

**THE JUDICIAL COMMISSION OF INQUIRY INTO THE EVENTS AT THE
MARIKANA MINE IN RUSTENBURG, NORTH WEST PROVINCE, SOUTH
AFRICA DURING AUGUST 2012**

SUBMISSIONS ON BEHALF OF MR CYRIL RAMAPHOSA

SUMMARY OF MR RAMAPHOSA'S EVIDENCE TO THE COMMISSION

1. Mr Ramaphosa is the Deputy President of South Africa and the Deputy President of the African National Congress ("**ANC**").
2. Mr Ramaphosa was the founding General Secretary of the National Union of Mineworkers ("**NUM**"), a position he held until his election as the Secretary General of the ANC in 1991.
3. During 2012 Mr Ramaphosa was the chairman of Shanduka Group (Pty) Ltd ("**Shanduka**"), an investment holding company which he founded in 2001. He resigned from this position on 20 December 2013.
4. During 2010, Shanduka had acquired an effective shareholding of approximately 9 per cent in two subsidiaries of Lonmin Plc ("**Lonmin**"), namely Western Platinum Ltd and Eastern Platinum Ltd, collectively known as Lonplats.
5. Mr Ramaphosa was appointed as a non-executive director of Lonmin in July 2010. He resigned on 31 January 2013.
6. Mr Ramaphosa was not a member of government during 2012. He was an elected member of the National Executive Committee of the ANC.

7. Certain email correspondence exchanged between Mr Ramaphosa and Lonmin personnel on 15 August 2012 formed part of a bundle of documents relevant to phase 1 of the Commission that was submitted by Lonmin.¹ The emails recorded that Mr Ramaphosa had conversations with, in particular, the Minister of Police and the Minister of Mineral Resources concerning the events that were then unfolding at Marikana.
8. Prior to Mr Ramaphosa's appearance before the Commission on 11 and 12 August 2014, reference was made to these emails and to Mr Ramaphosa's intervention with the Ministers on a number of occasions in the proceedings. In particular:
 - 8.1 In his opening statement, Mr Dali Mpofu SC, representing, inter alia, the Lonmin Community Committee and the 272 workers arrested subsequent to 16 August 2012, characterised the emails as *"a long line of emails under, in the same vein, effectively encouraging so-called concomitant action to deal with these criminals, whose only crime was that they were seeking a wage increase"*.²
 - 8.2 Mr Mpofu SC subsequently stated that he intended to argue that the emails were evidence of *"concerted pressure that was being put, among others, on the police – well, firstly on the government not to call the strike a strike or not to call it labour related but to*

¹ Exhibit BBB4, p 289a-f.

² Record, page 221, lines 19–22.

call it so-called criminal action and that was a platform from which it would be easier to inflict violence upon the strikers".³

8.3 During the appearance of Mr Ramaphosa before the Commission, Mr Mpofo sought to attribute a causal connection between Mr Ramaphosa's intervention and the killing of miners by the police on 16 August 2012. He indicated that he intended to argue that Mr Ramaphosa had, in the course of his intervention in the events, instigated these actions for the purpose of protecting his financial interests in Lonmin. Mr Ramaphosa was said to have placed pressure on the Ministers to cause the police to take extreme measures to suppress the strike. As a consequence, Mr Mpofo said that he would ask the Commission to recommend that Mr Ramaphosa be charged with murder.⁴

9. The intervention described above, Mr Ramaphosa's motivation for it and its effect on his interlocutors and on the developing situation was the focus of Mr Ramaphosa's testimony to the Commission. That testimony established the sequence of events we describe below.

10. Mr Ramaphosa's testimony, and the evidence given by his interlocutors to the Commission, shows that the accusations described above that

³ Record, page 4806, lines 8-14 (cross-examination of Mr Zokwana).

⁴ Record, page 34794, lines 11-15; p 34802, line 21 to 34803, line 1, p 34835, line 7 to 34837, line 8.

were made against him on the strength of the email correspondence and his account of his interactions with the Ministers are groundless.

Sequence of events involving Mr Ramaphosa: 12-15 August 2012

11. The email correspondence referred to above constitutes the concluding part of a sequence of emails received or sent by Mr Ramaphosa that commenced on 11 August 2012 and ended on 15 August 2012 and that concerned the events that were unfolding on those days. Mr Ramaphosa submitted the earlier emails in the sequence in evidence when he appeared before the Commission on 11 August 2014.

12. The full sequence of emails is as follows:

12.1 Email from Thandeka Ncube to Cyril Ramaphosa headed “Note on RDO industrial action sequence of events”, 11 August 2012, 10:00.⁵

12.2 Email from Cyril Ramaphosa to Thandeka Ncube headed “Re: Note on RDO industrial action sequence of events”, 11 August 2012 11.45pm.⁶

⁵ Exhibit JJJ1.

⁶ Exhibit JJJ1.

- 12.3 Email from Albert Jamieson to Cyril Ramaphosa, Phuti Mahanyele and Thandeka Ncube headed “FW: Unrest at Marikana Mines”, 12 August 2012 1:16pm.⁷
- 12.4 Email from Cyril Ramaphosa to Barnard Mokwena, Phuti Mahanyele, Thandeka Ncube and Albert Jamieson headed “Re: Lonmin condemns inter-union fatal killings at WPL”, 13 August 2012, 2.34am.⁸
- 12.5 Email from Thandeka Ncube to Cyril Ramaphosa and others headed “Lonmin update”, 13 August 2012, 2:48pm.⁹
- 12.6 Email from Roger Phillimore to Cyril Ramaphosa and others headed “Marikana”, 14 August 2012 4:28pm.¹⁰
- 12.7 Email from Cyril Ramaphosa to Roger Phillimore headed “Re:Marikana”, 15 August 2012 00:47.
- 12.8 Email from Albert Jamieson to Cyril Ramaphosa headed “Security Situation”, 15 August 2012 0:94am.
- 12.9 Email from Cyril Ramaphosa to Albert Jamieson and others headed “Re:Security Situation”, 15 August 2012, 12:18pm.

⁷ Exhibit JJJ2.

⁸ Exhibit JJJ4.

⁹ JJJ6.

¹⁰BBB4.

12.10 Email from Albert Jamieson to Cyril Ramaphosa and others headed “Re: Security Situation”, 15 August 2012 1:13pm.

12.11 Email from Cyril Ramaphosa to Albert Jamieson and others headed “Re: Security Situation”, 15 August 2012 2:58pm.

12.12 Email from Albert Jamieson to Cyril Ramaphosa headed “Re: Security Situation”, 15 August 2012 3:13pm.

13. In addition, Mr Ramaphosa submitted phone records listing calls and text messages exchanged between him and Mr Mthethwa, the Minister of Police, and Ms Shabangu, the Minister of Mineral Resources, between 12 and 15 August 2012.¹¹

14. The documents listed above record that telephone conversations took place between Mr Ramaphosa and the two ministers, with Mr Senzeni Zokwana, the President of the NUM, and Mr Mike Teke, the Deputy Chairman of the Chamber of Mines.

15. Mr Ramaphosa also spoke to Mr James Motlatsi, the former President of the NUM.¹²

16. In the email listed at 12.11 above, Mr Ramaphosa referred to a discussion with Minister Shabangu in Cape Town. In his oral testimony to the Commission on 11 and 12 August 2014, Mr Ramaphosa said that

¹¹ JJJJ3.

¹² Record, page 34433, lines 11-21.

he went to Cape Town on a scheduled trip for the launch of the National Development Plan on 15 August 2012.¹³ While in Cape Town he met briefly with the Minister on that day.¹⁴ We deal further with the timing of this meeting below.

17. In the email listed at paragraph 12.7 above, Mr Ramaphosa said that he would be speaking to Gwede Mantashe, the ANC Secretary General to suggest that the ANC should intervene. In his oral testimony to the Commission on 11 August 2014, Mr Ramaphosa said that he could not recall exact details of when this discussion with Mr Mantashe took place or the substance of the discussion.¹⁵
18. The proposed meeting between Mr Ramaphosa, Mr Zokwana, Mr Motlatsi and Mr Frans Baleni, the General Secretary of NUM scheduled for Friday 17 August 2014 and referenced in the email at paragraph 12.7 above, did not take place.¹⁶

¹³ Record, page 34750, lines 8-23.

¹⁴ Record, page 34431, line 20 to page 34432, line 16.

¹⁵ Record, page 34433, line 21 to page 34434, line 4.

¹⁶ Record, page 34602, lines 3-5.

Mr Ramaphosa's motivation for his intervention and the content of his conversations with the Ministers

The Minister of Police

19. Mr Ramaphosa was first apprised on 11 August 2012 about the strike by rock drill operators at the Marikana mine. Prior to his receiving the email listed at paragraph 12.1 above, Mr Ramaphosa was unaware that there was strike activity taking place at the mine.¹⁷

20. On Sunday 12 August 2012, Mr Ramaphosa received the email from Mr Jamieson that is listed at paragraph 12.3 above. This email attaches an email that had been sent slightly earlier by Mr Jamieson to Mr Thibedi Ramontja, the Director-General of the Department of Mineral Resources recording that *"a terrible and distressing situation"* had developed at Marikana which had resulted in two members of the Lonmin security staff being killed. Mr Jamieson told Mr Ramontja that *"at this stage it is clear that probably only a massive police and possibly army presence will stop us having a repeat of recent past experiences ... we simply do not have the capability to protect life and limb and I urge you to please use your influence to bring this over to the necessary officials who have the resources at their disposal. We need help"*.

¹⁷ Record, p 34410, lines 7-14.

21. Mr Ramaphosa testified that after having read this email *“I felt it was necessary to respond to the concern that he was raising in his e-mail, particularly in relation to the people who had either been injured or had been killed and I realised that he was concerned that this could escalate into more violence and more deaths ...”*¹⁸
22. Mr Ramaphosa’s approach to the unfolding events over the next days remained consistent with this initial characterisation of the situation. He explained that characterisation in his written statement to the Commission as follows:

“Arising from the violence, which included the brutal murder of six employees, two Lonmin security personnel and two police officers over the course of several days, Lonmin management took the view that this was not simply an industrial dispute, and that Lonmin needed the SAPS to restore and maintain law and order and prevent further loss of life. Lonmin was anxious that government urgently be informed of the seriousness of the situation.

... Accordingly, I undertook to speak with government. My motivation in so doing was to prevent the further loss of life and injury. The reference to "concomitant action" in my email communication of 15 August 2012 was to indicate that appropriate steps should be taken to bring the violence and deaths to an end. I was calling for peace and for the necessary steps to be taken to save lives.”

¹⁸ Record, p 34418, lines 15-20.

23. Mr Ramaphosa testified that the phrase used by him in the email listed at paragraph 12.11 above, namely “*act in a more pointed way*” was intended to have the same meaning.¹⁹
24. Mr Ramaphosa then sent an SMS message to Mr Mthethwa at 4.24pm on 12 August 2012. Mr Mthethwa telephoned him at 6.38pm on the same day.
25. Mr Ramaphosa’s recollection of his conversation with Mr Mthethwa is as follows:

“And I, in my call to him, just raised the concern that Jameson [Jamieson] had raised, that people had died and are dying and the situation was getting worse and Jameson had requested that there should be more police presence so as to prevent further loss of life and I said, Minister, the situation that I've been told about on the ground is such that they need help, they need more police presence on the ground, could he do something about it.

MR UNTERHALTER SC: Did you in that conversation in any way seek to suggest to the Minister what steps should be taken and what sort of police presence was required?

MR RAMAPHOSA: No, I did not suggest what steps should be taken. All I communicated to him was the concern that Jameson had raised and that they needed more help and police presence on the ground would help.

MR UNTERHALTER SC: Yes, and as far as you recall what was the Minister’s response?

¹⁹ Record, p 34443, lines 15-21: (“we wanted to communicate to government that we’re dealing with people who are being killed and what we need to do is to prevent further deaths occurring, and acting in a pointed way would mean that those who are perpetrating those acts should be arrested so that that comes to a stop and does not carry on any further. That is acting in a pointed way”).

MR RAMAPHOSA: The Minister said he would look into it and he would, he said to me, talk to his people on the ground and see for him – and hear for himself what is actually unfolding.²⁰

26. This accords with the earlier testimony of Mr Mthethwa, who said that, on Sunday 12 August 2012, *“I spoke to the Deputy President now, Mr Ramaphosa, who had called earlier, or who had left a message and I then returned the call. He explained to me that the situation in Marikana is bad. I’m not quoting his exact words, but he says he’s concerned because people are dying there, property is being damaged there and as far as he can see there are no police, or adequate police on the ground.”*²¹
27. Mr Ramaphosa said that he understood Mr Jamieson’s reasons for forwarding the email to him to be to seek his assistance because, as he put it, *“He knew that I knew the Minister of Police and I knew some of the people in authority and as he needed, as the manager on the manager on the ground [sic], assistance, he knew that I could communicate a message to the Minister of Police, which I did.”*²²
28. In the early hours of Monday, 13 August 2013 at 2.34am, Mr Ramaphosa sent the email listed at paragraph 12.4 above. This email responds to a press release forwarded to him the previous evening by Mr Barnard Mokwena, the Human Resources Manager of Lonmin. The press release

²⁰ Record, p 34418, line 24 to p 34419, line 20.

²¹ Record, page 32079, lines 8 to 15. See also p 32080, line 20 to 25.

²² Record, p 34420, line 22 to 34421, line 1.

records the deaths of the two security officers described above and reports on other criminal actions taking place, including the shooting of employees attempting to report for work.

29. The email to Mr Mokwena records that Mr Ramaphosa had had a further conversation with Mr Mthethwa. It describes the content of this conversation as follows: *“I ... stressed that they should immediately take steps to ensure that they protect life and property and bring those responsible for the terrible acts of violence and death to book. He said that they are working on it.”*

30. In his testimony to the Commission Mr Ramaphosa explained what he intended by this request and described the response of the Minister:

MR RAMAPHOSA: When I said that they should be brought to book, I had anticipated and expected that those who were responsible would be identified and they would be arrested, which is what I expect police to do normally in pursuing their tasks and duties.

MR UNTERHALTER SC: Yes. What about the steps to ensure that property and life is protected, did you have anything in mind as far as that’s concerned?

MR RAMAPHOSA: Yes. It occurred to me that where these incidents had occurred, as one got the full detail thereof, police presence was either absent or very minimal and that is why I felt these people were being attacked and being killed in the way they were.

MR UNTERHALTER SC: Yes. Now the response that you record here is that the Minister said that they were working on it. As far as you can recall, did the Minister convey anything more to you other than that?

MR RAMAPHOSA: No, he did not convey anything to me other than that and he just said they're working on it, they were aware of the unfolding situation.²³

31. Mr Mthethwa had added the following recollection of his conversation with Mr Ramaphosa, without specifying whether this was the first or second conversation:

MS NKOSI-THOMAS SC: Now, what information was given to you by these two gentlemen [Mr Ramaphosa and Mr Zokwana] who called you on the 12th in the evening? What did they tell you exactly?

MINISTER MTHETHWA: Well, they were saying that they are concerned about what is happening in the area and particularly the deputy president now, Mr Ramaphosa, saying that he doesn't think that what is happening is pure industrial action in the true sense of the word. It has criminality on it and violence, which thing when the provincial commissioner spoke to me I tended to understand where he was coming from because industrial action as you would understand it is that the constitution and the Gatherings Act allow people to picket, to march, to demonstrate and do all sorts of things unarmed. Now, if there's an action, a protest action or industrial action, and lives of people are lost that's criminal so I understood where they were coming from. That's all I want to say on that.²⁴

32. Mr Ramaphosa did not mention this detail in his testimony in respect of either of his conversations with the Minister, but it accords with what he says in his email of 15 August 2012 (listed at paragraph 12.9 above) that *"all government officials need to understand that we are essentially*

²³ Record, p 34424, lines 5 to 25.

²⁴ Record, page 32090, line 16 to page 32091, line 9.

dealing with a criminal act. I have said as much to the Minister of Safety and Security”.

33. Mr Ramaphosa had no further interaction with the Minister of Police after this.
34. There is some further evidence concerning Mr Ramaphosa’s telephone call in the testimony of General Mbombo, the North West Provincial Commissioner of Police. General Mbombo gave evidence that she had received a telephone call from the Minister of Police on the evening of Sunday 12 August 2012. She said that *“the Minister phoned me, saying that he got a report from Cyril, asking whether he knew about what was happening at Marikana. He said he heard, he saw, and Cyril said this appears to be a problem, he should please look carefully at it”*.²⁵
35. General Mbombo then described a meeting with Lonmin management on Tuesday 14 August 2012 in which she mentioned this telephone call. She said that the Minister *“mentioned a name to me that is also calling him that is pressurising him... Cyril Ramaphosa.”*²⁶

²⁵ Record, page 21321, lines 19-23.

²⁶ Record, page 21322, lines 18 to 21.

36. General Mbombo made it clear that the characterisation that the Minister was being “pressurised” by Mr Ramaphosa was her own and did not come from the Minister.²⁷
37. Mr Mthethwa denied that he had been put under pressure as a result of Mr Ramaphosa’s conversations with him.²⁸ He also denied that it had been Mr Ramaphosa’s intention to exert pressure on him²⁹ and denied that he, in turn, had placed improper pressure on the police in his interactions with the National and Provincial Commissioners.

The Minister of Mineral Resources

38. The email listed at paragraph 12.5 above describes the further events taking place at Marikana. It records that “Last night two more Lonmin employees were killed ... This brings us to a total of four dead employees”.
39. The email of 14 August 2012 listed at paragraph 12.6 above, from the Chairman of Lonmin, Mr Roger Phillimore, refers to a “massive police intervention” having a “significant effect” on the situation at the mine, but that, in his view, “the challenge will be to sustain it”. The email also records that Mr Phillimore had attempted without success to speak with “the Minister”.

²⁷ Record, p 21323, lines 5-19.

²⁸ Record, p 32331, lines 13-22.

²⁹ Record, p 32335, lines 1-11.

40. Mr Phillimore did not, in his email, identify the Minister to whom he was referring. Mr Ramaphosa said that he thought it was the Minister of Mineral Resources.³⁰
41. At 6:35pm on the same day, 14 August 2012, Mr Ramaphosa spoke by telephone to Ms Shabangu. His account of that conversation is as follows:

The discussions I had with Minister Shabangu who was then the Minister of Mineral Resources, were that the situation at Lonmin was deteriorating, more and more people were getting killed and injured and that was a matter of great concern to me because I knew how this type of situation can just escalate into more and more violence and I was saying that we need to make sure that at a government level we sensitise people so that the Minister of Police can be of assistance and deploy more police who can protect life and property.

MR UNTERHALTER SC: Yes, it appears also from the summary and point 1 [a reference to Mr Ramaphosa's email at paragraph 12.7 above], that you had indicated that inaction and silence was not desirable. Did you raise this matter with the minister?

MR RAMAPHOSA: Yes, I did because being the minister responsible for these matters I felt that she needed to be communicating a government view and I have said that to her even on a number of occasions, whenever there are mining accidents I am one of those who often say, Minister, people have died on the mines, you as the minister concerned needs to be making a statement and taking a position, it is your responsibility and similarly with this type of situation I felt that she had a responsibility to be heard because she is in a leadership position.³¹

³⁰ Record, p 34428, lines 6-7.

³¹ Record, p 34431, lines 1-19.

42. A few hours later, in the early hours of 15 August 2012, Mr Ramaphosa wrote the email listed at paragraph 12.7 above to Mr Phillipmore. It records the content of his telephone conversation with Ms Shabangu and that Ms Shabangu said she would be in Cape Town during the course of 15 August 2012. Mr Ramaphosa said that he was also going to be in Cape Town and suggested that they “*would have a discussion and see what she needs to do*”. The email further records that Ms Shabangu “*was going to issue a statement*”.
43. That meeting and discussion took place in the afternoon of 15 August 2012 in Cape Town where Mr Ramaphosa was on a scheduled trip.³² The timing of the discussion is indicated by the emails at paragraph 12.9 (which indicates that, as at 12:18pm on 15 August 2012 the meeting had not yet taken place) and at paragraph 12.11 (which reports that Mr Ramaphosa had “*just had a discussion with Susan Shabangu in Cape Town*”).
44. Mr Ramaphosa recalled that he saw her very briefly and “*more or less repeated precisely*” what he had said to her in his telephone conversation.³³
45. Ms Shabangu in her evidence before the Commission recalled that the meeting had taken place in the morning and not the afternoon of 15

³² Record, p 34750, lines 8-24.

³³ Record, p 344321, line 25 to p 34432, line 2.

August 2012. She also recalled that the telephone conversation between them had been very brief and entailed little more than setting up the meeting.³⁴ That meeting was, in her words, “*an extensive, sort of a very brief, but very detailed discussion*”.³⁵

46. Mr Ramaphosa’s version of the content of the telephone conversation and the timing of the meeting between him and Ms Shabangu is backed up by the near contemporaneous emails he sent reporting on the conversation and the meetings. In any event, nothing turns on these differences. According to Ms Shabangu’s evidence, her interaction with Mr Ramaphosa was to the following effect:

CHAIRPERSON: It sounds actually as if you said two things along with what he said and I think you’ve already agreed with that. Let’s just get clarity. He spoke to you about your silence and I take it indicated he didn’t think it was a good idea for you to be silent and then you made two answers as I understand it. The first thing is we’re going to respond and you’ve already said you were going to respond by issuing a statement. So you said we’re going to issue a statement, but you then said – it then turned out you’d both be in Cape Town on the Wednesday and you then said let’s have a meeting and discuss it. Is that essentially what happened?

MS SHABANGU: Exactly, that’s correct, Mr Chairman.

MS PILLAY: Now, Minister, according to Mr Ramaphosa, based on his discussion with you on the 14th, you agreed to issue a statement. Now I’ll take you to the records and we’ll show you that in fact your spokesman does issue a statement the next day. Now what I want to

³⁴ Record, p 35555, line 14-16.

³⁵ Record p 35550-35551.

clarify with you was that the outcome of the discussion you had with Mr Ramaphosa on the 14th?

MS SHABANGU: It did not arise. Mr Chairman, it did not arise out of a discussion with Mr Ramaphosa. We already had agreed that we were going to issue a statement, it does not arise because of that discussion.

MS PILLAY: ... When Mr Ramaphosa indicated to you that he thought that you were silent on what had happened at Lonmin did you agree with him?

MS SHABANGU: Well what happened on the day when he raised the matter telephonically to say that we're silent and as I said that we said we're not silent. Already during the day we had agreed that we must issue a statement in relation to what was going on, Mr Chairman, there.³⁶

47. Following their meeting, Mr Ramaphosa wrote the email at paragraph 12.11. He recorded that Ms Shabangu *"agrees that what we are going through is not a labour dispute but a criminal act. She will correct her characterisation of what we are experiencing"*.
48. Mr Ramaphosa testified that he thought he had persuaded Ms Shabangu to change her earlier characterisation of the events. This was consonant with his approach throughout his intervention which was to secure an appropriate police response to deal with the escalating and terrible violence that was taken place.

CHAIRPERSON: Did you in fact persuade her in any event to abandon the characterisation that it was just a wage dispute and to take a different view of the matter?

³⁶ Record, page 35561, line 21 to 35562, line 4.

MR RAMAPHOSA: Yes –

CHAIRPERSON: As it were, withdraw her, correct her previous public statement –

MR RAMAPHOSA: Yes.

CHAIRPERSON: - that it was just a wage dispute, management and the workers must get together and sort the thing out.

MR RAMAPHOSA: Indeed.

CHAIRPERSON: Did you think that if that recipe which the Minister had proposed had been followed that the police wouldn't have to be called in, wouldn't have to try to deal with it as a law and order matter, but just management and workers get together, you think the problem would have gone away?

MR RAMAPHOSA: Mr Chairman, it's not to exclude that possibility. I think it is eminently possible that if that track had been pursued it could have borne some fruit, but what was of prime importance then was that we were dealing with a situation that was highly volatile where people were getting killed, and for good or bad reason we felt that we needed to stabilise the situation first, that we should prevent further people from getting killed and in my view that does not exclude the fact that once the situation is stabilised, or as you stabilise it you will be able to talk to people and negotiate.³⁷

49. Ms Shabangu however denied that she had been persuaded to correct her characterisation by Mr Ramaphosa.

MS SHABANGU: I disagree what is written here to say I will correct my characterisation.

CHAIRPERSON: Did you not say to him that having said already what you told us you said during the radio interview with Mr Gwala, about it being a wage dispute, and management, the unions and so on must sort it out. Did you not say to him that you would correct that characterisation and you would mention in future the statement that

³⁷ Record, p 34593, line 17- p 34594, line 20.

there was this aspect of criminality which required attention. Did you not say that?

MS SHABANGU: Well, Mr Chairman, the issue of saying that it's no longer a labour dispute, that's what I'm correcting, and now it's being characterised as a criminal act. I've never said we were characterising that dispute now as criminal, because the dispute was relevant. What I said, what was creeping in was criminality or a criminal act, but it does not change the strike, or the labour dispute to be a criminal, or criminalising the strike itself or the illegal action.³⁸

50. Mr Ramaphosa's email reporting on his meeting with Ms Shabangu also records that the Minister *"is going into Cabinet and will brief the President as well and get the Minister of Police to act in a more pointed way"*. He explained that he meant the following by his use of the phrase "a more pointed way".

MR RAMAPHOSA: I meant that what we wanted to communicate to government that we're dealing with people who are being killed and what we need to do is to prevent further deaths occurring, and acting in a pointed way would mean that those who are perpetrating those acts should be arrested so that that comes to a stop and does not carry on any further. That is acting in a pointed way.

MR UNTERHALTER SC: As far as continuing to contain the situation, did you have anything else in mind as far as how the police should go about ensuring that there was no further escalation?

MR RAMAPHOSA: No, I did not have anything further in mind except that the police need to do their job and as I understand it their job is to have a presence where acts of criminality are taking place, to prevent further acts of criminality and to arrest those who they know

³⁸ Record, p 35595, lines 9-25. See also p 35635, lines 7-23.

have perpetrated such acts so that they do not carry on perpetrating those acts. That is the sum total of what I expect the police to do.³⁹

51. Ms Shabangu testified that she disagreed that the characterisation of her own intervention with the President and the Minister of Police was aimed at getting them to act in a more pointed way or that it was done at the instance of Mr Ramaphosa.

MS PILLAY: ...I asked you earlier what it is that you wanted the President, and specifically the Minister of Police to do, and if you look at paragraph 2 of Mr Ramaphosa's email it seems to address that point because he says "She is going into cabinet and will brief the President," and this is the important part, "as well and get the Minister of Police Nathi Mthethwa to act in a more pointed way." Now is that a correct reflection of your discussion with Mr Ramaphosa?

MS SHABANGU: It's not a correct reflection. When I say I will raise it with the President and the Minister of Police it does not necessarily talk about a pointed way. I will raise it. I will raise it with the Minister. I think we need to realise –

CHAIRPERSON: What's point of raising it with the Minister – I'm sorry to interrupt, sorry. Do you want to finish your answer first?

MS SHABANGU: Ja, I'm saying, saying that I will raise it, it does not mean that I wanted to have, or in the way it's written here. I've never – my intention was to raise it with him.⁴⁰

52. Ms Shabangu also denied that she was put under pressure by Mr Ramaphosa.

³⁹ Record, p 34443, line 13 to p 34444, line 8.

⁴⁰ Record, p 35596, lines 1-21. See also p 65636, lines 4-19.

CHAIRPERSON: Can I ask you a question about that? The last sentence of that email says, "Let us keep the pressure on them to act correctly." Did you regard what Mr Ramaphosa was doing when he was talking to you as being putting pressure on you?

MS SHABANGU: Well, Mr Chairman, as you can understand he's the one who was under pressure, so he had to find a way of making sure that his colleagues feel that he's doing well.⁴¹

SUMMARY OF MR RAMAPHOSA'S EVIDENCE WITH REFERENCE TO THE COMMISSION'S INVESTIGATIVE MANDATE

53. Insofar as it pertains to the first phase of the Commission's investigation, the evidence of Mr Ramaphosa is relevant to the following themes in the Commission's terms of reference:

53.1 Inquiring into and making findings on the conduct of Lonmin, in particular whether the company responded appropriately to the threat and outbreak of violence which occurred at its premises and more generally whether its policy, procedure, practices and conduct relating to its employees and organised labour may have contributed to the tragic events of August 2012.⁴²

⁴¹ Record, p 35636, line 23 to p 35637, line 6.

⁴² Terms of reference, para 1.1.

53.2 Whether the conduct of individuals in fomenting and/or otherwise promoting a situation of conflict and confrontation may have given rise to the tragic incident, whether directly or indirectly.⁴³

54. As regards the first area of inquiry, the Commission's evidence leader and various of the parties' representatives put to Mr Ramaphosa certain of the criticisms of the conduct of Lonmin that have arisen over the course of the Commission's hearings and questioned him on his knowledge of and influence over that conduct. Those criticisms can be summarised as follows:

54.1 Criticism of Lonmin's focus on ensuring an increased police presence at the mine, to the neglect of other strategies for dealing with the unrest such as negotiation with the strikers.

54.2 Criticism of Lonmin's approach to the unprotected strike, which was to follow disciplinary procedures and dismiss the strikers.

54.3 Criticism of Lonmin's failure to address the economic and social needs of its workers, particularly in respect of housing and living conditions.

54.4 Criticism of Lonmin's approach of dealing with NUM to the exclusion of AMCU.

⁴³ Terms of reference, para 1.6.

54.5 The allegation that Lonmin's intention in securing a police presence at the mine was to use force, or the threat of it, to break the strike.

54.6 Criticism of Lonmin in allowing a differential to develop between the wages of the rock drill operators employed at its mines and those employed at other mines.

55. Mr Ramaphosa's evidence in this regard emphasised the limits of his influence over and knowledge of the company's policies and actions by virtue of his role as a non-executive director of the company, who was uninvolved in its day-to-day management.⁴⁴ In this capacity, Mr Ramaphosa was reliant for information about the company's decisions concerning the handling of the strike on what he was told by Lonmin executive management. He was also reliant on that management for the implementation of policy decisions taken at board level.

56. That said, Mr Ramaphosa accepted the criticism of certain of Lonmin's policies and actions, and of his own role in shaping those policies and influencing those actions. In particular:

56.1 Mr Ramaphosa accepted that, had Lonmin adopted a more flexible stance concerning negotiation directly with the striking workers rather than insisting that negotiations be channeled

⁴⁴ Record, p 34559, lines 4-21.

through the NUM, there may have been a different outcome and the deaths of strikers on 16 August 2012 might have been avoided.⁴⁵

56.2 Mr Ramaphosa was critical of the approach of Lonmin to seek to discipline and dismiss the strikers rather than to negotiate with them.⁴⁶

56.3 Mr Ramaphosa accepted that he might have sought to use such influence as he had over the direction of the company to seek to change the approach of Lonmin management in this respect. However, in his assessment of the situation, the most immediate priority was to stabilise the situation and to restore peace and order.⁴⁷

56.4 Mr Ramaphosa denied that it was his intention to secure a heightened police presence in order to break the strike, as opposed to stabilising the situation and bringing the acts of violence to an end.⁴⁸

56.5 Mr Ramaphosa accepted, as he had indicated in his first email of the sequence described above, that the differential between the

⁴⁵ Record, p 34454, lines 19-24.

⁴⁶ Record, p 34466, line 3 to 34467, line 11.

⁴⁷ Record, p 34471, line 21 to 34472, line 10.

⁴⁸ Record, p 34597, line 15 to 34598, line 6.

wages of the rock drill operators at the various mines was a recipe for conflict. He was not however, prior to being being so informed by Ms Ncube emails, aware that this situation had developed.

56.6 As to Lonmin's focus on ensuring an increased police presence at the mine, to the neglect of other strategies for dealing with the unrest such as negotiation with the strikers, Mr Ramaphosa accepted that events may have turned out differently had a different strategy been adopted and that the deaths that occurred on 16 August might possibly have been avoided.⁴⁹

56.7 Though the social and economic conditions of the Lonmin workers and the response of the company towards ameliorating those condition is an issue more properly for subsequent phases of the Commission's inquiry, Mr Ramaphosa accepted that Lonmin had fallen short in this regard and that he, as non-executive director bore some measure of of responsibility for this:

CHAIRPERSON: Now what Mr Mpofu wants to know from you is would you be able, in order to help us, to define the extent to which you, in retrospect, because we all know that hindsight is 20/20, to what extent would you with hindsight say you fell short?

MR RAMAPHOSA: Is that what you would like me to deal with now?

CHAIRPERSON: I would.

⁴⁹ Record, p 34454, line 19 to 34455, line 6.

MR RAMAPHOSA: Yes I think, Mr Chairman, I think the responsibility at the board level, as a non-executive board member of Lonmin, one should have sought to find out more closely the actual process of negotiating with the union. That I concede I should have done, I should have probed that and I should also, I would concede, have looked more closely at the unintended consequences that flowed from paying workers a living out allowance and finally getting them to a point where they took the money and went to live in less than desirable accommodation where they would face challenges of nutrition, challenges of having to pay a lot of money for transport. As a company that is what we should have done, we should have looked more closely at where the workers live and how they live because the living conditions that workers were exposed to is not something that I can proudly say that I would like to be associated with, in fact they are appalling and they are inhuman and that is what I should have paid, and indeed the board should have paid closer attention to.⁵⁰

57. As regards the second area of inquiry, Mr Mpofu SC pursued in cross-examination of Mr Ramaphosa the line of argument foreshadowed in his opening address and outlined in paragraph 8 above.
58. It is clear from the evidence summarised above that the inferences sought to be drawn from Mr Ramaphosa's dealings with the Ministers and his description in his emails of those dealings are groundless and unjustifiable. In particular:

58.1 The use of the phrase "dastardly criminal" and Mr Ramaphosa's concern that the events should be characterised as criminal acts,

⁵⁰ Record, page 344651.

as opposed to a mere labour dispute, are consistent with his apprehension of the situation, based on his limited knowledge of what was taking place.

58.2 Mr Ramaphosa's intervention was undertaken in circumstances of great urgency and on the basis of the information he had received from Lonmin management concerning escalating violence and the brutal murders of Lonmin personnel and others. These murders loomed large in his assessment of the events and in his consequent decision to engage with the Ministers in the hope of securing a heightened police presence that could stabilise the situation.

58.3 There is no evidence to gainsay Mr Ramaphosa's account of his dealings with the Ministers. That account is consistent with the contemporaneous reports he gave of those conversations in the email correspondence.

58.4 Mr Ramaphosa's characterisation of the events taking place as criminal was justified in the circumstances. His focus was on the violence that had occurred and that appeared to be escalating and, in particular, the murders of Lonmin security personnel and workers. No sinister intent is revealed by this characterisation. He did not regard or characterise the unprotected strike itself as criminal.

58.5 Mr Ramaphosa's focus on restoring relative peace to the mine did not exclude the possibility that negotiations could commence once this had been achieved. Such negotiations would be the province of Lonmin management and would not be undertaken by him. It is for this reason that he did not make this the focus of his interventions with the Ministers.

58.6 Nevertheless, Mr Ramaphosa said of the proposed meeting between Mr Ramaphosa, Mr Zokwana, Mr Motlatsi and Mr Baleni, that was scheduled for Friday 17 August 2014, that *"if we could have met, would have found a way of dealing with this strike and putting some ideas on the table"*.⁵¹

58.7 There is no evidence justifying the contention that Mr Ramaphosa's intervention was intended to instigate the tragic events of 16 August 2012 or that it in fact did so.

CONCLUSION

59. Mr Ramaphosa's clear articulation of the circumstances of his intervention and of his reasons for it provide no basis for the overblown series of contentions put to him by Mr Mpofu.

60. Whilst recognising that the course of events might have turned out differently had negotiations with the strikers taken place, Mr

⁵¹ Record, page 34559, lines 18-21.

Ramaphosa's evidence clearly establishes that his intervention was conducted with the intention of assisting to contain the spiral of violence that had developed. There is no link that can be drawn between that intervention and the tragic events of 16 August 2011.

DN Unterhalter SC
IB Currie

Chambers, 27 October 2014

**THE JUDICIAL COMMISSION OF INQUIRY INTO THE EVENTS AT THE
MARIKANA MINE IN RUSTENBURG, NORTH WEST PROVINCE, SOUTH
AFRICA DURING AUGUST 2012**

SUBMISSIONS ON BEHALF OF MR CYRIL RAMAPHOSA

SUMMARY OF MR RAMAPHOSA'S EVIDENCE TO THE COMMISSION

1. Mr Ramaphosa is the Deputy President of South Africa and the Deputy President of the African National Congress ("**ANC**").
2. Mr Ramaphosa was the founding General Secretary of the National Union of Mineworkers ("**NUM**"), a position he held until his election as the Secretary General of the ANC in 1991.
3. During 2012 Mr Ramaphosa was the chairman of Shanduka Group (Pty) Ltd ("**Shanduka**"), an investment holding company which he founded in 2001. He resigned from this position on 20 December 2013.
4. During 2010, Shanduka had acquired an effective shareholding of approximately 9 per cent in two subsidiaries of Lonmin Plc ("**Lonmin**"), namely Western Platinum Ltd and Eastern Platinum Ltd, collectively known as Lonplats.
5. Mr Ramaphosa was appointed as a non-executive director of Lonmin in July 2010. He resigned on 31 January 2013.
6. Mr Ramaphosa was not a member of government during 2012. He was an elected member of the National Executive Committee of the ANC.

7. Certain email correspondence exchanged between Mr Ramaphosa and Lonmin personnel on 15 August 2012 formed part of a bundle of documents relevant to phase 1 of the Commission that was submitted by Lonmin.¹ The emails recorded that Mr Ramaphosa had conversations with, in particular, the Minister of Police and the Minister of Mineral Resources concerning the events that were then unfolding at Marikana.
8. Prior to Mr Ramaphosa's appearance before the Commission on 11 and 12 August 2014, reference was made to these emails and to Mr Ramaphosa's intervention with the Ministers on a number of occasions in the proceedings. In particular:
 - 8.1 In his opening statement, Mr Dali Mpofu SC, representing, inter alia, the Lonmin Community Committee and the 272 workers arrested subsequent to 16 August 2012, characterised the emails as *"a long line of emails under, in the same vein, effectively encouraging so-called concomitant action to deal with these criminals, whose only crime was that they were seeking a wage increase"*.²
 - 8.2 Mr Mpofu SC subsequently stated that he intended to argue that the emails were evidence of *"concerted pressure that was being put, among others, on the police – well, firstly on the government not to call the strike a strike or not to call it labour related but to*

¹ Exhibit BBB4, p 289a-f.

² Record, page 221, lines 19–22.

call it so-called criminal action and that was a platform from which it would be easier to inflict violence upon the strikers".³

8.3 During the appearance of Mr Ramaphosa before the Commission, Mr Mpofo sought to attribute a causal connection between Mr Ramaphosa's intervention and the killing of miners by the police on 16 August 2012. He indicated that he intended to argue that Mr Ramaphosa had, in the course of his intervention in the events, instigated these actions for the purpose of protecting his financial interests in Lonmin. Mr Ramaphosa was said to have placed pressure on the Ministers to cause the police to take extreme measures to suppress the strike. As a consequence, Mr Mpofo said that he would ask the Commission to recommend that Mr Ramaphosa be charged with murder.⁴

9. The intervention described above, Mr Ramaphosa's motivation for it and its effect on his interlocutors and on the developing situation was the focus of Mr Ramaphosa's testimony to the Commission. That testimony established the sequence of events we describe below.

10. Mr Ramaphosa's testimony, and the evidence given by his interlocutors to the Commission, shows that the accusations described above that

³ Record, page 4806, lines 8-14 (cross-examination of Mr Zokwana).

⁴ Record, page 34794, lines 11-15; p 34802, line 21 to 34803, line 1, p 34835, line 7 to 34837, line 8.

were made against him on the strength of the email correspondence and his account of his interactions with the Ministers are groundless.

Sequence of events involving Mr Ramaphosa: 12-15 August 2012

11. The email correspondence referred to above constitutes the concluding part of a sequence of emails received or sent by Mr Ramaphosa that commenced on 11 August 2012 and ended on 15 August 2012 and that concerned the events that were unfolding on those days. Mr Ramaphosa submitted the earlier emails in the sequence in evidence when he appeared before the Commission on 11 August 2014.

12. The full sequence of emails is as follows:

12.1 Email from Thandeka Ncube to Cyril Ramaphosa headed “Note on RDO industrial action sequence of events”, 11 August 2012, 10:00.⁵

12.2 Email from Cyril Ramaphosa to Thandeka Ncube headed “Re: Note on RDO industrial action sequence of events”, 11 August 2012 11.45pm.⁶

⁵ Exhibit JJJ1.

⁶ Exhibit JJJ1.

- 12.3 Email from Albert Jamieson to Cyril Ramaphosa, Phuti Mahanyele and Thandeka Ncube headed “FW: Unrest at Marikana Mines”, 12 August 2012 1:16pm.⁷
- 12.4 Email from Cyril Ramaphosa to Barnard Mokwena, Phuti Mahanyele, Thandeka Ncube and Albert Jamieson headed “Re: Lonmin condemns inter-union fatal killings at WPL”, 13 August 2012, 2.34am.⁸
- 12.5 Email from Thandeka Ncube to Cyril Ramaphosa and others headed “Lonmin update”, 13 August 2012, 2:48pm.⁹
- 12.6 Email from Roger Phillimore to Cyril Ramaphosa and others headed “Marikana”, 14 August 2012 4:28pm.¹⁰
- 12.7 Email from Cyril Ramaphosa to Roger Phillimore headed “Re:Marikana”, 15 August 2012 00:47.
- 12.8 Email from Albert Jamieson to Cyril Ramaphosa headed “Security Situation”, 15 August 2012 0:94am.
- 12.9 Email from Cyril Ramaphosa to Albert Jamieson and others headed “Re:Security Situation”, 15 August 2012, 12:18pm.

⁷ Exhibit JJJ2.

⁸ Exhibit JJJ4.

⁹ JJJ6.

¹⁰BBB4.

12.10 Email from Albert Jamieson to Cyril Ramaphosa and others headed “Re: Security Situation”, 15 August 2012 1:13pm.

12.11 Email from Cyril Ramaphosa to Albert Jamieson and others headed “Re: Security Situation”, 15 August 2012 2:58pm.

12.12 Email from Albert Jamieson to Cyril Ramaphosa headed “Re: Security Situation”, 15 August 2012 3:13pm.

13. In addition, Mr Ramaphosa submitted phone records listing calls and text messages exchanged between him and Mr Mthethwa, the Minister of Police, and Ms Shabangu, the Minister of Mineral Resources, between 12 and 15 August 2012.¹¹

14. The documents listed above record that telephone conversations took place between Mr Ramaphosa and the two ministers, with Mr Senzeni Zokwana, the President of the NUM, and Mr Mike Teke, the Deputy Chairman of the Chamber of Mines.

15. Mr Ramaphosa also spoke to Mr James Motlatsi, the former President of the NUM.¹²

16. In the email listed at 12.11 above, Mr Ramaphosa referred to a discussion with Minister Shabangu in Cape Town. In his oral testimony to the Commission on 11 and 12 August 2014, Mr Ramaphosa said that

¹¹ JJJJ3.

¹² Record, page 34433, lines 11-21.

he went to Cape Town on a scheduled trip for the launch of the National Development Plan on 15 August 2012.¹³ While in Cape Town he met briefly with the Minister on that day.¹⁴ We deal further with the timing of this meeting below.

17. In the email listed at paragraph 12.7 above, Mr Ramaphosa said that he would be speaking to Gwede Mantashe, the ANC Secretary General to suggest that the ANC should intervene. In his oral testimony to the Commission on 11 August 2014, Mr Ramaphosa said that he could not recall exact details of when this discussion with Mr Mantashe took place or the substance of the discussion.¹⁵
18. The proposed meeting between Mr Ramaphosa, Mr Zokwana, Mr Motlatsi and Mr Frans Baleni, the General Secretary of NUM scheduled for Friday 17 August 2014 and referenced in the email at paragraph 12.7 above, did not take place.¹⁶

¹³ Record, page 34750, lines 8-23.

¹⁴ Record, page 34431, line 20 to page 34432, line 16.

¹⁵ Record, page 34433, line 21 to page 34434, line 4.

¹⁶ Record, page 34602, lines 3-5.

Mr Ramaphosa's motivation for his intervention and the content of his conversations with the Ministers

The Minister of Police

19. Mr Ramaphosa was first apprised on 11 August 2012 about the strike by rock drill operators at the Marikana mine. Prior to his receiving the email listed at paragraph 12.1 above, Mr Ramaphosa was unaware that there was strike activity taking place at the mine.¹⁷
20. On Sunday 12 August 2012, Mr Ramaphosa received the email from Mr Jamieson that is listed at paragraph 12.3 above. This email attaches an email that had been sent slightly earlier by Mr Jamieson to Mr Thibedi Ramontja, the Director-General of the Department of Mineral Resources recording that *"a terrible and distressing situation"* had developed at Marikana which had resulted in two members of the Lonmin security staff being killed. Mr Jamieson told Mr Ramontja that *"at this stage it is clear that probably only a massive police and possibly army presence will stop us having a repeat of recent past experiences ... we simply do not have the capability to protect life and limb and I urge you to please use your influence to bring this over to the necessary officials who have the resources at their disposal. We need help"*.

¹⁷ Record, p 34410, lines 7-14.

21. Mr Ramaphosa testified that after having read this email *“I felt it was necessary to respond to the concern that he was raising in his e-mail, particularly in relation to the people who had either been injured or had been killed and I realised that he was concerned that this could escalate into more violence and more deaths ...”*¹⁸
22. Mr Ramaphosa’s approach to the unfolding events over the next days remained consistent with this initial characterisation of the situation. He explained that characterisation in his written statement to the Commission as follows:

“Arising from the violence, which included the brutal murder of six employees, two Lonmin security personnel and two police officers over the course of several days, Lonmin management took the view that this was not simply an industrial dispute, and that Lonmin needed the SAPS to restore and maintain law and order and prevent further loss of life. Lonmin was anxious that government urgently be informed of the seriousness of the situation.

... Accordingly, I undertook to speak with government. My motivation in so doing was to prevent the further loss of life and injury. The reference to "concomitant action" in my email communication of 15 August 2012 was to indicate that appropriate steps should be taken to bring the violence and deaths to an end. I was calling for peace and for the necessary steps to be taken to save lives.”

¹⁸ Record, p 34418, lines 15-20.

23. Mr Ramaphosa testified that the phrase used by him in the email listed at paragraph 12.11 above, namely “*act in a more pointed way*” was intended to have the same meaning.¹⁹
24. Mr Ramaphosa then sent an SMS message to Mr Mthethwa at 4.24pm on 12 August 2012. Mr Mthethwa telephoned him at 6.38pm on the same day.
25. Mr Ramaphosa’s recollection of his conversation with Mr Mthethwa is as follows:

“And I, in my call to him, just raised the concern that Jameson [Jamieson] had raised, that people had died and are dying and the situation was getting worse and Jameson had requested that there should be more police presence so as to prevent further loss of life and I said, Minister, the situation that I've been told about on the ground is such that they need help, they need more police presence on the ground, could he do something about it.

MR UNTERHALTER SC: Did you in that conversation in any way seek to suggest to the Minister what steps should be taken and what sort of police presence was required?

MR RAMAPHOSA: No, I did not suggest what steps should be taken. All I communicated to him was the concern that Jameson had raised and that they needed more help and police presence on the ground would help.

MR UNTERHALTER SC: Yes, and as far as you recall what was the Minister’s response?

¹⁹ Record, p 34443, lines 15-21: (“we wanted to communicate to government that we’re dealing with people who are being killed and what we need to do is to prevent further deaths occurring, and acting in a pointed way would mean that those who are perpetrating those acts should be arrested so that that comes to a stop and does not carry on any further. That is acting in a pointed way”).

MR RAMAPHOSA: The Minister said he would look into it and he would, he said to me, talk to his people on the ground and see for him – and hear for himself what is actually unfolding.²⁰

26. This accords with the earlier testimony of Mr Mthethwa, who said that, on Sunday 12 August 2012, *“I spoke to the Deputy President now, Mr Ramaphosa, who had called earlier, or who had left a message and I then returned the call. He explained to me that the situation in Marikana is bad. I’m not quoting his exact words, but he says he’s concerned because people are dying there, property is being damaged there and as far as he can see there are no police, or adequate police on the ground.”*²¹
27. Mr Ramaphosa said that he understood Mr Jamieson’s reasons for forwarding the email to him to be to seek his assistance because, as he put it, *“He knew that I knew the Minister of Police and I knew some of the people in authority and as he needed, as the manager on the manager on the ground [sic], assistance, he knew that I could communicate a message to the Minister of Police, which I did.”*²²
28. In the early hours of Monday, 13 August 2013 at 2.34am, Mr Ramaphosa sent the email listed at paragraph 12.4 above. This email responds to a press release forwarded to him the previous evening by Mr Barnard Mokwena, the Human Resources Manager of Lonmin. The press release

²⁰ Record, p 34418, line 24 to p 34419, line 20.

²¹ Record, page 32079, lines 8 to 15. See also p 32080, line 20 to 25.

²² Record, p 34420, line 22 to 34421, line 1.

records the deaths of the two security officers described above and reports on other criminal actions taking place, including the shooting of employees attempting to report for work.

29. The email to Mr Mokwena records that Mr Ramaphosa had had a further conversation with Mr Mthethwa. It describes the content of this conversation as follows: *“I ... stressed that they should immediately take steps to ensure that they protect life and property and bring those responsible for the terrible acts of violence and death to book. He said that they are working on it.”*

30. In his testimony to the Commission Mr Ramaphosa explained what he intended by this request and described the response of the Minister:

MR RAMAPHOSA: When I said that they should be brought to book, I had anticipated and expected that those who were responsible would be identified and they would be arrested, which is what I expect police to do normally in pursuing their tasks and duties.

MR UNTERHALTER SC: Yes. What about the steps to ensure that property and life is protected, did you have anything in mind as far as that’s concerned?

MR RAMAPHOSA: Yes. It occurred to me that where these incidents had occurred, as one got the full detail thereof, police presence was either absent or very minimal and that is why I felt these people were being attacked and being killed in the way they were.

MR UNTERHALTER SC: Yes. Now the response that you record here is that the Minister said that they were working on it. As far as you can recall, did the Minister convey anything more to you other than that?

MR RAMAPHOSA: No, he did not convey anything to me other than that and he just said they're working on it, they were aware of the unfolding situation.²³

31. Mr Mthethwa had added the following recollection of his conversation with Mr Ramaphosa, without specifying whether this was the first or second conversation:

MS NKOSI-THOMAS SC: Now, what information was given to you by these two gentlemen [Mr Ramaphosa and Mr Zokwana] who called you on the 12th in the evening? What did they tell you exactly?

MINISTER MTHETHWA: Well, they were saying that they are concerned about what is happening in the area and particularly the deputy president now, Mr Ramaphosa, saying that he doesn't think that what is happening is pure industrial action in the true sense of the word. It has criminality on it and violence, which thing when the provincial commissioner spoke to me I tended to understand where he was coming from because industrial action as you would understand it is that the constitution and the Gatherings Act allow people to picket, to march, to demonstrate and do all sorts of things unarmed. Now, if there's an action, a protest action or industrial action, and lives of people are lost that's criminal so I understood where they were coming from. That's all I want to say on that.²⁴

32. Mr Ramaphosa did not mention this detail in his testimony in respect of either of his conversations with the Minister, but it accords with what he says in his email of 15 August 2012 (listed at paragraph 12.9 above) that *"all government officials need to understand that we are essentially*

²³ Record, p 34424, lines 5 to 25.

²⁴ Record, page 32090, line 16 to page 32091, line 9.

dealing with a criminal act. I have said as much to the Minister of Safety and Security”.

33. Mr Ramaphosa had no further interaction with the Minister of Police after this.
34. There is some further evidence concerning Mr Ramaphosa’s telephone call in the testimony of General Mbombo, the North West Provincial Commissioner of Police. General Mbombo gave evidence that she had received a telephone call from the Minister of Police on the evening of Sunday 12 August 2012. She said that *“the Minister phoned me, saying that he got a report from Cyril, asking whether he knew about what was happening at Marikana. He said he heard, he saw, and Cyril said this appears to be a problem, he should please look carefully at it”*.²⁵
35. General Mbombo then described a meeting with Lonmin management on Tuesday 14 August 2012 in which she mentioned this telephone call. She said that the Minister *“mentioned a name to me that is also calling him that is pressurising him... Cyril Ramaphosa.”*²⁶

²⁵ Record, page 21321, lines 19-23.

²⁶ Record, page 21322, lines 18 to 21.

36. General Mbombo made it clear that the characterisation that the Minister was being “pressurised” by Mr Ramaphosa was her own and did not come from the Minister.²⁷
37. Mr Mthethwa denied that he had been put under pressure as a result of Mr Ramaphosa’s conversations with him.²⁸ He also denied that it had been Mr Ramaphosa’s intention to exert pressure on him²⁹ and denied that he, in turn, had placed improper pressure on the police in his interactions with the National and Provincial Commissioners.

The Minister of Mineral Resources

38. The email listed at paragraph 12.5 above describes the further events taking place at Marikana. It records that “Last night two more Lonmin employees were killed ... This brings us to a total of four dead employees”.
39. The email of 14 August 2012 listed at paragraph 12.6 above, from the Chairman of Lonmin, Mr Roger Phillimore, refers to a “massive police intervention” having a “significant effect” on the situation at the mine, but that, in his view, “the challenge will be to sustain it”. The email also records that Mr Phillimore had attempted without success to speak with “the Minister”.

²⁷ Record, p 21323, lines 5-19.

²⁸ Record, p 32331, lines 13-22.

²⁹ Record, p 32335, lines 1-11.

40. Mr Phillimore did not, in his email, identify the Minister to whom he was referring. Mr Ramaphosa said that he thought it was the Minister of Mineral Resources.³⁰
41. At 6:35pm on the same day, 14 August 2012, Mr Ramaphosa spoke by telephone to Ms Shabangu. His account of that conversation is as follows:

The discussions I had with Minister Shabangu who was then the Minister of Mineral Resources, were that the situation at Lonmin was deteriorating, more and more people were getting killed and injured and that was a matter of great concern to me because I knew how this type of situation can just escalate into more and more violence and I was saying that we need to make sure that at a government level we sensitise people so that the Minister of Police can be of assistance and deploy more police who can protect life and property.

MR UNTERHALTER SC: Yes, it appears also from the summary and point 1 [a reference to Mr Ramaphosa's email at paragraph 12.7 above], that you had indicated that inaction and silence was not desirable. Did you raise this matter with the minister?

MR RAMAPHOSA: Yes, I did because being the minister responsible for these matters I felt that she needed to be communicating a government view and I have said that to her even on a number of occasions, whenever there are mining accidents I am one of those who often say, Minister, people have died on the mines, you as the minister concerned needs to be making a statement and taking a position, it is your responsibility and similarly with this type of situation I felt that she had a responsibility to be heard because she is in a leadership position.³¹

³⁰ Record, p 34428, lines 6-7.

³¹ Record, p 34431, lines 1-19.

42. A few hours later, in the early hours of 15 August 2012, Mr Ramaphosa wrote the email listed at paragraph 12.7 above to Mr Phillimore. It records the content of his telephone conversation with Ms Shabangu and that Ms Shabangu said she would be in Cape Town during the course of 15 August 2012. Mr Ramaphosa said that he was also going to be in Cape Town and suggested that they “*would have a discussion and see what she needs to do*”. The email further records that Ms Shabangu “*was going to issue a statement*”.
43. That meeting and discussion took place in the afternoon of 15 August 2012 in Cape Town where Mr Ramaphosa was on a scheduled trip.³² The timing of the discussion is indicated by the emails at paragraph 12.9 (which indicates that, as at 12:18pm on 15 August 2012 the meeting had not yet taken place) and at paragraph 12.11 (which reports that Mr Ramaphosa had “*just had a discussion with Susan Shabangu in Cape Town*”).
44. Mr Ramaphosa recalled that he saw her very briefly and “*more or less repeated precisely*” what he had said to her in his telephone conversation.³³
45. Ms Shabangu in her evidence before the Commission recalled that the meeting had taken place in the morning and not the afternoon of 15

³² Record, p 34750, lines 8-24.

³³ Record, p 344321, line 25 to p 34432, line 2.

August 2012. She also recalled that the telephone conversation between them had been very brief and entailed little more than setting up the meeting.³⁴ That meeting was, in her words, “*an extensive, sort of a very brief, but very detailed discussion*”.³⁵

46. Mr Ramaphosa’s version of the content of the telephone conversation and the timing of the meeting between him and Ms Shabangu is backed up by the near contemporaneous emails he sent reporting on the conversation and the meetings. In any event, nothing turns on these differences. According to Ms Shabangu’s evidence, her interaction with Mr Ramaphosa was to the following effect:

CHAIRPERSON: It sounds actually as if you said two things along with what he said and I think you’ve already agreed with that. Let’s just get clarity. He spoke to you about your silence and I take it indicated he didn’t think it was a good idea for you to be silent and then you made two answers as I understand it. The first thing is we’re going to respond and you’ve already said you were going to respond by issuing a statement. So you said we’re going to issue a statement, but you then said – it then turned out you’d both be in Cape Town on the Wednesday and you then said let’s have a meeting and discuss it. Is that essentially what happened?

MS SHABANGU: Exactly, that’s correct, Mr Chairman.

MS PILLAY: Now, Minister, according to Mr Ramaphosa, based on his discussion with you on the 14th, you agreed to issue a statement. Now I’ll take you to the records and we’ll show you that in fact your spokesman does issue a statement the next day. Now what I want to

³⁴ Record, p 35555, line 14-16.

³⁵ Record p 35550-35551.

clarify with you was that the outcome of the discussion you had with Mr Ramaphosa on the 14th?

MS SHABANGU: It did not arise. Mr Chairman, it did not arise out of a discussion with Mr Ramaphosa. We already had agreed that we were going to issue a statement, it does not arise because of that discussion.

MS PILLAY: ... When Mr Ramaphosa indicated to you that he thought that you were silent on what had happened at Lonmin did you agree with him?

MS SHABANGU: Well what happened on the day when he raised the matter telephonically to say that we're silent and as I said that we said we're not silent. Already during the day we had agreed that we must issue a statement in relation to what was going on, Mr Chairman, there.³⁶

47. Following their meeting, Mr Ramaphosa wrote the email at paragraph 12.11. He recorded that Ms Shabangu *"agrees that what we are going through is not a labour dispute but a criminal act. She will correct her characterisation of what we are experiencing"*.
48. Mr Ramaphosa testified that he thought he had persuaded Ms Shabangu to change her earlier characterisation of the events. This was consonant with his approach throughout his intervention which was to secure an appropriate police response to deal with the escalating and terrible violence that was taken place.

CHAIRPERSON: Did you in fact persuade her in any event to abandon the characterisation that it was just a wage dispute and to take a different view of the matter?

³⁶ Record, page 35561, line 21 to 35562, line 4.

MR RAMAPHOSA: Yes –

CHAIRPERSON: As it were, withdraw her, correct her previous public statement –

MR RAMAPHOSA: Yes.

CHAIRPERSON: - that it was just a wage dispute, management and the workers must get together and sort the thing out.

MR RAMAPHOSA: Indeed.

CHAIRPERSON: Did you think that if that recipe which the Minister had proposed had been followed that the police wouldn't have to be called in, wouldn't have to try to deal with it as a law and order matter, but just management and workers get together, you think the problem would have gone away?

MR RAMAPHOSA: Mr Chairman, it's not to exclude that possibility. I think it is eminently possible that if that track had been pursued it could have borne some fruit, but what was of prime importance then was that we were dealing with a situation that was highly volatile where people were getting killed, and for good or bad reason we felt that we needed to stabilise the situation first, that we should prevent further people from getting killed and in my view that does not exclude the fact that once the situation is stabilised, or as you stabilise it you will be able to talk to people and negotiate.³⁷

49. Ms Shabangu however denied that she had been persuaded to correct her characterisation by Mr Ramaphosa.

MS SHABANGU: I disagree what is written here to say I will correct my characterisation.

CHAIRPERSON: Did you not say to him that having said already what you told us you said during the radio interview with Mr Gwala, about it being a wage dispute, and management, the unions and so on must sort it out. Did you not say to him that you would correct that characterisation and you would mention in future the statement that

³⁷ Record, p 34593, line 17- p 34594, line 20.

there was this aspect of criminality which required attention. Did you not say that?

MS SHABANGU: Well, Mr Chairman, the issue of saying that it's no longer a labour dispute, that's what I'm correcting, and now it's being characterised as a criminal act. I've never said we were characterising that dispute now as criminal, because the dispute was relevant. What I said, what was creeping in was criminality or a criminal act, but it does not change the strike, or the labour dispute to be a criminal, or criminalising the strike itself or the illegal action.³⁸

50. Mr Ramaphosa's email reporting on his meeting with Ms Shabangu also records that the Minister *"is going into Cabinet and will brief the President as well and get the Minister of Police to act in a more pointed way"*. He explained that he meant the following by his use of the phrase "a more pointed way".

MR RAMAPHOSA: I meant that what we wanted to communicate to government that we're dealing with people who are being killed and what we need to do is to prevent further deaths occurring, and acting in a pointed way would mean that those who are perpetrating those acts should be arrested so that that comes to a stop and does not carry on any further. That is acting in a pointed way.

MR UNTERHALTER SC: As far as continuing to contain the situation, did you have anything else in mind as far as how the police should go about ensuring that there was no further escalation?

MR RAMAPHOSA: No, I did not have anything further in mind except that the police need to do their job and as I understand it their job is to have a presence where acts of criminality are taking place, to prevent further acts of criminality and to arrest those who they know

³⁸ Record, p 35595, lines 9-25. See also p 35635, lines 7-23.

have perpetrated such acts so that they do not carry on perpetrating those acts. That is the sum total of what I expect the police to do.³⁹

51. Ms Shabangu testified that she disagreed that the characterisation of her own intervention with the President and the Minister of Police was aimed at getting them to act in a more pointed way or that it was done at the instance of Mr Ramaphosa.

MS PILLAY: ...I asked you earlier what it is that you wanted the President, and specifically the Minister of Police to do, and if you look at paragraph 2 of Mr Ramaphosa's email it seems to address that point because he says "She is going into cabinet and will brief the President," and this is the important part, "as well and get the Minister of Police Nathi Mthethwa to act in a more pointed way." Now is that a correct reflection of your discussion with Mr Ramaphosa?

MS SHABANGU: It's not a correct reflection. When I say I will raise it with the President and the Minister of Police it does not necessarily talk about a pointed way. I will raise it. I will raise it with the Minister. I think we need to realise –

CHAIRPERSON: What's point of raising it with the Minister – I'm sorry to interrupt, sorry. Do you want to finish your answer first?

MS SHABANGU: Ja, I'm saying, saying that I will raise it, it does not mean that I wanted to have, or in the way it's written here. I've never – my intention was to raise it with him.⁴⁰

52. Ms Shabangu also denied that she was put under pressure by Mr Ramaphosa.

³⁹ Record, p 34443, line 13 to p 34444, line 8.

⁴⁰ Record, p 35596, lines 1-21. See also p 65636, lines 4-19.

CHAIRPERSON: Can I ask you a question about that? The last sentence of that email says, "Let us keep the pressure on them to act correctly." Did you regard what Mr Ramaphosa was doing when he was talking to you as being putting pressure on you?

MS SHABANGU: Well, Mr Chairman, as you can understand he's the one who was under pressure, so he had to find a way of making sure that his colleagues feel that he's doing well.⁴¹

SUMMARY OF MR RAMAPHOSA'S EVIDENCE WITH REFERENCE TO THE COMMISSION'S INVESTIGATIVE MANDATE

53. Insofar as it pertains to the first phase of the Commission's investigation, the evidence of Mr Ramaphosa is relevant to the following themes in the Commission's terms of reference:

53.1 Inquiring into and making findings on the conduct of Lonmin, in particular whether the company responded appropriately to the threat and outbreak of violence which occurred at its premises and more generally whether its policy, procedure, practices and conduct relating to its employees and organised labour may have contributed to the tragic events of August 2012.⁴²

⁴¹ Record, p 35636, line 23 to p 35637, line 6.

⁴² Terms of reference, para 1.1.

53.2 Whether the conduct of individuals in fomenting and/or otherwise promoting a situation of conflict and confrontation may have given rise to the tragic incident, whether directly or indirectly.⁴³

54. As regards the first area of inquiry, the Commission's evidence leader and various of the parties' representatives put to Mr Ramaphosa certain of the criticisms of the conduct of Lonmin that have arisen over the course of the Commission's hearings and questioned him on his knowledge of and influence over that conduct. Those criticisms can be summarised as follows:

54.1 Criticism of Lonmin's focus on ensuring an increased police presence at the mine, to the neglect of other strategies for dealing with the unrest such as negotiation with the strikers.

54.2 Criticism of Lonmin's approach to the unprotected strike, which was to follow disciplinary procedures and dismiss the strikers.

54.3 Criticism of Lonmin's failure to address the economic and social needs of its workers, particularly in respect of housing and living conditions.

54.4 Criticism of Lonmin's approach of dealing with NUM to the exclusion of AMCU.

⁴³ Terms of reference, para 1.6.

54.5 The allegation that Lonmin's intention in securing a police presence at the mine was to use force, or the threat of it, to break the strike.

54.6 Criticism of Lonmin in allowing a differential to develop between the wages of the rock drill operators employed at its mines and those employed at other mines.

55. Mr Ramaphosa's evidence in this regard emphasised the limits of his influence over and knowledge of the company's policies and actions by virtue of his role as a non-executive director of the company, who was uninvolved in its day-to-day management.⁴⁴ In this capacity, Mr Ramaphosa was reliant for information about the company's decisions concerning the handling of the strike on what he was told by Lonmin executive management. He was also reliant on that management for the implementation of policy decisions taken at board level.

56. That said, Mr Ramaphosa accepted the criticism of certain of Lonmin's policies and actions, and of his own role in shaping those policies and influencing those actions. In particular:

56.1 Mr Ramaphosa accepted that, had Lonmin adopted a more flexible stance concerning negotiation directly with the striking workers rather than insisting that negotiations be channeled

⁴⁴ Record, p 34559, lines 4-21.

through the NUM, there may have been a different outcome and the deaths of strikers on 16 August 2012 might have been avoided.⁴⁵

56.2 Mr Ramaphosa was critical of the approach of Lonmin to seek to discipline and dismiss the strikers rather than to negotiate with them.⁴⁶

56.3 Mr Ramaphosa accepted that he might have sought to use such influence as he had over the direction of the company to seek to change the approach of Lonmin management in this respect. However, in his assessment of the situation, the most immediate priority was to stabilise the situation and to restore peace and order.⁴⁷

56.4 Mr Ramaphosa denied that it was his intention to secure a heightened police presence in order to break the strike, as opposed to stabilising the situation and bringing the acts of violence to an end.⁴⁸

56.5 Mr Ramaphosa accepted, as he had indicated in his first email of the sequence described above, that the differential between the

⁴⁵ Record, p 34454, lines 19-24.

⁴⁶ Record, p 34466, line 3 to 34467, line 11.

⁴⁷ Record, p 34471, line 21 to 34472, line 10.

⁴⁸ Record, p 34597, line 15 to 34598, line 6.

wages of the rock drill operators at the various mines was a recipe for conflict. He was not however, prior to being being so informed by Ms Ncube emails, aware that this situation had developed.

56.6 As to Lonmin's focus on ensuring an increased police presence at the mine, to the neglect of other strategies for dealing with the unrest such as negotiation with the strikers, Mr Ramaphosa accepted that events may have turned out differently had a different strategy been adopted and that the deaths that occurred on 16 August might possibly have been avoided.⁴⁹

56.7 Though the social and economic conditions of the Lonmin workers and the response of the company towards ameliorating those condition is an issue more properly for subsequent phases of the Commission's inquiry, Mr Ramaphosa accepted that Lonmin had fallen short in this regard and that he, as non-executive director bore some measure of of responsibility for this:

CHAIRPERSON: Now what Mr Mpofu wants to know from you is would you be able, in order to help us, to define the extent to which you, in retrospect, because we all know that hindsight is 20/20, to what extent would you with hindsight say you fell short?

MR RAMAPHOSA: Is that what you would like me to deal with now?

CHAIRPERSON: I would.

⁴⁹ Record, p 34454, line 19 to 34455, line 6.

MR RAMAPHOSA: Yes I think, Mr Chairman, I think the responsibility at the board level, as a non-executive board member of Lonmin, one should have sought to find out more closely the actual process of negotiating with the union. That I concede I should have done, I should have probed that and I should also, I would concede, have looked more closely at the unintended consequences that flowed from paying workers a living out allowance and finally getting them to a point where they took the money and went to live in less than desirable accommodation where they would face challenges of nutrition, challenges of having to pay a lot of money for transport. As a company that is what we should have done, we should have looked more closely at where the workers live and how they live because the living conditions that workers were exposed to is not something that I can proudly say that I would like to be associated with, in fact they are appalling and they are inhuman and that is what I should have paid, and indeed the board should have paid closer attention to.⁵⁰

57. As regards the second area of inquiry, Mr Mpofu SC pursued in cross-examination of Mr Ramaphosa the line of argument foreshadowed in his opening address and outlined in paragraph 8 above.
58. It is clear from the evidence summarised above that the inferences sought to be drawn from Mr Ramaphosa's dealings with the Ministers and his description in his emails of those dealings are groundless and unjustifiable. In particular:
- 58.1 The use of the phrase "dastardly criminal" and Mr Ramaphosa's concern that the events should be characterised as criminal acts,

⁵⁰ Record, page 344651.

as opposed to a mere labour dispute, are consistent with his apprehension of the situation, based on his limited knowledge of what was taking place.

58.2 Mr Ramaphosa's intervention was undertaken in circumstances of great urgency and on the basis of the information he had received from Lonmin management concerning escalating violence and the brutal murders of Lonmin personnel and others. These murders loomed large in his assessment of the events and in his consequent decision to engage with the Ministers in the hope of securing a heightened police presence that could stabilise the situation.

58.3 There is no evidence to gainsay Mr Ramaphosa's account of his dealings with the Ministers. That account is consistent with the contemporaneous reports he gave of those conversations in the email correspondence.

58.4 Mr Ramaphosa's characterisation of the events taking place as criminal was justified in the circumstances. His focus was on the violence that had occurred and that appeared to be escalating and, in particular, the murders of Lonmin security personnel and workers. No sinister intent is revealed by this characterisation. He did not regard or characterise the unprotected strike itself as criminal.

58.5 Mr Ramaphosa's focus on restoring relative peace to the mine did not exclude the possibility that negotiations could commence once this had been achieved. Such negotiations would be the province of Lonmin management and would not be undertaken by him. It is for this reason that he did not make this the focus of his interventions with the Ministers.

58.6 Nevertheless, Mr Ramaphosa said of the proposed meeting between Mr Ramaphosa, Mr Zokwana, Mr Motlatsi and Mr Baleni, that was scheduled for Friday 17 August 2014, that *"if we could have met, would have found a way of dealing with this strike and putting some ideas on the table"*.⁵¹

58.7 There is no evidence justifying the contention that Mr Ramaphosa's intervention was intended to instigate the tragic events of 16 August 2012 or that it in fact did so.

CONCLUSION

59. Mr Ramaphosa's clear articulation of the circumstances of his intervention and of his reasons for it provide no basis for the overblown series of contentions put to him by Mr Mpofu.

60. Whilst recognising that the course of events might have turned out differently had negotiations with the strikers taken place, Mr

⁵¹ Record, page 34559, lines 18-21.

Ramaphosa's evidence clearly establishes that his intervention was conducted with the intention of assisting to contain the spiral of violence that had developed. There is no link that can be drawn between that intervention and the tragic events of 16 August 2011.

DN Unterhalter SC
IB Currie

Chambers, 27 October 2014

**THE JUDICIAL COMMISSION OF INQUIRY INTO THE EVENTS AT THE
MARIKANA MINE IN RUSTENBURG, NORTH WEST PROVINCE, SOUTH
AFRICA DURING AUGUST 2012**

REPLYING SUBMISSIONS ON BEHALF OF MR CYRIL RAMAPHOSA

1. These submissions focus on certain of the arguments that have been advanced in respect of Mr Ramaphosa's role in the events under investigation.
2. There are two principal themes to those arguments:
 - 2.1 Mr Ramaphosa was a non-executive director of Lonmin between July 2010 and 31 January 2013. In this capacity, he is said to bear some responsibility for the relevant actions and omissions of Lonmin.
 - 2.2 Mr Ramaphosa intervened with, in particular, the Minister of Police and the Minister of Mineral Resources during the period 12-15 August 2012. This intervention has been said to have had a causal role to play in the deaths that occurred on 16 August 2012, more particularly:
 - 2.2.1 The aim of the intervention has been said to be, in concert with Lonmin, to lobby and collude with the SAPS to "*break the strike*".¹

¹ Submissions on behalf of families, pp414-420.

2.2.2 Mr Ramaphosa’s intervention is said to have had the consequence of introducing an element of political pressure into the situation that influenced the subsequent events. More particularly:

2.2.2.1 According to the evidence leaders, Mr Ramaphosa’s call to Minister Mthethwa on the evening of Sunday 12 August 2012 was probably the reason for subsequent calls made by the Minister to the police commissioners. These calls may have been a factor in the decision ultimately taken by the provincial commissioner to move precipitately to the “*tactical phase*” of the police operation on 16 August 2012.²

2.2.2.2 On behalf of the arrested and injured, the more extreme claim is made that Mr Ramaphosa’s intervention entailed the deliberate setting in motion of a “*chain of political pressure*” with the intention of ensuring a “*violent solution*” to the strike.³

² Evidence leaders’ submissions, p 549, para 1005.

³ Submissions on behalf of injured and arrested persons, p 223, para 598; p 239, para 640.

3. We make the following brief submissions in reply in respect of each of these arguments.

THE LIMITS OF MR RAMAPHOSA'S KNOWLEDGE OF AND INFLUENCE OVER LONMIN'S CONDUCT

4. The evidence leaders are critical of Lonmin's response to the strike of 9 August 2012 and to the conflict that followed from it. That response could be characterised as focused on securing the presence of the police and police action to deal with the violence and attacks on persons and property and declining to pursue the option of negotiation with the strikers on the issue of their wage demand. It is in this context that the evidence leaders submit that *"[i]t may well be that the directors, and perhaps particularly Mr Ramaphosa given his background, should have appreciated the need for urgent action to address the underlying labour dispute, and should have intervened actively to ensure that management took such action."*⁴
5. This submission largely accords with Mr Ramaphosa's own conclusions expressed during his testimony.⁵
6. That said, Mr Ramaphosa's evidence also emphasised the limits of his knowledge of, involvement in and influence over the management of the

⁴ Evidence leaders' submissions, p 535, para 973.

⁵ Record, p 34454, lines 19-24; p 34466, line 3 to 34467, line 11; p 34471, line 21 to 34472, line 10.

company that were attendant on his role as a non-executive director.⁶ It should thus be kept in mind that, while an intervention by Mr Ramaphosa along the lines postulated by the evidence leaders was possible, there is no certainty that it would necessarily have had any effect on the line that had been decided upon and that was being taken by the company's management.⁷

THE ALLEGED CONSPIRACY TO BREAK THE STRIKE

7. As to the second theme set out above, whatever criticisms are levelled at Lonmin's focus on the criminal conduct that attended the strike and on securing police action to prevent it and stabilise the situation, there is no direct evidence to justify the conclusion that Lonmin intended to influence the SAPS to use force to "*break the strike*". The transcript of the meeting between Lonmin management and General Mbombo which is relied on in support of this conclusion,⁸ is equally consistent with the interpretation that Lonmin agreed to issue an ultimatum to the strikers at the urging of General Mbombo.

⁶ Record, p 34534, lines 10-20; p 34559, lines 4-21.

⁷ See record, p 34566, line 21 to 34567, line 3: "All you can ever do is to bring things to the notice of others, for instance when it came to the issue of saying dismissal of workers I did say that dismissal of workers is not an option that should be considered, the extent to which, whether that was done or not is something that obviously can be examined. So the power and the authority that you say one had is simply not the case. You work with other people."

⁸ Exhibit JJJ192.

8. There is no evidence at all that Mr Ramaphosa participated in a mission to have the SAPS break the strike. His characterisation of the events that were taking place as “*criminal*” was a reference to the acts of violence and murder that had taken place and is objectively justified. His phrase “*act in a more pointed way*” was fully explained by him.⁹ The case that he participated in an alleged Lonmin conspiracy to break the strike is, we submit, built on little more on an interpretation of that phrase that seeks to impute a more sinister meaning to it.

THE ALLEGED “CHAIN” OF POLITICAL PRESSURE

9. The case made out in this respect by the evidence leaders is made tentatively and with due appreciation of the fact that it is made on the basis of hypothesising about the likely impact of the Minister’s calls on subsequent decisions of the police commissioners, particularly General Mbombo. There is no evidence that the Minister did anything more than what he said he did in these calls, which was to convey what he had been told about the situation at Marikana by Mr Ramaphosa and Mr Zokwana and ask what the police management was doing about it. The evidence leaders do not suggest that either Mr Ramaphosa’s or the Minister’s intervention was improper. No direct causal link is suggested

⁹ Record, p 34443, lines 15-21: (“we wanted to communicate to government that we’re dealing with people who are being killed and what we need to do is to prevent further deaths occurring, and acting in a pointed way would mean that those who are perpetrating those acts should be arrested so that that comes to a stop and does not carry on any further. That is acting in a pointed way”).

between Mr Ramaphosa engaging the Minister and the subsequent decisions taken by the provincial commissioner.

10. Such a link is however alleged in the submissions on behalf of arrested and injured persons. The argument is, with respect, somewhat difficult to follow but seems to proceed as follows:

- 10.1 Mr Ramaphosa's intervention entailed a *"conflict of interest"* between his role as a shareholder and director of Lonmin and his political involvements and connections.

- 10.2 As a result of Mr Ramaphosa's call, the Minister had informed the National Commissioner of political pressure from a *"politically high individual, who was a shareholder of Lonmin"*. *"The (political) nature and source of the pressure and the (shareholder) capacity in which it was exerted were therefore clearly understood by all the players, including the leadership of both SAPS and Lonmin"*.¹⁰

- 10.3 The national and provincial commissioners then reached a *"consensus ... that an opportunity to defuse the tensions and avoid further violence ought to be avoided, or presented purely and simply because, apart from resolving the violence (as had*

¹⁰ P 234, para 632.2.

*happened before), it would result in political credit going to a rival politician to the ruling ANC, Mr Julius Malema”.*¹¹

10.4 The timing of the police operation was therefore decided upon on the basis of these political considerations.¹²

10.5 Had the timing of the operation been different, then the specific deceased victims who perished would probably be alive today.¹³

10.6 The political pressure was therefore directly and causally connected to the 34 deaths, the injuries and arrests of the specific victims who suffered these calamities on 16 August 2012.¹⁴

11. We point out the following flaws in this argument:

11.1 There is no conflict of interest in Mr Ramaphosa seeking, in his capacity as a Lonmin director, to intervene with the Minister in order to direct the attention of the police to the criminal activities that were taking place and seek to have them stopped. Lonmin’s interests, those of the ANC and of the government were not in conflict in this regard.

¹¹ P 238, para 634.

¹² Submissions on behalf of injured and arrested persons, p 238, para 636.

¹³ Ibid p 239, para 638.

¹⁴ Ibid p 239, para 639.

- 11.2 In any event, even if there was a conflict of interest, it could have no bearing on the causal sequence of the subsequent events. At its highest, it would make Mr Ramaphosa's intervention improper or inappropriate but it would not implicate him in liability for the series of events that followed.
- 11.3 It was not improper for the Minister to call the commissioners or to tell them that he had spoken to Mr Ramaphosa. The Minister denied that he was pressured or that he placed any pressure on anyone else. There is no causal link established between the Minister's intervention and the tactics eventually decided upon by the police.
- 11.4 The concern about Mr Malema's possible involvement was certainly irrelevant, but the extent to which it influenced the provincial commissioner's decision is not definitively established by the evidence. As set out above, the evidence leads only so far as suggesting that the calls from the Minister "*are likely well have been a factor in that decision*". It is clear, however, that to the extent that the considerations pertaining to Mr Malema may have motivated the provincial commissioner in arriving at that decision, such considerations were not introduced by Mr Ramaphosa or the Minister.

DN Unterhalter SC
IB Currie
4 November 2014