page 32012

1 dark top, blue jeans and he's carrying a beige or a pinkish
2 blanket.
3 MR X: I see that person.
4 MR BUDLENDER SC: And then if you'll look
5 a little bit to the left of the photo in the same group,
6 you'll see a person in a green jacket. That's Mr Noki,
7 isn't it?
8 MR X: Yes, sir.
9 CHAIRPERSON: That's the person with the
10 number 1 above him and a red arrow going down from the
11 number 1 to his head, that's right?
12 MR X: Yes, sir.
13 MR BUDLENDER SC: And immediately to your
14 left is another man who also, who has a beige blanket.
15 MR X: Yes, I see.
16 MR BUDLENDER SC: And on your right is
17 another man with a light top. I think he is – he is Mr
18 Bhele, if I'm not mistaken.
19 MR X: Yes, that is Bhele.
20 MR BUDLENDER SC: That's Bhele.
21 CHAIRPERSON: Mr Budlender, you might,
22 when you refer to these people, refer to the numbers as
23 well –
24 MR BUDLENDER SC: Yes.
25 CHAIRPERSON: - to make it easier for

Page 32013

1 those who follow later on the record and the photographs.
2 MR BUDLENDER SC: Yes. Bhele is numbered
3 as 4 – I beg your pardon, Bhele is numbered as 5 and the
4 person to your left is numbered 3. That's 3, 4, 5 next to
5 each other. Do you see that?
6 MR X: Yes, I see it. There is someone
7 bending down, the head is not clearly visible.
8 MR BUDLENDER SC: Yes. Chair, this
9 numbered version doesn't have an exhibit number. I think
10 it had better have one. AAAA25.1 – so it would, ja.
11 CHAIRPERSON: AAAA33.4. Oh this, sorry,
12 I'm reminded this photograph of Mr Marinovich is AAAA25 so
13 you want to make this one –
14 MR BUDLENDER SC: Chair, I think that
15 there's going to be a series of photographs. I think it
16 might be better to make it a new series, a number with a
17 new series.
18 CHAIRPERSON: Well, that's 34 then, AAAA
19 –
20 MR BUDLENDER SC: 34. I think this
21 should be 34.1.
22 CHAIRPERSON: So what do we say, the
23 numbered version –
24 MR BUDLENDER SC: The numbered version of
25 AAAA25 –

Page 32014

1 CHAIRPERSON: - of AAAA25, that's AAAA34.
2 MR BUDLENDER SC: Thank you, Chair. Now
3 Mr X, I would like to go to the next slide. I'm sorry,
4 before we get there, the time of that photograph has been
5 marked, it's at 17:27 on that day and, if necessary,
6 there'll be evidence to show that that's the correct time.
7 CHAIRPERSON: Taken, this was taken on
8 the Wednesday afternoon and the shootings were on Thursday
9 the 16th. This is the Wednesday afternoon, the 15th and it's
10 taken in the afternoon, 27 minutes past 5. That's what Mr
11 Budlender put to you.
12 MR BUDLENDER SC: Now can we go to the
13 next slide in this series, please. Now this is the same
14 group photographed by Colonel Mere. This, or it shows two
15 photographs. Firstly it shows the one we've been looking
16 at and next to it and below it, it shows the same group
17 photographed by Colonel Mere at 17:31 on that day.
18 CHAIRPERSON: We can make this 34.2 or do
19 you want me –
20 MR BUDLENDER SC: Yes, please.
21 CHAIRPERSON: - to make it 35?
22 MR BUDLENDER SC: 34.2.
23 CHAIRPERSON: In other words, the
24 numbered version of AAAA25 is AAAA34.1 and 34.2 is a
25 numbered version of – and is Colonel Mere's photograph

Page 32015

1 already an exhibit or not?
 2 MR BUDLENDER SC: I think not, Chair, no.
 3 I'm not sure that it's the identical photograph but there's
 4 a series and it may or may not be.
 5 CHAIRPERSON: So okay, AAAA34.2 is a
 6 numbered version of Colonel Mere's photograph VSC3519 and
 7 you say which was taken at, and here you've got eTV time,
 8 taken at eTV 17:31:12. So that's taken, if those two times
 9 are correct, taken four minutes after the –
 10 MR BUDLENDER SC: Right. Right, now
 11 you'll see the person, you'll see again the person who is
 12 numbered 4 whom you've identified as yourself, there he is
 13 with his beige or pink blanket, his dark top and his blue
 14 jeans. He's standing up now. Do you see that?
 15 MR X: No, it's not that same person.
 16 MR BUDLENDER SC: Not? To his left, on
 17 the left of that person – look at the person to the left -
 18 MR X: That jean is light. The jean worn
 19 by the person standing is lighter than the jean worn by the
 20 other person in the other photo.
 21 [12:38] MR MATHIBEDI SC: Sorry, Chair, the Mere
 22 photo does not show Mr Nzuzza. Mr Nzuzza is not appearing in
 23 the Mere photograph, the photo.
 24 MR BUDLENDER SC: Chair, I'm aware of
 25 that and we'll come to that, but it's not for my learned

Page 32016

1 friend to say that. That's evidence, that's a matter for
 2 evidence and I'll come to it.
 3 CHAIRPERSON: Well, you were putting
 4 things to the witness as if they were definitely correct.
 5 The point that is obvious is that if this photograph was in
 6 fact taken four minutes later, and if it represents the
 7 same group of people, then some people have changed
 8 position.
 9 MR BUDLENDER SC: Yes.
 10 CHAIRPERSON: Because the person marked 2
 11 who is to the right of Mr Noki appears not to be there. In
 12 fact you haven't got him numbered.
 13 MR BUDLENDER SC: Yes, I was –
 14 CHAIRPERSON: And the person who's marked
 15 5 – no, the person who's marked 3, the person who's marked
 16 3 you say is there and the person who is marked 7 you say
 17 is – no, it's the person who's marked 4 you say is there,
 18 but some people are no longer there, had moved. So though
 19 you can – I think you have to put it more circumspectly to
 20 the witness than you've done.
 21 MR BUDLENDER SC: Let me just take –
 22 let's go back, Mr X, to the first photograph. Starting
 23 with Mr Noki, we see Mr Noki is sitting there, he's number
 24 1. Right?
 25 MR X: Yes.

Page 32017

1 MR BUDLENDER SC: Then next to him is
 2 number 2, that's Mr Nzuzza. Is that correct?
 3 MR X: Yes.
 4 MR BUDLENDER SC: And next to him is
 5 number 3. You see him? The man with the beige, with the
 6 blanket.
 7 MR X: I see it.
 8 MR BUDLENDER SC: And next to him is
 9 number 4, you say that's you.
 10 MR X: Yes, Sir.
 11 MR BUDLENDER SC: And next to you is
 12 number 5, that's Bhele.
 13 MR X: Yes, Sir.
 14 MR BUDLENDER SC: Now we go to the next
 15 photograph, and let's just say to the left of Mr Noki is a
 16 man with a blue blanket. He's number 16. You see that?
 17 MR X: I see it.
 18 MR BUDLENDER SC: Right, now let's go to
 19 the next photograph. On the left, towards the left we see
 20 the man in the blue blanket, number 16. Right? In the
 21 lower photograph we can see the man with the blue blanket.
 22 CHAIRPERSON: I see it's blue and then
 23 there's beige. You see the beige, it's either another
 24 blanket on top of the blue blanket or it's part of the
 25 design. That's number 16. We've seen that in the first

Page 32018

1 photograph. You see that? The one immediately to the left
 2 of Mr Noki.
 3 MR BUDLENDER SC: There he is.
 4 MR X: The chin doesn't appear in that
 5 person who's sitting next to Nzuzza.
 6 CHAIRPERSON: No, no, you're not
 7 understand. Mr X, I'm sorry, you're not understanding.
 8 MR X: We don't see the same, we don't
 9 see the same person.
 10 MR BUDLENDER SC: Chair, can I try?
 11 CHAIRPERSON: What I was putting to the
 12 witness was Mr Budlender is asking you something else. He
 13 was asking you about the person immediately to the left of
 14 Mr Noki. The person immediately to the left of Mr Noki in
 15 both photographs has got a blue blanket. That is correct,
 16 is it not?
 17 MR X: Yes, that is Anele.
 18 CHAIRPERSON: That's Anele, and then –
 19 that's what Mr Budlender was asking you about, and then to
 20 the right of Mr Noki on the first photograph is someone who
 21 appears to have a jersey, sort of – I think it's a jersey –
 22 black jersey, brown trousers, and there appears to be two
 23 white, two yellow lines at the bottom of the, it's a
 24 tracksuit top actually. You see that person on the first
 25 photograph? He's number 2 on the photograph and he's

Page 32019

1 immediately to the right of Mr Noki. Do you see that?
 2 MR X: That is Nzuzza.
 3 CHAIRPERSON: He doesn't appear on the
 4 right-hand photograph, the photograph taken by Colonel
 5 Mere. That's correct too, is it?
 6 MR X: Yes, he does not appear.
 7 MR BUDLENDER SC: So going from left to
 8 right on both photographs we have the man with the blue
 9 blanket, Anele. Correct?
 10 MR X: Ja, I see him.
 11 MR BUDLENDER SC: Next to him is Mr Noki.
 12 MR X: I see him.
 13 MR BUDLENDER SC: And then on the first
 14 photograph next to Mr Noki is Mr Nzuzza, but on the lower
 15 photograph Mr Nzuzza has now left. You see that?
 16 MR X: I see that.
 17 MR BUDLENDER SC: And then the next
 18 person is there on both photograph, he's the person who's
 19 called number 3, with the beige blanket and a bald head.
 20 You see that?
 21 MR X: I see it.
 22 MR BUDLENDER SC: And then on the top
 23 photograph next to him is you. Is that correct?
 24 MR X: Yes.
 25 MR BUDLENDER SC: But you say the man

Page 32020

1 next to him on the bottom photograph is not you, and you
 2 say that even though he also has a beige blanket, even
 3 though he also has a dark top, and even though he also has
 4 blue jeans? Is that your evidence, that that man standing
 5 up is not you, even though he's next to the man you were
 6 standing, you were next to, and he has a beige blanket, a
 7 dark top, and blue jeans?
 8 MR X: No, that's not me, the man who's
 9 standing.
 10 CHAIRPERSON: The man who's standing has
 11 got this beige blanket over his left shoulder in Colonel
 12 Mere's photograph and you had a beige blanket over your
 13 left shoulder in Mr Marinovich's photograph, the first one
 14 on the left. That's correct, is it?
 15 MR X: Mr Chair, these blankets are the
 16 same but that is not me. These are the Sotho blankets.
 17 CHAIRPERSON: Alright, okay. So it's a
 18 similar blanket. So the person in the left-hand
 19 photograph, who is you, has got a beige blanket on his
 20 left, over his left shoulder, and the person we see with
 21 also the number 4 superimposed above his head in the right-
 22 hand photograph, Colonel Mere's photograph, has also got a
 23 beige blanket over his left shoulder, but you say it's a
 24 similar blanket, it's not the same. That's your evidence,
 25 is it?

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1 MR X: Yes, that's not me.
 2 CHAIRPERSON: Yes, and the person who is
 3 on the left-hand photograph, Mr Marinovich's with the beige
 4 blanket over his left shoulder and who you say is you, has
 5 got a dark top. That's also correct, is it?
 6 MR X: What I'm wearing there is
 7 reversible. I can wear it on the other side. It's not the
 8 same colour.
 9 CHAIRPERSON: No, no, I understand. It's
 10 a dark top and the person on the right-hand photograph who
 11 is standing up with a similar blanket to your blanket over
 12 his left shoulder, has got a dark top as well. That's
 13 correct, is it? That's correct, isn't it? I'm waiting for
 14 your answer.
 15 MR X: No, now I'm suffering from a
 16 headache.
 17 CHAIRPERSON: I'm sorry about the
 18 headache. I hope when we finish the lunch adjournment your
 19 headache would have disappeared. Just one point, the last
 20 question I want to ask you, you'll notice the colours on
 21 these two photographs are slightly different. If you look
 22 at the person who is to the left of Mr Noki, who is Anele,
 23 who is on the left-hand of the photograph, Mr Marinovich's
 24 photograph, you will see his blanket is a dark blue. Can
 25 you see that?

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1 MR X: Yes, I see it.
 2 CHAIRPERSON: Yes, and when one looks at
 3 Colonel Mere's photograph on the right one sees what's
 4 obviously the same blanket, still Anele, but the blue is
 5 lighter, isn't it? That's right, isn't it?
 6 MR X: No, I don't agree, Mr Chair. I
 7 don't know whether it's because I'm dizzy as a result of
 8 the headache, or I can't see –
 9 CHAIRPERSON: I'm sorry if you have a
 10 headache, and I think we'll take the lunch adjournment now.
 11 It's not fair to force you to answer the question now.
 12 We'll take the lunch adjournment, we'll start again at
 13 quarter to 2 and perhaps Mr Budlender can question you
 14 further on this.
 15 [COMMISSION ADJOURNS COMMISSION RESUMES]
 16 [13:53] CHAIRPERSON: The Commission resumes.
 17 Would you please tell the witness he's still under oath?
 18 MR X: Yes, sir.
 19 MR X: (s.u.o.)
 20 CHAIRPERSON: Are you feeling a little
 21 bit better now, Mr X?
 22 MR X: The problem there is a child died
 23 in my family, the child is being buried today.
 24 CHAIRPERSON: I'm sorry to hear that and
 25 would you please convey our sympathy and condolences to the

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1 members of your family?
 2 MR X: Yes. I just did not want to
 3 report this in the morning but I received a call late
 4 yesterday.
 5 CHAIRPERSON: I can understand and I can
 6 understand how you feel in those circumstances. That's why
 7 I said we convey our sympathies to you and your family.
 8 MR X: Thank you.
 9 CHAIRPERSON: It must be hard not to be
 10 able to go home in circumstances such as this.
 11 CROSS-EXAMINATION BY MR BUDLENDER SC (CONTD.):
 12 Thank you, Chair. Mr X, I just want to clarify some
 13 evidence you gave just before lunch. It wasn't clear to me
 14 what you were saying. If I understand it, you said that
 15 the jersey which you were wearing on the 15th is a
 16 reversible jersey, is that right?
 17 MR X: Yes, Mr Chair.
 18 MR BUDLENDER SC: Do you mean that you
 19 can reverse it to be one way and then to be inside out, or
 20 do you mean you can reverse the back to the front and the
 21 front to the back?
 22 MR X: It's a jersey that you wear inside
 23 out, you reverse it, the inside is outside.
 24 MR BUDLENDER SC: Thank you. Now I'm not
 25 going to repeat all of the questions that you were asked

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1 before lunch. We are going to submit in argument that the
 2 person who is standing up on the – could we have 34.2 up so
 3 I just can show it again – that the person in the lower
 4 photograph who is standing up on the right is the same
 5 person as the person you identified in the upper one and we
 6 say that because he is next to the same person in both
 7 photographs, he is wearing blue jeans in both photographs,
 8 he is wearing a dark top in both photographs and he's
 9 carrying, he's wearing a beige blanket in both photographs
 10 and he's carrying, wearing the beige blanket over his left
 11 shoulder. And those two photographs are just four minutes
 12 apart. You say the man in the lower photograph is not you.
 13 MR X: No, that is not me.
 14 MR BUDLENDER SC: Who is he?
 15 MR X: I do not know his name but he is a
 16 Makarapa member, for the fact he is amongst us, the
 17 committee members, one of the people who had also undergone
 18 rituals.
 19 MR BUDLENDER SC: Is he a member of the
 20 committee?
 21 MR X: It's a member of the Makarapa. I
 22 do not know his name. I mentioned the people I know, the
 23 five people I know from the group on top and I do not know
 24 all the names of the members of the Makarapas -
 25 MR BUDLENDER SC: I understand.

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1 MR X: - Makarapa members and the
 2 committee members who come together on the mountain.
 3 MR BUDLENDER SC: I understand that. Is
 4 he, was he a member of the committee of 15?
 5 MR X: But Mr Chair, if you count on the
 6 top group, those people are 17 without the number 15, they
 7 are people from the Makarapa group who joined us.
 8 MR BUDLENDER SC: You haven't answered my
 9 question. Was he a member of the committee?
 10 MR X: He was a member of the Makarapas,
 11 I do not know him.
 12 MR BUDLENDER SC: Mr X, can you just
 13 answer the question? Was he a member of the committee?
 14 MR X: No, sir.
 15 MR BUDLENDER SC: So what we have is that
 16 – and you've told us that this was a member, this was a
 17 meeting, this was a caucus meeting of the committee.
 18 MR X: Yes, sir.
 19 MR BUDLENDER SC: So what you're telling
 20 the Commission is that this person in the lower photograph
 21 is a person who is attending a meeting of the committee of
 22 which he's not a member. He – sorry. He's wearing jeans
 23 that were similar to the one, to the member you've pointed
 24 out, he's wearing a top which is similar to the member
 25 you've pointed out, he's wearing a blanket similar to the

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1 one you pointed out, he's wearing the blanket in the same
 2 manner as the one that you pointed out, but he's not the
 3 [inaudible]. And he's standing in the same place as the
 4 one you pointed out.
 5 MR X: Mr Chair, that person came there
 6 to listen to what was being said. He is a Makarapa member.
 7 MR BUDLENDER SC: Alright. Chair, I'd
 8 like to put in some further photographs –
 9 COMMISSIONER HEMRAJ: Before you do that,
 10 Mr X are you visible in the second photograph?
 11 MR X: There are many of us there, Mr
 12 Chair. We did not choose to be where we are and the people
 13 are caucusing.
 14 CHAIRPERSON: That's not the question you
 15 were asked. The question you were asked was, can we see
 16 you on the second photograph? Are you visible on that
 17 photograph?
 18 MR X: I'm there, down there. You see
 19 the person sitting next to Mambush, that's me.
 20 CHAIRPERSON: On Mambush's right?
 21 MR X: Yes, on the right.
 22 CHAIRPERSON: I see. Number 3 on that
 23 photograph. Now you told us that the committee consisted
 24 of 15 people, five from Karee shaft, as you put it, five
 25 from Western shaft and five from Eastern shaft. You were

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1 from the Eastern shaft, weren't you?
 2 MR X: Yes, sir.
 3 CHAIRPERSON: Can you see any of the
 4 other delegates from the Eastern shaft on either of those
 5 two photographs?
 6 MR X: There are other members there.
 7 CHAIRPERSON: Can you see?
 8 MR X: Makhubane works at 3 shaft,
 9 Eastern.
 10 CHAIRPERSON: The Eastern shaft?
 11 MR X: Yes, this is at Eastern, he works
 12 at 3 shaft.
 13 CHAIRPERSON: Anybody else from the
 14 Eastern shaft on either of these photographs that you can
 15 identify?
 16 MR X: Yes, there are other people but I
 17 don't have their names here.
 18 CHAIRPERSON: But you had their names, I
 19 mean they were from Eastern shaft, you were from Eastern
 20 shaft also.
 21 MR X: The people I recognised from that
 22 group is myself and Makhubane who are from Eastern. The
 23 other people are from Saffy, there's a shaft called Saffy
 24 there. One from Eastern would be working at Karee shaft,
 25 we were mixed there from the different shafts.

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1 CHAIRPERSON: Makhubane, did he have
 2 another name?
 3 MR X: Rasta.
 4 CHAIRPERSON: According to your statement
 5 you made in February 2013, Rasta, otherwise known as
 6 Makhubane, was a delegate. He was a delegate from the
 7 Western shaft, not from the Eastern shaft.
 8 MR X: I mentioned Makhubane's name, he's
 9 there, he's in the committee.
 10 MR BUDLENDER SC: Mr X, do I understand
 11 you correctly that in response to the question from
 12 Commissioner Hemraj you said that you are the person
 13 numbered 3 on the lower photograph? I'm pointing out you,
 14 that's that person.
 15 MR X: Mr Chair, I'm thinking that could
 16 be me, I'm not sure. I'm not sure about the photo – on top
 17 of the photo above.
 18 MR BUDLENDER SC: Earlier today you
 19 agreed that the person who is number 3 on the lower
 20 photograph is the same person as the person who is number 3
 21 on the upper photograph, so that can't be you. You agreed
 22 with that, so how could it be you?
 23 MR X: Mr Chair, I have a request. Our
 24 culture is not the same as white people's culture. In our
 25 culture when there's a death in the family you mourn for

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1 that person who died. There is a funeral back home at one,
 2 so can I please rest my – mentally I need a rest, I'm
 3 mentally exhausted.
 4 CHAIRPERSON: I'll tell you what we'll
 5 do. We'll take an adjournment just now. Mr Mathibedi can
 6 contact, as to the witness at the remote venue at which he
 7 is and then report back to us on what we can do with the
 8 rest of the afternoon.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [14:37] CHAIRPERSON: The Commission resumes. Mr
 11 Mathibedi, are you in a position to report on what is to
 12 happen now?
 13 MR MATHIBEDI SC: Thanks, Chair. Chair,
 14 due to bereavement in Mr X's family we ask that this matter
 15 be postponed to the 14th because he is not in a proper fit
 16 and mental state to can proceed with the proceedings today
 17 because of the emotions that he's undergoing, and also
 18 because tomorrow according to his culture we have a
 19 situation where rituals have to be performed.
 20 CHAIRPERSON: Is he thereafter in a
 21 period of mourning that he would have to observe?
 22 MR MATHIBEDI SC: That's correct, Chair,
 23 hence I'm asking that the matter be postponed to the 14th.
 24 CHAIRPERSON: I see. Mr Budlender or Ms
 25 Pillay, do you have anything to say in regard to the

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1 application?
 2 MR BUDLENDER SC: Chair, it's very
 3 unfortunate, but it seems that there's no alternative and
 4 one can understand the position. I've just been reminded
 5 that the 14th is the day when the former Minister of Police
 6 will be giving evidence, Mr Mthethwa, so this witness would
 7 need to be available but he would have to come immediately
 8 after Mr Mthethwa. We can't move Mr Mthethwa around. If
 9 the Commission agrees that that is the way forward, in that
 10 regard we suggest that parties which wish to cross-examine
 11 Minister Mthethwa should give notice, should apply for
 12 leave, indicating what they want to cross-examine on, what
 13 subject matter, how long they'll be and identifying
 14 documents by Tuesday because Minister Mthethwa no doubt has
 15 many other documents which he must read. We must give him
 16 some time to read before the Monday following, and we're
 17 expecting a supplementary statement from the Minister which
 18 will be distributed, we're expecting it tomorrow. It will
 19 be distributed as soon as we receive it.
 20 CHAIRPERSON: Yes, thank you. I see from
 21 my diary that, I don't know if this entry is still correct
 22 but that Mr Ramaphosa, the Deputy President, is scheduled
 23 to be here on the 16th. Is that correct?
 24 MR BUDLENDER SC: That date has been
 25 changed, Chair. It's now towards the end of July. I think

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1 the current date is the 29th of July.
 2 CHAIRPERSON: So the only witness of that
 3 group that the two ministers and the Deputy President, the
 4 only witness from that group is Mr Mthethwa who is due to
 5 give evidence on the 14th, you say?
 6 MR BUDLENDER SC: 14th and 15th, although
 7 we hope we'll be able to complete it in one day, but we'll
 8 have to see.
 9 CHAIRPERSON: Yes, I see, so that those
 10 who are going to be cross-examining this witness once the
 11 evidence of Minister Mthethwa is over must be ready to do
 12 so. You will obviously continue with your cross-
 13 examination. I understood you to tell me in chambers that
 14 you thought it shouldn't be more than half an hour.
 15 MR BUDLENDER SC: That's right.
 16 CHAIRPERSON: And I think then the next
 17 cross-examiner would be –
 18 MR BUDLENDER SC: Mr Tip.
 19 CHAIRPERSON: Ms Pillay, is –
 20 MR BUDLENDER SC: Mr Tip will be –
 21 CHAIRPERSON: Mr Tip, I think.
 22 MR TIP SC: That's correct, Chair.
 23 CHAIRPERSON: Thank you, and how long did
 24 we give you?
 25 MR TIP SC: You've given me two hours,

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1 Chair.
 2 CHAIRPERSON: Yes, that's right, and then
 3 I think after you is Lonmin. You're going to cross-
 4 examine, Mr Van As?
 5 MR VAN AS: That's correct, Mr Chairman.
 6 CHAIRPERSON: How long do you
 7 anticipate –
 8 MR VAN AS: An hour, please, Mr Chairman.
 9 CHAIRPERSON: An hour, and then after
 10 that it's counsel for - I think Mr Gumbi, is it? Sorry,
 11 it's [inaudible] of the Monene family, I think, and –
 12 MS PILLAY: No, Chair, it's the Baloyi
 13 team is after Lonmin and they have half an hour.
 14 CHAIRPERSON: Half an hour, and then –
 15 MS PILLAY: It's the Monene family.
 16 CHAIRPERSON: How long do they have?
 17 MS PILLAY: They also have half an hour.
 18 CHAIRPERSON: I see, and thereafter?
 19 MS PILLAY: It's the LRC and they've got
 20 have a day.
 21 CHAIRPERSON: I see, alright. So that
 22 should take us to the end of the 15th if we finish the
 23 Minister on the 14th. Alright, thank you. So very well,
 24 then the – as I've said before, I'm reluctant to lose any
 25 sitting days in this Commission, but sometimes there's

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1 nothing one can do about things. The inevitability has to
 2 be faced. So we will adjourn then until the 14th –
 3 MR GOTZ: Chair, sorry, might I impress
 4 upon the evidence leaders to please provide us with a
 5 schedule or timetable as soon as possible? The last
 6 communication we had on the subject was in May, in terms of
 7 which we were told that the Minister of Police would
 8 provisionally be coming on the 14th of July. We raised the
 9 issue last week with Ms Pillay. We were not told that the
 10 Minister had been confirmed for the 14th of July and we've
 11 been –
 12 CHAIRPERSON: You've now been told –
 13 MR GOTZ: - asking for the timetable for
 14 some time, Chair, and we respectfully request that the
 15 evidence leaders provide the parties with one as soon as
 16 possible. Thank you.
 17 CHAIRPERSON: Well, you've now been told
 18 in good time what will happen on the 14th. Mr Budlender, do
 19 you want to say something?
 20 MR BUDLENDER SC: I'd like to respond to
 21 that, because I don't appreciate the tone of that remark.
 22 Mr Gotz knows as well as we do that it was only early this
 23 week that we were told that the President had decided to
 24 grant an extension. Any programme would be entirely
 25 provisional until we knew when the work of the Commission

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1 was going to end. Now that we have been told that we are
 2 working on the programme. We hope to be in a position to
 3 distribute a programme very shortly, but the complaint with
 4 respect is ill-founded. It would have been useless for us
 5 to make an announcement as to when particular people were
 6 going to come when we didn't know when the Commission was
 7 going to finish its work.
 8 MR GOTZ: Chair, might I apologise if my
 9 frustration in this regard has led me to adopt a tone which
 10 is inappropriate, but it is borne of frustration, Chair.
 11 I've raised this on a number of occasions that we would
 12 like a timetable, and –
 13 CHAIRPERSON: I'm sure, I'm also waiting
 14 for the programme. I was told as soon as we got notice of
 15 the extension that a programme was being prepared and will
 16 be made available to us, the Commissioners, as soon as
 17 possible. So we also haven't got it yet. But I'm not
 18 frustrated because I understand the problems that the
 19 evidence leaders have. I think that in the circumstances
 20 you will get it as soon as the rest of us, and I don't
 21 think it's appropriate, if I may say so, for reproach for
 22 requests, for counsel's respectful requests to be made in
 23 the open chamber unless the matters have been discussed
 24 beforehand because there may well be, as there is in this
 25 case, a satisfactory and perfectly understandable

1 explanation for the delay. But on that note we'll adjourn
2 until 9 o'clock on the morning the 14th.

3 [COMMISSION ADJOURNED]

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<p>A</p> <p>AAA 31967:15 AAAA 31967:7 32013:18 AAAA1.2 31982:22 32001:19 AAAA25 31972:8,8 32010:14 32013:12 32013:25 32014:1,24 AAAA25.1 32013:10 AAAA31 31967:5 AAAA33 31967:15 AAAA33.1 31972:2 31977:1,2 AAAA33.2 31970:9,21 AAAA33.3 31978:3 AAAA33.4 32013:11 AAAA34 32014:1 AAAA34.1 32014:24 AAAA34.2 32015:5 AAAA8 31990:6 31991:10 AAA33 31967:6 able 31989:18 31994:20 32005:12 32023:10 32031:7 accept 31965:25 accepts 31982:9,10 accompanied 31963:11 activities 31963:1,6 actual 31967:16 add 32000:5,7,9 adding 32000:11 additional 32000:18,25 32001:6,11 address 31956:16 31960:3,25 adjourn 31999:6 32033:2 32035:1 ADJOURNED 32035:3 adjournment 31999:10 32021:18 32022:10 32022:12 32029:5 ADJOURNS 31993:18 31999:8 32022:15 32029:9 admit 32007:15 Admittedly 31961:2 adopt 32034:9 Adv 31989:12,19 31998:7 31999:20 advised 31960:7 advocates 31974:12 African 31975:3 afternoon 32014:8,9,10 32029:8 agree 31957:2 31962:2 31979:10 32002:24 32022:6 agreed 32028:19,21 agrees 32030:9 alighted 31960:4 alleged 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31995:22 caused 31989:25 31990:15 cell 31967:12 certain 31976:3 32008:20 certainly 31966:14 31991:4 Chairman 32032:5,8 chamber 31999:10 32034:23 chambers 32031:13 change 31955:13,19 31972:17 31973:2 31975:18,20 31997:5 31998:14,20 changed 31972:24 31976:1 31996:8,11 31996:17 32016:7 32030:25 changing 31973:24 31974:19,21 32010:2 chanted 31960:10</p>
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