

# 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 47      13 FEBRUARY 2013      PAGES 5111 TO 5224

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 13 FEBRUARY 2013]  
 2 [10:12] CHAIRPERSON: The Commission resumes. Mr  
 3 Zokwana, you are still under oath.  
 4 SENZENI ZOKWANA (CONTD):  
 5 CHAIRPERSON: Who is next to cross-  
 6 examine the witness? I think, Mr Semenya, it was told to  
 7 me that the Minister of Police who was mentioned in the  
 8 evidence, his counsel had been instructed not to ask  
 9 questions but the questions were going to be asked by  
 10 counsel appearing for the police service. That was what I  
 11 was told on Friday. That message hadn't reached you yet.  
 12 I'll give someone else a chance in the meanwhile to cross-  
 13 examine, if there is anybody. I suggest you come forward  
 14 to the front so that we can see you and you can see us and  
 15 you can be as close as possible to the witness. More  
 16 importantly, have they found a place for you with a  
 17 microphone? I suggest you sit on Mr Semenya's left, there  
 18 is a microphone there. You're close then to the Legal  
 19 Resources Centre who will presumably assist you if you  
 20 require assistance. Mr Ramphele, am I correct in saying  
 21 that you appear for the families of the two security guards  
 22 employed by Lonmin who lost their lives on, I think it was  
 23 the 12th?  
 24 MR RAMPHELE: The 12th.  
 25 CHAIRPERSON: Of August, yes.

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1 MR RAMPHELE: And Mr Mabebe.  
 2 CHAIRPERSON: And?  
 3 MR RAMPHELE: Mr Mabebe who also lost his  
 4 life on the 12th.  
 5 CHAIRPERSON: On the 12th. Also an  
 6 employee of Lonmin?  
 7 MR RAMPHELE: Also an employee of Lonmin.  
 8 CHAIRPERSON: Very well.  
 9 MR RAMPHELE: And members of, two of them  
 10 are members of NUM.  
 11 CHAIRPERSON: And?  
 12 MR RAMPHELE: Two of them are members of  
 13 NUM.  
 14 CHAIRPERSON: Two of them are members of  
 15 NUM?  
 16 MR RAMPHELE: Yes.  
 17 CHAIRPERSON: Or they were, I suppose, at  
 18 the time.  
 19 MR RAMPHELE: Ja, ja.  
 20 CHAIRPERSON: Yes, alright. You are  
 21 ready to begin your cross-examination?  
 22 CROSS-EXAMINATION BY MR RAMPHELE: Thank  
 23 you, Chairperson. Thank you, Mr Zokwana. As the  
 24 Chairperson has already stated, I represent two of your  
 25 members, Mr Mabebe and one of the security, Fundi. And the

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1 reason why I am going to be questioning you is because the  
 2 families have requested me that at least, you know, from  
 3 your evidence they should be able to find some sort of  
 4 peace that NUM did what it could for their loved ones. So  
 5 I want to take you back to the terms of reference which  
 6 under 1.4 say, one of the issues to be probed in this  
 7 Commission is that the Commission must find out about the  
 8 conduct of the NUM, its members and officials and, in  
 9 particular, whether it had exercised its best endeavours to  
 10 resolve any disputes which may have arisen between itself,  
 11 Lonmin and AMCU or any other party. And further whether,  
 12 and the extent to which NUM exercised effective control  
 13 over its membership and those persons allied to it in  
 14 ensuring that their conduct was lawful and did not endanger  
 15 the lives and property of others and to ask you, whether by  
 16 act or omission, directly or indirectly, cost the lives of  
 17 Fundi, Mabebe or Mabelane that I represent.  
 18 Before I ask you the questions I want to put the  
 19 NUM in context. There's a lot of documentation here about  
 20 the experience of NUM and it's one of the few trade unions  
 21 that transcend from the time before the liberation of South  
 22 Africa, about 15 years before and 15 years after the  
 23 liberation of South Africa. Actually on page 20 of the  
 24 report of congress, the secretary described NUM as being in  
 25 the articulation phase of their development as a trade

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1 union and that entails foresight – you are the front line  
 2 of thought of leadership in modern trade unionism and you  
 3 have vision and you always advance the best interests of  
 4 your members. I suppose you agree with the description of  
 5 the report?  
 6 MR ZOKWANA: Yes, yes, I agree because it  
 7 was the NUM report to congress.  
 8 MR RAMPHELE: Now, let me just ask you a  
 9 direct question right at the beginning. Do you think it  
 10 was good foresight –  
 11 CHAIRPERSON: I suggest you ask direct  
 12 questions from the beginning right through to the end.  
 13 MR RAMPHELE: Yes. With your foresight  
 14 and the knowledge that you have, I'm trying to get an  
 15 answer from you because this is what I've been trying to  
 16 get all along – do you have an answer to the level of anger  
 17 that you said you were seeing for the first time in your 30  
 18 years of existence as a trade union member, do you have an  
 19 answer that you can assist this Commission that, you know,  
 20 this anger was caused probably by one, two or three? Can  
 21 you give us some sort of indication because with you –  
 22 CHAIRPERSON: I think he understands the  
 23 question, let's see - hear his answer. If he doesn't  
 24 understand, he'll let us know.  
 25 MR RAMPHELE: He does understand the

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1 question.

2 MR ZOKWANA: Thanks, Chairperson, senior  
3 counsel. Let me say, counsel for the families –

4 MR RAMPHELE: Yes.

5 MR ZOKWANA: Let me say this that I tried  
6 to say and fearing to be called to order again and to  
7 apologise because some made the allegations, not factual,  
8 but I think this was a turning point in the way things have  
9 been done in the past within the industry. Members will be  
10 angry because they believed that their demands were  
11 genuine, which I agree they were genuine but what was  
12 disturbing was to regard the union equal to the employer  
13 and be so angry towards the union such that it became  
14 difficult for shop stewards to enter and assist in the  
15 process. I think one of – without inviting a further  
16 grilling by the employer for AMCU I will say this, that the  
17 role of the rumours that two people had been killed could  
18 have, in many environments, made the people angry – that's  
19 point number 1. Point number 2, the allegation that NUM  
20 was colluding with the employer, preventing the employer to  
21 make an offer, could have made such a situation. And in a  
22 way that I hope that by the end of this Commission, the  
23 Commission will have gathered evidence to prove as to what  
24 could have made workers I claim to have known for all these  
25 years, who have gone through strikes before, to be in the

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1 mood they were in, and again who could have benefited in  
2 that anger? And as a union we would like to say to your  
3 clients, those families, NUM was to pass its condolences to  
4 the family, hoping that those who killed, when they are  
5 asked questions, the mothers have the strength to answer.  
6 I refer to the three families, not only to NUM members,  
7 three families you are representing.

8 MR RAMPHELE: Now, if they were to ask  
9 me, but if you say that NUM has got foresight, NUM said to  
10 my father, go to work and my father was killed, do you  
11 still maintain that that is foresight?

12 MR ZOKWANA: Thanks. That question may  
13 arise in a family but I think we have shown the fact that  
14 NUM has been responsible and the reason we were saying to  
15 people go to work, between the employer and every employee  
16 there is a contractual obligation that outlines what each  
17 worker should be doing and I think NUM saying go to work,  
18 it was not plunging them to murder because nobody could  
19 have predicted that the response of those who were on  
20 strike would be to kill those who were working and that has  
21 been the trend, Chairperson, of how NUM will respond to any  
22 unlawful strike. It was shown yesterday that one of the  
23 major developmental projects to make sure that we have got  
24 security of [inaudible], NUM members have not been on  
25 strike – for one reason, that we believe that if there is

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1 to be a strike it must be within the ambit of the law, for  
2 one reason, we don't want to plunge our members to be at  
3 the mercy of the employer because the employer is powerful  
4 at that time when workers go on an illegal strike. The  
5 employer can dismiss anybody. When you go to court your  
6 arguments are weakened. Those were the reasons that forced  
7 us, but if you were to say to me, had we known what we know  
8 now, what would've been our approach to that situation –  
9 that's one of the reasons NUM was calling for  
10 reinforcement, not to come and negotiate, not to come to do  
11 what the company should be doing but to make sure that law  
12 and order is sustained for the issue of people going on  
13 strike illegally and killing others has not been with us  
14 except from Impala up to Lonmin. Always people say that  
15 for – I mean after an event we all become wiser than we  
16 would have been before.

17 MR RAMPHELE: Maybe I did not understand  
18 you properly. Are you saying that an employer that you  
19 have been with for 30 years would dismiss someone for not  
20 become to work because they fear for their lives?

21 MR ZOKWANA: There are two issues at  
22 play. If the employer could establish that NUM was behind  
23 the strike, we could be sued. We have been sued before -  
24 with Eskom. Now as a union –

25 MR RAMPHELE: No –

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1 MR ZOKWANA: I'm coming to your question,  
2 I'm coming to your question –

3 MR RAMPHELE: Sorry, sorry Mr Zokwana, I  
4 have a very short memory. If you –

5 CHAIRPERSON: Give him a chance to answer  
6 the question.

7 MR RAMPHELE: Chairperson –

8 CHAIRPERSON: You can ask your follow-up  
9 question when he's given his answer.

10 MR RAMPHELE: Chairperson, no –

11 MR ZOKWANA: - to get confused.

12 CHAIRPERSON: Don't argue, just give him  
13 a chance, then I'll give you a chance to ask further –

14 MR RAMPHELE: Okay, Chair.

15 MR ZOKWANA: The question of an employer  
16 for 30 years, I think the report has been given that in the  
17 previous strike of Karee a number of workers were not re-  
18 employed. The employer now becomes choosey when people  
19 have gone to an illegal strike and again it just shows you  
20 that after most of the illegal strikes, it doesn't matter  
21 how many years we have been with the employer, if the  
22 employer was intending to retrench, that becomes an  
23 opportunity because he won't be obliged to pay what he  
24 would have paid in a normal process going forward. He  
25 would be called upon to select according to the LIFO

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1 principle. He can decide I don't want you, John, for these  
2 reasons he won't take you back. Lastly, Chairperson, there  
3 can never be a situation where employers and employees are  
4 friends. We happen to work in the same environment. Our  
5 class differences will remain. If you – the union  
6 therefore is stronger when the strike is legal. If it's  
7 not legal, we are weakened.

8 MR RAMPHELE: Yes –

9 CHAIRPERSON: Now you want to ask your  
10 follow-up question.

11 [10:32] MR RAMPHELE: Yes, thank you, Chair. But  
12 the question that I'm asking is, let's say Mabebe, he was  
13 not on strike but going to work was dangerous for him. Are  
14 you saying that the employer that you have been engaged  
15 with for 30 years could dismiss a person because they  
16 feared for their lives and didn't come to work?

17 MR ZOKWANA: No, no, I get your question.  
18 The employer would decide whether to dismiss or not  
19 dismiss, based on the factual evidence that really this  
20 person's life was in danger and that's why NUM, from the  
21 12th onwards, could not say to people or transport them  
22 because the situation changes drastically from the 9th  
23 onwards when people were being beaten up. Therefore the  
24 issue whether the employer would have understood if workers  
25 could have said because the RDOs are on strike we fear for

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1 our lives, I think any employer would demand, what evidence  
2 do you have that you would have been endangered, even  
3 before the first one was beaten. So I'm not in a position  
4 therefore to check what Lonmin would have been  
5 understanding, the fear of workers even before there had  
6 been any skirmish, but in the first place I don't think  
7 there was supposed [inaudible] beating. When you go out  
8 strike without asking others for solidarity, you can't  
9 expect them to join you, that is my understanding.

10 MR RAMPHELE: Is it that understanding  
11 that made you, in paragraph 8 of your statement, to say,  
12 "It is for these reasons that NUM consistently urged its  
13 members at Lonmin not to associate with the unprotected  
14 strike and to continue reporting for duty." So  
15 consistently members were encouraged and therefore Mabebe,  
16 Fundi, as loyal members of NUM, consistently disassociated  
17 themselves with the strike –

18 MR ZOKWANA: Let me maybe outline to the  
19 Commission that it was a difference of people going to work  
20 underground, who would have crossed the imaginary line  
21 between those who were on strike but in the case of the two  
22 clients you are representing, or three of them, they were  
23 not in the same situation. Remember, security officers,  
24 some of the medical people in the medical hospital, kitchen  
25 people, even if the strike is legal there has to be an

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1 agreement that such services would be rendered  
2 irrespective. Mabebe was not murdered for going to work,  
3 he was murdered precisely because, in my understanding, of  
4 being the leader of the union, equal to other leaders who  
5 were murdered either on the koppie or around the mine, but  
6 I take your point of saying they didn't just call for  
7 people to go to work, contribute, and my view is, I don't  
8 think we can qualify why people used violence to kill  
9 others on the basis that people were called upon to fulfil  
10 their duties. I think if those who wanted to go on strike  
11 believed it was the right thing to do, it was their right  
12 but that right cannot be at the expense of other people's  
13 lives. And I think the Commission, by the end, will have  
14 to pronounce as to how, if they can – I'm not sure whether  
15 they will not be seen to be promoting acting outside the  
16 law – to say how do you make sure that people, in  
17 exercising their rights, don't impede other people's  
18 rights? I'm saying this, Chairperson, the two people, the  
19 two people I want to – the three people he is representing  
20 are security guards, no matter if the strike was legal or  
21 not, illegal, they were supposed by their own occupation to  
22 be on the job and those jobs were categorised as essential  
23 services I would have said security officials were held to  
24 be at work because the company will need security and we  
25 will need security, by the way, as well as people working

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1 in certain clinics – but Mabebe was killed on the night of  
2 the 12th, no mistake, and he was killed precisely, I think,  
3 like others who were murdered, in my view, by asso – being  
4 seen to be leaders of the NUM.

5 MR RAMPHELE: Let me just finish with  
6 this one of Mabebe – no, Mabebe was killed when he actually  
7 reported to go underground and at the gate where he was  
8 clocking, that's why he was killed. So that is my  
9 instruction. But – but the question that I'm trying to, or  
10 the answer I'm trying to get from you is, in circumstances  
11 where the situation is volatile, was it not your  
12 responsibility to go to Lonmin and say, we have members,  
13 our members, if they're going to expose themselves to work,  
14 need protection. So let us deal with that because they  
15 have the right – at least those ones have the right to  
16 [indistinct], yes, but these ones have the right to life.

17 MR ZOKWANA: I can't agree with you more,  
18 sir, on that, that the employer was supposed to render that  
19 protection. People were not supposed to be – as I said,  
20 wisdom of hindsight would be, what happened - when the same  
21 environment appeared so that people going to work, the  
22 company was closed, so that before people can be endangered  
23 or exposed to danger, you don't allow people to go to work  
24 but I still maintain that our call for members not to join  
25 the strike was not a wrong call, given what I have said

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1 that if people don't go to work then they end up being  
2 dismissed unless such an agreement is – remember again that  
3 by the 12th in morning our leadership of the branch on the  
4 mine were compelled to run and be under, be in hiding,  
5 given that they were being hunted. And I would seriously  
6 say that even if you believed Mabebe was on the way to  
7 work, it would have compounded his situation. He was going  
8 to work and a well-known shop steward, the health and  
9 safety person of the union. And remember I'm saying it, I  
10 was not at the scene of the murder but I know very well  
11 that people who were associated with the NUM, being office  
12 bearers of the union, were targeted. If the branch could  
13 have been, maybe to meet Lonmin, but at the time no branch  
14 committee members were available on the mine – hence they  
15 have known that they were being hunted.

16 MR RAMPHELE: Mr President, I don't agree  
17 with you about the 12th. The 12th – or is it the 11th, when  
18 the situation was volatile. It was 30 of your members who  
19 could actually make thousands of people run helter-skelter,  
20 you know, in what Rumsfeld would say shock and awe, just 30  
21 of them – at that time, at that time it was obvious that  
22 tensions were developing in the workplace and your members  
23 had to be protected. There is nothing that stopped them  
24 from going to Lonmin management and saying, we have a  
25 situation here, we want our members, we are urging our

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1 members consistently to come to work, make sure they're  
2 safe.  
3 MR ZOKWANA: Thanks, thanks sir. I mean  
4 I can't differ with you on some of the statements you are  
5 making but you have not read my statement as well, that's  
6 below the one you have read. I put that on hearing of what  
7 was happening on the 12th where, unfortunately, one of the  
8 people you are representing was killed, we put to the  
9 employer the fact that people should not be exposed to  
10 danger and the employer raised the fact that he did not  
11 have enough personnel if – hence the call for extra police  
12 personnel to be deployed. Unfortunately, being deployed on  
13 the following day, two of them were murdered, one severely  
14 injured, which means that it would not be a normal  
15 situation you would be involved with in a strike because a  
16 strike is not supposed to be in this manner where the  
17 strike – the strike usually should be about demands of  
18 workers with the employer but when the strike changes to  
19 face this, it's no longer a labour relations matter in my  
20 view because it becomes now violent, people are being  
21 hunted down. And we raised this, remember, even before the  
22 office was attacked on the 11th. Security was aware that  
23 the guys, the people who were marching to NUM office had an  
24 intention to burn it down but they could not give that  
25 security to you if you speak of – it means, and I think it

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1 must go back, Chairperson, into understanding whether this  
2 thing was scaling down operations on the mine. Sometimes  
3 even outsourcing the security of the mine, what role does  
4 it play in compromising the ability of the company to  
5 respond to such challenges and expect SAPS, outside the  
6 operations, to do even the normal security of the  
7 operations, because I understand that security in Lonmin  
8 has been privatised and any private company entering any  
9 job will look at how you cut head costs to make sure that  
10 they make money and reduce the – to look at to say that do  
11 companies have enough security capacity internally before  
12 they can call for other state organs to come in.

13 MR RAMPHELE: So we are agreed that when  
14 it was clear that the situation was volatile and your  
15 members may be killed and the situation is not normal, as  
16 you put it, there was no message that was sent to these  
17 members that, hey, we are not dealing with a normal  
18 situation here. There was no message from your side, there  
19 was no message from the side of Lonmin and you created  
20 normality in an abnormal situation.

21 MR ZOKWANA: Again Chairperson, sometimes  
22 we read selectively. NUM issued even a statement on the  
23 13th after the murder of the two policemen, may their souls  
24 rest in peace. I was horrified to see men of uniform being  
25 killed on duty. That statement was read here by counsellor

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1 Mpfu, NUM making a special call on the 13th to say the  
2 situation is such that if the police are also being killed,  
3 we need more reinforcements. NUM was aware of the  
4 situation. I won't speak on behalf of Lonmin, what they  
5 did, what they didn't, but as a union from – even on the  
6 11th NUM general secretary, the late Bongo, phoned the  
7 company to say look, it seems our offices are going to be  
8 invaded and hence the security guy came to say look, we  
9 can't assist you, we don't have enough manpower to do. And  
10 what I'm putting to you is that I agree with you that if  
11 the company had kept enough personnel that would become an  
12 obligation as well, not only to produce platinum but to  
13 ensure that the safety of those it employs at all times is  
14 taken care of. And I would be happy if the Commission  
15 would look at whether, how prepared was Lonmin to deal with  
16 these situations internally before it called others, but in  
17 as far as NUM, I think we have proven that we have been  
18 making calls to say to people, violence should not be the  
19 norm. And if you accept the issue of the level, you won't  
20 pick a single instance where NUM used violence against or  
21 to ward off violence. What they chose, to prevent said  
22 violence was to leave the area – of course against their  
23 will because if they were not there, the issues you are  
24 raising about consistently engaging the company, NUM was  
25 deprived off because the local leadership was not there. I

1 agree with you, they were supposed to have been measures to  
 2 ensure that no further lives are lost, but the unions  
 3 cannot be accused of not having done anything. What we  
 4 could do was only to call for people in authority to do  
 5 certain things. We didn't have the army, as the NUM, to go  
 6 there and say nobody would shoot another one. We didn't  
 7 have, we are not trained in that field. We are trained to  
 8 engage employers and bargaining, we are trained in  
 9 defending our members in cases. We don't have an army of  
 10 people to say if people become violent, there's a way to  
 11 respond.

12 MR RAMPHELE: I don't want you to run  
 13 away from the questions that I'm posing. The question, or  
 14 actually let me say the suggestion that I'm making to you  
 15 is, the situation was abnormal, you were aware that the  
 16 situation is abnormal, you were aware that Lonmin does not  
 17 have capacity to deal with the situation. Despite these  
 18 observations you did not go to your own members, either by  
 19 SMS or by loud hailer, and say please, let's halt because  
 20 we cannot guarantee that you are safe going there and  
 21 Lonmin cannot protect you. That's all I'm trying to get  
 22 from you.

23 [10:52] MR ZOKWANA: Yes, I understand your point  
 24 but I think you will, you must look at BBB7, that is the  
 25 document entered by the counsel on behalf of the families

1 who were injured and those that were arrested and in that  
 2 evidence you'll find that NUM articulate the situation and  
 3 short of any other means to present protection to people,  
 4 it called upon the deployment of further security to make  
 5 sure that people are safe. And I get your point of saying  
 6 – and insofar as SMSes to members, it's one that I think we  
 7 – we have to ensure that all NUM members can interact with  
 8 SMSes, all forms of social media so that interaction is  
 9 quick and - and advanced. What you are asking me to check  
 10 is whether NUM did make a call to the members not to go to  
 11 work. I think that that judgment will be made by the  
 12 Commission and I think the person who has to answer that  
 13 question is the employer, seeing that he didn't have  
 14 capacity internally, since he could not get capacity from  
 15 outside quickly, how safe was his employee at that  
 16 juncture? But as a union I would say the only thing we  
 17 could do was to make sure that we don't expose ourselves to  
 18 dismissals and to your question, you can be saying then you  
 19 didn't want them dismissed but you could not prevent them  
 20 being killed and I can assure you, as NUM, we do care on  
 21 the safety of our members, given the number of calls we  
 22 have made. We are concerned about their future employment  
 23 as well as their security and I think these are some of the  
 24 things we need to deal with, as to how do we respond, given  
 25 the recent Harmony decision [inaudible] think is the best

1 because when you say to people I will close down my shaft  
 2 up until you present to me tangible reasons why I should  
 3 open it, which means by that moment nobody will be going to  
 4 work but we are saying to all parties, come with ideas that  
 5 make the mine safe. It was not done in Lonmin but I think  
 6 what was done in Harmony was what you are driving to but  
 7 remember again, sir, NUM has no power to tell the employer,  
 8 close down your shaft. It is the employer – the employer  
 9 has got two obligations, to safeguard the security of his  
 10 employees to do production and you can't do production at  
 11 the expense of life. I'm not accusing of Lonmin but I'm  
 12 saying there was thing, I think, given this situation,  
 13 could have been looked at.

14 MR RAMPHELE: Mr President, at some stage  
 15 I want us to look at this issue that you are referring to,  
 16 which is an observation that I also have made, that there  
 17 is vulnerability of workers in the workplace because it is  
 18 going to be one of my submissions to the Commission that  
 19 amongst the other issues that have to be addressed, is the  
 20 issue of vulnerability of workers in the workplace and that  
 21 maybe the anger that both you and I say probably cannot be  
 22 explained very easily, but before we go to that let me come  
 23 to NUM now with this membership. I want to take it that  
 24 NUM is a caring union but you see what is really  
 25 disheartening to my families, as you know, is that there

1 was a call that they should go to work, when they died no-  
 2 one came. Will you agree with me that it is one problem  
 3 area that makes your members vulnerable?  
 4 MR ZOKWANA: You can come to that  
 5 conclusion if you are reported like that. What is real,  
 6 what is real is that of the families who have lost their  
 7 next of kin, after – maybe after, not difficult for NUM to  
 8 interact with the families concerned. I have been in  
 9 contact, by the way, with the Mabebe family. I know that  
 10 they are staying here in Randfontein. We have been able to  
 11 send people to meet with them – of course, after, but again  
 12 remember, you know until we understand the atmosphere in  
 13 Lonmin, many people will come to the conclusion that NUM  
 14 didn't are because you know the leadership of NUM who knew  
 15 who is a member, who is not a member, are those people who  
 16 were compelled to run underground. And that could have  
 17 impeded our inability to go to each and every member. I  
 18 had a discussion, by the way, with the widow of Fundi and I  
 19 promised her that once we are through this we will be able  
 20 to visit her, sit down with her, be able to share her  
 21 frustrations and I extend that to all families because I  
 22 know as I sit here that promises by companies may be made,  
 23 obligations by companies may be explained but to seeing,  
 24 that is something else. But I want to say this, that none  
 25 of the family members who lost their lives is regarded as

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1 an enemy to NUM. We understand how they go through and  
 2 what they need is to ensure that NUM or any organisation  
 3 visits them to share and do whatever it could have done.  
 4 The promise I've made to Fundi is that as soon as I'm  
 5 through this I will make sure that I pay a visit to her  
 6 place to see the kids, to see how the things are going. It  
 7 is what I'm extending all families, time allowing, that we  
 8 sit down with them – maybe then NUM can be able to explain  
 9 even the rumours, I don't want to call them rumours now  
 10 because we know what was not, what was a rumour but not  
 11 true, because I can tell you that after the burial many  
 12 families believed that NUM could have been behind the  
 13 killing of their next of kin. And I take note of the point  
 14 you are raising and I can assure you that I've shown here  
 15 that NUM is a caring union, all the rights that these  
 16 families are enjoying are not rights that fell from heaven,  
 17 are rights bargained for by this union. The right of every  
 18 mineworker to belong to a burial society, it was an  
 19 agreement NUM has made. If you can revisit most mines in  
 20 Rustenburg, you will find unmarked graves of unknown  
 21 mineworkers because by that time there was no NUM. NUM  
 22 can't be accused of not caring but the environment, I agree  
 23 with you, should not be used as a reason not to do that  
 24 which is normal and I promise that as soon as I'm through  
 25 here, we will do exactly that. And I repeat, we have been

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1 interacting with the family of Mabebe, of course  
 2 telephonically – I haven't met with them physically myself,  
 3 but I know that a member of NUM has met with them. We plan  
 4 to give them comfort we could not give them in their hour  
 5 of need.  
 6 CHAIRPERSON: Please give the interpreter  
 7 a chance. It's a long slab he's got to interpret.  
 8 MR RAMPHELE: I hear you and I agree with  
 9 you that NUM has fought for rights of workers, that's why I  
 10 mentioned your history, but if I'm an employee and I'm a  
 11 member of NUM, I pay my subscription every month so that  
 12 NUM must protect me at work. If NUM does not come when I  
 13 die, do you think that my family will be happy?  
 14 MR ZOKWANA: The answer would not be -  
 15 and I repeat under normal circumstances where workers have  
 16 been killed underground, have died of any other nature, the  
 17 local structure of the union and in most companies they  
 18 would organise transport, they will go with the coffin down  
 19 home, they will meet with the family and I want to say this  
 20 was a situation that was not like other situations but  
 21 again you will understand this, I don't know, in our  
 22 African culture or way of doing things, if a person has  
 23 passed on you still visit the family thereafter to say to  
 24 them, I could not have been here during the burial and  
 25 therefore the family would outline the predicament they are

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1 in, if there are any problems or hindrances in dealing with  
 2 the after-effects and I can assure you NUM is a caring  
 3 union. In this instance it may not have been seen to be as  
 4 you outlined, all families in question, but I can tell you  
 5 this that whenever there has been a situation like this,  
 6 NUM would do all. If you were to visit the Vaal Reefs  
 7 disaster where 103 workers were killed, we tried to make  
 8 sure that all those killed have got dreams of their parents  
 9 fulfilled. A fund was created, not because the company  
 10 thought to but because NUM put pressure on them to do so,  
 11 that no child of an ex-mineworkers will not be able to go  
 12 to school. We know that Lonmin has made pledges of the  
 13 same kind. It is the duty of NUM and its shop stewards to  
 14 ensure that those killed are known where they are, they are  
 15 able to interact with them to check their progress. Where  
 16 there may be faulting by the company, we can follow up - it  
 17 is a pledge, I'm saying, it is a pledge, I'm saying as from  
 18 now on, ongoing, we cannot have any other reason not to  
 19 make sure that – I repeat, we have made promises to the  
 20 families because we have spoken to them, the two families  
 21 you referred to.  
 22 MR RAMPHELE: Mr Zokwana, this is – I  
 23 think we will agree and you have given a good number of  
 24 explanations about why things did not happen – can we agree  
 25 that, and we want to give you that respect but more must be

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1 done than said. It's better done than said, can we agree  
 2 on that?  
 3 MR ZOKWANA: We – I mean I will not say I  
 4 – NUM would not make, to a family in that state to say  
 5 we'll be coming and not come because it is those things  
 6 that you, those dealings that would give and tarnish this  
 7 history of this noble union and I promise you that we will  
 8 not wish to meet with you during the Commission and you are  
 9 asking me, have you been to the family and I said no,  
 10 because of that and that and that. Meeting with those  
 11 families is number one, not only these two but I think that  
 12 we need now to see how do we interact with families –  
 13 remember, I was cautioned before the Commission not to be  
 14 seen to be interfering in areas that seek to paint a view  
 15 that says NUM has seen its mistake, it's trying to correct  
 16 it but I'm assuring you this, that our task will be to make  
 17 sure that these families you have referred to are visited –  
 18 even others.  
 19 CHAIRPERSON: I'd like to ask a question  
 20 about a topic you were questioned about a few minutes ago  
 21 and that is in your statement para 14 you describe what you  
 22 did after you arrived at the mine –  
 23 MR ZOKWANA: Yes.  
 24 CHAIRPERSON: - about 1PM on the 12th.  
 25 MR ZOKWANA: Yes.

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1 CHAIRPERSON: You received a report of  
2 what happened and then you requested a meeting with Lonmin  
3 management.  
4 MR ZOKWANA: Yes.  
5 CHAIRPERSON: And you say that you had a  
6 meeting later that afternoon in Middlekraal, several Lonmin  
7 managers attended, their briefing indicated the high level  
8 of risk, that the strikers would increasingly resort to  
9 violent conduct in order to disrupt the operations of the  
10 mine.  
11 MR ZOKWANA: Yes.  
12 CHAIRPERSON: You then say, "I expressed  
13 my view that a larger law enforcement presence, involving  
14 both Lonmin and the SAPS, was required at the mine to avoid  
15 further violence and loss of life."  
16 MR ZOKWANA: Yes.  
17 CHAIRPERSON: Did you ask Lonmin – I know  
18 you didn't have the power to order them to do so but did  
19 you request Lonmin to close the shafts until that larger  
20 law enforcement presence was available, so that in order to  
21 prevent people who were obeying your call reporting for  
22 work, would not be exposed to that high level of risk that  
23 you mention in your statement?  
24 [11:12] MR ZOKWANA: Yes, thank you, Chairperson.  
25 I would be honest, I never raised that –

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1 CHAIRPERSON: Sorry, let's give the  
2 interpreter a chance –  
3 MR ZOKWANA: No, no, Chairperson, I  
4 didn't and I understand, given what we have been able to  
5 achieve with the recent example I've made of Harmony, that  
6 it was one measure maybe that should be implemented  
7 whenever these things happen but at the point in time it  
8 never rose to me that one way of doing it was to close down  
9 the shaft. And there's one thing I was saying, maybe the  
10 Commission in its own deliberations will have to check  
11 whether [inaudible] because remember Chairperson, this was,  
12 this could have been in one element there has been violence  
13 in Impala but the level is not nearer this, although people  
14 lost their lives as well but I think it's one lesson I  
15 think we need to take, of saying if the employer could not  
16 give enough security to its employees, people are bent on  
17 doing violence, what is the best measure to take going  
18 forward? Do you negotiate while people are being attacked  
19 or do you close operations and call all people involved to  
20 say, before you come to a – come with tangible answers,  
21 this is going to be the situation. I think, the idea I  
22 think did not crop up then but I think since then we have  
23 seen that's one measure we can take going forward.  
24 CHAIRPERSON: Mr Ramphele may wish to ask  
25 follow-up questions on that point but I suggest he does so

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1 after we take the tea adjournment, which we will now take.  
2 [COMMISSION ADJOURNS COMMISSION RESUMES]  
3 [11:37] CHAIRPERSON: You're still under oath, Mr  
4 Zokwana. Mr Ramphele, any more questions?  
5 SENZENI ZOKWANA (CONTD):  
6 CROSS-EXAMINATION BY MR RAMPHELE (CONTD):  
7 Thank you, Chairperson. Mr Zokwana, just to follow up on  
8 the question that was asked by the Chairperson, so you  
9 would agree that if the union could have made suggestions  
10 about the closure of the shaft as you have indicated, or  
11 any other means of ensuring that the workers that come to  
12 work are protected, maybe the violence that escalated could  
13 not have escalated in the manner it did.  
14 MR ZOKWANA: Yes, I have said that if  
15 that idea could have come maybe it would have been one, but  
16 I would like to add to say this that one further area we  
17 need to deal with is whether people on strike have a right  
18 to embark on violence and pose others' lives in danger and  
19 even use violence for any other ulterior alternatives  
20 because that is against the spirit NUM was trained in, NUM  
21 has been built on – a state of you having the right to  
22 decide because if RDOs decided not to go to work, my  
23 understanding is that that right is limited only to them  
24 but to plunge, and chase people who go to work – I don't  
25 think that, I think the Commission will have to check

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1 whether this is not against the spirit of our Constitution  
2 that guarantees the right to life to every citizen.  
3 MR RAMPHELE: Yes, that is another  
4 debate. I am just looking at what NUM, because remember I  
5 read 1.4 – I'm looking at you, NUM, as president and I'm  
6 happy unless you disagree, that if NUM were to suggest –  
7 and you say that it didn't come to mind – that if there was  
8 such a suggestion by the NUM then maybe lives could have  
9 been saved and we agree, unless you disagree with it.  
10 MR ZOKWANA: To the extent that people  
11 would not have been exposed – do you remember, sir, the  
12 killing were not only limited to those who were going to  
13 work. Even shop stewards of NUM who were not going to work  
14 were killed. On the basis that maybe the level of  
15 vulnerability could have been reduced, let me put this that  
16 you know this environment did not only end on the mine.  
17 I've been told of instances, there's a local - in my home  
18 town Idutywa, called [indistinct] – some of these comrades  
19 either, some of them may know it here, it's on the road to  
20 Mthatha. If you are from East London down, and you  
21 [indistinct] it is the only place you can – but in that  
22 people have tended to take this thing, Chairperson, to the  
23 localities they come to, where people were say if it was in  
24 Rustenburg you won't be wearing this NUM T-shirt here. And  
25 it means that unless we are able to work very hard to



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1 ensure that people understand the fact that it is my right  
 2 to decide to wear a particular one, not another one, but  
 3 that right cannot infringe on the rights of others. Yes,  
 4 you say had the mines been closed maybe the confrontation  
 5 between those who were on strike, because there would be no  
 6 strike with the mine closed – but whether that could have  
 7 stopped the hunting of NUM shop stewards who were already  
 8 out of the mine, I'm not convinced that it could have not  
 9 continued amongst them but I'm not going to dwell with  
 10 that.

11 MR RAMPHELE: Now let me go on to the  
 12 next issue of the terms of reference. One of the issues  
 13 raised, the one of effective control of members. So my  
 14 understanding, and I'm sure anyone reading the terms of  
 15 reference, it means that the president assumes that a trade  
 16 union must have effective control of its members. Do we  
 17 agree on that?

18 MR ZOKWANA: Yes.

19 MR RAMPHELE: Now let me ask you this,  
 20 taking into account the situation that started with rock  
 21 drillers, some of them members of NUM, members of AMCU,  
 22 non-unionised, what would you say, would you say that NUM  
 23 had effective control of its members?

24 CHAIRPERSON: I take it you mean some of  
 25 its members?

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1 MR RAMPHELE: Some of its members, ja.

2 MR ZOKWANA: Yes, let me say this in  
 3 answering your question. NUM had control of its members up  
 4 until they took a decision to abandon their own union and  
 5 now think that we don't want NUM to be involved. And as I  
 6 said one day that it is like a horse that you take and  
 7 [inaudible], you drag it to the river. The choice of  
 8 drinking depends on that horse, you can't force it. Our  
 9 members decided to join the strike and, in joining the  
 10 strike, decided that they will not be [inaudible] by NUM.  
 11 So there was no way, therefore, NUM would go to them and  
 12 say, you will, because you are members and following that.  
 13 I think NUM was disqualified by those members to be their  
 14 agent. They chose another agent. But if your question  
 15 were to say, if the strike was not violent, could NUM  
 16 continue dealing with, engaging them? My answer would be  
 17 yes, we could have tried to engage them but once the  
 18 violent features of the strike came up, it was no longer  
 19 possible.

20 MR RAMPHELE: So what you have just said,  
 21 if one were to make a submission to the Commission, one  
 22 would say that NUM had control of its members, or some of  
 23 its members who joined the strike decided not to be bound  
 24 by NUM and therefore NUM lost control of some of its  
 25 members? Is that how I understand you?

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1 MR ZOKWANA: We did not only lose control  
 2 only, we lost lives. If it was only control, I think Twala  
 3 would still be alive – and many others, including your two  
 4 clients on whose families you are acting here. As I'm  
 5 saying, I would have understood your question if there was  
 6 no violence, to say what stopped you from persisting in  
 7 calling on them to understand what you are saying, but  
 8 remember from the 12th all our local leadership had to run  
 9 away, not because they chose to run but they were – they  
 10 could see that if they didn't run I think the NUM's would  
 11 have been more.

12 MR RAMPHELE: I'm very happy with the  
 13 answer that yes, indeed you lost control of some of the  
 14 members but I also want to go into what are the possible  
 15 reasons for losing effective control of the members. Now  
 16 at the heart of the RDO strike, was the issue of collective  
 17 bargaining, do you agree? Or your view on how it should be  
 18 done and then the rock drillers sort of, as you say, doing  
 19 it in the manner in which they deemed fit.

20 MR ZOKWANA: And your question is that  
 21 whether the strike was still an industrial matter?

22 MR RAMPHELE: No, no, I say at the heart  
 23 of this effective control was how you considered good  
 24 collective bargaining principles and how some of the  
 25 members that were yours, perceived their way of getting

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1 what they wanted, outside of the collective bargaining  
 2 [inaudible] used collective bargaining.

3 MR ZOKWANA: But if the loss of control  
 4 would be limited only to people, I would like this thing  
 5 not to be dealt with in isolation. Remember, it was not  
 6 accidental that lies were told about people killed in the  
 7 course of the – it was to make NUM more weaker. The fact  
 8 that NUM was, the allegation was that NUM was colluding  
 9 with the employer not to make an offer, all those things  
 10 added to NUM losing not only control but credibility  
 11 amongst those and I would be happy if, at the end of the  
 12 Commission, the truth may come as to whether these guys who  
 13 have been NUM members – just woke up and thought that NUM  
 14 was part of the employer, or they were told that NUM is  
 15 such. I agree with you that NUM in the beginning thought  
 16 that the matter was a labour matter, but it changed its  
 17 shape when people used violence and I repeat what I said,  
 18 that we are not trained to deal with violence, we are  
 19 training to deal with bargaining, we are trained to engage.  
 20 But one other matter you must always take into account is  
 21 this, that when – you cannot negotiate as an agent for any  
 22 grouping unless you have got their trust, unless you are  
 23 able to talk to them and you can get their mandate, unless  
 24 you are able to engage your opponent and wherever there are  
 25 offers made you are sure that you can be able to sell that

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1 offer. With NUM not being able to interact with those  
2 workers in the form I have described, where violence was  
3 the mood, there was no way NUM could have – but no, no, I  
4 would be happy if you don't come to say NUM lost control,  
5 we end there, without underlining the reasons that could  
6 have, and what nature – because if workers could have said  
7 we won't talk to NUM and at the end there was no violence,  
8 I'm sure NUM could have been able to engage them until they  
9 understood where it stands but when violence was used, it  
10 was difficult and futile, by the way, to call on our  
11 stewards who had to run away, to go back and say in the  
12 mountain, guys, here we are, we have got your interests at  
13 heart.

14 MR RAMPHELE: If the Chairperson would  
15 allow me to chip – we have been asking the question about  
16 NUM caring.

17 MR ZOKWANA: I gave an answer. I can  
18 tell you this, that if NUM don't care for its members –

19 MR RAMPHELE: Mr President –

20 MR ZOKWANA: Allow me only a minute. A  
21 lady was, a lady died in a mine called Anglo Platinum.  
22 That lady was not an NUM member. For the sake of us  
23 thinking it's sacrilege against women, Chairperson, we took  
24 that member [inaudible], we campaigned against women abuse  
25 by men in any situation. We were able to form a fund to

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1 take care of her kids, to elevate the matter globally.  
2 Remember, not an NUM member but a co-worker. We don't  
3 limit our work that we do to NUM members. We feel the pain  
4 of every family, the pain of every member or any person,  
5 all on duty. I'm not [inaudible] direct you in your  
6 questioning, sir.

7 MR ZOKWANA: I think we must start from  
8 this premise. NUM is not only respected here, it is  
9 respected internationally. It has done a lot of good so  
10 all the good is okay, but the Commission is about what  
11 could have led to the deaths. So in order to be able to  
12 solve that problem we have to find out whether there are no  
13 weaknesses that could have led to the deaths. So the  
14 questioning should not give you an impression that you say  
15 no – no, NUM did not bring liberation, it did not do this,  
16 it did not – no, we've read the report. Very, very good, I  
17 mean that NUM is doing. At the moment we are looking at  
18 that there are no weaknesses that led to the deaths. So  
19 Chairperson, President, please don't take the questions as  
20 an attack. It is a way of trying to build so that we don't  
21 have a repeat of Marikana.

22 MR ZOKWANA: I agree with you and I  
23 understand your point and as I've said on Friday, should  
24 the Commission find any reason of any magnitude that NUM  
25 could have not been at its best, even if we could not be

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1 found having done anything that would have led to this, NUM  
2 will be able to participate and willing to ensure that no  
3 child would ask where, where is my father, and the answer  
4 is that other fellow workers killed him. That is what I've  
5 taken. We will not only be informed by any witness being  
6 found but we believe that if we are to create dignity for  
7 the union, for the industry and ensure that families know  
8 that their next of kin can die from rock falls, from  
9 seismicity, from anything, it cannot be at the hands of  
10 their fellow workers and I agree with you, if that will be  
11 the undertaking we take, I am binding NUM to that process  
12 going forward, even if one is found guilty of any omission.

13 [11:57] MR RAMPHELE: So in effect, your  
14 admission of weaknesses will enable the country to  
15 strengthen those weaknesses so that things like collective  
16 bargaining, which I want to talk to you about now, we look  
17 at it and say maybe in the 30 years that we've – we've done  
18 a lot of good but there are still weaknesses that we have  
19 to address. And that is the engagement that I want to have  
20 with you.

21 MR ZOKWANA: I think we'll agree if we  
22 also look at the constraints that could have limited the  
23 ability to make progress, the attitude of employers  
24 sometimes to certain demands and the limitations that the  
25 current grading system presents as a hindrance.

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1 MR RAMPHELE: Thank you, President. I  
2 want us to look at collective bargaining now and I also  
3 want us to look at your report on what you say about  
4 collective bargaining or about what the secretary general  
5 says about collective bargaining, but I also want to give  
6 an indication that the reason why I want us to go into this  
7 is because it could be a source of frustration and anger,  
8 not that NUM will be wrong but just because there will be a  
9 weakness in the system that has to be corrected. Now, if I  
10 look at page 82 of the report of the secretary general  
11 under "Information management," 82 – are you having the big  
12 bundle? In the big bundle.

13 MR ZOKWANA: I don't have, unfortunately

14 –

15 MR RAMPHELE: But so that we should not  
16 waste time, let me just give you an indication of what the

17 –

18 MR ZOKWANA: Alright, alright.

19 MR RAMPHELE: - secretary general, in  
20 general terms –

21 MR ZOKWANA: Alright.

22 MR RAMPHELE: So that one doesn't go  
23 sentence for sentence. The secretary general's report, in  
24 the first place let me say that from the report one can  
25 deduce when one reads in collective bargaining that there

<p style="text-align: right;">Page 5147</p> <p>1 are still a number of challenges. Would you agree with me?  2 MR ZOKWANA: Yes. One of the challenges  3 would have been the frustration that had been facing the  4 union, especially in platinum and other minerals, having to  5 bargain with different mining houses, as a result not being  6 able to improve your co-ordination, what you are doing – a  7 matter we have been presenting to the companies concerned,  8 and I've shown that it goes back to in the 90s. Even now,  9 it's only after Marikana that companies have come on board  10 to say they see it as a hindrance. It means that you must  11 spread your negotiators across the industry. Experiences  12 that would be used jointly are spread, whereas that's why  13 you'll find that it was not difficult within the other  14 sectors under the Chamber to even deal with the issue of  15 machine operators because all companies were present. You  16 didn't expect to get the person in from London or from  17 anywhere to give the go-ahead. Yes, such challenges would  18 have been shown but I think one weakness I think the  19 platinum industry had been having was this scattered  20 industry based or mining house based negotiations.  21 MR RAMPHELE: In this report it also  22 gives an indication of just the difficulty of NUM having to  23 deal – sort of point out local or, local based collective  24 bargaining is a problem, centralised bargaining poses a  25 problem and there's also a serious problem on just how</p>	<p style="text-align: right;">Page 5149</p> <p>1 those areas referred to sub-committees - but when you  2 centralise the processes, you are able then to have a focus  3 because when you meet you are able to demand that report.  4 It is worse when you are dealing with decentralised  5 processes. And again it shows that you are not negotiating  6 with your friends, you are negotiating with employers whose  7 sole reason of doing mining is to mark mine profits and if  8 you don't remind them that you owe us, they will not come  9 back and say yes, we know that we owe you. Example, what  10 triggered the Impala strike, I'm sure we've been told, was  11 the fact that the company could see that it was losing its  12 best miners to its competitors. If you're negotiating in  13 the centralised bargaining process, they would have paid  14 the equal amount of money to all their employees because  15 they would be sharing the same platform. It is what,  16 therefore, different processes, I mean, create challenges.  17 CHAIRPERSON: I don't want to interrupt  18 unnecessarily and restrict your cross-examination unfairly  19 but I'd like to restrict the discussion of centralised  20 bargaining because, according to the report filed at the  21 annual general meeting of Lonmin recently in London, Lonmin  22 have now come out in favour of centralised bargaining.  23 They concede that there were all sorts of errors and  24 problems created by the previous system and they're now  25 supporting centralised bargaining. So I don't know that we</p>
<p style="text-align: right;">Page 5148</p> <p>1 agreements are processed to a point where – in one sentence  2 it says, "We have agreements that we never really look  3 into." So a very sort of serious challenge for anyone  4 reading the report.  5 MR ZOKWANA: I think the agreement raises  6 those things but I think again you should understand that  7 the reason we have made progress within the Chamber of  8 Mines processes was the nature that if the processes are  9 centralised, your are able to co-ordinate. The issue, I  10 think the issue you are raising is the implementation of  11 some of the agreements. You deal with wages, there may be  12 other issues to deal maybe with housing that may be  13 referred to mining house committees. If you are dealing  14 with 11 mining houses differently, the challenge is more  15 but when you centralise you are able therefore to have your  16 teams looking at broader – for instance in the case of  17 gold, all gold mines would be under the same roof and these  18 commodities are sold at the same market, it's not a  19 question that one mine sells its own commodity in New York,  20 another one sells it in Shanghai. No, but you are able  21 then after analysing – because this, it's not about waking  22 up and saying you want 10%. You first do your own  23 research, having researched you are able therefore to say  24 this is what the companies can afford and argue like why,  25 but I think this whole, the problem of the following up on</p>	<p style="text-align: right;">Page 5150</p> <p>1 need go into that in any more depth, unless there's some  2 point you particularly want to draw to our attention but I  3 think in view of the stance adopted by Lonmin at their  4 annual general meeting, a number of the problem areas which  5 they now in effect concede existed, are clearly on the  6 table and they concede they're problem areas, so I think we  7 can -  8 MR RAMPHELE: Chair, I will just wrap up  9 –  10 CHAIRPERSON: - refrain from going into  11 too much detail in that regard.  12 MR RAMPHELE: Yes. Let me just go to –  13 CHAIRPERSON: Mr Ramphele, if you haven't  14 had access yet, the evidence leaders have copies and I'm  15 sure that they can make copies of that report available to  16 you over the lunch adjournment. If there's something extra  17 you want to deal with after you've studied that and even if  18 you've finished cross-examining, I'll allow you to come  19 back and ask further questions after lunch. In other  20 words, I don't want to unduly restrict you –  21 MR RAMPHELE: I understand –  22 CHAIRPERSON: On the other hand, I do  23 want to use as much of the expensive time of this  24 Commission as profitably as I can.  25 MR RAMPHELE: Yes. Thank you, Chair.</p>

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1 Thank you, Chair. So the issue that I would like to bring  
 2 is that are we agreed that these weaknesses that even the  
 3 Chairperson has indicated having addressed and Lonmin had  
 4 acceded to, could have been what actually made the rock  
 5 drillers not to have full confidence in the collective  
 6 bargaining process as they perceived at that time?  
 7 MR ZOKWANA: At the heart of this debate  
 8 – I think I had this debate with Mr Mpofu – is the weakness  
 9 in the grading system that the companies are still using.  
 10 The grading system does not look at the conditions under  
 11 which a particular task is being performed or as to how  
 12 heavy that task is. When they speak of group force, the  
 13 script for group force is informed by the current grading  
 14 system that recognises authority and if that, if we can  
 15 change the grading system I think NUM can be able to  
 16 present a compelling case that says the machine operators  
 17 and – but other operators, but RDOs in particular – would  
 18 deserve a better pay because if you look at the conditions  
 19 I've mentioned, I was telling Mr Mpofu during - that once  
 20 those men are staying – with experience, are staying in  
 21 room B52, an old guy from Lesotho who had seen the mine  
 22 before these BPEs were introduced, told me a story that  
 23 when he is home, he could not talk with his wife when it is  
 24 dark, for he has learned to read her lips to establish what  
 25 she is saying, for he has lost his sense of hearing. That

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1 is the damage to which, the extent to which machine  
 2 drillers are faced with. So I'm saying therefore that if,  
 3 among the things we are going to deal with, we can revisit  
 4 the issue of grading and make sure that people are paid  
 5 properly according to the exposure to danger, the hard –  
 6 how difficult the job is – I believe that the case of RDOs  
 7 and other workers can be changed. The employers have been  
 8 reluctant to agree to that, as I've shown. In 1998 we went  
 9 to Canada to study their own methods of grading. Without  
 10 that grading being changed, I think we will be able to come  
 11 now and again, say they are not paid properly. Yes, I  
 12 agree, currently what they are being paid does not take  
 13 into account the risk to their exposure on a daily basis,  
 14 the physical risk, health risk and many other risks that  
 15 they should be dealing with. I always wondered whether a  
 16 machine operator is able to appreciate his family when he  
 17 knocks off, given the hard work he is engaged in during the  
 18 day.  
 19 MR RAMPHELE: This is a –  
 20 CHAIRPERSON: Mr Zokwana, again I don't  
 21 want us to be involved in too much detail on a matter that  
 22 may have fallen away, to some extent, but I see from the  
 23 amended agreement which was concluded in September last  
 24 year –  
 25 MR ZOKWANA: Yes.

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1 CHAIRPERSON: - which is page 92 and  
 2 following of, I think it's exhibit XX2, what has now  
 3 happened is that effective from the 1st October 2012, Lonmin  
 4 have agreed – certainly as far as their Marikana operation  
 5 is concerned –  
 6 MR ZOKWANA: Yes.  
 7 CHAIRPERSON: It's page 93 – to promote  
 8 all rock drill operators from Paterson grade A4 –  
 9 MR ZOKWANA: Yes.  
 10 CHAIRPERSON: To B1.  
 11 MR ZOKWANA: Yes.  
 12 CHAIRPERSON: And in addition to that,  
 13 they pay them, they're going to pay them a drilling – or  
 14 now apparently, paying them a drilling allowance as well  
 15 and all surface and underground general workers are  
 16 promoted from Paterson grade A3 to A4 with effect from the  
 17 1st of October. Now, am I correct in thinking that the  
 18 point that you've been telling us about, namely that  
 19 insufficient attention was paid, insufficient consideration  
 20 given to the terrible problems that rock drill operators  
 21 have, the unpleasant working conditions, the danger, the  
 22 damage to their hearing and so on – those have, to some  
 23 extent at least, now been addressed by this promotion of  
 24 all rock drill operators from Paterson grade A4 to B1.  
 25 Would that be correct or is that an oversimplification?

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1 MR ZOKWANA: One can say, Chairperson,  
 2 yes, at last there's been that acknowledgement but whether  
 3 it means that B1 is the relevant grade should be informed  
 4 by a scientific work being done and the danger therefore is  
 5 that Impala did it after the strike, Lonmin did a strike  
 6 and what our NUM would say is where the industry here  
 7 especially agrees that there has to be this scientific process  
 8 of changing the grading system. Maybe they deserve more  
 9 than this but I agree with you that that acknowledgement  
 10 was that these people deserve a better pay.  
 11 CHAIRPERSON: Would it be fair to say  
 12 that you are suggesting to us, this Commission, that we  
 13 should recommend that attention be given to revisiting the  
 14 grading system, seeing whether it's capable of improvement,  
 15 I think you told us –  
 16 MR ZOKWANA: Yes.  
 17 [12:17] CHAIRPERSON: - at one stage you people  
 18 got information from Canada and I understand the platinum  
 19 mines, I think, in Australia as well but – although they  
 20 may not be operating as far underground as ours are, which  
 21 may introduce further aspects, but effectively are you  
 22 suggesting to us that we should recommend that perhaps the  
 23 Chamber of Mines in conjunction with the relevant trade  
 24 unions should commission a scientific study to be done into  
 25 the whole question of the grading of these various posts,

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1 particularly in regard to the rock drill operators.  
 2 MR ZOKWANA: I agree with that,  
 3 Chairperson.  
 4 CHAIRPERSON: Alright. If we're agreed  
 5 on that then perhaps you can move to your next point, Mr  
 6 Ramphele.  
 7 MR RAMPHELE: Actually, I want – I agree  
 8 with the Chair and you that that recommendation should be  
 9 made. My only problem is that it came after 45 people died  
 10 and it means that either you were not addressing it at  
 11 collective bargaining or Lonmin was not listening to you at  
 12 collective bargaining because you knew that that is a  
 13 problem.  
 14 MR ZOKWANA: We can deal with the  
 15 industry, we've been raising this matter and we have been  
 16 engaging the industry on this matter. It didn't have to  
 17 happen after so many lives are lost. As I said before,  
 18 major such catastrophes waking up the country to realities,  
 19 to do that which is right. I don't think that those 44  
 20 lives should have been lost before this has been seen but  
 21 I'm saying that the fact now that there is an agreement  
 22 towards that means that we'll not only be doing what is  
 23 good, we'll be making sure that in the future we are guided  
 24 by a scientific approach as to what people should be paid  
 25 per the job in question.

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1 MR RAMPHELE: And you would agree with me  
 2 that as a result of you hammering that collective  
 3 bargaining and the employer not listening to you, the rock  
 4 drillers lost confidence that you were able to represent  
 5 them adequately, not because of your fault because you have  
 6 been raising it, but because your collective bargaining  
 7 struggles were not bearing fruit.  
 8 MR ZOKWANA: I think that I said when I  
 9 opened my evidence that I would be happy if, at the end, it  
 10 may come out whether these drillers just woke up on a day  
 11 and believed that they were not earning that which was due  
 12 to them or whether there were other influences that made  
 13 them to believe that NUM is not a preferred agent. And  
 14 I've made examples of what workers would do in the event  
 15 such that they believed that the local negotiating team did  
 16 not do what was right. And I made the example that in the  
 17 same company, Lonmin, in 2005 the same situation happened.  
 18 The second thing is this, that it should not be seen that  
 19 these machine drillers were not part of the people who  
 20 approved the previous agreement. In NUM we negotiate, we  
 21 feed back before we sign an agreement. It is only signed  
 22 when everybody says, or more, you must hold your fire, it  
 23 is time to sign. And I'm still of the view that when  
 24 everything is done, you may be able to find, where these  
 25 people were having genuine concerns which we have raised,

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1 other processes were happening as well. In my view the  
 2 reason they are so angry is not purely that the NUM could  
 3 not have agreed with – but the influences of others who  
 4 were saying this union is colluding with the employer, this  
 5 union has killed two of you, this union is doing this and  
 6 this. Remember, I remember one journalist asking if I do  
 7 have shares in Lonmin, meaning that these were things, that  
 8 NUM is in bed with the company. What would – what such  
 9 statements would have made in view of these drillers? I  
 10 agree that if drillers are angry about these wages, there  
 11 could have been a manner in which they handle it but the  
 12 manner of violence, murdering others, should not be  
 13 justified under any circumstances.  
 14 CHAIRPERSON: I think we've got those  
 15 points, Mr Ramphele, perhaps you can – on the assumption  
 16 that we understand the points that you've been making, you  
 17 might like to move on to another point.  
 18 MR RAMPHELE: Did you get my point,  
 19 Chair? The point I'm making is that the witness, president  
 20 of NUM, says that they considered the grading system and  
 21 other things, very important –  
 22 CHAIRPERSON: Yes, we heard –  
 23 MR RAMPHELE: - and they were raised –  
 24 CHAIRPERSON: We heard him say that –  
 25 MR RAMPHELE: And they were raised –

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1 CHAIRPERSON: We heard him say that, we  
 2 heard him say it was raised with the employer. We heard  
 3 him say that the employer – we heard a long time ago, the  
 4 employer originally wouldn't listen. What he then says is  
 5 they went back to their members and explained how far  
 6 they'd got with the negotiations and then got a mandate  
 7 which, on the strength of which they signed the agreement.  
 8 I mean all that material is before us, so I don't know that  
 9 it has to be gone over and over again. We've also now got  
 10 the point that the employer has now, to some extent,  
 11 changed its stance on that point. It made a concession, at  
 12 least as far as Marikana is concerned, and that can then  
 13 form the basis for further recommendations in our report  
 14 later on but I think for the purposes of the present phase  
 15 of the inquiry you've probably got enough material on the  
 16 table to enable you to move on to your next point.  
 17 MR RAMPHELE: Chair, only the witness,  
 18 Chair, if with your permission, the witness can admit then  
 19 that - because he said that he believed that the issue  
 20 raised by the rock drillers was illegitimate. Now it  
 21 cannot be illegitimate after an agreement –  
 22 CHAIRPERSON: No, no –  
 23 MR RAMPHELE: Either it's illegitimate or  
 24 it's not.  
 25 CHAIRPERSON: No, it could be

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1 illegitimate for two years in the sense that you can't  
 2 strike about it but it doesn't mean that in two years' time  
 3 you can't raise the point again and if the circumstances  
 4 change because of what's happened at Impala, you're able –  
 5 you may not be able to strike but you can go to the  
 6 employer and say, look here, the whole situation has  
 7 changed in the platinum industry and it's appropriate for  
 8 you to agree to amend the agreement. He said all that,  
 9 over and over again. So as I've said before, the time of  
 10 this Commission is precious. It's very – every day is  
 11 expensive and if we have points being raised again and  
 12 again and again, we're not gaining much by further  
 13 repetition. I think the point you've made is clear to us.  
 14 Again, the function of cross-examination here isn't like  
 15 police interrogation, designed to extract an admission from  
 16 the witness at the end. All you need do is put your facts  
 17 on the table, if he doesn't admit as much as you want him  
 18 to admit, you can argue at the end of the day that he  
 19 should have admitted more but if we're going to sit here  
 20 while you go on and on and on, wearing him down, eventually  
 21 trying to get an admission out of him, then we'll have to  
 22 send you the bill for the waste of time.  
 23 MR RAMPHELE: Then you have to  
 24 [inaudible] – but thank you, Chair. I understand your  
 25 point, Chair, even though – let me just, one or two issues

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1 because Chair, the point I'm trying to make is that it is  
 2 the trust in the collective bargaining that will either  
 3 ensure that you have control of your members or you don't  
 4 have effective control of your members –  
 5 CHAIRPERSON: I think you've made that  
 6 point earlier today as well.  
 7 MR RAMPHELE: Yes.  
 8 CHAIRPERSON: And the Commission must be  
 9 credited with some intelligence in understanding the point  
 10 you're making.  
 11 MR RAMPHELE: Mr President, because I  
 12 want us to agree on the report, that the report I actually  
 13 very, could one say damning, on the ability of NUM in many  
 14 respects, especially around the issue of how employees are  
 15 protected. And I just want to – the view of the secretary  
 16 general on page 110, he says that – and I paraphrase – that  
 17 NUM should be a democratic organisation and what should  
 18 make it a democratic organisation should be that  
 19 information should filter down to ordinary members of the  
 20 NUM. And then he goes on to say it seems as though if it  
 21 doesn't filter. He asks the question, are we not equipping  
 22 capital to mislead – in other words [inaudible] members,  
 23 because we represent them poorly or not at all? How – he  
 24 goes on to say, "How strategic are we in assisting members  
 25 to understand their role and conditions of employment?" Do

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1 you agree that this type of view by the secretary general  
 2 is actually a very challenging view of the organisation?  
 3 MR ZOKWANA: Thanks. My understanding of  
 4 the context in which this view is presented, because the  
 5 danger of any organisation is to become complacent,  
 6 believing that all is going very well and refuse to admit.  
 7 It doesn't matter whether, how minute such weaknesses may  
 8 be, you need to raise them and I've been to many  
 9 organisations, any report that does not look at weaknesses  
 10 would not be a report because it seeks to glorify.  
 11 Remember, any comrade is a [inaudible] for those new shop  
 12 stewards coming on board. He was not admitting that NUM  
 13 has no systems, NUM is full of weaknesses. What he was  
 14 admitting was the fact that we need to ensure that any  
 15 decisions reached, reaches members and I can assure you  
 16 when it comes to bargaining, as far as I know, no agreement  
 17 can be signed by any shop steward or leader of a  
 18 negotiating team without a mandate by members to say 10%,  
 19 yes, we have got these issues but nonetheless, sign. That  
 20 report was not giving a view that says NUM is failing.  
 21 What it was doing, it was outlining flashlights or areas  
 22 that NUM has to pay more attention on.  
 23 MR RAMPHELE: Can I suggest that that is  
 24 actually incongruent to what he said earlier when, under  
 25 information management he says, "This means that it becomes

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1 increasingly difficult to know what the full agreement  
 2 looks like," referring to collective agreement, that you  
 3 have a situation where the organisation is actually  
 4 overwhelmed.  
 5 MR ZOKWANA: That is one area we have  
 6 dealt with together this morning where I said the challenge  
 7 of a staggered process of going to employer A, employer B,  
 8 employer C with different negotiators will present that  
 9 scenario but once you negotiate centrally you are sure – by  
 10 the way, in the NUM when you negotiate each and every  
 11 participating mine or company will have a rep, so that the  
 12 same day after negotiations mass meetings are held. What  
 13 becomes difficult then is when first processes are  
 14 staggered – this month you negotiate with Lonmin, that  
 15 month you go to Northam, that month you go to Anglo  
 16 Platinum, that month you go to Plant B and they're all  
 17 mining the same commodity. The advantage of a centralised  
 18 one is that the agreement will be one you would be able to  
 19 read from the same [inaudible]. The chances of explaining  
 20 it differently are very high. By the way, I can tell you  
 21 this that agreements are very tricky processes. The reason  
 22 you must get a mandate is to ensure that at least members  
 23 are clear of what the agreement is. Last week I read an  
 24 SMS from Chief Pathekhile Holomisa to Lonmin, questioning  
 25 the essence of the agreement because media chose to

<p style="text-align: right;">Page 5163</p> <p>1 interpret it to be 22% across the board, whereas 22% was  2 the cost to the company and workers in Lonmin as we sit  3 believe that they have been underpaid by Lonmin. So it is  4 the essence that when you negotiate, you make sure that  5 workers understand exactly what is it that they're going to  6 get and mistakes of doing that is that you may get a  7 clapping from the koppie, being held as heroes [inaudible],  8 and yet workers don't understand what is that agreement  9 about which is key, those who are negotiating at  10 negotiations so that every worker must know what would be  11 the meaning of this agreement. By the way, we will split  12 it into groups, that group 4 will get R20, group 3 will get  13 R20 – nobody must ask another person. The danger it's  14 raising is that under this current situation in [inaudible]  15 bargaining you have spread your forces. The chances of  16 misinterpretation may happen but I can assure you that in  17 NUM when it comes to bargaining, preparing thereto, even  18 signing of agreements, we do our best to make sure that  19 workers do not find an agreement in the lockers without  20 [indistinct] stated in those. Every move made by the  21 employer gets [indistinct] workers – and even go back to  22 the employer and [indistinct] that this is a fallback  23 position, this is a strike breaker. You don't do that  24 without making sure that your forces down will take that.  25 [12:37] CHAIRPERSON: Now we're back at the</p>	<p style="text-align: right;">Page 5165</p> <p>1 you sign with the employers has got full confidence of  2 full, of members. Remember, counsellor, life is not  3 static. Since Wednesday the cost of living has been, is  4 worse than it was a week before with the 40 cents increase  5 in petrol. You can basically – if you can be able to  6 verify whether there were no changes in the lives and also  7 the conditions of life for those drillers. One other  8 element I'm sure this Commission will deal with is the area  9 of living conditions because I won't be here. I can assure  10 you, sir, one burden that migrant workers are having is a  11 situation of being divorced from their families and staying  12 in other areas away from their families and that creates a  13 major burden on them as they must take care of the two  14 environments whenever there are challenges or increases –  15 if for instance there's 40 cents increase in petrol, it  16 doesn't hit a mineworker only where he is, it hits him  17 because in his family in his area where he comes from his  18 wife will pay more to go to town, the cost of living will  19 be increased. It will increase even where he's staying.  20 So I'm saying this that it cannot be easy to say the only  21 causal for this was because of failures of NUM and I can  22 quote to you to say you may find that the other causals may  23 have been some influences by others that could have made  24 the drillers to believe that the better way of getting what  25 they would have got was to discard NUM, but I'm sure that</p>
<p style="text-align: right;">Page 5164</p> <p>1 anomalies of centralised bargaining –  2 MR RAMPHELE: Ja.  3 CHAIRPERSON: - which I thought we're  4 agreed that we were moving on.  5 MR RAMPHELE: Yes. I will inform you  6 that one of the submissions that we will make to the  7 Commission is that the conduct of the rock drillers was  8 possibly created by the weaknesses in the collective  9 bargaining by liaison with ordinary members as it appears  10 in your report, the knowledge they had about what is  11 happening and that as a union you could have done more to  12 ensure that these two are in place in order that you must  13 have effective control.  14 MR ZOKWANA: Thanks. I'm sure in doing  15 that, sir, you will not be condoning violence as a weapon  16 to be used by anybody when he demands something but let me  17 respond by saying this, that if this was caused by  18 witnesses in the bargaining process, I'm sure you're not  19 going to rely on the document you are reading because it's  20 not a prescription only for Lonmin, it's a broader  21 overview. The second thing is – and I'm sure NUM would put  22 – I'm sure you're still consulting, let me wait for you.  23 MR RAMPHELE: No, no, I'm just –  24 MR ZOKWANA: So I'm sure, counsel, you'll  25 find we'll be able to prove to you this, that any agreement</p>	<p style="text-align: right;">Page 5166</p> <p>1 will come – that it was not a simple situation whereby  2 workers would say we don't want NUM, without anybody to  3 have said if you don't want NUM we are the preferred  4 candidates. That would be explained by the way leaders  5 were receptive in the koppie, the way others could go to  6 the koppie, all those things must inform your decision but  7 let me [inaudible] senior counsel have a right to present  8 your concluding views and I'm sure our own counsel would be  9 able, or would be able to show that he is not limited also  10 to bring forward.  11 MR RAMPHELE: I agree with what you have  12 been saying actually, I'm –  13 MR MAHLANGU: Chairperson -  14 CHAIRPERSON: Before you can carry on, I  15 think Mr Mahlangu wants to either say something or change  16 positions with the other interpreter who's in position.  17 MR MAHLANGU: That's correct.  18 CHAIRPERSON: You'd better start again.  19 MR RAMPHELE: I agree with your  20 sentiments around the issue of the cost of living.  21 Actually how I see it is that it's not a socio-economic  22 issue, it's a physical issue because hunger is a physical  23 issue. If a family without food it's actually physical, so  24 I agree completely with what you're saying but that is the  25 reason why we have to go into what would make them have</p>

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1 hope in NUM representing them, you see. Let me take on the  
 2 last issue of your view as NUM of collective bargaining and  
 3 that is the issue that NUM actually attained, of having a  
 4 majoritarian system where you have to be a majority to have  
 5 a voice, as an issue, and I want to – you will at a later  
 6 stage go to your secretarial report but on page 145,  
 7 talking about Eskom, NUM refers to minority unions sort of  
 8 as Mickey mouse unions and then I couple that with the word  
 9 that has been used quite extensively of “reclamation,”  
 10 reclaiming our position as the majority union. I want to  
 11 find out from you –

12 CHAIRPERSON: Sorry to interrupt you, is  
 13 this relevant on phase 1? I can understand in phase 2 the  
 14 kind of issue that you talk about may come up.

15 MR RAMPHELE: Yes.

16 CHAIRPERSON: And in fact one of the  
 17 things that we may consider doing is referring the whole  
 18 question of this majoritarian principle to a body like  
 19 Nedlac to reconsider, but I'm not sure that it's relevant  
 20 at this stage

21 MR RAMPHELE: I just want to ask one  
 22 question about what could have angered or – you know  
 23 because if you are a minority –

24 CHAIRPERSON: Ask your – you don't have  
 25 to address me further, ask your one question, thank you, as

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1 shortly and sharply as you can.

2 MR RAMPHELE: Thank you, Chair. The  
 3 issue that I want to find out is whether this terminology  
 4 and the fact that workers knew that to have a voice you  
 5 must be a majority did not actually bring about the  
 6 frustration and the anger, to say if we are not in the  
 7 majority we don't have a voice in this industry.

8 MR ZOKWANA: Thanks Chairperson. NUM is  
 9 an affiliate of COSATU, it believes on the fact that in  
 10 COSATU in every industry there will be one union, but that  
 11 understanding does not delimit the right of any formation  
 12 to be formed, as long as it's not a COSATU formation. I  
 13 think that anybody knows very well that size counts when it  
 14 comes to bargaining. The employer should see that when you  
 15 demand 10% and he does not agree and you go through lawful  
 16 processes, you will carry the members to go to strike. It  
 17 is the [inaudible] views in building that majoritarian  
 18 status of that particular union, when – because members  
 19 don't go to NUM congress to know how the [inaudible] NUM  
 20 refer to other unions. When you go to a plant to organise  
 21 members you will not say join NUM, leave so-and-so. You  
 22 would say join NUM because we improve your conditions of  
 23 service, we'll defend you when you are dismissed, we make  
 24 sure that we build unity among yourselves and we'll sustain  
 25 your dignity in the organisation. [Inaudible] once NUM

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1 goes and says join us because we're not like so-and-so,  
 2 that is a negative form of recruiting and NUM does not use  
 3 that. When we [inaudible] that says reclaim a plant, we  
 4 are not saying reclaim a plant and leave so-and-so. We are  
 5 saying reclaim a plant by joining NUM. It is a normal form  
 6 in any operation that when you engage in that competition,  
 7 it is not a - you don't bad mouth those you are competing  
 8 with. You say, I even said when you operate in that way  
 9 you behave like people who sell on stands. If I'm selling  
 10 oranges I don't blame bananas. I explain why they must eat  
 11 oranges because they've got vitamin C, vitamin C will make  
 12 sure that in winter when it's cold I will be having a  
 13 strong immune system, not only sick from flu. I  
 14 [inaudible] bananas. So if NUM goes and says join NUM  
 15 because we are strong and if we are strong, we belong to  
 16 COSATU, 1.2 million members we belong to industry all – we  
 17 are known globally. It's what we say at NUM. We don't say  
 18 [inaudible], it's not our business to do that.

19 MR RAMPHELE: It is going to be our  
 20 submission to the Commission that this Marikana issue that  
 21 is so distressing was because a rock driller, as you have  
 22 clearly explained, with very specific circumstances and  
 23 conditions, was subjected to a system that did not give  
 24 them a voice because they happened to be less than what is  
 25 supposed to be a majority union with a voice. So that

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1 frustration gave them no other but the outlet of doing  
 2 things outside of the collective bargaining system. That  
 3 is the submission that we are going to make to the  
 4 Commission.

5 CHAIRPERSON: I take it the submission is  
 6 not going to be that that was the sole cause of what  
 7 happened. At the highest that you'll put the submission, I  
 8 take it, will be that it was a contributory cause, is that  
 9 correct?

10 MR RAMPHELE: Yes, contributing –

11 CHAIRPERSON: I think that's important  
 12 because –

13 MR RAMPHELE: Yes.

14 CHAIRPERSON: - the witness has dealt  
 15 with that aspect before.

16 MR RAMPHELE: Yes.

17 CHAIRPERSON: But do you understand the  
 18 point being made, Mr Zokwana?

19 MR ZOKWANA: I think you are welcome to  
 20 make that submission but I can assure you now, that  
 21 submission will not be sound for the following reasons.  
 22 Rock drillers, as we speak, are NUM members. They are not  
 23 precluded from being NUM members. They are still NUM  
 24 members. Unless – and rock drillers don't form a trade  
 25 union, they're a group of workers who belong to a union.



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1 It could not therefore be them saying we, as drillers, we  
 2 are a minority. NUM is not a craft union that is based on  
 3 that which operates, which – I mean RDOs as organised – I  
 4 understand if RDOs were forming a union. RDOs are part of  
 5 other workers. That scenario can only arise in a craft  
 6 union basis where workers are organised on the job they do.  
 7 We have got drillers in NUM, we still have got drillers in  
 8 Lonmin. We had them before the strike. The answer to the  
 9 question is whether there was a union that believed that  
 10 its members in Lonmin were disadvantaged – not drillers.  
 11 [12:57] CHAIRPERSON: Mr Ramphele, it sounds as  
 12 if you're not going to get the witness to agree -  
 13 MR RAMPHELE: Yes.  
 14 CHAIRPERSON: - with your attack on the -  
 15 MR RAMPHELE: I am -  
 16 CHAIRPERSON: It may well be that you can  
 17 come back to it at some later stage -  
 18 MR RAMPHELE: Yes.  
 19 CHAIRPERSON: - with other witnesses,  
 20 possibly witnesses of your own, but I don't think there's  
 21 any -  
 22 MR RAMPHELE: No. It's just that I said  
 23 it's a submission I will make.  
 24 CHAIRPERSON: Yes.  
 25 MR RAMPHELE: And I'm not going to argue

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1 with the witness.  
 2 CHAIRPERSON: Do you have any more  
 3 questions?  
 4 MR RAMPHELE: Yes, yes.  
 5 CHAIRPERSON: Are they – will they be  
 6 capable of being dealt with before the adjournment in a few  
 7 minutes' time?  
 8 MR RAMPHELE: No, no, I'll try and move  
 9 into new areas.  
 10 CHAIRPERSON: No, I understand. I say  
 11 will those new areas take you three minutes or longer?  
 12 MR RAMPHELE: Chairperson, you see there  
 13 are certain things that the witness -  
 14 CHAIRPERSON: I want to take the lunch  
 15 adjournment shortly.  
 16 MR RAMPHELE: Oh.  
 17 CHAIRPERSON: The question is do I take  
 18 it now and you come back after lunch or is there a shot  
 19 little point you can make quickly before we take the lunch  
 20 adjournment [inaudible].  
 21 MR RAMPHELE: - finish with the issue of  
 22 the collective bargaining and how NUM is doing in the  
 23 collective bargaining. This is one of the submissions I  
 24 will make on the issue of collective bargaining, which I  
 25 want to finalise now, that even though you say that you've

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1 done everything you could in order to avoid Marikana, if  
 2 one has to benchmark you with unions internationally, for  
 3 instance do you sit on the board of directors of companies  
 4 like Lonmin where you can make input because – and the  
 5 reason why I'm asking is because for instance in Europe  
 6 when they describe corporate governance, they look at the  
 7 shareholder, they look at the union and the interests of  
 8 the workers. So is it something that is happening here?  
 9 MR ZOKWANA: In South Africa we don't  
 10 have trade unionists sitting in boards of companies for  
 11 which they are bargaining. You would find that mostly in  
 12 Germany in core determination where workers sit in such  
 13 boards but in our own environment it does not happen, but  
 14 that would not limit you. I said before we enter with  
 15 negotiations, research is done. There are many research  
 16 institutions between NUM capacity, that will look at all  
 17 the changes in all the prices of commodities, look at  
 18 inflation, look at all these things and come to say this is  
 19 the area we will believe – and we have shown here that NUM  
 20 in the last three years have been able to reach agreement  
 21 far above inflation. By the way, when we have claimed we  
 22 say nothing less than two digits, it's no good for  
 23 mineworkers. The Reserve Bank was not happy with us, that  
 24 that demand will be inflationary. The point I'm putting is  
 25 that you don't need to sit in those boards. The other

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1 danger, therefore, in a country like ours – not Germany –  
 2 is that you may find that we sit in a board and we are  
 3 convinced in that situation not to improve the conditions  
 4 of workers. The conditions of - Germany has got a social  
 5 background from the Second World War and rebuilding Germany  
 6 and the conditions of workers in Germany are far above our  
 7 own conditions. I wonder if such would survive here at  
 8 home.  
 9 MR RAMPHELE: Well, the last question  
 10 before lunch would be, if indeed your answer is correct,  
 11 then what I've read about you having a lot of influence in  
 12 the corridors of parliament and being able to change  
 13 legislation, which I think is a bigger forum than the board  
 14 of directors, then I have serious questions about that.  
 15 CHAIRPERSON: You may have questions  
 16 about it but what's the question you're asking now?  
 17 MR RAMPHELE: The question is, if you say  
 18 NUM is not as advanced as a German trade union to be able  
 19 to sit in the board of directors and make a meaningful  
 20 input in protection of the rights of workers, but at the  
 21 same time you say NUM is one union that has got most  
 22 influence in the corridors of parliament and they make sure  
 23 that legislation in parliament is in favour of workers,  
 24 then the two statements – the one you are making and the  
 25 influence you have in parliament – they make me wonder

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1 whether you consider parliament less important than a  
2 meeting of a board of directors.  
3 CHAIRPERSON: - the question but I take  
4 it what he means is, do you agree with the sentiments he's  
5 expressed?  
6 MR ZOKWANA: No, I don't agree,  
7 Chairperson, because parliament makes laws. When you  
8 negotiate with companies it's outside parliament, you  
9 negotiate with employers and there's nowhere government can  
10 tell employers that you will give workers 20%. It is an  
11 area in which the union uses its strengths through  
12 organising and I repeat, I said that there's historical  
13 background to the situation in Germany of co-determination.  
14 CHAIRPERSON: Alright.  
15 MR ZOKWANA: And even – here at home we  
16 can agree that because of unemployment, because of job  
17 losses, because of the [inaudible] that we lay down the  
18 rules such that unions don't get used as conduits of  
19 business and government.  
20 CHAIRPERSON: On that note we'll take the  
21 lunch adjournment.  
22 MR RAMPHELE: Chairperson –  
23 CHAIRPERSON: You've just put the last  
24 question before lunch –  
25 MR RAMPHELE: - can I finish off?

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1 CHAIRPERSON: - question before lunch.  
2 MR RAMPHELE: The answer actually begs  
3 just – because I want to finish with this before lunch.  
4 CHAIRPERSON: How long are you doing to  
5 be?  
6 MR RAMPHELE: Just one question.  
7 CHAIRPERSON: Alright.  
8 MR RAMPHELE: Unless the answer takes  
9 another –  
10 CHAIRPERSON: I'll allow you to ask one  
11 question.  
12 MR RAMPHELE: Last question. It is an  
13 issue that we will submit that you have to consider  
14 seriously because it's not because Germany is advanced,  
15 it's because they deal with multinationals, MMCs, as you do  
16 and you have trans-national agreements which impact  
17 directly on your workers and that is why they have to know  
18 what the shareholders' interests are in the MMCs and  
19 therefore the participation of unions in the board of  
20 directors is not, I mean even as observers it would give  
21 you more information that would enable you to assist the  
22 workers and not just research outside of where decisions  
23 are actually taken. And a classical example is 14 000 – a  
24 company moving from South Africa elsewhere, something that  
25 has been discussed at the board of directors and you get to

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1 know it when it's actually at the point of implementation.  
2 MR ZOKWANA: In my short stint as  
3 serving, not in a board of a company, I was informed that  
4 one of the roles that governs boards is that as a board  
5 member you have got the interests of the shareholder and  
6 members are the stakeholders, not shareholders. The danger  
7 therefore is that you may be called upon to agree with the  
8 company retrenching because in the circumstances  
9 retrenching is the best order, so I don't think there is  
10 one answer for what you are raising and I repeat, currently  
11 in the European Union there's also a section of labour  
12 sitting to look at laws. We don't have that in South  
13 Africa, we don't have that in Africa. I don't think such  
14 can be planted into our, in our environment. We need a  
15 longer discussion to engage in that.  
16 CHAIRPERSON: We will now take the lunch  
17 adjournment.  
18 [COMMISSION ADJOURNS COMMISSION RESUMES]  
19 [14:06] CHAIRPERSON: The Commission resumes. Mr  
20 Zokwana, you're still under oath.  
21 SENZENI ZOKWANA (CONTD): Yes.  
22 CHAIRPERSON: You're still questioning.  
23 CROSS-EXAMINATION BY MR RAMPHELE (CONTD):  
24 Thank you, Chair. Mr Zokwana, I think we're done with the  
25 issue of collective bargaining. Now let's go to the

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1 incident, coming from the 11th. Let me ask you, your main  
2 concern when you went to Lonmin and when you spoke to the  
3 police was the protection of your workers, your members, is  
4 that correct?  
5 MR ZOKWANA: On the 12th it was the safety  
6 of mine employees.  
7 MR RAMPHELE: And that is why you  
8 proposed that there has to be more forces that come to  
9 protect workers that would like to come to work.  
10 MR ZOKWANA: It was to protect workers on  
11 the mine because not only people were being killed because  
12 they were at work, others were being killed as we became  
13 aware that there may be a list of leaders of NUM to be  
14 killed.  
15 MR RAMPHELE: The one thing that I seem  
16 to miss in this whole thing is the happenings of the 16th  
17 that is, you know, the ultimate horrible incident of the  
18 16th. Was this on the way to work of some of the workers or  
19 how would that incident protect people that were coming to  
20 work?  
21 MR ZOKWANA: As I have shown, that on the  
22 15th we had a radio interview with the president of AMCU.  
23 By that moment 10 lives had been lost and the public  
24 callers as well as the host of the programme, three of  
25 those are the people you are representing now, counsellor –

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1 and the issue was for us to go to the koppie and address  
 2 people so that they desist from the practices that were  
 3 taking place. It was to talk to them to agree to disarm  
 4 and allow processes of negotiations between the employer  
 5 and the unions to take place. My answer shortly is that it  
 6 was not about people going to work but people who were on  
 7 the koppie, armed.

8 MR RAMPHELE: Yes but the question that  
 9 I'm asking is, so in relation to people that could be  
 10 protected to go to work, the koppie was not really  
 11 relevant. If the intention was to protect people that were  
 12 going to work, the koppie could just be sort of ostracised  
 13 and these people could be protected and go to work – the  
 14 question that I'm asking, and that is if the koppie was not  
 15 on their way to work, that is if it had nothing to do with  
 16 ordinary NUM non-organised members who wanted to just go  
 17 and conduct business as workers.

18 MR ZOKWANA: Sir, if you have read the  
 19 statement of Akanyang Motlogeloa who was with two of your,  
 20 of the family clients, details what happened on that day.  
 21 They were deployed by the company to prevent people from  
 22 the koppie going to one of the operations to remove working  
 23 people. Therefore – and I'm not an expert in such issues  
 24 of protection but what I know is that the reason there was  
 25 deployment of people to prevent people from the koppie from

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1 going to working places or people going to work and harm  
 2 them.

3 MR RAMPHELE: In that statement it shows  
 4 that where people were on the koppie they were able to  
 5 travel to areas where people were working, as the incident  
 6 of that day, page 84 of that statement, will show you what  
 7 really happened.

8 MR ZOKWANA: So what you're saying is  
 9 that people that were at the koppie were moving into the  
 10 workplace to stop people from going to work and going back  
 11 to the koppie, is that what you're saying? One of the  
 12 reasons these people were deployed was to prevent people  
 13 from the koppie from going to the hostel, NUM offices in  
 14 some such areas. On the day in – they are marching on the  
 15 koppie to the NUM office and they instructed them to  
 16 prevent them to bus their vehicle since the two cars were  
 17 attacked and the two people were killed. So I'm saying is,  
 18 that there may have been other activities that the people  
 19 on the koppie were having. So your question to say if the  
 20 people in the koppie were prevented from going down, going  
 21 to work, I don't think that that is a right scenario as  
 22 shown by that statement.

23 MR RAMPHELE: Well, let me put it to you  
 24 that in my understanding and evidence that has been led  
 25 here, the koppie is actually far from the workplace and if

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1 the koppie could have been cordoned off, people, ordinary  
 2 workers could actually just go to work whilst that was kept  
 3 on guard.

4 MR TIP SC: Mr Chair –

5 CHAIRPERSON: This question as far as  
 6 this witness is concerned, I can understand you may want to  
 7 ask the other witnesses –

8 MR RAMPHELE: As it pleases –

9 CHAIRPERSON: I don't think that Mr  
 10 Zokwana is a position to give a meaningful answer to it.

11 MR RAMPHELE: Okay.

12 MR TIP SC: Mr Chair, I was going to make  
 13 the same objection. It's a policing question, it's got  
 14 nothing to do with Mr Zokwana.

15 CHAIRPERSON: Yes, I think you'll  
 16 withdraw the question, won't you?

17 MR RAMPHELE: Ja.

18 CHAIRPERSON: Alright.

19 MR RAMPHELE: Mr President, as the  
 20 president of the NUM I would like you to give your opinion  
 21 on this proposal that I'm putting, that it was possible to  
 22 actually cordon them off at the koppie and have normal work  
 23 activities going. Your opinion, if you agree you agree, if  
 24 you don't, you don't.

25 MR TIP SC: Mr Chair, I renew the

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1 objection. It's an irrelevant opinion, with respect. It  
 2 doesn't help at all to say I'm asking you as the president  
 3 of NUM whether that could be done. It's a policing  
 4 decision. Mr Zokwana has said that he called for  
 5 reinforcements and approached the Minister on the 12th  
 6 because of what he had seen. There's nothing to suggest  
 7 that he was involved in any discussions around the role of  
 8 the koppie and how police forces should be deployed.

9 CHAIRPERSON: What do you say about that?

10 MR RAMPHELE: The relevance to Mr Zokwana  
 11 is that his concern is protection of his workers going to  
 12 work and that was, as far as I understand –

13 CHAIRPERSON: The fact –

14 MR RAMPHELE: Can I finish, Chairperson?

15 CHAIRPERSON: Yes, of course.

16 MR RAMPHELE: As far as I understand,  
 17 that was his main concern and the question is being asked  
 18 to say it that were to, that could have happened, would his  
 19 members have been safer or would there have been a problem?

20 CHAIRPERSON: Now, is he in any position  
 21 to answer that?

22 MR RAMPHELE: In relation to –

23 CHAIRPERSON: He wasn't present at the  
 24 scene. He can only go on what other people have told him  
 25 happened.

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1 MR RAMPHELE: Yes.

2 CHAIRPERSON: Aren't we, as the

3 commissioners, in exactly the same position that he would

4 be in to decide that question because the information that

5 he has will obviously include all the information we've got

6 and we will have far more other information he hasn't got.

7 So I don't see how he can help us.

8 MR RAMPHELE: Well, Chairperson, and this

9 is my response to you and if you accept it, it's okay, if

10 you don't it's fine, but I'm saying as a leader in the

11 union his concern – and that is the concern that he

12 actually raised with the employer, that he raised with the

13 police – was the safety of the clients that I represent,

14 amongst others.

15 CHAIRPERSON: Yes.

16 MR RAMPHELE: And the question is

17 directed at what would make him satisfied that that safety

18 is actually being taken care of.

19 CHAIRPERSON: Yes but –

20 MR RAMPHELE: And I'm saying if, if I

21 were Mabebe and I was not going to go via the koppie and I

22 would be protected from where I would be coming from to

23 work and back, with the koppie cordoned off, would he be

24 satisfied about my safety.

25 CHAIRPERSON: I'm not sure that his

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1 degree of satisfaction is in any way relevant to answering

2 any of the questions the President has posed to us in terms

3 of the terms of reference. So I disallow the question.

4 Please proceed.

5 MR RAMPHELE: Thank you, Chairperson.

6 Now let's go to the issue of whether members were actually

7 directly involved on the 11th. The Commission has seen

8 video clips of, or taken by – I think it's security

9 officers of Lonmin – and I think it's three days before the

10 11th and in all of them they were recording incidents of

11 workers going to work, either getting into a shaft, and

12 almost all of them said – and it's five o'clock, this

13 happened and the situation is peaceful. What I'm trying to

14 get at is, as at that time, all of which are before the

15 11th, they record that the situation was peaceful.

16 CHAIRPERSON: What's the question?

17 MR RAMPHELE: Do you think that the

18 security officers who recorded had any reason not to

19 present their observations? Would you agree that they were

20 presenting the observation as they saw that –

21 CHAIRPERSON: What is the relevance of

22 his opinion on that question?

23 MR RAMPHELE: It is –

24 CHAIRPERSON: I can understand it's a

25 point you'd want to argue at the end.

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1 MR RAMPHELE: Yes.

2 CHAIRPERSON: It may well be an issue in

3 respect of which you would wish us to make a finding, but

4 will we be assisted one way or the other by his opinion on

5 the matter?

6 MR RAMPHELE: Yes.

7 CHAIRPERSON: How?

8 MR RAMPHELE: Because if indeed the

9 record by Lonmin was that there were no problems before the

10 11th, then that after the 11th the situation changed, then

11 as a leader of the union at least if they were one, they

12 were not involved in the incident of the 11th, then as a

13 leader of the union he's got to at least say my union was

14 involved at this point when the situation changed.

15 CHAIRPERSON: I still don't understand

16 the relevance of the answer that he gives. The mere fact

17 that he's the president of NUM, does that give his opinion

18 on the point any extra of the force in this context that

19 we're busy with?

20 MR RAMPHELE: It is very relevant. It is

21 actually – because remember, Chairperson, that we have

22 cross-examined witnesses and time and time again the issue

23 of how the situation changed after the 11th is actually the

24 crux.

25 CHAIRPERSON: Mm.

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1 MR RAMPHELE: And either the union has to

2 admit that what happened on the 12th they contributed to and

3 that that was the turning point, or the union can say that

4 no, this situation has been volatile all along, as

5 sometimes the evidence wants to suggest.

6 CHAIRPERSON: The difficulty I've got is,

7 this witness wasn't on the scene except for apart from what

8 happened later on – except he arrived on the afternoon of

9 the 12th at round about one o'clock, as I understand,

10 received reports and then went and spoke to the

11 representatives of Lonmin but he hasn't got any knowledge

12 of his own, dealing with the other matter that you referred

13 to. So how can anything he says on the point that you, the

14 subject of your question, assist us to make any findings

15 either in your favour or against you on the points you wish

16 to argue?

17 MR RAMPHELE: Yes. Chairperson, if the

18 terms of reference were saying Mr Zokwana, as president,

19 should or shouldn't have done one or two things, then I

20 would probably agree with you. The terms of reference

21 refer to a union, he is a leader of that union. The union

22 is supposed to have given a report on their activity on the

23 11th, or otherwise. And the response that this terms of

24 reference requires is not a personal response, it is an

25 organisational response.

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1 CHAIRPERSON: The union – he's here as a  
 2 witness, he's not here as a spokesman for the union, able  
 3 to make statements binding the union. At the end of the  
 4 matter, of the first phase, there'll be argument from the  
 5 various parties and NUM's counsel will be able to make  
 6 admissions or not, as the case may be, on behalf of NUM, in  
 7 respect of the issues you wish to raise but I'm not – it's  
 8 not at all clear to me how any statement he makes in his  
 9 capacity as a witness, not – he's not NUM, he's just Mr  
 10 Zokwana who happens to be president of NUM who has  
 11 knowledge about certain things that happened over the  
 12 relevant period. I'm not sure that anything he would say  
 13 with regards to the question you've asked will assist us.  
 14 MR RAMPHELE: He has said a lot of things  
 15 about things that he actually does not have personal  
 16 knowledge of. He has been –  
 17 [14:26] CHAIRPERSON: That is true and I allowed  
 18 many of those questions to be asked and answers to be  
 19 given, in the absence of objection, I don't think it  
 20 appropriate for me to appear to be more pro-NUM than NUM's  
 21 own counsel was, so that was why I allowed these questions  
 22 to be asked and inasmuch as he's a trade unionist and able  
 23 to speak with experience and understanding in many of these  
 24 matters, I allowed them but I'm not – I think that we've  
 25 gone even beyond the extended boundaries, which I allowed

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1 up to now.  
 2 MR RAMPHELE: Chairperson, I do  
 3 understand where the Chairperson is coming from, it's just  
 4 that I think the issue of the turning point is actually  
 5 very important for the Chairperson to either say – there  
 6 was cross-examination by, say, Mr Mpofo on what might or  
 7 might not have happened on the 11th and that was canvassed  
 8 quite extensively. And the Commission, the Commission is  
 9 going to hold a view on that, dependent on what he said in  
 10 relation to the 11th. Now, it would be –  
 11 CHAIRPERSON: [Inaudible] answer he gave,  
 12 is there a specific answer that he gave in answer to the  
 13 cross-examination to which you've referred which you wish  
 14 to discuss with him and which you wish to challenge because  
 15 if there's – if what you're asking relates to specific  
 16 answers he gave that you ought to challenge, I'll obviously  
 17 allow you to do that, subject to Mr Tip who turned his  
 18 microphone on a moment ago. But anyway, if you assure me  
 19 that you're only going to ask him about things he said that  
 20 you ought to challenge, subject to what Mr Tip says, I'll  
 21 allow you to ask the question but let's hear what Mr Tip  
 22 has to say.  
 23 MR TIP SC: Thank you, Mr Chair. The  
 24 question as framed is objectionable on another ground. The  
 25 question is based on the proposition that before the 11th,

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1 all the security records and occurrence book entries kept  
 2 by Lonmin reflect an entirely peaceful environment. That  
 3 proposition is factually wrong and evidence has been placed  
 4 before the Commission of the number of entries made by  
 5 security personnel of Lonmin in the course of the evening  
 6 and night of the 10th to the 11th, there were numerous  
 7 incidents of intimidation. Direct evidence has been given  
 8 here by, amongst others, Mr Setelele who accompanied the  
 9 NUM Quantum in the course of that night, speaking about  
 10 incidents of intimidation, of people who were evidently  
 11 preventing others from going to work, threatening those NUM  
 12 members in the Quantum, so that if my learned friend wants  
 13 a turning point then he must not look at the morning of the  
 14 11th of August, he must look at the evening of the 10th of  
 15 August and he must direct his attention not to Mr Zokwana  
 16 on behalf of NUM but to the strikers.  
 17 CHAIRPERSON: What do you say about that?  
 18 MR RAMPHELE: Whatever senior counsel Tip  
 19 is referring to, is not what we have as evidence of a group  
 20 that we're talking about. It's some information about  
 21 maybe things that happened between one or two or maybe a  
 22 number of individuals but we're referring to a situation  
 23 where you had an identifiable group of rock drillers having  
 24 grouped themselves with a particular purpose of venting  
 25 either their anger or frustration and working in unison.

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1 And when all of the clips that are being referred to, are  
 2 instances where you actually had groups of people that were  
 3 either singing – the one was, I think, on the 10th where the  
 4 singing was happening right in front of the Lonmin security  
 5 and there was no threat of life or damage –  
 6 CHAIRPERSON: Sorry to interrupt you but  
 7 it would be helpful if we looked at the exhibit XX2. If  
 8 you look at page, it looks like 23, this deals with the  
 9 10th. Do you have that page in front of you? You will see  
 10 that at 16:30, that's 4:30 in the afternoon, there's an  
 11 entry, "Intimidation at Wonderkop" it looks like "NUM  
 12 offices, complainer T Mahalu" and there's a reference.  
 13 Then at 17:15 on the 10th August, "Information received from  
 14 PPL hostel manager," et cetera so he received the  
 15 information, PPL hostels will be intimidated when they want  
 16 to go to work. Then there's an entry later on, 18:25 –  
 17 that's 6:25 in the evening – "K3 manager report of  
 18 intimidation of employees going to work." And then there's  
 19 another one – ja, those are the main entries, as far as I  
 20 can see –  
 21 MR RAMPHELE: Yes.  
 22 CHAIRPERSON: - relating to the 10th. So  
 23 the question based on the proposition that nothing happened  
 24 before the beginning of the 11th, isn't factually correct,  
 25 so Mr Tip is correct. May I suggest you withdraw both the

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1 questions, both of them and reformulate your question which  
2 deals with the point that you raised with me. You said in  
3 answer to a question I raised with you actually, something  
4 that the witness said in answer to Mr Mpfu that you wish  
5 to challenge, that you can obviously do and as long as you  
6 don't base it on an incorrect premise as to what happened  
7 on what date then Mr Tip won't object. So would you like  
8 to reframe the question in a way that will meet the points  
9 raised?

10 MR RAMPHELE: Thank you, Chair. Just as  
11 a point of clarification, the intimidations that you have  
12 read, do they relate to the – are they specific as to where  
13 they came from?

14 CHAIRPERSON: I read the reference in the  
15 logbook and it seems clear in the context of all these  
16 entries what they're about. I have no more information  
17 than is in the logbook.

18 MR RAMPHELE: Yes.

19 CHAIRPERSON: So it's no good asking me  
20 anything about that because I know even less than Mr  
21 Zokwana knows and he knows nothing.

22 MR RAMPHELE: It is my submission that in  
23 a mine situation, you have a strike, intimidation could  
24 come from anywhere but evidence that we have of  
25 intimidation or of conduct that is before the Commission

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1 that we have on record, on clips, is information of a group  
2 or video clips of a group singing, either with sticks and  
3 what – my submission to you, Chair, is that before the 11th  
4 this group had been singing and there was, at least on the  
5 clips that were taken by Lonmin security, no one instance  
6 where they said there was intimidation.

7 CHAIRPERSON: There are other entries  
8 that there was intimidation.

9 MR RAMPHELE: Yes.

10 CHAIRPERSON: Now there's no evidence  
11 that there was some phantom group or alternative group who  
12 were going around with other acts of intimidation that  
13 aren't –

14 MR RAMPHELE: We don't –

15 CHAIRPERSON: - highly unlikely, so I  
16 think your question must have some basis in reality.

17 MR RAMPHELE: Alright.

18 CHAIRPERSON: Anyway, I've given you what  
19 I'd like to think is friendly advice, to reformulate the  
20 question along the lines we've discussed and then I'll  
21 allow you to ask it.

22 MR RAMPHELE: Okay. Mr Zokwana, did I  
23 hear you in your evidence stating that you do not consider  
24 that NUM should be blamed, either in whole or in part, for  
25 the incident that happened at the Lonmin office on the 11th

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1 August? NUM offices, the one next to the satellite police  
2 station.

3 MR ZOKWANA: Thanks, Chairperson. The  
4 question has been raised by counsellor Mpfu and my answer  
5 to it was that it is this Commission which will have to  
6 verify the information and as far as I'm concerned NUM shop  
7 stewards who were in the office saw it fit to defend the  
8 office and defend their lives. Whether that would be  
9 putting blame to the NUM for that day, I think this  
10 Commission has been supplied with statements of our people  
11 who were at the office, so I cannot sit here and judge  
12 whether that information is enough to find guilty with the  
13 union but [inaudible] Chairperson, for showing page 23 of  
14 this report which details events before the 11th, for I say  
15 that, Chairperson, you are only interested on the 11th, you  
16 want to make it the day on which everything was based on.

17 MR RAMPHELE: You have also in your  
18 evidence said that if you look at the conduct of NUM, this  
19 is what one can call an isolated incident, hat it does not  
20 happen often.

21 MR ZOKWANA: I said that – not only  
22 saying that, I said that no contrary evidence has been  
23 presented to show otherwise. If it was a norm, it could  
24 have been carried beyond the 11th as people's lives were  
25 being threatened.

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1 MR RAMPHELE: You also said in your  
2 evidence that NUM would not resolve issues by giving  
3 violence back.

4 MR ZOKWANA: It's what I said.

5 MR RAMPHELE: And I take it that, I mean  
6 if you really want to help the Commission, where you see  
7 weaknesses you'll be the first to admit that there's a  
8 weakness here we need to correct. Is that how we should  
9 deal with this Commission?

10 MR ZOKWANA: I think the –

11 CHAIRPERSON: Sorry, Mr Zokwana. Surely  
12 he can only give evidence along the lines that you've  
13 indicated where he has personal knowledge, otherwise he  
14 would just be giving his opinion as to the weakness of some  
15 witnesses and strength of others. Won't he be usurping the  
16 functions of the Commission, which is something that he  
17 shouldn't be allowed to do?

18 MR RAMPHELE: No, Chairperson, I wouldn't  
19 like him to usurp the function of the Commission and I'm  
20 sure you don't want that to happen but I think we want a  
21 country where, if there are weaknesses in the system of  
22 organisations that are led by leaders in the country, then  
23 those leaders would then look back in the weaknesses and  
24 say there's a weakness here, let's see how we correct it,  
25 because without that attitude we're going to have

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1 recurrence and leaders will, every time – and this is the  
2 approach that I think we are – I'm sort of trying to get  
3 out of our leaders that are giving evidence here, that you  
4 cannot have in a country where you have such a serious  
5 incident that very important stakeholders, instead of  
6 looking at what has actually happened and admitting where  
7 there are weaknesses, they go into a laager and become  
8 defensive, because I mean whether it's the job of the  
9 Commission or not, it is, I think, the responsibility of a  
10 social partner that is as important as NUM that if there's  
11 a problem they should be able to assist and say, you know,  
12 we have a problem here. Not only will they be assisting  
13 future processes of Lonmin, I mean as one of the biggest  
14 unions in Africa, not the country, they will also be  
15 assisting unions that are coming after it to take  
16 responsibility where it is necessary to do so.

17 CHAIRPERSON: What you say may be true  
18 for statements made from public platforms but where you  
19 have a Commission which is sitting as a fact finding  
20 tribunal, in effect, to find the facts, we should not allow  
21 ourselves by people who haven't personal knowledge of the  
22 facts but just come to express their opinions and then  
23 we'll have other people coming and doing the same and the  
24 inquiry will be unnecessarily lengthened by longer evidence  
25 which in fact takes the matter no further. It's for us to

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1 decide on the evidence before us whether NUM can be blamed  
2 for some of the things that you're referring to and what  
3 the personal opinion of the president or the vice-president  
4 or the secretary or the treasurer of NUM is on those  
5 matters, is a matter of no concern to me. So I disallow  
6 the question.

7 MR RAMPHELE: Thank you, Chairperson. Mr  
8 Zokwana, would you still stick by your evidence that as a  
9 leader of NUM you cannot apportion blame to anyone and that  
10 except for a rival union that you have mentioned and that  
11 the Commission, you leave everything, to take a decision.

12 MR ZOKWANA: I will be happy if,  
13 Chairperson, I will not be – my statement will not be taken  
14 as read. Where I mentioned the issue of a rival union and  
15 what I presumed to be allegations, I was called to order  
16 and I retracted that statement. I am saying that up to a  
17 stage where it is shown, because I've seen your line, you  
18 have been trying to curtail anything that happened before  
19 the 20 – the 11th, to be non-existent even though people  
20 were sent to hospital injured. To you it is a non-issue,  
21 the issue has become the issue on the day there is this  
22 incident at the NUM office and I'm still saying if the  
23 Commission would find, no matter to extent NUM could have  
24 erred, NUM will deal with that but I'm not going to submit  
25 that NUM is guilty without giving concrete evidence as to

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1 what you are accusing NUM of having done.

2 MR RAMPHELE: And you have personal  
3 knowledge that other unions should actually be looked at  
4 because they are the ones to blame.

5 MR ZOKWANA: I have never accused of any  
6 union – in my statement we can re-look it. I said that  
7 what must be investigated is the implications of the  
8 allegations, rumours made by certain individuals, unions -  
9 I've not been, I didn't say that and I object to your line  
10 of trying to bring, of even regarding the employees as a  
11 group, being a union, being small and I don't know what  
12 your line of questioning is but my answer to your question  
13 is, NUM is not accusing anybody of having been behind the  
14 strike except to say that it wonders, it creates a worry to  
15 me that workers could behave the way they behaved and I  
16 even said there should be a check if anybody was behind it  
17 who could have – in the strike going forward. And I think  
18 it is this Commission and through your own evidence, if you  
19 believe that any union is involved, that could be – not  
20 what I think – that must guide this Commission.

21 [14:46] MR RAMPHELE: So in brief, you're  
22 actually just saying you don't have personal information or  
23 a view on who might have caused this, the Commission must  
24 see whether NUM caused it, whether AMCU caused it, whether  
25 any other factors might have caused it and therefore you

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1 actually just move out of the situation and say,  
2 Commission, check the facts and decide.

3 CHAIRPERSON: I'm not sure that's a  
4 question but I'd already indicated to you that any view  
5 that he may have on the matter is, as far as I'm concerned,  
6 irrelevant. We have to form a view at the end on the  
7 evidence. Whatever view he's formed on the evidence that  
8 he has, is of no concern to us. I've already ruled that.  
9 What you're now putting is an attempt to approach the same  
10 point from another angle and I'm not going to fall for it  
11 and I'm disallowing the question you haven't yet asked.

12 MR RAMPHELE: Let me just explain,  
13 Chairperson, why I'm asking this question because it's very  
14 important –

15 CHAIRPERSON: You're asking a question  
16 about –

17 MR RAMPHELE: His view is –

18 CHAIRPERSON: Give me a chance. I'll  
19 give you a chance in a moment. You're asking a question  
20 about his view and I've told you I'm not interested, we're  
21 not interested in his view -

22 MR RAMPHELE: Sure, sure.

23 CHAIRPERSON: You didn't help us. He may  
24 well have views but I've got to put some check on the  
25 evidence before us, I don't want to hear what his view is

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1 and the question you were asking was an attempt from the  
2 other side to refer to his view and that's what I'm  
3 disallowing. If you want to ask a question based on his  
4 own knowledge or something that he can legitimately answer,  
5 obviously I'll allow you to do so.

6 MR RAMPHELE: Chairperson, let me just  
7 put the context of my question –

8 CHAIRPERSON: Well, let me hear what your  
9 question – sorry, give me a chance. Firstly tell me what  
10 your question is –

11 MR RAMPHELE: Yes. The question is, in  
12 as far as he's given evidence on things that he has no  
13 personal knowledge of, ascribing blame to others that he  
14 says he cannot testify to and should not be considered, in  
15 the same way –

16 CHAIRPERSON: I'm sorry to interrupt you.  
17 He denies that he's attributed blame to anybody. He says  
18 he didn't attribute blame to anybody. He says there are  
19 other people who may be to blame but that's for us to  
20 decide, to investigate. What evidence are you referring to  
21 where he attributed blame to any other union or body?

22 MR RAMPHELE: Chairperson, I would not be  
23 able to recall the exact words that were used but there was  
24 a lot of insinuation of other unions that probably didn't  
25 have a majority, that the Commission must see whether the

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1 smoke is not coming from those unions. Now that is  
2 evidence and if a leader of a union says, well, I'm not to  
3 blame but check, check others –

4 CHAIRPERSON: No, sorry. I'm not sure  
5 that he said I'm not to blame. If he said I'm not to  
6 blame, they're to blame, then I can understand the question  
7 you want to ask. As I understand him – if I misunderstood  
8 him he must correct me – he doesn't express an opinion as  
9 to whether NUM is to blame, he says that's for the  
10 Commission to decide. He doesn't specifically name  
11 anybody. There may have been a bit of insinuation and  
12 innuendo but he appears to have abandoned that in the  
13 latest answers he gave because he says he doesn't blame  
14 anybody. So if that's what he says then you've achieved  
15 what you set out to achieve, namely to do away with any  
16 insinuation or innuendo which might be interpreted as  
17 blaming anybody so –

18 MR RAMPHELE: No, I –

19 CHAIRPERSON: Isn't that the long and the  
20 short?

21 MR RAMPHELE: I – I agree with you  
22 completely, Chair, it's just that there was a time when the  
23 questioning then came - do you think your shop stewards in  
24 defending the office, acted in a manner that is proper and  
25 that is where the issue of returning of violence was

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1 actually taken up and –

2 CHAIRPERSON: But here again you're busy  
3 with his opinion. Are you of the opinion that your shop  
4 stewards were negligent or acted illegally in doing  
5 something? Well, let's assume that he thinks they didn't  
6 act illegally or they didn't act negligently, does it take  
7 the matter any further? He wasn't there, we have to decide  
8 on the evidence as to whether it could be said that the  
9 shop stewards concerned were acting in accordance with the  
10 principles of private defence or whether they in fact went  
11 beyond what would be allowed under that doctrine. That's  
12 for us to decide on the evidence, isn't it? What he thinks  
13 about it –

14 MR RAMPHELE: Is not relevant.

15 CHAIRPERSON: I don't want to insult him,  
16 but what he thinks on the matter doesn't interest me in the  
17 least and it shouldn't interest you either.

18 MR RAMPHELE: Ja, Chairperson yes, I  
19 agree with you but we have to accept that members get a cue  
20 from the leadership and organisations take positions on how  
21 they would react in particular situations. Say, for  
22 instance, if defending NUM means that if they're advised  
23 that no, it's better that you leave, but the position of  
24 the organisation is that no, you don't leave the office,  
25 you stay on and defend – then that is not an opinion, it is

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1 a position of an organisation. And that is a position of  
2 the organisation that this Commission has to say, is this  
3 the position of the organisation or is it not. If it's the  
4 position of the organisation then obviously you have the  
5 situation where that position may actually have resulted in  
6 the conflict between the two unions and this is what I'm  
7 just trying to get because if it is the position of the  
8 organisation and it states –

9 CHAIRPERSON: Let's ask the question  
10 briefly, shortly – Oprah Winfrey style. Is it the position  
11 of NUM that it's the duty of shop stewards to stand and  
12 defend the office of NUM even if, in doing so, they go  
13 beyond what is permitted under the common law doctrine of  
14 private defence? Is that the position of NUM, never mind  
15 what the common law is, even if it's contrary to the common  
16 law NUM's shop stewards must still stand there and defend  
17 the office. Is that the position of NUM?

18 MR ZOKWANA: Thanks, Chairperson, for the  
19 question, it's better clarified now by you. The position  
20 of the NUM is not to indulge in violence. The shop  
21 stewards were faced with the situation where the company  
22 could not supply security. They saw it fit to defend the  
23 union. It does not represent our view that we should use  
24 violence to deal with such issues but I would like just,  
25 Chairperson, to check whether the counsel has got an



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1 instruction from the AMCU counsellor because –  
 2 CHAIRPERSON: No – no, that's not your  
 3 function. He's not appearing for AMCU anyway. No, I'm not  
 4 going to allow that. I think you've answered the question.  
 5 MR RAMPHELE: I think you didn't allow it  
 6 but it's very important. This is not about the union –  
 7 CHAIRPERSON: He wants to know –  
 8 MR RAMPHELE: - it's about security of  
 9 the country.  
 10 CHAIRPERSON: Give me a chance. He  
 11 wanted to know whether you got instructions from AMCU.  
 12 MR RAMPHELE: Yes.  
 13 CHAIRPERSON: You're not appearing for  
 14 AMCU.  
 15 MR RAMPHELE: No.  
 16 CHAIRPERSON: It's not a proper question  
 17 for him to ask you and I've – even though he's not allowed  
 18 to ask questions, I've disallowed that question on two  
 19 grounds, a) he's not allowed to ask questions and b) it's  
 20 an improper question anyway. So you don't have to worry  
 21 about that, that's off the table. Carry on with your next  
 22 question if you have any.  
 23 MR RAMPHELE: Chairperson, just that the  
 24 public perception is very important in this and it has to  
 25 be – it has to be emphasised, especially because of his

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1 position, that the Commission is not about this or that  
 2 union, it's about saving lives in situations of this nature  
 3 and we have to delve into weaknesses as we see them and  
 4 obviously, Chair, you will always be there to be, to stop  
 5 us where we go wrong but unless we go into it, the  
 6 perception may actually be wrong from the other side so –  
 7 CHAIRPERSON: I don't know whether you're  
 8 challenging the ruling I just gave or you're challenging –  
 9 MR RAMPHELE: No, no, I'm just saying  
 10 public perception and therefore the Chairperson, the  
 11 president should understand that I don't –  
 12 CHAIRPERSON: I'm sure Mr Tip will speak  
 13 to him privately afterwards. The public perception, I  
 14 hope, is that this Commission is concerned with one thing,  
 15 to ascertain the truth in respect of the questions we've  
 16 been asked by the President – no matter who, who may be  
 17 injured or hurt or dissatisfied at the answers we come up  
 18 with. That's our only objective, to ascertain the truth.  
 19 That's where it starts, that's where it finishes.  
 20 MR RAMPHELE: Yes, yes.  
 21 CHAIRPERSON: The public, I hope, knows  
 22 that already. If they don't know that already, I hope they  
 23 know it now. Please proceed.  
 24 MR RAMPHELE: Thank you, Chair. Mr  
 25 Zokwana, in concluding my assessment then – this is the

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1 submissions that I will make to this Commission - my  
 2 assessment is that part of what contributed to Marikana is  
 3 that there was complacency within NUM, not only as a trade  
 4 union but as an important trade union in the country.  
 5 Would you agree? And the complacency is reflected in how  
 6 NUM actually defines itself as having reached phase 6 and  
 7 they call it articulation phase and that that belief that  
 8 you have reached that stage actually created complacency  
 9 and that complacency created weaknesses in how you control,  
 10 or effective control and liaison with your ordinary  
 11 membership.  
 12 CHAIRPERSON: Just give the interpreter a  
 13 chance to interpret the question.  
 14 MR ZOKWANA: Thanks, Chairperson. I  
 15 disagree with your assessment. I understand it because  
 16 you're not in our confidence, you are reading a document,  
 17 the background that you don't have. In essence, if NUM  
 18 could have been complacent, it could have been before the  
 19 Impala situation. We're not, we understood the fact that  
 20 there are challenges. If you check our report thoroughly,  
 21 it outlines challenges and how best to deal with them. If  
 22 we were to say we're the best union in South Africa, nobody  
 23 overtakes us, well I would agree with you but unfortunately  
 24 you didn't read the report with the background  
 25 understanding, you were dealing with words. And when you

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1 speak of articulation, we always believe that as a union we  
 2 have got an obligation not always to engage others but to  
 3 offer ideas and we do that, without believing that others  
 4 don't exist. By the way, in the industry we are in, we are  
 5 not dealing with NUM alone. We have got other players –  
 6 Solidarity, UASA – and respect their views. So it's not  
 7 about us thinking we are the only union in the industry and  
 8 nobody is above us, no, but always when we articulate or –  
 9 our things, we look inwardly, we look at what weaknesses do  
 10 we have and how do we plan. We don't blame others outside  
 11 to say, because of so and so is happening. We always do  
 12 inward looking. So there's nothing, I mean further from  
 13 the truth that – we are not complacent as a union. We  
 14 believe we have got tasks to do, we believe we have got  
 15 challenges, we believe we have got weaknesses. Those are  
 16 the ones you have referred to. A person who is complacent  
 17 will not see weaknesses, will not look at challenges.  
 18 MR RAMPHELE: That this complacency is  
 19 actually what caused this catastrophe. 30 days, 30 years  
 20 under your watch where you have been involved and after 30  
 21 years of involvement you still have this catastrophe.  
 22 MR ZOKWANA: I don't think that you can  
 23 define disasters on the basis of years. The world globally  
 24 has gone through two disasters, two world wars and you  
 25 can't blame the fact that such occurrences happen. By the

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1 way, it is not the first disaster to happen in the mining  
 2 industry, for confirmation, sir. In the '90s we had a  
 3 situation where another union was on the scene. I can  
 4 mention their name because it did exist, called  
 5 [inaudible]. There was violence in Rustenburg, people were  
 6 killed, but it cannot be said unless your inclination is to  
 7 blame NUM as having caused this situation – and I repeat  
 8 that let the Commission, with your information at your  
 9 disposal, present the view that says NUM has been the  
 10 cause. And I still repeat that to link all this to  
 11 complacency is really, you have not yet assisted me to  
 12 understand the basis of your argument at all, other than  
 13 reading what you found in our document and what you have  
 14 said has not assisted me. So the fact that we are 30 years  
 15 in existence doesn't mean that there would be no  
 16 challenges. They have been there before, they will be  
 17 there tomorrow but it is the manner by which we deal with  
 18 them – and I've shown here and I will prove that we could  
 19 not be found to have adopted violence as an instrument to  
 20 solve problems. I have shown that instances where we are  
 21 working a strike, we choose to call it off than to continue  
 22 with a [inaudible] that was weakening. Currently, I said  
 23 the strike currently in [inaudible], which is legal, we are  
 24 not involved in that strike – not because we are cowards,  
 25 we respect the law. There are things we cannot do as NUM

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1 that's contrary to the law. We can't plunge our members to  
 2 an illegal strike when the law dictates what should be done  
 3 to make the strike legal and get it on. So therefore,  
 4 Chairperson, I think as a senior – as a counsel of your  
 5 client you have a right to present whatever conclusion you  
 6 want to put forward and I'm sure NUM will challenge that,  
 7 as long as you bring facts.  
 8 [15:06] MR RAMPHELE: And the complacency is  
 9 actually confirmed by you, both in your address to your  
 10 conference and in your evidence today, that even though  
 11 some of the people that died, like Fundi, are you members,  
 12 Mabebe your member, you have not as a union at least gone  
 13 to those members and said this is what happened, this is  
 14 how we thought it would happen, it didn't happen this way,  
 15 so the uncaring that you referred to in your statement is  
 16 reflected by a union that almost three, four months down  
 17 the line has not visited a family of a fallen member that  
 18 they said must go back to work.  
 19 MR ZOKWANA: Thanks, Chairperson. If the  
 20 counsel has come to a conclusion on NUM, I can't assist him  
 21 but what I've shown here is to say that I have spoken to  
 22 the family members who represent, telephonically and in  
 23 person. I have articulated our sympathy with the family, I  
 24 have promised to visit them - unless you are saying what  
 25 I've said is not true. If you choose to put NUM in a light

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1 that you have chosen, I cannot be able to go and refute  
 2 that but I believe when this Commission has sat, it will  
 3 not be based on whether we have visited those families or  
 4 not, it will be the presentation of information I expect  
 5 you to present, compelling to prove that NUM was not only a  
 6 player that led to where we are and I've shown that if some  
 7 conclusion is reached, NUM is better placed to deal with  
 8 that because we are concerned about people, sir. We are  
 9 concerned about the loss of life. We exist to make sure  
 10 that the rights of mineworkers are recognised. You cannot  
 11 therefore judge us on the fact that we could not visit  
 12 those two families. I have spoken to them, I know where  
 13 they are – unless you can prove me lying on that basis,  
 14 that the sister of Mabebe is not currently staying in  
 15 Randfontein, nor that NUM has met with her. So if you have  
 16 got other issues, sir, with NUM, I'm sure you will present  
 17 that evidence before this Commission and I am concerned – I  
 18 would not play the issue of caring to cloud over any other  
 19 weakness that the Commission may find, Chairperson. I'm  
 20 concerned, like another person, as to say didn't we see the  
 21 signs of this happening, how ready were we to deal with it?  
 22 But to come here and present NUM as the uncaring union to  
 23 the extent that it could participate in the murdering of  
 24 its own members is really, sir, a strong statement to make  
 25 but I leave it to you because I'm sure you're going to

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1 prove that. If telling the truth, Chairperson, represents,  
 2 I mean, complacency, I may be failing to understand what  
 3 complacency means.  
 4 MR RAMPHELE: No, and it's this issue  
 5 that you have almost 65 000 members, say for instance in  
 6 Rustenburg alone, has actually created a situation where  
 7 your ordinary member, as in my client, and the leadership  
 8 has become too far and therefore that is why it is so  
 9 normal for you, after four months, to say I am still going  
 10 to visit that family. What has happened to the family  
 11 since they saw a defaced father [inaudible], having paid  
 12 premiums for years to NUM to protect that mineworker? You  
 13 see that is what I'm talking about and I'm saying – I'm not  
 14 saying that NUM is the only union to blame but I'm saying  
 15 there is more that NUM could do or can do to make sure that  
 16 those members relate to it and are protected better.  
 17 MR ZOKWANA: Thanks, Chairperson. You  
 18 know some words have been barbed words, like this one of  
 19 social distance between leaders and members, sometimes  
 20 distorted [inaudible]. If you have to understand, sir, the  
 21 structures of the union, it is not a head office with  
 22 members alone. There are structures below that. In every  
 23 section there will be a section shop steward linked with  
 24 those members and up until you will understand the scenario  
 25 that happened in Lonmin and appreciate it, than to be a

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1 judge that judges NUM in the light you have done, without  
 2 allowing it to present its own case. I'm saying this  
 3 because if all our shop stewards or leaders of the branch  
 4 could have been present, I'm not making an excuse in the  
 5 fact – maybe the situation you are detailing is – could  
 6 have changed, but I found it also presenting something  
 7 else, that the only statement or point you can cling to, to  
 8 prove NUM otherwise, is the fact that we did not visit the  
 9 families in question. I've dealt with that question when  
 10 it was raised by AMCU counsel. I have raised it when Mr  
 11 Mpofo raised it and I have shown the circumstances under  
 12 which this event happened. By the way, usually when a  
 13 member has died – be it, Chairperson, due to a mine or – it  
 14 is the local branch committee that informs head office to  
 15 say so and so has passed on, on this date there will be a  
 16 funeral. Then we decide who goes. Without trying to be  
 17 defensive, at that point in time our shop stewards were in  
 18 hiding. That, in a way, weakened us. Hence when I met the  
 19 family of Fundi, may his soul rest in peace, because we  
 20 value his membership and again unless we can come to your  
 21 view that NUM did not care except for his contribution –  
 22 and I'm sure there are reasons why he valued of being a  
 23 member, unfortunately he's not here for him to tell that.  
 24 Any member of NUM has got a reason why he's in NUM. Most  
 25 of them will tell instances where they were on the verge of

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1 being dismissed, some of them have got kids in school  
 2 already who are studying through NUM, some of them have  
 3 seen the work we have done. I don't think we should be  
 4 judged on the basis that we couldn't attend those funerals  
 5 and I've told more than once that it is [inaudible] whether  
 6 I will go. I said as soon as I'm through with this  
 7 Commission I will be able to, because I will avoid going to  
 8 a place when I'm still under oath and I think that would be  
 9 used against me when I appear here. If you have checked, I  
 10 have not been – I've been avoiding any interview with the  
 11 media, knowing very well that those who want to hang NUM  
 12 will use it. I'm sure, Chairperson, the question –  
 13 CHAIRPERSON: I'm sorry – I'll take the  
 14 tea adjournment now and you can then make your remark you  
 15 were going to make after tea and you did say lastly a few  
 16 minutes ago but I'll give you an opportunity to gather your  
 17 thoughts during the tea adjournment so you can prepare your  
 18 final question.  
 19 MR RAMPHELE: I thought you were tired of  
 20 my asking questions.  
 21 CHAIRPERSON: No, on the contrary I want  
 22 to hear your questions –  
 23 MR RAMPHELE: Okay.  
 24 CHAIRPERSON: - with renewed interest  
 25 after the tea adjournment.

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1 MR RAMPHELE: Thank you, Chair.  
 2 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 3 [15:31] CHAIRPERSON: Mr Zokwana, you're still  
 4 under oath. Mr Ramphele, you've still got some questions?  
 5 SENZENI ZOKWANA (CONTD): Sorry,  
 6 Chairperson, before we broke for – I requested to clarify  
 7 one point to the issue raised by the counsel of NUM as  
 8 uncaring. It's not true that NUM did not visit the family  
 9 of Fundi. NUM did, I verify that [inaudible] to go there.  
 10 So it would not be because of their religion -  
 11 CROSS-EXAMINATION BY MR RAMPHELE (CONTD):  
 12 Are you saying there's a problem with communication? Let's  
 13 leave it. Let's agree, president – and you see, the words  
 14 you use I think confuse the intention or the objective of  
 15 my question. I'm not saying NUM is guilty of anything.  
 16 I'm saying there is room for improvement in liaison with  
 17 ordinary members by the NUM. Are we – can we put it that  
 18 way and agree? That is the submission that I'm going to  
 19 make to this Commission.  
 20 MR ZOKWANA: That was the context in  
 21 which the word "complacency" was used, that we need to make  
 22 sure that our interaction with members is improved, our  
 23 ability to listen to their views taken into account.  
 24 MR RAMPHELE: And that if it can be  
 25 worked on and that there could be satisfactory improvement

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1 in this area, then the issue of effective control of  
 2 members will also improve as a result.  
 3 MR ZOKWANA: I would differ with this  
 4 view you are saying, it would improve control, because that  
 5 is subjective to particular conditions and if that was the  
 6 case, I mean NUM has got so many operations it is  
 7 participating in and only in two operations has that  
 8 control, in a way as you put it, could have been lost and  
 9 I've put here as to how that control was lost. So it would  
 10 be wrong to judge NUM wholly on the basis of two incidents  
 11 and I believe that when the process has gone, other  
 12 evidence may prove that these members did not act entirely  
 13 on their own but it's a view I'm only putting now as an  
 14 opinion. I'm not going to [inaudible] what do I mean by  
 15 that but my view is this, that these members of NUM for 30  
 16 years could not have woken up one day and believed that NUM  
 17 is not satisfying them, without coming with tangible, sound  
 18 reasons, but resort to the form they resorted to.  
 19 MR RAMPHELE: And further it will be a  
 20 submission that once the opposite has been achieved, then  
 21 your description of foresight, of trouble, will be greatly  
 22 enhanced and in future you will be able to know that we  
 23 have a very volatile situation, let's deal with it and deal  
 24 with it on time.  
 25 MR ZOKWANA: Well, I would be reluctant

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1 to take that line as if the incident on the koppie or  
 2 before the koppie were caused by lapses in NUM's foresight.  
 3 Yes, I admit that lessons will be drawn from this by all  
 4 parties involved in as far as how do we deal with this, how  
 5 do you become educational because it's not only NUM failing  
 6 – I wonder if workers could have understood those who  
 7 embark on this strike, thoroughly, the consequences of an  
 8 illegal strike, no matter whether NUM told them or any  
 9 other agent. And therefore it's difficult for me to say  
 10 only NUM will have foresight to deal with this because if  
 11 the foresight will be based as to the normal organisational  
 12 practices, I will say yes, but we are dealing with a  
 13 situation which was not the normal way of doing things.  
 14 Workers have gone on illegal strikes, we have dealt with  
 15 that, but this case of people being armed, ready to kill  
 16 even their own shop stewards, was something unheard of. So  
 17 foresight, yes, but I think the context must not be seen to  
 18 be because NUM was sleeping, therefore they have woken up  
 19 now to see that things have changed. Yes, I agree with you  
 20 that this should be – if you are saying this incident  
 21 before, after the Commission has done its work, should be a  
 22 lesson of us not repeating it, the role of tribunals to  
 23 study the current Labour Relations Act, the processes to be  
 24 followed of declaring a dispute and going through  
 25 processes, the issue of not encouraging illegal strike –

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1 but we need to speak clear and louder than no form or no  
 2 amount of anger should ever justify the processes that  
 3 people have gone through.  
 4 MR RAMPHELE: And what I have said about  
 5 the issue of liaison, I say in that very context that what  
 6 we have seen with your members feeling that they were not  
 7 given support, can be improved and if that were to happen  
 8 you are going to probably have a more harmonious workplace,  
 9 which is the ultimate objective of the union and that if  
 10 anything or anyone forces one of your members to do  
 11 otherwise, you would be the first to hear and not hear  
 12 after 45 people have died.  
 13 MR ZOKWANA: I don't think that statement  
 14 seems to suggest that NUM, the reason that people died is  
 15 because NUM didn't know that there's dissatisfaction. If  
 16 you look at the interaction and the role that NUM played  
 17 calling mass meetings, warning people against these acts,  
 18 if that is not enough as a union without powers to police  
 19 and do those things – but nonetheless I repeat, this should  
 20 not only be a lesson to NUM but to all parties involved and  
 21 in my view even the ministry in question, the Ministry of  
 22 Labour, should be in a position to put its foot down on  
 23 unions it has registered to work within the norms of trade  
 24 unions and I repeat it should, your conclusion should not  
 25 be seen as, I begin to feel that it is sent to portion

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1 blame on NUM that NUM didn't know that people were angry.  
 2 NUM could not know that people were going to take up arms  
 3 and kill other people because it's not a norm of what  
 4 should be happening. We saw this [inaudible] in Impala, it  
 5 became worse in – but you need not even for a moment to  
 6 begin to seem to condone that kind of behaviour.  
 7 MR RAMPHELE: I don't have qualms with  
 8 what you're saying. The only thing that sort of like comes  
 9 up as a question to me is, would you be happy if what  
 10 happened – and as we have heard, some of the people that  
 11 were involved were actually NUM members – obviously the  
 12 issue of not knowing how they felt, to the extent that they  
 13 actually engaged in that type of group, should be something  
 14 that is concerning to a union. I mean as – and that for  
 15 the future as a union you would like to have such contact  
 16 with your members that you don't have as many as the ones  
 17 we have seen deviating so far from what you believe.  
 18 MR ZOKWANA: I have shown this Commission  
 19 that the most participating period in the NUM is during  
 20 negotiations or when issues of finances are being mentioned  
 21 and I was doing that because in a normal situation where  
 22 people speak about other things, you won't have many people  
 23 attending. And I think the Commission in its work will  
 24 have to – I mean will, not have to, will assess the causal  
 25 of the statements that allegedly were made by other people

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1 against, saying that NUM was party to the employer, NUM was  
 2 against the negotiations, NUM was party to the killing of  
 3 two – and all those things. Because remember these people  
 4 didn't have, NUM didn't have recourse to go and say, this  
 5 being said is not true. Now what I'm saying is, before you  
 6 want to come to a view that says it was due to NUM's  
 7 distance from members that caused those – I don't think  
 8 that that's necessarily the answer because I repeat to say  
 9 that this, these people could not have acted in the way  
 10 they acted. One, they believed that the amount is  
 11 attainable, that's why they joined the strike but in as far  
 12 as what happened to those who were leading the strike,  
 13 anti-NUM sentiments and all those things, what role could  
 14 they play to turn those people against NUM? So I wonder if  
 15 there were not such allegations or rumours made that  
 16 everybody could have believed what he was told.  
 17 MR RAMPHELE: Now this is the very last  
 18 question. What you have said, I agreed with and I still  
 19 agree with it. All I'm saying is forget about the third  
 20 force or whatever you want to call – other outside factors.  
 21 I'm just talking about, because the terms of reference is  
 22 effective control of your members, so I want you to leave  
 23 out the others and say me, my member. And I'm saying if  
 24 there was a closer contact, what the others that you are  
 25 referring to were doing, you could have known, you could be

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1 having statements of people coming to you and saying, you  
 2 know, as a member I have this problem, so and so is saying  
 3 this and what do you say, is this possible or not – so that  
 4 that interaction gives not only control but belief of that  
 5 member of what you can achieve as a union. So I'm not  
 6 talking about others, I'm just talking about you and I'm  
 7 talking about the members that you say turned against you  
 8 and did something. I said if there could have been a  
 9 closer contact with those members you could have  
 10 appreciated either their doubt, frustration or fear. And  
 11 maybe I should finish this by saying – and I'm not saying  
 12 you are guilty because you are not guilty of this – I'm  
 13 saying there is room to improve in that area.  
 14 [15:51] MR ZOKWANA: Thanks. I think one needs  
 15 to understand the situation in Lonmin because there were  
 16 about five to six meeting were held at Impala – at the  
 17 Karee site of Lonmin and I'm sure you can do your research  
 18 as to what formations were playing there at Karee that led  
 19 – because it spread to the south and other areas. But  
 20 again I want to tell you this, when a person tells a lie he  
 21 has no obligation of explaining it to those because in most  
 22 cases people believe. If I'm told that you are – if I  
 23 spread that you are something you're not, without you being  
 24 able to explain that, in most cases that which I said,  
 25 people believe. And I'm saying, people were saying we can

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1 get you – in Karee these people approached management  
 2 without the union. Management gave them R700 and  
 3 [inaudible]. Obviously they believed that we can do more  
 4 but why, it began at Karee and the question I think we need  
 5 to analyse, what could have been the other influences – not  
 6 making allegations here, just saying in facts that it  
 7 started in Karee, from Karee to other mines and I'm saying  
 8 they need to understand then the Karee formation at that  
 9 point. But lastly, to your question – it would not, I have  
 10 said this [inaudible], if NUM would be found to have  
 11 weaknesses, it is the first one to say yes, there are, but  
 12 we are not going to follow the lines of saying because  
 13 you're saying it, therefore there are weaknesses. I  
 14 believe that the branch, the shop stewards had access to  
 15 this, they were aware of this immediately it cropped up.  
 16 They tried their best to interact with the people  
 17 concerned, hence a number of meetings were held but the  
 18 attitude of the RDOs was that we don't need you, we will do  
 19 it our own way. Maybe they gained the view that the  
 20 employer has given us the R700 without the unions, we could  
 21 push. If that is the case, I'm sure the evidence will  
 22 show. If somebody else was involved I think that will come  
 23 as well. I can't make accusations here but I repeat to say  
 24 if there were to be a case that shows that NUM could have  
 25 had [inaudible] – remember we are not dealing with an

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1 ordinary situation where people are angry, want money. It  
 2 has happened before. If they distrusted the local  
 3 leadership of the branch, when national arrived they would  
 4 have been happy to say, thanks that you have come, these  
 5 are issues for discussion. It has happened before, we have  
 6 stopped illegal strikes through that motion but for them to  
 7 say no NUM at all was really an issue I'm still staggering  
 8 to appreciate or understand. I hope that when every  
 9 evidence is given, I will be clearer.

10 MR RAMPHELE: This is - the last question  
 11 for the day from me. Given a similar situation in the  
 12 future, are you saying that you are going to behave, as a  
 13 union, in the same manner you did preceding Marikana up to  
 14 the catastrophe or would you say that you would say to  
 15 South Africa, we would do things differently so that this  
 16 thing should not happen? That, was it 100% of what you  
 17 could do, was it your full capacity?

18 MR ZOKWANA: First answer, as a union we  
 19 could only engage the employer and try to persuade our  
 20 members but this morning the Chairperson raised a very  
 21 important question of saying had we put forward to the  
 22 employer that he closes down the operations and sends  
 23 people wherever, home, to cool off and I'm saying that this  
 24 is what has been done and we've been involved in that  
 25 process with, that when the operations were stopped they

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1 are now engaging into processes to do with that going  
 2 forward. And of course from this I'm sure lessons have  
 3 been drawn, not only by NUM, by many parties, many  
 4 stakeholders. I think companies must decide in future as  
 5 how do they respond but I don't think that it must be  
 6 saying it is normal for people to carry weapons and kill  
 7 others. I think the right to strike is entrenched in our  
 8 Constitution, it's clarified in our law as to what you  
 9 should be doing. I don't think we should, counsellor, work  
 10 as if we are saying it should be a norm for you to go on  
 11 illegal strikes and beat up. In my language they say "n  
 12 beloofte is 'n beloofte," to say that was your last question.

13 CHAIRPERSON: Ek het nie geweet dat dit  
 14 jou taal was nie.

15 MR RAMPHELE: Nee, dit maak skuld, dit  
 16 maak skuld.

17 MR ZOKWANA: Ek stem saam.

18 MR RAMPHELE: Ja – no, thank you, Mr  
 19 Zokwana, that was my last question. I just hope that you  
 20 will draw lessons and then you will conduct NUM affairs in  
 21 such a manner that we don't have the catastrophe we had in  
 22 the future and I hope, I wish you strength in that. Thank  
 23 you, Chairperson.

24 CHAIRPERSON: Do I understand that there  
 25 are no questions from the LRC? Mr Semenya, there was a

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1 question raised as to whether questions were going to be  
2 asked on behalf of the Minister of Safety and Security and  
3 Police and are you proposing to ask such questions?

4 MR SEMENYA SC: Yes, Chair.

5 CHAIRPERSON: Can you ask them by four  
6 o'clock?

7 MR SEMENYA SC: Yes, Chair.

8 CHAIRPERSON: Try anyway.

9 CROSS-EXAMINATION BY MR SEMENYA SC: Mr  
10 Zokwana, the evidence relating to the contact, the  
11 telephone contact with the Minister, recall that? Do you  
12 recall that evidence?

13 MR ZOKWANA: Yes.

14 MR SEMENYA SC: For the record, it will  
15 not be disputed that such a conversation happened. Do you  
16 note that?

17 MR ZOKWANA: Yes.

18 MR SEMENYA SC: Also that the request  
19 that there should be more deployment of police presence in  
20 Marikana because of the events, right?

21 MR ZOKWANA: Yes.

22 MR SEMENYA SC: That too, for the record,  
23 is not in dispute. Do you note that? More importantly,  
24 should the evidence be required, what the Minister did was  
25 to relay your request to the operational people.

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1 MR ZOKWANA: I understand him to say he  
2 will, of course, deal with it in - I don't expect the  
3 Minister to take a decision to say I will send so many, but  
4 he was in a position to make it clear of what they need to  
5 do.

6 MR SEMENYA SC: Those are the questions,  
7 Chair.

8 CHAIRPERSON: Mr Madlanga, any questions  
9 you wish to ask the witness?

10 MR MADLANGA SC: After so many questions,  
11 Mr Chairperson, there are none, thank you.

12 CHAIRPERSON: No questions. Do any of  
13 the parties who haven't yet had an opportunity wish to ask  
14 any questions in cross-examination? No. Mr Tip, how long  
15 are you going to be in re-examination? I understand that  
16 depends on the length of the answers as well but can you  
17 give me an indication?

18 MR TIP SC: It does. Mr Chair, I propose  
19 to re-examine on one topic only but, with interpretation,  
20 it is likely to take about 20 minutes.

21 CHAIRPERSON: We will - it seems then  
22 appropriate for us to take the - to adjourn at this stage  
23 until 9:30 tomorrow morning.

24 [COMMISSION ADJOURNED]  
25

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