

# *RealTime Transcriptions*

---

TRANSCRIPTION OF THE

**COMMISSION OF INQUIRY**

**MARIKANA**

**SEMINAR PHASE 2**

**HELD ON**

16 APRIL 2014

**PAGES**

1 TO 98



© **REALTIME TRANSCRIPTIONS**

64 10<sup>th</sup> Avenue, Highlands North, Johannesburg  
P O Box 721, Highlands North, 2037  
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335  
E-mail: [realtime@pixie.co.za](mailto:realtime@pixie.co.za)  
Web Address: <http://mysite.mweb.co.za/residents/pak06278>



## Seminar Phase 2

1 [PROCEEDINGS ON 16 APRIL 2014]

2 JUDGE FARLAM: Good afternoon, ladies and  
3 gentlemen. Welcome here this afternoon to this, the third  
4 seminar in our series of seminars in relation to Phase 2 of  
5 the Marikana Commission. I seem to recognise most of you  
6 as people who were here last time, so I don't have to say  
7 very much by way of introduction.

8 We are, as you will have heard, effectively  
9 conducting Phase 2 in four different ways by the seminars,  
10 which we think are a very valuable way of getting a vast  
11 amount of expertise from acknowledged experts in the field  
12 in a manner which is much quicker and far more expeditious  
13 than would be the case if we were hearing all the evidence,  
14 having witnesses cross-examined and so on.

15 We also have researchers, the chief researcher is  
16 Dr Kelly Forrest who is with us today, many of you will  
17 know. Researchers are getting information for us from the  
18 parties and others in regard to many of the aspects which  
19 have to be considered under Phase 2.

20 We also have made it clear to the parties who may  
21 feel themselves unfairly criticised or in respect of who  
22 may say some of the things said here at the Commission are  
23 not true, are given a chance to reply by giving us material  
24 - affidavits and statements dealing with points that have  
25 arisen that they feel their point of view should be before

## Seminar Phase 2

1 us, and other interested parties, or other people who think  
2 they have things to contribute that will assist us to get  
3 to the truth in regard to Phase 2, we also welcome inputs  
4 from them. We had been approached by a number of bodies  
5 who asked if they can make representations on particular  
6 topics and make submissions to us, and some have already  
7 been received.

8           And then finally if there are issues in respect  
9 of which we consider it necessary to hear oral evidence  
10 with examination and cross-examination of the witnesses we  
11 will do that, but we will hope to keep that to the minimum  
12 because time is running out on us. The task that we have  
13 to perform is very important, but we have to use the time  
14 as economically as we can.

15           I'm very pleased that the organisers have  
16 succeeded in firstly assembling this very authoritative and  
17 heavyweight panel to give us their views on a particularly  
18 important aspect of our work, which is the question of  
19 violence in industrial relations, but we're also very happy  
20 to be able to welcome back Mr Kettledas, who was the  
21 chairman of our first session, which he - if I may say so -  
22 chaired in a very exemplary fashion and we're looking  
23 forward to his contributions from the chair today. So  
24 without further ado I hand over to Mr Kettledas.

25           MR KETTLEDAS:                   Thank you very much to the

## Seminar Phase 2

1 honourable Judge Ian Farlam, who we know of course is the  
2 chairperson of the Marikana Commission of Inquiry. We'd  
3 also like to welcome one of the Commissioners, Senior  
4 Counsel Tokota. He's seated amongst the masses there.

5 We also want to welcome the parties to the  
6 Commission, guests, and all of your. We have seen a number  
7 of faces that we have seen in the previous two seminars as  
8 well, so we hope they will go all the way with all the  
9 seminars and we thank you for your attendance and  
10 participation in these seminars.

11 This is the third one, as honourable Judge Farlam  
12 indicated. The previous two seminars dealt with Bargaining  
13 Arrangements in Platinum, that was the first one, and last  
14 week on Wednesday the second seminar dealt with Mining and  
15 Migrancy.

16 The theme for today's seminar is Violence in  
17 Industrial Relations and I'm sure many of you will agree  
18 that over the past few years we have seen quite serious  
19 levels of violence in industrial relations, more  
20 particularly during strikes, and this has become a huge  
21 problem. I also recall that when the Department of  
22 Labour's industrial action report was released the issue of  
23 violence had also been raised in the context of the strikes  
24 that had taken place, particularly in 2012. I think about  
25 45% of the strikers in 2012 were unprocedural strikes, as

## Seminar Phase 2

1 an example.

2           So there's been many questions that have been  
3 raised around industrial relations in mining and in  
4 platinum specifically, and today with us we have three  
5 speakers that will share their views on this very important  
6 topic. Firstly we have Crispin Chinguno who will be  
7 explaining violence in strikes. That is the topic that he  
8 will address. He will be followed by Professor Emeritus  
9 Eddie Webster who will talk about strike violence and  
10 alternative avenues to that, and finally we will have a  
11 presentation from Gareth Newham on how SAPS, the South  
12 African Police Service can prevent another Marikana. I  
13 will also briefly introduce them before their  
14 presentations.

15           So I hope - I don't want to talk too long - I  
16 hope that these deliberations today will contribute to us  
17 finding solutions to this problem of violence in our  
18 industrial relations environment and that we can move  
19 forward towards a more stable and peaceful conduct of  
20 industrial relations at all of our workplaces, not just in  
21 the context of the mining industry or in particular in  
22 regard to what is happening in the platinum sector.

23           It is my hope that today's seminar will be a  
24 success and that it will contribute to the work of the  
25 Commission. So thank you very much for your attendance and

## Seminar Phase 2

1 since we want to finish by 5 o'clock we will go straight  
2 into the presentations. We will have two presentations,  
3 whereafter we'll then have a tea break for about 15 minutes  
4 and then the last presentation will be after tea break and  
5 then we'll have a session for discussions and conclusion  
6 between quarter past 4 and 5 o'clock. So with your  
7 cooperation we will meet that deadline, or closing time, so  
8 that we are able, that everybody is enabled to go where  
9 they need to go. We also know tomorrow is the start of the  
10 Easter weekend and people would be travelling to different  
11 parts of the country. So let's target to finish by 5 and  
12 the presentations will be such that we'll have just briefly  
13 after each presentation only questions for clarification,  
14 no discussion, that the presenters can then answer, but  
15 where you do have comments and questions and contributions  
16 to make, that will be in the discussion session after the  
17 last presentation.

18           So I'll call on Crispen Chinguno. Crispen is an  
19 International Centre for Development and Decent Work fellow  
20 at SWOP. You know the new name for SWOP is the Society,  
21 Work and Development Research Institute at the University  
22 of the Witwatersrand here. His PhD project registered in  
23 the Department of Sociology explores the variations of  
24 strike violence in South Africa and draws case studies from  
25 the platinum belt where he conducted an ethnographic study

## Seminar Phase 2

1 for 18 months, for over 18 months between 2011 and 12.

2 His research interests are labour studies, trade  
3 unions, social movements, working class agencies, labour  
4 and development, and the sociology of violence. He has  
5 recently published articles covering broadly these research  
6 interests in the Review of the African Political Economy,  
7 British Journal of Industrial Relations, Journal of  
8 Workplace Rights, Juridikum, Peripherie, Global Labour  
9 Journal, and finally the South African Labour Bulletin. So  
10 let's welcome Mr Chinguno.

11 MR CHINGUNO: Firstly good afternoon to  
12 everyone. First I would like to thank the Commission for  
13 inviting me to share some of sort of findings from the  
14 research that I started in 2010 where I'm trying to  
15 understand the use of violence in strikes, and I'm drawing  
16 case studies from the platinum belt. So this is where I  
17 draw my research findings.

18 The aim of these projects when I started is  
19 basically to understand the use of violence which tend to  
20 characterise - strike violence is one of the many different  
21 forms of violence that characterise our democracy. So I  
22 sort of got interested in terms of how do we understand the  
23 use of violence in a democratic South Africa. So I decided  
24 to - I resolved at the end of the day with my supervisor,  
25 we resolved to look at the case studies from the platinum

## Seminar Phase 2

1 belt and to start with these studies, based on the premises  
2 that the mining industry remains central in explaining the  
3 post-apartheid social order which is characterised by  
4 poverty, inequality and general precariousness.

5           So I conducted this ethnographic study between  
6 2011 and 2012 and what is important is I started off with  
7 the time when the 2011 strike broke out at Karee, that's  
8 when I was doing sort of my pilot study. I went to  
9 Rustenburg for two weeks. That was the time when we had a  
10 strike at Karee Mine, which culminated in the new union  
11 emerging sort of as the dominant union at one of the  
12 operations for Lonmin.

13           Then I moved on to Murray & Roberts, which is in  
14 Aquarius. I got interested in a strike that happened in  
15 2009 in which 9 000 workers were dismissed and 2 000 of  
16 them were never reinstated, and as we talk of now the  
17 committee for this strike at Murray & Roberts is still  
18 active to this day. So I've lived in the platinum belt for  
19 over 18 months, including in one of the biggest informal  
20 settlements, Number 9, where I rented a shack during the  
21 time I was conducting this study.

22           Then I moved, from Murray & Roberts I moved to  
23 Impala Platinum Mine in January and then a strike broke out  
24 on the 17<sup>th</sup> of January at Impala Platinum Mine, just a few  
25 days after I've commenced my fieldwork there. This strike

## Seminar Phase 2

1 was characterised by the various forms of violence and this  
2 presented an opportunity for me to have sort of like a life  
3 experience to be of such problem that I was exploring.  
4 This strike evolved into a strike where that ended up  
5 affecting the whole platinum belt, so and then at some time  
6 in order for me to understand, to have an in-depth  
7 understanding to this strike I followed this to the Lonmin  
8 Platinum, which was later sort of blighted by what became  
9 the Marikana Massacre in which at least 50 workers lost  
10 their lives. So when we look at it, sort of violence  
11 constituted a major dimension when we talk about the strike  
12 where that happened in 2012.

13           So to start with I will sort of like try, I'll  
14 start off with some conceptual sort of clarification,  
15 because when we look at the question of violence it's a  
16 very contentious subject. So I sort of like decided to  
17 divided the violence into two, sort of like broad  
18 categories. To start, there is firstly the violence that  
19 is physical, direct, which is identifiable, subjective,  
20 some will call it subjective violence. This is basically  
21 the use of physical force, threat, or actual against a  
22 person group that either result in the injury or death or  
23 physical harm.

24           There is also structural violence, which is non-  
25 physical, invisible, some may call it objective violence.

## Seminar Phase 2

1 These are sort of like the broad sort of distinction that I  
2 sort of make in terms of maybe trying to understand, to  
3 unpack the use of violence in strike, and when we talk of  
4 structural violence, it's violence that is sort of, which  
5 harm people by preventing them from meeting their basic  
6 needs and embedded in institutional practices and  
7 associated with social injustice, and it results from  
8 catastrophic, or sort of smooth functioning of economic and  
9 political system.

10           So this is sort of like the two broad forms of  
11 violence that are important with it comes to understanding  
12 violence. But what is important to note is the fact that  
13 we need to - when we look at violence as a phenomenon we  
14 need to understand that it should be sort of like  
15 understood in the broad - we need to link this to the  
16 broader socio-economic and political context, because  
17 usually these two forms of violence, they are sort of like  
18 interdependent. There's a link, there's always a link  
19 between these two forms of violence. So this is sort of  
20 like, sort of the division between the two violence, the  
21 physical and the non-physical, the violence that we cannot  
22 see by our eyes, but which is also very important.

23           So I will broadly also try to clarify, because  
24 violence is a very complex phenomenon. Firstly there is a  
25 problem of the polysemic nature of strike violence in

## Seminar Phase 2

1 particular where you find that it is sort of like, it  
2 evolves various meanings and interpretations, so there's  
3 always a problem of conceptualising what is violence and  
4 what is not violence, what constitutes violence, whose  
5 violence, when whose violence matters.

6           The construct of violence sort of like, I sort of  
7 like developed a typology where I divided the violence in  
8 to the violence by the State, the violence by the workers,  
9 the violence by the employers, and the violence by the  
10 unions. Sort of like this is typology that I've developed  
11 to try to understand the use of violence in strikes.

12           So in overview I've sort of tried to address sort  
13 of how was strike violence explained in the past, when we  
14 look at the South African context, and I also want to  
15 emphasise the fact that it must be understood from the  
16 employer/employee production politics of control and  
17 resistance which in a way should be linked to the broader  
18 socio-economic and political context. It's very important  
19 when we look at the South Africa history.

20           What is important is the fact that strike  
21 violence has been part of the organising order, especially  
22 when we look at the mining industry which Johnston argued  
23 that it's sort of like characterised by what he calls  
24 extra-economic coercion.

25           So in a way we find that workers connected strike

## Seminar Phase 2

1 action and violence, it is the, I guess the period for the  
2 struggles for democracy in the 1970s and 1980s up to the  
3 1990, the years before the attainment of democracy, the  
4 workers in South Africa sort of like tended to connect sort  
5 of what happened, to connect sort of like strike actions  
6 and the violence to the broader political question, the  
7 broader struggle for democracy, what Professor Eddie  
8 Webster calls, this is sort of like social union, social  
9 movement unionism.

10           So it was expected that with the, after the  
11 attainment of democracy strike violence was expected to  
12 lose its saliency after the democratic transition, and  
13 indeed there was a decline in as far as the use of violence  
14 in strike for the first decade after democracy, but this is  
15 - but nevertheless strike violence remained a very  
16 significant phenomenon, if you want to understand  
17 industrial relations in South Africa.

18           One important thing that happens, like in the  
19 second decade after democracy there's sort of like an  
20 escalation in as far as the use of violence in strike is  
21 concerned.

22           So in terms of resources I draw it basically from  
23 four strikes. The first one, the 2009 strike Aquarius,  
24 Murray & Roberts, which is Murray & Roberts was contracted  
25 by Aquarius on let's say 100% contracting to mine in

## Seminar Phase 2

1 Rustenburg where they had a strike; 4 000 workers were  
2 dismissed. 2 000 of these workers were never reinstated.  
3 In this strike three workers were killed or went missing,  
4 30 were charged for murder, trespassing, attempted - the  
5 strike committee of this is still active up to date, as far  
6 as I, the latest information that I had these guys are  
7 still, they are still conducting meeting up to this date.

8           Then we had the 2011 strike in Lonmin Karee where  
9 9 000 workers were dismissed and 7 000 reinstated, and then  
10 we had the 2012 strike at Impala Platinum Mine where at  
11 least three workers were killed and over 50 were injured,  
12 100 were charged for public violence, 55 migrants spaza  
13 shop owners were displaced after the shops were ransacked  
14 by workers who were in strike, and the public. Then we  
15 move to the 2012 strike where in the region of 50 workers  
16 were killed and several assaulted, which is the subject of  
17 this Commission.

18           In all the strikes, except the Lonmin 2011, the  
19 workers highlighted marginalisation, exploitation,  
20 substandard living, and in terms of pathetic conditions of  
21 employment.

22           Then in terms of the way that I've tried to just  
23 aggregate, I sort of like tried to divide the violence into  
24 four categories - the violence by the State, the violence  
25 by the police, by the workers, by the union, and when we

## Seminar Phase 2

1 look at the violence by the State it sort of like it  
2 manifested in many forms and the most common of which was  
3 police violence and more like where we draw from sort of  
4 where [inaudible] sort of perspective, the State expected  
5 to have a monopoly over the use of violence. But however,  
6 if we look at the South African context this sort of  
7 monopoly is contested.

8           The shooting of striking workers by South African  
9 Police Service, post-democratic police service, is not a -  
10 it's not a new phenomenon. We have had in many of the  
11 strikes that's been faced with similar incidents where the  
12 South African Police Service sort of opened fire to  
13 striking workers. For example in the Impala Platinum  
14 strike on the 19<sup>th</sup> of February 2012 when I was conducting my  
15 fieldwork in Rustenburg the South African Police Service  
16 opened fire to workers who in the early morning of the  
17 hours, or they were suspected to be sort of hunting out for  
18 scabs who were going to work in the early morning of that  
19 day, and one of the workers was killed, nine were injured  
20 seriously.

21           Then we had the Marikana massacre on 16<sup>th</sup> of  
22 August which the police killed 34 workers and at least 78  
23 were injured, which is said to be the most lethal use of  
24 force by the South African Police in a democracy.

25           Then we look at it, there is now the use of

## Seminar Phase 2

1 violence by police, the argument is that the police is  
2 there, the State is there to maintain or restore order.  
3 Since the State has the monopoly over the use of legitimate  
4 violence it has to restore or maintain order, but however,  
5 as I've highlighted, this is contested.

6           But we find that in some cases there's direct  
7 intervention by the State in industrial relations where,  
8 which is highlighted by the sort of, the repressive sort  
9 of, the repression by the police to worker resistance,  
10 where it's sort of like, it's not - I remember talking to  
11 some of the workers, they say the police in actual fact  
12 they want, they sort of like want to force us to go to  
13 work, which is in a way characteristics of the apartheid  
14 sort of workplace regime. So this is sort of like what  
15 characterises the State violence that we see in our  
16 industrial, which in away there are some continuities when  
17 you look at, and I'm just going to go and look at how the  
18 State sort of in a way use the violence to maintain or  
19 restore order.

20           Then when you look at worker violence there is  
21 what I call worker-on-worker violence, which in this way  
22 predominantly in a way targets what are called scabs, or  
23 "amagundwane," in which the strike that, in the strike that  
24 I have highlighted there are several instances where you'll  
25 find that a number of workers have lost their lives on

## Seminar Phase 2

1 their way to work. It's so much like when we have a strike  
2 the workers will be divided between those who are  
3 supporting the strike and those who are against.

4           There's also high levels of intimidation to non-  
5 strikers. You know all the strikes, for example in some of  
6 the strikes I witnessed that there was workers who wanted  
7 to go to work, they were sort of like, some of the workers  
8 they barred buses from taking workers to go to work, to  
9 sign up for duty.

10           There is also some elements of arson where the  
11 police force that was burned down in Number 9 informal  
12 settlement in 2012 during the Impala strike with - many of,  
13 especially mukukus for those who are labelled as scabs,  
14 burned down, a number of company property, offices, in many  
15 of these strikes, and in particular when we look at even  
16 sort of like the violence from the workplace, and that from  
17 the workplace almost like spilling into the community when  
18 we in 2012 we find that 55 migrants, mostly from Asian  
19 origin, they ended up getting displaced after their spaza  
20 shops were looted by striking workers and members of the  
21 community.

22           Then we look at the rationale behind the use of  
23 violence by the workers. It's in a way some of the workers  
24 they argue that it's part of the repertoire to realise the  
25 violence. This is, and in a way violence works; violence

## Seminar Phase 2

1 has worked in the past and it will work today. It brings  
2 results, and that's in the way when we look at some of the  
3 strikes where the workers sort of, they argue that the fact  
4 that we use violence in the strike we end up sort of like  
5 attaining some of our goals.

6           Then in a way it's also a response to the  
7 fragmentation because when you look at it the platinum, the  
8 mining industry in general is sort of like characterised by  
9 various forms of work fragmentation. There's a growing  
10 number of subcontracting/labour broking. The platinum  
11 mining has the highest levels of subcontracting mining  
12 where at least 30% of the workers in platinum, they are  
13 employed through subcontractors. So this in a way  
14 undermines what I call worker collective solidarity and  
15 this is, this form of fragmentation is linked to the  
16 neoliberal, sort of like globalised in terms of how workers  
17 organise.

18           So in a way some of the workers they argue that  
19 in a way this is a response to the structure of violence  
20 that I've tried to elaborate in my first slide. But what  
21 I've observed is that workers, they've got competing, sort  
22 of like views on violence, on whether the use of violence  
23 is a necessary strategy in strikes. Some of the workers  
24 they see it as something that is empowering and a means of  
25 forging worker collective solidarity, which is in line more

## Seminar Phase 2

1 like with a Fanonian sort of perspective, and yet some of  
2 them see it as something that is retrogressive and more  
3 like, sort of like a Gandhian, so you don't need to use  
4 violence and so forth.

5           Then what is important is like when you look at  
6 violence, it's a means, violence in strikes is a means of  
7 challenging - they also argue that it's a means of  
8 challenging an order of inequality and exploitation which  
9 characterises the mining industry.

10           Then at the same time it's also a means of  
11 forging collective solidarity to overcome the  
12 fragmentation, and the current context of the industry is  
13 that the workers are so fragmented, such that it's very  
14 difficult for them to build, when a strike is built on  
15 worker collective solidarity. So the current context makes  
16 it almost impossible for workers to come together and sort  
17 of like build collective solidarity. So in a way I argue  
18 that in a way violence becomes one of the means in which  
19 workers sort of come together for a common cause at the end  
20 of the day.

21           So one of the workers I interviewed, he argued,  
22 "Sometimes violence is the only way out. In a strike we  
23 are normally not supposed to use force, but people take  
24 advantage and report for duty and the strike will flop and  
25 we may never get what we want." Then another way continue

## Seminar Phase 2

1 and said, "A strike has its own rules and rule number 1 is  
2 that no-one must report for work when a strike is called."

3           Then in a way when we look at the violence by the  
4 workers, in a way it's, a strike is a collective decision  
5 by, which is passed by the majority of the workers, usually  
6 after consultation. They have these mass meetings, usually  
7 before a strike the workers are calling a mass meeting  
8 which is sort of like a process where the workers sort of  
9 like try to reach a consensus, and this is the only chance  
10 those who oppose a strike, where they can stand up and sort  
11 of present their view in as far as the strike is concerned.

12           So whenever, after the mass meeting, so in a way  
13 they have passed this, the decision in terms of - it  
14 becomes a collective decision for all the workers and  
15 anyone who sort of in a way transgress against this  
16 collective decision become the enemy, becomes an enemy. So  
17 in a way when we look at people who is in a way a  
18 transgressor against the collective decision for a strike  
19 action, they are in a way, it represents sort of like a  
20 reverse solidarity. So in a way the fact that we see many  
21 workers losing their lives during the strike, many workers  
22 on their way to work. So in a way these are workers who  
23 are the strike breakers. They in a way represent more like  
24 a brother killing a brother for the sake of collective  
25 solidarity, because many of these they are their co-workers

## Seminar Phase 2

1 but they end up killing each other for the sake of  
2 maintaining collective worker solidarity. So in a way the  
3 killing of a scab, of someone who is going to work during a  
4 strike is perceived to be a legitimate punishment to  
5 collaborators.

6           Then I move on to union violence where you find  
7 that in the strike we find that for example in a incidents  
8 where the union officials are attacked by workers, for  
9 example 2012 strike at Impala Platinum Mine, number 6, I  
10 witnessed this incident where workers accused the union  
11 leadership of selling out and trying to hijack a  
12 revolution, and they ended up assaulting some of the union  
13 leaders.

14           Then at Impala Platinum after the 2012 strike the  
15 union offices were shut down, what I call in military style  
16 by rival faction. It's almost become dangerous to be  
17 associated with some of the unions. For example workers  
18 were sidelined for belonging to the wrong union. It's  
19 become even more dangerous for those who work underground,  
20 for underground teams and workers were attacked and  
21 labelled "impimpis," or a sell-out, for example if you are  
22 found wearing a T-shirt for a wrong union.

23           Then we find that there's union competition where  
24 in some of the instances we have shop stewards crossing  
25 floor from one union to the other union, and in some of the

## Seminar Phase 2

1 incidents from my interviews, for example during the 2009  
2 Murray & Roberts strikes we find that union officials  
3 displaying guns at some of the union meetings, and we ended  
4 up with the - what happened is at Lonmin during the 2012  
5 strike where union officials are said to have fired shots  
6 at a group of workers who were marching towards the union  
7 office.

8           Then with union violence it's not only, it's sort  
9 of like, I sort of like characterised it as intra union  
10 rivalry, intra union violence, and intra and inter union  
11 violence, and when we look at it, the platinum belt in  
12 particular, you find that before 2012 it was more to do  
13 with intra union violence. It was more, what was more  
14 common was intra union violence. It was more common  
15 because at that point in time we had one dominant union,  
16 which was the NUM, and we look at in terms of how the  
17 workers are trying to explain this type of violence. They  
18 argue that this type of violence, it's sort of in a way  
19 related to the internal factionalism within the union at  
20 that point in time, which was reflected in the contestation  
21 for power and control of the union, and this sort of like,  
22 it's sort of between the period 2000 up to 2012, before the  
23 2012 strike.

24           So it's also, as explained by Professor Buhlungu  
25 in the last panel, a union has sort of in a way become sort

## Seminar Phase 2

1 of like a means of social upward mobility and elite  
2 formation post the democratic transition. So this is one  
3 way of explaining the violence, the union violence.

4           Then at the same time after 2012 we see increased  
5 intra union violence, which is explained by increased union  
6 competition, and sort of what characterises this type of  
7 violence is what are called sort of assassination across  
8 the two divides, and I think after the 2012 at least more  
9 than a dozen union officials have lost their lives through  
10 these assassinations.

11           Then when we look at employer violence, it's also  
12 manifested indifferent forms where you find that in 2009,  
13 in particular the 2009 Murray & Roberts Aquarius where we  
14 have the OHS officers, security officers, in a way hunting  
15 down with live ammunition 35 striking workers after they  
16 had occupied one of the shafts underground. Several of  
17 these workers were injured and three are said to have been  
18 killed or went missing.

19           They were later assisted by the South African  
20 Police Service to push the workers from this shaft, and  
21 this battle had lasted for two days. It's almost like it's  
22 a war between the company and in collaboration with the  
23 State.

24           So the employer violence is also, what is  
25 interesting, it's also characterised by the use of what are

## Seminar Phase 2

1 called violence specialists, or as I observed when I was  
2 doing my fieldwork, the use of these private security  
3 guards company, and I happen to have talked to any of them  
4 and I observed that many of them are ex-military officers  
5 from Mozambique and Angola possibly, they were speaking  
6 Portuguese. Some of them they indicated that they're from  
7 the ex-RENAMO and UNITA, being used by some of the private  
8 security companies in some of these strikes. So we find  
9 that this is sort of like in a way the employer sort of  
10 engaging the use of violence specialists, and at the same  
11 time employer sort of in a way often covertly, in  
12 collaboration with the State in terms of meting out  
13 violence, especially usually directed towards the workers.

14           Then what is important in terms of when looking  
15 at violence is the question around how violence is  
16 represented. We find that in these strikes the way the  
17 mineworkers and the violence were represented in a way  
18 helped us in understanding the responses by the various  
19 stakeholders, and how they explain the use of violence.

20           An analysis of representation is important, and  
21 some of the representation sort of becomes sort of like the  
22 dominant, sort of dominant discourse. First of all we find  
23 that mineworkers were framed as they're primitive, they're  
24 illiterate, they use sangoma, they use muti, they are  
25 violent, they're traditionalists, and most important their

## Seminar Phase 2

1 demand for R12 500 was represented as unreasonable,  
2 outrageous. They were labelled as financially illiterate,  
3 they don't understand economics; there's no way that you  
4 can move from 5 000 in a month to 12 000 the following  
5 month. So at the same time the violence was also  
6 represented as historical notion and that it was  
7 destructive and sort of damage the economy.

8           So when we look at what is important, this  
9 representation in a way it shared the responses by the  
10 various stakeholders. I argue that it's sort of in a way,  
11 especially the issue around the 12 500 for example, sort of  
12 the fact that the workers were presented as barbaric,  
13 uneducated, use sangoma, it's in a way an attempt to try to  
14 justify the low wages.

15           Then also at the same time it's also tied to the  
16 fact that they are unreasonable, they're violent. It's  
17 sort of like in a way silence, sort of in a way closed  
18 dialogue with the workers because of the time it ended up  
19 there's almost no dialogue between the workers'  
20 representative and the employer. And most important it's  
21 in a way, these forms of representation, they in a way  
22 justify the use of violence, for example the use of live  
23 ammunition, I remember talking to some of the police  
24 officers, they say no, these guys were armed, these guys  
25 are violent, these guys are not, they are not schooled,

## Seminar Phase 2

1 they are very violent. So in a way it was used in a way to  
2 justify the use of violence, the use of live ammunition,  
3 and the use of violence specialists.

4 At the same time it reinforced the use of  
5 violence and certain stereotypes, the question around  
6 illiteracy, ignorance, it also justified the low salaries  
7 and use of excessive force, and in a way it's designed to  
8 delegitimize the demands by the workers. It sort of  
9 becomes that these people are unreasonable. So some of  
10 these representations they've become sort of like dominant.

11 So in conclusion I would say when we look at  
12 violence in strikes it serves a different purpose and as a  
13 result the justification may vary. At the same time  
14 strikes have own sort of like rationalised rules of conduct  
15 and this may include the use certain types, or certain  
16 forms of violence. A strike action by its own, it has got  
17 its own sort of like rationalised rules of conduct which  
18 may include the use of violence.

19 Then strikes at the same time, the violence in  
20 strike is not just about violence, but it's also about  
21 forging worker collective solidarity. So it's also  
22 important to look at the way that the workers, or the  
23 people, the stakeholders in the strikes are represented.  
24 It also is very important as it sort of in a way reinforces  
25 certain practices which include the use of violence and its

## Seminar Phase 2

1 justification, and in a way in most cases it shapes their  
2 responses.

3           Then the most important thing in my concluding  
4 remarks is when you look at the explanation of strike  
5 violence we need to link this to the production politics of  
6 control and resistance at the workplace, and this must be  
7 connected to the broader socio-economic and political  
8 context.

9           When we look at this form of violence that we see  
10 in industrial relations in the current context, in a way  
11 it's linked to this neoliberal system, neoliberal  
12 globalising system which in a way has created a competitive  
13 society in which some people are marginalised, oppressed,  
14 and are losers in the polity.

15           Then the economic hardships and substandard  
16 living and working conditions force the marginalised - that  
17 is according to some of my interviews - groups to be  
18 discontent and this in a way manifests as subjective  
19 violence. So that connection between visible and invisible  
20 violence is very important when we look at strike violence.

21           So lastly, strike violence is a means for the  
22 workers, it's a means to the stakeholders, strike violence  
23 is a means to assert, maintain, restore, control, order, or  
24 a form of resistance to challenge or reject domination or  
25 control. Thank you.

## Seminar Phase 2

1                    MR KETTLEDAS:                    Thank you very much to  
2 Crispen. Is there any burning question for clarification  
3 now, otherwise you can then raise the issues in the  
4 discussion session. No. So we're going to go on to the  
5 next presentation by Professor Eddie Webster. He's a  
6 research professor in SWOP, the Society, Work and  
7 Development Institute at Wits here, and also director of  
8 the Chris Hani Institute. He is editor-in-chief of the  
9 Global Labour Journal and coordinates a range of research  
10 projects on the world of work. Among his publications are  
11 Grounding Globalisation: Labour in the Age of Insecurity,  
12 written by Rob Lambert and Andries Bezuidenhout, which won  
13 the American Sociological Association award for the best  
14 book on labour in 2008. This is a very-very-very short CV  
15 of Professor Webster. He's got a long-long-long-long list.  
16 Let's welcome Professor Webster.

17                    PROF WEBSTER:                    Right, thank you, Chair,  
18 Judge Farlam, ladies and gentlemen. Thank you for this  
19 opportunity to share ideas about this complex topic. I  
20 want to first try and explain violence and then try and  
21 suggest alternatives because fundamentally I think a strike  
22 should be a non-violent withdrawal of labour, Gandian  
23 rather than Fanonite.

24                    My point of departure is that industrial  
25 relations involves the strategic use of power, and this

## Seminar Phase 2

1 holds particular in a strike situation.

2           In low trust situations - and not all industrial  
3 relations are low trust, but in low trust situations  
4 management will attempt to divide the workforce in a  
5 strike, and the union will attempt to establish collective  
6 solidarity amongst its members. An injury to one is an  
7 injury to all, and I think Crispin has outlined very  
8 clearly that idea of standing together.

9           The question I want to address this afternoon is,  
10 how is this solidarity to be constructed? Because it's not  
11 something that's given; it has to be built, has to be made,  
12 and there are two ways of doing it. You can either do it  
13 by coercion and violence, or by voluntary, consensual and  
14 democratic means.

15           My argument will be that the outcome does not  
16 depend on union democracy alone, although I want to put at  
17 the centre of my argument the need for this to be something  
18 that involves the consent of employees. It also requires  
19 employers to be willing to negotiate, and a police force  
20 trained in public order policing. That's the centre of  
21 what I want to argue, and I want to begin with what I call  
22 the post-apartheid promise.

23           In 1987 strike militancy and violence under  
24 apartheid culminated in 9 million workdays lost. It  
25 happened to be the highest ever recorded during apartheid

## Seminar Phase 2

1 period. You had - I'm just picking up - they had the SATS  
2 strike where four non-strikers were killed, and Afcol where  
3 four non-strikers were killed, and this led to the trial of  
4 State versus Elias Phasha and Others in February 1990, who  
5 were found guilty of murder for killing the scabs, and that  
6 really began my own interest in this topic because I was  
7 the expert witness in that particular trial.

8           Out of this conflict - I'm talking about the  
9 broader conflict of the 1980s - a new vision of industrial  
10 relations emerged, drawing on some key characteristics of a  
11 Coordinated Market Economy. That phrase really captures a  
12 particular approach to industrial relations, one that  
13 follows if you like, the Nordic German path of national  
14 collective bargaining, employers association, a degree of  
15 participation, even co-determination in the industrial  
16 relations system. That was the promise, a participatory  
17 and cooperative industrial relations system, and at the  
18 centre of that, for purposes of our discussion here, was  
19 the right to strike and picket in the Labour Relations Act.  
20 The promise was then was an alternative avenue laid out for  
21 the non-violent resolution of conflict. That was, if you  
22 like, the promise at the dawn of democracy.

23           Initially there was a decline in violence in the  
24 immediate post-apartheid period, and then it rose again.  
25 Initially the CCMA, a central actor in mediating,

## Seminar Phase 2

1 arbitrating conflict, seemed to be effective in  
2 institutionalising the conflict. Strike action dropped 1.6  
3 million - just bear this in mind, 9 million days lost in  
4 1987 - dropped down to 1.6, reaching 650 000 in 1997. So  
5 you have here what looked like a promise being fulfilled.

6           Then it began to increase dramatically. 2007,  
7 now I notice that 12.9 million is higher than the high  
8 point of apartheid. So we had a high incident of strikes  
9 post-apartheid than we'd had in that high point in  
10 apartheid. 2010, 14.6 million; 2011, 20 million days lost.  
11 So you have this rise, strikes becoming longer, and the  
12 concept that industrial relations literature uses, a trial  
13 of strength, a battle, as distinct from a demonstration  
14 stoppage, a quickie, a trial of strength not only becoming  
15 longer - and I do think the two are linked - become more  
16 violent.

17           For example we have here in Johannesburg in 2006  
18 a three-month strike in the Private Security Industry, led  
19 to 57 deaths. Now these deaths are intra, they're amongst  
20 the workers, largely to do with the question of scabbing.  
21 Here we have a curious pattern in our industrial relations  
22 system; a dramatic increase in workplace violence, and at  
23 the same time community unrest, which of course culminates  
24 in Marikana in August 2012.

25           Workdays lost due to strikes, I just capture this

## Seminar Phase 2

1 briefly here. Here you see 1994, '95 dropping, dropping to  
2 '97, picks up, but then you get this significant rise here.  
3 So that merely becomes a crucial background to our  
4 explaining violence, and it almost seems as if the use of  
5 violence becomes normalised.

6 "There is no sweet strike" - this is a worker on  
7 strike. "There is no Christian strike. A strike is a  
8 strike. You want to get back what belongs to you. You  
9 won't win a strike with a Bible. You do not wear high  
10 heels and carry an umbrella and say '1992 was under  
11 apartheid, 2007 is under the ANC'. You won't win a strike  
12 like that."

13 Now that I think is important not only because  
14 you are in a sense seeing here, as I think Crispen was  
15 suggesting, a sense that strikers have their own moral  
16 order, that there's nothing wrong with being violent in a  
17 strike. So there is a sense of it being socially  
18 acceptable. That's one point.

19 The other point is that they seem to be saying  
20 there's no real difference between apartheid and post-  
21 apartheid; the same dynamics apply. So you get this  
22 paradoxical persistence of violence post-democracy,  
23 something that almost becomes part of the culture of the  
24 workplace.

25 I just wanted to focus very quickly here on the

## Seminar Phase 2

1 chronology of 2012, the immediate background to this,  
2 because what I'm going to do is try and pick up a pattern  
3 in strikes. You have, as Crispen's argued, a strike in  
4 January over the allowance for RDOs. Management responds  
5 in intransigent way, dismisses workers. You get the  
6 subcontractor worker was stripped and there's assaulted,  
7 getting that violence towards one, dies en route. Police  
8 shoot. One worker killed, seven injured. A contractor  
9 found dead after being assaulted by striking workers who  
10 were looking for scabs. Strike draws to an end as workers  
11 are reinstated. Three people died, 60 injured, some  
12 seriously, so you have that pattern which Crispen was  
13 pointing to, of violence by the State, violence by workers,  
14 not one party here.

15           And again if we turn to Lonmin, our second  
16 strike, management - this becomes of course crucial - it  
17 will only address through the recognised union, the  
18 National Union of Mineworkers. Workers are not happy, they  
19 march on the NUM office, there's a hail of bullets, union  
20 responds in a defensive way, as Crispen was describing,  
21 because they're armed in some cases. Workers move to the  
22 koppie and there's a clash with security officers. Two  
23 workers are killed, one hacked to death by a machete and  
24 other burned alive. These are security workers being  
25 killed by workers. Workers refuse police instructions to

## Seminar Phase 2

1 hand over the weapons. All key points, I want to return  
2 to, police respond by shooting. A fight ensued between the  
3 two groups. Two police officers hacked to death by  
4 workers, two workers shot dead by police. August, 34 lives  
5 lost through bullets from police assault rifles and  
6 handguns, 71 injured.

7           Okay, I think it's very important - and this is  
8 no ordinary strike, but there is a pattern, and there's a  
9 pattern, and I want to turn just because side by side with  
10 this violence you're getting a change in the nature of  
11 COSATU. You see there COSATU, 1991 is the blue, NUMSA,  
12 NUM, the big industrial unions dominate the [inaudible].  
13 2011, here, blue colour, sorry, white colour, teachers, 1  
14 out of 10 COSATU members is a school teacher. NEHAWU, they  
15 got a shift from a blue colour to a white colour. These  
16 are changes taking place, I would argue, in the sense that  
17 COSATU's members are increasingly becoming part of, if you  
18 like, the lower middle class. They're getting into the  
19 top-end of the labour market, and with that comes this  
20 phenomenon, the fulltime shop stewards, the opportunities  
21 for upward social mobility, and just, I want to touch on  
22 this because it's going to be part of my argument about how  
23 to explain this phenomenon of violence in strikes.

24           If you become a fulltime shop steward - this  
25 happens to be G4 security, it could be any other one, if

## Seminar Phase 2

1 you've got 51 plus - this is the majority, 50 plus 1  
2 members you get a, and depending on number of workers, a  
3 fulltime shop steward, and if you're a fulltime shop  
4 steward you get your normal salary, you get a travelling  
5 allowance of 550 a month, allowance of 1 000 a month,  
6 that's in addition to your salary, access to company  
7 transport, phone, access to an office, employed at the  
8 grade of rank after ceasing to be a fulltime shop steward.

9           Now the point about, I'm not saying, I'm not  
10 arguing against shop stewards becoming full - I'm arguing  
11 that it can lead to a social distance, a representational  
12 gap, if you like, that the union, the fulltime shop steward  
13 because of all these perks comes to identify with  
14 management rather than the members who elected him,  
15 particularly striking on a mine because you move from the  
16 underground, that's the stope where it's hot, dangerous,  
17 and dirty, to the surface level where you have this office,  
18 the cell phone, etcetera, etcetera. And it's very  
19 interesting because I actually did a little breakdown here  
20 of a survey of the number of fulltime shop stewards in  
21 COSATU, and it's quite interesting if you do this, you find  
22 the average is 12% of the shop stewards in COSATU are  
23 fulltime. However, the NUM, the National Union of  
24 Mineworkers, 24% of the shop stewards are fulltime. In  
25 other words 1 out of 4 shop stewards full time. I'm just

## Seminar Phase 2

1 mentioning this as a feature of, it's statistical data. I  
2 was taught as a student that statistics was introduced into  
3 sociology to prevent it from deteriorating into philosophy,  
4 so it gives you an opportunity to kind of measure things  
5 better. But the key point really is there's a large number  
6 of fulltime shop stewards who can then be -

7           Now on the basis of this I developed what I call  
8 a process analysis of the escalation of violence, and this  
9 is how it works in a strike situation. You get frustration  
10 because there's no response to your demands, and  
11 frustration of course as we know can lead to aggression and  
12 there's division in the workforce; some are for the strike,  
13 some are against it. There's militancy nevertheless, and  
14 the union is not representative enough, democratic enough  
15 to control its members, and you get inadequate access to  
16 the workplace and communication. So that's what we call a  
17 social distance, or representational gap.

18           At the same time there's a lack of solidarity  
19 from other unions. The union tends to be on its own, it's  
20 isolated, it's got no support, and at the same time as  
21 these internal dynamics are happening you get the perceived  
22 cooperation between police and employer, apparent  
23 management intransigence; it seems that the management is  
24 not willing to listen. It's very important, by the way, I  
25 mean Crispen said the demand of the workers in the current

## Seminar Phase 2

1 strike is 12 500, it's 12 500 over four years. It's not  
2 immediate. I would argue any employer who wanted to  
3 negotiate in good faith would say right guys, you want it  
4 over a year, want it now or you want it over four years,  
5 let's talk about it. To my knowledge there hasn't been -  
6 that's the kind of part of the dynamics, and of course what  
7 this does do is prolong the strike.

8           So you've got frustration, an unrepresented,  
9 unresponsive union, employers and police seem to be working  
10 together, and what has happened? What happens is that  
11 there's a loss of faith in the negotiation process because  
12 there's no point in trying to negotiate. They, individuals  
13 strike, policing the strike because the union can't control  
14 it, the workers are divided, you start to be violent and  
15 even possibly kill fellow workers, and the out come is  
16 ultimately a confrontation, a violent confrontation.

17           Now I'm providing this as what we can in  
18 sociology an ideal type. It's an abstraction and you can  
19 try and fill in whether it fits into the Marikana - but I  
20 would suggest to you that it's a kind of working model to  
21 understand how we end up with violence. So that's the  
22 first part of what I wanted to present to you.

23           I want to now turn to an alternative avenue, and  
24 I want to put at the centre of my argument that workers  
25 need to have a sense of control to overcome their

## Seminar Phase 2

1 frustration. They need to feel that they are in control of  
2 what's happening inside the union, and there are two  
3 requirements and these are quite central. The first of  
4 that is that you need to have in the union constitution a  
5 requirement of a confidential ballot before a strike.

6           Now there are two very important points I'm going  
7 to expand on as to why it should be in the union  
8 constitution, not in the law, in the union constitution,  
9 and it should be confidential, not a show of hands as  
10 happened, but a properly organised secret ballot.

11           Secondly picket must be negotiated at the local  
12 level. Now picketing is in the Labour Relations Act, but  
13 it's got to be negotiated, and let me explain why I think  
14 these two elements are crucial.

15           Confidential balloting, it's rather puzzling that  
16 in preparing for this presentation I did some research on  
17 both - and to my knowledge there's only one union in South  
18 Africa - I'm open to correction - that has secret balloting  
19 in its constitution, and it's the South African Clothing  
20 and Textile Workers Union. It's incorporated in the union  
21 constitution, so it's something they agreed to. An  
22 advantage of this, of having a ballot is if you come out of  
23 the ballot with 80% it nudges the employer to settle before  
24 resorting to a strike; it's an early warning. So you  
25 actually avoid a strike and you get into a negotiating

## Seminar Phase 2

1 situation.

2           Most important, ensures that the union has a  
3 democratic mandate for a strike, and then if you got 80% in  
4 fact, or they say well that's sufficient to go on a strike,  
5 but it must be in the constitution of the union, not, the  
6 SACTWU doesn't argue it's against the idea of making it the  
7 law of the land, but what you're trying to do is to  
8 establish control by the workers themselves of their own  
9 organisation. It actually pre-empts strikes. For example  
10 50 000 workers balloted in 2013, 85% supported a strike,  
11 employers agreed to the demands.

12           So it's a way of finding a negotiated outcome  
13 without the kind of violence that we saw in Marikana, and  
14 as the general secretary said, "Strike balloting is not a  
15 requirement of the Labour Relations Act. However, SACTWU  
16 always voluntarily ballots its members before embarking on  
17 any wage strike action. It is part of our internal policy  
18 of worker control on critical organisational matters."  
19 Worker control over their own organisation.

20           So that's the first requirement in my  
21 alternative, because I'm going to develop it in my second  
22 diagram. The second is picketing. Now in the case I'm  
23 going to give you the picketing is in the recognition  
24 agreement with the employer. If they were to decide to go  
25 on strike they must notify the company in writing that the

## Seminar Phase 2

1 union intends to call a picket. Now a picket is important  
2 because it's a moral appeal to fellow workers to stand in  
3 solidarity; an injury to one is an injury to all, and it's  
4 best done with placards and appealing to workers, and  
5 that's what this particular agreement, which is working and  
6 has worked.

7           Now you may not block any entrance or exit to the  
8 company, so again it's the emphasis on voluntary  
9 participation democracy. The union must take reasonable  
10 steps to ensure no-one intimidates, damages property, or  
11 carries weapons, and the key factor, the employer - who I  
12 spoke to, director of a well-known parastatal - a key  
13 factor in a peaceful picket is the preparation the employer  
14 puts into the picket. Now this is very important because  
15 it's putting the weight not just on workers to ensure  
16 peaceful picketing and peaceful strikes, but on the  
17 employer, the employer is a key actor here. In this case  
18 she says, "My experience is that it is best to conclude  
19 picketing agreements as close to the site of the protest  
20 action as possible. This forces an engagement with the  
21 union and the management of the site over where picketing  
22 till take place, what is appropriate picketing, how the  
23 situation will be managed." So in this way you draw  
24 employer and employee into a common way of allowing workers  
25 to express their grievance in a peaceful - to use their

## Seminar Phase 2

1 power in a peaceful way.

2           So what would the dynamics then be in terms of my  
3 model of a non-violent strike? Well, firstly I'm  
4 suggesting effective confidential balloting. In the case  
5 of SACTWU they actually go to the factories, you have  
6 somebody from a reputable agency to ensure that it's fair,  
7 management must sign and say this, and so when you have the  
8 response of the workers it's not in dispute as to what the  
9 workers actually feel, and picketing.

10           So if you have those, let's call them best  
11 practice for a non-violent strike, what happens then is  
12 there's a sense of democratic control within the strike and  
13 that - in other words the answer as to how do you avoid  
14 building solidarity by solidarity, you try to build it here  
15 by consent voluntarily in a democratic way.

16           You have in a non - that you have then, you've  
17 got unity of the workforce because you've got the overall  
18 majority behind you. You've got a union that's  
19 representing the members, that can maintain discipline and  
20 leadership and regular communication. I mean this is  
21 absolutely central. If you talk to any union organiser,  
22 it's not difficult to get workers out on strike. The  
23 challenge is to get them back to work. That means you have  
24 to have a democratic organisation that has legitimacy and  
25 the power to draw them back in. Those implications for how

## Seminar Phase 2

1 you understand, so the power to be able to exercise your  
2 power in a strategic way. That's the centre of what I'm  
3 arguing here, and you've got the moral support of your  
4 community. This is quite vital, as I'll come on to.

5           Constraint of police action, police intervention  
6 is highly problematic. Management/union negotiation, a  
7 management that's willing to negotiation with the  
8 employees, and this of course may shorten the duration of  
9 the strike. The outcome then is an institutionalisation of  
10 conflict, which is the promise of the post-apartheid labour  
11 regime; constraints on the use of violence, and a  
12 likelihood of a negotiated compromise, because after all  
13 that is the purpose of the collective bargaining process,  
14 to come out of that with a compromise that is acceptable to  
15 both - strong union representative of its members, employer  
16 willing to negotiate, State that plays a disciplined  
17 professional role.

18           So that's what I'm suggesting, is an alternative  
19 avenue. Now it's not as when I argued this before the  
20 judge in 1990, it's not something Utopian; it's actually  
21 happening now and many of our companies are doing,  
22 beginning to take this and the two examples I've given of a  
23 union having a ballot in its constitution and this  
24 regulation of the picketing at the local level by  
25 management is an example of how you can take that path.

## Seminar Phase 2

1 I had also thought, but I've decided not to  
2 pursue this, this afternoon, the idea of the union having a  
3 strike fund. It seems to me that there's no union in South  
4 Africa that has a strike fund, but it's interesting; the  
5 most successful industrial relations system in the world,  
6 the German system, every union has what they call a war  
7 chest that allows them to have quite quickly settled  
8 strikes without violence. But I'm not arguing that  
9 position, and I think I'd like to suggest to the Judge and  
10 to the Commission that that's an area where we could do  
11 research because at the moment there is no research on that  
12 particular topic.

13 So what I want to suggest to you is that power is  
14 at the centre of the industrial relations system -  
15 management, worker, employer, employee, and it's a struggle  
16 over how much to get and how long you're going to work,  
17 under what conditions, and parties exercise that power.  
18 The question we're trying to find here is how for this  
19 power to be exercised in a strategic and non-violent way so  
20 that we can have peaceful, orderly industrial relation  
21 system, and I've developed what I call a power diamond. At  
22 the centre of the power that workers have is in the heart  
23 of the economy. I'm going to call that structural power,  
24 and of course I'm drawing on significant work that's been  
25 done by sociologists on the nature of power. Structural

## Seminar Phase 2

1 power is your workplace power, your ability to withdraw  
2 your labour, which of course is exactly what happened in  
3 Marikana, they exercised their structural power. That  
4 translates into a second form of power that workers have,  
5 which is their organisational power, the union. Those  
6 arrows have to interact with each other.

7           There is a third source of power which I would  
8 call societal, that comes from the community, the support,  
9 the moral support, the networks informal and formal in the  
10 community, and there's a fourth dimension to power and it's  
11 a central part of what I want to argue. If you are going  
12 to establish a stable orderly industrial relations system  
13 you need to have rules of the game that the parties agree  
14 to. You could call it law, you can call it regulations,  
15 but they have to be - and there's, within the union  
16 movement there's an ambiguity about what I'm going to call  
17 institutional power. Institutional power consolidates  
18 structural organisational power. So you've got to, an  
19 institutional power is virtual for unions because if you  
20 recognise a union and you allow fulltime shop stewards, the  
21 institution may gobble up the shop steward and turn him  
22 into a hand of management. So on the one hand it's a  
23 victory when a shop steward is fulltime, but on the other  
24 hand it's a constraint. It's an opportunity - so it's  
25 quite, so what I've done here is suggested that those, that

## Seminar Phase 2

1 you have to have, to see those as interacting with each  
2 other, institutions have to be accountable, shop stewards  
3 accountable to their members, otherwise you get into that  
4 celebrated law that Michels spoke about, the iron law of  
5 oligarchy, the tendency for a few to control the  
6 organisation, which some are suggesting happened in the  
7 case of the National Union of Mineworkers.

8           So in essence I'm suggesting that there are  
9 sources of power that can be used; how you use them, to  
10 what end, and the rules that constitute those relationships  
11 are what industrial relations is about.

12           So my conclusion, what I'm suggesting to you is  
13 that we in some ways have slipped back into our past.  
14 There's been a persistence of the past. There's a  
15 wonderful economist called Douglass North who developed the  
16 concept of path dependence, a country lays its foundations  
17 and it finds it difficult to break from that path. We laid  
18 our foundations through a system of violence,  
19 dispossession, and we put in practice a set of institutions  
20 and rules and norms where you find, as Crispen was  
21 suggesting, that the workers say if you want to get your  
22 way use violence, burn a building, kill someone. They got  
23 into that practice and we tried to break that in 1994 with  
24 the new labour regimes. We've got those structures, those  
25 institutions, those rules in place some companies are using

## Seminar Phase 2

1 and pointing to us an alternative path, but, "Marikana  
2 strongly suggests that collective bargaining alone cannot  
3 address the expectations of workers in a context of  
4 precariousness and fragmentation," as outlined by Crispen.

5 "Precarious work and living conditions and the  
6 failure of political citizenship undermine industrial  
7 relations institutions which have little capacity to manage  
8 industrial conflict."

9 Now these words which I've taken from Crispen I  
10 think point to the fact that there is a possibility of an  
11 alternative path. We have laid down some of those  
12 mechanisms. We could draw on those existing ones and could  
13 make the promise of 1994 come true. Thank you.

14 MR KETTLEDAS: Thank you very much,  
15 Eddie. We have lost 10 minutes of our tea break, so I  
16 think that we should break immediately and reduce it to 10  
17 minutes because we still have another presentation and we  
18 still want to get in a discussion session of around 40, 45  
19 minutes, until 5 o'clock. So the tea is in the room behind  
20 us and we will start on the dot 25 to 4.

21 [PROCEEDINGS ADJOURN PROCEEDINGS RESUME]

22 MR KETTLEDAS: We are going for the third  
23 presentation, and this presentation is how the South  
24 African Police Service can prevent another Marikana, and  
25 it's going to be presented by Gareth Newham. Given the

## Seminar Phase 2

1 time constraints I will summarise the CV. Gareth is the  
2 Head of the Governance, Crime and Justice Division at the  
3 Institute for Security Studies which he joined in January  
4 2010. The institute is an independent and authoritative  
5 research policy and training organisation working to  
6 enhance human security in Africa. Gareth is responsible  
7 for managing a team of people that work to -

8 1. Promote democratic governance and reduce  
9 corruption through announcing levels of accountability,  
10 transparency and respect for human rights in African  
11 democracies; and

12 2. To reduce crime and promote justice by  
13 assisting African governments to develop evidence-based  
14 policies, legislation, and strategies and improve the  
15 performance of their Criminal Justice Systems.

16 Between 2006 and 2009 he was the Policy Advisor  
17 and Special Projects Manager to the Gauteng MEC for  
18 Community Safety, Firoz Cachalia. I will stop there. So  
19 let's welcome Gareth to make this presentation. Thank you.

20 MR NEWHAM: Thank you, Chair, Judge  
21 Farlam, ladies and gentlemen. Thank you for the invitation  
22 to address this panel discussion today. Just very briefly,  
23 most of the last 15 years I've been working very closely  
24 with police officials, the first half of that, about seven  
25 years at station level, spending a lot of time doing

## Seminar Phase 2

1 research in different policing functions, working with  
2 police officials in various kinds of environments in  
3 different places such as Hillbrow, townships, suburbs. I  
4 did a lot of training at that stage as well and then for a  
5 number of years working at provincial level, and more  
6 recently more at a national level.

7 I understand policing to be something that you  
8 really would like people to have a calling to do it to be  
9 part of it because it is incredibly difficult, it's a very  
10 dangerous at times job, and can be very traumatising for  
11 police officials.

12 I am not here to talk about the technical  
13 operational ways in which you would prevent Marikana from  
14 happening. I think the Commission is looking at all that  
15 evidence and will come to a conclusion about those kinds of  
16 outcomes - where command should have been allocated, who  
17 should have done the planning, and how that should have  
18 been executed. I think there's a lot of information around  
19 that.

20 Coming from a strategic and policy environment  
21 and perspective we're talking a bit more about the  
22 following few things. Just understanding policing in a  
23 democracy, looking a bit about the issue of politicisation  
24 of police and interference of the police and leadership,  
25 impact of this on the ethos of professionalism within the

## Seminar Phase 2

1 police agency, and then some recommendations particularly  
2 for the South African Police Service.

3           So when looking at policing in a democracy, one  
4 of the ways of actually defining democracy - and this is  
5 taken from *Police and Democracy*, a book on Theory and  
6 Practice written in 2001 - is that the police force is  
7 subject to the rule of law embodying values respectful of  
8 human dignity, rather than the wishes of a powerful leader  
9 or party, as we see in autocracies or in countries that do  
10 not have democratic dispensations. Then the police are an  
11 expression of whoever controls power and there's very  
12 little accountability to anybody else. In a democracy,  
13 however, you try and reduce that situation, and that when  
14 the police act, they act in situations, or they intervene  
15 in life of citizens only under limited and carefully  
16 controlled circumstances and they are publicly accountable.

17           Now the South African Constitution really adopts  
18 that understanding and version of policing, and therefore  
19 we have quite a sound, in terms of law and the  
20 Constitution, architecture to oversee the police. We have  
21 a Bill of Rights which constrains how the police act, and  
22 so we really in terms of our law and many of the policies,  
23 that's the kind of approach that South Africa has taken  
24 towards understanding our democracy and the police's role  
25 in it.

## Seminar Phase 2

1                   If you understand, what I understand the  
2 objectives of democratic policing, how police organisation  
3 in a democracy should operate, it needs to gain public  
4 trust and confidence. These are prerequisites for  
5 effective policing because you're going to have in South  
6 Africa, let's look at it; there are almost 52 million  
7 people, there are 36 million or so over the age of 18 and  
8 there are 200 000 people, just under, working in the South  
9 African Police Service. Those 200 000 people won't be able  
10 to control 30 to 40 million people unless there's some  
11 level of consent and legitimacy, and where that consent and  
12 legitimacy gets achieved is through adhering to rules,  
13 being fair, being seen to be professional.

14                   Democratic policing requires that police  
15 simultaneously stay out of politics and protect democratic  
16 political activities and processes, and that's very well  
17 codified in the South African law as well. WE really don't  
18 want our police officials to get involved in politics and  
19 in fact in the South African Police Service Act there's a  
20 clause that office bearers of political parties may not be  
21 police officials.

22                   When the police do intervene in conflicts they  
23 must be guided by the principle that everyone should be  
24 subject to such limitations as are determined by law, so  
25 the rule of law, treating everyone equally, for the purpose

## Seminar Phase 2

1 of securing due recognition and respect for the rights and  
2 freedoms of everybody involved.

3           So really that's what you want to see a policing  
4 organisation do, because policing, any democracy is a messy  
5 business. There is going to be various conflicts, there's  
6 going to be various times when the police are going to come  
7 under immense pressure and they will need to be able to  
8 have the trust of the population that they are not going to  
9 get drawn into one side or another.

10           This is codified in the South African Police  
11 Service Code of Conduct and it's very clear, it says if  
12 you're a police official - you sign this Code of Conduct,  
13 you commit yourself to creating a safe and secure  
14 environment for all people in South Africa. You uphold the  
15 Constitution and law at all times. You undertake to act  
16 with integrity in rendering an effective service of high  
17 standard that is accessible to everybody. You uphold and  
18 protect the fundamental rights of every person in a manner  
19 that is impartial, courteous, honest, respectful,  
20 transparent, and accountable, and you exercise the powers  
21 conferred upon you in a responsible and controlled manner,  
22 because as a police official you have more powers than the  
23 average citizen. You are able to detain them, search their  
24 person, their property, seize articles from them, detain  
25 them and use minimum force to detain them, if necessary.

## Seminar Phase 2

1 Those are quite dramatic powers and you're given a firearm  
2 and training in the use of lethal force to achieve those  
3 powers. So it is very important that you constrain your  
4 way of being a police official by this Code of Conduct.

5 So what are the kinds of key concerns that  
6 immediately rose, well starting to rise as the evidence  
7 started being presented before the Marikana Commission?

8 1. The belief by protagonists, or some of the  
9 protagonists that the police were amenable to acting in  
10 response to political and private pressure.

11 Political pressure, because we know from some  
12 testimony that the president of NUM, Mr Zokwana, spoke  
13 directly to the Minister and the Minister promised to  
14 ensure that all resources available would be there, and on  
15 the 13<sup>th</sup> of August NUM released a press statement saying  
16 they call on the Special Task Force, a highly militant unit  
17 of the South African Police Service, to come in to the area  
18 and deal with their enemies, who were called "criminals,"  
19 not a rival gang, or rival union. They said, "These are  
20 criminals acting outside of the law."

21 The private pressure - we saw Cyril Ramaphosa  
22 writing a letter directly to the Minister of Police as  
23 having a direct interest in Lonmin. Lonmin was a  
24 protagonist; the way they handled some of the, or handled  
25 labour relations was directly a cause of some of this

## Seminar Phase 2

1 disgruntlement and the strike in the first place, and Cyril  
2 Ramaphosa wrote directly to the Minister of Police and said  
3 you must get involved and this must be understood as a  
4 criminal issue, not a labour issue. So already we start  
5 seeing this high-level political engagement from people who  
6 represent the political power structures of South Africa in  
7 putting pressure on the Minister of Police, and that  
8 pressure seems to have been brought to the police.

9           We know from also evidence from the Marikana  
10 Commission that the Provincial Commissioner Mbombo spoke to  
11 Lonmin management in a very political way, demonstrate that  
12 you are on our side, talking about Julius Malema and  
13 political players in this arena. So politics was already  
14 very deeply ingrained in what was going on there and the  
15 decision-making around the police.

16           There was a very close relationship between  
17 Lonmin management and the police. The police were using  
18 Lonmin resources to have their joint operation centre,  
19 helicopter rides, food was being bought by Lonmin for the  
20 police officials involved in this. So private interests  
21 were very closely connected to the police agency that is  
22 supposed to be an independent, impartial body of State,  
23 power for all, and the Lonmin management were protagonists;  
24 they could have ended this by negotiating. They chose not  
25 to.

## Seminar Phase 2

1           Then on the actual day, from what we've seen in  
2 the footage and that, the police did not appear to be  
3 primarily focussed on doing everything possible to avoid  
4 violence and the loss of life. The very simple answer to  
5 the question, what can be done, is simply that the police  
6 should have done what they have done repeatedly since 1994  
7 in terms of their very well established Public Order  
8 Policing protocols - absolute minimum use of force,  
9 negotiations, and you simply, if you can't act without  
10 causing loss of life you retreat and only use force as a  
11 minimum, proportional to a direct threat that you can see,  
12 and from what I understand from this, from my understanding  
13 of it the miners were dispersing when the police started  
14 the operation against the miners. The miners were not  
15 attacking anybody, they were leaving the koppie to go back  
16 to their homesteads when they were engaged with by the  
17 police.

18           Then very importantly when it comes to  
19 accountability, there appears to have been no investigation  
20 by the South African Police Service immediately thereafter  
21 to identify any possible criminality or misconduct on the  
22 part of its members. When a police organisation shoots 112  
23 people, killing 34 of them, you have a moral and legal duty  
24 to immediately investigate what happened. That is no  
25 normal situation. It has not happened before in South

## Seminar Phase 2

1 Africa.

2           The police have dealt over the years with very  
3 large protests, violent protests. We've seen before  
4 presentations, up to 60 people killed in a security guard  
5 strike where masses of people were operating. In fact in  
6 the same area in Impala in Rustenburg in '99 50 people died  
7 in union skirmishes. Police did not kill people there in  
8 large numbers. Something went wrong and it is incumbent  
9 upon police management to immediately investigate, identify  
10 if every single possible thing was done to avoid loss of  
11 life, if every police official acted within the law, within  
12 the rules, and within the protocols available to them.

13           Then we still have not seen any - because that  
14 has not happened, although we here there have been various  
15 assessments done internally, but seemingly those  
16 assessments are buried. The lack of any clear plan of  
17 action to prevent such incident from reoccurring, do we  
18 here still know what the police will do to prevent another  
19 Marikana from happening again? Have they clearly  
20 communicated to parliament and to the people of South  
21 Africa what they will do as senior management of the South  
22 African Police Service to prevent such an incident from  
23 happening again, or do we just wait for the commission of  
24 inquiry to eventually come up with recommendations?

25           So why do we have the situation? And it actually

## Seminar Phase 2

1 starts a bit way back. If we look at the leadership  
2 context, when you want to ensure that an organisation has a  
3 certain orientation and culture towards adhering to those  
4 principles I'd pointed out earlier, then the leadership of  
5 that organisation are incumbent to uphold those principles  
6 in everything they do and say at all times, and  
7 unfortunately in South Africa we have not had that  
8 situation.

9           Why I said I appreciate those who have a calling  
10 for policing, because it is so tough and difficult and if  
11 you can survive in that environment and you can help people  
12 and work in those conditions, you should become the senior  
13 management. But from 2000 we saw political appointees  
14 coming in.

15           Jackie Selebi, no policing experience, to come in  
16 and change policing. Not all bad, some very good morale-  
17 boosting measures earlier on, but what we saw in that  
18 period of time that Jackie Selebi was there was some poor  
19 decision-making - closure of specialised units such as the  
20 Public Order Policing Units were halved. The Family  
21 Violence Child Sexual Offences Units were shut down. The  
22 internal South African Police Service anti-corruption units  
23 were shut down. These are units now being re-established  
24 because those functions are needed. He didn't understand  
25 that, he shut them down and that denuded that kind of

## Seminar Phase 2

1 capacity in our South African Police Service. He weakened  
2 or ignored accountability mechanisms. He would have  
3 nothing to do with the secretariat, which became almost  
4 moribund. The secretarial police is an executive oversight  
5 function. He really, he easily missed being called to  
6 parliament, or not coming before parliament, and really  
7 thought that the IPID should be shut down and said as much,  
8 the Independent Complaints Directorate as it was then  
9 known, now known as the Independent Police Investigation  
10 Directorate.

11           A number of inappropriate appointments and  
12 promotions were made. Somebody had been found to be guilty  
13 of maladministration and gross mismanagement by the Public  
14 Service Commission was appointed to head one of the key  
15 internal accountability structures in the South African  
16 Police Service in about 2004. That system then collapsed.

17           Then we saw as his trial and tribulations with  
18 corruption emerged, the use of South African Crime  
19 Intelligence capacity against the National Prosecuting  
20 Authority's investigating unit, Scorpions, and in spite of  
21 knowing that there was hard evidence against this man,  
22 President Mbeki, who appointed him and wanted his loyalty,  
23 protected him and would rather fire the National Director  
24 of Public Prosecutions, and that was the first time we  
25 really saw this level of political interference and

## Seminar Phase 2

1 willingness to protect loyal cadres against which was  
2 clearly hard evidence of corruption. Selebi was ultimately  
3 convicted to 15 years imprisonment for corruption.

4           The next key issue which really has had a huge  
5 impact in many ways at the national level is the  
6 appointment ultimately of - well he became a lieutenant-  
7 general, Richard Mdluli, involved in the police campaign  
8 against the Scorpions in 2008 while the head of the Gauteng  
9 Crime Intelligence component, and two months after the  
10 elections in 2009 was appointed as the national head. The  
11 procedures of appointing somebody into that sensitive  
12 environment were not followed. He was not subject to an  
13 assessment, to a panel review, a background check. Four  
14 ministers met and the Minister of Police instructed then  
15 acting National Commissioner Tim Williams to sign off on  
16 it. Tim Williams refused to come to that meeting because  
17 he could see that the procedures weren't being followed and  
18 he didn't want to be part of it, but he ultimately relented  
19 and signed it and he later gave in to this effect.

20           Later Richard Mdluli faced various charges of  
21 murder, fraud, corruption, nepotism based on various  
22 investigations, and in his bail hearing releases a report  
23 demonstrating the South African Police Service intelligence  
24 capacity is being misused to spy on internal African  
25 National Congress political dynamics. There was a meeting

## Seminar Phase 2

1 held in Newcastle by some people discussing the up and  
2 coming national conference and he released that report to  
3 demonstrate his loyalty to the incumbent president of the  
4 ANC.

5           Then we see an allegation that the Minister of  
6 Police instructs acting National Commissioner Mkhwanazi to  
7 lift the suspension and stop all investigations against  
8 Mdluli and he is reinstated on the 27<sup>th</sup> of March with  
9 additional powers to those that he had before being  
10 suspended. The significant public outcry and the outcry  
11 within African National Congress led to the Minister on the  
12 9<sup>th</sup> of May announcing that he will be moved to another  
13 environment and it took Freedom Under Law NGO to go to  
14 court to finally have his suspension reinstated. on the  
15 23<sup>rd</sup> of September last year the High Court orders that  
16 Mdluli to be re-suspended and criminal charges reinstated  
17 without delay.

18           Then of course we have Bheki Cele, very briefly,  
19 that's when we see the Tactical Response Teams being formed  
20 in 2009 and he for his troubles ends up on the wrong up of  
21 a Public Protector report. A board of inquiry gets  
22 established; he's found unfit for office and he's fired.  
23 The other recommendation from that board of inquiry that he  
24 be investigated for corruption are not followed through, as  
25 is the finding by that commission that two very senior

## Seminar Phase 2

1 lieutenant-generals who were dishonest and tried to mislead  
2 that board of inquiry have action taken against them  
3 because it is critical for the integrity at the highest  
4 levels of police - no action taken against those national  
5 lieutenant-generals.

6           Now we have our current National Commissioner,  
7 again appointee with no police experience. Unfortunately  
8 four days after the killings rather than trying to get to  
9 grips with what had happened by having that kind of  
10 investigation, states that, "What happened at Marikana  
11 represents the best of responsible policing." When the  
12 most powerful person in a police organisation sends a  
13 signal that we are going to not investigate, we are going  
14 to cover up, we are going to make sure that we see this as  
15 a good thing, it influences everybody else's ability, and  
16 that was a very unfortunate thing. Ideally she would have  
17 said I don't really know what happened, I will instigate an  
18 investigation alongside the IPID. Because remember, the  
19 police never have to wait to investigate where they have  
20 any evidence of criminality whatsoever. They don't wait  
21 for any other organisation. They have a moral and legal  
22 duty to investigate. They decide to wait for the  
23 commission of inquiry.

24           She continues to protect Mdluli and the High  
25 Court judgment says that, "The National Commissioner

## Seminar Phase 2

1 apparently sees no need to place any obstacles in the way  
2 of Mdluli's return to work, despite her constitutional duty  
3 to investigate allegations against him and the  
4 unfeasibility of his holding a position of trust at the  
5 highest level in the South African Police Service." Once  
6 again that's a court finding. How do you discipline an  
7 ordinary member for coming to work late, for being drunk on  
8 duty, for possibly misusing his powers or her powers, when  
9 you won't take action against somebody who is facing a  
10 mound of very serious criminal charges? Herself being  
11 criminally investigated for defeating the ends of justice,  
12 and more recently reduces the qualification levels for the  
13 South African Police Crime Intelligence Heads at a  
14 provincial level, and demotes two very senior qualified  
15 officers without following legal processes.

16           Why this is important is if the organisation is  
17 to be able to look upwards and trust its leaders it needs  
18 to adhere to the regulations itself, adhere to the  
19 principles of democratic policing, and adhere to the law.  
20 They need to see that the people who'd given them the  
21 orders to do things are doing the same thing. They need to  
22 have that guidance, very paramilitaristic order  
23 organisation; what gets determined in an organisation is  
24 determined at the top, and so the behaviour and the way  
25 that your senior national leaders behave will influence

## Seminar Phase 2

1 that organisation.

2           So, we've got the political environment, this is  
3 just the very well-know tough talk from Deputy Police  
4 Minister Susan Shabangu back on 9<sup>th</sup> of April 2008, "You must  
5 kill the bastards if they threaten you or the community.  
6 You must not worry about the regulations. I want no  
7 warning shots. You have one shot and it must be a kill  
8 shot. I want to assure policemen and women that they have  
9 the permission to kill these criminals. I will not  
10 tolerate any pathetic excuses for you not being able to  
11 deal with crime. You have been given guns, now use them."

12           Who are criminals? People that are being  
13 convicted in a court of law, or do you leave that decision  
14 up to a constable at the station level to decide?

15           Again in 2012, 12<sup>th</sup> of March 2012, introducing the  
16 new ranks, the change from civilian ranks to military  
17 ranks, the National Minister of Police said, "We have taken  
18 a stance of fighting crime and fighting it tough. The rank  
19 changes are in line with our transformation of the Force,  
20 including a change in attitude, thinking, and operational  
21 duties. This is not merely the militarisation of the  
22 police but part of our new approach of being fierce towards  
23 criminals. There are certain steps we have undertaken to  
24 ensure we win this war. This is a people's war against  
25 criminals."

## Seminar Phase 2

1                   So you have the situation in which political  
2 rhetoric are urging the police to act outside of the law of  
3 minimum and proportional force, and you have a system in  
4 which the senior police management, certainly the National  
5 Commissioners, are not following all regulations  
6 themselves.

7                   So what is the impact when you've studied this  
8 stuff internationally? What happens in organisations  
9 around the world, particularly police, when that kind of  
10 collection of factors come to bear? When action is not  
11 taken against certain senior officials despite evidence of  
12 wrongdoing, it fundamentally undermines the ethos that it's  
13 a fair organisation that treats everybody equally and will  
14 take action where there is evidence. It starts showing a  
15 selectivity, a favouritism, and creates massive rifts  
16 within the organisation, you start having factionism, so  
17 that the leadership of the organisation, the different  
18 components that have to work together, don't work together  
19 as well as they should because it's not about whether you  
20 are right or wrong, it's about the power dynamics that you  
21 align yourself with. And so that sometimes means that the  
22 detectives don't talk to Visible Policing, who don't talk  
23 to Crime Intelligence, and you have the mistrust starting  
24 to develop. It's starts faction in the organisation.

25                   If you appoint some people into senior positions

## Seminar Phase 2

1 for reasons other than merit and integrity, in other words  
2 even where it's found that they do not have the necessary  
3 skills, experience, knowledge and background to hold those  
4 very senior ranks in the police, you do another thing; you  
5 create impression that political approval or personal  
6 loyalties are more important than hard work, honesty, and  
7 qualifications, to achieve senior ranks in the South  
8 African Police Service. So certain people start using  
9 other methods for trying to get into those senior ranks,  
10 and that's often by making their superiors look good or  
11 being willing to take the fall for them or be willing to be  
12 dishonest. The Code of Conduct really literally goes out  
13 the window. This contributes to an organisation culture  
14 characterised by a code of silence, very well documented  
15 characteristic of policing worldwide, and the lack of  
16 willingness to reflect openly and honestly on key  
17 challenges, because you don't know who you're going to  
18 upset and it's not about being rational and arguing a point  
19 according to the rules and regulations of the  
20 organisational law; it's about who you know and who you're  
21 protecting and who's protecting you.

22 This undermines overall police morale and a  
23 willingness to improve, and many of these issues have been  
24 raised for years before the Portfolio Committee by the  
25 Portfolio Committee of Police, and we have yet to see major

## Seminar Phase 2

1 changes in this regard, unfortunately.

2           Moving to one of the key consequences, there are  
3 many indicators; I just point to some here. The blue line,  
4 the top line are criminal cases opened against the police  
5 with the Independent Police Investigative Directorate, the  
6 bottom line are cases of brutality that are related to  
7 those criminal cases, and we can see that from 1998/99  
8 until about 2000/2001 there was relatively a flat line. It  
9 doesn't really, it goes up a bit and goes down. Then from  
10 2001/2002 you see both line going up and they go up  
11 consistently, up until 2011/2012 and we think the decrease  
12 there is because of the killing of Andries Tatane which  
13 made international headlines and sent shockwaves through  
14 the police organisation. Things were getting out of  
15 control. The massive political and public pressure led to  
16 a relook and we started to see the tone and the rhetoric  
17 come down a bit, and that seemed to have been the  
18 reduction.

19           Those next two big sharp increases, well I'll  
20 tell you that there was this massive increase in the number  
21 of police cases of criminality and brutality. This was  
22 when the mandate of the Independent Police Investigative  
23 Directorate changed and they were compelled to investigate  
24 all assaults, all rapes, various cases of corruption. So  
25 their mandate increased, but what it does show is that now

## Seminar Phase 2

1 that they are compelled to investigate all those kinds of  
2 cases against police, look how much more they would be  
3 investigating. So they were really investigating half or  
4 less than half of the total number of cases that were being  
5 reported or where people would be willing to report. We  
6 know reporting levels against the police are very low as it  
7 is.

8           So that's just an indication of the challenges  
9 that when you are not able to run an organisation with the  
10 kind of professional ethos, where you expect people to  
11 adhere on their own versions and their own sense of  
12 morality around the Code of Conduct because that's what  
13 professional police officials do, you will get widespread  
14 systemic problems of brutality and corruption.

15           What are the recommendations? First of all,  
16 sorry but there are no simple recommendations. To change a  
17 police organisation is actually the exception more than the  
18 rule internationally, but fortunately we do have the  
19 National Development Plan 2030. This is released by the  
20 National Planning Commission and has been formally adopted  
21 by cabinet, which is a very positive thing in the sense  
22 that the Chapter 12 that deals with what should happen with  
23 policing, we believe has various constructive and far-  
24 reaching recommendations, that if they are implemented will  
25 start changing this dynamic that we've seen growing in the

## Seminar Phase 2

1 South African Police Service for some time.

2           It talks about professionalization of the police  
3 by ensuring in the short term that the Code of Conduct is  
4 included in all disciplinary regulations and performance  
5 appraisal systems and that periodic checks are taken that  
6 people understand and are adhering to the Code of Conduct,  
7 because this Code of Conduct very rarely makes a feature.  
8 I don't know if people are asked to refer to the Code of  
9 Conduct in the Marikana Commission of Inquiry or before  
10 parliament; I haven't seen it. Once it's signed, does it  
11 get adhered to? Do people ever look at it again in the  
12 South African Police Service? And that an oversight body  
13 should really monitor and ensure that people are being  
14 trained and tested on this.

15           But there should be a National Policing Board  
16 with multi-sectoral and multi-disciplinary expertise be  
17 established to set standards for recruitment, selection,  
18 appointment and promotion of police officials. The reason  
19 why multi-sectoral, multi-disciplinary, is because in an  
20 organisation such as a police organisation is naturally you  
21 get group think. When people at the top of an organisation  
22 feel under attack, they feel that the NGOs are attacking  
23 them and the public don't appreciate them and the  
24 politicians are putting pressure on them, they withdraw and  
25 you get into a group-think situation and sometimes it's

## Seminar Phase 2

1 very difficult for people inside that situation to  
2 understand how best to move the organisation forward.

3           And so the National Planning Commission  
4 recognises that we need, there are many very experienced,  
5 very honest, very hardworking, good policemen and women in  
6 the South African Police Service, and we need them. What  
7 we need is for them to be able to come to the fore and work  
8 with other experts and look at how to fix the police, by  
9 the police, and that all officers should undergo competency  
10 assessment and rated accordingly, and they're talking about  
11 managers.

12           That we have a two-stream system so that all the  
13 managers go through a separate system that trains them to  
14 be the best they can be in terms of professional and  
15 objective policing, and that there are objective standards  
16 and testing that are used to reward and recognise that  
17 criteria.

18           Very importantly, that the National Commissioner  
19 and Deputies should be appointed by the President on a  
20 competitive basis. A selection panel should select and  
21 interview candidates against objective criteria which would  
22 enhance incumbents standing in the eyes of the community  
23 and increase respect accorded to them by their peers and  
24 subordinates.

25           Focus on training for professionalism across

## Seminar Phase 2

1 different functions. There must be demilitarisation short-  
2 term and that must happen immediately, and that assessment  
3 of the organisation cultures and subcultures within the  
4 police be assessed in order to understand how we can move  
5 the organisation forward.

6           So the National Planning Commission recognises,  
7 and the diagnostic that they used is the one that I'm  
8 presenting to you today and these are the recommendations  
9 they follow. We think these are the right ways to go.

10           Ideally we want to have a team of highly  
11 experienced skilled and knowledgeable officers and many of  
12 the serving current officers will be in that team, because  
13 I said there are many in the South African Police Service  
14 who are highly skilled, very honest, good hardworking men  
15 and women. They will be tasked to developing a very clear  
16 plan of action for change in the police over the next three  
17 to five years. It should be measurable, reported on before  
18 the Policing Board, independently assessed, and reporting  
19 to parliament. That would ensure that South African Police  
20 Service becomes depoliticised and it will be a bulwark  
21 against political pressure so that when you have a  
22 situation such as Marikana the politicians might be saying  
23 use all the force necessary, we want the strike to end  
24 today, and the police will be able to turn around and say  
25 we are not ready to do this yet, we need another few more

## Seminar Phase 2

1 days, we need to negotiate better, we need a different plan  
2 of action; if we act now there will be blood, and they will  
3 be able to withstand that sort of pressure.

4 Over time the South African Police Service will  
5 then increase its public trust and respect from all  
6 communities both to the benefit of the police officers on  
7 the ground and of the communities who need their services.  
8 I'll end there. Thank you very much.

9 MR KETTLEDAS: Thank you very much to  
10 Gareth for that presentation. We've now had all three  
11 presentations and we will immediately go over to the  
12 discussion session. We are going to allow about four  
13 questions or comments at a time and when you speak just  
14 indicate your name and organisation where you come from.  
15 Unfortunately no speeches. The speeches have been made,  
16 the presentations have been made, so crisp, short, and  
17 sweet, so that we can allow as many as possible to  
18 participate. And also state to which of the three you want  
19 to pose the question or make your comment. Do we have the  
20 roving mike available? There's number 1 here, the lady  
21 here. There's someone behind the cameraman there, Jane  
22 here is number 3 and number 4 next to the other camera.

23 SPEAKER: Good afternoon. Thank you.  
24 The first question just very briefly to Gareth; what would  
25 you say is the correct role for private security in a

## Seminar Phase 2

1 situation like Marikana? Second very, very quick question  
2 to Eddie; as in the sucking up of politics with white(?)  
3 worker and shop stewards, broader politics, broader  
4 workers' tendencies and also brutal tactics pursued by  
5 protest movements, is there some crossing over between  
6 protest and strike?

7 MR KETTLEDAS: Okay. Number 2 there in  
8 the line where Kelly is now.

9 SPEAKER: The question is to Gareth -

10 JUDGE FARLAM: I'm sorry [Microphone off,  
11 inaudible] is that it's important for us when we -

12 MR KETTLEDAS: Yes.

13 JUDGE FARLAM: - read the transcript to  
14 know who ask the questions.

15 MR KETTLEDAS: [Inaudible] from Wits.

16 MS MATLOU: Daisy from Wits, School of  
17 Mining Engineering, and my question is directed to Gareth.  
18 You mentioned that Cyril Ramaphosa issued a statement that  
19 these are acts of criminality and therefore - do you think  
20 that Lonmin itself is in collusion with the police service?  
21 If so, can the community actually continue to trust, I mean  
22 the workers continue to trust a company that allows itself  
23 to collude with assisting to destroy it? Thank you.

24 MR KETTLEDAS: Okay, thank you. The lady  
25 here next to the camera, then Jane, you'll be fourth.

## Seminar Phase 2

1                    MS FUNDI:                    Thank you. Chairperson, I  
2 would like to sit down. I'm not, I do not feel correctly  
3 to say when I am sitting -

4                    MR KETTLEDAS:                    State your name.

5                    MS FUNDI:                    And some of the things that  
6 have touched are done [inaudible]. Can I just sit down,  
7 please?

8                    MR KETTLEDAS:                    Yes, that's fine.

9                    MS FUNDI:                    Thank you.

10                   MR KETTLEDAS:                    State your name and  
11 organisation, please.

12                   MS FUNDI:                    My name is Ayesha Fundi. I am  
13 the widow of the security guard Hassan Fundi who was killed  
14 brutally by the miners. I have few questions and comments  
15 about different researches that was displayed. Firstly my  
16 question is about why are the striking miners intimidating  
17 and attacking their own brothers and sisters and calling  
18 them the scab or impimpi? It doesn't solve the problem or  
19 make it legitimate. My appeal to the government is to  
20 enforce the law, to protect innocent people around  
21 Marikana. And perhaps an intervention from the spiritual  
22 leaders. I personally think that unionism and politics are  
23 the business; some of the politician took advantage of  
24 Marikana to recruit and to regain majority. Instead of  
25 preaching peace and a stability and maintain or enforcing

## Seminar Phase 2

1 the discipline they encouraged strike amongst the miners.

2           Instead of also building the peace and  
3 reconciliation they are biased and busy planting the  
4 division amongst the widows of Marikana. I'm saying this  
5 because we are divided as the widows of Marikana. There  
6 are those widows that they lost their husbands during 34  
7 when the police were fired to the strikers. There are  
8 those widows, which I'm one of them, that our loved ones  
9 were killed by the strikers. My husband was killed  
10 brutally by those strikers. His body parts were taken for  
11 muti rituals. Is that you leaders are saying it must be  
12 done? That's my question.

13           I understand there is a protest. Workers are  
14 allowed to protest peacefully. For me the thing that  
15 happened in Marikana, it is about the Satanism and when you  
16 talk about the Bible, the Bible condemns Satanism. You  
17 cannot kill and take the body parts and take them to the  
18 sangoma and say that now you are, are you actually fighting  
19 the capitalists or are you fighting your own brother?

20           Now my last comment will be I heard - I don't  
21 know which speaker was that, his words that - a worker on  
22 worker violence and the reason I'm saying these words is  
23 because he said something about the violence is the  
24 solution, not the way. It has been a solution in the past  
25 and it is a solution today. I differ with that because

## Seminar Phase 2

1 what we are seeing, we are seeing the black on black  
2 violence and we are not fighting the capitalism. If that  
3 is the case is South Africa going anywhere? No, I foresee  
4 a bloodshed and more killings to occur in Marikana because  
5 leaders are biased in seeking the truth. They encourage  
6 the violence instead of condemning it.

7           And looking at what Ed Webster - I don't know  
8 whether I got it wrong, I stand for correction - I heard  
9 when he was saying there is no sweet strike, and it ended  
10 up by saying you won't win a strike with a Bible. I'm  
11 asking him, because I believe that there is also no sweet  
12 death; the death in Marikana, there's no death which is  
13 sweet, and stop dividing us as the widows. We all lost our  
14 loved ones.

15           We must, Bible teaches us Ubuntu, which is the  
16 humanity. It teaches us to love one another. It teaches  
17 us responsibility, to take responsibility of our action.  
18 In fact the killings to me, it must be resolved by another  
19 killing. If I was the State President I will reinstate the  
20 death penalty. And the last part, not -

21           MR KETTLEDAS:                   That's the second-last  
22 part.

23           MS FUNDI:                   I'm sorry. I want to tell you  
24 I was an ex-Lonmin employee and for me I'm not going to  
25 take advantage of my primitive, or my forefathers for me,

## Seminar Phase 2

1 for not taking me to school and take it right now. Now we  
2 are living after apartheid. As a Lonmin ex-employee,  
3 looking at the various researches that was represented here  
4 today, none of them highlight what has been done by the  
5 union after apartheid. A lot has been done by the mining  
6 houses today in terms of development. The reasons are that  
7 basic education, if you never got an opportunity to go to  
8 school you can go to schools freely in the mine. There are  
9 also the learnership in place for all employees who want to  
10 learn and change their lifestyle. It is just a matter of  
11 choice. I thank you.

12 MR KETTLEDAS: Thank you. Jane, just two  
13 rights in front of you.

14 MS BARRETT: Thanks. Is it appropriate  
15 for me to -

16 MR KETTLEDAS: State your name and your  
17 organisation just-

18 MS BARRETT: I just wondered if you want  
19 to refer to the -

20 MR KETTLEDAS: No, no, you're the fourth  
21 one. They're going to deal with all four now.

22 MS BARRETT: Jane Barrett from COSATU.  
23 It's difficult to sort of make some general points after  
24 such a personal testimony, but I think one of the issues I  
25 have to raise was I think Eddie's input was very useful,

## Seminar Phase 2

1 but one thing that perhaps was missing from it is a  
2 reference to the growing in balance of power between  
3 capital and labour over the period sort of beginning in the  
4 late 1990s, and the fact that it has become increasingly  
5 difficult in the course of wage negotiations and for trade  
6 unions to achieve any substantial difference and make any  
7 substantial inroads into the wage structure in South  
8 Africa. So for example in 2006 there were numerous, very,  
9 very long strikes, 10 weeks in the security guards, 10  
10 weeks in the - or 16 weeks for security guards, 10 weeks  
11 for cleaning, contract cleaning workers, 10 weeks for  
12 workers of Checkers. All of those workers remain some of  
13 the lowest paid workers in the economy, despite those  
14 incredibly long, protracted, and sometimes violent strikes,  
15 and what that tells us is that there has been an increasing  
16 power of capital in this relationship between capital and  
17 labour and that what's been happening is that workers are  
18 increasingly using faith in a formalised industrial - based  
19 on voluntarism, and that unless there's an intervention  
20 from the State through economic policy to address  
21 structural low pay and the low pay on which our whole  
22 economy is based, to seriously lift it up from the current  
23 levels of poverty where you have vast numbers of workers  
24 working to stay poor, unless we have those economic  
25 interventions our membership of unions is going to

## Seminar Phase 2

1 increasingly lose faith in the system, and that's  
2 illustrated by the increasing numbers of strikes - two  
3 years that have been unprotected strikes.

4           Which takes me to my second point, which is  
5 somehow unrelated, but it's the whole question of language,  
6 and if one goes to the situation in Marikana, or in Lonmin  
7 as it was at the time, and in other situations where there  
8 is constant reference by the media and by the police to  
9 unprotected strikes as illegal, which is not the case - if  
10 strikes are unprotected they're not against the law, but  
11 when the language that is used suggests that they are  
12 illegal it encourages the kind of activity in my view that  
13 the police entertained in Marikana.

14           And then finally, I think it's quite important  
15 that more research is done into general behaviour of police  
16 in strikes over the last 10 years because while Marikana  
17 was anomalous in its scale, it wasn't anomalous in the  
18 basic facts. There had been numerous strikes, both  
19 protected and unprotected strikes, in the last 10 years in  
20 which workers had been shot dead, including a strike of  
21 municipal workers, a couple of workers were shot dead in  
22 Pretoria just three years ago, and there are many, many  
23 other incidents which have basically gone undocumented and  
24 unresearched. I think in order to understand the police,  
25 the role of the police in Marikana one has to look at what

## Seminar Phase 2

1 the build-up of the behaviour was after the - where it's  
2 completely without comment and unsanctioned.

3 MR KETTLEDAS: Thank you. Shall we get  
4 the panel now to respond to those four comments, questions?  
5 Gareth?

6 MR NEWHAM: Thanks, Chairperson. Related  
7 to private security, a few years ago, I think in 2000 a  
8 number of international companies got together, mostly in  
9 the mining and construction industries, and set up a very -  
10 set of principles about how their security guards and  
11 officials should work with public policing agencies and  
12 what they should and should not do, and very simply private  
13 security really should always move out of the way when  
14 something needs policing intervention. Ideally they  
15 shouldn't be carrying even firearms. They should really be  
16 more of a monitoring, play a more monitoring role where  
17 they can see what's going on and report to the police who  
18 can then come in and make arrests.

19 The private security guards in this country don't  
20 have any more powers in the law than any civilian, and in  
21 many cases not as much training as the police. So you want  
22 them to have as little as possible to do with conflict  
23 because they could escalate the situation or could result  
24 in deaths.

25 The second question from Daisy around Cyril

## Seminar Phase 2

1 Ramaphosa and collusion, well I think that is something  
2 that the Commission will have to find, but what we did see  
3 is not the, the email that was presented before the  
4 Commission wasn't Ramaphosa asking for very specific  
5 killers of those of the security guards, of the police -  
6 people who had been responsible directly for the deaths  
7 should be thoroughly investigated and brought before  
8 justice. It was painting the entire thing as a criminal  
9 enterprise and that the police should respond  
10 concomitantly, I think he used the word. So yes, it does  
11 raise some questions about how it was understood and  
12 responded and will damage relations between public and  
13 police and Lonmin.

14 I think just also the last point - ja, if you  
15 look at what the police's own data shows in which they say  
16 is that over the last 20 years there have been very few  
17 deaths as a result of public order policing, and they put  
18 the average around two to three deaths a year, a number of  
19 years with no deaths. However, if you look at the last  
20 four years, recent research by the University of  
21 Johannesburg shows over 30 deaths related directly to  
22 public order policing. So there's been a dramatic increase  
23 in public order policing related deaths in the last few  
24 years, Marikana obviously being the most outrageous.

25 MR KETTLEDAS: Okay. Eddie?

## Seminar Phase 2

1                    PROF WEBSTER:                    Just firstly Jackie Dugard  
2 asked whether there was a linkage with protest and strike  
3 action. I think the Marikana, De Doorns, most of these  
4 strikes are traditional wage-based disputes to do with  
5 working conditions, to do with collective bargaining, but  
6 they do spill over into De Doorns, and I think for example  
7 in the case of De Doorns where there was community  
8 mobilisation.

9                    The second question to do with Ayesha, the widow,  
10 I must express my - speaker - think that firstly the  
11 quotation that you cited about there's no such thing as a  
12 sweet strike was not my words; it was the words of one of  
13 the strikers and it was in inverted commas. It wasn't my  
14 expression. I was trying to illustrate what I think is the  
15 problem, that is that solidarity attempts to get workers to  
16 stand together, there's violence used, and the whole thrust  
17 of my presentation was to try and explore alternative  
18 avenues to resolve those, what I see as a fundamental  
19 conflict in the workplace, in a strategic but peaceful way  
20 - hesitation and unequivocally.

21                    With regard to Jane Barrett, I think you're quite  
22 right on that point whereof, I think when you're given 25  
23 minutes, I think I focussed a little bit around the  
24 institutional aspect of industrialised and processes. I  
25 think certainly in my argument I think you were right; I

## Seminar Phase 2

1 think the part of the context, if you like the political  
2 economy of it, is the economic recession in particular that  
3 squeezed employers, in some cases retrenchment, splitting  
4 of unions because unions are not able to win increases.  
5 But generally I think there has been in the spread of  
6 globalisation a shift to strength of employers who continue  
7 to make large profits and so on. So I think that that is a  
8 missing dimension of it, and I think if I was writing a  
9 broader paper, Jane, I would definitely make that point.

10 I think your second point about the discourse  
11 around that, I thought it was kind of addressed by Crispen  
12 when he spoke about the representation of the strike and  
13 how the language of illegality and criminality, violence on  
14 the part of the police, but I think it may be - to suggest  
15 to the Farlam Commission, I think that is another area if  
16 we're going to try and think about a more orderly, peaceful  
17 industrial relations system to look at, maybe to analyse  
18 the way the media is reporting on strikes and the  
19 construction they're giving of that may be an aspect of  
20 recommendations from the Commission. Thank you.

21 MR KETTLEDAS: Thank you.

22 MR CHINGUNO: My response to some of the  
23 questions, I would address the question around the issue  
24 around worker on worker - firstly I would say it's sort of,  
25 we look at it, I was sort of like trying to present the

## Seminar Phase 2

1 perspectives as presented by some of the workers I  
2 interviewed. In the slide where sort of I cite violence  
3 worked in the past and it will work today, it will get  
4 results, it's in quotes. This is not my position. I don't  
5 salutise(?) anti-violence, but this is sort of, I was  
6 trying to understand how the workers themselves, the use of  
7 violence. This is how they see it, the workers on the  
8 ground. But this is not my personal perspective.

9           For example they said that the violence works and  
10 I remember the workers they give an example, for example  
11 the Impala strike in 2012 where they said for the first  
12 time we got the highest ever percentage in terms of salary,  
13 which was outside the normal institutionalised collective  
14 bargaining structure, and basically some of them believe  
15 because of the fact that the workers have sort of used,  
16 instrumentally used violence as part of their strategy.

17           Then I also addressed the issue around the  
18 developments which is being done in terms of trying to  
19 develop the mineworkers, which has been cited by the Madam.  
20 Yes, I would say yes, the mining company, mining houses may  
21 be trying to make, improve the lives of the mineworkers,  
22 yes, but the fact of the matter on the ground right now is  
23 totally the question around literacy. I think we have the  
24 Benchmark report has clearly highlighted the fact that the  
25 majority of the workers is part of the lower levels, low-

## Seminar Phase 2

1 level skills in the mining sector. The majority of them at  
2 the moment, the fact of the matter they are illiterate.  
3 That's the fact of the matter, although these mining houses  
4 have been running these programmes where they sort of try  
5 to improve the literacy, but the fact of the matter on the  
6 ground, the majority of the workers as it is now who is in  
7 fact the low-skills mineworkers, they are illiterate.

8           MR KETTLEDAS:                   Thank you. Shall we take  
9 another round of four? I'll start here with the gentleman  
10 here, US Consulate, both of you, and right at the back.  
11 Yes, Sir?

12           PROF DAVIS:                   Danie Davis, I'm from Wits.  
13 I want to just add to what Jane Barrett was saying and to  
14 what Crispen said in his address. This strike is  
15 contextualised by a situation which was clearly described  
16 just before the episode at Marikana by the Benchmarks  
17 Foundation. This is a description of squalor and community  
18 disorganisation which is almost exactly mimicked by  
19 Friedrich Engels' description in his publication on the  
20 condition of the working class in Britain 170 years ago,  
21 and I ask the panellists just to read these two documents  
22 and tell me in due course what has changed.

23           MR KETTLEDAS:                   Okay. Name, organisation.

24           MR CUMMINGS:                   Phillip Cummings from the  
25 American Consulate General, Johannesburg. My question

## Seminar Phase 2

1 relates to Crispen and to Eddie, and I was a little bit -  
2 trying to understand this decision where the workers can  
3 work - facts about the reasons that the workers went on  
4 strike and was there union control over that - but the one  
5 issue that advocating for the - would have been possible -  
6 have been useful - the unions were very unclear, the - was  
7 whether or not they would agree to, whether or not leaders  
8 are directing the strike or the workers are - leaders of  
9 the union rather than the support of the workers.

10 MR KETTLEDAS: Madam.

11 SUSANNA: Thank you. My name is Susanna  
12 from the US Consulate. My comment is on violence in  
13 strikes. In my own opinion I don't think violence is going  
14 to disappear any time soon. My view is that the problem  
15 lies within the picketing rules. If the picketing rules or  
16 the picketing clause in the Labour Relations Act is not  
17 amended, we are not going to get anywhere - because they  
18 frustrate workers are being the former trade union  
19 organiser, they come out drawing you away from the  
20 establishment, for example one kilometre, or 900 metres  
21 away from the employer premises, and what purpose are you  
22 serving if that is the case?

23 Then next thing is the use of labour consultants  
24 in wage negotiations, the workers do not take that lightly  
25 because they believe that labour consultants come with an

## Seminar Phase 2

1 attitude that we will, of [inaudible] help from the primary  
2 employer, the owner of the business. They go to strike,  
3 already they are irritated, they are frustrated, and it's  
4 not the attitude that you would - the employer. Thank you.

5 MR KETTLEDAS: Okay, right at the back.  
6 No, no, no, not here. Not here. Right at the back.

7 MR REES: Thank you. Rob Rees from  
8 Naledi. I wanted to make some comments on Eddie Webster's  
9 contribution, but I accept it's 25 minutes and -  
10 everything. I must say the comments on the context where I  
11 think employers have excessive - in the context that  
12 Crispen pointed on [inaudible] capitalism - [inaudible]  
13 there's a sense of [inaudible] workers [inaudible] I think  
14 your argument about workers must have - I really cannot see  
15 how ballots - ballots use workers - control with due  
16 respect are meant for a show of hands is I would go on  
17 strike, yes I'm with my fellow workers - because I, you  
18 know, you don't strike by yourself, you strike as a  
19 collective. So I think the weakness in what you're saying,  
20 I think there's a strength in not arguing for a change in  
21 the law, which many bosses [inaudible] internal union  
22 practice, but I think workers control, not just the concept  
23 of sort of - has to be participation, participation in  
24 constructing a demand, not just for the representatives but  
25 for ordinary workers in general meetings at the workplace,

## Seminar Phase 2

1 etcetera.

2           So I guess really what I'm getting to [inaudible]  
3 one more ballot about the settlement [inaudible] if you go  
4 on a three-month strike, why not a weekly ballot? What we  
5 need is far deeper and wider, and it's not just a  
6 [inaudible] through resolution, practices of worker  
7 control. For example should we have a ballot about the  
8 amount of money the fulltimers earn? I though the G4  
9 example was quite - the examples I've seen of being a  
10 fulltime shop steward gets in at the level of a human  
11 resource manager in that you are able, yes, you can  
12 increase your access to income and benefits 10 or 20 times,  
13 you know. I'm not sure if ballots as in an individual  
14 exercise of a vote is the way forward. I think we need  
15 more detail in worker control as in participation of  
16 ordinary workers, not participation just of the  
17 representatives. So if you look at the LRA it talks about  
18 access of unions. It doesn't talk about access of workers  
19 to the union. Thank you.

20           MR KETTLEDAS:           Thank you. Shall we get  
21 the panel? We'll get the panel to respond now and then  
22 we'll take another round of four, which may lead us to  
23 closure time. Eddie.

24           PROF WEBSTER:           Thank you, Prof Davies,  
25 for reminding me of Engels' classic. I think there is a

## Seminar Phase 2

1 sense in which we're returning to the market despotism of  
2 the 19<sup>th</sup> century.

3           Phillip from the US Consular, I think that it is  
4 self-policing in a way, although I wouldn't use those  
5 words. I was talking about workers controlling their  
6 members, or the workers doing it collectively together. I  
7 wasn't thinking of this as an explanation for what happened  
8 in Marikana, or even necessarily a solution to Marikana. I  
9 was saying this is an alternative part, but it's not only  
10 an alternative, it's actually being practised in SACTWU, in  
11 the case of the clothing and textile workers union where  
12 they have been able to contain violence by making a secret  
13 or confidential ballot.

14           With regard to Susanna, also from the Consulate,  
15 I think that I wasn't talking about the picketing laws  
16 inside the LRA. I specifically gave the example of a  
17 company that argued slightly differently and may be  
18 consistent to what you're saying, and the centre of the  
19 argument is that it has to be negotiated at a local level,  
20 the picketing rules, so all the parties agree on how you're  
21 going to do it. So there's agreement, there's  
22 consultation. You're allowing the parties to negotiate.

23           I think the question about consultants,  
24 management consultants, I think that's quite an important  
25 point. I think it was suggested in the first seminar that

## Seminar Phase 2

1 there has been possibly a decline in the capacity of  
2 management at the human resource level to deal with these  
3 issues, and I think part of that is they tend to outsource  
4 it to professional consultants and maybe that's a problem  
5 and it should be dealt with by the employers.

6           The final point about - Rob Rees, look, I think,  
7 you know my central concern about violence when I talk with  
8 the unions would, not so much the moral argument but the  
9 argument that it's counterproductive because what happens  
10 is if there's violence the police come in and you lose  
11 control over the issue. But I think that it seems to me,  
12 I'm not sure whether we disagree, Rob, except - ja, I'm  
13 sure you've got examples of shop stewards who are fulltime  
14 are earning a lot more, but I think the point I was wanting  
15 to stress here is not about workers controlling the factory  
16 in general, which may well be a demand that workers may  
17 support.

18           My concern was how to control this particular  
19 activity, namely the strike, and the ballot, the advantage  
20 of the ballot is that it allows people to exercise freedom  
21 of choice. A show of hands may not do that. If I was a  
22 union leader, I got 80%, I put it to the general secretary  
23 of that union, at what point would you go on strike, how  
24 many percentage vote would you need to get, and he said 80%  
25 then we'll go for a strike. The importance of that is it

## Seminar Phase 2

1 means that you do have unity roughly, sufficient people on  
2 your side to ensure that it's collective solidarity, and  
3 it's very important, I think, that the ballot should be  
4 done in a non-coercive way so you're getting the general  
5 voice of the workers because ultimately it's their jobs  
6 that are at stake and they must control that process. That  
7 would be my response to that.

8           MR CHINGUNO:           Yes, I'll respond on the  
9 first question of what has changed. I think the other  
10 panel of discussion has addressed the issue around  
11 continuity in terms of mine labour system and the cheap  
12 labour regime which categorises the mining.

13           Then on the question of the mass meetings and  
14 then complexity around the workers, the strike at Marikana  
15 which was organised outside the unions. I would say  
16 although these strikes were organised outside the unions,  
17 but in terms of how the workers organised themselves on the  
18 shop floor, there isn't much in terms of the - in terms of  
19 consensus building we find that there is always a strike  
20 committee which in a way, like for example before the  
21 commencement of the strikes, although instead of the fact  
22 that these strikes were organised outside the unions, the  
23 strike committees they manage to organise mass meetings  
24 which are important in terms of consensus building,  
25 collective decision-making for the workers. They play an

## Seminar Phase 2

1 important role in as far as trying to build consensus  
2 across all the markers, and at the same time also trying to  
3 boost solidarity for the workers.

4           You also, what is important, sort of trying to  
5 make a collective decision, and whilst the workers sort of  
6 make these collective decisions at the mass meeting, then  
7 every one of them who have to sort of like defend this  
8 position. So that's the point where those who may have  
9 sort of like a different perspective, maybe that's the last  
10 time where they have to show up their, defend their  
11 position.

12           So I think I'm a bit sceptical when it comes to  
13 this question around ballots because it's very complicated.  
14 When we look at the fact that it brings you another  
15 question in terms of who is supposed to be, to bringing the  
16 Independent Electoral Commission to run those ballots  
17 before each and every strike, which is not possible.

18           And at the same time I would say at what rate do  
19 we have to - because it's like the positions are always  
20 shifting at any given time. Do we have to have the ballot  
21 just before the strike, two days after the strike? Do we  
22 have to keep on having ballots with all the - so I think  
23 the current situation where the workers [inaudible] build  
24 consensus, sort of like collective consensus and in most of  
25 the situations there's an intent by the workers even

## Seminar Phase 2

1 outside the union to try and build this consensus and  
2 [inaudible] at the end of the day. Then ja, okay.

3 MR KETTLEDAS: Alright, last four  
4 briefly. We start here next to Carel. Next one the lady  
5 in yellow, red arm there, I can't see who it is. Okay,  
6 third one. Ja, you start. I have three.

7 MR CAPPS: Gavin Capps from SWOP, Wits.  
8 My question probably comes out of Crispen's presentation,  
9 but maybe the whole panel will have to contemplate it as  
10 well, which is actually the reverse of the one when we seem  
11 to be thinking about this, but actually isn't it surprising  
12 and isn't it amazing that given the conditions in which the  
13 majority of workers live and labour in South Africa and the  
14 histories which lay behind that, that actually strikes  
15 aren't more violent? Because Crispen raised a point about  
16 structural violence and the experience of the majority of  
17 workers in this country was being [inaudible] structural  
18 violence. Violence has been fundamentally embedded within  
19 the labour process in all areas of work, and that's  
20 particularly true of the way in which mineworkers  
21 experience work, with the way in which the mine labour  
22 system is operated, which itself is based on history of  
23 dispossession, violent dispossession and coercion, which is  
24 not so far back in living memory, and various ways as  
25 experienced today, and John Barmedi who sat next to me has

## Seminar Phase 2

1 done fantastic work on how the whole way in which mine  
2 production operated underground and aboveground was based  
3 on absolute violence, which manifested in a whole number of  
4 different ways, and maybe within the neoliberal period that  
5 exists as well, but it's time to be reorganised  
6 [inaudible].

7           But it doesn't end there. It also exists in the  
8 structural violence of the living conditions of  
9 mineworkers, which Danie was mentioning earlier, and we  
10 could go on and on and on, and this isn't just the  
11 condition of South African mineworkers, it's a condition of  
12 many other workers, and of course it's an intensely  
13 rationalised experienced in violence as well. So really  
14 for the observer outside of South Africa the question  
15 always is actually how come there's so much social peace  
16 here, and how come there's people living in these  
17 conditions which by any measure conditions of work, or  
18 conditions of live which are absolutely inhuman, and where  
19 violence is experienced in every facet of your social  
20 existence. How come actually there isn't more violence,  
21 and should maybe South African workers be applauded for not  
22 being more violent from acts of violence they experience in  
23 their everyday life.

24           MR KETTLEDAS:           Thank you. Lady in yellow  
25 there.

## Seminar Phase 2

1                    MS MAGUBANE:                    Thank you very much. My  
2 name is Lizzie Magubane, the late Warrant Officer Monene  
3 who was killed in Marikana on the 13<sup>th</sup> of August last year  
4 during the unrest of Marikana. Firstly I want to  
5 sympathise with the 43 families of the unrest of Marikana.  
6 To the families, my deepest sympathy, and what I want to  
7 say is that may their souls rest in peace.

8                    Mine is just a comment; I'm not going to be long.  
9 I just want to comment on something that we as the Monene  
10 family, having lost a brother, a breadwinner and father,  
11 now understand that the violence that has taken my  
12 brother's life might be as a result of socialism. I just  
13 want to say to our fellow South Africans that killing each  
14 other during the strikes, it's not a good thing at all. We  
15 need to wake up and realise that the violence against each  
16 other doesn't and won't solve the dispute with the  
17 employer. It might just bring pain and just loss of lives  
18 to the families. I just want to say to all those people  
19 who were killed in Marikana, may their souls rest in peace.  
20 That's all what I want to say.

21                    I'm wanting to say to the people of South Africa  
22 that police are also human beings. They've got families,  
23 they've got everything. My brother was brutally killed in  
24 Marikana, wearing uniform, going there to restore peace in  
25 Marikana, he was hacked, killed and shot three times by the

## Seminar Phase 2

1 striking miners. Thank you.

2 MR KETTLEDAS: Thank you. The lady here  
3 in the red.

4 SPEAKER: I'd like to say to the three  
5 panellists thank you for their presentations. Just in  
6 short -

7 MR KETTLEDAS: Yes -

8 SPEAKER: I assumed everybody knows me.  
9 I'm Janet [inaudible] university.

10 MR KETTLEDAS: All those who knew you  
11 forgot your name.

12 SPEAKER: Okay. Just my comment, I just  
13 want to direct to Prof Webster. First I would like to say  
14 thanks for the idea or model of the ballots that you have  
15 actually proposed, but I would like to say also on the  
16 issue of the ballot is a democratic process for workers to  
17 engage on a strike to some extent could be determined by  
18 the union density versus the workforce in that particular  
19 space. Like we see today that most of our sectors, the  
20 mining sector itself has been affected by - networking, and  
21 I'm sure Crispen has alluded to the fact that most of the  
22 mineworkers - contracted through labour brokers and to me  
23 it points to some very fundamental point which leads me to  
24 say we have so much precarious workers who are working  
25 outside the union model who are not even union members

## Seminar Phase 2

1 simply because they are discriminated on the grounds of  
2 their employment status that [inaudible] workers or they're  
3 migrants to some extent and they cannot be part of the  
4 union. How then can we apply the ballot model in such a  
5 context? Can we say the ballot model could be an ideal one  
6 given the fact that the strike that we witnessed in  
7 Marikana was more of the wildcat strike, or maybe - I  
8 wouldn't like to say that but it was led by committees  
9 outside the union institution. Thank you.

10 MR KETTLEDAS: Thank you. Panel  
11 response.

12 PROF WEBSTER: Alright, thank you for  
13 these penetrating comments. I want to first respond to the  
14 ballot question. My colleague Crispen emphasised the  
15 importance of building consensus rather than a ballot. My  
16 position is that the two are integrally related. The way  
17 in which you embark on a strike, gradually, through  
18 meetings, through discussions, develop demands, demands are  
19 not met, so it's a participatory process. The allot is a  
20 way of ensuring protection of a secret ballot, that you  
21 have the support of everyone. That's, so they're not  
22 either, or. I just want to just emphasise that point.

23 I think it's - yeah, there's nothing wrong with  
24 bringing in the - not the IEC; there are whole sorts of  
25 electoral commissions - at the beginning of the strike. I

## Seminar Phase 2

1 think once you embark on the strike these are strategic  
2 questions the leadership has to take, but I think these -  
3 and I don't want to, it's an idea, we're exploring ideas of  
4 alternatives and I think we should be open to them and it  
5 works in SACTWU very well.

6           The second point, Gavin, I think - ja, those are,  
7 I think the difference, I think we most probably find  
8 common ground on understanding the political economy on -  
9 as a colleague in SWOP, the history of the mining industry  
10 and the violence that takes place has really been my life's  
11 work. So I am familiar with that, the structural violence.

12           I think the question we're really facing here is  
13 not about how vicious the capitalist system is; the  
14 question is how - this is my perspective - how can we  
15 improve the wages and working conditions of people, and  
16 that to me is a tactical and strategic question, and I  
17 think the centre of my argument would be how do you use  
18 your power in a strategic way. That's - and my feeling is  
19 when you resort to violence, not only do you create the  
20 tragedies that we've heard from testimony here of lives  
21 lost, I think you also have a confrontation, you lose sight  
22 of those central demands.

23           Now of course you can argue, and Crispen has made  
24 the point and I'm very familiar with the point that workers  
25 will say the only way we can get our way is through

## Seminar Phase 2

1 violence. Yes, okay, that is the history of our country.  
2 The question is how do we break out of that? That's the  
3 question, Gavin. That is the question you have to  
4 confront. How do we break that pattern? That's the  
5 question, and I think which leads to Janet's point.

6 I think, look, I'm an idealist, I hope not a  
7 naïve idealist, but it is pointing to what is possible, I  
8 think, and I think that's the spirit in which, which I was  
9 putting forward, and I think it is a challenge for the  
10 Farlam Commission that we never have another Marikana. So  
11 these are some ideas of how we could do it. I admit  
12 they're hopelessly reformist, naïve, and inadequate, but  
13 that's the best I can do. Thanks.

14 MR CHINGUNO: Briefly, Janet has touched  
15 on the issue around subcontracted workers and the question  
16 around violence. From my research I'll say most of the  
17 people who ended up being victims of this violence,  
18 especially the worker - they tend to be workers who are  
19 subcontracted. When you look at platinum for example, more  
20 than 30% of workers are subcontract workers.

21 But the problem is there now on the ground is the  
22 fact, almost like one of the rules when it comes to the  
23 strike, especially in relation to subcontractor workers is  
24 like whenever the workers of the main contractors, of the  
25 company, for example Lonmin, are on strike they would also

## Seminar Phase 2

1 apply that to everyone else, including those 30% who are  
2 not employed directly by Lonmin, they must also respect  
3 that strike. But the problem is we have been talking about  
4 solidarity here. They sort of, it's sort of like it's not  
5 your simple - it's sort of like the one way, because we  
6 have a number of incidents where those workers also who  
7 were subcontracted, they went on strike, but there is no  
8 sort of reverse solidarity.

9           Then the balloting, I don't know, the issue  
10 around voting to decide whether to go on strike or not, I  
11 think the problem which is there already it's like if we  
12 sort of make this decision through a vote, it's already  
13 from the onset, it's already sort of like an indication  
14 that the workers are already in a way that that sort of,  
15 that collective sort of consensus is not there from the  
16 onset. So in a way I would say in the current situation  
17 where the workers already have, even if you find that most  
18 of these strikes are organised by committee, they've got a  
19 process in terms of how this consensus, it's sort of like  
20 they, or have these mass meetings, sort of collective  
21 solidarity.

22           But if you put a ballot from the onset it's sort  
23 of like we're already dividing the workers. We're really,  
24 it becomes almost very - we're sort of like relegating that  
25 collective decision to sort of individuals to - because the

## Seminar Phase 2

1 problem with the balloting is like it's a - decision yes,  
2 but it's an individual, it's sort of like a different, you  
3 know we allow workers to sort of come up with a consensus,  
4 sort of consensus building.

5           MR KETTLEDAS:            Alright, thank you very  
6 much to the panellists for the responses to your questions  
7 and the comments that you have raised. I think we've had  
8 some good presentations this afternoon. It builds on the  
9 work that has gone before in the other two seminars and the  
10 contributions that we have received and the comments that  
11 have been made are very useful and I think it only enriches  
12 the discussion as we go forward. So thank you very much  
13 for your participation. Before we close we will have some  
14 closing remarks from senior counsel Geoff Budlender, one of  
15 the evidence leaders, and thereafter we would then adjourn  
16 this seminar until the next one. So thank you very much.

17           MR BUDLENDER SC:           Thank you, Les. Very  
18 briefly on behalf of all of us I'd like to thank Gareth and  
19 Eddie and Crispen for the work they've done, sharing their  
20 insights with us. This is a very important subject,  
21 important that we see it from a range of perspectives.  
22 That's one of the reasons I particularly want to thank all  
23 of you for being here. I think the discussion session has  
24 been particularly lively. These seminars have come to  
25 represent, to show a mixture of analysis and passion in

## Seminar Phase 2

1 dealing with the issue before us, and I think that's quite  
2 right; it's important that we should not lose either of  
3 those.

4           Our comments from the floor raised a number of  
5 very important issues, and I hope I'll be forgiven,  
6 including by the Monene family, if I particularly mention  
7 the importance of the viewpoint expressed by Mrs Fundi,  
8 which is a viewpoint which we hear insufficiently, I think,  
9 in and around the Commission; important point of view we  
10 sometimes forget.

11           But again I'd like to thank the speakers, I'd  
12 like to thank Les Kettledas for again chairing as well.  
13 I'd like to thank those who've put in a lot of work into  
14 organising the study for us, Thantaswa, Department of  
15 Justice, and I hope they'll [inaudible]. Can I remind you  
16 - times and details will be announced in due course. We  
17 look forward to seeing you there. Thank you all of you for  
18 your presence.

19           [PROCEEDINGS ADJOURNED]