

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 293

29 SEPTEMBER 2014

PAGES 38369 TO 38489



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1 [PROCEEDINGS ON 29 SEPTEMBER 2014]
 2 [13:28] CHAIRPERSON: The Commission resumes. Mr
 3 Seedat is back at the witness table. I must remind you, Mr
 4 Seedat, you're still under oath. There has been a
 5 complication, I understand, and that is that Mr Chaskalson
 6 has not yet completed his cross-examination but he's just
 7 been handed some documents from Lonmin which it's necessary
 8 for him to go through. So the idea is that we will allow
 9 the other parties who are remaining to cross-examine,
 10 waiting to cross-examine, an opportunity to do so now and
 11 then when they have finished then Mr Chaskalson will resume
 12 his cross-examination. Now Mr Wesley, will you please
 13 remind me, I've got notes as to who they are but I'm not
 14 sure as to whether the parties have agreed among themselves
 15 as to the order of cross-examination.
 16 MR WESLEY: Chair, as I understand it,
 17 the order has been settled amongst the parties. The
 18 allocations that follow are, AMCU have 30 minutes, the
 19 Legal Resources Centre has 25, the Human Rights Commission
 20 has 25. There will of course be 15 minutes re-examination
 21 at the end of Mr Chaskalson's cross-examination.
 22 CHAIRPERSON: Yes, alright. So AMCU will
 23 be first then. I take it you read them out in the order in
 24 which cross-examination is to take place, so Ms Barnes?
 25 MS BARNES: Yes, thank you, Chair.

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1 MAHOMED ISMAIL SEEDAT: [s.u.o.]
 2 CROSS-EXAMINATION BY MS BARNES: Good
 3 afternoon, good afternoon Mr Seedat.
 4 MR SEEDAT: Good afternoon.
 5 MS BARNES: I represent AMCU in this
 6 Commission of Inquiry. Mr Seedat, you made a statement in
 7 relation to the events at Marikana through Lonmin's
 8 attorneys in November 2012, correct?
 9 MR SEEDAT: That's correct.
 10 MS BARNES: And that statement is exhibit
 11 OO14. Now presumably at the time that that statement was
 12 being drawn up you would have been informed by your
 13 attorneys that Mr Mathunjwa had made a statement for
 14 purposes of this Commission, correct?
 15 MR SEEDAT: I was aware that he made a
 16 statement, not necessarily the contents.
 17 MS BARNES: So did your attorneys not
 18 draw your attention to statements made by Mr Mathunjwa in
 19 his statement pertaining to yourself?
 20 MR SEEDAT: It was not at that time when
 21 I made my statement but subsequent to that I was told about
 22 it. Subsequent to me making my statement.
 23 MS BARNES: You were told that Mr
 24 Mathunjwa said certain things in his statement pertaining
 25 to you.

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1 MR SEEDAT: Yes. Well, pertaining to the
 2 incident that I referred to in my statement.
 3 MS BARNES: Alright. Now we know, Mr
 4 Seedat, that you bumped into Mr Mathunjwa on the morning of
 5 the 16th of August 2012 at the Lonmin LPD offices, you've
 6 testified to that effect.
 7 MR SEEDAT: That's correct.
 8 MS BARNES: And during that encounter you
 9 exchanged cell phone numbers, correct?
 10 MR SEEDAT: Well, not just cell phone
 11 numbers. We had a fairly lengthy conversation and also in
 12 that conversation exchanged our cell phone numbers, yes.
 13 MS BARNES: Yes, I didn't ask whether
 14 that was the only thing you did, I'm just confirming that
 15 you did exchange cell phone numbers during that encounter,
 16 correct?
 17 MR SEEDAT: Yes, we did, yes.
 18 MS BARNES: Now Mr Mathunjwa says that he
 19 phoned you on the 16th of August 2012 and it would have been
 20 at about 2 o'clock in the afternoon. Now we have provided
 21 you, I understand that my colleague Mr Gotz provided you
 22 with a page from Mr Mathunjwa's phone records pertaining to
 23 that day and we see on that page that a certain call was
 24 made at seven minutes past two. Now I don't really want,
 25 Mr Seedat, to read out your cell number in the open

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1 Commission so I'm sure if you can simply confirm that the
 2 number that appears against seven minutes past two on the
 3 16th of August 2012 is your number. Is that correct?
 4 MR SEEDAT: I don't have the document in
 5 front of me, it's in a file somewhere but I do, I had a
 6 look at it and it is my number, yes.
 7 MS BARNES: And you will have seen that –
 8 again we can make this an exhibit but I'm not sure that
 9 it's necessary if this is common cause but let's see how we
 10 go. The call lasted for just over three minutes, we see
 11 that from the phone record. Do you accept that?
 12 MR SEEDAT: Yes, I can't recall what it
 13 said on that sheet but if that's what it said, that's fine,
 14 ja.
 15 MS BARNES: You confirm, Mr Seedat, that
 16 Mr Mathunjwa did phone you at about 2 o'clock or just after
 17 2 o'clock on the 16th of August 2012 and that you had a
 18 conversation, correct?
 19 MR SEEDAT: Yes.
 20 MS BARNES: Now Mr Mathunjwa deals with
 21 the specifics of that conversation in his statement which
 22 is exhibit NN, if we could have that on the screen please,
 23 if we could go to page 24. Now just to give you some
 24 context, Mr Seedat, on page 24 – are we there? Yes, Mr
 25 Mathunjwa here is talking about the events of the 16th of

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1 August 2012 just before 2 o'clock. What he says, I'm not
 2 going to read the paragraph, it's not necessary, I'm just
 3 going to paraphrase, he says that he had a number of
 4 conversations with Mr Kwadi and Mr Kwadi – and what he
 5 wanted to do was give feedback from the strikers to Lonmin
 6 management and basically Mr Kwadi said to him, no, Lonmin
 7 management was not prepared to meet with them. Now if we
 8 could go over the page to page 25, paragraph 82, this is
 9 where you come in and Mr Mathunjwa says the following, "I
 10 then phoned Mr Seedat. I told him that the situation I was
 11 facing was that Lonmin management was not prepared to meet
 12 with me to receive feedback from the workers. Mr Seedat
 13 advised me that he could not make any commitments but that
 14 he would try to contact Lonmin's management. Mr Seedat
 15 never came back to me." Now if we could break this down,
 16 firstly Mr Seedat, do you confirm that Mr Mathunjwa said to
 17 you that he wanted to give feedback to Lonmin management
 18 but that they were not prepared to meet with him.
 19 MR SEEDAT: I can't recall the exact
 20 conversation we had but – and I take it that that's the
 21 conversation – but I do recall us having a conversation,
 22 yes.
 23 MS BARNES: You don't dispute that Mr
 24 Mathunjwa said to you, a statement to the effect that he
 25 wanted to speak with Lonmin management and they were not

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1 prepared to meet with him?
 2 MR SEEDAT: Well, I do recall a little
 3 more that, in the sense that he did talk about Lonmin
 4 management going back on their word or words to that effect
 5 as well, somersault I think is one of the words he used.
 6 MS BARNES: Now on the afternoon of the
 7 16th of August 2012 at around 2 o'clock, the time we're
 8 talking about now, there was a heavy police presence at
 9 Lonmin, correct? You saw that.
 10 MR SEEDAT: Yes, yes, I saw the presence,
 11 yes.
 12 MS BARNES: The situation was tense, is
 13 that correct?
 14 MR SEEDAT: Yes.
 15 MS BARNES: So presumably, Mr Seedat, if
 16 Mr Mathunjwa had said to you that he wanted to speak to
 17 Lonmin management but they were not prepared to speak to
 18 him or words, that they'd gone back on their word, you
 19 would have been quite concerned in those circumstances,
 20 correct?
 21 MR SEEDAT: Well, to an extent. Please
 22 understand that that's the first morning I got involved in
 23 any of the details of what was happening at Marikana so I
 24 didn't have the background, I didn't have all of the
 25 details of conversations prior to that, I wasn't party to

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1 that but yes, when he expressed that he clearly was
 2 concerned and he passed the message on to me of his
 3 concerns, yes.
 4 MS BARNES: So you would have presumably
 5 wanted to find out what was going on from Lonmin
 6 management, correct?
 7 MR SEEDAT: To an extent, to the extent
 8 that I could because there were a whole lot of other things
 9 going on at the same time, you know, not everybody is
 10 available to talk to me at the time.
 11 MS BARNES: So you would have, it's
 12 correct then that you would have said to Mr Mathunjwa that
 13 you would see what you could do, you couldn't make any
 14 commitments but you would try and contact Lonmin management
 15 and see what you could do, is that correct?
 16 MR SEEDAT: That's exactly why I said
 17 what I said, yes.
 18 MS BARNES: And who then did you contact,
 19 Mr Seedat?
 20 MR SEEDAT: Well, the call came to me
 21 while I was sitting in what they call the mining boardroom
 22 and in the mining boardroom there were other members of
 23 management and some of them were, if I recall correctly it
 24 was Mr Kwadi amongst others and as soon as I finished the
 25 conversation with Joseph, I passed his message on to them

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1 and said it's up to you now to take this forward because I
 2 didn't have the context of how the discussions were going
 3 between Joseph Mathunjwa and the other members of
 4 management and I passed the message on to them immediately,
 5 yes.
 6 MS BARNES: Did you not, did you not say
 7 to Lonmin management that they should at least listen to
 8 what Mr Mathunjwa had to say? I mean he said that he had
 9 feedback from the strikers. Did you not say that to Lonmin
 10 management?
 11 MR SEEDAT: Well, it's – just remember
 12 that I wasn't party to all of the other conversations that
 13 had happened between Mr Mathunjwa and Lonmin management.
 14 They had a particular view of the conversations they had
 15 with him, I didn't have all of that background so I did
 16 what I thought was the right thing and said, this is what
 17 Joseph has responded to me, just like what he passed on to
 18 me in the corridor that I'd passed on to the management
 19 immediately after I left Joseph and I met with them,
 20 similarly immediately then when I put the phone down to
 21 Joseph I passed this on to them and said you have now got
 22 to decide how you respond to this. I didn't have enough of
 23 the context to be able to make a judgment call on how
 24 things should happen based on the call that Joseph made to
 25 me.

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1 MS BARNES: So you simply told Lonmin
 2 management that Mr Mathunjwa wished to give them feedback
 3 from the strikers and you left it at that?
 4 MR SEEDAT: Well, I said he was unhappy
 5 and he needed to speak to somebody from management and, you
 6 know, you guys need to decide how you respond to his
 7 request. He had Mr Kwadi's number, he had Barnard
 8 Mokwena's number, I mean he had all of those numbers so ja,
 9 he passed on a message to me which I then passed on to
 10 management that he has been communicating with regularly
 11 over this past couple of days.
 12 MS BARNES: And you never then reverted
 13 back to Mr Mathunjwa to tell him what you had done, did
 14 you?
 15 MR SEEDAT: Well, I didn't, I don't
 16 believe I made a commitment to get back to him. I said
 17 management will get back to him and I did what I said, I
 18 gave the information to management and I expected them to
 19 decide how they're going to get back to him.
 20 MS BARNES: So Mr Mathunjwa is correct
 21 when he says in his statement, Mr Seedat never came back to
 22 me.
 23 MR SEEDAT: Because I didn't - there was
 24 no commitment made to get back to him.
 25 MS BARNES: No, I accept that. If we can

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1 go back now, Mr Seedat, to –
 2 CHAIRPERSON: Are you moving away from
 3 that topic?
 4 MS BARNES: Yes.
 5 CHAIRPERSON: Was Mr Mokwena there as
 6 well, in the mining boardroom?
 7 MR SEEDAT: Ja, I can't recall exactly,
 8 there were a whole lot of people. We'd gone to the
 9 operations centre, we'd come back and we were in this room
 10 with the Chairman of Lonmin, Albert Jamieson I think, Simon
 11 Scott, and people were walking in and out. So I can't
 12 recall exactly who was there, all the participants at the
 13 time.
 14 CHAIRPERSON: I see. And can you recall
 15 what the response was of the person or persons to whom you
 16 spoke, conveying what Mr Mathunjwa had said?
 17 MR SEEDAT: No, except that, you know, it
 18 appeared like they were frustrated with his, with his – you
 19 know, with him. I got the impression that they were
 20 frustrated with him but not more than that.
 21 CHAIRPERSON: Did anyone express an
 22 interest in listening to what he was bringing from the
 23 koppie, what he was going to say or proposed to say in
 24 relation to what the strikers were saying to him?
 25 MR SEEDAT: Well, he was having the

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1 conversation with me and I felt I should have the
 2 conversation with him and then pass the message on, I mean,
 3 it didn't strike me at the time to put the phone on speaker
 4 phone. I'm not sure, as I say, who was in the room at the
 5 time when I had the conversation, so after the conversation
 6 who was in the room and I think I do recall Mr Kwadi was
 7 there, I passed the message on to them.
 8 CHAIRPERSON: Yes, no, I understand that
 9 but were you able to ascertain what the attitude was of the
 10 management person or people to whom you spoke about what Mr
 11 Mathunjwa had to say, whether did they want to hear what he
 12 had to say, were they not interested in hearing what he had
 13 to say or aren't you able to assist?
 14 MR SEEDAT: All I can remember is there
 15 was frustration in the management team in terms of their
 16 discussions with Joseph but exactly whether they were going
 17 to talk to him or not, I can't say.
 18 MS BARNES: Mr Seedat, if we can go back
 19 now to the encounter that you had with Mr Mathunjwa in the
 20 morning of the 16th of August, so it's before this telephone
 21 call.
 22 MR SEEDAT: Yes.
 23 MS BARNES: If we can look at your
 24 statement, it's exhibit OO14, if we could have that on
 25 screen, please? Now you say here in your statement, Mr

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1 Seedat, that Mr Mathunjwa told you during this encounter
 2 that – if we could read the last line of the paragraph, "He
 3 then said to me, 'Give me a place at the bargaining table
 4 and I will get the workers off the koppie.'" Do you see
 5 that?
 6 MR SEEDAT: Words to that effect. It may
 7 have been mountain or koppie, but words to that effect.
 8 MS BARNES: Yes, well, that's important
 9 and we're going to go into that in some detail in a moment
 10 but before I do, I must just indicate to you that Mr
 11 Mathunjwa has testified in the Commission that those, that
 12 he did not say those words to you. You understand that?
 13 MR SEEDAT: I wasn't here but if he said
 14 it, yes, okay.
 15 MS BARNES: And I'd like to highlight at
 16 this stage, Mr Seedat, that in your evidence in chief which
 17 you gave on the 11th of September 2014, there your evidence
 18 was not that Mr Mathunjwa had said "Give me a place at the
 19 bargaining table," your evidence was that Mr Mathunjwa had
 20 said words to the effect, and I'm quoting, "give me a place
 21 at the negotiating table." Do you accept that? Would you
 22 like me to refer you to the transcript?
 23 MR SEEDAT: I may have said that, fine.
 24 MS BARNES: There's a difference, Mr
 25 Seedat, and I'm not, I don't know whether you appreciate it

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1 but let me put it to you, there's a difference between a
 2 place at the negotiating table and bargaining rights at
 3 Lonmin, you accept that there's a difference?
 4 MR SEEDAT: Well, ma'am, technically I
 5 understand there's a difference but I didn't see that, you
 6 know, from a technical perspective.
 7 MS BARNES: Well, the difference is not
 8 technical and I'll explain to you why and it'll become
 9 clear why as we go along, but perhaps if we can go at this
 10 stage to the transcript of the meeting that was held at the
 11 Lonmin LPD offices on the morning of the 16th of August
 12 2012, this is exhibit OO13, if we could have that on the
 13 screen, please. Now this is a meeting, Mr Seedat, that was
 14 in fact being held – this will become evident as we go
 15 along – that was in fact being held in the reception area
 16 of the LPD offices and this meeting we now know was
 17 recorded by Mr Kwadi. This will become clear as we go
 18 along, if it's not clear to you now. If we could go to
 19 page 700, paginated page 700 please? Thank you, that's
 20 fine. Now you'll see there that the following appears,
 21 "Mahomed joined meeting and there is a greeting between
 22 Mahomed and Mathunjwa."
 23 MR SEEDAT: I'm sorry, I'd like to
 24 clarify that. There was not a meet – I didn't join any
 25 meeting, I was simply making my way through the reception

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1 area to the mining boardroom. As I went through the
 2 security gate, as I entered the door I noticed Joseph
 3 sitting to my right on one of the couches. There were
 4 other people sitting there, amongst them those people.
 5 Joseph stood up to greet me, I greeted him and we had a bit
 6 of a banter and because we were talking loudly, people said
 7 there's a press conference going on, keep quiet, and then
 8 we moved to the side to one of the passages and had a
 9 conversation there but I did not join that meeting.
 10 CHAIRPERSON: Yes, I take it the
 11 transcriber who is responsible for this transcript that we
 12 have on the screen, who said "Mahomed joins meeting" –
 13 MR SEEDAT: That's not correct, sir.
 14 CHAIRPERSON: - and there's a greeting.
 15 That, the word "meeting" wasn't well chosen. It's probably
 16 "joins discussion" or something of that sort.
 17 MR SEEDAT: No, sir, I didn't have a
 18 discussion with anyone else in that room, in that reception
 19 area. As I walked in, Joseph got up when he recognised me,
 20 I recognised him, we shook hands, we greeted each other, he
 21 asked me what I was doing there, I asked him what he was
 22 doing there and because we were talking loudly, then we
 23 moved to the side.
 24 CHAIRPERSON: Alright, so "joins meeting"
 25 should really mean "comes into the room" or something like

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1 that.
 2 MR SEEDAT: I entered the room.
 3 CHAIRPERSON: Yes. You see this is a
 4 transcript prepared by Lonmin but we're not bound by what
 5 the transcriber thought was happening. So you say it would
 6 be a more accurate transcript if it were to say "Mahomed
 7 comes into the room?"
 8 MR SEEDAT: I entered the reception area,
 9 yes.
 10 CHAIRPERSON: Entered the reception area,
 11 alright.
 12 MS BARNES: Because you see, Mr Seedat,
 13 what was in fact happening and I accept that you may not
 14 have been aware of this but there was a discussion going on
 15 among the people in the reception area and that is the
 16 discussion that was being recorded by Mr Kwadi and that is
 17 the transcript that we have in front of us here. Now
 18 perhaps what we should do in order for us to have absolute
 19 clarity, is play the audio portion of the transcript at
 20 this point where it says Mahomed joins meeting and there is
 21 a greeting between Mahomed and Mathunjwa and we can then –
 22 because there are in fact, the greeting is expressed on the
 23 audio and doesn't in fact appear in the transcript. So
 24 perhaps if we could do that. The audio is not yet an
 25 exhibit, Chair, so we would need to make the audio clip an

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1 exhibit. I believe that the people operating the system do
 2 have it.
 3 CHAIRPERSON: Could we not call it OO13A?
 4 MS BARNES: Yes, I'm sure we could,
 5 Chair. That would be –
 6 CHAIRPERSON: If Ms Pillay will give us
 7 permission. Ms Pillay, do we have your permission?
 8 MS PILLAY: Yes, you do, Chair.
 9 CHAIRPERSON: Thank you.
 10 MS BARNES: If you could play the audio,
 11 please, at 13:53.
 12 CHAIRPERSON: How do we describe it?
 13 I've written it as exhibit double zero 13A – actually it's
 14 double OO13A, isn't it, the letter not the number –
 15 MR SEEDAT: I'm sorry, ma'am –
 16 CHAIRPERSON: What do I call it, audio
 17 clip of – oh yes, audio clip of exhibit OO13 will be an
 18 adequate description, I think.
 19 MR SEEDAT: Sorry, you mentioned 13:53,
 20 is that the time or is that –
 21 MS BARNES: It's the time on the
 22 recording that I would like played.
 23 MR SEEDAT: Oh, not the time of day, it's
 24 the time of recording.
 25 MS BARNES: No, no. So if we could play

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1 it from 13:53 to 14:15, please?
 2 [13:47] [AUDIO CLIP IS PLAYED]
 3 MS BARNES: You can stop, thank you very
 4 much. So Mr Seedat, you recall that, that was the occasion
 5 where you first saw Mr Mathunjwa on the 16th of August,
 6 correct?
 7 MR SEEDAT: That's right, I referred to
 8 the little banter we had between us, ja.
 9 MS BARNES: You hadn't had any discussion
 10 with Mr Mathunjwa prior to that on the 16th of August?
 11 MR SEEDAT: No, the last time I saw
 12 Joseph was probably five, six years before that when I was
 13 in the BHP Billiton group.
 14 MS BARNES: And so it's clear then that
 15 this was the moment at which you had your discussion with
 16 Mr Mathunjwa and you also exchanged cell numbers, correct?
 17 MR SEEDAT: Yes.
 18 MS BARNES: Now Mr Seedat, before you had
 19 arrived in the reception are there had in fact been a
 20 discussion going on between Mr Mathunjwa and Mr Kwadi. You
 21 wouldn't have been aware of that.
 22 MR SEEDAT: No.
 23 MS BARNES: But if we could look again at
 24 exhibit OO13, if we could go to the bottom of page 695,
 25 this is now before you arrived there. At the bottom of

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1 paragraph 695, after quite a lengthy discussion between Mr
 2 Mathunjwa and Mr Kwadi, Mr Kwadi says the following, he
 3 says "So you are saying that if this issue is to be
 4 resolved there has to be, call it a central discussion for
 5 lack of a" and then we go on to the next page, "for lack of
 6 a better word, okay, there has to be a central forum to
 7 deal with the issues of RDOs across Marikana operations and
 8 you are saying the only way you will go to the mountain is
 9 if you are guaranteed a place there." And Mr Mathunjwa
 10 then says, "Exactly." Now Mr Seedat, that is what, what we
 11 see there is precisely what Mr Mathunjwa was suggesting.
 12 He was suggesting that a central forum would be established
 13 to look at the issues raised by the RDOs across Marikana
 14 and it was on that forum that AMCU wanted a seat. Do you
 15 see that?
 16 MR SEEDAT: That's what this – it's your
 17 interpretation of what's there. I can't comment on it
 18 because I wasn't there.
 19 MS BARNES: Well, those are the words we
 20 see there. We also have Mr Mathunjwa's evidence before
 21 this Commission in which he has said that that is what he
 22 was asking for and I'd like to refer us – 5, page 2578.
 23 This is where we see Mr Mathunjwa's evidence that the forum
 24 that he envisaged was to be outside of the bargaining
 25 structures, if we could go to page 2578 from line 4. This

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1 is in fact in response to a question from Commission Hemraj
 2 who says, "Mr Mathunjwa, this forum that you speak of that
 3 you wanted to be part of, do I understand that forum that
 4 you refer to, to be separate from the bargaining
 5 structures?" And Mr Mathunjwa says, "That's correct." Do
 6 you see that?
 7 MR SEEDAT: Hm-hm.
 8 MS BARNES: Now of course you hadn't been
 9 party to the discussion between Mr Mathunjwa and Mr Kwadi
 10 that had taken place in this regard, we've established
 11 that. We do know that your discussion with Mr Mathunjwa
 12 was a minute or two after Mr Kwadi had clarified that what
 13 Mr Mathunjwa wanted was a central forum to be established
 14 and for AMCU to have a seat on the central forum, you
 15 accept that?
 16 MR SEEDAT: Ja.
 17 MS BARNES: If you could just verbalise
 18 your answer –
 19 MR SEEDAT: Yes.
 20 MS BARNES: - for the record, please.
 21 And it's most likely, most unlikely, I beg your pardon, I'm
 22 sure you'll agree with me, that Mr Mathunjwa would have
 23 said "Exactly" to Mr Kwadi's clarification and then said
 24 something different to you, correct?
 25 MR BURGER SC: I object to –

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1 MR SEEDAT: Well, I can't, I can't say
 2 what Mr Mathunjwa – sorry.
 3 CHAIRPERSON: Mr Burger, you have an
 4 objection?
 5 MR BURGER SC: I object to that question.
 6 CHAIRPERSON: What is the objection?
 7 MR BURGER SC: He's not an expert on
 8 probabilities and inferences to be drawn.
 9 CHAIRPERSON: Ms Barnes, this is a point
 10 we've made often in this Commission that if something is
 11 put to a witness, unless the witness is in a special
 12 position to express an opinion on the probabilities of
 13 particular conduct, or improbabilities, we say that to
 14 decide whether something is probable or not
 15 MS BARNES: Chair, I'm happy to move on.
 16 I'm happy to move on.
 17 CHAIRPERSON: Yes, I think you should.
 18 MR SEEDAT: Chair, could I just respond
 19 differently to the question, though? I had the
 20 conversation that I recall I had with Joseph. Now if I'd
 21 said at the Commission on the negotiable, I would prefer to
 22 stick with "bargaining" because that's what, the statement
 23 was written shortly after the incident. And I'm a little
 24 confused why Joseph would want me involved in that
 25 discussion when he was having it with Mr Kwadi and the

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1 other people. I had no party to that discussion, so why
2 would he approach me with that specific request when those
3 discussions with Mr Kwadi were going on at the time? So I
4 can recall what I clearly heard Joseph say and I'd like to
5 say that that's what I heard and I didn't hear anything
6 else.

7 MS BARNES: But isn't it possible, Mr
8 Seedat, having regard to the transcript that we've just
9 looked at, to the fact that there was a prior discussion
10 between Mr Mathunjwa and Mr Kwadi that you weren't aware
11 of, isn't it possible that you misunderstood what Mr
12 Mathunjwa was saying to you?

13 MR SEEDAT: Ma'am, I can't say that
14 because I can only tell you what I heard and what I heard
15 is what Joseph told me.

16 MS BARNES: Isn't it possible that you
17 misunderstood the meaning that Mr Mathunjwa, that you've
18 claimed Mr Mathunjwa was conveying to you?

19 MR SEEDAT: Well, I don't think so
20 because I explained to Joseph that we already have existing
21 structures in place that have to be honoured but I will
22 take his request to management, you know, if I – to the
23 people involved, and I would have explained and said, well,
24 I'm talking to Joseph, to Mr Kwadi about that anyway, which
25 I did immediately after the conversation with Joseph go to

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1 the boardroom where the other management team were and I
2 relayed to them the conversation I'd just had with Joseph.
3 So I'm a little confused why he would have brought it up
4 with me when he was actually having these discussions with
5 the people who actually were responsible.

6 CHAIRPERSON: I imagine the explanation
7 for that is pretty obvious, that he would appear to have
8 been not getting the kind of response from Mr Kwadi that he
9 wished for, he knew you previously in your BHP Billiton
10 days, knew you as a reasonable person and he thought that
11 if he put the point to you, you might be able to put it
12 more persuasively than he could, to Mr Kwadi. I would
13 imagine that's the explanation, I don't think very much
14 turns on it.

15 MR SEEDAT: We can only speculate but I,
16 you should have then given me the context, that he's trying
17 to convince Mr Kwadi and others there that they were having
18 this conversation. This just came to me as something out
19 of the blue. I had none of the context to understand why
20 he said it and my response to him at that time was, I am a
21 non-executive director, I have no executive powers, I can't
22 make any decisions, I will convey your message to the
23 relevant people in management, which is what I did.

24 MS BARNES: Mr Seedat, isn't it correct
25 then that you couldn't be sure whether what Mr Mathunjwa

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1 was asking you for or you to agree to, was a central forum
2 or a place at the bargaining table, isn't that correct?

3 MR SEEDAT: Well, ma'am, I can only
4 respond to what I heard him say, it was a seat at the
5 bargaining table and then he'd get the workers off the
6 koppie, that's what I remember him telling me. So I can
7 only interpret what I –

8 MS BARNES: Or negotiating table, you're
9 not sure of the precise word.

10 MR SEEDAT: When I wrote the statement it
11 was within a few weeks of the incident and I would rely on
12 what I said three years, two years ago rather than what I
13 said two weeks ago.

14 MS BARNES: Mr Seedat, in your statement
15 you talk about being, you make reference to being briefed
16 on the 16th of August 2012 by General Mbombo and General
17 Annandale, do you recall that?

18 MR SEEDAT: That's correct.

19 MS BARNES: Was your understanding that
20 General Mbombo was in charge of the operation on the 16th of
21 August?

22 MR SEEDAT: I think she's the Provincial,
23 she was the Provincial Commissioner and we had a discussion
24 with her after we had a discussion with General Annandale
25 about what was happening at the koppie. I got the

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1 impression that General Annandale was responsible for the
2 actual disarming of the people on the koppie and he was
3 reporting to, amongst others, Provincial Commissioner
4 Mbombo. Have I got the names right? I'm sorry, are you
5 talking about the Provincial Commissioner?

6 CHAIRPERSON: The Provincial Commissioner
7 is General Mbombo and Major-General Annandale was someone
8 from head office who had come specially to Marikana to be
9 involved in the operations.

10 MR SEEDAT: Yes.

11 MS BARNES: Thank you, Chair, those are
12 our questions.

13 CHAIRPERSON: Thank you, Ms Barnes. Next
14 is the LRC, Mr Wesley, is that correct?

15 MR NGCUKAITOBI: Yes, thank you, Mr
16 Chairman. Just -

17 CHAIRPERSON: Let me get your name right,
18 is it Ngcukaitobi, is that correct?

19 MR NGCUKAITOBI: Yes.

20 CHAIRPERSON: Alright, got it. You have
21 25 minutes.

22 MR NGCUKAITOBI: Thank you.

23 CHAIRPERSON: Now that I've got your name
24 right.

25 CROSS-EXAMINATION BY MR NGCUKAITOBI: I

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1 just want to make sure that the witness has the LRC's
 2 bundle for phase 2.
 3 MR SEEDAT: Is it this one?
 4 MR NGCUKAITOBI: Yes, does it start with
 5 20, 21? Yes, yes, that's the one and the panel presumably
 6 also has a copy.
 7 MS PILLAY: Chair, this will be exhibit
 8 SSSS7, SSSS7.
 9 CHAIRPERSON: How do I describe it?
 10 MS PILLAY: It's the LRC's bundle for the
 11 cross-examination of Mr Seedat.
 12 MR NGCUKAITOBI: Now, Mr Seedat, I want
 13 to take you back to –
 14 CHAIRPERSON: Alright, it has so been
 15 noted.
 16 MR NGCUKAITOBI: Thank you. I want to
 17 take you back to the issue of the houses. As I understand
 18 your evidence it was never the intention of Lonmin that you
 19 would be financially responsible for these houses.
 20 MR SEEDAT: Yes, that's what I said.
 21 MR NGCUKAITOBI: Yes. And in fact a
 22 question specifically was put by Mr Burger that you could
 23 not be the guarantor of these houses. You remember that?
 24 MR SEEDAT: Yes.
 25 MR NGCUKAITOBI: And you confirmed that

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1 you couldn't be the guarantor of the houses.
 2 MR SEEDAT: Yes.
 3 MR NGCUKAITOBI: Now, when Lonmin made
 4 the undertaking in 2007, 2006 rather, and repeatedly made
 5 it right up to 2010 when it changed its stance, who did you
 6 think was going to pay for these houses?
 7 MR SEEDAT: Well, sir, as I said then,
 8 they were having discussions with RMB, Rand Merchant Bank,
 9 and I have subsequently recently found a letter written by
 10 RMB to Mr Kgomo Ngcobo dated 27 February 2007 and I'm sure
 11 we'll have to submit it at some point but it says, "RMB is
 12 pleased to advise that a facility in an amount of not
 13 exceeding R318 million has been approved for the project
 14 subject to the terms and conditions set out below." And he
 15 talks about conclusion of a facility, conclusion of a land
 16 sale agreement and it was going to be done in terms of
 17 approved institutional structures, this is what RMB is
 18 saying, "The facility will be made available to a property
 19 SPV to be formed, called the borrower. This facility may
 20 only be used for the financing of up to 3 000 completed
 21 housing units. The units are to be constructed by a
 22 contractor satisfactory to both parties and sold or rented
 23 to credit approved mine employees."
 24 MR NGCUKAITOBI: And what was going to be
 25 the role of Lonmin?

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1 MR SEEDAT: Well, it says here the other
 2 thing that Lonmin was going to do, Lonmin had to be a party
 3 to the land sale agreement between Western Platinum Limited
 4 and the borrower, which is the property SPV. I'm trying to
 5 see where Lonmin is referred to. "Conclusion of an
 6 undertaking from Western Platinum Limited" which is Lonmin,
 7 "to the borrower" which is the property SPV "in terms of
 8 which Western Platinum Limited underpins arrear payments
 9 arising as a result of an employee's retrenchment from the
 10 mine plus any foreclosure losses incurred by the property
 11 SPV as a result of default by such retrenched employee."
 12 MR NGCUKAITOBI: Now that undertaking or
 13 underpinning –
 14 MR CHASKALSON SC: Sorry, Chair, I'm
 15 sorry to interrupt but I think that document ought to be
 16 made an exhibit and circulated to the parties because it
 17 may affect what questions I want to ask Mr Seedat later,
 18 for instance, and I think Mr Ngcukaitobi should see it as
 19 well.
 20 MR NGCUKAITOBI: Yes, I would like to see
 21 the document, Mr Chair.
 22 CHAIRPERSON: Have you only got one copy,
 23 Mr Seedat?
 24 MR SEEDAT: I've only got this copy, sir.
 25 CHAIRPERSON: Yes, I see. Is it possible

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1 for you to deal with, Mr Ngcukaitobi, is it possible for
 2 you to deal with another matter in cross-examination while
 3 copies of this document are being made? That shouldn't
 4 take more than a few minutes.
 5 MR NGCUKAITOBI: Yes, indeed Mr Chairman.
 6 CHAIRPERSON: If you've got discrete
 7 topics to deal with, you can deal with another one.
 8 MR NGCUKAITOBI: Yes, I'll come back to
 9 this –
 10 CHAIRPERSON: And come back to this as
 11 soon as a copy is available. So can you give us the
 12 document please and –
 13 MR SEEDAT: Yes, sir.
 14 CHAIRPERSON: How many copies will we
 15 need?
 16 MR NGCUKAITOBI: Maybe six, but that's
 17 just my thumb suck.
 18 MS PILLAY: Chair, we usually make 10
 19 copies.
 20 CHAIRPERSON: Make 12 copies to be on the
 21 safe side.
 22 MR NGCUKAITOBI: Mr Burger says 15.
 23 CHAIRPERSON: Mr Burger has bid high, his
 24 bid is accepted, yes 15.
 25 MR BURGER SC: I'm just more expensive,

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1 Chair.

2 MR NGCUKAITOBI: Now, to move on to

3 another topic of your evidence, you've testified in several

4 parts of your evidence that the overwhelming majority of

5 workers were not interested in ownership, they were

6 interested in rental. In fact you put the figure at 85%.

7 MR SEEDAT: Can I, can I just correct

8 that? Two surveys were done, one was done around November

9 2007 and in that survey the employees who were surveyed,

10 they did what they call focus group surveys, got people in

11 and talked to them – the vast majority of employees there

12 wanted to own their own houses. So I'd like to put that in

13 context. In the subsequent survey that was done around

14 2009, is where it was – we put up the three show houses and

15 when people came to look at the show houses, that's when we

16 picked up that it appeared that the employees were more

17 interested in rental units and that's when we did a further

18 survey that confirmed that 85% of employees preferred

19 renting units.

20 MR NGCUKAITOBI: Can I take you to the

21 first survey of 2007, November?

22 MR SEEDAT: Yes.

23 MR NGCUKAITOBI: It is in the LRC bundle

24 at page 2075.

25 MR SEEDAT: No – where it starts.

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1 MR NGCUKAITOBI: 2075, is that in that –

2 MR SEEDAT: Yes, I've got it.

3 MR NGCUKAITOBI: Well, I'm waiting for it

4 to show on the screen.

5 CHAIRPERSON: I think that the document

6 on the – we've got a different document 2075 from the one

7 which is on the screen. The one which we've been handed is

8 the document headed "Housing demand assessment, Lonmin

9 Marikana operation" –

10 MR NGCUKAITOBI: Yes, that's the correct

11 document.

12 CHAIRPERSON: January 2008.

13 MR NGCUKAITOBI: Yes.

14 CHAIRPERSON: That's 2075. I don't know

15 where, I don't know – it's part of the 2007 annual report,

16 it would appear. It looks like page 7 of that report.

17 MR NGCUKAITOBI: Yes, well, the document

18 on the screen is not the document I want to refer the

19 witness to. The panel has the right document and the

20 witness has the right document, I've got the right

21 document. So presumably we can just proceed.

22 CHAIRPERSON: Yes, let's carry on.

23 MR NGCUKAITOBI: Yes, thank you.

24 CHAIRPERSON: And hope that the operator

25 will be able to catch up in due course.

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1 MR NGCUKAITOBI: Thank you, Mr Chairman.

2 I want you to turn to page 2092. The second paragraph on

3 the left under the heading "The housing waiting list." Now

4 you see the second paragraph, the first paragraph talks

5 about the housing waiting list dating back to 1998. Were

6 you aware that the Lonmin housing list dated back to 1998?

7 MR SEEDAT: It says so in the document,

8 so I can only go by what the document says. I joined in

9 2007, so I had to rely on this, yes.

10 MR NGCUKAITOBI: And the second paragraph

11 says by the time you joined in 2007 the list included more

12 than 5 000 names.

13 MR SEEDAT: Yes.

14 MR NGCUKAITOBI: Were you aware of that?

15 MR SEEDAT: Well, yes, the document says

16 so. I'm aware of what the document says.

17 MR NGCUKAITOBI: Ja. Now, your evidence

18 where you were not sure about where the number of 5 000

19 houses comes from, I want to suggest to you that it

20 presumably comes from the fact that Lonmin had a waiting

21 list of approximately 5 000 list, names.

22 MR SEEDAT: Yes, I think I did say so in

23 my evidence that I think it came from this survey.

24 MR NGCUKAITOBI: Yes.

25 MR SEEDAT: Not from the survey because

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1 prior, the SOP was submitted in April 2007 –

2 MR NGCUKAITOBI: Yes.

3 MR SEEDAT: Lonmin was aware that there

4 were over 5 000 people waiting for houses and used that

5 5 000.

6 MR NGCUKAITOBI: Now I can take you to

7 page 2123 of that same document 2123, have you got that?

8 You see under the heading "Ownership versus rent

9 preference?"

10 MR SEEDAT: Yes.

11 MR NGCUKAITOBI: You see that it says,

12 "It is the intention of 85% of respondents to own their

13 house. To many people this is a lifelong ideal and

14 symbolic of arriving somewhere in life." And there is a

15 table on the right which tells you how that number is

16 arrived at. The people who want to rent are 15%, those who

17 want to buy straight away is 39% and those who want to rent

18 to buy is 46%.

19 MR SEEDAT: That's right.

20 MR NGCUKAITOBI: So the experts were

21 telling you already in 2008 that there is an overwhelming

22 demand for ownership.

23 MR SEEDAT: In 2008 that's what they

24 said, yes.

25 [14:07] MR NGCUKAITOBI: Yes. Now you also gave

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1 evidence essentially where you said some of these employees
 2 essentially own a house in the labour sending area, whether
 3 it is the Eastern Cape or wherever they come from and what
 4 you established in your experience was that they basically
 5 didn't want to saddle themselves with the responsibility of
 6 a second house in Marikana, you remember that?
 7 MR SEEDAT: That's right, that's after
 8 the survey we did in 2009, yes.
 9 MR NGCUKAITOBI: But you remember that's
 10 the evidence that you gave, in fact you spoke to somebody
 11 in a hostel and that's what they told you and you assumed
 12 therefore that many people generally do not want a second
 13 home in Marikana.
 14 MR SEEDAT: Well, it is also based on a
 15 survey that said 85% of employees surveyed said they do not
 16 want to own a unit in the Marikana area and would prefer to
 17 rent.
 18 MR NGCUKAITOBI: Yes. Now I can take you
 19 to 2128 to look at the actual results of the survey and you
 20 see there under perception of cost it says only 3%
 21 indicated that they will give up the option to buy and stay
 22 where they are. So you had a 97% demand for housing.
 23 MR SEEDAT: To own houses –
 24 MR NGCUKAITOBI: Yes, to own houses.
 25 MR SEEDAT: Yes.

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1 MR NGCUKAITOBI: In fact the following
 2 sentence says, "The rest were so desperate to get a house
 3 that they would make a number of plans to change their
 4 personal situation to be able to afford it."
 5 MR SEEDAT: Yes.
 6 MR NGCUKAITOBI: Now if I can then take
 7 you to page 2146 under the heading "Lonmin perceived poor
 8 delivery," we started off when we analysed the survey by
 9 looking at what happened in 1998 where the housing list
 10 seems to have started. Your own investigators were telling
 11 you that there is a profound and broad-based scepticism
 12 about Lonmin's willingness to really build houses and then
 13 if you go further down they talk about the angriest
 14 statements coming from people who have been waiting on the
 15 waiting list for 10 years or longer.
 16 MR SEEDAT: Yes.
 17 MR NGCUKAITOBI: So by 2008 you were
 18 already warned that your employees are in fact very angry
 19 with Lonmin, in fact the word used here is that they resent
 20 Lonmin because it breaks its promises. If you want to look
 21 at the statements, I mean the statements are on the right-
 22 hand side of page 2146. The last statement says, "Lonmin
 23 is not honest. They always promise and they don't keep
 24 their promises. They have been deceiving us and telling us
 25 untrue stories." So already in January 2008 you were being

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1 told by your experts that your workers do not trust your
 2 company because it doesn't keep its housing promises.
 3 MR SEEDAT: Yes.
 4 MR NGCUKAITOBI: Now, what they
 5 recommended you should do, your experts recommended, is at
 6 2151. Now the first recommendation was that you should
 7 develop affordable houses. Remember when you gave evidence
 8 and essentially said these surveys told you that you should
 9 be looking at a rental option rather than an ownership
 10 option?
 11 MR SEEDAT: I've got to qualify, that was
 12 based on the survey we did in 2009. You're referring to
 13 the survey done in 2007, that's not the conclusion we got
 14 from the survey in 2008.
 15 MR NGCUKAITOBI: Well, can I take you to
 16 your evidence? It's particularly at page 37718. Yes, it's
 17 lines 15 to 25 where you say, "In November 2007" – we know
 18 that we've just looked at that study –
 19 MR SEEDAT: Well, as I pointed out there,
 20 we looked at the housing needs analysis and they used a
 21 waiting list of people wanting houses, I said that
 22 previously, yes.
 23 MR NGCUKAITOBI: Yes. Now the study that
 24 you talk about in 2010, where is that study because I
 25 haven't seen that study in any of the documents?

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1 MR SEEDAT: It's in one of the files.
 2 MR NGCUKAITOBI: You see I have a
 3 document prepared in August 2010 by a company called
 4 H-O-L-M Jordaan Architects and Urban Designers and those
 5 are the only two studies I have seen.
 6 MR SEEDAT: Well, it is that study but
 7 there's a file that's that thick with all the details in
 8 it, that was submitted as evidence.
 9 MR NGCUKAITOBI: Alright, because the
 10 second study of August 2010 has nowhere where it talks
 11 about a survey being done on employees with the result that
 12 15% are interested in ownership and 85% are interested in
 13 rental.
 14 MR SEEDAT: Well, I think you need to
 15 read the complete file, the comprehensive one –
 16 MR BURGER SC: [Microphone off,
 17 inaudible] made it available to the Commission and it was
 18 referred to in chief.
 19 MR SEEDAT: Yes.
 20 MR NGCUKAITOBI: Now you would agree, Mr
 21 Seedat, that the 2008 study told you that the overwhelming
 22 number of employees in fact want to own accommodation.
 23 MR SEEDAT: At that time, yes.
 24 MR NGCUKAITOBI: And it was only 15% that
 25 were interested in rental.

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1 MR SEEDAT: At that time, yes, yes.
 2 MR NGCUKAITOBI: And notwithstanding
 3 those recommendations, you in fact never acted upon them.
 4 MR SEEDAT: No, that's not true. I said
 5 so in my evidence, that there were proposals done, there
 6 were consultations with the union, the union looked at the
 7 proposal and made some, requested some changes. The
 8 proposals were revised to include those changes. Then in
 9 August 2008 a memo was written by the head of housing,
 10 Wayne Hill, to the EXCO saying this is where we are, we
 11 would like to start with 100 starter homes, that's also in
 12 the evidence, and that was submitted to EXCO in around
 13 August 2008. So it was acted on. The survey was done, the
 14 survey was translated into an output, the output was a
 15 proposal, the proposal was discussed with the unions, the
 16 union representatives made suggestions, those suggestions
 17 were incorporated into the proposal. That was then
 18 submitted to the EXCO around August 2008 for approval by
 19 the EXCO in 2008.
 20 MR NGCUKAITOBI: So the 15% who were
 21 interested in ownership on your model, also never got their
 22 houses.
 23 MR SEEDAT: Well, sir, then from what I
 24 can establish, in August 2008 that proposal for 100 houses,
 25 starter houses, was put together, it was submitted to the

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1 EXCO. In late September 2008 you had the stock market
 2 crash where the platinum price dropped from over \$2 000 a
 3 fine ounce to around \$800 a fine ounce. The attention of
 4 management focused on the survivability of the company, we
 5 went through a process called the R&R, the reorganise and
 6 restructure, where we had to retrench a significant number
 7 of people including board members, including executives and
 8 the net was around 3 500 people. So from September 2008
 9 Lonmin had a choice, continue building these houses but you
 10 don't know whether you're going to be surviving the next
 11 year in terms of financials, or put all your effort into
 12 ensuring that the company survives. People who are losing
 13 their jobs are not going to be interested in buying a house
 14 if they're at risk of losing their jobs. So the focus
 15 between management, labour, the DMR, all changed on how can
 16 we keep the company surviving through those difficult
 17 times. Nobody knew where the platinum price was going to
 18 go when it was at \$800 an ounce –
 19 MR NGCUKAITOBI: Can you answer my
 20 question –
 21 MR SEEDAT: - finish. At \$800 a fine
 22 ounce the company was totally underwater, so you had to
 23 focus on the viability of the company otherwise you'd have
 24 a company that's gone off and you'd have houses that nobody
 25 would have been able to occupy.

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1 MR NGCUKAITOBI: Mr Seedat, can you
 2 please answer my question? The 15% on your suggestion also
 3 never got their houses, yes or no?
 4 MR SEEDAT: Yes, in the context of what
 5 I've just said, yes.
 6 MR NGCUKAITOBI: Now you also gave
 7 evidence about the 1 149 houses that were built where the
 8 take-up was about 220, you remember that?
 9 MR SEEDAT: Well, the take-up, I'd like
 10 to define what take-up is. Take-up is where people had
 11 paid the last bits of money in that were required to be
 12 paid to have the houses transferred onto their names.
 13 Ownership, in other words, legal ownership went to them.
 14 MR NGCUKAITOBI: Yes. Now can I take you
 15 to page 2069 of the LRC bundle? Now that tells us by
 16 October 2010 what the story was in relation to the 1 149
 17 houses that you spoke about.
 18 MR SEEDAT: Yes?
 19 MR NGCUKAITOBI: Now if you look at the
 20 graph at the bottom of the page, on your first, the left
 21 hand corner it says "Total houses 1 149" and then one, two,
 22 three, four, five, then fifth table from the right it's
 23 deed of sale signed.
 24 MR SEEDAT: Yes.
 25 MR NGCUKAITOBI: That's what you're

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1 talking about.
 2 MR SEEDAT: Yes.
 3 MR NGCUKAITOBI: Well, it's not 220, it's
 4 232 but that doesn't matter –
 5 MR SEEDAT: No, no, no. Again please let
 6 me clarify. Deed of sale signed is not transfer of
 7 ownership. Transfer of ownership would have been transfer
 8 completed 103 plus the 103 clearance certificate received,
 9 in other words the last step needed to be done which is the
 10 transfer of the property being registered. So the number
 11 I'm giving you, which is the current number, not in 2010,
 12 is the addition of those two plus a few more obviously that
 13 have come through further down, yes.
 14 MR NGCUKAITOBI: Now if you look at the
 15 second column it's total houses and then the second one is
 16 applied to purchase.
 17 MR SEEDAT: Yes.
 18 MR NGCUKAITOBI: And that takes you to
 19 1 065.
 20 MR SEEDAT: Yes.
 21 MR NGCUKAITOBI: Do you know why those
 22 applications were not processed?
 23 MR SEEDAT: No. You've got to understand
 24 how it was done. The applied to purchase was done at the
 25 time when the houses to which occupation was taken, the way

1 the people, the resident were going to pay for the houses,
 2 on what is called a rent to buy. So they were going to
 3 rent the units and I think the rent was around R500 a month
 4 – I'm giving you estimated numbers – the price of these
 5 units was around 60 or R70 000. Every month the unit's
 6 occupant paid the rent, so he paid R500 and by the end of
 7 the year he would have paid R6 000. That R6 000 would be
 8 deducted from the money owing, which is the price of the
 9 unit, let's say for these purposes, R70 000. So at the end
 10 of the first year he would be owing R66 000, at the end of
 11 the second year he would be owing R60 000. At the end of
 12 10 years or thereabouts he would have paid for the unit and
 13 then transferred, the transfer process would have happened.
 14 So that's how they applied to purchase, is at the time when
 15 they took occupation on a rent to buy basis.

16 MR NGCUKAITOBI: Now the point I'm trying
 17 to make here is a simple one. The fact that there was a
 18 take-up of 220 or whatever the number is, is not a
 19 reflection on the demand for housing because you had more
 20 than 1 000 applications to purchase.

21 MR SEEDAT: It's a reflection of the
 22 fact, which is confirmed by the survey we did in 2009,
 23 2010, that people would prefer to rent rather than own.
 24 Why would someone who has been occupying a unit for almost
 25 10 years and has a few thousand rand to pay, doesn't want

1 presentation made by Mr Farmer to parliament in November
 2 2011 and if you look at the bottom of the page where it
 3 says "Promotion of home ownership" and the second bullet,
 4 it talks about a sale of 1 149 Marikana houses to
 5 employees. There is nowhere where he talks about the sale
 6 being 220 houses. Can you explain that?

7 MR SEEDAT: Sold and transfer of
 8 ownership are two different things. The houses were sold
 9 to the occupants when they took ownership. The transfer
 10 would happen when the full amount has been paid on a rent
 11 to buy basis, yes.

12 MR NGCUKAITOBI: Do you accept that in
 13 fact Lonmin had sold all the 1 149 houses, as Mr Farmer
 14 told parliament?

15 MR SEEDAT: Yes, it did.

16 MR NGCUKAITOBI: Now can I move on to the
 17 next topic? You mentioned that you received the letter in
 18 terms of section 93 by the DMR where certain complaints
 19 were made against Lonmin and you also mentioned that there
 20 was a certain ex-director-general of DMR who was also a
 21 director of Lonmin and basically he was behind all of this.

22 MR SEEDAT: Not true, I didn't say he was
 23 a director-general of the DMR.

24 MR NGCUKAITOBI: Yes, but who is this
 25 person who you claim was behind this?

1 to pay and take ownership? Because if you take ownership
 2 you have to pay rates, you have to pay your lights and
 3 water, you have to pay all of the service charges that go
 4 with owning units. So the assumption is people didn't want
 5 the burden of those additional costs, they would prefer to
 6 rent because even though the agreement said they would pay
 7 for the rent and for the lights and water, they were not
 8 and Lonmin was paying all of those, Lonmin was paying the
 9 rates to those properties so that they can be serviced.

10 MR NGCUKAITOBI: Now can I ask you about
 11 a presentation made by Mr Farmer in parliament in November
 12 2011 on those houses? It's at page 2030 of the LRC bundle.

13 MR SEEDAT: 2013 or 2030?

14 MR NGCUKAITOBI: 2030.

15 MR SEEDAT: Sorry, mine are missing some
 16 numbers.

17 MR NGCUKAITOBI: Yes, well, if you just
 18 go to 2029, it's the page following 2029.

19 MR SEEDAT: Okay.

20 MR NGCUKAITOBI: And maybe the way to
 21 work, because even my own numbers are cut, if you cannot
 22 look at that document itself and go to page 16 of the
 23 document. Have you got that page?

24 MR SEEDAT: Yes.

25 MR NGCUKAITOBI: Now this was a

1 MR SEEDAT: Sir, I think it's public
 2 knowledge. I'm not sure if I should –

3 MR NGCUKAITOBI: Is it Mr Sivi Gounden.

4 MR SEEDAT: Yes.

5 MR NGCUKAITOBI: Now is it true that the
 6 way you resolved the matter with Mr Gounden is that you
 7 paid him US\$4 million, approximately R60 million.

8 MR SEEDAT: The number that comes to my
 9 mind is to settle the dispute on the associated minerals
 10 and the ownership of it, was around R35 million. So you
 11 have to use the exchange rate of the day, rather than
 12 today's exchange rate.

13 MR NGCUKAITOBI: So you paid him R35
 14 million?

15 MR SEEDAT: In exchange for getting the
 16 ownership confirmed by the DMR, he transferred the
 17 ownership of those prospecting rights to Lonmin.

18 MR NGCUKAITOBI: Yes. Now –

19 MR SEEDAT: Let me just clarify, Lonmin
 20 evaluated whether we should go the litigious route and the
 21 cost of going the litigious route versus settling this,
 22 because there were other priorities that Lonmin felt it had
 23 to focus on. So it was a decision that was made after
 24 considering all the options and it was felt that the one
 25 that best suited Lonmin at the time was to – because the

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1 DMR conferred these prospecting rights to this ex-director
 2 of Lonmin and to get those prospecting rights awarded to
 3 Lonmin was, either go and challenge it in the courts or
 4 reach a settlement with the owner and we reached a
 5 settlement with the owner.
 6 MR NGCUKAITOBI: Now, the letter from the
 7 DMR that was read out, you remember that one of the
 8 complaints that the DMR had against you is relating to the
 9 issue of housing.
 10 MR SEEDAT: Yes.
 11 MR NGCUKAITOBI: Now, to resolve the
 12 issue of the prospecting rights you paid R35 million. How
 13 much did you pay to resolve the issue of housing?
 14 MR SEEDAT: I don't understand the
 15 question.
 16 MR NGCUKAITOBI: Well, how did you
 17 resolve the issue of housing?
 18 MR SEEDAT: Well, the issue of housing is
 19 still not resolved –
 20 MR NGCUKAITOBI: Why –
 21 MR SEEDAT: - our best efforts, as I
 22 indicated previously the affordability of putting up houses
 23 for people to rent, the rental that they have to pay,
 24 there's a mismatch. Someone would have to subsidise that
 25 difference if we had to build normal, single stand

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1 dwellings of brick and mortar.
 2 MR NGCUKAITOBI: Mr Chairman, the last
 3 part of my cross-examination is the letter that was just
 4 handed up by the witness. I am told that I have five
 5 minutes to go, or less than five minutes.
 6 CHAIRPERSON: [Microphone off, inaudible]
 7 time to deal with this letter –
 8 MR NGCUKAITOBI: So I just –
 9 CHAIRPERSON: - but be sparing, ask
 10 short, focused questions.
 11 MR NGCUKAITOBI: Yes, I will ask the
 12 questions, I just want, if I can take five minutes to look
 13 at the letter.
 14 [14:27] CHAIRPERSON: You want an adjournment of
 15 five minutes to do it?
 16 MR NGCUKAITOBI: Yes.
 17 CHAIRPERSON: Well, I'd like to ask a
 18 question meanwhile, so let's just carry on with the
 19 question I want to ask. You were talking about the
 20 expressed preference on the part of the people whom you,
 21 who were surveyed originally. Over 80% said they wanted to
 22 own rather than rent. Were you aware of the fact that a
 23 number of people indicated they didn't quite understand the
 24 full implications? If you look at page 2123 of this
 25 exhibit of yours, part of the housing demand assessment –

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1 MR SEEDAT: Yes?
 2 CHAIRPERSON: There's a section that
 3 says, it's about, it's the first paragraph which begins on
 4 that page after the letter R. It's a reply that you got
 5 from the respondent, "I want to buy because when I own my
 6 own place I can bring my family here." Then the
 7 commentators, compilers of the assessment say this,
 8 "However, respondents were the first to admit they have
 9 more questions than answers when it comes to issues of
 10 house ownership. Being exposed mainly to the local makuku
 11 rent system" – makuku, I understand, is a Setswana word for
 12 shack, is that right?
 13 MR SEEDAT: Yes.
 14 CHAIRPERSON: "Being exposed mainly to
 15 the local makuku rent system, as well as the Marikana West
 16 and RDP housing schemes, employees feel extremely
 17 vulnerable when it comes to making decisions regarding home
 18 ownership. Also see section 5 of this report." We'll look
 19 at it in a moment. And then they go on to say how they
 20 lack information, they're confused about the options,
 21 they're afraid they'll take the wrong op-, the wrong
 22 decisions. Then at the top of the next column, "The
 23 question of renting or buying is difficult for us. People
 24 need advice." And then that point is elaborated on and
 25 then if one goes to section 5 which one finds at page 2143,

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1 a section headed "Questions in need of immediate answers.
 2 In the final analysis it is of importance to take note of
 3 the most prominent questions that respondents have about
 4 home ownership" and they talk about the need for a high
 5 impact training programme that can alleviate a lot of the
 6 anxiety and allow employees time to prepare themselves
 7 sufficiently to take decisions responsibly. And then there
 8 are a whole lot of questions that are set out there and in
 9 the second column under the heading "Long-term planning
 10 questions" there's an answer, there are two answers that
 11 I'd like to read. "We need education and counselling
 12 before we commit. We ask Lonmin to please give us the
 13 information we need so that we can discuss this with our
 14 families and decide." And then the next answer, "In my
 15 head there are many questions about buying a house" and the
 16 questions are then set out. Now, were you aware at the
 17 time you considered this alleged preference of 85% of
 18 respondents to buy, that in fact this answer was given
 19 clearly by people who, as they put it, had a lot of
 20 questions, more questions than answers, who appear to have
 21 not been able to formulate a well-considered decision as to
 22 what would be best for them and what decision they really
 23 should make. Were you aware of that?
 24 MR SEEDAT: Yes, sir, and I wasn't at the
 25 time but I can surmise that that's why Lonmin then decided

<p style="text-align: right;">Page 38417</p> <p>1 to start the way they did, with 100 starter homes and if I 2 recall there's some documentation somewhere that says 3 they'd also embarked on an education programme for 4 employees and in fact the letter that I referred to 5 earlier, one of the conditions there is that all purchasers 6 have completed a home owners' education programme. So it 7 was recognised and it was being built into the way the 8 housing solution was being effected.</p> <p>9 CHAIRPERSON: Yes, yes –</p> <p>10 MR SEEDAT: And I think then the 11 distraction happened with the crash in 2008.</p> <p>12 CHAIRPERSON: You see I'd be interested 13 to know how extensive this education and counselling, 14 that's the phrase used in one of these questions that I 15 read out, how extensive the education and counselling was.</p> <p>16 You were, you had a number of employees of course who came 17 from the North-West Province, who had homes of their own in 18 the area. You had a number of migrant labourers who were 19 living there, I don't know what the percentage was but 20 perhaps you do, but there were thousands of migrant 21 labourers –</p> <p>22 MR SEEDAT: At least half of our 23 employees were migrant –</p> <p>24 CHAIRPERSON: At least half. I thought 25 half is about the right figure. And they were the people,</p>	<p style="text-align: right;">Page 38419</p> <p>1 agree with that.</p> <p>2 MR SEEDAT: Yes.</p> <p>3 MR NGCUKAITOBI: Yes, and then the 4 following paragraph says, "He said 38% of Lonmin work force 5 still lived in hostels and that the plan was to work with 6 Rand Merchant Bank to ensure that all Lonmin personnel were 7 accommodated in family units within three to five years." 8 And then it says, "RMB had agreed to finance the project 9 and Lonmin would sign surety for the homes which would be 10 employee owned. As of last year Lonmin had 26 534 11 employees in all, which included its contractors." Now I 12 want to ask you about that statement which says that RMB 13 had agreed to finance the project and Lonmin would sign 14 surety for the homes. You've given us this document which 15 probably should be given an exhibit number, the letter of 16 the 27th of February 2007.</p> <p>17 MS PILLAY: Chair, the document should be 18 marked SSSS10. 10.</p> <p>19 CHAIRPERSON: It was 7 a minute ago but I 20 take it 8 and 9 have been reserved.</p> <p>21 MS PILLAY: The other numbers have been 22 reserved.</p> <p>23 CHAIRPERSON: SSSS10 is letter from RMB 24 to Lonmin.</p> <p>25 MR NGCUKAITOBI: Yes.</p>
<p style="text-align: right;">Page 38418</p> <p>1 the migrant labourers were the ones you were primarily 2 concerned with, I take it, in the housing programme. Now 3 how many of those people received education and 4 counselling? How many of them were exposed to the kind of 5 information, the kind of answers that were asked for in 6 these responses that I read from the report?</p> <p>7 MR SEEDAT: Sir, I don't have the answer 8 to that but I'm sure we can try to get it out of Lonmin.</p> <p>9 MR NGCUKAITOBI: Thank you, I can 10 continue –</p> <p>11 CHAIRPERSON: Are you ready now?</p> <p>12 MR NGCUKAITOBI: Yes, I am now ready.</p> <p>13 Thank you for that, for the adjournment. Mr Seedat, I want 14 to start at page 2268 of the LRC bundle. Now this is a 15 press statement that was released on the 3rd of October 2006 16 by the former CEO of Lonmin, Mr Brad Mills. You are aware 17 of Mr Brad Mills, no doubt.</p> <p>18 MR SEEDAT: Yes, yes.</p> <p>19 MR NGCUKAITOBI: Now, he was announcing 20 how this housing programme would be implemented. The third 21 paragraph says that, "Lonmin CEO Brad Mills, who has 22 interrogated the mineworker housing situation at Lonmin 23 over the past 18 months and in the process also spent a 24 night at one of the hostels, described the current 25 accommodation model as unsustainable." I have no doubt you</p>	<p style="text-align: right;">Page 38420</p> <p>1 CHAIRPERSON: Dated 27/2/2007.</p> <p>2 MR NGCUKAITOBI: Yes. Now Mr Seedat, 3 according to this letter Lonmin had given you a facility of 4 R318 million so that you can actually build the houses.</p> <p>5 MR SEEDAT: No, RMB was going to give the 6 facility to a property SPV of R318 million to build and 7 rent houses, not Lonmin.</p> <p>8 CHAIRPERSON: Who were to be the 9 shareholders in the SPV?</p> <p>10 MR SEEDAT: Sir, that's not specified in 11 here and I'm not exactly sure who were going to be the 12 shareholders of the SPV. This was – later on it also 13 refers to the involvement of the North-West Department of 14 Housing. So I assume there were three parties that would 15 be involved in managing this SPV. It would have been RMB, 16 it would have been Lonmin and it would have been the North- 17 West Department of Housing because there's talk of 18 subsidies so –</p> <p>19 CHAIRPERSON: Yes, I see. Thank you.</p> <p>20 MR SEEDAT: I've tried to get more 21 information to try to flesh this out but I couldn't get 22 more than what I can tell you now.</p> <p>23 MR NGCUKAITOBI: Yes. Well, one of the 24 conditions to make this happen is in paragraph 1.6 which is 25 at page 2, which is that Lonmin should – okay, in this case</p>

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1 in the form of Western Platinum – should sign an
 2 undertaking in relation to arrear payments and any
 3 foreclosure losses.
 4 MR SEEDAT: Yes, it's arrear payments
 5 arising as a result of an employee's retrenchment.
 6 MR NGCUKAITOBI: Yes. Well, and also
 7 foreclosure losses incurred by the SPV in the result of
 8 default by the retrenched employees.
 9 MR SEEDAT: Yes.
 10 MR NGCUKAITOBI: Now that is consistent
 11 with what we see at page 2268 where Mr Mills announced to
 12 the world that Lonmin would sign surety for the houses.
 13 MR SEEDAT: No, I think that's quite a
 14 leap, with the greatest of respect. The agreement is very
 15 specific about providing surety to RMB in the event that an
 16 employee gets retrenched. I don't think that clause is the
 17 same as what Mr Mills has put in his statement.
 18 MR NGCUKAITOBI: Well, were you aware
 19 that Mr Mills's idea was that Lonmin would stand surety for
 20 these houses? Obviously surety is in the event of a
 21 default.
 22 MR SEEDAT: Well, this letter was – he
 23 referred to the RMB negotiations, so I can only imagine
 24 that he meant what was written in this letter rather than
 25 taking what is written there as being the fact because the

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1 agreement with RMB was what would carry weight.
 2 MR NGCUKAITOBI: Well, were you aware
 3 that Mr Mills had announced to the world in October 2006
 4 that the role of Lonmin would stand surety for these houses
 5 in the event of a default?
 6 MR SEEDAT: I was not aware of this
 7 particular press statement, no.
 8 MR NGCUKAITOBI: Yes. Now obviously you
 9 would have been aware that the way that Lonmin would deal
 10 with it is as contained in the letter that you've just
 11 introduced, which is that Lonmin would be, effectively
 12 would underpin arrear payments which is the same as the
 13 form of a guarantor.
 14 MR SEEDAT: No, it would underpin arrear
 15 payments arising as a result of employee's retrenchment.
 16 MR NGCUKAITOBI: Yes.
 17 MR SEEDAT: So out of the 26 000
 18 employees, if someone, an employee got retrenched, that is
 19 the employee's payment that Lonmin will underpin, not all
 20 26 000 employee.
 21 MR NGCUKAITOBI: Now did Lonmin sign the
 22 undertaking that was requested?
 23 MR SEEDAT: Unfortunately I can't find
 24 any further correspondence beyond this letter in respect of
 25 why this did not proceed in the way that is outlined here

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1 and I've tried to contact ex-employees to try to find out
 2 from them. One of them gave me this letter but he couldn't
 3 tell me why it did not proceed along these lines. I can't
 4 find any, anyone who can tell me why it did not proceed on
 5 these lines.
 6 MR NGCUKAITOBI: Mr Seedat, you were the
 7 COO between 2007 and 2008. You were sitting in the
 8 transformation and sustainability committee.
 9 MR SEEDAT: I joined in September 2007.
 10 By that time it appears that this option had disappeared
 11 because it's not something that we worked with. So when I
 12 became, I was first president in 2007 and then became COO
 13 at the end of 2008. The Rand Merchant Bank option did not
 14 come up in any of the discussions after I joined.
 15 MR NGCUKAITOBI: And did you make any
 16 enquiries, because the issue of RMB is referenced in many
 17 Lonmin documents, about why the RMB option was never
 18 pursued?
 19 MR SEEDAT: As I said, I did and I tried
 20 again recently and I cannot find anyone who can give me a
 21 reason on why it wasn't progressed.
 22 MR NGCUKAITOBI: So as we sit today
 23 Lonmin does not know why the RMB option was not pursued.
 24 MR SEEDAT: I don't know.
 25 MR NGCUKAITOBI: Well, there is no

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1 witness from Lonmin who can explain and we were told that
 2 we cannot ask Mr Mokwena. He was the person who must
 3 answer on phase 2. If you don't know, Lonmin doesn't know.
 4 MR SEEDAT: If that's how you interpret
 5 it –
 6 MR NGCUKAITOBI: I have no further
 7 questions, Mr Chair.
 8 CHAIRPERSON: Thank you, I think we'll
 9 now take the tea adjournment for 15 minutes. Please, 15
 10 minutes.
 11 [COMMISSION ADJOURNS COMMISSION RESUMES]
 12 [14:58] CHAIRPERSON: The Commission resumes.
 13 You're still under oath, Mr Seedat.
 14 MAHOMED ISMAIL SEEDAT: [s.u.o.]
 15 CHAIRPERSON: Yes, Ms Le Roux?
 16 CROSS-EXAMINATION BY MS LE ROUX: Thank
 17 you, Chair. Good afternoon, Mr Seedat. I represent the
 18 South African Human Rights Commission in this process.
 19 Chair, if I could ask for Ms Pillay's assistance but she's
 20 not here, I understand that the Human Rights Commission's
 21 phase 2 submissions were marked as SSSS8, I just wanted to
 22 confirm that. Ja, Mr Chaskalson is nodding. And Chair,
 23 given my limited time I'm going to try to do this without
 24 reference to those documents. The witness does have a set,
 25 however, if we need to go there. Mr Seedat, I'd like to,

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1 quite quickly if I can, go through a number of criticisms
 2 that were made of the SLP system in general as well as in a
 3 qualitative and quantitative assessment of Lonmin's SLP
 4 compliance which constitute the Human Rights Commission's
 5 submissions to the Commission on the erstwhile phase 2
 6 questions. One of those relate to the consistency and
 7 accuracy of reporting in the SLPs and if I could just use
 8 one example, KPMG who were Lonmin's auditors at the time,
 9 they prefaced both the 2010 and the 2011 annual reports
 10 with the statement that they can only provide what they
 11 call limited assurance and then, in another instance,
 12 reasonable assurance on certain of the reported items that
 13 relate to the SLPs. These include targets on adult basic
 14 education and training, student sponsorship, historically
 15 disadvantaged South African management as well as hostel
 16 conversion. Are you aware of any steps taken by Lonmin's
 17 board or management to improve the quality and consistency
 18 of the information available when they were reporting on
 19 the SLPs?
 20 MR SEEDAT: Yes, ma'am. It was done in
 21 my time when I was still at Lonmin until 2010 and I have to
 22 preface this a little bit. The SLP was put together in
 23 2006/2007. Lonmin was the first company to submit an SLP
 24 for conversion from the old order to the new order mining
 25 rights. It was new territory and plans were put in there,

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1 some of them were being approached for the first time and
 2 as you got into the application mode, and housing is one
 3 example but in the other areas like adult basic education
 4 as well, as you got into the implementation phase you found
 5 you encountered some unintended problems. And when you
 6 encountered those problems you had to find ways of
 7 overcoming them and that, in some cases, led to changing of
 8 the targets somewhat to try to get impetus, to try to get
 9 things going so that you can achieve more results. Adult
 10 basic education is one example that comes to mind where we
 11 found that the take-up was poor and people, it's a fact
 12 that you know, rather than go underground you'd want to sit
 13 in a room – I would prefer not going underground and being
 14 in a room. If you do that and you create an option for
 15 that to happen, the way, as the programme started working,
 16 was not the right way. So we had to motivate people and
 17 say we will pay you a bonus or if you achieve certain
 18 results or we'll expect you to do a certain amount yourself
 19 to show that you are committed to this and then we will
 20 take you further. We had to look at things like that over
 21 time to try to get the right result out which is, in the
 22 case of ABET, get as many people as possible taking up the
 23 course. So over a period of time the reporting did also
 24 get affected and we said rather than try to get assurance,
 25 because you need good systems to capture everything

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1 accurately and auditors want to look for things to be
 2 absolutely correct, not approximately right. So we decided
 3 that we will take a certain number of key stats, for
 4 example health, safety, environmental statistics, those
 5 kind of stats and I'm trying to remember the other ones, we
 6 said let's first focus on those and make sure that we get
 7 our reporting absolutely correct and over time we'll add
 8 more. As we achieve success with the reporting of some of
 9 these and they get consistent in accurate reporting, we'll
 10 then move to the other ones. So that, over time that's
 11 what we tried to do. It was a big challenge and we didn't
 12 get, we were not successful in reporting accurately on all
 13 of the statistics we were supposed to report on.
 14 MS LE ROUX: Mr Seedat, one component of
 15 an SLP is what's known as the local economic development
 16 component and Lonmin's mission statement for its LED
 17 section in its SLP says the following, "We respect the
 18 communities and nations that host our operations and
 19 conduct our business in a sustainable, socially and
 20 environmentally responsible way. WPL/EPL embraces the role
 21 of being a powerful force in the upliftment and
 22 transformation of South Africa. WPL clearly states its
 23 intention to embrace socio-economic development, both
 24 within the greater Lonmin community and within its primary
 25 labour sending areas." Now you'll agree with me that

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1 Lonmin's LED component to its SLP was trying to design
 2 projects that would achieve socio-economic advancement of
 3 mining affected communities, both those in Marikana as well
 4 as the labour sending areas, correct?
 5 MR SEEDAT: That's right.
 6 MS LE ROUX: And these would be both
 7 infrastructural, they would be poverty eradication projects
 8 and some of them would be income generating projects,
 9 correct?
 10 MR SEEDAT: Yes, that's right.
 11 MS LE ROUX: Now you would agree with me
 12 that sound planning as well as proper consultation and
 13 investigation would be necessary to ensure that any
 14 projects identified are in fact feasible, sustainable and
 15 that they'll succeed in meeting the goals set out in the
 16 SLP.
 17 MR SEEDAT: That's right.
 18 MS LE ROUX: And the first step in that
 19 process is identifying the needs of the community for that
 20 local economic development. This is done in terms of the
 21 relevant legislation both the MPRDA as well as NEMA, the
 22 National Environmental Management Act, through what's known
 23 as a social impact assessment. However, in Lonmin's SLPs
 24 we see it stated that a proper socio-economic impact study
 25 will be conducted once the current impacts have been

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1 mitigated and progress tracked. So it appears that at the
 2 time the SLPs were filed they hadn't yet been a socio-
 3 economic impact assessment made. Can you confirm that?
 4 MR SEEDAT: I wasn't there at the time
 5 but it appears so.
 6 MS LE ROUX: And are you aware of the
 7 socio-economic impact assessment study being done at any
 8 time from then to date?
 9 MR SEEDAT: Not on all the SLP
 10 components. On some of them they would have been, yes.
 11 MS LE ROUX: Which ones have had socio-
 12 economic impact assessments done?
 13 MR SEEDAT: I think from memory, from
 14 memory, if we're looking at – as we were looking at trying
 15 to find additional land for developing houses, we would
 16 have looked at doing – well I'm talking about EIA there
 17 more than anything else, environmental impact assessment
 18 which the component you're talking about would have been
 19 part of that. So that in specific cases we're looking at
 20 specific issues that we had to resolve at the time.
 21 MS LE ROUX: Right but the, I mean the
 22 EIA is a mandatory requirement under the environmental
 23 legislation. Included that is a mandatory socio-economic
 24 impact assessment but Lonmin hadn't done one of those and
 25 to date you're not sure that it's done for any of the, for

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1 all of the projects that are part of its SLP programme.
 2 MR SEEDAT: Well, I'm aware that when
 3 we're looking at housing or making land available for
 4 housing close to the mine, we did participate in an EIA
 5 process.
 6 MS LE ROUX: No, I'm not talking about an
 7 environmental impact assessment, I'm talking about the
 8 socio-economic impact assessment –
 9 MR SEEDAT: Okay.
 10 MS LE ROUX: - which is a different
 11 assessment.
 12 MR SEEDAT: Ja, no –
 13 MS LE ROUX: It falls under the EIA.
 14 MR SEEDAT: To answer that question, I'm
 15 not aware.
 16 MS LE ROUX: Okay. So it seems as if
 17 there were no studies done before identifying projects that
 18 would then be included and touted in the SLP and to date we
 19 haven't seen those impact assessments concluded to date, as
 20 far as you are aware.
 21 MR SEEDAT: As far as I am aware, yes.
 22 MS LE ROUX: Okay. You would also agree
 23 with me that for local economic development projects in an
 24 SLP we would need identified and realistic goals.
 25 MR SEEDAT: Yes.

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1 MS LE ROUX: And yet we see things line
 2 Lonmin committing under its local employment commitments to
 3 employ local people, "whenever possible." Are you aware of
 4 any steps taken by Lonmin to identify the available local
 5 skills and identify potential employment opportunities for
 6 those individuals?
 7 MR SEEDAT: Yes, ma'am. A lot of work
 8 has been done in that area. I am aware, for example, that
 9 at one stage and I think it carries on till now – I think
 10 we had about, I'm subject to correction because I'm not
 11 involved in the details of Lonmin anymore but I think over
 12 500 people from the community that were brought on and pre-
 13 trained for different jobs, like rock drill operators, et
 14 cetera and when a vacancy arises – because clearly you can
 15 only employ somebody when a vacancy arises or when you're
 16 building a new shaft and you need additional people, that
 17 these individuals would be given consideration from the
 18 local community for those jobs. I must again also say that
 19 that's a well-intentioned objective but in reality you pick
 20 up problems there because who the community considers as
 21 local is not necessarily the same as who Lonmin considers
 22 local. If somebody has got a house in the local community
 23 we accept him as being local but the local community says
 24 no, he moved here from elsewhere, he's not local. You have
 25 these challenges that you have to face and try to resolve

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1 as you're going through this process of trying to identify
 2 people who are local that you are going to employ.
 3 MS LE ROUX: Mr Seedat, there were six
 4 projects identified for WPL. These related to nutrition,
 5 the provision of access to basic services in the labour
 6 sending areas, the housing project, schools, water and
 7 sanitation. Unfortunately I'm not going to have time to go
 8 through some of the difficulties that have been experienced
 9 in those not achieving success but I'd like to focus on
 10 what's known in the SLP as WPL project 2. This was a brick
 11 making factory and it's part of the SLP where a commitment
 12 is made to local employment as well as skills development
 13 and training. It was designed to employ local people. It
 14 was designed to be the source of the bricks for the 5 500
 15 houses that we've heard so much about. Now it appears that
 16 this brick making factory that Lonmin had intended to
 17 commit R10 million to, failed for two reasons. The first
 18 was obviously because there was no demand for the bricks
 19 because there were no 5 500 houses. The second is that the
 20 bricks were to be made using what's known as tailings
 21 material from the mine but that turned out to be radio-
 22 active and so it was unfeasible and unsuitable to make
 23 bricks out of. Now this strikes us as one example where,
 24 you know, careful planning surely would have been able to
 25 pick up that the tailings material was unsuitable for

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1 making bricks because it was radio-active. Do you know of
 2 any steps taken by Lonmin management to work out why, in
 3 the planning process, that critical fact was missed?
 4 MR SEEDAT: No, ma'am, I can only
 5 speculate, is, you know there was this rush to get the old
 6 order mining rights converted to new order, people did
 7 things with the best of intentions but clearly in terms of
 8 the time that was available and in spite of the best
 9 efforts, having the Desmond Tutu Foundation to come and
 10 have a look at all these plans, I think was accepted as
 11 being a way of auditing whether the plans were realistic, I
 12 think despite all of that clearly after the fact it was
 13 realised that more homework, even with the housing, a farm
 14 that Lonmin spent I think R52 million on and got nothing
 15 for it, a lot of these plans appeared good on paper but in
 16 actual application it turned out to be not as good as it
 17 was intended to be.
 18 MS LE ROUX: But Mr Seedat, my question
 19 was whether you are aware of any steps taken by Lonmin to
 20 address that deficiency, that in future when projects are
 21 touted for local economic development or to be part of an
 22 SLP in some other component, that they actually are
 23 feasible projects.
 24 MR SEEDAT: Ma'am, absolutely and that's
 25 - for example if you look at how we subsequently have

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1 approached the housing challenge, it's looking at all
 2 issues and trying to come up with a solution that would
 3 meet the needs of all the stakeholders and that's why it's
 4 been such a difficult problem to solve, is to try and
 5 ensure that what we say we're going to do, we've thought of
 6 all the possible consequences and tried to cover them. So
 7 where we've taken on new projects, that has been done.
 8 MS LE ROUX: In the SLPs we also see
 9 that, in partnership with the Madibeng local municipality,
 10 Lonmin was committed to and there were plans approved for
 11 an informal trading area, a shopping complex and a bus and
 12 taxi rank. Now it's unclear what role, if any, Lonmin has
 13 played in making any of those come to fruition. Are you
 14 aware of whether any of that has in fact happened in the
 15 Madibeng local municipality, an informal trading area, a
 16 shopping complex and a bus and taxi rank?
 17 MR SEEDAT: Ma'am, sadly Lonmin did put
 18 up the structures, in fact if you go to Sun City and you
 19 turn off at Madibeng, as you're passing through the
 20 township on the right-hand side, these structures that look
 21 honeycombs are still there. One of the challenges Lonmin
 22 had faced, and it's public knowledge that there's a lot of
 23 disagreement within the community about anything and I'll
 24 give you a personal example, when I joined Lonmin I had a
 25 meeting with who I thought were the chief executive, who I

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1 thought were the leaders of the local community and I was
 2 instructed by the chief executive that the transport
 3 contract that was going to benefit the entire community as
 4 I was told please get this in place as quickly as possible.
 5 I did that, I got it in place as quickly as possible only
 6 to find that the main, the significant shareholding in that
 7 contract company was by four people in the community, not
 8 the entire community. So the Bapu community has had
 9 significant challenges in terms of how its affairs are
 10 managed and that has created problems in terms of executing
 11 projects successful in that community.
 12 MS LE ROUX: So are you aware of how
 13 things currently stand with those proposed developments?
 14 MR SEEDAT: Well, as far as that informal
 15 taxi rank, the structure is there, I'm not aware of how far
 16 it's gone. I'm pleased to say, though, that in recent
 17 engagements with the community around converting
 18 shareholding in certain mines into shareholding at a Lonmin
 19 level, the community seems to be pulling together and
 20 resolution to these issues that have been outstanding for
 21 as long as I was involved with Lonmin, seem to be resolved.
 22 So I'm hoping that that positive approach allows some of
 23 these other projects to be also completed successfully.
 24 MS LE ROUX: If I could then ask you
 25 about what's known as WPL project 1 which is around water

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1 and sanitation, targeting the Rustenburg and Madibeng
 2 municipalities. There we only see in the SLP and in the
 3 reports, time frames, outputs and budgets for the building
 4 of 1 000 pit latrines but there were other deliverables
 5 promised in the SLP, namely the rolling out of sewer
 6 systems with toilet structures and water reticulation with
 7 residential connections. Now, nowhere in the documentation
 8 we've obtained from Lonmin have we seen whether there's
 9 funding, whether there's benchmarking, whether anything is
 10 actually being done to meet this commitment that was made
 11 in the SLP. And obviously it's been impossible to both
 12 determine success as well as accountability. Are you aware
 13 of any steps taken by Lonmin, firstly to realise the roll-
 14 out of toilet structures as well as residential water
 15 reticulation connections in Rustenburg and Madibeng as
 16 promised in the SLP?
 17 MR SEEDAT: Ma'am, I personally visited
 18 the township closest to the mine and I visited the water
 19 reticulation system that had been installed and this is,
 20 I'm talking as far back as I think 2009/2010. The piping
 21 systems had been installed. It was a joint partnership
 22 between Lonmin and the local municipality. The
 23 municipality was going to provide the water and Lonmin was
 24 going to put the water reticulation system in. When I
 25 visited it, the water reticulation system was in but the

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1 connection by the municipality hadn't happened and I am
 2 subject to correction whether it still has happened to
 3 date. What I'm trying to say is, some of these projects
 4 you need to work with the local municipalities, the local
 5 government and you can only do so much and you can't do the
 6 rest unless you get the full co-operation of the local
 7 municipalities. It is common knowledge that the Madibeng
 8 municipality currently is under administration, I think it
 9 is, and it's not the first time it's under administration.
 10 So when you've got a dysfunctional municipality it's
 11 extremely difficult to deliver projects that requires their
 12 co-operation. As far as the pit latrines are concerned,
 13 again I'm speaking subject to correction, I know a fair
 14 number have been installed, particularly at schools, but
 15 I'm not sure whether that entire project was completed or
 16 not.

17 MS LE ROUX: And with respect to the
 18 third deliverable which was the sewer systems with actual
 19 toilet structures, do you have any knowledge of any
 20 progress made on that commitment?

21 MR SEEDAT: No, ma'am, and I would say
 22 that would have required the co-operation of the local
 23 municipality because waste water has to end up in some
 24 recycling system and I would suspect that as the reason
 25 why, if it hasn't progressed, that's why it hasn't

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1 progressed.

2 MS LE ROUX: Okay, but you don't know for
 3 sure –

4 MR SEEDAT: I don't know.

5 MS LE ROUX: - that that's the reason.

6 Okay. Chair, we'd like to show a short film which is part
 7 of the Human Rights Commission phase 2 submissions. It
 8 relates to the lived experience of women in Marikana as
 9 well as their efforts to engage with Lonmin around the –

10 CHAIRPERSON: How long is it going to
 11 take?

12 MS LE ROUX: Sorry, Chair?

13 CHAIRPERSON: How long is it going to
 14 take?

15 MS LE ROUX: It's nine minutes, just over
 16 nine minutes long.

17 CHAIRPERSON: Mr Wesley, I take it
 18 they've got nine minutes left?

19 MS LE ROUX: Yes, I do, Chair.

20 CHAIRPERSON: Alright.

21 MS LE ROUX: And Chair, just for the
 22 record this is a film that was produced in collaboration
 23 between KELS as well as Harvard's New Media Advocacy
 24 Project and Harvard's International Human Rights Clinic.

25 CHAIRPERSON: I take it it's got to get

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1 an exhibit number, has it?

2 MS LE ROUX: Chair, it does form part of
 3 our submissions which are already SSSS8.

4 CHAIRPERSON: I see, alright.

5 MS LE ROUX: We can index it separately
 6 if you'd like but if we could play the film.

7 [15:17] [FILM IS SHOWN]

8 MS LE ROUX: Mr Seedat, are you aware of
 9 any response from Lonmin to the petition presented to them
 10 by the women in March of this year?

11 MR SEEDAT: No, ma'am.

12 MS LE ROUX: Chair, we have no further
 13 questions for Mr Seedat but if I could use 10 seconds to
 14 thank my Human Rights Commission team who are here today
 15 for their indefatigable and marvellous efforts over the
 16 course of the Commission. Thank you.

17 CHAIRPERSON: Thank you, Ms Le Roux, and
 18 I'm sure that the efforts of your team will contribute
 19 ultimately to the report that we produce and we all will be
 20 grateful to them. Mr Chaskalson?

21 MR CHASKALSON SC: Thank you, Chair.
 22 Chair, if I can start with some housekeeping, there are
 23 four documents that I need to hand in. The first is the
 24 missing page of SSSS5 to which I referred last time. It
 25 comes in after page 234 so I've numbered it 234A and a copy

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1 has been made available to the witness and also to
 2 Commissioners. It is being circulated to the parties.

3 Then there is a one page document which has been labelled
 4 SSSS9 which has the heading "Western Platinum Limited sales
 5 commission, management fee and dividend payments 2006/7 to
 6 2010/11." Then there are two further documents, one is a
 7 document prepared by Lonmin to address some of the
 8 questions that were raised with Mr Seedat in cross-
 9 examination earlier and that is a statement by Simon Scott
 10 with some schedules attached to it.

11 CHAIRPERSON: That will have to be marked
 12 an exhibit, won't it?

13 MR CHASKALSON SC: Indeed.

14 CHAIRPERSON: The indispensable Ms Pillay
 15 will help us.

16 MS PILLAY: Chair, that will be SSSS11.

17 CHAIRPERSON: Quadruple?

18 MS PILLAY: SSSS11.

19 CHAIRPERSON: Yes, S11, that's the
 20 witness statement of Simon Scott. And then the other, the
 21 annexure is all part of that, I take it. Annexure A 2000 –

22 MR CHASKALSON SC: No, no, that must
 23 become SSSS12.

24 CHAIRPERSON: I see –

25 MR CHASKALSON SC: And what this document

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1 does –

2 CHAIRPERSON: So SSSS11 is witness

3 statement of Simon Scott and SSSS12 is annexure, it's just

4 annexure A, 2007 to 2011, annexure to Mr Scott's –

5 MR CHASKALSON SC: No, no, no. What it

6 does is it takes the annexures from Mr Scott's statement

7 that run from 2007 to 2012 and reduces them to annexures,

8 those same documents, to the period 2007 to 2011.

9 CHAIRPERSON: I've just called it

10 annexure A, 2007 to 2011, that's all I need call it.

11 MR CHASKALSON SC: I'll explain the logic

12 of this document when I get to it.

13 CHAIRPERSON: As long as it's now before

14 us as SSSS12 and Mr Scott's statement, affidavit – is it an

15 affidavit? Oh, it's just a statement, alright. Witness

16 statement of Simon Scott, that's SSSS11.

17 MR CHASKALSON SC: But does that not

18 include some annexures?

19 CHAIRPERSON: It's got some annexures –

20 MR CHASKALSON SC: Annexures at the back.

21 CHAIRPERSON: - but it take it it's all

22 part of that document.

23 MR CHASKALSON SC: Indeed.

24 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):

25 Now, Mr Seedat, when last we met, most of my questioning

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1 was directed to the issue of whether WPL and EPL or Lonmin

2 itself had any obligations in relation to housing

3 construction. I was planning not to return to that topic

4 but I must do so in terms of SSSS10 which is the letter

5 that you referred to in terms of Rand Merchant Bank and I

6 just want to ask you a few questions in relation to this

7 document. And the first feature that I would draw to your

8 attention in relation to this document is that the facility

9 amount that RMB were advancing was 318 million and that one

10 sees in the second paragraph, and the facility was going to

11 be capable of being used for only up to 3 000 completed

12 housing units, which one sees in the third paragraph. So

13 this of course was never going to be the sole means by

14 which Lonmin approached the obligation, whatever it was, in

15 relation to 5 500 houses with a capital budget of 665

16 million.

17 MR SEEDAT: It appears so, ja.

18 MR CHASKALSON SC: The second point that

19 I make in relation to this document is if one goes to

20 clause 2.1.6, it speaks of instalment sales and rental

21 agreements as a condition for the facility. So this was to

22 finance, inter alia, occupation by means of instalment sale

23 and rental agreement which would not be the straight

24 mortgage to the purchaser through a private financial

25 institution. You'll agree with that?

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1 MR SEEDAT: That's right. I think it's

2 related to clause 2.1.12 where there was going to be a

3 subsidy of R72 000, so I think collectively that would have

4 enabled the instalment sale to work.

5 MR CHASKALSON SC: No, that was just in

6 respect of rental. It wasn't in respect of instalment

7 sales. So there are really three categories, there's

8 rental, instalment sale, purchase.

9 MR SEEDAT: That's right.

10 MR CHASKALSON SC: And 2.1.12 relates to

11 rental.

12 MR SEEDAT: Ja.

13 MR CHASKALSON SC: The third point that

14 I'd want to make about this document is that the borrower

15 is going to be a special purpose vehicle. The borrower,

16 it's not as it were 5 500 individual borrowers, there's an

17 SPV set up.

18 MR SEEDAT: Yes.

19 MR CHASKALSON SC: And Lonmin is

20 presumably going to play a major role in that SPV, you'll

21 accept that – or Lonmin or Western Platinum or Eastern

22 Platinum.

23 MR SEEDAT: Would be one of the key

24 players in that, yes.

25 MR CHASKALSON SC: Well, who could the

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1 other key players possibly be?

2 MR SEEDAT: Well, I would assume RMB

3 would want some kind of security in how this company is

4 going to be managed so –

5 MR CHASKALSON SC: We'll get to that in

6 due course because I think this letter covers that.

7 MR SEEDAT: And also I would expect the

8 North=West government would have to have, want to have some

9 kind of say on how this SPV would have been run.

10 MR CHASKALSON SC: Are you able to give

11 any evidence, even on a hearsay basis, that the North-West

12 government was going to be a shareholder in the SPV?

13 MR SEEDAT: No, I can't say a shareholder

14 but I said a say, yes.

15 MR CHASKALSON SC: Say. So are you able

16 to suggest that anyone other than Lonmin, Eastern Platinum

17 or Western Platinum was going to be a shareholder in this

18 SPV?

19 MR SEEDAT: Well, as I say I'm

20 speculating but I would expect RMB to have or to either

21 have a say in how this SPV was going to be run –

22 CHAIRPERSON: May I ask you a question

23 before you carry on? Was the SPV ever set up?

24 MR SEEDAT: No, I don't think –

25 CHAIRPERSON: Were any documents prepared

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1 by Lonmin's attorneys in relation to the establishment of
 2 the SPV?
 3 MR SEEDAT: Not that I can locate.
 4 CHAIRPERSON: Were any documents produced
 5 from which it's apparent or will be apparent who the
 6 parties or the shareholders in the SPV would have been?
 7 MR SEEDAT: Not that I could find, sir.
 8 All I could find was this letter and then there's nothing
 9 after that. I know – and I've spoken to people who were
 10 part of Lonmin at the time and some of them I could get
 11 hold of, others I couldn't get hold of and I couldn't find
 12 how far this was progressed.
 13 CHAIRPERSON: SPVs of course are quite
 14 common in commercial practice, aren't they?
 15 MR SEEDAT: Well, the MHBC for example is
 16 a housing company that's in partnership with, it's run by
 17 directors of Lonmin represented and the union –
 18 CHAIRPERSON: So would that be an SPV
 19 really?
 20 MR SEEDAT: Yes. That I would think is
 21 an SPV because all the rental income goes to this SPV and
 22 they've got I think about R25 million in that company at
 23 the moment. So I think it was intended that this would be
 24 set up in a similar way.
 25 CHAIRPERSON: Do you know whether, in the

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1 mining industry, some of the other companies also adopted
 2 this way of going about things and set up SPVs in relation
 3 to the position of housing for their migrant labourers?
 4 MR SEEDAT: In the discussions I had with
 5 one individual who provided me with this letter, he said
 6 this was based on a model that was implemented at Sishen by
 7 Kumba or Iscor at the time. So this model was based on
 8 that similar arrangement.
 9 CHAIRPERSON: Do you know who the
 10 shareholders in the SPV in Sishen were?
 11 MR SEEDAT: I haven't had time to
 12 research and see what was actually done there.
 13 CHAIRPERSON: When you were at BHP
 14 Billiton, didn't they go in for SPVs of this kind?
 15 MR SEEDAT: No, BHP Billiton didn't have
 16 any operations that had this number of employees, primarily
 17 in coal mines, aluminium smelters, manganese mines and
 18 because you've got a fewer number of employees who are
 19 generally employed in more skilled jobs, they can afford to
 20 buy their houses. So the focus there was on enabling them
 21 to buy houses in the local community.
 22 [15:37] MR CHASKALSON SC: Mr Seedat, you
 23 mentioned the MHDC as an SPV whose board includes members
 24 from the unions and from Lonmin. IS it not correct that
 25 Lonmin, although the board includes union members, the

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1 unions don't hold any shares in the MHDC. It was 100%
 2 owned by Lonmin itself.
 3 MR SEEDAT: No, it's not owned by Lonmin
 4 either, to the best of my knowledge. I'm subject to
 5 correction but Lonmin does not own any shares in MHDC.
 6 CHAIRPERSON: Do you know who does?
 7 MR SEEDAT: No. I can find out.
 8 MR CHASKALSON SC: I'll come back to you
 9 on that one because I seem to remember references to MHDC
 10 as a related party in the Western Platinum financial
 11 statements or the Lonmin financial statements.
 12 MR SEEDAT: Well, the reason why I say
 13 that is because there was once an issue about that R25
 14 million and how it could be used and it was made clear to
 15 me by the CFO that Lonmin has no decision capability on
 16 that money, it has to be done by the people who are
 17 responsible for managing MHDC, the directors as well as
 18 management. So I'm basing it on that.
 19 MR CHASKALSON SC: Yes, but of course
 20 that would ordinarily be true, the directors would
 21 determine what happens to the assets of the company. There
 22 may be an agreement in terms of which the union has a
 23 director's – a right to positions on the board that would
 24 effectively give it equal control with Lonmin. It doesn't
 25 answer the question of who the shareholder is.

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1 MR SEEDAT: I think we've got to find
 2 that out.
 3 MR CHASKALSON SC: But that we can
 4 establish, but in any event it's a bit of a side issue.
 5 What we're really concerned with is who was going to be a
 6 shareholder in this SPV. Would you accept that either
 7 Lonmin PLC, WPL or EPL would certainly have been one of the
 8 major shareholders in this SPV?
 9 MR SEEDAT: I'm sorry, I can't because
 10 we're speculating and I don't know what was intended and
 11 how this SPV was going to be set up.
 12 MR CHASKALSON SC: You see I want to put
 13 to you that the obvious model for this SPV was that either
 14 Lonmin PLC or WPL or EPL was going to be either the sole
 15 shareholder or a major shareholder in this SPV. You say
 16 you can't respond to that?
 17 MR SEEDAT: No.
 18 MR CHASKALSON SC: Why that's significant
 19 is if one goes to clause 7 of this document where the issue
 20 of security is addressed and what RMB's requirement was,
 21 was as security for the obligations to RMB under the
 22 facility, the borrower or its shareholders – and I'd
 23 emphasise "or its shareholders" – will, 7.1.1 to 1.1.5 is
 24 going to deal with security provided by the borrower but
 25 1.1.6 must be security provided by the shareholders because

<p style="text-align: right;">Page 38449</p> <p>1 what's going to be ceded is 100% of the borrower's shares, 2 "supported by legal cause (guarantee)." And what I want to 3 put to you is that what is contemplated by this agreement 4 is that the shareholder in the SPV is going to give a 5 guarantee for the borrower's obligations and is going to 6 cede to RMB all of its shares in the borrower as security 7 for the borrower's obligations and that shareholder is 8 either going to be Lonmin PLC itself or WPL and EPL. Do 9 you have a response to that?</p> <p>10 MR SEEDAT: I don't know, I mean we don't 11 know.</p> <p>12 MR CHASKALSON SC: Do you accept – well, 13 I suppose your understanding and your interpretation of 14 7.1.6 is actually not relevant so I won't ask about that, 15 that's a matter for argument. That is all that I wanted to 16 address on the question of whether there were obligations 17 for Lonmin itself or WPL and EPL in relation to housing or 18 for today, I certainly stand by everything that we 19 addressed last time we spoke, but going forward I now want 20 to address the justifications that you put forward in your 21 evidence for Lonmin's failure to build 5 500 houses and for 22 the purposes of this questioning I want you to assume that 23 there was an obligation, either on – well, on WPL and EPL 24 to build those houses. Of course that's not your evidence 25 but I want you to make that assumption and if I understood</p>	<p style="text-align: right;">Page 38451</p> <p>1 services on 780 stands at Marikana Extension 2 with a view 2 to building 700 houses on these stands during the course of 3 the 2006/7 financial year. Plans to build these 700 houses 4 in the next financial year are on track." Then if we go 5 down to page 80 and the second paragraph below the table, 6 "To cater for those employees who will no longer be 7 accommodated in hostels in the 2006/7 and 7/8 financial 8 years owing to the conversion of 22 hostel units, houses to 9 be build at Marikana Extension 2 will be available for, 10 inter alia, purchase or rental. In addition, houses will 11 be built on the vacant space around the existing hostel 12 complex, which does not need to go through the township 13 establishment process, to provide the further accommodation 14 needs of these employees" or "the above employees." So 15 when your SLP was submitted, you were already in a position 16 to get going on house construction at least in respect of 17 the 780 stands in Marikana Extension 2 which had already 18 been serviced by Lonmin, do you agree with that?</p> <p>19 MR SEEDAT: Yes, they were serviced but 20 I'm not sure if they were proclaimed, there's a difference.</p> <p>21 MR CHASKALSON SC: Are you suggesting 22 that they weren't proclaimed?</p> <p>23 MR SEEDAT: I'm not sure.</p> <p>24 MR CHASKALSON SC: Because your evidence 25 a few weeks ago was that there was proclamation in respect</p>
<p style="text-align: right;">Page 38450</p> <p>1 your evidence, there were really three independent 2 justifications for not meeting this obligation. The first 3 related to proclamation and you suggested that proclamation 4 of stands on which houses could be built was slow in coming 5 and that was one of the reasons why houses weren't built. 6 I'd like you to go to SSSS2 on page 76, which is the 7 original SLP.</p> <p>8 MR SEEDAT: SSSS2, I don't have that. If 9 you can put it up a little -</p> <p>10 MR CHASKALSON SC: Chair, I've just been 11 told I have five minutes left. I –</p> <p>12 CHAIRPERSON: How long do you actually 13 need?</p> <p>14 MR CHASKALSON SC: It depends –</p> <p>15 CHAIRPERSON: Mr Bham, how long do you 16 need for re-examination?</p> <p>17 MR BHAM SC: About 20 minutes.</p> <p>18 CHAIRPERSON: Oh dear.</p> <p>19 MR CHASKALSON SC: Let me not waste the 20 remaining five minutes. What you will see in the original 21 SLP is during, at page 76, second last paragraph on the 22 page – can we scroll down? "During the course of this 23 financial year, Lonmin Platinum has built 70 new houses at 24 Karee Mine, Marikana Extension 3, in order to address an 25 accommodation shortage. Lonmin Platinum has also installed</p>	<p style="text-align: right;">Page 38452</p> <p>1 of 780 but then there was also the vacant space around the 2 existing hostel complex which didn't have to go through the 3 proclamation process. Now have any houses ever been built, 4 either on those 780 stands or on the proclamation, or on 5 the area which doesn't need to be proclaimed in the hostel 6 complex?</p> <p>7 MR SEEDAT: Well, I think those three 8 houses, show houses were built -</p> <p>9 MR CHASKALSON SC: Yes, so it's only the 10 three show houses?</p> <p>11 MR SEEDAT: Ja, and no houses have been 12 built within the hostel complexes, although I'm aware that 13 many options were looked at and the financial viability 14 wasn't there to programme further than the options.</p> <p>15 CHAIRPERSON: Relating to proclamations, 16 we can look at the official gazettes of the North-West 17 Province, they will show us –</p> <p>18 MR SEEDAT: Ja.</p> <p>19 CHAIRPERSON: - where the proclamations 20 and dates and so on.</p> <p>21 MR CHASKALSON SC: And we agreed last 22 time that full proclamation of Marikana Extension 2, which 23 would have released the bulk of the stands, would have been 24 10 February, was 10 February 2009.</p> <p>25 MR SEEDAT: 2009.</p>

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1 MR CHASKALSON SC: In terms of local
 2 authority notice 28. So from 10 February 2009 there was
 3 certainly no problem caused by proclamation. The next
 4 problem that you raised was building price inflation and
 5 you said at page 37724 that your budget in the SLP had been
 6 at 114 000 per house but when you started building in 2009,
 7 you found that that budget had doubled to approximately
 8 220, I think you said 220 000 –
 9 MR SEEDAT: That's the number I
 10 recollect, yes.
 11 MR CHASKALSON SC: Now I want to put to
 12 you that your evidence in that regard is not correct and
 13 for that purpose I want to take you to SSSS2 page 1484,
 14 which is a housing survey apparently conducted in September
 15 2008. So can we go to page 1484? This is the housing
 16 survey with the date of September 2008 which we see on 1484
 17 and this is when the CEC approved the construction of 100
 18 starter houses, that we see at 1485. At 1491 we see that
 19 those houses have been costed and there we see a basic 36
 20 square metre house which is costed at 116 000 for the basic
 21 house and then if you want additional enhance – additional
 22 enhancements under B you add another 3 000 to get 119 000.
 23 That's September '08.
 24 MR SEEDAT: 2008, yes.
 25 MR CHASKALSON SC: And again we see the

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1 same at 1495, they've also costed a 40 square metre at
 2 116 000 at 1499 a – I've got 40 square metres at 116 000, I
 3 think it's even bigger than 40 square metres. So sir, are
 4 you suggesting that between September 2008 and sometime in
 5 2009 when these houses were built, their price doubled?
 6 MR SEEDAT: No, I'm suggesting that after
 7 the survey was done, I'm talking of 2010, when we looked at
 8 how to take this forward after the three show houses were
 9 built and the survey was done, I do recall that we were
 10 doing all the numbers around the cost of around 220 000.
 11 Also there were some changes compared to these original
 12 homes. I don't think the three show houses are similar to
 13 these houses that you are looking at when the survey was
 14 done in 2008.
 15 MR CHASKALSON SC: You see, I think I
 16 know where you got your 220 000 figure from. It's in
 17 response to the section 93 request of the DMR at page 1538,
 18 Lonmin reports that, "In 2009 three show houses were built
 19 to encourage employees to purchase property." And then it
 20 says, "675 000 was spent in building these houses and
 21 servicing stands." Now it doesn't tell us how much was
 22 spent on servicing stands, which was an independent
 23 obligation of Lonmin, and how much is built on constructing
 24 the houses.
 25 MR SEEDAT: I'm not sure if you could

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1 separate servicing the stand from the house because you've
 2 got to supply the electricity, someone has to bear that
 3 cost.
 4 MR CHASKALSON SC: No, no, but what I'm
 5 saying is that in Lonmin's original capital budget you'll
 6 recall there was this one undertaking for house building
 7 with a budget of 665 million, a separate undertaking for
 8 stand servicing, I think the budget was 96 million, but one
 9 doesn't know, that 220 000 per house that you're quoting,
 10 it's not clear to me from the 675 000 figure how much was
 11 spent on houses, how much was spent on servicing stands
 12 because I would imagine that when one services stands, one
 13 doesn't service three individual stands. It's not cost
 14 efficient to service three individual stands in a township
 15 into which you're going to be installing hopefully 2 000
 16 stands, 2 000 houses.
 17 MR SEEDAT: No, I think when these three
 18 houses were built, it was the services that were provided
 19 there to these three houses. If you had to service more
 20 than that it would cost a lot more, but we can get those
 21 details –
 22 MR CHASKALSON SC: I would like to see
 23 those details because I fear that the effective building
 24 price inflation may have been overstated. My last, the
 25 last topic that I want to address, which was your last

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1 justification, relates to affordability and in that context
 2 I want to refer to SS9 and SS – SSSS9 and SSSS12 and if I
 3 can quickly run through what SSSS9, what these documents
 4 do. SSSS9 looks at the turnover, the first column and the
 5 first set of rows has Western Platinum Limited turnover
 6 with a reference to SSSS5 where you find those figures and
 7 I've run the figures from 2007 to 2011 because that was the
 8 period of the SLP and it is also the only period for which
 9 we have audited financials available and also the only
 10 period for which we've got financials in rands available.
 11 There is then a column which works out what 2% of the
 12 Western Platinum Limited turnover would be because that's
 13 what the sales commission payment should have been, do you
 14 recall?
 15 MR SEEDAT: Hm-hm.
 16 MR CHASKALSON SC: There is then a column
 17 which shows what the sales commission payment actually was
 18 and a reference to the financial statements, where that
 19 comes from. And you'll see that over the five years what
 20 was paid in sales commission was actually R161 million more
 21 than 2%. Are you able to explain that in any way?
 22 MR SEEDAT: I think so.
 23 MR CHASKALSON SC: Can you try?
 24 MR SEEDAT: The sales agreement covers
 25 the turnover of both WPL and EPL. The way the WPL turnover

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1 is shown here excludes the EPL turnover. So if you add the
 2 EPL turnover then that will explain the commission
 3 difference and the reason why the difference is small,
 4 relatively speaking, is between EPL and WPL the sales is of
 5 ore, of concentrate and obviously that value is a lot lower
 6 than the finished product.
 7 MR CHASKALSON SC: So the figures for
 8 turnover that we see on WPL –
 9 MR SEEDAT: Exclude the EPL 2 –
 10 MR CHASKALSON SC: Exclude, although the
 11 financials speak of amounts paid to EPL for concentrate and
 12 so you're saying that's not accounted in the WPL turnover
 13 figures?
 14 MR SEEDAT: No, that's what I'm told by
 15 the accountant, it's not because otherwise it would have
 16 been double accounting.
 17 MR CHASKALSON SC: Okay. Then the next
 18 set of rows has WPL turnover 1.9% and the management fee
 19 payments over those five years and again there is a
 20 difference of approximately 157 million. Would that be for
 21 the same reason, are you suggesting?
 22 MR SEEDAT: Yes and another reason,
 23 because one of the clauses in the agency agreement is that
 24 WPL and EPL have to reimburse LMS for all taxes, duties,
 25 insurance premiums, cost of transport, sampling, assaying,

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1 stevedoring and warehousing and all other charges and
 2 expenses of a like nature properly and reasonably incurred
 3 by LMS in respect of sales, so it's that turnover
 4 difference as well as these charges that I've just
 5 mentioned, I would think would be included in that –
 6 MR CHASKALSON SC: Let's leave those
 7 difference columns for now and look at the cumulative
 8 figures. The cumulative total over those five years is 2.5
 9 billion which you see in the next row which says cumulative
 10 total.
 11 MR SEEDAT: Yes.
 12 MR CHASKALSON SC: Now if one goes to
 13 that agreed statement of fact, you will recall that what is
 14 pointed out there is that both the sales commission and
 15 management fees are payments that are capable of being
 16 waived by head office agreement under unfairness
 17 arrangements. Are you aware of that?
 18 MR SEEDAT: Yes.
 19 MR CHASKALSON SC: And that in fact with
 20 effect from August 2012, head office agreed to waive those
 21 payments for a period that ran from, I think the 30th of
 22 August till the end of March 2013 and I understand there
 23 have been subsequent waivers in 2013 but they're not
 24 relevant for present purposes. The reference is on page
 25 231 of SSSS5. So those are payments which head office has

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1 the power to waive within the group.
 2 [15:57] MR SEEDAT: Yes.
 3 MR CHASKALSON SC: And if there was an
 4 obligation to make the housing, to make available the
 5 housing budget, it would have been within head office's
 6 power to waive what would have amounted to – gosh, we have
 7 2.5 billion there versus a housing budget of 665 million.
 8 So by waiving payments it could have made space for the
 9 housing obligation, if that was an obligation.
 10 MR SEEDAT: Well, if you took a narrow
 11 view and said the only obligation was housing, I would
 12 agree with you but over the same period I'm aware that
 13 Lonmin acquired other assets, specifically Akanani, as well
 14 as Messina Platinum. Those two alone, the dollar price I
 15 have, I don't have the rand price, was around \$535 million.
 16 So you've got to look at it in the context of what other
 17 obligations or other initiatives Lonmin was busy with and I
 18 use Lonmin in a general sense.
 19 MR CHASKALSON SC: You see that's clearly
 20 how Lonmin looks at it but I want to put to you that that's
 21 not how Lonmin should have looked at it because the housing
 22 obligation is for the benefit of the workers of EPL and
 23 WPL. You'll accept that?
 24 MR SEEDAT: Yes.
 25 MR CHASKALSON SC: Now, Akanani is an

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1 exploration asset. It generates no income at the moment,
 2 it will in due course, if ever explored, hopefully generate
 3 substantial income for Lonmin and for Incwala.
 4 MR SEEDAT: At the time of acquiring it,
 5 the plans were to get Akanani operating – I remember it's
 6 one of the issues that the CEO mentioned to me before I
 7 joined, that the objective was to get Akanani up and
 8 running within a few years, as quickly as possible. A lot
 9 of energy and effort was being put in there and one could
 10 argue, well, you know you could have employed another few
 11 thousand people, grown the environment economically –
 12 MR CHASKALSON SC: No, no, I appreciate
 13 that, Mr Seedat, but the workers of EPL and WPL are never
 14 going to derive any benefit from Akanani, are they?
 15 MR SEEDAT: Well, if it made Lonmin more
 16 profitable maybe, yes. There's benefit in terms of having
 17 money available for other things besides keeping the
 18 business running.
 19 MR CHASKALSON SC: You see what I want to
 20 put to you as the outcome of the choices that Lonmin made,
 21 is that workers at EPL and WPL who were entitled to 665
 22 million spent on housing, ended up effectively subsidising
 23 an interest of Incwala and Lonmin PLC in Akanani. That's
 24 what happened. You chose not to discharge an obligation to
 25 pay 665 million in housing or to underwrite that, so that

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1 funds could be available for Akanani and possibly also
 2 Messina.
 3 MR SEEDAT: Again I believe you're taking
 4 a narrow view because the SLP was approved on the basis of
 5 a particular way in which the houses were going to be built
 6 and that I've given enough evidence of, how that was
 7 intended to be done, why it never got done nobody seems to
 8 know. So if at the time of Lonmin planning its investments
 9 it was assumed that this funding for at least the 3 000
 10 houses was going to come from a financing arrangement and
 11 nobody knows what was intended for the remaining 2 000
 12 houses, Lonmin in parallel, because the markets were
 13 growing and everybody thought that this commodity cycle was
 14 going to carry on for a lot, much longer, Lonmin decided
 15 that it's an opportune time to acquire more assets and
 16 invest in them and grow the business and of course all the
 17 benefits that follow out of growing a business for Lonmin,
 18 its shareholders as well the communities in the job. So
 19 it's a bit, I think, not correct to look at it just from
 20 the perspective of housing. You have to look at the
 21 business in its entirety. I haven't even talked about –
 22 Lonmin has a shaft, I mentioned this before, K4 which is
 23 currently about 80% complete, in my view, spent about 7, R8
 24 billion and not delivering a cent of value. If it had the
 25 money and the choice is between housing and finishing the

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1 shaft, as an example, if it finished the shaft it would be
 2 producing significantly more ounces, much more profitably,
 3 which would allow – and employing up to 10 000 more people,
 4 and have more money to do the things like then take on the
 5 obligation of building the houses out of its own coffers
 6 rather than looking for arrangements like with Rand
 7 Merchant Bank and special purpose vehicles. So as I say,
 8 it's a little difficult to comment on it just looking at it
 9 from a very narrow perspective.
 10 MR CHASKALSON SC: I want to put one last
 11 and, I would submit, fairly obvious source form which that
 12 housing obligation should have been discharged and that's
 13 dividends. If one goes to the bottom of this table SSSS9,
 14 one sees that over the same period R4.59 billion was paid
 15 by Western Platinum Limited in dividends. Now ordinarily
 16 one wouldn't pay dividends before one had discharged what
 17 are apparently current obligations, is that not correct?
 18 MR SEEDAT: Well, these dividends, are
 19 these dividends paid to Lonmin PLC?
 20 MR CHASKALSON SC: Well, they're total
 21 dividends paid, part to Lonmin PLC, part to Incwala.
 22 MR SEEDAT: Well, the other side of the
 23 coin is the shareholders over that same period put R15
 24 billion back into the business, so 4 billion versus 15
 25 billion, shareholders actually lost R10 billion putting

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1 that money back into the business rather than receiving the
 2 dividends.
 3 MR CHASKALSON SC: No, with respect Mr
 4 Seedat, you are incorrect there because if we look at
 5 Western Platinum and Eastern Platinum as opposed to Lonmin
 6 as a whole who has to service a very expensive acquisition
 7 in Akanani and another expensive acquisition that isn't
 8 generating income in Messina, if one looks at Western
 9 Platinum and Eastern Platinum and one goes to SSSS12, one
 10 sees that there have been loans from Lonmin PLC to Western
 11 Platinum and Eastern Platinum over this period and this is
 12 the table which I have recreated from Mr Scott's annexures
 13 ending at 2011, but one sees that the total dividends paid
 14 out by Western Platinum Limited and Eastern Platinum
 15 Limited less loans coming back in the opposite direction,
 16 is still \$127 million. Now I don't know what that
 17 translates to in terms of rands but it's probably in the
 18 region of a billion rands because the rand/dollar price is
 19 fluctuating over that five year period.
 20 MR SEEDAT: I assume that 127 you're
 21 referring to there is the loans over that period. It
 22 doesn't cater for loans prior to that period.
 23 MR CHASKALSON SC: That's all that Mr
 24 Scott addresses in his statement.
 25 MR SEEDAT: But as I mentioned in my

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1 previous, when I gave evidence, it's a lot cheaper to
 2 borrow in the foreign markets as a PLC organisation than
 3 borrowing locally, so the loans would generally have come
 4 out of Lonmin PLC and those, the 127 million I think you're
 5 referring to are the loans given to WPL – over this period.
 6 But you know Lonmin has been in existence longer than this
 7 period, so one has to look at the total loan obligation
 8 that PLC had that it had to service because some of the
 9 dividends paid by WPL/EPL back to Lonmin PLC are used to
 10 pay the interest to service those loans. These numbers I'm
 11 not totally familiar with but I would say you've got to
 12 look at the total loan book that PLC held at the time
 13 rather than the loans paid at the time.
 14 MR CHASKALSON SC: If there are relevant
 15 numbers I'm sure Mr Bham will raise them with you in re-
 16 examination. Chairperson, I've run way over my time limit
 17 at this point.
 18 MR MPOFU SC: Chair -
 19 CHAIRPERSON: Yes, Mr Mpoфу?
 20 MR MPOFU SC: Thank you very much.
 21 Chairperson, I have asked for two minutes from Mr Bham, not
 22 to ask questions, it's just to place something on the
 23 record, Chairperson.
 24 CHAIRPERSON: Mr Bham, you've agreed?
 25 MR BHAM SC: I'm not giving up my –

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1 CHAIRPERSON: Well, let's –
 2 MR BHAM SC: If you give him two minutes,
 3 you give him two minutes out of your time.
 4 MR MPOFU SC: Ja, no, no.
 5 CHAIRPERSON: No, I'm not going to give
 6 him my time, he can have some of yours.
 7 MR BHAM SC: I need my time, especially
 8 with the last question.
 9 MR MPOFU SC: Chairperson, let me just
 10 explain. I unfortunately have to leave because I have
 11 another meeting. There is something I wanted to put on the
 12 record when we finish but –
 13 CHAIRPERSON: Put it on record quickly.
 14 MR MPOFU SC: Yes. It's simply this,
 15 Chairperson, that there's a document that we've received
 16 about an hour ago which has been filed by SAPS entitled
 17 "The role of ritual in Marikana" by some Professor Hlamhla
 18 or another and we just, there's no time to canvass, we
 19 simply just want to place on the record that this is
 20 completely unacceptable, that one cannot introduce this
 21 kind of evidence, so-called expert evidence at this late
 22 hour when we haven't had a chance to respond to it, we will
 23 not have a chance to respond to it. It has never been, the
 24 material in there, I have just gleaned it quickly, has
 25 never been put to any of the witnesses. So we simply would

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1 like the Commission to ignore and strike it off the record.
 2 CHAIRPERSON: We'll note what you say.
 3 The matter can be dealt with further in argument when we
 4 reach the argument stage.
 5 MR MPOFU SC: Yes, if it's intended to be
 6 used in argument then we'll deal with it later, thank you,
 7 Chairperson.
 8 CHAIRPERSON: Well, I've got an idea that
 9 I've seen that document before, a long time ago, but anyway
 10 let's not spend time on it now. The matter can be dealt
 11 with –
 12 MR MPOFU SC: No, it's a so-called
 13 supplementary document. Chairperson is quite correct,
 14 previously a document was – but it was never used and
 15 that's why we never contradicted it.
 16 CHAIRPERSON: You have the advantage over
 17 me, you've seen it, I haven't but –
 18 MR MPOFU SC: Yes.
 19 CHAIRPERSON: - the matter can be
 20 addressed further during the argument.
 21 MR MPOFU SC: Thank you, Chairperson.
 22 CHAIRPERSON: Yes, Mr Bham?
 23 RE-EXAMINATION BY MR BHAM SC: Thank you,
 24 Mr Commissioner. Mr Seedat, on a number of occasions
 25 during your cross-examination you referred to the concept

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1 of business cycles, good years and bad years. 2008, the
 2 collapse in 2008, would you describe that as having been
 3 part of the typical type of cycle of a bad year that you
 4 would experience?
 5 MR SEEDAT: No. You know, prior to that
 6 crash in 2008 I would have described the good times as
 7 being extraordinarily good and what happened in 2008 was
 8 extraordinarily bad. It was almost the extreme of the good
 9 times we were seeing, you know, a price of a product
 10 dropping from over \$2 000 a fine ounce to 8 000 – and
 11 perhaps you talk too much of platinum, rhodium just prior
 12 to the crash was selling for \$10 000 a fine ounce. Today
 13 even after the crash I think the price today, I'm subject
 14 to correction, I don't get it every day now anymore, is
 15 around 1 000, \$1 200, 10% of the value at its prime. A
 16 significant part of Lonmin's income was coming out of the
 17 rhodium sales.
 18 MR BHAM SC: Besides pricing, what impact
 19 did that crash have on capital markets generally, on the
 20 share prices and the availability of finance?
 21 MR SEEDAT: Well, we saw what happened
 22 with the share price because Xstrata had put in a bid just
 23 prior to the crash and I think it was around 37 pounds and
 24 post the crash it dropped to, I think about 15 pounds.
 25 Again I'm speaking subject to correction, we've covered

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1 this before and there's documentation in there. Besides
 2 the crash it was also – you know when times are good and
 3 companies are making money, management does become a bit
 4 slack and do more of the sort of not so essential stuff,
 5 you know, perhaps employ a few more people, perhaps agree
 6 to doing a few more projects and when this happened, those
 7 were the things we had to tighten down immediately on and
 8 the shafts that were just marginal at 2 000, at \$800 were
 9 just uneconomic, we had to shut them down and that's where
 10 we ended up with letting about 3 500 people go.
 11 MR BHAM SC: And the crash that occurred
 12 in 2008, was that the type of economic event which was
 13 foreseeable so that you could plan for it?
 14 MR SEEDAT: You know, everybody regards
 15 Mick Davis from Xstrata as being quite a wizard in growing
 16 a business. If he couldn't see it, I don't think anybody
 17 else would have seen it. It kept the entire, certainly in
 18 the mining world but I'm sure the other commercial parts,
 19 banks, et cetera, all of them were hit by surprise at this
 20 event and the extent to which it had an impact.
 21 MR BHAM SC: Thank you. You have in
 22 front of you the witness statement of Mr Simon Scott,
 23 SSSS11. I'm going to ask you to talk to the annexures to
 24 that witness statement so that we can deal with the
 25 questions put to you on dividends and loans and the extent

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1 of those. Do you have that in front of you, Mr Seedat?
 2 MR SEEDAT: Yes, I have. Annexure A is
 3 about the dividends –
 4 MR BHAM SC: Could I ask you to go
 5 through it fairly carefully because of what has been put to
 6 you in cross-examination? Annexure A talks to dividends
 7 paid by WPL and EPL to PLC, that would be Lonmin PLC.
 8 MR SEEDAT: That's right.
 9 MR BHAM SC: During the period 2007
 10 through to 2012.
 11 MR SEEDAT: That's right.
 12 MR BHAM SC: Could you very briefly talk
 13 to that? You'll see the figures are in dollars, so it's
 14 both to PLC and to Incwala.
 15 MR SEEDAT: That's right. Well, the
 16 Incwala dividends had, are paid primarily to enable the
 17 Incwala preference shares to be serviced. If those are not
 18 serviced, Incwala is in default. If it's in default and
 19 the rug is pulled from underneath it, Lonmin would be in
 20 default or WPL/EPL would be in default because we wouldn't
 21 have an HDSA partner as is required as a non-negotiable in
 22 terms of the Mining Charter. And the dividends paid to
 23 PLC, as I mentioned previously, those were paid because to
 24 pay, you know, some dividends were paid over that period,
 25 minimal, I think only about \$50 million in total. The rest

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1 would have gone to servicing the debt that Lonmin PLC
 2 incurred on behalf of the operations it has.
 3 MR BHAM SC: Now the total amount of
 4 those dividends in that period was 621 million. I want you
 5 just to keep that figure in mind, I'll come back to it a
 6 little later. Could I ask you to turn to annexure B? Does
 7 that represent the management and marketing costs incurred
 8 by Lonmin Management Services? Could you briefly explain
 9 to the Commission what is dealt with here?
 10 MR SEEDAT: Obviously this is, it says
 11 management and marketing so this covers, in terms of the
 12 two agreements, the one agreement covers the provision of
 13 company secretarial, CEO, finance, tax, all of the services
 14 in terms of the agreement, the people, the resources, the
 15 consultants, whoever are used are in that cost as well as
 16 the rental of the premises and similarly the marketing
 17 people would have been included in that cost. The
 18 marketing cost in 2009 is high and I am again subject to
 19 correction but I think it includes, it was probably the
 20 last year that it included the Jewellery Council that they
 21 had formed to try to promote the provision of jewellery and
 22 the costs associated with that.
 23 MR BHAM SC: If we turn to annexure C,
 24 that makes reference to sales commissions and management
 25 fees paid to Lonmin Management Services by WPL and EPL.

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1 Then you'll see at the bottom of the two tables there's a
 2 note, "The fee paid to Lonmin PLC is for the services they
 3 have rendered to LMS and for which it, in turn, incurs
 4 costs. LMS is subject to taxation in South Africa and
 5 Lonmin PLC to taxation in the United Kingdom." Would you
 6 briefly explain that note in the context of the figures in
 7 those two schedules?
 8 MR SEEDAT: Ja, these fees are paid to
 9 Lonmin but they are costs that also in PLC incurs and
 10 obviously those charges have to be deducted from here. The
 11 taxation, as an example, I'm trying to go by memory but LMS
 12 I think paid tax of about R110 million in 2011 and I think
 13 in 2012 it paid taxes of around R70 million in South
 14 Africa. So this notion that the money is siphoned out
 15 without the full benefit being obtained in South Africa,
 16 due benefit, for example taxes, et cetera, that's not
 17 correct. These are after tax amounts that are submitted
 18 through finally to PLC. Just I think to be aware because
 19 there's a difference between Mr Chaskalson's spreadsheet
 20 and this one on commission received for example in 2007
 21 there's a number that he has that's not on here because
 22 this only covers the fees paid to LMS, excludes the fees
 23 paid to Western Metal Sales. In 2007 Western Metal Sales
 24 was still in existence and for a period thereafter a
 25 percentage of the fees were still paid to Western Metal

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1 Sales. So when you look at this, just ensure that you're
 2 looking at it from an LMS only perspective, excluding what
 3 was paid to Western Metal Sales in those earlier years.
 4 MR BHAM SC: Now are those commissions
 5 paid in – those commissions and fees paid for value
 6 received or, to put it bluntly, was it just to siphon off
 7 money as might be suggested?
 8 MR SEEDAT: No, there is an agency
 9 agreement – I'll talk about the marketing first, there is
 10 an agency agreement that exists between LMS and WPL/EPL and
 11 in that agency agreement effectively all the things to do
 12 with marketing, sales, research and development, liaising
 13 with the customers, all of that is done by LMS and this fee
 14 is for doing the services and it's risk-based in the sense
 15 that it's based on turnover. So that if at some point the
 16 turnover drops to a certain level, the actual fee paid
 17 would not cover the costs. So there's a risk element there
 18 and similarly the management fees, as I've explained
 19 before, the agreement specifies what LMS has to provide to
 20 WPL/EPL and these fees are intended to cover those expenses
 21 and of course you pay tax after, on whatever profit there
 22 is before you would send anything back to PLC. And
 23 similarly it's a risk so that if at any one point, and I
 24 think it happened in one of the years, if I remember
 25 correctly around 2009 where the fees recovered were

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1 actually lower than the costs incurred and therefore there
 2 was a loss for LMS in one of those years.
 3 MR BHAM SC: May I ask you to turn to
 4 annexure D? You'll recall annexure, when we looked at
 5 annexure A we looked at the total dividends paid over the
 6 period 2007 to 2012 which was \$621 million. Annexure D
 7 talks about monies loaned and advanced to WPL and EPL by
 8 Lonmin PLC. 2007/2008 there was nothing.
 9 MR SEEDAT: Yes.
 10 MR BHAM SC: But can you talk to the
 11 figures that follow from 2009?
 12 [16:17] MR SEEDAT: Well, you know, again it's
 13 not coincidental that the loans started flying just after
 14 2008 financial year and as I mentioned earlier, the loans,
 15 it's cheaper to borrow in the international markets than in
 16 the local markets. So the PLC does the borrowing and in
 17 these years, I was involved with 2010 and I'm aware of how
 18 tight financial conditions were and it is those loans that
 19 PLC had, I don't think there were significant return
 20 earnings anywhere, that were used to keep WPL and EPL going
 21 in terms of advancing those loans to WPL/EPL so that we
 22 could keep the operations in South Africa going. And this
 23 was the bare minimum that was required just to keep the
 24 operations alive.
 25 MR BHAM SC: Now just before we go away

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1 from there, that amount totals US\$673 161 145.
 2 MR SEEDAT: Yes.
 3 MR BHAM SC: That exceeds the total
 4 figure represented on annexure A.
 5 MR SEEDAT: That's right and what it
 6 doesn't cover, and the difference is made up by what the
 7 shareholders had also put in to – because they buy more
 8 rights in Lonmin PLC, the additional funding came from the
 9 funding we got from shareholders.
 10 MR BHAM SC: And that would have been the
 11 rights issue in 2009 which raised US\$441 million, as I
 12 understand it, and the rights issue – it's not on the
 13 schedule.
 14 MR SEEDAT: No, I've got –
 15 MR BHAM SC: And the rights issue in
 16 2012, I think –
 17 MR SEEDAT: Ja.
 18 MR BHAM SC: - which raised £800 million
 19 sterling.
 20 MR SEEDAT: Dollars, \$800 million.
 21 MR BHAM SC: \$800 million.
 22 MR SEEDAT: Yes.
 23 MR BHAM SC: So both of them, \$441
 24 million in 2009 and 800 million in 2012.
 25 MR SEEDAT: There was also a \$250 million

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1 rights issue, it was a placement, specific shareholders, in
 2 2010.
 3 MR BHAM SC: So in the very period that
 4 you were taken through the dividends paid out, in that
 5 period the funds coming in from shareholders including
 6 Lonmin was substantially higher than what went out.
 7 MR SEEDAT: That's right. I mean the
 8 simple calculation I did is that between 2008 and 2013,
 9 dividends that were paid to shareholders over that period,
 10 and this number is corrected because the error that -
 11 previously, \$564 million. So R5 billion circa, was paid as
 12 dividends to shareholders. In the same period shareholders
 13 paid to Lonmin to keep it going, R15 billion. It's \$1.544
 14 billion.
 15 MR BHAM SC: And some of those funds
 16 would have been the result of those shareholders incurring
 17 loans because it was cheaper to raise funds abroad in order
 18 to enable WPL/EPL to keep going.
 19 MR SEEDAT: That and, you know,
 20 shareholders after all at the end of the day they make an
 21 investment to make a return, they would have taken a view
 22 and said it's worth doing this additional investment
 23 because we expect at some point the platinum, PGM market to
 24 improve and then we'll get a return. So that's what is
 25 important, that you have to pay dividends when you can

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1 because otherwise shareholders will vote with their feet
 2 and say, this is the return – if you put your money in the
 3 bank and you get nothing for it and you're asked to put more
 4 money in the bank without getting any return, you're going
 5 to take your money out. Shareholders think in the same
 6 way.
 7 MR BHAM SC: Can I then ask you to go to
 8 annexure E, that document which is, there's four pages to
 9 it, it talks about the historical dividend benchmarking and
 10 looks at Lonmin and benchmarks it in respect of dividends
 11 against Anglo Platinum, Impala Platinum and Northam
 12 Platinum. Without going through the precise detail because
 13 we don't have much time left, could you give the Commission
 14 an overview of how Lonmin compared to its competitors in
 15 respect of dividends and what the implication of that is?
 16 MR SEEDAT: Because these companies are
 17 different sizes, I think the dividend payout ratio is a
 18 more relevant measure to use because it's related to the
 19 size of your company and you look at, in all of these years
 20 Lonmin, except for 2010, Lonmin's ratio has not been – has
 21 lagged the rest. That's why again it's reflected in the
 22 lower share price which has lagged the other mining
 23 companies, platinum miners in terms of any growth.
 24 MR BHAM SC: Finally, Mr Seedat, may I
 25 ask you to go to exhibit SSSS3, it's the spreadsheet.

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1 MR SEEDAT: I don't have that.
 2 MR BHAM SC: It's on the screen –
 3 MR SEEDAT: Okay.
 4 MR BHAM SC: You'll see for the years
 5 2009 and 2012 the adjusted FCF, the free cash flow, were
 6 both negative amounts. Now do these figures adhere –
 7 sorry, these figures would reflect those adjusted negative
 8 free cash flows after the receipt of the funds from the two
 9 rights issues in that period.
 10 MR SEEDAT: No, I don't think it includes
 11 the rights issues. This is negative operations.
 12 MR BHAM SC: Operations.
 13 MR SEEDAT: So its operating free cash
 14 flow is negative and that's why the borrowings and the
 15 rights issues would have enabled Lonmin to continue meeting
 16 its obligations, or WPL/EPL, because those rights issues
 17 and the borrowings would have negated the negatives so that
 18 you could meet your obligations.
 19 MR BHAM SC: I have no further questions.
 20 CHAIRPERSON: Yes, thank you. That
 21 concludes the evidence. Yes, Mr Chaskalson?
 22 MR CHASKALSON SC: Sorry, Chair, but
 23 before we break, I have picked up an error in the copy of
 24 SSSS12 that has been circulated. I will have it corrected.
 25 I would ask everyone not to look at their SSSS, to wait for

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1 the replacement SSSS12. It was prepared in haste and there
 2 is an error in it.
 3 CHAIRPERSON: Thank you, Mr Chaskalson.
 4 That concludes the evidence in this Commission. Tomorrow
 5 we're going to have an inspection in loco. Are we going,
 6 do the same arrangements apply as previously for the
 7 disrupted inspection? Are we going to – Mr Chaskalson, can
 8 you perhaps tell us what the gathering point will be and
 9 the time?
 10 MR CHASKALSON SC: The gathering point
 11 will be the kraal and it will be 10 o'clock.
 12 CHAIRPERSON: And before we adjourn I am
 13 reminded Ms Pillay wants to do the exhibits, is that right?
 14 MS PILLAY: That's correct, Chair.
 15 CHAIRPERSON: Yes, alright.
 16 MS PILLAY: We kick off, Chair, with KKKK
 17 which is the presentations for the deceased. We have at
 18 KKKK34 Mr Langa's presentation, KKKK35 Mr Sokanyile, KKKK36
 19 Mr Mabelane, KKKK37.1 Mr Twala's presentation, 37.2 Mr
 20 Twala's statement, 38 is Mr Mangcotywa, 39 Mr Mtshazi, 40
 21 Mr Jijase, 41 Mr Xalabile, 42 Ngweyi and 43 Mr Mohai and
 22 KKKK44 is Mr Msenyeho. And then, Chair, we are introducing
 23 a new exhibit number, it's ZZZZ which is basically the
 24 mopping up of all exhibits that needed to be marked thus
 25 far. Before we get there, Chair, just to clear up the

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1 HRC's submission which is quadruple, was previously marked
 2 SSSS8 will now become, the submission itself will be
 3 SSSS8.1 and the video which we watched, the women lived
 4 experience in Marikana would become SSSS8.2. Then finally
 5 just to go on to the ZZZZ –
 6 CHAIRPERSON: Fortunately we've just
 7 finished the alphabet four times and we didn't have to go
 8 any further.
 9 MS PILLAY: That's correct, Chair. If we
 10 can go to the ZZZZ –
 11 CHAIRPERSON: If that was good
 12 management, I imagine more accident than design.
 13 MS PILLAY: ZZZZ1, Chair, is the unsigned
 14 statement of Brigadier Van Graan dated June 2013.
 15 ZZZZ2 is the index to the statements of SAPS
 16 shooters for the 13th of August 2012. This means that
 17 ZZZZ2.1 to 2.177 would be all of the individual statements
 18 which fall under ZZZZ2.
 19 ZZZZ3 is the index to SAPS statements for the 16th
 20 of August 2012 and this means that ZZZZ3.1 to 3.677 are all
 21 the individual statements which fall under that index.
 22 ZZZZ4 is the index to statements of SAPS shooters
 23 in the folder called "Additional" and ZZZZ4.1 to 4.40 are
 24 the individual statements of those members who fall under
 25 that index.

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1 ZZZZ5, Chair, is the transcript of the bail
 2 proceedings of all the accused.
 3 ZZZZ6 is a document we've circulated headed
 4 "Directory of additional photographs and videos." These
 5 are photographs and videos which haven't been made
 6 exhibits. We have put them into a single directory.
 7 ZZZZ7 is the statement of Minister Mthethwa.
 8 Chair, you will recall that the Minister meant to respond
 9 to some of the recommendations in the NDP. We're advised
 10 that that statement is completed but has yet to be signed.
 11 It will then be placed before us. We have reserved ZZZZ7
 12 for that document.
 13 ZZZZ8, Chair, is the document prepared by Mr De
 14 Rover entitled "Lessons learnt," that document has been
 15 circulated.
 16 ZZZZ9 is the time synchronisation presentation
 17 prepared by Mr Chaskalson on behalf of the evidence
 18 leaders.
 19 ZZZZ10 is the evidence leaders' detailed
 20 timelines synchronising all of the different times on the
 21 different instruments.
 22 ZZZZ11 is the consolidated cell phone records of
 23 the SAPS members, that has now been put into a single
 24 document.
 25 ZZZZ12 is the presentation on the position of the

<p style="text-align: right;">Page 38481</p> <p>1 body of the late Mr Gwelani. 2 ZZZZ13.1 is the statement, the initial statement 3 of Prof Hlamhla. ZZZZ13.2 is the supplementary statement 4 of Prof Hlamhla, it's the one referred to by Mr Mpopu 5 earlier today. 6 ZZZZ14 is a document prepared by SAPS in response 7 to the HRC's video dealing with movements around scene 1. 8 ZZZZ15 we've reserved, Chair, the evidence 9 leaders are in the process of preparing an index of all the 10 dockets which have been placed before the Commission and 11 that index will become ZZZZ15. And then ZZZZ15.1 to 15 12 point whatever the number is, will be the individual 13 dockets which will then form exhibits. 14 ZZZZ16, Lonmin have agreed to put together a 15 cumulative index of all Lonmin statements, that will become 16 ZZZZ16 and ZZZZ16.1 to 16 point whatever the ultimate 17 number is, will be the individual Lonmin statements. 18 We have reserved, Chair, ZZZZ17 for the 19 ballistics reports. There are multiple ballistics reports. 20 We don't have the final number yet but we have reserved 21 ZZZZ17 for all of the ballistics reports. 22 ZZZZ18 is a document listing all public violence 23 cases reported in the Marikana area. It's a document which 24 has been circulated by SAPS. 25 ZZZZ19 is the translation of the responses of</p>	<p style="text-align: right;">Page 38483</p> <p>1 the injured and arrested persons, which seems to me to be 2 appropriate for us to grant. 3 MS PILLAY: We have reserved, Chair, 4 ZZZZ20 to 27 for each of the different hospitals. The 5 injured and arrested, their records relate to a particular 6 hospital and there are seven hospitals, so we have reserved 7 seven numbers and we'll finalise which injured and arrested 8 fall within those hospital exhibit numbers. And finally, 9 Chair, ZZZZ28, we've got 28.1, 28.2 and 28.3 which is the 10 annual financial statements of the Marikana Housing 11 Development Company for the years ended 30th September 2005, 12 2006 and 2007. And those are the new exhibits. 13 CHAIRPERSON: There will be two, well, we 14 did ask for some statements to be made – I think affidavits 15 we actually asked for in relation to the alleged recording 16 which, evidence that AMCU was behind the strike which Mr 17 Kwadi made and refused to hand over and so forth and which 18 Mr Mokwena dealt with in his evidence. I take it that 19 those will be included in the Lonmin statements, Lonmin 20 directory, but that's something that we were promised and 21 that will obviously have to be forthcoming. 22 And then finally, I understand that the evidence 23 leaders have, at my request, framed an interrogatory 24 addressed to all those persons who were present at the 25 meeting of the National Management Forum, the extraordinary</p>
<p style="text-align: right;">Page 38482</p> <p>1 strikers to Mr Mathunjwa's first address at the koppie on 2 the 16th of August. Now you will recall, Chair, the exhibit 3 L163, 164, 165, et cetera, purports to be a translation of 4 the protesters' address at the koppie on the 16th and there 5 was a question raised around how valid the translation was 6 and the evidence leaders are now preparing a fresh 7 translation of those addresses. And that translation, when 8 it becomes available, will be ZZZZ19. 9 We have reserved, Chair, exhibit numbers for the 10 hospital records of the injured and arrested and I'm not 11 sure if that's been finalised as yet. 12 CHAIRPERSON: What is important in that 13 regard is that, I don't know that we need all the hospital 14 records, only those where the hospital records are relevant 15 to determine wounds, direction of wounds, position of 16 wounds and possibly the distance between the fired firearm 17 and the point of impact on the body of the injured person. 18 That's an exercise that must be performed and in other 19 words we don't need all the records, but the second point 20 is that we must make it clear at this stage that those 21 exhibits will not be accessible to the public. We have 22 already, in the case of some exhibits, we have indicated 23 particularly gruesome photographs in that category and 24 these will be also treated in the same way. That's a 25 request we have received from the legal representatives of</p>	<p style="text-align: right;">Page 38484</p> <p>1 session of the Management Forum, apart from the Provincial 2 Commissioner North-West and the National Commissioner who 3 have already testified, answering specific questions that 4 were sent to them in relation to what happened at that 5 meeting. Those will also, those will presumably have to be 6 ZZZZ29. 7 MS PILLAY: 29, that's correct, Chair. 8 CHAIRPERSON: I don't know whether dates 9 – Mr Budlender perhaps is able to address us on that 10 further. They've already received the interrogatories? 11 MR BUDLENDER SC: Oh yes. 12 CHAIRPERSON: Yes, I see, but anyway the 13 point is we must reserve ZZZZ29 for the interrogatories and 14 the answers. 15 MS PILLAY: Chair, may I suggest then 16 that 29.1 is the evidence leaders' interrogatories and then 17 29.2 will be the answer, the responses. 18 CHAIRPERSON: 2 down to the relevant 19 number, yes. 20 MS PILLAY: Yes. 21 CHAIRPERSON: Thank you. I think there 22 were 13 people present, am I correct? Mr Budlender, is 23 that right? Were there 13 people present, I think? 24 MR BUDLENDER SC: I think that's right. 25 CHAIRPERSON: So we've already had two of</p>

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1 them, so it'll be down to 11 or 2 to 12, I suppose. So
 2 that then is the conclusion –
 3 MS LE ROUX: Chair?
 4 CHAIRPERSON: Yes?
 5 MS LE ROUX: We'll engage with the
 6 evidence leaders but we are still under the impression that
 7 there's a universe of documents that are sort of the record
 8 of the Commission that are not yet included, even in Ms
 9 Pillay's ZZZZ series and there may need to be a mechanism
 10 to add those in, but we'll engage in that respect. I mean
 11 for example the phase 2 discovery, DMR discovery, Lonmin
 12 discovery. Similarly we could have confidentiality
 13 protocols but there certainly are documents that are part
 14 of the record of this Commission that are not yet exhibited
 15 and parties are likely to rely on them in argument, so
 16 we'll need to add to that series.
 17 CHAIRPERSON: Yes. As you say, there may
 18 well be confidentiality provisos.
 19 MR CHASKALSON SC: Chair, I think Ms Le
 20 Roux is speaking about documents which have been referred
 21 to in evidence but which were never given exhibit numbers.
 22 Particularly at the start of the Commission there were, a
 23 lot of the photographs and videos were referred to and
 24 shown in Commission but were never given exhibit numbers.
 25 We should have covered most of them now but there may be

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1 some that have still fallen through the cracks.
 2 CHAIRPERSON: I understand her to go
 3 further. She refers to documents that were discovered by
 4 parties. I'm not sure, I mean normally in a court case you
 5 don't put discovered, all documents discovered by parties
 6 aren't normally exhibits. It's only those that have been
 7 referred to in the course of the evidence.
 8 MR BHAM SC: Mr Chairman, what concerns
 9 me is the reference by Ms Le Roux to, fairly broadly to
 10 theme 2 documents. Now those which have been referred to
 11 in evidence are evidence before the Commission. Those
 12 which have not been referred to are not evidence before the
 13 Commission and we haven't had a chance to deal with them.
 14 So I think we must be very careful about –
 15 CHAIRPERSON: Yes, that's why I –
 16 MR BHAM SC: - that we can throw in
 17 everything.
 18 CHAIRPERSON: I'm raising a caveat that
 19 the mere fact that documents were discovered doesn't mean
 20 that they become exhibits and come before the Commission
 21 and normally, if one follows the analogy of a civil trial,
 22 all discovered documents don't form part of the record of
 23 the court. They are discovered, they can be examined by
 24 parties, parties who wish to use them in the course of
 25 proceedings do so and then they become exhibits. So I am

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1 reluctant to do it but I don't think we need give a final
 2 decision now, that's something that can possibly form the
 3 subject of discussion. There may well be documents in the
 4 category to which Ms Le Roux refers which we, the
 5 Commissioners, will be satisfied should form part of the
 6 record of the Commission but that's something we will deal
 7 with as soon as we can so that the parties aren't
 8 prejudiced if it's a question of their being dealt with.
 9 So that then, I think, concludes the proceedings.
 10 MS PILLAY: Chair, I'm sorry to
 11 interrupt. If I can mention the final exhibit document,
 12 it's ZZZZ30 and it's SAPS's response to the NDP.
 13 CHAIRPERSON: That's now SAPS's response,
 14 you mean the Minister's response or SAPS's response?
 15 MS PILLAY: No, SAPS's –
 16 CHAIRPERSON: Oh, SAPS. We're needing
 17 the ex-Minister to respond and also SAPS itself.
 18 MS PILLAY: We're waiting for the ex-
 19 Minister to respond and we have SAPS's response.
 20 CHAIRPERSON: I see. Is this just by
 21 SAPS, because the new Minister has made certain public
 22 statements in relation to the implementation of certain
 23 parts of the NDP.
 24 MR CHASKALSON SC: Could I just clarify?
 25 ZZZZ30, it is the document which was requested by the

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1 Commission. It is the, it was the SAPS response to the
 2 draft National Development Plan, following on which the
 3 National Development Plan was finalised and published. So
 4 it was a document submitted by SAPS at the request of the
 5 Commission. It's a response to the draft –
 6 [16:36] CHAIRPERSON: I see, I see. So it's not,
 7 it doesn't involve the views expressed or otherwise of the
 8 present Minister –
 9 MR CHASKALSON SC: Not at all.
 10 CHAIRPERSON: - in response to the
 11 National Development Plan.
 12 MR CHASKALSON SC: The NDP, the –
 13 CHAIRPERSON: It's an historic document.
 14 MR CHASKALSON SC: The Planning
 15 Commission asked for SAPS, produced a draft, asked SAPS for
 16 a response and this is the document which SAPS produced in
 17 response.
 18 CHAIRPERSON: I see, thank you. Mr
 19 Seedat, I've been very remiss. Please forgive me, I should
 20 have excused you before we had this housekeeping
 21 discussion. Thank you very much, you are excused.
 22 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 23 CHAIRPERSON: So that then brings the
 24 evidentiary aspect of the Commission to a conclusion. We
 25 will resume with the inspection in loco, as we've heard, at

1 the kraal tomorrow starting at 10 o'clock and thereafter we
2 will hear argument on dates that will be, I think have
3 already been communicated to the parties on an informal
4 basis. Once the proclamation has been published they will
5 be announced publicly. On that note, the Commission will
6 adjourn till 10 o'clock tomorrow morning at the kraal.

7 [COMMISSION ADJOURNED]

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