

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 44 6 FEBRUARY 2013 PAGES 4736 TO 4870

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 6 FEBRUARY 2013]
 2 [09:43] CHAIRPERSON: The Commission resumes.
 3 You're still under oath, Mr Zokwana. Mr Mpofo, you are
 4 still cross-examining, I take it.
 5 MR MPOFU: Yes, thank you very much,
 6 Chairperson.
 7 SENZENI ZOKWANA (CONTD):
 8 CROSS-EXAMINATION BY MR MPOFU (CONTD):
 9 Thank you, Chair. Mr Zokwana, we finished off when I just
 10 read out the e-mails in BBB4, remember?
 11 MR ZOKWANA: Good morning, counsellor
 12 Mpofo. Yes, it is so.
 13 MR MPOFU: Thank you. Sorry, Mr Zokwana,
 14 I have been reprimanded before for greeting the witnesses.
 15 I'm sorry, I forgot to –
 16 CHAIRPERSON: I think he's over it. Can
 17 we get on with the case?
 18 MR MPOFU: Yes. You see what I mean?
 19 Thank you, Chairperson. Mr Zokwana, I just want to recap
 20 because we need to situate this discussion that we're going
 21 to have in its proper context, so I'll just recap without
 22 wasting time or repeating the ground that we covered
 23 yesterday. What we are discussing now is what I put to
 24 you, that there have been submissions made by myself and
 25 the SAPS of two types of collusion. Do you remember that?

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1 MR ZOKWANA: Those were your views –
 2 MR MPOFU: But do you remember that?
 3 MR ZOKWANA: Yes, I remember that.
 4 MR MPOFU: Thank you. Can I also maybe
 5 just make an appeal that you listen to my question and
 6 answer it, instead of giving long explanations. I'm not
 7 saying that to be facetious, I just want us to save time,
 8 okay? I will try to do that, Chairperson, but I think that
 9 before you came to this process you worked on, with a
 10 political theory that underlines the basis of my question.
 11 So as a result I think it would be unfair on my part,
 12 Chairperson, to just give yes or no answers to a question
 13 that has got other implications or that can be viewed as
 14 either me agreeing with you or disagreeing with you.
 15 MR MPOFU: Okay. No, sorry no, when the
 16 question needs an explanation of course you can't just have
 17 a monosyllabic answer, but when it simply needs a yes or
 18 no, can you please humour us with that? Right, the – if
 19 you go to, I don't know if you have a copy of the
 20 transcript, Ms Pillay? I'm just going to go from page 45,
 21 46, that would be day 41, I think it's the latest. Anyway
 22 I'll quote it, if you remember you'll just say so, just to
 23 save time. In relation to the collusion alleged by SAPS,
 24 this is what Mr Semanya said to you. Can I read it out?
 25 Sorry, 45/46, page 45, 46.

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1 COMMISSIONER HEMRAJ: Did you say day 41?
 2 MR MPOFU: Day 41, yes. Page 45, 46. Oh
 3 sorry, no, it's day 42. I just have it combined. Day 42
 4 would be 1 February, sorry. Are we there?
 5 MR ZOKWANA: Yes.
 6 MR MPOFU: Okay. This is what was said
 7 by counsel, my learned friend Mr Semanya in response to
 8 something you had said, "Because we're going to ask the
 9 Commission at the end that one of the recommendations or
 10 findings that must be made is that it is the rigidity of
 11 both labour and capital to formations instead of resolving
 12 a palpable problem that's in their hands." Do you remember
 13 that?
 14 MR ZOKWANA: Yes, I can see that, yes.
 15 MR MPOFU: And I said that we, in
 16 argument we'll agree with that proposition with Mr Semanya
 17 but we will also argue that the primary collusion was the
 18 one between the SAPS and Lonmin. Remember me saying that?
 19 I'm not saying you agree with it, do you remember me
 20 stating that to you?
 21 MR ZOKWANA: Yes, I do, you said so and I
 22 remember I said that will be what you will present to the
 23 Commission, not what I can comment on. I remember that.
 24 MR MPOFU: And you will note that the –
 25 in both of those sets of collusion the common denominator

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1 is Lonmin, correct?
 2 MR BURGER SC: I object to that
 3 proposition. I object to that proposition. There's no
 4 two, second set of collusion here that my learned friend
 5 has referred to and while I interrupt, Chair, I really call
 6 upon you, it's now five to 10, we haven't had a question
 7 yet. I don't know what we're busy with.
 8 CHAIRPERSON: I already said some time
 9 ago that the time for pleasantries was over and I wanted a
 10 question, but you've made the point as well. Mr Mpofo I'm
 11 sure will bear it in mind. The point, the main objection
 12 at this stage is that there's only one collusion that's
 13 actually been referred to.
 14 MR MPOFU: Yes.
 15 CHAIRPERSON: Not two. So you'll have to
 16 reformulate your question or I may have to uphold the
 17 objection when I've heard your reply.
 18 MR MPOFU: Okay, thank you, Chair. Let's
 19 make it easy and use terminology maybe that will
 20 differentiate. Let's call the collusion that I allege, the
 21 toxic collusion and let's call the one that's alleged by Mr
 22 Semanya the unholy alliance. Do you agree that Mr Semanya,
 23 from the passage that I read out, suggests that he, at the
 24 end of the Commission will ask that both labour and capital
 25 –

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1 CHAIRPERSON: Mr Mpofu, you don't have to
2 do that.

3 MR MPOFU: Yes –

4 CHAIRPERSON: What Mr Semenya said, we
5 heard. You read it out. What's the point of saying to him
6 do you agree that Mr Semenya said what I read to you what
7 he said?

8 MR MPOFU: No –

9 CHAIRPERSON: Why not just ask the
10 question. If he doesn't understand he'll tell us and we'll
11 deal with it then.

12 MR MPOFU: Chairperson –

13 CHAIRPERSON: Time is precious. Please
14 ask some questions. You haven't asked a question yet. Mr
15 Burger's irritation is not confined to him. Please ask a
16 question.

17 MR MPOFU: Well, Chairperson, should I
18 not deal with the objection?

19 CHAIRPERSON: You said you'd reformulate
20 your question, then you started making a speech. Please
21 reform – please just ask the question.

22 MR MPOFU: No, Chairperson, with the
23 greatest respect, Mr Burger has said that there's one
24 collusion. I'm trying to establish that there's two.

25 CHAIRPERSON: You've said that. You've

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1 said I'm calling the one, one thing, I'm calling the other,
2 the other.

3 MR MPOFU: Yes.

4 CHAIRPERSON: You've said that. Then you
5 say, "Do you agree that Mr Semenya said the following."
6 You don't have to ask that question, we know what Mr
7 Semenya said, the witness knows what Mr Semenya said, just
8 ask the question. If he doesn't understand then I will –

9 MR MPOFU: Alright. From what I said to
10 you in the morning, Mr Zokwana, before Mr Burger's
11 intervention, do you understand that we are talking about
12 two separate allegations which would be made at the end of
13 the Commission as to who was in bed with whom or who did
14 what in cahoots with whom?

15 MR ZOKWANA: Those, I have heard you
16 saying that and in my view they remain what you have to
17 prove –

18 MR MPOFU: Yes.

19 MR ZOKWANA: - than being a fact.

20 MR MPOFU: No, I'm not saying they are
21 facts, I'm saying allegations of collusion but –

22 MR ZOKWANA: Chairperson –

23 CHAIRPERSON: You mustn't speak over each
24 other. You're speaking, Mr Mpofu the witness was speaking,
25 he was listening patiently when you made a speech, he

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1 didn't interrupt you. Extend to him the same courtesy. Mr
2 Zokwana, please continue with your answer.

3 MR ZOKWANA: Thank you, Chairperson. You
4 know, Chairperson, I think that after every major incident
5 like the one we are dealing with, people will come with
6 conspiracy theories that seek to explain what, in their
7 view, would be the fundamental cause. So I'm saying,
8 Chairperson, he is right then to present – [indistinct] I
9 am compelled to agree with him. I have heard what Mr
10 Semenya said, I have heard what he is saying. I don't
11 think I should engage in that debate as to –

12 CHAIRPERSON: Well, the point is a simple
13 one. He simply wants to know whether you understand what I
14 can call the shorthand terminology that he's going to use.
15 He does this by way of clearing the ground for the
16 questions to follow. He's drawing a distinction between
17 what he calls a toxic collusion between state and capital
18 and what he calls an unholy alliance between capital and
19 union.

20 MR ZOKWANA: I –

21 CHAIRPERSON: You understand that
22 distinction?

23 MR ZOKWANA: Yes, I do.

24 CHAIRPERSON: Now you've understood it, I
25 hope that the questioning will commence.

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1 MR MPOFU: Thanks, Chairperson.

2 CHAIRPERSON: Mr Mathibedi, you want to
3 say something?

4 MR MATHIBEDI: Chairperson, I think it
5 will be unfair for our client, for Mr Mpofu to argue at the
6 end of the day –

7 CHAIRPERSON: No, he can argue what he
8 likes at the end of the day. I can't indicate now what he
9 can't argue at the end of the day. If he puts up a bad
10 argument at the end of the day, you'll be able to answer
11 it. At the moment he's just trying to get answers from the
12 witness which will enable him to argue the way he wants to
13 argue.

14 MR MATHIBEDI: Well, with due respect, Mr
15 Chairman –

16 CHAIRPERSON: - your objection –

17 MR MATHIBEDI: - if somebody has to argue
18 at the end of the day that there was a toxic relationship
19 between Lonmin and the police, then such evidence should be
20 produced so that we should deal with that.

21 CHAIRPERSON: Yes, no, that's quite
22 correct but I take it Mr Mpofu's answer to that will be, I
23 haven't led – I propose to put the evidence before the
24 Commission and I'll then argue. You're quite right, he
25 can't argue at the moment on the basis of what's before us

1 but he may be able, depending what happens later, but all
 2 he's doing at the moment is he's asking questions and he's
 3 establishing a kind of terminology to make the questions
 4 shorter. I hope he succeeds in making the questions
 5 shorter. So I think, may I suggest you hold your objection
 6 back for the moment and at a later stage if there's
 7 something that you have serious complaints about, then
 8 raise it again, alright?
 9 MR MATHIBEDI: But with due respect, Mr
 10 Chairman, he must give us an undertaking that such meeting,
 11 such – you know, information or evidence will be produced.
 12 CHAIRPERSON: Mr Mpofo, you hear that.
 13 MR MPOFU: Well, Chairperson –
 14 CHAIRPERSON: Can you give the
 15 undertaking, either direct or indirect evidence in the form
 16 of circumstantial evidence will be forthcoming?
 17 MR MPOFU: Well, it already has, but I
 18 guess I can give the undertaking.
 19 CHAIRPERSON: Alright, the undertaking
 20 has been given, now ask the question.
 21 MR MPOFU: Thank you, Chair.
 22 MR BURGER SC: May I then – may I then
 23 have clarity, sir? It's not sufficient to give an
 24 undertaking. My learned friend is not entitled to debate
 25 with an outside witness the existence of a toxic

1 relationship. He doesn't understand one of the two words,
 2 I will submit. He cannot debate that with the witness if
 3 he doesn't give a factual basis for that, otherwise it's a
 4 debate in the air.
 5 CHAIRPERSON: Mr Burger, I think, with
 6 respect – one of my commissioners wants to – Mr Burger,
 7 there are two points, as I understand, that we've got to be
 8 clear about. The first is the alleged toxic collusion
 9 between the state and capital, to use Mr Mpofo's
 10 terminology, as I understand it, isn't going to be the
 11 subject of these questions because this witness can't
 12 answer anything about that. So you don't have to worry
 13 about that for the moment. The next question, what he does
 14 propose to do is to ask questions about what he calls the
 15 unholy alliance between your client and NUM. Now I don't
 16 know, I haven't seen the statements that have been
 17 exchanged, I don't know whether any basis has been laid in
 18 the statements that you've received from NUM for
 19 questioning along those lines and if that's the basis for
 20 your objection I can understand it, but if there is
 21 something – either directly or circumstances from which an
 22 inference can be drawn – which does relate to the unholy
 23 alliance, so-called unholy alliance, then it may well be
 24 that the questions can be asked.
 25 MR BURGER SC: With respect, but I

1 understand the position differently. My learned friend has
 2 yesterday, just before we closed, read – at great detail
 3 and verbatim – a series of e-mails. I submit he did that
 4 as a basis for a submission at the end of the day of this
 5 toxic relationship, but of course he needs the courage now
 6 to say that and I was waiting for that to be said today.
 7 If his suggestion is that his evidence for a toxic
 8 relationship between my client and the SAPS is that series
 9 of e-mails, he'd better say so because I will ask an
 10 opportunity of you to, with this witness - how irrelevant
 11 it may be – to debate that very proposition.
 12 CHAIRPERSON: Mr Burger, of course one of
 13 the other questions we have to deal with is to what extent
 14 any of the e-mails, other than the first one, is relevant
 15 in relation to this witness. He is mentioned in the first
 16 e-mail, the witness is, so clearly questions can be asked
 17 about that. Whether there's a basis for cross-examining
 18 him about other e-mails which he never received or sent, is
 19 a matter which we'll deal with when he, when Mr Mpofo gets
 20 there, but you've issued a challenge to him, let's see what
 21 his response is.
 22 MR MPOFU: Chair, my response is simply
 23 that immediately before Mr Burger interrupted, that was
 24 exactly what I was going to say to the witness. Having put
 25 those two collusions, as I call them, I was now going to

1 say, what I'm going to ask you about is that in the e-mails
 2 this is demonstrated, and then ask the question. That's
 3 all. Without that interruption I would, we would be long
 4 there now.
 5 CHAIRPERSON: The point you'd have to
 6 deal with is, the witness's opinion as to whether something
 7 is or is not demonstrated in an e-mail isn't very relevant
 8 and we've got to decide on the evidence before us.
 9 MR MPOFU: Fair enough.
 10 CHAIRPERSON: I understand, however, in
 11 relation to the first e-mail he's mentioned by name and
 12 questions could, I think, legitimately be asked of him
 13 about that.
 14 MR MPOFU: Yes, thank you. My
 15 submission, Chair, very briefly on that is the following.
 16 One –
 17 CHAIRPERSON: I'm not stopping you from
 18 asking him questions on the first e-mail.
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: It's after that, that we
 21 may have to revert to the matter.
 22 MR MPOFU: Yes.
 23 CHAIRPERSON: But anyway – you've now got
 24 a statement made by Mr Mpofo which appears to deal with the
 25 point that you raised, is that correct?

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1 [10:03] MR BURGER SC: Sir, yes. I don't
 2 understand then why the other e-mails were read and were
 3 permitted to be read.
 4 MR MPOFU: No –
 5 MR BURGER SC: Except if it was for
 6 public consumption but apart from that, I don't follow
 7 that.
 8 MR MPOFU: Chairperson –
 9 MR BURGER SC: So perhaps my learned
 10 friend can deal with that also.
 11 MR MPOFU: Chairperson, with the greatest
 12 respect, I'll say this again. I've said that Mr Burger is
 13 wrong, wrong in suggesting that I'm only going to ask about
 14 the first e-mail and that's why I was saying let me rather
 15 address – the Chairperson has correctly put the issue on
 16 the table now, so let's rather address that issue so that
 17 after this I know whether I'm able to ask on all the e-
 18 mails or only on the first e-mail and that's how I
 19 understood the Chairperson to be – the challenge, as it
 20 were, is for me to deal with whether I intend to confine
 21 myself to e-mail 1 or not. If not –
 22 CHAIRPERSON: Sorry, you've indicated
 23 you're going to – proposing to deal with the others as
 24 well.
 25 MR MPOFU: Yes.

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1 CHAIRPERSON: Whether there's a
 2 foundation for it –
 3 MR MPOFU: Is another matter.
 4 CHAIRPERSON: - is a matter which may or
 5 may – which will become clear later.
 6 MR MPOFU: Absolutely.
 7 CHAIRPERSON: So I can't rule in
 8 abstracto, as it were, at this point whether you can
 9 question on the other e-mails because there may be some
 10 factor which –
 11 MR MPOFU: Yes.
 12 CHAIRPERSON: - entitles you to do so.
 13 You can ask on the first, I don't understand Mr Burger to
 14 object to that.
 15 MR MPOFU: No.
 16 CHAIRPERSON: So let's deal with that one
 17 and then the other issue can be raised after you've asked
 18 such preliminary questions which you would, which would put
 19 you in a position to ask about the other e-mails and then
 20 the matter can be dealt with.
 21 MR MPOFU: In fact, Chairperson, I want –
 22 CHAIRPERSON: May I say that – the point,
 23 the question was raised as to why you were permitted to
 24 read them. There was, of course, no objection to your
 25 reading them yesterday and so I didn't consider it

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1 appropriate although I had a problem, I didn't consider it
 2 appropriate to raise the point myself if the counsel whose
 3 client is directly affected didn't object, but anyway,
 4 please proceed with your first question.
 5 MR MPOFU: Yes. Mr Zokwana, you've heard
 6 that debate. I intend to question you on all the e-mails –
 7 CHAIRPERSON: Just ask the question,
 8 don't make a speech every time before you ask a question.
 9 It's not good advocacy –
 10 MR MPOFU: I'm helping the witness.
 11 CHAIRPERSON: Well, I don't think he
 12 needs help. Please just ask questions.
 13 MR MPOFU: Mr Zokwana, have you seen that
 14 on e-mail 1 you and the NUM are mentioned?
 15 MR ZOKWANA: Yes, of course.
 16 MR MPOFU: Can you see that on e-mail 2
 17 the NUM Eastern Plats is also mentioned? At the top.
 18 MR ZOKWANA: Yes, I can see that, yes,
 19 but you must note that the difference in context of
 20 mentioning – no, no, please Chairperson, I'll be happy if
 21 the counsel can agree with me that, or that in the first e-
 22 mail it mentioned NUM and the people involved, the second
 23 e-mail mentions an NUM branch structure.
 24 MR MPOFU: Yes – oh, can you see that?
 25 MR ZOKWANA: I see that, yes.

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1 MR MPOFU: Would you agree with me that
 2 apart from the e-mail that was sent at the wee hours of the
 3 morning at 1AM, the other e-mails constitute a series of e-
 4 mails that was exchanged within a period of about five
 5 hours or so?
 6 CHAIRPERSON: You don't have to ask him
 7 that question, it's obvious from the e-mails they were. I
 8 mean that's just a padding question. Ask a proper
 9 question, please.
 10 MR MPOFU: Chairperson, I'm establishing
 11 a basis for treating them as a fact.
 12 CHAIRPERSON: I know that but we can see,
 13 we can read them ourselves, you know.
 14 MR MPOFU: No – okay, we'll deal with it
 15 when the objection comes but the – Mr Zokwana, what we are
 16 going to submit is that this –
 17 CHAIRPERSON: Submit, just ask the
 18 question. You can submit later. Please ask the question.
 19 MR MPOFU: Chairperson -
 20 CHAIRPERSON: Time – this Commission is
 21 costing the taxpayer a lot of money every day. Every
 22 minute, I would like perhaps to ask an actuary to calculate
 23 for us how much each minute costs. Please bear that in
 24 mind and ask a question.
 25 MR MPOFU: Well, Chairperson, we don't

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1 know how much it costs because we don't get paid but be
 2 that as it may, I'm going to ask the questions and I'm
 3 going to take my time, you can be sure about that. But the
 4 question is this –
 5 CHAIRPERSON: - time as I allow you to
 6 take, Mr Mpofo.
 7 MR MPOFU: Thank you, yes, I will. The
 8 e-mails, as I read them and I want your comment whether you
 9 agree with me or not, form one transaction. In other
 10 words, they are each a reply to the other, starting with e-
 11 mail number 1, would you agree with that?
 12 MR ZOKWANA: Chairperson, with due
 13 respect, I can comment on the e-mails where it refers to
 14 me. I think the individual people who were interacting
 15 with whoever, are at liberty to be invited by the senior
 16 counsel for questioning – by the counsel for questioning.
 17 I'm not, I don't have a proxy on their behalf to speak –
 18 MR MPOFU: No.
 19 MR ZOKWANA: - or to confirm what was
 20 said or not.
 21 MR MPOFU: Mr Zokwana, I'm going to
 22 suggest that you are evading my question. You read the e-
 23 mails, you heard me reading them and you've read them
 24 overnight I'm sure, is that correct? Is that correct?
 25 MR ZOKWANA: But I still submit,

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1 Chairperson, that I am not at liberty to either interpret
 2 whether they were a series of discussions between the
 3 individuals concerned. I still say I can be able, if I'm
 4 asked Chairperson, where it refers to me because I can be
 5 able to remember and understand the context under which it
 6 took place.
 7 CHAIRPERSON: You can say that all the e-
 8 mails were sent over a period of a few hours, to that
 9 extent they are linked together from the point of view of
 10 almost contemporaneousness. That answer you can give
 11 without trespassing beyond that and exercising a proxy vote
 12 that you haven't been given.
 13 MR ZOKWANA: Yes.
 14 CHAIRPERSON: But Mr Mpofo having
 15 established that point, which is self-evident, will then I
 16 take it proceed to ask you a question directly relevant.
 17 MR ZOKWANA: If it's about time, that it
 18 was in a certain time, I think that has been answered. The
 19 answer is yes.
 20 MR MPOFU: Would you agree with me if I
 21 say that, generally speaking, the government or the state
 22 should not take sides in a dispute between capital and
 23 labour or rather –
 24 CHAIRPERSON: Mr Mpofo, Mr Mpofo, anyone
 25 who can read, can read the e-mails and see what the purpose

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1 is. You don't have to ask a question to which the answer
 2 is self-evident.
 3 MR MPOFU: No –
 4 CHAIRPERSON: You're just wasting time.
 5 Please ask questions but don't waste time. You've asked
 6 questions in the past which don't waste time, which help
 7 us. Please try to carry on doing what you've done in the
 8 past in that regard.
 9 MR MPOFU: Chairperson, I'm not sure that
 10 the Chairperson even heard my question. My question is
 11 this, let me – and if you feel legitimate, then Chairperson
 12 can intervene –
 13 CHAIRPERSON: You asked what the purpose
 14 of the e-mails was, I'm saying –
 15 MR MPOFU: No, no.
 16 CHAIRPERSON: Alright, well ask your
 17 question again.
 18 MR MPOFU: Chair, can I ask you the
 19 question again? My question was simply this, would you –
 20 Chairperson, with the greatest respect, you did not hear my
 21 question. My question –
 22 CHAIRPERSON: Ask your question.
 23 MR MPOFU: Yes. Do you agree, Mr
 24 Zokwana, that generally speaking the government or the
 25 state should not take sides in a labour dispute? That's

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1 the only question. I don't know –
 2 MR ZOKWANA: Ek stem nie saam nie. I
 3 don't agree with you, for one reason. If there's a dispute
 4 and the state, the Department of Labour, as the case is now
 5 in the Western Cape on the farm strike, I think everybody
 6 appreciated that the Minister had to intervene and give the
 7 way forward. If, in many instances besides the Lonmin one,
 8 whenever there's a dispute, CCMA will offer its services
 9 and has done that excellently. So I think you're wrong to
 10 say that it's wrong for the state to intervene if a labour
 11 dispute is – because all are governed by such laws.
 12 MR MPOFU: You see, Mr Zokwana, we're
 13 going to be here all week at this rate. I did not ask you
 14 about the government intervention, please sir, listen to
 15 the question. Do you agree or do you not agree?
 16 MR ZOKWANA: I don't agree, sir.
 17 MR MPOFU: That – Chair, he can't not
 18 agree when he hasn't heard the question. We've established
 19 that you're not answering my question so I'm putting it to
 20 you again, please. Do you agree – I've even written it
 21 down, so I'll read what I said to you – do you agree that,
 22 generally speaking, the government or the state should not
 23 take sides in an industrial dispute - not intervene.
 24 MR ZOKWANA: It's a tricky question to
 25 me, Chairperson, to answer without maybe explaining in what

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1 form would that taking sides be.

2 CHAIRPERSON: Mr Zokwana, what was put to

3 you was a general proposition. Generally speaking – there

4 will obviously be exceptions, I take it, but generally

5 speaking if there's a labour dispute between an employer

6 and a trade union, generally speaking it's not appropriate

7 for the state to intervene. The state should stand back

8 and allow the ordinary processes of industrial interaction

9 to proceed. I think that's the question counsel is asking

10 you. Is that right, Mr Mpofo?

11 MR MPOFU: Yes.

12 CHAIRPERSON: Now do you agree with that?

13 MR ZOKWANA: Thanks, Chairperson, for the

14 way you put it because in the first question there was the

15 issue of taking sides. If the question is as you put it, I

16 agree.

17 MR MPOFU: Thank you, Chairperson. And

18 therefore - and I'm going to try and compound my questions

19 unfortunately Chair, just to try and save time – and

20 therefore would you agree that if government took sides on

21 the side of, took sides, I meanly wrong so in terms of

22 favouring one side over the other – took sides on the side

23 of labour, then capital would rightfully frown upon that

24 and if it took sides on the side of capital, labour would

25 rightfully frown upon it. I know I'm asking you two

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1 questions but I'm trying to save time.

2 MR ZOKWANA: No, I agree with that.

3 MR MPOFU: Thank you. I didn't get quite

4 your answer but am I correct to assume that you have read

5 the e-mails overnight?

6 MR ZOKWANA: Yes, I did.

7 MR MPOFU: Now would you agree with the

8 proposition that the, that a careful analysis or a reading,

9 even not careful, of the e-mails – and I'll quote you from

10 the specific e-mail but I'm just making a broad proposition

11 for now - seem to exhibit that there was a concerted effort

12 to influence key stakeholders including your union and

13 government to act in particular ways and to talk in

14 particular ways.

15 MR BURGER SC: I object to that question.

16 The view of this witness on the meaning of the e-mails are

17 quite irrelevant and it's wasting our time.

18 CHAIRPERSON: What is your response to

19 that, Mr Mpofo?

20 MR MPOFU: Chairperson, well, this is

21 what I was trying to do earlier. The two things have been

22 established through this witness. One, it is that the e-

23 mails are interlinked, interlinked with even the one where

24 he is mentioned.

25 CHAIRPERSON: What's the relevance of

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1 that to the question as to what they mean? The Commission

2 at the end of the day will have read them, will have

3 argument as to what they mean, will form its views insofar

4 as they're relevant –

5 MR MPOFU: No, okay.

6 CHAIRPERSON: Now, the view of this

7 witness on that point isn't going to help us one way or

8 t'other, is it?

9 MR MPOFU: Ja. No, I hear that, Chair.

10 CHAIRPERSON: So maybe you should perhaps

11 step back and move on to your next question.

12 MR MPOFU: Yes, I should, Chair, but

13 before that can I say this? This following series of

14 questions is based on the witness as a, what do you call

15 it, a veteran trade unionist, so to speak, a person who

16 health and safety said what, narrowly speaking, in

17 industrial relations what kind of role the state should or

18 should not play and that's all –

19 CHAIRPERSON: Now you're doing something

20 that we've been complaining to the witness about. You're

21 anticipating the next objection and seeking to deal with it

22 by way of a pre-emptive answer. So the objection at this

23 stage is, it doesn't help to ask the witness what the e-

24 mails mean because we can read that ourselves and you've

25 conceded that that's a good point, so I suggest you move on

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1 to your next one.

2 MR MPOFU: As a – I've already called you

3 a veteran trade unionist, which I think is a description

4 that befits you, would you agree that if the e-mails

5 exhibit an intention to put pressure on government to act

6 and to talk in certain ways in relation to an industrial

7 dispute, that would be something undesirable?

8 [10:23] MR ZOKWANA: Chairperson, I have

9 submitted in my response to the same question raised by the

10 counsel for the police that I have got a particular view at

11 the stage in question of the strike, what form it takes,

12 and I would again plead that I'm not put under pressure to

13 enter into describing what could be the reflection of the

14 e-mails involved. I think the people who were interacting

15 in these e-mails can be made available to this Commission

16 and I'm sure most of them would welcome that chance to

17 exchange their ideas with counsellor Mpofo. As a senior

18 trade unionist, Chairperson, I believe that this is the

19 first time where you deal with a labour dispute that was

20 characterised by the level of violence, that we've got a

21 stage where saving lives was the key issue, than the key

22 issue that should be the bargaining processes. And I can

23 say that, Chairperson, I would be happy if I am not forced

24 to enter into the scenario that could have been present

25 between the exchange of those, the calling of Ministers and

1 difference - because I think that I will be maybe
2 prejudicing the evidence of the people involved. What I
3 can only say, Chairperson, with due respect to the counsel,
4 is in my life as a trade unionist I've never seen or I have
5 seen the discomfort, being dismissed from your own union or
6 political party, what it does to the individual and the
7 behaviour that follows thereafter. I can expand if you
8 want me to.

9 MR MPOFU: I don't. Sir, I think I asked
10 you a simple question and I started with the word "if" so
11 that I'm not accused of asking you to agree with me, as you
12 have done before. I'm saying if the e-mails exhibit an
13 intention to put pressure on government officials to act or
14 to speak in a particular fashion in relation to this
15 dispute, would you agree that that is something that would
16 be undesirable? You may not agree, you may agree.

17 CHAIRPERSON: But Mr Mpofu, the problem
18 is it's an opinion he's giving. It's an opinion that the
19 Commission can formulate itself with the benefit of
20 argument from the various parties. His answer to it
21 doesn't take the matter any further. He will either agree
22 with you or he won't, but either way we will say okay,
23 that's his opinion but we will consider all the evidence
24 and give a finding on the matter insofar as we consider to
25 be relevant but I don't think it helps us, with respect,

1 asking him – otherwise you get a whole lot of witnesses who
2 are all asked these questions on their opinions on matters
3 which really we have to form our own opinion on with the
4 benefit of argument. I have powers under the regulations
5 to disallow questions, even if technically they may be
6 admissible, in the interests of saving time and
7 concentrating in a focused way on the issues before us and
8 I'm proposing to exercise that power in respect of the
9 question you've now asked.

10 MR MPOFU: Thank you, Chairperson,
11 although you did allow it the first time. Okay, I won't
12 ask it again, it's just that it was not answered and I was
13 re-putting it. It was allowed before. Anyway –

14 CHAIRPERSON: It shouldn't have been but
15 let's not go into that now.

16 MR MPOFU: Maybe, maybe, Chairperson.
17 Once again, as a trade unionist or somebody who has been in
18 the movement, trade union movement, who has the interests
19 of workers at heart, would you agree that the intervention
20 or rather calling for the intervention of the police and
21 the army in an industrial dispute should be done as a
22 matter of last resort, if it's done at all?

23 MR ZOKWANA: Thanks, Chairperson. The
24 police and the army don't negotiate. It is the parties who
25 negotiate and I hope that that question satisfies you. I'm

1 putting this question precisely in a normal environment.
2 I'm answering you in my experience in a normal environment,
3 you don't need the police and the army to be around when
4 you negotiate.

5 MR MPOFU: And I'm sure you'll agree with
6 me, given your background, that two of the key instruments
7 of state power are the police and the army.

8 MR ZOKWANA: Yes.

9 MR MPOFU: And I'm sure you'll also agree
10 with me that the business of the army is to kill.

11 MR ZOKWANA: Chairperson, I would appeal
12 that when I'm compelled to answer some of the questions and
13 – because it is difficult to describe the army in that
14 fashion –

15 CHAIRPERSON: It sounds as if your answer
16 is no.

17 MR ZOKWANA: The answer is no,
18 Chairperson.

19 CHAIRPERSON: Okay, you've given the
20 answer, let's get to the next question.

21 MR MPOFU: Okay. It is not the business
22 of the army to kill, is that your opinion or your view?
23 It's another question, actually.

24 CHAIRPERSON: I think Mr Burger wants to
25 say something, wants to object.

1 MR BURGER SC: Chair, this is not only –
2 it's not a serious question, it's a flippant question.
3 It's wasting time. It doesn't advance what we're doing in
4 this Commission and I respectfully submit you should
5 disallow that question also, whether the army kills or does
6 not kill.

7 CHAIRPERSON: The army does all sorts of
8 things. Presumably if they engage in a war they kill but
9 otherwise, generally speaking, they don't but Mr –

10 MR MPOFU: Okay Chair, I'm prepared to
11 put it at that basis. Would you agree that one of the
12 objectives or activities –

13 CHAIRPERSON: But even if he gives a yes
14 answer to your question you're going to ask, is that going
15 to take this inquiry an inch further or perhaps I should
16 say a centimetre further?

17 MR MPOFU: Well, Chairperson, I would
18 have – I really, really, really, really hope so. I hope,
19 if this Commission is about people who were killed, I hope
20 that when somebody calls on an instrument that kills,
21 that's very relevant to this Commission, I do hope so. If
22 it is not, then we are in the wrong place.

23 CHAIRPERSON: Of course it is. The e-
24 mails speak for themselves. They will, when - the facts
25 that you are referring to are already before us but I don't

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1 know that asking this witness these questions is going to
 2 help us. So may I suggest you approach the matter in a
 3 slightly different angle and see whether it help us more
 4 than the question you've just asked.
 5 MR MPOFU: Have you ever observed, in
 6 your experience, a situation of industrial action, legal or
 7 illegal, which calls for the deployment of the army?
 8 MR ZOKWANA: I may not be an expert or
 9 maybe I haven't done a study as to have the history of
 10 illegal strike or whatever, but if - I have not seen a
 11 situation where the army is deployed to stop a strike but I
 12 know that when there's violence the police have been
 13 involved.
 14 MR MPOFU: Have you ever witnessed or
 15 experience, in your experience, a situation where a company
 16 that is involved in a strike basically dictates to the
 17 government as to how that strike should be characterised
 18 and how it should be, what it should be called?
 19 MR ZOKWANA: No.
 20 MR MPOFU: And I suppose that makes the
 21 next answer obvious but I'll ask it anyway. Have you
 22 experienced a situation where, whatever the pressure that
 23 might be put by the company as to how the strike, what it
 24 should be called, that within the space of three, four to
 25 five hours that the government indeed does what the company

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1 is asking it to do?
 2 MR ZOKWANA: Chairperson, thank you. I
 3 would like to, in my answer to say this, that this is
 4 seeking for me to quantify or explain the exchange of SMSes
 5 between government and –
 6 CHAIRPERSON: No, Mr Zokwana, that's not
 7 the question. The question is a general question, Mr
 8 Zokwana. Have you ever, in the course of your experience
 9 as a very experienced trade unionist, encountered a
 10 situation where a company goes to the government and says,
 11 look here, please take drastic action to deal with a –
 12 MR ZOKWANA: No.
 13 CHAIRPERSON: - situation and within five
 14 hours they respond. The answer to that is no.
 15 MR ZOKWANA: No.
 16 CHAIRPERSON: It is a general question,
 17 not specifically based on the facts here but you've given
 18 the answer. Mr Mpofo –
 19 MR ZOKWANA: But Chairperson, without
 20 pre-empting the question –
 21 CHAIRPERSON: No, no, it's not a good
 22 idea to answer the next question before it's been asked
 23 because sometimes it never gets asked and a clever counsel
 24 asks a question in such a way that he persuades the witness
 25 to go further than he should and the witness gets into all

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1 sorts of trouble. So my advice always is, answer the
 2 question only and answer the next question when and if it
 3 comes.
 4 MR ZOKWANA: Yes.
 5 MR MPOFU: Are you aware of any previous
 6 situation where a leader of a company or a board member or
 7 an executive would communicate directly, not with the
 8 Minister of Labour, not with the Minister of Minerals and
 9 Energy but with the Minister of Police?
 10 MR ZOKWANA: Thanks Chairperson. I am
 11 not privy to conversations of board members between
 12 themselves and ministers. Then my answer will be no.
 13 MR MPOFU: What is the view of the
 14 National Union of Mineworkers on the proper role that
 15 should be played by BEE partners in these mining BEE deals?
 16 MR ZOKWANA: Do you mean in general?
 17 MR MPOFU: In general, but in relation to
 18 the workers, in relation to the interests of the workers.
 19 MR ZOKWANA: In our view as a union, what
 20 has been insufficient is the level of transformation and
 21 this question has been raised by many media people,
 22 questioning some people who are appointed to boards, but
 23 selective in doing so. Our view is that if you, Mr Mpofo,
 24 become a participant in any deal, as a union we'd be happy
 25 if your participation reflects at all levels of the

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1 company. Changes come, the Irish coffee scenario changes
 2 to more cream at the top than sprinkles of chocolate, as
 3 the scenario is always the case. Where members at every of
 4 a company can feel that your presence, Mr Mpofo, has made
 5 their lives different, that because you are there the
 6 company's ethics have changed and embraces the different
 7 classes or people in this country. And that is a broad
 8 picture but if you wanted me to describe what individual
 9 board members to be doing, I'm not at liberty to do that.
 10 MR MPOFU: Yes, no, that's quite
 11 sufficient. The only follow-up question I have is whether,
 12 would I be entitled to read from that answer, therefore,
 13 that if I was in that position you as NUM and maybe the
 14 workers would be surprised, disappointed if I were instead
 15 to participate in exchanges that call for the army to be
 16 deployed upon them?
 17 MR ZOKWANA: Chairperson, I would decline
 18 on that question because I have not been mandated by
 19 anybody to answer as to what could have been the intentions
 20 for that and if NUM is to judge a person on the basis of
 21 what the counsellor believes could have been contra to the
 22 NUM's view, I'm not at liberty to answer that question.
 23 [10:43] CHAIRPERSON: It would depend, in any
 24 event, on the circumstances. If a BEE director of a
 25 company were to engage in what one could describe as union

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1 bashing in his capacity as a director, the union wouldn't
 2 like that. If he, however, sought to act in a manner which
 3 was in the interests of the company as a whole, including
 4 the workers, in a particularly extreme situation your
 5 opinion might be different but it's difficult to give a
 6 categorical answer, I take it, unless one knows what the
 7 full circumstances were. Would that be a fair answer?
 8 MR ZOKWANA: That is the answer,
 9 Chairperson, but I can't give an answer to that because I'm
 10 not as clear as to what, under what conditions does the
 11 counsellor described to have been under union or under
 12 worker.
 13 MR MPOFU: Yes, thank you very much for
 14 the opportunity. Maybe I was putting it too abstractly. I
 15 will tell you what the situation was. The situation was
 16 that at that stage by the 13th, nine people had died, by the
 17 14th another body was found. On the 14th it was quiet. On
 18 the 15th, as it says in the e-mails, there were no
 19 incidents.
 20 CHAIRPERSON: On the 14th Mr Twala's body
 21 was found.
 22 MR MPOFU: That's right, Chair –
 23 CHAIRPERSON: Mr Twala was killed on the
 24 14th so –
 25 MR MPOFU: Well, we don't know when he

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1 was killed, Chair. Maybe you – I don't know when he was
 2 killed.
 3 CHAIRPERSON: The body was found on the
 4 afternoon of the 14th.
 5 MR MPOFU: That's what is said.
 6 CHAIRPERSON: I think he was killed that
 7 day, was he not?
 8 MR MPOFU: I don't know.
 9 CHAIRPERSON: We'll hear in due course,
 10 presumably.
 11 MR MPOFU: Yes.
 12 CHAIRPERSON: The 15th was quiet. Sorry,
 13 I understood you to say the 14th but if I misheard you –
 14 MR MPOFU: No.
 15 CHAIRPERSON: - I apologise. Please
 16 proceed with your question.
 17 MR MPOFU: Apology accepted, Chair. I
 18 was putting that carefully for exactly that reason, that by
 19 the 13th nine people had died and on the 14th another body
 20 was found, I don't know when the person was killed. And if
 21 you go to e-mail number 2 –
 22 MR ZOKWANA: Yes?
 23 MR MPOFU: "Hello Cyril, thanks for your
 24 help. Thankfully last night was relatively peaceful, as is
 25 this morning." Do you see that?

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1 MR ZOKWANA: Yes.
 2 MR MPOFU: And that e-mail then continues
 3 to say, "The two areas of concern" – and I'm not going to
 4 read it all out, I'll paraphrase – are the fact that the
 5 Minister said that this was a wage dispute and whether or
 6 not the police can be influenced to keep the number of 800
 7 policemen for more than a week or so, remember that?
 8 MR ZOKWANA: I see that, yes.
 9 MR MPOFU: So there's peace and the two
 10 areas of concern are those two. Now that is the situation
 11 and in front of you, you said you didn't know what the
 12 situation was. Now if, under those, that situation, going
 13 back to what you were postulating me as a board member, if
 14 I were to participate in exchanges that suggest that the
 15 army, the army should be called, would you as a union and
 16 the workers in general insofar as you may answer for them,
 17 not frown upon that?
 18 MR ZOKWANA: Thanks, Chairperson. What
 19 we have not done, counsel, is to read the second sentence
 20 of the same said paragraph that details the view of the
 21 local branch of the NUM in view of what they saw happening
 22 – that, one, people wanted to go to work but the fact that
 23 there was the potential or they were being intimidated,
 24 they were calling for the police presence.
 25 MR MPOFU: Are you reading that from the

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1 e-mails?
 2 MR ZOKWANA: Yes. It said, "Hello Cyril,
 3 thanks for your help so far. Thankfully last night was
 4 relatively peaceful, as is this morning. We have been
 5 approached" – and I think it should say –
 6 MR MPOFU: Yes.
 7 MR ZOKWANA: - by, "we have been
 8 approached, we had an approach from the NUM Eastern Plan" –
 9 Eastern Plat branch, it should be – "that they would like
 10 to return to work if police can offer adequate protection."
 11 In the view of the branch, therefore, without police
 12 presence, going to work would have presented a challenge
 13 for them." If I may, as a trade unionist, given what the
 14 NUM branch view was which was on the ground, in as I am not
 15 answering whether the board member – I am answering as
 16 myself.
 17 MR MPOFU: Yes.
 18 MR ZOKWANA: The police, given what I
 19 said earlier, their presence was highly needed, not only
 20 for people who go underground but to make sure that nobody,
 21 no further body is found on the koppie or anywhere.
 22 MR MPOFU: But sir, please, my question
 23 was deliberately confined to the issue of the army which,
 24 according to you, you have never seen in your entire life
 25 being used in the circumstances. I'm asking you a simple

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1 question. Given these conditions that are described where
 2 everything is peaceful except for those two "concerns,"
 3 quote/unquote, would you – if I was the board member as you
 4 described and I called or participated in calling for the
 5 army, would you or would you not frown upon it, please?
 6 MR ZOKWANA: Is this contained on this
 7 same page –
 8 MR MPOFU: It doesn't matter, just answer
 9 the question.
 10 MR ZOKWANA: I'm not in a position to
 11 answer the question, Chairperson. [Inaudible] I think
 12 whoever made that call or that decision had all its own
 13 views.
 14 MR MPOFU: You do, do you agree – I think
 15 we went through this with Mr Gcilitshana so I'll try to do
 16 it very quickly – you would agree that the RDOs work very
 17 hard, second to none according to you, that they are
 18 extremely underpaid and that their situation constituted a
 19 ticking time bomb. I'm putting many questions because, as
 20 I say, we've already covered this ground but if you don't
 21 agree, of course you can say so.
 22 MR ZOKWANA: Because, Chairperson, I'm
 23 not only confining myself to RDOs in Marikana, I'm giving a
 24 broader view as NUM president – yes, I agree that the RDOs,
 25 I've said that they do the most strenuous work underground

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1 under very difficult conditions, I agree with that.
 2 MR MPOFU: Thank you. And I take it that
 3 you agree that the failure to address their situation
 4 amounted to a ticking time bomb, as Mr Gcilitshana
 5 testified?
 6 MR ZOKWANA: Chairperson, in my
 7 presentation here I made the point that there has been this
 8 disjuncture in the manner the issue has been dealt with,
 9 where the central bargaining were not meeting the real
 10 challenge [indistinct] we have been able to make inroads in
 11 addressing the problem, but frustratingly in the platinum
 12 industry has been the fact that there is a decentralised
 13 bargaining process. Whether the time bomb, as it is put by
 14 Gcilitshana, was or not, I think I'm presenting my own view
 15 that we knew that without addressing their problem there
 16 will always be continued disgruntlement about machine
 17 drillers, especially if companies begin to offer and give
 18 different proposals about the matter or they do as they did
 19 in Lonmin and Impala, giving people these increments
 20 without following the negotiation process, not that we are
 21 against such being given. Again Chairperson, this word
 22 "time bomb" has been used sometimes loosely and as if time
 23 bombs just find themselves in spaces and I believe that the
 24 scenario, wherever it happens, has somebody who will
 25 prevent them to happen. I don't remember the question I

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1 should be answering.
 2 MR MPOFU: Chair, if you'd just give me a
 3 second.
 4 CHAIRPERSON: I was going to take the tea
 5 adjournment in two minutes.
 6 MR MPOFU: Thank you, Chair –
 7 CHAIRPERSON: Would it be helpful if I
 8 took the tea adjournment now and you then find what you
 9 want over the tea adjournment, or have you found it already
 10 and you want to ask one short, sharp question before we
 11 take the adjournment? Tell me what you want me to do.
 12 MR MPOFU: Chair, I want a short, sharp,
 13 a short, sharp question. I will find what I was looking
 14 for but can we put it this way, if the situation of the
 15 RDOs which the NUM had been raising for some time, was left
 16 unattended for some time or for a long time, do you agree
 17 that it is a situation that might have exploded later?
 18 MR ZOKWANA: I disagree with that,
 19 Chairperson. Yes, I agree these RDOs' underpayment and the
 20 conditions under which they work could present a problem
 21 but at the same time, Chairperson, I am putting this as a
 22 view that if I'm called upon to it, that I will, as I have
 23 done – that if, when this process has gone I think the
 24 Commission will be able to find, like a time bomb that has
 25 been used by Mr Mpofo – no, no, I heard it from you today –

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1 is that for the bomb to be in that time it needs somebody
 2 to time it so that you'll know where it explodes. My view
 3 therefore is that somebody knew of these conditions of
 4 machine drillers and he manipulated the conditions for his
 5 own interest and I'm sure by the end of this Commission
 6 maybe we'll be able to find if there's such a scenario. It
 7 is my view and I stick by it. It was not that these
 8 machine drillers slept, overnight they dreamt that all of
 9 them, we need to - all of them at night and in the morning
 10 they planned these things with nobody abetting and advising
 11 them and I will find that hard, as a person who has been in
 12 the industry.
 13 MR MPOFU: Chair –
 14 CHAIRPERSON: Mr Mpofo having kept his
 15 promise to ask a short and sharp question, before he goes
 16 on to put to you what Mr Gcilitshana said in paragraph 30.6
 17 of exhibit XX1, we'll take the adjournment.
 18 MR MPOFU: Thank you, Chair.
 19 [COMMISSION ADJOURNS COMMISSION RESUMES]
 20 [11:30] CHAIRPERSON: The Commission resumes.
 21 Yesterday we were given an exhibit which was marked BB3.
 22 We were told at the time that the statement that we were
 23 given had subsequently been revised but we were given the
 24 original copy, I think probably because the revised one
 25 wasn't available at the time and the point was that

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1 paragraph 36 was the same anyway, but I think it's
 2 desirable that the exhibit should be the revised one. So
 3 I'd be grateful if, during the lunch adjournment, I could
 4 be given the revised copy and then we will destroy the
 5 preliminary one and mark the revised one BBB3.
 6 MS BARNES: Thanks, Mr Chair.
 7 CHAIRPERSON: You're still under oath, Mr
 8 Zokwana.
 9 SENZENI ZOKWANA (CONTD): Yes.
 10 CHAIRPERSON: And Mr Mpofo, I take it
 11 you're now going to deal with the statement of Mr –
 12 MR MPOFU: Gcilitshana.
 13 CHAIRPERSON: Gcilitshana, and
 14 particularly in relation to paragraph 30.6.
 15 MR MPOFU: That's correct.
 16 CHAIRPERSON: Please carry on with your
 17 cross-examination. Of course, it's merely a suggestion.
 18 You don't normally accept my suggestions, so you don't have
 19 to accept that one if you don't want to.
 20 CROSS-EXAMINATION BY MR MPOFU (CONTD):
 21 Thank you, Chairperson, I always accept your suggestions,
 22 Chair, but I need to explain, like the witness, Chair.
 23 Right, Mr Zokwana, have you now got the statement of Mr
 24 Gcilitshana? And if you don't have it I'll just read it
 25 out to you.

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1 MR ZOKWANA: I do have it.
 2 MR MPOFU: You do? Okay, go to page 10
 3 paragraph 30.6.
 4 MR ZOKWANA: Yes?
 5 MR MPOFU: You'll notice there –
 6 MR ZOKWANA: Sorry, sorry. Page 30.6?
 7 MR MPOFU: 30.6 yes.
 8 MR ZOKWANA: Yes.
 9 MR MPOFU: You'll notice there that Mr
 10 Gcilitshana, unlike what I put to you, puts that
 11 proposition not as his personal observation but as a view
 12 of the NUM.
 13 MR ZOKWANA: Yes?
 14 MR MPOFU: And he effectively says that
 15 it was the NUM view that if the RDOs' issue was not
 16 addressed, it would become a time bomb.
 17 MR ZOKWANA: Yes. I'm not sure whether
 18 this word, time bomb or timed bomb, I'm not sure which is
 19 the right word.
 20 MR MPOFU: No, it's the one – the way
 21 it's put there. It should say ticking time bomb but I see
 22 that –
 23 MR ZOKWANA: So it is ticking because you
 24 have set your watch to regulate –
 25 MR MPOFU: Correct.

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1 MR ZOKWANA: - the time at which it will
 2 explode.
 3 MR MPOFU: Okay, but we won't quibble
 4 with English, ja.
 5 CHAIRPERSON: Probably time bomb is an
 6 inaccurate metaphor, because as you point out, with a time
 7 bomb someone has actually set the clock and there will be a
 8 definite time in future when, unless the bomb is defused in
 9 the meanwhile, it's going to go off. Now I take it that's
 10 not an accurate metaphor here. What was meant was, it was
 11 a bomb that was going to go off at some uncertain –
 12 MR MPOFU: Stage.
 13 CHAIRPERSON: - undeterminable stage, but
 14 it will go off. The suggestion is it seems to be fairly
 15 certain but let's not get involved in the inadequacy and
 16 inappropriateness of the metaphor and from a strict point
 17 of view the idea is that there was going to be an explosion
 18 at some stage in the future, was conveyed and that's really
 19 what counsel is worried about.
 20 MR ZOKWANA: Correct, Chairperson.
 21 MR MPOFU: And I take it that you would
 22 agree with the view that is posed there as an NUM view,
 23 subject to what the Chairperson has said, without the exact
 24 words, that this was a situation which, if left unattended,
 25 would become seriously problematic – let's put it no higher

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1 than that.
 2 MR ZOKWANA: NUM members have
 3 [indistinct] would have meant being resolved in the
 4 processes which are within the ambit of the law.
 5 MR MPOFU: Yes, I take it that you'd also
 6 agree with Mr Gcilitshana that the conditions, the
 7 situation of the RDOs is - seriously impairs their human
 8 dignity, that they're still referred to as machine boys and
 9 I'm adding this now, it doesn't come from Mr Gcilitshana,
 10 that also the evidence will be that they worked long and
 11 unpredictable hours and sometimes the shift, if someone was
 12 supposed to knock off at one, if they haven't finished the
 13 work they might be required to work for an extra three
 14 hours, two to three hours without any overtime pay. Would
 15 you agree with that, including Mr Gcilitshana's stuff that
 16 I've added?
 17 MR ZOKWANA: I would say, Chairperson,
 18 the word "boy" has been used within the industry. One of
 19 the struggles the union I'm part of led, was one of dealing
 20 with such language and I don't think that word is still
 21 ever used in the industry. And maybe, Chairperson, to
 22 assist this Commission with the one thing I didn't mention
 23 historically, that one of the reasons NUM believes in
 24 working within the law, respect for human beings, being
 25 able to forgive whoever has done what to whom, in 1997,

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1 Chairperson, we took a decision to elect the then
2 imprisoned Nelson Mandela as our honourable president and
3 in doing that we embraced his principles and at all times
4 we are guided by that. Therefore fighting against such
5 words, changing the dignity of mineworkers, making sure
6 that there's harmony and brotherhood in terms of workers
7 has been our motto. That word, Chairperson, is no longer
8 used in my own knowledge. That's why they are called now
9 RDOs. There's no more machine boys or - the machine boys,
10 tea boys, all those who were – they're no longer in
11 existence in the language of the industry.

12 CHAIRPERSON: Mr Zokwana, if you said
13 1997 I take it you meant 1987?

14 MR ZOKWANA: In 1987 – sorry, '87. We
15 endorsed – sorry about that, thanks Chairperson, for that –
16 we elected the then imprisoned Dr Nelson Mandela as our
17 honourable president and in so doing we embraced all the
18 principles that has guided his life. Amongst those was the
19 principle of discipline within the organisation.

20 MR MPOFU: Mr Gcilitshana testified, you
21 were here when he testified and he said that those terms
22 are still being used and I can assure you that the evidence
23 will also be that those terms are still being used. Would
24 it be fair, and I'm not saying this to be funny, to suggest
25 that in relation to this and the previous issue we were

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1 talking about, that maybe you as a person who is up there
2 in the national office, are not quite as in touch with the
3 reality in the mines as somebody like Mr Gcilitshana,
4 because he certainly said those words are still being used
5 and you are now testifying that they are not?

6 CHAIRPERSON: Before you answer the
7 question, it might help generally if I point out that Mr
8 Gcilitshana, apart from being the national secretary for
9 health and safety of NUM, is also the chief negotiator –

10 MR ZOKWANA: On Lonmin.

11 CHAIRPERSON: - at Lonmin platinum.

12 MR ZOKWANA: Yes.

13 CHAIRPERSON: And the statement that he
14 made that was put to you related to something said by NUM
15 at the negotiations with Lonmin, so –

16 MR ZOKWANA: Yes.

17 CHAIRPERSON: Add that to form, to
18 amplify the question put, before you answer it.

19 MR ZOKWANA: I agree with you,
20 Chairperson. Chairperson –

21 MR MPOFU: Sorry, before you agree with
22 the Chairperson, let's not agree. The Chairperson is
23 making a mistake. The question I'm putting to you about
24 the use of the words "machine boy" has nothing to do with
25 the negotiating table. I'm talking about the use of the

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1 word in the mine. The issue of the time bomb, yes, relates
2 to what they said but that's not what we're dealing with
3 now. We have left the time bomb.

4 MR ZOKWANA: I understand you very well,
5 Mr Mpofo. Let me put it this way, Chairperson, when the
6 law is change to put forward certain rights to people and
7 if for instance now, I have been called a kaffir in my life
8 as a mineworker, it was right then because there was no law
9 against that. Yes, being called a kaffir was normal
10 underground, sir. If you were to call a white shift boss a
11 meneer, hy sal jou sê "Ek is nie 'n kaffir predikant, ek is
12 jou baas." We knew that, what it meant. The point I'm –
13 but now under this stage, the Act, the law we live under
14 would give those people, if they're so-called kaffirs, a
15 recourse to law. As we read here, they are referred as
16 RDOs, that is what – even in training, everywhere they are
17 referred to. If it happens that in a mine there can be
18 those instances, it is upon a local branch, it is upon the
19 individual so-called to go forward and lay a charge against
20 the person, but as I speak now, that language is no longer
21 in use. I don't have to belong, to be in a branch or to be
22 a mine, because I'm aware that as a union we have engaged
23 in dealing with that.

24 MR MPOFU: Yes, thank you. No, I know
25 the "kaffir predikant" one, it has been said to me as well

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1 by the security police – but are you then saying that Mr
2 Gcilitshana was wrong?

3 MR ZOKWANA: I think the Chairperson is
4 right to say that Gcilitshana has presented here as a chief
5 negotiator of Lonmin as well as the secretary of NUM in
6 health and safety. If he may have that experience, the
7 point I'm putting is, if that word is still used where
8 people are demeaned, called boys when they are men or girls
9 when they are women, old women, the law will be against
10 that person and if that is taken up, like any other
11 legislation or any other law that bans such usage, that
12 will be dealt with. It isn't that – now at least there's
13 this prohibition. Hence in the past you would find the
14 words "baas boy" or "machine boy" written in the language
15 of the company, hence now you see RDOs defining any
16 operator.

17 MR MPOFU: Thank you, Mr Zokwana, I don't
18 want to belabour this. All I will say is, and hopefully
19 you will agree with me, that the mere passing of
20 legislation does not do away with racism or racialism and
21 I'm sure you will agree with that.

22 MR ZOKWANA: I agree with you and I'm
23 saying that that legislation can only be applicable when
24 those who are offended present their case to an institution
25 to deal with.

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1 MR MPOFU: Would you agree or disagree
2 with Mr Gcilitshana that at the heart of this dispute was a
3 wage dispute and a demand for R12 500?
4 MR ZOKWANA: Chairperson, I find it
5 difficult to describe it as a dispute, on the basis that a
6 dispute only arises when a particular proposal is made to a
7 forum with employers and when the two could not agree on
8 the way of taking it forward, a dispute is declared and the
9 CCMA being the first forum, will issue the certificate and
10 resolve such. In this case, Chairperson, workers decided
11 or a group of workers decided to go on an illegal strike,
12 demanding the amount you have mentioned.
13 MR MPOFU: Mr Zokwana, please let's not
14 quibble about the technical terms. Would you agree with Mr
15 Gcilitshana that at the heart of this illegal strike, if
16 that's what you prefer, was a disagreement about wages and
17 a demand for 12 500?
18 [11:50] MR ZOKWANA: If I can look at the clause
19 that seems to be near to what you are saying, on page 11
20 clause 37, as I said, although I do not know the details,
21 it is clear that the RDOs resolved not to accept Lonmin's
22 offer of the additional allowance and instead they would
23 persist with their demand for 12 500. There's no words of
24 a dispute, it just says that what the drillers were dealing
25 with, so that if you speak of a dispute in his statement, I

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1 have not found that.
2 MR MPOFU: If my learned friend Mr
3 Semenya was here, he would be saying eh-eh, Mr Zokwana. I
4 have deliberately rephrase the question to avoid using the
5 word "dispute" so that you and I don't quibble about
6 technical words. I have said, I used your words to make it
7 easy. Do you agree that at the heart of this illegal
8 strike, that was your word, okay, was the demand for R12
9 500, amounting to a wage demand. Yes or no?
10 MR ZOKWANA: As formulated, yes, I read
11 it.
12 MR MPOFU: Thank you. And that as I put
13 it to Mr Gcilitshana, that it would accordingly – because
14 he gave me the same answers you've given me – it would
15 accordingly be incorrect to describe the problem or illegal
16 strike as not being about a labour dispute or about a
17 labour issue and only being about criminal activity.
18 MR ZOKWANA: Thanks, Chairperson. In my
19 own evidence, Chairperson, I put it that what we found not
20 possible to be engaged upon as such industrial action was
21 the manner of the conduct, that people – more than the
22 strike being illegal, the NUM was not allowed to be such an
23 agent. Two, violence was part that played a role and in my
24 view Mr Semenya raised the same question to me and I said
25 to him and I repeat now, Mr Mpofo, to say the nature of the

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1 strike was such that I would hardly define it as a labour
2 relations act in as far as people's lives were being lost,
3 property was being threatened, was being burned down. You
4 don't need Lonmin to meet with NUM or whoever to negotiate
5 how to deal with such, because only people trained for that
6 purpose, who understand the matters of crowd control who
7 can deal with that - only the SAPS, not NUM. Shortly,
8 Chairperson, the strike took a turn and became a non-, in
9 my view, industrial action, once people were beaten up,
10 offices were threatened with burning, people were killed.
11 It was no longer an issue of industrial relations, it was
12 more of a situation where you needed other instruments to
13 deal with such, in this case the SAPS.
14 MR MPOFU: And therefore there was
15 absolutely no room for an industrially-based solution and
16 that's what you're saying? And sorry to qualify that, just
17 so that we don't waste time, I accept – take it as given
18 that I accept that the strike should not have been violent
19 and that people should not have died and all that. Please
20 accept that, I cannot argue with that. We can even go so
21 far as to say that I accept that the deaths of those people
22 constituted criminal activities, Chair, so that we don't
23 waste time. But I'm basing this question on the fact that
24 you and I have agreed and Mr Gcilitshana and I also agreed
25 that at the heart of this was a labour related wage demand

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1 of 12 500. Are we together so far?
2 MR ZOKWANA: We are together but I think
3 again, sir, I have made a point of saying that NUM was not
4 in the position to enter in any negotiations when those –
5 yes, I'm trying to answer you. I think we agree with you
6 that there could have been a chance to negotiate but NUM
7 could not have been that agent –
8 MR MPOFU: Fair enough.
9 MR ZOKWANA: - minus the fact that it had
10 no mandate.
11 MR MPOFU: Ja. No, I accept that. I
12 agree with you even there, but minus the NUM, would you
13 agree with me that there was still an opportunity to find a
14 negotiated solution?
15 MR BURGER SC: Chair, to make any sense
16 of that proposition and in fairness to the witness, my
17 learned friend should tell us who should have negotiated
18 with whom, under what circumstances and where?
19 CHAIRPERSON: That seems a fair request.
20 I wouldn't call it an objection but it sounds like a fair
21 request.
22 MR MPOFU: Ja. No, I agree with Mr
23 Burger. Would you agree that as of the 15th when there was
24 some relative peace, that there was an opportunity for
25 Lonmin to engage with the strikers as they requested and as

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1 Mr Gwala also suggested, to go and engage with them where
2 they were?
3 MR ZOKWANA: Sir, let me read a statement
4 from – of Akanyang, Julius Motlogeloa who I think – no, no,
5 let me do that before I answer your question because I
6 don't want to do an injustice.
7 MR MPOFU: As long as you'll answer the
8 question.
9 MR ZOKWANA: Ja, I'll answer the
10 question. And this is an interaction between him and the
11 strikers. It would be paragraph, I mean page 85, paragraph
12 18 and he says, "I asked them how am I going to meet them
13 when I come with the manager. They said to me we will meet
14 at the hill that time. They were in possession of
15 traditional weapons, dangerous weapons such as pangas,
16 spears, other sharpened instruments. After 30 minutes the
17 police arrived," but if I was a manager in Lonmin – I'm not
18 a manager in Lonmin – after people have been killed and I'm
19 required to engage in negotiations with a group of more
20 than 3 000 with the armoury described, if you ask me as a
21 person, are you willing to negotiate, I would not go.
22 Chairperson, I want to say this that I'm answering as a
23 person, I'm not Lonmin management but if I was in that
24 position I would have to think about my own kids, I would
25 have seen others being killed and I would know that the

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1 instruments used were those that were being carried, and
2 being commanded to go to the koppie alone without a police
3 escort would have made me to do otherwise. In my view then
4 there is no elements for negotiations under those
5 conditions was impossible.
6 MR MPOFU: Yes, Mr Zokwana. You know,
7 it's a real big problem if you change my question or add
8 something to it and then answer that, your question, your
9 amended question and then it becomes a problem. I didn't
10 say anything about without police escort and all these
11 things that you've added. Let me just do this to assist
12 you, now that you've mentioned the issue of police escort.
13 If, on top of the question that I'd asked you, if there
14 were two other sectors – one was that General Mpembe had
15 said, as he said to you and to Mr Mathunjwa, that if you go
16 there your safety is guaranteed, so let's put that as an
17 additional thing. And two – thanks Chair.
18 CHAIRPERSON: We've just heard a mobile
19 telephone going off. I would ask those who are in
20 possession of mobile telephones to please ensure that they
21 are turned off and the next person whose cell phone goes
22 off will be ejected from the auditorium. I'm sure I turned
23 my own cell phone off, so I expect everyone to follow my
24 example.
25 MR MPOFU: Okay, Mr Zokwana, I'll

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1 reformulate the question or at least repeat even the first
2 part. I'm saying, to the question that I asked you, now
3 add the following considerations. One, that the police
4 escort which you took out is actually there and that
5 General Mpembe, who is the boss of the police there, says
6 that your safety will be guaranteed. And then add another
7 sector that to do so, to go to the mountain with the police
8 escort would potentially save lives, further loss of life
9 in addition to the 10 people who had died, would your
10 answer, if those two sectors are put into the mix, be the
11 same or different?
12 MR ZOKWANA: Thanks, Chairperson. It may
13 have been possible but – but I'm not in a position to
14 understand what could have been the reaction of those on
15 the mountain, Chairperson. If you want to use my own
16 experience, being in the Hippo with the police escort,
17 whether I did want to talk to those members, my answer is
18 no. Only Mr Mathunjwa could have done that because he was
19 welcomed with open arms by those workers. I want – but
20 again I say, again, I don't know what the attitude was
21 towards Lonmin but if you use my own experience, I'm not
22 sure if they would behave the same they did to me, if that
23 would have opened nego – again I repeat I'm not in a
24 position to know what the attitude was towards Lonmin.
25 MR MPOFU: Okay, let me assist you about

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1 what their attitude was. Their attitude was as expressed
2 in QQ1 to General Mpembe, it was that they were not
3 fighting with anybody, their attitude was that they were
4 carrying their arms because, according to them, the NUM had
5 killed their people. So we know what their attitude was to
6 the NUM but as far as Lonmin is concerned their attitude
7 was that the employer, "Mkashe", should please come and
8 address them and that attitude was expressed to the police,
9 it was expressed to Mr Mathunjwa and it was expressed to
10 Bishop Seoka.
11 MR BURGER SC: No, my learned friend must
12 add to that the evidence before the Commission, slide
13 number 121, exhibit L shows us what his witnesses, his
14 clients looked like at quarter past five on that Wednesday
15 afternoon.
16 MR MPOFU: It's not evidence.
17 MR BURGER SC: Exhibit L, Chair, slide
18 121.
19 CHAIRPERSON: The slides are before us as
20 evidential material.
21 MR MPOFU: Okay, whatever. Let me –
22 CHAIRPERSON: As are the videos.
23 MR MPOFU: Ja, no, no problem, Chair.
24 What's the page? The attitude of the workers is as I have
25 described and that attitude was expressed while the people

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1 were looking as they at page 121. It was also expressed
2 while they were sitting down and kneeling in front of
3 General Mpembe on the 13th and it was also expressed to
4 Bishop Seoka on the 16th.

5 [12:10] MR ZOKWANA: Yes.

6 MR MPOFU: Sorry, Mr Zokwana, before you
7 answer, just as a follow-up, the real point that I'm making
8 is that it would seem that the protesters had different
9 attitudes to different people, hence you and Mr Mathunjwa
10 for example, and what I'm saying to you – the real gist of
11 what I'm putting to you is that their attitude to Lonmin
12 was exhibited by the repetitious invitations for Lonmin to
13 come and address them.

14 MR ZOKWANA: Thanks, Chairperson. There
15 are different versions given to different people by the
16 same strikers as to whom they were against and the reasons
17 of what. If you go to page 84, paragraph 1 – I think it's
18 paragraph 11 or point number 11, the reasons they give to
19 the security for marching to the NUM office, in their own
20 words, is because NUM shop stewards had accompanied people
21 to work, undermining the instruction not to go to work.
22 Therefore I'm playing, Chairperson, here – not an advocate
23 but a devil's advocate. I don't think advocates will feel
24 offended by that – the fact that it may have been that by
25 the time they met with the said security, this lie of two

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1 of in this country. It would be equal to saying to me, you
2 either give me what I want or you don't leave here alive.
3 I'm not, I'm saying the picture I may have and I speak
4 here, Chairperson, not as an expert but as a mere
5 mineworker.

6 MR MPOFU: Okay. Before I come back to
7 you, Chairperson about the confusion of the president, the
8 Chairperson will be happy to know that in the
9 Constitutional Court I was caught many times calling the
10 Justice, Chairperson, because of –

11 CHAIRPERSON: That was reported to me.

12 MR MPOFU: Thank you. Mr Zokwana, please
13 sir, accept that I agree with you that the strikers
14 harboured some hostility towards the NUM. Whether it was
15 because of a lie or this, that and the other, that much is
16 obvious, just given the different receptions that you and
17 Mr Mathunjwa received, okay. Right now I'm asking you a
18 question regarding Lonmin, at the invitation of Mr Burger.
19 Are we together?

20 CHAIRPERSON: Let's not bother about who
21 invited you to ask questions, just pose your question and
22 let's get the answer.

23 MR MPOFU: Okay, I'm asking you about
24 Lonmin's responsibility to engage with the protesters,
25 that's all I'm asking about.

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1 bodies have been killed and were not yet amongst those
2 workers there, so the only reason they went to attack NUM
3 was because NUM shop stewards had distracted their plan to
4 stop them going to work. But this lie was spread
5 thereafter in singing and the rest, was done after. And I
6 can take that lie to have done exactly what you are saying,
7 that the people began to hate NUM, that lie that amongst
8 you who marched two were killed but I wonder how could that
9 lie - because if you were 2 000 you will know who you were.
10 If somebody is killed and none of you know who has been
11 killed, how do you believe that?

12 MR MPOFU: Ja –

13 MR ZOKWANA: But I leave that to them.

14 MR MPOFU: No, thank you, Mr Mathunjwa –
15 Mr Zokwana. Maybe it's prophetic.

16 CHAIRPERSON: I take it it's easy to
17 confuse one president with another.

18 MR MPOFU: Correct, Chairperson.

19 MR ZOKWANA: Hence, Chairperson, when I
20 look at the exhibit as shown by counsellor Mpofo I agree,
21 if I look at those pictures, the pictures I saw on that
22 day, they are not a picture that would make anybody to
23 negotiate with comfort, no matter how many police you have.
24 Maybe they equalled the number of those who were carrying
25 those weapons but to me that kind of a situation is unheard

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1 CHAIRPERSON: I think he answered it but
2 I'll allow you to answer it one more time, one more time.

3 MR MPOFU: One more, yes Chair. And
4 well, the question you have not answered is the following.

5 I have demonstrated to you that as far as Lonmin is
6 concerned, as far as Lonmin is concerned the protesters, to
7 Mpembe, to the police, to Bishop Seoka, to Mathunjwa, had
8 invited everybody who cared to listen, they would say to
9 them, we are inviting the Mkashe to come and address us.

10 That's the distinction of everything else. Yes, they were
11 hostile to NUM, they were friendly to AMCU and so on. Now
12 if you factor that in that they themselves were, because of
13 this demand of R12 500, were inviting the employer to come
14 and engage – not necessarily to give them the 12 500, to
15 come and engage on it, would you – what would be –

16 MR ZOKWANA: I would agree with you under
17 the following conditions. Allow me now to put how I would
18 have seen it being easier. Suppose, as they did to Mr Da
19 Costa, suppose as they did to Mr Sinclair, that they
20 elected a delegation, not on the koppie, to say employer,
21 we are here at the gates of LPD, we are five or 10 unarmed,
22 we are your employees, we would like to engage you. And if
23 Lonmin could, if it could be shown anywhere that Lonmin
24 would have declined that situation, I would agree with you.
25 And I'm saying this, Chairperson, because there may be

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1 strikes in any situation, always there will be centres where
 2 such processes are handled because if there's – I've never
 3 seen in my life of a trade union conducting negotiations in
 4 a forest, in a river or in a mountain. You always prefer
 5 office because there are aircons, there's coffee, there's
 6 cake, there's comfort. If the things become worse you can
 7 close the doors and hide but in a mountain remember you are
 8 meeting people who are carrying their – I'm saying, Mr
 9 Mpofo, if ever there would have been a stage where those
 10 look, we have been here, our brothers have been killed
 11 unfortunately, now we want a solution, advised by whoever
 12 was behind them – five of them, as they have done before to
 13 Mr Da Costa, as they have done to Mr Sinclair. Here,
 14 manager, we present ourselves to you, we want a solution,
 15 unarmed. Because I don't – I think that would have been a
 16 scenario, I think your question would be, I would say I
 17 concur with you but if the manager would have gone to the
 18 mountain, I wonder if he would come back without – unless
 19 he would agree to have - possible and I've seen when he
 20 does, I compared even trade unionists under duress by
 21 members, to make concessions they could not foresee. And I
 22 knew, Chairperson, that it happened in NUM in 1995. We met
 23 members less violent or less armed than these. Where they
 24 were demanding something we could not offer, what – but
 25 they didn't come back. It is not a very good environment

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1 to engage in negotiations with people who may have been
 2 lied to, who may have been made to believe that what – I'm
 3 putting this only as my experience and my view is that a
 4 possibility could have arisen if those workers could have
 5 agreed to march to the offices, not in thousands but now
 6 five and say here, we are before you, manager, here is our
 7 case. I'm sure, I don't think Lonmin could have seen
 8 anything wrong with that, but at the end I'm not Lonmin, I
 9 don't know, I'm not with Lonmin.

10 MR MPOFU: Did you yourself accept
 11 General Mpenzima's assurances that your physical safety would
 12 be assured?

13 MR ZOKWANA: I did.

14 MR MPOFU: Thank you.

15 MR ZOKWANA: Not before – I did accept it
 16 but what I received on the mountain was not what I expected
 17 because he promised me that we'll meet with a delegation of
 18 the strikers. When we arrived we were channelled to meet
 19 with the whole mob of people who were carrying the weapons
 20 we have been shown.

21 MR MPOFU: And can we accept, since we
 22 know that the protesters were hostile towards you, that if
 23 you – that but for the police protection you might not have
 24 been, you might not have escaped unharmed, as you are now
 25 sitting there?

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1 MR ZOKWANA: I have that statement,
 2 Chairperson, of saying that when I was coming nearer and I
 3 heard the song, I mistook the protesters to be NUM members
 4 because I understood the song. Not until I understood the
 5 words that were sung and the attitude of clashing those
 6 weapons together and I can say, Chairperson, given that I
 7 can vouch that I wonder if I could have come alive.

8 MR MPOFU: Thank you. And if you,
 9 against whom the protesters, rightly or wrongly, were
 10 hostile could, because of the police protection, escape
 11 unscathed, would it be fair to assume that someone else
 12 against whom they were not as hostile as they were against
 13 the NUM, might have also not been harmed?

14 MR BURGER SC: I object to that question,
 15 it's irrelevant what this witness's opinion is on that
 16 question.

17 MR MPOFU: Well, if it's – well, Mr
 18 Burger did not find it irrelevant when it suited him when
 19 the witness was saying –

20 CHAIRPERSON: That's not an answer to the
 21 question.

22 MR MPOFU: Well, it's as relevant –

23 CHAIRPERSON: Sorry, that's not an answer
 24 to the objection. The objection taken is that the
 25 witness's opinion on the matter is not relevant. It's a

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1 matter that's been traversed to some extent in other
 2 contexts as well. What is your answer to the objection?

3 MR MPOFU: Well –

4 CHAIRPERSON: Whether Mr Burger earlier
 5 perhaps mistakenly took another stance is neither here nor
 6 there. What is your answer to his objection?

7 MR MPOFU: Well, the answer is that yes,
 8 it is relevant, firstly, but it is as relevant as the
 9 issues that the witness has been canvassing for the past 15
 10 minutes about the –

11 CHAIRPERSON: - was irrelevant –

12 MR MPOFU: The picture that Mr Burger
 13 invited him to look at is as relevant as that.

14 CHAIRPERSON: If it was irrelevant, as
 15 you've admitted, then I won't allow the question. If
 16 you're being asked – if you're saying it is as relevant as
 17 what's been said before for the last 15 minutes and by
 18 implication that was irrelevant as well, then I'm sorry I
 19 allowed you to ask the questions but it did because I
 20 thought that you had a point which was relevant, which you
 21 were putting to the witness and I allowed you to do it and
 22 you got answers which are on the record but –

23 MR MPOFU: Thank you, Chair.

24 CHAIRPERSON: I uphold the objection.

25 MR MPOFU: Thank you, Chair. Do you find

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1 it – okay, let me put it this way. If, as you and I
 2 agreed, that at the heart of the problem was this wage
 3 demand, would you then agree with me that it would be
 4 incorrect to say that it was not – and please listen
 5 carefully – that it was not, not that it was partly not or
 6 whatever, that it was not an issue of industrial relations
 7 at all?
 8 [12:30] MR ZOKWANA: Chairperson, in answering
 9 the question, the fact that there was a demand of the
 10 amount mentioned is not an issue but what becomes an issue
 11 is the manner by which such a demand is moved forward that
 12 results in the loss of lives and the threat to human
 13 beings. So it has got two features. In as far as the
 14 demand, for demand, no matter how it was raised, it was a
 15 demand but it is the manner of those who were demanding
 16 that changes the whole picture and if, if you ask me, it is
 17 that picture therefore where people march with the
 18 intention or alleged intention to burn offices, where they
 19 begin to have lists of mineworkers, of NUM leaders to be
 20 killed, where some lost their lives, then it changes the
 21 picture then.
 22 MR MPOFU: Yes. No, I agree with you, it
 23 has two features. The issue that I'm raising with you is
 24 if you and I accept then each of those two features, would
 25 you agree that the change from how it was described in the

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1 morning as the labour dispute by the Minister and how it
 2 was described four hours later as not – not being about
 3 that second feature, was something quite dramatic and
 4 attributable to the intervention of the senior Lonmin
 5 leadership.
 6 CHAIRPERSON: How can the witness answer
 7 that? How can the witness answer what caused this change
 8 of description of the dispute? He's got no personal
 9 knowledge of his own. He can possibly express an opinion,
 10 as a layman, from reading the e-mails but we can also
 11 express the same opinion and our opinion as a finding based
 12 on argument and so on would have relevance and his opinion
 13 wouldn't. So I don't think it's a good question and I'll
 14 not allow you to ask it.
 15 MR MPOFU: Okay, Chairperson. You
 16 yourself were – I'm just trying to see who approached who –
 17 in any event you spoke to Mr Ramaphosa regarding the
 18 strike, the illegal strike. Were you aware or not aware
 19 that those discussions would form part of this kind of
 20 exchange regarding interventions made by Lonmin board
 21 members or senior leaders in relation to the illegal
 22 strike?
 23 MR ZOKWANA: Thank you, Chairperson. I
 24 was not aware of what Lonmin board members were doing.
 25 What I was aware of, which I shared with Cyril, which I

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1 shared with any other former leader of NUM, was the
 2 concerns we had about the nature of violence the strike
 3 took. And the reason, Chairperson, I was calling them is
 4 because they led before me. There was a phase in the
 5 mining and especially in Rustenburg where there was a union
 6 called Mouthpiece. Its methods of organising, its methods
 7 of entering the industry were a carbon paper of what we
 8 were dealing with in Lonmin, where the union would hide
 9 behind illegal strikes. During the strike, whether they
 10 will be in the mountains or anywhere, forms were brought
 11 forward of the new union having been camouflaging as five
 12 Madoda. So we are chasing that alone to say having been a
 13 leader before, how did you deal with that? And the advice
 14 was, don't embrace the methods they use.
 15 CHAIRPERSON: Sorry to interrupt you, you
 16 say them. I take it, I'm basing this on para 2 of the e-
 17 mail number 1 –
 18 MR ZOKWANA: Yes.
 19 CHAIRPERSON: - on exhibit BB4.
 20 MR ZOKWANA: Yes.
 21 CHAIRPERSON: I take it you're referring
 22 to Mr Ramaphosa –
 23 MR ZOKWANA: Yes.
 24 CHAIRPERSON: And Mr Motlatsi.
 25 MR ZOKWANA: Yes.

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1 CHAIRPERSON: Mr Motlatsi is a former
 2 president of the –
 3 MR ZOKWANA: Of NUM, yes.
 4 CHAIRPERSON: One of your predecessors.
 5 MR ZOKWANA: yes.
 6 CHAIRPERSON: And as you've explained
 7 earlier, Mr Ramaphosa also held high office in NUM at an
 8 earlier stage in his career.
 9 MR ZOKWANA: He is the founder of NUM.
 10 He was working as a lawyer for a company under COSA,
 11 mandated to organise mineworkers and we always regard him
 12 very highly as a union.
 13 MR MPOFU: Mr Zokwana, don't go ahead of
 14 me. We are going to come to your office, alright, as to
 15 why you spoke to X or Y or Z. The question I'm asking you
 16 is whether, a simple question, were you aware or were you
 17 not aware that your discussion with the gentleman in
 18 question formed part of a communication between Lonmin
 19 management as to how they would manage the illegal strike?
 20 Yes or no?
 21 MR ZOKWANA: I repeat, Chairperson, there
 22 was no way I would have known whom he would speak to after.
 23 MR MPOFU: Would you – well, now you know
 24 – would you have expected those discussions which you
 25 carried out in the manner that you've described, which

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1 we'll come to, to feature in discussions among the
 2 leadership regarding the types of interventions, pressure,
 3 suggestions, influence and all the words that are used here
 4 about the illegal strike?
 5 MR ZOKWANA: My answer again,
 6 Chairperson, I was not expecting that that will form but
 7 let me put it that, Chairperson, I have presented here my
 8 own concerns about security. I have presented here how the
 9 situation was developing and what I did as a person.
 10 MR MPOFU: Yes.
 11 MR ZOKWANA: And I was not going to be
 12 able to know whether that discussion would be used
 13 anywhere, or would I have a discomfort if it gets used
 14 anywhere, as long as the context is the same. It's about
 15 security of those workers who were being hunted or the
 16 possibility of more being killed.
 17 MR MPOFU: Were you aware that the
 18 discussions you were holding formed part of a broader
 19 strategy by Lonmin, by the Lonmin leadership to manage the
 20 strike?
 21 MR BURGER SC: Chair, where is my learned
 22 friend's evidence for the suggestion that there's a broader
 23 strategy of Lonmin involving this witness and the NUM?
 24 What are we busy with here?
 25 MR MPOFU: I never said involving this

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1 witness. My learned friend mustn't put words –
 2 CHAIRPERSON: I was surprised at the way
 3 the question was asked and also in view of the fact that
 4 this witness himself says that he spoke directly to the
 5 Minister of Safety and Security and made representations to
 6 him to get more police on the scene, I couldn't understand
 7 what basis could've been suggested to him that he would
 8 have projected something he'd said to Mr Ramaphosa along
 9 the same lines being repeated, but anyway, there isn't any
 10 evidence along the lines that you've suggested directly.
 11 Perhaps it might be sensible to reformulate the question in
 12 a way that doesn't elicit an objection and then you can get
 13 some kind of answer from the witness.
 14 MR MPOFU: I take it that you were not
 15 aware that your conversation would form part of a
 16 discussion involving the conversation with you, the
 17 conversation with Minister Susan Shabangu, the conversation
 18 with Mr Gwede Mantashe of the ANC, all those conversations
 19 including yours, in the context of discussions between the
 20 leadership of Lonmin as to deal with the illegal strike, is
 21 that correct?
 22 MR ZOKWANA: Chairperson, I want to
 23 repeat again for the Commission to say that my discussion
 24 with the Minister of Police, my discussion with Cyril, was
 25 not whether the strike was illegal or legal, whether there

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1 was a substance for those demands. It was about the nature
 2 it has taken in as far as violence was used and whenever
 3 that discussion, Chairperson, was used in that context, I
 4 have no qualm with – to make the mine safer, to prevent
 5 further lives.
 6 MR MPOFU: You see, Mr Zokwana, at the
 7 end of the case we are going to argue, as I said in the
 8 opening address, that these e-mails in which you are
 9 featured constitute concerted pressure that was being put,
 10 among others, on the police – well, firstly on the
 11 government not to call the strike a strike or not to call
 12 it labour related but to call it so-called criminal action
 13 and that was a platform from which it would be easier to
 14 inflict violence upon the strikers because if you call it
 15 labour relations then the violence maybe is not
 16 concomitant, to coin a phrase. So what I'm – the questions
 17 I'm putting to you are that given the fact that on the
 18 first phase of what I've just described to you, it looked
 19 like the first phase of a successful, very successful – 10
 20 o'clock the Minister says it's labour relations, 3 o'clock
 21 she says it's not labour relations. So that much was
 22 achieved. Now, what I'm saying to you is that, I'm asking
 23 you about that metamorphosis of the characterisation of the
 24 illegal strike from being a labour dispute that at 10 and
 25 being a criminal act at three. Are we together so far?

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1 MR ZOKWANA: I'm listening. Chairperson,
 2 before I say whether I agree or not, you used the term
 3 metamorphosis. When I was doing sub-B it was showing
 4 processes through a locust develops to its own end from a
 5 lava, all processes, and I think therefore before we speak
 6 of that phase, the people mentioned here whom you believe
 7 their exchange of SMSes could have created that picture, I
 8 would think that if the proper – I'm not going to make a
 9 judgment, Chairperson, that maybe their own evidence be
 10 heard. They are better placed to explain the issues you're
 11 coming to.
 12 MR MPOFU: Yes, I –
 13 CHAIRPERSON: Mr Ramaphosa invited,
 14 requested to be allowed to join the proceedings as a party,
 15 which we granted, and I take it he will – we're busy with
 16 phase 1 at the moment – I take it he will give evidence in
 17 regard to phase 1 because his evidence would be relevant in
 18 regard to phase 1.
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: And all these questions can
 21 then be asked of him.
 22 MR MPOFU: Yes.
 23 CHAIRPERSON: But Mr Mpofo says he is
 24 going to make this argument at the end and inasmuch as he's
 25 going to make the argument, he's also going to apply it in

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1 some way to NUM, so it's only fair that you should get a
 2 chance to answer. That's his contention, but I'm afraid
 3 the question he asked was so long that you may have been
 4 able to follow it, but I wasn't. So I'd be grateful if he
 5 would just repeat it in – shortly and sharply, that the
 6 witness gets an opportunity to answer and I get an
 7 opportunity to understand the answer.
 8 MR MPOFU: Thank you, Chairperson.
 9 CHAIRPERSON: But it's a perfectly proper
 10 question. This is what I'm going to argue at the end of
 11 the day, it relates to NUM, I must in fairness give you a
 12 chance to answer. It may be suggested that the argument
 13 won't be a good one but this isn't the time to go into that
 14 debate.
 15 MR MPOFU: I have no doubt that –
 16 CHAIRPERSON: Put the question –
 17 MR MPOFU: Thank you, Chairperson.
 18 CHAIRPERSON: - and let's get the answer.
 19 MR MPOFU: Thank you. Chairperson, yes,
 20 I appreciate the Chairperson's intervention. My tendency
 21 to ask long questions is in trying to save time but
 22 sometimes maybe I overdo it. I'll break it down. What I
 23 was saying to you is that what we're going to argue is that
 24 the key objective of these e-mails or rather of the people,
 25 the Lonmin side at least of the people featured in the e-

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1 mails, was to ensure that between 10 o'clock and 3 o'clock
 2 the illegal strike is not described as a labour issue but
 3 as a criminal issue. Let's stop there.
 4 [12:50] CHAIRPERSON: I don't think it's relevant
 5 to get his answer up to this point. The real point is to
 6 give him an opportunity to deal with such allegations as
 7 you propose making in your argument at the end which relate
 8 to NUM and what you've said so far doesn't relate to NUM,
 9 so I think that's the part that I'm going to allow you to
 10 put to him because in fairness you must put it to him and
 11 he must get a chance to answer.
 12 MR MPOFU: You and I agreed in the
 13 morning that these e-mails form a series or a transaction
 14 of to-ing and fro-ing between essentially the same group of
 15 people, agreed?
 16 MR ZOKWANA: I think I gave the answer as
 17 yes.
 18 MR MPOFU: You did. In that –
 19 MR ZOKWANA: In as far as the content
 20 determines.
 21 MR MPOFU: Yes, in as far as the content
 22 is concerned, thank you. Now in that single transaction or
 23 series, NUM and yourself as a person are featured, correct?
 24 MR ZOKWANA: Yes.
 25 MR MPOFU: Maybe that's argument. So I'm

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1 not proposing to artificially unscramble the egg, do you
 2 understand what I'm saying? You do. Sorry, you know when
 3 you nod it doesn't record.
 4 MR ZOKWANA: Can you repeat?
 5 MR MPOFU: I'm saying when you nod, the
 6 recording doesn't –
 7 MR ZOKWANA: No – no, can you repeat the
 8 question before you judge my reflection. I think in this
 9 forum, Chairperson, we can't rely on body language and
 10 conclude that it means a question, a person must answer.
 11 MR MPOFU: That's the point I'm making,
 12 yes, thank you. Since you and I have agreed about the last
 13 two questions, I do not propose to unscramble that egg of
 14 the e-mails, do you understand that?
 15 MR ZOKWANA: I understand, Chair.
 16 MR MPOFU: So what I'm saying to you is
 17 that, is what I'm going to argue at the end of the case in
 18 respect of this fried egg or scrambled egg in which the NUM
 19 is featured. So everything that I'm saying, you must take
 20 that into account that the NUM is part of the scramble.
 21 MR ZOKWANA: Yes, I check the promise you
 22 are making. I am sure you will have – I'm sure by then
 23 we'll have presented such a body of proof such that you can
 24 provide that. I don't [indistinct].
 25 MR MPOFU: I don't have to provide any

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1 proof for something that you and I have agreed upon –
 2 CHAIRPERSON: Mr Mpofu, Mr Mpofu, you're
 3 indulging in a debate now with him that doesn't take it any
 4 further.
 5 MR MPOFU: Fair enough.
 6 CHAIRPERSON: What I understood you to do
 7 was, you were going to say at the end of the case I'm going
 8 to argue the following.
 9 MR MPOFU: Yes, thank you, Chair.
 10 CHAIRPERSON: This is what the argument's
 11 going to be. Don't give us all the surrounding – give him
 12 the argument, what does he say, will it be a good argument
 13 or a bad argument?
 14 MR MPOFU: Thank you, Chair.
 15 CHAIRPERSON: If I may say so, that's the
 16 way to put the question.
 17 MR MPOFU: Thank you, Chair. Alright, Mr
 18 Zokwana, okay I'm not going to repeat for the third time
 19 the ground that I've already covered on what I'm going to
 20 argue. The second stage is that indeed the effort that
 21 I've referred to of characterising the illegal strike in a
 22 particular way was successful in – within the space of time
 23 that I've described to you and that is because the Minister
 24 having said it's a labour dispute reportedly at about 10
 25 o'clock, according to I think it's Roger Phillimore, at

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1 2:58PM Cyril Ramaphosa writes the following, "I have just
 2 had a discussion with Susan Shabangu in Cape Town." Sorry
 3 Chair, I'm reading e-mail 6.
 4 MR ZOKWANA: Yes, I see that.
 5 MR MPOFU: You see it, yes. "She agrees
 6 that what we are going through is not a labour dispute but
 7 a criminal act. She will correct her characterisation of
 8 what we are experiencing." And that's what I'm describing
 9 to you as the facts, that at 10 she says it's a labour
 10 dispute. By three she will correct and –
 11 CHAIRPERSON: What's the argument going
 12 to be at the end of the case? You've referred us to the e-
 13 mails and that'll all be part of your argument at the end
 14 of the case.
 15 MR MPOFU: Yes, I'm –
 16 CHAIRPERSON: Just put to the witness
 17 what your argument will be and then let's get the answer.
 18 MR MPOFU: Chairperson, yes, I'm trying
 19 to break it down. When I compound it, it was a problem,
 20 when I break it down it's a problem. Now I don't know what
 21 to do.
 22 MR ZOKWANA: I will decline to either
 23 confirm your theory or your analysis –
 24 MR MPOFU: That's fine.
 25 MR ZOKWANA: Because I think that can be

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1 come to when the said individuals have been brought forward
 2 before the Commission to explain. We can't presume that
 3 because the Minister changed her mind from this to that, it
 4 confirms your point unless you are able to take them
 5 through what was going on. They may know something we
 6 don't know here.
 7 MR MPOFU: Yes – thank you, Mr Zokwana,
 8 I'm going to move to the next stage but just for your
 9 comfort, as the Chairperson said, I'm just putting the
 10 proposition. You are entitled to agree, disagree or say
 11 you don't know, so don't –
 12 MR ZOKWANA: I disagree.
 13 MR MPOFU: Good. The third stage –
 14 CHAIRPERSON: That sounds like an answer,
 15 clear answer, short and sharp.
 16 MR MPOFU: Ja.
 17 CHAIRPERSON: He doesn't agree with your
 18 argument.
 19 MR MPOFU: So far.
 20 CHAIRPERSON: If you're going to move on
 21 – oh, alright, do you want to –
 22 MR MPOFU: You asked me to break it down,
 23 Chair.
 24 CHAIRPERSON: Yes alright, okay.
 25 MR MPOFU: The third leg of what I had

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1 said to you is that the – okay, I won't use metamorphosis
 2 again – the change in the characterisation which we have
 3 covered in the first two segments was intended to make it
 4 easier for violence to be meted out against the strikers
 5 because it is easier if it's characterised as a criminal
 6 act than if it is a labour act and that goes together with
 7 the issues of calling the army, that's the kind of violence
 8 I'm talking about.
 9 CHAIRPERSON: How can a NUM witness
 10 answer that question? You say that was intended to do
 11 various things, representations were made on behalf of
 12 Lonmin –
 13 MR MPOFU: No, Chair, I'm putting my
 14 case.
 15 CHAIRPERSON: No, I understand that. I'm
 16 saying how can you expect him to answer your case on that
 17 point? Some of the other witnesses will obviously be able
 18 to answer it or will have to answer it but can you expect
 19 him to answer? If he'd prefer to try to answer I won't
 20 stop him.
 21 MR ZOKWANA: Thanks, Chairperson. I'm
 22 not in a position to answer what would have that led to
 23 because I'm neither in the shoes of the police, I'm sure
 24 the police have got their own senior counsel who will argue
 25 their own point and I think Lonmin will do the same and the

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1 people whose SMSes or documentation you are dealing with
 2 are better placed to give the answer. I'm not their rep.
 3 MR MPOFU: Thank you. The last –
 4 CHAIRPERSON: I see you've got your light
 5 on.
 6 MR BURGER SC: May I just raise a formal
 7 objection? By of attrition now my learned friend is now
 8 debating the content of the e-mails post number 1 with this
 9 witness.
 10 CHAIRPERSON: Yes, but he hasn't got any
 11 meaningful response from the witness so –
 12 MR BURGER SC: No –
 13 CHAIRPERSON: So it doesn't matter.
 14 MR BURGER SC: But it's a waste of time
 15 then.
 16 CHAIRPERSON: I know, the time – if it's
 17 a waste of time it's already happened. I've done my best
 18 to limit the discussion as far as I could. I suggest that
 19 we now take the lunch adjournment.
 20 MR MPOFU: Thank you, Chairperson.
 21 CHAIRPERSON: The Commission will now
 22 adjourn. We resume at half past one.
 23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [13:43] CHAIRPERSON: The Commission resumes.
 25 When we came back after the tea adjournment we found on our

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1 desks in front of us, or on the table in front of us, a DVD
 2 which is described as exhibit AAA. I haven't got a note in
 3 my – I should have, I know, but I haven't got a note in my
 4 notes as to what exhibit AAA is, so I thought I should ask
 5 Ms Pillay what it is before we carry on.
 6 MS PILLAY: Thank you, Chair. We
 7 reserved exhibit AAA for the video compilation that was
 8 shown by Mr Budlender on day 4 of the hearing. so this is
 9 –
 10 CHAIRPERSON: It was reserved, that's why
 11 I haven't got a note.
 12 MS PILLAY: That's correct.
 13 CHAIRPERSON: And that's what it is. How
 14 do I describe it?
 15 MS PILLAY: It's the compilation of the
 16 video shown on day 4, which is the 23rd of October.
 17 CHAIRPERSON: Shown on day 4, you say?
 18 MS PILLAY: Day 4.
 19 CHAIRPERSON: What does it represent?
 20 MS PILLAY: It's just the media clips of
 21 the shooting on the 16th.
 22 CHAIRPERSON: I did say that people who
 23 didn't turn their cell phones off would be ejected from the
 24 proceedings but I regret to say that if I eject myself from
 25 the proceedings they'll come to an end. I turned my phone

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1 on at lunch time and forgot to turn it off. I apologise to
 2 all concerned for such a bad example but may I take
 3 advantage of the opportunity to say that those whose cell
 4 phones are on must please turn them off because I won't
 5 deal as kindly with them as I have with myself.
 6 MS LEWIS: Chair –
 7 CHAIRPERSON: Yes, I haven't warned the
 8 witness yet that he's still under oath. Do I have to?
 9 MS LEWIS: Not at all, Chair. Chair, I
 10 just want to hand up that exhibit, the revised statement.
 11 If that's okay, we're handing it up now.
 12 CHAIRPERSON: Thank you very much. It's
 13 BBB3. Before you go away, let me give you back the one
 14 that I was given, which is apparently an earlier unrevised
 15 copy. Thank you for that. Is that housekeeping now sorted
 16 out?
 17 MS LEWIS: Thank you, Chair.
 18 CHAIRPERSON: Mr Zokwana, after those
 19 little interludes we're now going to proceed with your
 20 evidence so please remember you're still under oath. Mr
 21 Mpofo, I take it you still have further cross-examination.
 22 SENZENI ZOKWANA (CONTD):
 23 CROSS-EXAMINATION BY MR MPOFU (CONTD):
 24 Yes, Chairperson, thank you Chairperson. Mr Zokwana,
 25 you'll be happy to know we are just about to move away from

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1 the business of the e-mails but before we broke I was just
 2 about to put the last proposition of – I'd broken into
 3 three the, what I said I will put and I was going to put
 4 the fourth one and then I'm going to ask you one or two
 5 questions and then we move to somebody, something else.
 6 Yes, now the fourth proposition, which I'll break into two
 7 questions, is that we will argue that the material
 8 contained in the e-mails in which the NUM is featured
 9 demonstrates collusive activities as between the state and
 10 capital on the one hand and as between yourselves and
 11 Lonmin on the other, which directly and causally – which
 12 are directly and causally connected to the events of the
 13 16th in which 34 people died, about 100 others were injured
 14 and about 270 were arrested. Comment? I take it you don't
 15 agree with me. Do you have a response?
 16 CHAIRPERSON: What is your comment, Mr
 17 Zokwana? Do you agree, will you agree with that submission
 18 when it's advanced or will you disagree?
 19 MR ZOKWANA: I disagree with it. It's
 20 obvious because –
 21 MR MPOFU: Thank you.
 22 MR ZOKWANA: - it doesn't matter how many
 23 times you say it, I will still disagree with it.
 24 MR MPOFU: No, I'm saying it for the
 25 first time, sir. And that in particular that last

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1 contention will be based on the evidence of the employment
 2 of phrases such as "dastardly criminal acts which need
 3 concomitant action, the need to call in the army and the
 4 request for the Minister of Police to act in a pointed
 5 way," quote/unquote, which we will submit are all
 6 euphemisms for deadly violence.
 7 CHAIRPERSON: Is that a statement that
 8 was made by someone from NUM?
 9 MR ZOKWANA: Yes, yes, counsellor, I
 10 think it is right to present that position, especially if
 11 you're going to discount any other violent occurrence
 12 before the 16th. If you do that, then maybe the argument
 13 can be a strong one, but if you take the fact that people
 14 have been killed, others have been injured, I don't know
 15 how you assume – but that is your case to put.
 16 CHAIRPERSON: Mr Mpofo, you might like to
 17 answer my question.
 18 MR MPOFU: Yes, I will.
 19 CHAIRPERSON: Which of those statements
 20 can be attributed to anyone from NUM?
 21 MR MPOFU: Well, Chairperson, the witness
 22 and I have agreed that you can't unscramble the egg, that
 23 all the statements constitute one transactions which is a
 24 series of the same thing. So I'm not about to unscramble
 25 the egg now.

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1 CHAIRPERSON: - scrambled two eggs, the
 2 one is a NUM egg and one is a Lonmin egg and the resulting
 3 scrambled egg can't then be unscrambled thereafter. It
 4 doesn't mean that you can hold NUM responsible for the
 5 resulting scrambled egg merely because its egg went into
 6 the mix.
 7 MR MPOFU: Yes, fair enough.
 8 CHAIRPERSON: So I put that to you
 9 because I don't quite understand the point that's being put
 10 but perhaps I must wait to hear you present the argument at
 11 the end and put the question to you then –
 12 MR MPOFU: Yes.
 13 CHAIRPERSON: And hopefully by then
 14 you'll have thought of the answer.
 15 MR MPOFU: I'm sure in a few months' time
 16 –
 17 MR ZOKWANA: And again, Chairperson, I'm
 18 sure that this assertion that counsellor Mpofo is making is
 19 what, in my view, was part of the campaign to tarnish the
 20 NUM reputation on the koppie, that NUM was colluding with
 21 the employer, NUM was making it impossible for people to
 22 find a solution, NUM has called the police, NUM has called
 23 tow people –
 24 MR MPOFU: We'll come to that.
 25 MR ZOKWANA: And I'm sure your, those you

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1 represent to be part of those who uttered those words, but
 2 I'm sure in doing that unscrambling you have to deal with
 3 the shell from that egg to avoid being choked.
 4 MR MPOFU: Thank you, no, the victims of
 5 that egg are already choked in that they're dead, injured
 6 or arrested. Now the question that I want to put to you, I
 7 promised you a couple of questions once I've put this
 8 proposition, is that the e-mail number 1 in which you are
 9 featured says that you wanted to meet with Mr Ramaphosa,
 10 among others, to discuss what you should do as a union
 11 going forward, agreed?
 12 MR ZOKWANA: You are relating paragraph,
 13 paragraph 2 –
 14 MR MPOFU: Yes – yes.
 15 MR ZOKWANA: Yes and that is what it
 16 says.
 17 MR MPOFU: Yes. Did you indeed discuss
 18 what you should do as a union going forward with Mr
 19 Ramaphosa, among other people?
 20 CHAIRPERSON: - it's fair to say what you
 21 mean by amongst other people. The other people were Mr
 22 Baleni, Frans Baleni and Mr Motlatsi, the former NUM
 23 president.
 24 MR MPOFU: Yes, thank you Chair.
 25 CHAIRPERSON: [Inaudible] in paragraph 2.

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1 MR ZOKWANA: Sorry, yes?
 2 MR MPOFU: I'm sorry to interrupt you. I
 3 just wanted to emphasise one person but the Chair is right,
 4 in fairness, to mention who the other people are and that's
 5 why I said amongst other people, sorry.
 6 MR ZOKWANA: And I want to clarify the
 7 context in which this debate took place, hence it includes
 8 other people other than Cyril, the person you have referred
 9 to as the board member of Lonmin. We were talking to them
 10 as former leaders of the union and the intended meeting of
 11 Monday could not sit, given the events that unfolded on
 12 that day, on the following day.
 13 MR MPOFU: Are you familiar with the
 14 concept of conflict of interest?
 15 MR ZOKWANA: Chairperson my knowledge –
 16 MR MPOFU: But –
 17 MR ZOKWANA: No, no, let me answer. If
 18 you attend a particular meeting and the matter in question
 19 may have, or you have an interest in it, given I think
 20 three or two calls upon you to declare that interest so
 21 that when that matter is under debate you don't participate
 22 to influence a decision and then to show you – I may not be
 23 giving you the right, I think that it is, in as far as I
 24 understand it, that when the matter in question is going to
 25 have inherent or you're going to stand to benefit in it,

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1 you will recuse yourself in that meeting in which that
 2 decision is taken. Remember, I'm only a mineworker, not a
 3 legal expert like you.
 4 MR MPOFU: No, Mr Zokwana, I appreciate
 5 that and I think you underestimate your own importance but
 6 the question was simply – it was not for you to give me
 7 that long lecture, it was simply to question whether you
 8 are familiar with the concept of conflict of interest but
 9 from that long an answer I've gathered that you are, so I'm
 10 not going to ask you the question again. Now, you and I
 11 yesterday agreed that capital and labour are in an
 12 inherently antagonistic relationship.
 13 MR ZOKWANA: In as far as – because Marx
 14 explains this where he defines labour and capital and he
 15 puts it that they are faced with a situation where their
 16 contradictions are unmanageable. It doesn't mean that
 17 capital and labour cannot meet and negotiate. It depends
 18 on the power the other party has.
 19 MR MPOFU: Thank you and I agree with
 20 you, incidentally, but would you also agree with me that
 21 while it's acceptable for capital and labour to meet, it
 22 would be a conflict of interest for the same person in that
 23 meeting to represent capital and labour?
 24 MR ZOKWANA: Again Chairperson, before I
 25 say I disagree with you, Mr Mpofo, in terms of a government

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1 institute, you can be in a meeting in which your interests
 2 are going to be debated. There are two things you do. You
 3 either write a form to declare that interest – when the
 4 matter is presented for discussion you request that you be
 5 recused so that your presence may not influence a decision.
 6 There's nothing wrong, therefore, in being in a meeting as
 7 long as none of your interests are being debated or you
 8 stand to benefit in such debate.
 9 MR MPOFU: Mr Zokwana, please can you
 10 answer my question? Accepting what you are saying about
 11 recusals and declarations, do you or do you not agree that
 12 it is a conflict of interest situation where the same
 13 person, same human being in that meeting of these two
 14 antagonistic forces, purport to represent both capital and
 15 labour, that that person should – would not be properly
 16 taking part in that meeting? Yes, sir answer it as you
 17 like.
 18 MR BURGER SC: Chair, I object to that
 19 proposition. It's wrong in law. I don't have my learned
 20 friend's intimate knowledge of Marxist terminology but we
 21 deal with law procedure and if he refers to the role of Mr
 22 Ramaphosa in this meeting referred to in the e-mail as
 23 representing a conflict of interest, that's wrong both in
 24 company law and in process.
 25 MR MPOFU: Chairperson, Mr Burger will

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1 certainly – if, he used the word "if" I make that
 2 proposition in argument I'm sure he'll deal with it at that
 3 stage. All I'm doing now is simply to ask the witness
 4 whether, as a general proposition – I have not mentioned Mr
 5 X or Mr Y – whether, as a general proposition, the same
 6 person in the example that he was making can represent –
 7 MR ZOKWANA: I want to venture to answer
 8 to say there's nothing wrong in being in a meeting, as long
 9 as the matters under discussion don't stand to benefit you.
 10 MR MPOFU: Good.
 11 MR ZOKWANA: We do meet with – with
 12 those, and again I think, you know this thing of maybe
 13 using Marxism may have got an unintended consequences of
 14 presenting a wrong note. The way you define a capitalist
 15 can never be defined as meaning everybody who is an
 16 employee of the company. A capitalist is somebody who
 17 employs all others and derives wealth through using them.
 18 MR MPOFU: Yes –
 19 MR ZOKWANA: I'm saying this, that you
 20 don't get a mixture of things, Chairperson, in this, in
 21 paragraph 2 of the – unless Mr Mpofu refers to somewhere
 22 else – on paragraph 2 there was never a meeting in which
 23 Ramaphosa had to recuse himself. It was a telephonic
 24 conversation.
 25 [14:03] MR MPOFU: You know, sir, once again you

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1 are putting words in my mouth which I have not put to you.
 2 I have not said anything about anybody who is employed by
 3 anybody. Do you accept that in any terms a capitalist is
 4 somebody who owns the company, owns the means of
 5 production?
 6 MR ZOKWANA: The question confirms,
 7 Chairperson, my answer to the first question.
 8 MR MPOFU: What is it? Do you accept it?
 9 MR ZOKWANA: I mean does that define,
 10 Chairperson, my understanding of what a capitalist is.
 11 MR MPOFU: Yes, do you accept that in
 12 this context Mr Ramaphosa's company owns 18% of Lonmin?
 13 MR ZOKWANA: I'm aware that Shanduka is a
 14 BEE partner of Lonmin but I don't know the percentage.
 15 MR MPOFU: Okay, let's forget the
 16 percentages. Do you accept that they own part of the
 17 company?
 18 MR ZOKWANA: I've said yes, I understand
 19 that, I know that.
 20 MR MPOFU: So isn't that the ground of
 21 somebody who owns the company, not employed, okay?
 22 MR ZOKWANA: He owns shares in that
 23 company, not owns the company. They are two things, owning
 24 a company and being a shareholder are two different things
 25 and your power in that company is proportionate to your

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1 shares.
 2 MR MPOFU: So if there are 100 people and
 3 each of them owning – if there are 100 people, each of them
 4 owning 1% of the company, that company has no owner.
 5 MR ZOKWANA: If that's the choice they
 6 may, they will decide how they will, I mean proportionately
 7 the power in the company.
 8 MR MPOFU: Okay Mr Zokwana, I don't know
 9 –
 10 CHAIRPERSON: That's a semantic question.
 11 MR MPOFU: Ja.
 12 CHAIRPERSON: If you've got joint owners
 13 –
 14 MR MPOFU: Ja.
 15 CHAIRPERSON: - each joint owner owns his
 16 share.
 17 MR MPOFU: Exactly.
 18 CHAIRPERSON: Together the joint owners
 19 own the total res that's the subject of the Commission.
 20 MR MPOFU: Fair enough.
 21 CHAIRPERSON: But I mean we don't have to
 22 spend valuable Commission time on debating propositions
 23 like that, do we?
 24 MR MPOFU: Chairperson, well, I have to
 25 support – or rather if the witness says I said something

1 which I didn't say, which is about employers, then I think
2 I'm entitled to correct him. Mr Zokwana, the Chairperson
3 is right, this is not the issue I want to put to you.
4 Accept that I know that Mr Ramaphosa's company does not own
5 100% or even 51% of Lonmin, all I'm saying to you is that –
6 I'm telling you the fact that it owns 18% and I'm saying
7 that that makes it an owner, not the owner, an owner of the
8 company.

9 MR ZOKWANA: Yes, I agree with that.

10 MR MPOFU: Thank you. Thank you very
11 much. Now that we've put that behind us, do you think that
12 is it a conflict of interest situation for somebody in that
13 position who is an owner, a part owner or whatever, in the
14 situation where there is this conflict and antagonism, to
15 speak on behalf of or to participate on both sides of that
16 divide?

17 MR ZOKWANA: Again Chairperson, as I've
18 said before, what would disqualify him would be the content
19 of the discussion in question. If the discussion for
20 example, Chairperson, was whether NUM or whether the
21 workers should go on strike where he would be losing
22 production, maybe the questions arise but I think if you
23 look at the content of the discussion held with me, was
24 around the violent nature and the fact that people were
25 being killed. You know, Chairperson, sometimes

1 Chairperson, we don't take note of the impact to human
2 beings as well as to the image of this country's mining
3 sector, that what has that done in terms of the investor
4 confidence in this country because mining is not like a
5 pawn shop where you can use your own money to start a mine.
6 You rely upon independent, willing investors. So in this
7 case, Cyril engaging me Chairperson, I repeat, in my
8 capacity as a union leader in as far as violence was
9 occurring, we didn't discuss whether we must go to work or
10 not go to work where then his interest would be that
11 production must continue.

12 MR MPOFU: No, Mr Zokwana, that can't be
13 completely correct. According to this there are two things
14 that you discussed – or rather at least the first one you
15 proposed to discuss – it was what you should do as a union
16 going forward. The second one was about people going to
17 work and that was, you told him that you had a meeting of
18 500 to 700 workers that stated that they wanted to work.

19 MR ZOKWANA: I can better explain this,
20 Chairperson, because I was interacting with Cyril and these
21 two things are different. The first one was the issue of
22 what was happening at the mine insofar as violent protest
23 was involved and how, as a union, we should have been
24 dealing with that because the simple choice could have been
25 if NUM is under attack, workers are being killed,

1 Chairperson. A foolish approach could have been that let's
2 take arms as well and face those who were taking our
3 leaders, than hide. But the second sentence, Chairperson,
4 is in as far as the frustration is that some of our
5 branches have told us like at Impala they are willing to go
6 to work, not production, but it's that they're being
7 intimidated, they're being prevented. Only a police
8 presence can make them to work, not that we are saying go
9 to work. I was telling him that, look, people – and I'm
10 still believing, Chairperson, that had there no strike –
11 sorry, had there been no violence at Lonmin, no
12 intimidation, no murder, no people threatening offices, I
13 wonder if that strike could have succeeded. It did, only
14 because violence, coercion, threats were used. It was that
15 context, I put it. And Chairperson, it concurs, this
16 sentence, what I said that as a union what should we do.
17 Immediately people were being harassed, coerced, beaten up
18 from the 9th, the 10th, NUM sought to escort them earlier,
19 then called for police to arrive so that their
20 independence, their decisions should be independent, free
21 from coercion, free from threats to go to work. In a
22 threatening environment, Chairperson, in my understanding,
23 you don't force people against their will, you allow them –
24 because all of them have got contracts. Nobody – I mean to
25 say this, Chairperson, we must not sit here and make as if

1 it is lawful for people to decide that tomorrow we won't go
2 to work. That decision you can take as a person but to
3 force others to follow suit is a bit irresponsible.

4 MR MPOFU: Okay, for the life of me I
5 don't know what that has to do with the proposition I put
6 to you but can I, for the sake of progress, just put the
7 last proposition and invite your comment? And it is that
8 you know, just like everybody does know, that in a
9 situation such as this where there is a conflictual
10 situation between labour and capital per se that it's
11 impossible, it's a classical definition of conflict of
12 interest for any single person to purport to represent the
13 interests of both sides. You would either be representing
14 the interests of labour or the interests of capital, unless
15 of course you were a neutral person not involved with
16 either, like the CCMA or whatever.

17 MR BURGER SC: I object to that
18 proposition. Sorry, I object to that proposition. There's
19 no evidence before this Commission that there was a
20 conflict between labour and capital. There was a stand-off
21 by an unruly crowd at a koppie, carrying weapons. Labour
22 was not involved.

23 MR MPOFU: I don't know if I need to
24 respond to that, honestly.

25 CHAIRPERSON: You put a proposition that

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1 was incorrect and Mr Burger put what he says is the correct
 2 proposition, so you have to deal with the point.
 3 MR MPOFU: Chair – okay. The point that
 4 there was no conflict between labour and capital on those
 5 days? Well, right, I'll deal with it.
 6 MR TIP SC: Mr Chair, may I ask Mr Mpofu
 7 to deal with another aspect that flows out of my learned
 8 friend Mr Burger's objection and that is that there's a
 9 difficulty in the premise with which, on the basis of which
 10 propositions have been put to this witness. He is being
 11 asked to deal with a hypothesis that there was a conflict
 12 between capital in the generic sense and labour in a
 13 generic sense. The witness has already indicated more than
 14 once that one had a situation where some workers had
 15 elected to embark on an unprotected strike, other workers
 16 wished not to take part in that strike and there is
 17 therefore no homogeneous position in respect of labour and
 18 that is a consideration that must, with respect, refine
 19 some of the propositions that are put.
 20 MR MPOFU: Okay. I'll put it like this,
 21 Chair. I'll make it simply for everybody.
 22 CHAIRPERSON: Rephrase your question.
 23 MR MPOFU: Yes, that's exactly what I'm
 24 doing.
 25 CHAIRPERSON: I think I know the point

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1 you're trying to put.
 2 MR MPOFU: Yes.
 3 CHAIRPERSON: And it's obviously
 4 important that you put it so that you get the answer from
 5 the witness –
 6 MR MPOFU: Thank you, Chairperson.
 7 CHAIRPERSON: - if you do meet these
 8 objections on the way which you can eliminate by rephrasing
 9 your question.
 10 MR MPOFU: I will do so. Would you agree
 11 with the following proposition, that when there is a
 12 conflict between a company that I own or partly own and
 13 anybody, whether it's labour or X, Y, Z, doesn't matter,
 14 okay – when the issue of resolving that conflict, including
 15 the company that I own, my interest in that bilateral
 16 conflict, so to speak, will lie with the company that I own
 17 and not with the other, however you define that.
 18 MR ZOKWANA: First I must deal with what
 19 you didn't finish saying, Mr Mpofu, to the fact that –
 20 MR MPOFU: Can you start with -
 21 MR ZOKWANA: No – no, when in your first
 22 sentence you said I should define this, unless I am, I was
 23 neutral and you mentioned to me I want to tell you that
 24 today that I've never been neutral in the struggle I have
 25 committed, I'm committed to. I was – if you're saying that

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1 maybe you didn't say that –
 2 MR MPOFU: I didn't.
 3 MR ZOKWANA: Coming to your question, Mr
 4 Mpofu, again I don't understand what you want me to confirm
 5 because you are not clear to on which basis do you raise
 6 the question? Owning a company can everywhere, having a
 7 dispute can be everywhere, but it's by your own definition.
 8 You cannot say maybe - between you as the owner and those
 9 you employ, it cannot be anywhere.
 10 MR MPOFU: Mr Zokwana, you know I'm
 11 inclined to let you get away with this but I want you to
 12 answer my question. Would you agree or not agree with the
 13 following proposition, if there is a conflict between a
 14 company that I, Mpofu, own or partly own and another
 15 entity, another party, whatever it's called, that it – in
 16 that, if there's a discussion about that I will
 17 automatically be representing the interests of the company
 18 that I own or partly own.
 19 MR ZOKWANA: Thanks, I think I begin to
 20 understand you now but you know, Chairperson, in answering
 21 this question, there are two forms of interest an employer
 22 should be having – one, the interest to extract gold, if
 23 it's gold or diamonds if it's diamonds, but also the
 24 interest to make sure that those he employs are safe. It
 25 depends what scenario you are in that must define the

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1 question you are raising. If, in the scenario of Lonmin, I
 2 would not be happy that, Chairperson, the Lonmin employers
 3 would be indifferent if their own employers, employees they
 4 have employed were being killed.
 5 MR MPOFU: I promise you this is my last
 6 attempt to get you to answer this question. I'm
 7 deliberately choosing my words, Mr Zokwana. I agree with
 8 you in normal peace time when you look into, or rather as
 9 an owner you might look into the interests of the company
 10 as a whole, including your workers and so on, that I
 11 accept. Do you understand? I'm asking you specifically in
 12 a situation where there is a conflict between the two, do
 13 you understand?
 14 MR ZOKWANA: Mm.
 15 MR MPOFU: Do you accept or don't you
 16 accept that if I'm an owner, in the context of that
 17 conflict, I will represent the interests of the company
 18 rather than the interests of that other undefined –
 19 MR ZOKWANA: I'm trying to answer. If I
 20 fail, Chairperson, I think I will be forgiven because I
 21 will have failed to answer the question. I'm answering the
 22 question, Chairperson, based on the exchange of the SMSes
 23 and the role I played and I'm saying in that scenario it
 24 would be improper for any employer only to focus on his
 25 interest or production where people have been injured, the

1 threats of others, more being killed.

2 MR MPOFU: Okay, I give up. Alright, now

3 let's – can we talk about violence? Would it be fair to

4 say that the NUM is no stranger to violent strikes?

5 [14:23] MR ZOKWANA: Thanks, Chairperson. There

6 have been strikes as NUM is a very big organisation. In

7 some instances members do go out of way but the leadership

8 of NUM has always been able to come and make sure that

9 people conform to the roles of the game. We have never

10 condoned violence or promoted it or been seen singing songs

11 that seeks to encourage such.

12 MR MPOFU: Okay, as the leadership you

13 may not have promoted violence, that I am prepared to

14 accept, but can you go as far as to say that you have never

15 understood workers, your workers, your members employing

16 violence as a tactic when they were provoked?

17 MR ZOKWANA: There can be no justice to

18 people doing violence on the basis that they are provoked,

19 Chairperson. I repeat this that as a union, we do not

20 encourage people to embark on violence, hence from the

21 first day when the strike began, our branch committee

22 members knew what to do as they understood the implications

23 of an illegal strike, and I want to put it clear that even

24 today, since the Marikana disaster, Chairperson, I received

25 a letter that, last week, on the last week, a number of our

1 shop stewards in a mine owned by Goldfields, Driefontein,

2 our shop stewards, some of, among the crowd there, have

3 been given special leave to go home because of continued

4 unprovoked beating from AMCU members, and the NUM has said

5 we will not embrace violence, will not imitate violence,

6 will not use violence to do anything. The law will play

7 its role, and as a union, Chairperson, we will never be

8 seen – if such happens, we would be the first to go there

9 and make sure that violence is not practised and I do not

10 speak for others.

11 MR MPOFU: Well, in that vein, what steps

12 did you take to act against the violence that was meted out

13 against the protesters by the NUM on the 11th of August?

14 MR ZOKWANA: Thanks, Chairperson. I am

15 sure evidence has been led in this Commission, showing the

16 fact that the incident that happens near our office, never

17 repeated itself. I don't think in this Commission,

18 Chairperson, I wonder if any proof will be put to show that

19 there was a recurrence thereof, either in Impala, either in

20 Lonmin, or at any other branch where NUM would have been

21 involved. And I can assure you that if you do that,

22 looking at the other party, prisons will have records of

23 those who have been arrested. Records will show that

24 employers had to clock them in, in some of the mines, like

25 Impala to avoid dismissing them, because it is a norm in

1 AMCU to beat anybody who disagrees with them.

2 MR MPOFU: Why do we have to wait for a

3 repetition, why are the prisons not overflowing with the

4 violence that happened on the 11th?

5 MR ZOKWANA: I have to answer that,

6 because it is how the rule of law takes its course. I

7 can't sit here and answer it why when people have been

8 arrested by the police, they are given bail by magistrates,

9 is not my call, but I know very well that in Impala people

10 have been arrested for violence in, as we speak,

11 Chairperson, an operation owned by AM has been mothballed

12 because of violence against our own members, two of which

13 were killed. The company said to avoid further bloodshed

14 let us close our operations until we can find a formula.

15 The point, Chairperson, I don't think I should be put here

16 Chairperson, to argue as to why people who cause violence

17 are not kept in prison. I can't give that answer because I

18 am not having rights to decide who should be in or out.

19 MR MPOFU: Thank you. It seems to the

20 one, the problem is that you, not me, are the person who

21 introduced the issue of prisons overflowing, but let's move

22 on.

23 MR ZOKWANA: No, no, Chairperson, please,

24 I am present, I said if records can be checked, of people

25 who have been arrested.

1 MR MPOFU: Let's move on. The NUM, the

2 formation of the NUM in 1982, was among others facilitated

3 by unlawful strikes in three places, including where you

4 are working, President Steyn, are you aware of that which

5 advocated violence.

6 MR ZOKWANA: Let me answer this question,

7 Chairperson. Chairperson, NUM was not form as a

8 consequence of strikes. NUM was formed because after the

9 Commission that was elected then, after the 1973 strikes in

10 Durban, it came with this first of its kind to allow black

11 workers to belong to trade unions. The strike that Mr

12 Mpofo may have come upon happened in 1980, two years before

13 NUM was formed. I participated in that strike, not staying

14 as a whole, Sir, it was only number 1 shaft where I was

15 working. It was on the implications of death benefit un-

16 negotiated. Two features of it, nobody was killed, nobody

17 was intimidated or workers were angry. People were

18 confronted, everybody but stated at free will, as opposed

19 to what we have seen in Lonmin.

20 MR MPOFU: Okay, because I am going to be

21 making many examples, I am not going to debate all the

22 specific incidents with you. The 1987 strike that NUM

23 organised, you'll agree that that one was violent?

24 MR BURGER SC: Chair, in protection of my

25 learned friend, he is busy with phase 2, he should go back

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1 to phase 1 and perhaps –

2 CHAIRPERSON: That's right, he is

3 attacking the witness's suggested that NUM is a non-violent

4 union, it engages in non-violent industrial action and he's

5 suggesting that that's not borne out by the record of NUM,

6 and he's putting examples. So I don't think it's only

7 phase 2. I am not sure, however, that going back that far

8 into the history of industrial relations in this country,

9 it's going to help us to answer the questions that the

10 President sent us to find answers to. But provided you

11 keep this aspect short, I'll let you continue, but I am

12 mindful of the point Mr Burger has raised from the other

13 angles that I endeavoured to put to him.

14 MR MPOFU: Yes.

15 MR ZOKWANA: Let me answer, Chairperson.

16 We are dealing with two difference scenarios. The 1987

17 strike was the strike that was own legal within the law.

18 NUM members balloted, I balloted myself, there was a

19 dispute declared, we got a certificate. Now if it is

20 comparing with the current situation we are speaking to, I

21 can't see the similarities. There may have been some

22 incidents as he referred to, because in that strike

23 Chairperson, violence, I can attach to, as a person who was

24 working at Steyn that time as a branch chairperson that

25 time. That violence was meted on workers by the security

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1 police and mine police. It was not violence of workers

2 against workers. Remember, that time we were dealing with

3 a government known to be violent. I wonder if we can

4 qualify that in the present moment, in as far as strikes

5 are concerned. Remember one thing about what could have

6 happened, but where people go on strike within the law, I

7 have not known of the police being called upon to disperse

8 people who are marching peacefully, Chairperson, where

9 there is permission to do so. Maybe Chairperson, we can

10 take a bash in dealing with mineworkers, in the 1946 strike

11 and how it ended.

12 MR MPOFU: Yes, in the 1946 strike which

13 was led by JB Marx 45 000 workers came out and they were

14 striking for 10 shillings a day and many people died and

15 others were arrested.

16 MR ZOKWANA: And they never killed each

17 other.

18 MR MPOFU: The issue we are dealing with,

19 is whether there was violence and there was.

20 MR ZOKWANA: I think, Chairperson, to

21 define this violence, from whom?

22 MR MPOFU: I will do so.

23 CHAIRPERSON: Mr Mpofo, I did indicate to

24 you, I hope you'll remember it –

25 MR MPOFU: Yes.

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1 CHAIRPERSON: - what I said. I am not

2 going to stop you at this –

3 MR MPOFU: Chair, I am going to be quick.

4 CHAIRPERSON: - but this Commission isn't

5 going to embark upon an investigation of the history of

6 violent strikes in South Africa since over the last 150

7 years because then we will be sitting into the next century

8 if we go on like that, and I have no intention about doing

9 that.

10 MR MPOFU: Chairperson, I have no

11 intention of going through 150 years. What I do have an

12 intention of doing, is to cross-examine a witness who

13 portrays a particular disposition towards violence.

14 CHAIRPERSON: All I am saying to you is,

15 keep it short.

16 MR MPOFU: Yes, I will, accepted. And Mr

17 Zokwana, can I show you, I want to come to the post 94

18 situation just now, but do you accept that in the 1987

19 strike 177 strike leaders were arrested for among other

20 issues, dealing with violence?

21 MR ZOKWANA: Chairperson, well, I am

22 willing to say, cannot contest the number, I know that some

23 people were arrested but the reasons are different from now

24 on the basis that under that time people who could raise –

25 I know of people who were arrested. By the way, if you had

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1 to go back in that strike, Mr Mpofo, you will find that all

2 NUM leaders from Lesotho were refused permits to come back,

3 not because they were engaged in violence. It was the

4 power of the state at that time, and I am saying to you

5 that the rules as they apply now are better off. That's

6 why I believe it is easier to go to a strike for the

7 restrictions that were present in that time, are not the

8 same. So by then when you define violence, you may have

9 been standing not far from the point of entry to the work

10 place. I know it happened. This time more people were

11 carrying assegais and others, who really armed them on

12 others. So the violence were different. Chairperson, I

13 can tell you – assure you, Mr Mpofo, that many of us in

14 this room went to prison under law called state of

15 emergency. You were not called upon to explain why you

16 were interested. It was the same - them and I will be

17 happy if we can confine ourselves Chairperson, to finding

18 whether there have been instances under the new regime of

19 the law that allow strike happen, that NUM can be accused

20 of there having been a violence and we did nothing as

21 leadership to stop it.

22 MR MPOFU: Okay, in the interests of

23 time, I am going to move to current era. Is it correct

24 that members of the NUM have in the current era and

25 continue to use violence as a means of resolving issues?

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1 [14:43] MR ZOKWANA: Generally, no. We don't
2 have such, I don't have that knowledge that NUM has a
3 principle or members of NUM have adopted that violence
4 would be used to achieve their goals. If you ask me
5 whether there's been illegal strikes, my answer will be,
6 yes. If those have got any resemblance to what we saw in
7 Marikana, I will differ with you.

8 MR MPOFU: Okay, Mr Zokwana, once again,
9 please don't put words in my mouth. I'm asking you a
10 simple question, whether you know that members of the NUM
11 in the post-apartheid era and currently used violence as a
12 means of dealing with grievances -

13 MR ZOKWANA: My answer is no.

14 MR MPOFU: Do you know about the violent
15 attack by NUM members upon the Deputy President of the NUM
16 recently?

17 MR ZOKWANA: Chairperson, a very
18 unfortunate incident, I didn't know it's going to be used
19 here. Let me explain, Chairperson. We have not been
20 hesitant in the process of investigations whether the
21 person Mr Mpofu refers to was a NUM member. For a repeat
22 now, nobody has been found guilty of that offence. If you
23 ask me if Comrade Matosa, the person you referred to, was
24 injured, my answer is yes. Let me also highlight the fact
25 that during which negotiations when you call for a mass

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1 to now to identify the person who did it. Yes, he was
2 injured in a NUM meeting and I admit that in any meeting
3 during negotiations you're not only dealing with NUM
4 members, even non-members attend those meetings. I will
5 appreciate if there is anybody who may have evidence of who
6 the person is.

7 MR MPOFU: So if anybody in the NUM
8 leadership suggested that Mr Matosa was attacked by NUM
9 members, they should apologise to NUM members?

10 MR ZOKWANA: There is no need to
11 apologise for making your view, Chairperson, because in
12 this case, it was a NUM – it was a mass meeting organised
13 by NUM. What I'm putting to you that no proof has come
14 forward to say it was a NUM member who attacked Matosa.
15 Whether the person in question was an agent, I don't know.
16 And I will not call on anybody to apologise for have made a
17 view that says, possible it may have been. Yes, it's
18 possible or not, but up to now there is no proof that it is
19 NUM who have done that.

20 MR MPOFU: Once again you're putting
21 words in my mouth. If that person did not possible, if
22 they said he was attacked by NUM members, that would be
23 incorrect?

24 MR ZOKWANA: Chairperson, I will repeat
25 again to my answer to say this that after today we don't

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1 meeting, in most instances it is not only mineworkers who
2 attended the stadium and I am sure in the same vein, I'm
3 sure the Commission that even in Marikana all the bodies on
4 the mountain was a mine employee and I say this answer to
5 say this, Chairperson, I'm not aware that it was a mine and
6 NUM member who injured, because no such record exists as to
7 who the person was, hence nobody had been arrested or
8 accept sentence.

9 MR MPOFU: I put it to you that that
10 answer is untruthful. You know that Mr Matosa was attacked
11 by NUM members. What is your response?

12 MR ZOKWANA: Unless I will be presented,
13 Chairperson, with proof, as far as I sit here and I'm sure
14 people from Impala will testify that nobody has been found
15 guilty of the offence. As a result that case has been
16 struck off the role, because the police could not find who
17 the [inaudible] was. He was attacked in a NUM meeting, as
18 this could happen everywhere. I mean, many people of NUM
19 have been attacked, like in Lonmin. We cannot stand here
20 and say we know who attacked them in that meeting, unless
21 the people who did that can be - they were NUM members.
22 And it doesn't therefore - my answer to say, I can say
23 that, I'm sorry, Chairperson, [inaudible] and Mr Mpofu.
24 NUM has no record that the person who attacked Comrade
25 Matosa was a NUM member. Hence the police have failed up

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1 know what - Comrade Matosa. I'm not in a position to say
2 it was a NUM member, but it would be wrong for anybody to
3 suggest that NUM members used violence, using that incident
4 as a basis.

5 MR MPOFU: Is it correct to state that
6 the Rustenburg Branch of NUM Origin that among the
7 challenges that it faces, is that they resort to violence
8 without any provocation, including against leadership?

9 MR ZOKWANA: I don't want to accuse,
10 Chairperson that I have twisted words or put words to
11 counsellor Dali Mpofu. NUM doesn't have – NUM have got
12 structures. Rustenburg is a region. We've seen the region
13 we've got mines that in our demarcation becomes branches,
14 unless you say to me, the Lonmin has got four branches,
15 Impala has got so many, Anglo got – for the Anglo Platinum
16 has got so many. Unless you still say this that in that
17 branch of NUM, being Impala or Lonmin or whatever they have
18 used violence, I can be able to answer you.

19 MR MPOFU: Alright. I'm going to try and
20 assist you.

21 MR ZOKWANA: Yes.

22 MR MPOFU: Like yesterday I'm going to
23 try – I'm going to put propositions to you and try to avoid
24 – I'm going to use a document, but I'm going to try and
25 avoid to have it as an exhibit, partly because it's just

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1 too bulky. But if you and I disagree on anything, then
 2 we'll have no choice. We'll make the arrangement. Can you
 3 work with me on this?
 4 MR ZOKWANA: If it is permissible in the
 5 Commission to do that, it's fine.
 6 MR MPOFU: Yes, it is provisionally.
 7 Look, it – sorry, I'm taking the Chair's job, but it's just
 8 to try and save volume. The document that I'm referring
 9 to, I'm sure you're familiar with it, is 30 years of
 10 unbroken revolutionary trade unionism struggle, the
 11 secretariat report.
 12 MR ZOKWANA: Where did you get it -
 13 MR MPOFU: Don't worry about that for
 14 now. Secretariat report to the 14th National Congress 2012.
 15 But part of this ad hoc arrangement of ours, is once again
 16 with the Chair's permission, just to facilitate I will give
 17 you, only you and not even the –
 18 MR ZOKWANA: Document -
 19 MR MPOFU: Not even the - thank you.
 20 MR ZOKWANA: It's an office copy?
 21 MR MPOFU: No, it's not an office copy.
 22 MR BURGER SC: Chair, we don't have
 23 access to the document. May we know what the subject is to
 24 be addressed, or are we to be excluded from that also?
 25 CHAIRPERSON: We don't know what the

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1 document is. We got a very cryptic incomplete description
 2 of the document. It's a most extraordinary way of cross-
 3 examining, but you've shown the document to the witness.
 4 The witness apparently alleges it was a stolen document.
 5 We are still in the dark as to what document it is, what
 6 it's all about, but I suppose we expect Mr Mpofu at least
 7 to tell us what the document is, so we can then follow the
 8 interesting debate that's going to take place.
 9 MR MPOFU: Chairperson, you know what,
 10 I'm quite happy, we can make 30 copies of this bulky
 11 document. I'm trying my best not to burden the record. If
 12 I'm just going to –
 13 CHAIRPERSON: I think there's enough
 14 forests that had been chopped down unnecessarily as it is.
 15 MR MPOFU: Exactly.
 16 CHAIRPERSON: Without your chopping down
 17 another one.
 18 MR MPOFU: Thank you.
 19 CHAIRPERSON: Put the document before us,
 20 but whatever its origin may be, is it going to assist us to
 21 find out what happened at Marikana over the relevant
 22 period?
 23 MR MPOFU: It will, Chair, if you let me
 24 put my question.
 25 CHAIRPERSON: Okay.

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1 MR TIP SC: Mr Chair, before Mr Mpofu
 2 puts questions, it really is a very unsatisfactory
 3 situation, with respect. The witness has a document, Mr
 4 Mpofu has a document, the Commission doesn't, the evidence
 5 leaders, no parties has the document. I see it's a bulky
 6 document. I'm quite certain that Mr Mpofu doesn't intend
 7 to work from page 1 to the end.
 8 MR MPOFU: Well -
 9 MR TIP SC: There must be a limited
 10 number of pages. Can we perhaps take the tea adjournment.
 11 He can prepare copies of whatever the portions he's going
 12 to refer to and let us all have them so that we can follow
 13 the context?
 14 CHAIRPERSON: Mr Mpofu, that sounds like
 15 what my granddaughter would call a good idea.
 16 MR MPOFU: No, Chair, no, it's not a good
 17 idea. I'll make a better suggestion. Chairperson, what I
 18 can do and I'm sorry for trying to save time, is that I'll
 19 move to something else, so that – we can take the break any
 20 way, but I'll move to something else and then make the
 21 copies and take the witness through – my attempt to save –
 22 CHAIRPERSON: You're going to make copies
 23 of this whole document, because somewhere if there's a
 24 passage which has got some bearing on what we're busy with?
 25 MR MPOFU: Not one – well exactly –

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1 CHAIRPERSON: That's a course of conduct
 2 I'm not going to allow.
 3 MR MPOFU: Well –
 4 CHAIRPERSON: We take the tea adjournment
 5 now.
 6 MR MPOFU: Ja.
 7 CHAIRPERSON: I suggest you discuss the
 8 matter with Mr Tip and see whether you can work out an
 9 acceptable, practical, sensible way forward. Discuss this
 10 also with the evidence leaders, who I'm sure will be able
 11 to give you sensible advice. We take the tea adjournment.
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]
 13 [15:29] CHAIRPERSON: The Commission resumes.
 14 We've been handed a document during the adjournment, which
 15 consists of extracts from a report which is going to be put
 16 to the witness. It's sensible to give it an exhibit
 17 number. So Ms Pillay will tell us what the exhibit number
 18 is.
 19 MS PILLAY SC: Chair, it will be BBB5.
 20 CHAIRPERSON: Has the witness got a copy?
 21 MR ZOKWANA: Just about a few minutes
 22 ago, Chairperson, I was the last to receive it.
 23 CHAIRPERSON: You're still under oath.
 24 I'm sure you've read the document already in its complete
 25 form. Mr Mpofu, are you ready to cross-examine the witness

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1 further on the extent of this document and anything else
 2 that you want to ask him.
 3 MR MPOFU: Thank you very much,
 4 Chairperson. Mr Zokwana?
 5 MR ZOKWANA: Yes.
 6 MR MPOFU: This document is the one that
 7 I'm sure you're familiar with. It's the secretariat report
 8 that was presented at your last national congress?
 9 MR ZOKWANA: Presented today by you.
 10 MR MPOFU: Although I'm not the general
 11 secretary.
 12 CHAIRPERSON: Apparently been presented
 13 by the general secretary earlier –
 14 MR ZOKWANA: I would have appreciated –
 15 CHAIRPERSON: At national congress when
 16 you saw it.
 17 MR ZOKWANA: I did. Fine, go through.
 18 MR MPOFU: In the document we've accepted
 19 only the relevant parts, but the part that I'm going to
 20 refer you to, is at the bottom, is page 79.
 21 MR ZOKWANA: 79.
 22 MR MPOFU: It starts at 78.
 23 MR ZOKWANA: Alright.
 24 MR MPOFU: Ja. Sorry.
 25 MR ZOKWANA: Yes.

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1 MR MPOFU: Okay, the format that – and
 2 you can also help us and help the Commission, if you start
 3 at the top of 78, 3.3.4.11 towards the end of 79, that is a
 4 format that is followed in the document, in the bigger
 5 document of report of all the regions, would you agree with
 6 me?
 7 MR ZOKWANA: Yes.
 8 MR MPOFU: Thank you. But the part that
 9 we are reading, deals specifically with the region of
 10 Rustenburg?
 11 MR ZOKWANA: Yes.
 12 MR MPOFU: And in respect of each region
 13 there are – the following heading, Regional Committee
 14 Member highlights, lowlights and challenges. That's the
 15 pattern of the document in respect of all the regions, you
 16 remember that?
 17 MR ZOKWANA: Yes, Chairperson, because
 18 NUM would like to make sure that its members at congress
 19 are not only applauding for what an imagined a free
 20 situation. It only has to deal with everything and I agree
 21 with you, it is how it has been.
 22 MR MPOFU: And the simple point I wanted
 23 to make is that in respect of the challenges facing – well,
 24 let's start with the lowlights. One of the lowlights is
 25 that there are low loyalty levels amongst members, the

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1 second bullet, can you see that?
 2 MR ZOKWANA: Yes.
 3 MR MPOFU: The next – okay, jump one,
 4 two, the third bullet from that, another lowlight is that
 5 consultation for leadership position can sometimes turn
 6 violent?
 7 MR ZOKWANA: Yes.
 8 MR MPOFU: You see that one. The next
 9 bullet says, members opt to use violence rather than
 10 dialogue?
 11 MR ZOKWANA: [No audible reply].
 12 MR MPOFU: You see that?
 13 MR ZOKWANA: I'm - because I've only
 14 received this – that will be under lowlights, nè?
 15 MR MPOFU: Yes, after the contestation
 16 one. I've read bullet 2, 5 and 6.
 17 MR ZOKWANA: Bullet 2 will be?
 18 MR MPOFU: There are low –
 19 MR ZOKWANA: Under lowlights, some
 20 branches turn to create no zone, we'll leave that one.
 21 Then bullet 2 will be the region must improve. There's
 22 been instances over the past six years, where are you, we
 23 don't seem to be on the same.
 24 MR MPOFU: No, we're not. Look at 79 at
 25 the bottom.

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1 MR ZOKWANA: That's the problem. You
 2 said 78 earlier.
 3 MR MPOFU: No, I said we start at 78 just
 4 to show that it's from Rustenburg.
 5 MR ZOKWANA: Yes, fine.
 6 CHAIRPERSON: The passage you read
 7 relates to the Gauteng region?
 8 MR MPOFU: Yes.
 9 MR ZOKWANA: Yes.
 10 CHAIRPERSON: The Rustenburg region
 11 begins on the top of the right hand column.
 12 MR MPOFU: And continues on page –
 13 CHAIRPERSON: On page 78.
 14 MR ZOKWANA: Yes.
 15 CHAIRPERSON: And continues through to –
 16 where it really continues through to 80, halfway down the
 17 first column.
 18 MR ZOKWANA: Yes, I've seen that.
 19 CHAIRPERSON: What counsel was putting to
 20 you was, the left hand column, column 1 on page 79, under
 21 the heading, lowlights, there are a number of bullets as
 22 they're called and he was referring to the second one, the
 23 5th one and the 6th one.
 24 MR ZOKWANA: Yes, I see that, members opt
 25 to use violence, yes, than dialogue.

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1 MR MPOFU: Yes.

2 MR ZOKWANA: Yes.

3 MR MPOFU: Okay. Okay, I'm sorry, Mr

4 Zokwana, so the other three – the three are, the loyalty

5 levels amongst – low loyalty members.

6 MR ZOKWANA: Hm.

7 MR MPOFU: Second one, consultation for

8 leadership position can sometimes turn violent and members

9 opt to use violence rather than dialogue.

10 MR ZOKWANA: Yes, yes, I see that.

11 MR MPOFU: And then at the bottom, it

12 says, "at the point of writing this report our membership

13 was 49% in Lonmin, a drop from 66%,' do you see that?

14 MR ZOKWANA: Oh yes, I see that, yes.

15 MR MPOFU: Okay. And the paTH that I was

16 – I wanted – that I was quoting earlier, before the break,

17 right at the bottom of page 79.

18 MR ZOKWANA: Yes.

19 MR MPOFU: Under challenges.

20 MR ZOKWANA: Yes.

21 MR MPOFU: The third bullet there reads

22 as follows, 'they', I suppose, resort to violence without

23 any provocation including against leadership.

24 MR ZOKWANA: Yes.

25 MR MPOFU: And just for good measure,

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1 even though you were reading it by mistake, on page 78 the

2 first lowlight there under Gauteng is that some branches

3 tend to create no-go-zones for some leaders?

4 MR ZOKWANA: Yes.

5 MR MPOFU: Okay. Thank you. Now the

6 question now comes, in the light of – well, can we accept

7 that this report from the general secretary is a true

8 reflection of the state of organisation?

9 MR ZOKWANA: Yes.

10 MR MPOFU: Thank you. And in the light

11 of what I have said and the discussion we had about the

12 relatively recent attack, on my version by NUM members, I

13 know you're contesting that, on the Deputy President, would

14 you be prepared to concede that now in this era, not in the

15 past era, that violence seems to be a tool that is used by

16 NUM members in some instances?

17 MR ZOKWANA: I will still dispute that as

18 an instrument by the Union, because you must distinguish

19 between violence used as the means that – or the ends

20 justifying the means. In this instance violence being used

21 to grow membership as the means used, violence as the

22 means, and the means used therefore justified by the ends,

23 the ends is that the Union will grow. NUM will never – NUM

24 has never used violence or approved violence where ever

25 violence have been a feature, as the case will show.

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1 MR MPOFU: If – sorry.

2 MR ZOKWANA: I hope you will allow me to

3 finish?

4 MR MPOFU: Of course, I'm sorry.

5 MR ZOKWANA: If you – if you – if where

6 its members says members opt to use violence rather than

7 dialogue, if it is in what manner that violence gets used

8 and they can able to assist the Commission and those who

9 were not present at the NUM conference, so that we don't

10 use words in abstract. If I am allowed, Chairperson? The

11 report speaks of NUM members opting to use violence rather

12 than the dialogue and the points, I think, bullet point

13 number – it says, in 2010 8000 members were dismissed at

14 Lonmin Karee for participating in an illegal strike,

15 demanding the reinstatement of their branch chairperson,

16 who was dismissed by the Union for refusing to – it shows

17 that these members were dismissed and as a Union we believe

18 in discipline. As a Union who believes that people must

19 work within the law, Chairperson and respect its own

20 constitution. We'll continue and we're not shy for making

21 sure that every leader of NUM will go through our own

22 processes. In this case here, this violence is referred to

23 for workers when they want to restate their own

24 chairperson, resolved to an illegal strike. It does not

25 show that NUM as a Union have been behind this action of

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1 these workers. By the way it condemns this action, to show

2 that as a Union we're against any form of violence applied

3 by our members. And we'll discipline every member when we

4 came to know that he has been ill-disciplined. And we have

5 done that. The number of people who have been disciplined

6 by NUM, in this case in question, were disciplined, Steve

7 Kulukele, the then Chairperson of Karee, for one reason,

8 for refusing to go to a conference to stand for nomination

9 and be elected. That's how this violence came into being.

10 Chairperson, lastly, we don't believe in hereditary that

11 when you are – I'm the president of NUM, because of the

12 years I have been there and then I will not be going

13 through processes of being nominated and the people

14 conducting. And if that is the same NUM committee,

15 Chairperson, it is the same we believe that it was done in

16 good faith, because we cannot entrench where people will

17 just decide that because I want to be the Chairperson, I

18 will not go through processes. And in this instance,

19 Chairperson, does not support the argument put forward that

20 NUM has used violence. NUM has used measures to correct

21 ill-discipline by dismissing a person who refused to obey

22 his own, constitution of his own Union.

23 MR MPOFU: Are you finished? Okay.

24 Alright. Would somebody reading this report be forgiven to

25 assume that in the Rustenburg region one of the problems is

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1 that members opt to use violence rather than dialogue?
 2 MR ZOKWANA: Thanks, Chairperson. It
 3 depends how he got the report. Mostly a report of the
 4 Union is for the consumption of those who had been at
 5 congress. And any report, Chairperson, is presented for
 6 debate. Those delegates in that conference, if it is their
 7 view that the report does not present the true facts as
 8 they appear, they have the right to debate it and change
 9 it, Chairperson.
 10 CHAIRPERSON: That's not an answer. What
 11 you were asked, would an ordinary reader, an outsider into
 12 whose hands this document fell by whatever means, and who
 13 read these sections, would he or she conclude that this is
 14 a Union which is – cannot be described as a non-violent
 15 Union, because, to quote the report, column 1, page 79,
 16 "members opt to use violence rather than dialogue." I think
 17 that's your question?
 18 MR MPOFU: That's the question, thank
 19 you, Chair.
 20 CHAIRPERSON: You didn't answer that
 21 directly.
 22 MR ZOKWANA: Yes, he would, Chairperson,
 23 provided he doesn't read the examples thereto. Because
 24 what happens below, sets out the examples of what does the
 25 sentence refer to. And I repeat, Chairperson, that those

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1 examples do not show that it has been violent in the form
 2 of workers using violence, but there's been people who have
 3 violated our constitution, who have to face consequences of
 4 ill-discipline.
 5 CHAIRPERSON: It seems to me there could
 6 be two forms of violence. There could be violence by NUM
 7 against outsiders and there could be, what one can call
 8 internal violence?
 9 MR ZOKWANA: Internal, yes.
 10 CHAIRPERSON: So the members having
 11 fights with each other, with each other, not NUM itself
 12 fighting against other people. Now are you able to help us
 13 as to what form of violence was envisaged, sorry, on your
 14 understanding by the statement, members – they're talking
 15 about the Rustenburg region, "the members opt to use
 16 violence rather than dialogue". Does it mean they tended
 17 to use violence against outsiders on behalf of NUM or they
 18 tended to have internal scraps among themselves?
 19 MR ZOKWANA: Thanks, Chairperson, for
 20 that. Where this violence has been clear, because before a
 21 person leaves your organisation, you will refer to him as a
 22 member up until such time that he resigns. Chairperson,
 23 there's been violence in nature of a strike, especially in
 24 Marikana and I'm sure it is shown that in 2012 when 10 000
 25 members were dismissed, it is where we saw the beginning of

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1 violence by what we thought initially were NUM members
 2 against other members that culminated in where people of
 3 that number were dismissed, started by wrongful operators,
 4 which I refer to as the carbon paper of what happened in
 5 Lonmin. Violence was used there. What we thought were NUM
 6 members earlier, but who changed to be AMCU members later.
 7 [15:49] MR MPOFU: And would the same reader be
 8 entitled to conclude that one of the challenges is that in
 9 the Rustenburg branch, members resort to violence without
 10 any provocation including against the leadership?
 11 MR ZOKWANA: Yes, Chairperson, and I
 12 think the report shows that, with the report shows that
 13 members of NUM before they resigned, from red to green T-
 14 shirts, began the strike, beat our leadership of NUM, and
 15 made the situation untenable for NUM to operate. It
 16 happened in Impala. They were red initially, from the
 17 railway line they came back in a new uniform. It was the
 18 feature of their rivals, Chairperson, I agree.
 19 MR MPOFU: Sorry, I can't find the exact
 20 passage, but would you agree that one of the problems that
 21 was also frequently highlighted in this report, was the
 22 problem of illegal strike?
 23 CHAIRPERSON: Points to an unprotected
 24 strike in column 2 on page 79, near the top of the page,
 25 and there's also a reference to what I think is the same

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1 strike, in the last bullet on the – in column 1 on the same
 2 page. I don't know if there are others.
 3 MR MPOFU: Okay, Chair, can we pass on
 4 that, if I find it, I will read it another time. But maybe
 5 I should ask you generally at the congress, was one of the
 6 issues that were raised highlighted in respect of various
 7 regions, the problem of illegal strikes under low lights
 8 and challenges.
 9 CHAIRPERSON: What you are looking for,
 10 Mr Mpofo, is column 1, page 78, the last bullet. That's a
 11 reference to –
 12 MR MPOFU: Oh, yes.
 13 CHAIRPERSON: - goings on in Gauteng.
 14 MR MPOFU: Oh, yes. Actually, it's the
 15 bottom of page 78, where it sets out -
 16 MR ZOKWANA: I've seen that.
 17 MR MPOFU: Where it says, "illegal
 18 strikes remain a big concern."
 19 MR ZOKWANA: Yes.
 20 MR MPOFU: Thank you, Chairperson.
 21 MR ZOKWANA: Yes, it's true that it is a
 22 problem we are faced with, but as a union we remain
 23 committed that whenever such a strike happens, at
 24 leadership level, we'll avail ourselves to convince members
 25 to go back to work and engage the employers on the issues

1 in question. But none of those illegal strikes referred to
2 took the nature of the strikes we have seen in Impala and
3 Lonmin where violence was the instrument.

4 MR MPOFU: And wrong as it is, do you
5 know that violence and intimidation is a feature of strike
6 action in South Africa including for example, I think the
7 worst and the most recent example is 59 people dying during
8 the security guards strike.

9 MR ZOKWANA: Chairperson, as NUM I have
10 been saying and will say it again that we are against
11 illegal strikes, we are against violence of any form.
12 Chairperson, if we were to go back to our – I am sure Mr
13 Mpfu tried to detail the 1987 as such, I wonder if you
14 will find an NUM strike where people were treated the way
15 if – and I can agree with you during the railway strike,
16 there was a feature of a truck running past the streets
17 with robots, red or green, and the police had to run to
18 climb over the truck. COSATU has been saying now and again
19 that it is fine to go on strike, it is not your right to
20 intimidate others. And I can tell you this, that such
21 practices, Mr Mpfu, only happens when the strike is not
22 supported by workers, when the strike is not canvassed by
23 them. In NUM, Sir, I can assure you this, that we will
24 never embark on a strike that was not supported by members.
25 Hence we don't use violence or intimidation to sustain

1 those strikes. It is members decided at their own free
2 will through the process of feedbacks and going back to
3 employers. We don't sign a single agreement informed by
4 our own thinking as to what our workers are worth. They
5 decide.

6 MR MPOFU: I don't think you answered my
7 question. Are you, or are you not aware that –

8 MR ZOKWANA: Mr Mpfu, I did concur with
9 you and I made an example –

10 MR MPOFU: Okay.

11 MR ZOKWANA: - and I said that in NUM is
12 not our practise, it's not what we promote, whenever such
13 happens we will deal with it. And I want to say to you
14 that don't compare therefore NUM with any other union in
15 which violence has been used. Do don't use it in NUM.

16 MR MPOFU: Do you accept that at last
17 from the point of view of striking workers, the – anybody
18 who seeks to undermine the strike or to do something that
19 is calculated to make it to fail, is seen as being
20 provocative?

21 MR ZOKWANA: Thanks, Mr – I am sure you
22 don't expect me to say yes or no.

23 MR MPOFU: At this stage, I don't accept
24 that from you.

25 MR ZOKWANA: Initially there was a legal

1 requirement that before you undertake a strike workers
2 would have gone through balloting to make sure that the
3 strike enjoyed the support of those you are leading. And
4 as NUM, I can tell you, Chairperson, we enjoyed that
5 because it was the only time that we were able to interface
6 with workers, and many were joined there.

7 MR MPOFU: Thank you.

8 MR ZOKWANA: And I repeat again, the
9 scenario you are putting again confirms my view, if the
10 strike is not well canvassed, it has not been debated in an
11 open meeting, where people have put forward their view, it
12 is against any right, you cannot impose. If you happen to
13 be in a bar, happen to drink Hansa, and you drink another
14 beer, you can't say I am wrong because I am drinking the
15 beer. In the same vein at work, you can't go and say
16 tomorrow I won't go to work unless that view has been
17 canvassed correctly and people agree that the strike is
18 called.

19 MR MPOFU: Do you accept, Sir, that the
20 scenario you are talking about usually involves a situation
21 where 51%, a minimum of 51% of the work force would have
22 voted for the strike and in which case, there might still
23 be a significant minority who are against it?

24 MR ZOKWANA: Chairperson, in the history
25 of the labour movement I have been involved in, there may

1 be low turn up out in meetings of the union, except during
2 which negotiations as every worker will be willing to hear
3 what the offer is. It is when the union is alive with its
4 members. Whenever workers decide therefore to go on strike
5 in the instances I have been involved, you've got the
6 biggest turn up of people. And I would like us to hear,
7 Chairperson, we are speaking about lawful strike because
8 NUM, we can't indulge into a practice of illegal strikes
9 because we promote none.

10 MR MPOFU: Do you agree that there is a
11 still a prevalent view among workers or strikers that
12 whatever the numbers, the people who continue to go to
13 work, that their actions are provocative and that those
14 people are referred to "amagundwane," as the interpret
15 correctly used the term, which means "rights" in English.

16 MR ZOKWANA: Chairperson, in a context of
17 a strike that is agreed upon, canvassed properly in mass
18 meetings, and the strike has got all the legal
19 requirements, people's future employments are guaranteed.
20 I am not saying I promote it. The view that the counsellor
21 is proposing is possible but if the strike is illegal by
22 virtue of it being illegal, I wonder how do you canvass an
23 illegal strike and unfortunately, I've canvassed for none.
24 Chairperson, briefly, sorry, what is my understanding of a
25 strike action? A strike action, please, Chairperson, allow

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1 me, a strike action, Chairperson, is the only instrument at
 2 the hands of workers. In most instances it does not
 3 resolve problems, it only allow the two parties to come
 4 together and negotiate. You don't go on strike, so that
 5 the company is closed, because I said, Chairperson, a union
 6 is reformist in character. It means you believe that you
 7 don't have the powers to shut a mine, but you have powers
 8 to put pressure on the employer to come forward with an
 9 offer. And that can only be done by illegal strike because
 10 there are legal limits the employer can go to, even it
 11 doesn't like the strike, will come forward and negotiate.
 12 MR MPOFU: Mr Zokwana, you have not
 13 answered my question. Chairperson, yes, I see the time, if
 14 I can just put this question.
 15 CHAIRPERSON: - when it will be a
 16 convenient stage.
 17 MR MPOFU: Thank you, Chair, yes. Mr
 18 Zokwana, just to round off this issue, and to remind you
 19 while it is still fresh in you mind, my question is whether
 20 or not, you know that right now, legal or illegal, that
 21 strikers view the actions of "amagundwane," in other words
 22 people who work while they have embarked on a strike, as a
 23 form of provocation.
 24 MR ZOKWANA: Chairperson, I disagree with
 25 that view, on the basis that workers who don't want to go

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1 on strike, have the right not to go to a strike. It is the
 2 duty of the union to persuade them to go to join the
 3 strike. An example, Chairperson, there was no frustrating
 4 a strike than the one with Anglo Platinum in 2002, when NUM
 5 took up a strike and they found that numbers were declining
 6 on daily basis. Instead of taking up arms and beat those
 7 who are going to work, we chose to graciously withdraw from
 8 the strike, using a miner language of aggravating because
 9 the strike was not supported. The route of joining, it is
 10 because we are angry. I remember one shop steward, the
 11 late Killer, some may know him, he was angry looking at the
 12 mine belt this was turning, people being underground and
 13 working, he was saying, "I stated that way," and I said,
 14 "hate your weakness because if you've done your work, no
 15 worker will be underground." The choice the union have,
 16 Chairperson, when the strike is faltering, is to call off
 17 the strike and go back and do his work.
 18 MR MPOFU: Chairperson, one more, just so
 19 that I start on a new topic. Do you also agree or are you
 20 also aware or unaware that from the point of view of
 21 strikers, another form of provocation is the phenomenon of
 22 scab labour, in other words, people who are brought into
 23 work while the incumbents of the job are on strike?
 24 MR ZOKWANA: That is a – I mean it is
 25 normal that scab labour will not be liked by workers. But

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1 what form they will take, differs on the union that leads.
 2 I can tell you examples where scab labour was used and what
 3 NUM did. We will call the strike off call the strike off
 4 we will organise them to the union. We will not use
 5 violence for them not to go to work.
 6 [16:09] MR MPOFU: You can tell us tomorrow.
 7 HAIRPERSON: Mr Mpofu, that is something
 8 to look forward to. We will adjourn till 09:30 tomorrow
 9 morning.
 10 MR MPOFU: Thank you, Chairperson.
 11 [COMMISSION ADJOURNED]
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