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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 271

11 AUGUST 2014

PAGES 34403 TO 34605



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<p style="text-align: right;">Page 34403</p> <p>1 [PROCEEDINGS ON 11 AUGUST 2014] 2 [09:05] CHAIRPERSON: Mr Unterhalter, I believe 3 you're going to call your witness this morning. 4 MR UNTERHALTER SC: I am, thank you. I 5 appear for the Deputy President, Mr Ramaphosa, on the 6 instructions of Michael Katz and Sue Hayes of Edward Nathan 7 Sonnenbergs. We would ask that the witness be sworn. 8 CHAIRPERSON: Is he prepared to take the 9 oath? 10 MR UNTERHALTER SC: He is indeed. 11 CHAIRPERSON: Mr Ramaphosa, would you 12 please stand? Will you swear that the evidence you'll give 13 before this Commission will be the truth, the whole truth, 14 and nothing but the truth? Please raise your right hand 15 and say, "I swear, so help me God." 16 MATAMELA CYRIL RAMAPHOSA: I swear, so 17 help me God. 18 CHAIRPERSON: Thank you, you may be 19 seated. What are your full names, Mr Ramaphosa? 20 MR RAMAPHOSA: My full names are Matamela 21 Cyril Ramaphosa. 22 CHAIRPERSON: Thank you. Yes, Mr 23 Unterhalter. 24 EXAMINATION BY MR UNTERHALTER SC: Thank 25 you, Mr Chair. Deputy President, would you firstly tell us</p>	<p style="text-align: right;">Page 34405</p> <p>1 in coal, in the coal sector, in the gold sector, and to a 2 limited extent in the diamond sector, but also got an 3 opportunity to invest in the platinum sector through 4 Incwala Resources, which is the shareholder in Lonmin, and 5 this happened when the erstwhile shareholders, the black 6 economic empowerment shareholders, their funding 7 arrangement ran into trouble and they need refinancing. 8 MR UNTERHALTER SC: And when did that 9 occur? 10 MR RAMAPHOSA: If my recollection serves 11 me correctly that would have been some five years ago. 12 MR UNTERHALTER SC: Yes. Now having 13 taken a stake in the Lonmin subsidiaries were you entitled 14 to a position on the board of the company? 15 MR RAMAPHOSA: Yes, I was invited to the 16 board of the company, which I took up. 17 MR UNTERHALTER SC: And what position did 18 you hold on the board? 19 MR RAMAPHOSA: I was a non-executive 20 member of the PLC board, the one that's listed at the 21 London Stock Exchange, and the Johannesburg Stock Exchange. 22 MR UNTERHALTER SC: And upon what 23 committees in particular did you serve on that board? 24 MR RAMAPHOSA: I served on the 25 Transformation Committee of that board.</p>
<p style="text-align: right;">Page 34404</p> <p>1 of your current position? 2 MR RAMAPHOSA: I am currently the Deputy 3 President of the Republic of South Africa. I'm also the 4 Deputy President of the African National Congress. 5 MR UNTERHALTER SC: Now we are concerned 6 with events that occurred in 2012. I wonder if I could 7 take you back to that and firstly could you tell us 8 something of your position in the Shanduka Group? 9 MR RAMAPHOSA: I was chairman of the 10 Shanduka Group, having founded the company some 10, 12 11 years ago. I have since resigned on being elected as 12 Deputy President of the ANC. 13 MR UNTERHALTER SC: What is the Shanduka 14 Group? 15 MR RAMAPHOSA: The Shanduka Group is a 16 holding company that invests in a number of sectors of the 17 economy, in mining, in fast-moving goods, in energy, in 18 telecommunications, in financial services. That is the 19 type of investment holding company that Shanduka is. 20 MR UNTERHALTER SC: Now can you tell us 21 again briefly how Shanduka acquired an interest in Lonmin 22 subsidiaries? 23 MR RAMAPHOSA: The Shanduka Group through 24 its Shanduka resources has been involved in trying to 25 invest in the mining industry and to that end it invested</p>	<p style="text-align: right;">Page 34406</p> <p>1 MR UNTERHALTER SC: And just in brief 2 terms, what was the remit of the Transformation Committee? 3 MR RAMAPHOSA: The Transformation 4 Committee's task was to look at all the transformation 5 activities of the company to see the extent to which the 6 company could transform the issues of housing in the 7 company, for the workers that is, employment equity, and 8 indeed to look more closely at the mining plan that had 9 been, mining labour plan that had been filed with the 10 Department of Mineral Resources. 11 MR UNTERHALTER SC: Was Shanduka a 12 minority shareholder in the subsidiaries of Lonmin? 13 MR RAMAPHOSA: Yes, Shanduka was a 14 minority shareholder in Lonmin itself, although it was the 15 majority shareholder in Incwala, which was an empowerment 16 vehicle in which the IDC as well as Lonmin itself also held 17 a stake. 18 MR UNTERHALTER SC: Yes, now a statement 19 has been submitted to this Commission reflecting your 20 position on the issues that you've been asked to come and 21 testify about. Are you in a position to confirm the 22 contents of that statement? 23 MR RAMAPHOSA: Yes, I'm in a position to 24 confirm the contents of that statement. 25 MR UNTERHALTER SC: Now I just want to</p>

<p style="text-align: right;">Page 34407</p> <p>1 take you to –</p> <p>2 CHAIRPERSON: I'm sorry to interrupt you,</p> <p>3 Mr Unterhalter. Ms Pillay, what is the exhibit number of</p> <p>4 that statement?</p> <p>5 MS PILLAY: Chair, it's FFF29.</p> <p>6 CHAIRPERSON: FFF29?</p> <p>7 MS PILLAY: That's correct.</p> <p>8 CHAIRPERSON: Thank you. So it's already</p> <p>9 an exhibit but you've confirmed the contents as being</p> <p>10 correct?</p> <p>11 MR RAMAPHOSA: Yes, Mr Chairman, I do</p> <p>12 confirm it.</p> <p>13 CHAIRPERSON: Yes, thank you. Mr</p> <p>14 Unterhalter.</p> <p>15 MR UNTERHALTER SC: Now I want to take</p> <p>16 you to a number of aspects of the statement and go through</p> <p>17 a number of the events in a little more detail. There has</p> <p>18 been provided I believe to the Commission an evidence</p> <p>19 bundle. Chair, I'm not certain how these are –</p> <p>20 CHAIRPERSON: That is correct. We have</p> <p>21 the evidence bundle –</p> <p>22 MR UNTERHALTER SC: And is that –</p> <p>23 CHAIRPERSON: - with an index at the</p> <p>24 front indicating what the documents are. Unfortunately</p> <p>25 they haven't got the exhibit numbers, but Ms Pillay is in</p>	<p style="text-align: right;">Page 34409</p> <p>1 CHAIRPERSON: No, quadruple – we've been</p> <p>2 here a long time, Mr Unterhalter, it's quadruple J, I'm</p> <p>3 afraid.</p> <p>4 MR UNTERHALTER SC: Well, quadruple J, I</p> <p>5 beg your pardon.</p> <p>6 MS PILLAY: Chair, the next exhibit</p> <p>7 number is quadruple I.</p> <p>8 CHAIRPERSON: No, but I looks like 1,</p> <p>9 it's very confusing.</p> <p>10 MS PILLAY: Oh, yes of course. I</p> <p>11 apologise. Then it's quadruple J.</p> <p>12 CHAIRPERSON: So we normally in courts</p> <p>13 don't use the letter I for exhibits, or O for the same</p> <p>14 reason, although we did that in this case.</p> <p>15 MR UNTERHALTER SC: Well, if I could</p> <p>16 refer you at least to the first page of that exhibit, which</p> <p>17 is an exchange of emails that commences on the 11th of</p> <p>18 August 2012 and you receive an email from Thandeka Ncube on</p> <p>19 that day. Can you tell us firstly what was the essence of</p> <p>20 the email that you received and was this the first time</p> <p>21 that you came to learn of the events that were occurring at</p> <p>22 the mine?</p> <p>23 MR RAMAPHOSA: Yes, Thandeka Ncube is, or</p> <p>24 was the Transformation Manager at Shanduka and she was</p> <p>25 Shanduka's representative on the Lonmin Executive</p>
<p style="text-align: right;">Page 34408</p> <p>1 charge of looking after the exhibits, amongst all the other</p> <p>2 things she does, and she will tell us when you refer to –</p> <p>3 most of them are emails, I think.</p> <p>4 MR UNTERHALTER SC: That is so.</p> <p>5 CHAIRPERSON: When you refer to an email</p> <p>6 she'll give us the exhibit number. I'm not sure whether</p> <p>7 the first interchange are exhibits, interchange of emails</p> <p>8 have been put before the Commission already, but certainly</p> <p>9 all the others have and we'll get the exhibit numbers as we</p> <p>10 go along.</p> <p>11 MR UNTERHALTER SC: Thank you. Thank you</p> <p>12 very much.</p> <p>13 CHAIRPERSON: The witness's exhibit – I</p> <p>14 think the first ones, pages 1 to 4, is it? Yes, it's email</p> <p>15 of the 11th of August.</p> <p>16 MR UNTERHALTER SC: Yes, that is right.</p> <p>17 CHAIRPERSON: I don't think that's an</p> <p>18 exhibit. Is that correct, Ms Pillay?</p> <p>19 MS PILLAY: That's correct, Chair, that's</p> <p>20 a new exhibit.</p> <p>21 CHAIRPERSON: So that will be JJJ1.</p> <p>22 MS PILLAY: That's correct, Chair.</p> <p>23 MR UNTERHALTER SC: Thank you, Chair. If</p> <p>24 I might then refer you to page 1 of the bundle of documents</p> <p>25 that is before you, which is JJJ1, the exhibit –</p>	<p style="text-align: right;">Page 34410</p> <p>1 Management Committee and her task or duty was to represent</p> <p>2 Shanduka there, but also just to keep us abreast of some of</p> <p>3 the things that were happening, and in this regard she sent</p> <p>4 this information through to say that there are great</p> <p>5 problems, a serious situation is unfolding, and it is</p> <p>6 articulated in this email.</p> <p>7 MR UNTERHALTER SC: Now prior to</p> <p>8 receiving this email, had you had any other information</p> <p>9 about strike action that had been taken by Lonmin rock</p> <p>10 drillers and any of the events surround that activity?</p> <p>11 MR RAMAPHOSA: To my recollection not</p> <p>12 directly. The extent to which I would have known would</p> <p>13 have been either in the newspapers regarding other mines in</p> <p>14 the area.</p> <p>15 MR UNTERHALTER SC: Yes, now if we have a</p> <p>16 look at what is conveyed in the email - and I don't think</p> <p>17 it's necessary to read it out – she says to you that the</p> <p>18 rock drill operators had embarked on an illegal strike,</p> <p>19 demanding more money, and that this has been on the table</p> <p>20 with management since the Impala strike earlier this year,</p> <p>21 and she then explains something of the demands that had</p> <p>22 been made and what was being done concerning this strike.</p> <p>23 What she conveys is that Lonmin had conceded that the rock</p> <p>24 drill operators would have to get more money but preferred</p> <p>25 the route of the special bonus to an outright increase.</p>

<p style="text-align: right;">Page 34411</p> <p>1 The illegal strike is an indication that the rock drillers 2 are sticking to their demands. 3 She then refers to a memorandum and then she goes 4 on to say that, "Lonmin had obtained an interdict because 5 of the illegal strike and AMCU and NUM yesterday denied any 6 knowledge of the action. Also attached a memorandum from 7 AMCU denying knowledge of the strike," although she says 8 that it's highly suspicious as AMCU has a majority 9 membership at Karee and all of this looks very similar to 10 the tactics [she says] that were used at Impala, and then 11 she says, "Unfortunately today the strikers continue, 12 leading to two persons being shot. I'm not sure about the 13 extent of the injuries." She says, "The response of Lonmin 14 is to follow disciplinary procedures and, if required, will 15 dismiss the illegal strikers. Barnard is preparing the 16 ultimatum." Who is Barnard? 17 MR RAMAPHOSA: Barnard Mokwena was the 18 Human Resource Manager. 19 MR UNTERHALTER SC: Yes. Now what was – 20 we'll come to your email response to her, but what was your 21 sense of things when you received this email? 22 MR RAMAPHOSA: I was obviously very 23 concerned when I heard about this and my concern deepened 24 when I heard about the differential in pay rates between 25 the rock drill operators at Lonmin and the other mines, and</p>	<p style="text-align: right;">Page 34413</p> <p>1 real cause is the huge differential between the wages paid 2 to the rock drill operators in other companies and what we 3 pay them. I really did not know that the differential was 4 so huge." 5 MR RAMAPHOSA: Ja. 6 MR UNTERHALTER SC: "The solution they've 7 come up with is clearly not workable." Now the solution 8 that had been referenced in the letter is the special bonus 9 "and I'm not surprised that the rock drill operators have 10 rejected it." Why did you consider the bonus an inadequate 11 response? 12 MR RAMAPHOSA: I considered it an 13 inadequate response because she had communicated to me the 14 differential as she represented it then and I knew that 15 rock drill operators do communicate with each other across 16 the various companies that they work for and there would 17 ordinarily be a going rate for the pay levels of rock drill 18 operators because they basically do the same type of work. 19 MR UNTERHALTER SC: Yes. 20 MR RAMAPHOSA: So if there was a 21 differential it would be a problem. 22 MR UNTERHALTER SC: Now on the next page, 23 if I could take you to it, it's actually page 3 of this 24 exhibit, we see that there is the memorandum that is 25 referenced in the emails.</p>
<p style="text-align: right;">Page 34412</p> <p>1 I also understood that the rock drill operators would not 2 want to be happy with the type of solution that management 3 was putting forward, and to that extent I articulated it in 4 my email that I don't believe that that is the solution 5 because I don't believe that the rock drill operators would 6 accept what management was saying. 7 MR UNTERHALTER SC: Yes, so if we then 8 examine the email that you sent back to her, which appears 9 at the top of this page, you thank her for the email and 10 you say, "This is a grave situation." Perhaps just pausing 11 there for a minute, why did you consider the situation was 12 grave? 13 MR RAMAPHOSA: I considered it grave 14 because in her communication to me she had already 15 indicated that two people had been injured, or shot at, so 16 to me that raised a concern that an element of violence was 17 beginning to creep into this action, but I also felt that 18 it is a grave situation because the differential between 19 rock drill operators at Lonmin and the other mines was 20 different, was quite big, and I knew that that would be a 21 huge issue of concern to the rock drill operators at 22 Lonmin. 23 MR UNTERHALTER SC: Yes, and indeed you 24 articulate that in your email where you say, "The problem 25 with the situation is that we know the cause of it; the</p>	<p style="text-align: right;">Page 34414</p> <p>1 MR RAMAPHOSA: Yes. 2 MR UNTERHALTER SC: And there is an 3 account that is given here of a sequence of events. Did 4 you have regard to this memorandum at the time? 5 MR RAMAPHOSA: No, I did not. 6 MR UNTERHALTER SC: I see. Well, it sets 7 out certain events as understood by Lonmin management at 8 the time, but the record of that is just set out and we 9 don't need to take that further. If I could then refer you 10 to what is page 5 in my bundle, but Mr Chairman, I'm not 11 certain that I haven't now gone on to another exhibit. 12 It's the email of the 12th of August from Mr Jamieson to Mr 13 Ramaphosa – 14 CHAIRPERSON: I understand from Ms Pillay 15 that that's not previously been handed in, so that will be 16 JJJJ2. 17 MR UNTERHALTER SC: So if I could then 18 refer you to this particular document, which is an email 19 from Mr Jamieson and it's headed "Unrest at Marikana 20 mines." Who is Mr Jamieson? 21 MR RAMAPHOSA: Mr Jamieson – 22 MR UNTERHALTER SC: Or was he at that 23 stage at any rate. 24 MR RAMAPHOSA: At that stage Mr Jamieson 25 was the Marketing Director of Lonmin and in this particular</p>

<p style="text-align: right;">Page 34415</p> <p>1 case the then CEO had taken ill and he was, if you like, 2 doubling up for the CEO in communicating to me. 3 MR UNTERHALTER SC: Now he writes this on 4 the 12th of August, which is a Sunday, and if we could just 5 go to the contents of that email. It's written to the 6 Director General, but then copies, as you will see, are 7 sent to you and perhaps we could just go to the text of the 8 email that Mr Jamieson sent to the Director General. He 9 says, "Dear DG, sorry to interrupt your Sunday. We have a 10 terrible and distressing situation at our Marikana 11 operations with two people killed in violence. Ian Farmer 12 was off sick in the latter part of last week, hence my 13 communiqué to you and request to please keep the Minister 14 updated. I'm concentrating more on speed of communication 15 to you here and I'm unsure of complete accuracy, but I 16 promise to get a full and accurate account to you by later 17 tomorrow." 18 And then he goes on to say and recount the 19 events; he says, "On Friday morning we became aware of an 20 illegal work stoppage across all our mines by mainly the 21 RDOs. Approximately 90% did not report for work, seeking 22 to escalate a pay issue directly with management. There 23 was an illegal gathering of some few thousand workers, 24 followed by an unauthorised march. 25 [09:25] Apart from the usual boisterous spirit this past</p>	<p style="text-align: right;">Page 34417</p> <p>1 which resulted in the deaths of two of our own security 2 officers when their patrol car was burned and an NUM office 3 torched. We are in the process of informing their families 4 of this tragedy. Attacks and disruptions are continuing 5 and the situation can neither be described as stable nor 6 under control. We continue to be in contact and work with 7 the SAP and the two unions." And then there is a note to 8 Thobedi, "At this stage it is clear that probably only a 9 massive police and possibly army presence will stop us 10 having a repeat of recent past experiences on nearby – we 11 simply do not have the capability to protect life and limb 12 and I urge you please to use your influence to bring this 13 over to the necessary officials who have the resources at 14 their disposal. We need help." Now, did you receive this 15 e-mail? 16 MR RAMAPHOSA: Yes, I did receive this e- 17 mail as it was copied to me as well. 18 MR UNTERHALTER SC: Yes. And you'll see 19 that in the communication to you, the note from Mr Jameson 20 is, "Absolutely tragic events, I know you're trying to 21 help. Thank you. Below for your information." And if I 22 could then take you to the next page in this bundle, which 23 is page 7 – 24 CHAIRPERSON: That'll be JJJJ3. 25 MR UNTERHALTER SC: Now this is simply a</p>
<p style="text-align: right;">Page 34416</p> <p>1 off largely peacefully and the gathering dispersed. We 2 did, however, obtain an urgent court interdict by Friday 3 afternoon and issued," and issued – unfortunately my copy 4 is a bit poor – "them with a briefing informing them that 5 the gathering and their actions were illegal and could 6 result in disciplinary action and dismissal. We informed 7 and co-operated fully with the local police and local mayor 8 to appraise them of the situation and urged a strong 9 presence, given what had happened. The SAP were present 10 and monitored the gathering and stewarded the marchers. 11 From Friday morning we were also in almost constant contact 12 with local and national NUM and AMCU offices who, while not 13 claiming any responsibility for actions, were doing their 14 best to understand the situation and act accordingly. We 15 have done everything possible to work with the SAP in 16 deploying our own" – presumably – "security, by comparison 17 somewhat modest security details, to try to ensure the 18 safety and security of those wishing to return to work." 19 Then it goes on to say, "On Friday night shift 20 there were instances of employees not reporting to work and 21 by Saturday morning it was clear the stoppage by the rock 22 drill operators was continuing. During the course of 23 yesterday, last night and this morning there were sporadic 24 violent incidents, including a reportedly well-organised 25 attack by a mob of hundreds on police and our security,</p>	<p style="text-align: right;">Page 34418</p> <p>1 list that we have compiled from phone records of the 2 various phone calls that have been recorded between, 3 between you and the two Ministers, the Minister of Police 4 and the Minister of Minerals and Energy Affairs. Now could 5 we just go to the first of those entries? Well, actually 6 to be more accurate, the second of those entries which is 7 recorded to be on Sunday the 12th of August at 6:38PM. You 8 are recorded there to have received a call from the 9 Minister of Police. Did you receive such a call? 10 MR RAMAPHOSA: Yes, I did receive such a 11 call. 12 MR UNTERHALTER SC: Could you tell us 13 what transpired in the conversation that you had with the 14 Minister of Police? 15 MR RAMAPHOSA: After having read this e- 16 mail from Mr Jameson, I felt it was necessary to respond to 17 the concern that he was raising in his e-mail, particularly 18 in relation to the people who had either been injured or 19 had been killed and I realised that he was concerned that 20 this could escalate into more violence and more deaths 21 like, as he says in his e-mail, happened in other mines and 22 I remembered for a fact that in another mine at Impala a 23 number of people had died in similar circumstances where 24 there was labour action. And I, in my call to him, just 25 raised the concern that Jameson had raised, that people had</p>

<p style="text-align: right;">Page 34419</p> <p>1 died and are dying and the situation was getting worse and 2 Jameson had requested that there should be more police 3 presence so as to prevent further loss of life and I said, 4 Minister, the situation that I've been told about on the 5 ground is such that they need help, they need more police 6 presence on the ground, could he do something about it. 7 MR UNTERHALTER SC: Did you in that 8 conversation in any way seek to suggest to the Minister 9 what steps should be taken and what sort of police presence 10 was required? 11 MR RAMAPHOSA: No, I did not suggest what 12 steps should be taken. All I communicated to him was the 13 concern that Jameson had raised and that they needed more 14 help and police presence on the ground would help. 15 MR UNTERHALTER SC: Yes, and as far as 16 you recall what was the Minister's response? 17 MR RAMAPHOSA: The Minister said he would 18 look into it and he would, he said to me, talk to his 19 people on the ground and see for him – and hear for himself 20 what is actually unfolding. 21 MR UNTERHALTER SC: Yes. Now when you 22 decided to make this call to the Minister and he in turn 23 got back to you and the conversation that you've told us 24 about occurred, in what capacity did you make this 25 intervention with the Minister?</p>	<p style="text-align: right;">Page 34421</p> <p>1 a message to the Minister of Police, which I did. 2 MR UNTERHALTER SC: Yes. Now if we go to 3 the next document in the bundle, it is page 8 of the 4 bundle. 5 CHAIRPERSON: It's also a new document, 6 that would be JJJJ4. 7 MR UNTERHALTER SC: It is to be read 8 together with a press release which follows it. I don't 9 know if you want to see them as a single document or – 10 CHAIRPERSON: Well, if it's going to 11 refer to separately, as it may be, let's give it a separate 12 exhibit number. So you're referring to page 9 – 13 MR UNTERHALTER SC: Indeed. 14 CHAIRPERSON: - which will be JJJJ5. 15 MR UNTERHALTER SC: Now if we could start 16 with JJJJ5, which in your bundle will be document number 9, 17 one sees that a press release had been issued by Lonmin on 18 the 12th of August 2012 and I don't want to go through all 19 of it but if we could just pick up a few of the aspects 20 that are reflected in this media release, it begins by 21 saying, "Lonmin condemns fatal attacks. Two Lonmin 22 employees have been killed and six injured in three 23 incidents of suspected inter-union conflict at the 24 company's Western Platinum operations. The company 25 immediately requested the support of the South African</p>
<p style="text-align: right;">Page 34420</p> <p>1 MR RAMAPHOSA: As he had communicated 2 what was happening to me, he did so in my capacity as non- 3 executive director. 4 MR UNTERHALTER SC: When you say "he" – 5 MR RAMAPHOSA: That is Jameson. 6 MR UNTERHALTER SC: - you mean Mr 7 Jameson? 8 MR RAMAPHOSA: Mr Jameson, I apologise. 9 MR UNTERHALTER SC: Yes. 10 MR RAMAPHOSA: When Mr Jameson copied 11 this e-mail to me, he did so in my capacity as non- 12 executive director and I felt that with this grave 13 situation that was unfolding at the mine, I felt duty-bound 14 to try and help and see the extent to which one could 15 communicate with those in authority as he himself had said 16 in his e-mail, to try and get the situation not to escalate 17 into further violence and loss of life. 18 MR UNTERHALTER SC: Presumably Mr Jameson 19 looked to you for assistance in this way because you did 20 have political influence. Why, in what capacity did you 21 have such influence? 22 MR RAMAPHOSA: He knew that I knew the 23 Minister of Police and I knew some of the people in 24 authority and as he needed, as the manager on the manager 25 on the ground, assistance, he knew that I could communicate</p>	<p style="text-align: right;">Page 34422</p> <p>1 Police Services to try and contain the violence in support 2 of its own security procedures. The incidents followed an 3 illegal work stoppage and protest march on Friday. The 4 illegal march was accompanied by incidents of intimidation 5 and violent action against employees who wanted to report 6 for duty. Four employees trying to report for work were 7 injured on Friday 10th, two of whom have been hospitalised 8 after receiving gunshot wounds, allegedly by rival union 9 supporters. A further two employees were hospitalised on 10 Saturday, also as a result of gunshot wounds. On Saturday 11 the 12th, two Lonmin security guards were killed as a large 12 group attempted to attack Lonmin facilities. Their 13 families, to whom the company extends its deepest 14 sympathies, are being informed. The company will do 15 everything possible to support the SAPS in bringing the 16 culprits to book. At the commencement of the unrest, 17 Lonmin immediately took appropriate precautions from a 18 security perspective including mobilising additional 19 resources and involving the SAPS." And then there is a 20 statement from Mr Mokwena that is referenced. 21 Now if we could go back to JJJJ4 where you are 22 now writing to Mr Mokwena and you reference the press 23 statement which I've just referred to and you say, "This is 24 a grave situation." Now if I could pause there and ask you 25 again to tell us why was that your estimation of the</p>

<p style="text-align: right;">Page 34423</p> <p>1 situation?</p> <p>2 MR RAMAPHOSA: The press statement had</p> <p>3 set out that violence was escalating and workers had been</p> <p>4 killed and security guards had also been killed and I</p> <p>5 concluded that this had now become really grave and that is</p> <p>6 what I felt and that is what I communicated to Barnard</p> <p>7 Mokwena as well.</p> <p>8 MR UNTERHALTER SC: Yes. Now if we read</p> <p>9 on in the e-mail it says, "As I indicated, I spoke to the</p> <p>10 Minister of Police again and stressed that they should</p> <p>11 immediately take steps to ensure that they protect life and</p> <p>12 property and bring those responsible for the terrible acts</p> <p>13 of violence and death to book." Now this suggests that you</p> <p>14 had a further conversation with the Minister of Police.</p> <p>15 Can you tell us about that?</p> <p>16 MR RAMAPHOSA: Yes. I had said to the</p> <p>17 Minister that the situation was actually getting worse and</p> <p>18 more and more violence was occurring and this raised the</p> <p>19 level of my concern even higher and it is to that, for that</p> <p>20 reason that I communicated as I did to Barnard and I told</p> <p>21 him that I had spoken to the Minister and he had said, I</p> <p>22 had said that they should take immediate steps to ensure</p> <p>23 that they protect life and property and also take steps to</p> <p>24 bring those responsible for these acts to book because some</p> <p>25 of the descriptions that were coming through about how the</p>	<p style="text-align: right;">Page 34425</p> <p>1 MR UNTERHALTER SC: Yes. Now after you</p> <p>2 say "Regards," you then say, "Let us all keep cool heads."</p> <p>3 Can you tell us what you had in mind?</p> <p>4 MR RAMAPHOSA: What I had in mind was</p> <p>5 that we should keep our heads cool, we should not be</p> <p>6 alarmist in what we said, either publicly or otherwise, and</p> <p>7 that hopefully the situation would be brought under control</p> <p>8 and that, to me, is what keeping cool heads meant because</p> <p>9 it was what I perceived as the brutality of the killing,</p> <p>10 particularly of the security guard, that was quite alarming</p> <p>11 and could have led one to react in ways that could have</p> <p>12 been too alarmist and I felt one needed to keep a cool head</p> <p>13 and hope that the police would prevent further loss of life</p> <p>14 and injury to other people.</p> <p>15 MR UNTERHALTER SC: Now on the same day,</p> <p>16 the 13th of August, we go to the next e-mail which is page</p> <p>17 number 11 in your bundle and, Chair, I'm imagining this</p> <p>18 JJJ6 but –</p> <p>19 CHAIRPERSON: E-mail from Ms Ncube dated</p> <p>20 the 13th, is that right?</p> <p>21 MR UNTERHALTER SC: That is so.</p> <p>22 CHAIRPERSON: That's also a new exhibit,</p> <p>23 so that will be JJJ6, as you say.</p> <p>24 MR UNTERHALTER SC: Now shortly after the</p> <p>25 e-mail that we've just examined, JJJ4, you received an e-</p>
<p style="text-align: right;">Page 34424</p> <p>1 people were killed, were quite horrifying.</p> <p>2 MR UNTERHALTER SC: Did you seek to</p> <p>3 prescribe in any way to the Minister what steps he should</p> <p>4 take or what you had in mind?</p> <p>5 MR RAMAPHOSA: When I said that they</p> <p>6 should be brought to book, I had anticipated and expected</p> <p>7 that those who were responsible would be identified and</p> <p>8 they would be arrested, which is what I expect police to do</p> <p>9 normally in pursuing their tasks and duties.</p> <p>10 MR UNTERHALTER SC: Yes. What about the</p> <p>11 steps to ensure that property and life is protected, did</p> <p>12 you have anything in mind as far as that's concerned?</p> <p>13 MR RAMAPHOSA: Yes. It occurred to me</p> <p>14 that where these incidents had occurred, as one got the</p> <p>15 full detail thereof, police presence was either absent or</p> <p>16 very minimal and that is why I felt these people were being</p> <p>17 attacked and being killed in the way they were.</p> <p>18 MR UNTERHALTER SC: Yes. Now the</p> <p>19 response that you record here is that the Minister said</p> <p>20 that they were working on it. As far as you can recall,</p> <p>21 did the Minister convey anything more to you other than</p> <p>22 that?</p> <p>23 MR RAMAPHOSA: No, he did not convey</p> <p>24 anything to me other than that and he just said they're</p> <p>25 working on it, they were aware of the unfolding situation.</p>	<p style="text-align: right;">Page 34426</p> <p>1 mail from Thandeka Ncube and perhaps we could just again</p> <p>2 briefly refer to its contents. It's sent to a number of</p> <p>3 people, yourself included, and it says, "Lonmin strike</p> <p>4 update. This morning we had an update telecon on the</p> <p>5 strike at Lonmin operations in Marikana. Last night two</p> <p>6 more Lonmin employees were killed, one was found dead with</p> <p>7 several bullet holes, the other was shot at the mine. This</p> <p>8 brings us to a total of four dead employees." And then it</p> <p>9 says, "Lonmin has stepped up the call for more SAPS</p> <p>10 presence and this morning the Police Commissioner was at</p> <p>11 the mine to identify hot spots. She has pledged her full</p> <p>12 support. There are two helicopters flying over the</p> <p>13 operations and about 150 SAPS staff on the premises. The</p> <p>14 South African Police has promised to increase the number of</p> <p>15 police on the ground." And then there are some matters</p> <p>16 concerning the HR process that was being followed in</p> <p>17 respect of workers facing dismissal and in that it is said,</p> <p>18 "Both AMCU and NUM are still denying involvement but NUM</p> <p>19 has been supportive, with the President of NUM visiting the</p> <p>20 operations and liaising with both Ministers Shabangu and</p> <p>21 Mthethwa. Tactics used in the strike are similar to those</p> <p>22 used at Impala." So AMCU is looking, she says, very</p> <p>23 suspicious. And then there are some references to the</p> <p>24 impact on the business and generally Albert is preparing</p> <p>25 letters to the provincial and local government and he's</p>

<p style="text-align: right;">Page 34427</p> <p>1 doing a briefing note to Minister Shabangu and will also 2 send a note to the office of the Presidency. As far as you 3 can recall, did anything more happen on the 13th that 4 involved your taking any actions? 5 MR RAMAPHOSA: No, nothing further that 6 required my taking any action happened on that day. 7 MR UNTERHALTER SC: Yes. Then on the 14th 8 of August, and this is document 12 – 9 CHAIRPERSON: It's already an exhibit, 10 it's BBB4. 11 MR UNTERHALTER SC: This is an e-mail 12 that is sent by Roger Phillimore to a number of persons, 13 yourself included. Who is Mr Phillimore? 14 MR RAMAPHOSA: Mr Roger Phillimore was 15 the then chairman of Lonmin TLC. 16 [09:45] MR UNTERHALTER SC: He writes to you and 17 he says, "I attach a note from Tanya summarising the 18 situation, the current situation at the mine," and then it 19 says, "The massive police intervention has had a 20 significant effect but the challenge will be to sustain it. 21 You will note that efforts have been made to get people 22 back to work over the next few days. Mohammed has very 23 kindly agreed to help in keeping the business running," and 24 then he says, "My attempts to speak with the Minister have 25 not yet succeeded but I was able to brief a very supportive</p>	<p style="text-align: right;">Page 34429</p> <p>1 gathering daily on the property and arresting those 2 suspected as having been involved in activity," and then it 3 goes on to say, "The situation was relatively peaceful 4 overnight with no reported incidents of unrest. There is 5 no production from the shafts." So can you tell us on this 6 assessment on the 14th of August what, how did you 7 understand the position and what did you think was 8 necessary, if anything? 9 MR RAMAPHOSA: Well, my own assessment 10 was that Roger Phillimore was saying that there was in the 11 media particularly, in the South African press more focus 12 on what government actions are to restore peace on the 13 mines and the deployment of further police was also 14 helpful. Overnight he reports that it was relatively 15 peaceful although two other people had been killed, police 16 officers and that to me also raised my own concern once 17 again because it seemed like the situation, as much as it 18 seemed peaceful at the time was actually getting worse 19 because more and more people were getting injured and 20 getting killed. 21 MR UNTERHALTER SC: Yes, now if we could 22 then turn to the email exchange of the 15th of August and – 23 CHAIRPERSON: Page 14, that would be – 24 MR UNTERHALTER SC: Page 14. 25 CHAIRPERSON: That would be Exhibit or</p>
<p style="text-align: right;">Page 34428</p> <p>1 Mick Davis." Who is Mick Davis? 2 MR RAMAPHOSA: Mick Davis was the CEO of 3 Xtrata which was also a shareholder in Lonmin. 4 MR UNTERHALTER SC: Yes, and do you know 5 which minister he is here referring to? 6 MR RAMAPHOSA: I would have image that he 7 was referring to the Minister of Mineral Resources. 8 MR UNTERHALTER SC: Yes, and then he goes 9 on to say, "The SA Press is all over this but accurately is 10 focussing attention on government's duty to restore peace 11 and quiet, we are seen as collateral damage. The markets 12 in London have not surprisingly marked the shares down by 13 some 4% today," and if we turn over the page we'll see the 14 update to which he refers in the first sentence of his 15 email and it references the fact that the police are now 16 fully engaged since yesterday morning at the highest level, 17 significantly increased its presence in the last 24 hours. 18 Unfortunately two policemen were fatally wounded during 19 clashes with the group of people yesterday afternoon, 20 following that the National Police Commission visited our 21 operations to assess the situation and lend support. 22 Police numbers have increased further and the 23 intention is to increase them to between 801,000. 24 Overnight SAPS has been developing a strategy that is aimed 25 at peacefully carolling the mobs of people who have been</p>	<p style="text-align: right;">Page 34430</p> <p>1 that is already Exhibit BBB4.1. 2 MR UNTERHALTER SC: Thank you, Chair. We 3 see that you respond or a response to Mr Phillimore in this 4 email on the 15th of August and you say, "Thank you for your 5 briefing notes. I have had some interaction with some of 6 the role players and pen hereunder some of the discussions 7 I have had. One, discussion with Minister Susan Shabangu, 8 I called her and told her that her silence and inaction 9 about what is happening at Lonmin was bad for her and the 10 government. She said that she was going to issue a 11 statement. She was going to be in Cape Town to attend a 12 joint parliamentary session and would be back in 13 Johannesburg later today to attend to the Lonmin matter. I 14 told her that I would also be in Cape Town and suggested 15 that we should have a discussion and see what she needs to 16 do." 17 Now perhaps I can just pause there for a moment 18 and ask you to tell the Commission what discussions did you 19 have with Minister Shabangu? 20 MR RAMAPHOSA: The discussions I had with 21 Minister Shabangu who was then the Minister of Mineral 22 Resources, were that the situation at Lonmin was 23 deteriorating, more and more people were getting killed and 24 injured and that was a matter of great concern to me 25 because I knew how this type of situation can just escalate</p>

<p style="text-align: right;">Page 34431</p> <p>1 into more and more violence and I was saying that we need 2 to make sure that at a government level we sensitise people 3 so that the Minister of Police can be of assistance and 4 deploy more police who can protect life and property. 5 MR UNTERHALTER SC: Yes, it appears also 6 from the summary and point 1, that you had indicated that 7 inaction and silence was not desirable. Did you raise this 8 matter with the minister? 9 MR RAMAPHOSA: Yes, I did because being 10 the minister responsible for these matters I felt that she 11 needed to be communicating a government view and I have 12 said that to her even on a number of occasions, whenever 13 there are mining accidents I am one of those who often say, 14 Minister, people have died on the mines, you as the 15 minister concerned needs to be making a statement and 16 taking a position, it is your responsibility and similarly 17 with this type of situation I felt that she had a 18 responsibility to be heard because she is in a leadership 19 position. 20 MR UNTERHALTER SC: Yes. Now there is 21 also reference in this paragraph to the fact that you were 22 both, that is you and the minister, were going to be in 23 Cape Town at the same time. As far as you can recall did 24 you in fact see the minister and meet with her? 25 MR RAMAPHOSA: Yes, I saw her very</p>	<p style="text-align: right;">Page 34433</p> <p>1 to the email, Exhibit BBB4.1, you then referenced that you 2 had spoken to the president of the NUM and that he had said 3 that he and Frans Baleni wanted to meet, using the 4 language, me and former NUM James Motlatsi, to discuss what 5 they should do as a union going forward. He told me that 6 the NUM had had a successful meeting where some 5 to 700 7 workers had stated that they wanted to work. Then you 8 said, "I will be speaking to Gwede Mantashe, the ANC 9 general secretary and suggest that the ANC should 10 intervene." Did you in fact have such a discussion? 11 MR RAMAPHOSA: I did have a discussion 12 with Minister Senzeni Sokwana, who was then the president 13 of the NUM, and also had a discussion with Mr James 14 Motlatsi and both had been involved as leaders of the NUM 15 and we felt that it would be good if there could be a 16 discussion to see what can be done to stop further deaths 17 in terms of either communicating with workers and all that, 18 and when the report came that they had held a fairly good 19 meeting with some of the workers I felt that this was a 20 step in the right direction. 21 MR UNTERHALTER SC: Did you have any 22 conversation with the ANC general secretary or secretary 23 general? 24 MR RAMAPHOSA: To my recollection it 25 would have been a telephone discussion and where both of us</p>
<p style="text-align: right;">Page 34432</p> <p>1 briefly in Cape Town and more or less repeated precisely 2 what I have just said now to her. 3 MR UNTERHALTER SC: Yes. 4 MR RAMAPHOSA: And said that I'm 5 concerned about this and in fact I then said to her the 6 management at the mine have come to a point where they now 7 are saying that they are seeing so much, so many people 8 being injured and being killed and this in their view had 9 now become quite criminal where people were being targeted 10 and being killed and in their view as Albert Jamison said 11 in one of the emails he sent to me, that he now began to 12 characterise this no longer as a labour dispute but as a 13 form of criminal activity. 14 MR UNTERHALTER SC: Yes, and what was the 15 response of the minister, both during the phone call and at 16 the brief meeting that you've had? 17 MR RAMAPHOSA: In my discussion with her 18 she, when she got to hear and understand precisely what is 19 happening, she did say, now she understands that with the 20 number of people who are being killed almost on a daily 21 basis and the numbers were stacking up, she also conceded 22 that it is no longer just a labour dispute but now there 23 was criminal activity involved because why would people 24 just be targeted like this and be killed. 25 MR UNTERHALTER SC: Yes, returning then</p>	<p style="text-align: right;">Page 34434</p> <p>1 would have raised our concern about this. I do not have a 2 deep recollection of the exact or substance of that 3 discussion with him. 4 MR UNTERHALTER SC: Yes, and then you 5 reference the Chamber of Mines and you say, "I will keep 6 you updated on the progress." 7 MR RAMAPHOSA: Yes. 8 MR UNTERHALTER SC: On page 15 of the 9 bundle there is an email sent from Mr Jamison to you – 10 CHAIRPERSON: Mr Unterhalter, I'm sorry 11 to interrupt you, that is Exhibit BBB4.2. 12 MR UNTERHALTER SC: Thank you, Chair, 13 which is also sent amongst others to Mr Phillimore and it 14 is, Mr Jamison on the 15th says, "Hello Cyril, thanks for 15 your help so far. Thankfully last night was relatively 16 peaceful as is this morning. We've had approached from NUM 17 Eastern Plat that they would like to return to work if 18 police can offer adequate protection," and then he says, 19 "There are two areas of concern. The minister," and I 20 think contextually this is clearly the Minister of 21 Minerals, "was on radio today saying she had been briefed 22 that this was a wage dispute and management and the unions 23 should sit down and sort it out. I'm not sure who has 24 briefed her. We're waiting to talk to her, Roger, and 25 although not too damaging it is also not too helpful.</p>

<p style="text-align: right;">Page 34435</p> <p>1 We had two discussions with the DG and in each 2 case categorised this as not an industrial relations issue 3 but civil unrest, destabilisation criminal issue that could 4 not be resolved without political intervention and need the 5 situation stabilised by the police army. I think on both 6 occasions he agreed with me and it reflected what was in 7 our letter, but now I'm not sure. I have a call to him 8 this morning." Now perhaps let me pause there for a 9 moment, Mr Jamison referencing the radio interview seems to 10 says of the minister that she was still seeing things as 11 essentially a labour dispute rather than something which 12 had spilled over into criminal activity. Can you tell us 13 how this relates to your discussions with the minister 14 which you conveyed? This is referring to a radio interview 15 on the 15th.</p> <p>16 MR RAMAPHOSA: Yes, in my discussions 17 with her I, as I recall, informed her about what was 18 happening on the ground as the information has been given 19 to me and said to her my concern was that people were being 20 killed on a daily basis and people were being injured and 21 whilst one needed to address the issue of the labour 22 demands that had been made, this actually started to 23 discolour it because people were getting killed and the 24 concern, as I said earlier, was that they were being killed 25 on a targeted basis, you know that workers were being</p>	<p style="text-align: right;">Page 34437</p> <p>1 this and ensuring they remain and would take appropriate 2 action so that we can get people back to work. It would be 3 good to have some independent confirmation. The police 4 have plans to sustain a presence for at least a week and 5 numbers don't wane by the weekend. If you can talk to the 6 minister please could you influence these things with her 7 and encourage her to make time to talk to Roger, I have 8 garnered support from other CEOs?" Did, once you've 9 received this email did you have any further discussions as 10 far as you can recall with the minister?</p> <p>11 MR RAMAPHOSA: I don't immediately recall 12 of any further discussion.</p> <p>13 MR UNTERHALTER SC: Yes, and if we go 14 back to the call list which I believe is JJJ3?</p> <p>15 CHAIRPERSON: I believe it is correct. 16 I'm not sure if the operators got it, but –</p> <p>17 MR UNTERHALTER SC: In any event this is 18 the list of calls but you will see that for those referring 19 to the bundle, it is document number 7? It appears from 20 this that your discussions with the minister telephonically 21 occurred on Tuesday, the 14th and the one reference on the 22 15th, it seems that at 5:22 you placed a call to the 23 minister but the recorded duration is 3.5 seconds which I 24 think in the telecommunication's world means a call dropped 25 or simply no connection made.</p>
<p style="text-align: right;">Page 34436</p> <p>1 killed, security guards and the police and so on. So that 2 is what I communicated to her.</p> <p>3 MR UNTERHALTER SC: Yes, it appears that 4 she made –</p> <p>5 MR MPOFU: Sorry, Chairperson, I'm sorry 6 to interrupt my learned friend, could this exhibit just be 7 put up like all other exhibits so that we can follow?</p> <p>8 CHAIRPERSON: Yes, it should be possible.</p> <p>9 MR MPOFU: Thanks, Chairperson.</p> <p>10 CHAIRPERSON: They are exhibits already, 11 so I take it they are available to the operator.</p> <p>12 MR MPOFU: Thanks, Chairperson.</p> <p>13 CHAIRPERSON: This is Exhibit –</p> <p>14 MR MPOFU: BBB4.</p> <p>15 CHAIRPERSON: I said BBB4.2.</p> <p>16 MR UNTERHALTER SC: Yes, so I had 17 referenced the first part of Mr Jamison's email referring 18 to the minister's radio interview. It certainly appears 19 from this account of her interview that it didn't appear as 20 if the minister had perhaps entirely being persuaded by you 21 in your calls with her.</p> <p>22 MR RAMAPHOSA: I think it is possible.</p> <p>23 MR UNTERHALTER SC: Yes. What Mr Jamison 24 then goes on to say is, "We are grateful the police now 25 have some 800 on site. Our next challenged is sustaining</p>	<p style="text-align: right;">Page 34438</p> <p>1 MR RAMAPHOSA: Yes.</p> <p>2 MR UNTERHALTER SC: Now if we can then 3 come to the documents which are at page 16 and 17 of the 4 bundle, -</p> <p>5 CHAIRPERSON: The document at page 16 is 6 BBB4.5 and that, page 17 is a continuation of that exhibit.</p> <p>7 MR UNTERHALTER SC: Yes. Now I think one 8 should read this document with the first, the email that 9 appears at the bottom part of the page first. So you write 10 to Mr Jamison and you say, "Dear Albert, thank you for your 11 email." It is headed, "Re security situation. Thank you 12 for your email."</p> <p>13 CHAIRPERSON: Mr Unterhalter, I take it 14 that's a reference to the email in Exhibit –</p> <p>15 MR UNTERHALTER SC: It is so –</p> <p>16 CHAIRPERSON: BBB4.2?</p> <p>17 MR UNTERHALTER SC: It is so. "I am 18 currently in Cape Town and will have a discussion with 19 her." I'm assuming you're now referring to the minister?</p> <p>20 MR RAMAPHOSA: Yes, indeed.</p> <p>21 MR UNTERHALTER SC: "I thank you for the 22 consistent manner in which you are characterising the 23 current difficulties we are going through." Now perhaps 24 you could tell the Commission what that characterisation 25 was on the part of Mr Jamison with which you were in</p>

<p style="text-align: right;">Page 34439</p> <p>1 agreement?</p> <p>2 MR RAMAPHOSA: Well, my characterisation</p> <p>3 was really based on the reports of the situation, that is,</p> <p>4 it was based on the reports that one kept getting from the</p> <p>5 mine, that people were being killed and by this time the</p> <p>6 people who have been killed had numbered close on to 8 or</p> <p>7 so, I think, and there were workers, there were security</p> <p>8 guards and there were police.</p> <p>9 [10:04] And I have then viewed this as criminal acts that</p> <p>10 people were getting killed and when the descriptions of how</p> <p>11 they were being killed were put before me. I realised that</p> <p>12 we were dealing with people who were bent on killing other</p> <p>13 people in what I would call the most brutal way, cutting</p> <p>14 out their body parts, and that shocked me and I immediately</p> <p>15 classified that as acts of criminality.</p> <p>16 MR UNTERHALTER SC: Yes. When we read</p> <p>17 the sentence here, "I thank you for the consistent manner</p> <p>18 in which you are characterising the current difficulties we</p> <p>19 are going through," the you in that instance I'm assuming</p> <p>20 is Mr Jamieson.</p> <p>21 MR RAMAPHOSA: Yes, it is –</p> <p>22 CHAIRPERSON: I'm sorry to interrupt you.</p> <p>23 That clearly is a reference, if I may say so, back to</p> <p>24 BBBB4.2, the first bullet point "The Minister was on radio</p> <p>25 today," the third line of that says, "I," that's Jamieson,</p>	<p style="text-align: right;">Page 34441</p> <p>1 to say, "They are plainly dastardly criminal and must be</p> <p>2 characterised as such." Perhaps you could just distil for</p> <p>3 us again, because this is obviously a matter of some</p> <p>4 interest, this text, just tell us why you used the language</p> <p>5 of "dastardly criminal and must be characterised as such."</p> <p>6 MR RAMAPHOSA: Well, to me as I've</p> <p>7 described earlier the way the people were being killed, the</p> <p>8 brutality thereof, I concluded that this is dastardly</p> <p>9 criminal, these are dastardly acts. They are horrific,</p> <p>10 they are terrible and I couldn't find a better way of</p> <p>11 describing it when someone is killed and their body parts</p> <p>12 are then cut out of their bodies, some parts of their limbs</p> <p>13 are cut out. I couldn't find any other better way of</p> <p>14 describing it. It to me was quite horrific.</p> <p>15 MR UNTERHALTER SC: You go on to say, "In</p> <p>16 line with this characterisation there needs to be</p> <p>17 concomitant action to address the situation." Can I ask</p> <p>18 what you mean by "concomitant"?</p> <p>19 MR RAMAPHOSA: I felt that this needed</p> <p>20 the police to take appropriate action to arrest those who</p> <p>21 were involved in these acts of criminality, that the police</p> <p>22 should identify those who were perpetrating these acts,</p> <p>23 bring them to book, identify them, arrest them, so that</p> <p>24 they just don't carry on killing more and more people in</p> <p>25 the brutal way that I, that it had been described to me.</p>
<p style="text-align: right;">Page 34440</p> <p>1 "have had two discussions with the DG and in each case have</p> <p>2 characterised this as not an industrial relations issue but</p> <p>3 a civil unrest, destabilisation, criminal issue that could</p> <p>4 not be resolved without political intervention and need the</p> <p>5 situation stabilised by the police/army." So that is Mr</p> <p>6 Jamieson's characterisation in his email –</p> <p>7 MR UNTERHALTER SC: That is correct.</p> <p>8 CHAIRPERSON: And I take it that when you</p> <p>9 say you agree with his characterisation, that's what you're</p> <p>10 agreeing with. Is that correct?</p> <p>11 MR RAMAPHOSA: It is correct that he had</p> <p>12 characterised it first as an act of criminality and I</p> <p>13 tended to agree with that, and earlier the National Union</p> <p>14 of Mineworkers had also issued a statement where they</p> <p>15 painted a picture as they understood it on the ground of</p> <p>16 acts of criminality happening. So with the descriptions</p> <p>17 that both key role-players had put forward, much as I was</p> <p>18 not on the ground I concluded as one got all these reports</p> <p>19 of the way people were being killed that these were acts of</p> <p>20 criminality.</p> <p>21 MR UNTERHALTER SC: Yes. Now if we could</p> <p>22 go to the next paragraph and take it one step at a time.</p> <p>23 You say, "The terrible events that have unfolded cannot be</p> <p>24 described as a labour dispute." Now I think you've already</p> <p>25 told the Commission why you reached that view. You go on</p>	<p style="text-align: right;">Page 34442</p> <p>1 MR UNTERHALTER SC: Yes. You go on, just</p> <p>2 turning over the page, "You are absolutely correct in</p> <p>3 insisting that the Minister and indeed all government</p> <p>4 officials need to understand that we are essentially</p> <p>5 dealing with a criminal act. I've said as much to the</p> <p>6 Minister of Safety & Security. I will stress that Minister</p> <p>7 Shabangu should have a discussion with Roger," and then the</p> <p>8 email is then acknowledged by Mr Jamieson who says, "Thank</p> <p>9 you, Cyril. I had a planned briefing with Bheki today and</p> <p>10 I've also carried that message over, which they a hundred</p> <p>11 percent support. He will also convey this to the Minister</p> <p>12 tomorrow morning. He asked for a copy of the letter."</p> <p>13 Then if I could take you to the last email in the</p> <p>14 sequence, which is at page 18 of the bundle –</p> <p>15 CHAIRPERSON: I'm informed that that is</p> <p>16 BBB4. The others followed after it, 4.1, point 2.</p> <p>17 According to what I'd been told that's exhibit BBB4.</p> <p>18 MR UNTERHALTER SC: If I could then take</p> <p>19 you to this –</p> <p>20 CHAIRPERSON: That's what I'd been told.</p> <p>21 I notice that item 6 is also BBB4, but when Ms Pillay comes</p> <p>22 back she can clarify, but for the moment we will call it</p> <p>23 BBB4 until further notice.</p> <p>24 MR UNTERHALTER SC: Alright, so well just</p> <p>25 then for identification purposes, it is an email that you</p>

<p style="text-align: right;">Page 34443</p> <p>1 sent on the 15th of August to amongst others Jamieson and 2 Phillimore re. the security situation, and you say, "I 3 just had a discussion with Susan Shabangu in Cape Town. 4 She agrees that what we are going through is not a labour 5 dispute but a criminal act. She will correct her 6 characterisation of what we are experiencing. She's going 7 into cabinet and will brief the President as well and get 8 the Minister of Police, Nathi Mthethwa, to act in a more 9 pointed way. She will be in Johannesburg by 5PM and would 10 be able to speak to Roger. Let us keep the pressure on 11 them to act correctly." 12 Now could I take you to a couple of points that 13 have emerged from this. What did you mean by the Minister 14 acting in a more pointed way? 15 MR RAMAPHOSA: I meant that what we 16 wanted to communicate to government that we're dealing with 17 people who are being killed and what we need to do is to 18 prevent further deaths occurring, and acting in a pointed 19 way would mean that those who are perpetrating those acts 20 should be arrested so that that comes to a stop and does 21 not carry on any further. That is acting in a pointed way. 22 MR UNTERHALTER SC: As far as continuing 23 to contain the situation, did you have anything else in 24 mind as far as how the police should go about ensuring that 25 there was no further escalation?</p>	<p style="text-align: right;">Page 34445</p> <p>1 seek to prescribe the type of action that they should take, 2 except for doing what I understand to be their duties. 3 MR UNTERHALTER SC: Thereafter and before 4 the events of the following day, which are the subject 5 matter of consideration by this Commission, did you have 6 any other discussions with ministers or other officials in 7 the police concerning their conduct at Marikana? 8 MR RAMAPHOSA: No, I had no further 9 discussion with the ministers of the police. 10 MR UNTERHALTER SC: Thank you, Chair, 11 those are our questions. 12 CHAIRPERSON: I said there was a problem, 13 I couldn't understand why this BBBB4 – I'm informed it's 14 actually BBBB4.6. This is your document at page 18 of the 15 bundle. 16 MR UNTERHALTER SC: Thank you, Mr 17 Chairman, I've corrected that in my bundle. Those are our 18 questions for the Deputy President. 19 CHAIRPERSON: Thank you. I think it's 20 probably appropriate for us now to take the first comfort 21 break for quarter of an hour. We will resume at half past 22 10. 23 [COMMISSION ADJOURNS COMMISSION RESUMES] 24 [10:33] CHAIRPERSON: The Commission resumes. In 25 future I don't want any photographers sitting in the well</p>
<p style="text-align: right;">Page 34444</p> <p>1 MR RAMAPHOSA: No, I did not have 2 anything further in mind except that the police need to do 3 their job and as I understand it their job is to have a 4 presence where acts of criminality are taking place, to 5 prevent further acts of criminality and to arrest those who 6 they know have perpetrated such acts so that they do not 7 carry on perpetrating those acts. That is the sum total of 8 what I expect the police to do. 9 MR UNTERHALTER SC: And then just the 10 language in the final sentence, "Let us keep the pressure 11 on them to act correctly," again what did you mean? 12 MR RAMAPHOSA: To act correctly with 13 regard to executing their jobs and their tasks, which is to 14 prevent further criminality carrying on, further loss of 15 life, and further injuries to people. That is what I felt 16 we needed to be conveying to them and that was keeping the 17 pressure on – 18 MR UNTERHALTER SC: Yes. 19 MR RAMAPHOSA: - so that those people 20 should be arrested. 21 MR UNTERHALTER SC: Did you at any point 22 in time seek to prescribe how the police should go about 23 doing this and with what level of intervention they should 24 act? 25 MR RAMAPHOSA: No, I did not at any time</p>	<p style="text-align: right;">Page 34446</p> <p>1 of the chamber, certainly not just after we've adjourned or 2 when we're trying to come back. Anyway, I take it they've 3 taken all the photographs they want but it's not 4 appropriate for them to fill up the well of the court, the 5 well of the chamber here, taking photographs. The 6 Commission resumes. You're still under oath, Mr Ramaphosa. 7 Mr Budlender? 8 MATAMELA CYRIL RAMAPHOSA: (s.u.o.) 9 CROSS-EXAMINATION BY MR BUDLENDER SC: 10 Thank you, Chair. Mr Ramaphosa, good morning. 11 MR RAMAPHOSA: Good morning, Mr 12 Budlender. 13 MR BUDLENDER SC: One of the matters for 14 which you are well known, of course, is your role in our 15 constitutional negotiations but as we know, in fact, your 16 experience in negotiations goes much further than that, 17 much wider than that. You've been intensively engaged over 18 many years in the negotiations on other matters such as 19 labour matters, community matters, civic association 20 matters, is that correct? 21 MR RAMAPHOSA: That is correct, Mr 22 Chairman. 23 MR BUDLENDER SC: And would you agree 24 with me that one of the principles of negotiation is that 25 if you are negotiating with a group of people, a community,</p>

<p style="text-align: right;">Page 34447</p> <p>1 a group of workers or whatever, it's vital that they should 2 have confidence in their representatives at the bargaining 3 table. 4 MR RAMAPHOSA: I would agree. 5 MR BUDLENDER SC: If the negotiators 6 don't have the confidence of the people they are supposed 7 to represent, then any deal you reach with those 8 negotiators is worthless. 9 MR RAMAPHOSA: That would be correct. 10 MR BUDLENDER SC: Thank you. Now, one of 11 the previous witnesses, as I think you know, was Mr Da 12 Costa who was the Lonmin vice-president for the Karee Mine. 13 Do you know Mr Da Costa? 14 MR RAMAPHOSA: Yes, I know Mr Da Costa. 15 MR BUDLENDER SC: He agreed, and I'll 16 give you the reference but I'm not going to put the record 17 up on the screen unless you'd like to see it and please ask 18 if you would like to see it, but he agreed – it's day 239, 19 page 30097 line 22 – he agreed that Lonmin management set 20 four conditions for – perhaps you should go there. Do you 21 have his evidence in front of you? 22 MR RAMAPHOSA: It would be helpful if it 23 was up there – 24 MR BUDLENDER SC: Let's do that. 25 MR RAMAPHOSA: - so that I can have</p>	<p style="text-align: right;">Page 34449</p> <p>1 for negotiation? 2 MR RAMAPHOSA: I do not know but I would 3 guess it would have been at the executive management level. 4 MR BUDLENDER SC: And you don't know 5 whether it was discussed at a meeting of the executive 6 management committee or whether it was discussed amongst 7 members of the executive management? 8 MR RAMAPHOSA: I would not know, Mr 9 Chairman. 10 MR BUDLENDER SC: Then as I say, I'd like 11 to examine the refusal to talk to the strikers except 12 through the NUM. 13 MR RAMAPHOSA: Ja. 14 MR BUDLENDER SC: Could we have day, 15 record day 36? That's the evidence of Mr Gcilitshana of 16 the NUM, whom I am sure you also know. 17 MR RAMAPHOSA: Yes, I know him. 18 MR BUDLENDER SC: Day 36, page 3874 lines 19 4 to 12 and I was asking some questions to him and I asked 20 him, "It wouldn't assist in September 2012" – I think that 21 should really be August 2012 or maybe September, in any 22 event – "for NUM and Lonmin to reach an agreement through 23 the normal processes about how the dispute could be 24 resolved because the striking workers were not adequately 25 represented by NUM at that time, they didn't have</p>
<p style="text-align: right;">Page 34448</p> <p>1 easier reference. 2 MR BUDLENDER SC: Let's do that. It's 3 page 30097 line 22. 4 CHAIRPERSON: 30097, there we are. 5 MR BUDLENDER SC: Line 22. 6 CHAIRPERSON: Line 22. 7 MR BUDLENDER SC: And I say to Mr Da 8 Costa, "Management set three preconditions; you've got to 9 lay down your weapons," then I correct myself, "four 10 preconditions; you've got to lay down your weapons, you've 11 got to leave the koppie, you've got to go back to work and 12 you've got to speak to us through NUM, otherwise management 13 wasn't prepared to speak. That's right?" And then Mr Da 14 Costa says, "Those were the conditions that were laid down, 15 yes." And I want to ask you some questions about the 16 fourth condition, the condition that any discussion with 17 the strikers would be through the NUM. Now firstly, was it 18 the Lonmin board that decided that Lonmin management should 19 take up this position and was the board consulted about 20 that? 21 MR RAMAPHOSA: No. No such discussion, 22 to my recollection, happened at the board in relation to 23 this matter. 24 MR BUDLENDER SC: Yes. Do you know who 25 took that decision as to what the preconditions would be</p>	<p style="text-align: right;">Page 34450</p> <p>1 confidence in NUM and Mr Gcilitshana said, "It will be 2 difficult for me to say yes or no on that one but what I 3 agree with you, that there was a loss of confidence to the 4 NUM" and I'm sure you are aware of that as well. 5 MR RAMAPHOSA: Yes. 6 MR BUDLENDER SC: And in fact if we can 7 go back to day 239 page 30101 – 8 CHAIRPERSON: Just – now we have it on 9 the screen. 30101. 10 MR BUDLENDER SC: 30101 line 10, you'll 11 see that Mr Da Costa was asked a series of questions about 12 in which, during the course of our examining, what the 13 cause was or the symptoms were of that hostility or that 14 problem and if we can just start at line 10, what I put to 15 him, "There was a physical confrontation on Saturday, the 16 11th of August, when strikers marched to the NUM offices." 17 And then line 14, "Some of the strikers who marched on the 18 NUM offices were armed with dangerous weapons." Line 18, 19 "NUM officials fired shots at the strikers. They injured 20 two of the strikers and at the time the strikers thought 21 that those two of their members had been killed by the NUM 22 officials." At line 23, "It was a source of great anger on 23 their part because they thought their members had been 24 killed by union officials." Could we go on further down? 25 Line 7, "The strikers repeatedly" – perhaps I should record</p>

<p style="text-align: right;">Page 34451</p> <p>1 that that wasn't true, that in fact the strikers had not 2 been killed by the NUM officials who fired shots. There 3 were two people injured but no-one was killed. 4 MR RAMAPHOSA: Okay. 5 MR BUDLENDER SC: Line 7, "The strikers 6 repeatedly said that the reason they were carrying 7 dangerous weapons was that they feared that NUM members 8 would attack them and that they wanted to defend 9 themselves." And Mr Da Costa makes the point, "That's what 10 they said," he doesn't acknowledge that that was true. 11 Then a bit further down, line 20, "The NUM was trying to 12 persuade workers to go back to strike," Mr Da Costa – 13 MR RAMAPHOSA: Back to work. 14 MR BUDLENDER SC: Back to work, I beg 15 your pardon. Mr Da Costa says, "Yes, they were at the 16 time." I put to him, "To break the strike?" And he says, 17 "That's correct, I think it was an unprotected strike. 18 They wanted their members," could we continue, "to get back 19 to work." "And the strikers were very angry about this. 20 Some of the strikers attempted to prevent workers, 21 including NUM members, from going to work." And "The 22 strikers killed some of the Lonmin employees." I think 23 you'll be – Mr Julius Langa seems to have been killed for 24 going to work. I think you'll be aware of that general 25 background to the matter, if not all of the detail.</p>	<p style="text-align: right;">Page 34453</p> <p>1 They said, it's not our business." And Mr Da Costa says, 2 "Ja, they weren't really prepared to get involved in it." 3 And that, too, is consistent with what Mr Gcilitshana said 4 when he said the NUM had no principled objection to Lonmin 5 talking directly to the strikers, not through them. I 6 don't know whether you're aware – were you, are you aware 7 of that? 8 MR RAMAPHOSA: No, I was not aware of 9 that. 10 MR BUDLENDER SC: Right. Now, by the 15th 11 of August the strikers had killed five of their co-workers, 12 they'd been involved in a clash with the police in which 13 five more people were killed, three strikers and two police 14 officers and it was as you've said, it was a very serious 15 situation. 16 MR RAMAPHOSA: Yes. 17 MR BUDLENDER SC: I want to suggest to 18 you, because 10 people had died – 19 MR RAMAPHOSA: Yes. 20 MR BUDLENDER SC: - and there was a real 21 risk of further violence and further deaths. 22 MR RAMAPHOSA: Indeed. 23 MR BUDLENDER SC: Under those 24 circumstances, was there not an obligation on Lonmin to be 25 flexible and adaptable and to try every possible means of</p>
<p style="text-align: right;">Page 34452</p> <p>1 MR BUDLENDER SC: So there was, when one 2 says that the strikers, when Mr Gcilitshana agreed that the 3 strikers didn't have confidence in the NUM, we see that 4 that was, there were multiple causes of that and it was a 5 deep-seated problem, it wasn't a superficial problem. 6 MR RAMAPHOSA: Yes. 7 MR BUDLENDER SC: And then we also see, 8 could we go to day 239 page 30091 line 25, what Mr Da Costa 9 says – 10 CHAIRPERSON: I think you should start 11 reading your question, starting perhaps at line 19. 12 MR BUDLENDER SC: No, I'm dealing with a 13 slightly different, a slightly different aspect, Chair. 14 CHAIRPERSON: Oh. 15 MR BUDLENDER SC: I'm not dealing with 16 the line 19 point. Can I go to line 4 on page 30092 – 17 unless, Chair, you wanted – 18 CHAIRPERSON: No, I just thought to 19 understand the answer that you'd referred to, one had to 20 know what the question is. 21 MR BUDLENDER SC: Yes, at 30092 line 4 I 22 say to, Mr Da Costa says, "The NUM's position was, this is 23 not our situation, we're not getting involved in this, it's 24 for the company to –." And then I say to him, "So NUM 25 weren't an obstacle?" I say, "NUM weren't an obstacle.</p>	<p style="text-align: right;">Page 34454</p> <p>1 avoiding further violence? 2 MR RAMAPHOSA: Yes, I would agree in 3 fact. 4 MR BUDLENDER SC: Yes. 5 MR RAMAPHOSA: All parties needed to do 6 whatever they could to avoid further deaths and violence 7 and that also behoved on Lonmin, on the police, on the 8 unions and indeed everybody else who could have had some 9 impact on making sure that the situation does not 10 deteriorate, needed to do something. 11 MR BUDLENDER SC: Yes. That's very fair, 12 I think. I want to suggest to you that the Lonmin position 13 that they would talk to the, their offer that they would 14 talk to the strikers but only through NUM was an empty 15 offer because any such talks would be useless. 16 MR RAMAPHOSA: I would tend to agree in 17 view of the fact that the workers had lost confidence in 18 the NUM. 19 MR BUDLENDER SC: Yes. And I want to 20 suggest – we don't know, of course, what would have 21 happened, what if, but I do want to put it to you that it's 22 possible that if Lonmin had taken up a more flexible 23 stance, the further deaths on the 16th of August might have 24 been avoided. What do you say to that? 25 MR RAMAPHOSA: It is possible.</p>

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1 MR BUDLENDER SC: Yes. We don't know.
 2 MR RAMAPHOSA: We don't know. I would
 3 not know as well.
 4 MR BUDLENDER SC: Yes, but it's a
 5 possibility, you accept that.
 6 MR RAMAPHOSA: Yes.
 7 MR BUDLENDER SC: Yes. Now, then I want
 8 to move on, Mr Ramaphosa, to some questions about the
 9 relationship between trade unions and the government.
 10 MR RAMAPHOSA: Yes.
 11 MR BUDLENDER SC: Now as we know, you
 12 were previously the general secretary of the NUM.
 13 MR RAMAPHOSA: That is correct.
 14 MR BUDLENDER SC: You really came to very
 15 public prominence because of the work you did for the
 16 established of independent trade unions.
 17 MR RAMAPHOSA: I was asked to serve
 18 mineworkers by establishing the National Union of
 19 Mineworkers.
 20 MR BUDLENDER SC: Well, that's very
 21 modest, Mr Ramaphosa, but you, your campaign, your cause
 22 was the cause of independent trade unions.
 23 MR RAMAPHOSA: Indeed.
 24 MR BUDLENDER SC: Yes. And of course if
 25 trade unions are to be truly independent and to act

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1 independently, the state should keep its hands off and not
 2 favour one union over another. Would you agree with that?
 3 MR RAMAPHOSA: I would agree.
 4 MR BUDLENDER SC: Now I want to read to
 5 you what was said by Lieutenant-General Mbombo, the
 6 Provincial Commissioner of Police. This was at a meeting
 7 with Lonmin management on Tuesday, the 14th of August.
 8 That's two days before the big event on the 16th. I should
 9 tell you that she didn't know that the meeting was being
 10 recorded and it seems that she spoke very frankly. Could
 11 we have exhibit JJJ192 and could we go to page 8 of that?
 12 And then we can go, let me just find the line. Right,
 13 could we go to line 15? Now where it says "SAPS
 14 Commissioner," this is the Provincial Commissioner
 15 Lieutenant-General Mbombo. She says, it's a long passage
 16 but I want to read it to you, Mr Ramaphosa, so you can see
 17 the full context. She says, "You see I want us to, you
 18 remember last night Abey, I raised this thing that when we
 19 were dealing with Impala we had a lot of allegations and
 20 rumours and some of these allegations they were
 21 [indistinct] the management, that the management is
 22 colluding with AMCU and so on and so forth. And at some
 23 point ourselves, we were asking ourselves questions to say
 24 but these rumours that we are getting, these issues that
 25 are being said, they might find truth somehow because we

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1 are looking at how the management was moving forward in
 2 terms of taking action, in terms of, you know, because what
 3 we believe is, is that whether there is this unrest now,
 4 this unrest does not withdraw our policy," I think rather
 5 than our policy, "our policies are still intact. They need
 6 to be implemented in the best way and the unrest situation
 7 should then take its own form, but like I said yesterday
 8 that once we are on site as the cops then we can take
 9 control of the security issue, but the administrative
 10 issues should also take their own line. So at the end of
 11 the day when we were dealing with these issues we ended up
 12 ourselves not being comfortable in respect of understanding
 13 whether the Impala management really is colluding with the
 14 mind." I assume that's a reference to AMCU. "But also
 15 remember from a political point of view there was even this
 16 feeling that, you know, the mining sector wants to replace
 17 NUM, you know, with a new face and that is, maybe that is
 18 why these things are erupting. So I think yesterday, Abey
 19 will recall, you will recall this discussions with the
 20 National, when the National Commissioner came. She also
 21 came from the discussion that she raised from you and, you
 22 know, and some of these questions that she raised, you
 23 remember I raised them in the morning in our meeting and
 24 she also felt that, you know, it is difficult to separate
 25 management from giving these people this type of a leeway.

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1 How do we separate them now from an allegation that can
 2 come and say, but they are supporting them? So I want us
 3 to, when you said people must be arrested, I want us to be
 4 very clear that any information that we should get, we
 5 should, so that we can arrest people, that is our interest
 6 because yourselves here as management, you will clear
 7 yourselves from this Mr Mokwena's perception" – she says,
 8 "Perception," Mr Kwadi says "Yes." "You will clear
 9 yourself by ensuring that you defuse, you give out
 10 information that is relating to this thing and we are able
 11 to actually act on that information." So what she's
 12 saying, as I understand it, is, she was asking them for the
 13 names of people involved in the strike so that they could
 14 be arrested and she is saying, you should give us these
 15 names because that way you will clear yourself from a
 16 perception that you are colluding with AMCU. That, in any
 17 event, is what we will submit this means. It's not, I
 18 don't ask you to comment on what it means, it's not
 19 appropriate. If that's what it means, if what the
 20 Provincial Commissioner was meaning was that it's important
 21 for the police, important for the mine management to
 22 distance themselves from any suggestion that they are
 23 wanting to undermine the NUM and to distance themselves
 24 from any suggestion that they are supporting AMCU, if
 25 that's what it means, that would be a very inappropriate

<p style="text-align: right;">Page 34459</p> <p>1 matter for the police to be concerned with.</p> <p>2 MR RAMAPHOSA: Yes, I would agree.</p> <p>3 MR BUDLENDER SC: And according to what</p> <p>4 she says, it's not only she who is concerned about that,</p> <p>5 she says the National Commissioner also was concerned about</p> <p>6 that.</p> <p>7 MR RAMAPHOSA: Yes.</p> <p>8 MR BUDLENDER SC: You've seen that.</p> <p>9 MR RAMAPHOSA: Yes.</p> <p>10 MR BUDLENDER SC: Because it's not for</p> <p>11 the, it's not for the police, of all institutions, to take</p> <p>12 sides in a dispute between unions and say we support this</p> <p>13 union and we don't support that union.</p> <p>14 MR RAMAPHOSA: Yes.</p> <p>15 MR BUDLENDER SC: That's where we come</p> <p>16 from, we've been there.</p> <p>17 MR RAMAPHOSA: Indeed.</p> <p>18 MR BUDLENDER SC: And we know what that</p> <p>19 leads to.</p> <p>20 MR RAMAPHOSA: Indeed.</p> <p>21 MR BUDLENDER SC: In fact, it leads to</p> <p>22 violence.</p> <p>23 MR RAMAPHOSA: Indeed.</p> <p>24 MR BUDLENDER SC: Amongst other things.</p> <p>25 Thank you. Then one further matter only that I need to</p>	<p style="text-align: right;">Page 34461</p> <p>1 which we need to find a way of defusing. Hence I just told</p> <p>2 these guys that we need to act such that we kill this</p> <p>3 thing." And Mr Mokwena says, "Immediately, yes."</p> <p>4 Now again what we are going to submit to the</p> <p>5 Commission, and I don't ask you to comment on it, is that</p> <p>6 what she is saying is that they should put an end to the</p> <p>7 situation at the koppie quickly before Mr Malema comes</p> <p>8 because if Mr Malema comes and it's then settled he will</p> <p>9 get the credit for settling it. I don't ask you to comment</p> <p>10 on that, that's not for you to say.</p> <p>11 MR RAMAPHOSA: Yes, indeed.</p> <p>12 MR BUDLENDER SC: And if that's what it</p> <p>13 means would you think that's an appropriate consideration</p> <p>14 for the police to take into account in making their plans?</p> <p>15 MR RAMAPHOSA: I would not think it is</p> <p>16 appropriate.</p> <p>17 MR BUDLENDER SC: And he says that the</p> <p>18 matter has a political connotation because Mr Malema's in</p> <p>19 favour of -</p> <p>20 CHAIRPERSON: No, she said. She said.</p> <p>21 MR BUDLENDER SC: She says, I beg your</p> <p>22 pardon. She says it has a political connotation because Mr</p> <p>23 Malema is in favour of nationalisation of the mines and so</p> <p>24 therefore as a political connotation is the question of</p> <p>25 nationalisation or non-nationalisation of the mines a</p>
<p style="text-align: right;">Page 34460</p> <p>1 raise with you, Mr Ramaphosa, and that's on that same</p> <p>2 document. A little bit further you'll see towards the foot</p> <p>3 of that page she refers to the fact that the Minister had a</p> <p>4 call from Mr Ramaphosa. I'm not going to deal with that,</p> <p>5 you've spoken about that and no doubt other people may want</p> <p>6 to ask you questions about it but I want to go to the next,</p> <p>7 to - no, please, to page 10.</p> <p>8 [10:53] Perhaps we should start at line 8. She's talking</p> <p>9 about you and she's talking about what seems to be the ANC</p> <p>10 disciplinary committee hearing in relation to Mr Malema's</p> <p>11 matter, and then at line 15 Lieutenant-General Mbombo says</p> <p>12 the following, "And remember that at Impala Malema came</p> <p>13 with our Premier and spoke to those people about that they</p> <p>14 should make their demands but in a way that - and after</p> <p>15 that we ourselves as the police we manage to, you know,</p> <p>16 manage the situation after Malema came. Now our</p> <p>17 discussions with the National Commissioner was around this</p> <p>18 thing, that says this thing now happening, such again</p> <p>19 Malema come and defuses thing so that it becomes as if</p> <p>20 Malema has taken charge of the mining, the mine." Mr</p> <p>21 Mokwena says, "Yes." And she says, "Once again remember</p> <p>22 Malema's view that the mine should be" - Mr Mokwena says,</p> <p>23 "Nationalised," and Lieutenant-General Mbombo says,</p> <p>24 "nationalised and all of that. So it has got a serious</p> <p>25 political connotation that we need to take into account but</p>	<p style="text-align: right;">Page 34462</p> <p>1 matter which you think the police should take into account</p> <p>2 in deciding on their operational plans?</p> <p>3 MR RAMAPHOSA: No, I would not think so.</p> <p>4 MR BUDLENDER SC: If it means what we're</p> <p>5 going to suggest it was, it does, namely that this was one</p> <p>6 of the motors that was driving the decisions the police</p> <p>7 took, that too would be an inappropriate motive for the</p> <p>8 police. You agree with that?</p> <p>9 MR RAMAPHOSA: I would agree.</p> <p>10 MR BUDLENDER SC: And according to what</p> <p>11 she says the National Commissioner too was holding that</p> <p>12 view, but again you can't comment on whether -</p> <p>13 MR RAMAPHOSA: I can't comment on that.</p> <p>14 MR BUDLENDER SC: You can't comment on</p> <p>15 the views of the National Commissioner.</p> <p>16 MR RAMAPHOSA: Indeed.</p> <p>17 MR BUDLENDER SC: Thank you, Chair, I</p> <p>18 have no further questions.</p> <p>19 CHAIRPERSON: Thank you, Mr Budlender.</p> <p>20 The LRC?</p> <p>21 MR NGCUKAITOBI: Thank you, Mr Chairman,</p> <p>22 I will be doing the cross-examination for the Legal</p> <p>23 Resources Centre.</p> <p>24 CHAIRPERSON: I don't think you've</p> <p>25 appeared before us before, so can you please spell your</p>

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1 name for the benefit of the transcribers of the record?
 2 MR NGCUKAITOBI: I have, Mr Chairman, but
 3 I'm happy to repeat my surname. It's N-G-C-U-K-A-I-T-O-B-
 4 I, Ngcukaitobi.
 5 CHAIRPERSON: You're going very fast. N-
 6 G-C?
 7 MR NGCUKAITOBI: N-G-C-U-K-A-I-T-O-B-I,
 8 Ngcukaitobi is the surname.
 9 CHAIRPERSON: Yes, thank you very much.
 10 Please commence your cross-examination.
 11 CROSS-EXAMINATION BY MR NGCUKAITOBI:
 12 Thank you. Good morning, Deputy President.
 13 MR RAMAPHOSA: Good morning, Mr
 14 Ngcukaitobi.
 15 MR NGCUKAITOBI: Now can I start with the
 16 email of the 11th of August 2012. It is the email that was
 17 put up on the screen earlier when you gave your testimony
 18 in chief. I wonder if it can be –
 19 CHAIRPERSON: Is that exhibit JJJ1?
 20 MR NGCUKAITOBI: That is JJJ1, Mr
 21 Chairman.
 22 CHAIRPERSON: Page 1 of the bundle.
 23 MR NGCUKAITOBI: Page 1 of the bundle.
 24 Well, that's the Deputy President's –
 25 CHAIRPERSON: Page 1 of the bundle that

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1 the Deputy President's legal representatives have handed in
 2 and it's now exhibit JJJ1.
 3 MR NGCUKAITOBI: Yes, thank you, Mr
 4 Chairman. I want to start with the email from Ms Thandeka
 5 Ncube. Was this the first time when you received this
 6 email that you were appraised of the situation at Lonmin
 7 pertaining to the illegal strike?
 8 MR RAMAPHOSA: As far as I recall, yes,
 9 to the extent of the details set out here.
 10 MR NGCUKAITOBI: Yes, now what she told
 11 you in that email was, 1, there is an illegal strike at the
 12 Karee Mine and she told you the reasons behind the illegal
 13 strike, particularly the fact that the workers at Impala
 14 had received an increase of R12 000 and - up to R12 000,
 15 and at Lonmin the offer was R6 000. Can you see that?
 16 MR RAMAPHOSA: Yes.
 17 MR NGCUKAITOBI: And then she also tells
 18 you that the solution proposed by Lonmin is a special
 19 bonus.
 20 MR RAMAPHOSA: Yes.
 21 MR NGCUKAITOBI: And that the RDOs are
 22 sticking to their guns in relation to their demand.
 23 MR RAMAPHOSA: Indeed.
 24 MR NGCUKAITOBI: And then towards the end
 25 of that email, the very last paragraph she proposes a way

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1 forward in relation to how to deal with the illegal strike.
 2 She says that, "The response of Lonmin is to follow
 3 disciplinary procedures and, if required, will dismiss the
 4 illegal strikers, and then Barnard," that's presumably Mr
 5 Mokwena, "is preparing the ultimatum which they will issue
 6 tomorrow and will terminate contracts of employment should
 7 employees not show up for duty." This is also, if I may
 8 ask you, consistent with your understanding of how an
 9 employer responds to an illegal strike; dismissals is one
 10 of the options?
 11 MR RAMAPHOSA: Yes.
 12 MR NGCUKAITOBI: Now if we can then go
 13 back to your own email at the top of the page – sorry, I'm
 14 sort of struggling here with the technology –
 15 CHAIRPERSON: It is at the top of the
 16 page, you're right.
 17 MR NGCUKAITOBI: Yes. What you say is
 18 "This is a grave situation." You will remember in that
 19 email she also told you that two people had been shot.
 20 MR RAMAPHOSA: Indeed.
 21 MR NGCUKAITOBI: And then you say, "The
 22 problem with this situation is that we know the cause of
 23 it."
 24 MR RAMAPHOSA: Yes.
 25 MR NGCUKAITOBI: And you go to explain

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1 what the cause is.
 2 MR RAMAPHOSA: Yes.
 3 MR NGCUKAITOBI: And you say, "The real
 4 cause," emphasis on the real cause, "is the huge
 5 differential between the wages paid to RDOs in other
 6 companies and what we pay them as Lonmin."
 7 MR RAMAPHOSA: Yes.
 8 MR NGCUKAITOBI: And then you said you
 9 were not aware personally that the differential was this
 10 high.
 11 MR RAMAPHOSA: Yes.
 12 MR NGCUKAITOBI: And then you say, "The
 13 solution that they have come up with," presumably "they"
 14 there means Lonmin management –
 15 MR RAMAPHOSA: Yes.
 16 MR NGCUKAITOBI: - "is not workable," and
 17 then you say you are NOT surprised that the RDOs have
 18 rejected it. This is also consistent with your own
 19 personal experience, having been a leader of the workers.
 20 MR RAMAPHOSA: Yes.
 21 MR NGCUKAITOBI: Now what would have been
 22 a workable solution?
 23 MR RAMAPHOSA: Well, in this case a
 24 workable solution was not to go down the route they had
 25 suggested, which is disciplinary action and dismissal of

<p style="text-align: right;">Page 34467</p> <p>1 the workers.</p> <p>2 MR NGCUKAITOBI: Yes.</p> <p>3 MR RAMAPHOSA: I, that is why I said this</p> <p>4 is not a workable solution.</p> <p>5 MR NGCUKAITOBI: Yes.</p> <p>6 MR RAMAPHOSA: Because the workable</p> <p>7 solution would be to sit down and negotiate with those</p> <p>8 workers who are raising this concern.</p> <p>9 MR NGCUKAITOBI: Yes, and the fact that</p> <p>10 the strike is illegal is not an inseparable bar to a</p> <p>11 negotiation.</p> <p>12 MR RAMAPHOSA: No, it is not.</p> <p>13 MR NGCUKAITOBI: Yes. Now at this stage</p> <p>14 we know from the evidence you've given in chief that you</p> <p>15 were also the chairperson of the Transformation Committee</p> <p>16 of Lonmin.</p> <p>17 MR RAMAPHOSA: Yes, indeed.</p> <p>18 MR NGCUKAITOBI: And one of the</p> <p>19 responsibilities was to look broadly at the issues</p> <p>20 affecting workers.</p> <p>21 MR RAMAPHOSA: Yes.</p> <p>22 MR NGCUKAITOBI: Did you raise your</p> <p>23 concern that you expressed to Ms Ncube to the board and the</p> <p>24 management of Lonmin that what they are proposing is not a</p> <p>25 solution and in fact there is a solution, which is the</p>	<p style="text-align: right;">Page 34469</p> <p>1 don't dismiss and in fact mass dismissals of workers is not</p> <p>2 an option.</p> <p>3 MR NGCUKAITOBI: Yes.</p> <p>4 MR RAMAPHOSA: What you need to do is to</p> <p>5 negotiate with workers.</p> <p>6 MR NGCUKAITOBI: Yes. Yes, I accept</p> <p>7 that. I'm trying to understand between the 11th of August</p> <p>8 when you expressed the view why it seems to me that the</p> <p>9 most logical thing would have been the view you articulated</p> <p>10 to Ms Ncube should be articulated to management, because</p> <p>11 they were at the coalface of dealing with the workers, why</p> <p>12 you did not raise it.</p> <p>13 MR RAMAPHOSA: Well, I would have raised</p> <p>14 it with Ms Ncube, who was the Shanduka representative on</p> <p>15 that management committee where decisions were being taken.</p> <p>16 I did not sit on the management committee, she did.</p> <p>17 MR NGCUKAITOBI: Yes. Now in the</p> <p>18 correspondence of the 15th – and I accept that there were</p> <p>19 additional deaths that had occurred –</p> <p>20 MR RAMAPHOSA: Yes.</p> <p>21 MR NGCUKAITOBI: But you would agree with</p> <p>22 me that even in that context the answer was still a</p> <p>23 negotiated outcome?</p> <p>24 MR RAMAPHOSA: The negotiated outcome as</p> <p>25 I said earlier would have been one of the options indeed.</p>
<p style="text-align: right;">Page 34468</p> <p>1 negotiated route?</p> <p>2 MR RAMAPHOSA: The Transformation</p> <p>3 Committee was not in session during this whole process. It</p> <p>4 only meets I think twice or so a year, so we would just</p> <p>5 tend to get reports of what has already happened and in</p> <p>6 this case I would have had maybe a discussion to say that</p> <p>7 dismissal of workers is clearly not the solution to be</p> <p>8 opted for.</p> <p>9 MR NGCUKAITOBI: Yes, just explain</p> <p>10 whether in the correspondence you had with Mr Phillimore</p> <p>11 and in the correspondence you had with Mr Jamieson whether</p> <p>12 you raised with them that the solution they're proposing is</p> <p>13 incorrect and that a proper solution is negotiations?</p> <p>14 MR RAMAPHOSA: That issue never came up</p> <p>15 again because we now got catapulted into a situation where</p> <p>16 we were now dealing with the deaths of a number of people.</p> <p>17 MR NGCUKAITOBI: But you were in email</p> <p>18 correspondence; it is a matter you could have raised.</p> <p>19 MR RAMAPHOSA: One could have raised it,</p> <p>20 but in the emails, as you would have clearly seen, we were</p> <p>21 now dealing with what I would have seen as a more emergency</p> <p>22 situation of people getting injured and getting killed.</p> <p>23 MR NGCUKAITOBI: Yes.</p> <p>24 MR RAMAPHOSA: My own view on issues of</p> <p>25 dismissal and issues of negotiation is firmly that you</p>	<p style="text-align: right;">Page 34470</p> <p>1 The problem with all this is that we were now dealing with</p> <p>2 what I regard as an emergency situation of people getting</p> <p>3 killed.</p> <p>4 MR NGCUKAITOBI: Yes. But still on the</p> <p>5 15th the answer to it includes, or at least predominantly is</p> <p>6 negotiations, because even the current strike we are</p> <p>7 dealing with, it was ultimately solved by negotiations.</p> <p>8 What I'm struggling with is since your view by the 11th of</p> <p>9 August was that the way out is to negotiate –</p> <p>10 MR RAMAPHOSA: Yes.</p> <p>11 MR NGCUKAITOBI: - why that view could</p> <p>12 not be expressed to management on the 15th of August and why</p> <p>13 it could not be raised with the chairman of the board.</p> <p>14 MR RAMAPHOSA: Well, it's a matter of</p> <p>15 saying when was it raised. I mean during the course of all</p> <p>16 this all options would have been considered and one of them</p> <p>17 is to stabilise the situation to make sure that no further</p> <p>18 deaths occur and another one would have been once that has</p> <p>19 happened, negotiations must then ensue because in any event</p> <p>20 to get out of any difficult situation you've got to talk</p> <p>21 amongst yourselves.</p> <p>22 MR NGCUKAITOBI: Yes.</p> <p>23 MR RAMAPHOSA: You've got to negotiate.</p> <p>24 MR NGCUKAITOBI: Do you not think it</p> <p>25 should have been raised earlier, your proposal that the</p>

<p style="text-align: right;">Page 34471</p> <p>1 outcome is negotiated, and that if it had been raised 2 earlier some of this that we are dealing with in this 3 Commission could have been avoided? 4 MR RAMAPHOSA: Well, as I was saying, 5 with respect, Mr Chairman, that the issue of negotiations 6 has to remain prominent in anybody's mind who is dealing in 7 a situation where there are various parties trying to find 8 a solution, and that is a clear option. But another option 9 which was considered, as I've said in this case, is to make 10 sure that there is stability. In this case it was very 11 relevant that people, no further people should be killed. 12 MR NGCUKAITOBI: Yes. 13 MR RAMAPHOSA: So yes, it was an option. 14 MR NGCUKAITOBI: But do you not think it 15 should have been raised earlier, Mr Deputy President? 16 MR RAMAPHOSA: Well, as I understand it 17 there were discussions that happened and people on the mine 18 - and I don't know to what extent they may have come here 19 to testify - would have attested to the fact that there was 20 continuous talking and negotiation. 21 MR NGCUKAITOBI: But the reason I persist 22 with this is looking at the person that you are and the 23 influence that you could have brought to bear on the 24 situation if you had raised prominently the solution that 25 you proposed in the email, whether you don't think that</p>	<p style="text-align: right;">Page 34473</p> <p>1 should have upped its offer? 2 MR RAMAPHOSA: Once I looked at the 3 differential and I looked at it in two ways; the first card 4 was what I was given and I was quite concerned that there 5 was a gap, a huge gap as I perceived it, but later when I 6 asked for further information and looked at the 7 differential I found that when all the key elements of the 8 pay levels were given it was in the ballpark figure. The 9 three companies had minor differences here and there. In 10 one case Lonmin paid slightly better on I would think the 11 living-out allowance, or slightly better on something else. 12 So they seemed to level out, but the first card is what 13 concerned me. 14 MR NGCUKAITOBI: Yes. Did you think in 15 relation to the first card that Lonmin should have upped 16 its offer? 17 MR RAMAPHOSA: I thought that they needed 18 to sit down, yes, clearly, and negotiate this matter, yes. 19 MR NGCUKAITOBI: And in the negotiation 20 they should make an offer to the workers upping their 21 proposal. 22 MR RAMAPHOSA: That would have been a 23 matter that would have arisen between discussions between 24 the management, as well as the workers, and that would have 25 come out in the mix.</p>
<p style="text-align: right;">Page 34472</p> <p>1 perhaps if you had taken a more active direct route towards 2 cajoling all the parties to a negotiated outcome, whether 3 some of this could not have been avoided. What do you 4 think about that proposal? 5 MR RAMAPHOSA: It is possible, yes, 6 eminently possible, but we were dealing with a situation 7 from a variety of angles and we needed - in my view what 8 was prominent was to make sure that no further deaths 9 should occur. As I got reports that more and more people 10 were being killed I got quite alarmed. 11 MR NGCUKAITOBI: Yes, now I also want to 12 look at the email. One of the concerns that you expressed 13 in your email of the 11th is the wage gap - 14 MR RAMAPHOSA: Yes. 15 MR NGCUKAITOBI: - between what Implats 16 was paying and what your company was paying. Now how did 17 you think that wage gap could be resolved? 18 MR RAMAPHOSA: I mean clearly a wage gap 19 has to be resolved through negotiation between the union 20 and the company. 21 MR NGCUKAITOBI: Yes. 22 MR RAMAPHOSA: That's how you get into 23 the theatre of negotiation and resolve whatever wage gap or 24 whatever demand that has been put on the table. 25 MR NGCUKAITOBI: Did you think Lonmin</p>	<p style="text-align: right;">Page 34474</p> <p>1 MR NGCUKAITOBI: Yes, now I want to stay 2 with this theme that the real cause of what transpired is 3 the wage gap that you spotted perceptively, given your own 4 experience. 5 MR RAMAPHOSA: Ja. 6 MR NGCUKAITOBI: Now you were appointed 7 to the board of Lonmin, as I understand from your statement 8 in July of 2010. 9 MR RAMAPHOSA: Yes. Yes. 10 MR NGCUKAITOBI: And you became the 11 chairperson, and this is information I got on the website 12 of Lonmin - 13 MR RAMAPHOSA: Yes. 14 MR NGCUKAITOBI: You became chairperson 15 of the Transformation Committee in November 2010. 16 MR RAMAPHOSA: Yes. 17 MR NGCUKAITOBI: I think that's when it 18 was established. 19 MR RAMAPHOSA: Yes. 20 MR NGCUKAITOBI: Now I have a bundle of 21 document, I think - I don't know what's it called, I think 22 it's - 23 MS PILLAY: Chair, the LRC have a fairly 24 comprehensive bundle, so I'm going to propose - 25 CHAIRPERSON: As far as I understand most</p>

<p style="text-align: right;">Page 34475</p> <p>1 of them aren't relevant to the present topic we're dealing 2 with, but some of them obviously are. Have they now 3 isolated those that are relevant to the present topic? 4 MR NGCUKAITOBI: Yes, Mr Chairman. 5 CHAIRPERSON: In which case they will 6 obviously go in as – do we put them in perhaps all as 7 JJJJ8.1, 2, 3, etcetera? 8 MS PILLAY: Chair, the bundle that the 9 LRC has circulated is paginated already and I believe 10 they've prepared their cross-examination based on the 11 paginated number. So I'm going to propose that we put the 12 entire bundle in as JJJJ7 and that we refer – 13 CHAIRPERSON: We've already had JJJJ7. 14 That's the – oh no, sorry, we haven't, I beg your pardon. 15 In the bundle of documents which were presented to us by Mr 16 Ramaphosa's legal representatives, in addition to the 17 documents that have already been put in was a letter from 18 ENS, Edward Nathan Sonnenbergs, to Mr Budlender on the 31st 19 of May, answering a query. I think actually that should go 20 in because it constitutes an admission virtually by Mr 21 Ramaphosa. 22 MS PILLAY: That's correct. That would 23 be JJJJ7 then. 24 CHAIRPERSON: So let's treat that now – 25 Mr Unterhalter didn't put it in, but I'll put it in at this</p>	<p style="text-align: right;">Page 34477</p> <p>1 MR UNTERHALTER SC: We haven't learnt 2 which 50 were going to be the subject matter of 3 examination, so the witness hasn't had an opportunity, but 4 I think my learned friend should proceed – 5 CHAIRPERSON: Ja – 6 MR UNTERHALTER SC: - if the deputy 7 president requires a little bit time to familiarise himself 8 with it we can take that time. 9 CHAIRPERSON: Yes, that seems a practical 10 suggestion, let's proceed in that fashion. 11 MR NGCUKAITOBI: Thank you, Mr Chairman. 12 Deputy President, I'm still on the theme of the real 13 causes. Can I take you to page 324? 14 MR RAMAPHOSA: Yes. 15 MR NGCUKAITOBI: Now this is a report in 16 the Mining Weekly of the 11th of December 2012 and in the 17 first paragraph, which is immediately to the right of your 18 picture there, it refers to an article that you wrote in 19 2011, can you see that? 20 MR RAMAPHOSA: Yes. 21 MR NGCUKAITOBI: Now that article, if you 22 look at the last paragraph, you say there, "The current 23 turmoil in the mining industry, he believed was in large 24 measure the result of the inability to attend adequately to 25 the economic and social needs of the people most directly</p>
<p style="text-align: right;">Page 34476</p> <p>1 stage – JJJJ7, and then the LRC bundle can be JJJJ8. 2 MR NGCUKAITOBI: Okay, so I'm talking 3 then about triple J – or quadruple – 4 CHAIRPERSON: Quadruple J. We've been 5 here a long time. 6 MR NGCUKAITOBI: JJJJ8. 7 CHAIRPERSON: JJJJ8 and there is a bundle 8 and the pages have been numbered, so you can refer to the 9 particular page numbers that you're referring to now and 10 that will be all part of JJJJ8. 11 MR NGCUKAITOBI: Thank you, Mr Chairman. 12 CHAIRPERSON: But firstly we must be sure 13 that the witness has already got a copy of this bundle. 14 Has he? Yes, he has. 15 MR UNTERHALTER SC: No Chair, I think the 16 witness doesn't have the correct bundle, if we could just 17 place it before him so that my learned friend can continue. 18 CHAIRPERSON: Yes, has he had an 19 opportunity to – did the LRC indicate, because when I was 20 told they were going to hand in 400, I think it was 400 21 pages last week, I indicated that wasn't acceptable, it 22 wasn't fair to the witness, to give him 400 pages on Friday 23 and expect him to read them by Monday. 24 [11:13] I was told that, I think it was 50 pages that 25 have been isolated. Was that communicated to you?</p>	<p style="text-align: right;">Page 34478</p> <p>1 involved in the mining industry, namely the workers and the 2 communities that hosted them." 3 MR RAMAPHOSA: Yes. 4 MR NGCUKAITOBI: Yes, so by 2012, 2011 5 rather you already held the view that the labour 6 instability was directly caused by the failure of mining 7 companies to address the social conditions of the workers. 8 MR RAMAPHOSA: Yes. 9 MR NGCUKAITOBI: Is that the view that 10 you still hold? 11 MR RAMAPHOSA: Yes, I still hold that 12 view. 13 MR NGCUKAITOBI: Yes. 14 MR RAMAPHOSA: And in fact I would say 15 this is a collective responsibility. We're dealing here 16 with the legacy of apartheid and colonialism and largely 17 the legacy of the migrant labour system which is deeply 18 imbedded in the history of our country which has taken 19 hundreds of years to develop to the level where it is and I 20 still hold the view that collective action needs to be 21 taken to rid out country of this inhumane system of migrant 22 labour. 23 MR NGCUKAITOBI: Yes, in relation to 24 Lonmin do you also believe the same applies, that the 25 labour instability at Lonmin is also caused in large</p>

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1 measure, those are your words, by the failure of Lonmin to
 2 address the economic and social needs of the workers?
 3 MR RAMAPHOSA: The labour instability in
 4 our mining areas is caused by our collective failure as
 5 various stakeholders to address the key problems that
 6 confront working people in mining areas.
 7 MR NGCUKAITOBI: Yes, but your article
 8 was specific to mining companies.
 9 MR RAMAPHOSA: Indeed, that's what I
 10 mean, yes.
 11 MR NGCUKAITOBI: Yes.
 12 MR RAMAPHOSA: Mining companies have a
 13 responsibility, yes, a more direct responsibility and
 14 indeed other role players as well, government has a
 15 responsibility, local government has a responsibility,
 16 trade unions also have a responsibility.
 17 MR NGCUKAITOBI: Yes, I want to focus on
 18 the mining companies –
 19 MR RAMAPHOSA: Yes –
 20 MR NGCUKAITOBI: - which is the subject
 21 matter of your article.
 22 MR RAMAPHOSA: Indeed.
 23 MR NGCUKAITOBI: I just want to make it
 24 clear that we understand each other. Do you believe that
 25 Lonmin also have the responsibility to address the living

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1 conditions and that its failure to do so is the direct
 2 cause of the labour instability?
 3 MR RAMAPHOSA: Yes, Lonmin and indeed
 4 other companies do have a responsibility to address the
 5 living conditions of workers. I was privileged to serve
 6 mineworkers as the general secretary of the National Union
 7 of Mineworkers. One of the things that we took up or one
 8 of the campaigns we took up quite vociferously was to bring
 9 an end to the migrant labour system and we campaigned quite
 10 a lot trying to get to a situation where mineworkers would
 11 live in humane conditions with their families where it was
 12 possible, or in, say bachelor single accommodation rather
 13 than be accommodated in many rooms. And in part that
 14 struggle or campaign did succeed but it had unintended
 15 consequences in that when we pushed companies to recognise
 16 their responsibility for improving the living conditions of
 17 workers they paid out a living allowance and the living
 18 allowance was additional income to workers who were already
 19 lowly paid and they took that and went out to get inferior
 20 accommodation so as to save on their income and that was an
 21 unintended consequence –
 22 MR NGCUKAITOBI: Yes –
 23 MR RAMAPHOSA: - of this.
 24 MR NGCUKAITOBI: Yes, now in your article
 25 you mentioned these social conditions.

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1 MR RAMAPHOSA: Yes.
 2 MR NGCUKAITOBI: One of them that you
 3 mentioned specifically is housing.
 4 MR RAMAPHOSA: Yes.
 5 MR NGCUKAITOBI: Which you've just spoken
 6 about.
 7 MR RAMAPHOSA: Indeed.
 8 MR NGCUKAITOBI: Yes, I just want to make
 9 sure that before we move from this that whether it is your
 10 belief that the failure of mining companies to address
 11 housing conditions contributes to labour instability?
 12 MR RAMAPHOSA: Yes, it does, the
 13 inability to provide proper housing, decent housing to
 14 mining people or mineworkers and their families is a
 15 contributory factor.
 16 MR NGCUKAITOBI: Yes, well, it is not
 17 just a contributory factor according to your article. You
 18 say in large measure –
 19 MR RAMAPHOSA: Yes –
 20 MR NGCUKAITOBI: - the major contributory
 21 factor?
 22 MR RAMAPHOSA: I would agree with that.
 23 MR NGCUKAITOBI: Yes, now you were, in
 24 your position at the board of Lonmin in a special position
 25 because you were the chairperson of the Transformation

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1 Committee.
 2 MR RAMAPHOSA: Yes.
 3 MR NGCUKAITOBI: Now, and you had been
 4 the chairperson of the Transformation Committee at least
 5 for two years before the events that are the subject matter
 6 of this Commission.
 7 MR RAMAPHOSA: Indeed.
 8 MR NGCUKAITOBI: Yes, now you explained
 9 to the evidence leaders in chief that, - sorry, to your
 10 counsel in chief, that the remit of the Transformation
 11 Committee included looking at the social conditions of the
 12 workers.
 13 MR RAMAPHOSA: Yes.
 14 MR NGCUKAITOBI: Yes, so you would be the
 15 prime person to draw this connection between the labour
 16 instability and the failure to address the living
 17 conditions.
 18 MR RAMAPHOSA: Well, I don't know whether
 19 I would be the prime person.
 20 MR NGCUKAITOBI: Yes.
 21 MR RAMAPHOSA: I would say that I would
 22 be one amongst a number of people who were in a position to
 23 address this.
 24 MR NGCUKAITOBI: Yes.
 25 MR RAMAPHOSA: But with me at a

<p style="text-align: right;">Page 34483</p> <p>1 nonexecutive level.</p> <p>2 MR NGCUKAITOBI: Yes. Alright, but the</p> <p>3 responsibilities of the board is to hold management</p> <p>4 accountable, you would accept that?</p> <p>5 MR RAMAPHOSA: Yes, Sir.</p> <p>6 MR NGCUKAITOBI: So in other words you</p> <p>7 would at least be prime insofar as holding management</p> <p>8 accountable in relation to social conditions of the</p> <p>9 workers?</p> <p>10 MR RAMAPHOSA: Yes.</p> <p>11 MR NGCUKAITOBI: Yes. Now I also want to</p> <p>12 look at the report of 2013, 392 –</p> <p>13 CHAIRPERSON: Is this in your bundle and</p> <p>14 what page?</p> <p>15 MR NGCUKAITOBI: The specific page is</p> <p>16 396, it is fine, you can start at 392, that's the specific</p> <p>17 page that's been isolated for reference. That is the</p> <p>18 annual report of 2013.</p> <p>19 MR UNTERHALTER SC: Chair, I'm not</p> <p>20 certain that we have this document in the documents given</p> <p>21 to us by the LRC and I don't think it will be in the bundle</p> <p>22 we've given to the -</p> <p>23 CHAIRPERSON: I've got an idea that when</p> <p>24 I arrived this morning I was given three pieces of paper</p> <p>25 which, I think should have been in the bundle and weren't</p>	<p style="text-align: right;">Page 34485</p> <p>1 electronically during the weekend but one can understand if</p> <p>2 this is the case, why Mr Ramaphosa and his representatives</p> <p>3 aren't aware of this as the sits there at the moment. Mr</p> <p>4 Unterhalter, can you help us?</p> <p>5 MR UNTERHALTER SC: Well, our bundle goes</p> <p>6 to 367, we haven't received additional documents and</p> <p>7 they're not in the file.</p> <p>8 CHAIRPERSON: Sorry, to interrupt, did</p> <p>9 you not get electronic documents, did you not receive</p> <p>10 documents electronically over the weekend?</p> <p>11 MR UNTERHALTER SC: Not according to my</p> <p>12 instructing attorneys.</p> <p>13 MR NGCUKAITOBI: Mr Chairman, I am told</p> <p>14 by my attorneys that these documents were handed in</p> <p>15 together with the whole bundle but there seems to be a bit</p> <p>16 of a difficulty. It is quarter past 11 anyway and I wonder</p> <p>17 whether this is not the right moment?</p> <p>18 CHAIRPERSON: So do you want me to take</p> <p>19 the tea adjournment at this stage so that the problem can</p> <p>20 be sorted out in the interval?</p> <p>21 MR NGCUKAITOBI: Indeed, Mr Chairman.</p> <p>22 CHAIRPERSON: That sounds a sensible</p> <p>23 suggestion. I just want to repeat what I said earlier,</p> <p>24 that it is not appropriate for photographers to congregate</p> <p>25 here in the well of the Chamber while we are entering it or</p>
<p style="text-align: right;">Page 34484</p> <p>1 and it looks to me, I didn't bring them with me because</p> <p>2 they're in the Chambers we're using.</p> <p>3 MR NGCUKAITOBI: This is not one of those</p> <p>4 pages, Mr Chairman.</p> <p>5 CHAIRPERSON: No, I'm wrong, my</p> <p>6 colleague, Advocate Hemraj brought her copy and it doesn't</p> <p>7 include this page.</p> <p>8 MR NGCUKAITOBI: Yes, indeed.</p> <p>9 CHAIRPERSON: It goes as far as 377 and</p> <p>10 then 377A and there is a 218A and a 218B and C, so there is</p> <p>11 a problem here. The bundle stopped at page 366, I'm</p> <p>12 informed, so these are additional pages that presumably or</p> <p>13 were intended to be included or were late inclusions which</p> <p>14 didn't make it to us or to the witness and his</p> <p>15 representatives.</p> <p>16 MS PILLAY: Chair, these pages of the</p> <p>17 bundle were in fact circulated, so I'm sure it is just a</p> <p>18 problem with –</p> <p>19 CHAIRPERSON: Yes, -</p> <p>20 MS PILLAY: - the photocopying.</p> <p>21 CHAIRPERSON: Over the weekend</p> <p>22 electronically we received a whole batch of documents from</p> <p>23 the LRC which I didn't have time to go through, I assumed</p> <p>24 they would give a hardcopy this morning, but it may well be</p> <p>25 that these pages were part of those that were sent</p>	<p style="text-align: right;">Page 34486</p> <p>1 leaving it. I understand they've got responsibilities to</p> <p>2 their newspapers and so on, to take photographs and I</p> <p>3 wouldn't want to stop that but please, have some regard for</p> <p>4 our convenience and the convenience of practitioners</p> <p>5 involved and the witnesses entering and leaving the</p> <p>6 Chambers. We will now adjourn for a quarter of an hour.</p> <p>7 MR NGCUKAITOBI: Thank you, Mr Chairman.</p> <p>8 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>9 [11:46] CHAIRPERSON: - has been sorted out, is</p> <p>10 that correct?</p> <p>11 MR UNTERHALTER SC: Yes, the Deputy</p> <p>12 President has the documents that are going to be referred</p> <p>13 to and he's had a look at them, so we can proceed.</p> <p>14 CHAIRPERSON: Thank you. Mr Ramaphosa,</p> <p>15 you're still under oath. Yes, Mr</p> <p>16 MATAMELA CYRIL RAMAPHOSA: (s.u.o.)</p> <p>17 CROSS-EXAMINATION BY MR NGCUKAITOBI SC (CONTD.):</p> <p>18 Thank you, Mr Chairman. Mr Deputy President, we are still</p> <p>19 at page 392 of JJJJ8. Have you got the page? Thank you</p> <p>20 very much. Now I just want to first look at the specific</p> <p>21 remit of the transformation committee of which you were the</p> <p>22 chairperson. It is mentioned under the heading, "The</p> <p>23 Transformation Committee" and it says, "The committee was</p> <p>24 created voluntarily by the board in January 2011," but I</p> <p>25 think it's common cause that it was actually in November</p>

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1 2010.

2 MR RAMAPHOSA: Yes.

3 MR NGCUKAITOBI SC: "- to help it to

4 oversee the significant risk that the company faces in the

5 crucial area of transformation." And then it says, "While

6 this term is not commonplace in the UK, in South Africa it

7 refers to the overarching aims of the entire process of

8 black economic empowerment and changing how business is

9 done" and then it says, "In our case, we have committed to

10 certain outcomes through the SLPs to which our new order

11 mineral rights are subject to and to a series of

12 initiatives outlined at the 2013 AGM." Now –apparently

13 your microphone is off.

14 MR RAMAPHOSA: Yes, thank you. Thank

15 you.

16 MR NGCUKAITOBI SC: I just want to

17 concentrate on the second element of transformation which

18 is the commitment contained in our SLPs. Now you mentioned

19 in your evidence in chief that part of your responsibility

20 was looking at issues related to housing. Now the SLPs are

21 the primary instrument by which a mine is measured in

22 relation to compliance with housing commitments. Do you

23 accept that?

24 MR RAMAPHOSA: Yes, yes.

25 MR NGCUKAITOBI SC: Now one of the things

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1 that you do, if you look at the heading under paragraph 7.1

2 of this document and particularly the second bullet point,

3 is monitoring, reviewing and evaluating progress in

4 relation to what the company has done.

5 MR RAMAPHOSA: Yes.

6 MR NGCUKAITOBI SC: Do you accept that?

7 Yes, and if you look at the bottom of the page it's got the

8 shaded area there, "Implementation strategy, governance,

9 regulatory and reporting," can you see that?

10 MR RAMAPHOSA: Yes.

11 MR NGCUKAITOBI SC: And the first bullet

12 point speaks specifically about reviewing progress against

13 the objectives of the SLPs. And then the last bullet point

14 speaks about the issue of industrial relations and under

15 "Strategy," the first bullet point and the last item there

16 is housing and living conditions. Can you see that?

17 MR RAMAPHOSA: I do.

18 MR NGCUKAITOBI SC: Yes, thank you. Now

19 I want to suggest to you that the issue of housing which

20 you mentioned in your statement in 2011 as being one of the

21 major causes of industrial unrest was at the heart of the

22 mandate of the transformation committee.

23 MR RAMAPHOSA: Yes.

24 MR NGCUKAITOBI SC: Yes. Now the way in

25 which you discharged that mandate was monitoring,

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1 evaluating and reviewing progress made by management in

2 that area.

3 MR RAMAPHOSA: Yes.

4 MR NGCUKAITOBI SC: Yes. Now you were

5 the chair from November 2010, so you would have received

6 the social and labour plans of 2011 and 2012.

7 MR RAMAPHOSA: Yes.

8 MR NGCUKAITOBI SC: Yes. And obviously

9 knowing the – well, certainly from the newspaper accounts

10 and the television accounts, knowing the person that you

11 are, you wouldn't have just rubber stamped them. You would

12 have studied them and, if satisfied, approved them.

13 MR RAMAPHOSA: Yes.

14 MR NGCUKAITOBI SC: Yes. Now I want to

15 start with the social and labour plan of 2010, which we've

16 now accepted served before your committee. Now this is 236

17 but the specific page I want to refer to is 272 to 263.

18 Have you got that, Mr Deputy President?

19 MR RAMAPHOSA: You said 27 –

20 MR NGCUKAITOBI SC: 272 specifically,

21 yes.

22 MR RAMAPHOSA: Yes.

23 MR NGCUKAITOBI SC: Thank you. Now item

24 13 talks about housing and living conditions and if you

25 then forget about the first paragraph under item 13 and you

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1 look under the sub-paragraph "Progress review," what it

2 says there is, "The financial situation of the company was

3 unfavourably impacted by the global economic crisis and the

4 falling prices of platinum. A decision was therefore taken

5 to review the housing and hostel upgrade programme. Lonmin

6 has invested in the development of the human settlement

7 strategy intended to address housing and living conditions

8 challenges. The primary objective of the strategy is to

9 facilitate decent, affordable accommodation for our

10 employees to contribute towards eradication of informal

11 settlements and to create a competitive edge for our

12 business." And then you talk about how that strategy is

13 going to be implemented going forward, but the next

14 paragraph says, "In view of the impact of the global

15 economic crisis and the consequent financial position of

16 the company, the target of building 5 500 houses and

17 converting 124 hostel blocks into family units by 2011 will

18 not be achieved."

19 MR RAMAPHOSA: Yes.

20 MR NGCUKAITOBI SC: "The conversion of

21 the 124 hostel blocks will, however, be achieved by 2014."

22 MR RAMAPHOSA: Yes.

23 MR NGCUKAITOBI SC: Now we've already

24 established that you reviewed, monitored, evaluated this

25 SLP at the transformation committee. Why was the target of

<p style="text-align: right;">Page 34491</p> <p>1 building 5 500 houses by Lonmin not met by 2011?</p> <p>2 MR RAMAPHOSA: I think, as clearly</p> <p>3 articulated in the report, the target as reported to the</p> <p>4 transformation committee could not be met because of lack</p> <p>5 of the necessary resources, which is the financial</p> <p>6 resources, in view of the global negative impact that the</p> <p>7 company was subjected to.</p> <p>8 MR NGCUKAITOBI SC: Yes.</p> <p>9 MR RAMAPHOSA: They had hoped, as clearly</p> <p>10 stated here, to have built 5 500 affordable houses and they</p> <p>11 were now saying that that target will not be achieved.</p> <p>12 MR NGCUKAITOBI SC: And the reference</p> <p>13 here to global economic crisis refers to the crisis of</p> <p>14 2008/2009, correct?</p> <p>15 MR RAMAPHOSA: Indeed.</p> <p>16 MR NGCUKAITOBI SC: Yes. Now the target</p> <p>17 of building 5 500 houses was a five year target, correct?</p> <p>18 MR RAMAPHOSA: Yes.</p> <p>19 MR NGCUKAITOBI SC: And it was made in</p> <p>20 2006.</p> <p>21 MR RAMAPHOSA: Yes.</p> <p>22 MR NGCUKAITOBI SC: And from what was</p> <p>23 reported to you when this was abandoned, what were the</p> <p>24 reasons why Lonmin did not build the houses between 2006 to</p> <p>25 2008?</p>	<p style="text-align: right;">Page 34493</p> <p>1 were not satisfied.</p> <p>2 MR RAMAPHOSA: I had no reason to doubt.</p> <p>3 MR NGCUKAITOBI SC: Yes. Now let's go</p> <p>4 back to 2006 so that we can evaluate whether you should</p> <p>5 have been satisfied with the explanation by management.</p> <p>6 Can I take you to page –</p> <p>7 MR UNTERHALTER SC: I'm sorry to</p> <p>8 interrupt my learned friend but Mr Ramaphosa only acceded</p> <p>9 to the board, as we've made clear, in 2010. So to the</p> <p>10 extent he wishes to explore what could or could not have</p> <p>11 been done by this witness in 2006, it's really irrelevant</p> <p>12 for this witness.</p> <p>13 MR NGCUKAITOBI SC: Yes. No, that's</p> <p>14 definitely not the intention.</p> <p>15 CHAIRPERSON: What do you say, what do</p> <p>16 you say about the objection?</p> <p>17 MR NGCUKAITOBI SC: No, it's not the</p> <p>18 intention to ask this witness what he should have done in</p> <p>19 2006. The only intention is to ask him whether he should</p> <p>20 have been satisfied with the explanation given to him by</p> <p>21 management in 2010, why the project had to be abandoned. I</p> <p>22 am not going to say to this witness –</p> <p>23 CHAIRPERSON: Yes, no, I understand that</p> <p>24 it may be relevant to some of the other witnesses who were</p> <p>25 around at the time to raise this kind of question but I</p>
<p style="text-align: right;">Page 34492</p> <p>1 MR RAMAPHOSA: It is largely because of</p> <p>2 the financial resources that needed to be put in place, but</p> <p>3 I do think that one needs to look at it in broader context</p> <p>4 because it is also dealt with here in one of the reports</p> <p>5 that in order to achieve this target, you also needed to</p> <p>6 work with other parties. Local government, for instance,</p> <p>7 needed to also release land, the land has to be serviced</p> <p>8 and – but in the end you also needed to have an uptake.</p> <p>9 You might see in the report somewhere that, of some of the</p> <p>10 houses that were built and had to be sold. The uptake from</p> <p>11 workers was very minimal.</p> <p>12 MR NGCUKAITOBI SC: Yes.</p> <p>13 MR RAMAPHOSA: And so this project, this</p> <p>14 type of a project faced a number of challenges and may I</p> <p>15 say there were quite a number of constraints, financial</p> <p>16 resources was one of them.</p> <p>17 MR NGCUKAITOBI SC: Okay, now let's go</p> <p>18 back to – perhaps before we do that, let me ask you this</p> <p>19 question. Were you satisfied that the explanation that was</p> <p>20 given to you by management was an accurate and honest</p> <p>21 explanation about why these houses could not be built?</p> <p>22 MR RAMAPHOSA: I had no reason to doubt</p> <p>23 the truthfulness of what they were saying.</p> <p>24 MR NGCUKAITOBI SC: Yes. In fact you</p> <p>25 wouldn't have signed off on this change of strategy if you</p>	<p style="text-align: right;">Page 34494</p> <p>1 don't think this witness can be asked that, but anyway you</p> <p>2 say you're not going to go there?</p> <p>3 MR NGCUKAITOBI SC: No, I'm not. I'm</p> <p>4 simply going to illustrate to the witness the historical</p> <p>5 account and then to go back to where I started, whether he</p> <p>6 should have been satisfied if he had done the interrogation</p> <p>7 that he says he did. Mr Deputy President, let me take you</p> <p>8 back to 2006. I'm simply not going to ask you to answer if</p> <p>9 you feel like you are not competent enough, I mean</p> <p>10 competent in the most general sense, competent enough to</p> <p>11 answer the question.</p> <p>12 CHAIRPERSON: Do I understand you're</p> <p>13 going to put documents to him –</p> <p>14 MR NGCUKAITOBI SC: Yes.</p> <p>15 CHAIRPERSON: - from 2006?</p> <p>16 MR NGCUKAITOBI SC: Yes, for 2006, 2007</p> <p>17 and 2008.</p> <p>18 CHAIRPERSON: I understand. You are</p> <p>19 then, I take it, going to ask him whether he read the</p> <p>20 documents?</p> <p>21 MR NGCUKAITOBI SC: Yes.</p> <p>22 CHAIRPERSON: And then take it from</p> <p>23 there.</p> <p>24 MR NGCUKAITOBI SC: Yes. Thank you, Mr</p> <p>25 Chairman. Mr Ramaphosa –</p>

<p style="text-align: right;">Page 34495</p> <p>1 CHAIRPERSON: It might be helpful to ask 2 him first if he read the documents because if he didn't 3 then it will save quite a lot of time. 4 MR NGCUKAITOBI SC: Yes, indeed Mr 5 Chairman. 6 MR UNTERHALTER SC: Chair, again I don't 7 mean to constrain my learned friend but isn't the simple 8 thing to point to what was happening in 2010 as to the 9 reasons that were then relevant, because those are the only 10 ones the witness can address? Going through a historical 11 trawl as to what happening in 2006 may be of historical 12 interest but nothing that could have been done or said 13 about those matters by this witness. 14 MR NGCUKAITOBI SC: Mr Chairman, this 15 historical trawl – 16 CHAIRPERSON: I understand the thrust of 17 the question to be the witness's knowledge in 2010 about 18 things that had happened earlier and whether they, that 19 knowledge would have induced him to act in a particular way 20 in 2010. 21 MR NGCUKAITOBI SC: Yes. 22 CHAIRPERSON: I think, am I understanding 23 – 24 MR NGCUKAITOBI SC: Indeed, Mr Chairman. 25 CHAIRPERSON: Anyway, I think Mr</p>	<p style="text-align: right;">Page 34497</p> <p>1 CHAIRPERSON: Did you know that, Mr 2 Ramaphosa? 3 MR RAMAPHOSA: No, I did not know that. 4 MR NGCUKAITOBI SC: Yes. Well, at the 5 time you said at the transformation committee in 2010 and 6 it was said to you by management that we've got a land 7 problem, we've got an uptake problem and we've got a 8 financial resources problem, we must abandon the whole 9 project. Are you saying they didn't tell you that out of 10 the target of 5 500 we've only built three? 11 MR RAMAPHOSA: No. 12 MR NGCUKAITOBI SC: Now did you ask them, 13 how many have you built, before you come with all these 14 excuses why you cannot build them? 15 MR RAMAPHOSA: Well, I received the 16 report as set out in various documents. A report, if I had 17 the time to look into more closely, would show that a 18 number of hostel blocks were converted into single and 19 family accommodation and that a number of houses were built 20 and that they were seeking to get a number of workers to 21 take up those houses and somewhere in one of the reports 22 they then set out that only so many workers took up the 23 houses. I must say that I never had sight of the report 24 that said only three houses had been built. 25 MR NGCUKAITOBI SC: But I can show you</p>
<p style="text-align: right;">Page 34496</p> <p>1 Unterhalter is effectively underlining the fact that you 2 can deal with this in a fairly focused way without taking 3 too much time. 4 MR NGCUKAITOBI SC: Yes. The historical 5 trawl is literally going to take half a minute. Mr Deputy 6 President, I want to start by the 2006 report and 7 specifically page 76 and the table there is under table 42. 8 Are you at that table, Mr Deputy President? 9 MR RAMAPHOSA: Yes, I am. 10 MR NGCUKAITOBI SC: Thank you. Now the 11 plan was originally conceived in 2006, culminating in 2011 12 and which is where you've got a total of 5 500. 13 MR RAMAPHOSA: Yes. 14 MR NGCUKAITOBI SC: The target for 2010 15 was 1 200, can you see that? 16 MR RAMAPHOSA: Yes. 17 MR NGCUKAITOBI SC: And the target for 18 2011 was 1 100. It says, "Number of houses to be built." 19 MR RAMAPHOSA: Yes, I see. 20 MR NGCUKAITOBI SC: And then 2009, 1 200, 21 2008 1 300, 2007, 700. Now I want to take you then, just 22 to note those were the targets and those were the figures. 23 Now I want to put it to you that it is common – well, maybe 24 not common cause. Out of this target set in 2006 to build 25 5 500 houses, only three houses were actually built.</p>	<p style="text-align: right;">Page 34498</p> <p>1 the report, it's in the 2009 SLP which is page 218A to 2 218C. 3 CHAIRPERSON: Annual report 2009. 4 MR NGCUKAITOBI SC: Yes. 5 CHAIRPERSON: On the social and labour 6 plan – 7 MR NGCUKAITOBI SC: Yes. 8 CHAIRPERSON: Western Platinum. 9 MR NGCUKAITOBI SC: Yes. 10 CHAIRPERSON: You, of course, as you've 11 told us, only joined the board in the second half of 2010. 12 MR RAMAPHOSA: Indeed. 13 CHAIRPERSON: Did you see this report? 14 Was it shown to you? 15 MR RAMAPHOSA: No, I don't remember 16 seeing this report but I also see that it refers to Western 17 Platinum Limited – 18 MR NGCUKAITOBI SC: Yes, well – 19 MR RAMAPHOSA: - and one would have 20 wanted to see the more globular report. 21 MR NGCUKAITOBI SC: Well, at page 218, 22 that's how we got to Western Platinum because at page 218, 23 which is the Eastern Platinum, it tells us that the 24 commitments for housing and hostels are reflected under the 25 Western Platinum report. So there are no specific reports</p>

<p style="text-align: right;">Page 34499</p> <p>1 for Eastern Platinum, so you must go to Western Platinum to 2 know what the status is and when you go to Western 3 Platinum, which is 218A, you see there that the target for 4 2009, according to Lonmin, is three houses and then the 5 actual is three houses and the attainment is 100% against 6 the target of 3%.</p> <p>7 MR RAMAPHOSA: Ja. 8 CHAIRPERSON: Three. 9 MR NGCUKAITOBI SC: I mean of three 10 houses. 11 MR RAMAPHOSA: Yes. 12 CHAIRPERSON: Three out of three is 100%. 13 MR RAMAPHOSA: Ja. 14 MR NGCUKAITOBI SC: Yes, it is but as I 15 pointed out to you – can you see that, Mr Deputy President? 16 MR RAMAPHOSA: I see it. This is 17 certainly not the report that I had sight of. 18 MR NGCUKAITOBI SC: Yes, and as I pointed 19 out to you the targets, actual targets for 2009, according 20 to page 76, was actually 1 200. 21 MR RAMAPHOSA: Yes, quite. 22 MR NGCUKAITOBI SC: So to then present a 23 report in 2009 as though the target was three houses, is 24 inaccurate. 25 MR RAMAPHOSA: Yes.</p>	<p style="text-align: right;">Page 34501</p> <p>1 can refer you to a copy of the annual report that I have 2 extracted, which is at page 342 – have you got that, Mr 3 Deputy President? 4 MR RAMAPHOSA: I do. 5 MR NGCUKAITOBI SC: Thank you very much. 6 Now there are four tables there at the bottom of the page 7 and the table on the left, bottom left is revenue. 8 MR RAMAPHOSA: Yes. 9 MR NGCUKAITOBI SC: Now it is telling us 10 what the revenue position of Lonmin has been since 2005 to 11 2009. 12 [12:05] The relevant years of course is and you see there 13 between 2006 and 2007 the revenue actually increased from 14 US\$1.8 billion to US\$1.9 billion. 15 MR RAMAPHOSA: Yes. 16 MR NGCUKAITOBI: And then from 2007 to 17 2008 the revenue increased from US\$1.9 billion to US\$2.2 18 billion. 19 MR RAMAPHOSA: Yes. 20 MR NGCUKAITOBI: So those years one 21 cannot – I'm sure you would agree with me, one cannot use 22 the financial constraints as an excuse. These were the 23 good years for Lonmin. Do you accept that? 24 MR RAMAPHOSA: Well, certainly from a 25 revenue point of view –</p>
<p style="text-align: right;">Page 34500</p> <p>1 MR NGCUKAITOBI SC: And these are the 2 things I'm asking about when I say in 2010 when the company 3 comes before you and says, Mr Chairman, we want to abandon 4 the aim of building 5 500 houses, we've got very good 5 reason, when I say did you interrogate these reasons and 6 you say you did, I want to understand how it came about 7 that these questions didn't arise and if they arose, what 8 explanations were given to you? 9 MR RAMAPHOSA: Well, the explanations 10 were given were the economic situation and the economic, 11 global economic clampdown. I will say with honesty that I 12 did not have sight of this report, if this is the report 13 that reflects the activity or the progress that Lonmin is 14 meant to have made. 15 MR NGCUKAITOBI SC: Yes. Now let us look 16 at the explanation given about the financial situation of 17 Lonmin. I asked earlier whether the financial situation 18 relates to the global economic problems of 2008 and 2009 19 and your answer was yes. Do you remember that? 20 MR RAMAPHOSA: Yes. 21 MR NGCUKAITOBI SC: And clearly it would 22 not relate to the period between 2006 to 2008, do you 23 accept that? 24 MR RAMAPHOSA: Yes. 25 MR NGCUKAITOBI SC: Alright. Now if I</p>	<p style="text-align: right;">Page 34502</p> <p>1 MR NGCUKAITOBI: Yes. 2 MR RAMAPHOSA: - yes. From a revenue 3 point of view. 4 MR NGCUKAITOBI: Ja, we see there is this 5 slump from 2008 to 2009 from US\$2.2 billion to US\$1.1 6 billion. 7 MR RAMAPHOSA: Yes. 8 MR NGCUKAITOBI: Yes, now I want to refer 9 you to what happened after that, and now between 2009 and 10 2010 - and that's the period where you come onto the scene 11 – can I take you to page 349? 12 MR RAMAPHOSA: Yes. 13 MR NGCUKAITOBI: Now it says here under 14 2010 features it's got the bullet point there, the revenue 15 is US\$1.6 billion. Can you see that? 16 MR RAMAPHOSA: Yes, I see it. 17 MR NGCUKAITOBI: Yes, now you see that 18 there has been again an increase from 1.1 billion to 1.6 19 billion. 20 MR RAMAPHOSA: Yes. 21 MR NGCUKAITOBI: Now if I then take you 22 to what happened after – 23 CHAIRPERSON: [Microphone off, inaudible] 24 MR NGCUKAITOBI: Sorry, Mr Chairman? 25 CHAIRPERSON: That's revenue.</p>

<p style="text-align: right;">Page 34503</p> <p>1 MR NGCUKAITOBI: Yes.</p> <p>2 CHAIRPERSON: But is it relevant to look</p> <p>3 at earnings before interest and tax?</p> <p>4 MR NGCUKAITOBI: Yes, I'll come –</p> <p>5 CHAIRPERSON: I'm not saying you can't</p> <p>6 ask a question about revenue, but for the sake of</p> <p>7 completeness you've got to look at the EBIT as well,</p> <p>8 haven't you?</p> <p>9 MR NGCUKAITOBI: Yes, I will look at that</p> <p>10 as well. But I want to finish the topic on revenue. In</p> <p>11 the 2011 report which we see at page 360 – have you got it,</p> <p>12 Mr Deputy President?</p> <p>13 MR RAMAPHOSA: Yes, I do.</p> <p>14 MR NGCUKAITOBI: We see the revenue again</p> <p>15 goes up to two billion, which is the same as it was in 2008</p> <p>16 – well, not the same but 200 million less, that is two</p> <p>17 billion –</p> <p>18 CHAIRPERSON: But compare the EBIT in</p> <p>19 2008 with the EBIT in 2010.</p> <p>20 MR NGCUKAITOBI: Yes –</p> <p>21 CHAIRPERSON: 2011, that's earnings</p> <p>22 before interest and tax.</p> <p>23 MR NGCUKAITOBI: Yes, Mr Chairman, we are</p> <p>24 going to do that at page 360 because it is the –</p> <p>25 CHAIRPERSON: Well, as long as you're</p>	<p style="text-align: right;">Page 34505</p> <p>1 MR NGCUKAITOBI: Now the financial excuse</p> <p>2 that is given why this programme must be abandoned really</p> <p>3 is only applicable in relation to one year, which is 2008</p> <p>4 to 2009.</p> <p>5 MR RAMAPHOSA: I can see that. You're</p> <p>6 referring to the revenue and now also to the earnings</p> <p>7 before interest and tax.</p> <p>8 MR NGCUKAITOBI: Yes.</p> <p>9 MR RAMAPHOSA: But I also think that the</p> <p>10 critical question that needs to be addressed is what those</p> <p>11 earnings were used for.</p> <p>12 MR NGCUKAITOBI: Yes.</p> <p>13 MR RAMAPHOSA: And I think we will need</p> <p>14 to look at that. But in the same vein I hope you do take</p> <p>15 us to page 362 –</p> <p>16 MR NGCUKAITOBI: Yes.</p> <p>17 MR RAMAPHOSA: - where there is a report</p> <p>18 about housing which sets out that so many hostel blocks</p> <p>19 were converted and so many houses were built.</p> <p>20 MR NGCUKAITOBI: Yes, I will deal with</p> <p>21 that –</p> <p>22 MR RAMAPHOSA: Will you deal with that?</p> <p>23 MR NGCUKAITOBI: Yes, I will.</p> <p>24 MR RAMAPHOSA: Okay.</p> <p>25 MR NGCUKAITOBI: I will deal with that,</p>
<p style="text-align: right;">Page 34504</p> <p>1 going to go there I won't stop you.</p> <p>2 MR NGCUKAITOBI: Yes. Can you see there</p> <p>3 that there has been an increase in the revenue from 1.6 to</p> <p>4 US\$2 billion?</p> <p>5 MR RAMAPHOSA: Indeed.</p> <p>6 MR NGCUKAITOBI: Yes, now let's go then</p> <p>7 to the question that the Chairman has been asking me. The</p> <p>8 underlying EBIT, and that's at page 360 and that's where</p> <p>9 there is a comparison between 2007 up to 2011, can you see</p> <p>10 that?</p> <p>11 MR RAMAPHOSA: Yes, I can see that.</p> <p>12 MR NGCUKAITOBI: Now we see that between</p> <p>13 2008 and 2009 there is actually a negative. You see that?</p> <p>14 MR RAMAPHOSA: Yes.</p> <p>15 MR NGCUKAITOBI: Thereafter it picks up</p> <p>16 again up between 2009 and 2010. Can you see that?</p> <p>17 MR RAMAPHOSA: Yes.</p> <p>18 MR NGCUKAITOBI: And then it again</p> <p>19 increases to US\$311 million.</p> <p>20 MR RAMAPHOSA: Yes.</p> <p>21 MR NGCUKAITOBI: So the point I'm trying</p> <p>22 to make is that both from a revenue point of view and from</p> <p>23 a point of view of the EBIT we see there is a remarkable</p> <p>24 change between 2009 and 2011.</p> <p>25 MR RAMAPHOSA: Indeed.</p>	<p style="text-align: right;">Page 34506</p> <p>1 but I am simply exploring the explanation that was given to</p> <p>2 you –</p> <p>3 MR RAMAPHOSA: Yes.</p> <p>4 MR NGCUKAITOBI: - of financial</p> <p>5 constraints. I am proposing to you that those financial</p> <p>6 constraints in reality are only applicable to one year and</p> <p>7 not to the entire five years.</p> <p>8 MR RAMAPHOSA: That may well be so, but</p> <p>9 when one looks at the financial architecture of a company</p> <p>10 one needs to look at it in totality and it's not only</p> <p>11 limited to one year. One needs to look at a number of</p> <p>12 years, and what the use of the earnings that were earned</p> <p>13 were put to, and some of them could have been put to</p> <p>14 capital expenditure and so forth.</p> <p>15 MR NGCUKAITOBI: Yes. Now maybe you can</p> <p>16 help us here about exactly what the use of these earnings</p> <p>17 was. Let us talk about the period where there was actually</p> <p>18 a loss, as we have seen on the earnings before interest and</p> <p>19 tax between 2008 and 2009. Did Shanduka, was Shanduka paid</p> <p>20 any dividends for that period?</p> <p>21 MR RAMAPHOSA: No –</p> <p>22 CHAIRPERSON: Which period?</p> <p>23 MR NGCUKAITOBI: For 2008/2009.</p> <p>24 CHAIRPERSON: When did Shanduka invest in</p> <p>25 the company?</p>

<p style="text-align: right;">Page 34507</p> <p>1 MR RAMAPHOSA: It was in 2010 –</p> <p>2 MR NGCUKAITOBI: Sorry –</p> <p>3 CHAIRPERSON: I thought they invested in</p> <p>4 2010. So how could they have earned anything from the</p> <p>5 company in 2009 and 10?</p> <p>6 MR NGCUKAITOBI: Yes, sorry, sorry –</p> <p>7 CHAIRPERSON: 8 and 9, I mean, sorry.</p> <p>8 MR NGCUKAITOBI: Sorry, Mr Chairman, it's</p> <p>9 my mistake. I'm actually looking at the later period.</p> <p>10 When was Shanduka first paid dividends?</p> <p>11 MR RAMAPHOSA: To my recollection</p> <p>12 Shanduka has not received any dividends.</p> <p>13 MR NGCUKAITOBI: Yes, alright. Now I</p> <p>14 understand that Shanduka actually receives about R250 000 a</p> <p>15 month in relation to advice given on empowerment.</p> <p>16 MR RAMAPHOSA: Yes.</p> <p>17 MR NGCUKAITOBI: And that must not be</p> <p>18 limited in any way by the financial constraints of Lonmin.</p> <p>19 MR RAMAPHOSA: Yes.</p> <p>20 MR NGCUKAITOBI: Alright, now Mr Deputy</p> <p>21 President, you wanted me to refer to what Lonmin has</p> <p>22 actually done in the area of housing.</p> <p>23 MR RAMAPHOSA: I was merely saying that</p> <p>24 will we deal with that.</p> <p>25 MR NGCUKAITOBI: Yes.</p>	<p style="text-align: right;">Page 34509</p> <p>1 will be completed by 2014. So if you look at this versus</p> <p>2 the target of 124 you see that actually Lonmin has only</p> <p>3 converted about 50% of the hostels that they said they</p> <p>4 would convert and there are still 68 outstanding by 2011,</p> <p>5 which is the end of the five-year period.</p> <p>6 MR RAMAPHOSA: Yes.</p> <p>7 MR NGCUKAITOBI: I wouldn't necessarily</p> <p>8 characterise this as a success. Would you?</p> <p>9 MR RAMAPHOSA: Well, I would characterise</p> <p>10 this as work in progress.</p> <p>11 CHAIRPERSON: I hear someone say you're</p> <p>12 lying. People are allowed into the chamber to hear the</p> <p>13 evidence, to listen to it while we listen to it as well.</p> <p>14 We're not going to make comments or interjections and if</p> <p>15 that happens again I'll ask that the person concerned</p> <p>16 leaves the chamber. We are here to hear the evidence of</p> <p>17 the witness without interruption, without comments, and</p> <p>18 it's something that I will not tolerate. I hope that's</p> <p>19 clearly understood.</p> <p>20 MR BHAM SC: Mr Chairman, sorry, before</p> <p>21 we continue, I want to deal with two issues if you'll</p> <p>22 permit me. It will be short. It relates to the line of</p> <p>23 questioning and where it started. The first is a number of</p> <p>24 the questions that are now being asked deals with scheme 2.</p> <p>25 You know we've addressed you on that. I'm not going to –</p>
<p style="text-align: right;">Page 34508</p> <p>1 MR RAMAPHOSA: Yes.</p> <p>2 MR NGCUKAITOBI: Alright. Now I can tell</p> <p>3 you in relation to hostels that we have seen that the</p> <p>4 target was 124 to be built over a period of, to be</p> <p>5 converted over a period of five years.</p> <p>6 MR RAMAPHOSA: Indeed.</p> <p>7 MR NGCUKAITOBI: Now according to the</p> <p>8 SLP, I think it's the 2010 SLP – I should probably refer to</p> <p>9 it so that I am fair to you.</p> <p>10 CHAIRPERSON: What page is that?</p> <p>11 MR NGCUKAITOBI: Mr Chairman, this is</p> <p>12 actually 318. It is the 2011 SLP, 318. Have you got it,</p> <p>13 Mr Deputy President?</p> <p>14 MR RAMAPHOSA: I do have it.</p> <p>15 MR NGCUKAITOBI: Thank you. Now this is</p> <p>16 now the end of the five-year period that Lonmin had</p> <p>17 undertaken in 2006. What they say under table 18, "Housing</p> <p>18 and hostel conversion performance for Marikana: Category,</p> <p>19 number of houses to be built, 2011 target, zero. Variance,</p> <p>20 zero. Attained, zero." And then they speak about hostel,</p> <p>21 target 26, actual 26, variance zero, attained 100%.</p> <p>22 Now if you look at action plans going forward</p> <p>23 they talk about 100 million being budgeted for conversion</p> <p>24 of 26 hostel blocks in the financial year of 2012. Then</p> <p>25 they say the planned conversion for the remaining 68 blocks</p>	<p style="text-align: right;">Page 34510</p> <p>1 CHAIRPERSON: No, no, that's not correct.</p> <p>2 The questions as I understand it are relevant in phase 1</p> <p>3 because the contention being put up - whether it's correct</p> <p>4 or not is another matter – the contention being put up by</p> <p>5 the LRC is based upon the article which the witness wrote</p> <p>6 which was quoted at the very beginning, where he said the</p> <p>7 turmoil in the mining industry is caused through housing</p> <p>8 and so forth, and he's trying to establish – with what</p> <p>9 degree of success I don't know, we'll see in due course –</p> <p>10 that there is a direct link between problems in relation to</p> <p>11 housing and the non-provision of housing and the turmoil,</p> <p>12 in other words the unrest which culminated in the 44</p> <p>13 deaths. That as I understand it is the basis of the</p> <p>14 questioning, that's why I've allowed it.</p> <p>15 MR BHAM SC: You haven't allowed –</p> <p>16 CHAIRPERSON: They did ask for a number</p> <p>17 of other topics relating in a wider sense with the SLP and</p> <p>18 so forth, which I disallowed, and I made it quite clear to</p> <p>19 the representatives of the LRC that I was not prepared to</p> <p>20 allow them to venture into that area. But the area they're</p> <p>21 busy with now is a direct link between what happened or</p> <p>22 what didn't happen and the actual deaths. That is phase 1.</p> <p>23 MR BHAM SC: You didn't allow me to</p> <p>24 finish my sentence.</p> <p>25 CHAIRPERSON: Yes, forgive me. I will</p>

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1 now allow you.

2 MR BHAM SC: The point I'm making is to

3 the extent that it might go over into areas one shouldn't –

4 and I'm not going to raise my voice all the time – one

5 shouldn't see that as any concession on our part it should

6 go into. We'll deal with it separately in accordance with

7 the letter we sent to you.

8 CHAIRPERSON: No, I understand. You're

9 entitled to make your position plain and you've done so.

10 MR BHAM SC: The second point I want to

11 raise - and perhaps I should have raised it earlier, it

12 occurs to me now – the line of cross-examination which my

13 learned friend is busy with now commences really at page

14 218C of the LRC bundle. Sorry, not 218C, 218B, where there

15 was a reference to the number of houses built, a target in

16 2009 of three and the actual achievement of three. In fact

17 it's the previous page, Mr Chairman, the table in 15.1.

18 CHAIRPERSON: [Microphone off, inaudible]

19 then it's amplified in the text on 218B.

20 MR BHAM SC: The point I want to make,

21 and I was going to deal with this in re-examination but

22 it –

23 CHAIRPERSON: No, no, there's no re-

24 examination, this isn't your witness.

25 MR BHAM SC: In cross-examination, you're

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1 right. I was going to deal with it in cross-examination

2 but I think I need to make a point now because one can go

3 in the line that has been followed subsequently. If you

4 turn to the next page the context of the three houses built

5 referred to is fully explained. There were three show

6 houses waiting for an uptake, which wasn't taken on. The

7 manner in which it was presented to the witness is having

8 regard to the original target they built three houses and

9 they stopped at three houses, and that whole context is

10 lost, Mr Chairman.

11 CHAIRPERSON: That surely is a question

12 for you to raise and deal with in cross-examination when

13 you get your turn. I don't think there's anything improper

14 about the question. But anyway, your comments are noted.

15 Shall we proceed?

16 MR NGCUKAITOBI: Thank you, Mr Chairman –

17 MR MPOFU: Chairperson – Chairperson,

18 this side.

19 CHAIRPERSON: Yes, Mr Mpofo.

20 MR MPOFU: Ja.

21 CHAIRPERSON: You're going to get a

22 chance to cross-examine tomorrow.

23 MR MPOFU: So I understand, Chairperson,

24 but if you wanted to give it to me now it's okay. No,

25 Chairperson, on a serious note, I think this might be an

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1 opportune moment, given so that we only have one

2 interruption of my learned friend Mr Ngcukaitobi's cross-

3 examination, to raise the issue which arises from the

4 exchange you've just had with Mr Bham which suggests that

5 he must raise certain things when he cross-examines, to

6 raise the fact upfront that my instructions are that we are

7 going to object very strenuously to the idea of Lonmin

8 cross-examining this witness and it might as well, so that

9 maybe it can be dealt with –

10 CHAIRPERSON: Let me deal with it now.

11 We had the point long ago when the Commission started when

12 there was what I described as friendly cross-examination by

13 say the families of a witness called by the injured and

14 arrested parties or vice versa. Well, the families haven't

15 yet called witnesses, but it arose in the context, you'll

16 remember, of witnesses called by you for the injured and

17 arrested parties being cross-examined by representatives of

18 the families and it amounted to what I called friendly

19 cross-examination, and the question arose whether that kind

20 of cross-examination is allowed and I drew attention to the

21 fact that it was decided as long ago as the early 1950s in

22 the [inaudible] case that friendly cross-examination of

23 that kind can be allowed but the answers obtained in that

24 fashion have very little value, and I gave a ruling to that

25 effect at the time and that ruling stands and applies here

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1 as well. Now we've got that out of the way –

2 MR MPOFU: Well Chairperson, if you may

3 allow me to finish my point so that you can make a ruling

4 informed by what I'm going to say. I'm acutely aware of

5 your previous ruling made in Rustenburg along the lines

6 that you have explained. It's my humble submission that

7 that situation differs markedly to the current situation.

8 Here we have a witness who says to you that he gave, all

9 his involvement in this matter was in his capacity as a

10 director of Lonmin. He has just said that this morning

11 when he was asked by his own counsel and the evidence

12 obviously suggests that as well, and on what basis then can

13 the company in respect of which he was acting as a director

14 in a fiduciary capacity be allowed to cross-examine him,

15 friendly or unfriendly? I mean that is just an

16 incestuous –

17 CHAIRPERSON: Mr Mpofo, you've given us

18 warning of the point you're going to raise when Mr Bham

19 wishes to cross-examine and you also have a foretaste of

20 the attitude that I have adopted previously, so you'll be

21 able to deal with it fully in the light of what I'd put to

22 you when the question arises. Let's not waste time now,

23 let's carry on with the cross-examination –

24 MR MPOFU: No, no. No, Chairperson –

25 CHAIRPERSON: Mr Mpofo –

<p style="text-align: right;">Page 34515</p> <p>1 MR MPOFU: Yes, I understand. Let me 2 just explain why I'm raising it now, Chairperson. 3 CHAIRPERSON: But you're raising an 4 objection that you're going to raise tomorrow, so let's 5 raise it tomorrow – 6 MR MPOFU: No, no – 7 CHAIRPERSON: You've indicated what your 8 stance is. I'm afraid you're wasting time, Mr Mpofu. I 9 think we must carry on. 10 MR MPOFU: No, Chairperson, if you'll 11 listen to me, please, then it will be clear who's wasting 12 time now. I'm saying the reason – 13 CHAIRPERSON: Yes, I'm sure it will be, 14 but please carry on. 15 MR MPOFU: Yes, the reason that I'm 16 raising this now – 17 SPEAKER: Ramaphosa has blood on his 18 hands. 19 MR MPOFU: Ja. 20 CHAIRPERSON: Would you please leave the 21 room? 22 SPEAKER: He has blood on his hands. 23 CHAIRPERSON: Will you please leave the 24 room? [Disruption by audience] The Commission will 25 adjourn.</p>	<p style="text-align: right;">Page 34517</p> <p>1 other side of the passage, without being able to come into 2 the Chamber and waste our time and disrupt the proceedings. 3 This is serious misconduct which cannot be 4 tolerated in any civilised society and no commission of 5 this kind can function in the face of misbehaviour of this 6 kind, as I said I am prepared to overlook it now, I'm not 7 going to, as I was originally intending to do, to clear the 8 Chamber now and say those who want to hear what's happening 9 can do so across the passage, I give them one more chance, 10 but please be absolutely clear in your minds, if you do 11 this kind of thing again the consequences which I've spelt 12 out will follow. You're still under oath, Mr Ramaphosa. 13 You were still cross-examining, - oh sorry, I beg your 14 pardon, Mr Mpofu, you were still addressing me? 15 MR MPOFU: Thank you, Chairperson. 16 Chairperson, I was, when you were making the addressing I 17 was talking to Mr Bham in the hope that in the interest of 18 time him and I could find each other. I suggest, 19 Chairperson, that you give me some time, during the lunch 20 hour I'll speak to Mr Bham and if we find each other – 21 CHAIRPERSON: I would appreciate that. 22 MR MPOFU: Thank you, Chairperson. 23 CHAIRPERSON: That sounds, if I may so, a 24 very sensible suggestion which reflects credit on both of 25 you.</p>
<p style="text-align: right;">Page 34516</p> <p>1 [COMMISSION ADJOURNS COMMISSION RESUMES] 2 [12:30] CHAIRPERSON: I would like to address 3 some remarks to those people who were responsible for the 4 interruption which we've just endured. I hope it is being 5 interpreted to them. It is important for this Commission 6 to get to the truth of what happened at Marikana over the 7 period, from the 9th to the 16th of August 2012. It is 8 important for us to find out not only what happened, but 9 why it happened and whose conduct contributed to what 10 happened. It is important that this witness gives his 11 evidence in chief, which he has done and that we hear it, 12 which we've done. It is also important that he be cross- 13 examined so that can assess the accuracy or otherwise of 14 the evidence he gives. Those who are interrupting the 15 proceedings are in fact depriving us of the full 16 opportunity to hear that cross-examination. 17 We have limited time in this Commission, the 18 witness is available for two days only. Those interrupting 19 the proceedings are in fact impairing the work of the 20 Commission by preventing us from having the witness fully 21 cross-examined and I want to make one thing absolutely 22 clear. I'm going to give those concerned one more chance 23 to behave themselves. If there are further interruptions I 24 will not hesitate to clear the Chamber and those who want 25 to hear the evidence can do so at the overflow room at the</p>	<p style="text-align: right;">Page 34518</p> <p>1 MR MPOFU: Thank you, Chairperson. 2 CHAIRPERSON: I also want to thank you, I 3 understand you were responsible for calming the people who 4 were misbehaving and interrupting the proceedings. 5 MR MPOFU: Thanks, Chairperson. 6 CHAIRPERSON: And I appreciate your 7 intervention. 8 MR MPOFU: Thank you very much, 9 Chairperson. 10 CHAIRPERSON: Please proceed with the 11 cross-examination? 12 MR NGCUKAITOBI: Thank you, Mr Chairman, 13 and thank you for the assistance with the situation. 14 Deputy President, I was still exploring the issue of the 15 financial constraints which was put forward to you at the 16 Transformation Committee. 17 MR RAMAPHOSA: Yes. 18 MR NGCUKAITOBI: And I had now come to 19 the point where I was suggesting to you that if it has any 20 relevance it is between 2008 and 2009. Now you've 21 mentioned two other reasons that were given to you. The 22 second reason is the issue of availability of land. 23 CHAIRPERSON: Sorry, just before you go 24 on with the availability of land, there was one point I 25 thought you were going to make, because I think it should</p>

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1 be made now, unless if you're going to make it later in
 2 which case I don't want to interrupt you. It is the
 3 question of the effect on the available housing stock of
 4 the converting of hostels. If you're going to deal with
 5 that then I won't ask questions about it, but it seemed to
 6 me you were on the point of asking questions about that.
 7 You've dealt with housing, then you came onto hostel
 8 conversions, if you're not going to deal with that question
 9 I'll ask the question, otherwise it is stand over for you
 10 to ask.

11 MR NGCUKAITOBI: We maybe approach it
 12 from different ends, Mr Chairman, so I wouldn't constrain
 13 you from asking the question.

14 CHAIRPERSON: I see. Mr Ramaphosa, were
 15 you ever informed what the effect on the available housing
 16 stock would be of the conversion of a hostel?

17 MR RAMAPHOSA: I don't quite understand,
 18 Mr Chairman.

19 CHAIRPERSON: Well, let me explain. At
 20 the beginning of the Commission –

21 MR RAMAPHOSA: Yes –

22 CHAIRPERSON: - we had an inspection in
 23 loco, we were taken to see one of the existing hostels.

24 MR RAMAPHOSA: Yes.

25 CHAIRPERSON: And then we were taken to

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1 see a converted hostel.

2 MR RAMAPHOSA: Yes.

3 CHAIRPERSON: Now what we saw is this, in
 4 some cases there was what amounted to a single room, I'm
 5 talking about, in a hostel.

6 MR RAMAPHOSA: Yes.

7 CHAIRPERSON: Which is occupied by 8
 8 people and then there was a larger room which was occupied
 9 by 16 people.

10 MR RAMAPHOSA: Yes.

11 CHAIRPERSON: 16 miners, when we were
 12 shown the converted hostel what had happened was, the room
 13 which previously accommodated 8 people was now a single
 14 room for one person.

15 MR RAMAPHOSA: Yes.

16 CHAIRPERSON: The rooms which had
 17 occupied, which accommodated 16 people appeared now to be
 18 units for two people, generally a miner and his wife or
 19 partner.

20 MR RAMAPHOSA: Yes.

21 CHAIRPERSON: So the impression that we
 22 got was that a conversion of a hostel effectively reduced
 23 the available housing stock by 87.5%.

24 MR RAMAPHOSA: Indeed.

25 CHAIRPERSON: So it is not just

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1 appropriate to convert hostels and say, well, we done what
 2 we had to do, you had to build houses as well –

3 MR RAMAPHOSA: Yes –

4 CHAIRPERSON: - to make up for the loss
 5 of housing stock caused by the conversion of the hostel.

6 MR RAMAPHOSA: Indeed.

7 CHAIRPERSON: Were you aware of that?

8 MR RAMAPHOSA: Yes, and that is –

9 CHAIRPERSON: Was my impression correct?

10 MR RAMAPHOSA: Your question was correct
 11 and now I understand it more fully.

12 CHAIRPERSON: Yes.

13 MR RAMAPHOSA: That is where the real
 14 challenge came in, that the mining companies giving
 15 pressure to doing away with these ravages of the migrant
 16 labour system where people are accommodated in collective
 17 accommodation, that as you converted them then it meant
 18 that you needed to have a commensurate number of houses to
 19 accommodate those that you were displacing from the hostel.
 20 So your percentage or your figure is correct, that it would
 21 have given rise to about 87% of shortage then of houses, so
 22 that was where the real challenge was.

23 CHAIRPERSON: Yes, thank you very much.

24 MR NGCUKAITOBI: So –

25 CHAIRPERSON: I'm sorry to have

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1 interrupted you.

2 MR NGCUKAITOBI: No problem, Mr Chairman.
 3 In fact I might as well follow up on this point. Mr Deputy
 4 President, what we now know is, there was a target of 5,500
 5 houses.

6 MR RAMAPHOSA: Yes.

7 MR NGCUKAITOBI: Three of which Mr Bham
 8 says they were show houses, the three that were built –

9 MR RAMAPHOSA: Yes –

10 MR NGCUKAITOBI: - were show houses.
 11 Three show houses were built. There was a target of 124
 12 hostels to be converted.

13 MR RAMAPHOSA: Yes.

14 MR NGCUKAITOBI: Only 60 were converted,
 15 68 were still to be converted.

16 MR RAMAPHOSA: Indeed.

17 MR NGCUKAITOBI: Now it is so clear that
 18 if you look at what you said in 2011 about what the
 19 responsibilities of mining companies were, this was a
 20 complete failure on the part of Lonmin, do you agree with
 21 that?

22 MR RAMAPHOSA: I wouldn't classify it as
 23 a complete failure, I would say they under achieved.

24 MR NGCUKAITOBI: Yes.

25 MR RAMAPHOSA: And more work needed to be

<p style="text-align: right;">Page 34523</p> <p>1 done.</p> <p>2 MR NGCUKAITOBI: Yes, so let's stay with</p> <p>3 the language of under achievement. When you sat as</p> <p>4 chairperson of the Transformation Committee and one of your</p> <p>5 key responsibilities was to ensure optimum achievement for</p> <p>6 the two years, why did you not raise this concern?</p> <p>7 MR RAMAPHOSA: The concern was raised in</p> <p>8 the committee meetings.</p> <p>9 MR NGCUKAITOBI: Yes?</p> <p>10 MR RAMAPHOSA: Indeed it was raised and</p> <p>11 the reasons for that were given and were put forward and in</p> <p>12 those committee meetings we would have wanted to see better</p> <p>13 performance going forward.</p> <p>14 MR NGCUKAITOBI: Yes, but it was clearly</p> <p>15 not raised with the sense of urgency that you articulated</p> <p>16 in 2011.</p> <p>17 MR RAMAPHOSA: Well, I would say that</p> <p>18 urgency would have been a question that one would have</p> <p>19 dealt with because it is relative.</p> <p>20 MR NGCUKAITOBI: Yes.</p> <p>21 MR RAMAPHOSA: And one would have wanted</p> <p>22 things to be done as quickly as possible, but given</p> <p>23 whatever constraints they had they would have given</p> <p>24 explanation for that.</p> <p>25 MR NGCUKAITOBI: But then wouldn't you</p>	<p style="text-align: right;">Page 34525</p> <p>1 MR RAMAPHOSA: Yes.</p> <p>2 MR NGCUKAITOBI: So here by 2008 Lonmin</p> <p>3 could start the construction of at least 800 houses. Do</p> <p>4 you see that?</p> <p>5 MR RAMAPHOSA: I've seen it, yes.</p> <p>6 MR NGCUKAITOBI: Yes, and the following</p> <p>7 year in 2009 which is at page 218B, we see the same</p> <p>8 reference being made under paragraph 15.3, can you see</p> <p>9 that?</p> <p>10 MR RAMAPHOSA: Yes, indeed.</p> <p>11 MR NGCUKAITOBI: And the second and third</p> <p>12 bullet point, the second bullet point says, "The 800 stands</p> <p>13 at Marikana Extension 2 have been proclaimed." Can you see</p> <p>14 that?</p> <p>15 MR RAMAPHOSA: Yes.</p> <p>16 MR NGCUKAITOBI: The following bullet</p> <p>17 point, "An additional 1,500 stands have been approved by</p> <p>18 council at Marikana Extension 5."</p> <p>19 MR RAMAPHOSA: Yes.</p> <p>20 MR NGCUKAITOBI: So by this stage we at</p> <p>21 least have 2,300 stands that have been approved and</p> <p>22 proclaimed by the council.</p> <p>23 MR RAMAPHOSA: Yes.</p> <p>24 CHAIRPERSON: - Explain this to the</p> <p>25 witness, you should put to him what appears further down on</p>
<p style="text-align: right;">Page 34524</p> <p>1 describe an achievement of three show cases against 5,500</p> <p>2 as a failure?</p> <p>3 MR RAMAPHOSA: Well, now that Mr Bham has</p> <p>4 explained what those show houses were, I mean they were</p> <p>5 show houses that were meant to, as I understand it now, to</p> <p>6 exhibit to the would be, if you like, takers that these are</p> <p>7 the houses that we could build and one needs then to</p> <p>8 interrogate why there was no follow up in terms of building</p> <p>9 more houses, was it because people did not take them up or</p> <p>10 was it because there were other reasons.</p> <p>11 MR NGCUKAITOBI: Alright, now one of the</p> <p>12 reasons is availability of land that was given to you.</p> <p>13 MR RAMAPHOSA: Yes.</p> <p>14 MR NGCUKAITOBI: Now I just want to refer</p> <p>15 you to some of the pages here which explained the story</p> <p>16 around the availability of land. At page 151 which is the</p> <p>17 2008 SLP, -</p> <p>18 MR RAMAPHOSA: Yes.</p> <p>19 MR NGCUKAITOBI: Under paragraph 15.5,</p> <p>20 review of commitments made in respect of housing and hostel</p> <p>21 accommodation, the third bullet point says, "Partial</p> <p>22 proclamation has been obtained for 800 stands which will</p> <p>23 only have water connections and Eskom power will only be</p> <p>24 available in 2010," and then it says, "Building activities</p> <p>25 can however begin."</p>	<p style="text-align: right;">Page 34526</p> <p>1 the page, giving an explanation, whether it is an adequate</p> <p>2 explanation is a matter, I don't think we need to explore</p> <p>3 it with him but explaining under the heading "Action plans</p> <p>4 going forward," -</p> <p>5 MR NGCUKAITOBI: Yes -</p> <p>6 CHAIRPERSON: - why the commencement of</p> <p>7 the buildings had not happened and when it was going to</p> <p>8 happen.</p> <p>9 MR NGCUKAITOBI: Yes, thank you, Mr</p> <p>10 Chairman, I just want to finalise the point about</p> <p>11 availability of land as an excuse. What I'm trying to put</p> <p>12 to you, Mr Deputy President, is that at least by 2009 there</p> <p>13 were 2,300 stands available on which construction could</p> <p>14 begin.</p> <p>15 MR RAMAPHOSA: Yes.</p> <p>16 MR NGCUKAITOBI: So the excuse given to</p> <p>17 you in 2010 about the availability of land is an invalid</p> <p>18 excuse.</p> <p>19 MR RAMAPHOSA: Well, clearly I mean it</p> <p>20 falls under the realms of underperformance, under</p> <p>21 achievement because clearly as set out here the approval</p> <p>22 for the stands were obtained and they were proclaimed and</p> <p>23 then the work did not get underway.</p> <p>24 MR NGCUKAITOBI: Yes, now the plans that</p> <p>25 are highlighted at action plans going forward are as</p>

<p style="text-align: right;">Page 34527</p> <p>1 follows, "Three show houses will be shown to all interested 2 employees whereby details pertaining to the houses, size, 3 cost and information pertaining to financing an application 4 will be provided. Once the interested employees deliver 5 guarantees of financing we will commence the building of 6 the houses and project manage such," and then it talks 7 about, "The initial finding to start the housing 8 development will be taken from the funds available from the 9 Marikana housing development company," and then it 10 continues. Now it seems that all of this was then put 11 conditional upon these employees, the very same employees 12 for whom this housing benefit should have benefited, that 13 they must now guarantee finance. Did you accept this, did 14 you agree with this?</p> <p>15 CHAIRPERSON: To provide guarantee, I 16 take it they weren't going to guarantee it themselves.</p> <p>17 MR NGCUKAITOBI: Yes, -</p> <p>18 CHAIRPERSON: They were going to obtain 19 guarantees from financial institutions of some kind.</p> <p>20 MR NGCUKAITOBI: Yes, indeed but it looks 21 like, what happened, Mr Deputy President, is that Lonmin 22 then puts the onus back on the employees to provide 23 guarantees of finance.</p> <p>24 MR RAMAPHOSA: Yes.</p> <p>25 CHAIRPERSON: The question is, were you</p>	<p style="text-align: right;">Page 34529</p> <p>1 housing project and replace it with giving employees a 2 living out allowance of R1,800 per employee who qualified, 3 do you remember that?</p> <p>4 MR RAMAPHOSA: Which year was that? 5 MR NGCUKAITOBI: 2011. 6 MR RAMAPHOSA: Yes. 7 MR NGCUKAITOBI: Yes, now was this 8 discussed at the level of the Transformation Committee? 9 MR RAMAPHOSA: Various schemes were put 10 forward to the Transformation Committee in relation to 11 addressing the housing problem. 12 MR NGCUKAITOBI: Yes, but the issue of 13 replacing tangible houses with a living out allowance of 14 R1,800 per employee who qualifies, was that discussed and 15 approved by your committee? 16 MR RAMAPHOSA: I would not remember the 17 specific details. The real challenge was, workers were 18 being paid a living out allowance and as they were being 19 paid out a living out allowances houses had to be build and 20 the scheme that was on the table was that those same 21 workers would need to buy those houses through a financing 22 mechanism that had been put in place. So in the end what 23 they would have to do is to utilise that living out 24 allowance for purposes of buying the houses. 25 MR NGCUKAITOBI: Yes.</p>
<p style="text-align: right;">Page 34528</p> <p>1 aware of that, when you got this explanation you told us 2 about, when you took over, when you became a director to 3 the Transformation Committee and you were given 4 explanations as to why there had been this under 5 achievement, as you call it, -</p> <p>6 MR RAMAPHOSA: Yes, -</p> <p>7 CHAIRPERSON: - were you given that full 8 explanation which is now being explained to you by counsel? 9 MR RAMAPHOSA: The explanation was given 10 and I must say where I had reservations was on the lack of 11 provision for rental stock because all this was for, Mr 12 Chairman, purchasing these houses and workers then had to 13 interact with financial institutions and guarantees and at 14 that level I did raise that there needs to be another 15 option which needs to be clearly investigated for rental 16 housing so that workers could then have an opportunity to 17 rent rather than to purchase, which would have gone a long 18 way in addressing this problem because they would have used 19 in part their living out allowance which they were getting 20 and part of it would then have gone to renting these houses 21 and the rental would have gone to help to finance the 22 building of those houses.</p> <p>23 MR NGCUKAITOBI: Yes. Alright, now I 24 just want to then deal with the issue of the living out 25 allowance. Now in 2011 Lonmin decided to discontinue the</p>	<p style="text-align: right;">Page 34530</p> <p>1 MR RAMAPHOSA: So in the end it was not 2 like giving out the houses free as well as the living out 3 allowance. So a worker would have had to opt for either 4 participating within the housing scheme which is to buy or 5 saying, all I want to do is to stay with the living out 6 allowance and the other option that was put forward is the 7 houses should be build and workers should have an option to 8 rent those houses so that they don't have an additional 9 burden of purchasing the house. 10 MR NGCUKAITOBI: I just want to talk 11 about the living out allowance, was this an item discussed 12 that we will now discontinue the construction, give the 13 workers a living out allowance? 14 MR RAMAPHOSA: I don't remember the 15 details. 16 MR NGCUKAITOBI: Yes, but when you gave 17 your evidence - 18 CHAIRPERSON: I'm sorry, before you go on 19 may I ask a question? I ask it because I have an 20 impression that it may be erroneous. The question I get 21 is, the living out allowances were not something confined 22 to Lonmin, not even confined to the platinum mining 23 industry, perhaps the witness can tell us whether that's 24 correct. 25 MR RAMAPHOSA: That is correct, when many</p>

<p style="text-align: right;">Page 34531</p> <p>1 of the mines started becoming alive to the inhumane 2 conditions of accommodating workers in hostels, the option 3 that they then had was to pay workers a living out 4 allowance, because they were incurring a cost anyway in 5 accommodating them in the hostels, so a living out 6 allowance then became the norm in a number of mines, so it 7 was not only Lonmin. 8 CHAIRPERSON: But my understanding is it 9 wasn't only platinum, am I correct? 10 MR RAMAPHOSA: It is actually right 11 across the industry right now. 12 CHAIRPERSON: Yes, the question you were 13 asked by counsel was based upon an assertion, that Lonmin 14 introduced the living out allowances in 2011 and I 15 understood you to agree with that. 16 MR RAMAPHOSA: Yes. 17 CHAIRPERSON: Was that when this idea of 18 giving living out allowance became general throughout the 19 industry or had it happened in certain other areas of the 20 mining industry before 2011? 21 MR RAMAPHOSA: Mr Chairman, it would have 22 happened in a number of other companies a lot earlier than 23 just 2011. 24 MR NGCUKAITOBI: Yes, but your evidence 25 in chief on the issue of the living out allowance, this is</p>	<p style="text-align: right;">Page 34533</p> <p>1 chamber to listen to the evidence, so they can see it on 2 the screen. 3 MR NGCUKAITOBI SC: Thank you, Mr 4 Chairman. 5 CHAIRPERSON: Which paragraph are you 6 referring to? 7 MR NGCUKAITOBI SC: 1, 2, 3, 4, 5, 6, 7, 8 the seventh paragraph from the top and the eighth 9 paragraph. So this is what you said, Mr Deputy President, 10 "Employers could not" – 11 CHAIRPERSON: Sorry, is this the 12 paragraph, the seventh paragraph I think begins, "If the 13 business of mining depends" – is that right? 14 MR NGCUKAITOBI SC: No, the paragraph 15 thereafter, Mr Chairman, the following paragraph. 16 "Employers could not merely confine their concerns to 17 working conditions and needed to assume far greater 18 responsibility for the conditions under which workers 19 lived." Then you continue, "Workers living close to work 20 in water and electricity regulated dwellings and who were 21 able to afford adequate nutrition and had vastly improved 22 family lives were likely to be more productive. They were 23 also likely to remain with the mine for longer, improving 24 skill retention and increasing stability." Those were your 25 words in 2011.</p>
<p style="text-align: right;">Page 34532</p> <p>1 one of the aspects that you are quite critical about 2 because what happens in practice, workers take the living 3 out allowance and they go back to the squatters where they 4 are living. 5 MR RAMAPHOSA: Yes. 6 MR NGCUKAITOBI: And the same actually 7 happened at Lonmin. 8 MR RAMAPHOSA: Yes. 9 MR NGCUKAITOBI: There are no houses 10 built, there are no hostels converted, not no hostel, but 11 very few hostels are converted. People are getting cash 12 and what they do with it is they go back to the informal 13 settlement. 14 MR RAMAPHOSA: Yes. 15 [12:50] MR NGCUKAITOBI: Now these informal 16 settlements in your article of 2011, this is what you said 17 about why this is critical, that companies must attend to. 18 CHAIRPERSON: Perhaps we could have the 19 article back again on the screen. 20 MR NGCUKAITOBI SC: 324. 21 CHAIRPERSON: Yes, it's 324 of the little 22 bundle. 23 MR NGCUKAITOBI SC: 324. 24 CHAIRPERSON: [Microphone off, inaudible] 25 - before for the benefit of those who have stayed in the</p>	<p style="text-align: right;">Page 34534</p> <p>1 MR RAMAPHOSA: Yes. 2 MR NGCUKAITOBI SC: You had your 3 responsibilities as the chairperson of the transformation 4 committee to make sure that these things actually happened. 5 MR RAMAPHOSA: Yes. 6 MR NGCUKAITOBI SC: What do you say to 7 the criticism that you also did not – I think your words 8 were "under-achieved," you also under-achieved in that 9 respect. 10 MR RAMAPHOSA: Yes. Those are my words. 11 They remain my words. I am clear about how one can deal 12 with the ravages of the migrant labour system and that 13 companies need to have a responsibility for the living 14 conditions of their workers, that I am clear about. And on 15 the transformation committee one is not the only person who 16 is a member. You are a member with many others and as a 17 non-executive director and in a sub-committee of the board 18 you are largely reliant on the executive managers, 19 executive management to implement decisions to make sure 20 that things happen and in this case, as I have said, there 21 was clear under-achievement. 22 MR NGCUKAITOBI SC: So you were let down 23 by the management. 24 MR RAMAPHOSA: Yes, I am not happy with 25 this part of the mining industry. I have said so, so many</p>

<p style="text-align: right;">Page 34535</p> <p>1 times myself. This is not a happy area where the mining 2 industry can be proud of its achievements. 3 MR NGCUKAITOBI SC: Can I ask you about 4 something else which is something that appears in your 5 statement in a descriptive fashion where you are describing 6 the way in which you acquired your shareholding at Lonmin? 7 MR RAMAPHOSA: Yes. 8 MR NGCUKAITOBI SC: Where you mentioned – 9 CHAIRPERSON: What is the relevance of 10 that to the terms of reference? I know there have been 11 attempts by people to raise that issue and I must confess 12 I'm unable to understand how that issue – I understand it's 13 an issue that some people feel strongly about, I'm not sure 14 it's an issue that helps us at all to answer the terms of 15 reference that have been given to us and I'm not sure that 16 it's covered by the topic that I allowed you to cross- 17 examine on. 18 MR NGCUKAITOBI SC: I'll not pursue the 19 issue any further, Mr Chairman. 20 CHAIRPERSON: Good. 21 MR NGCUKAITOBI SC: Those are the 22 questions. 23 CHAIRPERSON: Thank you. The next party 24 to cross-examine will be AMCU. Mr Gotz, do you want to use 25 the five minutes we have before lunch or do you want us to</p>	<p style="text-align: right;">Page 34537</p> <p>1 got to draw the witness's attention – when you consider how 2 many exhibits we've got – 3 MR NTSEBEZA SC: I believe it was, Mr 4 Chairman. 5 CHAIRPERSON: Oh, it was. I see, 6 alright, thank you. I was going to resume at quarter to 7 two but I'll resume at 20 to two. 8 MR NTSEBEZA SC: As the Chair pleases. 9 CHAIRPERSON: Unless Mr Mpofo and Mr Bham 10 think they'll require longer and reach an agreement. I'm 11 in your hands, Mr Mpofo, Mr Bham? 12 MR MPOFU: No, Chairperson, I think we 13 want – two o'clock should be in order. We – 14 CHAIRPERSON: I was going to say but – 15 MR MPOFU: Oh, quarter to? 16 CHAIRPERSON: In other words, you want 17 two o'clock. You understand we have to finish by the end 18 of tomorrow. 19 MR MPOFU: Quarter to two, Chairperson, 20 given the other discussion about the shortness of time or 21 the extension thereof. 22 CHAIRPERSON: Alright, so you want to 23 start at quarter two? 24 MR MPOFU: Yes please, Chairperson. 25 CHAIRPERSON: Alright. Now –</p>
<p style="text-align: right;">Page 34536</p> <p>1 take an early lunch? 2 MS BARNES: Chair, I'm cross-examining on 3 behalf of AMCU. 4 CHAIRPERSON: Sorry, I beg your pardon, 5 Ms Barnes. Forgive me, I'm sorry. 6 MS BARNES: But Chair, we have, with your 7 permission of course, we've changed the order. Mr Ntsebeza 8 will be cross-examining and then I will follow him. 9 CHAIRPERSON: I was told, I was told the 10 order was changed and Mr Ntsebeza was going to cross- 11 examine before Mr Mpofo but I wasn't told about the other 12 one, but in any event thank you for telling me. Mr 13 Ntsebeza, do you want to use five minutes before lunch or 14 would you like us to adjourn now and you can start five 15 minutes earlier than you otherwise would have done with 16 your cross-examination? 17 MR NTSEBEZA SC: Mr Chairman, if we could 18 adjourn now so that we – 19 CHAIRPERSON: We'll adjourn now and we 20 will resume then at – we haven't got any documents from 21 you. Are you not going to refer to any? 22 MR NTSEBEZA SC: I think all of the 23 documents and/or material that we are going to be referring 24 to are exhibits already. 25 CHAIRPERSON: That's not enough, you've</p>	<p style="text-align: right;">Page 34538</p> <p>1 MR MPOFU: And if I can be credited with 2 that 15 minutes, Chair. 3 CHAIRPERSON: No, no. No credits, no 4 credits. I think it might be helpful, Mr Ntsebeza, if you 5 had a discussion with Mr Unterhalter now just after we 6 adjourn because I get the impression that they may not be 7 entirely clear about what documents you're going to refer 8 to, but anyway that's a matter you and your colleague can 9 deal with during the adjournment. Quarter to two we 10 reassemble. 11 [COMMISSION ADJOURNS COMMISSION RESUMES] 12 [13:51] CHAIRPERSON: The Commission resumes, not 13 quite as promptly as I had wished, but I suppose in the 14 circumstances the best we can hope for. Mr Ntsebeza, 15 before you start your cross-examination I must remind the 16 witness he's still under oath. 17 MATAMELA CYRIL RAMAPHOSA: [s.u.o.] 18 CHAIRPERSON: Mr Ntsebeza. [Microphone 19 off, inaudible] I understand you want to report on progress 20 in your talks with Mr Bham, Mr Mpofo. 21 MR MPOFU: Thank you, Chairperson, yes. 22 The talks were fruitful. The arrangement, Chairperson, is 23 the following, that Mr Bham has explained to me there's one 24 issue, or topic that he wants to clarify and we've agreed 25 that he should do that before my cross-examination. If it</p>

<p style="text-align: right;">Page 34539</p> <p>1 so happens that after my cross-examination he needs to 2 clarify any point then we'll deal, we'll cross that bridge 3 at that stage so that, because it's a bridge that might not 4 arise, so that we don't debate something which might end up 5 being of academic importance. 6 CHAIRPERSON: That sounds sensible. 7 MR MPOFU: Thank you, Chairperson. 8 CHAIRPERSON: So you will know whether he 9 thinks you scored some points if he tries to cross-examine 10 after you finished. 11 MR MPOFU: Thank you, Chairperson. 12 CHAIRPERSON: We look forward with 13 interest to see what happens in that regard. Alright, 14 thank you. Mr Ntsebeza. 15 MR NTSEBEZA SC: Thank you, Mr Chairman. 16 Mr Chairman, before I start to cross-examine the Deputy 17 President I just want to make a declaration and acknowledge 18 that I do know him and at one stage we had the privilege of 19 serving in an organisation called "Freedom under Law" and 20 that is an organisation that we both on one day at one time 21 sent emails resigning from. You will recall that. 22 MR RAMAPHOSA: I do recall. 23 MR NTSEBEZA SC: Yes, ja, and – 24 CHAIRPERSON: Of what relevance is that 25 to our terms of reference?</p>	<p style="text-align: right;">Page 34541</p> <p>1 MR NTSEBEZA SC: It's 12:57, Mr Chairman. 2 CHAIRPERSON: 12:57, I see. Alright, 3 we've got 12:47 at the moment, so if we wait 10 seconds 4 we'll be where we should be. 5 [VIDEO IS SHOWN] 6 MR NTSEBEZA SC: Stop there. Now I take 7 it, Deputy President, that you believed in that statement 8 at the time you made it. Is that correct? 9 MR RAMAPHOSA: That is correct. 10 MR NTSEBEZA SC: May I dare to suggest 11 that in fact when we talk about these oppressive features 12 the primary feature was the massive exploitation of black 13 mineworkers? Would you agree? 14 MR RAMAPHOSA: I would agree. 15 MR NTSEBEZA SC: One of the features 16 would be forcing them to work and live in subhuman 17 conditions. You've even indicated that to Mr Ngcukaitobi 18 that one of the oppressive features would, to force the 19 workers to live in subhuman conditions. Would you agree 20 with that? 21 MR RAMAPHOSA: I would agree. 22 MR NTSEBEZA SC: And paying them paltry 23 wages. 24 MR RAMAPHOSA: I would agree. 25 MR NTSEBEZA SC: And the system of the</p>
<p style="text-align: right;">Page 34540</p> <p>1 MR NTSEBEZA SC: It's presenting a 2 context, Mr Chairman, just so that he should relax, I come 3 in peace. 4 CHAIRPERSON: Context is everything, as 5 the SCA is wont to say. 6 CROSS-EXAMINATION BY MR NTSEBEZA SC: 7 Thank you very much, Mr Chairman. Also I just want to make 8 the disclosure that when you became Deputy President of the 9 ANC I sent a letter from Barloworld expressing the view 10 that business would probably feel a lot more confident in 11 your ascendancy to that position because it might lead you 12 to being President of the country and business would 13 welcome that development. Yes, so when the Chair was 14 talking about EBITDA I could relate to that because that 15 serves also in some of our board meetings in Barloworld. 16 Now that having been cleared, I'd like to play 17 exhibit TTT4.011, and I would like this to be played from 18 12:57 to 13:02. It's the documentary "Miners shot" filmed 19 by Rehad Desai. I mean miners, it's not just shot, shot 20 down. 21 CHAIRPERSON: We're looking at the part 22 of the documentary – 23 MR NTSEBEZA SC: 12:57 to 13:02. 24 CHAIRPERSON: - we're expecting to see – 25 sorry, what is the reading? 10:57 –</p>	<p style="text-align: right;">Page 34542</p> <p>1 migratory labour system. 2 MR RAMAPHOSA: I would agree. 3 MR NTSEBEZA SC: You will recall, I'm 4 sure, with the kind of experience you have that – and I 5 will link it up with the Bantustan system – that when in 6 1894 the Glen Grey Act was passed in the Cape Parliament 7 Cecil John Rhodes actually made it very clear with the 8 discovery of diamonds and gold – 9 MR RAMAPHOSA: Ja. 10 MR NTSEBEZA SC: - we must create these 11 reserves - 12 MR RAMAPHOSA: Yes. 13 MR NTSEBEZA SC: They were called 14 reserves, but we came to know them as reservoir of cheap 15 labour because that's what they became. 16 MR RAMAPHOSA: Yes. 17 MR NTSEBEZA SC: In fact if we could, 18 there's an exhibit, Chairman, XX7, an article by Gavin 19 Hartford and if we could put it up there because I will 20 want to look at page 2, the second paragraph thereof. "It 21 is a well-known truism that migrant labour was not only the 22 core foundation in economic imperative for SA mining 23 industry, but also the labour market infrastructure from 24 which the entire Bantustan system and the apartheid order 25 were built post 1948." You wouldn't disagree with that</p>

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1 statement?

2 MR RAMAPHOSA: I wouldn't disagree.

3 MR NTSEBEZA SC: Now again one of the

4 main features of migrant labour was that mineworkers only

5 got to return to their homes periodically, once or twice a

6 year. Is that right?

7 MR RAMAPHOSA: That is true.

8 MR NTSEBEZA SC: That in itself you would

9 agree was inhumane.

10 MR RAMAPHOSA: Yes.

11 MR NTSEBEZA SC: Now if we could go to

12 that document I would like to play from 13:21 to 13:41, the

13 same exhibit, Mr Chairman, TTT4.011VOB. 13:21 to 13:41.

14 You can play it from there.

15 [VIDEO IS SHOWN]

16 Stop there.

17 CHAIRPERSON: You're up to 13:37.

18 MR NTSEBEZA SC: Yes, Mr Chairman, thank

19 you very much. You won't disagree with that statement made

20 by Mr Rehad Desai?

21 MR RAMAPHOSA: No, I would not.

22 MR NTSEBEZA SC: Now we now know that you

23 were secretary general of the largest trade union in the

24 country in the 80s, the National Union of Mineworkers.

25 MR RAMAPHOSA: General secretary.

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1 MR NTSEBEZA SC: I mean general

2 secretary. Alright, yes.

3 MR RAMAPHOSA: Yes.

4 MR NTSEBEZA SC: What did I say?

5 Secretary general?

6 MR RAMAPHOSA: You said secretary

7 general.

8 MR NTSEBEZA SC: General secretary.

9 CHAIRPERSON: What's the difference –

10 MR NTSEBEZA SC: Well, you went on to

11 become secretary general.

12 CHAIRPERSON: What's the difference?

13 MR NTSEBEZA SC: Of another organisation

14 called the ANC, indeed, yes.

15 MR RAMAPHOSA: The difference, Mr

16 Chairman, is often that unions refer to their secretaries

17 as general secretary and political parties refer to their

18 secretaries as secretary general.

19 CHAIRPERSON: Thank you.

20 MR RAMAPHOSA: Which would be a higher

21 level of position.

22 MR NTSEBEZA SC: So what I just want to

23 point out, and I'm sure you're in agreement, was that when

24 you led the NUM as you did, the purpose was amongst other

25 things to fight against these kinds of injustices.

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1 MR RAMAPHOSA: Yes.

2 MR NTSEBEZA SC: And you achieved many

3 victories, is it correct?

4 MR RAMAPHOSA: Yes, indeed.

5 MR NTSEBEZA SC: What do you consider

6 some of your most noteworthy victories to have been? Just

7 at a high level.

8 MR RAMAPHOSA: Well, at a high level the

9 most important victory by mineworkers was just being able

10 to be organised. Since 1946 when the African Mineworkers

11 Union was crushed by the apartheid regime mineworkers had

12 tried on a number of occasions and had failed to organise

13 themselves into a viable formation. So the success in

14 getting them to form their own union, which was the

15 National Union of Mineworkers, was a major achievement.

16 The other major achievement was the failure on

17 the part of mining industry to crush the union and that

18 clearly exemplified during the 1987 strike which was meant

19 to cut the union to a small size.

20 I think the overriding achievement was also

21 giving mineworkers dignity. Mineworkers used to be the

22 most oppressed, the most degraded and the most despised of

23 all industrial workers in our country and the union in

24 organising them was able and succeeded in giving them

25 dignity.

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1 And the fourth one was being able to sit at the

2 negotiating table and negotiate with their employers, and

3 those I would say would be the key victories and thereafter

4 the overriding one was to begin to raise the issue of

5 working conditions, health and safety issues with the

6 mining companies so that mineworkers could be treated

7 better. Those were the key victories that I can think of.

8 MR NTSEBEZA SC: Yes, but I want to

9 suggest to you that despite those victories – and one

10 cannot downplay it and [inaudible] for instance of the NUM

11 in the federation COSATU and the other mine, your unions

12 that were established notwithstanding that there was no

13 enabling legislation, but would you agree with me that

14 despite these victories which you have indicated there's

15 still a long way to go? Miners still do dangerous,

16 physically difficult work. Is that right?

17 MR RAMAPHOSA: Yes, there is still a long

18 way to go. Mineworkers still do very dangerous work.

19 MR NTSEBEZA SC: And they still earn

20 wages which are not sufficient to sustain their families,

21 and I think that came through –

22 MR RAMAPHOSA: Yes, I would agree.

23 MR NTSEBEZA SC: And in fact on the wages

24 that they get they would struggle to educate their children

25 so as to liberate their children and their families from

<p style="text-align: right;">Page 34547</p> <p>1 poverty. You will agree with that?</p> <p>2 MR RAMAPHOSA: Yes.</p> <p>3 MR NTSEBEZA SC: Yes, so in many case</p> <p>4 their children are also condemned to become migrant</p> <p>5 labourers. In fact we have heard evidence here where this</p> <p>6 was made by one of the workers that their children were</p> <p>7 also destined to become migrant labourers in the mines in</p> <p>8 order to try and sustain themselves and their families.</p> <p>9 You are familiar with that?</p> <p>10 MR RAMAPHOSA: I am familiar with that.</p> <p>11 MR NTSEBEZA SC: Now I understand before</p> <p>12 this whole thing about 12 500 that mineworkers were not</p> <p>13 earning than R5 000 at the time. That was basically the</p> <p>14 average that each mineworkers was earning, net, the rock</p> <p>15 drill operators, RDOs.</p> <p>16 MR RAMAPHOSA: Yes.</p> <p>17 MR NTSEBEZA SC: Do you agree with that</p> <p>18 kind of estimate?</p> <p>19 MR RAMAPHOSA: At which time? As at</p> <p>20 which point? Right now or even before?</p> <p>21 MR NTSEBEZA SC: Before the strike of</p> <p>22 2012.</p> <p>23 CHAIRPERSON: Say before August 2012 –</p> <p>24 MR NTSEBEZA SC: Before August 2012.</p> <p>25 CHAIRPERSON: Essentially before the 9th</p>	<p style="text-align: right;">Page 34549</p> <p>1 MR NTSEBEZA SC: I won't lead you down</p> <p>2 the garden path –</p> <p>3 MR RAMAPHOSA: I'm distinctly becoming</p> <p>4 aware that that's what he would like me to do.</p> <p>5 MR NTSEBEZA SC: Right. For the most</p> <p>6 part, I mean you have said it in your evidence under cross-</p> <p>7 examination from Mr Ngcukaitobi and Mr Budlender that for</p> <p>8 the most part they still live in subhuman conditions.</p> <p>9 MR RAMAPHOSA: Yes.</p> <p>10 MR NTSEBEZA SC: Yes, now I would like us</p> <p>11 to go back to that exhibit – okay, in fact before we get</p> <p>12 there, but if it could be prepared, exhibit XX7, page 3,</p> <p>13 but a large percentage of mineworkers, particularly rock</p> <p>14 drill workers which are constituting 80% of the workforce,</p> <p>15 are still migrant labourers, correct?</p> <p>16 MR RAMAPHOSA: Yes.</p> <p>17 MR NTSEBEZA SC: If we could have page 3,</p> <p>18 second paragraph of exhibit XX7, second paragraph, "The</p> <p>19 hard reality is that the pattern of migrant labour super-</p> <p>20 exploitation - characterised by 12 long months with only a</p> <p>21 Christmas and Easter break - has remained unaltered in the</p> <p>22 18 years of democracy." You see that?</p> <p>23 MR RAMAPHOSA: Yes.</p> <p>24 MR NTSEBEZA SC: And you agree?</p> <p>25 MR RAMAPHOSA: Yes.</p>
<p style="text-align: right;">Page 34548</p> <p>1 of August 2012 when they had the meeting.</p> <p>2 MR NTSEBEZA SC: Yes, indeed, Mr</p> <p>3 Chairman.</p> <p>4 MR RAMAPHOSA: Yes.</p> <p>5 MR NTSEBEZA SC: And I mean I don't have</p> <p>6 to canvass it with you. There's very little that one can</p> <p>7 do to support a family on R5 000 and in particular</p> <p>8 mineworkers who still have to maintain themselves in</p> <p>9 Marikana and maintain another family at home. You agree</p> <p>10 with that? Now for the most part therefore – I'm being</p> <p>11 reminded that I know when you nod you mean yes, but it</p> <p>12 doesn't come out in the –</p> <p>13 MR RAMAPHOSA: Oh, okay. Yes.</p> <p>14 MR NTSEBEZA SC: Yes.</p> <p>15 MR RAMAPHOSA: Yes, I should say yes.</p> <p>16 MR NTSEBEZA SC: Yes, yes, and I would –</p> <p>17 MR RAMAPHOSA: Thank you.</p> <p>18 MR NTSEBEZA SC: Ja, just say yes.</p> <p>19 MR RAMAPHOSA: Yes, the recording machine</p> <p>20 does not recognise my nod. Yes.</p> <p>21 MR NTSEBEZA SC: Yes.</p> <p>22 CHAIRPERSON: I think Mr Ntsebeza is</p> <p>23 likely to say yes to every question. I'm not sure you'll</p> <p>24 necessarily do that.</p> <p>25 MR RAMAPHOSA: I am –</p>	<p style="text-align: right;">Page 34550</p> <p>1 MR NTSEBEZA SC: Thank you. Now I'd just</p> <p>2 like to request you that you shouldn't be modest because</p> <p>3 I'm going to come up with what I regard have been your</p> <p>4 major achievements during the course of our struggle. Now</p> <p>5 Mr Budlender had suggested to you that you are being</p> <p>6 modest, but – and it is around this whole issue of your</p> <p>7 skills as a negotiator and the role that you played, very</p> <p>8 central role that you played in the debates up to and</p> <p>9 leading to our democracy, and I want to highlight those</p> <p>10 because if I understood your evidence well, I was a bit</p> <p>11 troubled by the fact that it seemed to come across as</p> <p>12 though you were suggesting that negotiations in the midst</p> <p>13 of a turbulent and a violent situation are not possible. I</p> <p>14 may have got you wrongly.</p> <p>15 Now you will agree with me that when you were</p> <p>16 part of that ANC delegation that successfully negotiated</p> <p>17 the peaceful transition to democracy with the apartheid</p> <p>18 government in the main, those were turbulent times,</p> <p>19 difficult times. Would you agree?</p> <p>20 MR RAMAPHOSA: I would agree.</p> <p>21 MR NTSEBEZA SC: In fact in that period</p> <p>22 of time there were two massacres, the 1992 Bisho massacre,</p> <p>23 7th of September. You will remember that you were part of</p> <p>24 that march to Bisho, but 23 ANC supporters were mowed down</p> <p>25 by machinegun fire by the Xhosa government. You remember</p>

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1 that?

2 MR RAMAPHOSA: I do remember.

3 MR NTSEBEZA SC: There was another

4 massacre, the Boipatong massacre.

5 MR RAMAPHOSA: Yes.

6 MR NTSEBEZA SC: That you can never

7 forget.

8 MR RAMAPHOSA: Indeed.

9 MR NTSEBEZA SC: That massacre was of

10 such intensity that it almost derailed the peace talks,

11 isn't it?

12 MR RAMAPHOSA: Indeed.

13 MR NTSEBEZA SC: The murder of Comrade

14 Chris Hani was one of those epoch-making events that could

15 easily have dealt with this. So violence was at the centre

16 of it, do you agree with me?

17 MR RAMAPHOSA: I would agree.

18 [14:11] MR NTSEBEZA SC: But in fact you and

19 Roelf Meyer made it possible –

20 MR RAMAPHOSA: Yes.

21 MR NTSEBEZA SC: - to bring back the

22 negotiating parties from the brink of that abyss.

23 MR RAMAPHOSA: Yes.

24 MR NTSEBEZA SC: Come back because

25 there's no other way. The only way you're going to achieve

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1 your objectives is to negotiate.

2 MR RAMAPHOSA: Yes.

3 MR NTSEBEZA SC: Yes. So I'm putting all

4 of this because of the kind of person that you are.

5 MR RAMAPHOSA: Yes.

6 MR NTSEBEZA SC: A number of us are

7 asking, I mean, why did we end here when at the centre of

8 that, there was comrade Cyril Ramaphosa? I mean he – so as

9 I begin to look at your e-mails, because I'll come to that

10 not because, you know, there is anything but to see the

11 nuance. The question is always going to be, and I'll put

12 it to you, that in spite of the fact, during that time in

13 spite of the fact that there were moments when we thought

14 peace could never be achieved –

15 MR RAMAPHOSA: Yes.

16 MR NTSEBEZA SC: - because of the

17 violence, the levels of violence. In fact the TRC we have

18 established that there was more violence in that period

19 than there ever was during the entire apartheid era.

20 MR RAMAPHOSA: Yes.

21 MR NTSEBEZA SC: But you kept on

22 negotiating until a peaceful settlement was arrived at.

23 MR RAMAPHOSA: Yes.

24 MR NTSEBEZA SC: So I want to suggest

25 that in view of the successes that were achieved by the

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1 National Union of Mineworkers under your leadership – and

2 your role in negotiations that led to the birth of our new-

3 found democracy –

4 MR RAMAPHOSA: Yes.

5 MR NTSEBEZA SC: - it really goes without

6 saying that you are a skilled negotiator.

7 MR RAMAPHOSA: Mm-mm.

8 MR NTSEBEZA SC: You are nodding. Put

9 modesty aside, don't nod, say yes. You are a skilled

10 negotiator, you are a skilled mediator and you are a

11 strategist. You must agree with that, don't you? Never

12 mind your [indistinct], never mind your – you have been

13 described as that and there is, I mean when the

14 Constitutional Assembly met in 1996 you were there.

15 MR RAMAPHOSA: Mr Chairman, it is a

16 description that I find difficult to deal with because it's

17 possible that it is a bit overstated and as you correctly

18 say, I tend to be a bit modest, I don't try to over-

19 emphasise my own abilities. I work together with many

20 other people and it is when I work with other people that

21 I'm able to be effective and I guess when they also work

22 with me they become effective. So I believe in mutually

23 beneficial type of talent, action and sharing.

24 CHAIRPERSON: Would it be safe to say

25 that in helping us to get safely to democracy, you didn't

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1 under-achieve?

2 MR RAMAPHOSA: Mr Chairman, it would be

3 safe to say we, we collectively as South Africans did not

4 under-achieve.

5 MR NTSEBEZA SC: I mean look, that's a

6 fair statement to make and I'm sure you know that that is

7 also what Madiba used to say.

8 MR RAMAPHOSA: Yes.

9 MR NTSEBEZA SC: But there is no doubt

10 that everybody or a number of people acknowledge the

11 centrality of Madiba or his leadership skills. This is

12 just what I want to be putting to you, that in spite of the

13 fact that you may not like the way I put it, maybe I'm too

14 glowing in the terms I'm putting it in, it is so that you

15 are a skilled negotiator, otherwise your results wouldn't

16 be what they were. You are a skilled mediator and a

17 strategist. Would you at least agreed that this is my view

18 or this is how you are perceived?

19 MR RAMAPHOSA: Let me say that it is your

20 view and, with respect, I would like you to accept that I

21 see it as your view.

22 MR NTSEBEZA SC: You wouldn't disagree

23 with it?

24 MR MPOFU: It's a generally held view.

25 MR NTSEBEZA SC: It's a generally held

<p style="text-align: right;">Page 34555</p> <p>1 view. Don't be evasive. It's a generally held view. 2 MR RAMAPHOSA: It is your view, thank 3 you. 4 MR NTSEBEZA SC: Yes. Anyway, you would 5 agree with me that in order to negotiate, mediate in a 6 dispute, one of the central features of being able to do 7 that is you have to know the underlying facts. 8 MR RAMAPHOSA: Yes. 9 MR NTSEBEZA SC: Isn't that right? 10 MR RAMAPHOSA: That is correct. 11 MR NTSEBEZA SC: You have to make sure 12 that the facts that you are being given are correct. 13 MR RAMAPHOSA: Yes. 14 MR NTSEBEZA SC: And there are always two 15 sides to a story. You happen also to be a lawyer and 16 indeed you have to understand what each party's grievance 17 is, isn't that right? 18 MR RAMAPHOSA: Indeed. 19 MR NTSEBEZA SC: And the parties to a 20 grievance often misunderstand or misstate what the other 21 side's grievance is and as a mediator you know, that's why 22 sometimes there are confidentiality sections and that is 23 precisely, you know, why you have to have the skill to 24 understand that you may be given something else other than 25 what is, what is the truth.</p>	<p style="text-align: right;">Page 34557</p> <p>1 MR NTSEBEZA SC: Yes. Now I'm sure this 2 question has been asked in a different way by Mr Budlender 3 but may I just ask it? Why, why were you only, in a 4 meeting only with NUM because the relevant, because during 5 the relevant period I am not aware that you made any 6 attempt to contact AMCU, for instance, and to engage with 7 them. Isn't that right? 8 MR RAMAPHOSA: Yes, it is true. 9 MR NTSEBEZA SC: Now the question is, why 10 didn't you? 11 MR RAMAPHOSA: I referred to Senzeni 12 Zokwana and Frans Baleni and James Motlatsi because I know 13 them and I have worked with them and I have their contact 14 details. I was not able to make any reference to any 15 leader of AMCU because I do not have any details of them 16 and I have not dealt with them. 17 MR NTSEBEZA SC: I mean we have heard 18 evidence here that Lonmin, and possibly you too, I don't 19 know, believed that AMCU was behind the strike and the 20 violence. Did you know about that? I see Mr Zokwana has 21 joined us. I was just saying to the Deputy President that 22 there is evidence here that Lonmin and possibly you too – 23 MR RAMAPHOSA: Yes. 24 MR NTSEBEZA SC: - believed that AMCU was 25 behind the strike and the violence.</p>
<p style="text-align: right;">Page 34556</p> <p>1 MR RAMAPHOSA: Indeed. 2 MR NTSEBEZA SC: Because you know, you 3 know what parties are. Parties are concerned about their 4 own case. 5 MR RAMAPHOSA: Yes. 6 MR NTSEBEZA SC: You as the negotiator 7 and mediator, you want to get the complete picture. 8 MR RAMAPHOSA: Indeed. 9 MR NTSEBEZA SC: Yes. Now I would like 10 to put up one of the e-mails. I know, Mr Chairman, it's 11 BBB4 but I don't know whether it's 5 or 6, this one, but 12 it's the one in which the Deputy President said, "I spoke 13 to Senzeni Zokwana, president of NUM." 14 CHAIRPERSON: Which one do you want? 15 MR NTSEBEZA SC: It's probably 4.1. 16 CHAIRPERSON: BBB4.1, that's page 14, I 17 think. 18 MR NTSEBEZA SC: Yes. Is that – oh yes, 19 ja, paragraph 2. 20 CHAIRPERSON: I spoke to, he says he 21 spoke to the future Minister of Agriculture. 22 MR NTSEBEZA SC: Yes, yes, Mr Chairman, 23 current Minister of Agriculture. You have read that, have 24 you? 25 MR RAMAPHOSA: Yes, I have.</p>	<p style="text-align: right;">Page 34558</p> <p>1 MR RAMAPHOSA: Yes. 2 MR NTSEBEZA SC: Yes. Now it's been 3 shown in the Commission that that was not correct. 4 MR RAMAPHOSA: Yes. 5 MR NTSEBEZA SC: That AMCU was not behind 6 the strike and did not incite any of the violence that was 7 associated with it. Now, but if it was you and Lonmin's 8 belief at the time that AMCU was somewhat to blame for the 9 strike and for the violence, now wearing your hat as a 10 skilled negotiator, as a skilled mediator, you would agree 11 with me it was even more of a reason that you should have 12 engaged with them. The fact that you didn't have 13 Mathunjwa's cell phone number, which Lonmin had, cannot be 14 a reason but the question I'm putting to you, isn't it so 15 that it was even more of a reason that you should have 16 engaged AMCU given that, you know, we - 17 MR RAMAPHOSA: Yes. I think maybe let's 18 put this in broader context. You have referred to 19 negotiations and how one should approach negotiations and 20 this in many ways, Mr Chairman, was what one could call a 21 perfect storm that had evolved. Firstly, AMCU was saying 22 that they are not involved in all this, so in a way 23 abdicated. Secondly, the CEO of Lonmin, who I rate very 24 highly in as far as interacting with workers is concerned, 25 had taken ill so he was not on the spot to negotiate.</p>

<p style="text-align: right;">Page 34559</p> <p>1 Thirdly, the NUM itself was not really involved because as 2 we heard earlier, a number of the workers who were 3 protesting or who were demanding this, had lost confidence 4 in the NUM by the NUM's own admission. So you had a 5 situation where, whilst negotiations would have helped, 6 would have borne fruit, you had a huge vacuum and as a non- 7 executive director who is not involved in the management of 8 the company on a daily basis, one relied on the management 9 team on the ground to deal with all these matters and as 10 often happens in this types of situation, it is a 11 management team that has the responsibility to negotiate 12 with unions, to find settlement and quite often the non- 13 executive directors are hardly ever involved in negotiating 14 with unions. What you referred to in the e-mail where I 15 was saying, referring to Mr Senzeni Zokwana, Minister, 16 where I was referring to the General Secretary and also 17 James Motlatsi, was to refer to people who had been in the 18 NUM and who, if we could have met, would have found a way 19 of dealing with this strike and putting some ideas on the 20 table. I myself would hardly ever have been involved 21 because I was non-executive director of the company. 22 MR NTSEBEZA SC: Yes. I mean I - I mean 23 there's merit in everything that you have said. The only 24 point I make is this, when you decided to engage a union 25 knowing full well that, on just what you have said, there</p>	<p style="text-align: right;">Page 34561</p> <p>1 would not end quickly and amicably without both Lonmin 2 making concessions to the strikers and thus a likely change 3 in the status quo for both Lonmin and NUM, you would agree 4 with that? 5 MR RAMAPHOSA: That's what often happens 6 in negotiations. 7 MR NTSEBEZA SC: Give and take. You are 8 experienced in this. Now if Lonmin had engaged with the 9 strikers early on, you know there was the 10th and the 11th 10 and the 12th and the 13th and what have you, when the RDOs 11 had first asked to engage with management on the 10th, in 12 fact I make bold to say that up to the 12th which is the day 13 on which, when they got to management, management said, we 14 are not going to talk to you, we are going to talk to NUM, 15 we are not going to talk outside the structures even though 16 they went - 17 CHAIRPERSON: Mr Ntsebeza, that was the 18 10th. That was Friday - 19 MR NTSEBEZA SC: On the 10th, yes. 20 CHAIRPERSON: The 12th, remember, was the 21 Sunday when - 22 MR NTSEBEZA SC: Oh yes, yes, Chairman. 23 CHAIRPERSON: The 10th is the day they 24 went to what they call the time office, the LPD. 25 MR NTSEBEZA SC: Yes.</p>
<p style="text-align: right;">Page 34560</p> <p>1 was waning supporting for NUM and that there was a belief, 2 your belief and Lonmin's belief that AMCU was behind the 3 strike, what you didn't do and it is - unless there's 4 something else - that paragraph 2 shows that when you 5 decided to engage anyone from the working class at Lonmin, 6 you decided to engage with the president of NUM to the 7 exclusion of the other union. You made no attempt to 8 contact the other union, that's the only point I'm making. 9 Do you accept that? 10 MR RAMAPHOSA: I accept that and I have 11 given my reasons. 12 MR NTSEBEZA SC: Yes, yes. Now we all 13 know that it's, the issue was a strike for salaries but 14 their primary demand was simply for management to engage 15 with them. Do you recall that? 16 MR RAMAPHOSA: Yes. 17 MR NTSEBEZA SC: And this is a request 18 they made repeatedly, did you know that? 19 MR RAMAPHOSA: Yes. 20 MR NTSEBEZA SC: And if that is so, may I 21 suggest that the quickest and the most amicable way to have 22 brought this strike to an end would have been for Lonmin 23 management to engage with the strikers, isn't that right? 24 MR RAMAPHOSA: Yes. 25 MR NTSEBEZA SC: And of course the strike</p>	<p style="text-align: right;">Page 34562</p> <p>1 CHAIRPERSON: And they wanted to speak to 2 the mine management and they got the response you've 3 summarised. 4 MR NTSEBEZA SC: Now I'm sure, I'm sure, 5 I think you did say to Mr Budlender if they had engaged 6 them at that stage the possibility of violence ensuing 7 would be minimal. 8 MR RAMAPHOSA: Yes. 9 MR NTSEBEZA SC: Now then there is the - 10 were you told that during the afternoon or evening of the 11 15th of August, that Mr Mathunjwa had spoken to the 12 mineworkers on strike at the koppie about going back to 13 work? Were you told? You were never told that? 14 MR RAMAPHOSA: No, I was not told. I saw 15 it, I think, on television. 16 MR NTSEBEZA SC: You saw it on 17 television. And we would argue that in fact maybe what you 18 saw was when he went there for the second time on the 16th 19 but it's neither here nor there, but you saw - we are 20 talking about the 15th. 21 MR RAMAPHOSA: Yes. 22 MR NTSEBEZA SC: You were not told about 23 the fact that in the afternoon or evening of the 15th Mr 24 Mathunjwa went there, escorted by the police to the koppie. 25 MR RAMAPHOSA: I finally saw that either</p>

<p style="text-align: right;">Page 34563</p> <p>1 in the newspapers or on television.</p> <p>2 MR NTSEBEZA SC: Yes. Now my sense, and</p> <p>3 I'm putting it to you, was that the mineworkers were</p> <p>4 receptive when Mathunjwa came and told them about going</p> <p>5 back to work. They said to him he must come back tomorrow</p> <p>6 and there was a ray of hope that the impasse would be</p> <p>7 solved.</p> <p>8 [14:30] Did you know about that?</p> <p>9 MR RAMAPHOSA: No, I'm not aware of that.</p> <p>10 MR NTSEBEZA SC: You saw however</p> <p>11 subsequently, - well, I'm saying on the 15th, the day before</p> <p>12 the events that have sparked the Commission on the 16th,</p> <p>13 what I'm suggesting to you is that on the evening of the</p> <p>14 15th Mr Mathunjwa went to the koppie, spoke the mineworkers</p> <p>15 and said, you know if you want us to back to work you must</p> <p>16 go and indicate, come back tomorrow, we want the employer</p> <p>17 to meet with us and it appeared that the impasse could be</p> <p>18 resolved. Now are you aware that this was one of the</p> <p>19 features of the 15th of August 2012, that there was a ray of</p> <p>20 hope that the impasse could be resolved under those</p> <p>21 circumstances.</p> <p>22 MR RAMAPHOSA: I'm not aware about the</p> <p>23 extent to which it was the ray of hope, what I do know is</p> <p>24 that a message had been communicated that they wanted to</p> <p>25 meet with management.</p>	<p style="text-align: right;">Page 34565</p> <p>1 MR RAMAPHOSA: I would not agree, I was</p> <p>2 just a nonexecutive director, no involvement in the daily</p> <p>3 management operations of the company and I was not involved</p> <p>4 in the negotiations with unions as well and nonexecutive</p> <p>5 directors never get involved in wage negotiations. The</p> <p>6 fact that I was general secretary of the National Union of</p> <p>7 Mineworkers would have no bearing in this and the fact that</p> <p>8 Shanduka was a shareholder also minimal bearing because</p> <p>9 we're just a minority shareholder amongst a body of bigger</p> <p>10 shareholders.</p> <p>11 MR NTSEBEZA SC: Thank you. Maybe I</p> <p>12 should indicate where I come from.</p> <p>13 MR RAMAPHOSA: Yes.</p> <p>14 MR NTSEBEZA SC: If you had decided to do</p> <p>15 it there is no law, there is nothing that could have</p> <p>16 prevented you from doing it. The fact that you are a</p> <p>17 nonexecutive director and the fact that management deals, I</p> <p>18 mean we know this, in terms of your own evidence on the</p> <p>19 evening of the 15th you had known that security employees at</p> <p>20 Lonmin had been killed.</p> <p>21 MR RAMAPHOSA: Yes.</p> <p>22 MR NTSEBEZA SC: You had known that on</p> <p>23 the 13th three mineworkers had died.</p> <p>24 MR RAMAPHOSA: Yes.</p> <p>25 MR NTSEBEZA SC: Including, - and, not</p>
<p style="text-align: right;">Page 34564</p> <p>1 MR NTSEBEZA SC: When did you learn about</p> <p>2 this after Mathunjwa had been to the koppie on the 15th?</p> <p>3 MR RAMAPHOSA: I would have been either</p> <p>4 aware of it soon after it happened but I do not now have a</p> <p>5 full recollection of how the information came to me.</p> <p>6 MR NTSEBEZA SC: Were you told by Lonmin</p> <p>7 management on the 15th or did you get to know about it</p> <p>8 subsequently?</p> <p>9 MR RAMAPHOSA: I think I got to know</p> <p>10 about it subsequently.</p> <p>11 MR NTSEBEZA SC: So there was nothing</p> <p>12 told to you by management?</p> <p>13 MR RAMAPHOSA: Not to my recollection.</p> <p>14 MR NTSEBEZA SC: Okay. Now I will want</p> <p>15 to argue that you not only as the ex SG of NUM, GS –</p> <p>16 MR RAMAPHOSA: Yes, General secretary.</p> <p>17 MR NTSEBEZA SC: General secretary?</p> <p>18 MR RAMAPHOSA: Yes.</p> <p>19 MR NTSEBEZA SC: And Lonmin, but also in</p> <p>20 your capacity as a Lonmin shareholder, a nonexecutive</p> <p>21 director, will you disagree with me that you were uniquely</p> <p>22 pleased to influence all the parties and stakeholders to</p> <p>23 come to an amicable or negotiated solution provided that</p> <p>24 you were proactive and you acted impartially, would you</p> <p>25 disagree with that?</p>	<p style="text-align: right;">Page 34566</p> <p>1 including, and that two members of the SAPS had not only</p> <p>2 just been killed in your description, they had been killed</p> <p>3 in the most brutal ways.</p> <p>4 MR RAMAPHOSA: Yes.</p> <p>5 MR NTSEBEZA SC: Now I'm simply saying to</p> <p>6 you, you have - and you have direct links to the company,</p> <p>7 you are a non exec, you are a chairman of the</p> <p>8 Transformation Committee as we have now come to know, and</p> <p>9 this is a matter about which you are not neutral in your</p> <p>10 views as we'll go through your emails. I'm simply saying</p> <p>11 if you had decided to do something there was nothing that</p> <p>12 stopped, that could have stopped you from doing so. Do you</p> <p>13 agree with that?</p> <p>14 MR RAMAPHOSA: I should be flattered by</p> <p>15 the importance that you seem to think I had and the</p> <p>16 influence with regards to this issue, but it is simply not</p> <p>17 the case. When one is a nonexecutive director of a company</p> <p>18 you deal with issues as they are presented to you by the</p> <p>19 executive management. You act together with others and you</p> <p>20 therefore do not have the power that you seem to ascribe a</p> <p>21 person who is a nonexecutive director. All you can ever do</p> <p>22 is to bring things to the notice of others, for instance</p> <p>23 when it came to the issue of saying dismissal of workers I</p> <p>24 did say that dismissal of workers is not an option that</p> <p>25 should be considered, the extent to which, whether that was</p>

<p style="text-align: right;">Page 34567</p> <p>1 done or not is something that obviously can be examined. 2 So the power and the authority that you say one had is 3 simply not the case. You work with other people. 4 MR NTSEBEZA SC: I appreciate that and I 5 think at the time that you said it I said there is a lot of 6 credit in what you are saying, but what I'm putting to you 7 and in doing so, you are concerned with the escalation 8 violence. 9 MR RAMAPHOSA: Yes. 10 MR NTSEBEZA SC: You are concerned with 11 the deaths. Are you suggesting that simply because in 12 terms of protocol you did not have it in you to say, I, 13 Cyril Ramaphosa, I am not going to stand on ceremony, this 14 thing is getting out of hand, let me get the opportunity of 15 getting into grips with this thing, call your, - I want to 16 meet the union members, I want to meet management, I want 17 to meet the police, I, I as myself, I want to meet the 18 mineworkers who are on strike, I want to address them. Now 19 I see you have been nodding, I'm putting it to you, there 20 was nothing that stopped you from doing so, isn't that 21 right? 22 MR RAMAPHOSA: Objectively speaking, yes. 23 MR NTSEBEZA SC: Now I want us to look at 24 BBB4, it is these emails. I'm sorry you are going to be 25 around with this, we are going to go to the emails again.</p>	<p style="text-align: right;">Page 34569</p> <p>1 MR NTSEBEZA SC: Yes. 2 CHAIRPERSON: Is that what you want? 3 MR NTSEBEZA SC: BBB, - AAAA, I don't 4 know. 5 CHAIRPERSON: No, just give me the time 6 of the one you want and the day, I can find that for you. 7 I act as your junior for a moment, you've got juniors but 8 never mind I'll do it for you. What exactly do you want? 9 MR NTSEBEZA SC: I want BBB4.2, that one, 10 I can point it, Mr Chairman, that's the one I want. No, 11 what one is that, Mr Chairman? That's what I want. 12 CHAIRPERSON: What's the date, what's it 13 about? 14 MR NTSEBEZA SC: It is 0047, although it 15 says 15 August I suspect probably it is that one. It is an 16 email which the witness sent to Mr Jamieson, now the 17 juniors agree, it is 4.1. 18 CHAIRPERSON: Well, there is one he sent 19 to Mr Jamieson on page 16 of the Lonmin bundle, that's 20 Exhibit BBB4.5 and the one at 4.1 is the one that he sent 21 to Mr Roger Phillimore. 4.1 is, at the foot of the page, 22 the earlier one is one you sent to Mr Jamieson on the 15th, 23 - sorry, I beg your pardon, Mr Phillimore on the 15th and 24 then he replied to you at 1:07pm on the same page saying, 25 "Thanks, very much appreciated, look forward talking to</p>
<p style="text-align: right;">Page 34568</p> <p>1 MR RAMAPHOSA: No problem. 2 MR NTSEBEZA SC: Yes, now Mr Chairman, I 3 don't know whether that one, that's 2898, in your bundle 4 I'm told it is page 15 and – 5 CHAIRPERSON: And I'll tell you where it 6 is if I can. 7 MR NTSEBEZA SC: It is 444.5, I'm told Mr 8 Chairman. 9 CHAIRPERSON: 444? 10 MR NTSEBEZA SC: BBB4. 11 CHAIRPERSON: That's page 16, I think, 12 that's page 16 of the bundle. 13 MR NTSEBEZA SC: No, the one I want is 14 the one where, I believe it is page 15 of the Lonmin bundle 15 where there is an email which was sent by the witness to Mr 16 Jamieson. 17 CHAIRPERSON: There is one sent by Mr 18 Jamieson to the witness on page 15 and – 19 MR NTSEBEZA SC: Oh, yes, there is the 20 one, yes. 21 CHAIRPERSON: And there is one sent by 22 the witness to Mr Jamieson which is on page 16, at the 23 foot, it looks like just after, it looks 12:18pm on the 15th 24 of August, is that the one you want? That's the one where 25 he agrees with the characterisation?</p>	<p style="text-align: right;">Page 34570</p> <p>1 you," but the one from the witness to Mr Phillimore is 4.1, 2 it is page 14 of the bundle and the one the witness sent to 3 Mr Jamieson is around about the same time, also the 15th of 4 August, that's page 16 and that's BBB4.5. The more 5 assistance to you I can't be. 6 MR NTSEBEZA SC: Yes, the one on the 7 screen, Mr Chairman. 8 CHAIRPERSON: That's the one to Mr 9 Phillimore, not Mr Jamieson, the one on the screen. 10 MR NTSEBEZA SC: Yes, Roger is 11 Phillimore. 12 CHAIRPERSON: You've got to distinguish 13 your Phillimore with Jamieson. 14 MR NTSEBEZA SC: Yes, Mr Chairman, thanks 15 for the guidance. 16 CHAIRPERSON: I do my best for you. 17 MR NTSEBEZA SC: Roger is Phillimore. 18 Now in this there are three things that I want to 19 highlight, the first is that you state that you have 20 already spoken to the Minister of Minerals at the time, 21 Minister Shabangu. 22 MR RAMAPHOSA: Yes. 23 MR NTSEBEZA SC: And you have told her 24 that her reaction and silence were bad for government, 25 would that be a good summary of what you communicate there?</p>

<p style="text-align: right;">Page 34571</p> <p>1 MR RAMAPHOSA: Yes, it is correct.</p> <p>2 MR NTSEBEZA SC: You also tell, you told</p> <p>3 her that you and she should have a discussion and see what</p> <p>4 she needs to do. Do you see that?</p> <p>5 MR RAMAPHOSA: Yes, I see it.</p> <p>6 MR NTSEBEZA SC: You also indicated that</p> <p>7 you had had a discussion with NUM and were planning another</p> <p>8 one. We have already dealt with this one, isn't it?</p> <p>9 MR RAMAPHOSA: Yes.</p> <p>10 MR NTSEBEZA SC: Now another email, it is</p> <p>11 in the Lonmin bundle, page 26, BBB4.2. It is an email from</p> <p>12 Mr Jamieson to you at that time, 9:43am. I think this</p> <p>13 email was read before but can we just summarise it with</p> <p>14 your consent, or with your agreement? Here Jamieson is</p> <p>15 saying that Minister Shabangu has been interviewed on the</p> <p>16 radio and had said during that radio interview that what</p> <p>17 was happening at Lonmin was a wage dispute in that</p> <p>18 management and the union should sit down and sort it out,</p> <p>19 do you see that?</p> <p>20 MR RAMAPHOSA: Yes.</p> <p>21 MR NTSEBEZA SC: And that what is clear</p> <p>22 therefore, from this email is that Mr Jamieson was not</p> <p>23 simply referring to the crimes that had been committed, is</p> <p>24 that correct?</p> <p>25 MR RAMAPHOSA: Yes.</p>	<p style="text-align: right;">Page 34573</p> <p>1 MR RAMAPHOSA: Yes?</p> <p>2 MR NTSEBEZA SC: That they were, - crime</p> <p>3 had been committed.</p> <p>4 MR RAMAPHOSA: Yes.</p> <p>5 MR NTSEBEZA SC: But in the course or</p> <p>6 when these were happening there was also this labour</p> <p>7 dispute. So when Jamison talks about what he is obtaining</p> <p>8 at Lonmin surely he is referring to both the strike as well</p> <p>9 as the acts of violence that have resulted. Do you agree</p> <p>10 with that?</p> <p>11 MR RAMAPHOSA: That he would be referring</p> <p>12 to everything that's happening there, indeed.</p> <p>13 MR NTSEBEZA SC: Now you see why I see we</p> <p>14 were going to do an exercise with you is because Jamieson</p> <p>15 seems to take an issue with the minister characterising</p> <p>16 this as a labour unrest. She says the minister, what she</p> <p>17 is saying is unhelpful, do you see that?</p> <p>18 MR RAMAPHOSA: Yes, I see it.</p> <p>19 MR NTSEBEZA SC: And he says he is</p> <p>20 unhelpful because she characterises it as a labour dispute,</p> <p>21 isn't that right?</p> <p>22 MR RAMAPHOSA: Indeed.</p> <p>23 [14:50] MR NTSEBEZA SC: He seems to take an</p> <p>24 issue with the fact that the Minister see this matter as</p> <p>25 one in relation to which management and the unions should</p>
<p style="text-align: right;">Page 34572</p> <p>1 MR NTSEBEZA SC: Yes, crimes are crimes,</p> <p>2 I mean people have been killed there, they have been</p> <p>3 killed, that's a crime and there was going to be no need to</p> <p>4 characterise them as such. The minister would also never</p> <p>5 be saying that criminal actions are a matter for management</p> <p>6 and the unions to resolve by sitting down and negotiating</p> <p>7 it. You will agree with that?</p> <p>8 MR RAMAPHOSA: Yes.</p> <p>9 MR NTSEBEZA SC: So she says it as she</p> <p>10 sees it, this is a labour dispute and it is not as though</p> <p>11 she is unaware that there have been criminal acts. So</p> <p>12 would you accept my suggestion that he must have been</p> <p>13 referring to Jamieson because he must be referring to the</p> <p>14 situation as a whole, in other words to the labour dispute</p> <p>15 as well as the acts of crime. Do you agree with that?</p> <p>16 MR RAMAPHOSA: Let me understand that</p> <p>17 question better, please?</p> <p>18 MR NTSEBEZA SC: Yes, you see if one</p> <p>19 reads this email –</p> <p>20 MR RAMAPHOSA: Yes?</p> <p>21 MR NTSEBEZA SC: - in context –</p> <p>22 MR RAMAPHOSA: Yes –</p> <p>23 MR NTSEBEZA SC: - one accepts that it</p> <p>24 was manifest that because of people who had died and all of</p> <p>25 that, -</p>	<p style="text-align: right;">Page 34574</p> <p>1 sit down and resolve the matter through negotiation. You</p> <p>2 see that?</p> <p>3 MR RAMAPHOSA: Yes.</p> <p>4 MR NTSEBEZA SC: It is confirmed by the</p> <p>5 fact that he says he had two discussions with the DG and in</p> <p>6 each case characterised this as not an industrial relations</p> <p>7 issue, that is now Jamieson -</p> <p>8 MR RAMAPHOSA: Yes.</p> <p>9 MR NTSEBEZA SC: - "but as civil unrest,</p> <p>10 a destabilisation, a criminal issue that could not be</p> <p>11 resolved without political intervention and needs the</p> <p>12 situation to be stabilised by the police or army." Do you</p> <p>13 see that?</p> <p>14 MR RAMAPHOSA: Yes, I do.</p> <p>15 MR NTSEBEZA SC: Now it seems to me that</p> <p>16 – and you will agree with me, or disagree, but it seems to</p> <p>17 me that it is very clear, and this I want to put to you,</p> <p>18 that Mr Jamieson does not appear to be saying look, this is</p> <p>19 ridiculous, the Minister is wrong, this is clearly a</p> <p>20 criminal matter which will have to be sorted out by a</p> <p>21 combination of political intervention and rolling out the</p> <p>22 army. Doesn't that appear to be what he's saying?</p> <p>23 MR RAMAPHOSA: Well, from that email,</p> <p>24 yes.</p> <p>25 MR NTSEBEZA SC: Would you agree that</p>

<p style="text-align: right;">Page 34575</p> <p>1 Jamieson here is putting out how he wants the situation to 2 be characterised by government? Do you agree? 3 MR RAMAPHOSA: Well, what he says is that 4 the Minister should see it in the way that he's describing 5 it. 6 MR NTSEBEZA SC: Yes. Ja, now if one 7 looks at the overall impression that then one is left with, 8 will you agree that the purpose here seems to be twofold; 9 the first is to get political involvement to ensure that 10 the police and the army are brought in, to use his words, 11 to stabilise the situation. Would you agree with that? 12 MR RAMAPHOSA: Yes – 13 MR NTSEBEZA SC: That is what that email, 14 you know, conveys. 15 MR RAMAPHOSA: Well, he's suggesting, as 16 I read it, that because people are dying and people are 17 being injured it would be best if the police were able to 18 be present on the ground to stabilise the situation. 19 MR NTSEBEZA SC: But more importantly it 20 seems to me, and this is what I put to you, he is keen to 21 get political involvement that will ensure that the police 22 and the army are brought in to stabilise the situation. Do 23 you agree? 24 MR RAMAPHOSA: Well, he would like the – 25 as I read it, the people who are responsible for say law</p>	<p style="text-align: right;">Page 34577</p> <p>1 done. Surely you would agree with that. 2 MR RAMAPHOSA: I would not agree with 3 that construction. I would say that what Jamieson was 4 saying is that the situation that we have at hand now is 5 leading to the loss of life and the injury of people and he 6 wants the situation to be stabilised and after it is 7 stabilised clearly they will have a situation where they 8 will be able to deal with whatever problems. So he was 9 dealing with - if one can use the word - a situation of 10 exigency, or emergency, because he wants, as I understand 11 his email, to make sure that lives are saved and no further 12 deaths happen. 13 MR NTSEBEZA SC: Except that he doesn't 14 say so. That's the problem, you see. 15 MR RAMAPHOSA: But I think – 16 MR NTSEBEZA SC: He doesn't say so. His 17 email is very clear – if Shabangu is going to characterise 18 this whole thing as a labour dispute in relation to which 19 management and workers should get together and try and 20 resolve it through negotiation, that is unhelpful because 21 this is not what it is. 22 MR RAMAPHOSA: I would respectfully 23 disagree because he uses the word, the situation needs to 24 be stabilised by the police. The situation that's 25 unfolding is that people are being killed and as you</p>
<p style="text-align: right;">Page 34576</p> <p>1 and order to act so that the situation is stabilised. 2 MR NTSEBEZA SC: He says it in so many 3 words. You seem to evade the nuance of political 4 involvement. He says so there. He says it in so many 5 words. 6 MR RAMAPHOSA: I would read that as 7 meaning, yes, political intervention – 8 MR NTSEBEZA SC: In each issue that could 9 not be resolved without political intervention. 10 MR RAMAPHOSA: Yes. 11 MR NTSEBEZA SC: And needs the situation 12 stabilised by police or army. 13 MR RAMAPHOSA: Yes. 14 MR NTSEBEZA SC: So he is actually 15 culling for political intervention. That's the one aspect. 16 MR RAMAPHOSA: Yes. 17 MR NTSEBEZA SC: The other is that he is 18 keen to convey – and this is an email to you – that as 19 opposed to what Minister Shabangu had allegedly said the 20 solution was, and you recall what Minister Shabangu had 21 said, management and unions and workers must sit together 22 and resolve this labour dispute. That is what Minister 23 Shabangu had proposed; there must be negotiation to resolve 24 the issue. This email comes across clearly as being 25 opposed to what Minister Shabangu had suggested should be</p>	<p style="text-align: right;">Page 34578</p> <p>1 yourself have said that crimes are being committed and that 2 is what I believe Jamieson was concerned with, that let us 3 get the situation stabilised. 4 MR NTSEBEZA SC: Well, I think the emails 5 and objective evidence – I hear what you are saying. We 6 will argue that in fact what is very clear here is that 7 Jamieson is seeking to disabuse the Minister from 8 characterising this thing as anything but a criminal act. 9 He doesn't want the Minister to characterise it as a labour 10 dispute. He doesn't say first stabilise the situation and 11 then negotiate. He doesn't say that. 12 MR RAMAPHOSA: Mr Chairman, I think Mr 13 Jamieson if he is to be a witness in this Commission should 14 be able to answer that for himself. I'm merely giving the 15 viewpoint in response to the question that you posed. I've 16 been clear – 17 MR NTSEBEZA SC: Ja, because he was 18 sending it to you. 19 MR RAMAPHOSA: Indeed. Even if he was, 20 but he's the best placed person to give those answers. 21 CHAIRPERSON: Mr Ntsebeza, it's now 3 22 o'clock. I was proposing to take the tea adjournment now. 23 You've got another half an hour I think. So if we take the 24 tea adjournment now, we'll resume promptly, if it's 25 possible for us, at 3:15, then you'll have a clear run</p>

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1 through till quarter to 4. But I'm in your hands. If
 2 that's convenient to you we'll go that way, but if you want
 3 to round off this point first –
 4 MR NTSEBEZA SC: Mr Chairman, we can take
 5 whatever it is that we are taking at this time – tea, and
 6 I'll –
 7 CHAIRPERSON: Alright, we'll adjourn now
 8 for quarter of an hour for tea or coffee.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [15:19] CHAIRPERSON: The Commission resumes. Mr
 11 Ramaphosa, you're still under oath. Mr Ntsebeza, you're
 12 still cross-examining.
 13 MATAMELA CYRIL RAMAPHOSA: (s.u.o.)
 14 CROSS-EXAMINATION BY MR NTSEBEZA SC:
 15 Thank you, Mr Chair, if we could have the e-mail BBB4.2?
 16 Now that we have agreed that Mr Jameson was referring to
 17 the situation as a whole, both the crimes that had been
 18 committed as well as the labour unrest, if we then look at
 19 what he further says, he says now that it appears that
 20 there are approximately 800 police officers, they would be
 21 grateful if – you see where he talks about 800, "We are
 22 grateful that the police now have about 800 people on
 23 site," do you see that?
 24 MR RAMAPHOSA: Yes, I see it.
 25 MR NTSEBEZA SC: And then he then goes on

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1 to talk about the next challenge being "to take appropriate
 2 action so we can get people back to work. It would be good
 3 to have some independent confirmation the police have plans
 4 to sustain a presence for at least a week and numbers don't
 5 wane by the weekend." Do you see that?
 6 MR RAMAPHOSA: Yes, I see it.
 7 MR NTSEBEZA SC: Now did you – what is
 8 this appropriate action which Mr Jameson was talking about
 9 to get people back to work?
 10 MR RAMAPHOSA: I don't know what he was
 11 specifically referring to there and I think he would be the
 12 best placed person who can answer that. I can only surmise
 13 and say that he clearly was continuing with his theme to
 14 say the situation should be stabilised so that people can
 15 go back to work.
 16 MR NTSEBEZA SC: Can I propose that –
 17 CHAIRPERSON: Sorry, Mr Ntsebeza, you see
 18 the key words are "ensuring they remain and take
 19 appropriate action so that we can get people back to work."
 20 When I'd read this initially I thought they wanted, he
 21 wanted the police to do something to get the people back to
 22 work, which wouldn't have been appropriate action for the
 23 police but maybe the phrase "we can get people back to
 24 work" is the clue to what was meant, I'm not sure.
 25 MR RAMAPHOSA: Precisely.

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1 MR NTSEBEZA SC: Can I propose what
 2 probably could be another? Could he have meant, for
 3 instance, one of two things, either that a large presence
 4 of police would be interpreted as a threat of force and
 5 strikers would be intimidated to abandon the strike, or the
 6 police would actually use force to break the strike. Would
 7 that be an unfair interpretation of what he says there?
 8 MR RAMAPHOSA: I would not know whether
 9 he meant all those things.
 10 MR NTSEBEZA SC: What did you understand
 11 him to mean?
 12 MR RAMAPHOSA: I understood him to mean
 13 that they would be able to restore some peace and calm in
 14 the area so that they can then be able to a situation where
 15 people can return back to work. That's what I understood.
 16 MR NTSEBEZA SC: Now how could that
 17 ensure that people went back to work? It seems to me that
 18 would only be the case if Lonmin believed that the majority
 19 of the people were on strike because of the intimidation or
 20 violence. Don't you agree?
 21 MR RAMAPHOSA: When he says, "so that we
 22 can get people back to work," I fully don't know what he
 23 actually meant, whether he meant that there would be, you
 24 know, discussions that would enable people to agree to go
 25 back to work or that those who voluntarily wanted to go

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1 back to work would do so, it could have been any of those.
 2 MR NTSEBEZA SC: But isn't it
 3 interesting, he links it. He says, "We are grateful that
 4 the police now have about 800 on site. Our next challenge
 5 is sustaining this and ensuring they remain and take
 6 appropriate action so we can get people back to work."
 7 MR RAMAPHOSA: Yes.
 8 MR NTSEBEZA SC: "It would be good to
 9 have some independent confirmation that police have plans
 10 to sustain a presence for at least a week and numbers don't
 11 wane by the weekend." That's why I'm asking the question
 12 whether Lonmin believed that the majority of the people
 13 were on strike because of the intimidation or violence and
 14 therefore the police in large numbers would ensure people
 15 going back to work.
 16 MR RAMAPHOSA: I think they had a sense
 17 that some of the workers wanted to go back to work, as
 18 possibly intimidated to them by the National Union of
 19 Mineworkers. It is possible and I think, through you Mr
 20 Chairman, that that is a question that Mr Jameson would be
 21 best placed to answer.
 22 MR NTSEBEZA SC: But I'm sure Lonmin knew
 23 that the people were not on strike because they are
 24 intimidated, they quite clearly knew why the I were on
 25 strike, the rock drill operators, that was not the case and

<p style="text-align: right;">Page 34583</p> <p>1 Lonmin knew about it. In fact, Lonmin had even brought a 2 Labour Court interdict. Do you have anything to say to 3 that? 4 MR RAMAPHOSA: Mr Chairman, I'm not 5 trying to be evasive, which is not my nature, but I think 6 this question, Mr Jameson would be best placed to answer 7 this question for a number of reasons but more principally 8 because he was on the ground and he was dealing with issues 9 as they evolved on the ground and he was, if you like, the 10 lead manager who was able to deal with all this as the CEO 11 was indisposed. 12 MR NTSEBEZA SC: Do you read from this e- 13 mail that it appears that it was Lonmin's agenda to get the 14 police to break the strike, either by the threat or the 15 actual use of force? 16 MR RAMAPHOSA: No, I don't read that into 17 this e-mail. 18 MR NTSEBEZA SC: We will argue that it 19 appears clearly from here that there seems to have been a 20 concerted effort on the part of Lonmin to avoid having to 21 negotiate higher wages. Do you have a comment you want to 22 make? 23 MR RAMAPHOSA: I would not say a 24 concerted effort. What I do know is that they did meet one 25 of the line managers and discussed this issue when some of</p>	<p style="text-align: right;">Page 34585</p> <p>1 army to break the strike by the threat or actual use of 2 force in order to avoid having to negotiate higher wages 3 and that is why they never got to a stage where they 4 actually had meaningful negotiations with the workers. Do 5 you want to make a comment on that? 6 MR RAMAPHOSA: I would say that that is a 7 question that you would have to put to Jameson. My own 8 approach to these matters, which I have articulated here 9 already, is that it is through negotiation and talking that 10 you are able to resolve problems. It is possible, Mr 11 Chairman, that as the situation got from bad to worse and 12 as workers were being killed, that tended to cloud various 13 initiatives that could have been embarked upon but I think 14 Lonmin's then, he was really not acting CEO but James would 15 be best placed to answer that. 16 MR NTSEBEZA SC: Right. I mean we will 17 argue the rest. Let's just look what your response was. 18 MR RAMAPHOSA: Ja. 19 MR NTSEBEZA SC: The e-mail is – Mr 20 Chairman, the one that's 289F is BBB4 what? 21 CHAIRPERSON: The witness's response to 22 Mr Jameson's e-mail is on page 16 of the bundle. BBB4.5, 23 is it? 24 MR NTSEBEZA SC: Yes, yes, Mr Chairman, 25 it's 4.5.</p>
<p style="text-align: right;">Page 34584</p> <p>1 the workers made the representation to the line manager. 2 So talking had happened at some stage. 3 MR NTSEBEZA SC: Are you talking about Da 4 Costa? 5 MR RAMAPHOSA: Yes, sir. 6 MR NTSEBEZA SC: That was before the 7 strike. 8 MR RAMAPHOSA: Yes, sir. 9 MR NTSEBEZA SC: And they have since then 10 refused to speak to the mineworkers who were on strike. 11 MR RAMAPHOSA: I was referring to 12 discussions that had ensued. 13 MR NTSEBEZA SC: Yes. The question was, 14 well, that it is clear because now we are into the strike, 15 it's not a question of what they did before. 16 MR RAMAPHOSA: Yes. 17 MR NTSEBEZA SC: We are into the strike. 18 We are putting to you, and this is what we are going to 19 argue, that from the way this e-mail reads and the others 20 we are going to put to you, Lonmin wanted to influence, 21 one, Minister Shabangu in characterising the strike the way 22 they wanted it characterised. That we have agreed on. 23 MR RAMAPHOSA: Yes. 24 MR NTSEBEZA SC: Now, and we also will 25 say that the agenda in Lonmin was to get the police or the</p>	<p style="text-align: right;">Page 34586</p> <p>1 CHAIRPERSON: "Thank you for your e-mail. 2 I am currently in Cape Town." I think that's – 3 MR NTSEBEZA SC: Yes, "I thank you for 4 the consistent manner in which you are characterising" – 5 this was thanking Mr Jameson at 12:18, do you see that? 6 MR RAMAPHOSA: Yes, I see it. 7 MR NTSEBEZA SC: "I thank you for the 8 consisting manner in which you are characterising the 9 current difficulties which we are going through. The 10 terrible events that have unfolded cannot be described as a 11 labour dispute. They are plainly dastardly criminal and 12 must be characterised as such. In line with this 13 characterisation there needs to be concomitant action to 14 address this situation. You are absolutely correct in 15 insisting that the Minister and indeed all government 16 officials need to understand that we are essentially 17 dealing with a criminal act. I have said as much to the 18 Minister of Safety and Security." Now you are referring to 19 the situation as a whole there, it is very clear to me. In 20 other words, labour unrest as well as the acts of 21 criminality that have been taking place, isn't that right? 22 MR RAMAPHOSA: Yes, it is correct. 23 MR NTSEBEZA SC: In fact, now it seems to 24 me you say two things to Mr Jameson even though you refer 25 to the whole situation, labour dispute as well as acts of</p>

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1 criminality, but what you say there firstly is that you
 2 agree with the characterisation of the situation as
 3 criminal, is that right?
 4 MR RAMAPHOSA: Yes.
 5 MR NTSEBEZA SC: Secondly, you say that
 6 all government officials, including the Minister, must be
 7 made to understand that. Do you see that?
 8 MR RAMAPHOSA: Yes.
 9 MR NTSEBEZA SC: And you confirm that you
 10 have already spoken to your colleague, the then Minister of
 11 Safety and Security, Minister Nathi Mthethwa.
 12 CHAIRPERSON: I suggest the person who
 13 has that cell phone, please leave the chamber. We can't
 14 have disturbances like that.
 15 MR NTSEBEZA SC: It was in traffic.
 16 CHAIRPERSON: Come back tomorrow morning.
 17 MR NTSEBEZA SC: I'm sorry, Deputy
 18 President, for that but -
 19 MR RAMAPHOSA: No problem.
 20 MR NTSEBEZA SC: You confirm that you had
 21 already said as much to Minister Mthethwa, do you see that?
 22 MR RAMAPHOSA: Yes.
 23 MR NTSEBEZA SC: And that it was in line
 24 with that kind of characterisation that there needed to be
 25 concomitant action to address the situation. That's right,

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1 isn't it?
 2 MR RAMAPHOSA: It is correct.
 3 MR NTSEBEZA SC: And we know that
 4 criminal acts are usually dealt with by the police, isn't
 5 that right?
 6 MR RAMAPHOSA: Yes.
 7 MR NTSEBEZA SC: And correct me if I'm
 8 wrong, what one then concludes from what you say in your e-
 9 mail is that you are saying actually I agree, the police
 10 must be brought in to deal with this criminal act, is that
 11 right?
 12 MR RAMAPHOSA: What was of great concern
 13 to me, Mr Chairman, was that people were getting killed,
 14 they were being targeted and they were getting killed and
 15 some of them were being killed in the most brutal manner
 16 where body parts were being torn off their bodies and they
 17 had already numbered up to 10. Now that was primary in my
 18 concern.
 19 MR NTSEBEZA SC: Yes, but I mean I don't
 20 think we have got to traverse this.
 21 MR UNTERHALTER SC: I wonder if the
 22 witness could finish his response.
 23 CHAIRPERSON: I think -
 24 MR RAMAPHOSA: I hadn't.
 25 CHAIRPERSON: - point, Mr Ntsebeza, I

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1 think the witness -
 2 MR RAMAPHOSA: I hadn't finished.
 3 CHAIRPERSON: You hadn't finished?
 4 MR RAMAPHOSA: Yes.
 5 CHAIRPERSON: Well, finish now.
 6 MR RAMAPHOSA: So that was my primary
 7 area of focus and I did believe that these acts of
 8 targeting people and killing them in the way that they were
 9 being killed was of a criminal nature and that the police
 10 needed to come, as I said earlier, identify and arrest
 11 those who were perpetrating these acts, with a view of
 12 ensuring that those who are perpetrating these acts do not
 13 continue to kill other people. That was my primary
 14 concern. Further loss of life is what I felt needed to be
 15 prevented.
 16 MR NTSEBEZA SC: Yes. Now, I hear you
 17 now at this point in your evidence. I was simply saying
 18 you conceded when you talked about this situation, you
 19 meant the whole situation, both the labour unrest that had
 20 arisen as well as the acts which are manifestly criminal
 21 which we all agree about. Where people had been killed.
 22 [15:38] Now I don't know whether you'll change your mind
 23 now or you had changed your mind then because if you read
 24 this email you're actually saying you will have a
 25 discussion with Minister Shabangu and stress that she

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1 should have a discussion with Roger, and we know what Roger
 2 has been saying; Roger is saying it's unhelpful to
 3 characterise this as a labour unrest. Isn't that right?
 4 MR RAMAPHOSA: Through you, Mr Chairman,
 5 could you just repeat the reference to Roger, because I
 6 never understood Roger to have such a position. I'm
 7 talking about Roger Phillimore, the chairman of Lonmin,
 8 then chairman.
 9 MR NTSEBEZA SC: Jamieson, I'm sorry, Mr
 10 Chairman. It was Jamieson that made the suggestion about -
 11 MR RAMAPHOSA: Yes.
 12 MR NTSEBEZA SC: Now what I'm saying is
 13 the excuse with Jamieson indicates that you were going to
 14 do two things. Now this is against the backdrop of your
 15 concession that when you talked about the situation you
 16 talked about the labour unrest as well as the acts of
 17 criminality. Now against that backdrop this exchange of
 18 emails I suggest and I put to you you're attempting to
 19 persuade Minister Shabangu to change her characterisation
 20 of the situation at Lonmin that it is merely a labour
 21 dispute. She should change her characterisation and
 22 characterise it as criminal. What do you say to that?
 23 MR RAMAPHOSA: Well yes, we're saying
 24 that people are getting killed in a criminal way, as you
 25 have admitted yourself, and we were saying we would like

<p style="text-align: right;">Page 34591</p> <p>1 police to be brought on site to prevent further killings, 2 further criminal activity where people are being killed, in 3 that way from taking place. So yes, that is the case. 4 MR NTSEBEZA SC: Indeed the second thing 5 is that there will be a need to persuade Minister Shabangu 6 to meet with Phillimore. 7 MR RAMAPHOSA: Yes. 8 MR NTSEBEZA SC: And we know from 9 previous emails, certainly from the previous email that Mr 10 Phillimore's role was also going to be to persuade Minister 11 Shabangu to change her characterisation. We know that Mr 12 Phillimore's role was also going to be to persuade Minister 13 Shabangu to change her characterisation. Isn't that right? 14 MR RAMAPHOSA: Mr Chairman, it's not my 15 place to pose a question to the counsel, but are you 16 referring to Mr Jamieson or Mr Roger Phillimore? 17 CHAIRPERSON: What happened was Mr 18 Jamieson asked you to talk to the Minister – 19 MR RAMAPHOSA: Yes. 20 CHAIRPERSON: - Shabangu to encourage her 21 to make time to talk to Mr Phillimore. 22 MR RAMAPHOSA: Indeed. 23 CHAIRPERSON: So that's how they both 24 come into it. 25 MR RAMAPHOSA: Okay.</p>	<p style="text-align: right;">Page 34593</p> <p>1 MR NTSEBEZA SC: But you know – 2 CHAIRPERSON: Doesn't his email give a 3 bit of a clue – doesn't his email to you give a bit of a 4 clue as to what he's likely to have said to the Minister? 5 MR RAMAPHOSA: Mr Chairman, with respect, 6 what I did know about Roger Phillimore's desire to talk to 7 the Minister was that he had wanted to have communication 8 with the Minister broadly about the situation that was 9 unfolding. The specific detail thereof, such as persuading 10 him to characterise the situation as the counsel is 11 outlining is – 12 CHAIRPERSON: I think you mean persuading 13 her. 14 MR RAMAPHOSA: Yes, I would not have 15 known. But I'm not trying to split hairs on this one. I'm 16 just stating what I think was the situation. 17 CHAIRPERSON: Did you in fact persuade 18 her in any event to abandon the characterisation that it 19 was just a wage dispute and to take a different view of the 20 matter? 21 MR RAMAPHOSA: Yes – 22 CHAIRPERSON: As it were, withdraw her, 23 correct her previous public statement – 24 MR RAMAPHOSA: Yes. 25 CHAIRPERSON: - that it was just a wage</p>
<p style="text-align: right;">Page 34592</p> <p>1 CHAIRPERSON: Jamieson's proposal to you 2 is speak to the Minister, tell the Minister to talk to Mr 3 Phillimore and what Mr Ntsebeza suggests is we know what Mr 4 Phillimore would have said to the Minister because we've 5 seen it in his email. I think that's your question. 6 MR RAMAPHOSA: Okay. 7 CHAIRPERSON: Is that right? 8 MR NTSEBEZA SC: Yes. 9 CHAIRPERSON: You haven't got many 10 minutes left, but – 11 MR NTSEBEZA SC: Indeed. 12 CHAIRPERSON: I suggest get it clear that 13 the witness understands what you're putting to him. 14 MR RAMAPHOSA: I understand. I 15 understand. 16 MR NTSEBEZA SC: So now are we all clear? 17 MR RAMAPHOSA: Yes. 18 MR NTSEBEZA SC: And we know that 19 Phillimore's role – is it Roger Phillimore's role was only 20 going to be to persuade the Minister to change her 21 characterisation. You agree with that? 22 MR RAMAPHOSA: I don't know what the 23 content of their discussion would have been, so it would be 24 difficult for me to even presume what the content of that 25 discussion would have been.</p>	<p style="text-align: right;">Page 34594</p> <p>1 dispute, management and the workers must get together and 2 sort the thing out. 3 MR RAMAPHOSA: Indeed. 4 CHAIRPERSON: Did you think that if that 5 recipe which the Minister had proposed had been followed 6 that the police wouldn't have to be called in, wouldn't 7 have to try to deal with it as a law and order matter, but 8 just management and workers get together, you think the 9 problem would have gone away? 10 MR RAMAPHOSA: Mr Chairman, it's not to 11 exclude that possibility. I think it is eminently possible 12 that if that track had been pursued it could have borne 13 some fruit, but what was of prime importance then was that 14 we were dealing with a situation that was highly volatile 15 where people were getting killed, and for good or bad 16 reason we felt that we needed to stabilise the situation 17 first, that we should prevent further people from getting 18 killed and in my view that does not exclude the fact that 19 once the situation is stabilised, or as you stabilise it 20 you will be able to talk to people and negotiate. 21 CHAIRPERSON: Thank you. Mr Ntsebeza, 22 your time is up, but I take it you want – would you like 23 time to deal with one more point quickly, or shall I invite 24 Ms Barnes to start cross-examining on behalf of AMCU? 25 MR NTSEBEZA SC: Mr Chair, with your</p>

<p style="text-align: right;">Page 34595</p> <p>1 permission, AMCU are quite happy to arrange through the 2 Chair that I could do the cross for the next 13 minutes and 3 it's the end of the day. 4 CHAIRPERSON: Well, let's not – I won't 5 just take your word for it. Let's ask Ms Barnes. Is Mr 6 Ntsebeza right? I'm not reflecting on you, Mr Ntsebeza, 7 I'm just – 8 MS BARNES: Yes, Chair, that's in terms 9 of the arrangement. 10 CHAIRPERSON: Alright, Mr Ntsebeza. 11 MS BARNES: We're quite happy, thank you, 12 Chair. 13 CHAIRPERSON: Let's see how you use the 14 next 13 minutes. 15 MR NTSEBEZA SC: It will be very 16 fruitful, Mr Chair. Now from everything else that I've 17 been able to get from the emails it does appear that you 18 finally got your colleague – well, she's your colleague 19 now, I don't think she was your colleague then – you 20 finally got Minister Shabangu to change her 21 characterisation of the situation from that of merely a 22 labour dispute to that one of being a criminal act. Isn't 23 that right? You just said that to the Chair, isn't it? 24 MR RAMAPHOSA: Yes. 25 MR NTSEBEZA SC: Now I'm going to want to</p>	<p style="text-align: right;">Page 34597</p> <p>1 CHAIRPERSON: Alright, Mr Ntsebeza, I 2 think you can make it more specific than you have and do so 3 and then we'll get a focussed answer from the witness that 4 may help you at the end of the day. 5 MR NTSEBEZA SC: Mr Chairman, there isn't 6 much time. I will argue the rest. I want to put it to you 7 that you and Lonmin may have been keen that the emphasis 8 should switch from Lonmin having to negotiate a solution to 9 one which government should be influenced to deploy the 10 police and/or the army in order to break the strike with a 11 threat of, or actual use of force. Do you have anything to 12 say to that? 13 MR RAMAPHOSA: Could you rephrase that so 14 that I can understand it better? 15 MR NTSEBEZA SC: You see, we have put to 16 you – and I'm putting it to you now – that the 17 characterisation of this situation as being just criminal 18 and specifically saying it is not a labour dispute was an 19 attempt to make sure that Lonmin doesn't have to negotiate 20 a solution, but that government should be influenced to 21 deploy the police and/or the army. That is what I argue is 22 coming out of this and I put that to you. 23 CHAIRPERSON: [Microphone off, inaudible] 24 to say in order to break the strike that had to happen – 25 MR NTSEBEZA SC: In order to break the</p>
<p style="text-align: right;">Page 34596</p> <p>1 – and I'm putting this to you, that you and Lonmin had a 2 clear agenda; 1, it was to characterise this as criminal. 3 Am I being unfair to you? 4 MR RAMAPHOSA: That the acts of killing – 5 MR NTSEBEZA SC: No, the situation, the 6 situation. You wanted the situation to be characterised as 7 criminal. 8 MR UNTERHALTER SC: Could I invite my 9 learned friend to define what he means by the situation so 10 that we can get some particularity into what is being 11 asked? These generalities are not entirely helpful. 12 MR NTSEBEZA SC: I've been more pointed 13 in my entire cross-examination with the witness and that's 14 why I made concessions. I've not been labouring on 15 generalities. I've been saying consistently, and there's 16 been a concession to that, that when they talk about the 17 situation, he, Phillimore and whoever else, they are 18 talking about the labour unrest as well as the acts of 19 criminality that have arisen. I can never have been more 20 particular than that. 21 MR UNTERHALTER SC: I think the record 22 will suggest that there's quite a good deal of ambiguity in 23 the way in which these questions have been posed. It might 24 be important to have my learned friend be very specific as 25 to what he means by "the situation."</p>	<p style="text-align: right;">Page 34598</p> <p>1 strike either by the threat of or actual use of force. 2 MR RAMAPHOSA: My own view is that that 3 was not the intention, Sir, to break the strike. The 4 intention was to ensure that there are no further acts of 5 violence that would lead to the loss of life and injury of 6 people. 7 MR NTSEBEZA SC: You see, if you are 8 going to get the police to break up a strike of 2 000 to 9 3 000 mineworkers, many of whom were armed with assegais 10 and pangas, by the threat or use of force, surely there 11 would have been a foreseeability of the possibility of the 12 conflict between the strikers and the police ensuing and in 13 deaths occurring. You will agree with that, isn't it? 14 MR RAMAPHOSA: I was really focussing 15 more on the prevention of further loss of life and injury 16 of people. 17 MR NTSEBEZA SC: Yes, but the point in 18 question that I'm putting to you – 19 MR RAMAPHOSA: And the way that would 20 manifest itself would be where lives would be threatened, 21 like lives of these police, security people and workers who 22 were either killed in their office or there – that with the 23 police presence would be prevented and that those who were 24 perpetrating such acts would be arrested. 25 MR NTSEBEZA SC: Are you suggesting, as</p>

<p style="text-align: right;">Page 34599</p> <p>1 was the request from the email, are you suggesting that if 2 the army and/or heavily armed police were to confront 2 to 3 3 000 mineworkers and you were aware as at that stage that 4 there had been another confrontation in which two police 5 officers had died and three mineworkers had also died, are 6 you suggesting that it was not foreseeable that if those 7 800 police were at the place, or the army, and they would 8 confront 2 000 to 3 000 workers, that it could never have 9 been foreseen by you or members of the Lonmin management 10 that there was a likelihood of a conflict ensuing between 11 the strikers and the police and/or army, and a likelihood 12 of fatalities? Are you genuinely suggesting that – 13 MR RAMAPHOSA: Mr Chairman, my – 14 MR NTSEBEZA SC: - was not foreseeable? 15 MR RAMAPHOSA: Mr Chairman, my 16 interaction with the Minister had to do only with make sure 17 that further loss of life is prevented. How they were 18 going to deploy, like from a logistical point of view, 19 their personnel is something that I have no expertise or 20 knowledge of. 21 MR NTSEBEZA SC: Yes, I accept. Again 22 I'm going to come – and you'll forgive me, you are not just 23 a board member from Lonmin; you are Cyril Ramaphosa. You 24 know what the 1987 strike was. You know that condition. 25 You know that this flare-up in violence, and I want to put</p>	<p style="text-align: right;">Page 34601</p> <p>1 of Lonmin management, in which he had announced this to the 2 world that the police would be ending the matter on that 3 day. 4 MR RAMAPHOSA: No, I did not. 5 MR NTSEBEZA SC: You only got to know 6 about that later. 7 MR RAMAPHOSA: After the event. 8 CHAIRPERSON: Your time is nearly up, Mr 9 Ntsebeza, in fact it is up. 10 MR NTSEBEZA SC: Yes. Mr Chairman, can I 11 just check? 12 CHAIRPERSON: Yes. While he's checking 13 can I ask you a question? 14 MR RAMAPHOSA: Yes, please. 15 CHAIRPERSON: You told us that you were 16 going – it's one of your e-mails – you were going to have a 17 meeting with Mr Zokwana and Mr Motlatsi, I think the 18 gentleman's name is and - on the Friday. 19 MR RAMAPHOSA: Yes. 20 CHAIRPERSON: To discuss how NUM could go 21 forward with this matter, I think that's the phrase you 22 used. 23 MR RAMAPHOSA: Yes. 24 CHAIRPERSON: What exactly did you 25 envisage? I know it's, the meeting hadn't taken place, it</p>
<p style="text-align: right;">Page 34600</p> <p>1 it to you that a person in your position with your track 2 record, like most of us would have in that kind of 3 situation have found it was absolutely imperative that 4 nothing of the nature that happened in Boipatong, Bisho, 5 Sharpeville, happened. You are Cyril Ramaphosa. So did 6 you deliberately not want to know how these about 800 7 stationed there would contain the acts of criminality, or 8 you chose not to know? 9 MR RAMAPHOSA: Mr Chairman, with respect, 10 it is not whether I wanted to know or did not want to know. 11 Matters of deployment of police is something that is not an 12 area that I'm knowledgeable in or am an expert in. Counsel 13 refers to 1987 and also Boipatong. My concern was 14 precisely to prevent situations where more and more people 15 would be killed, like what happened during the 1987 strike, 16 and indeed in places like Boipatong. So that was the 17 overriding concern that I had, and forgive me, Counsel, if 18 I say that how the police were going to be deployed is 19 something that clearly this Commission has to deal with 20 through interrogating or cross-examining the people who are 21 in the police themselves. 22 [15:58] MR NTSEBEZA SC: Before the events of the 23 16th of August did you know that the provincial 24 commissioner, General Mbombo had actually given a media 25 briefing on Lonmin's premises, attended by senior members</p>	<p style="text-align: right;">Page 34602</p> <p>1 never did take place but what did you envisage was likely 2 to emerge from that meeting? 3 MR RAMAPHOSA: Well, as it turned out the 4 meeting never took place, Mr Chairman, but what one would 5 have envisaged was to give some counsel, give some ideas 6 and also I think more properly to get a proper briefing 7 from the union that was on the ground and, if need be, to 8 share some thoughts and ideas of what could be done to try 9 and bring normality to the situation. That's what one had 10 envisaged. 11 MR NTSEBEZA SC: Mr Chairman – 12 CHAIRPERSON: So it sounds from that that 13 you didn't think that anything would happen on the 14 Thursday, any action will be taken by the police to, quote, 15 "break the strike" or bring the situation to an end on the 16 Thursday because you were going to have your meeting on the 17 Friday, is that a fair inference? 18 MR RAMAPHOSA: Yes, sir. 19 CHAIRPERSON: And there was also mention 20 in one of the letters of a desire or an expectation, I 21 think, that the police wouldn't, would be there for at 22 least a week, the numbers wouldn't wane, I think was the 23 phrase used. 24 MR RAMAPHOSA: Yes. 25 CHAIRPERSON: So does that mean that you</p>

<p style="text-align: right;">Page 34603</p> <p>1 didn't, you and your colleagues didn't anticipate any 2 police action of the kind that took place on the Thursday? 3 MR RAMAPHOSA: No, we did not. I 4 certainly did not expect it. 5 COMMISSIONER HEMRAJ: Deputy President, 6 can I just ask you, do I understand that as at the time the 7 negotiations were taking place at the koppie on the 14th, 8 15th and 16th, that you were unaware that the strikers had 9 specifically asked to speak with Lonmin management and 10 that Lonmin management had taken the position that they 11 would not interact with them? 12 MR RAMAPHOSA: I was not aware. 13 COMMISSIONER HEMRAJ: And you were also 14 unaware of the position that Lonmin had taken? 15 MR RAMAPHOSA: Yes, I was not aware. 16 COMMISSIONER HEMRAJ: Thank you. 17 CHAIRPERSON: Mr Ntsebeza? 18 MR NTSEBEZA SC: Mr Chairman, can I just 19 ask one question, just one privilege? 20 CHAIRPERSON: Yes. 21 MR NTSEBEZA SC: At one stage you chaired 22 a BEE Commission. 23 MR RAMAPHOSA: Yes, sir. 24 MR NTSEBEZA SC: Black economic 25 empowerment. And part of that was to empower previous</p>	<p style="text-align: right;">Page 34605</p> <p>1 CHAIRPERSON: No, there's no relevance at 2 all but if you decline to answer you might find inferences 3 being drawn against you by others, although not by this 4 Commission. 5 MR RAMAPHOSA: Okay. 6 MR NTSEBEZA SC: You look at all the 7 legal teams there, I think 90% of them are non-racial. 8 MR RAMAPHOSA: Message understood. 9 MR NTSEBEZA SC: Thank you very much. 10 Thank you, Mr Chairman. 11 CHAIRPERSON: On that positive note we'll 12 adjourn till 9 o'clock tomorrow morning. 13 MR RAMAPHOSA: Oh, are we done, okay. 14 MR NTSEBEZA SC: For today. 15 [COMMISSION ADJOURNED] 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 34604</p> <p>1 disadvantaged people. 2 MR RAMAPHOSA: Yes. 3 MR NTSEBEZA SC: And if you were an organ 4 of state, which you are not because you are an individual, 5 in the procurement of goods and services there was a view 6 that previously disadvantaged entities should get 7 preference. 8 MR RAMAPHOSA: Yes. 9 MR NTSEBEZA SC: Now as a parting shot, 10 I'm going to say you must look at your legal team. When 11 you procure those services – 12 MR RAMAPHOSA: Yes. 13 MR NTSEBEZA SC: - we must see a 14 reflection of South Africa in those services. Today all 15 those friends of mine and colleagues of mine are not 16 representative, they are not what you were speaking to in 17 terms of black economic empowerment. Would you agree with 18 that? 19 MR RAMAPHOSA: I don't know what you mean 20 exactly. 21 MR NTSEBEZA SC: I'm talking about my 22 friend there, Dave, and my friend, Mike and the other – 23 your legal team is not reflective of an empowerment – 24 MR RAMAPHOSA: Mr Chairman, does this 25 have any relevant to the issue that we</p>	

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