

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 291

15 SEPTEMBER 2014

PAGES 37906 TO 38126



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Page 37906

1 [PROCEEDINGS ON 15 SEPTEMBER 2014]
 2 [09:36] CHAIRPERSON: The Commission resumes.
 3 This is the second-last day on which we'll be hearing
 4 evidence, so I want to appeal to everybody that when we
 5 take the breaks to make it short, only quarter of an hour.
 6 We're starting again at half past 1 after lunch. Please,
 7 everyone must be back by half past 1. We're going through
 8 to quarter past 4 because there's only one day left after
 9 today for us to make up any lost time and so we must from
 10 our side bear that in mind, but we ask everybody else to do
 11 so as well. You're still under oath, Mr Mokwena.
 12 BARNARD OLEFILE MOKWENA: [s.u.o.]
 13 CHAIRPERSON: You were going to, I think
 14 you were going to deal with one point still possibly in
 15 evidence-in-chief based on a document you got at a late
 16 stage. Is that correct, Mr Bham?
 17 MR BHAM SC: I need not deal with
 18 anything further.
 19 CHAIRPERSON: Is that the –
 20 MR BHAM SC: That's the close of
 21 examination-in-chief. So Mr Wesley, can you please
 22 announce who's going to cross-examination and what times?
 23 MR WESLEY: Thank you, Chair. The
 24 families are allocated 45 minutes, AMCU have 170 minutes,
 25 SAPS –

Page 37907

1 CHAIRPERSON: How long?
 2 MR WESLEY: 170. It's two hours and 50
 3 minutes –
 4 CHAIRPERSON: It's an interesting number.
 5 MR WESLEY: It is, Chair. SAPS have 60
 6 minutes. The Human Rights Commission have 30 minutes. The
 7 Legal Resources Centre –
 8 CHAIRPERSON: The Human Rights Commission
 9 have 30?
 10 MR WESLEY: 30, Legal Resources Centre
 11 45, the evidence leaders have 45 and the injured and
 12 arrested have 60.
 13 CHAIRPERSON: Well, there may well be
 14 substantial measure of repetition which I hope will be
 15 avoided, so it may be that all the time that's been
 16 allocated may not have to be used, but that's something
 17 that we will see in due course. Very well, who's going to
 18 cross-examine on behalf of the families?
 19 MS BARNES: Chair, I'm in fact going to
 20 go first by agreement and then the –
 21 CHAIRPERSON: You're AMCU?
 22 MS BARNES: Mr Ntsebeza will follow me.
 23 CHAIRPERSON: You're AMCU, so –
 24 MS BARNES: Yes.
 25 CHAIRPERSON: So who'll be following – Mr

Page 37908

1 Ntsebeza?
 2 MS BARNES: Yes.
 3 CHAIRPERSON: I see. The arrangement
 4 being designed to ensure that Mr Ntsebeza is here when the
 5 cross-examination begins. Alright, 170 minutes, Ms Barnes.
 6 CROSS-EXAMINATION BY MS BARNES (CONTD.):
 7 Thank you, Chair. Good morning, Mr Mokwena.
 8 MR MOKWENA: Good morning.
 9 MS BARNES: I represent AMCU in this
 10 Commission of Inquiry. Mr Mokwena, presumably in your
 11 position as head of Human Capital at Lonmin you would have
 12 been involved in wage negotiations that took place between
 13 management and the unions. Is that correct?
 14 MR MOKWENA: That is correct.
 15 MS BARNES: And you would have been aware
 16 then presumably that in 2012 the rock drill operators at
 17 Lonmin considered themselves to be underpaid. Is that
 18 correct?
 19 MR MOKWENA: That is correct.
 20 MS BARNES: And you're aware that that
 21 view was also shared by NUM, correct?
 22 MR MOKWENA: That is correct.
 23 MS BARNES: The evidence before the
 24 Commission, Mr Mokwena, and it's not disputed, is that in
 25 two sets of wage negotiations at Lonmin, so in 2009 and

Page 37909

1 again in 2011 NUM tabled a demand for a significant
 2 differential increase for rock drill operators and on both
 3 occasions they were unsuccessful. You were aware of that?
 4 MR MOKWENA: Yes, I was aware.
 5 MS BARNES: And you would have been aware
 6 too presumably that NUM was very concerned about the
 7 situation, it was very concerned about the inability to
 8 achieve a differential increase for rock drill operators.
 9 You were aware of that?
 10 MR MOKWENA: Ja, they were concerned.
 11 MS BARNES: And in fact the chief
 12 negotiator for NUM at Lonmin was so concerned about the
 13 situation so at the end of 2011 he called the matter a
 14 ticking time bomb. Were you aware of that?
 15 MR MOKWENA: Yes.
 16 MS BARNES: Now you would also have been
 17 aware, Mr Mokwena, that in 2012 NUM was losing support and
 18 it was becoming doubtful whether NUM was in fact a
 19 legitimate voice for the workers at Lonmin, correct?
 20 MR MOKWENA: That's not correct.
 21 MS BARNES: Well, Mr Jamieson who gave
 22 evidence here last week conceded that point, but you say
 23 you don't.
 24 MR MOKWENA: NUM lost about 4 000 members
 25 in 2012. They still remained the majority union at Lonmin

Page 37910

1 by 2012.

2 MS BARNES: Yes, perhaps, Sir, you could

3 listen carefully to my question and try and focus on the

4 question and answer it. Let me ask the question again.

5 The question was in 2012 NUM was losing support and it was

6 becoming doubtful whether it could be regarded as the

7 legitimate voice of the workers at Lonmin. Do you agree

8 with that?

9 MR MOKWENA: Give me forensic evidence

10 that suggests that there was that, because I don't have it.

11 MS BARNES: Well Mr Mokwena, I'll take

12 you to your scenario planning document in a moment, but I'm

13 asking the questions here. Do you agree, and let me tell

14 you that –

15 CHAIRPERSON: Let me explain to you, Ms

16 Barnes doesn't have to produce evidence to satisfy you of

17 anything. She asked you a question. You just give an

18 honest answer. If the honest answer to the question is yes

19 but it's uncomfortable, you're still going to give the

20 answer yes. If the honest answer is no, you can give the

21 answer no, or alternatively "I don't know." A lot of

22 witnesses up to now have said "I don't know" when they

23 don't know, but please, don't ask for proof from the cross-

24 examiner. You're not allowed to do it and it just wastes

25 time. Concentrate on answering the questions that you're

Page 37911

1 being asked and we'll then cover much more ground more

2 quickly.

3 MS BARNES: Mr Mokwena, let me try the

4 question again and let me start with the fact that Mr

5 Jamieson conceded the point. Mr Jamieson conceded the

6 point that was phrased in these specific terms, Lonmin was

7 losing support in 2012 and it was doubtful –

8 CHAIRPERSON: NUM.

9 MS BARNES: Sorry, NUM was losing support

10 and it was doubtful that it could be considered the

11 legitimate voice of the workers at Lonmin. Do you agree

12 with that?

13 MR MOKWENA: No, I don't agree.

14 MS BARNES: Okay, but at the very least

15 you do agree that NUM had lost touch with its members and

16 their confidence in 2012, correct?

17 MR MOKWENA: No, I do not agree.

18 MS BARNES: You don't agree, okay. Let's

19 go then to your bundle of documents, to the scenario

20 planning document that you mentioned in your evidence-in-

21 chief. It starts at page 353 of your bundle. That's where

22 it starts and if you could go to page 363 you'll see that

23 it says – let me give you a chance to find it.

24 MR MOKWENA: I've got it.

25 MS BARNES: You'll see that it says there

Page 37912

1 "NUM seems to have lost touch with their members and their

2 confidence." You see that?

3 MR MOKWENA: Yes.

4 CHAIRPERSON: What's the page number?

5 Give me the page number.

6 MS BARNES: It's 363.

7 CHAIRPERSON: Thank you. You and Mr

8 Kgotle compiled this document, didn't you? That's the

9 evidence.

10 MR MOKWENA: Chair?

11 CHAIRPERSON: You and Mr Kgotle I think

12 compiled this document.

13 MR MOKWENA: Ja, there's about six or

14 seven of my managers that worked together to produce this.

15 CHAIRPERSON: Ja, and who signed the

16 document?

17 MR MOKWENA: It was not signed, Chair.

18 MS BARNES: Chair, I think my 363 is in

19 fact missing and I slotted it in from another copy of the

20 scenario planning document. The statement appears twice in

21 the document. It also appears at page 372. Perhaps we can

22 go there.

23 CHAIRPERSON: Mr Jamieson as far as I can

24 remember said this document came before the executive and

25 you're a member of the executive –

Page 37913

1 MR MOKWENA: Yes.

2 CHAIRPERSON: - and you presented it to

3 the executive.

4 MR MOKWENA: Yes.

5 CHAIRPERSON: And there were indications

6 that the document was compiled by Mr Kgotle. He actually

7 as I understood it said it was really a joint document, you

8 were involved in its compilation as well. Is that correct?

9 Did I understand correctly or wrongly?

10 MR MOKWENA: Chair, I explained on Friday

11 that I did a workshop with about six or seven managers to

12 look at trends and analysis of what was going on and this

13 was the outcome of that workshop. Jomo may have been the

14 secretary, but these are the thoughts and the brains of six

15 other people who were party to the workshop.

16 CHAIRPERSON: Including you?

17 MR MOKWENA: Yes, Chair.

18 CHAIRPERSON: Ja, so you have to accept

19 that what is in the document –

20 MR MOKWENA: Yes, Chair.

21 CHAIRPERSON: - is something that you

22 accepted responsibility for at the time when it was

23 presented to the executive.

24 MR MOKWENA: Exactly.

25 CHAIRPERSON: Ja, alright.

<p style="text-align: right;">Page 37914</p> <p>1 MS BARNES: So Mr Mokwena, you'll see 2 that on page 372 – I'm not sure what page is on the screen 3 now – it is again stated that the NUM seems to have lost 4 touch with its members and their confidence. 5 CHAIRPERSON: 372 is on the screen. 6 MS BARNES: Do you see that, Mr Mokwena? 7 MR MOKWENA: Yes, I see that. 8 MS BARNES: Okay, so that statement is 9 made twice in the document. 10 MR MOKWENA: Exactly. 11 MS BARNES: Presumably then you align 12 yourself with that statement, correct? 13 MR MOKWENA: Yes. 14 MS BARNES: And we also know – perhaps we 15 should just confirm this now – if you go to page 400 of 16 your bundle, this is a memo prepared by Mr Kwadi on the 13th 17 of July 2012. He says there that the scenario document was 18 presented to EXCO in April 2012. You see that? 19 MR MOKWENA: Yes. 20 MS BARNES: You said in your evidence-in- 21 chief on Friday that it was presented in June 2012. I 22 suggest to you that the correct date is in fact April 2012. 23 That's what Mr Kwadi says in his memo and Mr Jamieson also 24 confirmed that in his evidence. Do you accept that? 25 MR MOKWENA: That's fine, thanks.</p>	<p style="text-align: right;">Page 37916</p> <p>1 MR MOKWENA: Yes, if you look at the two 2 references, Chair, in the scenario document, we 3 intentionally used the word "seems" as we were not certain 4 and I would like, that was our reflection. It seemed like, 5 so we intentionally used a subjective term because we were 6 not defining a reality, we were merely describing our 7 experience. 8 MS BARNES: That was your perception, 9 correct? 10 MR MOKWENA: Yes. 11 MS BARNES: So it was in these 12 circumstances, Mr Mokwena, in 2012 that the Impala strike 13 happened, correct? 14 MR MOKWENA: Correct. 15 MS BARNES: Now let's look at that. It's 16 generally accepted that there were really two triggers for 17 the Impala strike. I'd like to just take you to each of 18 those. The first trigger was the failure to achieve a 19 differential increase for rock drill operators at Impala in 20 the 2011 wage negotiations. You're aware of that? 21 MR MOKWENA: Ja, I'm aware of that. 22 MS BARNES: And it was alleged that 23 Impala management had in fact suggested a differential 24 increase for rock drill operators but that NUM was against 25 that. That is disputed by NUM, but presumably you'd heard</p>
<p style="text-align: right;">Page 37915</p> <p>1 MS BARNES: Now the other thing that was 2 a reality in 2012, Mr Mokwena, was that an increasing 3 number of workers were becoming un-unionised and an 4 increasing number of workers were also losing confidence in 5 the recognised union and as a result of that it was 6 recognised that the existing collective bargaining 7 structures at Lonmin were of doubtful relevance. Sorry, 8 that's a long question. Did you follow it? 9 MR MOKWENA: No. 10 MS BARNES: It is a proposition rather. 11 MR MOKWENA: What's the question? 12 MS BARNES: It's a proposition and again 13 it's a proposition that Mr Jamieson agreed with last week 14 and the proposition is essentially that the existing 15 collective bargaining structures at Lonmin were of doubtful 16 relevance in 2012. Do you agree with that? 17 MR MOKWENA: Yes. 18 MS BARNES: And that's also something 19 that's recorded in your scenario planning document that was 20 presented to EXCO, correct? 21 MR MOKWENA: That is correct. 22 MS BARNES: And the reason for that was 23 fundamentally that more workers than in previous years in 24 fact did not belong to unions and also workers were losing 25 faith in the recognised union, which was NUM, correct?</p>	<p style="text-align: right;">Page 37917</p> <p>1 about that? 2 MR MOKWENA: I heard about it. 3 MS BARNES: You heard about it, but for 4 whatever reason, a differential increase for rock drill 5 operators was not achieved at Impala in 2011, the end of 6 2011, correct? 7 MR MOKWENA: Yes. 8 MS BARNES: And then the wage agreement 9 was signed at Impala I think in November or December 2011 10 and shortly after the agreement was signed Impala 11 management unilaterally gave its Miners – Miners with a 12 capital M - a whopping 18% increase, and they did that 13 outside of the wage agreement that had just been signed. 14 You were aware of that? 15 MR MOKWENA: I was aware of that, yes, in 16 the public domain. 17 MS BARNES: So what happened was that in 18 December 2011 the rock drill operators at Impala, well a 19 large number of them lived in the Eastern Cape. They went 20 back to the Eastern Cape for their annual December holiday 21 and they obviously would have talked among themselves. 22 When they returned in January 2012 they embarked on an 23 unprotected strike at Impala. You were aware of that? 24 MR MOKWENA: I have no idea where they 25 went, Chair.</p>

<p style="text-align: right;">Page 37918</p> <p>1 CHAIRPERSON: You know where most of them 2 come from, don't you? 3 MR MOKWENA: She's referring to Impala. 4 I'm not aware of the demographics of Impala employees. 5 CHAIRPERSON: You don't know about 6 Impala, but is it not correct to say that Pondoland is the 7 great labour sending area from which many of the platinum 8 mineworkers come? 9 MR MOKWENA: Well Chair, as I said, I 10 don't know the demographics. If that's the case, that's 11 fine, of Impala employees. 12 CHAIRPERSON: So are you telling us under 13 oath – 14 MR MOKWENA: Yes. 15 CHAIRPERSON: - that you don't know that 16 the great labour sending area for the platinum industry in 17 South Africa is Pondoland? You don't know that? 18 MR MOKWENA: I know that, Chair. She's 19 saying they went home to the Eastern Cape. 20 CHAIRPERSON: Yes, I know. Let's take it 21 step by step. You know the great labour sending area for 22 the platinum industry is Pondoland. That's correct? 23 MR MOKWENA: Yes, amongst others, Chair. 24 CHAIRPERSON: The great labour sending 25 area on percentages is Pondoland. Is that right?</p>	<p style="text-align: right;">Page 37920</p> <p>1 MR MOKWENA: Yes. 2 MS BARNES: And the strikers had two 3 demands; the first demand was that they get a salary of 4 R9 000, which was the equivalent of an 18% increase, which 5 was the 18% increase that had been given to the Miners 6 unilaterally, and the second demand was no negotiations 7 with NUM. You're aware of that? 8 MR MOKWENA: Ja, I read about that. 9 MS BARNES: And then we know, Mr Mokwena, 10 that the strike was violent, it was protracted. Impala 11 management fired en masse, rehired and eventually the 12 entire episode culminated in April 2012 in Impala 13 management granting very significant increases to RDOs, up 14 to 25%, correct? 15 MR MOKWENA: Chair, I feel I have not 16 prepared on the details of what was going on at Impala and 17 I feel that I'm being asked questions about Impala and that 18 I read on the newspapers. So my responses could just be 19 public information, Chair. 20 MS BARNES: Well, Mr Mokwena, perhaps I 21 can assist by referring you to page 1 of your bundle of 22 documents, and this is all you really need to be aware of 23 for present purposes. It forms part of your bundle. 24 MR MOKWENA: Yes. 25 MS BARNES: It's a management brief from</p>
<p style="text-align: right;">Page 37919</p> <p>1 Particularly of underground workers, rock drill operators 2 and so forth. Is that right? 3 MR MOKWENA: That's right, Chair, at 4 Lonmin, yes. 5 CHAIRPERSON: Okay, now if they go home 6 for Christmas, if they go away for Christmas, the Christmas 7 holidays, they don't go overseas to Hawaii or the South of 8 France or anything like that. Is that correct? 9 MR MOKWENA: That is correct. 10 CHAIRPERSON: They go home to the labour 11 sending area from which they came. 12 MR MOKWENA: That is correct. 13 CHAIRPERSON: That's Pondoland. 14 MR MOKWENA: Yes, Chair. 15 CHAIRPERSON: Right, and the probability 16 is overwhelming I would imagine that over Christmastime at 17 celebrations that accompany Christmas they would meet and 18 discuss, exchange notes of what's going on at their 19 respective mines. Is that a fair assumption? 20 MR MOKWENA: Ja, that's a fair 21 assumption. 22 CHAIRPERSON: Ja, thank you. 23 MS BARNES: So the strike at Impala, it 24 was an unprotected strike and it commenced on the 12th of 25 January 2012. You were aware of that?</p>	<p style="text-align: right;">Page 37921</p> <p>1 Impala that granted the increases at the end of that strike 2 in 2012, correct? 3 MR MOKWENA: Correct. 4 MS BARNES: And you're familiar with this 5 document? 6 MR MOKWENA: Yes. 7 MS BARNES: Yes, and those increases were 8 in the range of 25% for rock drill operators, correct? 9 MR MOKWENA: That is correct. 10 MS BARNES: You would have heard about 11 this presumably quite soon after it happened. Would that 12 be correct? 13 MR MOKWENA: Yes, I did. 14 MS BARNES: So the result, the net 15 result, Mr Mokwena, was that rock drill operators at Impala 16 had taken matters into their own hands, embarked on an 17 unprotected strike and then secured massive increases for 18 themselves, correct? 19 MR MOKWENA: That is correct. 20 MS BARNES: And the result at Lonmin was 21 that RDOs at Lonmin were now paid significantly less than 22 their counterparts at Impala, correct? 23 MR MOKWENA: That is correct. 24 MS BARNES: RDOs at Lonmin were also paid 25 less than their counterparts at Amplats in 2012, correct?</p>

<p style="text-align: right;">Page 37922</p> <p>1 MR MOKWENA: That is correct.</p> <p>2 MS BARNES: Mr Mokwena, you anticipated –</p> <p>3 correctly I would submit – that what had happened at Impala</p> <p>4 might spread to Lonmin. You could this the risk of</p> <p>5 contagion in your scenario planning document. Is that</p> <p>6 right?</p> <p>7 MR MOKWENA: That is correct.</p> <p>8 MS BARNES: And then we know, Mr Mokwena,</p> <p>9 that on the 21st of June 2012 a group of RDOs from the Karee</p> <p>10 Mine marched to Mr Da Costa's office and they asked for a</p> <p>11 wage increase. Now when did you first become aware of</p> <p>12 that? We know that that first approach took place on the</p> <p>13 21st June 2012.</p> <p>14 MR MOKWENA: Yes, I became aware</p> <p>15 immediately thereafter as the matter was escalated to Exco.</p> <p>16 [09:56] Towards the end of June.</p> <p>17 MS BARNES: And presumably you wouldn't</p> <p>18 have been particularly surprised by this, by the fact that</p> <p>19 your RDOs at Lonmin were now demanding a wage increase,</p> <p>20 given what had happened at Impala, correct?</p> <p>21 MR MOKWENA: Yes.</p> <p>22 MS BARNES: And you would also presumably</p> <p>23 not have been particularly surprised that the RDOs were not</p> <p>24 pursuing their demand through NUM, you had suspected that</p> <p>25 there was significant loss of faith in NUM in 2012,</p>	<p style="text-align: right;">Page 37924</p> <p>1 of the transcript, perhaps I should. If we could have day</p> <p>2 239 on the screen at page 30068 line 11. Is it 30068? Is</p> <p>3 that page 30068, line 11? Okay, that's not –</p> <p>4 CHAIRPERSON: 30068 is on the screen,</p> <p>5 line 11. In fact when I asked, in fact when they walked</p> <p>6 out of the meeting someone had come," I think it should</p> <p>7 have been "if," "if someone had come out and said, tell me,</p> <p>8 have you been engaged in wage negotiations, you know,</p> <p>9 someone from the unions, have you been engaged in wage</p> <p>10 negotiations with management or what, surely they would</p> <p>11 have said yes, or no, no, no, these aren't negotiations,</p> <p>12 these are something else, these are just talks about an</p> <p>13 allowance, I mean surely that kind of distinction wouldn't</p> <p>14 have appealed to their minds, would it?" I asked. Mr Da</p> <p>15 Costa, "No, I'm really not sure." And then Mr Budlender</p> <p>16 took the point up further with the Karee RDO occurrence</p> <p>17 book which is exhibit XXX4, where the phrase</p> <p>18 "negotiations," as far as I remember, was actually used.</p> <p>19 MS BARNES: Yes, thank you, Chair. If we</p> <p>20 could go on, if we could just go on to where Mr Budlender</p> <p>21 takes it up, if you could just give me a sec.</p> <p>22 CHAIRPERSON: Yes, the next page I think</p> <p>23 contains the passage that you're looking for. Could we</p> <p>24 have the next page, please? Sorry, just – I think it went</p> <p>25 on, it went, there we are. At line 13, let's read the</p>
<p style="text-align: right;">Page 37923</p> <p>1 correct?</p> <p>2 MR MOKWENA: I would not have suspected</p> <p>3 that particularly, that they were RDOs at Karee where there</p> <p>4 was no NUM but only AMCU. So it is correct I would not</p> <p>5 have expected the demand to come from NUM.</p> <p>6 MS BARNES: Now we know then that Mr Da</p> <p>7 Costa had meetings with the Karee RDOs about their demand,</p> <p>8 is that correct?</p> <p>9 MR MOKWENA: That is correct.</p> <p>10 MS BARNES: And so Mr Da Costa engaged</p> <p>11 with the RDOs on their demand, correct?</p> <p>12 MR MOKWENA: Yes.</p> <p>13 MS BARNES: Even though that wage demand</p> <p>14 had not been brought through the structures, correct?</p> <p>15 MR MOKWENA: Yes.</p> <p>16 MS BARNES: And what Mr Da Costa did is</p> <p>17 he communicated between the RDOs and Lonmin management at</p> <p>18 EXCO and vice versa, do you agree?</p> <p>19 MR MOKWENA: That is not unusual for him</p> <p>20 to do.</p> <p>21 MS BARNES: Now Mr Da Costa, when he was</p> <p>22 cross-examined, conceded that it may well have been that</p> <p>23 from the workers' point of view what was happening in this</p> <p>24 regard was in fact a wage negotiation. I'm not sure</p> <p>25 whether it's necessary for me to take you to that portion</p>	<p style="text-align: right;">Page 37925</p> <p>1 whole entry. Mr Budlender says, "Yes, let's see what they</p> <p>2 say on the first entry, 21 July at 10 o'clock, 'The RDO's</p> <p>3 first illegal march to the general office, Karee.'" Now</p> <p>4 they're spelling Karee correctly, I see, for the first</p> <p>5 time. "The first demand made for an increase from R5,400</p> <p>6 to R12,500. Negotiations between VP Mike da Costa and</p> <p>7 Semelo Mkhise and two reps from the RDOs, demand rejected</p> <p>8 at EXCO level, threat, strike action." So then Mr</p> <p>9 Budlender, that's the end of the quote, Mr Budlender</p> <p>10 continues, "Now what that tells me is the following, the</p> <p>11 person who made that entry thought that these were</p> <p>12 negotiations?" Mr Da Costa said yes. And then Mr</p> <p>13 Budlender says, "And that person didn't draw the</p> <p>14 distinction between wages, allowances, negotiations,</p> <p>15 unilateral action, that's what, colloquially what it means,</p> <p>16 isn't it?" Mr Da Costa said, "The person who made this</p> <p>17 entry clearly draw that distinction." That's the passage</p> <p>18 you want, I think, Ms Barnes.</p> <p>19 MS BARNES: If we could go on to 30071,</p> <p>20 please.</p> <p>21 CHAIRPERSON: What line do you want</p> <p>22 there?</p> <p>23 MS BARNES: In fact no, sorry, no -</p> <p>24 [microphone off, inaudible.]</p> <p>25 CHAIRPERSON: The previous page, 30070.</p>

Page 37926

1 What line there? Oh, Mr Budlender at line 11, I want to
 2 put it to you, Mr Da Costa, that the distinction between
 3 negotiations and unilateral decisions and the distinction
 4 between wages and allowances may be important as a matter
 5 of theoretical principle or a practical principle to Lonmin
 6 but it is actually entirely artificial from the point of
 7 view of the employees." Mr Da Costa says, "No, I'm not
 8 sure if I'm in a position to comment on that." Is that the
 9 piece you want?
 10 MS BARNES: [Microphone off, inaudible] –
 11 if I can just read the next section, Mr Budlender then
 12 says, "Well, the relevance of the question is this, that
 13 Lonmin takes a stand on the basis that it says, oh, no, we
 14 never entered into negotiations, we just made a unilateral
 15 decision. Oh, no, we never discussed wages, we just
 16 discussed an allowance, and I'm suggesting to you that
 17 that's an artificial, a nice artificial distinction that
 18 has no meaning in the real world. Would you like to
 19 comment on that?" And Mr Da Costa eventually says at line
 20 5, "That may well be but you know I'm not seeing it from
 21 the perspective of the general employees out there." Now
 22 presumably, Mr Mokwena, you would accept as Mr Da Costa did
 23 that it may well be that from the perspective of the
 24 workers what was happening here was nothing more than a
 25 wage negotiation, correct?

Page 37927

1 MR MOKWENA: No, I do not accept that.
 2 MS BARNES: Because what had happened as
 3 far as the workers were concerned, Mr Mokwena, is that
 4 there had been an approach to management with a wage
 5 demand, management had engaged with the workers on the wage
 6 demand and ultimately an offer of more money was made,
 7 isn't that correct?
 8 MR MOKWENA: That is correct. Chair, am
 9 I allowed to create context for my answer?
 10 CHAIRPERSON: Of course you are, of
 11 course you are.
 12 MR MOKWENA: The Lonmin employees have a
 13 rich history of wage negotiations and demands and I
 14 therefore do not agree with the perception that they may
 15 have understood this to be negotiations when in actual fact
 16 they had only a year before that entered into a wage
 17 agreement that they had signed and accepted. So the
 18 perception that they may have understood this to be wage
 19 negotiations when they have a rich tradition of how demands
 20 are presented, how wage negotiations are run, I think for
 21 me may, doesn't sound true.
 22 MS BARNES: Well, Mr Mokwena, the
 23 difference really is that it's not happening within the
 24 structures, it's happening outside the structures, that the
 25 RDOs are saying, we want more money, we want 12 500, they

Page 37928

1 are engaged with, meetings are held and then they're told
 2 okay, we'll give you an extra 750 a month. Now how is that
 3 not a wage negotiation from their perspective?
 4 MR BHAM SC: Mr Chairman, before the
 5 witness answers, I've raised this previously in a similar
 6 context when Ms Pillay had put a similar question about
 7 perception of witnesses. I am going to raise it, you had
 8 made a ruling on that but I am going to raise it again.
 9 We're now being, a question is being put about perception
 10 of witnesses, a question is being put about perception of
 11 workers. We have had a number of parties, of individuals
 12 who were involved in the strike who gave evidence, they led
 13 none of this evidence about that being their perception and
 14 I'm going to again object to the question. There isn't a
 15 factual foundation for this. In fact the evidence to back
 16 up this perception hasn't been forthcoming.
 17 CHAIRPERSON: I would have thought that
 18 the evidential basis for it is a concession Mr Da Costa
 19 made in the passage at 30071, so the objection is
 20 disallowed.
 21 MR BHAM SC: I just want to – then I
 22 might just take that through because his concession didn't
 23 go further than "it may well be," in other words he was
 24 talking about what he might have perceived. This witness
 25 may have a different perception but what we're being asked

Page 37929

1 – if I might finish, Mr Chairman –
 2 CHAIRPERSON: Yes –
 3 MR BHAM SC: - if I might finish, what
 4 we've been asked –
 5 CHAIRPERSON: I was going to say yes,
 6 carry on.
 7 MR BHAM SC: Sorry, Mr Chairman, it's
 8 happened again. I am in the middle of saying something and
 9 you interrupted me.
 10 CHAIRPERSON: The interruption was to say
 11 carry on. I'm sorry, it wasn't an intended interruption,
 12 please forgive me, carry on –
 13 MR BHAM SC: - you interrupted –
 14 CHAIRPERSON: - carry on without
 15 interruption.
 16 MR BHAM SC: I am going to put it again.
 17 What we're being presented with is perception of workers.
 18 What we're being, what this witness is being asked for is
 19 what the workers may have perceived or may not have
 20 perceived. They gave their evidence. Why do we have to
 21 sit in the realm of what they may or may not perceive when
 22 that evidence could have been led directly by them? So we
 23 just don't have the basis for that and the proposition you
 24 put to me about what Mr Da Costa conceded, well, we've read
 25 his passage, that wasn't his concession.

Page 37930

1 CHAIRPERSON: Yes, Ms Barnes?
 2 MS BARNES: Well, Chair, perhaps I might
 3 put something to the witness that will deal with my learned
 4 colleague's objection.
 5 CHAIRPERSON: I must say I think, to be
 6 fair to him, he's correct. You've got, Mr Budlender got a
 7 concession that the workers may have seen it that way but
 8 higher than that one can't take it and he is quite correct
 9 in saying that there was no direct evidence to that effect.
 10 MS BARNES: I was simply drawing the
 11 witness's attention to Mr Da Costa's concession but can I
 12 put this to the witness, that whatever the workers may have
 13 thought, Mr Mokwena, whatever was actually in their minds I
 14 put it to you, sir, that you should have been concerned
 15 that they would perceive this as a wage negotiation. Would
 16 you like to answer that?
 17 MR MOKWENA: If only I had the power to
 18 have anticipated or a premonition to have known what the
 19 workers understood. I didn't, so unfortunately I cannot
 20 answer whether they had a perception that it was
 21 negotiations or not. All I'm referring to, Chair, is after
 22 11 years with the same employees through the structures, at
 23 no point have Lonmin employees shown ignorance about the
 24 structures and wage negotiations and how demands are done.
 25 That is where I am coming from.

Page 37931

1 MS BARNES: Yes, but we have already
 2 established, Mr Mokwena, that you were aware at the time
 3 that things were changing, NUM was losing support, the
 4 collective bargaining structures were losing relevance and
 5 so things were changing. This was not a normal situation,
 6 you were aware of that, we've established that.
 7 MR MOKWENA: I've accepted that.
 8 MS BARNES: And I put it to you, Mr
 9 Mokwena, just finally on this point and we'll argue it, it
 10 didn't require any premonitory powers on your part. As a
 11 matter of simple logic you should have been aware and
 12 concerned that engaging with the workers in this manner
 13 would lead them to believe that this was in fact a wage
 14 negotiation. Would you like to comment finally?
 15 MR MOKWENA: I also refute that
 16 assumption. Chair, given an opportunity I will show that
 17 even post-August other groups of employees approached us,
 18 similar pattern, and our response was exactly the same.
 19 MS BARNES: Now the approach that had
 20 been made to Mr Da Costa on the 21st June was discussed at
 21 the next EXCO meeting which was held on the 28th of June
 22 2012, correct?
 23 MR MOKWENA: Correct.
 24 MS BARNES: And if we can just go to the
 25 minute of that EXCO meeting to see what EXCO wanted done,

Page 37932

1 the minute of that meeting appears in exhibit VVVV1 which
 2 is the bundle that was used for Mr Jamieson's evidence, at
 3 page 75 if we could have that on the screen, please? If we
 4 could go to page 78, so that records an action item in the
 5 meeting that was held on the 28th of June and we see that
 6 what EXCO says is that the following must be done. It
 7 says, "To consider the implications of, 1) NUM claiming
 8 representation at this point in time; 2) dealing with two
 9 unions that will not meet or speak to each other; and 3)
 10 possible requests for the reopening of wage negotiations in
 11 October. Probabilities of the risk occurring and
 12 mitigation strategies are to be put in place for each."
 13 And then there's a reference to BM, which is presumably
 14 yourself, correct?
 15 MR MOKWENA: That is correct.
 16 MS BARNES: Now was this done, Mr
 17 Mokwena?
 18 MR MOKWENA: Yes, Chair. Bullet number
 19 1, NUM claiming representation at this point, we had
 20 prolonged disputes about authenticity of membership during
 21 that period between NUM and AMCU. So it was already an
 22 event that was happening and I think it was public
 23 knowledge. The second one was, we were already that period
 24 just concluded giving AMCU limited organisational rights
 25 which was our attempt to create coexistence of AMCU and NUM

Page 37933

1 at Lonmin. The third bullet remained a concern for us. We
 2 did not have a particular strategy around how wage
 3 negotiations could be reopened in October because October
 4 is the beginning of our financial year.
 5 MS BARNES: But now was it, it then goes
 6 on to say "Probabilities of the risk occurring and
 7 mitigation strategies are to be put in place for each." So
 8 presumably what EXCO wanted was some sort of written report
 9 which dealt with each of these but I'm less interested in
 10 the first two and more interested in the third one, which
 11 is possible request for the reopening of wage negotiations.
 12 Didn't EXCO want a report on the probabilities of that risk
 13 occurring and mitigation strategy?
 14 MR MOKWENA: The only probable strategy
 15 or risk occurring at that time was, we had already given
 16 NUM a notification regarding their, the recognition
 17 agreement. That for us was the only option we had, in
 18 other words NUM had lost members, we derecognise and we
 19 trigger a new process of negotiating a new recognition
 20 agreement. At the time there was no other avenue, other
 21 than first derecognise NUM and start a new relationship,
 22 whether with NUM or AMCU or any other unions.
 23 MS BARNES: So nothing was prepared and
 24 put in writing in response to this action item at this
 25 meeting?

<p style="text-align: right;">Page 37934</p> <p>1 MR MOKWENA: No.</p> <p>2 MS BARNES: If we can go then to the next</p> <p>3 meeting which was held on the 19th of July 2012, the minute</p> <p>4 of that meeting is also in VVVV1. That minute starts at</p> <p>5 page 81 and if we could go to page 84. Page 84 again sets</p> <p>6 out the action items at this meeting and here we see item 5</p> <p>7 says – now this is on the 19th of July 2012 – it says, “To</p> <p>8 prepare an opinion covering the operational, political and</p> <p>9 legal implications in the event of various identified</p> <p>10 inter-unions rivalry scenarios emerging. This is to</p> <p>11 include the implications of addressing the demands at RDOs</p> <p>12 at this point in time and the implications in terms of</p> <p>13 potentially reopening wage negotiations.” And again Mr</p> <p>14 Mokwena, you are tasked with that, do you see that?</p> <p>15 MR MOKWENA: Yes.</p> <p>16 MS BARNES: Now it’s clear from this, Mr</p> <p>17 Mokwena, that at this stage on the 19th of July 2012, EXCO</p> <p>18 is open to the possibility that wage negotiations could be</p> <p>19 reopened, correct?</p> <p>20 MR MOKWENA: That’s a misinterpretation.</p> <p>21 EXCO is asking for us to look at what would be the</p> <p>22 implications, not consider opening wage negotiations.</p> <p>23 MS BARNES: Well, it records it as</p> <p>24 something that needs to be considered and explored,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 37936</p> <p>1 at the end of this sub-paragraph. Now did you in fact</p> <p>2 prepare the opinion referred to?</p> <p>3 MR MOKWENA: A written opinion, Chair,</p> <p>4 was not prepared, but we had extensive engagement with EXCO</p> <p>5 around these options. So EXCO was fully aware of the</p> <p>6 implications of us opening wage negotiations. So there was</p> <p>7 no written, physical document and I need to say that many</p> <p>8 of the deliberations that our EXCO are not written all the</p> <p>9 time, Chair.</p> <p>10 CHAIRPERSON: Clearly one of the things</p> <p>11 you had to deal with was the implications of addressing of</p> <p>12 the RDOs, that’s the language of the paragraph and the way</p> <p>13 I read it the concern was that that might be construed,</p> <p>14 hence the use of the word potential, that it might be</p> <p>15 construed, perhaps by NUM, as the re-opening of wage</p> <p>16 negotiations which is something to which they would have</p> <p>17 objected. In fact, I think did object. That’s correct</p> <p>18 isn’t it?</p> <p>19 MR MOKWENA: Yes, Chair.</p> <p>20 CHAIRPERSON: So did you then give an</p> <p>21 oral opinion to EXCO dealing with the matters covered in</p> <p>22 this sub-paragraph?</p> <p>23 MR MOKWENA: Yes true, Chair.</p> <p>24 CHAIRPERSON: What was your opinion in</p> <p>25 relation to the question you were asked to deal with,</p>
<p style="text-align: right;">Page 37935</p> <p>1 MR MOKWENA: Chair, at no stage in my</p> <p>2 recollection did Lonmin EXCO consider opening wage</p> <p>3 negotiations, at no point and if I have forgotten I would</p> <p>4 appreciate if I am reminded. So this bullet may, for an</p> <p>5 outsider, look like EXCO was considering wage negotiations,</p> <p>6 opening wage negotiations but I’m not aware of any decision</p> <p>7 to actually consider opening wage negotiations, for a very</p> <p>8 simple reason. Lonmin would not alone have opened wage</p> <p>9 negotiations without the consent of the signatories to the</p> <p>10 wage negotiations, for a very simple reason. Lonmin would</p> <p>11 not alone have opened wage negotiations without a consent</p> <p>12 of the signatories to the wage negotiations which is a</p> <p>13 fact that happened only afterwards.</p> <p>14 CHAIRPERSON: Tell me, was the opinion</p> <p>15 which you were asked to prepare in fact drawn up?</p> <p>16 [10:16] MR MOKWENA: Chair?</p> <p>17 CHAIRPERSON: Was the opinion which you</p> <p>18 were asked to draw up, or to prepare, was it actually drawn</p> <p>19 up? You see the action item was “To prepare an opinion</p> <p>20 covering the operational, political and legal implications</p> <p>21 in the event of various identified inter union rivalry</p> <p>22 scenarios emerging. This is to include the implications of</p> <p>23 addressing the demands of RDOs at this point in time and</p> <p>24 the implications in terms of potentially re-opening wage</p> <p>25 negotiations.” And then your name or your initials appear</p>	<p style="text-align: right;">Page 37937</p> <p>1 namely, the implications in terms of potentially re-opening</p> <p>2 wage negotiations if the demands of the RDOs are addressed</p> <p>3 at that stage?</p> <p>4 MR MOKWENA: Yes, Chair, the oral opinion</p> <p>5 had two components to it. The first one that we presented</p> <p>6 to EXCO was the category 429 at the time at Lonmin</p> <p>7 consisted of more than RDOs. So this matter would not</p> <p>8 necessarily have just been about RDOs, but many other job</p> <p>9 categories in that Cat 429 referred to at Lonmin. That was</p> <p>10 one major concern and EXCO said it therefore cannot be a</p> <p>11 solely RDO matter because it would create a need that wages</p> <p>12 are therefore revised for everybody in that category 429.</p> <p>13 So the problem was more than just RDOs. The second problem</p> <p>14 that EXCO was briefed accordingly by myself was that it</p> <p>15 would have been illegal for Lonmin unilaterally to consider</p> <p>16 opening wage negotiations, for the simple reason that we</p> <p>17 would have to request consent from all the other parties to</p> <p>18 do that. The third reason that I gave to our EXCO was that</p> <p>19 what precedent would we be setting out of a population of</p> <p>20 20 000 workers? If 3000 want to change the wage</p> <p>21 negotiations or the wages what was the possibility that a</p> <p>22 week, a month later another 2000 could come and do the</p> <p>23 same? Those were the major four reflections by our EXCO at</p> <p>24 the time, Chair.</p> <p>25 MS BARNES: Mr Mokwena, we know, of</p>

Page 37938

1 course that, wage negotiations have been re-opened, wage
2 agreements have been re-opened at Lonmin in the past,
3 correct?
4 MR MOKWENA: I recall one incident and
5 that was from NUM and actually it was NUM head office that
6 made a special request that together we considered with
7 them and that was granted.
8 MS BARNES: Yes, Mr Mokwena, I'm not
9 suggesting that this would be done unilaterally because
10 your wage agreements typically have a variation clause and
11 it would be in terms of that variation clause that you
12 could, by agreement with all the parties, amend the
13 agreement. And that's what was done in the past when
14 inflation rose, isn't that correct?
15 MR MOKWENA: That is correct. The
16 difference, Chair, is it was the union that approached us.
17 MS BARNES: And that's ultimately how the
18 strike, the Lonmin strike in 2012 was resolved, the wage
19 agreement that had been signed was amended in terms of the
20 variation clause by agreement between all the parties,
21 correct?
22 MR MOKWENA: That is correct.
23 MS BARNES: And there would have been
24 nothing stopping Lonmin from making an approach to NUM and
25 any other relevant unions to the effect that a

Page 37939

1 consideration be given to amending the agreement. Correct?
2 MR MOKWENA: Yes, Chair. A bit of
3 context that may help the Commission, I did not anticipate
4 that NUM would have agreed at that time. The reason being
5 the Karee section of Lonmin from 2010, 2011 after NUM had
6 fired the shop stewards and 7000 employees were fired
7 thereafter everybody at Karee became AMCU. So a demand
8 from RDOs from Karee in my opinion would not have been
9 entertained by NUM that had just lost those 4, 5000
10 members.
11 MS BARNES: Yes but you knew, Mr Mokwena
12 that the demand had really risen and spread to Lonmin as a
13 result of what had happened at Impala, correct?
14 MR MOKWENA: That is correct.
15 MS BARNES: And you knew that the
16 salaries of the RDOs at NUM were lagging significantly
17 behind those at Impala and you must have been extremely
18 concerned about the situation. Correct?
19 MR MOKWENA: And that is why, Chair,
20 there was an adjustment by way of an allowance, if indeed
21 the true demand was for our RDOs to end like their peers at
22 Anglo and Impala.
23 MS BARNES: We haven't seen anywhere, Mr
24 Mokwena, that EXCO actually took a decision not to re-open
25 wage negotiations. Is it correct that no such decision was

Page 37940

1 taken?
2 MR MOKWENA: Because it is a principle
3 that does not require a decision.
4 CHAIRPERSON: That must be right. The
5 default position was not to re-open negotiations. So you
6 would only expect a decision if they decided to depart from
7 the default position and to re-open negotiations. That
8 must be right.
9 MS BARNES: Yes, but an opinion had been
10 requested and pursuant to the opinion that you say you gave
11 orally, no decision was actually taken not to re-open wage
12 negotiations. Isn't that correct? We don't see any such
13 decision, Mr Mokwena.
14 CHAIRPERSON: It sound like the other
15 way. He gave an opinion, the opinion effectively said
16 let's stay with the default position and so they did. So
17 they didn't have to make a decision to do that, they just
18 left things as they were. Wouldn't that be right?
19 MS BARNES: When did you give that oral
20 opinion, Mr Mokwena?
21 MR MOKWENA: During the period June, July
22 when Mike Da Costa approached an EXCO met regularly this
23 was a matter that EXCO discussed on a weekly basis at every
24 opportunity. So I do not have the exact time, the exact
25 meeting and the location. All I know is this was a regular

Page 37941

1 conversation at EXCO that I regularly, during that period
2 briefed EXCO of those four points that I have, before,
3 given to the Commission.
4 MS BARNES: We know, Mr Mokwena, that
5 Lonmin applied for and was granted an interdict against the
6 strike on the 10th of August 2012, correct?
7 MR MOKWENA: That is correct.
8 MS BARNES: And you said in your evidence
9 in chief that you were involved in the decision to apply
10 for that interdict, correct?
11 MR MOKWENA: That is correct.
12 MS BARNES: Did you have sight of the
13 interdict papers before they went out?
14 MR MOKWENA: Our interdict would have
15 been drafted by our legal and they would have then told us
16 it was ready or the application to court and that's a
17 competency of our legal team.
18 MS BARNES: So you didn't have sight of
19 the papers, is that what you're saying, before they went
20 out?
21 MR MOKWENA: No.
22 MS BARNES: But we know that the founding
23 affidavit was deposed to by Mr Kwadi, correct?
24 MR MOKWENA: Yes.
25 MS BARNES: Who reports to you, you're

<p style="text-align: right;">Page 37942</p> <p>1 his boss.</p> <p>2 MR MOKWENA: Yes.</p> <p>3 MS BARNES: If we could have a look at</p> <p>4 the interdict application, if we could have it on the</p> <p>5 screen please. It's exhibit RR. Yes, thank you. We can</p> <p>6 start on page 134 where we see the – if we look at the</p> <p>7 respondents. The first respondent is NUM, the next</p> <p>8 respondent is AMCU, that should be the second respondent</p> <p>9 and then the third to further respondents are the names</p> <p>10 that are listed in an annexure to the application. Do you</p> <p>11 see that?</p> <p>12 MR MOKWENA: I do.</p> <p>13 MS BARNES: And if we could go to page</p> <p>14 136, paragraph 8. We see the following. "The third to</p> <p>15 further respondents whose names are reflected in annexure</p> <p>16 A1 are all employees of the applicants. The list comprises</p> <p>17 almost 3000 employees. The third to further respondents</p> <p>18 are participating in the unprotected strike, in breach of</p> <p>19 the provisions of section 64.1 of the LRA. The third to</p> <p>20 further respondents are making unreasonable demands which</p> <p>21 primarily centre on a demand for a basic wage increase to</p> <p>22 R12 500 a month." Do you see that?</p> <p>23 MR MOKWENA: Yes.</p> <p>24 MS BARNES: So the founding affidavit</p> <p>25 clearly records who is on strike, correct?</p>	<p style="text-align: right;">Page 37944</p> <p>1 strike they then may or may not, depending on which side of</p> <p>2 the argument you're on, they may or may not have resorted</p> <p>3 to self help, but the resort to self help isn't the cause</p> <p>4 of the strike. The resort to self help is something which</p> <p>5 followed on the strike and the cause of the strike clearly</p> <p>6 was something different, more money.</p> <p>7 MS BARNES: Yes, perhaps I phrased it</p> <p>8 clumsily, Chair. The reason for the strike was a wage</p> <p>9 demand by RDOs, correct?</p> <p>10 MR MOKWENA: Yes, it is.</p> <p>11 MS BARNES: And the RDOs were pursuing</p> <p>12 that demand through self help and they'd embarked on an</p> <p>13 unprotected strike as a result. Correct?</p> <p>14 MR MOKWENA: Yes.</p> <p>15 MS BARNES: So essentially what had</p> <p>16 happened at Impala, what the RDOs had done at Impala had</p> <p>17 happened at Lonmin in the sense that the RDOs at Lonmin had</p> <p>18 also now taken matters into their own hands in support of a</p> <p>19 demand of a salary of R12 500 a month. Correct?</p> <p>20 MR MOKWENA: That is correct.</p> <p>21 MR BHAM SC: Mr Chairman, I just want to</p> <p>22 again tie the question in with the evidence. We now know</p> <p>23 from the evidence that it wasn't just RDOs who went on</p> <p>24 strike. There were other categories of workers as well.</p> <p>25 CHAIRPERSON: I didn't catch your last</p>
<p style="text-align: right;">Page 37943</p> <p>1 MR MOKWENA: Yes.</p> <p>2 MS BARNES: If we go then to page 137,</p> <p>3 paragraph 9. It says "During the course of July 2012 the</p> <p>4 applicants have noted a continuing trend by certain groups</p> <p>5 of employees acting on their own and in the absence of any</p> <p>6 trade union representation, insisting to engage management</p> <p>7 on separate wage negotiations." And then if we go on to</p> <p>8 paragraph 21 "The first respondent has distanced itself</p> <p>9 from the conduct of the third to further respondents. It</p> <p>10 is not a co-ordinated effort by the first." And then if we</p> <p>11 go on there appears to be a word missing there, but in any</p> <p>12 event the last line is particularly important. "The third</p> <p>13 to further respondents appear to have resorted to self help</p> <p>14 in pursuit of their demands." Do you see that?</p> <p>15 MR MOKWENA: Yes.</p> <p>16 MS BARNES: So the founding affidavit</p> <p>17 clearly records the cause of the strike which is the RDOs</p> <p>18 taking matters into their own hands, resorting to self</p> <p>19 help, as it's described there, in pursuit of a wage demand.</p> <p>20 Correct?</p> <p>21 MR MOKWENA: That is correct.</p> <p>22 CHAIRPERSON: I'm not sure if that's</p> <p>23 right. You say the cause of the strike was that they'd</p> <p>24 resorted to self help. That can't be right. The cause of</p> <p>25 the strike is they want more money. Once they have a</p>	<p style="text-align: right;">Page 37945</p> <p>1 sentence.</p> <p>2 MR BHAM SC: We know from the evidence</p> <p>3 now that those who had gone on strike were not limited to</p> <p>4 RDOs, there were other categories of workers as well.</p> <p>5 CHAIRPERSON: Yes. That is correct, Ms</p> <p>6 Barnes, isn't it?</p> <p>7 MS BARNES: What I think the evidence is</p> <p>8 that, at least initially it was just RDOs and that is</p> <p>9 certainly what's recorded in Lonmin's interdict</p> <p>10 application. It says these are our RDOs.</p> <p>11 MR BHAM SC: Let's just look at the facts</p> <p>12 before the Commission. We have got now a few witnesses who</p> <p>13 have testified. When you talk of initially, certainly Mr</p> <p>14 Nzuzwa wasn't one of those who initially went on strike, but</p> <p>15 the very first two witnesses and if I'm correct one of them</p> <p>16 was Mr Magidiwana. It was either him or one of the other</p> <p>17 witnesses, I forge the name now, who wasn't an RDO, who</p> <p>18 went out on strike initially as well. So what I'm pointing</p> <p>19 to is the evidence before this Commission which is</p> <p>20 uncontested.</p> <p>21 CHAIRPERSON: Yes I think that's correct.</p> <p>22 You may be correct if you say the majority of – the</p> <p>23 overwhelming majority of them were RDOs, but certainly Mr</p> <p>24 Bham is quite right in saying that some of them, at least</p> <p>25 on the evidence before us, were clearly not RDOs. The RDOs</p>

<p style="text-align: right;">Page 37946</p> <p>1 may have taken the initiative in launching this unprotected 2 strike, but certainly they didn't maintain an exclusive 3 company of strikers to keep any non RDO or non RDOs out. I 4 think the question can be reformulated to avoid the 5 upholding of the objection. 6 MS BARNES: Yes, Chair, I'm happy to put 7 it on the basis that the majority of those on strike were 8 RDOs, but really the point I'm trying to make, Mr Mokwena, 9 and I'm sure you'll agree with this point, is that the 10 contagion that you had feared as a result of the Impala 11 strike had come to pass. Is that correct? 12 MR MOKWENA: That is correct. 13 MS BARNES: Now, Mr Mokwena, presumably 14 you would have followed Mr Mathunjwa's evidence here in the 15 Commission. He gave evidence quite some time ago now, in 16 November 2012, but presumably at least insofar as that 17 evidence had related to yourself you would have paid 18 attention to it. Correct, through your lawyers. 19 Presumably you would also have looked at Mr Mathunjwa's 20 statement at that time. 21 MR MOKWENA: Correct. 22 MS BARNES: And if there was anything in 23 Mr Mathunjwa's evidence or in his statement pertaining to 24 you that was wrong you would have drawn that to your 25 lawyer's attention, correct?</p>	<p style="text-align: right;">Page 37948</p> <p>1 look at is in your bundle at page 159. If we could go to 2 page 162 to paragraph 3.2 and you say here "I did, however, 3 telephone Mr Mathunjwa during July 2012 after Da Costa told 4 me that he heard a rumour that workers at the Karee mining 5 operations intending a memorandum to management at Karee." 6 CHAIRPERSON: - was deleted when the 7 witness gave his evidence gave his evidence in chief on 8 Friday. 9 MS BARNES: Yes, I know. That was my 10 next question. 11 CHAIRPERSON: In 3.1 and in 3.2. So read 12 it as it now is. 13 MS BARNES: My next question related to 14 just that and that is that on Friday, Mr Mokwena you said 15 that word rumour in both that paragraph and the preceding 16 paragraph 3.1 were in fact there in error and should be 17 deleted. Is that right? 18 MR MOKWENA: Yes. 19 MS BARNES: Because what's interesting, 20 Mr Mokwena, is that Mr Mathunjwa, you phoned Mr Mathunjwa 21 during July 2012, that's common cause between the two of 22 you and Mr Mathunjwa puts it in precisely those terms. He 23 says that you told him that there was a rumour that workers 24 were going to present a memorandum to management at Karee. 25 If we could look at Mr Mathunjwa's statement, it appears in</p>
<p style="text-align: right;">Page 37947</p> <p>1 MR MOKWENA: I submitted my statements 2 and I was never asked to respond to the statements of other 3 witnesses. That was my understanding, so I wrote my 4 statements from what I experienced. I was never asked to 5 write it to respond to other witnesses. 6 CHAIRPERSON: Did you see his statement 7 though? 8 MR MOKWENA: Yes I did. 9 CHAIRPERSON: And did you read the 10 transcript of his evidence? 11 MR MOKWENA: Yes. 12 CHAIRPERSON: If you'd seen something in 13 his statement or in the transcript of his evidence which 14 you knew to be wrong would you have drawn that to your 15 legal representative? 16 MR MOKWENA: I have raised a couple of 17 things yes, but – 18 CHAIRPERSON: You haven't answered my 19 question. 20 MR MOKWENA: Yes, Chair. 21 CHAIRPERSON: Thank you. 22 MS BARNES: If we can go to your 23 statement, well it's in fact your second statement, you've 24 made three statements altogether to this Commission, 25 haven't you, Mr Mokwena? The statement that I'd like us to</p>	<p style="text-align: right;">Page 37949</p> <p>1 your bundle at page 208, paragraph 11. 2 CHAIRPERSON: Paragraph 12 on page 212. 3 MS BARNES: Yes, that's right, thank you, 4 Chair. Paragraph 212, paragraph 12. 5 [10:35] So you'll see there it says, "On or about the 20th 6 of July 2012, about three weeks before the strike began, I 7 received a phone call from Mr Barnard Mokwena. Mr Mokwena 8 advised me that he had heard a rumour that workers at 9 Lonmin had certain grievances and that they intended to 10 hand over a memorandum to Lonmin management." So isn't 11 that in fact what you told Mr Mathunjwa, Mr Mokwena, that 12 there was a rumour? 13 MR MOKWENA: I said to Mr Mathunjwa in 14 July, and Chair, it may be a time issue here that when I 15 spoke to Mr Mathunjwa in July then it was not yet what 16 became Mr Da Costa's so-called engagement with RDOs and 17 it's probably why the word "rumour" then was used because 18 that stopped being a rumour for me to becoming Mr Da Costa 19 saying actually there are workers who are coming and 20 demanding 12 500. So it may be a time between when I spoke 21 to Mathunjwa then and when Mr Da Costa actually said indeed 22 I have been approached by employees, and I think, Chair, 23 the environment in which we work, we do hear a lot of 24 things about workers and until they become presented to you 25 in a formal way or in a meeting and all that, we hear a lot</p>

<p style="text-align: right;">Page 37950</p> <p>1 of things that are rumours, and I thought it was a diligent 2 thing for me to say to Mr Mathunjwa I may have heard a 3 rumour. Only after when Mr Da Costa had actually formally 4 said indeed workers are here – that may have been the 5 context of my conversation with Mathunjwa in July 2012. 6 MS BARNES: No, Mr Mokwena, that can't be 7 right because you and Mr Mathunjwa both agree that you had 8 this conversation in July – 9 MR MOKWENA: Yes. 10 MS BARNES: - 2012. You earlier said to 11 me that you heard about the demand from RDOs and it was a 12 specific demand for 12 500 in June and so when you spoke to 13 Mr Mathunjwa on this occasion you knew exactly what the 14 demand was, it wasn't a rumour, but Mr Mathunjwa says that 15 you called it a rumour when you spoke to him. Can you 16 explain that? 17 MR MOKWENA: Ja, now until I as head of 18 Human Capital and unions and wages and all that, I receive 19 in a structured formal manner all these things, they may 20 have for me, I may have interpreted them as mere rumours 21 and I apologise if you believe I may have used a different 22 word. 23 CHAIRPERSON: According to paragraph 12 24 of Mr Mathunjwa's statement what you told him was that you 25 heard a rumour that they intended to hand over a</p>	<p style="text-align: right;">Page 37952</p> <p>1 Mathunjwa on the morning of the 10th and I'm not sure 2 whether it goes back to July because I didn't speak to 3 Frans Baleni in July. I called both of them Friday 4 morning. Paragraph 14 is actually true because I'd called 5 Frans Baleni the Friday after speaking to Joseph Mathunjwa, 6 but it looks like there's a reference that I didn't get 7 back to him before the 10th. I actually called both on the 8 10th, so I would not have gone back to them before the 10th. 9 MS BARNES: No, but the point is really 10 this, Mr Mokwena, is that you raised this issue with Mr 11 Mathunjwa in July. You tell him that it's a rumour. 12 That's all you tell him. 13 MR MOKWENA: I've confirmed that I spoke 14 to him in July, yes. 15 MS BARNES: And he then says well call a 16 meeting, when you get the demand call a meeting of all the 17 stakeholders. Now isn't it correct that that's what he 18 said to you in July? 19 MR MOKWENA: No, Chair. 20 MS BARNES: Well, that part of Mr 21 Mathunjwa's evidence was never challenged. Can you explain 22 that? 23 MR MOKWENA: I don't know, Chair. All 24 I'm saying is paragraph 13 and 14 is a confirmation of my 25 telephone conversation with Mr Mathunjwa in the morning and</p>
<p style="text-align: right;">Page 37951</p> <p>1 memorandum. Now I take it that part as a statement made 2 round about the 20th of July was probably right. 3 MR MOKWENA: Yes. 4 MS BARNES: You didn't say to Mr 5 Mathunjwa that there was a demand for a wage increase to 6 R12 500? 7 MR MOKWENA: Not to my recollection. 8 MS BARNES: Even though you had that 9 information at the time? 10 MR MOKWENA: Not to my recollection, 11 Chair. 12 MS BARNES: Now Mr Mathunjwa goes on to 13 say on the same page, page 212 in paragraphs 13 and 14, 14 paragraph 13 Mr Mathunjwa says, "I said to Mr Mokwena that 15 when he receives these demands he should call a meeting of 16 all the stakeholders being the NUM, AMCU, Solidarity and 17 UASA, so that the matter could be discussed." If we could 18 then go on to paragraph 14, "Mr Mokwena responded by saying 19 that he would contact Mr Baleni from NUM and get back to 20 me. He did not get back to me before the 10th of August 21 2012, nor was AMCU called to a meeting prior to the events 22 of the 10th of August 2012." Now presumably you agree with 23 the contents of those paragraphs? 24 MR MOKWENA: Chair, may I be clarified, 25 paragraph 13 sounds like the conversation I had with Mr</p>	<p style="text-align: right;">Page 37953</p> <p>1 Mr Frans Baleni. I would never have spoken about Frans in 2 July about a rumour and it just doesn't make sense to me 3 that Joseph would have asked for a meeting already in July 4 when actually there was no march. So this was my response 5 to the event on the 10th. I called him and I called Mr 6 Mathunjwa who both said they had nothing to do with this, 7 they did not know. 8 MS BARNES: Yes, so we know that on the 9 10th – well, Mr Mathunjwa says he repeated his request for a 10 meeting to be convened of all the stakeholders, all the 11 unions with the presence at Lonmin, correct? 12 MR MOKWENA: Yes. 13 MS BARNES: And you didn't do that. 14 MR MOKWENA: Yes, I didn't do that. 15 MS BARNES: And you've said in your 16 statement, if we look at page 165, paragraph 4.3, the 17 reason that you give us that a memorandum wasn't received, 18 but the point is, Mr Mokwena, you knew what the demand was. 19 It was quite clear you'd known for ages what the demand 20 was. Was it not an eminently sensible suggestion to 21 convene a meeting of all the stakeholders to discuss the 22 demand, or the issue? 23 MR MOKWENA: Chair, on the Friday of the 24 10th of August, when you are faced with an unprotected 25 strike, my most important thing for me was to make sure we</p>

Page 37954

1 were acting within the prescripts of law. That for me was
 2 the most important thing. So the fact that 3 000 workers
 3 had marches required a different intervention, which was
 4 first of all for me I need to get a court to interdict the
 5 march, and in my experience it, I have never had to deal
 6 with an unprotected strike, Chair, which is illegal also
 7 and at the same time say well, can we talk about it. I
 8 would have in my opinion wasted time going to court.
 9 CHAIRPERSON: Why do you say an
 10 unprotected strike is illegal?
 11 MR MOKWENA: For me it was illegal.
 12 There are two other people, Chair, that I phoned in order
 13 to satisfy that I was, I had to understand what was going
 14 on and in the Marikana area whenever there's a march of any
 15 kind the municipality would have granted permission. So I
 16 called the mayor to say "Mayor, maybe we are not aware;
 17 have you granted permission for a march?" The mayor said
 18 no, no one has applied for a march in Marikana. I also
 19 phoned the local area police in Bethanie, closer to
 20 Marikana, to say "Maybe we missed it as a company; was
 21 there any authorisation for a march?" She also, Brigadier
 22 Koroba said "We have not granted." That's why –
 23 CHAIRPERSON: Yes, yes, no, I know about
 24 the march.
 25 MR MOKWENA: Ja.

Page 37955

1 CHAIRPERSON: - but you said it was a
 2 illegal strike and I asked you why you – you said it was an
 3 unprotected strike and an illegal strike and I wanted to
 4 know from you why you said it was an illegal strike. I
 5 know about the march. That's why I didn't ask about the
 6 march, I asked about the strike. Would you be kind enough
 7 to answer my question?
 8 MR MOKWENA: Chair, I'm sorry, I confused
 9 the two concepts. I wanted to say unprotected strike and
 10 illegal march.
 11 CHAIRPERSON: I understand that. Ms
 12 Barnes, when it's convenient for you can we take the first
 13 comfort break?
 14 MS BARNES: Yes, Chair –
 15 CHAIRPERSON: You can round off any point
 16 you want to do, but all I'm saying to you, when it's
 17 convenient please tell me.
 18 MS BARNES: Yes. Mr Mokwena, if I could
 19 just confirm with you that after having made the verbal
 20 request for a meeting of all the stakeholders in your
 21 conversation on the 10th of August Mr Mathunjwa the wrote
 22 you a letter in which, and in that letter the request for
 23 such a meeting was repeated. Is that correct?
 24 MR MOKWENA: Yes.
 25 CHAIRPERSON: That's the letter at page 9

Page 37956

1 of the witness's bundle.
 2 MS BARNES: Yes, and I think you
 3 confirmed in your evidence-in-chief that you did receive
 4 that letter on the 10th of August, correct?
 5 MR MOKWENA: That is correct.
 6 MS BARNES: Chair, this would be a
 7 convenient time.
 8 CHAIRPERSON: Well, before we adjourn - I
 9 haven't given the adjournment yet – before we adjourn, in
 10 fairness to the witness, at the foot of page 9 of the
 11 bundle what is said is this, "This memorandum," it talked
 12 about when the memorandum was received. "This memorandum
 13 will be communicated by management to respective recognised
 14 unions and a meeting will be coordinated to discuss the
 15 content of the memorandum." That's also an important
 16 aspect, isn't it?
 17 MR MOKWENA: Yes, Chair, it is, and I
 18 would not, there was no memorandum, there was no content,
 19 there was – yes.
 20 CHAIRPERSON: Okay, can we now take the
 21 first comfort break, Ms Barnes?
 22 MS BARNES: Yes, thank you, Chair.
 23 CHAIRPERSON: 15 minutes.
 24 [COMMISSION ADJOURNS COMMISSION RESUMES]
 25 [11:07] CHAIRPERSON: The Commission resumes. Mr

Page 37957

1 Mokwena, you're still under oath. Ms Barnes?
 2 BARNARD MOKWENA: (s.u.o.)
 3 CROSS-EXAMINATION BY MS BARNES (CONTD.):
 4 Thank you, Chair. Mr Mokwena, if we can go now to the
 5 transcript of the SAfm interview that you were involved in
 6 on the 15th of August. That –
 7 CHAIRPERSON: It wasn't an interview, it
 8 was a debate but it's in the, it's page 42 of the bundle.
 9 It's headed "News interview" but it wasn't really an
 10 interview, it was –
 11 MS BARNES: Yes, it really was a debate.
 12 So that starts at page 42 of your bundle of documents and
 13 if we could go to page 48 and we then need to, I'm going to
 14 read an exchange that took place between yourself, Mr
 15 Mathunjwa and Mr Gwala. It starts at the top of page 48.
 16 Mr Gwala says, "Mr Mathunjwa, do you know these people who
 17 were marching on Friday, were they your members?"
 18 Mathunjwa says, "According to us it is the workers."
 19 "Gwala: Are they your members or not?" "Mathunjwa: Some of
 20 them are our members but you cannot say it is only AMCU
 21 members because this march was not convened by AMCU but are
 22 the workers, it was the workers themselves who arranged
 23 this march." "Gwala: So your unions did not know anything
 24 about this march?" "Mathunjwa: Our union did know about
 25 this march. How we happened to know is because Mr Barnard

Page 37958

1 phoned me personally two weeks ago saying to me that there
 2 are a group of workers who are intending to serve him with
 3 a list of demands. Then I told him, I said quickly arrange
 4 a high level meeting with the leaders of all the unions,
 5 including NUM, ourselves, Solidarity and UASA in order to
 6 look at these demands and be confined within the structures
 7 of the unions. And he said to me he is still going to
 8 speak to Mr Frans Baleni who is the general secretary of
 9 NUM. I waited for two weeks, nothing happened." So there
 10 Mr Mathunjwa again refers to the fact that he, on that
 11 occasion in that telephone conversation with you, asked for
 12 a meeting. Do you see that?
 13 MR MOKWENA: Yes, I do.
 14 MS BARNES: If we then go on, "On the 10th
 15 of August I received a call from him that there are workers
 16 who are marching to the office and he will be arranging for
 17 the SAPS to receive the memorandum." I'm not, I am just
 18 going to paraphrase here somewhat. He then basically says
 19 that he asked you for a stakeholders' meeting again, which
 20 we know, that's common cause. If I can just then skip, if
 21 we can skip on to page 49, if we can go on to page 49 and
 22 then Gwala says, "And you never bothered to ask your branch
 23 chairperson, branch leaders, whether they are part of this
 24 march." Mathunjwa says, "We did ask them in terms of what
 25 is really happening. They are saying as part of this they

Page 37959

1 went to management and they" – again I am paraphrasing
 2 somewhat, they heard that workers will be bringing some
 3 sort of memorandum. Please invite us into this process but
 4 management, what they neglected, what they did they
 5 neglected all the structures of the unions and engaged
 6 those employees outside the structures of the unions. Do
 7 you see that?
 8 MR MOKWENA: Yes, I do.
 9 MS BARNES: Then Mr Gwala says, "Alright,
 10 I'm going to come back to Mr Zokwana to find out then at
 11 what point did his union get involved but again, Mr
 12 Mokwena, it appears that you knew something like this was
 13 happening two weeks prior." You then say the following,
 14 "It is amazing how Joseph could lie before the South
 15 African public with 10 people dead. He is insinuating he
 16 knew, he is insinuating." Gwala says, "No, he is
 17 insinuating that or he's also insinuating that you knew and
 18 that you called him two weeks ago to say that there are
 19 these rumours." Again we see the reference to rumours.
 20 And you then say, "No, no, no, he is twisting the truth at
 21 the expense of 10 lives. There are no engagements. We
 22 have not engaged these groups of people and it is still our
 23 position, we will not engage people who engage in criminal
 24 activity outside the union structures." Gwala then says,
 25 "Okay but let us establish the facts, Mr Mokwena. You

Page 37960

1 never called Mr Mathunjwa two weeks ago to say that you
 2 heard people will be marching, you never did that." You
 3 then say, "I called Mr Mathunjwa in relation to" – or if we
 4 go on to the next page, page 50, there appears to be a
 5 missing word there but you say, "issues not related to what
 6 is happening now." So you called him about issues not
 7 relating to what is happening now. "What happened on
 8 Friday took us by surprise," you say, "people grouped and
 9 marched."
 10 Now Mr Mokwena, there are at least three things
 11 that you say here that are fundamentally incorrect and in
 12 fact untrue. The first is your statement in this, on
 13 national radio that your telephone call to Mr Mathunjwa in
 14 July was about issues unrelated to what was happening at
 15 Lonmin on the 10th of August. That's not correct, we
 16 confirmed that earlier, you phoned him about the very same
 17 issue, correct?
 18 MR MOKWENA: I accept what you are saying
 19 and I have had so many calls with Joseph Mathunjwa, Chair,
 20 and I have had many calls on issues not related to what was
 21 going on.
 22 MS BARNES: Of course Mr Mathunjwa was
 23 very specific here about that call when he – I've read it,
 24 I don't need to read it again.
 25 MR MOKWENA: Yes.

Page 37961

1 MS BARNES: It must have been clear to
 2 you what he was referring to.
 3 MR MOKWENA: And I agree with you.
 4 However, what you are not stating or you are not – what I
 5 feel or understand you to be saying, there was no list of
 6 demands in July so I had no reason to call Mr Mathunjwa or
 7 call a meeting, that's in his statement and that he waited
 8 for two weeks. I never received a list of demands which
 9 was the premise for which I would have called a meeting in
 10 July.
 11 MS BARNES: Mr Mokwena, that's not the
 12 point. The point is you say in this interview that the
 13 call to him two weeks ago had nothing to do with this issue
 14 at Lonmin and that is false.
 15 MR MOKWENA: That is possible because,
 16 Chair, as I've said, I've had so many calls with Mr
 17 Mathunjwa and I did speak to Mr Mathunjwa earlier about
 18 what we described before as rumours and I spoke to him
 19 about a lot of other issues.
 20 MS BARNES: The second falsehood that we
 21 see here, Mr Mokwena, is your statement that Lonmin has not
 22 engaged with the workers. That's also false, isn't that
 23 correct? You've earlier admitted in terms that Mr Da Costa
 24 engaged with the RDOs on their demand, we know he did but
 25 you tell the nation that that didn't happen.

<p style="text-align: right;">Page 37962</p> <p>1 MR MOKWENA: Now the day of this 2 interview I had already received accusations from Mr 3 Mathunjwa himself that I had entered into wage negotiations 4 and I think the word "engagement" may be problematic here. 5 I was already accused by him that I had entered into 6 negotiations and by the way, page 2 of the letter that you 7 refer to with Mr Mathunjwa, he states categorically that 8 these are sinister forces not to be engaged. So you are 9 asking me that I'm inconsistent but I'm asking you, through 10 the Chair, look at the second page of Mr Mathunjwa's letter 11 – 12 MS BARNES: No, Mr Mokwena – 13 MR MOKWENA: - and what transpired here. 14 MS BARNES: I'm sorry to interrupt you 15 but you don't ask me the questions, I ask you the 16 questions. 17 MR MOKWENA: I'm creating context for my, 18 what I said at this interview, what I'd already experienced 19 between Friday with Mr Mathunjwa, to the interview. 20 MS BARNES: And the third falsehood, Mr 21 Mokwena, is your statement at the top of page 50 that you 22 were taken by surprise. You say, "We were taken by 23 surprise. People grouped and marched." That's false, Mr 24 Mokwena, you had been concerned for many months that what 25 had happened at Impala was going to happen at Lonmin.</p>	<p style="text-align: right;">Page 37964</p> <p>1 surprise to you. 2 MR MOKWENA: Yes, Chair. 3 CHAIRPERSON: That had never happened 4 before, is that right? 5 MR MOKWENA: No. 6 CHAIRPERSON: May I ask you a question 7 before Ms Barnes continues? You used rather strong 8 language against Mr Mathunjwa, you called him, you accused 9 him of lying before the South African people, that's on 10 page 49 about line 16, you accused him of twisting the 11 truth, that's line 23. Now these are serious allegations. 12 Would you be kind enough just to, very shortly, to help me? 13 Point out what the lies were, in what respects Mr Mathunjwa 14 was twisting the truth? You can just refer me to 15 particular statements that he made in this radio debate so 16 that I can underline them and then we can see whether your 17 allegations Mr Mathunjwa that he was lying, was correct. 18 What were they? 19 MR MOKWENA: Refer me to those paragraphs 20 again, Chair? 21 CHAIRPERSON: No, you were – you see on 22 page 49 you said, line 17, "It is amazing how Joseph could 23 lie before the South African public with 10 people dead." 24 And then you talk about an insinuation and then line 23 you 25 say, "No, no, no, he is twisting the truth at the expense</p>
<p style="text-align: right;">Page 37963</p> <p>1 You've confirmed that. You also said in your evidence in 2 chief on Friday that this thing started for you not just on 3 the 10th when workers embarked on the strike, but much in 4 earlier in June when they started engaging with Mr Da 5 Costa. Isn't that correct? 6 MR MOKWENA: That is incorrect. Me taken 7 by surprise, in the 11 years I've spent at Lonmin, the last 8 time I managed an unprotected strike, Chair, was about six, 9 seven years ago and my surprise was, despite numerous 10 attempts to communicate and explain to the workers between 11 June, July and August, that 3 000 of our employees could 12 still go an unprotected strike is the context of my 13 surprise, that these are the workers I've worked with for 14 many years, they know the rules, I've spoken to them, I've 15 explained to them, why do they go on an unprotected strike? 16 That is the meaning of why I was surprised. 17 MS BARNES: What you really do here – 18 MR MOKWENA: It's not that I didn't know. 19 CHAIRPERSON: No, to be fair to you I 20 take it, you explained earlier you were surprised by the 21 fact that there was a march which, it was an illegal march 22 – 23 MR MOKWENA: Yes. 24 CHAIRPERSON: Of 3 000 people coming to 25 the LPD. I think you explained that also came as a</p>	<p style="text-align: right;">Page 37965</p> <p>1 of 10 lives." Now that's fairly strong language. Now what 2 I'd like to know from you is, would you be kind enough to 3 identify the lies that Mr Mathunjwa said, according to you, 4 the respects in which he was twisting the truth? If you 5 tell me what they are then I can underline the actual 6 statements so that I know whether your allegation against 7 him was correct. Now what were the lies or was it only one 8 lie? 9 MR MOKWENA: Yes, Chair. This is where I 10 was coming from before we got to the interview. When I 11 spoke to both Mr Frans Baleni and Joseph Mathunjwa on the 12 Friday, well-seasoned trade unionists who know the rules, 13 they both confirmed the principle that this was an 14 unprotected strike, they had nothing to do with it and you 15 know, workers should not be engaged and if, we shouldn't 16 set a wrong precedent. That was my position on Friday. 17 The three of us were agreeing in principle, Chair. Going 18 forward and Mr Mathunjwa in particular called, that there 19 were sinister forces. So on Friday in my mind I had two 20 partners who were agreeing with me in principle that this 21 was unprotected. What I found very, very difficult and 22 different was the following week from the first press 23 statement they made accusing me of many other things, when 24 I had an expectation that the three of us would run this 25 interview, condemn violence together and say it's an</p>

Page 37966

1 unprotected strike and workers should actually go back to
2 work. So that is the context of me making statements that
3 he was twisting the truth.

4 CHAIRPERSON: So do I understand you to
5 be saying it wasn't anything he'd said on the radio
6 programme that was a lie or a twisting of the truth, it was
7 something that he'd said previously in a press statement,
8 is that correct?

9 MR MOKWENA: Yes, and –

10 CHAIRPERSON: So there's no lie in what
11 he'd said on the radio programme that I can underline with
12 my pen and say, ah, that's what Mr Mokwena says is a lie.

13 MR MOKWENA: Yes, Chair.

14 CHAIRPERSON: So he hadn't lied on the
15 radio programme or certainly not up to that point.

16 MR MOKWENA: No.

17 CHAIRPERSON: But you were complaining
18 about press statements that AMCU had issued.

19 MR MOKWENA: Yes.

20 CHAIRPERSON: Prior to the radio
21 programme and which you say contained statements which were
22 not true and he should have realised they were not true.
23 Is that correct?

24 MR MOKWENA: Yes, that's correct, Chair.

25 CHAIRPERSON: I understand, thank you.

Page 37967

1 MS BARNES: Firstly, Mr Mokwena, can I
2 put it to you that nowhere in this transcript do you say
3 that Mr Mathunjwa told a lie in any press statement, do you
4 accept that?

5 MR MOKWENA: Yes, I've just explained the
6 context of my experience between Friday and the interview.
7 In other words, Chair, my honest expectation was the three
8 of us would have conveyed the same message around the
9 principle that this was an unprotected strike. That's
10 where I was coming from.

11 MS BARNES: Yes. Mr Mokwena, we'll get
12 to AMCU's press statements in due course and you can point
13 there to any lies that you allege that Mathunjwa, that Mr
14 Mathunjwa told in those as well but at this stage, reading
15 this transcript you create the clear impression that you
16 are accusing Mr Mathunjwa of lying on the radio. I'm going
17 to give you an opportunity to comment on it. That is the
18 impression you create here, there's no reference to any lie
19 being told in any other place, anywhere in this transcript.

20 MR MOKWENA: Yes, you are correct. As
21 I've said, my experience of Mr Mathunjwa from Friday, the
22 letter he sent me, the telephone conversation, that morning
23 I walked into the studio with an expectation that he would
24 reiterate that position and I found it very difficult that
25 I was the only one at that instance who was upholding the

Page 37968

1 principle that he, in his letter, and Mr Zokwana actually
2 were meant to have said this is the situation.

3 MS BARNES: But where's the lie, Mr
4 Mokwena, where's the lie that you allege?

5 CHAIRPERSON: He said, as I understood
6 him, that he doesn't say that there's anything in the
7 transcript, certainly not up to this part of the
8 transcript, which I can underlie – sorry, I can underline
9 as being a lie. He explained to me when I asked him that
10 question that he was actually referring to press statements
11 that had been issued, if I understood him correctly, if I'm
12 wrong he'll tell me, he was referring to press statements
13 which AMCU had issued to the South African public which he
14 states contain statements which are incorrect and which Mr
15 Mathunjwa should have known are incorrect. Is that right,
16 Mr Mokwena?

17 MR MOKWENA: Yes, Chair.

18 CHAIRPERSON: Thank you.

19 MS BARNES: Alright, well, we'll get to
20 those press statements in due course. Mr Mokwena, if we
21 can look now at the meeting that was held with the two
22 unions, AMCU and NUM, and Lonmin on the 15th of August 2012
23 with General Mpmembe. The transcript of that meeting is
24 also in your bundle, it starts at page 100 if we could have
25 that on the screen? If we could go to page 126?

Page 37969

1 CHAIRPERSON: It'll be in the exhibits, I
2 can't remember the exhibit number but it's page 27 of the
3 exhibit.

4 MS BARNES: Page 126, if we could move
5 down the page.

6 CHAIRPERSON: Perhaps Ms Pillay can tell
7 us what the exhibit number is. It's already –

8 MS PILLAY: Chair, it's exhibit LL.

9 CHAIRPERSON: LL. So it's LL but for
10 convenience you've included it in the bundle and the whole
11 bundle is an exhibit, so it's before us twice.

12 MS BARNES: Mm.

13 CHAIRPERSON: It's page 27 of that
14 exhibit, 126 of the bundle. What's the passage? Sorry,
15 what's the passage on that page that you want to
16 specifically refer the witness to?

17 MS BARNES: It starts at line 17, so it's
18 Mr Mokwena speaking from line 17 and this where you set
19 out, you state Lonmin's position. You say the following,
20 "Our position, General, as Lonmin management, our position
21 is as follows. We are willing to engage our employees
22 within the structures that are known, in a very safe
23 environment where there are no weapons, not on the
24 mountain. So we are willing to meet our employees through
25 their structures, through their leaders to discuss any

Page 37970

1 issue, not when they are armed, not when they are actually
 2 outside the Lonmin property. So when the workers are back,
 3 disarmed, tomorrow, tonight, through their leaders we will
 4 meet them. That is our position. So we are not against
 5 meeting, discussing issues with their" – presumably that
 6 should be "our" – "employees through the right structures,
 7 we are prepared to do that." Now Mr Mokwena, we know that
 8 the strikers here had not brought their demand through NUM
 9 because they'd lost faith in NUM, correct, or for whatever
 10 reason they'd not brought their demand through NUM.
 11 MR MOKWENA: They didn't bring their
 12 demand through any union.
 13 MS BARNES: Yes, thank you. And we know
 14 that NUM did not support the strike or in fact the demand
 15 for 12 500, correct?
 16 MR MOKWENA: My understanding is NUM did
 17 not endorse the unprotected strike.
 18 CHAIRPERSON: No, but Ms Barnes' question
 19 had two legs to it. The first one you have answered. NUM
 20 didn't endorse the unprotected strike.
 21 [11:27] And the evidence is NUM don't agree that
 22 unprotected strike is a good idea because it gives the
 23 employer a weapon to discharge people and then selectively
 24 re-employ. So it's their policy, they don't believe in
 25 unprotected strikes. But the second half of the question

Page 37971

1 you didn't answer and that was – perhaps you could repeat
 2 that again, Ms Barnes?
 3 MS BARNES: Yes, the demand for R12 500
 4 as a basic wage per month, NUM didn't support that demand
 5 either, did they?
 6 MR NTSONKOTA: Chair, before the witness
 7 answers, evidence is clear, Chair, no such demand –
 8 CHAIRPERSON: It's not a valid objection.
 9 She can put the –
 10 MR NTSONKOTA: May I just –
 11 CHAIRPERSON: Yes, you can, but –
 12 MR NTSONKOTA: - raise an objection,
 13 Chair, and perhaps that –
 14 CHAIRPERSON: Alright, I'll listen to
 15 you.
 16 MR NTSONKOTA: Evidence, objective
 17 evidence is that no such demand was ever put to NUM. So we
 18 never had opportunity to react to the demand.
 19 CHAIRPERSON: You're suggesting an answer
 20 to the witness. That's not a proper –
 21 MR NTSONKOTA: I'm not suggesting an
 22 answer. I'm merely –
 23 CHAIRPERSON: It's not a proper –
 24 MR NTSONKOTA: - placing on record the
 25 evidence –

Page 37972

1 CHAIRPERSON: It's not a proper objection
 2 and I'm disallowing it. We've got limited time here.
 3 Please, I don't want people to waste time with improper
 4 objections. Please carry on –
 5 MR NTSONKOTA: But Chair, I wasn't
 6 suggesting an answer, merely placing on record –
 7 CHAIRPERSON: Alright –
 8 MR NTSONKOTA: - the objective evidence
 9 that's there. It has never been contested. In fact the
 10 RDOs themselves did say that we never put the demand to
 11 NUM, so the objective evidence –
 12 CHAIRPERSON: What's the basis of your
 13 objection?
 14 MR NTSONKOTA: The basis of the objection
 15 is that the answer is misleading because the question –
 16 CHAIRPERSON: No, you mean the question
 17 is misleading –
 18 MR NTSONKOTA: - doesn't have a factual
 19 basis.
 20 CHAIRPERSON: The question is –
 21 MR NTSONKOTA: There was never a demand
 22 put to NUM for 12 500 by the RDOs.
 23 MS BARNES: That's not the question. The
 24 question is what the witness understood NUM's position to
 25 be.

Page 37973

1 MR NTSONKOTA: How could you understand,
 2 ask the question if there was never a demand put to NUM?
 3 CHAIRPERSON: You're now debating the
 4 merits of the matter. Let's get the witness's answer to
 5 it –
 6 MR NTSONKOTA: But Chair, this is not
 7 opportunity to be –
 8 CHAIRPERSON: - because there are various
 9 answers the witness –
 10 MR NTSONKOTA: - scoring political
 11 points. No such demand was put to NUM, period, Chair.
 12 CHAIRPERSON: I don't think it's a valid
 13 objection. It's disallowed. Carry on, Ms Barnes.
 14 MS BARNES: Would you like to answer the
 15 question?
 16 MR MOKWENA: Please ask the question
 17 again.
 18 MS BARNES: The question is that is it
 19 correct that NUM did not support the – as far as you
 20 understood is it correct that NUM did not support the
 21 demand of R12 500?
 22 MR MOKWENA: I have no evidence to
 23 suggest that NUM supported or did not support 12 500.
 24 MS BARNES: So Mr Mokwena, if the
 25 strikers had gone back to work this demand would not have

Page 37974

1 been pursued through NUM. Isn't that correct?

2 MR MOKWENA: That is incorrect.

3 CHAIRPERSON: Surely you can't say that

4 because the answer to that question presumes an answer to

5 the preceding question, which you didn't get. He said he

6 doesn't know whether NUM agreed or disagreed with the

7 demand –

8 MS BARNES: Alright, let me –

9 CHAIRPERSON: - so you can't say

10 therefore –

11 MS BARNES: Let me rephrase the question.

12 CHAIRPERSON: Ja, I think you should.

13 MS BARNES: Mr Mokwena, when you said in

14 the passage that we've just read in that meeting that you

15 would engage the employees through the structures, did you

16 mean that you would engage with them through NUM?

17 MR MOKWENA: Yes, that's the assumption.

18 MS BARNES: Because it couldn't of course

19 have been AMCU because AMCU did not have bargaining rights

20 at Lonmin at the time, correct?

21 MR MOKWENA: Exactly.

22 MS BARNES: So what you were actually

23 saying is that if the workers came back to work you would

24 engage with them on their demand through NUM. Is that what

25 you're saying?

Page 37975

1 MR MOKWENA: Yes.

2 MS BARNES: Even though you knew, Mr

3 Mokwena, that the workers had lost faith in NUM and had not

4 in fact brought their demand through NUM?

5 MR MOKWENA: Ja, but engaging workers

6 through NUM if workers, as you say, had left NUM at Karee,

7 the Labour Relations Act actually provides for more if that

8 were to be the case. So all I needed at the time would

9 have been to get NUM's consent.

10 MS BARNES: You see, what I'm really

11 trying to understand, Mr Mokwena, is what you meant in this

12 passage here. The only relevant structure really here is

13 NUM because it's the only trade union at the time that

14 represent these particular workers that are on strike that

15 has bargaining rights, correct?

16 MR MOKWENA: That is correct.

17 MS BARNES: So when you said what you

18 said here at the meeting on the 15th did you mean that we

19 will engage through NUM, or did you mean that we will

20 engage with the leaders of all the unions?

21 MR MOKWENA: I meant the kind of

22 employees we're talking about here would have been in the

23 bargaining unit at the time represented by NUM. So it

24 would have been NUM, not Solidarity, not UASA, and not AMCU

25 because AMCU had no bargaining rights.

Page 37976

1 MS BARNES: So what you were saying here

2 is that if the workers come back to work we will engage

3 with them on their demand through NUM. That's what you

4 meant?

5 MR MOKWENA: Yes.

6 MS BARNES: Mr Mokwena, if we can look

7 now at another topic. We know that ultimately after 44

8 people had died at Lonmin that a forum was set up in order

9 to discuss the RDO issue. We know that all the trade

10 unions were represented on that forum, together with Lonmin

11 management and a delegation of the workers. Is that right?

12 MR MOKWENA: That is correct.

13 MS BARNES: And it was through that forum

14 that the RDO demand was discussed and that the strike was

15 ultimately resolved, correct?

16 MR MOKWENA: That is correct.

17 MS BARNES: Now –

18 MR MOKWENA: However –

19 MS BARNES: Yes?

20 MR MOKWENA: - what is crucial, I got the

21 consent of UASA, Solidarity and NUM to reopen the existing

22 agreements, so I needed their consent and that's the

23 principle that I'm trying to put across. Unilateral

24 opening would have actually created a very, very bad

25 precedent not only for Lonmin, so not only did we have the

Page 37977

1 stakeholders come together, I actually had to get NUM

2 agree, Solidarity agree, and UASA. That for me is what

3 made it successful.

4 MS BARNES: Yes, of course, but you were

5 able to do that.

6 MR MOKWENA: Yes.

7 MS BARNES: And shouldn't you have done

8 that much earlier, Mr Mokwena? At least with the benefit

9 of hindsight, once people started dying shouldn't you have

10 done that?

11 MR MOKWENA: Well, I'm not sure whether I

12 understand your question. The assumption that it was

13 reopened because people died –

14 MS BARNES: No, that wasn't –

15 MR MOKWENA: If she can ask the question

16 again.

17 MS BARNES: That wasn't the question.

18 We've agreed that a forum was set up, all the stakeholders

19 were represented on it, engagement took place, that's how

20 the strike was resolved. You've said in order to do that

21 you had to obtain the consent of some of the unions. I

22 accept that.

23 MR MOKWENA: Yes.

24 MS BARNES: Shouldn't you have set about

25 doing that much earlier once Lonmin was in an absolute

Page 37978

1 situation of crisis with people dying, before the 16th? 10
 2 people had died before the 16th.
 3 MR MOKWENA: You see, Chair, I don't have
 4 – I couldn't foretell that people were going to die, for
 5 starters. All what we wanted to do was uphold the rule of
 6 law, the framework, which determines our behaviour as an
 7 employer and the employees on the other hand. I had no
 8 idea people were going to be killed. If I'd known –
 9 CHAIRPERSON: I'm sorry, Mr Mokwena, that
 10 doesn't answer the question. What Ms Barnes wants to know,
 11 after 10 people died – I can understand on the Friday you
 12 didn't know anyone would die. I'm sure it was the furthest
 13 thing from your mind that there'd be deaths, looking at the
 14 matter from your position on the 10th, the Friday, but Ms
 15 Barnes is asking you another question. Later on, before
 16 the 16th when a lot of other people died, when 10 people had
 17 died - or perhaps leave Mr Twala out because he died on the
 18 Tuesday – at the end of Monday nine people had died. What
 19 she's suggesting to you, as I understand the question, is
 20 was that not a time for you to say this situation is
 21 getting out of hand, people are being killed, what we'd
 22 better do is call together all the people whose presence is
 23 necessary, whose consents are required really, for an all-
 24 inclusive consultation and meeting on the matter? Is that
 25 a summary of your question?

Page 37979

1 MS BARNES: Yes. Yes, thank you, Chair.
 2 CHAIRPERSON: Now what's the answer to
 3 that?
 4 MR MOKWENA: Chair, that, yes, you know,
 5 in hindsight that would have been a possibility, but
 6 judging by how particularly AMCU and NUM before the 16th
 7 didn't convince me that they were the kind of parties that
 8 would, could actually sit around a table, and it was just a
 9 natural way of saying look, on one hand there's hope this
 10 thing could be resolved, workers could heed to the call,
 11 there's court interdict. On the other hand the partners
 12 that I was with at the time didn't look like they were in a
 13 position to talk, so that's just how we experienced that
 14 week before the 16th. It wasn't really a complete exclusion
 15 of the possibility to bring the parties.
 16 MS BARNES: But Mr Mokwena, you never –
 17 COMMISSIONER HEMRAJ: Sorry, just a sec.
 18 Mr Mokwena, whose initiative was the forum?
 19 MR MOKWENA: Come again?
 20 COMMISSIONER HEMRAJ: Whose initiative
 21 was the forum? The forum.
 22 CHAIRPERSON: The forum.
 23 MR MOKWENA: The forum, well I worked
 24 with – the Department of Labour came onboard, but I
 25 initiated the opening of the contracts myself with UASA,

Page 37980

1 Solidarity, to get their willingness to come to the party
 2 and the Department of Labour came onboard, the CCMA, and
 3 the Bishop brought in the representatives of the workers.
 4 COMMISSIONER HEMRAJ: Yes, thank you.
 5 MS BARNES: Mr Mokwena, we know that
 6 during that week you didn't even suggest a meeting between
 7 NUM and AMCU, a meeting of NUM and AMCU and Lonmin, let
 8 alone all the other unions, correct? You never suggested
 9 such a thing.
 10 MR MOKWENA: Yes, as I've just explained,
 11 Chair, I didn't and you know, the environment just didn't
 12 look to have a potential for that to happen.
 13 MS BARNES: Well, we'll get to that in
 14 more detail in a minute. We'll see that Mr Mathunjwa in
 15 fact suggested that meeting and once the meeting was
 16 suggested it happened on the very same day, but we'll get
 17 to that in more detail –
 18 MR MOKWENA: Which meeting are you
 19 referring to?
 20 MS BARNES: The meeting on the 15th. That
 21 was the first meeting that was held between Lonmin, NUM and
 22 AMCU. It was, the initial suggestion came from Mr
 23 Mathunjwa, and I'll take you to that reference in a moment,
 24 and it was during the SAfm debate that it was agreed that
 25 the parties would all meet. But that was never at your

Page 37981

1 suggestion.
 2 MR MOKWENA: No, I –
 3 MS BARNES: Correct?
 4 MR MOKWENA: It –
 5 MS BARNES: Okay, now before we get to
 6 that I just, I want to deal first with an aspect that, in
 7 relation to the meeting that happened on the 16th, the
 8 morning of the 16th of August 2012, between Mr Mathunjwa, Mr
 9 Kwadi, Mr Kgotle and others. You were not at that meeting,
 10 but you do deal with it in your supplementary affidavit and
 11 I'm going to take you there now. It's page 192 of your
 12 bundle, paragraph 21, page 192. Okay, now I'm going to
 13 take you to the paragraph now, but this is basically, you
 14 were not at this meeting but you were phoned by Mr Kwadi
 15 during that meeting to get a mandate in relation to
 16 something that Mr Mathunjwa had asked for. Are you with
 17 me?
 18 MR MOKWENA: Yes.
 19 MS BARNES: So in paragraph 21 of your
 20 statement you say the following. "Kgotle and Kwadi had a
 21 meeting with Joseph Mathunjwa during the course of the
 22 morning of the 16th of August. Kwadi recorded this meeting
 23 and a transcript of the recording is before the Commission.
 24 I did not attend this meeting. Kwadi telephoned me during
 25 the meeting and said that Mathunjwa had undertaken to

<p style="text-align: right;">Page 37982</p> <p>1 persuade the strikers to leave the koppie and return to 2 work on condition that Lonmin allow AMCU to negotiate on 3 behalf of all the RDOs. Since such a concession would be 4 tantamount to Lonmin granting collective bargaining rights 5 to AMCU, at least on behalf of the RDOs, I instructed Kwadi 6 to tell Mathunjwa that this proposal was unacceptable to 7 Lonmin. I take responsibility for this decision." You see 8 that? 9 MR MOKWENA: Yes. 10 MS BARNES: So this is then, these are 11 the terms in which Kwadi communicated to you what Mathunjwa 12 had said to him, that you've recorded here. 13 MR MOKWENA: Yes. 14 MS BARNES: You confirm that? 15 MR MOKWENA: Yes. 16 MS BARNES: Now if we could go to the 17 transcript of this meeting, which is at page 131 of this 18 bundle, it is also a separate exhibit. 19 CHAIRPERSON: Ms Pillay will give us the 20 separate exhibit number, just for completeness. 21 MS PILLAY: Chair, this is OO4. 22 CHAIRPERSON: Thank you. 23 MS BARNES: If we could look at paginated 24 page in the bundle, 134, which is I think 695 of the 25 exhibit, if we could go to the bottom of the page –</p>	<p style="text-align: right;">Page 37984</p> <p>1 MR MOKWENA: Yes. 2 CHAIRPERSON: He can answer the question 3 as he wishes and if – 4 MS BARNES: Yes. 5 CHAIRPERSON: - referring to other parts 6 of the document is part of his answer, so be it. 7 MS BARNES: You can answer the question 8 as you please, of course. 9 MR MOKWENA: Yes, okay. So if you go to 10 page 134, Chair, which is paragraph 26 – 11 CHAIRPERSON: You mean line 26. 12 MR MOKWENA: Ja, 20 in the middle of the 13 page, Mr Mathunjwa says, "Or whether AMCU will be part of 14 the demand, I mean according to those people whom they want 15 to negotiate on their behalf, yes." Keep that comment in 16 mind, Chair, and I also take you to the other section, 17 because I believe, Chair, taking extracts from such a 18 conversation may be taken out of context. Page 138, Mr 19 Mathunjwa says, 138, "Then the issue, this is the issue 20 that you are facing. All these things of numbers and what 21 will sort itself out, I think the issue is, 1, the issue of 22 AMCU being part of this issue in terms of that mandate from 23 the mountain to the timeframe of dealing with these 24 grievances is also important." Now I want you, Chair, to 25 note crucial negotiation terminology used by Mr Mathunjwa,</p>
<p style="text-align: right;">Page 37983</p> <p>1 CHAIRPERSON: 134, that's page 3 of the 2 exhibit, line? 3 MS BARNES: Line 29. 4 CHAIRPERSON: Thank you. 5 MS BARNES: Now what has happened here, 6 Mr Mokwena, is that there's been a long discussion between 7 Mr Kwadi and Mr Mathunjwa and what happens at the bottom of 8 this page is Mr Kwadi summarises the import of the 9 discussion. He says, "So you are saying that if this issue 10 is to be resolved there has to be, call it a central 11 discussion for lack of a better word, okay. There has to 12 be a central forum to deal with the issue of RDOs across 13 Marikana Operations. You are saying the only way you will 14 go to the mountain is if you are guarantees a place there." 15 You see that? 16 MR MOKWENA: Yes. 17 MS BARNES: So you'll see there that's 18 what being referred to, and Mr Kwadi is summarising what Mr 19 Mathunjwa has said to him, is a central forum and a place 20 on the central forum. There's no reference there to a 21 place at the bargaining table. You see that? 22 MR MOKWENA: Yes. Are you done? Can I 23 refer you to other parts of the same document, Chair? 24 MS BARNES: You can answer the question, 25 Sir.</p>	<p style="text-align: right;">Page 37985</p> <p>1 if he didn't suggest it. "Further, how long, we return to 2 work, how long will it take the management to take a 3 decision or the engagement, to conclude the engagement on 4 those issues?" The last reference I want to refer the 5 Chair to is page 141. Mr Mathunjwa in the middle of the 6 page says, "Yes, and not even elaborating from my side, 7 based on the mandate of yesterday, based on things that we 8 heard from the report of the generals in their debriefing, 9 surely they told NUM that you heard from your own ears that 10 those people, they do not want you so therefore they prefer 11 AMCU to engage with management." Now Chair, this is real 12 negotiation vocabulary used by Mr Mathunjwa. If he did not 13 suggest what you say he did not, then I do not know, in the 14 very same conversation. Thank you, Chair. 15 MS BARNES: Yes, thank you, Mr Mokwena. 16 Mr Mokwena, the point, isn't the point really where such 17 negotiations are to take place? Because Mr Mathunjwa has 18 said, and I'll take you to his evidence in a moment, that 19 he said that AMCU needed to be part of the solution. AMCU 20 needed to be one of the parties around the table to 21 negotiate a solution. But he did not say that that forum 22 was a bargaining table. That forum was in fact the special 23 forum that should be set up to deal with the RDO issue. 24 Did you follow? 25 MR MOKWENA: I completely agree with you,</p>

Page 37986

1 Chair. All I'm saying is if Mr Mathunjwa on the Friday
2 described this event as the work of sinister forces, I
3 don't know at what stage Mr Mathunjwa ceased to see the
4 workers on the koppie as sinister forces and now he has
5 their demand. That's the problem I had at the time. I was
6 getting conflicting messages from Mr Mathunjwa in terms of
7 the principle that he had laid on the Friday in the letter.

8 CHAIRPERSON: Before you carry on, Mr
9 Mokwena, there's another passage which deals with that as
10 well and for the sake of saving time I think I'd like to
11 put it to you now because I think it's, I'm inclined to
12 think that you're correct. At the top of page 134, page 8
13 of the exhibit, Mr Mathunjwa talks about the issue of
14 technicality, as he calls it. That AMCU is not a
15 bargaining agent. Then he says, "that is where we need to
16 address those issues before.
17 [11:46] That issue is not, if we've got a commitment, if
18 we've got a commitment that those technicalities will not
19 be raised. We want to solve the problem, fine, we're going
20 to the mountain. So you must get Barnard about that issue
21 and get a mandate, but he's not committing himself to that
22 one, let him discharge his police to go and kill those
23 people as Zokwana and Barnard was their mandate yesterday.
24 If we were not there, those people could have been killed
25 yesterday." So what he's saying, as I read it, is this, if

Page 37987

1 the technicality issue is set aside and we get a commitment
2 that technicalities will not be raised then we'll go to the
3 mountain and if you don't get that mandate from Mr Mokwena,
4 then by clear implication we're not going because he says
5 then "let him discharge his police and go and kill those
6 people" and that, then read with the passage at 141, makes
7 the passage clearer I would have thought but I'm just
8 putting it to you for your response.

9 MR MOKWENA: Exactly my, what I'm trying
10 to explain that there is an implicit condition and the
11 technicality is reference to nothing else but bargaining
12 right.

13 MS BARNES: Mr Mokwena –

14 MR MOKWENA: I don't know of any other
15 technicality in a situation like this when you don't have
16 those technical rights to bargain, I don't know of any. I
17 can only assume Mr Mathunjwa was referring to, give me the
18 right to bargain and I'll do it for you, I will remove
19 workers from the koppie. That was my conclusion.

20 CHAIRPERSON: Sorry to interrupt you.
21 And then the further passage which seems to support that
22 and I'm just putting it for the sake of brevity, page 134
23 line 12, now Mr Mokwadi – sorry, Mr Kwadi is putting to Mr
24 Mathunjwa how he understands what Mr Mathunjwa is saying to
25 him and he says, "Okay, Joseph, I think it's clear to me

Page 37988

1 what you're saying. You're" – that should be "you're" I
2 suppose – "basically saying you will go to the mountain on
3 condition that you get some kind of guarantee that the
4 company will negotiate with AMCU on the demands of the
5 people that are on the mountain. That is what you are
6 saying. At no point did Mr Mathunjwa say, that's not what
7 I'm saying. In fact he says, he says "Or whether AMCU will
8 be part of the demand, I mean according to those people
9 whom they want to negotiate on their behalf, yes." So that
10 in fact appears to be, prima facie at least, an agreement
11 that Mr Kwadi's understanding which he sets out in line 12
12 to 15 on that page is correct. How do you respond to that?

13 MR MOKWENA: Yes, Chair. That is exactly
14 my only understanding between a union and a manager who
15 manages unions. There cannot be any other understanding
16 except the one that I've just presented before the
17 Commission.

18 MS BARNES: Well, this has to be read
19 together, Mr Mokwena, with Mr Mathunjwa's evidence. If we
20 can go to day 25, page 2581 - of the transcript, sorry.

21 CHAIRPERSON: What page? Page?

22 MS BARNES: It's day 25.

23 CHAIRPERSON: Yes, page 2581?

24 MS BARNES: That's right.

25 CHAIRPERSON: Line?

Page 37989

1 MS BARNES: I just, if you can just give
2 me a moment, Chair.

3 CHAIRPERSON: Yes, of course.

4 MS BARNES: If we could just perhaps
5 scroll down that page, please? Yes, in fact if we can
6 look, start at line 20. So Mr Burger there is cross-
7 examining Mr Mathunjwa and they're talking about, you'll
8 see in fact if you could go a little bit further back to
9 line 16 they're talking about the central forum that we've
10 seen referred to in this transcript and that precise
11 passage that I read to you a little while ago, Mr Mokwena,
12 is read to Mr Mathunjwa there and he says, "That's the
13 central forum I was referring to." Mr Burger says, "Yes,
14 that's the forum outside the bargain structure." You
15 understand that that's what was being proposed. Let's read
16 on, Mr Mathunjwa says "You are correct." And then he goes
17 on to say, we can skip ahead to line 24, "because of the
18 situation, I wanted a seat in this special forum for these
19 circumstances, for this extraordinary situation that has
20 happened at Karee, not on the normal bargaining forum." Do
21 you see that?

22 MR MOKWENA: Yes, I can see that.

23 MS BARNES: Now that was – Mr Mokwena,
24 that, the fact that there was a reference to a central
25 forum to resolve the RDO issue at Lonmin, that was never

<p style="text-align: right;">Page 37990</p> <p>1 conveyed to you by Mr Kwadi, is that correct? Perhaps let 2 me put it more clearly. Mr Kwadi never approached you and 3 said what Mr Mathunjwa wants is for a forum to be set up to 4 deal with the RDO issue at Marikana.</p> <p>5 MR MOKWENA: Mr Kwadi would not have 6 communicated it to me because I don't know what a central 7 forum is and what its prerogatives are, obligations of 8 parties, and I don't know what is meant by Mr Mathunjwa, a 9 central forum. Now, and this is where I'm coming from, 10 Chair, I'm talking about the president of a well-seasoned 11 union who knows the rules of recognition, rules around 12 unprotected strike, I don't know what a central forum is 13 and what the obligations would be, the parties taking part 14 in it. The only point that I can think of that time would 15 be a reference to a bargaining forum. I don't know what a 16 central forum is.</p> <p>17 MS BARNES: Yes, but Mr Mokwena, the 18 strike was taking place outside the established bargaining 19 structures, correct?</p> <p>20 MR MOKWENA: The strike was unprotected –</p> <p>21 MS BARNES: Therefore –</p> <p>22 MR MOKWENA: I don't understand what you 23 mean, outside recognised structures.</p> <p>24 MS BARNES: Well, because the strike was 25 unprotected, the demand was being made outside the</p>	<p style="text-align: right;">Page 37992</p> <p>1 to repeat again?</p> <p>2 MR MOKWENA: Yes.</p> <p>3 MS BARNES: You were not told by Mr Kwadi 4 that Mr Mathunjwa was proposing that a central forum be set 5 up outside the established bargaining structures to deal 6 with the issue of RDOs.</p> <p>7 MR MOKWENA: I understood Mr Kwadi 8 telling me that Joseph was requesting for a bargaining 9 chair. That was what I understood.</p> <p>10 MS BARNES: Chair, I'm about to move on 11 to another topic. I wonder if this might be a convenient 12 time?</p> <p>13 CHAIRPERSON: I was proposing to do it in 14 five minutes but if it's convenient for you at this stage 15 we'll take the adjournment now. Please, 15 minutes unless 16 we have some housekeeping to attend to, which I hope we 17 won't. 15 minutes.</p> <p>18 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>19 [12:15] CHAIRPERSON: The Commission resumes. Mr 20 Mokwena, you're still under oath. Ms Barnes.</p> <p>21 MS BARNES: Mr Mokwena, you refer in your 22 supplementary statement to a meeting that was held between 23 AMCU and certain employees of Lonmin on Monday the 13th of 24 August 2012. You weren't at that meeting, correct?</p> <p>25 MR MOKWENA: That is correct.</p>
<p style="text-align: right;">Page 37991</p> <p>1 established bargaining structures, correct?</p> <p>2 MR MOKWENA: Yes.</p> <p>3 MS BARNES: So in order to resolve the 4 situation a structure had to be set up which would be 5 outside the established bargaining structures, that was the 6 proposal.</p> <p>7 MR MOKWENA: As I said, I will accede to 8 your argument, through Chair. If I'm given a case study in 9 this country when a group of workers in an unprotected 10 action approaches the employer, everything gets suspended – 11 Labour Relations Act, existing agreements, recognition 12 agreement. My only reference are those tools and if I'm 13 wrong I will accede.</p> <p>14 MS BARNES: Yes, but the point, what I'm 15 really asking you, you weren't at this meeting, Mr Mokwena, 16 what I'm really asking you about is what Mr Kwadi told you 17 and I just want you to confirm that Mr Kwadi did not say to 18 you, Mr Mathunjwa is proposing that a central forum be set 19 up outside the normal bargaining structures obviously in 20 order to deal with the problem of RDOs or the issues being 21 raised by RDOs. You weren't told that, correct?</p> <p>22 MR MOKWENA: I thought you had shown in 23 my statement what I actually understood from Mr Kwadi.</p> <p>24 MS BARNES: Yes, I did and then I asked a 25 follow-up question which I've just asked. Do you need me</p>	<p style="text-align: right;">Page 37993</p> <p>1 MS BARNES: I just need to draw your 2 attention to what purports to be the minutes of that 3 meeting which you've included in your bundle at page 16 and 4 17. You were presumably handed these minutes at some 5 stage. Were you informed that this was in fact the minutes 6 of that meeting that had taken place?</p> <p>7 MR MOKWENA: Yes.</p> <p>8 MS BARNES: Because I must just tell you 9 that we have already established in this Commission that 10 there are some quite serious errors and inaccuracies in 11 these minutes and I just need to tell you what those are. 12 The first is that the minute refers to Mr Mathunjwa as 13 having been present at the meeting when he was in fact not 14 present. Mr Da Costa conceded in his evidence that he was 15 mistaken and that Mr Mathunjwa had not – Mr Da Costa was at 16 this meeting, but he confirmed that Mr Mathunjwa was in 17 fact not. Do you see that?</p> <p>18 MR MOKWENA: Yes.</p> <p>19 MS BARNES: Then if we go to the next 20 page of the minutes, the second page of the minutes it's 21 recorded under Management, it says, the first bullet under 22 Management AMCU should denounce violence and it just stops 23 there. Now Mr De Costa testified in the Commission that 24 AMCU did in fact denounce violence in that meeting. Do you 25 accept that? Well you must accept it because you weren't</p>

Page 37994

1 at the meeting. I'm just putting to you -

2 MR MOKWENA: I wasn't at the meeting.

3 MS BARNES: It will become clear in a

4 little while why I'm putting this to you.

5 MR MOKWENA: That's fine.

6 MS BARNES: The third problem with the

7 minutes, perhaps the most serious problem is the last

8 bullet under AMCU where it says "The employees at the

9 koppie demanded that the company – sorry "demand that the

10 company increase the pay of all employees to 12 500. The

11 employees will return to work the following day if the

12 increase is given." Now again it just stops there. Now Mr

13 Da Costa confirmed that what in fact happened in the

14 meeting was that AMCU was specifically asked whether they

15 were tabling that demand on behalf of the strikers and they

16 said no they were not. Mr Da Costa was there, he confirmed

17 that happened. That's not recorded in the minutes. Do you

18 see that?

19 MR MOKWENA: Can you rephrase yourself

20 again?

21 MS BARNES: You can read the last bullet

22 for yourself and then – Mr Da Costa said that AMCU was

23 asked in the meeting whether they were tabling that demand

24 on behalf of the strikers and they said no they were not.

25 So that's what happened at the meeting. That was never

Page 37995

1 communicated to you was it?

2 MR MOKWENA: No.

3 MS BARNES: Then the other thing that I

4 must draw your attention to is a media statement that was

5 released by AMCU on the 14th of August 2012, it's not in

6 your bundle, it's exhibit OO2. If we could have that on

7 the screen please. Have you seen this media statement

8 before? I take you have.

9 MR MOKWENA: Yes.

10 MS BARNES: And you'll agree with me that

11 in that statement firstly AMCU denounce violence, did you

12 agree?

13 CHAIRPERSON: Well that's not on the

14 screen at the moment, but I take it it's there. Let's just

15 see that.

16 MS BARNES: Yes it's in the second

17 paragraph.

18 CHAIRPERSON: Yes "As AMCU we condemn

19 these killings in the strongest terms it deserves. We do

20 not believe that any form of violence can bring about

21 changes in the workplace nor it can benefit anyone, may

22 their souls rest in peace." So there is a public

23 denunciation of violence.

24 MS BARNES: And then, Mr Mokwena, what we

25 don't see in this statement is any statement by AMCU that

Page 37996

1 they are tabling the demand for 12 500 on behalf of the

2 strikers. Do you accept that?

3 MR MOKWENA: Yes.

4 CHAIRPERSON: Let's look at the paragraph

5 that begins "Now let me deal with the issue of Lonmin

6 workers' demands." The topic is dealt with there. It goes

7 on "Let me deal with the issues of Lonmin workers' demands

8 during mid July. We received a phone call from middle

9 management at Lonmin Platinum who stated they got rumours

10 that RDOs apparently made salary adjustment demands on

11 their own. We immediately advised management not to set

12 precedence by trying" – I take he means a precedent "By

13 trying to entertain these individual demands. We urge

14 management to be pro-active and co-ordinate an urgent

15 meeting with all recognised unions so that these issues can

16 be dealt with speedily to avoid similar situations as it

17 happened at Impala Platinum."

18 MS BARNES: Yes, and then if can also

19 focus on the third paragraph on that page. If we could

20 scroll down please to the third paragraph. It says "AMCU

21 has got nothing to do with neither the killings nor is it

22 behind the demands by the RDOs. We have got nothing to do

23 with the demands. However, since the demands are there it

24 is our belief that parties should constructively engage on

25 them and find a common ground in order for the mine to

Page 37997

1 resume its operation. Do you see that?

2 MR MOKWENA: Yes.

3 CHAIRPERSON: Is this the press statement

4 that you said contained a lie or lies in the debate on the

5 morning of the 15th on the radio and the forum at 8:00 where

6 you accused Mr Mathunjwa of having lied to the people of

7 South Africa. You said in answer to a question I asked you

8 that you didn't say he'd lied on the radio program, but you

9 said that AMCU had lied in press statements. Is the press

10 statement to which you were referring or one of the press

11 statements to which you were referring?

12 MR MOKWENA: Chair, allow me to go

13 through my – yes, Chair, I would probably have been

14 referring to comments in the media because I didn't have a

15 first hand copy of this, I would have reacted to what was

16 reported coming out of this press statement at the time. I

17 did not receive this and I would have relied on what had

18 got reported.

19 CHAIRPERSON: You were referring to a

20 press report about this press statement, is that what

21 you're saying?

22 MR MOKWENA: Yes because I did not

23 receive this first statement live personally.

24 CHAIRPERSON: Now it's a very serious

25 allegation to make on a public broadcast and it might have

Page 37998

1 been prudent to have made sure of your facts before you
 2 said what you said. But is there anything in the actual
 3 text of the press statement which you can say was a lie or
 4 a twisting of the truth by Mr Mathunjwa?

5 MR MOKWENA: No, Chair and I will
 6 withdraw that. As I said I based my assessment on media
 7 reports. I apologise to Joseph for saying that.

8 CHAIRPERSON: This is the first time
 9 after all this time that you've now publicly withdrawn the
 10 serious allegation you made against Mr Mathunjwa. Is that
 11 correct?

12 MR MOKWENA: That is correct, Chair.

13 CHAIRPERSON: Based on this information.
 14 When did you become aware of the fact that there was this
 15 misinformation upon which you'd based this very serious
 16 allegation?

17 MR MOKWENA: I became aware of the – in
 18 the documents that I was going through with my lawyers. I,
 19 at that time, did not have access to this press statement.

20 MS BARNES: Mr Mokwena, in your
 21 supplementary – perhaps I can just orientate us. We've
 22 looked at the minutes of the meeting that Lonmin held with
 23 AMCU on the 13th of August and I've explained to you what
 24 the errors in that or the inaccuracies in that minute.
 25 We've also now looked at the press statement and we know

Page 37999

1 what it says and what it doesn't say. Mr Mokwena, that was
 2 also the only press statement, it was issued by AMCU during
 3 the week of the 9th to the 16th of August. There was no
 4 other press statement. But now I'm going to take you to
 5 your supplementary affidavit, supplementary statement, page
 6 191 where you refer to a recording that you say Mr Kwadi
 7 took of a conversation that took place between himself and
 8 Mr Nkalitshana. Do you recall that? Mr Mokwena are you
 9 with me?

10 MR MOKWENA: I am with you, I'm following
 11 you.

12 MS BARNES: Now you say in your – I take
 13 it Mr Kwadi told you what was on this recording, you
 14 haven't actually heard the recording yourself, is that
 15 correct?

16 MR MOKWENA: That is correct.

17 MS BARNES: The recording's never been
 18 made available to you and you've never heard it yourself.

19 MR MOKWENA: That is correct.

20 MS BARNES: And what Mr Kwadi reported to
 21 you, if you look at paragraph 18 of your supplementary
 22 statement, he says that Kwadi told me that during this
 23 conversation Mr Nkalitshana told him that AMCU officials
 24 had been to the koppie on the 13th of August 2012 and had a
 25 clear instruction from the strikers that Lonmin will remain

Page 38000

1 ungovernable unless it agrees to the strikers' wage demand.
 2 Now as I read that what Mr Kwadi is saying is that he's
 3 told by Mr Nkalitshana what the strikers had told him. Is
 4 that correct?

5 MR MOKWENA: That is correct?

6 MS BARNES: That will be your
 7 understanding.

8 MR MOKWENA: Yes.

9 MS BARNES: There's no allegation there,
 10 you don't make an allegation in terms that Mr Nkalitshana
 11 purports to be acting on behalf of the strikers do you?
 12 That's not what it says.

13 MR MOKWENA: Yes, however, Chair, what
 14 confused me at the time was I'd always known that the
 15 striking workers did not want any union and we know what
 16 happened the following week when both Mr Mathunjwa and Mr
 17 Zokwana went to the koppie. What I didn't understand and
 18 it may have been my naivety, was how could any union have
 19 been allowed at the koppie when the workers had said they
 20 don't want any union and subsequent to that in the
 21 correspondence and the conversation Joseph had with Jomo
 22 that suddenly AMCU heard the demand of the workers from the
 23 koppie. So I was just confused and when you asked me they,
 24 was it a reference to the workers themselves or the
 25 leadership of AMCU? I concluded it was both.

Page 38001

1 MS BARNES: But you don't know because
 2 you didn't hear the recording, correct?

3 MR MOKWENA: Yes, as I said it was my
 4 interpretation based on circumstances and it may be wrong.

5 MS BARNES: In fact it is wrong. Let's
 6 look at what you told General Mbombo. If we can go to the
 7 transcript of the meeting that you had with her on the
 8 afternoon of the 14th of August 2012, that's page 20 of your
 9 bundle. Okay, so if we could start at – the lines aren't
 10 numbered here but you're speaking in the middle of the
 11 page. It's page 21 of your bundle, page 2 of the actual
 12 transcript. You say "Because it's very clear AMCU is
 13 behind this, very clear. In fact we have a recording that
 14 we want to play for you. This is the recording that you've
 15 never heard and that none of us have ever seen, it's never
 16 been made available to the Commission. Correct?"

17 MR MOKWENA: That is correct.

18 MS BARNES: Then you then go on to say
 19 "They've actually been to the mountain. They've spoken to
 20 the people and they are issuing statements that have made
 21 and they have presented demands to management for R12 500."
 22 That's what you say to General Mbombo and I would like you
 23 to tell us where you get the information or the evidence
 24 from that AMCU presented demands to management for R12 500.

25 MR MOKWENA: Well that was the content of

Page 38002

1 that conversation between Dumisani and Jomo that they had
 2 been to the koppie and that's what the workers said.
 3 CHAIRPERSON: The recording of that
 4 conversation?
 5 MR MOKWENA: Yes the recording, Mr Jomo
 6 Kwadi had said he had recorded that.
 7 CHAIRPERSON: Do you know whether that
 8 recording's been made available by Lonmin's legal
 9 representatives to the Commission?
 10 MR MOKWENA: If they asked, Chair, I'm
 11 sure.
 12 CHAIRPERSON: No, no do you know whether
 13 they made it available? Never mind if they were asked.
 14 MR MOKWENA: No, no I'm not aware.
 15 CHAIRPERSON: No, neither am I.
 16 MR BHAM SC: I can say to you we don't
 17 have that recording. We don't have that recording, don't
 18 have it.
 19 COMMISSIONER HEMRAJ: Mr Mokwena, do you
 20 know if such a recording is in fact available?
 21 MR MOKWENA: I think Mr Jomo Kwadi would
 22 be the only one to tell because I never physically saw the
 23 recording or listened to the recording. He was giving me
 24 and Mogege – telling us about that recording.
 25 MS BARNES: And you've, of course, just

Page 38003

1 confirmed that you made assumptions because you hadn't
 2 yourself heard the recording.
 3 MR MOKWENA: Yes.
 4 MS BARNES: But when you're talking to
 5 General Mbombo here you were relying purely on the
 6 recording, is that right?
 7 MR MOKWENA: Yes.
 8 MS BARNES: So you accept that there was
 9 no basis for you to say to General Mbombo that AMCU had
 10 presented a demand of R12 500 to Lonmin management?
 11 MR MOKWENA: Well at the time, Chair, I
 12 trusted that Jomo would not have said such a thing to me as
 13 a senior. So I took it that he was telling me the truth
 14 and so I relied on what he told me.
 15 MS BARNES: No but, Mr Mokwena, that's
 16 not even clear. In your supplementary affidavit it's not
 17 even clear that Jomo is saying that AMCU is acting on
 18 behalf of the strikers. That's not even clear. On your
 19 own affidavit that's not clear.
 20 MR MOKWENA: So what is the question,
 21 Chair?
 22 CHAIRPERSON: Put the question more
 23 clearly, Ms Barnes. But do I understand, Mr Bham, that
 24 you're conceding now on behalf of Lonmin that there's no
 25 such recording in existence? I Didn't understand you to go

Page 38004

1 that far.
 2 MR BHAM SC: I'm saying to you we haven't
 3 seen or heard the recording.
 4 CHAIRPERSON: Is it possible then for you
 5 perhaps to take instructions from Mr Kwadi, I take it the
 6 evidence leaders can, if necessary, send an interrogatory
 7 to Lonmin ascertaining precisely if there was such a
 8 recording where it is and for it to be made available if it
 9 exists.
 10 MR BHAM SC: I will take the instruction.
 11 MS BARNES: Isn't it correct to say, Mr
 12 Mokwena, that without you being satisfied from your own
 13 direct knowledge of what you say here that there was no
 14 basis to say it to General Mbombo?
 15 MR MOKWENA: Well upon reflection two
 16 years down the line that afternoon when Jomo told us I had
 17 no reason to doubt or that he would have fabricated that.
 18 I trusted him. Now that you say if there's no such a tape
 19 obviously I need to say well it was a bad judgment on
 20 myself, but at that time when he came to me as a senior
 21 manager and said I've got this, I believed him.
 22 MS BARNES: So are you now prepared to
 23 retract that statement?
 24 MR MOKWENA: Yes I'm prepared to retract
 25 it.

Page 38005

1 MS BARNES: There's another reference
 2 that I must take you to in that same meeting with General
 3 Mbombo. It's on page 23 of your supplementary statement,
 4 page 4 of the transcript and here you say – if we go
 5 towards the end of that paragraph. You say "We have
 6 rejected quite a number of positions and people indirectly
 7 trying to start negotiating. AMCU, you will notice their
 8 press statement, so they are throwing stuff into the media
 9 to say oh we've asked management to give everybody - well
 10 there you say R12 000. "Now the media are going to say but
 11 management you must talk to AMCU." So there again you are
 12 saying to General Mbombo that it is AMCU that is demanding
 13 the 12 500 on behalf of the workers and that that's evident
 14 from their press statement. Now we know that that's not
 15 correct, we've just been through the press statement, the
 16 only one that AMCU released in that week. Are you prepared
 17 to retract that as well, Mr Mokwena?
 18 MR MOKWENA: Yes, Chair.
 19 CHAIRPERSON: What you say on page 4 of
 20 this document, page 23 of your bundle is – fourth line from
 21 the foot of the page "You will notice their press
 22 statements. So they are throwing stuff into the media to
 23 say oh we've asked management to give everybody 12 000.
 24 Now the media are going to say but management then you must
 25 talk to AMCU." Do I understand you to say that you made

<p style="text-align: right;">Page 38006</p> <p>1 that statement to General Mbombo without personally having 2 seen any press statements that AMCU had issued? 3 MR MOKWENA: Yes, Chair. 4 CHAIRPERSON: And you made the statement 5 to General Mbombo for what reason? 6 MR MOKWENA: At the time, Chair, I was 7 trying to make sense of what was going on and the different 8 parties and as I said earlier I had honestly speaking, had 9 expected us with NUM and AMCU to be a joint force in 10 condemning what was going on. 11 [12:35] And I just felt that I was not in sync with AMCU, 12 and I may not have a particular incident, I just felt that 13 the way they approached the matter, the way they were 14 discussing the matter with us, there was more to it than 15 what they were saying, particularly the Friday letter, 16 because that was for me the beginning of AMCU entering this 17 conflict and I just, my gut feeling, Chair, was there was 18 something not kosher with their approach that they were not 19 chased from the koppie. What happened to the sinister 20 forces? It didn't make sense to me. 21 CHAIRPERSON: Yes, but I was interested 22 in what you were trying, why you said this to General 23 Mbombo, and I must tell you I get the impression, and I'd 24 like your comment on it, from the line, it's 6 and 7 on 25 this page 23 of the bundle, page 4 of the exhibit, that you</p>	<p style="text-align: right;">Page 38008</p> <p>1 press statements, throwing stuff into the media, to use 2 your language, saying we've asked management to give 3 everyone 12 000? What was the point of making that 4 statement to General Mbombo? How did that take your 5 discussion an inch further? Or I suppose I should say a 6 centimetre. 7 MR MOKWENA: Chair, the context of this 8 recorded conversation was not a formal meeting where we 9 were discussing point by point. It was a very casual talk, 10 standing outside, and one may have uttered statements that 11 looking back you may say why did I say this. It was not a 12 formal meeting with General planning item by item, 13 discussing issues and all that. It was an informal 14 meeting, standing outside, and yes, when I look back, 15 Chair, one, if I had known that there was a recording going 16 on I would not have uttered these things, and the way it 17 was done, I was not even aware that I was being recorded. 18 So I do apologise for some of the statements, but they were 19 not done, issued by me for any other reason than I'm 20 talking to the General outside and the tape picked up on 21 our conversation. 22 CHAIRPERSON: You were presumably 23 speaking to her in order to persuade her to share a view 24 which you held and to persuade her to get the police to 25 take action. Now whether you said that outside the</p>
<p style="text-align: right;">Page 38007</p> <p>1 actually wanted General Mbombo to get the police to arrest 2 some of the strikers. "So if you ask what our plans are, 3 our plans are we await your team to guide us and say we 4 have arrested people, we've done this, then we'll develop 5 action plans following dissolving the problem of security," 6 and then you go on about that, "No longer an HR issue, it's 7 a security issue." Well, it obviously was a security issue 8 by that time, but the point is why do you make these 9 statements to the General, which we now know are incorrect 10 because there weren't such media statement issued by AMCU? 11 Why did you make them? What were you trying to get her to 12 do? Am I correct in thinking that you were trying – this 13 is a prima facie view obviously – that you were trying to 14 get the General to agree that the police would arrest the 15 leaders of the strike? 16 MR MOKWENA: My main preoccupation with 17 my conversation with the General was arresting people after 18 the murder. That was my biggest preoccupation. I had 19 absolutely no intention at no stage to have any union 20 leader arrested. My main preoccupation was the week was 21 proceeding, a number of people had died and I was making an 22 appeal that unless arrests are made, this may just 23 continue. 24 CHAIRPERSON: What is the point then of 25 saying, incorrectly as it turned out, that AMCU are making</p>	<p style="text-align: right;">Page 38009</p> <p>1 building or inside the building, would it have made any 2 difference? 3 MR MOKWENA: Yes, Chair, I have in other 4 occasions that are not recorded where we made the plea for 5 people to be arrested, and as I said, I was just getting 6 worried that we were not receiving any reports on any 7 arrests. 8 CHAIRPERSON: What were you worried 9 about? There were over 800 policemen there at the time, 10 were there not? 11 MR MOKWENA: Yes. 12 CHAIRPERSON: And as far, apart from the 13 death of Mr Twala, which I'm not sure had taken place yet, 14 but there was the necessary police presence which would at 15 least have discouraged further violence. Bringing the 16 strike to an end of course was another matter. I suppose 17 disarming the people who had dangerous weapons was also an 18 important aspect as well, but what exactly, why were you 19 talking to her? Were you trying to persuade her to agree 20 to a course of action? 21 MR MOKWENA: Not at all, Chair. When I 22 look back and reflect on that informal chat with her, if I 23 had other means to either formally write to the police and 24 state in a formal way, and I regarded this as a very 25 informal conversation with the General; I had absolutely no</p>

Page 38010

1 intention to influence her.

2 CHAIRPERSON: On page 21, halfway down

3 the page, "Our priority is we want people arrested, okay,

4 because it's very clear AMCU is behind it, very clear. In

5 actual fact we have a recording of what took place here.

6 We now know that the indications are that the recording

7 doesn't exist." At the foot of the page, "That's why it's

8 very important for us that we want to see somebody arrested

9 so the message gets across that the nine people were

10 killed, somebody was arrested. Secondly we believe

11 honestly speaking with our poor intelligence it's very,

12 very clear AMCU leaders are behind that and if they do not

13 get arrested," that's AMCU leaders don't get arrested, "and

14 we do paperwork afterwards, you know, the people who

15 gathered at that mountain will still believe their leaders

16 were doing this." Now a very serious allegation, "It's

17 very clear AMCU leaders are behind that and if they do not

18 get arrested," is that not an attempt to persuade General

19 Mbombo to get the police to arrest the AMCU leaders? Is

20 that not what the words mean?

21 MR MOKWENA: Yes. Yes, Chair, it does

22 mean that and this is a follow-up to the conversation I had

23 with legal fraternity that I'd based this on what Jomo had

24 told me about Dumisani had said to him Lonmin will be made

25 ungovernable, and knowing Dumisani at the time was the

Page 38011

1 national organiser of AMCU, so that's a follow-up to what

2 Jomo had told me about the tapes and there's no other

3 reference other than that tape.

4 CHAIRPERSON: Is Mr Kwadi here today?

5 MR MOKWENA: Yes, he is –

6 CHAIRPERSON: Will you be able to find

7 out during the lunch hour from him where the tape recorder

8 is, if it ever existed?

9 MR MOKWENA: I will, Chair.

10 CHAIRPERSON: Perhaps you can ask him, or

11 possibly better I suppose of the legal representatives did.

12 I suppose it's better not you, that you talk to people

13 about matters you're under cross-examination about while

14 you're still under cross-examination. But I'm sure the

15 legal representatives of Lonmin will be able to interview

16 Mr Kwadi and ascertain the information that I've requested.

17 Yes, thank you. I'm sorry to have interrupted your cross-

18 examination, Ms Barnes.

19 MS BARNES: Thank you, Chair. Mr

20 Mokwena, if I can take you to another aspect of your

21 conversation with General Mbombo, it's page 31 of the

22 transcript at the bottom of the page. The Provincial

23 Commissioner says, "Hence I just told these guys that we

24 need to act such that we kill this thing," and you then

25 say, "Immediately, yes." The PC says at the top of the

Page 38012

1 next page, "When tomorrow we have to move in, if today we

2 don't find cooperation with these people we need to move in

3 such that we kill it because we need to protect the

4 situation where any Jack and Jay from a political angle,"

5 and then it tailors off. You see that?

6 MR MOKWENA: Yes.

7 MS BARNES: Then if we look at page 33,

8 halfway down the page you say the following, "So I agree

9 with you, Commissioner, if we can arrest this thing

10 tomorrow, because the longer it goes, it's giving all the

11 other opportunists to come in and cease the opportunity and

12 then it gets out of control." The PC says, "That's it."

13 You then say, "So I think yes, let tomorrow be the D-day

14 where we issue the ultimatum and say if you don't show up

15 for work, sorry, that's it. So we'll go tonight, go and

16 print all those brochures in the languages that we want to

17 use, use our choppers tomorrow, drop them around at all the

18 strategic places." And then finally if you can go to page

19 35, the Provincial Commissioner says about a third of the

20 way down the page, I just need to read halfway through that

21 paragraph, she says, "So I think that also I think the plan

22 gels nicely. I support the idea that they must be given

23 the notice tonight rather" –

24 CHAIRPERSON: Not be given.

25 MS BARNES: Sorry, "not be given the

Page 38013

1 notice tonight, rather in the early hours of tomorrow so

2 that it works together with our plans." So essentially

3 reading all of this together you are agreeing with General

4 Mbombo that what must happen is that ultimatums must be

5 issued to the workers early the following morning and if

6 they don't adhere or obey the ultimatum and go back to

7 work, the police will act on that day, on Wednesday the 15th

8 of August, correct? That's what you agreed with her?

9 MR MOKWENA: Ja, that's my understanding,

10 yes.

11 MS BARNES: And if we can go then quickly

12 to the transcript of the meeting that you had with General

13 Mbombo the next day, so on Wednesday the 15th of August, I

14 just need to find the reference. Page 122 of the bundle,

15 now this is a meeting that's being chaired by General

16 Mpembe, yourself and the two unions. You say at line 17,

17 "Sorry, General, it's not a question and answer session.

18 Let me just remind everybody, we have asked the police to

19 hold on their plans to execute for in an interview this

20 morning two presidents committing to come here, that zone

21 is classified as a security zone. It is in the hands of

22 the police," and then on the next page you say, "It is not

23 Lonmin, so Lonmin has absolutely nothing to do, meaning you

24 and us, so sitting here arguing will not help. We need to

25 say to the man we are failing to give you the chance to go

Page 38014

1 and resolve the problem, now activate." Now as I
 2 understand, Mr Mokwena, you're saying two –
 3 MR MOKWENA: Sorry, I lost track of the
 4 pages and where you were reading.
 5 MS BARNES: 122 and 123.
 6 MR MOKWENA: 122.
 7 MS BARNES: Starting at 122, on the top
 8 of 123. Have you read that?
 9 MR MOKWENA: Yes.
 10 MS BARNES: Yes, so Mr Mokwena, as I
 11 understand it you're saying here, firstly you're saying
 12 that, what's implicit is that, or as you've just confirmed,
 13 the police action was to in fact have happened on the
 14 Wednesday, but because the two union presidents agreed at
 15 the SAfm debate to go to Lonmin and address the strikers
 16 you have asked the police to hold off for the Wednesday.
 17 Is that right?
 18 MR MOKWENA: Yes, because we wanted to
 19 give this a chance.
 20 MS BARNES: And what you're also saying
 21 is that there isn't really a role for Lonmin to play here.
 22 What you say, so Lonmin has absolutely nothing to do. It's
 23 really for the presidents to address the workers and see if
 24 they can sort this thing out and if they can't, you'll tell
 25 the police to activate their plan, correct?

Page 38015

1 MR MOKWENA: Ja, okay, this is what
 2 General Mpembe's position in that meeting was. He was
 3 saying he wants the three of us, the three parties to find
 4 a way to get the workers to leave the koppie, disarm and go
 5 back to work, and he said them as police cannot negotiate
 6 industrial relations issues. So the understanding in that
 7 meeting was the two parties would go to the mountain and
 8 deliver three messages that were all agreed upon; 1, to
 9 tell the workers to disarm, leave their weapons there; to
 10 disperse; and go back to work. Those were the three
 11 messages conveyed by General Mpembe in that meeting and I
 12 understood him to be saying it's not his job to be involved
 13 in industrial relations negotiations. His job is to
 14 maintain public peace and for the people to disarm and
 15 disperse the koppie. That's the context of that meeting.
 16 MS BARNES: Yes, I understand that, Mr
 17 Mokwena, but we're not talking about what General Mpembe
 18 said. We're talking about what you said, because at the
 19 top of page 123 it's you speaking and what you are saying
 20 there is, because there's a bit of an argument and you
 21 interrupt and say no, this is not a question and answer
 22 session. What you are saying there is if the presidents
 23 can't sort this out in some way, the police must activate
 24 the plan.
 25 MR MOKWENA: Yes. Now what was going on

Page 38016

1 was suddenly there was an argument between Mr Mathunjwa and
 2 Mr Zokwana and what I was appealing to them was gentlemen,
 3 please let's not waste time by arguing amongst ourselves.
 4 Let's go do the job that we've been asked to do because if
 5 we don't do that obviously the police must do their job,
 6 which is public safety on the koppie. That is the purpose
 7 of this statement, or what actually I meant.
 8 MS BARNES: If we could look at page 171
 9 of your supplementary statement, in paragraph 7.1 you say
 10 the following, "Early in the morning of the 16th of August I
 11 was at LPD when my team, Kgotle and Kwadi, provided me with
 12 feedback that Mathunjwa had not delivered on the agreed
 13 script set by General Mpembe on the 16th of August, namely
 14 that Mathunjwa was supposed to call upon the strikers to
 15 disarm, disperse and return to work. My team also informed
 16 me that Zokwana had been shunned by the strikers. I felt
 17 very hurt, disappointed and betrayed by Mathunjwa." Now
 18 first of all we don't, in the transcript of the meeting
 19 with General Mpembe we don't see this very specific and
 20 particular and agreed script that you refer to. There is
 21 no such thing in the transcript. Mr Mpembe also didn't
 22 give evidence that there was such a script.
 23 MR MOKWENA: I sat in that meeting and
 24 walked out of that meeting with clarity that the workers
 25 should disarm, should disperse and go back to work. That's

Page 38017

1 what came out of that meeting and that's what I understood.
 2 I did not understand any other thing that came out of that
 3 meeting. So I left the meeting with that clarity in my
 4 mind that the two gentlemen would have gone to the koppie
 5 to tell the workers please disperse, leave your arms and go
 6 back to work. That was what I understood.
 7 MS BARNES: Now of course you weren't at
 8 the place where the presidents addressed the strikers. You
 9 weren't present when they did that on the 15th?
 10 MR MOKWENA: No, I was not.
 11 MS BARNES: You received a report-back
 12 about what happened?
 13 MR MOKWENA: Yes.
 14 MS BARNES: And you were told that Mr
 15 Mathunjwa had not said to workers that they should go back
 16 to work. Is that what you were told?
 17 MR MOKWENA: Yes.
 18 MS BARNES: Mr Mathunjwa's evidence is
 19 that he did tell the workers to go back to work, but I'd
 20 like to refer you also to a document that appears in
 21 exhibit VVVV1, page 62.
 22 MR MOKWENA: Chair, in response to what
 23 you just said I know there was a video clip that has been
 24 played - I have no, I've not seen it – when Mr Mathunjwa
 25 appeared at the koppie and I therefore cannot confirm what

Page 38018

1 you are saying. I know that there was a clip played at the
 2 Commission when he appeared at the koppie and if I see that
 3 I'll be able to tell whether those three messages were
 4 delivered.

5 MS BARNES: So really for all you know he
 6 may have conveyed the messages. You can't say. Is that
 7 your evidence? Could you answer the question, please?

8 MR MOKWENA: Sorry?

9 MS BARNES: Is your evidence that for all
 10 you know he could have conveyed the message, the script,
 11 you can't say?

12 MR MOKWENA: Yes, I heard my managers who
 13 were debriefing me and telling me what had happened, so –

14 MS BARNES: If we could just quickly have
 15 VVVV1, page 62 on the screen, please. This is from Mr
 16 Henry Blou, it's an email and this is his report about what
 17 happened in that session where the presidents addressed the
 18 strikers. If you could go down towards the bottom of the
 19 page, you'll see in paragraph C at the bottom of the page
 20 Mr Blou says, "The AMCU have denounced violence and have
 21 requested that the people on the hill go to work from
 22 tomorrow. The dangerous weapons must be left at the hill
 23 with SAPS to collect them." You see that?

24 MR MOKWENA: Yes.

25 MS BARNES: So that's what Mr Blou

Page 38019

1 understood to have happened. You didn't receive that
 2 report presumably?

3 MR MOKWENA: If you scroll up I'll be
 4 able to tell whether I was. No, it doesn't look like I was
 5 copied on this.

6 [12:55] CHAIRPERSON: Tell me, as far as you know
 7 was Mr Blou in the Nyala, you know, there was a negotiation
 8 Nyala do you remember, and Mr Zokwana was in it for a while
 9 and then Mr Mathunjwa was. There was a Lonmin
 10 representative, as I understand it, in the Nyala. Is that
 11 correct, am I right? Was Mr Blou the representative?

12 MR MOKWENA: Mr Blou was security so
 13 obviously he would have been there. I don't know who else,
 14 Chair.

15 CHAIRPERSON: Mr Sinclair was too.
 16 Anyway the point is, Mr Blou would have known what he was
 17 talking about in this e-mail.

18 MR MOKWENA: Yes.

19 MR BHAM SC: The e-mail, though, seems to
 20 make reference to what happened at the meeting and not what
 21 happened at the koppie. If we just go through the e-mail
 22 it say, "Context, as you know this afternoon's meeting with
 23 the trade unions resolved as follows."

24 CHAIRPERSON: Ja, but then go on. "This
 25 evening's outcome, we had two outcome sessions" –

Page 38020

1 MR BHAM SC: But it doesn't, "We had two
 2 briefing sessions" but it doesn't seem to make, as I'm
 3 reading it, it doesn't seem to me to make reference to what
 4 was said at the koppie itself but it was what was dealt
 5 with at the meeting and what was dealt with at the
 6 briefing.

7 MS BARNES: Well, accept that it's there,
 8 Chair. "Have requested that the people on the hill go to
 9 work from tomorrow" –

10 MR BHAM SC: All I'm saying is that it's
 11 a recordal of what happens at the meeting and what happened
 12 at the briefing. It doesn't seem to purport to make
 13 reference to what was actually stated or what he says was
 14 stated at the koppie itself.

15 CHAIRPERSON: Well, he sent it at 8:53PM
 16 and he does use the past tense. "AMCU have denounced
 17 violence and have requested that the people on the hill go
 18 to work from tomorrow" but it –

19 MR BHAM SC: But it says, "We had two
 20 briefing sessions."

21 CHAIRPERSON: No, no, no, I understand
 22 that.

23 MR BHAM SC: And that's what he is
 24 referring to.

25 CHAIRPERSON: Well, that's his a) and

Page 38021

1 then – that's his a) and then he goes down to b) and then
 2 c) but anyway, it's a matter for argument.

3 MR BHAM SC: It's a matter for
 4 interpretation.

5 CHAIRPERSON: Is there any more in the e-
 6 mail? Can we just see? Well, I would have thought that he
 7 may have put it beyond doubt. It was mentioned that
 8 tonight would be the last night on the hill. As such
 9 they've instructed workers to return back to work. The
 10 evidence was that when Mathunjwa came back to the JOC he
 11 actually said to the police, leave them alone tonight, this
 12 will be their last night. But anyway we don't have to
 13 waste Ms Barnes's time in discussing it now. It's a matter
 14 that can be addressed in argument.

15 MR BHAM SC: It's just, all I want to say
 16 is that would seem to support the suggestion that what they
 17 were referring to there was at the briefing rather than
 18 what actually happened at the koppie.

19 CHAIRPERSON: Ms Barnes will deal with
 20 that in argument, I take it. Ms Barnes?

21 MS BARNES: Yes, Chair. I see it is
 22 almost one o'clock. I think that my time is up.

23 CHAIRPERSON: I don't know if that's
 24 correct but let's see whether my calculation coincides with
 25 Mr Wesley's. What's the story, Mr Wesley, how much longer?

Page 38022

1 MR WESLEY: Chair, Ms Barnes has
2 approximately 10 minutes left.

3 CHAIRPERSON: Yes. Well, do you want to
4 use them after lunch? It's half past one.

5 MS BARNES: Yes, Chair, I would. Thank
6 you.

7 CHAIRPERSON: Alright. I may, perhaps I
8 must announce at this stage that we've decided to start
9 tomorrow at half past eight and to take half an hour for
10 lunch and to go on till quarter past four. So that means
11 we're sitting for what amounts in total to an extra hour.
12 That's just for the benefit of the parties so that they can
13 all be here at half past eight, but anyway you've got 10
14 minutes left but you'll use that after lunch. We now
15 adjourn till half past one.

16 [COMMISSION ADJOURNS COMMISSION RESUMES]
17 [13:34] CHAIRPERSON: The Commission resumes. Mr
18 Mokwena, you're still under oath. Ms Barnes, your 10
19 minutes.

20 BARNARD MOKWENA: (s.u.o.)
21 CROSS-EXAMINATION BY MS BARNES (CONTD.):
22 Thank you, Chair. Mr Mokwena, I take it you knew during
23 the week of the 9th to the 16th of August 2012 that NUM were
24 seeking to persuade the strikers to go back to work. You
25 were aware of that?

Page 38023

1 MR MOKWENA: Yes.
2 MS BARNES: Essentially NUM wanted to
3 break the strike, correct?
4 MR MOKWENA: Sorry?
5 MS BARNES: NUM wanted to break the
6 strike.
7 MR MOKWENA: Yes.
8 MS BARNES: I take it you also knew that
9 on Saturday, Saturday the 11th of August 2012 there was an
10 incident where the striking workers were marching towards
11 the NUM offices and NUM officials came out of the offices
12 and opened fire. You were aware of that incident?
13 MR MOKWENA: Yes.
14 MS BARNES: And originally the strikers
15 thought that two of their number had in fact been killed as
16 a result but it turned out that it was, people were injured
17 but not killed as a result of that shooting incident.
18 You're aware of that?
19 MR MOKWENA: Yes.
20 MS BARNES: And of course you were aware
21 that when Mr Zokwana attempted to address the strikers on
22 the koppie on the 15th of August 2012, he received a very
23 negative reception. The strikers in fact sang a song which
24 has the words "Kill the NUM" in it. You're aware of that?
25 MR MOKWENA: Yes, I am.

Page 38024

1 MS BARNES: You were aware of all of that
2 at the time, correct? I mean you were aware of those
3 events as they were unfolding.
4 MR MOKWENA: Yes.
5 MS BARNES: And despite that, your
6 message to the strikers was, if you come back to work we
7 will negotiate with you but only through NUM.
8 MR MOKWENA: Yes.
9 MS BARNES: Then, Mr Mokwena, if we could
10 look quickly at some of the things that you told SAPS about
11 what was happening at Lonmin, it's correct that you had a
12 meeting with SAPS at 10 o'clock on the morning of Monday
13 the 13th of August, correct?
14 MR MOKWENA: Monday the 10th?
15 MS BARNES: Sorry sir, Monday the 13th of
16 August at 10 o'clock there was a meeting with SAPS
17 officials at which you were present, do you recall that?
18 MR MOKWENA: I don't recall me present in
19 a meeting with SAPS.
20 MS BARNES: Well, perhaps we can jog your
21 memory. A Mr – General Mpembe referred to it in his
22 statement which is GGG12, if we could have that on the
23 screen, please? I'm just going to start reading because I
24 have limited time and this really shouldn't be
25 controversial. General Mpembe says the following, "At

Page 38025

1 about 10 o'clock on the 13th of August the SAPS was formally
2 briefed" – can we just check if it's paragraph 5? No. Ja,
3 paragraph 4. "At about 10 o'clock on the 13th of August the
4 SAPS were formally briefed of the situation by the mine
5 management and in particular," and it refers to a number of
6 people there including yourself. "We were informed of the
7 problems experienced on the mine on the previous Friday,
8 Saturday, Sunday and the marchers" – "Mr Mokwena, referring
9 to the protesters, stated that they were faceless and that
10 the company does not know them." Do you recall that?
11 MR MOKWENA: Yes, that I recall, Chair.
12 MS BARNES: We had the same evidence from
13 General Mbombo and I'm not going to refer you to the actual
14 reference. I can perhaps just get you to confirm, she was
15 at the same meeting on that Monday morning. She said that
16 the police were told by Lonmin that those leading the
17 strike were faceless and were not employees of Lonmin. Do
18 you recall that?
19 MR MOKWENA: Yes.
20 MS BARNES: And also she says that they
21 were also told that the strike was caused by rivalry
22 between AMCU and NUM. Do you recall that?
23 MR MOKWENA: Yes.
24 MS BARNES: And then General Naidoo gave
25 very similar evidence. Then General Phiyega, the National

Page 38026

1 Commissioner, referred to a meeting that she had that
 2 evening with Lonmin. So it's on the evening of Monday the
 3 13th and again she says the mine management further stated
 4 that the protesters were not their employees and were
 5 unknown to them and also that the strike was caused by
 6 rivalry between AMCU and NUM.
 7 MR MOKWENA: Yes.
 8 MS BARNES: Now Mr Mokwena, well, let's
 9 take those statements one at a time. It's not correct that
 10 Lonmin didn't know who was on strike. Lonmin knew
 11 precisely who was on strike, as we've seen from – as we've
 12 seen from the interdict application that we looked at
 13 earlier, isn't that correct?
 14 MR MOKWENA: Here is the context of that
 15 statement, which I believe is crucial and where I'm coming
 16 from as head of human capital managing wage negotiations
 17 and all that. Any presentation of memorandum or conflict
 18 or demand would traditionally, conventionally be presented
 19 by people identifying themselves within their structures or
 20 unions. In my reference to faceless, meant actually the
 21 way we've been doing things where we receive a memorandum
 22 from strikers or employees with a specific representation,
 23 it therefore in that instance, the workers who were on
 24 strike did not identify themselves, we know they were RDOs
 25 but faceless meaning for any demand in a workplace there's

Page 38027

1 normally, there's normally people who say who they are,
 2 they sign, they give us their names. And in actual fact,
 3 Chair, even post this event, the group of employees who
 4 came to represent the workers at the hospital, even at that
 5 time after refused to give us identities. That's one
 6 point.
 7 Two, one of the speakers who frequently appeared
 8 on television happened to be an employee of a contractor at
 9 Lonmin and not a Lonmin employee. And it is for that
 10 reason that I used this word "faceless" meaning the
 11 conventional way of presenting demands in a structured way
 12 is not being used. That was the intention behind the word
 13 "faceless."
 14 CHAIRPERSON: Who was the leader who
 15 worked for a contractor?
 16 MR MOKWENA: I have obtained the name,
 17 Chair, that I don't have with – but it's one of the
 18 protesters actually we found after that he was not an
 19 employee of Lonmin but worked for one of the contractors.
 20 CHAIRPERSON: One of the ones who was
 21 killed?
 22 MR MOKWENA: No, no, no, he was not
 23 killed.
 24 CHAIRPERSON: I see.
 25 MS BARNES: The list, annexure A to the

Page 38028

1 interdict application, it lists 3 000 names, we've referred
 2 to it earlier and the interdict application says the people
 3 listed in annexure A are employees of Lonmin. We've gone
 4 through that passage. So it was incorrect for you to say
 5 to the police that the people on strike were not employees
 6 of Lonmin, correct?
 7 MR MOKWENA: Here's what I am trying to
 8 convey. I am coming from circumstances where traditionally
 9 in a workplace demands would be presented to management in
 10 a structured format, structured structures, people with
 11 legitimate representation on behalf of those who are
 12 presenting the demand. And in that instance when I said
 13 these are faceless, I was purely referring to the fact that
 14 there's no structure, these individuals, we know they're
 15 RDOs but actually by practice there is nothing formal about
 16 them for me to understand exactly how to respond to them.
 17 That was the context in which I used the word "faceless."
 18 CHAIRPERSON: It goes on, "The company
 19 doesn't know them." Now did you have photographs – did you
 20 have photographs of them or could you take photographs of
 21 them?
 22 MR MOKWENA: Photographs of who, Chair?
 23 CHAIRPERSON: Of the protesters, the
 24 strikers.
 25 MR MOKWENA: Yes. I think the Commission

Page 38029

1 -
 2 CHAIRPERSON: Did you have photographs of
 3 them?
 4 MR MOKWENA: No, not me personally. I
 5 don't know whether security had perhaps a video –
 6 CHAIRPERSON: I see, but if they were
 7 RDOs, you knew the strikers were RDOs.
 8 MR MOKWENA: Yes, Chair. Let -
 9 CHAIRPERSON: And you must have known
 10 from your records who the RDOs were. Faceless, what does
 11 faceless mean? Faceless surely means we don't know who
 12 they are. In fact, it says that. "They were faceless, the
 13 company does not know them."
 14 MR MOKWENA: Yes, Chair.
 15 CHAIRPERSON: Now doesn't that mean that
 16 these were people whose identity was not known to you?
 17 MR MOKWENA: No – no, I did not mean that
 18 -
 19 CHAIRPERSON: What else can it mean?
 20 MR MOKWENA: What I meant, Chair, was our
 21 tradition of receiving demands and memorandum is normally
 22 done in a structured way, written down, knowing who the
 23 structure or the constituents who are presenting the
 24 memorandum – so I used the word "faceless" simply saying we
 25 do not have a structure, we do not have a constituency

<p style="text-align: right;">Page 38030</p> <p>1 that's recognised and therefore these are people that 2 actually don't fall in that structure. That's the 3 reference to – 4 CHAIRPERSON: And did you think that the 5 police to whom you made that statement would have 6 understood you to be, to mean that? 7 MR MOKWENA: I did not get any question 8 from the police in terms of we don't understand, explain 9 what it means. 10 CHAIRPERSON: That wasn't the question. 11 The question was, did you think that by using that 12 language, when you used that language that the police would 13 understand that you didn't mean faceless in the sense that 14 you didn't know who they were, despite what this statement 15 says, but you would have meant these were people actually 16 outside the structures? Did you think the police would 17 understand you to be saying that? 18 MR MOKWENA: Probably they would not have 19 understood that, Chair. 20 MS BARNES: Mr Mokwena, General Phiyega 21 specifically said that you said to SAPS that the strikers 22 were faceless in the sense that they were not Lonmin 23 employees. I'm just going to give you an opportunity to 24 comment on that because we have the references and we're 25 going to argue that that's what she said.</p>	<p style="text-align: right;">Page 38032</p> <p>1 I had requested senior counsel to subpoena to this 2 Commission, unfortunately he's passed on, Stephen 3 reorganised the six, 7 000 employees at Karee who had been 4 fired for taking part in an unprotected strike due to 5 internal NUM issues. Stephen came back to Lonmin, 6 presented himself as an AMCU organiser and recruited the 7 workers at Karee. My assessment of the situation between 8 2010 to 2012 and the origin of the demand did not come from 9 EPL which was majority NUM, did not come from LPD branch 10 which was majority NUM, did not come from WPL which was 11 still majority NUM. The conflict started from 2010 with 12 the introduction of Steve and recruitment at AMCU. Me, as 13 an executive, trying to understand these developments and 14 the many stoppages that occurred between 2010 and 2012 at 15 Karee, I could only associate it that indeed there was a 16 conflict around membership and recruitment at Lonmin 17 between Karee branch, which was AMCU, and the rest of the 18 organisation. So my statement, Chair, emanates from what I 19 saw between 2010 and 2012. 20 MS BARNES: We've been through the facts, 21 Mr Mokwena, and we've agreed on all the facts as to how the 22 strike came about and what caused it and there's no 23 evidence before this Commission that the strike was caused 24 by conflict between AMCU and NUM. There's not a shred of 25 evidence.</p>
<p style="text-align: right;">Page 38031</p> <p>1 MR MOKWENA: Yes, I agree – 2 MS BARNES: You agree that she said that 3 – 4 MR MOKWENA: - what she was saying. I 5 said we, however, knew that one of the Mr Mokwena who spoke 6 frequently on television, when we identified him he was 7 actually not a Lonmin employee but was working for a 8 contractor. The majority would have been Lonmin employees, 9 I'm not denying that. 10 CHAIRPERSON: Is it correct that National 11 Commissioner Phiyega actually, when she spoke to people I 12 think on the Monday night and was told this same story 13 about faceless people, then suggested that you should 14 actually get photographs and identify the people on the 15 photographs? That was her evidence. Were you present when 16 she said that to people, to you people? 17 MR MOKWENA: I do not recall that 18 request, Chair. 19 MS BARNES: Mr Mokwena, it was also 20 incorrect to say to the police that the strike was caused 21 by rivalry between AMCU and NUM, isn't that correct? 22 MR MOKWENA: In my interpretation, in 23 2010 when NUM suspended and fired the branch at Karee, 24 Chair, and I think it's a very important detail here, the 25 branch committee of Karee which consisted of Mr Stephen who</p>	<p style="text-align: right;">Page 38033</p> <p>1 CHAIRPERSON: That should be the last 2 question to be asked by Ms Barnes, so you'd better answer 3 it. 4 MR MOKWENA: If there was no conflict, 5 Chair, the very first, the interview itself between Mr 6 Mathunjwa, myself and Mr Zokwana, during the meeting with 7 General Mpmembe, if that is not described as conflict, then 8 I will apologise for using the word but my experience of 9 the two gentlemen on both occasions did not reveal an 10 exchange of love and charity. 11 CHAIRPERSON: And that's the answer to 12 the question. Alright, thank you. 13 MS BARNES: Thank you, Chair. 14 CHAIRPERSON: Thank you, Ms Barnes. 15 Before we proceed to the next cross-examiner, I understand 16 Mr Bham wants to put something on record in relation to the 17 query I addressed to him before we adjourned for lunch. 18 MR BHAM SC: If you'll just give me two 19 minutes, I'm just getting it back. 20 CHAIRPERSON: Alright, well, do you want 21 to do it after the end of -the next cross-examiner I take 22 it is going to be from the family. Is it Mr Ntsebeza? 23 MR BHAM SC: Give me two minutes. We can 24 get it out of the way now. 25 CHAIRPERSON: Let him, let Mr Ntsebeza</p>

Page 38034

1 start his cross-examination. When you're ready you can
 2 indicate. Yes, Mr Ntsebeza.
 3 CROSS-EXAMINATION BY MR NTSEBEZA SC:
 4 Thank you, Mr Chairman. Mr Mokwena, I just want to confirm
 5 your position in Lonmin. You are the executive vice-
 6 president of human capital and external affairs in the PLC,
 7 is that right?
 8 MR MOKWENA: I was in 2012, Chair.
 9 MR NTSEBEZA SC: You were, you were at
 10 the time. What are you now?
 11 MR MOKWENA: Executive vice-president for
 12 business transformation.
 13 MR NTSEBEZA SC: I see. You perhaps
 14 know, but let me for the record tell you that I represent
 15 three of the families who died on the 13th, I mean whose,
 16 three families of the three strikers who died on the 13th
 17 and 33 of the 34 strikers who died on the 16th of August,
 18 the families of those. In other words, I represent 36
 19 families. I see you nod.
 20 MR MOKWENA: Yes.
 21 MR NTSEBEZA SC: Yes.
 22 MR MOKWENA: I understand.
 23 MR NTSEBEZA SC: Now human capital, I've
 24 just done a research with the encyclopaedia, it seems to
 25 have been a term that was invented in the 1960s by an

Page 38035

1 economist called Theodore Schultz. Do you know that?
 2 MR MOKWENA: I am aware.
 3 MR NTSEBEZA SC: Yes, and he invented the
 4 term to reflect the value of our human capacities, is that
 5 correct?
 6 MR MOKWENA: That is correct.
 7 MR NTSEBEZA SC: And he believed that
 8 human capital, like any other capital, is something to be
 9 invested in through education, training and enhanced
 10 benefits that would lead to an improvement in the quality
 11 and level of production. You would agree with that?
 12 MR MOKWENA: I agree with that.
 13 MR NTSEBEZA SC: So it's very important.
 14 It touches on people. You would say it is a people's issue
 15 and it is something that you as the head, as you were then,
 16 of that division, you dealt with people, you dealt with
 17 people's issues.
 18 MR MOKWENA: Exactly.
 19 MR NTSEBEZA SC: Yes, and human resources
 20 was part of that, isn't it? And you were the most senior
 21 division, I mean you were the most senior executive in that
 22 division, isn't it?
 23 MR MOKWENA: Exactly.
 24 MR NTSEBEZA SC: Now you would have known
 25 and please correct me if I'm wrong, that RDOs were doing

Page 38036

1 work which was physically demanding and very, very
 2 dangerous. Would you agree?
 3 MR MOKWENA: I agree, Chair, and many
 4 others.
 5 MR NTSEBEZA SC: Yes. I'm asking about
 6 the RDOs. The RDOs do work that is extremely dangerous and
 7 demanding. I have seen in some footages they work so many,
 8 I mean many kilometres into the belly of the earth in
 9 conditions where they really have to be crouching all the
 10 time, drilling rock face.
 11 MR MOKWENA: That is correct.
 12 MR NTSEBEZA SC: Yes, so there is no
 13 question about the work being physically demanding and
 14 dangerous. Do you agree?
 15 MR MOKWENA: I do agree.
 16 MR NTSEBEZA SC: And would you agree with
 17 me if, as you know, at the time they were earning anything
 18 between 4 000 to R5 000 a month. That would be very, very
 19 little in terms of earnings for them to accommodate
 20 everything that an ordinary family should accommodate.
 21 [13:54] It's difficult out of that amount to feed, to
 22 clothe, and to educate a family. Isn't that right?
 23 MR MOKWENA: That is correct, and Chair,
 24 actually I have a brother who retired as an RDO from Impala
 25 three years ago, so I know exactly what it means.

Page 38037

1 MR NTSEBEZA SC: Yes, and I'm sure when
 2 you have compared what your brother earns with what you
 3 earn – by the way, how much do you earn per month?
 4 MR MOKWENA: Chair, I'm not at liberty to
 5 divulge –
 6 MR BHAM SC: Mr Chair, I want to know
 7 what the relevance of that –
 8 MR NTSEBEZA SC: It is very relevant, Mr
 9 Chairman. I will argue that –
 10 CHAIRPERSON: [Microphone off, inaudible]
 11 relevant. I take it we can assume that he earns
 12 substantially more than his brother earns, substantially
 13 more than the RDOs –
 14 MR NTSEBEZA SC: Mr Chair, unless you are
 15 going to rule that –
 16 CHAIRPERSON: The exact number I don't
 17 understand – I'm asking you a question. The exact number –
 18 MR NTSEBEZA SC: Mr Chairman, I've been
 19 talking about numbers here, 4 000, R5 000 per rock driller.
 20 If it is not – I mean there is published material, I'm sure
 21 that in your company books it will be published material.
 22 I'm simply asking a question; how much do you earn per
 23 month.
 24 CHAIRPERSON: And I've asked you what's
 25 the relevance of the evidence?

Page 38038

1 MR NTSEBEZA SC: It's about the wage gap.
 2 CHAIRPERSON: No, I take it we can accept
 3 that there's a substantial wage gap. Do you need more than
 4 that?
 5 MR NTSEBEZA SC: Mr Chairman, are you
 6 ruling the question irrelevant?
 7 CHAIRPERSON: No, I'm asking you a
 8 question. What's your answer to it? I can't rule until
 9 you've answered my question.
 10 MR NTSEBEZA SC: The question, I sought
 11 to say this, Mr Chairman, the relevance is that I would
 12 like to be in a position to argue with Mr Mokwena if he
 13 says that compared with what he earns and given the nature
 14 of his work the rock drillers should or should not have
 15 been satisfied with the amount of money that they were
 16 earning at that time.
 17 CHAIRPERSON: Mr Bham, what's your answer
 18 to Mr Ntsebeza's –
 19 MR BHAM SC: I raised the question of
 20 relevance with reference to your terms of reference.
 21 Nothing has been stated which makes this particular
 22 question relevant.
 23 CHAIRPERSON: Yes, Mr Ntsebeza, do you
 24 wish to reply to what Mr Bham says?
 25 MR NTSEBEZA SC: Mr Chairman, I've said

Page 38039

1 everything that I wanted to say to Mr Mokwena. If Mr
 2 Mokwena on the advice of his legal advisors doesn't want to
 3 tell us how much he earns per month and the Commission
 4 feels that the question that I've asked is irrelevant, I'll
 5 go on.
 6 CHAIRPERSON: I was concerned more about
 7 the exact number. I take it I would be correct in assuming
 8 that you are paid substantially more than your brother was
 9 by Impala as an RDO.
 10 MR MOKWENA: Exactly, Chair, that was
 11 going to be my answer.
 12 MR NTSEBEZA SC: How many times more?
 13 CHAIRPERSON: No, no, no, no, that's –
 14 MR NTSEBEZA SC: Yes –
 15 MR BHAM SC: It's the same question in a
 16 different guise. We're still waiting for an answer by –
 17 CHAIRPERSON: No, I accept that.
 18 MR NTSEBEZA SC: Yes.
 19 CHAIRPERSON: No, alright, I uphold the
 20 objection. I think it's enough that we have on record that
 21 there's a substantial difference between what this witness
 22 earns and what his brother earned as an RDO when he was at
 23 Impala, and presumably substantial difference between what
 24 he earns and what the rock drill operators earn at Lonmin.
 25 MR NTSEBEZA SC: Mr Mokwena, I'll move on

Page 38040

1 because of the Chairman's ruling. There was something I
 2 saw in Checkpoint. You were asked whether in fact it is
 3 true that you earn seven and half million rand per annum.
 4 Is that true?
 5 MR MOKWENA: That is completely false. I
 6 don't earn R7 million, and secondly, Chair, to correct, my
 7 salary is not published. I'm not a director.
 8 MR NTSEBEZA SC: I see.
 9 MR MOKWENA: So it is not public
 10 information, my salary. I hope I've corrected that
 11 perception.
 12 MR NTSEBEZA SC: So anyway, since you are
 13 not in a position to tell us what you earn or you're not
 14 wanting to tell us what you earn, can I ask you this; do
 15 you have an idea what it is like to try and feed and
 16 educate and clothe a family on R4 000 to R5 000 per month?
 17 You have no idea?
 18 MR MOKWENA: I do have an idea.
 19 MR NTSEBEZA SC: Would you do all those
 20 things on that salary?
 21 MR MOKWENA: Which things, Chair?
 22 MR NTSEBEZA SC: I'll repeat the
 23 question. Would you be able to, 1, feed your family; 2,
 24 clothe your family; 3, educate your family; 4, create a
 25 shelter, at 4 000 to R5 000 per month? And I'm refraining

Page 38041

1 from saying decent accommodation.
 2 MR MOKWENA: Chair, may I state that I
 3 don't endorse, I don't like how employees are paid. It
 4 hurts me. I know where they come from because I come from
 5 those conditions and it is not something that I, Barnard,
 6 would like to endorse and say rock drill operators and
 7 other mine employees earn well. So I'm one of those
 8 people, Chair, who would push this industry to reward
 9 employees much better than what they are currently earning.
 10 So I have absolutely no issue in saying many of those
 11 employees, yes, Chair, they deserve to earn more. However,
 12 as Barnard I can only do so much at Lonmin, in the industry
 13 and in the country. So I do support your thoughts.
 14 MR NTSEBEZA SC: Is that all?
 15 MR MOKWENA: Yes, Chair.
 16 MR NTSEBEZA SC: Yes, now we'll get into
 17 the reasons why you decided not to engage, such as we would
 18 be able to get anything out of you that has not been got
 19 out of you by cross-examination thus far. Now would you
 20 then, given what you have said, would you have regarded the
 21 demand by the RDOs an improvement on 4 to R5 000 - I'm not
 22 going to talk about 12 500 – their demand to improve on 4
 23 to R5 000 per month, would you regard it to have been an
 24 unreasonable demand given the nature of the work that we
 25 have now agreed is dangerous and difficult?

<p style="text-align: right;">Page 38042</p> <p>1 MR MOKWENA: To arrive at a point to say 2 something is unreasonable, Chair, I believe there would 3 have been some thinking to it and I therefore believe that 4 a demand of 12 500 or 10 000 or 15 000 or 20 000, as it has 5 been the practice in this country is something that gets 6 negotiated properly and arrived at properly without loss of 7 life. 8 MR NTSEBEZA SC: Now what's your answer, 9 Mr Mokwena? 10 MR MOKWENA: So my answer is any number, 11 any demand, you are referring to a 12 500 and I'm saying it 12 is not the actual number but it's how a decision is 13 arrived, in a manner that human life is not lost and that 14 engagement happens – 15 MR NTSEBEZA SC: Mr Mokwena, let me 16 interrupt you. I am asking you whether you regarded it as 17 unreasonable that there was a demand from rock drill 18 operators for an improvement on their salaries in the light 19 of what I understand you to be conceding, namely that given 20 the nature of the work that they do, dangerous and 21 demanding, when they were making a demand for better 22 salaries – 23 MR BHAM SC: Mr Chair – 24 MR NTSEBEZA SC: - was that unreasonable 25 to you?</p>	<p style="text-align: right;">Page 38044</p> <p>1 Perhaps we must establish that first. Do you accept that 2 the rock drill operators couldn't – because this has 3 essentially been put to you by Mr Ntsebeza that the rock 4 drill operators could not support their families on the 5 salary they got at 4 500 per month? 6 MR MOKWENA: Yes, I have confirmed that, 7 Chair. 8 CHAIRPERSON: You have. Well, then you 9 can answer the question Mr Ntsebeza has asked you. 10 MR MOKWENA: Yes, Chair, in order for me 11 to answer that question whether the 12 500 demand for rock 12 drill operators was unreasonable or not, what I'm battling 13 with is a 12 500 demand for rock drill operators in the 14 decision making process would not have been the only thing 15 to decide on. In other words I would have to say who else 16 in that category of employees, because if you pay rock 17 drill operators 12 500 you need to pay somebody else 18 something else, somebody else something else, somebody else 19 something else. So the question around RDOs and 12 000 has 20 to be answered in the context of an organisation that 21 employs other types of job categories who would equally and 22 justifiably be asking for a similar adjustment. So the 23 unreasonability is not determined by only RDOs and the 24 12 000. That's what I'm trying to put as a context for my 25 decision making.</p>
<p style="text-align: right;">Page 38043</p> <p>1 MR BHAM SC: Mr Chairman, I'm afraid we 2 can't run away from one aspect. There was a demand but it 3 was a very specific demand and if we're going to be dealing 4 with what was on the issue at the time, then that specific 5 demand needs to be dealt with so that the witness can deal 6 with the demand as was articulated. That was the demand 7 for 12 and a half thousand. It may illustrate my learned 8 friend's point, it may not, but it's got to be put in the 9 terms if was put to Lonmin at the time because that's the 10 issue we're dealing with in the confines of this Commission 11 of Inquiry. 12 CHAIRPERSON: What do you say to that, Mr 13 Ntsebeza? 14 MR NTSEBEZA SC: Mr Chairman, if Mr 15 Mokwena will feel comfortable in answering to a demand for 16 R12 500 then I will put the question. Did you regard it as 17 being unreasonable that the rock drill operators were 18 raising a grievance about having to do dangerous, difficult 19 work for a salary that is not sufficient to support their 20 families and – 21 CHAIRPERSON: I'm not sure – 22 MR NTSEBEZA SC: - and that they made the 23 demand for R12 500? 24 CHAIRPERSON: I'm not sure the witness 25 conceded that they couldn't support their families.</p>	<p style="text-align: right;">Page 38045</p> <p>1 MR NTSEBEZA SC: Can I see if we can 2 narrow the issue? You have just conceded that the salary 3 that they were at, at the time, was insufficient for them 4 to support their families in the various ways I've 5 indicated, food, clothing, education, board and lodging and 6 all of that. We're on the same page as far as that is 7 concerned? 8 MR MOKWENA: Exactly. 9 MR NTSEBEZA SC: And therefore the 10 question therefore is did you regard their demand for an 11 improved wage as being unreasonable? 12 MR MOKWENA: Yes, in that context that, 13 Chair, I have just presented, because I would have to look 14 at winch operators, assistants and everybody in that 15 category, as it would not make sense to upgrade one 16 category of employees and leave the rest. So that's the 17 context of unreasonability. Now – 18 MR NTSEBEZA SC: We will argue 19 differently, Mr Mokwena, but that's not where I want to get 20 you to. Can we be on the same page also on the fact that 21 in that week of the 9th to the 16th with all those people 22 who had died, which is the purpose amongst others of this 23 Commission's investigations, those families who lost their 24 loved ones can properly be classified as victims? Do you 25 understand the question?</p>

Page 38046

1 MR MOKWENA: Yes, I do understand –

2 MR NTSEBEZA SC: You concede that those

3 families can properly be classified as the victims, because

4 they are families of those who were killed during the

5 relevant period of the Commission's investigations?

6 MR MOKWENA: That is true, Chair. I

7 agree.

8 MR NTSEBEZA SC: Now on the 13th and the

9 14th of August this year the Commission set aside in its own

10 wisdom – and I will tell you it is because as you can see

11 there, it is committed to finding the truth in the

12 interests of restoration and justice. Do you understand?

13 MR MOKWENA: I do understand.

14 MR NTSEBEZA SC: Now it set aside those

15 two days to deal with the restorative aspects of its work

16 by focussing on the victims and 28 of the families who I

17 represent were given the opportunity to tell this

18 Commission in their own words the effect of their suffering

19 as victims of the tragedies that took place. Do you

20 understand that?

21 MR MOKWENA: I do understand.

22 MR NTSEBEZA SC: Now what I want to put

23 to you, depending on your answer, is the fact that on those

24 two days, and I wasn't here, I'm instructed that there was

25 not a single representative of Lonmin management on those

Page 38047

1 two days. Do you dispute that?

2 MR MOKWENA: Chair, unfortunately I was

3 never made aware of such a meeting, so I didn't attend.

4 MR BHAM SC: Mr Chair, just to place on

5 record that on the second of the two days, the Friday that

6 passed, Mr Peter McElligott, the head of Legal at Lonmin

7 was present.

8 MR NTSEBEZA SC: The main day of the two

9 days there was not a single Lonmin representative, and

10 we're not talking about last week. I'm talking about the

11 13th and the 14th of August. My instructions are that on

12 those two days there wasn't a representative from Lonmin.

13 Mr Bham may be talking about last week and I'm going to say

14 something about last week.

15 MR MOKWENA: Chair –

16 MR NTSEBEZA SC: Can you explain that?

17 MR MOKWENA: Chair, as I said, I was not

18 made aware of such events and if indeed we were required to

19 be present, so –

20 MR NTSEBEZA SC: Are you saying that you

21 were not told –

22 MR MOKWENA: Exactly, Chair.

23 MR NTSEBEZA SC: - by anybody that

24 families were now giving an account?

25 MR MOKWENA: Yes, Chair.

Page 38048

1 MR NTSEBEZA SC: Are you saying that you

2 didn't read this in the newspapers?

3 MR MOKWENA: Yes, I read about

4 afterwards –

5 MR NTSEBEZA SC: So you were aware that

6 there's something that was taking place here.

7 MR MOKWENA: Chair, I said –

8 MR NTSEBEZA SC: Families were giving an

9 account of how they have suffered and about their

10 victimhood.

11 MR MOKWENA: Chair, I said I read about

12 it after the event.

13 MR NTSEBEZA SC: Okay. Now there were

14 those families who didn't testify on the 13th and the 14th

15 and they were here last Friday, which was the 12th of

16 September 2014 and you were here on both days actually.

17 MR MOKWENA: That is correct, Chair.

18 MR NTSEBEZA SC: I saw you sitting out

19 there and you never came to the chamber. In fact on the

20 day you were going to testify, when it was thought you were

21 going to testify on Thursday, what day was this? On

22 Friday, and we began with the families' accounts, you

23 didn't come into the chamber. You were at these precincts

24 but you didn't come into the chamber. Is that right?

25 MR MOKWENA: Chair, that is correct. I –

Page 38049

1 MR NTSEBEZA SC: Why was that?

2 MR MOKWENA: I was attending to my

3 preparation with my lawyers.

4 MR NTSEBEZA SC: Were you told that it

5 was impermissible for you to come here and hear what the

6 people were saying in their own words about how they were

7 suffering as a consequence of the deaths that took place in

8 the period of the Commission's investigations?

9 MR MOKWENA: It was important for me to

10 be here and equally I needed to be with lawyers on that

11 particular morning for me to prepare to come and tell the

12 truth at the Commission.

13 MR NTSEBEZA SC: So wasn't it therefore

14 more important for you as a part of your preparation to be

15 here to come and hear for yourself what the people were

16 saying about Lonmin? Because I will tell you now that a

17 lot of their grievances are about Lonmin, and you must have

18 known this.

19 MR MOKWENA: I am aware, and Chair, since

20 2012 I have a manager that I appointed whose sole job is to

21 go around the country, visit families, tell me what's going

22 on, assist the children at school throughout the year –

23 MR NTSEBEZA SC: That's very cynical, Mr

24 Mokwena –

25 MR MOKWENA: No, I want to just –

Page 38050

1 MR NTSEBEZA SC: You were here last week.
 2 The families were here and you were aware that they were
 3 testifying about how they have suffered as a consequence of
 4 the killings, and you are coming and telling this
 5 Commission that it is your desire to be going around the
 6 country when they were here, when you could have hear for
 7 yourself.
 8 [14:13] MR MOKWENA: What I am trying to say,
 9 Chair, is coming here on a specific day yes would have
 10 helped me, but the situation of the victims is something
 11 that I live with every day since 2012. So it would have
 12 yes helped me, but it would not necessarily have been an
 13 exceptional moment for me because for the last two years I
 14 have people, together with me that we have trouble to
 15 visit, to see and assist, so yes –
 16 MR NTSEBEZA SC: Mr Mokwena, I will put
 17 to you and we'll argue this, that you are now becoming
 18 absolutely disingenuous. This story about your concern for
 19 the last two years about these families cannot stand the
 20 test of just the two days that you were here, you were here
 21 on Thursday, I saw you in the car park and that's where you
 22 were stationed. You were here on Friday. So much for your
 23 being here and you are attending to your preparation and
 24 you were sitting there doing nothing. And when the
 25 occasion was here for you to come and hear and I'm going to

Page 38051

1 tell what these families were saying, to hear about what
 2 they were saying about Lonmin. You just do not come and
 3 you want this Commission to believe that for the last years
 4 you have been paining about what happened to them. I will
 5 submit that that is disingenuous and untrue. What do you
 6 say to that?
 7 MR MOKWENA: Chair, I've given my
 8 situation and circumstances and I'm willing to hear what is
 9 being said about us and I'm not trying to defend at all,
 10 I'm just trying to state where I was and what I was doing.
 11 MR NTSEBEZA SC: You know you came
 12 across, Mr Mokwena as somebody who has got better things to
 13 do. These stories that were being told by the workers and
 14 by the families were things that were far beneath you.
 15 That's how you come across.
 16 MR MOKWENA: I apologise for that, it's
 17 not my intention and it's not who I am. It's not what I
 18 represent.
 19 MR NTSEBEZA SC: Too little too late, Mr
 20 Mokwena. Too little too late. Let me tell you what the
 21 Commission was told by those families, about the impact and
 22 the details of their loved ones. The killing of their
 23 loved ones. What is clear from their presentation is that
 24 they have been emotionally devastated by the killings of
 25 their loved ones and I'm talking about all of the families.

Page 38052

1 The families of the police, the families of your own
 2 security guards and the families of the mineworkers. They
 3 say their pain is unbearable, some of them suffered
 4 physical ill health as a result. Do you accept that?
 5 MR MOKWENA: Chair, I can imagine the
 6 kind of pain those families have gone through, so I'm not
 7 refuting any of their experiences.
 8 MR NTSEBEZA SC: What is also clear is
 9 that for most of them, if not for all, those who got killed
 10 were their only breadwinner, family from family. Do you
 11 accept that?
 12 MR MOKWENA: Yes, that is true.
 13 MR NTSEBEZA SC: In the few instances
 14 where it is not the case the families were still heavily
 15 dependent on the support of their loved ones who were
 16 killed. Do you accept that?
 17 MR MOKWENA: I do accept that, I know
 18 that.
 19 MR NTSEBEZA SC: And in most cases the
 20 families loved ones who was killed supported members of
 21 their extended families as well. In some instances they
 22 had to support as many as ten dependents. Do you accept
 23 that? Or do you accept my word for it?
 24 MR MOKWENA: I accept that, Chair. I
 25 want I know workers who support a lot in their families,

Page 38053

1 five, ten. We had one employee from Mozambique for
 2 example, a couple of years ago, who had 14 siblings. It is
 3 correct what you are saying.
 4 MR NTSEBEZA SC: You are an indigenous
 5 sort of African is it?
 6 MR MOKWENA: I am.
 7 MR NTSEBEZA SC: Yes and you would know
 8 that you know we support not just sort of our immediate
 9 families, we support also extended families isn't that
 10 right?
 11 MR MOKWENA: That is correct.
 12 MR NTSEBEZA SC: Now, of course, with the
 13 loss of their breadwinners the families are struggling just
 14 to put food on the table, that's what they said. Do you
 15 accept that?
 16 MR MOKWENA: That is correct.
 17 MR NTSEBEZA SC: And many of those family
 18 members who are attending the Commission don't know whether
 19 their children are going to have food to eat at the end of
 20 each day. You must know that and I'll tell you why.
 21 MR MOKWENA: Yes, I am aware of that.
 22 MR NTSEBEZA SC: So what came across then
 23 was that survival has become a daily struggle for those
 24 families. Do you accept that?
 25 MR MOKWENA: Yes, I do.

Page 38054

1 MR NTSEBEZA SC: And that's a terrible
2 position for any human being to be in. I'm sure you would
3 accept that.
4 MR MOKWENA: I do accept that.
5 MR NTSEBEZA SC: Everyone wants their
6 families to be fed, they want their children to be
7 educated, they want their children to be clothed. They
8 want roofs over their heads, is it roofs? Roofs ja. Do
9 you agree?
10 MR MOKWENA: I agree, Chair.
11 MR NTSEBEZA SC: Now you see what also
12 came across here was that and this is their view, I'm not
13 entering into a debate, but they came across here, family
14 after family, saying that Lonmin is to blame for the deaths
15 of their families because if Lonmin had engaged the
16 strikers instead of calling the police their loved ones
17 would still be alive today. That is their view. Do you
18 accept that?
19 MR MOKWENA: I sympathise with that
20 statement, Chair.
21 MR NTSEBEZA SC: And part of the reason
22 would be because of your stunts both as a chief executive
23 at the time in the position you were in as Lonmin and that
24 is your decision which you took and you're sitting here
25 today, I've been painfully trying to understand your

Page 38055

1 rationale, but your decision not to engage them, with the
2 strikers is one of the reasons that they are holding Lonmin
3 to blame. Now in your supplementary statement, paragraphs
4 5 and 7 you stated that one, you took the decision not to
5 engage the employees and that you stand by that decision.
6 Do you remember that?
7 MR MOKWENA: Yes, I do remember that
8 statement.
9 MR NTSEBEZA SC: And you told that your
10 reasons for not doing so were threefold. First that you
11 didn't want to set a precedent for engaging outside of the
12 collective bargaining structures. That has been the centre
13 of debate for much of your cross – under Ms Barnes.
14 Secondly, if you had done so it would have undermined the
15 EXCO's decision to implement an RDO allowance and thirdly,
16 to allow Lonmin to adopt a principle stand not to entertain
17 a wage grievance from employees who had engaged in an
18 unprotected strike. Those are the reasons that you gave.
19 Isn't that right?
20 MR MOKWENA: That is correct.
21 MR NTSEBEZA SC: Now it seems to me that
22 what you are telling us is that you disapproved of their
23 conduct in wanting to engage with management outside the
24 bargaining structures and also their conduct in engaging in
25 an unprotected strike. Correct?

Page 38056

1 MR MOKWENA: Yes.
2 MR NTSEBEZA SC: And you decided not to
3 engage them so that you should not set a precedent and so
4 that you can deter employees from engaging in unprotected
5 strike in future.
6 MR MOKWENA: That is correct.
7 MR NTSEBEZA SC: So basically you treated
8 them like children who were misbehaving. Is that right?
9 MR BHAM SC: Mr Chairman, this is just an
10 emotional proposition put which has got no foundation in
11 anything. It's an unfair proposition to put to the
12 witness. He's explained fully the circumstances in which
13 he has taken the decision, he had taken it, but to bring it
14 down to the level that's been put to the witness is just
15 completely out of hand.
16 CHAIRPERSON: What do you say about that,
17 Mr Ntsebeza?
18 MR NTSEBEZA SC: Well, Mr Chairman, I
19 don't know in what way the explanations – I'm presenting Mr
20 Mokwena from saying no I didn't treat them like children, I
21 treated them like adults, I treated them with respect. He
22 can say so. I don't understand the objection.
23 CHAIRPERSON: All right, Mr Bham, what do
24 you say in response to –
25 MR BHAM SC: - of a lie which can be so

Page 38057

1 prejudicial to the witness because it can create headlines
2 unnecessarily.
3 SPEAKER: Is it a lie?
4 MR BHAM SC: It's unfair, it's
5 unnecessary, it doesn't take the point any further and in
6 fact it's a proposition which is just incorrect to put to
7 the witness and unfair. You've got to reach a stage, Mr
8 Chairman, where language used of that sort, directed
9 towards witness which can be prejudicial in the public eye
10 because of how it's reported. It's got to be avoided, Mr
11 Chairman.
12 MR NTSEBEZA SC: Mr Chairman, just before
13 you make a ruling, you see I emphasised all of these by
14 indicating that this is what the families are saying in
15 their testimonies here, obviously without cross-examination
16 for the reasons that were given, that is what they felt.
17 CHAIRPERSON: I don't remember them
18 saying that they thought that Lonmin had treated them like
19 children, treated their loved ones as children. I don't
20 remember that, so on that basis that you put forward I
21 uphold the objection.
22 MR NTSEBEZA SC: All right. Mr Mokwena,
23 it's clear to me that you didn't approve of the conduct of
24 the rock drill operators for seeking to operate outside the
25 recognised structures. Isn't that right?

<p style="text-align: right;">Page 38058</p> <p>1 MR MOKWENA: Yes, that is true.</p> <p>2 MR NTSEBEZA SC: Would it be fair to say,</p> <p>3 I have to now ask those questions in that kind of way,</p> <p>4 would it therefore be fair to say that it could be</p> <p>5 perceived you have decided to teach them a lesson by</p> <p>6 refusing to engage with them in relation to their demands?</p> <p>7 I will teach them a lesson, I will show them that if they</p> <p>8 don't follow the rules then they are not going to get an</p> <p>9 instruction.</p> <p>10 MR MOKWENA: That is incorrect. My</p> <p>11 motivation for arriving at those decisions was based on me</p> <p>12 treating them as adults that I worked with for many years</p> <p>13 who knew how demands are presented at Lonmin. Secondly,</p> <p>14 Chair, the majority of Karee employees who had been re-</p> <p>15 employed in 2010 were all sitting on final written warning</p> <p>16 due to unprotected strike. So I treated them like adults</p> <p>17 who I believed would therefore respond accordingly to</p> <p>18 numerous communication that I had with them. So at no</p> <p>19 stage did I believe I was treating our RDOs because I</p> <p>20 wanted to punish them. That is incorrect.</p> <p>21 MR NTSEBEZA SC: You certainly treated</p> <p>22 them like adults who should have known better. Didn't you?</p> <p>23 MR MOKWENA: I would not have used that</p> <p>24 expression for my respect of them</p> <p>25 MR NTSEBEZA SC: Your approach, your</p>	<p style="text-align: right;">Page 38060</p> <p>1 CHAIRPERSON: I said are you still</p> <p>2 continuing with your answer.</p> <p>3 MR MOKWENA: Yes.</p> <p>4 CHAIRPERSON: Yes well carry on.</p> <p>5 MR MOKWENA: My answer, Chair, is living</p> <p>6 in those circumstances day by day and trying to drive the</p> <p>7 whole situation around a framework that we have all known</p> <p>8 for many years, at no stage did it occur to me or any of</p> <p>9 the executives that we are doing this in order to punish</p> <p>10 anybody. That's one, we were trying to do things within</p> <p>11 the rule of law which was the only thing we knew at the</p> <p>12 time. Secondly it was also a moral issue for us to say if</p> <p>13 you accede to 3000 employees now with a demand what are you</p> <p>14 going to do if another 3000 comes tomorrow. So, Chair, it</p> <p>15 was purely out of that understanding, not to punish</p> <p>16 anybody, not to treat anybody with disrespect.</p> <p>17 MR NTSEBEZA SC: Okay, I don't want to</p> <p>18 appear like my learned friend is accusing me to be</p> <p>19 emotionalising the issue. But let me present the context,</p> <p>20 before the 16th ten people had died.</p> <p>21 MR MOKWENA: That is correct.</p> <p>22 MR NTSEBEZA SC: Including eight Lonmin</p> <p>23 employees, isn't that right?</p> <p>24 MR MOKWENA: That is correct.</p> <p>25 MR NTSEBEZA SC: Now I can understand</p>
<p style="text-align: right;">Page 38059</p> <p>1 entire approach here was so painfully technical, you</p> <p>2 operate within structures, there's only one union that is</p> <p>3 recognised here, irrespective of what the tragedy is,</p> <p>4 irrespective of whether up to the 16th ten people had died</p> <p>5 your approach is there's a recognised bargaining structure.</p> <p>6 You operate within that structure, if you don't I'm not</p> <p>7 going to engage you. Doesn't that sum up your attitude?</p> <p>8 MR MOKWENA: No, Chair, I disagree</p> <p>9 because I, at the time and even now, Chair, if you ask me,</p> <p>10 it's a moral dilemma. In other words is it being</p> <p>11 insinuated that people had to die to prove the point or am</p> <p>12 I misinterpreting that? Because I have a moral dilemma</p> <p>13 that having treated employees, RDOs as workers who were</p> <p>14 well entrenched in the customs and the tradition of wage</p> <p>15 demands and accept that, you say I was technical, fine,</p> <p>16 what I'm trying to say to the Commission is I find it a</p> <p>17 moral issue that deaths of people is now presented to me as</p> <p>18 a reason why I did not talk to them. I did not know people</p> <p>19 are going to die. My engagement with the workers –</p> <p>20 MR NTSEBEZA SC: Well they died up to</p> <p>21 that point.</p> <p>22 CHAIRPERSON: Let him just finish his</p> <p>23 answer, Mr Ntsebeza. Are you still continuing with your</p> <p>24 answer?</p> <p>25 MR MOKWENA: Chair?</p>	<p style="text-align: right;">Page 38061</p> <p>1 your desire not to create a precedent, but when people die</p> <p>2 and at the - whatever you are going to say and this is</p> <p>3 going to be our submissions later on, when so many people</p> <p>4 have died and it is clear that the reason that there is</p> <p>5 this death that is taking place is because there's the</p> <p>6 dispute at the centre of it all. Remove the dispute,</p> <p>7 that's what we will submit then there is no problem. Now</p> <p>8 was it not calling upon you, Human Capital Executive, to</p> <p>9 think outside of the box, to say listen I would rather have</p> <p>10 a dead President in the form of I'm going out of my way to</p> <p>11 negotiate with these people, to call for a mediator, to</p> <p>12 call for a conciliator, anything but a perpetuation of</p> <p>13 these deaths? Wasn't it calling upon your leadership to do</p> <p>14 that?</p> <p>15 MR MOKWENA: Chair, that's the beauty of</p> <p>16 sitting here two years down the line –</p> <p>17 MR NTSEBEZA SC: I wouldn't call it</p> <p>18 beauty, but –</p> <p>19 MR MOKWENA: Yes, because we can reflect</p> <p>20 back and learn from what could have happened, but at that</p> <p>21 time, as I said, circumstances, practise norm did not</p> <p>22 suggest that there was an outside the box situation.</p> <p>23 MR NTSEBEZA SC: Are you saying ten</p> <p>24 people, eight of your people have been murdered, some</p> <p>25 incinerated. How much would it have –</p>

Page 38062

1 [14:33] Was it the body count that would have persuaded
 2 you that this was an extraordinary situation that called on
 3 your leadership to say I know the rules, I know the labour
 4 law, LRA, LRA, whatever it's called, now is a time for me
 5 to go in there and say in the light of this carnage I just
 6 want to hear you. Was that such a difficult thing to do?
 7 MR MOKWENA: I have stated that we had
 8 already, Chair, given and communicated to the RDOs about
 9 the 12 500. The event of the 10th was not the beginning of
 10 communication or lack thereof with RDOs. Chair, may I also
 11 say an innocent 12 500 demand doesn't warrant death. I'm
 12 battling to understand why the 12 500 demand is now
 13 associated with death. In other words, I have a moral
 14 dilemma to accept the argument that it's because we did not
 15 grant the 12 500, people therefore died.
 16 MR NTSEBEZA SC: I am putting it at a far
 17 lower level because you are raising this R12 500 as a
 18 distraction. I put it to you at a lower level and that is
 19 the level of engagement. Engagement means, okay, they may
 20 not be operating within the recognised structures, they may
 21 not be belonging to NUM or NUM may no longer have authority
 22 over them, I don't recognise AMCU because I don't know it,
 23 I am prepared to look at other alternative dispute
 24 resolution mechanisms because my portfolio is to deal with
 25 people. These are people, these are human beings, I am in

Page 38063

1 charge of human capital, I have invested in these people.
 2 So many of them have already died up to this point, I'm not
 3 prepared to have another death on my hands, I will engage
 4 them. Why was that difficult?
 5 MR MOKWENA: Chair, I agree with you
 6 actually, I do agree with you. All I'm saying is when
 7 South Africa agreed to have certain prescripts and
 8 frameworks, the idea was for us to keep them and observe
 9 them. At the time Lonmin had no other alternative other
 10 than what the country knows, that we have all agreed as a
 11 framework of engaging on dispute regarding wages. That's
 12 all I'm saying. Two years down the line, Chair, maybe we
 13 can look back and say what didn't work properly but at that
 14 time all Lonmin knew was the tradition and the practice
 15 around unprotected strike and wages and Lonmin could not,
 16 because of the circumstances at that time, decide to park a
 17 piece of legislation that the whole of South Africa so
 18 adores – in fact which makes it so easy for workers to go
 19 on strike in a manner that is protected.
 20 MR NTSEBEZA SC: You know, Mr Mokwena,
 21 you are now becoming a technocrat again because you see
 22 maybe I'm getting to your brains but I'm not getting to
 23 your heart and I want to get to both. The simple question
 24 I'm putting to you, and incidentally you had already
 25 operated outside the structures in this whole episode but I

Page 38064

1 don't want to be detracted. You know the evidence is
 2 there, Da Costa has given that kind of evidence, we know
 3 all of that. All I am simply putting to you, and by you I
 4 include the top management in the executive, is that you
 5 didn't do what you needed to do, even when 10 bodies were
 6 an evidence of what the dispute has resulted in. Are you –
 7 well, you said you agree with that but is there really any
 8 basis that you should not have engaged the workers?
 9 MR MOKWENA: Chair, you've been in my
 10 heart since you started the cross-examination, I can
 11 guarantee you that and perhaps what I'm not hearing
 12 properly is, Mr Mokwena, two years down the line when you
 13 look back what do you think could have been done
 14 differently? Now that's a different question from that
 15 particular day or those days with the circumstances given,
 16 with our tradition, with our practice, with our reference
 17 points, we did not think of any other thing except what we
 18 knew.
 19 MR NTSEBEZA SC: You did actually,
 20 because what you did was to call on government to increase
 21 police presence at Marikana, isn't that right?
 22 MR MOKWENA: I believe it's the
 23 competency of the police to deal with such –
 24 MR NTSEBEZA SC: And to arrest AMCU
 25 leaders, as was put to you during the course of Ms Barnes's

Page 38065

1 cross-examination. It's not as though you didn't think
 2 that there is a way in which a labour dispute could be
 3 resolved, except that your thinking was that the way to
 4 resolve it is to bring more police because you in that
 5 organisation had characterised it, in spite of what the
 6 Minister involved had done. You in that organisation had
 7 characterised it as a criminal issue, not a labour issue.
 8 Isn't that what informed you?
 9 MR MOKWENA: Chair, may I correct that
 10 last statement? I did not characterise the event as
 11 criminal. If you go back to what I said, I was referring
 12 to the deaths of people as criminal.
 13 MR NTSEBEZA SC: No, I'm simply using you
 14 as the royal collective you.
 15 MR MOKWENA: I'll accept that.
 16 MR NTSEBEZA SC: Yes. You see that's
 17 what I am putting to you, that it's not as though Lonmin
 18 top executives, and you are in the centre of it because we
 19 are dealing with people's issues, it's not as though you
 20 didn't do anything. What you regarded as something that
 21 should be done ASAP was to increase the police contingent
 22 in that place and all that they were saying to you, please
 23 come and talk to us. Was that a reasonable way of dealing
 24 with the matter?
 25 MR MOKWENA: It was, Chair, given those

<p style="text-align: right;">Page 38066</p> <p>1 circumstances.</p> <p>2 MR NTSEBEZA SC: We'll argue otherwise,</p> <p>3 Mr Mokwena. I would just like to tell you, since you were</p> <p>4 not here, what the families think your organisation should</p> <p>5 do to assist, because they hold the view that you have your</p> <p>6 fair share in the killings of their loved ones, they take</p> <p>7 the view that you should assist the families in the same</p> <p>8 way as their killed relatives used to. What is your</p> <p>9 attitude to that? They say, for instance, they are</p> <p>10 struggling to provide the necessities for their families,</p> <p>11 in particular such as food. And they say in that regard at</p> <p>12 a meeting which had been held on the 9th July 2013 in</p> <p>13 Mthatha, Lonmin was represented by Ben Magara and Jones</p> <p>14 Maropeng who are your employees, and the families and at</p> <p>15 that meeting they were promised on behalf of Lonmin that</p> <p>16 they would not go hungry. Are you aware of that?</p> <p>17 MR MOKWENA: I am aware of that.</p> <p>18 MR NTSEBEZA SC: Now they say despite</p> <p>19 that undertaking that they would not go hungry, the</p> <p>20 families have only received food parcels twice, in December</p> <p>21 2012 amounting to approximately R700 for food parcels and</p> <p>22 R700 cash and in 2013 amounting to approximately R1 000 for</p> <p>23 food and R1 000 cash respectively. Are you aware of that?</p> <p>24 MR MOKWENA: I am aware of that.</p> <p>25 MR NTSEBEZA SC: You would agree with me</p>	<p style="text-align: right;">Page 38068</p> <p>1 that they never go hungry?</p> <p>2 MR MOKWENA: Chair, I can commit to go</p> <p>3 remind Mr Ben Magara –</p> <p>4 MR NTSEBEZA SC: As you sit there before</p> <p>5 God you are making that oath?</p> <p>6 MR MOKWENA: Yes, yes.</p> <p>7 MR NTSEBEZA SC: Now houses, a number of</p> <p>8 – far be it from me to simply to seek to suggest or to</p> <p>9 prescribe to Lonmin but whilst I have you there under oath</p> <p>10 before three Commissioners, are you undertaking that Lonmin</p> <p>11 is going to see to it now that the families get food</p> <p>12 parcels every month, not every year, not once every year?</p> <p>13 MR MOKWENA: What I can commit to is to</p> <p>14 go back to Mr Ben Magara and make sure that his statement</p> <p>15 that they will not go hungry is made a reality. I don't</p> <p>16 know whether it's by way of food –</p> <p>17 MR NTSEBEZA SC: No, let's forget about</p> <p>18 Magara now, you see. You are there, you are now even</p> <p>19 higher than you were at the top. You are a top Lonmin</p> <p>20 executive. I want you under oath to say, as a top</p> <p>21 executive –</p> <p>22 MR BHAM SC: May I just make a statement</p> <p>23 on behalf of the company, I've taken an instruction. That</p> <p>24 type of a decision is an executive decision. It puts this</p> <p>25 witness in a difficult position because he doesn't have any</p>
<p style="text-align: right;">Page 38067</p> <p>1 that once every year an amount of R1 700 would not be</p> <p>2 considered per family to be sufficient to fulfil your</p> <p>3 undertaking that was made by Magara and Maropeng. You</p> <p>4 can't say if I give you R1 700 in 2012 and R1 700 in the</p> <p>5 next year you will not go hungry. That would be a joke,</p> <p>6 wouldn't it be?</p> <p>7 MR MOKWENA: It would, Chair, I totally</p> <p>8 agree with that sympathy. When Mr Ben Magara said they</p> <p>9 will not go hungry I don't know what he had in mind but</p> <p>10 here's what I think or what I believe, that whatever</p> <p>11 support families should get should be a sustainable support</p> <p>12 that actually takes away the dependency on Lonmin or on</p> <p>13 anybody else. So I'm not privy to the details of what Ben</p> <p>14 Magara meant when he said the families will not go hungry.</p> <p>15 What I personally believe is to create a solution that's</p> <p>16 sustainable and that removes the element of dependency on</p> <p>17 anybody. That for me would be something that I would truly</p> <p>18 support but, Chair, I don't know the details and if we have</p> <p>19 failed as per that promise, we have no reason as Lonmin to</p> <p>20 apologise and to do it the right way and keep the promise.</p> <p>21 MR NTSEBEZA SC: Do I understand</p> <p>22 therefore that you are willing to give an undertaking that</p> <p>23 Lonmin will make sure that the families who were told by</p> <p>24 Magara and Maropeng that they will never go hungry, that in</p> <p>25 fact Lonmin will put in place some measures to make sure</p>	<p style="text-align: right;">Page 38069</p> <p>1 mandate to talk to that. He has stated no more than he can</p> <p>2 actually state and that's to communicate to the CEO but you</p> <p>3 can't put a witness who can't talk without a mandate in the</p> <p>4 position he's been put in now.</p> <p>5 CHAIRPERSON: Mr Ntsebeza, that would</p> <p>6 appear to be right. If he's got no authority to give the</p> <p>7 undertaking, the undertaking couldn't be enforced against</p> <p>8 Lonmin and you would then sue him for a breach of warranty</p> <p>9 of authority or something of that kind, which I don't think</p> <p>10 is what you want. He said he will take it back to the CEO</p> <p>11 of the company, it may well be –</p> <p>12 MR NTSEBEZA SC: Well –</p> <p>13 CHAIRPERSON: - that we can demand an</p> <p>14 answer from Lonmin itself at some stage in the argument</p> <p>15 stage as to what their attitude is to what he said, but I</p> <p>16 don't – you can't force him to give you an undertaking on</p> <p>17 behalf of Lonmin which he has no authority to give, can</p> <p>18 you?</p> <p>19 MR NTSEBEZA SC: Mr Chairman –</p> <p>20 CHAIRPERSON: I think the objection is</p> <p>21 well taken.</p> <p>22 MR NTSEBEZA SC: Mr Chair, it's just that</p> <p>23 you know this thing seems to be a moving target. There</p> <p>24 first it was Ben Magara and Maropeng, now he says Maropeng</p> <p>25 and Ben Magara didn't have the authority to – but I</p>

Page 38070

1 understand, I understand –

2 CHAIRPERSON: No, no, Mr Ntsebeza, you're

3 misunderstanding, you're misunderstanding Mr Bham here.

4 This witness hasn't authority to give an undertaking in

5 that regard -

6 MR NTSEBEZA SC: I am quite happy to take

7 my learned friend's assurance that this will go to the

8 executive which has the decision-making powers and that Mr

9 Mokwena can do no more than simply say, because it has

10 moved him to the extent that he claims it has, he will

11 motivate for this matter to receive executive attention.

12 MR BHAM SC: But the witness, and I think

13 I must be – the witness has stated that he will communicate

14 what has been said to him back to the CEO, Mr Magara.

15 Everything else dealt with, with him, is just outside of

16 the scope of what can be dealt with in the Commission.

17 It's not the first time that I'm raising the point.

18 CHAIRPERSON: I must say I did get the

19 impression, though, that he indicated that as far as it

20 could come from him he would support such an approach but

21 he hasn't got decision-making powers. All he would have

22 possibly is some power of advocacy in the higher councils

23 of Lonmin.

24 MR NTSEBEZA SC: Can I clarify it? Are

25 you, Mr Magara, is he not CEO? He's CEO of Lonmin?

Page 38071

1 MR MOKWENA: Ja, and it's him who made

2 that promise.

3 MR NTSEBEZA SC: That's the thing.

4 MR MOKWENA: Ja.

5 MR NTSEBEZA SC: He made the undertaking.

6 Anyway you understand where we are coming from. Mr

7 Chairman, there is an issue about whether it's 45 minutes

8 or whether I take –

9 CHAIRPERSON: No, it's not an issue, that

10 was announced by Mr Wesley at the beginning and you've

11 actually gone on beyond that, I think.

12 MR NTSEBEZA SC: Yes, Mr Chairman, but –

13 CHAIRPERSON: But I understood that, I

14 understood from the signals I'm getting from Mr Wesley that

15 you had, without my permission, taken time from somebody

16 else and I was prepared in the circumstances, seeing you

17 were in full flow, not to interrupt you. I think your

18 time, even the extended time you've been donated by your

19 colleagues, is now up.

20 MR NTSEBEZA SC: No, Mr Chairman. My

21 time, with the donation, would be an hour.

22 CHAIRPERSON: Let's find out from Mr

23 Wesley who is the duly appointed timekeeper. Yes, Mr

24 Wesley?

25 MR WESLEY: Chair, Mr Ntsebeza commenced

Page 38072

1 at 10 minutes, at 13H50, 10 minutes to two, it is now 10

2 minutes to three, that's an hour. That's the 45 minutes

3 allotted plus the 15 extra which was negotiated inter

4 partes. It's up.

5 CHAIRPERSON: I'm afraid you can't argue

6 against the clock, Mr Ntsebeza, that's it. The next cross-

7 examiner is on behalf of the SAPS, he's got 60 minutes

8 unless the donation – did you donate your time, Mr Semenya?

9 MR WESLEY: Chair, can I clarify? It's

10 quite interesting. The police, the parties – it's for all

11 parties – they were asked whether, an identity of interest

12 to try and work the time out better between them. How it

13 worked out is SAPS have in fact given Mr Mpofu 30 minutes.

14 MR SEMENYA SC: No – no.

15 CHAIRPERSON: Mr Mpofu an extra 30

16 minutes?

17 MR SEMENYA SC: No – no.

18 CHAIRPERSON: No, there's a dispute of

19 fact about that. Nemo dat qui non habet, I think. Mr

20 Semenya –

21 MR NTSEBEZA SC: Mr Chairman, can I use

22 the next 10 minutes to 3 o'clock just to round off –

23 CHAIRPERSON: Not without taking time

24 from someone else, no, that's not fair. Look, Mr Semenya

25 what's the position? You're next. You were given,

Page 38073

1 according to my instructions, a minute, 60 minutes.

2 MR SEMENYA SC: I will –

3 CHAIRPERSON: Did you give any of it

4 away?

5 MR SEMENYA SC: I will give away anything

6 of that 60 minutes not used by me.

7 CHAIRPERSON: Oh, so you want to use it

8 first?

9 MR SEMENYA SC: Yes.

10 CHAIRPERSON: That doesn't help Mr

11 Ntsebeza because he can't come back.

12 MR MPOFU SC: No, it's for me.

13 CHAIRPERSON: But Mr Mpofu is waiting in

14 the wings with his handout, hoping to receive unused,

15 donations of unused time. That's what it amounts to.

16 MR MPOFU SC: No, Chairperson, I think Mr

17 Semenya is clarifying the arrangement. He had an hour and

18 he said he'll give me the remainder.

19 CHAIRPERSON: Ja, that's right.

20 MR MPOFU SC: Which I took to be half an

21 hour but it might not be, it might be more.

22 CHAIRPERSON: No, what I said was – what

23 I said was, you were in the wings with outstretched hands

24 waiting to receive donations of unused time, so that's

25 correct. Mr Ntsebeza's time is up. Mr Semenya is going to

Page 38074

1 start cross-examining but before he does so, I want to put
2 a question to the witness but first before I even do that,
3 Mr Bham was going to make a statement in relation to the
4 request that I addressed to the legal representatives of
5 Lonmin before the lunch adjournment.

6 MR BHAM SC: Mr Chairman, I make the
7 statement on instructions from my client following on what
8 arose from the reference of page 21 of the bundle before Mr
9 Mokwena, that's WWWW1.21. On line 16 of that bundle, there
10 is a reference to a recording, and what occurred in the
11 course of the cross-examination of Mr Mokwena was where the
12 recording is.

13 [14:53] I've been instructed to state the following and I
14 state so under instructions. The recording had previously
15 been requested from Mr Jomo Kwadi after consideration of
16 the transcript in which reference is made to that recording
17 - this is at line 16 of page 21 - and that request had been
18 made by Lonmin. Mr Kwadi advised Lonmin that the specific
19 recording referred to by Mr Mokwena on line 16 at page 21
20 of exhibit WWWW1.21 must have existed. He, namely Mr
21 Kwadi, would not have referred to such a recording if it
22 did not exist. However, Mr Kwadi does not have the
23 specific recording in his possession and has not been able
24 to find it when he previously looked for it. Mr Kwadi
25 believes that the specific recording may have been on a CD

Page 38075

1 which he had handed over to Mr Dirk Botes which contained
2 all recordings which he, Mr Kwadi, had made. Mr Botes
3 copied the content of the CD onto the Lonmin drive which
4 had been made available to SAPS. Mr Kwadi does not
5 presently have the recording in his possession and has not
6 been able to find it.

7 CHAIRPERSON: Thank you. I've asked the
8 evidence leaders to see to it that affidavits are taken
9 from both Mr Botes and Mr Kwadi containing the information
10 that Mr Bham has read out. Thank you, Mr Bham. Mr
11 Mokwena, before Mr Semanya asks you question I'd like to
12 ask you about a passage at page 399 of your bundle. This
13 is, the document at 399 begins at 398 and it's a memorandum
14 addressed to EXCO by Mr Kwadi on the 26th of June 2012. Mr
15 Kwadi, is Mr Kwadi someone who reports to you? Are you his
16 line manager?

17 MR MOKWENA: Yes, I'm a manager once
18 removed. He was reporting to Abey Kgotle and Abey was
19 reporting to me.

20 CHAIRPERSON: Right, and you're a member
21 of EXCO?

22 MR MOKWENA: Yes.

23 CHAIRPERSON: So were you present, did
24 you actually present this memorandum to EXCO?

25 MR MOKWENA: Yes.

Page 38076

1 CHAIRPERSON: Alright, now on page 399,
2 the third paragraph reads as follows, "The RDOs at Karee
3 Mine approached management with a 'request' for an increase
4 to their remuneration. They've requested a package of
5 12 500 per month. Although there's no proof of AMCU's
6 involvement in the Lonmin RDO 'request' suspicions are that
7 they may be behind it directly or indirectly. Of
8 particular interest though is that the RDOs were led by one
9 member from AMCU and another one from the NUM. This may
10 suggest that the RDO issue has assumed a life of its own
11 independent of trade unions." You see that?

12 MR MOKWENA: Yes.

13 CHAIRPERSON: Did that paragraph express
14 your understanding of the matter when you presented this
15 document to EXCO?

16 MR MOKWENA: Yes, that was, Chair, the
17 kind of understanding we had. We were hovering over what's
18 going on, who's who, and all that, yes.

19 CHAIRPERSON: Okay, did anything between
20 the date you presented this memorandum to EXCO on the 26th
21 of June and the date you had the conversation that was
22 recorded with the Provincial Commissioner on the 14th of
23 August, did anything over that period induce you to a
24 belief other than what is contained in the paragraph I
25 read?

Page 38077

1 MR MOKWENA: No, my conversation with the
2 General, Chair, would have literally been triggered by my
3 experience from the Friday the 10th, onwards, nothing
4 before.

5 CHAIRPERSON: Ja, but there was nothing
6 from the Friday the 10th to the 14th of August to make you
7 change the view set out in this paragraph? Am I right?

8 MR MOKWENA: Yes.

9 CHAIRPERSON: You agree?

10 MR MOKWENA: Yes.

11 CHAIRPERSON: I see. So at the time you
12 spoke to General Mbombo, if you still were of the views set
13 out in this paragraph you would have had to say if you were
14 expressing your understanding of the situation or possible
15 situation in relation to the activities of the two unions,
16 that though there was a suspicion that AMCU might have been
17 involved in the requests, on the other side it had to be
18 said that the RDOs who were making the demand were led by
19 one member from AMCU and another from NUM and that that
20 suggested that the RDO issue might have assumed a life of
21 its own independent of the trade unions. Is that correct?

22 MR MOKWENA: That is correct.

23 CHAIRPERSON: That's not what you said to
24 the Provincial Commissioner, is it?

25 MR MOKWENA: No, no, no, I didn't say

Page 38078

1 that.

2 CHAIRPERSON: I see. Alright, thank you.

3 Mr Semenya.

4 MR MOKWENA: Chair, may I ask to –

5 CHAIRPERSON: I beg your pardon. I

6 didn't realise that you hadn't finished. Of course you can

7 amplify your answer or –

8 MR MOKWENA: No, what I mean is may I

9 quickly relieve myself, if that's permitted?

10 CHAIRPERSON: It sounds like an

11 appropriate stage to take the tea adjournment and do

12 whatever else may be considered necessary.

13 MR BHAM SC: He's taken your cue on a

14 body break, or a comfort break.

15 [COMMISSION ADJOURNS COMMISSION RESUMES]

16 [15:16] CHAIRPERSON: The Commission resumes. Mr

17 Mokwena, you're still under oath.

18 BARNARD OLEFILE MOKWENA: [s.u.o.]

19 CHAIRPERSON: Mr Semenya.

20 CROSS-EXAMINATION BY MR SEMENYA SC:

21 Thank you, Chair. Ntathe Mokwena, good afternoon.

22 MR MOKWENA: Good afternoon, Sir.

23 MR SEMENYA SC: You would consider the

24 Deputy President of this country, Mr Ramaphosa, an

25 accomplished and a seasoned negotiator, wouldn't you?

Page 38079

1 MR MOKWENA: Yes, I do.

2 MR SEMENYA SC: Particularly that he

3 comes from the same background where you are in mining.

4 MR MOKWENA: Exactly.

5 MR SEMENYA SC: He would have some fair

6 understanding how these negotiations and impasses are

7 resolved in that industry.

8 MR MOKWENA: Yes.

9 MR SEMENYA SC: And even much more I

10 think as a country we owe it to him that he got us out of a

11 very intractable position to where we are now, in part.

12 MR MOKWENA: Exactly.

13 MR SEMENYA SC: Let me tell you what he

14 says. He says the tragedy in Marikana was an outcome of

15 collective failure. We'd defer to that opinion of his,

16 wouldn't we?

17 MR MOKWENA: I would sympathise with that

18 opinion.

19 CHAIRPERSON: No, no, sympathise is one

20 thing and agreement is another. You're asked whether you

21 agree.

22 MR MOKWENA: Oh, I would, yes.

23 MR SEMENYA SC: And to those who must

24 take collective responsibility points amongst others to

25 himself. You wouldn't take issue with that, would you?

Page 38080

1 MR MOKWENA: No, I wouldn't.

2 MR SEMENYA SC: And he seems to also

3 include Lonmin to say Lonmin could have handled that

4 differently. You agree with that?

5 MR MOKWENA: I do agree with that.

6 MR SEMENYA SC: Okay. He goes so far as

7 to say perhaps the tragedy would have not been what it is

8 had Lonmin negotiated with the RDOs. You'd associate

9 yourself with that, wouldn't you?

10 MR MOKWENA: Yes.

11 MR SEMENYA SC: Now let me examine this

12 with you. The distinction between talking and agreeing was

13 not lost on management, was it?

14 MR MOKWENA: No, it wasn't.

15 MR SEMENYA SC: So there was a fair

16 understanding that what the people on the koppie wanted was

17 to talk, not necessarily that management must be bound. Am

18 I right?

19 MR MOKWENA: No, Chair.

20 MR SEMENYA SC: Now they did not invite

21 management to agree to 12 500. They wanted management to

22 discuss with them their demand for 12 500.

23 MR MOKWENA: You are correct now.

24 MR SEMENYA SC: So the distinction

25 between talking and necessarily agreeing was not lost on

Page 38081

1 management. That's the point I'm making.

2 MR MOKWENA: No.

3 MR SEMENYA SC: And because as management

4 you were satisfied that the rationale behind your position

5 was sound, it is something that you could discuss and

6 persuade the other side into appreciating, no?

7 MR MOKWENA: Correct.

8 MR SEMENYA SC: You could say to them

9 look, the other reason why we think these discussions are

10 unsound is because they may create an unfortunate

11 precedent, and maybe they would have agreed to that, huh?

12 MR MOKWENA: Chair, there is reference to

13 that attempt from June already through various communiqué

14 issued to the workforce.

15 MR SEMENYA SC: Ja, the Deputy President

16 would probably tell us that you don't start once,

17 negotiate, negotiate, negotiate, you might just find the

18 breakthrough, no?

19 MR MOKWENA: Sorry, I didn't get the

20 question.

21 MR SEMENYA SC: I'm trying to work on the

22 template of our Deputy President. He would advise all of

23 us that you negotiate and negotiate and negotiate and

24 negotiate, you might get a breakthrough.

25 MR MOKWENA: Oh, no, I was not aware that

Page 38082

1 you were still on the Deputy President's statement.

2 MR SEMENYA SC: No, what I mean is

3 there's no reason in discussions to take an intractable

4 position because it breaks the discussions.

5 MR MOKWENA: That is correct.

6 MR SEMENYA SC: And you have no reason to

7 believe that if you persuaded them into understanding the

8 implications of their demand they may very well have

9 considered and agreed a different formula to achieve, or

10 alleviate their condition, no?

11 MR MOKWENA: That is correct.

12 MR SEMENYA SC: Alright, but then the

13 position was a different one. You knew that NUM was not

14 carrying their confidence to carry the request or demand of

15 the RDOs forward, right?

16 MR MOKWENA: Yes.

17 MR SEMENYA SC: And so too you knew that

18 AMCU was not carrying their authority, nor having a

19 bargaining position to do so?

20 MR MOKWENA: Correct.

21 MR SEMENYA SC: And the members of the,

22 or parties to the wage agreement, being yourself amongst

23 others, were unwilling to entertain the subject.

24 MR MOKWENA: Correct.

25 MR SEMENYA SC: So on the formula you had

Page 38083

1 you were working to a stalemate that these people are not

2 going to be spoken to and neither are those who are able

3 and willing to talk about it taking a different direction

4 on the point?

5 MR MOKWENA: Correct.

6 MR SEMENYA SC: So it was a stalemate.

7 MR MOKWENA: Yes.

8 MR SEMENYA SC: Which can only produce

9 discontent, no?

10 MR MOKWENA: Not necessarily.

11 MR SEMENYA SC: I thought it is necessary

12 because the only way you seemed to have suggested to the

13 police was now it's your turn, whilst they made it plainly

14 obvious to you that they cannot deal with the industrial

15 dispute, no?

16 MR MOKWENA: Chair, if there was such a

17 stalemate it would have then occurred during the numerous

18 communication between Mr Da Costa and the workers. It

19 would possibly have occurred during the month of July,

20 after repeated communication with the workforce. It would

21 have occurred even on the morning of the 10th. It would

22 have occurred still with the court interdict. So in other

23 words if there was a stalemate, Chair, it would not have

24 occurred only after the 10th because there was already a

25 process of talking and communication between June and

Page 38084

1 August.

2 MR SEMENYA SC: The police were imploring

3 you to please go talk to the people at the koppie, no?

4 MR MOKWENA: Yes.

5 MR SEMENYA SC: And I'm trying to suggest

6 to you that it would have been something that you could

7 achieve without necessarily conceding to the correctness of

8 their claim, no?

9 MR MOKWENA: I accept that, and Chair, I

10 was asked why I did not go to the koppie or send anybody to

11 the koppie and I thought I'd given an explanation for that.

12 MR SEMENYA SC: But you tell me this;

13 there were serious financial ramifications around the

14 position I hold to have been obdurate of refusing to talk

15 to the RDOs. There was a financial impact on the company,

16 no?

17 MR MOKWENA: The financial consideration

18 of the company in as far as I understood at that time was

19 in fact secondary to my understanding and my communication

20 to the workforce.

21 MR SEMENYA SC: But your request that

22 they go back to work was to ameliorate the adverse

23 consequences the strike was having on your total

24 financials, no?

25 MR MOKWENA: Yes.

Page 38085

1 MR SEMENYA SC: And it seemed to me the

2 better you resolve the problem, I mean the earlier you

3 resolve the problem the better it was for all parties.

4 MR MOKWENA: You are correct.

5 MR SEMENYA SC: And in part one of your

6 attempts of getting to that outcome would be to go explain

7 yourself over and over again until your message is

8 understood because it was inherently rational.

9 MR MOKWENA: Inherently irrational –

10 MR SEMENYA SC: Rational. Rational.

11 MR MOKWENA: Yes, you are correct, and I

12 think my battle, Chair, and the difficulty with the team

13 was at what point do you therefore say it is possible or it

14 is not possible. So I'm not sure whether we were competent

15 to be able to tell whether two communication or three or

16 four or five or six would actually determine a better

17 outcome.

18 MR SEMENYA SC: Well, I'm better advised

19 by those who do these negotiations that the louisiest thing

20 you can ever say in negotiation is no because it closes all

21 doors.

22 MR MOKWENA: Well, unfortunately that was

23 at the time what we thought was the appropriate decision.

24 MR SEMENYA SC: Okay, can I ask that we

25 look at exhibit XXX8? This seems to be a document of

Page 38086

1 Lonmin that explains what happens in the, when an
 2 environment is as we know it was during that week. XXX8.
 3 The document, is it familiar to you, Mr Mokwena?
 4 MR MOKWENA: Ja, the document, yes, it's
 5 familiar to me now, Chair.
 6 MR SEMENYA SC: And paragraph 8 seems to
 7 address itself to what the company must do in the event of
 8 an unprotected strike. If you go to 8.3 paragraph there,
 9 that deals with unprotected strikes, correct?
 10 MR MOKWENA: Yes, I can see that.
 11 MR SEMENYA SC: And you're familiar with
 12 this document. It is binding on Lonmin, is it not?
 13 MR MOKWENA: I was, in my evidence-in-
 14 chief made statements about this particular document,
 15 Chair, that I had only seen it for the very first time in
 16 the last four, five weeks, when I started preparing.
 17 MR SEMENYA SC: Oh, sorry, I did not
 18 listen to your evidence-in-chief. But it is binding on the
 19 executive who are assigned the responsibility of managing
 20 the day-to-day activities of Lonmin?
 21 MR MOKWENA: That exactly was my evidence
 22 contrary to that statement that any Lonmin policy would
 23 have been signed by three operational executives, including
 24 myself, for the reason that we would review that policy in
 25 conjunction with other policies to avoid any conflict,

Page 38087

1 because I can already in this document highlight areas of
 2 conflict that I would not have passed the way this document
 3 is, Chair.
 4 MR SEMENYA SC: Well, in short my
 5 question is the Lonmin executive is bound to play by those
 6 rules?
 7 MR MOKWENA: Yes, of an approved policy.
 8 MR SEMENYA SC: And this one was, was it
 9 not?
 10 MR MOKWENA: No, Chair.
 11 MR SEMENYA SC: Oh, it wasn't approved?
 12 MR MOKWENA: No.
 13 MR SEMENYA SC: Is there anything about
 14 that document you find inherently implausible,
 15 objectionable?
 16 MR MOKWENA: Yes, Chair.
 17 MR SEMENYA SC: Tell me.
 18 MR MOKWENA: Ja, first of all if you go
 19 to page 1, Chair, I don't like the language. I would not
 20 have approved a policy that sounds like a combat policy of
 21 the 80s. That's the first thing I noticed, just the actual
 22 title of the policy.
 23 However, more closely to the subject that we're
 24 discussing, you know, counter industrial action response,
 25 that's not the kind of vocabulary that Barnard would have

Page 38088

1 approved in a policy in 2014. But close to the argument,
 2 Chair, particularly if you go to paragraph "Managing the
 3 situation" – oh, the second big omission in this policy is
 4 right at the outset of every Lonmin policy there's a
 5 generic statement that says this policy should be read in
 6 conjunction with other policies, which means it cannot be
 7 interpreted solely on its own. That's the second big
 8 missing that I would have inserted in the police.
 9 However, more close to, Chair, what we are
 10 discussing now, is under "Managing the situation" it says,
 11 "Liaison must immediately commence to establish a workable
 12 solution in order to address the reason for the industrial
 13 action/community unrest situation." Now this is completely
 14 blind to the fact that in Lonmin where you have got
 15 structures, unions, to discuss substantive matters, you do
 16 not need a liaison committee because there would have been
 17 existing structures to deal with substantive matters.
 18 MR SEMENYA SC: I don't see "committee"
 19 there.
 20 MR MOKWENA: I said "Liaison must
 21 immediately commence" –
 22 CHAIRPERSON: All that means surely is
 23 that attempts must be made to find out the reason for the
 24 industrial – let's talk about industrial action -
 25 MR MOKWENA: Yes.

Page 38089

1 CHAIRPERSON: - not talk about community
 2 unrest because we're not busy with that. All this seems to
 3 say is that attempts must be made to find out the reason
 4 for the industrial action and liaison means that
 5 communication, the people involved must be communicated
 6 with, if one can use that expression, to find out why, in
 7 other words the reason for the industrial action. That's
 8 all it says. Where does it say anything about liaison
 9 committees?
 10 MR MOKWENA: Sorry, I –
 11 CHAIRPERSON: In fact if you read further
 12 down you will find that there's reference, it's a rather
 13 badly phrased paragraph that we dealt with earlier, but a
 14 grievance committee, the idea is that the people involved
 15 in the unprotected strike should be encouraged to nominate
 16 leaders as it were who will, who are then the so-called
 17 grievance committee, who will then be involved in
 18 negotiations with people from the Lonmin side. But 8.1.1
 19 doesn't say what you seem to think it says.
 20 MR MOKWENA: Yes, Chair, the comment
 21 you've made was one of my last comments I was going to
 22 make, that the policy reads like there are no structures
 23 that actually deal with grievances at Lonmin and it reads
 24 like when there's an unprotected action the workers must,
 25 you know, provide leaders, management must – in other words

Page 38090

1 I would have rephrased this to say liaison or, should take
2 inside the context of existing structures –
3 CHAIRPERSON: What were the existing
4 structures that existed to deal with unprotected industrial
5 action?
6 MR MOKWENA: Ja, that, those structures,
7 Chair, would have been the recognised unions. Now there
8 was liaison as far back as June with the group, or the
9 leaders who the RDOs had sent through to Mike Da Costa. So
10 liaison in this situation if you read this and say well,
11 was this a breach or not, there was contact, there was
12 communication, and that for me would have been liaison. So
13 in other words liaison would not necessarily have happened
14 only on the 10th.
15 CHAIRPERSON: That presumably may all be
16 well for case of an unprotected industrial action involving
17 a union, but where - to use the language of the memorandum
18 that I quoted to you earlier, page 399 of your bundle – the
19 RDO issue, as was put, may have assumed a life of its own
20 independent of trade unions. In other words if the trade
21 unions aren't involved then how do you deal with it? What
22 structures do you have to deal with an issue which has
23 assumed a life of its own independent of trade unions?
24 MR MOKWENA: Chair, exactly that would
25 have been my conundrum at the time if that which is the

Page 38091

1 practice and the norm is not applicable, what then do you
2 do next?
3 MR SEMENYA SC: But I think what I'm
4 trying to establish is what is implicitly objectionable
5 with a proposition that says if there is a grievance group
6 which is unrepresented, that you confer with it and you
7 discuss with it and to understand its problem? What's so
8 implicitly wrong with that?
9 MR MOKWENA: There's nothing wrong, and
10 that's exactly what happened from June when they approached
11 Mike Da Costa. He explained to them, he gave them
12 feedback. He came to EXCO, EXCO gave him a directive what
13 to do. So there was liaison, there was contact, there was
14 communication, and Chair, as I said, we do receive on many
15 occasions grievances from the workers on many different
16 issues, and as it is the practice the first point of
17 contact is the line manager, the person they work with on
18 daily basis. Only on those occasions where the manager
19 determines the matter is of substantive nature that should
20 be negotiated at the bargaining forum, or the decision may
21 have corporate implication, then they would elevate that to
22 the right structures. So we do not discourage contact with
23 employees. We do actually encourage it.
24 MR SEMENYA SC: Apart from the reasons
25 you gave us why you did not want management to go to the

Page 38092

1 koppie, it did not have as part of its reasons that they
2 would have felt vulnerable and in danger because you were
3 provided with security, right?
4 MR MOKWENA: Well, I was asked why, and I
5 gave my personal experience and my personal fears, that I
6 would not personally have gone to the koppie and if I
7 feared I would not have sent any manager to the koppie.
8 MR SEMENYA SC: No, but I'm saying the
9 SAPS had offered armoured vehicles to facilitate that
10 contact. You accept that?
11 MR MOKWENA: Yes.
12 MR SEMENYA SC: And that would have been
13 adequate at least from a personal safety perspective to
14 achieve that result?
15 MR MOKWENA: To go to the koppie?
16 MR SEMENYA SC: No, to secure your safety
17 if you are in a armoured vehicle and given a platform to
18 discuss with the people on the koppie.
19 [15:35] MR MOKWENA: Chair, if fewer people in
20 June/July did not accept the communication, I did not see
21 it, how the manager before 3 000 people at the koppie would
22 be listened to. It just doesn't make sense to me how
23 sending a manager to the koppie with 3 000 people would
24 have made sense to anybody, to actually talk and be
25 listened to and particularly that the manager would have

Page 38093

1 carried the same message that 12 500 was not going to be
2 granted.
3 MR SEMENYA SC: Defusing the problem
4 through forceful means was a worse alternative to defusing
5 it through dialogue. That is eminently correct.
6 MR MOKWENA: If you assume, Chair, that
7 dialogue would have happened in a situation that actually
8 would have allowed the dialogue to happen. I did not see
9 the possibility of a proper dialogue at the koppie with
10 3 000 people, I just did not see that as conceivable.
11 MR SEMENYA SC: Ah, Tata Mokwena, that's
12 not my question. I'm saying resolving the problem through
13 dialogue is eminently more preferable than to do it by
14 force.
15 MR MOKWENA: I agree with you.
16 MR SEMENYA SC: And when the police were
17 with you, I know you have explained the context, you used
18 the word "faceless" but it could not have escaped that they
19 are interested in the identity of the individuals who are
20 responsible for the mayhem, correct?
21 MR MOKWENA: Yes.
22 MR SEMENYA SC: And it was not helpful to
23 say, I can't give you those identities because they are
24 faceless, with whatever the context you put to that word.
25 MR MOKWENA: Yes.

Page 38094

1 MR SEMENYA SC: Now can I explore another
2 area with you, Tata Mokwena. There may very well be good
3 reasons –

4 CHAIRPERSON: Sorry, before you explore
5 the other thing, were you aware of the fact that it was one
6 of the security people, I think it was Botes actually told
7 us that he advised that someone from management should go
8 to the koppie, I think he said he was prepared to go
9 himself. The basis was that whoever went would be in a
10 Nyala, would be protected and couldn't be injured. Were
11 you aware of that, that advice being given?

12 MR MOKWENA: No, Chair.

13 CHAIRPERSON: I see, do you think that
14 might have made a difference to you, to the decision you
15 took if you'd known that that advice had been given?

16 MR MOKWENA: I don't know, Chair.

17 MR SEMENYA SC: Mr Mokwena, en passant,
18 I'm told that Mr Jamieson's view was that this represented
19 policy, what we have on the screen, that document.

20 MR MOKWENA: It is possible that Mr
21 Jamieson would have assumed that. He is a non-operational
22 executive and he would have taken it at face value and said
23 it's okay.

24 MR SEMENYA SC: So too Mr Sinclair.

25 MR MOKWENA: Mr Sinclair was the head of

Page 38095

1 security. They would have written this policy so he would
2 have known and they would probably have used it.

3 MR SEMENYA SC: Ja, but I somewhat hear
4 you convey a sense that we are talking about a document
5 with no status within Lonmin. That's not where, how far
6 are you going?

7 MR MOKWENA: What I said was I received
8 this document a few weeks ago as part of my preparation and
9 I came across it for the very first time and upon reading
10 it, I noticed that, one, as an operational executive, I had
11 not signed it nor any of my other executives. Secondly,
12 that it had some language and expressions that I would, if
13 given the chance to review it, as it is the practice, I
14 would have made those changes to it.

15 MR SEMENYA SC: I accept all of that and
16 I won't invite you to repeat it. I am merely saying are
17 you conveying to us a conclusion that this document is, had
18 no status in Lonmin therefore, for the reasons that you
19 mention?

20 MR MOKWENA: Exactly.

21 MR SEMENYA SC: It had no status at all?

22 MR MOKWENA: As an executive, if a policy
23 is not authorised, signed, Chair –

24 MR SEMENYA SC: Okay.

25 MR MOKWENA: I can't say it's binding to

Page 38096

1 me or to any employee.

2 COMMISSIONER HEMRAJ: But you also say
3 that Mr Sinclair and the security department might have
4 used it regardless.

5 MR MOKWENA: Yes. It originates from the
6 security department. There may have been a gap in the flow
7 for authorisation, that it never got to EXCO. So I'm not
8 arguing that they didn't do it, I'm saying that they wrote
9 it but it shows a flaw that should have been followed for
10 authorisation until EXCO itself is satisfied and they sign
11 it.

12 CHAIRPERSON: Concentrate on the merits
13 of the matter, apart from the technical point that it
14 wasn't authorised by the executive and apart from some
15 stylistic points, you wouldn't have written it that way, is
16 there anything of substance that you don't agree with in
17 this document?

18 MR MOKWENA: No, not necessarily.

19 CHAIRPERSON: Look at 8 point – yes, I'm
20 concerned really with 8.1 and 8.3. Is anything wrong with
21 8.1, anything you wouldn't have agreed to, anything you
22 think is inappropriate, unwise?

23 MR MOKWENA: Chair, I said the only –

24 CHAIRPERSON: The style may not be your
25 style but let's not worry about that.

Page 38097

1 MR MOKWENA: The only comment in terms of
2 substance for me would have been that this should be read
3 in conjunction with other policies relevant. That's the
4 major substantive thing Brigadier Calitz –

5 CHAIRPERSON: What other relevant policy
6 operates here? Was there a relevant policy that you don't
7 negotiate with people in an unprotected strike? You don't
8 go and see them even in circumstances where it's safe to do
9 so, try to establish some kind of communication with them?
10 Was there any relevant policy like that, that was
11 inconsistent with this document?

12 MR MOKWENA: Ja, HR policies around
13 recognition agreement, representation, all those –

14 CHAIRPERSON: No, but we're talking about
15 an unprotected strike. We're talking about people who were
16 RDOs who had raised an issue which had assumed a life of
17 its own, independent of the trade unions. What's your
18 answer to that? Anything in the document which, against
19 that kind of background, dealing with that context, which
20 you say is unwise, is inappropriate, should never have been
21 part of the policy of Lonmin?

22 MR MOKWENA: Yes, Chair. If this policy
23 was present, we would not for example have gone for a court
24 interdict. We would have done exactly this. So the fact
25 that we even went for a court interdict because the matter

Page 38098

1 was unprotected –

2 MR SEMENYA SC: No –

3 CHAIRPERSON: That's not true, is it? Is

4 it not correct that it's very insensible to get a court

5 interdict because if you want to dismiss the people then

6 you don't want any comeback suggestion that what you did by

7 way of dismissing them was an unfair labour practice. So

8 isn't it a prudent course to get an interdict to protect

9 yourself from the kind of situation that would otherwise

10 arise if you dismissed them and selectively re-employed as

11 you had done before at Karee, that those who weren't re-

12 employed might complain of an unfair dismissal. In the

13 presence of an interdict they hadn't complied with they

14 couldn't do that, could they?

15 MR MOKWENA: No, Chair.

16 CHAIRPERSON: Am I right?

17 MR BHAM SC: Just to remind, Chair –

18 CHAIRPERSON: No, no, first, before you

19 remind me of anything, is what I've put to you correct?

20 MR MOKWENA: No –

21 CHAIRPERSON: Does a consequence of

22 getting an interdict give you extra protection against an

23 industrial – [microphone off, inaudible] –taking of an

24 interdict gives you additional protection against an

25 industrial claim in the Labour Court that you've been

Page 38099

1 guilty of an unfair labour practice.

2 MR MOKWENA: That is correct.

3 CHAIRPERSON: Ja. That in itself would

4 have been a good reason to have got the interdict, wouldn't

5 it?

6 MR MOKWENA: Yes.

7 CHAIRPERSON: Ja. What did you want to

8 remind me of that you thought I'd forgotten?

9 MR MOKWENA: No, Chair, I thought you

10 were pursuing the court interdict and our intention for

11 obtaining it and I said I agree with you and I wanted to

12 say, Chair, by the way we did not actually use the court

13 interdict for humanitarian reasons, so it wasn't just pure

14 technical that let's get a court interdict, fire everybody

15 and all that. So at some point EXCO decided actually not

16 to give the final notice.

17 MR SEMENYA SC: For all the good reasons

18 why there is agreement about thresholds for union

19 recognition, is there anything, in appropriate

20 circumstances, why that cannot be relaxed to at least stamp

21 out rivalry that arises as a function of members crossing

22 one to the other?

23 MR MOKWENA: Yes, we were actually in

24 2012 going through a process of one-one and recognising

25 AMCU, giving them limited rights. On the other hand we had

Page 38100

1 started the process of notifying NUM of their dwindling

2 numbers and then ultimately gave them a notice of three

3 months and our intention was exactly to allow for a new

4 recognition agreement –

5 MR SEMENYA SC: No, no, no, I think you

6 are misunderstanding my question. I say I understand there

7 are stipulated thresholds.

8 MR MOKWENA: Yes, agreed by the parties

9 entering into a recognition agreement.

10 MR SEMENYA SC: Yes, but that cannot

11 stand in the way of sense, even where you can see that

12 people are intimidating each other, killing each other,

13 simply because they want to attain a particular majority

14 for recognition .

15 MR MOKWENA: I agree with you.

16 MR SEMENYA SC: The intractable position

17 you talk about, not going to the koppie, it seemed if I

18 understand the evidence of the Deputy-President, not a

19 matter tabled with the board.

20 MR MOKWENA: No Chair, not to my

21 recollection, yes.

22 MR SEMENYA SC: What does that mean in

23 English?

24 CHAIRPERSON: He agrees with you, I

25 think.

Page 38101

1 MR SEMENYA SC: Oh. I want to be sure.

2 In your communication with the South African Police Service

3 members, General Mpmembe, General Mbombo, the evidence we

4 are told is that the reference to bloodshed, bloodshed,

5 bloodshed was to impress on Lonmin and yourselves the

6 urgency of tackling the problem through dialogue. Did you

7 get that impression when they were talking to you?

8 MR MOKWENA: No, Chair.

9 MR SEMENYA SC: Again let me invite you

10 to explain the "no." You tell us, as I understand

11 correctly, at no stage did you foresee any operation

12 resulting in death?

13 MR MOKWENA: Yes.

14 MR SEMENYA SC: You see no bloodshed?

15 MR MOKWENA: Yes, Chair.

16 MR SEMENYA SC: That's why you kept the

17 position you did.

18 MR MOKWENA: Yes, Chair.

19 MR SEMENYA SC: And they say they used

20 the word to try and impress on you so as to appreciate why

21 it is important that you dialogue as opposed to them

22 disarming the people forcefully.

23 MR MOKWENA: I am aware that both General

24 Mbombo and Mpmembe, on the few occasions I met with them,

25 were asking us to resolve the matter. So that was my

Page 38102

1 understanding. I have no doubt that they were saying
 2 please resolve the matter. If you look at the transcripts,
 3 the meeting between ourselves and Mpembe, he was very
 4 clear, please resolve this matter, gentlemen, go address
 5 the workers at the koppie, so they did.
 6 MR SEMENYA SC: Thank you. And common
 7 practice at Lonmin to record audio, to do audio recordals
 8 that are clandestine?
 9 MR MOKWENA: Chair, when I heard that
 10 they were recording I was shocked because I've never
 11 authorised any recording, I don't do recording and –
 12 MR SEMENYA SC: It's commonplace.
 13 MR MOKWENA: No, it's not.
 14 CHAIRPERSON: Were you shocked at the
 15 fact that the recording was made or were you shocked when
 16 you read the transcript to see some of the things you were
 17 recorded as having said?
 18 MR MOKWENA: I was made aware that there
 19 were tapes of recordings almost a year after and I was
 20 shocked because I –
 21 CHAIRPERSON: You didn't answer my
 22 question. Were you shocked only at the practice of making
 23 clandestine recordings or were you also shocked to see some
 24 of the things that you were recorded as having said?
 25 MR MOKWENA: Yes, Chair, both.

Page 38103

1 CHAIRPERSON: Ja.
 2 MR MOKWENA: Ja.
 3 CHAIRPERSON: That reminds me, I was
 4 going to ask you at the end but seeing it's raised I'll
 5 raise it with you now. I'd like to give you some homework.
 6 Would you go through the transcript this evening? You said
 7 there were some things in it that you didn't agree with,
 8 would you be kind enough to give us a written list tomorrow
 9 of those things you said as recorded in the transcript with
 10 which you do not agree and you think are unfortunate?
 11 MR MOKWENA: Oh, that I said I'm sorry to
 12 have said those –
 13 CHAIRPERSON: Yes, yes, well give me a
 14 list of the ones you're sorry that you said. Would you do
 15 that please, tomorrow morning half past eight?
 16 MR SEMENYA SC: Mr Mokwena –
 17 CHAIRPERSON: Who made the recordings?
 18 MR MOKWENA: Sorry, Chair?
 19 CHAIRPERSON: Who made the recordings?
 20 MR MOKWENA: The recordings were made by
 21 Mr Jomo Kwadi.
 22 CHAIRPERSON: Oh, Mr Kwadi. Has he been
 23 reprimanded for doing it? I notice you're pausing, what's
 24 the answer?
 25 MR MOKWENA: Chair, no.

Page 38104

1 CHAIRPERSON: No, I see. Well, that
 2 shows the depth of your discontent and disagreement with
 3 what he did.
 4 MR SEMENYA SC: The evidence of some of
 5 the witnesses is that the framework within which industrial
 6 disputes are, in part, resolved is to get all hands on deck
 7 really, everybody who can be useful must be there and help
 8 resolve the problem. Is that how you understand it as
 9 well?
 10 MR MOKWENA: No, Chair.
 11 MR SEMENYA SC: No, I mean even Bishop
 12 Seoka, if he can be there and help you resolve an impasse,
 13 that is to be encouraged, no?
 14 MR MOKWENA: Yes. As I said, I mean this
 15 was unprecedented for us and we have never had to appeal to
 16 any external party to resolve an industrial dispute in the
 17 history of Lonmin, so that was our point of reference,
 18 Chair –
 19 MR SEMENYA SC: And tomorrow if the
 20 situation was to replicate itself, clearly you would not
 21 just keep yourself within a tramline and reject all other
 22 alternatives, correct?
 23 MR MOKWENA: That's the kind of
 24 introspection that I believe we need to do and –
 25 MR SEMENYA SC: No, I know you need to do

Page 38105

1 it but I'm trying to get an unequivocal answer from you.
 2 If that situation replicates itself, Lonmin will go to the
 3 mountain.
 4 MR MOKWENA: If the situation replicates,
 5 I didn't get the last part, Chair?
 6 MR SEMENYA SC: Lonmin will go to the
 7 mountain if the situation replicated itself tomorrow.
 8 MR MOKWENA: I doubt, we have learnt –
 9 MR SEMENYA SC: Ah, then we have learnt
 10 nothing, Mr Mokwena, with respect. If you are capable of
 11 avoiding the tragedy of so many lives lost by going to the
 12 mountain, surely that's the first thing we'll do as Lonmin
 13 now, tomorrow?
 14 MR MOKWENA: What I'm trying to say is
 15 we'll do whatever it takes that nobody gets to the
 16 mountain.
 17 MR SEMENYA SC: Now you're putting a
 18 proposition which is not what happened. I'm saying
 19 tomorrow people are on the mountain, they are armed, they
 20 are dangerous, there is a potential of life lost and limbs
 21 maimed, Lonmin would be wiser tomorrow and just go up the
 22 mountain, no?
 23 MR MOKWENA: I would be scared, Chair, to
 24 go to the mountain –
 25 CHAIRPERSON: Even in a Nyala, even in an

Page 38106

1 armoured vehicle with police protection?
 2 MR MOKWENA: Yes, if those options are
 3 available -
 4 CHAIRPERSON: You'd go then?
 5 MR MOKWENA: Yes.
 6 CHAIRPERSON: What lessons – the police
 7 have promised us, the promise has not yet been fulfilled,
 8 to give us in writing the lessons they've learnt from this
 9 whole unfortunate series of events. I trust we will get
 10 the lessons from them tomorrow but can I ask you, what
 11 lessons has Lonmin learnt from this unhappy series of
 12 events?
 13 MR MOKWENA: Yes –
 14 CHAIRPERSON: Learnt any?
 15 MR MOKWENA: We have learnt –
 16 CHAIRPERSON: What are they?
 17 MR MOKWENA: We are in the process of
 18 putting that together to say, you know, what did we learn
 19 out of the event, what could have been done differently and
 20 at the right time when we have compiled all of that, we
 21 will be able to share it.
 22 CHAIRPERSON: Why has it taken two years?
 23 MR MOKWENA: Well, I suppose, Chair, we
 24 were – the matter was still under the Commission and we
 25 didn't have the –

Page 38107

1 CHAIRPERSON: The fact that it was under
 2 the Commission didn't meant that last month or even a year
 3 ago you might have had the same problem, you might not have
 4 had – not necessarily from the rock drill operators but
 5 from some other people who were going around brandishing
 6 dangerous weapons and people not obeying an unprotected
 7 strike being killed, the people concerned congregating on
 8 the koppie. That could have happened, couldn't it? A year
 9 ago it could have happened, couldn't it?
 10 MR MOKWENA: Yes, Chair.
 11 CHAIRPERSON: Yes, and you had done,
 12 performed no exercise to work out what the lessons were
 13 you'd learnt from the disaster of 2012 to make sure that
 14 this wasn't repeated.
 15 MR MOKWENA: We have, Chair. I could
 16 share with you some of those if you want me to share. I
 17 thought you were asking for a –
 18 CHAIRPERSON: Perhaps tomorrow you can
 19 give me in writing the lessons you've learnt as well as the
 20 things you regret in that transcript.
 21 MR MOKWENA: That's fine, Chair.
 22 CHAIRPERSON: [Microphone off, inaudible]
 23 please.
 24 MR SEMENYA SC: Those are the questions
 25 we have for Mr Mokwena, Chair.

Page 38108

1 CHAIRPERSON: Thank you. Mr Mpofo,
 2 you've got a gift of an extra 20 minutes. I hope you will
 3 use it appropriately.
 4 MR MPOFU SC: Yes, I am grateful,
 5 Chairperson, to SAPS. I thought it was -
 6 CHAIRPERSON: [Microphone off, inaudible]
 7 the time, Mr Mpofo.
 8 MR MPOFU SC: Oh, thank you. Thank you,
 9 Chairperson. I thought the Human Rights Commission was
 10 coming before me. 20 to, oh, thank you.
 11 CROSS-EXAMINATION BY MR MPOFU SC: Mr
 12 Mokwena, good afternoon.
 13 MR MOKWENA: Good afternoon, Sir.
 14 [15:55] MR MPOFU SC: You have already agreed
 15 that vice president of Lonmin in whatever capacity is a
 16 serious leadership position, correct?
 17 MR MOKWENA: That is correct.
 18 MR MPOFU SC: Underneath you, you have a
 19 whole number of technocrats and number crunchers and that
 20 kind of thing, but you are the leader?
 21 MR MOKWENA: Exactly.
 22 MR MPOFU SC: And from you what is
 23 expected is not mere management but leadership.
 24 MR MOKWENA: Correct.
 25 MR MPOFU SC: And did you by the way

Page 38109

1 participate in the transformation committee?
 2 MR MOKWENA: Of the board?
 3 MR MPOFU SC: Yes.
 4 MR MOKWENA: Yes.
 5 MR MPOFU SC: Ja, which was chaired by Mr
 6 Ramaphosa.
 7 MR MOKWENA: Correct.
 8 MR MPOFU SC: Okay, and the purpose of
 9 that committee is to as it were try and infuse the new
 10 spirit of transformation of the industry, but also of the
 11 organisation, correct?
 12 MR MOKWENA: That is correct.
 13 MR MPOFU SC: You would have also
 14 participated in the interactions with the government in
 15 terms of the transformation of the industry, broadly
 16 speaking?
 17 MR MOKWENA: That is correct.
 18 MR MPOFU SC: And in those discussions,
 19 particularly the ones with the government, you would have
 20 broader discussions about the industry as a whole
 21 generally?
 22 MR MOKWENA: That is correct.
 23 MR MPOFU SC: And something, I think it
 24 was called MIGDETT or something like that, you participated
 25 in those?

Page 38110

1 MR MOKWENA: No, Albert represented the
2 company at MIGDETT.
3 MR MPOFU SC: Albert represented the
4 company, and would you have had sight of the reports from
5 that kind of interaction?
6 MR MOKWENA: Yes.
7 MR MPOFU SC: And it will be clear, for
8 example one of the issues that had to do with the Impala
9 situation of early 2012 was what one might call the
10 emergence of AMCU as a force, correct?
11 MR MOKWENA: Yes.
12 MR MPOFU SC: And one of the issues that
13 would have been discussed around with the Minister and
14 Lonmin and others at that time would have been this
15 phenomenon of the emergence of AMCU and what it does to the
16 industrial landscape, correct?
17 MR MOKWENA: Correct.
18 MR MPOFU SC: So it wouldn't be true to
19 say if those meetings were chaired by Ms Shabangu then she
20 would have known about the AMCU phenomenon from the time of
21 the Impala strike at least, correct?
22 MR MOKWENA: That is correct, yes.
23 MR MPOFU SC: Yes. So if anyone said Ms
24 Shabangu was hearing for the first time about AMCU around
25 the 16th of August, that person would be lying, correct?

Page 38111

1 CHAIRPERSON: Not necessarily lying, but
2 possibly mistaken.
3 MR MPOFU SC: Ja, maybe mistaken,
4 flabbergasting as that might be. Correct?
5 MR MOKWENA: Ja.
6 MR MPOFU SC: Yes, or it will be
7 surprising. Would you – okay, let me put it this way –
8 MR MOKWENA: It would be surprising if –
9 MR MPOFU SC: Yes, it would be
10 surprising.
11 MR MOKWENA: Yes.
12 MR MPOFU SC: Ja, let me put it this way.
13 Would you be surprised that the Minister who chaired those
14 meetings came to this Commission and said that –
15 CHAIRPERSON: No, no, no, I don't think –
16 we're not interested as Commissioners in whether this
17 witness is surprised or not. You've got material on which
18 you can argue the point. His reaction, surprised or
19 unsurprised, doesn't take it any further as far as we're
20 concerned.
21 MR MPOFU SC: Well, okay. Well, he's
22 already expressed his surprise, so let's – I'll live with
23 the surprise that's already in the bag. Thank you,
24 Chairperson. Right, now you have, in fairness you have –
25 I'm just putting this really for reiteration because you

Page 38112

1 have in fairness expressed the fact that you were aware
2 that all the workers wanted to do was to discuss their
3 demand, correct?
4 MR MOKWENA: Yes.
5 MR MPOFU SC: And in fact if you go to
6 your statement at 186 you say that – 186 Chairperson – you
7 said "Abey Kgotle telephoned me and said that the RDOs had
8 marched to LPD and demanded to discuss their wage demands
9 with Lonmin management." Correct?
10 MR MOKWENA: Yes.
11 MR MPOFU SC: That seems to be in line
12 with your testimony, and you also say that at paragraph 4,
13 "We discussed the RDO demand and decided that we would not
14 speak to the RDOs about their wage demands."
15 MR MOKWENA: Yes.
16 MR MPOFU SC: That was the nature of the
17 decision.
18 MR MOKWENA: Correct.
19 MR MPOFU SC: Now let me just put a
20 proposition to you, Mr Mokwena. You have conceded as well
21 that your decision not to speak to the RDOs was causally
22 connected to the death of the people who died, or one of
23 the causes.
24 MR MOKWENA: No, I don't recall saying
25 that.

Page 38113

1 MR MPOFU SC: Okay.
2 MR MOKWENA: Ja.
3 MR MPOFU SC: Do you think that your
4 decision not to – well, I thought that's what you had done
5 with Mr Semenya, but maybe I'm wrong. Do you accept that
6 the decision not to engage with the RDOs, had it not been
7 taken it might have avoided the deaths?
8 MR MOKWENA: No.
9 MR MPOFU SC: You don't agree to that?
10 MR MOKWENA: No, Chair.
11 MR MPOFU SC: You think that even if on
12 the 10th you had taken a different decision and spoken to
13 the RDOs and not taken this decision that you have
14 expressed here, the following day they would have even gone
15 to the koppie? Do you think that that is how you
16 understand the flow of events?
17 MR MOKWENA: I have explained myself
18 before the Commission that if we had communicated to the
19 workers on that Friday morning about the position we have
20 always held, that I don't believe it would have changed the
21 situation.
22 MR MPOFU SC: You're aware that the
23 engagement, as you called it, that was done by Mr Da Costa
24 had albeit temporarily, quelled the situation according to
25 him of potential industrial unrest and violence?

Page 38114

1 MR MOKWENA: Yes, that's what he said and
2 I agree.
3 MR MPOFU SC: You agree, yes. So all I'm
4 saying is why then if you had adopted, let's call it the Da
5 Costa approach to things, why would it not have had a
6 similar result?
7 MR MOKWENA: Well, there was no result
8 with the communication with RDOs between June and July.
9 They came back, they went back, they came back and received
10 the same communication.
11 MR MPOFU SC: Yes.
12 MR MOKWENA: So that's why I said I don't
13 think one would have had a different outcome having
14 communicated the same facts on Friday morning.
15 MR MPOFU SC: Yes, but I thought you and
16 I have just agreed now that at the very least the Da Costa
17 intervention had quelled, albeit temporarily, but it might
18 have – let's put it no lower than that – it delayed,
19 because that's what he said, it delayed the potential for
20 violence. I'm cutting many other steps. I accept what you
21 said that unprotected industrial action does not
22 necessarily lead to violence, but Mr Da Costa said in your
23 industry that is something that one can anticipate. You do
24 accept that the mining industry is quite a hard and these
25 kinds of things are usually associated with violence?

Page 38115

1 MR MOKWENA: I do accept your argument,
2 Chair. However, what I'm trying to, a caveat to it is if
3 the workers had gone on an unprotected strike, whether it
4 was June or July, what I'm saying is it did not have to end
5 up with killings. So –
6 MR MPOFU SC: No, Mr Mokwena, I'm sorry –
7 MR MOKWENA: Unless I don't understand
8 your question –
9 MR MPOFU SC: No, you don't.
10 MR MOKWENA: Yes.
11 MR MPOFU SC: And maybe it's my fault.
12 All I'm saying is Mr Botes, Mr Da Costa, and I'm sure there
13 are others, I think Mr Sinclair, although I stand corrected
14 there, but certainly the first two have conceded in this
15 Commission that had the decision not to talk to the – Mr
16 Jamieson as well – had the decision not been taken of
17 refraining from engaging with the RDOs, then the tragedy
18 might have been averted. You're the first Lonmin witness,
19 to be honest, to even not make that obvious concession. So
20 maybe it's because of the way I framed it, but can I give
21 you a last chance?
22 MR MOKWENA: Chair, that the others
23 thought so doesn't necessarily say that – oh well, I
24 might –
25 MR MPOFU SC: Of course.

Page 38116

1 MR MOKWENA: Yes.
2 MR MPOFU SC: I wouldn't be asking you if
3 that was the case.
4 MR MOKWENA: Yes, so –
5 MR MPOFU SC: I want to know your view as
6 to whether you seriously are saying, given what you know
7 now with hindsight and all the things that you've said,
8 that you are telling this Commission that had you, Mr
9 Mokwena, on the 10th, instead of saying what I've just read
10 out to you had said oh, are those our RDOs, I'm coming down
11 from Melrose Arch from my big office, I'm going down there
12 and I'm going to engage them and you know, I'll explain to
13 them that 12 500 is not, you know, doable maybe 8 000,
14 whatever you would have said. You sitting there, under
15 oath, are saying that the consequences of the people who
16 died thereafter, you can't see a possibility of that having
17 been averted.
18 MR MOKWENA: I actually thought of a
19 different outcome following our position on Friday. I
20 thought the workers would give heed to the fact that we had
21 already before, secondly I thought the court interdict
22 would actually help workers to say this thing is not
23 working. You know let's stop it, let's find something
24 else. And thirdly that the majority of those workers from
25 Karee who were already on final written warning, on a

Page 38117

1 similar thing, unprotected strike, so I anticipated a
2 different outcome on Friday that the workers will start
3 seeing the seriousness of the unprotected action and they
4 would therefore retreat and not proceed with the strike.
5 MR MPOFU: Sure, okay look I don't
6 believe that but let's assume for now that it is true. By
7 when having had all those lofty expectations when now there
8 were ten people who had died surely you must have known
9 that those lofty expectations were not – could not
10 materialise. Correct?
11 MR MOKWENA: Yes.
12 MR MPOFU SC: Ja, now at that point and
13 remembering what you have said about leadership as opposed
14 to all this technical stuff you are telling about, final
15 warnings and what have you, given that people had died and
16 you are a leader, did it occur to you that maybe whatever I
17 might have thought on the 10th now it's the 14th or the 15th
18 and ten people have died. Maybe what is required of me as
19 a leader is to, as Mr Ntsebeza called it, think out of the
20 box and do what seems to be the simple demand of just
21 talking to the people. Did that not occur to you at all?
22 MR MOKWENA: At the time it did not. As
23 I said earlier to Chair, Mr Ntsebeza when we look back now
24 those are some of the lessons to say well how could we have
25 done this differently. But at that time with the

Page 38118

1 circumstances, with what we new and the practise and all
 2 that I did not think of that. So I'm accepting that when
 3 we look back it's one of the things that we probably need
 4 to say what have we learnt? At the time -
 5 MR MPOFU SC: But now we are going around
 6 in circles, that's exactly what Mr Semenya said. If it
 7 were to happen tomorrow would you take a different
 8 decision?
 9 MR MOKWENA: Yes.
 10 MR MPOFU SC: Yes. You see that's the
 11 problem I have because what you have said is you have come
 12 to this Commission, now in your statement which you did
 13 more recently and you said you stand by the decision you
 14 made despite the fact that it caused 44 deaths. I can
 15 understand you to say well at the time, all these nice
 16 things you've said, you know I didn't know, you are saying
 17 now in 2014 I stand by the decision which resulted in 44
 18 people dying.
 19 MR MOKWENA: Chair, let me say this. I
 20 prepared the statements narrating what happened and the
 21 decisions that we took and how I participated. If I was
 22 asked to make a supplementary statement to review decisions
 23 and what happened it would have been written differently.
 24 So I came to the Commission to narrate what happened, what
 25 I did, how I contributed, how I was involved. So that

Page 38119

1 statement simply said this is the decision that I helped
 2 the team arrive at and I stood by that decision. So -
 3 MR MPOFU SC: Ja the second one, the
 4 second similar decision which clearly had a contributory
 5 sect in the tragedy is your refusal to give Mr Mathunjwa
 6 even temporary space to be a participant in resolving the
 7 issue of the koppie. Would you accept that as a general
 8 statement, is that one of the things that would hindsight
 9 you might have done differently?
 10 MR MOKWENA: Chair, to have given Mr
 11 Mathunjwa exactly what -
 12 MR MPOFU SC: No to have given Mr - and
 13 listen to me very carefully, I'm glad you have asked that
 14 question. To have given Mr Mathunjwa a space to be part of
 15 the solution of the situation of the RDOs. In other words
 16 not to give the collective bargaining right which you
 17 feared is what he wanted. If you understood that all he
 18 wanted was for him to be given a space to resolve the
 19 specific issue of the RDOs. Would you tomorrow, if the
 20 situation arose, refuse him that right even if it might
 21 avoid 34 deaths or however many?
 22 MR MOKWENA: Well let me correct that
 23 assumption. I did not refuse Mr Mathunjwa any permission
 24 to do anything.
 25 MR MPOFU SC: Well you did.

Page 38120

1 MR MOKWENA: No, Chair, Mr Mathunjwa went
 2 to the koppie at his own time, free will to talk to the
 3 workers without my permission. My only refusal, Chair, was
 4 when he suggested a bargaining right.
 5 MR MPOFU SC: No.
 6 MR MOKWENA: A bargaining right is what I
 7 interpreted him to be asking for, not to grant him
 8 permission to resolve the issue.
 9 MR MPOFU SC: No, Mr Mokwena, please
 10 let's be serious. Bargaining right means a bargaining
 11 right for the what you call it, for the collective -
 12 MR BHAM SC: I'm sorry to interrupt my
 13 learned friend. The question is asked in vague terms, like
 14 give him space. Precisely what that space means is not
 15 clear. He's asked the question, the witness has answered
 16 it as he saw it at the time and what he understood Mr
 17 Mathunjwa wanted. If my learned friend wants to talk about
 18 space in vague then he's going to get an answer of that.
 19 If he wants to talk about it in specific terms then he
 20 should put it in specific terms.
 21 MR MPOFU SC: No, Chairperson -
 22 CHAIRPERSON: Sorry, sorry, Mr Mpofu, let
 23 him finish. Yes, Mr Bham.
 24 MR BHAM SC: I wouldn't interrupt my
 25 learned friend and I'd like to finish what I'm saying.

Page 38121

1 MR MPOFU SC: I thought you were
 2 finished, sorry.
 3 MR BHAM SC: No, I'm not finished.
 4 CHAIRPERSON: Okay he hasn't, let him
 5 carry on.
 6 MR BHAM SC: But the very notion of
 7 giving space, it's not something that has to come as a
 8 notion previously, he's going to define what he means by
 9 talking about -
 10 CHAIRPERSON: To a certain point it's not
 11 clear, I would suggest he reformulate the question to make
 12 it clear what precisely he wants to ask.
 13 MR MPOFU SC: Thank you, Chairperson. No
 14 it's a valid point. Please listen very carefully. When
 15 you rejected Mr Mathunjwa's overtures or proposal it was on
 16 the basis that you understood him to be asking for
 17 negotiating right on behalf of the collective. In other
 18 words to get into the bargaining table as it were through
 19 the back door. Isn't that correct?
 20 MR MOKWENA: That is correct.
 21 MR MPOFU SC: Yes now I'm saying to you
 22 that cannot be correct because that is not what was put to
 23 you. Go to your statement at page 192, paragraph 21. You
 24 said "I did not attend this meeting" which is true. Are
 25 you there?

Page 38122

1 MR MOKWENA: Yes.

2 MR MPOFU SC: Ja "Kwadi telephoned me

3 during the meeting and said that Mathunjwa had undertaken

4 to persuade the strikers to leave the koppie and return to

5 work on condition that Lonmin allow AMCU thereafter to

6 negotiate on behalf of all the RDOs, RDOs. Do you

7 understand? You never had such a bargaining forum RDO,

8 just a bargaining forum. Correct?

9 MR MOKWENA: Yes.

10 MR MPOFU SC: You didn't, yes. So then

11 you should have known exactly that what Mr Mathunjwa was

12 asking for was not to get into the full bargaining forum,

13 but a special thing called the RDO bargaining forum which

14 did not exist. In other words it was situational, context,

15 specific and related to the crisis that was taking place.

16 Correct?

17 MR MOKWENA: Let me help you through,

18 Chair. RDOs are not a thing as you refer to it. It's a

19 group of employees spread across the entire Lonmin

20 operation.

21 MR MPOFU SC: Yes.

22 MR MOKWENA: So if there was an attempt

23 for anybody to negotiate on behalf of RDOs it would have

24 had implications for Lonmin as a whole.

25 MR MPOFU SC: No.

Page 38123

1 CHAIRPERSON: I'd like to ask you one

2 question before we adjourn because we're running out – we

3 have to stop in a minute. You deal with the matter, as Mr

4 Mpofo has pointed out at page 192 and 193 of your statement

5 and you say that "I did not attend the meeting" that's the

6 passage he read "Kwadi telephoned me during the meeting and

7 said that Mathunjwa had undertaken to persuade the strikers

8 to leave the koppie and return to work on condition that

9 Lonmin allow AMCU to thereafter negotiate on behalf of all

10 the RDOs. Since such concession will be tantamount to

11 granting Lonmin" sorry "it will be tantamount to Lonmin

12 granting collective bargaining rights to AMCU on behalf of

13 the RDOs, I instructed Kwadi to tell Mathunjwa this

14 proposal was unacceptable to Lonmin." And then you go on

15 to give reasons. Now was it not possible to construe Mr

16 Mathunjwa's request as a one off. In other words to

17 negotiate on this occasion in respect of this situation.

18 [16:15] You could for example have made it clear, we have

19 got a crisis here, we will allow you to do it this time, as

20 in fact you did subsequently anyway. But this is not to be

21 regarded as a precedent, this is a one off. Did you think

22 of adopting that attitude? Conveying that view to Mr

23 Mathunjwa, vir Mr Kwadi?

24 MR MOKWENA: No, Chair, we did not

25 conceive of that possibility. And as I said earlier in my

Page 38124

1 earlier cross-examination that to trigger any wage

2 adjustment to any group of employees, we may say one

3 opportunity, the trickle effect for the rest of the

4 organisation. And it is therefore, it is unavoidable to

5 negotiate with one category of employees and hope that the

6 rest of the organisation will not ask questions. That's

7 the context of our fear. Even if that possibility was

8 there, Chair, I would have had to afterwards negotiation

9 with many others. That was the centre, the fear for us.

10 CHAIRPERSON: It doesn't sound thought as

11 if the problem was that AMCU was seeking a seat at the

12 bargaining table. It is a broader objection, you weren't

13 prepared to negotiate at all for the reason that you have

14 mentioned, to create a precedent which will operate all

15 over the company.

16 MR MOKWENA: Yes.

17 CHAIRPERSON: But, I am not sure that's

18 the thrust of the evidence that we have been hearing. My

19 understanding from what you have said is that the objection

20 was to allowing AMCU to come because that would give them a

21 seat at the bargaining table by implication forever

22 thereafter. Even though they didn't have collective

23 bargaining rights. But you are now really addressing the

24 point I put to you. But anyway, do I understand you to say

25 you never thought of it, responding that it could happen

Page 38125

1 but only on a one off basis because of the crisis you had

2 3 000 people, many of them armed with dangerous weapons,

3 dead bodies around, a necessity to respond to the request

4 the police had made to you to negotiate, to bring down the

5 temperature, bring about a peaceful solution. That didn't

6 occur to you?

7 MR MOKWENA: You are correct, Chair, I

8 was responding to you asking me whether it was ever a

9 possibility for us to consider. And I said we didn't. If

10 we had to consider it we would still have had to look at

11 its implications for the rest of the organisation.

12 CHAIRPERSON: Mr Mpofo, I think this is,

13 would you agree, you have got your hand up, if you want to

14 ask one more little question. We haven't really got time

15 for it.

16 MR MPOFU SC: Thank you, Chairperson.

17 One and a half please.

18 CHAIRPERSON: One and half what? One and

19 a half minutes, or one and a half questions?

20 MR MPOFU SC: Questions.

21 CHAIRPERSON: No, no, no, I think you had

22 better ask them tomorrow morning at 8:30, 8:31 after we

23 have received the lessons from the police and the lessons

24 from the witness and the things he regrets in the –

25 MR MPOFU SC: Yes, I am –

1 CHAIRPERSON: Clandestinely recorded
2 discussion with the provincial commissioner.
3 MR MPOFU SC: Yes.
4 CHAIRPERSON: We will adjourn until 08:30
5 tomorrow morning.
6 MR MPOFU SC: Okay, Chairperson, thank
7 you very much.
8 [COMMISSION ADJOURNED]
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Abey 38075:18,18 38112:7	38014:13 38087:24 38088:24 38089:4,7 38089:24 38090:5,16 38114:21 38117:3	afraid 38043:1 38072:5 Africa 37918:17 37997:7 38063:7,17 African 37959:15 37964:9,23 37968:13 38053:5 38101:2	38105:9 ahead 37989:17 albeit 38113:24 38114:17 Albert 38110:1,3 align 37914:11 alive 38054:17 allegation 37965:6 37997:25 37998:10 37998:16 38000:9,10 38010:16 allegations 37964:11 37964:17 allege 37967:13 37968:4 alleged 37916:22 alleviate 38082:10 allocated 37906:24 37907:16 allotted 38072:3 allow 37982:2 37997:12 38055:16 38100:3 38122:5 38123:9,19 allowance 37924:13 37926:16 37939:20 38055:15 allowances 37925:14 37926:4 allowed 37910:24 37927:9 38000:19 38093:8 allowing 38124:20 alright 37908:5 37913:25 37959:9 37968:19 37971:14 37972:7 37974:8 38022:7 38033:12,20 38039:19 38076:1 38078:2 38082:12 alternative 38062:23 38063:9 38093:4 alternatively 37910:21 alternatives 38104:22 altogether 37947:24 amazing 37959:14 37964:22 AMCU's 37967:12 38076:5 ameliorate 38084:22 amend 37938:12 amended 37938:19 amending 37939:1 amount 38036:21 38038:15 38067:1 amounting 38066:21 38066:22 amounts 38022:11 38073:15 Amplats 37921:25 amplify 38078:7 analysis 37913:12 angle 38012:4 Anglo 37939:22 annexure 37942:10,15 38027:25 38028:3	announce 37906:22 38022:8 announced 38071:10 annual 37917:20 annum 38040:3 answer 37910:4,18,18 37910:20,20,21 37927:9 37930:16,20 37955:7 37971:1,19 37971:22 37972:6,15 37973:4,14 37974:4,4 37978:10 37979:2 37983:24 37984:2,6,7 37997:7 38013:17 38015:21 38018:7 38033:2,11 38038:8 38038:17 38039:11 38039:16 38042:8,10 38044:9,11 38046:23 38059:23,24 38060:2 38060:5 38069:14 38078:7 38097:18 38102:21 38103:24 38105:1 38120:18 answered 37947:18 37970:19 38038:9 38044:20 38120:15 answering 37910:25 38043:15 answers 37928:5 37971:7 37973:9 anticipate 37939:3 38114:23 anticipated 37922:2 37930:18 38117:1 anybody 38047:23 38060:10,16,16 38067:13,17 38084:10 38092:24 38122:23 anyway 38019:16 38021:2,12 38022:13 38040:12 38071:6 38123:20 38124:24 apart 38009:12 38091:24 38096:13 38096:14 apologise 37950:21 37998:7 38008:18 38033:8 38051:16 38067:20 apparently 37996:10 appeal 37906:4 38007:22 38104:15 appealed 37924:14 appealing 38016:2 appear 37935:25 37943:13 38060:18 38069:6 appeared 38017:25 38018:2 38027:7 appears 37912:20,21 37932:1 37943:11 37948:25 37959:12 37960:4 37988:10 38017:20
able 37977:5 38011:6 38011:15 38018:3 38019:4 38040:23 38041:18 38074:23 38075:6 38083:2 38085:15 38106:21 absence 37943:5 absolute 37977:25 absolutely 38007:19 38009:25 38013:23 38014:22 38041:10 38050:18 accede 37991:7,13 38060:13 accept 37913:18 37914:24 37926:22 37927:1 37960:18 37967:4 37977:22 37993:25,25 37996:2 38003:8 38020:7 38038:2 38039:17 38044:1 38052:4,11 38052:16,17,22,23,24 38053:15,24 38054:3 38054:4,18 38059:15 38062:14 38065:15 38084:9 38092:10,20 38095:15 38113:5 38114:20,24 38115:1 38119:7 accepted 37913:22 37916:16 37927:17 37931:7 accepting 38118:2 access 37998:19 accommodate 38036:19,20 accommodation 38041:1 accompany 37919:17 accomplished 38078:25 account 38047:24 38048:9 accounts 38048:22 accusations 37962:2 accused 37962:5 37964:8,10 37997:6 accusing 37965:23 37967:16 38060:18 achieve 37909:8 37916:18 38082:9 38084:7 38092:14 achieved 37917:5 act 37975:7 37991:11 38011:24 38013:7 acting 37943:5 37954:1 38000:11 38003:17 action 37925:8,15 37932:4 37933:24 37934:6 37935:19 37991:10 38007:5 38008:25 38009:20	action/community 38088:13 activate 38014:1,25 38015:23 activities 38077:15 38086:20 activity 37959:24 actual 37927:15 37965:5 37998:2 38001:11 38010:5 38025:13 38027:2 38042:12 38087:21 additional 38098:24 address 37986:16 38014:15,23 38023:21 38086:7 38088:12 38102:4 addressed 37937:2 38017:8 38018:17 38021:14 38033:17 38074:4 38075:14 addressing 37934:11 37935:23 37936:11 38124:23 adequate 38092:13 adhere 38013:6 adjourn 37956:8,9 38022:15 38123:2 38126:4 adjourned 38033:17 38126:8 adjournment 37956:9 37992:15 38074:5 38078:11 ADJOURNS 37956:24 37992:18 38022:16 38078:15 adjustment 37939:20 37996:10 38044:22 38124:2 admitted 37961:23 adopt 38055:16 adopted 38114:4 adopting 38123:22 adores 38063:18 adults 38056:21 38058:12,16,22 adverse 38084:22 advice 38039:2 38094:11,15 advise 38081:22 advised 37949:8 37996:11 38074:18 38085:18 38094:7 advisors 38039:2 advocacy 38070:22 affairs 38034:6 affidavit 37941:23 37942:24 37943:16 37981:10 37999:5 38003:16,19 affidavits 38075:8	agree 37910:7,13 37911:11,13,15,17,18 37915:16 37923:18 37927:14 37946:9 37950:7 37951:22 37961:3 37970:21 37977:2,2 37985:25 37995:10,12 38007:14 38009:19 38012:8 38031:1,2 38035:11,12 38036:2 38036:3,14,15,16 38046:7 38054:9,10 38063:5,6 38064:7 38066:25 38067:8 38077:9 38079:21 38080:4,5,21 38093:15 38096:16 38099:11 38100:15 38103:7,10 38113:9 38114:2,3 38125:13 agreed 37915:13 37939:4 37974:6 37977:18 37980:24 38013:8 38014:14 38015:8 38016:12,20 38032:21 38041:25 38063:7,10 38081:11 38082:9 38096:21 38100:8 38108:14 38114:16 agreeing 37965:17,20 38013:3 38080:12,25 agreement 37907:20 37917:8,10,13 37927:17 37933:17 37933:20 37938:12 37938:13,19,20 37939:1 37988:10 37991:12 38079:20 38082:22 38097:13 38099:18 38100:4,9 agreements 37938:2,10 37976:22 37991:11 agrees 38000:1 38100:24 ah 37966:12 38093:11		

<p>applicable 38091:1 applicants 37942:16 37943:4 application 37941:16 37942:4,10 37945:10 38026:12 38028:1,2 applied 37941:5 37954:18 apply 37941:9 appointed 38049:20 38071:23 appreciate 37935:4 38101:20 appreciating 38081:6 approach 37922:12 37927:4 37931:19 37938:24 38006:18 38058:25 38059:1,5 38070:20 38114:5 approached 37931:17 37938:16 37940:22 37949:22 37990:2 38006:13 38076:3 38091:10 approaches 37991:10 appropriate 38078:11 38085:23 38099:19 appropriately 38108:3 approve 38057:23 approved 38087:7,11 38087:20 38088:1 approximately 38022:2 38066:21,22 April 37914:18,22 37920:12 Arch 38116:11 area 37918:7,16,21,25 37919:11 37954:14 37954:19 38094:2 areas 38087:1 aren't 37924:11 38001:9 38090:21 argue 37931:9 38030:25 38037:9 38038:12 38045:18 38050:17 38066:2 38072:5 38111:18 arguing 38013:24 38016:3 38096:8 argument 37944:2 37991:8 38015:20 38016:1 38021:2,14 38021:20 38062:14 38069:14 38088:1 38115:1 arises 38099:21 armed 37970:1 38105:19 38125:2 armoured 38092:9,17 38106:1 arms 38017:5 arose 38074:8 38119:20 arrange 37958:3 arranged 37957:22 arrangement 37908:3</p>	<p>38073:17 arranging 37958:16 arrest 38007:1,14 38010:19 38012:9 38064:24 arrested 37907:12 38007:4,20 38009:5 38010:3,8,10,13,13 38010:18 arresting 38007:17 arrests 38007:22 38009:7 arrive 38042:1 38119:2 arrived 38042:6,13 arriving 38058:11 articulated 38043:6 artificial 37926:6,17,17 ASAP 38065:21 ascertain 38011:16 ascertaining 38004:7 aside 37987:1 38046:9 38046:14 asked 37910:17 37911:1 37920:17 37922:10 37924:5,14 37928:25 37929:4,18 37935:15,18 37936:25 37947:2,4 37953:3 37955:2,6 37958:11,19 37968:9 37981:16 37991:24 37991:25 37994:14 37994:23 37997:7 38000:23 38002:10 38002:13 38005:9,23 38008:2 38013:18 38014:16 38016:4 38033:2 38037:24 38039:4 38040:2 38044:9 38072:11 38075:7 38079:20 38084:10 38092:4 38118:22 38119:13 38120:13,15 asking 37910:13 37934:21 37962:9,9 37978:15 37991:15 37991:16 38036:5 38037:17,22 38038:7 38042:16 38044:22 38101:25 38107:17 38116:2 38120:7 38121:16 38122:12 38125:8 asks 38075:11 aspect 37956:16 37981:6 38009:18 38011:20 38043:2 aspects 38046:15 assessment 37998:6 38032:7 assigned 38086:19 assist 37920:21 38049:22 38050:15 38066:5,7 assistants 38045:14</p>	<p>associate 38032:15 38080:8 associated 38062:13 38114:25 assume 37987:17 38037:11 38093:6 38117:6 assumed 38076:10 38077:20 38090:19 38090:23 38094:21 38097:16 assuming 38039:7 assumption 37919:19 37919:21 37931:16 37974:17 37977:12 38119:23 assumptions 38003:1 assurance 38070:7 attain 38100:13 attempt 37932:25 38010:18 38081:13 38122:22 attempted 38023:21 attempts 37963:10 38085:6 38088:23 38089:3 attend 37981:24 37992:16 38047:3 38121:24 38123:5 attending 38049:2 38050:23 38053:18 attention 37930:11 37946:18,25 37993:2 37995:4 38070:11 attitude 38059:7 38066:9 38069:15 38123:22 audio 38102:7,7 August 37941:6 37951:20,22 37953:24 37955:21 37956:4 37957:6 37958:15 37960:15 37963:11 37968:22 37981:8,22 37992:24 37995:5 37998:23 37999:3,24 38001:8 38013:8,13 38016:10 38016:13 38022:23 38023:9,22 38024:13 38024:16 38025:1,3 38034:17 38046:9 38047:11 38076:23 38077:6 38084:1 38110:25 authenticity 37932:20 authorisation 37954:21 38096:7,10 authorised 38095:23 38096:14 38102:11 authority 38062:21 38069:6,9,17,25 38070:4 38082:18 available 37999:18 38001:16 38002:8,13 38002:20 38004:8</p>	<p>38075:4 38106:3 avenue 37933:20 averted 38115:18 38116:17 avoid 37946:4 37996:16 38086:25 38119:21 avoided 37907:15 38057:10 38113:7 avoiding 38105:11 await 38007:3 aware 37908:15,20 37909:3,4,5,9,14,17 37916:20,21 37917:14,15,23 37918:4 37919:25 37920:7,22 37922:11 37922:14 37931:2,6 37931:11 37935:6 37936:5 37954:16 37998:14,17 38002:14 38008:17 38022:25 38023:12 38023:18,20,24 38024:1,2 38035:2 38047:3,18 38048:5 38049:19 38050:2 38053:21 38066:16 38066:17,23,24 38081:25 38094:5,11 38101:23 38102:18 38112:1 38113:22 A1 37942:16</p> <p style="text-align: center;">B</p> <p>b 38021:1 back 37906:7 37917:20 37928:15 37951:19 37951:20 37952:2,7,8 37959:10 37966:1 37970:2 37973:25 37974:23 37976:2 37989:8 38008:11,14 38009:22 38013:6 38015:5,10 38016:25 38017:6,15,19 38021:9,10 38022:24 38024:6 38032:5 38033:19 38061:20 38063:13 38064:13 38065:11 38068:14 38069:10 38070:14 38073:11 38084:22 38090:8 38114:9,9,9 38117:23 38118:3 38121:19 background 38079:3 38097:19 bad 37976:24 38004:19 badly 38089:13 bag 38111:23 Baleni 37951:19 37952:3,5 37953:1 37958:8 37965:11 bargain 37987:16,18 37989:14</p>	<p>bargaining 37915:6,15 37931:4 37974:19 37975:15,23,25 37982:4 37983:21 37985:22 37986:15 37987:11 37989:20 37990:15,18 37991:1 37991:5,19 37992:5,8 38055:12,24 38059:5 38082:19 38091:20 38119:16 38120:4,6 38120:10,10 38121:18 38122:7,8 38122:12,13 38123:12 38124:12 38124:21,23 Barnard 37906:12 37949:7 37957:2,25 37986:20,23 38022:20 38041:5,12 38078:18 38087:25 Barnes's 38021:13 38064:25 based 37906:15 37985:7,7 37998:6,13 37998:15 38001:4 38010:23 38058:11 basic 37942:21 37971:4 basically 37958:18 37981:13 37988:2 38056:7 basis 37926:13 37928:18 37929:23 37940:23 37946:7 37972:12,14,19 38003:9 38004:14 38057:20 38064:8 38091:18 38094:9 38121:16 38125:1 battle 38085:12 battling 38044:12 38062:12 bear 37906:10 beauty 38061:15,18 becoming 37909:18 37910:6 37915:3 37949:18 38050:17 38063:21 beg 38078:5 began 37949:6 38048:22 beginning 37933:4 38006:16 38062:9 38071:10 begins 37908:5 37996:5 38075:13 behalf 37907:18 37982:3,5 37984:15 37988:9 37994:15,24 37996:1 38000:11 38003:18,24 38005:13 38028:11 38066:15 38068:23 38069:17 38072:7 38121:17 38122:6,23 38123:9,12</p>
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<p>behaviour 37978:6 beings 38062:25 belief 37996:24 38076:24 believe 37931:13 37950:21 37970:24 37984:17 37995:20 38010:10,15 38026:15 38042:2,3 38051:3 38058:19 38064:22 38067:10 38067:15 38082:7 38104:24 38113:20 38117:6 believed 38004:21 38035:7 38058:17 believes 38074:25 belly 38036:8 belong 37915:24 belonging 38062:21 Ben 38066:13 38067:8 38067:13 38068:3,14 38069:24,25 beneath 38051:14 benefit 37977:8 37995:21 38022:12 benefits 38035:10 Bethanie 37954:19 betrayed 38016:17 better 37978:22 37983:11 38011:11 38011:12 38033:2 38041:9 38042:21 38051:12 38058:22 38072:12 38085:2,3 38085:16,18 38125:22 beyond 38021:7 38071:11 Bham 37906:16,17,20 37928:4,21 37929:3,7 37929:13,16 37944:21 37945:2,11 37945:24 38002:16 38003:23 38004:2,10 38019:19 38020:1,10 38020:19,23 38021:3 38021:15 38033:16 38033:18,23 38037:6 38038:17,19,24 38039:15 38042:23 38043:1 38047:4,13 38056:9,23,25 38057:4 38068:22 38070:3,12 38074:3,6 38075:10,10 38078:13 38098:17 38120:12,23,24 38121:3,6 big 38088:3,7 38116:11 biggest 38007:18 binding 38086:12,18 38095:25 Bishop 37980:3 38104:11 bit 37939:2 37989:8</p>	<p>38015:20 blame 38054:14 38055:3 blind 38088:14 bloodshed 38101:4,4,5 38101:14 Blou 38018:16,20,25 38019:7,11,12,16 BM 37932:13 board 38045:5 38100:19 38109:2 bodies 38064:5 38125:3 body 38062:1 38078:14 bomb 37909:14 book 37924:17 books 38037:21 boss 37942:1 Botes 38075:1,2,9 38094:6 38115:12 bothered 37958:22 bottom 37982:25 37983:7 38011:22 38018:18,19 bound 38080:17 38087:5 box 38061:9,22 38117:20 brains 37913:14 38063:22 branch 37958:22,23 38031:23,25 38032:9 38032:17 brandishing 38107:5 breach 37942:18 38069:8 38090:11 breadwinner 38052:10 breadwinners 38053:13 break 37955:13 37956:21 38023:3,5 38078:14,14 breaks 37906:5 38082:4 breakthrough 38081:18,24 brevice 37987:22 brief 37920:25 briefed 37937:14 37941:2 38025:2,4 briefing 38020:2,6,12 38020:20 38021:17 Brigadier 37954:21 38097:4 bring 37970:11 37979:15 37995:20 38056:13 38065:4 38125:4,5 bringing 37959:2 38009:15 broadcast 37997:25 broader 38109:20 38124:12 broadly 38109:15 brochures 38012:16 brother 38036:24 38037:2,12 38039:8</p>	<p>38039:22 brought 37923:14 37970:8,10 37975:4 37980:3 Budlender 37924:15,20 37925:1,9,9,13 37926:1,11 37930:6 building 38009:1,1 bullet 37932:18 37933:1 37935:4 37993:21 37994:8,21 bundle 37911:19,21 37914:16 37920:21 37920:23 37932:2 37948:1 37949:1 37956:1,11 37957:8 37957:12 37968:24 37969:10,11,14 37981:12 37982:18 37982:24 37993:3 37995:6 38001:9,11 38005:20 38006:25 38013:14 38074:8,9 38075:12 38090:18 Burger 37989:6,13 business 38034:12 busy 38089:2</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>c 38018:19 38021:2 calculation 38021:24 Calitz 38097:4 call 37949:7 37951:15 37952:15,16 37958:15 37960:13 37960:23 37961:6,7 37961:13 37978:22 37979:10 37983:10 37996:8 38016:14 38061:11,12,17 38064:20 38110:9 38114:4 38120:11 called 37909:13 37950:15 37951:21 37952:3,4,7 37953:5 37953:5 37954:16 37959:18 37960:1,3,6 37961:9 37964:8 37965:18 38035:1 38062:2,4 38109:24 38113:23 38117:19 38122:13 calling 38054:16 38061:8,13 calls 37960:19,20 37961:16 37986:14 can't 37943:24 37950:6 37974:3,9 38014:24 38015:23 38018:6,11 38038:8 38043:2 38116:16 capable 38105:10 capacities 38035:4 capacity 38108:15 Cape 37917:19,20 37918:19</p>	<p>capital 37908:11 37917:12 37950:18 38026:16 38034:6,23 38035:8,8 38061:8 38063:1 car 38050:21 carefully 37910:3 38119:13 38121:14 carnage 38062:5 carried 38093:1 carry 37929:6,11,12,14 37972:4 37973:13 37986:8 38060:4 38082:14 38121:5 carrying 38082:14,18 case 37918:10 37975:8 37991:8 38052:14 38090:16 38116:3 cases 38052:19 cash 38066:22,23 casual 38008:9 Cat 37937:9 catch 37944:25 categorically 37962:7 categories 37937:9 37944:24 37945:4 38044:21 category 37937:6,12 38044:16 38045:15 38045:16 38124:5 causally 38112:21 cause 37943:17,23,24 37944:3,5 37948:21 37958:20 caused 38025:21 38026:5 38031:20 38032:22,23 38118:14 causes 38112:23 caveat 38115:2 CCMA 37980:2 CD 38074:25 38075:3 cease 38012:11 ceased 37986:3 celebrations 37919:17 centimetre 38008:6 central 37983:10,12,19 37983:20 37989:9,13 37989:24 37990:6,9 37990:12,16 37991:18 37992:4 centre 37907:7,10 37942:21 38055:12 38061:6 38065:18 38124:9 CEO 38069:2,10 38070:14,25,25 certain 37916:3 37943:4 37949:9 37992:23 38063:7 38121:10 certainly 37945:9,13,23 37946:2 37966:15 37968:7 38058:21 38115:14 chaired 38013:15</p>	<p>38109:5 38110:19 38111:13 Chairman 37928:4 37929:1,7 37944:21 38034:4 38037:9,18 38038:5,11,25 38043:1,14 38056:9 38056:18 38057:8,11 38057:12 38069:19 38071:7,12,20 38072:21 38074:6 Chairman's 38040:1 challenged 37952:21 chamber 38048:19,23 38048:24 chance 37911:23 38013:25 38014:19 38095:13 38115:21 change 37937:20 38077:7 changed 38113:20 changes 37995:21 38095:14 changing 37931:3,5 characterise 38065:10 characterised 38065:5 38065:7 charge 38063:1 charity 38033:10 chased 38006:19 chat 38009:22 check 38025:2 Checkpoint 38040:2 chief 37909:11 37911:21 37914:21 37941:9 37948:7 37963:2 38054:22 38086:14 children 38049:22 38053:19 38054:6,7 38056:8,20 38057:19 38057:19 choppers 38012:17 Christmas 37919:6,6,6 37919:17 Christmastime 37919:16 circles 38118:6 circumstances 37916:12 37989:19 38001:4 38028:8 38051:8 38056:12 38060:6 38061:21 38063:16 38064:15 38066:1 38071:16 38097:8 38099:20 38118:1 claim 38084:8 38098:25 claiming 37932:7,19 claims 38070:10 clandestine 38102:8,23 Clandestinely 38126:1 clarified 37951:24 clarify 38070:24 38072:9</p>
--	---	---	--	---

<p>clarifying 38073:17 clarity 38016:24 38017:3 classified 38013:21 38045:24 38046:3 clause 37938:10,11,20 clear 37934:16 37953:19 37961:1 37967:15 37971:7 37987:4,25 37994:3 37999:25 38001:12 38001:13 38003:16 38003:17,18,19 38010:4,4,12,17 38051:23 38052:8 38057:23 38061:4 38102:4 38110:7 38120:15 38121:11 38121:12 38123:18 clearer 37987:7 clearly 37925:17 37936:10 37942:25 37943:17 37944:5 37945:25 37990:2 38003:23 38104:20 38119:4 client 38074:7 clip 38017:23 38018:1 clock 38072:6 close 37906:20 38088:1 38088:9 closely 38087:23 closer 37954:19 closes 38085:20 clothe 38036:22 38040:16,24 clothed 38054:7 clothing 38045:5 clumsily 37944:8 coexistence 37932:25 coincides 38021:24 colleagues 38071:19 colleague's 37930:4 collect 38018:23 collective 37915:6,15 37931:4 37982:4 38055:12 38065:14 38079:15,24 38119:16 38120:11 38121:17 38123:12 38124:22 colloquially 37925:15 combat 38087:20 come 37918:2,8 37923:5 37924:6,7 37937:22 37946:11 37959:10 37976:2 37977:1 37979:19 37980:1 38012:11 38013:20 38024:6 38032:8,9,10 38041:4 38041:4 38048:23,24 38049:5,11,15 38050:25 38051:2,15 38065:23 38070:20 38073:11 38118:11</p>	<p>38121:7 38124:20 comeback 38098:6 comes 38060:14 38079:3 comfort 37955:13 37956:21 38078:14 comfortable 38043:15 coming 37930:25 37949:19 37963:24 37965:10 37967:10 37990:9 37997:16 38026:15 38028:8 38050:4,9 38071:6 38108:10 38116:10 commence 38088:11,21 commenced 37919:24 38071:25 comment 37926:8,19 37931:14 37967:17 37984:15 38006:24 38030:24 38089:20 38097:1 comments 37997:14 38089:21 Commission 37906:2 37907:6,8 37908:10 37908:24 37939:3 37941:3 37945:12,19 37946:15 37947:24 37956:24,24,25 37981:23 37988:17 37992:18,18,19 37993:9,23 38001:16 38002:9 38018:2 38022:16,16,17 38028:25 38032:2,23 38039:3 38043:10 38046:9,18 38049:12 38050:5 38051:3,21 38053:18 38059:16 38070:16 38078:15 38078:15,16 38106:24 38107:2 38108:9 38111:14 38113:18 38115:15 38116:8 38118:12,24 38126:8 commissioner 37979:17,20 37980:4 38002:19 38011:23 38012:9,19 38026:1 38031:11 38076:22 38077:24 38096:2 38126:2 Commissioners 38068:10 38111:16 Commission's 38045:23 38046:5 38049:8 commit 38068:2,13 commitment 37986:17 37986:18 37987:1 committed 38046:11 committee 38031:25 38088:16,18 38089:14,17 38109:1</p>	<p>38109:9 committees 38089:9 committing 37986:21 38013:20 common 37948:21 37958:20 37996:25 38102:6 commonplace 38102:12 communicate 37963:10 38069:2 38070:13 communicated 37923:17 37956:13 37982:11 37990:6 37995:1 38062:8 38089:5 38113:18 38114:14 communication 38058:18 38062:10 38083:18,20,25 38084:19 38085:15 38089:5 38090:12 38091:14 38092:20 38097:9 38101:2 38114:8,10 communiqué 38081:13 community 38089:1 company 37946:3 37954:20 37988:4 37994:9,10 38025:10 38028:18 38029:13 38037:21 38068:23 38069:11 38084:15 38084:18 38086:7 38110:2,4 38124:15 compared 38037:2 38038:13 competency 37941:17 38064:23 competent 38085:14 compilation 37913:8 compiled 37912:8,12 37913:6 38106:20 complain 38098:12 complaining 37966:17 complete 37979:14 completely 37985:25 38040:5 38056:15 38088:13 completeness 37982:20 complied 38098:13 components 37937:5 comprises 37942:16 concede 38046:2 conceded 37909:22 37911:5,5 37923:22 37929:24 37993:14 38043:25 38045:2 38112:20 38115:14 conceding 38003:24 38042:19 38084:7 conceivable 38093:10 conceive 38123:25 Concentrate 37910:25 38096:12 concepts 37955:9</p>	<p>concern 37933:1 37936:13 37937:10 38050:18 concerned 37909:6,7 37909:10,12 37927:3 37930:14 37931:12 37939:18 37962:24 38039:6 38045:7 38096:20 38107:7 38111:20 concession 37928:18,22 37929:25 37930:7,11 37982:3 38115:19 38123:10 conciliator 38061:12 conclude 37985:3 concluded 37932:24 38000:25 conclusion 37987:19 38095:17 condemn 37965:25 37995:18 condemning 38006:10 condition 37982:2 37987:10 37988:3 38082:10 38122:5 38123:8 conditions 38036:9 38041:5 conduct 37943:9 38055:23,24 38057:23 confer 38091:6 confidence 37911:16 37912:2 37914:4 37915:4 38082:14 confined 37958:6 confines 38043:10 confirm 37914:15 37955:19 37982:14 37991:17 38017:25 38025:14 38034:4 confirmation 37952:24 confirmed 37914:24 37952:13 37956:3 37960:16 37963:3 37965:13 37993:16 37994:13,16 38003:1 38014:12 38044:6 conflict 38006:17 38026:17 38032:11 38032:16,24 38033:4 38033:7 38086:25 38087:2 conflicting 37986:6 confused 37955:8 38000:14,23 congregating 38107:7 conjunction 38086:25 38088:6 38097:3 connected 38112:22 consent 37935:9,11 37937:17 37975:9 37976:21,22 37977:21 consents 37978:23</p>	<p>consequence 38049:7 38050:3 38098:21 consequences 38084:23 38116:15 consider 37932:7 37934:22 37935:2,7 37937:15 38078:23 38125:9,10 consideration 37939:1 38074:15 38084:17 considered 37908:17 37911:10 37934:24 37938:6 38067:2 38078:12 38082:9 considering 37935:5 consisted 37937:7 38031:25 constituency 38029:25 constituents 38029:23 constructively 37996:24 construe 38123:15 construed 37936:13,15 consultation 37978:24 contact 37951:19 38090:11 38091:13 38091:17,22 38092:10 contagion 37922:5 37946:10 contain 37968:14 contained 37966:21 37997:4 38075:1 38076:24 containing 38075:9 contains 37924:23 CONTD 37908:6 37957:3 38022:21 content 37956:15,18 38001:25 38075:3 contents 37951:23 contested 37972:9 context 37927:9 37928:6 37939:3 37950:5 37962:17 37963:12 37966:2 37967:6 37984:18 38008:7 38015:15 38019:22 38026:14 38028:17 38044:20 38044:24 38045:12 38045:17 38060:19 38090:2 38093:17,24 38097:19 38122:14 38124:7 contingent 38065:21 continue 38007:23 continues 37925:10 37964:7 continuing 37943:4 38059:23 38060:2 contractor 38027:8,15 38031:8 contractors 38027:19 contracts 37979:25 contrary 38086:22</p>
---	--	--	--	--

<p>contributed 38118:25 contributory 38119:4 control 38012:12 controversial 38024:25 conundrum 38090:25 convene 37953:21 convened 37953:10 37957:21 convenience 37969:10 convenient 37955:12 37955:17 37956:7 37992:11,14 conventional 38027:11 conventionally 38026:18 conversation 37941:1 37950:5,8 37951:25 37952:25 37955:21 37958:11 37967:22 37984:18 37985:14 37999:7,23 38000:21 38002:1,4 38007:17 38008:8,21 38009:25 38010:22 38011:21 38076:21 38077:1 convey 38028:8 38095:4 conveyed 37967:8 37990:1 38015:11 38018:6,10 conveying 38095:17 38123:22 convince 37979:7 cooperation 38012:2 coordinated 37956:14 copied 38019:5 38075:3 copy 37912:19 37997:15 corporate 38091:21 corrected 38040:10 38115:13 correctly 37913:9 37922:3 37925:4 37968:11 38101:11 correctness 38084:7 correspondence 38000:21 Costa 37923:7,10,16,21 37924:15 37925:6,12 37925:16 37926:2,7 37926:19,22 37928:18 37929:24 37931:20 37940:22 37948:3 37949:18,21 37950:3 37961:23 37963:5 37993:14,15 37993:23 37994:13 37994:16,22 38064:2 38083:18 38090:9 38091:11 38113:23 38114:5,16,22 38115:12 Costa's 37922:10 37930:11 37949:16 couldn't 37974:18</p>	<p>37978:4 38043:25 38044:2 councils 38070:22 counsel 38032:1 count 38062:1 counter 38087:24 counterparts 37921:22 37921:25 country 37991:9 38041:13 38042:5 38049:21 38050:6 38063:10 38078:24 38079:10 couple 37947:16 38053:2 course 37907:17 37927:10,11 37938:1 37943:3 37960:22 37967:12 37968:20 37974:18 37977:4 37981:21 37984:8 37989:3 38002:25 38009:16,20 38017:7 38023:20 38053:12 38064:25 38074:11 38078:6 38098:8 38115:25 court 37941:16 37954:4,8 37979:11 38083:22 38097:23 38097:25 38098:4,25 38099:10,12,14 38116:21 cover 37911:1 covered 37936:21 covering 37934:8 37935:20 co-ordinate 37996:14 co-ordinated 37943:10 create 37927:9 37932:25 37937:11 37967:15,18 38040:24 38057:1 38061:1 38067:15 38081:10 38124:14 created 37976:24 creating 37962:17 criminal 37959:23 38065:7,11,12 crisis 37978:1 38122:15 38123:19 38125:1 cross 37910:23 37989:6 38011:17 38055:13 38072:6 crossing 38099:21 cross-examination 37906:22 37908:6 37957:3 38011:13,14 38022:21 38034:1,3 38041:19 38057:15 38064:10 38065:1 38074:11 38078:20 38108:11 38124:1 cross-examine 37907:18 cross-examined</p>	<p>37923:22 cross-examiner 38033:15,21 cross-examining 37908:5 38074:1 crouching 38036:9 crucial 37976:20 37984:25 38026:15 crunchers 38108:19 cue 38078:13 culminated 37920:12 currently 38041:9 customs 38059:14 cutting 38114:20 cynical 38049:23</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>da 37922:10 37923:6 37923:10,16,21 37924:14 37925:6,12 37925:16 37926:2,7 37926:19,22 37928:18 37929:24 37930:11 37931:20 37940:22 37948:3 37949:16,18,21 37950:3 37961:23 37963:4 37993:14,15 37994:13,16,22 38064:2 38083:18 38090:9 38091:11 38113:23 38114:4,16 38114:22 38115:12 daily 38053:23 38091:18 danger 38092:2 dangerous 38009:17 38018:22 38036:2,6 38036:14 38041:25 38042:20 38043:18 38105:20 38107:6 38125:2 dat 38072:19 date 37914:22 38076:20,21 day 37906:3,8 37924:1 37962:1 37980:16 37988:20,22 37994:11 38013:7,13 38047:8 38048:20,21 38050:9,11 38053:20 38060:6,6 38064:15 38113:14 days 38046:15,24 38047:1,5,9,12 38048:16 38050:20 38064:15 day-to-day 38086:20 De 37993:23 dead 37959:15 37964:23 38061:10 38125:3 deal 37906:14,17 37930:3 37936:11,25 37954:5 37981:6,10 37983:12 37985:23</p>	<p>37990:4 37991:20 37992:5 37996:5,7 38021:19 38043:5 38046:15 38062:24 38064:23 38083:14 38088:17 38089:23 38090:4,21,22 38123:3 dealing 37932:8 37936:21 37984:23 38043:3,10 38065:19 38065:23 38097:19 deals 37986:9 38086:9 dealt 37933:9 37996:6 37996:16 38020:4,5 38035:16,16 38043:5 38070:15,16 38089:13 death 38009:13 38061:5 38062:11,13 38063:3 38101:12 38112:22 deaths 37978:13 38049:7 38054:14 38059:17 38061:13 38065:12 38113:7 38118:14 38119:21 debate 37957:8,11 37964:15 37980:24 37997:4 38014:15 38054:13 38055:13 debating 37973:3 debriefing 37985:8 38018:13 December 37917:9,18 37917:20 38066:20 decent 38041:1 decide 38044:15 38063:16 decided 37940:6 38022:8 38041:17 38056:2 38058:5 38099:15 38112:13 decision 37926:15 37935:6 37939:24,25 37940:3,6,11,13,17 37941:9 37982:7 37985:3 38042:12 38044:14,25 38054:24 38055:1,4,5 38055:15 38056:13 38068:24,24 38085:23 38091:20 38094:14 38112:17 38112:21 38113:4,6 38113:12,13 38115:15,16 38118:8 38118:13,17 38119:1 38119:2,4 decisions 37926:3 38058:11 38118:21 38118:22 decision-making 38070:8,21 deck 38104:6 default 37940:5,7,16</p>	<p>defend 38051:9 defer 38079:15 define 38121:8 defining 37916:6 defusing 38093:3,4 delayed 38114:18,19 delegation 37976:11 deleted 37948:6,17 deliberations 37936:8 deliver 38015:8 delivered 38016:12 38018:4 demanded 37994:9 38112:8 demanding 37922:19 37949:20 38005:12 38036:1,7,13 38042:21 demands 37920:3 37927:13,19 37930:24 37934:11 37935:23 37937:2 37942:20 37943:14 37951:15 37958:3,6 37961:6,8 37988:4 37996:6,7,10,13,22 37996:23 38001:21 38001:24 38027:11 38028:9 38029:21 38058:6,13 38059:15 38112:8,14 demographics 37918:4 37918:10 denounce 37993:22,24 37995:11 denounced 38018:20 38020:16 denunciation 37995:23 denying 38031:9 depart 37940:6 department 37979:24 37980:2 38096:3,6 dependency 38067:12 38067:16 dependent 38052:15 dependents 38052:22 depending 37944:1 38046:23 deposed 37941:23 depth 38104:2 Deputy 38078:24 38081:15,22 38082:1 Deputy-President 38100:18 derecognise 37933:18 37933:21 described 37943:19 37961:18 37986:2 38033:7 describing 37916:6 deserve 38041:11 deserves 37995:19 designed 37908:4 desire 38050:5 38061:1 despite 37963:9 38024:5 38030:14</p>
---	--	---	--	--

38066:18 38118:14 detail 37980:14,17 38031:24 details 37920:16 38051:22 38067:13 38067:18 deter 38056:4 determine 38085:16 determined 38044:23 determines 37978:6 38091:19 detracted 38064:1 devastated 38051:24 develop 38007:4 developments 38032:13 de4mands 37996:23 dialogue 38093:5,7,8,9 38093:13 38101:6,21 didn't 37912:8 37925:13 37940:17 37941:18 37944:25 37946:2 37951:4 37952:2,6 37953:13 37953:14 37955:5 37970:20 37971:1,4 37974:5 37978:12 37979:7,12 37980:6 37980:11,11 37985:1 37997:8,14 38000:17 38001:2 38003:25 38006:20 38016:21 38019:1 38047:3 38048:2,14,23,24 38055:11 38056:20 38057:23 38058:22 38077:25 38078:6 38081:19 38118:16 38122:10 38124:22 38125:5,9 die 37978:4,12 38059:11,19 38061:1 died 37976:8 37977:13 37978:2,11,16,17,17 37978:18 38007:21 38034:15,16,17 38045:22 38059:4,20 38060:20 38061:4 38062:15 38063:2 38112:22 38116:16 38117:8,15,18 difference 37927:23 37938:16 38009:2 38039:21,23 38094:14 different 37928:25 37944:6 37950:21 37954:3 37965:22 38006:7 38039:16 38064:14 38082:9,13 38083:3 38091:15 38113:12 38114:13 38116:19 38117:2 38118:7 differential 37909:2,8 37916:19,23 37917:4	differently 38045:19 38064:14 38080:4 38106:19 38117:25 38118:23 38119:9 difficult 37965:21 37967:24 38036:21 38041:25 38043:18 38062:6 38063:4 38068:25 difficulty 38085:12 dilemma 38059:10,12 38062:14 diligent 37950:1 direct 37930:9 38004:13 directed 38057:8 direction 38083:3 directive 38091:12 directly 37929:22 38076:7 director 38040:7 Dirk 38075:1 disagree 38059:8 disagreed 37974:6 disagreement 38104:2 disallowed 37928:20 37973:13 disallowing 37972:2 disappointed 38016:17 disapproved 38055:22 disarm 38015:4,9,14 38016:15,25 disarmed 37970:3 disarming 38009:17 38101:22 disaster 38107:13 discharge 37970:23 37986:22 37987:5 discontent 38083:9 38104:2 discourage 38091:22 discouraged 38009:15 discuss 37919:18 37953:21 37956:14 37969:25 37976:9 38080:22 38081:5 38088:15 38091:7 38092:18 38112:2,8 discussed 37926:15,16 37931:20 37940:23 37951:17 37976:14 38110:13 38112:13 discussing 37970:5 38006:14 38008:9,13 38021:13 38087:24 38088:10 discussion 37983:6,9 37983:11 38008:5 38126:2 discussions 38081:9 38082:3,4 38109:18 38109:20 disingenuous 38050:18 38051:5 dismiss 38098:5 dismissal 38098:12	dismissed 38098:10 dismissing 38098:7 disperse 38015:10,15 38016:15,25 38017:5 dispute 38047:1 38061:6,6 38062:23 38063:11 38064:6 38065:2 38072:18 38083:15 38104:16 disputed 37908:24 37916:25 disputes 37932:20 38104:6 disrespect 38060:16 dissolving 38007:5 distanced 37943:8 distinction 37924:13 37925:14,17 37926:2 37926:3,17 38080:12 38080:24 distraction 38062:18 division 38035:16,21 38035:22 divulge 38037:5 doable 38116:13 document 37906:15 37910:12 37911:20 37912:8,12,16,20,21 37912:24 37913:6,7 37913:19 37914:9,17 37915:19 37916:2 37921:5 37922:5 37936:7 37983:23 37984:6 38005:20 38017:20 38075:13 38076:15 38085:25 38086:3,4,12,14 38087:1,2,14 38094:19 38095:4,8 38095:17 38096:17 38097:11,18 documents 37911:19 37920:22 37957:12 37998:18 doesn't 37910:16 37953:2 37972:18 37974:6 37978:10 37999:1 38010:7 38019:4 38039:2 38057:5 38059:7 38089:19 38111:19 38115:23 38124:10 doing 37977:25 38010:16 38026:21 38035:25 38050:24 38051:10 38055:10 38060:9 38103:23 domain 37917:16 donate 38072:8 donated 38071:18 donation 38071:21 38072:8 donations 38073:15,24 don't 37909:23 37910:10,21,22,23,23 37911:13,18 37918:2	37918:5,10,15,17 37919:7 37940:12 37952:23 37970:21 37970:24 37972:3 37973:12 37978:3 37986:3 37990:8 37995:25 38000:10 38000:20 38001:1 38002:16,17,17 38010:13 38012:2,14 38013:6 38016:5,18 38016:19 38037:16 38040:6 38041:3,3 38053:18 38056:19 38056:22 38057:17 38057:19 38058:8 38059:6 38060:17 38081:16 38087:19 38088:18 38111:15 38112:24 38113:9,20 38114:12 38115:7,9 38117:5 door 38121:19 doors 38085:21 doubt 38004:17 38021:7 38102:1 38105:8 doubtful 37909:18 37910:6 37911:7,10 37915:7,15 drafted 37941:15 draw 37925:13,17 37935:18 37993:1 37995:4 drawing 37930:10 drawn 37935:15,18 37946:24 37947:14 drill 37908:16 37909:2 37909:8 37916:19,24 37917:4,18 37919:1 37921:8,15 38039:24 38041:6 38042:17 38043:17 38044:2,4 38044:12,13,17 38057:24 38107:4 driller 38037:19 drillers 38038:14 drilling 38036:10 drive 38060:6 38075:3 drop 38012:17 due 37907:17 37967:12 37968:20 38032:4 38058:16 duly 38071:23 Dumisani 38002:1 38010:24,25 dwindling 38100:1 dying 37977:9 37978:1 38118:18 D-day 38012:13	37977:8,25 38006:8 38026:13 38028:2 38085:2 38089:13 38090:18 38117:23 38123:25 38124:1 early 38013:1,5 38016:10 38110:9 earn 38037:3,3,22 38039:24 38040:3,6 38040:13,14 38041:7 38041:11 earned 38039:22 earning 38036:17 38038:16 38041:9 earnings 38036:19 earns 38037:2,11,12 38038:13 38039:3,22 38039:24 ears 37985:9 earth 38036:8 Eastern 37917:19,20 37918:19 easy 38063:18 eat 38053:19 economist 38035:1 educate 38036:22 38040:16,24 educated 38054:7 education 38035:9 38045:5 effect 37930:9 37938:25 38046:18 38124:3 effectively 37940:15 effort 37943:10 eight 38022:9,13 38060:22 38061:24 38103:15 either 37945:16 37971:5 38009:23 elaborating 37985:6 element 38067:16 elevate 38091:21 email 38018:16 emanates 38032:18 embarked 37917:22 37921:16 37944:12 37963:3 emergence 38110:10 38110:15 emerging 37934:10 37935:22 eminently 37953:20 38093:5,13 emotional 38056:10 emotionalising 38060:19 emotionally 38051:24 emphasised 38057:13 employed 38058:15 38098:12 employee 38027:8,9,19 38031:7 38053:1 38096:1 employees 37918:4,11 37926:7,21 37927:12
E				
e 38021:5 earlier 37950:10 37960:16 37961:17 37961:23 37963:4,20				

37930:22,23 37931:17 37939:6 37942:16,17 37943:5 37949:22 37959:6 37963:11 37969:21 37969:24 37970:6 37974:15 37975:22 37978:7 37992:23 37994:8,10,11 38025:17 38026:4,22 38027:3 38028:3,5 38030:23 38031:8 38032:3 38041:3,7,9 38041:11 38044:16 38045:16 38055:5,17 38056:4 38058:14 38059:13 38060:13 38060:23 38066:14 38091:23 38122:19 38124:2,5 employer 37970:23 37978:7 37991:10 employs 38044:21 en 37920:11 38094:17 encourage 38091:23 encouraged 38089:15 38104:13 encyclopaedia 38034:24 endorse 37970:17,20 38041:3,6 enforced 38069:7 engage 37943:6 37959:23,23 37969:21 37974:15 37974:16,24 37975:19,20 37976:2 37985:11 37996:24 38041:17 38055:1,5 38055:23 38056:3 38058:6 38059:7 38063:3 38113:6 38116:12 engaged 37923:10 37924:8,9 37927:5 37928:1 37959:5,22 37961:22,24 37962:8 37965:15 38054:15 38055:17 38064:8 engagement 37936:4 37949:16 37962:4 37977:19 37985:3,3 38042:14 38059:19 38062:19,19 38113:23 engagements 37959:21 engaging 37931:12 37963:4 37975:5 38055:11,24 38056:4 38063:11 38115:17 English 38100:23 enhanced 38035:9 ensure 37908:4 entered 37926:14 37927:16 37962:3,5 entering 38006:16	38054:13 38100:9 entertain 37996:13 38055:16 38082:23 entertained 37939:9 entire 37920:12 38059:1 38122:19 entirely 37926:6 entrenched 38059:14 entry 37925:1,2,11,17 environment 37949:23 37969:23 37980:11 38086:2 episode 37920:12 38063:25 EPL 38032:9 equally 38044:21 38049:10 equivalent 37920:4 error 37948:16 errors 37993:10 37998:24 escalated 37922:15 escaped 38093:18 essentially 37915:14 37944:15 38013:2 38023:2 38044:3 establish 37959:25 38044:1 38088:11 38091:4 38097:9 established 37931:2,6 37990:18 37991:1,5 37992:5 37993:9 evening 38026:2,2 38103:6 evening's 38019:25 event 37932:22 37934:9 37935:21 37943:12 37953:5 37986:2 38027:3 38048:12 38062:9 38065:10 38086:7 38106:19 events 37951:21 38024:3 38047:18 38106:9,12 38113:16 eventually 37920:11 37926:19 everybody 37906:4,10 37937:12 37939:7 38005:9,23 38013:18 38045:14 38099:14 38104:7 evidence 37906:4 37907:11 37908:23 37909:22 37910:9,16 37912:9 37914:24 37928:12,13,15 37929:20,22 37930:9 37932:2 37941:8 37944:22,23 37945:2 37945:7,19,25 37946:14,15,17,23 37947:10,13 37948:7 37948:7 37952:21 37963:1 37970:21 37971:7,16,17,25	37972:8,11 37973:22 37985:18 37988:19 37993:14 38001:23 38004:6 38016:22 38017:18 38018:7,9 38021:10 38025:12 38025:25 38031:15 38032:23,25 38037:25 38064:1,2,6 38075:8 38086:21 38100:18 38101:3 38104:4 38124:18 evidence-in 37911:20 37914:20 38086:13 evidence-in-chief 37906:15 37956:3 38086:18 evident 38005:13 evidential 37928:18 exact 37940:24,24 38037:16,17 38039:7 exactly 37913:24 37914:10 37931:18 37950:13 37974:21 37987:9 37988:13 38009:18 38028:16 38035:18,23 38036:25 38039:10 38045:8 38047:22 38079:4,12 38086:21 38090:24 38091:10 38095:20 38097:24 38100:3 38108:21 38118:6 38119:11 38122:11 examination 38011:18 examination-in-chief 37906:21 examine 38080:11 examiner 37910:24 38072:7 examining 37989:7 example 38053:2 38097:23 38110:8 38123:18 exceptional 38050:13 exchange 37919:18 37957:14 38033:10 exclusion 37979:14 exclusive 37946:2 Exco 37914:18 37915:20 37922:15 37923:18 37925:8 37931:21,25,25 37932:6 37933:8,12 37934:17,21 37935:2 37935:5 37936:4,5,8 37936:21 37937:6,10 37937:14,18,23 37939:24 37940:22 37940:23 37941:1,2 38075:14,21,24 38076:15,20 38091:12,12 38096:7 38096:10 38099:15 EXCO's 38055:15	execute 38013:19 executive 37912:24,25 37913:3,23 38032:13 38034:5,11 38035:21 38054:22 38061:8 38064:4 38068:20,21 38068:24 38070:8,11 38086:19 38087:5 38094:22 38095:10 38095:22 38096:14 executives 38060:9 38065:18 38086:23 38095:11 exercise 38107:12 exhibit 37924:17 37932:1 37942:5 37969:2,3,7,8,11,14 37982:18,20,25 37983:2 37986:13 37995:6 38006:25 38017:21 38074:20 38085:25 exhibits 37969:1 exist 38010:7 38074:22 38122:14 existed 38011:8 38074:20 38090:4 existence 38003:25 existing 37915:6,14 37976:21 37991:11 38088:17 38090:2,3 exists 38004:9 expect 37940:6 expectation 37965:24 37967:7,23 expectations 38117:7,9 expected 37923:5 38006:9 38108:23 expense 37959:21 37964:25 experience 37916:7 37954:5 37967:6,21 38033:8 38077:3 38092:5 experienced 37947:4 37962:18 37979:13 38025:7 experiences 38052:7 explain 37910:15 37950:16 37952:21 37963:10 37987:10 38030:8 38047:16 38085:6 38101:10 38116:12 explained 37913:10 37963:15,20,25 37967:5 37968:9 37980:10 37998:23 38056:12 38091:11 38093:17 38113:17 explains 38086:1 explanation 38084:11 explanations 38056:19 explore 38094:1,4 explored 37934:24 express 38076:13	expressed 38111:22 38112:1 38113:14 expressing 38077:14 expression 38058:24 38089:6 expressions 38095:12 extended 38052:21 38053:9 38071:18 extensive 37936:4 extent 38070:10 external 38034:6 38104:16 extra 37928:2 38022:11 38072:3,15 38098:22 38108:2 extracts 37984:17 extraordinary 37989:19 38062:2 extremely 37939:17 38036:6 eye 38057:9 e-mail 38019:17,19,21
F				
			fabricated 38004:17 face 38036:10 38094:22 faced 37953:24 faceless 38025:9,17 38026:20,25 38027:10,13 38028:13,17 38029:10,11,11,12,24 38030:13,22 38031:13 38093:18 38093:24 facie 37988:10 38007:13 facilitate 38092:9 facing 37984:20 fact 37907:19 37909:11 37909:18 37911:4 37912:19 37914:22 37915:24 37916:23 37922:18 37923:24 37924:5,5 37925:23 37927:15 37928:15 37931:13 37935:13 37935:15 37936:1,17 37947:23 37948:16 37949:11 37954:2 37958:10 37960:12 37963:21 37970:14 37972:9 37975:4 37980:15 37985:22 37988:7,10 37989:5,8 37989:24 37993:5,13 37993:17,24 37994:13 37998:14 38001:5,13 38002:20 38010:5 38014:13 38023:15,23 38027:2 38028:13 38029:12 38040:2 38045:20 38046:23 38048:19 38057:6 38063:18 38067:25 38072:13	

38072:19 38084:19 38088:14 38089:11 38094:5 38097:24 38102:15 38107:1 38112:1,5 38116:20 38118:14 38123:20 facts 37945:11 37959:25 37998:1 38032:20,21 38114:14 factual 37928:15 37972:18 failed 38067:19 failing 38013:25 failure 37916:18 38079:15 fair 37919:19,20 37930:6 37963:19 38058:2,4 38066:6 38072:24 38079:5 38080:15 fairly 37965:1 fairness 37956:10 38111:24 38112:1 faith 37915:25 37922:25 37970:9 37975:3 fall 38030:2 false 37961:14,22 37962:23 38040:5 falsehood 37961:20 37962:20 familiar 37921:4 38086:3,5,11 families 37906:24 37907:18 38034:15 38034:16,18,19 38043:20,25 38044:4 38045:4,23 38046:3,4 38046:16 38047:24 38048:8,14,22 38049:21 38050:2,19 38051:1,14,21,25 38052:1,1,2,6,14,20 38052:21,25 38053:9 38053:9,13,24 38054:6,15 38057:14 38066:4,7,10,14,20 38067:11,14,23 38068:11 family 38033:22 38036:20,22 38040:16,23,24,24 38052:10,10 38053:17 38054:13 38054:14 38067:2 far 37912:23 37924:18 37927:3 37973:19 38004:1 38009:12 38019:6 38041:19 38045:6 38051:14 38062:16 38068:8 38070:19 38080:6 38084:18 38090:8 38095:5 38111:19 fault 38115:11	fear 38124:7,9 feared 37946:10 38092:7 38119:17 fears 38092:5 fed 38054:6 feed 38036:21 38040:15,23 feedback 38016:12 38091:12 feel 37920:15,17 37961:5 38043:15 feeling 38006:17 feels 38039:4 felt 38006:11,12 38016:16 38057:16 38092:2 fewer 38092:19 final 38058:15 38099:16 38116:25 38117:14 finally 37931:9,14 38012:18 financial 37933:4 38084:13,15,17 financials 38084:24 find 37911:23 37959:10 37996:25 38011:6 38012:2 38013:14 38015:3 38059:16 38071:22 38074:24 38075:6 38081:17 38087:14 38088:23 38089:3,6,12 38116:23 finding 38046:11 fine 37914:25 37918:11 37986:19 37994:5 38059:15 38107:21 finish 37929:1,3 38059:22 38120:23 38120:25 finished 38078:6 38121:2,3 fire 38023:12 38099:14 fired 37920:11 37939:6 37939:6 38031:23 38032:4 first 37907:20 37916:18 37920:3 37922:11,12 37925:2 37925:3,4,5 37933:10 37933:21 37937:5 37942:7 37943:8,10 37945:15 37954:4 37955:12 37956:21 37960:12 37965:22 37970:19 37980:21 37981:6 37993:12,21 37997:15,23 37998:8 38016:18 38033:5 38044:1 38055:10 38069:24 38070:17 38073:8 38074:2 38086:15 38087:18 38087:21 38091:16 38095:9 38098:18	38105:12 38110:24 38115:14,18 firstly 37967:1 37995:11 38014:11 five 37992:14 38053:1 38085:16 38086:16 flabbergasting 38111:4 flaw 38096:9 flow 38071:17 38096:6 38113:16 focus 37910:3 37996:19 focussing 38046:16 follow 37907:22 37915:8 37985:24 38058:8 followed 37944:5 37946:14 38096:9 following 37907:25 37925:10 37932:6 37942:14 37959:13 37965:22 37969:19 37981:20 37994:11 37999:10 38000:16 38007:5 38012:8 38013:5 38016:10 38024:25 38074:7,13 38113:14 38116:19 follows 37969:21 38019:23 38076:2 follow-up 37991:25 38010:22 38011:1 food 38045:5 38053:14 38053:19 38066:11 38066:20,21,23 38068:11,16 foot 37956:10 38005:21 38010:7 footages 38036:7 force 38006:9 38069:16 38093:14 38110:10 forceful 38093:4 forcefully 38101:22 forces 37962:8 37965:19 37986:2,4 38006:20 forensic 37910:9 foresee 38101:11 foretell 37978:4 forever 38124:21 forge 37945:17 forget 38068:17 forgive 37929:12 forgotten 37935:3 38099:8 form 37995:20 38061:10 formal 37949:25 37950:19 38008:8,12 38009:24 38028:15 formally 37950:3 38009:23 38025:1,4 format 38028:10 forms 37920:23 formula 38082:9,25 forth 37919:2 forthcoming 37928:16	forum 37976:8,10,13 37977:18 37979:18 37979:21,21,22,23 37983:12,19,20 37985:21,22,23 37989:9,13,14,18,20 37989:25 37990:3,7,9 37990:12,15,16 37991:18 37992:4 37997:5 38091:20 38122:7,8,12,13 forward 37965:18 38057:20 38082:15 found 37965:21 37967:24 38027:18 foundation 37928:15 38056:10 founding 37941:22 37942:24 37943:16 four 37937:23 37941:2 38022:10 38085:16 38086:16 fourth 38005:20 framed 38115:20 framework 37978:6 38060:7 38063:11 38104:5 frameworks 38063:8 France 37919:8 Frans 37952:3,5 37953:1,1 37958:8 37965:11 fraternity 38010:23 free 38120:2 frequently 38027:7 38031:6 Friday 37913:10 37914:21 37948:8,14 37952:3,5 37953:23 37957:17 37960:8 37962:19 37963:2 37965:12,16,19 37967:6,21 37978:11 37978:14 37986:1,7 38006:15 38025:7 38047:5 38048:15,22 38050:22 38077:3,6 38113:19 38114:14 38116:19 38117:2 friend 38060:18 38120:13,17,25 friend's 38043:8 38070:7 fulfil 38067:2 fulfilled 38106:7 full 38071:17 38122:12 fully 37936:5 38056:12 function 38099:21 fundamentally 37915:23 37960:11 further 37906:18 37924:16 37928:23 37942:9,15,17,20 37943:9,13 37985:1 37987:21 37989:8 38008:5 38009:15	38026:3 38057:5 38089:11 38111:19 furthest 37978:12 future 38056:5 <hr/> G <hr/> gap 38038:1,3 38096:6 gathered 38010:15 gels 38012:22 general 37925:3 37926:21 37958:8 37968:23 37969:20 38001:6,22 38003:5,9 38004:14 38005:2,12 38006:1,5,22 38007:1 38007:9,14,17 38008:4,12,20 38009:25 38010:18 38011:21 38013:3,12 38013:15,17 38015:2 38015:11,17 38016:13,19 38024:21,25 38025:13,24,25 38030:20 38033:7 38077:2,12 38101:3,3 38101:23 38119:7 generally 37916:16 38109:21 generals 37985:8 generic 38088:5 gentlemen 38016:2 38017:4 38033:9 38102:4 getting 37978:21 37986:6 38009:5 38033:19 38063:22 38063:22 38071:14 38085:6 38098:22 GGG12 38024:22 gift 38108:2 give 37910:9,17,19,20 37911:23 37912:5 37924:21 37928:2 37936:20 37940:19 37953:17 37967:17 37982:19 37987:17 37989:1 38005:9,23 38008:2 38013:25 38014:19 38016:22 38027:2,5 38030:23 38033:18,23 38067:4 38067:22 38069:6,16 38069:17 38070:4 38073:3,5,18 38093:23 38098:22 38099:16 38103:5,8 38103:13 38106:8 38107:19 38115:20 38116:20 38119:5,16 38120:14 38123:15 38124:20 given 37920:5 37922:20 37931:16 37933:15 37939:1 37941:3 37956:9
--	---	--	---	--

37991:8 37994:12 38012:22,24,25 38038:13 38041:20 38041:24 38042:19 38046:17 38051:7 38057:16 38062:8 38064:2,15 38065:25 38072:13,25 38084:11 38092:17 38094:11,15 38095:13 38116:6 38117:15 38119:10 38119:12,14,18 gives 37970:22 38098:24 giving 37932:24 38002:23 38012:10 38047:24 38048:8 38099:25 38121:7 glad 38119:13 God 38068:5 goes 37933:5 37951:12 37952:2 37989:16 37996:6 38012:10 38021:1 38028:18 38080:6 good 37908:7,8 37970:22 38078:21 38078:22 38094:2 38099:4,17 38108:12 38108:13 government 38064:20 38109:14,19 grant 38062:15 38120:7 granted 37921:1 37938:7 37941:5 37954:15,17,22 38093:2 granting 37920:13 37982:4 38123:11,12 grateful 38108:4 great 37918:7,16,21,24 grievance 38043:18 38055:17 38089:14 38089:17 38091:5 grievances 37949:9 37984:24 38049:17 38089:23 38091:15 ground 37911:1 37996:25 group 37922:9 37958:2 37991:9 38027:3 38090:8 38091:5 38122:19 38124:2 grouped 37960:8 37962:23 groups 37931:17 37943:4 37959:22 guarantee 37988:3 38064:11 guarantees 37983:14 guards 38052:2 guide 38007:3 guilty 38099:1 guise 38039:16	gut 38006:17 guys 38011:23 Gwala 37957:15,16,19 37957:23 37958:22 37959:9,16,24 <hr/> H <hr/> habet 38072:19 hadn't 38003:1 38078:6 half 37906:6,7 37970:25 38022:4,9,9 38022:13,15 38040:3 38043:7 38073:20 38103:15 38125:17 38125:18,19,19 halfway 38010:2 38012:8,20 hand 37949:10 37950:25 37978:7,21 37979:9,11 37997:15 38056:15 38099:25 38125:13 handed 37993:4 38075:1 handled 38080:3 handout 38073:14 hands 37921:16 37943:18 37944:18 38013:21 38063:3 38073:23 38104:6 happen 37961:25 37962:25 37980:12 38013:4 38093:8 38118:7 38124:25 happened 37916:13 37917:17 37921:11 37922:3,20 37927:2 37929:8 37935:13 37939:13 37944:16 37944:17 37957:25 37958:9 37960:7 37962:25 37964:3 37980:16 37981:7 37983:5 37989:20 37994:13,17,25 37996:17 38000:16 38006:19 38014:13 38017:12 38018:13 38018:17 38019:1,20 38019:21 38020:11 38021:18 38027:8 38051:4 38061:20 38090:13 38091:10 38093:7 38105:18 38107:8,9 38118:20 38118:23,24 happening 37923:23 37926:24 37927:23 37927:24 37932:22 37958:25 37959:13 37960:6,7,14 38024:11 happens 37983:7 38020:11 38042:14 38086:1	happy 37946:6 38070:6 hard 38114:24 hasn't 37928:16 38070:4,21 38121:4 haven't 37939:23 37947:18,25 37956:9 37999:14 38004:2 Hawaii 37919:7 head 37908:11 37938:5 37950:17 38026:16 38035:15 38047:6 38094:25 headed 37957:9 headlines 38057:1 heads 38054:8 health 38052:4 hear 37949:23,25 38001:2 38049:5,15 38050:6,25 38051:1,8 38062:6 38095:3 heard 37916:25 37917:2,3 37921:10 37948:4 37949:8 37950:2,11,25 37959:2 37960:2 37985:8,9 37999:14 37999:18 38000:22 38001:15 38003:2 38004:3 38018:12 38102:9 hearing 37906:3 38064:11 38110:24 38124:18 heart 38063:23 38064:10 heavily 38052:14 heed 37979:10 38116:20 held 37928:1 37931:21 37932:5 37934:3 37968:21 37980:21 37992:22 37998:22 38008:24 38066:12 38113:20 help 37939:3 37943:13 37943:19,24 37944:3 37944:3,4,12 37964:12 38013:24 38073:10 38104:7,12 38116:22 38122:17 helped 38050:10,12 38119:1 helpful 38093:22 HEMRAJ 37979:17,20 37980:4 38002:19 38096:2 Henry 38018:16 here's 38028:7 38067:10 he'd 37966:5,7,11 37997:8 he'll 37968:12 38073:18 he's 37930:6 37959:17 37986:21,25 38000:2 38032:2 38056:12	38069:4,6 38070:25 38072:7 38078:13 38111:21 38120:15 38120:18 38121:8 high 37958:4 higher 37930:8 38068:19 38070:22 highlight 38087:1 hill 38018:21,22 38020:8,17 38021:8 hindsight 37977:9 37979:5 38116:7 38119:8 history 37927:13 38104:17 hold 38013:19 38014:16 38066:5 38084:14 holding 38055:2 holiday 37917:20 holidays 37919:7 home 37918:19 37919:5,10 homework 38103:5 honest 37910:18,18,20 37967:7 38115:19 honestly 38006:8 38010:11 hope 37907:14 37979:9 37992:16 38040:10 38108:2 38124:5 hoping 38073:4 hospital 38027:4 hour 37906:5 38011:7 38022:9,11 38071:21 38072:2 38073:17,21 hours 37907:2 38013:1 housekeeping 37992:16 houses 38068:7 hovering 38076:17 HR 38007:6 38097:12 huh 38081:11 human 37907:6,8 37908:11 37950:18 38026:16 38034:6,23 38035:4,8,19 38042:13 38054:2 38061:8 38062:25 38063:1 38108:9 humanitarian 38099:13 hungry 38066:16,19 38067:5,9,14,24 38068:1,15 hurt 38016:17 hurts 38041:4 <hr/> I <hr/> idea 37917:24 37970:22 37978:8 38012:22 38040:15 38040:17,18 38063:8 38089:14 identified 37934:9 37935:21 38031:6 identify 37965:3	38026:24 38031:14 identifying 38026:19 identities 38027:5 38093:23 identity 38029:16 38072:11 38093:19 ignorance 37930:23 ill 38052:4 illegal 37925:3 37937:15 37954:6,10 37954:11 37955:2,3,4 37955:10 37963:21 illustrate 38043:7 imagine 37919:16 38052:5 immediate 38053:8 immediately 37922:15 37996:11 38011:25 38088:11,21 impact 38051:21 38084:15 Impala 37916:12,17,19 37916:23 37917:5,9 37917:10,18,23 37918:3,4,6,11 37919:23 37920:10 37920:12,16,17 37921:1,15,22 37922:3,20 37939:13 37939:17,22 37944:16,16 37946:10 37962:25 37996:17 38036:24 38039:9,23 38110:8 38110:21 impasse 38104:12 impasses 38079:6 impermissible 38049:5 implausible 38087:14 implement 38055:15 implication 37987:4 38091:21 38124:21 implications 37932:7 37934:9,11,12,22 37935:20,22,24 37936:6,11 37937:1 38082:8 38122:24 38125:11 implicit 37987:10 38014:12 implicitly 38091:4,8 imploring 38084:2 import 37983:8 important 37926:4 37943:12 37953:25 37954:2 37956:15 37984:24 38009:18 38010:8 38031:24 38035:13 38049:9,14 38101:21 impression 38101:5,20 impression 37967:15 37967:18 38006:23 38070:19 38101:7 improper 37972:3 improve 38041:22
--	--	---	--	--

<p>improved 38045:11 improvement 38035:10 38041:21 38042:18 inability 37909:7 inaccuracies 37993:10 37998:24 inappropriate 38096:22 38097:20 inaudible 37925:24 37926:10 38037:10 38098:23 38107:22 38108:6 inch 38008:5 incident 37938:4 38006:12 38023:10 38023:12,17 incidentally 38063:24 incinerated 38061:25 inclined 37986:11 include 37934:11 37935:22 38064:4 38080:3 included 37969:10 37993:3 including 37913:16 37958:5 38025:6 38060:22 38086:23 inclusive 37978:24 inconsistent 37962:9 38097:11 incorrect 37960:11 37963:6 37968:14,15 37974:2 38007:9 38028:4 38031:20 38057:6 38058:10,20 incorrectly 38007:25 increase 37909:2,8 37916:19,24 37917:4 37917:12 37920:4,5 37922:11,19 37925:5 37942:21 37951:5 37994:10,12 38064:20 38065:21 38076:3 increases 37920:13 37921:1,7,17 increasing 37915:2,4 independent 38076:11 38077:21 38090:20 38090:23 38097:17 indicate 38034:2 indicated 38045:5 38070:19 indicating 38057:14 indications 37913:5 38010:6 indigenous 38053:4 indirectly 38005:6 38076:7 individual 37996:13 individuals 37928:11 38028:14 38093:19 induce 38076:23 industrial 38015:6,13 38083:14 38087:24 38088:12,24,24</p>	<p>38089:4,7 38090:4,16 38098:23,25 38104:5 38104:16 38110:16 38113:25 38114:22 industry 37918:16,22 38041:8,12 38079:7 38109:10,15,20 38114:23,24 inflation 37938:14 influence 38010:1 informal 38008:13 38009:22,25 information 37920:19 37951:9 37998:13 38001:23 38011:16 38040:10 38075:9 informed 37993:5 38016:15 38025:6 38065:8 infuse 38109:9 inherently 38085:8,9 38087:14 initial 37980:22 initially 37945:8,13,14 37945:18 initials 37935:25 initiated 37979:25 initiative 37946:1 37979:18,20 injured 37907:11 38023:16 38094:10 innocent 38062:11 Inquiry 37908:10 38043:11 insensible 38098:4 inserted 38088:8 inside 38009:1 38090:2 insinuated 38059:11 insinuating 37959:15 37959:16,17,17 insinuation 37964:24 insisting 37943:6 insofar 37946:16 instance 37967:25 38026:23 38028:12 38066:9 instances 38052:13,21 instructed 37982:5 38021:9 38046:24 38074:13 38123:13 instruction 37999:25 38004:10 38058:9 38068:23 instructions 38004:5 38047:11 38073:1 38074:7,14 insufficient 38045:3 intelligence 38010:11 intended 37929:11 37949:9 37950:25 intending 37948:5 37958:2 intention 38007:19 38010:1 38027:12 38051:17 38099:10 38100:3</p>	<p>intentionally 37916:3,5 inter 37935:21 38072:3 interaction 38110:5 interactions 38109:14 interdict 37941:5,10,13 37941:14 37942:4 37945:9 37954:4 37979:11 38026:12 38028:1,2 38083:22 38097:24,25 38098:5 38098:8,13,22,24 38099:4,10,13,14 38116:21 interest 38072:11 38076:8 interested 37933:9,10 38006:21 38093:19 38111:16 interesting 37907:4 37948:19 38072:10 interests 38046:12 internal 38032:5 interpretation 38001:4 38021:4 38031:22 interpreted 37950:20 38088:7 38120:7 interrogatory 38004:6 interrupt 37962:14 37987:20 38015:21 38042:16 38071:17 38120:12,24 interrupted 37929:9,13 38011:17 interruption 37929:10 37929:11,15 intervention 37954:3 38114:17 interview 37957:5,7,9 37957:10 37961:12 37962:2,18,19 37965:10,25 37967:6 38011:15 38013:19 38033:5 inter-unions 37934:10 intimidating 38100:12 intractable 38079:11 38082:3 38100:16 introduction 38032:12 introspection 38104:24 invented 38034:25 38035:3 invested 38035:9 38063:1 investigations 38045:23 38046:5 38049:8 invite 37959:3 38080:20 38095:16 38101:9 involved 37908:12 37913:8 37928:12 37941:9 37957:5 37959:11 38015:12 38065:6 38077:17 38089:5,14,17 38090:21 38118:25</p>	<p>involvement 38076:6 involving 38090:16 irrational 38085:9 irrelevant 38038:6 38039:4 irrespective 38059:3,4 isn't 37925:16 37936:18 37938:14 37940:12 37944:3 37945:6 37949:10 37952:17 37956:16 37974:1 37985:16 38004:11 38014:21 38036:22 38053:9 38055:19 38057:25 38060:23 38121:19 issue 37949:14 37952:10 37953:22 37960:17 37961:13 37970:1 37976:9 37983:9,12 37984:19 37984:19,21,21,22 37985:23 37986:13 37986:17,20 37987:1 37989:25 37990:4 37992:6 37996:5 38007:6,7,7 38012:14 38035:14 38041:10 38043:4,10 38045:2 38059:17 38060:12 38060:19 38065:7,7 38071:7,9 38076:10 38077:20 38079:25 38090:19,22 38097:16 38119:7,19 38120:8 issued 37966:18 37968:11,13 37999:2 38006:2 38007:10 38008:19 38013:5 38081:14 issues 37960:5,6,14,20 37961:19 37970:5 37985:4 37986:16 37991:20 37996:7,15 38008:13 38015:6 38032:5 38035:17 38065:19 38091:16 38110:8,12 issuing 38001:20 item 37932:4 37933:24 37934:6 37935:19 38008:12,12 items 37934:6 It'll 37969:1 I'd 37916:17 37947:25 37952:4 37978:8 37986:10 38000:14 38006:23 38010:23 38017:19 38075:11 38084:11 38120:25 38123:1 I'll 37910:11 37971:14 37980:23 37985:18 37987:18 38018:3 38019:3 38039:4,25</p>	<p>38040:22 38053:20 38065:15 38103:4 38111:22 38116:12 I've 37911:24 37931:7 37952:13 37980:10 37998:23 38004:21 38011:16 38017:24 38034:23 38037:18 38037:24 38038:25 38039:4 38040:10 38045:4 38051:7 38054:25 38074:13 38075:7 38116:9</p> <hr/> <p style="text-align: center;">J</p> <p>ja 37909:10 37912:13 37912:15 37913:18 37913:25 37916:21 37919:20,22 37920:8 37950:17 37954:25 37974:12 37975:5 37984:12 38013:9 38015:1 38019:24 38025:2 38054:8 38071:1,4 38073:19 38077:5 38081:15 38086:4 38087:18 38090:6 38095:3 38097:12 38099:3,7 38103:1,2 38109:5 38111:3,5,12 38113:2 38117:12 38119:3 38122:2 Jack 38012:4 Jamieson 37909:21 37911:5,5 37912:23 37914:23 37915:13 38094:21 38115:16 Jamieson's 37932:2 38094:18 January 37917:22 37919:25 Jay 38012:4 job 37937:8 38015:12 38015:13 38016:4,5 38044:21 38049:20 JOC 38021:10 jog 38024:20 joint 37913:7 38006:9 joke 38067:5 Jomo 37913:13 38000:21 38002:1,5 38002:21 38003:12 38003:17 38004:16 38010:23 38011:2 38074:15 38103:21 Jones 38066:13 Joseph 37952:5 37953:3 37959:14 37960:19 37964:22 37965:11 37981:21 37987:25 37992:8 37998:7 38000:21 judging 37979:6 judgment 38004:19 July 37914:17 37925:2</p>
---	--	---	---	---

37934:3,7,17 37940:21 37943:3 37948:3,21 37949:6 37949:14,15 37950:5 37950:8 37951:2 37952:2,3,11,14,18 37953:2,3 37960:14 37961:6,10 37963:11 37996:8 38066:12 38083:19 38114:8 38115:4 June 37914:21 37922:9 37922:13,16 37931:20,21 37932:5 37940:21 37950:12 37963:4,11 38075:14 38076:21 38081:13 38083:25 38090:8 38091:10 38114:8 38115:4 June/July 38092:20 justice 38046:12 justifiably 38044:22	38098:9 38103:8 38104:23 38108:20 38110:5 kinds 38114:25 knew 37939:11,15 37947:14 37950:13 37953:18 37959:12 37959:16,17 37975:2 38022:22 38023:8 38026:10 38029:7 38031:5 38058:13 38060:11 38063:14 38064:18 38082:13 38082:17 knowing 38010:25 38029:22 knowledge 37932:23 38004:13 known 37930:18 37953:19 37968:15 37969:22 37978:8 38000:14 38008:15 38019:16 38029:9,16 38035:24 38049:18 38058:22 38060:7 38094:15 38095:2 38110:20 38117:8 38122:11 knows 37990:11 38063:10 koppie 37982:1 37986:4 37987:19 37994:9 37999:24 38000:17,19,23 38002:2 38006:19 38015:4,15 38016:6 38017:4,25 38018:2 38019:21 38020:4,14 38021:18 38023:22 38080:16 38084:3,10 38084:11 38092:1,6,7 38092:15,18,21,23 38093:9 38094:8 38100:17 38102:5 38107:8 38113:15 38119:7 38120:2 38122:4 38123:8 Koroba 37954:22 kosher 38006:18 Kwadi 37914:16,23 37941:23 37981:9,14 37981:20,22,24 37982:5,11 37983:7,8 37983:18 37987:23 37990:1,2,5 37991:16 37991:17,23 37992:3 37992:7 37999:6,13 37999:20,22 38000:2 38002:6,21 38004:5 38011:4,16 38016:11 38074:15,18,21,22,24 38075:2,4,9,14,15,15 38103:21,22 38122:2 38123:6,13,23 Kwadi's 37988:11	L	37947:15 38002:8 38010:23 38011:11 38011:15 38039:2 38047:6 38074:4 legislation 38063:17 legitimate 37909:19 37910:7 37911:11 38028:11 legs 37970:19 lesson 38058:5,7 lessons 38106:6,8,10,11 38107:12,19 38117:24 38125:23 38125:23 letter 37955:22,22,25 37956:4 37962:6,10 37967:22 37968:1 37986:7 38006:15 let's 37911:18 37916:15 37918:20 37924:25 37925:1 37940:16 37945:11 37973:4 37989:15 37995:14 37996:4 38001:5 38016:3,4 38021:24 38026:8 38068:17 38071:22 38088:24 38096:25 38099:14 38111:22 38114:4,18 38116:23 38116:23 38117:6 38120:10 level 37925:8 37958:4 38035:11 38056:14 38062:17,18,19 liaison 38088:11,16,20 38089:4,8 38090:1,8 38090:10,12,13 38091:13 liberty 38037:4 lie 37959:14 37964:23 37965:8 37966:6,10 37966:12 37967:3,18 37968:3,4,9 37997:4 37998:3 38056:25 38057:3 lied 37966:14 37997:6 37997:8,9 lies 37964:13 37965:3,7 37967:13 37997:4 life 38042:7,13 38076:10 38077:20 38090:19,23 38097:16 38105:20 light 38042:18 38062:5 limbs 38105:20 limited 37932:24 37945:3 37972:2 38024:24 38099:25 line 37924:2,3,5,25 37925:21 37926:1,1 37926:19 37943:12 37964:10,11,22,24 37969:17,18 37983:2 37983:3 37984:11 37987:23 37988:11	37988:25 37989:6,9 37989:17 38004:16 38005:20 38006:24 38013:16 38061:16 38063:12 38064:12 38074:9,17,19 38075:16 38091:17 38112:11 lines 38001:9 list 37942:16 37958:3 37961:5,8 38027:25 38103:8,14 listed 37942:10 38028:3 listen 37910:3 37971:14 38061:9 38086:18 38119:13 38121:14 listened 38002:23 38092:22,25 lists 38028:1 literally 38077:2 little 37989:8,11 37994:4 38036:19 38051:19,20 38125:14 live 37997:23 38050:11 38111:22 lived 37917:19 lives 37959:21 37965:1 38105:11 living 38060:5 local 37954:19 location 37940:25 lodging 38045:5 lofty 38117:7,9 logic 37931:11 long 37907:1 37915:8 37983:6 37985:1,2 longer 38007:6 38012:10 38021:25 38062:21 Lonmin's 37945:9 37969:19 38002:8 look 37913:12 37916:1 37916:15 37934:21 37935:5 37942:3,6 37945:11 37948:1,25 37953:16 37958:6 37962:10 37968:21 37976:6 37979:9,12 37980:12 37982:23 37989:6 37996:4 37999:21 38001:6 38008:14 38009:22 38012:7 38016:8 38019:4 38024:10 38045:13 38062:23 38063:13 38064:13 38072:24 38081:9 38085:25 38096:19 38102:2 38117:5,23 38118:3 38125:10 looked 37946:19 37998:22,25 38026:12 38074:24
---	--	----------	---	---

<p>looking 37924:23 37978:13 38008:11 looks 37952:6 losing 37909:17 37910:5 37911:7,9 37915:4,24 37931:3,4 loss 37922:25 38042:6 38053:13 lost 37906:9 37909:24 37911:15 37912:1 37914:3 37933:18 37939:9 37970:9 37975:3 38014:3 38042:13 38045:23 38080:13,25 38105:11,20 lot 37910:21 37949:23 37949:25 37961:19 37978:16 38049:17 38052:25 lousiest 38085:19 love 38033:10 loved 38045:24 38051:22,23,25 38052:15,20 38054:16 38057:19 38066:6 lower 38062:17,18 38114:18 LPD 37963:25 38016:11 38032:9 38112:8 LRA 37942:19 38062:4 38062:4 lunch 37906:6 38011:7 38022:4,10,14 38033:17 38074:5 lying 37964:9,17 37967:16 38110:25 38111:1</p> <hr/> <p style="text-align: center;">M</p> <p>M 37917:12 Magara 38066:13 38067:3,8,14,24 38068:3,14,18 38069:24,25 38070:14,25 Magidiwana 37945:16 mail 38021:6 maimed 38105:21 main 38007:16,20 38047:8 maintain 37946:2 38015:14 major 37937:10,23 38097:4 majority 37909:25 37945:22,23 37946:7 38031:8 38032:9,10 38032:11 38058:14 38100:13 38116:24 making 37938:24 37942:20 37966:2 38007:21,25 38008:3 38042:21 38044:14</p>	<p>38044:25 38068:5 38077:18 38081:1 38102:22 man 38013:25 managed 37963:8 management 37908:13 37916:23 37917:11 37920:11,13,25 37923:17 37924:10 37927:4,5 37943:6 37948:5,24 37949:10 37956:13 37959:1,4 37969:20 37976:11 37985:2,11 37993:21 37993:22 37996:9,11 37996:14 38001:21 38001:24 38003:10 38005:9,11,23,24 38008:2 38025:5 38026:3 38028:9 38046:25 38055:23 38064:4 38076:3 38080:13,17,21,21 38081:1,3 38089:25 38091:25 38094:7 38108:23 38112:9 manager 37988:14 38004:21 38049:20 38075:16,17 38091:17,18 38092:7 38092:21,23,25 managers 37912:14 37913:11 38018:12 manages 37988:15 managing 38026:16 38086:19 38088:2,10 mandate 37981:15 37984:22 37985:7 37986:21,23 37987:3 38069:1,3 manner 37931:12 37950:19 38042:13 38063:19 march 37925:3 37953:4 37954:5,14 37954:17,18,21,24 37955:5,6,10 37957:21,23,24,25 37958:24 37963:21 37963:21 marched 37922:10 37960:9 37962:23 38112:8 marchers 38025:8 marches 37954:3 marching 37957:17 37958:16 37960:2 38023:10 Marikana 37954:14,18 37954:20 37983:13 37990:4 38064:21 38079:14 Maropeng 38066:14 38067:3,24 38069:24 38069:24 masse 37920:11</p>	<p>massive 37921:17 material 38037:20,21 38111:17 materialise 38117:10 Mathunjwa's 37946:14 37946:19,23 37948:25 37950:24 37952:21 37962:10 37988:19 38017:18 38121:15 38123:16 matter 37909:13 37922:15 37926:4 37931:11 37937:7,11 37940:23 37951:17 37973:4 37978:14,24 38006:13,14 38009:16 38021:2,3 38021:13 38065:24 38070:11 38076:14 38091:19 38096:13 38097:25 38100:19 38101:25 38102:2,4 38106:24 38123:3 matters 37921:16 37936:21 37943:18 37944:18 38011:13 38088:15,17 mayhem 38093:20 mayor 37954:16,16,17 Mbombo 38001:6,22 38003:5,9 38004:14 38005:3,12 38006:1,5 38006:23 38007:1 38008:4 38010:19 38011:21 38013:4,13 38025:13 38077:12 38101:3,24 McElligott 38047:6 mean 37924:13 37972:16 37974:16 37975:18,19 37984:11,14 37988:8 37990:23 38010:20 38010:22 38024:2 38029:11,15,17,19 38030:6,13 38034:15 38035:21 38036:8 38037:20 38078:8 38082:2 38085:2 38100:22 38104:11 38104:14 meaning 37926:18 37963:16 38013:23 38026:25 38027:10 means 37925:15 37996:12 38009:23 38022:10 38029:11 38030:9 38036:25 38062:19 38088:6,22 38089:4 38093:4 38120:10,14 38121:8 meant 37968:2 37975:11,21 37976:4 37990:8 38016:7 38026:20 38029:20 38030:15 38067:14</p>	<p>38107:2 measure 37907:14 measures 38067:25 mechanisms 38062:24 media 37995:4,7 37997:14 37998:6 38005:8,10,22,24 38007:10 38008:1 mediator 38061:11 meet 37919:17 37932:9 37969:24 37970:4 37980:25 meetings 37923:7 37928:1 38110:19 38111:14 Melrose 38116:11 member 37912:25 38075:20 38076:9 38077:19 members 37909:24 37911:15 37912:1 37914:4 37933:18 37939:10 37957:17 37957:19,20,21 38052:20 38053:18 38082:21 38099:21 38101:3 membership 37932:20 38032:16 memo 37914:16,23 memorandum 37948:5 37948:24 37949:10 37951:1 37953:17 37956:11,12,12,15,18 37958:17 37959:3 38026:17,21 38029:21,24 38075:13,24 38076:20 38090:17 memory 38024:21 mention 38095:19 mentioned 37911:20 38021:7 38124:14 mere 37950:20 38108:23 merely 37916:6 37971:22 37972:6 38095:16 merits 37973:4 38096:12 message 37967:8 38010:9 38018:10 38024:6 38085:7 38093:1 messages 37986:6 38015:8,11 38018:3,6 met 37940:22 38101:24 microphone 37925:24 37926:10 38037:10 38098:23 38107:22 38108:6 mid 37996:8 middle 37929:8 37984:12 37985:5 37996:8 38001:10 MIGDETT 38109:24</p>	<p>38110:2 Mike 37925:6 37940:22 38090:9 38091:11 million 38040:3,6 mind 37906:10 37965:19 37978:13 37984:16 38002:13 38017:4 38067:9 minds 37924:14 37930:13 mine 37922:10 37996:25 38025:4,7 38026:3 38041:7 38076:3 Miners 37917:11,11 37920:5 mines 37919:19 mineworkers 37918:8 38052:2 mining 37948:4 38079:3 38114:24 Minister 38065:6 38110:13 38111:13 minute 37931:25 37932:1 37934:3,4 37980:14 37993:12 37998:24 38073:1 38123:3 minutes 37906:24,24 37907:3,6,6 37908:5 37956:23 37992:14 37992:15,17 37993:2 37993:4,5,11,20,20 37994:7,17 37998:22 38022:2,14,19 38033:19,23 38071:7 38072:1,1,2,2,7,13,16 38072:22 38073:1,6 38108:2 38125:19 misbehaving 38056:8 misinformation 37998:15 misinterpretation 37934:20 misinterpreting 38059:12 misleading 37972:15 37972:17 missed 37954:20 missing 37912:19 37943:11 37960:5 38088:8 mistaken 37993:15 38111:2,3 misunderstanding 38070:3,3 38100:6 mitigation 37932:12 37933:7,13 Mkhise 37925:7 Mm 37969:12 Mogele 38002:24 Mokwadi 37987:23 moment 37910:12 37980:23 37985:18 37989:2 37995:14 38050:13</p>
--	--	--	--	---

<p>Monday 37978:18 37992:23 38024:12 38024:14,15 38025:15 38026:2 38031:12</p> <p>money 37927:6,25 37943:25 37944:6 38038:15</p> <p>month 37928:2 37937:22 37942:22 37944:19 37971:4 38036:18 38037:3,23 38039:3 38040:16,25 38041:23 38044:5 38068:12 38076:5 38083:19 38107:2</p> <p>months 37962:24 38100:3</p> <p>moral 38059:10,12,17 38060:12 38062:13</p> <p>morning 37908:7,8 37952:1,4,25 37967:22 37981:8,22 37997:5 38013:5,20 38016:10 38024:12 38025:15 38049:11 38083:21 38103:15 38113:19 38114:14 38125:22 38126:5</p> <p>motivate 38070:11</p> <p>motivation 38058:11</p> <p>mountain 37969:24 37983:14 37984:23 37986:20 37987:3 37988:2,5 38001:19 38010:15 38015:7 38105:3,7,12,16,19 38105:22,24</p> <p>move 37969:4 37992:10 38012:1,2 38039:25</p> <p>moved 38070:10</p> <p>moving 38069:23</p> <p>Mozambique 38053:1</p> <p>Mpembe 37968:23 38013:16 38015:11 38015:17 38016:13 38016:19,21 38024:21,25 38033:7 38101:3,24 38102:3</p> <p>Mpembe's 38015:2</p> <p>Mpofu 38072:13,15 38073:12,13,16,20 38108:1,4,7,8,11,14 38108:18,22,25 38109:3,5,8,13,18,23 38110:3,7,12,18,23 38111:3,6,9,12,21 38112:5,11,16,19 38113:1,3,9,11,22 38114:3,11,15 38115:6,9,11,25 38116:2,5 38117:5,12 38118:5,10 38119:3 38119:12,25 38120:5 38120:9,21,22</p>	<p>38121:1,13,21 38122:2,10,21,25 38123:4 38125:12,16 38125:20,25 38126:3 38126:6</p> <p>Mthatha 38066:13</p> <p>municipality 37954:15</p> <p>murder 38007:18</p> <p>murdered 38061:24</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>Naidoo 38025:24</p> <p>naivety 38000:18</p> <p>name 37935:25 37945:17 38027:16</p> <p>names 37942:9,15 38027:2 38028:1</p> <p>narrate 38118:24</p> <p>narrating 38118:20</p> <p>narrow 38045:2</p> <p>nation 37961:25</p> <p>national 37960:13 38011:1 38025:25 38031:10</p> <p>natural 37979:9</p> <p>nature 38038:13 38041:24 38042:20 38091:19 38112:16</p> <p>necessarily 37937:8 38050:12 38080:17 38080:25 38083:10 38084:7 38090:13 38096:18 38107:4 38111:1 38114:22 38115:23</p> <p>necessary 37923:25 37978:23 38004:6 38009:14 38078:12 38083:11</p> <p>necessities 38066:10</p> <p>necessity 38125:3</p> <p>need 37906:17 37920:22 37936:7 37937:11 37954:4 37957:13 37960:24 37986:15 37991:25 37993:1,11 38004:19 38011:24 38012:2,3 38012:20 38013:14 38013:24 38038:3 38044:17 38088:16 38104:24,25 38118:3</p> <p>needed 37975:8 37976:22 37985:19 37985:20 38049:10 38064:5</p> <p>needs 37934:24 38043:5</p> <p>negative 38023:23</p> <p>neglected 37959:4,5</p> <p>negotiate 37982:2 37984:15 37985:21 37988:4,9 38015:5 38024:7 38061:11 38081:17,17,17,23,23 38081:23,24 38097:7</p>	<p>38122:6,23 38123:9 38123:17 38124:5,13 38125:4</p> <p>negotiated 38042:6 38072:3 38080:8 38091:20</p> <p>negotiating 37933:19 38005:7 38121:17</p> <p>negotiation 37923:24 37926:25 37928:3 37930:15 37931:14 37984:25 37985:12 38019:7 38085:20 38124:8</p> <p>negotiations 37908:12 37908:25 37916:20 37920:6 37924:8,10 37924:11,18 37925:6 37925:12,14 37926:3 37926:14 37927:13 37927:15,19,20 37930:21,24 37932:10 37933:3,11 37934:13,18,22 37935:3,5,6,7,9,10,11 37935:25 37936:6,16 37937:2,16,21 37938:1 37939:25 37940:5,7,12 37943:7 37962:3,6 37985:17 38015:13 38026:16 38079:6 38085:19 38089:18</p> <p>negotiator 37909:12 38078:25</p> <p>negotiations 37935:12</p> <p>neither 37996:21 38002:15 38083:2</p> <p>Nemo 38072:19</p> <p>net 37921:14</p> <p>never 37926:14,15 37947:2,4 37952:21 37953:1 37954:5 37958:22 37960:1,2 37961:8 37964:3 37971:18 37972:9,10 37972:21 37973:2 37979:16 37980:8,25 37989:25 37990:2 37994:25 37999:17 37999:18 38001:15 38001:15 38002:13 38002:22 38047:3 38048:19 38067:24 38068:1 38096:7 38097:20 38102:10 38104:15 38122:7 38124:25</p> <p>new 37933:19,19,21 38100:3 38109:9 38118:1</p> <p>News 37957:9</p> <p>newspapers 37920:18 38048:2</p> <p>nice 37926:17 38118:15</p> <p>nicely 38012:22</p>	<p>night 38021:8,12 38031:12</p> <p>nine 37978:18 38010:9</p> <p>Nkalitshana 37999:8 37999:23 38000:3,10</p> <p>nod 38034:19</p> <p>nominate 38089:15</p> <p>non 37946:3,3 38072:19</p> <p>non-operational 38094:21</p> <p>norm 38061:21 38091:1</p> <p>normal 37931:5 37989:20 37991:19</p> <p>normally 38027:1,1 38029:21</p> <p>note 37984:25</p> <p>noted 37943:4</p> <p>notes 37919:18</p> <p>notice 38005:7,21 38012:23 38013:1 38099:16 38100:2 38103:23</p> <p>noticed 38087:21 38095:10</p> <p>notification 37933:16</p> <p>notifying 38100:1</p> <p>notion 38121:6,8</p> <p>November 37917:9 37946:16</p> <p>Ntathe 38078:21</p> <p>Ntsebeza's 38038:18 38073:25</p> <p>NTSONKOTA 37971:6,10,12,16,21 37971:24 37972:5,8 37972:14,18,21 37973:1,6,10</p> <p>number 37907:4 37912:4,5 37915:3,4 37917:19 37928:11 37932:18 37969:2,7 37982:20 38005:6 38007:21 38023:15 38025:5 38037:16,17 38039:7 38042:10,12 38068:7 38108:19,19</p> <p>numbered 38001:10</p> <p>numbers 37984:20 38037:19 38100:2</p> <p>numerous 37963:9 38058:18 38083:17</p> <p>NUM's 37972:24 37975:9</p> <p>Nyala 38019:7,8,10 38094:10 38105:25</p> <p>Nzuza 37945:14</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 37906:11 37918:13 37957:1 37992:20 38022:18 38068:5,9,20 38078:17 38116:15</p> <p>obdurate 38084:14</p>	<p>obey 38013:6</p> <p>obeying 38107:6</p> <p>object 37928:14 37936:17</p> <p>objected 37936:17</p> <p>objection 37928:19 37930:4 37946:5 37971:8,12 37972:1 37972:13,14 37973:13 38039:20 38056:22 38057:21 38069:20 38124:12 38124:19</p> <p>objectionable 38087:15 38091:4</p> <p>objections 37972:4</p> <p>objective 37971:16 37972:8,11</p> <p>obligations 37990:7,13</p> <p>observe 38063:8</p> <p>obtain 37977:21</p> <p>obtained 38027:16</p> <p>obtaining 38099:11</p> <p>obvious 38083:14 38115:19</p> <p>obviously 37917:21 37991:19 38004:19 38007:7,13 38016:5 38019:13 38057:15</p> <p>occasion 37950:13 37958:11 38050:25 38123:17</p> <p>occasions 37909:3 38009:4 38033:9 38091:15,18 38101:24</p> <p>occur 38060:8 38117:16,21 38125:6</p> <p>occurred 38032:14 38074:10 38083:17 38083:19,21,22,24</p> <p>occurrence 37924:16</p> <p>occurring 37932:11 37933:6,13,15</p> <p>October 37932:11 37933:3,3</p> <p>offer 37927:6</p> <p>offered 38092:9</p> <p>office 37922:10 37925:3 37938:5 37958:16 38116:11</p> <p>offices 38023:11,11</p> <p>officials 37999:23 38023:11 38024:17</p> <p>oh 37926:1,13,15 38005:9,23 38073:7 38079:22 38081:25 38086:17 38087:11 38088:3 38101:1 38103:11,22 38108:8 38108:10 38115:23 38116:10</p> <p>okay 37911:14,18 37914:8 37919:5 37924:3 37928:2 37956:20 37959:25</p>
---	---	--	---	---

37981:5,12 37983:11 37984:9 37987:25 38001:9 38010:3 38015:1 38048:13 38060:17 38062:19 38076:19 38080:6 38085:24 38094:23 38095:24 38109:8 38111:7,21 38113:1 38117:5 38121:4 38126:6 OLEFILE 37906:12 38078:18 omission 38088:3 onboard 37979:24 37980:2 once 37943:25 37977:9 37977:25 37980:15 38067:1 38068:12 38075:17 38081:16 ones 38027:20 38045:24 38051:22 38051:23,25 38052:15,20 38054:16 38057:19 38066:6 38103:14 38109:19 one-one 38099:24 onwards 38077:3 OO2 37995:6 OO4 37982:21 open 37934:18 opened 37935:8,11 38023:12 opening 37934:22 37935:2,6,7 37936:6 37937:16 37976:24 37979:25 operate 38057:24 38059:2,6 38124:14 operated 38063:25 operates 38097:6 operating 38062:20 operation 37997:1 38101:11 38122:20 operational 37934:8 37935:20 38086:23 38095:10 operations 37948:5 37983:13 operators 37908:16 37909:2,8 37916:19 37916:24 37917:5,18 37919:1 37921:8,15 38039:24 38041:6 38042:18 38043:17 38044:2,4,12,13,17 38045:14 38057:24 38107:4 opinion 37934:8 37935:14,17,19 37936:2,3,21,24 37937:4 37939:8 37940:9,10,15,15,20 37954:8 38079:15,18 opportunists 38012:11	opportunity 37931:16 37940:24 37967:17 37971:18 37973:7 38012:11 38030:23 38046:17 38124:3 opposed 38101:21 38117:13 option 37933:17 options 37936:5 38106:2 oral 37936:21 37937:4 37940:19 orally 37940:11 order 37954:12 37958:5 37976:8 37977:20 37991:3,20 37996:25 38008:23 38044:10 38060:9 38088:12 ordinary 38036:20 organisation 38032:18 38044:20 38065:5,6 38066:4 38109:11 38124:4,6 38125:11 organisational 37932:24 organiser 38011:1 38032:6 orientate 37998:21 origin 38032:8 originally 38023:14 originates 38096:5 outcome 37913:13 38019:25,25 38079:14 38085:6,17 38114:13 38116:19 38117:2 outset 38088:4 outside 37917:13 37927:24 37959:6,24 37970:2 37989:14 37990:18,23,25 37991:5,19 37992:5 38008:10,14,20,25 38030:16 38055:11 38055:23 38057:24 38061:9,22 38063:25 38070:15 outsider 37935:5 outstretched 38073:23 overseas 37919:7 overtures 38121:15 overwhelming 37919:16 37945:23 owe 38079:10 o'clock 37925:2 o'clock 38021:22 38024:12,16 38025:1 38025:3 38072:22	38041:3 pain 38052:3,6 painfully 38054:25 38059:1 paining 38051:4 papers 37941:13,19 paperwork 38010:14 paragraph 37936:12 37942:14 37943:3,8 37948:2,15,16 37949:1,2,4,4 37950:23 37951:14 37951:18,25 37952:4 37952:24 37953:16 37981:12,13,19 37984:10 37995:17 37996:4,19,20 37999:21 38005:5 38012:21 38016:9 38018:19 38025:2,3 38076:2,13,24 38077:7,13 38086:6,8 38088:2 38089:13 38112:12 38121:23 paragraphs 37951:13 37951:23 37964:19 38055:3 paraphrase 37958:18 paraphrasing 37959:1 parcels 38066:20,21 38068:12 pardon 38078:5 park 38050:21 38063:16 part 37920:23 37931:10 37951:1 37952:20 37958:23 37958:25 37968:7 37984:6,13,22 37985:19 37988:8 37990:13 38032:4 38035:20 38049:14 38054:21 38079:11 38085:5 38092:1 38095:8 38097:21 38104:6 38105:5 38119:14 partes 38072:4 participant 38119:6 participate 38109:1 participated 38109:14 38109:24 38118:21 participating 37942:18 particular 37933:2 37964:15 37965:18 37975:14 38006:12 38016:20 38025:5 38038:21 38049:11 38064:15 38066:11 38076:8 38086:14 38100:13 particularly 37919:1 37922:18,23 37923:3 37943:12 37979:6 38006:15 38079:2 38088:2 38092:25	38109:19 parties 37928:11 37937:17 37938:12 37938:20 37979:7,15 37980:25 37985:20 37990:8,13 37996:24 38006:8 38015:3,7 38022:12 38072:10 38072:11 38082:22 38085:3 38100:8 partners 37965:20 37979:11 parts 37983:23 37984:5 party 37913:15 37980:1 38104:16 pass 37946:11 passage 37924:23 37925:17 37928:19 37929:25 37969:14 37969:15 37974:14 37975:12 37986:9 37987:6,7,21 37989:11 38028:4 38075:12 38123:6 passant 38094:17 passed 38032:2 38047:6 38087:2 pattern 37931:18 pausing 38103:23 pay 37994:10 38044:16 38044:17 PC 38011:25 38012:12 peace 37995:22 38015:14 peaceful 38125:5 peers 37939:21 pen 37966:12 people's 38035:14,17 38065:19 perceive 37929:21 37930:15 perceived 37928:24 37929:19,20 38058:5 percentages 37918:25 perception 37916:8 37927:14,18 37928:7 37928:9,10,13,16,25 37929:17 37930:20 38040:11 performed 38107:12 period 37932:21,23 37940:21 37941:1 37973:11 38046:5 38049:8 38076:23 permission 37954:15 37954:17 38071:15 38119:23 38120:3,8 permitted 38078:9 perpetuation 38061:12 person 37925:11,13,16 38091:17 38110:25 personal 38092:5,5,13 personally 37958:1 37997:23 38006:1 38029:4 38067:15 38092:6	perspective 37926:21 37926:23 37928:3 38092:13 persuade 37982:1 38008:23,24 38009:19 38010:18 38022:24 38081:6 38122:4 38123:7 persuaded 38062:1 38082:7 pertaining 37946:23 Peter 38047:6 phenomenon 38110:15 38110:20 Phiyega 38025:25 38030:20 38031:11 phone 37949:7 37996:8 phoned 37948:20 37954:12,19 37958:1 37960:16 37981:14 photographs 38028:19 38028:20,20,22 38029:2 38031:14,15 phrase 37924:17 phrased 37911:6 37944:7 38089:13 physical 37936:7 38052:4 physically 38002:22 38036:1,13 picked 38008:20 piece 37926:9 38063:17 Pillay 37928:6 37969:6 37969:8 37982:19,21 place 37908:12 37922:12 37932:12 37933:7 37957:14 37967:19 37977:19 37983:14,19,21 37985:17 37990:18 37993:6 37999:7 38009:13 38010:5 38017:8 38046:19 38047:4 38048:6 38049:7 38061:5 38065:22 38067:25 38122:15 places 38012:18 placing 37971:24 37972:6 plainly 38083:13 plan 38012:21 38014:25 38015:24 planning 37910:12 37911:20 37912:20 37915:19 37922:5 38008:12 plans 38007:2,3,5 38013:2,19 platform 38092:17 platinum 37918:7,16 37918:22 37996:9,17 play 38001:14 38014:21 38087:5 played 38017:24 38018:1
--	--	--	---	--

<p>PLC 38034:6 plea 38009:4 please 37906:6,21 37910:23 37924:24 37925:20 37929:12 37932:3 37942:5 37955:17 37959:3 37972:3,4 37973:16 37984:8 37989:5 37992:15 37995:7 37996:20 38016:3 38017:5 38018:7,15 38024:23 38035:25 38065:22 38084:3 38102:2,4 38103:15 38107:23 38120:9 38121:14 38125:17 plus 38072:3 point 37906:14 37909:22 37911:5,6 37923:23 37924:16 37926:6 37930:23 37931:9 37932:8,19 37934:12 37935:3,23 37946:8,9 37952:9 37953:18 37955:15 37959:11 37961:12 37961:12 37964:13 37966:15 37967:12 37985:16,16 37988:6 37990:14 37991:14 38007:8,24 38008:3,9 38008:9 38019:16 38027:6 38042:1 38043:8 38057:5 38059:11,21 38063:2 38070:17 38081:1 38083:4 38085:13 38091:16 38096:13 38096:19 38099:15 38104:17 38111:18 38117:12 38121:10 38121:14 38124:24 pointed 38123:4 pointing 37945:18 points 37941:2 37973:11 38064:17 38079:24 38096:15 police 37954:19 37986:22 37987:5 38007:1,14 38008:24 38009:14,23 38010:19 38013:7,18 38013:22 38014:13 38014:16,25 38015:5 38015:23 38016:5 38021:11 38025:16 38028:5 38030:5,8,12 38030:16 38031:20 38052:1 38054:16 38064:21,23 38065:4 38065:21 38072:10 38083:13 38084:2 38088:8 38093:16 38101:2 38106:1,6 38125:4,23</p>	<p>policemen 38009:9 policies 38086:25 38088:6 38097:3,12 policy 37970:24 38086:22,24 38087:7 38087:20,20,22 38088:1,3,4,5 38089:22 38094:19 38095:1,22 38097:5,6 38097:10,21,22 political 37934:8 37935:20 37973:10 38012:4 Pondoland 37918:6,17 37918:22,25 37919:13 poor 38010:11 population 37937:19 portfolio 38062:24 portion 37923:25 position 37908:11 37926:8 37940:5,7,16 37959:23 37965:16 37967:24 37969:19 37969:20,20 37970:4 37972:24 37978:14 37979:13 38015:2 38034:5 38038:12 38040:13 38054:2,23 38068:25 38069:4 38072:25 38079:11 38081:4 38082:4,13 38082:19 38084:14 38100:16 38101:17 38108:16 38113:19 38116:19 positions 38005:6 possession 38074:23 38075:5 possibility 37934:18 37937:21 37979:5,15 38093:9 38116:16 38123:25 38124:7 38125:9 possible 37932:10 37933:11 37961:15 38004:4 38077:14 38085:13,14 38094:20 38123:15 possibly 37906:14 38011:11 38070:22 38083:19 38111:2 post 38027:3 post-August 37931:17 potential 37936:14 37980:12 38105:20 38113:25 38114:19 potentially 37934:13 37935:24 37937:1 power 37930:17 38070:22 powers 37931:10 38070:8,21 practical 37926:5 practice 38028:15 38042:5 38063:14</p>	<p>38064:16 38091:1,16 38095:13 38098:7 38099:1 38102:7,22 practise 38061:21 38118:1 precedence 37996:12 precedent 37937:19 37965:16 37976:25 37996:12 38055:11 38056:3 38061:1 38081:11 38123:21 38124:14 preceding 37948:15 37974:5 precincts 38048:23 precise 37989:10 precisely 37948:22 38004:7 38026:11 38120:14 38121:12 prefer 37985:10 preferable 38093:13 prejudicial 38057:1,9 premise 37961:9 premonition 37930:18 premonitory 37931:10 preoccupation 38007:16,18,20 preparation 38049:3 38049:14 38050:23 38095:8 prepare 37934:8 37935:15,18,19 37936:2 38049:11 prepared 37914:16 37920:16 37933:23 37936:4 37970:7 38004:22,24 38005:16 38062:23 38063:3 38071:16 38094:8 38118:20 38124:13 preparing 38086:16 prerogatives 37990:7 prescribe 38068:9 prescripts 37954:1 38063:7 presence 37953:11 37978:22 38009:14 38064:21 38098:13 present 37920:23 37948:24 37993:13 37993:14 38017:9 38024:17,18 38031:15 38047:7,19 38060:19 38075:23 38075:24 38097:23 presentation 38026:17 38051:23 presented 37913:2,23 37914:18,21 37915:20 37927:20 37929:17 37937:5 37949:24 37988:16 38001:21,24 38003:10 38026:18 38028:9 38032:6</p>	<p>38045:13 38058:13 38059:17 38076:14 38076:20 presenting 38027:11 38028:12 38029:23 38056:19 presently 38075:5 president 37990:10 38034:6 38061:10 38078:24 38081:15 38081:22 38108:15 presidents 38013:20 38014:14,23 38015:22 38017:8 38018:17 President's 38082:1 press 37965:22 37966:7 37966:18 37967:3,12 37968:10,12,20 37997:3,9,9,10,16,20 37997:20 37998:3,19 37998:25 37999:2,4 38005:8,14,15,21 38006:2 38008:1 presumably 37908:10 37908:16 37909:6 37914:11 37916:25 37921:11 37922:17 37922:22 37926:22 37932:13 37933:8 37946:13,16,19 37951:22 37970:5 37993:4 38008:22 38019:2 38039:23 38090:15 presumes 37974:4 previous 37915:23 37925:25 38025:7 previously 37928:5 37966:7 38074:14,24 38121:8 prima 37988:10 38007:13 primarily 37942:21 principle 37926:5,5 37940:2 37965:13,17 37965:20 37967:9 37968:1 37976:23 37986:7 38055:16 print 38012:16 prior 37951:21 37959:13 37966:20 priority 38010:3 privy 38067:13 probabilities 37932:11 37933:6,12 probability 37919:15 probable 37933:14 probably 37949:17 37951:2 37997:13 38030:18 38081:16 38095:2 38118:3 problem 37937:13,13 37986:5,19 37991:20 37994:6,7 38007:5 38014:1 38061:7</p>	<p>38085:2,3 38091:7 38093:3,12 38101:6 38104:8 38107:3 38118:11 38124:11 problematic 37962:4 problems 38025:7 proceed 38033:15 38117:4 proceeding 38007:21 PROCEEDINGS 37906:1 process 37933:19 37959:3 38044:14 38083:25 38099:24 38100:1 38106:17 produce 37910:16 37912:14 38083:8 production 38035:11 program 37997:8 programme 37966:6 37966:11,15,21 prolonged 37932:20 promise 38067:19,20 38071:2 38106:7 promised 38066:15 38106:7 proof 37910:23 38076:5 proper 37971:20,23 37972:1 38093:9 properly 38042:6,6 38045:24 38046:3 38063:13 38064:12 property 37970:2 proposal 37982:6 37991:6 38121:15 38123:14 proposed 37989:15 proposing 37991:18 37992:4,13 proposition 37915:10 37915:12,13,14 37929:23 38056:10 38056:11 38057:6 38091:5 38105:18 38112:20 protect 38012:3 38098:8 protected 38063:19 38094:10 protection 38098:22,24 38106:1 protesters 38025:9 38026:4 38027:18 38028:23 protracted 37920:10 prove 38059:11 provide 38066:10 38089:25 provided 38016:11 38092:3 provides 37975:7 provincial 38011:22 38012:19 38076:22 38077:24 38126:2 provisions 37942:19</p>
--	--	---	--	---

<p>pro-active 37996:14 prudent 37998:1 38098:8 public 37917:16 37920:19 37932:22 37959:15 37964:23 37968:13 37995:22 37997:25 38015:14 38016:6 38040:9 38057:9 publicly 37998:9 published 38037:20,21 38040:7 punish 38058:20 38060:9,15 pure 38099:13 purely 38003:5 38028:13 38060:15 purport 38020:12 purports 37993:2 38000:11 purpose 38016:6 38045:22 38109:8 purposes 37920:23 pursuant 37940:10 pursued 37974:1 pursuing 37922:24 37944:11 38099:10 pursuit 37943:14,19 push 38041:8 put 37926:2 37928:6,9 37928:10 37929:16 37929:24 37930:3,12 37930:14 37931:8 37932:12 37933:7,24 37946:6 37967:2 37971:9,17 37972:10 37972:22 37973:2,11 37976:23 37986:11 37990:2 38003:22 38021:7 38033:16 38043:8,9,16 38044:3 38044:24 38046:22 38050:16 38053:14 38056:10,11,14 38057:6,20 38062:18 38064:25 38067:25 38069:3,4 38074:1 38090:19 38093:24 38098:19 38111:7,12 38112:19 38114:18 38120:20 38121:22 38124:24 puts 37948:22 38068:24 putting 37987:8,22,23 37994:1,4 38062:16 38063:24 38064:3 38065:17 38105:17 38106:18 38111:25</p> <hr/> <p>Q quality 38035:10 quarter 37906:5,8 38022:10 quelled 38113:24</p>	<p>38114:17 query 38033:17 questions 37910:13,25 37920:17 37962:15 37962:16 38058:3 38107:24 38124:6 38125:19,20 qui 38072:19 quickly 37911:2 37958:3 38013:11 38018:14 38024:10 38078:9 quite 37921:11 37930:8 37945:24 37946:15 37953:19 37993:10 38005:6 38070:6 38072:10 38114:24 quote 37925:9 quoted 38090:18</p> <hr/> <p>R radio 37960:13 37964:15 37966:5,11 37966:15,20 37967:16 37997:5,8 raise 37928:7,8 37971:12 38103:5 raised 37928:5 37947:16 37952:10 37986:19 37987:2 37991:21 38038:19 38097:16 38103:4 raising 38043:18 38062:17 38070:17 Ramaphosa 38078:24 38109:6 ramifications 38084:13 rand 38040:3 range 37921:8 rational 38085:8,10,10 rationale 38055:1 38081:4 RDO 37924:16 37937:11 37945:17 37946:3 37976:9,14 37985:23 37989:25 37990:4 38036:24 38039:9,22 38055:15 38076:6,10 38077:20 38090:19 38112:13 38122:7,13 RDO's 37925:2 reach 38057:7 react 37971:18 reacted 37997:15 reaction 38111:18 read 37920:8,18 37924:25 37926:11 37929:24 37936:13 37947:9 37948:11 37957:14 37960:23 37960:24 37974:14 37986:25 37987:6 37988:18 37989:11 37989:12,15 37994:21 38000:2</p>	<p>38012:20 38014:8 38048:2,3,11 38075:10 38076:25 38088:5 38089:11 38090:10 38097:2 38102:16 38116:9 38123:6 reading 37967:14 38013:3 38014:4 38020:3 38024:23 38095:9 reads 38076:2 38089:22,23 ready 37941:16 38034:1 real 37926:18 37985:11 realise 38078:6 realised 37966:22 reality 37915:2 37916:6 38068:15 really 37913:7 37916:16 37920:22 37924:15 37927:23 37939:12 37946:8 37952:9 37957:9,11 37958:25 37963:17 37975:10,12 37978:23 37979:14 37985:16 37991:15 37991:16 38014:21 38014:23 38018:5 38024:24 38036:9 38064:7 38096:20 38104:7 38111:25 38124:23 38125:14 realm 37929:21 reason 37915:22 37917:4 37935:8,10 37937:16,18 37939:4 37944:8 37953:17 37961:6 37970:10 38004:17 38006:5 38008:19 38027:10 38054:21 38059:18 38061:4 38067:19 38081:9 38082:3,6 38086:24 38088:12 38088:23 38089:3,7 38099:4 38124:13 reasonable 38065:23 reasons 38041:17 38055:2,10,18 38057:16 38091:24 38092:1 38094:3 38095:18 38099:13 38099:17 38123:15 recall 37938:4 37999:8 38024:17,18 38025:10,11,18,22 38031:17 38112:24 receive 37950:18 37956:3 37958:17 37997:17,23 38019:1 38026:21 38070:11 38073:14,24 38091:14</p>	<p>received 37949:7 37953:17 37956:12 37958:15 37961:8 37962:2 37996:8 38017:11 38023:22 38066:20 38095:7 38114:9 38125:23 receives 37951:15 receiving 38009:6 38029:21 reception 38023:23 recognise 38062:22 recognised 37915:5,6 37915:25 37956:13 37990:23 37996:15 38030:1 38057:25 38059:3,5 38062:20 38090:7 recognising 38099:24 recognition 37933:16 37933:19 37990:11 37991:11 38097:13 38099:19 38100:4,9 38100:14 recollection 37935:2 37951:7,10 38100:21 record 37971:24 37972:6 38033:16 38034:14 38039:20 38047:5 38102:7 recordal 38020:11 records 38102:7 recorded 37915:19 37945:9 37981:22 37982:12 37993:21 37994:17 38002:6 38008:8,17 38009:4 38076:22 38102:17 38102:24 38103:9 38126:1 recorder 38011:7 recording 37981:23 37999:6,13,14 38001:2,13,14 38002:3,5,17,17,20 38002:23,23,24 38003:2,6,25 38004:3 38004:8 38008:15 38010:5,6 38074:10 38074:12,14,16,19,21 38074:23,25 38075:5 38102:10,11,11,15 recordings 38075:2 38102:19,23 38103:17,19,20 recording's 37999:17 38002:8 records 37932:4 37934:23 37942:25 37943:17 38029:10 recruited 38032:6 recruitment 38032:12 38032:16 refer 37962:7 37964:14 37964:19 37969:16 37983:23 37985:4</p>	<p>37992:21 37999:6 38016:20 38017:20 38025:13 38122:18 reference 37932:13 37952:6 37959:19 37967:18 37980:23 37983:20 37985:4 37987:11 37989:24 37990:15 37991:12 38000:24 38005:1 38011:3 38013:14 38019:20 38020:3,13 38025:14 38026:20 38030:3 38038:20,20 38064:16 38074:8,10 38074:16 38081:12 38089:12 38101:4 38104:17 references 37916:2 38030:24 referred 37936:2 37937:9 37983:18 37989:10 38024:21 38026:1 38028:1 38074:19,21 referring 37918:3 37920:21 37930:21 37961:2 37968:10,12 37980:19 37984:5 37987:17 37989:13 37997:10,11,14,19 38020:24 38021:17 38025:8 38028:13 38042:11 38065:11 refers 37958:10 37993:12 38025:5 reflect 38009:22 38035:4 38061:19 reflected 37942:15 reflection 37916:4 38004:15 reflections 37937:23 reformulate 38121:11 reformulated 37946:4 refraining 38040:25 38115:17 refusal 38119:5 38120:3 refuse 38119:20,23 refused 38027:5 refusing 38058:6 38084:14 refute 37931:15 refuting 38052:7 regard 37923:24 38041:23 38043:16 38045:10 38066:11 38070:5 regarded 37910:6 38009:24 38041:20 38042:16 38065:20 38123:21 regarding 37933:16 38063:11 regardless 38096:4 regret 38107:20</p>
--	--	---	---	---

<p>regrets 38125:24 regular 37940:25 regularly 37940:22 37941:1 rehired 37920:11 reiterate 37967:24 reiteration 38111:25 reject 38104:21 rejected 37925:7 38005:6 38121:15 related 37946:17 37948:13 37960:5,20 38122:15 relating 37960:7 relation 37936:25 37960:3 37981:7,15 38033:16 38058:6 38074:3 38077:15 relations 37975:7 37991:11 38015:6,13 relationship 37933:21 relatives 38066:8 relaxed 38099:20 released 37995:5 38005:16 relevance 37915:7,16 37926:12 37931:4 38037:7,25 38038:11 38038:20 relevant 37938:25 37975:12 38037:8,11 38038:22 38046:5 38097:3,5,6,10 relied 37997:17 38003:14 relieve 38078:9 relying 38003:5 remain 37999:25 remainder 38073:18 remained 37909:25 37933:1 remember 37912:24 37924:18 37969:2 38019:8 38055:6,7 38057:17,20 remembering 38117:13 remind 38013:18 38068:3 38098:17,19 38099:8 reminded 37935:4 reminds 38103:3 remove 37987:18 38061:6 removed 38075:18 removes 38067:16 remuneration 38076:4 reopen 37976:21 reopened 37933:3 37934:19 37977:13 reopening 37932:10 37933:11 37934:13 reorganised 38032:3 repeat 37971:1 37992:1 38040:22 38095:16 repeated 37953:9 37955:23 38083:20</p>	<p>38107:14 repetition 37907:14 rephrase 37974:11 37994:19 rephrased 38090:1 replicate 38104:20 replicated 38105:7 replicates 38105:2,4 reply 38038:24 report 37933:8,12 37985:8 37997:20 38018:16 38019:2 reported 37997:16,18 37999:20 38057:10 reporting 38075:18,19 reports 37941:25 37998:7 38009:6 38075:15 38110:4 report-back 38017:11 represent 37908:9 37975:14 38027:4 38034:14,18 38046:17 38051:18 representation 37932:8 37932:19 37943:6 38026:22 38028:11 38097:13 representative 37947:15 38019:10 38019:11 38046:25 38047:9,12 representatives 37980:3 38002:9 38011:11,15 38074:4 represented 37975:23 37976:10 37977:19 38066:13 38094:18 38110:1,3 reprimanded 38103:23 reps 37925:7 request 37933:11 37937:17 37938:6 37953:9 37955:20,22 38031:18 38074:4,17 38076:3,6 38082:14 38084:21 38123:16 38125:3 requested 37940:10 38011:16 38018:21 38020:8,17 38032:1 38074:15 38076:4 requesting 37992:8 requests 37932:10 38077:17 require 37931:10 37940:3 required 37954:3 37978:23 38047:18 38117:18 research 38034:24 resolution 38062:24 resolve 37989:25 37991:3 38014:1 38065:4 38085:2,3 38101:25 38102:2,4 38104:8,12,16</p>	<p>38119:18 38120:8 resolved 37938:18 37976:15 37977:20 37979:10 37983:10 38019:23 38065:3 38079:7 38104:6 resolving 38093:12 38119:6 resort 37944:3,4 resorted 37943:13,24 37944:2 resorting 37943:18 resources 37907:7,10 38035:19 respect 38056:21 38058:24 38105:10 38123:17 respective 37919:19 37956:13 respectively 38066:23 respects 37964:13 37965:4 respond 37947:2,5 37988:12 38028:16 38058:17 38125:3 responded 37951:18 respondent 37942:7,8,8 37943:8 respondents 37942:7,9 37942:15,17,20 37943:9,13 responding 38124:25 38125:8 response 37931:18 37933:24 37953:4 37987:8 38017:22 38056:24 38087:24 responses 37920:18 responsibility 37913:22 37982:7 38079:24 38086:19 responsible 38093:20 rest 37995:22 38032:17 38045:16 38124:3,6 38125:11 restoration 38046:12 restorative 38046:15 result 37915:5 37921:14,15,20 37939:13 37944:13 37946:10 38023:16 38023:17 38052:4 38092:14 38114:6,7 resulted 38064:6 38118:17 resulting 38101:12 resume 37997:1 resumes 37906:2 37956:24,25 37992:18,19 38022:16,17 38078:15,16 retired 38036:24 retract 38004:23,24 38005:17 retreat 38117:4</p>	<p>return 37982:1 37985:1 37994:11 38016:15 38021:9 38122:4 38123:8 returned 37917:22 reveal 38033:9 review 38086:24 38095:13 38118:22 revised 37937:12 reward 38041:8 re-employ 37970:24 re-employed 38098:10 re-open 37939:24 37940:5,7,11 re-opened 37938:1,2 re-opening 37935:24 37936:15 37937:1 rich 37927:13,19 right 37918:25 37919:2 37919:3,15 37922:6 37940:4,8,18 37943:23,24 37945:24 37948:17 37949:3 37950:7 37951:2 37964:4 37968:15 37970:6 37976:11 37987:12 37987:18 37988:24 38003:6 38014:17 38019:11 38034:7 38036:22 38048:24 38053:10 38055:19 38056:8,23 38057:22 38057:25 38060:23 38064:21 38067:20 38069:6 38073:19 38075:20 38077:7 38080:18 38082:15 38088:4 38091:22 38092:3 38098:16 38106:20 38111:24 38119:16,20 38120:4 38120:6,10,11 38121:17 rights 37907:6,8 37932:24 37974:19 37975:15,25 37982:4 37987:16 38099:25 38108:9 38123:12 38124:23 risen 37939:12 risk 37922:4 37932:11 37933:6,12,15 rivalry 37934:10 37935:21 38025:21 38026:6 38031:21 38099:21 rock 37908:16 37909:2 37909:8 37916:19,24 37917:4,18 37919:1 37921:8,15 38036:10 38037:19 38038:14 38039:24 38041:6 38042:17 38043:17 38044:2,3,11,13,16 38057:24 38107:4</p>	<p>role 38014:21 roofs 38054:8,8,8 rose 37938:14 round 37951:2 37955:15 38072:22 royal 38065:14 RR 37942:5 rule 37978:5 38037:15 38038:8 38060:11 rules 37963:14 37965:12 37990:11 37990:11 38058:8 38062:3 38087:6 ruling 37928:8 38038:6 38040:1 38057:13 rumour 37948:4,15,23 37949:8,12,17,18 37950:3,14,15,25 37952:11 37953:2 rumours 37950:1,20 37959:19,19 37961:18 37996:9 run 37927:20 37965:24 38043:2 running 38123:2 R1 38066:22,23 38067:1,4,4 R12 37942:22 37944:19 37951:6 37971:3 37973:21 38001:21 38001:24 38003:10 38005:10 38043:16 38043:23 38062:17 R12,500 37925:6 R4 38040:16 R5 38036:18 38037:19 38040:16,25 38041:21,23 R5,400 37925:5 R7 38040:6 R700 38066:21,22 R9 37920:4</p> <hr/> <p style="text-align: center;">S</p> <p>safe 37969:22 38097:8 safety 38016:6 38092:13,16 SAfm 37957:5 37980:24 38014:15 sake 37986:10 37987:22 salaries 37939:16 38042:18,22 salary 37920:3 37944:19 37996:10 38040:7,10,20 38043:19 38044:5 38045:2 sang 38023:23 SAPS 37906:25 37907:5 37958:17 38018:23 38024:10 38024:12,16,19 38025:1,4 38030:21 38072:7,13 38075:4 38092:9 38108:5</p>
--	---	--	---	---

<p>sat 38016:23 satisfied 38004:12 38038:15 38081:4 38096:10 satisfy 37910:16 37954:13 Saturday 38023:9,9 38025:8 saving 37986:10 saw 38002:22 38032:19 38040:2 38048:18 38050:21 38120:16 says 37911:23,25 37914:17,23 37925:1 37925:13 37926:7,12 37926:13,19 37932:6 37932:7 37934:7,7 37943:3 37945:10 37948:23 37949:5 37950:14 37951:14 37952:15 37953:9 37957:16,18 37958:18,22,24 37959:9,16,24 37966:12 37983:9 37984:13,19 37985:6 37986:15 37987:4,25 37988:7,7 37989:12 37989:13,16 37993:21 37994:8 37996:20 37999:1,22 38000:12 38011:23 38011:25 38012:12 38012:19,21 38018:20 38020:13 38020:19 38024:25 38025:20 38026:3 38028:2 38029:12 38030:15 38038:13 38038:24 38069:24 38079:14,14 38088:5 38088:10 38089:8,19 38091:5 scared 38105:23 scenario 37910:12 37911:19 37912:20 37914:17 37915:19 37916:2 37922:5 scenarios 37934:10 37935:22 school 38049:22 Schultz 38035:1 scope 38070:16 scoring 37973:10 screen 37914:2,5 37924:2,4 37932:3 37942:5 37968:25 37995:7,14 38018:15 38024:23 38094:19 script 38016:13,20,22 38018:10 scroll 37989:5 37996:20 38019:3 seasoned 38078:25 seat 37989:18 38124:11 38124:21</p>	<p>sec 37924:21 37979:17 second 37920:6 37932:23 37937:13 37942:8 37947:23 37961:20 37962:10 37970:25 37993:20 37995:16 38047:5 38088:3,7 38119:3,4 secondary 38084:19 secondly 38010:10 38040:6 38055:14 38058:13 38060:12 38095:11 38116:21 second-last 37906:3 secretary 37913:14 37958:8 sect 38119:5 section 37926:11 37939:5 37942:19 37984:16 secure 38092:16 secured 37921:17 security 38007:5,7,7 38013:21 38019:12 38029:5 38052:2 38092:3 38094:6 38095:1 38096:3,6 seeing 37926:20 38071:16 38103:4 38117:3 seek 38068:8 seeking 38022:24 38057:24 38124:11 seen 37930:7 37939:23 37947:12 37989:10 37995:7 38001:15 38004:3 38006:2 38017:24 38026:11 38026:12 38036:7 38086:15 selectively 37970:23 38098:10 self 37943:13,18,24 37944:3,3,4,12 Semelo 37925:7 send 38004:6 38084:10 sending 37918:7,16,21 37918:24 37919:11 38092:23 senior 38003:13 38004:20 38032:1 38035:20,21 sense 37944:17 37953:2 38006:7,20 38030:13 38030:22 38045:15 38092:22,24 38095:4 38100:11 sensible 37953:20 sent 37967:22 38020:15 38090:9 38092:7 sentence 37945:1 Seoka 38104:12 separate 37943:7 37982:18,20 September 37906:1 38048:16</p>	<p>series 38106:9,11 serious 37964:11 37993:10 37994:7 37997:24 37998:10 37998:15 38010:16 38084:13 38108:16 38120:10 seriously 38116:6 seriousness 38117:3 serve 37958:2 Service 38101:2 session 38013:17 38015:22 38018:17 sessions 38019:25 38020:2,20 set 37965:16 37969:18 37976:8 37977:18,24 37985:23 37987:1 37990:3 37991:4,18 37992:4 37996:11 38016:13 38046:9,14 38055:11 38056:3 38077:7,12 sets 37908:25 37934:5 37988:11 setting 37937:19 seven 37912:14 37913:11 37963:9 38040:3 Shabangu 38110:19,24 share 38008:23 38066:6 38106:21 38107:16,16 shared 37908:21 shelter 38040:25 she's 37918:3,18 37978:19 shocked 38102:10,14 38102:15,20,22,23 shooting 38023:17 shop 37939:6 short 37906:5 38087:4 shortly 37917:10 37964:12 shouldn't 37965:15 37977:7,9,24 38024:24 show 37931:16 38012:14 38058:7 shown 37930:23 37991:22 shows 38096:9 38104:2 shred 38032:24 shunned 38016:16 siblings 38053:2 side 37906:10 37944:1 37985:6 38077:17 38081:6 38089:18 sight 37941:12,18 38110:4 sign 38027:2 38096:10 signals 38071:14 signatories 37935:9,12 signed 37912:15,17 37917:9,10,13 37927:17 37938:19</p>	<p>38086:23 38095:11 38095:23 significant 37909:1 37920:13 37922:25 significantly 37921:21 37939:16 similar 37928:5,6 37931:18 37996:16 38025:25 38044:22 38114:6 38117:1 38119:4 simple 37931:11 37935:8,10 37937:16 38063:23 38117:20 simply 37930:10 38029:24 38037:22 38064:3 38065:13 38068:8 38070:9 38100:13 38119:1 Sinclair 38019:15 38094:24,25 38096:3 38115:13 single 38046:25 38047:9 sinister 37962:8 37965:19 37986:2,4 38006:19 sir 37910:2 37930:14 37983:25 38024:15 38078:22 38108:13 sit 37929:21 37979:8 38068:4 sitting 38013:24 38022:11 38048:18 38050:24 38054:24 38058:15 38061:16 38116:14 situation 37909:7,13 37931:5 37939:18 37968:2 37978:1,20 37987:15 37989:18 37989:19 37991:4 38012:4 38025:4 38032:7 38050:10 38051:8 38060:7 38061:22 38062:2 38077:14,15 38088:3 38088:10,13 38090:10 38093:7 38098:9 38104:20 38105:2,4,7 38110:9 38113:21,24 38119:15,20 38123:17 situational 38122:14 situations 37996:16 six 37912:13 37913:11 37913:14 37963:8 38032:3 38085:16 skip 37958:20,21 37989:17 slotted 37912:19 sole 38049:20 solely 37937:11 38088:7 Solidarity 37951:16</p>	<p>37958:5 37975:24 37976:21 37977:2 37980:1 solution 37985:19,21 38067:15 38088:12 38119:15 38125:5 solve 37986:19 somebody 38010:8,10 38044:17,18,18 38051:12 38071:15 somewhat 37958:18 37959:2 38095:3 song 38023:23 soon 37921:11 sorry 37911:9 37915:7 37924:24 37925:23 37929:7,11 37955:8 37962:14 37968:8 37969:14 37978:9 37979:17 37987:20 37987:23 37988:20 37994:9 38011:17 38012:15,25 38013:17 38014:3 38018:8 38023:4 38024:15 38081:19 38086:17 38089:10 38094:4 38103:11,14 38103:18 38115:6 38120:12,22,22 38121:2 38123:11 sort 37933:8 37959:3 37984:21 38014:24 38015:23 38053:5,8 38057:8 sought 38038:10 souls 37995:22 sound 37927:21 37940:14 38081:5 38124:10 sounds 37951:25 38078:10 38087:20 South 37918:17 37919:7 37959:14 37964:9,23 37968:13 37997:7 38063:7,17 38101:2 so-called 37949:16 38089:16 space 38119:6,14,18 38120:14,14,18 38121:7 speak 37932:9 37952:2 37958:8 37961:17 38112:14,21 SPEAKER 38057:3 speakers 38027:7 speaking 37952:5 37969:18 38001:10 38006:8 38008:23 38010:11 38015:19 38109:16 special 37938:6 37985:22 37989:18 38122:13 specific 37911:6</p>
---	--	---	---	---

<p>37950:12 37960:23 38016:19 38026:22 38043:3,4 38050:9 38074:18,23,25 38119:19 38120:19 38120:20 38122:15 specifically 37969:16 37994:14 38030:21 speedily 37996:16 spelling 37925:4 spent 37963:7 spirit 38109:10 spite 38065:5 spoke 37949:15,20 37950:12,15 37952:13 37961:18 37965:11 38031:5,11 38077:12 spoken 37953:1 37963:14 38001:19 38083:2 38113:12 spread 37922:4 37939:12 38122:19 stage 37906:16 37934:17 37935:1 37937:3 37967:14 37986:3 37992:14 37993:5 38007:19 38022:8 38057:7 38058:19 38060:8 38069:14,15 38078:11 38101:11 stakeholders 37951:16 37952:17 37953:10 37953:21 37955:20 37958:19 37977:1,18 stalemate 38083:1,6,17 38083:23 stamp 38099:20 stand 37926:13 38050:19 38055:5,16 38100:11 38115:13 38118:13,17 standing 38008:10,14 start 37911:4 37933:21 37942:6 37989:6 38001:9 38005:7 38022:8 38024:23 38034:1 38074:1 38081:16 38117:2 started 37963:2,4 37977:9 38032:11 38064:10 38086:16 38100:1 starters 37978:5 starting 37906:6 38014:7 starts 37911:21,22 37934:4 37957:12,15 37968:24 37969:17 state 37969:19 38009:24 38041:2 38051:10 38069:2 38074:13,14 stated 37914:3 37996:9 38020:13,14 38025:9</p>	<p>38026:3 38038:21 38055:4 38062:7 38069:1 38070:13 statement 37912:20 37914:8,12 37946:20 37946:23 37947:6,13 37947:23,23,25 37948:25 37950:24 37951:1 37953:16 37960:12 37961:7,21 37962:21 37965:23 37966:7 37967:3 37981:20 37991:23 37992:22 37995:4,7 37995:11,25,25 37997:3,10,16,20,23 37998:3,19,25 37999:2,4,5,22 38004:23 38005:3,8 38005:14,15 38006:1 38006:4 38007:10 38008:4 38016:7,9 38024:22 38026:15 38030:5,14 38032:18 38054:20 38055:3,8 38065:10 38068:14 38068:22 38074:3,7 38082:1 38086:22 38088:5 38112:6 38118:12,22 38119:1 38119:8 38121:23 38123:4 statements 37947:1,2,4 37947:24 37964:15 37965:6 37966:2,18 37966:21 37967:12 37968:10,12,14,20 37997:9,11 38001:20 38005:22 38006:2 38007:9 38008:1,10 38008:18 38026:9 38086:14 38118:20 states 37962:7 37968:14 stating 37961:4 stationed 38050:22 status 38095:5,18,21 stay 37940:16 step 37918:21,21 Stephen 38031:25 38032:2,5 steps 38114:20 Steve 38032:12 stewards 37939:6 stipulated 38100:7 stood 38119:2 stop 38116:23 38123:3 stoppages 38032:14 stopped 37949:18 stopping 37938:24 stops 37993:22 37994:12 stories 38051:13 story 38021:25 38031:12 38050:18 strategic 38012:18</p>	<p>strategies 37932:12 37933:7 strategy 37933:2,13,14 strikers 37920:2 37946:3 37970:8 37973:25 37982:1 37994:15,24 37996:2 37999:25 38000:1,3 38000:11 38003:18 38007:2 38014:15 38016:14,16 38017:8 38018:18 38022:24 38023:14,21,23 38024:6 38026:22 38028:24 38029:7 38030:21 38034:16 38034:17 38054:16 38055:2 38122:4 38123:7 strikes 37970:25 38086:9 striking 38000:15 38023:10 strong 37964:7 37965:1 strongest 37995:19 structure 37975:12 37989:14 37991:4 38028:14 38029:23 38029:25 38030:2 38059:5,6 structured 37950:19 38027:11 38028:10 38028:10 38029:22 structures 37915:7,15 37923:14 37927:24 37927:24 37930:22 37930:24 37931:4 37958:6 37959:5,6,24 37969:22,25 37970:6 37974:15 37990:19 37990:23 37991:1,5 37991:19 37992:5 38026:19 38028:10 38030:16 38055:12 38055:24 38057:25 38059:2 38062:20 38063:25 38088:15 38088:17 38089:22 38090:2,4,6,22 38091:22 struggle 38053:23 struggling 38053:13 38066:10 studio 37967:23 study 37991:8 stuff 38005:8,22 38008:1 38117:14 stunts 38054:22 style 38096:24,25 stylistic 38096:15 subject 38082:23 38087:23 subjective 37916:5 submissions 38061:3 submit 37922:3 38051:5 38061:7</p>	<p>submitted 37947:1 subpoena 38032:1 subsequent 38000:20 subsequently 38123:20 substance 38096:16 38097:2 substantial 37907:14 38038:3 38039:21,23 substantially 38037:12 38037:12 38039:8 substantive 38088:15 38088:17 38091:19 38097:4 sub-paragraph 37936:1,22 successful 37977:3 suddenly 38000:22 38016:1 sue 38069:8 suffered 38048:9 38050:3 38052:3 suffering 38046:18 38049:7 sufficient 38043:19 38067:2 suggest 37914:22 37973:23 37980:6 37985:1,13 38061:22 38068:8 38076:10 38084:5 38121:11 suggested 37916:23 37980:8,15,16 38031:13 38077:20 38083:12 38120:4 suggesting 37926:16 37938:9 37971:19,21 37972:6 37978:19 suggestion 37953:20 37980:22 37981:1 38021:16 38098:6 suggests 37910:10 sum 38059:7 summarises 37983:8 summarising 37983:18 summary 37978:25 Sunday 38025:8 supplementary 37981:10 37992:22 37998:21 37999:5,5 37999:21 38003:16 38005:3 38016:9 38055:3 38118:22 support 37909:17 37910:5 37911:7,9 37931:3 37944:18 37970:14 37971:4 37973:19,20,23 37987:21 38012:22 38021:16 38041:13 38043:19,25 38044:4 38045:4 38052:15,22 38052:25 38053:8,9 38067:11,11,18 38070:20 supported 37973:23 38052:20</p>	<p>suppose 37988:2 38008:5 38009:16 38011:11,12 38106:23 supposed 38016:14 sure 37914:2 37923:24 37924:15 37926:8 37943:22 37946:9 37952:1 37953:25 37977:11 37978:12 37998:1 38002:11 38009:13 38011:14 38037:1,20 38043:21 38043:24 38054:2 38067:23,25 38068:14 38085:14 38101:1 38107:13 38115:12 38117:5 38124:17 surely 37924:10,13 37974:3 37985:9 38029:11 38088:22 38105:12 38117:8 surprise 37960:8 37962:22,23 37963:7 37963:9,13 37964:1 38111:22,23 surprised 37922:18,23 37963:16,20 38111:13,17,18 surprising 38111:7,8 38111:10 survival 38053:23 suspected 37922:24 37923:2 suspended 37991:10 38031:23 suspicion 38077:16 suspicious 38076:6 sustainable 38067:11 38067:16 sympathise 38054:19 38079:17,19 sympathy 38067:8 sync 38006:11 s.u.o 37906:12 37957:2 38022:20 38078:18</p> <p style="text-align: center;">T</p> <p>table 37979:8 37983:21 37985:20,22 38053:14 38121:18 38124:12,21 tabled 37909:1 38100:19 tabling 37994:15,23 37996:1 tackling 38101:6 tailors 38012:5 take 37906:5 37910:11 37916:17 37918:20 37923:25 37928:22 37930:8 37951:1 37955:12 37956:20 37963:20 37980:23 37981:11,13 37982:7</p>
--	--	--	--	--

<p>37984:16 37985:2,2 37985:17,18 37992:15 37995:8,14 37996:12 37999:4,12 38004:5,5,10 38005:2 38008:4,25 38011:20 38021:20 38022:9,22 38023:8 38026:9 38028:20 38033:21 38037:11 38038:2 38039:7 38057:5 38066:6 38069:10 38070:6 38071:8 38078:11 38079:24 38079:25 38082:3 38090:1 38111:19 38118:7 taken 37921:16 37940:1,11 37944:18 37946:1 37962:22,22 37963:6 37984:18 37993:6 38009:13 38056:13,13 38068:23 38069:21 38071:15 38075:8 38078:13 38094:22 38106:22 38113:7,12 38113:13 38115:16 takes 37924:21 37926:13 38067:12 38105:15 talk 37945:13 37954:7 37964:24 37979:13 38005:11,25 38008:9 38011:12 38041:22 38059:18 38065:23 38069:1,3 38080:17 38083:3 38084:3,14 38088:24 38089:1 38092:24 38100:17 38115:15 38120:2,17 38120:19 talked 37917:21 37956:11 talking 37928:24 37975:22 37989:7,9 37990:10 38003:4 38008:20 38009:19 38015:17,18 38019:17 38037:19 38047:10,10,13 38051:25 38080:12 38080:25 38083:25 38095:4 38097:14,15 38101:7 38117:21 38121:9 talks 37924:12 37986:13 tantamount 37982:4 38123:10,11 tape 38004:18 38008:20 38011:3,7 tapes 38011:2 38102:19 target 38069:23 tasked 37934:14 Tata 38093:11 38094:2</p>	<p>tea 38078:11 teach 38058:5,7 team 37941:17 38007:3 38016:11,15 38085:12 38119:2 technical 37987:16 38059:1,15 38096:13 38099:14 38117:14 technicalities 37986:18 37987:2 technicality 37986:14 37987:1,11,15 technocrat 38063:21 technocrats 38108:19 telephone 37948:3 37952:25 37958:11 37960:13 37967:22 telephoned 37981:24 38112:7 38122:2 38123:6 television 38027:8 38031:6 tell 37910:13 37924:7 37935:14 37952:11 37952:12 37955:17 37961:25 37965:5 37968:12 37969:6 37982:6 37993:8,11 38001:23 38002:22 38006:23 38014:24 38015:9 38017:5,19 38018:3 38019:4,6 38034:14 38039:3 38040:13,14 38046:10,17 38049:11,16,21 38051:1,20 38053:20 38066:3 38079:13 38081:16 38084:12 38085:15 38087:17 38101:10 38123:13 telling 37918:12 37992:8 38002:24 38003:13 38018:13 38050:4 38055:22 38116:8 38117:14 tells 37925:10 temperature 38125:5 template 38081:22 temporarily 38113:24 38114:17 temporary 38119:6 ten 38052:22 38053:1 38059:4 38060:20 38061:23 38117:8,18 tense 38020:16 term 37916:5 38034:25 38035:4 terminology 37984:25 terms 37911:6 37934:12 37935:24 37937:1 37938:11,19 37948:22 37958:24 37961:23 37982:11 37984:22 37986:6 37995:19 38000:10</p>	<p>38030:8 38036:19 38038:20 38043:9 38097:1 38109:15 38120:13,19,20 terrible 38054:1 test 38050:20 testified 37945:13 37993:23 testify 38048:14,20,21 testifying 38050:3 testimonies 38057:15 testimony 38112:12 text 37998:3 thank 37906:23 37908:7 37912:7 37919:22 37924:19 37942:5 37947:21 37949:3 37956:22 37957:4 37966:25 37968:18 37970:13 37979:1 37980:4 37982:22 37983:4 37985:14,15 38011:17,19 38022:5 38022:22 38033:12 38033:13,14 38034:4 38075:7,10 38078:2 38078:21 38102:6 38108:1,8,8,10 38111:23 38121:13 38125:16 38126:6 thanks 37914:25 Theodore 38035:1 theoretical 37926:5 thereof 38062:10 there'd 37978:13 there's 37906:8 37912:13 37932:13 37952:6 37954:14 37966:10 37967:18 37968:6 37979:9,11 37983:6,20 37986:9 38000:9 38003:24 38004:18 38005:1 38011:2 38015:20 38026:25 38027:1 38028:14 38032:22 38032:24 38038:3 38039:21 38048:6 38059:2,5 38061:5 38072:18 38076:5 38082:3 38088:4 38089:12,24 38091:9 they'd 37943:23 37944:12 37970:9,10 they're 37925:4 37928:1 37989:7,9 38028:14 they've 38001:19,19 38021:9 38076:4 38106:8 thing 37915:1 37950:2 37953:25 37954:2 37963:2 37978:13 37979:10 37980:9 37995:3 38003:12</p>	<p>38011:24 38012:9 38014:24 38016:21 38017:2 38044:14 38060:11 38062:6 38064:17 38069:23 38071:3 38079:20 38085:19 38087:21 38094:5 38097:4 38105:12 38108:20 38116:22 38117:1 38122:13,18 things 37931:3,5 37936:10 37940:18 37947:17 37949:24 37950:1,19 37960:10 37965:23 37984:20 37985:7 38008:16 38024:10 38026:21 38040:20,21 38051:12,14 38060:10 38102:16 38102:24 38103:7,9 38107:20 38114:5,25 38116:7 38118:3,16 38119:8 38125:24 thinking 38007:12 38042:3 38065:3 third 37933:1,10 37937:18 37942:9,14 37942:17,19 37943:9 37943:12 37962:20 37994:6 37996:19,20 38012:19 38076:2 thirdly 38055:15 38116:24 thought 37925:11 37928:17 37930:13 37950:1 37987:7 37991:22 38021:6 38023:15 38048:20 38057:18 38083:11 38084:11 38085:23 38099:8,9 38107:17 38108:5,9 38113:4 38114:15 38115:23 38116:18,20,21 38117:17 38121:1 38124:10,25 thoughts 37913:14 38041:13 thousand 38043:7 threat 37925:8 three 37947:24 37949:6 37960:10 37965:17 37965:24 37967:7 38015:3,3,8,10 38018:3 38034:15,16 38034:16 38036:25 38068:10 38072:2 38085:15 38086:23 38100:2 threefold 38055:10 thresholds 38099:18 38100:7 throwing 38005:8,22 38008:1</p>	<p>thrust 38124:18 Thursday 38048:21 38050:21 ticking 37909:14 tie 37944:22 till 38022:10,15 timeframe 37984:23 timekeeper 38071:23 times 37906:22 38039:12 title 38087:22 today 37906:9 38011:4 38012:1 38054:17,25 told 37928:1 37941:15 37948:3,23 37949:11 37950:24 37958:3 37967:3,14,19 37985:9 37991:16,21 37992:3 37999:13,22 37999:23 38000:3,3 38001:6 38003:14 38004:16 38010:24 38011:2,23 38017:14 38017:16 38024:10 38025:16,21 38031:12 38047:21 38049:4 38051:13,21 38055:9 38067:23 38094:6,18 38101:4 tomorrow 37970:3 38012:1,10,13,17 38013:1 38018:22 38020:9,18 38022:9 38060:14 38103:8,15 38104:19 38105:7,13 38105:19,21 38106:10 38107:18 38118:7 38119:19 38125:22 38126:5 tonight 37970:3 38012:15,23 38013:1 38021:8,11 tools 37991:12 top 37957:15 37962:21 37986:12 38011:25 38014:7 38015:19 38064:4 38065:18 38068:19,19,20 topic 37976:7 37992:11 37996:6 total 38022:11 38084:23 totally 38067:7 touch 37911:15 37912:1 37914:4 touches 38035:14 track 38014:3 trade 37943:6 37965:12 37975:13 37976:9 38019:23 38076:11 38077:21 38090:20,20,23 38097:17 tradition 37927:19 38029:21 38059:14 38063:14 38064:16</p>
---	---	--	---	--

<p>traditionally 38026:18 38028:8 tragedies 38046:19 tragedy 38059:3 38079:14 38080:7 38105:11 38115:17 38119:5 training 38035:9 tramline 38104:21 transcript 37924:1 37947:10,13 37957:5 37967:2,15,19 37968:7,8,23 37981:23 37982:17 37988:20 37989:10 38001:7,12 38005:4 38011:22 38013:12 38016:18,21 38074:16 38102:16 38103:6,9 38107:20 transcripts 38102:2 transformation 38034:12 38109:1,10 38109:15 transpired 37962:13 treat 38056:20 38060:16 treated 38056:7,21,21 38057:18,19 38058:16,21 38059:13 treating 38058:12,19 trend 37943:4 trends 37913:12 trickle 38124:3 trigger 37916:18 37933:19 38124:1 triggered 38077:2 triggers 37916:16 trouble 38050:14 true 37927:21 37936:23 37939:21 37952:4 37966:22,22 38040:3,4 38046:6 38052:12 38058:1 38098:3 38110:18 38117:6 38121:24 truly 38067:17 trust 38106:9 trusted 38003:12 38004:18 truth 37959:20 37964:11,14,25 37965:4 37966:3,6 37998:4 38003:13 38046:11 38049:12 try 37910:3 37911:3 38040:15 38072:12 38097:9 38101:20 38109:9 trying 37946:8 37975:11 37976:23 37987:9 37996:12,13 38005:7 38006:7,22 38007:11,12,13 38009:19 38028:7</p>	<p>38032:13 38044:24 38050:8 38051:9,10 38054:25 38059:16 38060:6,10 38081:21 38084:5 38091:4 38105:1,14 38115:2 Tuesday 37978:18 turn 38083:13 turned 38007:25 38023:16 Twala 37978:17 38009:13 twice 37912:20 37914:9 37969:11 38066:20 twisting 37959:20 37964:10,14,25 37965:4 37966:3,6 37998:4 two 37907:2 37908:25 37916:1,16 37920:2 37925:7 37932:8 37933:10 37937:5 37945:15 37948:21 37954:12 37955:9 37958:1,9 37959:13 37959:18 37960:1 37961:8,13 37965:19 37968:21 37970:19 38004:15 38013:16 38013:20 38014:2,14 38015:7 38017:4 38019:25 38020:1,19 38023:15 38027:7 38033:9,18,23 38046:15,24 38047:1 38047:5,8,12 38050:13,19,20 38061:16 38063:12 38064:12 38072:1 38077:15 38085:15 38106:22 38115:14 type 38068:24 types 38044:21 typically 37938:10</p> <hr/> <p style="text-align: center;">U</p> <p>UASA 37951:17 37958:5 37975:24 37976:21 37977:2 37979:25 ultimately 37927:6 37938:17 37976:7,15 38100:2 ultimatum 38012:14 38013:6 ultimatums 38013:4 unacceptable 37982:6 38123:14 unavoidable 38124:4 unbearable 38052:3 uncomfortable 37910:19 uncontested 37945:20 underground 37919:1 underlie 37968:8 underline 37964:16</p>	<p>37965:5 37966:11 37968:8 undermined 38055:14 Underneath 38108:18 Underpaid 37908:17 understand 37913:9 37954:13 37955:11 37961:5 37966:4,25 37973:1 37975:11 37977:12 37978:11 37978:19 37989:15 37990:22 38000:17 38003:23,25 38005:25 38014:2,11 38015:16 38017:2 38019:10 38020:21 38028:16 38030:8,13 38030:17 38032:13 38033:15 38034:22 38037:17 38042:19 38045:25 38046:1,12 38046:13,20,21 38054:25 38056:22 38060:25 38062:12 38067:21 38070:1,1 38071:6 38091:7 38100:6,18 38101:10 38104:8 38113:16 38115:7 38118:15 38122:7 38124:24 understanding 37947:3 37970:16 37988:11 37988:14,15 38000:7 38013:9 38015:6 38060:15 38076:14 38076:17 38077:14 38079:6 38080:16 38082:7 38084:19 38102:1 38124:19 understands 37987:24 understood 37913:7 37927:15,18 37930:19 37968:5,11 37972:24 37973:20 37991:23 37992:7,9 38015:12 38017:1,6 38019:1 38030:6,19 38071:13,14 38084:18 38085:8 38119:17 38120:16 38121:16 undertaken 37981:25 38122:3 38123:7 undertaking 38066:19 38067:3,22 38068:10 38069:7,7,16 38070:4 38071:5 unequivocal 38105:1 unfair 38056:11 38057:4,7 38098:7,12 38099:1 unfolding 38024:3 unfortunate 38081:10 38103:10 38106:9 unfortunately 37930:19 38032:2</p>	<p>38047:2 38085:22 ungovernable 38000:1 38010:25 unhappy 38106:11 unilateral 37925:15 37926:3,14 37976:23 unilaterally 37917:11 37920:6 37937:15 37938:9 union 37909:25 37915:5,25 37935:21 37938:16 37943:6 37957:24 37959:11 37959:24 37970:12 37975:13 37988:14 37990:11 38000:15 38000:18,20 38007:19 38014:14 38059:2 38090:17 38099:18 unionists 37965:12 unions 37908:13 37915:24 37924:9 37932:9 37933:22 37938:25 37950:18 37953:11 37956:14 37957:23 37958:4,7 37959:5,6 37968:22 37975:20 37976:10 37977:21 37980:8 37988:15 37996:15 38013:16 38019:23 38026:20 38076:11 38077:15,21 38088:15 38090:7,20 38090:21,23 38097:17 unit 37975:23 unknown 38026:5 unnecessarily 38057:2 unnecessary 38057:5 unprecedented 38104:15 unprotected 37917:23 37919:24 37921:17 37942:18 37944:13 37946:1 37953:24 37954:6,10 37955:3,9 37963:8,12,15 37965:14,21 37966:1 37967:9 37970:17,20 37970:22,25 37990:12,20,25 37991:9 38032:4 38055:18,25 38056:4 38058:16 38063:15 38086:8,9 38089:15 38089:24 38090:4,16 38097:7,15 38098:1 38107:6 38114:21 38115:3 38117:1,3 unreasonability 38044:23 38045:17 unreasonable 37942:20 38041:24 38042:2,17 38042:24 38043:17</p>	<p>38044:12 38045:11 unrelated 37960:14 unrepresented 38091:6 unrest 38088:13 38089:2 38113:25 unsound 38081:10 unsuccessful 37909:3 unsurprised 38111:19 untrue 37960:12 38051:5 unused 38073:14,15,24 unusual 37923:19 unwilling 38082:23 unwise 38096:22 38097:20 un-unionised 37915:3 upgrade 38045:15 uphold 37978:5 38039:19 38057:21 upholding 37946:5 37967:25 urge 37996:13 urgency 38101:6 urgent 37996:14 use 37936:14 38008:1 38012:17,17 38020:16 38022:4,14 38072:21 38073:7 38089:6 38090:17 38099:12 38108:3 useful 38104:7 usually 38114:25 uttered 38008:10,16</p> <hr/> <p style="text-align: center;">V</p> <p>vague 38120:13,18 valid 37971:8 37973:12 38121:14 value 38035:4 38094:22 variation 37938:10,11 37938:20 various 37934:9 37935:21 37973:8 38045:4 38081:13 vehicle 38092:17 38106:1 vehicles 38092:9 verbal 37955:19 versa 37923:18 vice 37923:18 38034:5 38108:15 vice-president 38034:11 victimhood 38048:10 victims 38045:24 38046:3,16,19 38050:10 video 38017:23 38029:5 view 37908:21 37923:23 37926:7 38007:13 38008:23 38054:12,17 38066:5 38066:7 38077:7 38094:18 38116:5</p>
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38123:22 views 38077:12 violence 37965:25 37993:22,24 37995:11,20,23 38009:15 38018:20 38020:17 38113:25 38114:20,22,25 violent 37920:10 vir 38123:23 visit 38049:21 38050:15 vocabulary 37985:12 38087:25 voice 37909:19 37910:7 37911:11 VP 37925:6 vulnerable 38092:2 VVVV1 37932:1 37934:4 38017:21 38018:15	37985:4,10 37986:19 37988:9 37991:17 38000:15,20 38001:14 38010:3,8 38012:16 38021:15 38022:3 38033:20 38034:4 38037:6 38039:2 38045:19 38046:22 38049:25 38051:3 38052:25 38054:6,7,8 38055:11 38060:17 38062:6 38063:23 38064:1 38068:20 38069:10 38073:7 38074:1 38091:25 38098:5,6 38099:7 38100:13 38101:1 38107:16 38116:5 38125:13 wanted 37931:25 37933:8 37955:3,9 37978:5 37989:18 38007:1 38014:18 38023:2,5 38039:1 38058:20 38080:16 38080:21 38099:11 38112:2 38119:17,18 38120:17 wanting 38040:14 38055:23 wants 37978:10 37990:3 38015:3 38033:16 38054:5 38120:17,19 38121:12 warning 38058:15 38116:25 warnings 38117:15 warrant 38062:11 warranty 38069:8 wasn't 37944:23 37945:14,17 37950:14 37953:17 37957:7 37972:5 37977:14,17 37979:14 37994:2 38046:24 38047:12 38049:13 38061:13 38080:14 38087:11 wasn't 37929:11,25 37957:9 37966:5 38030:10 38096:14 38099:13 38107:14 waste 37972:3 38016:3 38021:13 wasted 37954:8 wastes 37910:24 way 37930:7 37936:12 37939:20 37940:15 37949:25 37962:6 37979:9 37983:13 38006:13,13 38008:16 38009:24 38012:20 38015:4,23 38026:21 38027:11 38027:11 38029:22	38033:24 38037:3 38056:19 38058:3 38061:10 38065:2,3 38065:23 38066:8 38067:20 38068:16 38083:12 38087:2 38096:15 38098:7 38099:12 38100:11 38108:25 38111:7,12 38115:20 ways 38045:4 weapon 37970:23 weapons 37969:23 38009:17 38015:9 38018:22 38107:6 38125:2 Wednesday 38013:7,13 38014:14,16 week 37909:22 37915:13 37937:22 37965:22 37979:14 37980:6 37999:3 38000:16 38005:16 38007:20 38022:23 38045:21 38047:10 38047:13,14 38050:1 38086:2 weekly 37940:23 weeks 37949:6 37958:1 37958:9 37959:13,18 37960:1 37961:8,13 38086:16 38095:8 well-seasoned 37965:12 37990:10 went 37917:19,25 37918:19 37924:24 37924:25 37941:13 37941:19 37944:23 37945:14,18 37959:1 38000:17 38094:9 38097:25 38114:9 38120:1 weren't 37992:24 37993:25 38007:10 38017:7,9 38124:12 weren't 37991:15,21 38098:11 Wesley 37906:21,23 37907:2,5,10 38021:25 38022:1 38071:10,14,23,24,25 38072:9 Wesley's 38021:25 we'd 37978:21 38079:15 we'll 37906:3 37911:1 37928:2 37931:9 37967:11 37968:19 37980:13,14,16 37987:2 37992:15 38007:4 38012:15 38041:16 38050:17 38066:2 38105:12,15 we're 37906:6,7 37928:9,25 37929:17 37929:18 37975:22	37986:19 37987:4 38015:17,18 38022:11 38030:24 38039:16 38043:3,10 38045:6 38047:10 38087:23 38089:2 38097:14,15 38111:16,19 38123:2 we've 37929:4,24 37931:6 37972:2 37974:14 37977:18 37986:17,18 37989:9 37998:21,25 38005:9 38005:15,23 38007:4 38008:2 38016:4 38022:8 38026:11,11 38026:21 38028:1,3 38032:20,21 what's 37912:4 37915:11 37919:18 37945:9 37948:19 37969:14,15 37972:12 37979:2 38014:12 38021:25 38037:24 38038:8,17 38042:8 38049:21 38072:25 38076:17 38091:7 38097:17 38103:23 where's 37968:3,4 whilst 38068:9 38083:13 whopping 37917:12 who'll 37907:25 who's 37906:22 37907:17 38076:18 willing 37969:21,24 38051:8 38067:22 38083:3 willingness 37980:1 winch 38045:14 wings 38073:14,23 wisdom 38046:10 wiser 38105:21 wish 38038:24 wishes 37984:3 withdraw 37998:6 withdrawn 37998:9 witness 37928:5,24 37929:18 37930:3,12 37948:7 37956:10 37969:16 37971:6,20 37972:24 37973:9 38039:21 38043:5,24 38056:12,14 38057:1 38057:7,9 38068:25 38069:3 38070:4,12 38070:13 38074:2 38111:17 38115:18 38120:15 38125:24 witnesses 37910:22 37928:7,10 37945:12 37945:15,17 37947:3 37947:5 38104:5 witness's 37930:11 37956:1 37973:4	wonder 37992:11 word 37916:3 37936:14 37943:11 37948:15 37949:17 37950:22 37960:5 37962:4 37983:11 38027:10 38027:12 38028:17 38029:24 38033:8 38052:23 38093:18 38093:24 38101:20 words 37928:23 37933:18 37967:7 38010:20 38023:24 38034:18 38044:15 38046:18 38049:6 38059:10 38062:13 38083:23 38089:7,25 38090:13,20 38119:15 38121:18 38122:14 38123:16 work 37949:23 37966:2 37973:25 37974:23 37976:2 37982:2 37985:2 37986:2 37994:11 38012:15 38013:7 38015:5,10 38016:15,25 38017:6 38017:16,19 38018:21 38020:9,18 38021:9 38022:24 38024:6 38036:1,6,7 38036:13 38038:14 38041:24 38042:20 38043:19 38046:15 38063:13 38072:12 38081:21 38084:22 38091:17 38107:12 38122:5 38123:8 workable 38088:11 worked 37912:14 37963:13 37979:23 38027:15,19 38058:12 38072:13 workforce 38081:14 38083:20 38084:20 working 38031:7 38083:1 38116:23 workplace 37995:21 38026:25 38028:9 works 38013:2 workshop 37913:11,13 37913:15 world 37926:18 worried 38009:6,8 worry 38096:25 worse 38093:4 wouldn't 37924:13 37940:18 38061:17 38078:25 38079:16 38079:25 38080:1,9 38110:18 38116:2 38120:24 wouldn't 37922:17 38067:6 38096:15,21 38099:4 WPL 38032:10
--	--	--	---	--

<p>write 37947:5 38009:23 writing 37933:24 38106:8 38107:19 written 37933:8 37936:3,7,8 38029:22 38058:15 38095:1 38096:15 38103:8 38116:25 38118:23 wrong 37946:24 37947:14 37965:16 37968:12 37991:13 38001:4,5 38035:25 38091:8,9 38096:20 38113:5 wrongly 37913:9 wrote 37947:3 37955:21 38096:8 WWW1.21 38074:9 38074:20</p>	<p>38011:13,14 38014:2 38014:11,11,20 38022:18 38023:18 38023:24 38034:1 38040:13 38054:24 38070:2,3 38072:25 38075:20 38078:17 38079:20 38086:11 38103:14,23 38105:17 38113:22 38115:18 you've 37930:6 37947:23 37953:15 37961:23 37963:1 37969:10 37977:20 37982:12 37993:3 37998:9 37999:18 38001:14 38002:25 38014:12 38022:13 38038:9 38057:7 38071:10,18 38089:21 38098:25 38107:19 38108:2 38111:17 38116:7 38118:16</p>	<p>10th 37941:6 37951:20 37951:22 37952:1,7,8 37952:8 37953:5,9,24 37955:21 37956:4 37958:14 37960:15 37963:3 37978:14 38024:14 38062:9 38077:3,6 38083:21 38083:24 38090:14 38113:12 38116:9 38117:17 10:16 37935:16 10:35 37949:5 100 37968:24 11 37924:2,3,5 37926:1 37930:22 37949:1 37963:7 11th 38023:9 11:07 37956:25 11:27 37970:21 11:46 37986:17 12 37927:25 37949:2,4 37949:20 37950:12 37950:23 37970:15 37972:22 37973:23 37987:23 37988:11 37994:10 37996:1 38005:13,23 38008:3 38041:22 38042:4,11 38043:7 38044:11,13 38044:17,19,24 38062:9,11,12,15 38076:5 38080:21,22 38093:1 38116:13 12th 37919:24 38048:15 12:15 37992:19 12:35 38006:11 12:55 38019:6 122 38013:14 38014:5,6 38014:7 123 38014:5,8 38015:19 126 37968:25 37969:4 37969:14 13 37924:25 37951:13 37951:14,25 37952:24 13H50 38072:1 13th 37914:16 37992:23 37998:23 37999:24 38024:13 38024:15 38025:1,3 38026:3 38034:15,16 38046:8 38047:11 38048:14 13:34 38022:17 13:54 38036:21 131 37982:17 134 37942:6 37982:24 37983:1 37984:10 37986:12 37987:22 136 37942:14 137 37943:2 138 37984:18,19 14 37951:13,18 37952:4 37952:24 38053:2</p>	<p>14th 37995:5 38001:8 38046:9 38047:11 38048:14 38076:22 38077:6 38117:17 14:13 38050:8 14:33 38062:1 14:53 38074:13 141 37985:5 37987:6 15 37906:1 37956:23 37988:12 37992:15 37992:17 38042:4 38072:3 15th 37957:6 37968:22 37975:18 37980:20 37997:5 38013:7,13 38017:9 38023:22 38117:17 15:16 38078:16 15:35 38092:19 15:55 38108:14 159 37948:1 16 37964:10 37989:9 37993:3 38074:9,17 38074:19 16th 37978:1,2,16 37979:6,14 37981:7,8 37981:22 37999:3 38016:10,13 38022:23 38034:17 38045:21 38059:4 38060:20 38110:25 16:15 38123:18 162 37948:2 165 37953:16 17 37964:22 37969:17 37969:18 37993:4 38013:16 170 37906:24 37907:2 37908:5 171 38016:8 18 37999:21 18% 37917:12 37920:4 37920:5 186 38112:6,6 19th 37934:3,7,17 191 37999:6 192 37981:11,12 38121:23 38123:4 193 38123:4 196s 38034:25</p>	<p>2012 37908:16 37909:17,25 37910:1 37910:5 37911:7,16 37914:17,18,21,22 37915:2,16 37916:12 37917:22 37919:25 37920:12 37921:2,25 37922:9,13,25 37931:22 37934:3,7 37934:17 37938:18 37941:6 37943:3 37946:16 37948:3,21 37949:6 37950:5,10 37951:21,22 37968:22 37981:8 37992:24 37995:5 37999:24 38001:8 38022:23 38023:9,22 38032:8,14,19 38034:8 38049:20 38050:11 38066:21 38067:4 38075:14 38099:24 38107:13 38110:9 2013 38066:12,22 2014 37906:1 38048:16 38088:1 38118:17 208 37949:1 21 37925:2 37943:8 37981:12,19 38001:11 38010:2 38074:8,17,19 38121:23 21st 37922:9,13 37931:20 212 37949:2,4 37951:13 23 37964:11,24 38005:3 38005:20 38006:25 239 37924:2 24 37989:17 25 37988:20,22 25% 37920:14 37921:8 2581 37988:20,23 26 37984:10,11 38076:20 27 37969:2,13 28 38046:16 28th 37931:21 37932:5 29 37983:3</p>
<p style="text-align: center;">X</p> <p>XXX4 37924:17 XXX8 38085:25 38086:2</p>	<p style="text-align: center;">Z</p> <p>Zokwana 37959:10 37968:1 37986:23 38000:17 38016:2,16 38019:8 38023:21 38033:6 zone 38013:20,21</p>	<p style="text-align: center;">0</p> <p>000 37909:24 37920:4 37937:20 37954:2 37963:11,24 38005:10,23 38008:3 38028:1 38032:3 38036:18,18 38037:19,19 38040:16,16,25,25 38041:21,23 38042:4 38042:4,4 38044:19 38044:24 38066:22 38066:23 38092:21 38092:23 38093:10 38116:13 38125:2 08:30 38126:4 09:36 37906:2 09:56 37922:16</p>	<p style="text-align: center;">2</p> <p>2 37932:8 37962:6 38001:11 38040:23 20 37937:20 37984:12 37989:6 38001:8 38042:4 38108:2,10 20th 37949:5 37951:2 2000 37937:22 2009 37908:25 2010 37939:5 38031:23 38032:8,11,14,19 38058:15 2011 37909:1,13 37916:20 37917:5,6,9 37917:18 37939:5</p>	<p style="text-align: center;">3</p> <p>3 37932:9 37954:2 37963:11,24 37983:1 38028:1 38040:24 38072:22 38092:21 38092:23 38093:10 38125:2 3.1 37948:11,16 3.2 37948:2,11 30 37907:6,9,10 38072:13,15 3000 37937:20 37942:17 38060:13 38060:14 30068 37924:2,2,3,4</p>
<p style="text-align: center;">Y</p> <p>year 37927:16 37933:4 38046:9 38049:22 38067:1,5 38068:12 38068:12 38102:19 38107:2,8 years 37915:23 37930:22 37963:7,9 37963:14 38004:16 38036:25 38050:13 38050:19 38051:3 38053:2 38058:12 38060:8 38061:16 38063:12 38064:12 38106:22 yesterday 37985:7 37986:23,25 you'd 37916:25 37947:12 37953:19 37998:15 38033:2 38080:8 38094:15 38106:4 38107:13 you'll 37911:22,25 37914:1 37946:9 37949:5 37983:17 37989:7 37995:10 38014:24 38018:19 38022:14 38033:18 you're 37906:11 37907:21,23 37908:20 37910:19 37910:24,25 37912:25 37916:20 37920:7 37921:4 37924:23 37941:19 37941:25 37944:2 37957:1 37971:19 37973:3 37974:25 37986:12 37988:1,1,1 37992:20 37997:21 38001:10 38003:4,24</p>	<p style="text-align: center;">1</p> <p>1 37906:6,7 37920:21 37932:7,19 37984:21 38015:8 38040:23 38087:19 10 37925:2 37959:15,21 37964:23 37965:1 37978:1,11,16 38022:2,13,18 38024:12,16 38025:1 38025:3 38042:4 38064:5 38072:1,1,1 38072:22</p>	<p style="text-align: center;">1</p> <p>13 37924:25 37951:13 37951:14,25 37952:24 13H50 38072:1 13th 37914:16 37992:23 37998:23 37999:24 38024:13 38024:15 38025:1,3 38026:3 38034:15,16 38046:8 38047:11 38048:14 13:34 38022:17 13:54 38036:21 131 37982:17 134 37942:6 37982:24 37983:1 37984:10 37986:12 37987:22 136 37942:14 137 37943:2 138 37984:18,19 14 37951:13,18 37952:4 37952:24 38053:2</p>	<p style="text-align: center;">2</p> <p>2 37932:8 37962:6 38001:11 38040:23 20 37937:20 37984:12 37989:6 38001:8 38042:4 38108:2,10 20th 37949:5 37951:2 2000 37937:22 2009 37908:25 2010 37939:5 38031:23 38032:8,11,14,19 38058:15 2011 37909:1,13 37916:20 37917:5,6,9 37917:18 37939:5</p>	<p style="text-align: center;">3</p> <p>3 37932:9 37954:2 37963:11,24 37983:1 38028:1 38040:24 38072:22 38092:21 38092:23 38093:10 38125:2 3.1 37948:11,16 3.2 37948:2,11 30 37907:6,9,10 38072:13,15 3000 37937:20 37942:17 38060:13 38060:14 30068 37924:2,2,3,4</p>

<p>30070 37925:25 30071 37925:19 37928:19 31 38011:21 33 38012:7 38034:17 34 38034:17 38119:21 35 38012:19 353 37911:21 36 38034:18 363 37911:22 37912:6 37912:18 372 37912:21 37914:2,5 398 38075:13 399 38075:12,13 38076:1 38090:18</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4 37906:8 37909:24 37939:9 38005:4,19 38006:25 38025:3 38036:18 38037:19 38040:24,25 38041:21,22 38044:5 38112:12 4.3 37953:16 400 37914:15 42 37957:8,12 429 37937:6,9,12 44 37976:7 38118:14,17 45 37906:24 37907:11 37907:11 38071:7 38072:2 48 37957:13,15 49 37958:21,21 37964:10,22</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 37926:20 37934:6 38025:2 38055:4 50 37907:2 37960:4 37962:21 500 37927:25 37942:22 37944:19 37949:20 37950:12 37951:6 37970:15 37971:3 37972:22 37973:21 37973:23 37994:10 37996:1 38001:21,24 38003:10 38005:13 38041:22 38042:4,11 38043:16,23 38044:5 38044:11,13,17 38062:9,11,12,15,17 38076:5 38080:21,22 38093:1 38116:13 5000 37939:9</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 38006:24 60 37907:5,12 38072:7 38073:1,6 62 38017:21 38018:15 64.1 37942:19 695 37982:24</p> <hr/> <p style="text-align: center;">7</p>	<p>7 38006:24 38032:3 38055:4 7.1 38016:9 700 38067:1,4,4 7000 37939:6 75 37932:3 750 37928:2 78 37932:4</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 37942:14 37986:12 38086:6 38096:19 38116:13 8.1 38096:20,21 8.1.1 38089:18 8.3 38086:8 38096:20 8:00 37997:5 8:30 38125:22 8:31 38125:22 8:53PM 38020:15 80s 38087:21 800 38009:9 81 37934:5 84 37934:5,5</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 37943:3 37955:25 37956:10 9th 37999:3 38022:23 38045:21 38066:12</p>			
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