

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

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

#### HELD ON

DAY 272

12 AUGUST 2014

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<p>1 [PROCEEDINGS ON 12 AUGUST 2014]</p> <p>2 [09:00] CHAIRPERSON: The Commission resumes. Mr</p> <p>3 Ramaphosa, you're still under oath. Ms Barnes?</p> <p>4 MATAMELA CYRIL RAMAPHOSA: (s.u.o.)</p> <p>5 CROSS-EXAMINATION BY MS BARNES: Yes,</p> <p>6 thank you, Chair. Good morning, Mr Ramaphosa.</p> <p>7 MR RAMAPHOSA: Good morning to you.</p> <p>8 MS BARNES: I represent AMCU in this</p> <p>9 Commission of Inquiry.</p> <p>10 MR RAMAPHOSA: That's wonderful.</p> <p>11 MS BARNES: Mr Ramaphosa, you testified</p> <p>12 yesterday –</p> <p>13 MR RAMAPHOSA: Yes.</p> <p>14 MS BARNES: - that you knew that there</p> <p>15 was a differential between what RDOs at Lonmin were paid –</p> <p>16 MR RAMAPHOSA: Yes.</p> <p>17 MS BARNES: - and what RDOs at other</p> <p>18 platinum mines were paid.</p> <p>19 MR RAMAPHOSA: yes.</p> <p>20 MS BARNES: But that you were not aware</p> <p>21 of the extent of the differential or how huge the</p> <p>22 differential was until the 11th of August 2012, is that</p> <p>23 correct, when you received the e-mail?</p> <p>24 MR RAMAPHOSA: Yes.</p> <p>25 MS BARNES: Now you knew, of course, that</p>	<p>1 MR RAMAPHOSA: Yes.</p> <p>2 MS BARNES: - that created the huge</p> <p>3 differential between what RDOs at Lonmin were paid and what</p> <p>4 RDOs at Implats were paid, do you agree?</p> <p>5 MR RAMAPHOSA: Mm-mm.</p> <p>6 CHAIRPERSON: The "mm-mm" comes out as</p> <p>7 "yes" on the record, so it might be helpful to say yes.</p> <p>8 MR RAMAPHOSA: Yes, I would agree.</p> <p>9 MS BARNES: Now were you aware, and I'm</p> <p>10 talking about your awareness as at the 11th of August 2012</p> <p>11 when you were informed about the strike at Lonmin, were you</p> <p>12 aware that the RDOs at Lonmin had, for many years,</p> <p>13 considered themselves to be grossly underpaid?</p> <p>14 MR RAMAPHOSA: No, I was not aware.</p> <p>15 MS BARNES: You were then presumably also</p> <p>16 not aware that that view that the RDOs themselves held was</p> <p>17 also shared by NUM. Not aware of that either?</p> <p>18 MR RAMAPHOSA: Not aware.</p> <p>19 MS BARNES: And the uncontested –</p> <p>20 CHAIRPERSON: Shared by NUM –</p> <p>21 MS BARNES: Shared by NUM.</p> <p>22 CHAIRPERSON: Is this at the national</p> <p>23 level or just the local level or any level, I suppose?</p> <p>24 MS BARNES: I beg your pardon, Chair?</p> <p>25 CHAIRPERSON: No, did you mean, are you</p>
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<p>1 there'd been a massive unprotected strike led by RDOs at</p> <p>2 Implats in the first quarter of 2012, correct?</p> <p>3 MR RAMAPHOSA: I got to read about it.</p> <p>4 MS BARNES: And that strike culminated in</p> <p>5 Impala management granting massive increases to its RDOs,</p> <p>6 in the region of 25%. Were you aware of that?</p> <p>7 MR RAMAPHOSA: I knew they had been</p> <p>8 granted an increase.</p> <p>9 MS BARNES: You weren't aware of the</p> <p>10 precise figures?</p> <p>11 MR RAMAPHOSA: I was not aware of the</p> <p>12 precise figures.</p> <p>13 MS BARNES: Now those increases were</p> <p>14 granted on the 20th April 2012. We have, that evidence is</p> <p>15 before the Commission, that's the date on which those</p> <p>16 increases were granted. You don't dispute that,</p> <p>17 presumably.</p> <p>18 MR RAMAPHOSA: If they were granted –</p> <p>19 MS BARNES: I'm just giving you the date.</p> <p>20 MR RAMAPHOSA: Oh, okay.</p> <p>21 MS BARNES: Yes, the 20th of April 2012.</p> <p>22 MR RAMAPHOSA: I hear what you say.</p> <p>23 MS BARNES: Now it was primarily those</p> <p>24 increases that were granted unilaterally by Impala</p> <p>25 management on the 20th of April 2012 –</p>	<p>1 suggesting it was shared at the national level or just the</p> <p>2 local level or throughout NUM?</p> <p>3 MS BARNES: Well, it was certainly shared</p> <p>4 by NUM at Lonmin and we've had evidence in this Commission</p> <p>5 from the chief negotiator for NUM who was based at Lonmin</p> <p>6 and I want to tell you what that evidence is. His evidence</p> <p>7 was that in two sets of wage negotiations, and we know that</p> <p>8 they happen once every two years at Lonmin so in 2009 and</p> <p>9 in 2011 NUM demanded quite a significant differential</p> <p>10 increase for RDOs at Lonmin. Essentially the demand was</p> <p>11 that they be rolled up three categories, so they'd be</p> <p>12 rolled up from category 4 to category 7.</p> <p>13 MR RAMAPHOSA: Yes.</p> <p>14 MS BARNES: That was the NUM demand in</p> <p>15 2009 and 2011 and on both occasions NUM was unsuccessful.</p> <p>16 Do you follow?</p> <p>17 MR RAMAPHOSA: I do follow.</p> <p>18 MS BARNES: And the evidence before this</p> <p>19 Commission is that the chief negotiator for NUM at Lonmin</p> <p>20 was so concerned about the failure to achieve a</p> <p>21 differential increase for RDOs at Lonmin that he called the</p> <p>22 situation a ticking time bomb. I take it that you were not</p> <p>23 aware of that.</p> <p>24 MR RAMAPHOSA: I was not aware of that.</p> <p>25 MS BARNES: So Mr Ramaphosa, I put it to</p>

<p style="text-align: right;">Page 34610</p> <p>1 you that as at April 2012 there were three critical facts  2 in existence at Lonmin. Fact number 1 there was a huge  3 differential between what RDOs at Lonmin were being paid  4 and what RDOs at other platinum mines were being paid. Do  5 you accept that?  6 MR RAMAPHOSA: Yes.  7 MS BARNES: Fact number 2, RDOs at Lonmin  8 had for four years, and apparently with some justification  9 according to NUM, considered themselves to be grossly  10 underpaid, do you accept that?  11 MR RAMAPHOSA: Yes.  12 MS BARNES: and then three, the RDOs at  13 Implats had taken matters in to their own hands and  14 embarked on a massive unprotected strike and secured huge  15 increases for themselves. Do you accept that?  16 MR RAMAPHOSA: Yes.  17 MS BARNES: So those were the facts that  18 Lonmin was presented with in April, never mind August, in  19 April 2012. Do you accept that?  20 MR RAMAPHOSA: Yes.  21 CHAIRPERSON: If I can interpose at this  22 point, am I correct in thinking that the various platinum  23 mining companies knew what they were paid, what their  24 competitors or colleagues, whatever word is appropriate to  25 use, were paying? In other words, if Impala gave a 35%</p>	<p style="text-align: right;">Page 34612</p> <p>1 centralised bargaining would be appropriate for the  2 platinum industry, which of course as a result of the  3 recent strike is effectively what happened but that's  4 another issue that we don't have to go into now, but  5 there's some suggestion on material before us that  6 certainly the rock drill operators –  7 MR RAMAPHOSA: Yes.  8 CHAIRPERSON: - in the different mines,  9 knew quite quickly what their opposite numbers were getting  10 in other mines.  11 MR RAMAPHOSA: They did get to know.  12 CHAIRPERSON: So I would have thought  13 that it would have been possible for Lonmin, once it was  14 publicly announced that Impala had settled their strike by  15 giving increases, to find out what the increases were. So  16 okay, it might not have been instantaneous, it mightn't  17 have been immediate in the sense that within a few days or  18 so they would know, but it wouldn't have been difficult in  19 a matter of weeks to find out what the relevant figures  20 were. That must be right, surely?  21 MR RAMAPHOSA: That is correct.  22 CHAIRPERSON: And the further point that  23 arises is, it would have been sensible, I would have  24 thought, this is a prima facie view I'm putting to you –  25 MR RAMAPHOSA: Yes.</p>
<p style="text-align: right;">Page 34611</p> <p>1 increase in April, there's a high degree of probability, if  2 not certainty, that Lonmin would have known about it within  3 a day or two. Would that be correct?  4 MR RAMAPHOSA: Well, Chairman, this is  5 the great fault line that exists in the platinum industry,  6 that there isn't any centralised bargaining and as far as I  7 remember the companies, for competitive reasons, have felt  8 that they did not want to have a centralised bargaining  9 because they did not want the secrets, the trade secrets  10 that they had to be known to each other and as a result  11 that the pay levels tended to be the proprietary of one  12 company and at the best of times the other company did not  13 know and if they did know, it would be obtaining  14 information through other means, and so the information was  15 usually not publicly available. So it is for this reason  16 that in various other companies and indeed in Lonmin, one  17 did not immediately get to know what was being paid to a  18 category of other workers because they tended to keep it to  19 themselves. This, in my view, could have been solved quite  20 easily if there was centralised bargaining, like there is  21 centralised bargaining in the other two industries that I  22 know of, the coal industry as well as the gold industry.  23 CHAIRPERSON: It's not quite as simple as  24 that. I understand the thrust of what you say and in fact  25 I'm interested to hear that you take the view that</p>	<p style="text-align: right;">Page 34613</p> <p>1 CHAIRPERSON: It would have been  2 sensible, I would've thought, for Lonmin, once they  3 realised – and it would have been sensible for Amplats too,  4 of course, once they realised that Impala had given the big  5 increase for the RDOs, there would inevitably be ripple  6 effects of that.  7 MR RAMAPHOSA: Indeed.  8 CHAIRPERSON: So it would have been  9 sensible for Lonmin to have found out what the increases  10 were. Would you agree with that?  11 MR RAMAPHOSA: I would agree with that.  12 CHAIRPERSON: And if they'd done that,  13 they should've communicated, the management should have  14 communicated it to non-executive directors as well.  15 MR RAMAPHOSA: Yes.  16 CHAIRPERSON: And then one can imagine  17 the kind of initiatives you might have taken if that  18 information had been conveyed to you.  19 MR RAMAPHOSA: Yes, indeed.  20 CHAIRPERSON: Am I right?  21 MR RAMAPHOSA: You are right.  22 MS BARNES: Because, Mr Ramaphosa, I put  23 it to you that those three facts, the huge differential,  24 the fact that RDOs at Lonmin were deeply dissatisfied and  25 had been for some time, plus the fact that RDOs at Implats</p>

<p style="text-align: right;">Page 34614</p> <p>1 had taken matters into their own hands, those three facts 2 together created, in our submission, a recipe for – to use 3 your language of yesterday – a perfect storm. 4 MR RAMAPHOSA: Indeed. 5 MS BARNES: Do you agree? 6 MR RAMAPHOSA: I would agree. 7 MS BARNES: And so if you, presumably you 8 didn't have those facts at the time and neither did your 9 board, correct? 10 MR RAMAPHOSA: We did not. 11 MS BARNES: And if your board had had 12 those facts at the time, you would have recognised the 13 recipe for the perfect storm, you would have approached 14 management, at the very least you would have made enquiries 15 about what was management was doing in order to deal with 16 the storm when it came, correct? 17 MR RAMAPHOSA: I would say that we would 18 most probably have said a different approach needed to be 19 taken to address the problem and to more or less get in 20 line with what others had done. 21 MS BARNES: Certainly some steps would 22 have to be taken, contingency plans put in place, correct? 23 MR RAMAPHOSA: Yes, sir. 24 MS BARNES: Now Mr Ramaphosa, you've 25 testified that you knew prior to the commencement of the</p>	<p style="text-align: right;">Page 34616</p> <p>1 information is repeated in the e-mail that you received on 2 the 11th of August, that an offer was made to RDOs which 3 they rejected. So that is your understanding of what had 4 happened, correct? 5 MR RAMAPHOSA: Yes. 6 MS BARNES: And then we know that the 7 RDOs embarked on an unprotected strike over the same issue 8 on the 10th of August 2012, correct? 9 MR RAMAPHOSA: Yes. 10 MS BARNES: Now let's go to the e-mail 11 that you received – 12 CHAIRPERSON: Have you moved away from 13 wage increases and so forth and negotiations? 14 MS BARNES: Yes, I'm coming back there – 15 CHAIRPERSON: You're coming back. No, 16 there were some questions I want to ask but they may well 17 be the ones you're going to come back to, so I won't ask my 18 questions now. 19 MS BARNES: So Mr Ramaphosa, if we could 20 look at JJJ1, that's the e-mail that you received on the 21 11th of August informing you – that, you say, is the first 22 notice you got of the unprotected strike, correct? 23 MR RAMAPHOSA: Yes. 24 MS BARNES: And that, the e-mail that you 25 got sets out Lonmin's response to the strike. At the</p>
<p style="text-align: right;">Page 34615</p> <p>1 strike at Lonmin in 2012 that there had been talks between 2 Lonmin and the RDOs, correct? 3 MR RAMAPHOSA: I got to know about it 4 when I read Mr Da Costa's evidence but it only came to the 5 board after the – just before, just before – 6 MS BARNES: Just before the strike? 7 MR RAMAPHOSA: Ja, ja. There is a minute 8 to that effect in the papers. 9 MS BARNES: And you knew, I take it, that 10 those talks had been conducted directly between Lonmin 11 managers and the RDOs and not through NUM, correct? 12 MR RAMAPHOSA: That detail I did not 13 know, I must admit. 14 MS BARNES: You knew presumably that 15 those talks had culminated in Lonmin offering the RDOs an 16 allowance. I think it was referred to in the e-mail that 17 you received as a special bonus, but essentially an 18 allowance of R750. 19 MR RAMAPHOSA: That only came to surface 20 to me when the chief executive officer reported to the 21 board. 22 MS BARNES: But prior to the strike? 23 MR RAMAPHOSA: I think it would have been 24 just prior, yes. Yes, I think that's what the record says. 25 MS BARNES: In any event, that</p>	<p style="text-align: right;">Page 34617</p> <p>1 bottom of the page it reads, "The response of Lonmin is to 2 follow disciplinary procedures and, if required, will 3 dismiss the illegal strikers. Barnard is preparing the 4 ultimatum which they will issue tomorrow and will terminate 5 contracts of employment should the employees not show up 6 for duty tomorrow." So you understood from that, 7 presumably, that Lonmin was not going to engage with the 8 strikers, correct? 9 MR RAMAPHOSA: Mm-mm. 10 MS BARNES: If you could just verbalise 11 your answer, please? 12 MR RAMAPHOSA: Yes, yes. 13 MS BARNES: Thank you. And you testified 14 yesterday that you did not agree with that approach. As 15 far as you were concerned, negotiations were the correct 16 way to go and were in fact the only workable solution, 17 correct? 18 MR RAMAPHOSA: Yes. 19 MS BARNES: Now if we go over the page – 20 CHAIRPERSON: Before you leave that e- 21 mail can I, there's something I'd like to put to the 22 witness. The first sentence of Ms Ncube's e-mail to you 23 says this, "Yesterday" – well, the first two sentences – 24 "Yesterday the Lonmin rock drill operators (RDO) at Karee 25 Mine embarked on an illegal strike demanding more money.</p>

<p style="text-align: right;">Page 34618</p> <p>1 This has been on the table with management since the Impala 2 strike earlier this year.”</p> <p>3 MR RAMAPHOSA: Yes.</p> <p>4 CHAIRPERSON: Were you aware of the fact 5 that this had been on the table with management since the 6 Impala strike earlier in the year, which we've heard was 7 about April?</p> <p>8 MR RAMAPHOSA: No, I was not aware.</p> <p>9 CHAIRPERSON: Do you think that you 10 should have been informed of it at the time?</p> <p>11 MR RAMAPHOSA: I would have said yes.</p> <p>12 MS BARNES: If we, still on that e-mail 13 if we could just go over to the page to the next paragraph 14 of the e-mail. It reads as follows, “This is necessary,” 15 and that's a reference back to the response that Lonmin has 16 adopted to the strike, “This is necessary as Lonmin has 17 been engaging” or rather “had been engaging with the RDOs 18 in trying to address their needs. Secondly, the strike is 19 illegally and lastly, other workers in the business are 20 watching the situation and if the RDOs are successful to 21 bargain outside the engagement structures, it will set a 22 very bad precedent.” So there, Mr Ramaphosa, what's 23 essentially being communicated to you are the reasons for 24 the stance that Lonmin has adopted in response to the 25 strike, correct?</p>	<p style="text-align: right;">Page 34620</p> <p>1 Commission is we've, over and over again, emphasised that 2 an unprotected strike is unprotected in the sense that 3 it's, a dismissal following upon it is not an unfair labour 4 practice. So there are consequences which flow from 5 participating in an unprotected strike which don't flow 6 from participating in a protected strike. And we've also, 7 the point has been emphasised over and over again that 8 strikers do not commit a crime by participating in an 9 unprotected strike. They rather foolishly, some may say, 10 put their head in a noose, that they can be dismissed 11 without having redress, but that's the distinction we draw 12 and I think that's the point that Ms Barnes is making but I 13 take your point. The terminology is a bit imprecise but I 14 think the main thrust of what Ms Barnes is putting is 15 clear. If the witness has a problem I'm sure he'll let us 16 know but he is one who has himself been involved in many 17 unprotected strikes in the '80s and he knows very well, I'm 18 sure, the distinction better than you or I do.</p> <p>19 MS BARNES: Yes, of course, Mr Ramaphosa, 20 it used to be a crime to participate in an unpro – in a 21 strike that was not in accordance with the legal 22 prescripts. That's no longer the case, correct?</p> <p>23 MR RAMAPHOSA: Yes.</p> <p>24 MS BARNES: So it's really, it's more, 25 it's accurate and appropriate to refer to an unprotected</p>
<p style="text-align: right;">Page 34619</p> <p>1 MR RAMAPHOSA: Yes.</p> <p>2 MS BARNES: Now let's look at those 3 reasons. Firstly, you are told that “other workers in the 4 business are watching the situation and if the RDOs are 5 successful to bargain outside the engagement structures, it 6 will set a bad precedent,” but now that has really already 7 happened, isn't that correct? Lonmin has already, the 8 facts are that Lonmin has already engaged with RDOs outside 9 the structures and made them an offer, correct?</p> <p>10 MR RAMAPHOSA: Indeed.</p> <p>11 MS BARNES: So that can't be a reason for 12 refusing to speak to the strikers, correct?</p> <p>13 MR RAMAPHOSA: That is correct.</p> <p>14 MS BARNES: The second reason that is 15 given is that the strike is illegal, that is the word that 16 used. Do you see that?</p> <p>17 MR RAMAPHOSA: Yes.</p> <p>18 MS BARNES: And of course that's not 19 correct, is it? Workers don't commit a crime by going on 20 strike, even if it's unprotected.</p> <p>21 MR UNTERHALTER SC: Chair, that question 22 is rather ambiguous. Does my learned friend mean to refer 23 to illegality in the sense of criminality or simply not 24 protected under the scheme of the labour laws?</p> <p>25 CHAIRPERSON: What we've done in this</p>	<p style="text-align: right;">Page 34621</p> <p>1 strike rather than an illegal strike.</p> <p>2 MR RAMAPHOSA: Indeed.</p> <p>3 MS BARNES: Correct. Now of course the 4 fact that the strike was unprotected was not, again in and 5 of itself, a reason not to speak to the strikers, correct?</p> <p>6 MR RAMAPHOSA: I would agree.</p> <p>7 MS BARNES: And of course if a company 8 has a policy that requires it to speak to strikers in the 9 event of an unprotected strike, then they would be obliged 10 to follow that policy, correct?</p> <p>11 MR RAMAPHOSA: Yes.</p> <p>12 MS BARNES: Were you aware that Lonmin 13 had such a policy?</p> <p>14 MR RAMAPHOSA: Not the precise part of 15 it. What we'd always sort to encourage is that – and this 16 is a situation where they were dealing with one union that 17 they had recognised and I guess they never really had to 18 deal with many of such strikes in the new dispensation, so 19 they had one port of call which was the NUM and in this 20 situation I think they were traversing uncharted ground.</p> <p>21 MS BARNES: Well, let me take you to the 22 policy so that you can see precisely what it says. It's 23 exhibit XXX8, if we could have that on the screen, please.</p> <p>24 CHAIRPERSON: It's quite a lengthy 25 document, I think you –</p>

<p style="text-align: right;">Page 34622</p> <p>1 MS BARNES: Yes, it's –</p> <p>2 CHAIRPERSON: Give the page number. I</p> <p>3 think there's a particular section that, chapter or –</p> <p>4 MS BARNES: Paginated page 24 and clause</p> <p>5 8.3.</p> <p>6 [09:20] You will see that 8.3 deals with the steps that</p> <p>7 are required to be taken in the event of unprotected</p> <p>8 industrial action. There's reference to ultimatums that</p> <p>9 need to be given. There's reference to application for a</p> <p>10 court interdict that may be made, and then 8.3.6 describes</p> <p>11 the formation of a management committee. 8.3.7 describes</p> <p>12 the formation of a committee from the strikers that will be</p> <p>13 established in order to speak to management. 8.3.8 goes on</p> <p>14 to say that that should preferably not exceed four people,</p> <p>15 and then 8.3.9 deals with the fact that an appropriate</p> <p>16 location must be identified at which talks shall be held.</p> <p>17 So the witnesses from Lonmin that have testified</p> <p>18 thus far have confirmed that that's what was envisaged by</p> <p>19 this policy, is that a committee of management and a</p> <p>20 committee of the strikers are set up, should be set up and</p> <p>21 engage in talks and that that was not done in this case.</p> <p>22 You agree that it ought to have been done?</p> <p>23 MR RAMAPHOSA: Well, in terms of this</p> <p>24 policy yes, it ought to have been done.</p> <p>25 MS BARNES: So Mr Ramaphosa, if we look</p>	<p style="text-align: right;">Page 34624</p> <p>1 MS BARNES: Well, there's certainly no</p> <p>2 evidence that you did.</p> <p>3 CHAIRPERSON: I think she's asking you</p> <p>4 whether that's correct. There should be a question mark</p> <p>5 hanging over her head after she made her statement.</p> <p>6 MR RAMAPHOSA: Ja, I did not notice the</p> <p>7 question mark. There were discussions that ensued,</p> <p>8 particularly in relation to the suggestion that there could</p> <p>9 even be dismissals, which as I said yesterday I'm opposed</p> <p>10 to. So those discussions about embarking on an option of</p> <p>11 dismissals and so forth did happen and I remember</p> <p>12 communicating to Ms Ncube that that is not an option that</p> <p>13 should be pursued and there should be discussions.</p> <p>14 MS BARNES: Did you communicate to Lonmin</p> <p>15 though, to anyone from Lonmin that there should be</p> <p>16 negotiations with the strikers?</p> <p>17 MR RAMAPHOSA: I remember, and maybe the</p> <p>18 full detail is not immediately available to me. I do</p> <p>19 remember talking to Ms Ncube, who is the Shanduka</p> <p>20 representative, and I also remember talking to Mr Barnard,</p> <p>21 who I would have said to dismissal is not an option as they</p> <p>22 have already conceived.</p> <p>23 MS BARNES: Did you say that negotiations</p> <p>24 are the only option?</p> <p>25 MR RAMAPHOSA: Yes, that is my general</p>
<p style="text-align: right;">Page 34623</p> <p>1 at the reasons that were communicated to you for Lonmin's</p> <p>2 stance in relation to the strike on the 11th of August,</p> <p>3 surely, Sir, you could not have been satisfied with the</p> <p>4 reasons that were communicated to you for Lonmin's stance?</p> <p>5 Isn't that correct?</p> <p>6 MR RAMAPHOSA: The reasons being?</p> <p>7 MS BARNES: The reasons being, 1, that it</p> <p>8 would set a bad precedent to engage outside the structures</p> <p>9 when that had already happened to your knowledge.</p> <p>10 MR RAMAPHOSA: Yes.</p> <p>11 MS BARNES: And 2, that this was an</p> <p>12 illegal strike.</p> <p>13 MR RAMAPHOSA: Yes.</p> <p>14 MS BARNES: So surely you would have not</p> <p>15 considered those to be valid reasons for not engaging with</p> <p>16 the strikers?</p> <p>17 MR RAMAPHOSA: That is correct.</p> <p>18 MS BARNES: And yet you didn't take this</p> <p>19 up with management. You didn't say to management but these</p> <p>20 reasons don't stand up to scrutiny, this is not a basis not</p> <p>21 to engage with the strikers. You didn't do that.</p> <p>22 MR RAMAPHOSA: You are –</p> <p>23 MS BARNES: Isn't that correct?</p> <p>24 MR RAMAPHOSA: Are you saying so as a</p> <p>25 matter of fact?</p>	<p style="text-align: right;">Page 34625</p> <p>1 stance, that negotiations are the only option in matters</p> <p>2 like these.</p> <p>3 MS BARNES: And you said so to Mr</p> <p>4 Mokwena?</p> <p>5 MR RAMAPHOSA: I said so clearly to Ms</p> <p>6 Ncube.</p> <p>7 MS BARNES: And Mr Mokwena?</p> <p>8 MR RAMAPHOSA: I don't recall how that</p> <p>9 conversation would have gone, but in the course of our</p> <p>10 discussions that may well have emerged.</p> <p>11 MS BARNES: So you have no specific</p> <p>12 recollection of giving that message, that particular</p> <p>13 message to any Lonmin employee?</p> <p>14 MR RAMAPHOSA: I do not, I'm afraid.</p> <p>15 MS BARNES: Now Mr Ramaphosa, you've said</p> <p>16 that you were extremely concerned about the violence at</p> <p>17 Marikana, correct?</p> <p>18 CHAIRPERSON: [Microphone off, inaudible]</p> <p>19 MS BARNES: Yes, for the moment.</p> <p>20 CHAIRPERSON: [Microphone off, inaudible]</p> <p>21 MS BARNES: Please go ahead, Chair.</p> <p>22 CHAIRPERSON: One point that was made to</p> <p>23 the police when they came on the scene on the 13th, in fact</p> <p>24 to the National Commissioner I think it was, was that there</p> <p>25 was a two-year wage agreement in place.</p>

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1 MR RAMAPHOSA: Yes.

2 CHAIRPERSON: And there was therefore no

3 basis for negotiating any change until the two years were

4 up, which were going to be October 2013.

5 MR RAMAPHOSA: Ja.

6 CHAIRPERSON: And that was a position

7 which as far as we could make out from the evidence was

8 supported by the local branch of NUM, but when Mr Zokwana

9 came he said that that was incorrect. The relevant clause

10 in the two-year wage agreement said that no strike action

11 was possible to enforce a wage demand during the two-year

12 period, but he said that that didn't prevent negotiation

13 and he said in appropriate cases if there had been a

14 dramatic change in circumstances negotiations could be and

15 had in the past been resorted to.

16 MR RAMAPHOSA: Yes.

17 CHAIRPERSON: And he referred to a

18 precedent from, I think it was round about 2005 as far as I

19 remember, where there had been a two-year, I think it was a

20 two-year agreement, provision for an increase after the end

21 of the first year of a certain percentage, but there had

22 been a dramatic rise in the rate of inflation which made

23 that increase meaningless.

24 MR RAMAPHOSA: Ja.

25 CHAIRPERSON: And therefore NUM adopted

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1 the stance that negotiation was possible despite the fact

2 that the two-year agreement had not yet run its course and

3 they did so and they succeeded in getting it change, and he

4 conceded also, as I understood his evidence, that the

5 increase that the RDOs got at Impala and then later at

6 Amplats as well was that kind of change of circumstance

7 which would have justified negotiation. So I take it

8 that's a view that you would agree with as well.

9 MR RAMAPHOSA: I would agree with that

10 view, Mr Chairman.

11 CHAIRPERSON: Was the question of the

12 two-year agreements and the Lonmin stance as communicated

13 to the police that negotiations were inappropriate because

14 the two-year agreement hadn't run its course and that would

15 only be a matter for consideration in October 2013, was

16 that a matter that was raised with you at any stage by the

17 Lonmin management?

18 MR RAMAPHOSA: Not in as direct a way as

19 that. There was a view that once you have that type of

20 two-year agreement you need to run through with it until

21 the end and then renegotiate, but I would tend to agree

22 with what Mr Zokwana was saying and what you are saying as

23 well, that given new circumstances that would have come on

24 the scene there would be a need to renegotiate to avert a

25 bad situation.

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1 CHAIRPERSON: Thank you.

2 MS BARNES: So Mr Ramaphosa, you've

3 testified that you were extremely concerned about the

4 violence at Marikana during that period, correct?

5 MR RAMAPHOSA: Yes.

6 MS BARNES: And the violence that was

7 taking place arose out of the strike, correct?

8 MR RAMAPHOSA: Yes.

9 MS BARNES: So there was a strong

10 probability that if the strike was resolved the violence

11 would end, correct?

12 MR RAMAPHOSA: Yes.

13 MS BARNES: And the cause of the strike

14 was a wage dispute, correct?

15 MR RAMAPHOSA: Yes.

16 MS BARNES: So there needed to be some

17 mechanism in place in order to deal with the wage dispute

18 in order to resolve the strike in order for the violence to

19 end, correct?

20 MR RAMAPHOSA: I would agree.

21 MS BARNES: And there needed to be some

22 mechanism put in place as a matter of urgency to attend to

23 the wage dispute, correct?

24 MR RAMAPHOSA: Yes.

25 MS BARNES: Now surely, Mr Ramaphosa, you

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1 would have been concerned to ensure that that was

2 happening. Is that right?

3 MR RAMAPHOSA: Yes.

4 CHAIRPERSON: The mechanism that could

5 have been put in place fairly easily would have been the

6 mechanism referred to in paragraph 8.3 of this document.

7 Would you agree with that?

8 MR RAMAPHOSA: I would agree with that.

9 MS BARNES: You see, the peculiar thing,

10 Mr Ramaphosa, is that there was nothing in place at all.

11 Nothing was being done at all in relation to the wage

12 dispute. Lonmin refused to speak to the strikers at all,

13 despite being repeatedly requested to do so, not only by

14 the strikers but by the police. You say you didn't know

15 that. Is that correct?

16 MR RAMAPHOSA: Could you rephrase that

17 question about what I did not know?

18 MS BARNES: Yes, I apologise, it was a

19 long convoluted question.

20 MR RAMAPHOSA: Yes, please.

21 MS BARNES: Lonmin refused to engage with

22 the strikers at all despite being requested to do so by the

23 strikers themselves, the police, Mr Mathunjwa and Bishop

24 Seoka, to name four parties from whom that request was

25 coming.

<p style="text-align: right;">Page 34630</p> <p>1 MR RAMAPHOSA: Yes.</p> <p>2 MR VAN AS: Sorry, Mr Chairperson, in</p> <p>3 relation to Mr Mathunjwa requesting Lonmin to engage</p> <p>4 directly with the strikers there's no evidence to that</p> <p>5 effect.</p> <p>6 CHAIRPERSON: I think that's right.</p> <p>7 Let's take Mr Mathunjwa out of the question. You don't</p> <p>8 need him in the question. Carry on with the abridged</p> <p>9 question.</p> <p>10 MS BARNES: Let's just stick to the</p> <p>11 strikers and the police. The police were asking Lonmin to</p> <p>12 engage with the strikers, as were the strikers themselves.</p> <p>13 Lonmin refused to do so. Your evidence is that you did not</p> <p>14 know that, correct?</p> <p>15 MR RAMAPHOSA: Yes, I did not.</p> <p>16 MS BARNES: There wasn't even a meeting</p> <p>17 organised between Lonmin and all the unions together and I</p> <p>18 must point out to you, Mr Ramaphosa, that Mr Mathunjwa's</p> <p>19 reaction on being informed of the strike on Friday the 10th</p> <p>20 of August 2012, his response was to immediately suggest</p> <p>21 that a meeting be called between Lonmin management and all</p> <p>22 the unions as soon as possible. Were you ever informed of</p> <p>23 that?</p> <p>24 MR RAMAPHOSA: No, I was not informed of</p> <p>25 that.</p>	<p style="text-align: right;">Page 34632</p> <p>1 nothing was being done and demand that something be done.</p> <p>2 MR RAMAPHOSA: Well, as I indicated</p> <p>3 yesterday and even now, we had people, we had people on the</p> <p>4 executive who were dealing with these matters and as I said</p> <p>5 yesterday as a non-executive director we delegate all these</p> <p>6 powers, authority and matters to the management team who</p> <p>7 are employed on a fulltime basis to deal with these</p> <p>8 matters.</p> <p>9 MS BARNES: Mr Ramaphosa, presumably if</p> <p>10 you had known that nothing was being done in relation to</p> <p>11 the wage dispute you would have said that this is</p> <p>12 unacceptable, steps must be taken, correct?</p> <p>13 MR RAMAPHOSA: It is possible that any</p> <p>14 non-executive director would have said so, yes.</p> <p>15 MS BARNES: So you didn't even ask</p> <p>16 whether steps were being taken, because if you had asked</p> <p>17 you would have been told that they weren't.</p> <p>18 MR RAMAPHOSA: Well, we got reports from</p> <p>19 where everything was happening that they had met and Ms</p> <p>20 Ncube, who is our representative, was dealing with the</p> <p>21 matter on an ongoing basis.</p> <p>22 MS BARNES: So you had no information</p> <p>23 about what was going on in relation to the wage dispute and</p> <p>24 you made no attempt to get that information personally?</p> <p>25 MR RAMAPHOSA: I had no information on an</p>
<p style="text-align: right;">Page 34631</p> <p>1 MS BARNES: And that didn't happen. The</p> <p>2 first time that Lonmin and AMCU and NUM all sat around the</p> <p>3 same table was on Wednesday, the 15th of August and that was</p> <p>4 as a result of a challenge being issued by a radio talk</p> <p>5 show host. That meeting was not organised by Lonmin. Did</p> <p>6 you know that?</p> <p>7 MR RAMAPHOSA: I did not know that.</p> <p>8 MS BARNES: So nothing was happening as</p> <p>9 far as the wage dispute was concerned. No mechanism was</p> <p>10 being put in place, nothing was being done. Why did you</p> <p>11 not establish that and why did you not establish that</p> <p>12 nothing was being done?</p> <p>13 MR RAMAPHOSA: Well, we had people, as I</p> <p>14 indicated yesterday, who were dealing with the matter at</p> <p>15 the level where everything was happening and I think one</p> <p>16 can concede that a meeting should have happened, a</p> <p>17 negotiation should have ensued at that early stage even</p> <p>18 before everything escalated into the violence that it did,</p> <p>19 yes.</p> <p>20 MS BARNES: So steps should have been</p> <p>21 taken at a much earlier stage to deal with the wage</p> <p>22 dispute?</p> <p>23 MR RAMAPHOSA: I would agree with that.</p> <p>24 MS BARNES: But Mr Ramaphosa, what I'm</p> <p>25 particularly interested in is why you didn't find out that</p>	<p style="text-align: right;">Page 34633</p> <p>1 ongoing basis about what was happening.</p> <p>2 CHAIRPERSON: Mr Ramaphosa, I see that in</p> <p>3 the email you got from Ms Ncube, JJJ1, page 2 of your</p> <p>4 bundle, the last sentence of that email says, "I will keep</p> <p>5 you updated should the situation get any worse."</p> <p>6 MR RAMAPHOSA: Yes.</p> <p>7 CHAIRPERSON: Did she keep you updated?</p> <p>8 Were you informed after you received the email from her</p> <p>9 that – were you informed by her that the situation had got</p> <p>10 worse?</p> <p>11 MR RAMAPHOSA: She – yes, she did inform</p> <p>12 me and that is when the situation got really worse, when</p> <p>13 the violence then started unfolding.</p> <p>14 MS BARNES: Because you see, Mr</p> <p>15 Ramaphosa, it seems to us that you expended a great deal of</p> <p>16 energy on lobbying to have the events at Marikana</p> <p>17 characterised as criminal and to increase the police</p> <p>18 presence at Marikana, but yet you did not take a single</p> <p>19 step to find out what was going on in relation to the wage</p> <p>20 dispute. Can you explain that?</p> <p>21 MR RAMAPHOSA: Well, as I said yesterday</p> <p>22 I was being given information of people dying and being</p> <p>23 killed and as I indicated yesterday that represented in my</p> <p>24 mind an emergency situation that needed to be stabilised</p> <p>25 and that stabilisation would in my view then have led to</p>



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1 negotiations or discussions or talks beginning to happen to  
 2 bring the situation to a solution. So I was confronted  
 3 with information about the deaths and the injury of a  
 4 number of people, so that is what I reacted to immediately.  
 5 MS BARNES: I understand that partially,  
 6 Mr Ramaphosa, but remember we've earlier agreed that in  
 7 order for the violence to end the strike had to be  
 8 resolved. So it was surely as urgent to make sure that  
 9 there was at least some sort of mechanism in place in order  
 10 to begin dealing with the wage dispute. Surely that was  
 11 the other side of the coin and equally urgent.  
 12 MR RAMAPHOSA: I think it is the other  
 13 side of the coin, but I've also been involved in situations  
 14 where there have been strikes and where we have made it  
 15 clear to members of the union that in any strike situation  
 16 workers should not resort to violence and attacking other  
 17 workers and killing them, and during my days at the  
 18 National Union of Mineworkers we even went to an extent of  
 19 writing down strike rules, that during a strike you do not  
 20 attack other workers, whoever the workers might be; you do  
 21 not take steps to injure them or kill them. This we did  
 22 because we said if you begin to do that it begins to  
 23 interfere with the process that you are involved in to win  
 24 your demands and the situation that was communicated to me  
 25 was of an emergency nature that needed to be resolved

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1 before the discussions and negotiations could ensue. So in  
 2 my view there were then two types of situations; the  
 3 emergency one which was the violent actions that were  
 4 taking place and the normal one that would have ensued with  
 5 negotiations.  
 6 MS BARNES: But surely, Mr Ramaphosa,  
 7 there was no reason why those things could not have  
 8 happened simultaneously. In fact then you had a greater  
 9 prospect of bringing the strike to an end more quickly, in  
 10 which case the violence would end.  
 11 MR RAMAPHOSA: Well, I think it is easy  
 12 to say that they should be dealt with simultaneously. It  
 13 becomes a bit more difficult if many people are being  
 14 killed on a daily basis. What you seek to do is to  
 15 stabilise that so that there is peace and calm and  
 16 stabilisation and thereafter you are then able to embark on  
 17 proper more fruitful discussions.  
 18 MS BARNES: It appears to us, and we're  
 19 going to argue this, Mr Ramaphosa, that you appear to be  
 20 entirely unconcerned during that week about whether there  
 21 was a mechanism in place to deal with a labour dispute,  
 22 even though you have said that you considered negotiation  
 23 to be the only workable solution. Would you like to  
 24 comment on that?  
 25 MR RAMAPHOSA: I've always been concerned

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1 about finding ways of resolving problems through  
 2 negotiation. I think it's a little bit unfair on your part  
 3 to say I was unconcerned. I've been more concerned than  
 4 you can imagine about having people sit down and negotiate  
 5 their problems and find solutions.  
 6 MS BARNES: But Mr Ramaphosa, you have  
 7 conceded that you did not know what was going on as far as  
 8 the labour dispute was concerned and you did not take steps  
 9 to find out. Isn't that correct?  
 10 MR RAMAPHOSA: I did not know. It does  
 11 not mean that one did not take steps.  
 12 MS BARNES: Mr Ramaphosa, you would have  
 13 heard at some stage about Mr Zokwana, the president of NUM  
 14 at the time, attempting to address strikers on Wednesday  
 15 the 15th of August 2012 and the very bad reception that he  
 16 received. Did you hear about that?  
 17 MR RAMAPHOSA: Yes, I got to hear about  
 18 that.  
 19 MS BARNES: Did you hear about that on  
 20 the 15th of August, on the day on which it happened?  
 21 MR RAMAPHOSA: Yes. I think it could  
 22 have been on the day or soon thereafter.  
 23 MS BARNES: It could have been on the  
 24 day? That must have been very distressing for you to hear  
 25 that?

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1 MR RAMAPHOSA: Yes.  
 2 CHAIRPERSON: [Microphone off, inaudible]  
 3 MR RAMAPHOSA: I think I would probably  
 4 have seen it on television as well.  
 5 CHAIRPERSON: Yes, and answer the day or  
 6 soon thereafter is a bit unclear. I'd just like to clarify  
 7 one thing.  
 8 MR RAMAPHOSA: Yes.  
 9 CHAIRPERSON: The attempt by Mr Zokwana  
 10 to address the strikers was reasonably late on the  
 11 Wednesday afternoon. The killing of 34 people took place  
 12 on the Thursday afternoon.  
 13 MR RAMAPHOSA: That's true.  
 14 CHAIRPERSON: I take it your answer  
 15 implies that you knew about Mr Zokwana's unsuccessful  
 16 attempt –  
 17 MR RAMAPHOSA: On the day?  
 18 CHAIRPERSON: - to address the strikers  
 19 before the shooting on the Thursday afternoon?  
 20 MR RAMAPHOSA: Yes, Mr Chairman, with  
 21 respect, yes I did and as I recall now because most of this  
 22 was being played out on television.  
 23 [09:39] I would have seen it on television. And  
 24 similarly I would have seen Mr Mathunjwa succeeding in  
 25 going to address the workers.

<p style="text-align: right;">Page 34638</p> <p>1 MS BARNES: Thank you, Chair, those are 2 our questions. 3 CHAIRPERSON: Thank you, Ms Barnes. Mr 4 Van As, standard terms and arrangements between Mr Mpopu 5 and Mr Bham, you're going to deal with one topic in cross- 6 examination now and then if matters arise during the course 7 of his cross-examination he may seek to cross-examine 8 further in relation to such matters. Is it that we 9 understand? 10 MR VAN AS: That's correct, Mr 11 Chairperson. Mr Chairperson may I ask for a short five 12 minute adjournment? I'd just like to speak to Mr 13 Ramaphosa's counsel, just to consult about a document that 14 I don't know whether they received or not. It's part of 15 the – 16 CHAIRPERSON: Yes we'll adjourn for five 17 minutes. 18 MR VAN AS: Thank you. 19 [COMMISSION ADJOURNS COMMISSION RESUMES] 20 [09:50] CHAIRPERSON: The Commission resumes. Mr 21 Ramaphosa, you're still under oath. Mr van As. 22 CROSS-EXAMINATION BY MR VAN AS: Thank 23 you, Mr Chairperson. Good morning, Mr Ramaphosa, I act on 24 behalf of Lonmin. 25 MR RAMAPHOSA: Good morning to you.</p>	<p style="text-align: right;">Page 34640</p> <p>1 quite right. The row, going across – 2 MR RAMAPHOSA: The row, yes. 3 CHAIRPERSON: Sorry, forgive me, Mr van 4 As. Someone on the right-hand side has got, I don't know 5 what it is, but it's either headphones that are on the 6 table so we can hear what's coming out of the headphones or 7 it's a radio or something. But anyway it's making a noise, 8 it's disturbing us, making it difficult for us to 9 concentrate on the questions that are being answered. So 10 please see to it that it doesn't happen anymore. Carry on, 11 Mr van As. 12 MR VAN AS: Thank you. Perhaps I should 13 just set the background. This is a memorandum which 14 Lonmin's Human Capital department sent to Mr Mark Munroe 15 who is the executive vice president mining on the 27th of 16 July 2012. If one has a look at row number 1 it sets out 17 Lonmin's current basic salary as at July 2012 and you see 18 that 5 405. 19 MR RAMAPHOSA: Yes. 20 MR VAN AS: And it's set out the total 21 package as being 9 063. 22 MR RAMAPHOSA: That's correct. 23 MR VAN AS: Now what's more important for 24 the purposes of my cross-examination if you go to row 2 25 you've got Impala and that's set out the basic salary at</p>
<p style="text-align: right;">Page 34639</p> <p>1 MR VAN AS: Mr Ramaphosa, I'd like to 2 please refer you to exhibit JJJJ1 and if we could just 3 scroll down to the bottom of the document please? You 4 testified yesterday that this was the email which you 5 received from Ms Ncube at Shanduka, do you confirm that? 6 MR RAMAPHOSA: Yes I do confirm that. 7 MR VAN AS: I'd like to take you to 8 paragraph 1, the third sentence. It says "The RDOs have 9 been demanding what Impala ultimately settled for which was 10 an increase to R12 000 per month basic salary." Do you see 11 that? 12 MR RAMAPHOSA: Yes I do see that. 13 MR VAN AS: I'd like to then take you to 14 exhibit XXXX3.20. I've given you a copy of the document. 15 CHAIRPERSON: A bit lower down I think, a 16 bit lower down. I think that's the section that you want 17 Mr van As, isn't it? 18 MR VAN AS: Now, Mr Ramaphosa, I've 19 highlighted on there, I've also given you a hard copy, I've 20 highlighted with a yellow highlighter column number 1 on 21 table 1 is the current salaries, current remuneration as at 22 July of 2012. Do you see that? 23 MR RAMAPHOSA: By column, do you mean the 24 row or the column. 25 MR VAN AS: I beg your pardon, you're</p>	<p style="text-align: right;">Page 34641</p> <p>1 6 540 and the total remuneration as 9 961. 2 MR RAMAPHOSA: I see that. 3 MR VAN AS: So would it be fair to say 4 that Ms Ncube was incorrect when she advised you that 5 Impala rock drill operators were receiving a basic salary 6 R12 000 per month in July of 2012? 7 MR RAMAPHOSA: Yes on the basis of this, 8 clearly. 9 MR VAN AS: And then if I go to your – if 10 we can go back to JJJJ1 please? If we got to the top email 11 would it also be fair to then say that there is not the 12 huge differential between the wages paid to RDOs in other 13 companies and the RDOs paid – than the wages to RDOs at 14 Lonmin? 15 MR RAMAPHOSA: Yes it is – 16 CHAIRPERSON: I think what Mr van As 17 wants shown on the screen is Mr Ramaphosa's reply to Ms 18 Ncube. So it would be higher on that page. There it is, 19 that's it. 20 MR RAMAPHOSA: Yes, that's right. 21 MR VAN AS: Is that a fair 22 interpretation? 23 MR RAMAPHOSA: It is fair, that's true 24 the first statement. 25 MR VAN AS: Thank you, Mr Chairperson,</p>

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1 those are my only questions for Mr Ramaphosa.  
 2 CHAIRPERSON: Thank you. Mr Mpfu.  
 3 CROSS-EXAMINATION BY MR MPOFU: Thank  
 4 you, Chairperson. Good morning, Mr Ramaphosa.  
 5 MR RAMAPHOSA: Good morning, Advocate  
 6 Mpfu.  
 7 MR MPOFU: I think that without wasting  
 8 time I must also make a few declarations somewhere that you  
 9 and I go quite a long way. I think we met in 19 –  
 10 CHAIRPERSON: You go back quite a long  
 11 way.  
 12 MR MPOFU: Go back quite a long way, yes.  
 13 1983 I remember that somewhere at East Rand Gold Mining  
 14 when I was a student engineer, aspirant mining engineer or  
 15 metallurgist and you were canvassing there for the NUM.  
 16 That's more than 30 years ago, about 31 years ago.  
 17 MR RAMAPHOSA: And you didn't join the  
 18 union.  
 19 MR MPOFU: I didn't unfortunately but I  
 20 helped. I had already done that. Well in 1981 I was a  
 21 strike leader in East London, but that's another story. To  
 22 cut a long story short then the last encounter that we had  
 23 was about 2 years ago, 30 years later in the disciplinary  
 24 hearing that was referred to by General Mbombo. Do  
 25 remember that one?

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1 MR RAMAPHOSA: How can I forget that one?  
 2 MR MPOFU: Thank you and in between those  
 3 30 years countless occasions that you and I have worked  
 4 together, notably you were my chairman of the National  
 5 Reception Committee –  
 6 MR RAMAPHOSA: Indeed.  
 7 MR MPOFU: - for political leaders. Now  
 8 – well that's not the last niceties, there's another nicety  
 9 that's still coming so that we just get rid of the  
 10 niceties.  
 11 CHAIRPERSON: What is the opposite of  
 12 nicety, the nastety, are you going to have the nastities  
 13 after that?  
 14 MR MPOFU: That is the rest, thank you,  
 15 Chairperson. No I won't go that far. The other issue that  
 16 I really wanted to converse with you in this light is – I  
 17 think I'm going level quite substantial criticisms against  
 18 you towards the end of the cross-examination. But I think  
 19 that it's important to start the cross-examination on a  
 20 positive note and I will start it with quite a compliment  
 21 on what you said in an article that is on page 338,  
 22 Chairperson, of the LRC bundle.  
 23 CHAIRPERSON: Well yes so that was  
 24 already an exhibit, we made the whole bundle an exhibit.  
 25 MR MPOFU: Yes made it JJJJ8,

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1 Chairperson.  
 2 CHAIRPERSON: Yes that's correct. It's  
 3 JJJJ8 and it's page ?  
 4 MR MPOFU: 338, Chairperson.  
 5 CHAIRPERSON: 338.  
 6 MR MPOFU: Do you remember this is an  
 7 article you wrote in the Sunday Times about the Marikana  
 8 massacre?  
 9 MR RAMAPHOSA: Yes.  
 10 MR MPOFU: Or tragedy.  
 11 MR RAMAPHOSA: Yes.  
 12 MR MPOFU: I'm just going to read a few  
 13 paragraphs just for context. In the first paragraph you  
 14 say "The events at Marikana last week present probably the  
 15 lowest moments in the short history of a democratic South  
 16 Africa. The scene reminiscent of an age we thought had  
 17 long been left behind has shaken the nation to its core."  
 18 You obviously still agree with that.  
 19 MR RAMAPHOSA: Yes, I do.  
 20 MR MPOFU: And then let's jump two  
 21 paragraphs. You say, the paragraphs that start with "Much  
 22 has" do you see that?  
 23 MR RAMAPHOSA: Yes.  
 24 MR MPOFU: Ja, it says, "Much has been  
 25 written about the confluence of circumstances that led to

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1 the deaths of 44 people. The Judicial Commission of  
 2 Inquiry established by President Jacob Zuma will shed light  
 3 on how the events unfolded. Both the public commentary and  
 4 the inquiry are essential to our efforts to understand what  
 5 has happened, but they will be meaningless if one is not  
 6 able to find the resolve and courage to attend to the flaws  
 7 in our society that these vents have exposed." You  
 8 obviously still agree with that.  
 9 MR RAMAPHOSA: Yes.  
 10 MR MPOFU: And then the next paragraph  
 11 you say "The events at Marikana have revealed in the  
 12 starkest terms possible the extent to which violence has  
 13 become the language through which discontent is articulated  
 14 and disagreement mediated. Such is the depth of grievance  
 15 and such is the extent of popular alienation that to some  
 16 peaceful forms of protests seem ineffective. For a nation  
 17 that owes this democratic dispensation to its ability to  
 18 solve what was seemingly an intractable conflict this is a  
 19 devastating realisation." Then the next paragraph you say  
 20 "It is not sufficient to bemoan this development. We need  
 21 to act now, to address it. We need to attend both to the  
 22 mechanisms through which we resolve conflict and to the  
 23 broader question as to how those in positions of  
 24 responsibility interact with and are guided by the needs  
 25 and interests of the working people and communities."

<p style="text-align: right;">Page 34646</p> <p>1 And then later you say "In the early 1990s in 2 response to escalating political violence diverse parties 3 came together to negotiate the national peace accord with 4 mechanisms for independent monitoring and mediation. There 5 is much that can be learnt from that experience. The 6 current situation suggests the need for society wide effort 7 to promote peaceful resolution of conflict. We need to 8 reclaim our capacity to negotiate." Later on I'll just 9 paraphrase. You talk about effective communication, the 10 ability to listen and then you say "The democratic 11 dispensation we live in today requires that companies also 12 need to be more engaged with the communities in which they 13 operate. They need to be sensible to their needs and 14 ensure that they are able to respond to their concerns." 15 And it goes on and you say, underpinning the next 16 page, fourth paragraph, "Underpinning all the sectors that 17 led to this tragedy are extremes of economic inequality, 18 poverty, under development that continue to characterise 19 our society today. The conditions on the platinum belt in 20 the North-West resemble those in many communities" and so 21 on. But the most important paragraph is the one just 22 before the last one. You say there "There are few 23 innocents in this tragic space. Those who suffered the 24 greatest loss, the wives, the partners and children of 25 those who died bear the least responsibility for what</p>	<p style="text-align: right;">Page 34648</p> <p>1 be laid onto one person or one institution and so on. So 2 as much as you accept yourself that responsibility you say 3 that others should also do the same. Is that correct? 4 MR RAMAPHOSA: Well as I've articulated 5 before, even yesterday and I did so in that article that 6 you referred to the tragedy that occurred at Marikana has 7 to be approached as a collective failure by many role 8 players, many stakeholders. And I don't think that many 9 who had some role to play can say that they do not bear any 10 form of responsibility. I think the responsibility has to 11 be collective and as a nation we should dip our heads and 12 accept that we did fail the people of Marikana, 13 particularly the families and the workers and those who 14 died. We did fail them. 15 MR MPOFU: Yes, right. No, no that's 16 fine. We fortunately or unfortunately some of those 17 parties who must share or not share that responsibility 18 have either already been here or are still going to be here 19 so now we're going to deal with your responsibility since 20 you are the one who is testifying at the moment. I'm sure 21 that's acceptable. If you can say yes. 22 MR RAMAPHOSA: Yes, yes we should deal. 23 MR MPOFU: Thanks. Now I just want to 24 situate my cross-examination as follows. A lot has been 25 said about your own failures or failure to exercise certain</p>
<p style="text-align: right;">Page 34647</p> <p>1 happened. The rest of us will find it harder to make such 2 a claim. This must include the Lonmin management, the 3 board and all its shareholders. The National Union of 4 Mineworkers, the Association of Mineworkers and 5 Construction Union, AMCU, the South African Police Service 6 and the striking miners themselves." And if you allow me I 7 could add the government. Would that be acceptable? 8 MR RAMAPHOSA: Yes. 9 MR MPOFU: Thanks and you say "For 10 wherever we find ourselves we cannot escape that through 11 our action or inaction. We bear some responsibility for 12 the circumstances that made such a tragedy possible. As we 13 mourn so too must we introspect. Do you still stand by 14 that as well? 15 MR RAMAPHOSA: Yes I do. 16 MR MPOFU: Well I read that in detail 17 because I think it's going to make the cross-examination – 18 it will cut a lot of ground that we would have covered in 19 the cross-examination in that what it looks like here is 20 that at the very least you accept your share of the 21 responsibility for the massacre or for the tragedy. Is 22 that correct? 23 MR RAMAPHOSA: Yes. 24 MR MPOFU: Obviously you also probably 25 correctly say that this is not the kind of thing that can</p>	<p style="text-align: right;">Page 34649</p> <p>1 of the responsibilities that you know that's in reference 2 to your fiduciary duties as a board member and also I 3 suppose your moral duty as a person who has been in 4 leadership and so on. Do you remember that? 5 MR RAMAPHOSA: Yes. 6 MR MPOFU: And so given that and what I 7 read to you the only question really that we need to 8 determine is the extent of your responsibility. Would you 9 agree? 10 MR RAMAPHOSA: I don't know what that 11 means, the extent. 12 MR MPOFU: No it means that if you and I 13 agree that you accept some share of the responsibility the 14 only thing that remains is not to establish that because 15 that's established, it's to establish the extent of that 16 responsibility. 17 MR UNTERHALTER: Chair, these are utterly 18 abstract questions which are not helpful to anyone. If my 19 learned friend wants to pursue the question of the Deputy 20 President's responsibility let him deal with matters that 21 can be dealt with factually. But these general statements 22 are just entirely unhelpful and the editorialising is 23 equally unhelpful. 24 MR MPOFU: Chairperson, I'm not here to 25 help anybody. I'm putting –</p>

<p style="text-align: right;">Page 34650</p> <p>1 CHAIRPERSON: I'm sorry, Mr Mpfu, I 2 thought you were here to help us in the Commission – but - 3 MR MPOFU: You, yes I concede that, but 4 everyone else must help themselves . 5 CHAIRPERSON: Can I just ask the witness 6 two questions? Do you accept, you talked about collective 7 responsibility, do you accept, because this is the 8 foundation of Mr Mpfu's questioning, that to some extent 9 you personally have some responsibility for what happened? 10 That's the foundation of his cross-examination. What's the 11 answer to that? 12 MR RAMAPHOSA: Yes I would. I have 13 couched all this and without being evasive to say that we 14 all have had a role to play and somewhere along the line we 15 may not have fulfilled those roles as we should have 16 fulfilled them and that is what I would say yes I accept. 17 CHAIRPERSON: So to paraphrase what 18 you've said you and a lot of other people – 19 MR RAMAPHOSA: Yes. 20 CHAIRPERSON: - and institutions fell 21 short to some extent. 22 MR RAMAPHOSA: Indeed. 23 CHAIRPERSON: Now what Mr Mpfu wants to 24 know from you is would you be able, in order to help us, to 25 define the extent to which you, in retrospect, because we</p>	<p style="text-align: right;">Page 34652</p> <p>1 MR MPOFU: Thank you. In fact you had, 2 of the parties that you have listed, of the parties that 3 you have listed that you say should share the 4 responsibility, you were associated with about six of them. 5 The only two you were not associated with were AMCU and the 6 striking miners as, strikers as such. Would you agree? 7 MR RAMAPHOSA: Yes. 8 MR MPOFU: You were associated with 9 Lonmin management, you were associated with the board, you 10 were a shareholder, you were associated with the National 11 Union of Mineworkers, you had some dealings with SAPS and 12 the government, correct? 13 MR RAMAPHOSA: I was not in government 14 when all this happened. 15 MR MPOFU: Fair enough, you were not in 16 government but you were exchanging telephone calls with 17 people in government. 18 MR RAMAPHOSA: Yes. 19 MR MPOFU: Yes. 20 CHAIRPERSON: I'm not sure, I know this 21 is one of the issues we have to decide but I'm not sure we 22 can take it at this stage as a given that his contacts with 23 the government, the Ministers and the police in themselves 24 brought about a share of responsibility for him. It may 25 be, depending on the issues that are going to be covered</p>
<p style="text-align: right;">Page 34651</p> <p>1 all know that hindsight is 20/20, to what extent would you 2 with hindsight say you fell short? 3 MR RAMAPHOSA: Is that what you would 4 like me to deal with now? 5 CHAIRPERSON: I would. 6 MR RAMAPHOSA: Yes I think, Mr Chairman, 7 I think the responsibility at the board level, as a non- 8 executive board member of Lonmin, one should have sought to 9 find out more closely the actual process of negotiating 10 with the union. 11 [10:10] That I concede I should have done, I should have 12 probed that and I should also, I would concede, have looked 13 more closely at the unintended consequences that flowed 14 from paying workers a living out allowance and finally 15 getting them to a point where they took the money and went 16 to live in less than desirable accommodation where they 17 would face challenges of nutrition, challenges of having to 18 pay a lot of money for transport. As a company that is 19 what we should have done, we should have looked more 20 closely at where the workers live and how they live because 21 the living conditions that workers were exposed to is not 22 something that I can proudly say that I would like to be 23 associated with, in fact they are appalling and they are 24 inhuman and that is what I should have paid, and indeed the 25 board should have paid closer attention to.</p>	<p style="text-align: right;">Page 34653</p> <p>1 later in your cross-examination – 2 MR MPOFU: Yes, fair enough, Chairperson. 3 CHAIRPERSON: - but it's not a given at 4 this stage. 5 MR MPOFU: No, no, it's not. I accept 6 that, I accept that. 7 CHAIRPERSON: Those are matters we have 8 to anxiously consider. 9 MR MPOFU: Yes. Well, maybe I can short- 10 circuit it by saying you were a senior member of the 11 governing party, the ANC, at the time. Correct? 12 MR RAMAPHOSA: Yes. 13 MR MPOFU: Thanks, but we'll still 14 develop that association. Now what I'm going to seek to 15 establish, in fairness to you I must say this up front so 16 that we walk together, is not all the stories about 17 fiduciary responsibility and all that which you've just 18 dealt with now. I'm going to suggest at the end that the 19 extent of your responsibility is not confined to that but 20 should also extend to criminal liability, you understand 21 that? 22 MR RAMAPHOSA: I hear you. 23 MR MPOFU: Yes. And therefore this 24 discussion is just going to be at another level, at that 25 level. It is not about some moral duties that you might</p>

<p style="text-align: right;">Page 34654</p> <p>1 have failed to do, although we'll touch on those, but it  2 will be driving towards that point. Now in order, and just  3 for clarity's sake so that nobody misunderstands what I'm  4 saying, what I'm saying is not that the Commission – the  5 Commission is not empowered to say whether you are  6 criminally guilty or not, that's not its purpose, that can  7 be determined by another forum. All the Commission can do,  8 or at least all I can say to the Commission is that they  9 must make a recommendation for another forum. We  10 understand each other? Yes?</p> <p>11 MR UNTERHALTER SC: Chair, just on a  12 point, if no part of your remit concerns questions of the  13 attribution of criminal liability, I can't imagine –</p> <p>14 CHAIRPERSON: One of the questions we  15 have to consider is possibly making recommendations –</p> <p>16 MR MPOFU: Yes.</p> <p>17 CHAIRPERSON: - to the prosecution  18 authority –</p> <p>19 MR MPOFU: Yes.</p> <p>20 CHAIRPERSON: - for consideration by the  21 Provincial Director of Public Prosecutions, I take it  22 primarily, of possible prosecutions of various persons. So  23 I think that's what –</p> <p>24 MR MPOFU: That's the distinction I'm  25 drawing.</p>	<p style="text-align: right;">Page 34656</p> <p>1 are about.</p> <p>2 CHAIRPERSON: That's what I understood  3 him to say but I may have misunderstood him –</p> <p>4 MR MPOFU: That's exactly what I said,  5 Chairperson, I don't understand this. That's exactly, when  6 I used the word "recommendation" I was using it in that  7 context.</p> <p>8 CHAIRPERSON: [Microphone off, inaudible]  9 – correctly summarised.</p> <p>10 MR MPOFU: Yes, ja.</p> <p>11 CHAIRPERSON: Sorry, I correctly  12 summarised the point –</p> <p>13 MR MPOFU: You did, you did.</p> <p>14 CHAIRPERSON: I didn't misunderstand you  15 on that issue, at least.</p> <p>16 MR MPOFU: No, you didn't, Chairperson,  17 no. And you understand that distinction after that debate,  18 Mr Ramaphosa, correct?</p> <p>19 MR RAMAPHOSA: I'm trying to understand.</p> <p>20 MR MPOFU: Yes, no, okay I'll help you.  21 One of the terms of reference that the President has given  22 to the Commission is for it to make recommendations for  23 certain aspects or outcomes to be referred to other  24 agencies and that includes the prosecuting authorities. So  25 I'm saying to you, when I say I'm going to talk to you</p>
<p style="text-align: right;">Page 34655</p> <p>1 CHAIRPERSON: - alluding to.</p> <p>2 MR UNTERHALTER SC: I'd understood my  3 learned friend to say that that was not what he considered  4 to be relevant for your purposes but if it is then he must  5 make it plain that that's what he wishes to suggest you  6 should do.</p> <p>7 MR MPOFU: Yes –</p> <p>8 CHAIRPERSON: Well, he can look after  9 himself but my understanding was that he was saying,  10 correctly –</p> <p>11 MR MPOFU: Yes.</p> <p>12 CHAIRPERSON: - it's not for this  13 Commission to find anybody guilty. The most that we are  14 called upon to do in that area is to consider whether it's  15 appropriate for us to recommend –</p> <p>16 MR MPOFU: That's all.</p> <p>17 CHAIRPERSON: - consideration, not even  18 recommend prosecution but to recommend consideration by the  19 prosecution authority of particular persons for particular  20 alleged offences.</p> <p>21 MR UNTERHALTER SC: Just so that we're  22 plain that that is what my learned friend is seeking to  23 establish for the purposes of making, you're in due course  24 making such a recommendation. If that is what he's doing,  25 then fine, we at least know what the terms of this exchange</p>	<p style="text-align: right;">Page 34657</p> <p>1 about criminal liability it's not as if at the end of this  2 Commission I'm now going to say, well, Mr Ramaphosa is  3 guilty of this and that and therefore, Mr Chairman, you  4 must find him guilty. That's not the purpose or powers of  5 this Commission. It's only for them to refer it to another  6 place. Do you understand now?</p> <p>7 MR RAMAPHOSA: I do.</p> <p>8 MR MPOFU: Thank you. Now, in order to  9 circumscribe then our discussion, for me to be able to make  10 that recommendation at the end –</p> <p>11 CHAIRPERSON: You're going to make the  12 submission and you're going to ask us to make the  13 recommendation.</p> <p>14 MR MPOFU: Yes, of course, yes, without  15 usurping the powers of the Chairperson, for me to motivate  16 for that recommendation to be made, I would have to lay the  17 basis for four broad things or things which I'm going to  18 canvass with you in this cross-examination. Do you  19 understand?</p> <p>20 MR RAMAPHOSA: Mm-mm.</p> <p>21 MR MPOFU: The first one would have to  22 deal with things that you did, actions, physical actions or  23 you know, inactions that you must have performed, do you  24 understand that?</p> <p>25 MR RAMAPHOSA: Yes.</p>

<p style="text-align: right;">Page 34658</p> <p>1 MR MPOFU: The second broad category 2 would have to deal with your state of mind, your intention 3 and so on. Do you understand that, for sure? 4 MR RAMAPHOSA: Yes. 5 MR MPOFU: And thirdly, one would have to 6 deal with what we lawyers call causality, the connection 7 between what you did and the consequences, the 8 consequences. In this case the consequences are the deaths 9 of people and their injuries and so on, you understand 10 that? 11 MR RAMAPHOSA: Yes. 12 MR MPOFU: And then of course it's the 13 outcome which I've just mentioned and that's easy, I don't 14 have to establish that. We all know that people died, 15 others were injured and so on and so on, correct? 16 MR RAMAPHOSA: Yes. 17 MR MPOFU: Ja. So let's start then with 18 just a few of the things which are relevant to what I'm 19 going to ask you about which you have done or you have 20 agreed to having done, it's just a list in no particular 21 order. Number 1, you made the call to Mr Zokwana, correct? 22 MR RAMAPHOSA: Yes. 23 MR MPOFU: Which has been referred to. 24 I'm using shorthand, I'm not going to say on such and such 25 a date, you know what I'm talking about. Secondly, you</p>	<p style="text-align: right;">Page 34660</p> <p>1 MR RAMAPHOSA: Mm-mm. 2 MR MPOFU: And you and this one, you 3 didn't participate directly but you were made aware of a 4 discussion subsequent to your discussions with Minister 5 Shabangu that was going to take place in the cabinet and 6 with the President, correct? 7 MR RAMAPHOSA: Can you just rephrase that 8 one, please? 9 MR MPOFU: Were you – just a minute. 10 CHAIRPERSON: The reference is to page 18 11 of your bundle BBB4, your e-mail of the 15th of August at 12 2:58PM to Mr Jameson and others. In paragraph 2 of that e- 13 mail you have summarised a discussion you'd had with 14 Minister Shabangu by saying, "She is going into cabinet" – 15 MR RAMAPHOSA: Yes. 16 CHAIRPERSON: - "and will brief the 17 President as well and get the Minister of Police Nathi 18 Mthethwa to act in a more pointed way." 19 MR RAMAPHOSA: Yes. 20 CHAIRPERSON: The question is based upon 21 that - 22 MR RAMAPHOSA: Okay, I understand now. 23 CHAIRPERSON: - that passage in the e- 24 mail. 25 MR RAMAPHOSA: I understand now.</p>
<p style="text-align: right;">Page 34659</p> <p>1 made a call on the 12th of August to Minister Mthethwa. 2 MR RAMAPHOSA: Yes. 3 MR MPOFU: Thirdly, you made a call 4 around the 14th of August to Minister Susan Shabangu. 5 MR RAMAPHOSA: Yes. 6 MR MPOFU: Fourthly, you made another 7 call on the 15th of August to Minister Mthethwa. 8 MR RAMAPHOSA: Yes. 9 MR MPOFU: Number 5, you – and this is 10 almost like a question – in order to arrange the meeting in 11 Cape Town you must have made another call to Minister 12 Shabangu or her PA. 13 MR RAMAPHOSA: Yes. 14 MR MPOFU: Correct? Ja. Six, you made a 15 call to the ANC secretary general Gwede Mantashe or had a 16 discussion with him, it might not have been a telephone 17 call. 18 MR RAMAPHOSA: Yes. 19 MR MPOFU: Yes. Then seventh, you had a 20 meeting in Cape Town with Minister Shabangu. 21 MR RAMAPHOSA: Yes. 22 MR MPOFU: Eight, you had a call or a 23 discussion with the Chamber of Mines. 24 MR RAMAPHOSA: Mr Mike Teke, yes. 25 MR MPOFU: Mike Teke, yes.</p>	<p style="text-align: right;">Page 34661</p> <p>1 MR MPOFU: Yes, and in fact in your own 2 statement it's put much more clearer. Your statement is 3 FFF32, 13.5 Chairperson. 4 CHAIRPERSON: That's on page 23 of your 5 bundle. 6 MR MPOFU: Yes, page 23 of the witness 7 bundle. 8 CHAIRPERSON: On the fourth page of your 9 statement. 10 MR MPOFU: There you say, "Minister 11 Shabangu agrees with Lonmin's characterisation of the 12 situation," which we'll come to, "and indicated to me that 13 she would bring the matter to the attention of the cabinet 14 and the President." Is that – 15 MR RAMAPHOSA: Yes. 16 MR MPOFU: - how you understood it? 17 MR RAMAPHOSA: Yes. 18 MR MPOFU: Ja. So, and then number 10 19 is, let's call it the e-mail exchange that you had with Ms 20 Ncube. 21 MR RAMAPHOSA: Yes. 22 MR MPOFU: Then you had a similar e-mail 23 exchange with Mr Mokwena. 24 MR RAMAPHOSA: Yes. 25 MR MPOFU: And then lastly number 12, you</p>

<p style="text-align: right;">Page 34662</p> <p>1 had the famous e-mail exchanges with Lonmin leadership or 2 chairperson and so on.</p> <p>3 MR RAMAPHOSA: Yes.</p> <p>4 MR MPOFU: Okay, so those are the 12 5 facts that I'm going to refer to. I will call them the 6 dirty dozen.</p> <p>7 CHAIRPERSON: Before we get too fixated 8 on the number 12, the evidence indicates that there in fact 9 wasn't a cabinet meeting on the 15th of August –</p> <p>10 MR MPOFU: Ja.</p> <p>11 CHAIRPERSON: And Minister Shabangu is 12 still going to come and tell us what she did on that day.</p> <p>13 MR MPOFU: Yes.</p> <p>14 CHAIRPERSON: But there wasn't a cabinet 15 meeting.</p> <p>16 MR MPOFU: There was a cabinet committee, 17 that's been established.</p> <p>18 CHAIRPERSON: No, I'm saying it wasn't a 19 cabinet meeting and according to the evidence of the 20 Minister of Police she didn't speak to him on that day, 21 certainly before the –</p> <p>22 MR MPOFU: Yes.</p> <p>23 CHAIRPERSON: So I'm not sure whether 24 your dozen stands but certainly 11 of the points you make 25 are still there to be discussed.</p>	<p style="text-align: right;">Page 34664</p> <p>1 President and that is the case. Whether indeed that 2 happened is another matter.</p> <p>3 MS NKOSI THOMAS SC: Chairperson, just a 4 brief one to deduct from the dozen of my learned friend. 5 There was no telephone conversation between Minister 6 Mthethwa and the witness on the 15th.</p> <p>7 CHAIRPERSON: Yes, yes, I said that I 8 thought there wasn't. There certainly wasn't one before 9 the shooting but yes, that's also a factor to be borne in 10 mind but anyway –</p> <p>11 MR MPOFU: Fair enough, fair enough –</p> <p>12 CHAIRPERSON: - you've got enough 13 material to cross-examine on for the moment.</p> <p>14 MR MPOFU: Yes, yes.</p> <p>15 CHAIRPERSON: In the time that's been 16 allotted to you.</p> <p>17 MR MPOFU: Yes, I'm saying yes, 18 Chairperson, we'll fill the dozen. Maybe one should have 19 done the, what do you call, the baker's dozen so that –</p> <p>20 CHAIRPERSON: - 13.</p> <p>21 MR MPOFU: Yes, so that you have, you 22 have a spare wheel, ja, but be that as it may, the point 23 really is that this is a cluster of acts, whatever we call 24 it. Are we still together, Mr Ramaphosa?</p> <p>25 MR RAMAPHOSA: Yes.</p>
<p style="text-align: right;">Page 34663</p> <p>1 MR MPOFU: Well, it wouldn't affect the 2 dozen because the President is still there. So let's say 3 there was no cabinet meeting, it was referred to the 4 President, it's still a dozen.</p> <p>5 CHAIRPERSON: We don't know whether she 6 referred it to the President.</p> <p>7 MR MPOFU: No –</p> <p>8 CHAIRPERSON: That's the point. That's 9 why I'm saying I'm not sure that we can accept that, accept 10 the 12th point. I'm not saying it isn't correct. Certainly 11 there wasn't a cabinet meeting. Whether she spoke to the 12 President or not is something, there's no evidence about –</p> <p>13 MR MPOFU: Yes, fair enough.</p> <p>14 CHAIRPERSON: She will be coming in due 15 course.</p> <p>16 MR MPOFU: I accept that, I accept that.</p> <p>17 CHAIRPERSON: So perhaps it would be 18 sensible to confine yourself to the 11 points that –</p> <p>19 MR MPOFU: No.</p> <p>20 CHAIRPERSON: - are common cause that 21 took place.</p> <p>22 MR MPOFU: Yes. No, Chairperson, all I 23 was saying to the witness, which he has already agreed to, 24 by the way, is that he was made to understand that those 25 discussions would be escalated to the cabinet and the</p>	<p style="text-align: right;">Page 34665</p> <p>1 MR MPOFU: Yes. Now we are then going to 2 deal with those, let's put that issue aside for now because 3 I want to deal with an issue that doesn't quite fall into 4 those four categories that I spoke about, so that we get it 5 out of the way. You are familiar, you must be, with the 6 whole notion of conflict of interest, yes?</p> <p>7 MR RAMAPHOSA: Yes.</p> <p>8 MR MPOFU: And you are aware that it is 9 undesirable for one to act when they are conflicted in 10 various situations, I'm just talking generally now.</p> <p>11 MR RAMAPHOSA: Yes.</p> <p>12 MR MPOFU: Yes. And sometimes those 13 breaches of those conflicts might even be unlawful, 14 depending on whether it's a breach of articles of 15 association or a statute or the constitution, agreed?</p> <p>16 MR RAMAPHOSA: Well, in the situation of 17 articles of association, yes.</p> <p>18 MR MPOFU: Yes.</p> <p>19 MR RAMAPHOSA: Or breach of a statute, 20 yes.</p> <p>21 MR MPOFU: Of course, yes, thank you. 22 Now just on the actions, that basket of actions that we 23 have spoken about, you were – let me put it this way, you 24 regarded yourself as, or well at least, or you were 25 regarded correctly as a person who is associated with NUM,</p>



<p style="text-align: right;">Page 34666</p> <p>1 a former leader of NUM who has some direct relationship 2 with them, correct? 3 MR RAMAPHOSA: Yes. 4 MR MPOFU: And when you had your 5 telephonic discussions which I referred to in the e-mails 6 with Mr Zokwana, Mr Motlatsi and people like that, you were 7 doing so in that capacity? 8 MR MPOFU: Right. At the same time you 9 were communicating with Lonmin management. 10 MR RAMAPHOSA: Yes. 11 MR MPOFU: Where the NUM is, was the 12 recognised union, correct? 13 MR RAMAPHOSA: Yes. 14 MR MPOFU: And at the same time you were 15 a shareholder of Lonmin? 16 MR RAMAPHOSA: Yes, Shanduka. 17 MR MPOFU: Of Shanduka. 18 MR MPOFU: Of Shanduka, yes, which is a 19 shareholder in Lonmin. 20 MR RAMAPHOSA: Yes. 21 MR MPOFU: Ja. Eventually, it is a 22 shareholder in Lonmin, correct? 23 CHAIRPERSON: Well indirectly it is. 24 MR RAMAPHOSA: Indirectly. 25 [10:29] MR MPOFU: Yes, thank you and it holds 9%</p>	<p style="text-align: right;">Page 34668</p> <p>1 MR MPOFU: What am I leaving out? And 2 you were a non-executive director of Lonmin. 3 MR RAMAPHOSA: Yes. 4 MR MPOFU: Now if you look at that web 5 of – 6 MR RAMAPHOSA: Relationships. 7 MR MPOFU: - relationships. 8 MR RAMAPHOSA: Yes. 9 MR MPOFU: Thank you. 10 MR RAMAPHOSA: Yes. 11 MR MPOFU: You would accept that then you 12 were caught up in a sauce pool of incestuous 13 relationships – 14 MR UNTERHALTER SC: Chair, that – 15 MR MPOFU: - in relation to the players. 16 MR UNTERHALTER SC: Chair, that is not a 17 proper question to put, not only by the use of adjectives 18 which are unhelpful in elucidating what question is being 19 put but if my learned friend wants to suggest that 20 something about these relationships gives rise to a 21 conflict of interest he has to articulate what were the 22 duties that are relevant to his question and what are the 23 interests with which they conflict. 24 MR MPOFU: Okay – 25 MR UNTERHALTER SC: Absent any such</p>
<p style="text-align: right;">Page 34667</p> <p>1 of Lonmin. 2 MR RAMAPHOSA: Yes. 3 MR MPOFU: About. 4 MR RAMAPHOSA: Of Lonplats, yes. 5 MR MPOFU: Yes, of Lonplats, ja. 6 MR RAMAPHOSA: Much less of Lonmin 7 itself. 8 MR MPOFU: Yes, of PLC. 9 MR RAMAPHOSA: Yes. 10 MR MPOFU: Ja, fair enough. And at the 11 same time you were also having discussions, as we've 12 established, with Mr Mantashe. 13 MR RAMAPHOSA: Yes. 14 MR MPOFU: And you were a member of the 15 National Executive Committee of the ANC. 16 MR RAMAPHOSA: That is true. 17 MR MPOFU: And as we've already 18 established, the ANC is the governing party. 19 MR RAMAPHOSA: Yes. 20 MR MPOFU: And at the same time you had, 21 your relations with Mr Mthethwa among other things were 22 that you were both in the National Executive of the ANC. 23 MR RAMAPHOSA: Yes, that's correct. 24 MR MPOFU: As well as Mr Mantashe. 25 MR RAMAPHOSA: Yes.</p>	<p style="text-align: right;">Page 34669</p> <p>1 specification that is not a question that is properly put 2 or helpful to anyone. 3 MR MPOFU: Okay. 4 MR RAMAPHOSA: Mr Chairman, could I also 5 say that – 6 MR MPOFU: It's a fair question. 7 MR RAMAPHOSA: - I do take exception to 8 your question that seems to suggest that my relationship 9 with my organisation, the African National Congress, is 10 incestuous. 11 MR MPOFU: No – 12 MR RAMAPHOSA: I also similarly do take 13 exception to a suggestion that my relationship with the 14 secretary general of the ANC is incestuous, and all the 15 other colleagues that you referred to. Mr Chairman, I do 16 take exception to that. 17 MR MPOFU: Ja, that might well be. 18 CHAIRPERSON: [Microphone off, inaudible] 19 MR MPOFU: Yes – 20 CHAIRPERSON: There are two points. The 21 first points is incestuous was an unhappy word, which I 22 take it you will withdraw. The second point is that you 23 should spell out what the nature of the conflict was. Just 24 a vague phrase like the one you used, even shorn of that 25 objectionable adjective, is still unhelpful.</p>

<p style="text-align: right;">Page 34670</p> <p>1 MR MPOFU: I've already said I'm going to 2 do that.</p> <p>3 CHAIRPERSON: Well, you put the general 4 question, expecting an answer. So put to the witness 5 clearly what the conflict, or conflicts, I think implicitly 6 what you're putting to the witness is there were several 7 conflicts.</p> <p>8 MR MPOFU: Yes.</p> <p>9 CHAIRPERSON: Spell out what the 10 conflicts are, don't use objectionable adjectives and we 11 will make progress.</p> <p>12 MR MPOFU: Well, this witness is an 13 expert in using adjectives like dastardly, so I will try 14 and restrain myself –</p> <p>15 CHAIRPERSON: No, let's not –</p> <p>16 MR MPOFU: That's fine.</p> <p>17 CHAIRPERSON: - engage in a debate of 18 that kind.</p> <p>19 MR MPOFU: Alright, we'll get there. 20 Well, from your experience –</p> <p>21 CHAIRPERSON: Sorry, Mr Mpofu, sorry, is 22 this going to take some time? I was proposing to take the 23 first comfort break now. I thought I'd wait until this 24 point was finished but it looks to me as if it may take a 25 bit of time.</p>	<p style="text-align: right;">Page 34672</p> <p>1 hear you.</p> <p>2 MR MPOFU: You understand?</p> <p>3 MR RAMAPHOSA: I hear you.</p> <p>4 MR MPOFU: No, but do you understand – 5 you can't disagree with something you don't understand. Do 6 you understand the case?</p> <p>7 MR RAMAPHOSA: I hear what you are saying 8 and I disagree with you.</p> <p>9 MR MPOFU: Do you disagree with something 10 you understand or something you don't understand?</p> <p>11 MR UNTERHALTER SC: Chairman, there's 12 no –</p> <p>13 CHAIRPERSON: No, no, I think you're 14 wasting time now. He says he heard what you say, he 15 doesn't agree with what you said. I think that's enough 16 for my purposes.</p> <p>17 MR MPOFU: Well, Chairperson –</p> <p>18 CHAIRPERSON: It's enough for my 19 purposes.</p> <p>20 MR MPOFU: Can't you just ask the witness 21 to answer the question so that we move on, rather than what 22 have I done except answering and asking a question?</p> <p>23 CHAIRPERSON: I interpreted his answer as 24 being an answer to the question.</p> <p>25 MR MPOFU: Well –</p>
<p style="text-align: right;">Page 34671</p> <p>1 MR MPOFU: Yes, Chairperson, if –</p> <p>2 CHAIRPERSON: So if it's convenient for 3 you – I don't want to do anything that's inconvenient for 4 you, but if it's convenient for you shall we take the first 5 comfort break now?</p> <p>6 MR MPOFU: Yes, it is, Chairperson, 7 because there are many relationships.</p> <p>8 CHAIRPERSON: That's right. Quarter of 9 an hour break.</p> <p>10 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>11 [11:01] CHAIRPERSON: The Commission resumes. Mr 12 Ramaphosa, you're still under oath.</p> <p>13 MATAMELA CYRIL RAMAPHOSA: [s.u.o.]</p> <p>14 CHAIRPERSON: Mr Mpofu, you're still 15 cross-examining I believe.</p> <p>16 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 17 Yes, thank you, Chairperson. Thank you, yes. Again just 18 to be fair I think let me – I'm going to continue where we 19 left it off, but just to put it in context. You do 20 understand that effectively the case that I've been 21 presenting here from day 1 is that you exerted political 22 pressure which resulted in the massacre, to summarise it. 23 I know you disagree with it, but you understand that that's 24 our case?</p> <p>25 MR RAMAPHOSA: I disagree with it and I</p>	<p style="text-align: right;">Page 34673</p> <p>1 CHAIRPERSON: Let's not waste time, let's 2 carry on.</p> <p>3 MR MPOFU: Ja, well let's not. Do you 4 understand the gist of our case?</p> <p>5 MR RAMAPHOSA: I have heard the gist of 6 your case, Mr Mpofu.</p> <p>7 MR MPOFU: Yes. Now you also understand 8 that the – to be fair to you, it's no use for me to say you 9 exerted political pressure. That can mean a million 10 things. We have to narrow it to a specific part. You 11 understand that?</p> <p>12 MR RAMAPHOSA: I'm waiting to hear the 13 question, Mr Mpofu.</p> <p>14 MR MPOFU: No, that's the question. Do 15 you understand what I'm saying? That is the question.</p> <p>16 MR RAMAPHOSA: Okay –</p> <p>17 MR MPOFU: There's a question mark at the 18 end of that. Do you understand?</p> <p>19 MR RAMAPHOSA: I understand.</p> <p>20 MR MPOFU: Thank you. Okay, so when I'm 21 talking about all these things I'm trying to do that so 22 that I be helpful so that we can narrow it. Now that was 23 just to assist you, to give context.</p> <p>24 In one of the emails you suggested that you were 25 going to call Mr Gwede Mantashe for the ANC to intervene.</p>

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1 MR RAMAPHOSA: Yes.

2 MR MPOFU: How was the ANC going to  
3 intervene in this situation?

4 MR RAMAPHOSA: Well, I would have left  
5 the intervention of the secretary general of the ANC up to  
6 him. All I would have wanted to do is to say there is a  
7 problem, the African National Congress is the ruling party  
8 in the country, is interested in all manner of things that  
9 lead to the lives and death of people.

10 MR MPOFU: Thanks. Ja, that's enough.  
11 So the ANC had an interest, as you've described it.

12 MR RAMAPHOSA: I wanted to communicate to  
13 the secretary general.

14 MR MPOFU: Yes. Now in the protection of  
15 that interest how was the ANC going to intervene in line  
16 with your proposal?

17 MR RAMAPHOSA: I don't know how the  
18 secretary general would have intervened and all I wanted to  
19 do was that there should be a discussion.

20 MR MPOFU: No, please Mr Ramaphosa, you  
21 said that you were going to speak to Mr Mantashe for the  
22 ANC to intervene. I can't ask this of Mr Mantashe even if  
23 he was here because it's you who proposed it.

24 MR RAMAPHOSA: Mr Mpofo, it could have  
25 amounted to a variety of things. It could have amounted to

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1 him talking to Mr Mathunjwa, who he knows very well from  
2 their past days. It could have amounted talking to anyone  
3 who is involved, who was involved in the whole drama, and  
4 this is a matter where we required people to be raising the  
5 issue and talking to other people.

6 MR MPOFU: Oh, is it? Alright. Okay,  
7 let's put it this way then. If that had succeeded that the  
8 ANC would then have been a player of some sort or another,  
9 peripheral maybe, but it would have been a player, correct?

10 MR RAMAPHOSA: It could have been. It  
11 could never have been, you know, the whole might of the  
12 ANC. It could have been the individual, the secretary  
13 general used to be general secretary of the National Union  
14 of Mineworkers. He knows some of the players there, he  
15 knows Frans Baleni, Senzeni Zokwana, and he knows Mathunjwa  
16 as well, and he knows quite a number of the people who were  
17 involved in that whole drama.

18 MR MPOFU: No, well two things. 1, you  
19 know that that is not the case. You know that the office  
20 of the secretary general of the ANC brings effectively the  
21 weight of the organisation, because you've been the  
22 secretary general of the ANC. Isn't that correct?

23 MR RAMAPHOSA: No, in this case what  
24 would have happened is that Mantashe was being brought in,  
25 like James Motlatsi who used to be the president of the

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1 National Union of Mineworkers, to play a role in talking to  
2 some of the people who are involved in this.

3 MR MPOFU: No, but that is not true, Mr  
4 Ramaphosa, because you said at BBB4.1, "I will be speaking  
5 to Gwede Mantashe, the ANC secretary general, and suggest  
6 that the ANC should intervene" –

7 MR RAMAPHOSA: Yes.

8 MR MPOFU: - not Gwede Mantashe.

9 MR RAMAPHOSA: Fair enough.

10 MR MPOFU: Do you see the difference?

11 MR RAMAPHOSA: Fair enough.

12 MR MPOFU: Yes.

13 MR RAMAPHOSA: Yes.

14 MR MPOFU: Ja, so now that we've cleared  
15 that –

16 MR RAMAPHOSA: Yes.

17 MR MPOFU: - what was the ANC  
18 intervention - not Gwede Mantashe, who knows, Baleni or  
19 what-what – going to be?

20 MR RAMAPHOSA: Well, I was seeking to say  
21 to the secretary general people are dying, people are dying  
22 out there. If there is any help that can be brought to  
23 bear, people to be talked to so that we can bring the  
24 killing of people to an end.

25 MR MPOFU: Yes, okay. Let me just

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1 summarise it like this. Of the players that we have  
2 identified you were a party, or let's call it the lowest  
3 common denominator if we talk about the ANC, Lonmin, NUM.  
4 Is that correct?

5 MR UNTERHALTER SC: Chair, a question  
6 that is not comprehensible. What does it mean to say you  
7 are the lowest common denominator?

8 MR MPOFU: Alright –

9 CHAIRPERSON: I think he meant something  
10 else, but perhaps he can rephrase the question –

11 MR MPOFU: Well, I meant exactly that.

12 MR UNTERHALTER SC: Could he just –

13 MR MPOFU: Yes, I will. I will.

14 MR UNTERHALTER SC: Could my learned  
15 friend please just make plain –

16 MR MPOFU: Yes.

17 MR UNTERHALTER SC: - what he's asking?  
18 The lowest common denominator is not something that is  
19 comprehensible.

20 MR MPOFU: Ja, well to those who know  
21 mathematics it is. But what the lowest common denominator  
22 means, Mr Ramaphosa, is that if you have a number of  
23 fractions, or in this case we are talking about these  
24 entities, the one thing that is common among them could be  
25 a number, let's say 12 and 4, and 16 and 4; the lowest

<p style="text-align: right;">Page 34678</p> <p>1 common denominator is 4 because it's common to all of them.</p> <p>2 CHAIRPERSON: [Microphone off, inaudible]</p> <p>3 MR MPOFU: No, LCD, that's what it's</p> <p>4 called in mathematics. Looks like I have to have night</p> <p>5 school –</p> <p>6 MR UNTERHALTER SC: Chairman, I wonder</p> <p>7 whether the use of metaphor is particularly helpful.</p> <p>8 Perhaps my learned friend could just ask the question</p> <p>9 directly that he wants to ask.</p> <p>10 MR MPOFU: Well, the question is that you</p> <p>11 were a common feature in those three entities. I'm sure</p> <p>12 everybody understands that. I don't know why my time is</p> <p>13 being wasted.</p> <p>14 CHAIRPERSON: Let's not get involved in</p> <p>15 this debate. Just let's get questions answered. You</p> <p>16 understand the question? You were an actor in each of</p> <p>17 those three parties that have been referred to. You had a</p> <p>18 foot in each of those camps, to use another metaphor.</p> <p>19 That's basically the point he's pointing.</p> <p>20 MR MPOFU: Yes.</p> <p>21 MR RAMAPHOSA: Yes.</p> <p>22 MR MPOFU: Thank you, and so what I'm</p> <p>23 going to do now is just to give you a set of facts on the</p> <p>24 basis of which I'm going to at the end justify my statement</p> <p>25 that there were these conflicts. You've already said that</p>	<p style="text-align: right;">Page 34680</p> <p>1 not have known. He would have –</p> <p>2 MR MPOFU: He wouldn't, yes.</p> <p>3 MR RAMAPHOSA: Yes.</p> <p>4 MR MPOFU: He would have had to guess.</p> <p>5 Minister Shabangu also would not have known whether you</p> <p>6 were calling her in your capacity as a shareholder or a</p> <p>7 board member or a fellow member of the NEC of the ANC.</p> <p>8 MR RAMAPHOSA: Well, I think Ms Shabangu</p> <p>9 would have known that I was a board member of Lonmin</p> <p>10 because we had had dealings on a variety of issues and we</p> <p>11 had had meetings with her prior to all this on a variety of</p> <p>12 matters that had to do with the mining business.</p> <p>13 MR MPOFU: No, that's true. Actually</p> <p>14 Lonmin submitted a submission on the nationalisation debate</p> <p>15 of the ANC, correct?</p> <p>16 MR RAMAPHOSA: Indeed.</p> <p>17 MR MPOFU: Yes, so she would have known,</p> <p>18 ja. Okay, now you would also agree as a seasoned former</p> <p>19 unionist that usually the interests of management and the</p> <p>20 union are not, do not coincide completely. Let's put it</p> <p>21 like that.</p> <p>22 MR RAMAPHOSA: Yes.</p> <p>23 MR MPOFU: Ja, and yet you being a</p> <p>24 shareholder and an executive on the Lonmin side were –</p> <p>25 CHAIRPERSON: He wasn't an executive. He</p>
<p style="text-align: right;">Page 34679</p> <p>1 Mr Mantashe was the secretary general of the ANC, correct?</p> <p>2 MR RAMAPHOSA: That is true.</p> <p>3 MR MPOFU: He was also a former secretary</p> <p>4 general, like yourself, of the National Union of</p> <p>5 Mineworkers.</p> <p>6 MR RAMAPHOSA: General secretary of the</p> <p>7 National Union of Mineworkers.</p> <p>8 MR MPOFU: General secretary, yes.</p> <p>9 MR RAMAPHOSA: Yes.</p> <p>10 MR MPOFU: And Mr Motlatsi –</p> <p>11 MR RAMAPHOSA: James Motlatsi.</p> <p>12 MR MPOFU: Mr James Motlatsi –</p> <p>13 MR RAMAPHOSA: Former president –</p> <p>14 MR MPOFU: Former president of the –</p> <p>15 MR RAMAPHOSA: - of the National Union of</p> <p>16 Mineworkers.</p> <p>17 MR MPOFU: - National Union of</p> <p>18 Mineworkers in your era, correct?</p> <p>19 MR RAMAPHOSA: Yes.</p> <p>20 MR MPOFU: Now Mr Mthethwa, when you were</p> <p>21 phoning Mr Mthethwa – I'm going to suggest to you he would</p> <p>22 not have known whether you were calling him as a</p> <p>23 shareholder of Lonmin or as a fellow member of the National</p> <p>24 executive. Would that be fair? Or did you specify it?</p> <p>25 MR RAMAPHOSA: You're correct, he would</p>	<p style="text-align: right;">Page 34681</p> <p>1 was a non-executive.</p> <p>2 MR MPOFU: Yes, well non-executive</p> <p>3 director. Well, more than that. You were more than just a</p> <p>4 non-executive director as we know it, independent non-</p> <p>5 executive director. You were also a shareholder, if you</p> <p>6 forget the structural things, in the sense that you and I</p> <p>7 understand, correct?</p> <p>8 MR RAMAPHOSA: Yes.</p> <p>9 MR MPOFU: Yes, so that's the one side.</p> <p>10 Then you are convening a meeting of the union, as it were,</p> <p>11 or under the banner of the NUM to see what must be done</p> <p>12 about the strike at the same time, correct?</p> <p>13 MR RAMAPHOSA: What do you mean, under</p> <p>14 the banner of the NUM?</p> <p>15 MR MPOFU: Well, you said that when you</p> <p>16 were calling Mr Senzeni Zokwana, James Motlatsi and so on</p> <p>17 to your meeting which was going to happen on Friday, that</p> <p>18 was being done in your capacities as NUM people.</p> <p>19 MR RAMAPHOSA: Former NUM people, yes.</p> <p>20 MR MPOFU: Yes, and current in the case</p> <p>21 of Mr Zokwana.</p> <p>22 MR RAMAPHOSA: Of course.</p> <p>23 MR MPOFU: Yes.</p> <p>24 MR RAMAPHOSA: Ja.</p> <p>25 MR MPOFU: Yes, that's what I mean by</p>

<p style="text-align: right;">Page 34682</p> <p>1 under the banner of the NUM.</p> <p>2 MR RAMAPHOSA: Okay.</p> <p>3 MR MPOFU: Yes, now would you agree at</p> <p>4 the very least that that is unusual in the sense that you</p> <p>5 are, as the Chairperson put it, one of your feet is on the</p> <p>6 management, or on the company side, let's put it, and then</p> <p>7 you are also on the labour side.</p> <p>8 MR RAMAPHOSA: I don't see what the</p> <p>9 unusual aspect of that is because we are human beings, we</p> <p>10 know each other, we play different roles in different</p> <p>11 organisations and we are meeting around a common purpose.</p> <p>12 MR MPOFU: Mr Ramaphosa, really, in your</p> <p>13 days as a unionist would you have had a caucus of the NUM</p> <p>14 together with Mr Oppenheimer?</p> <p>15 MR RAMAPHOSA: I did meet on a number of</p> <p>16 occasions with the full knowledge of my members, members of</p> <p>17 the National Union of Mineworkers, sometimes on a one-to-</p> <p>18 one basis with people who represent the employers. They</p> <p>19 knew that there was nothing fraudulent, there was nothing</p> <p>20 suspicious about those meetings. Mr Mpofo, I've held</p> <p>21 numerous meetings with people on the opposite side of the</p> <p>22 divide and what we've always, I've always sought to do is</p> <p>23 to deal in those meetings honestly, openly, and make sure</p> <p>24 that I am prepared to disclose whatever would have been</p> <p>25 discussed.</p>	<p style="text-align: right;">Page 34684</p> <p>1 there was a lot of violence on the mines and we had</p> <p>2 occasion to meet with representatives of the Chamber of</p> <p>3 Mines and of the employers and in those meetings we were</p> <p>4 able to find ways of curbing the violence to the extent</p> <p>5 that we could because that was a completely different</p> <p>6 situation that we are exposed to now, and there was nothing</p> <p>7 suspicious about that, or unusual.</p> <p>8 MR MPOFU: Again you know that I'm not</p> <p>9 talking about those kinds of meetings. But by the way,</p> <p>10 since you've mentioned the 1987 strike, was some of that</p> <p>11 violence perpetrated by your members in the NUM?</p> <p>12 MR RAMAPHOSA: Yes.</p> <p>13 MR MPOFU: Ja.</p> <p>14 MR RAMAPHOSA: But as you say there, you</p> <p>15 will recall what I said earlier that in the National Union</p> <p>16 of Mineworkers we had strike rules.</p> <p>17 MR MPOFU: Yes, well did those strike</p> <p>18 rules involve not shooting other workers?</p> <p>19 MR RAMAPHOSA: Not as far as I know.</p> <p>20 What I do know is that the workers who were shot at were</p> <p>21 shot at by the apartheid police.</p> <p>22 MR MPOFU: Yes. No, I'm saying when you</p> <p>23 were there one of the rules you've referred to must have</p> <p>24 involved people, NUM members not shooting fellow workers,</p> <p>25 correct?</p>
<p style="text-align: right;">Page 34683</p> <p>1 MR MPOFU: Yes.</p> <p>2 MR RAMAPHOSA: So there was nothing</p> <p>3 suspicious about any of those meetings.</p> <p>4 MR MPOFU: Yes, well you know that that's</p> <p>5 not what I'm asking about. Obviously people have to meet,</p> <p>6 even in the heat of a strike or whatever conflict. That's</p> <p>7 not what I'm talking about, and you know it. I'm saying is</p> <p>8 it, when you were a unionist would you have found it as a</p> <p>9 usual occurrence that you have a caucus of the NUM to deal</p> <p>10 about what to do about the strike and invite Mr</p> <p>11 Oppenheimer?</p> <p>12 MR RAMAPHOSA: I would not characterise –</p> <p>13 MR MPOFU: Yes.</p> <p>14 MR RAMAPHOSA: - a meeting with the</p> <p>15 employer as a caucus.</p> <p>16 MR MPOFU: Well okay, a meeting that</p> <p>17 happens under the banner, as you and I have agreed, of the</p> <p>18 NUM where you invite Mr Oppenheimer.</p> <p>19 MR RAMAPHOSA: No, leave Mr, late Mr</p> <p>20 Oppenheimer out of this, so –</p> <p>21 MR MPOFU: Well, I'm making an example –</p> <p>22 MR RAMAPHOSA: Let's deal with some of</p> <p>23 the things that I experienced and I went through.</p> <p>24 MR MPOFU: Yes.</p> <p>25 MR RAMAPHOSA: During the 1987 strike</p>	<p style="text-align: right;">Page 34685</p> <p>1 MR RAMAPHOSA: Well, it could not have</p> <p>2 been maybe specified like shooting, but not perpetrating</p> <p>3 acts of violence against other workers.</p> <p>4 MR MPOFU: Any acts of violence, yes.</p> <p>5 Well, after you left, yes, we will hear, on the 11th</p> <p>6 actually the first act of violence was by NUM members</p> <p>7 shooting the protesters.</p> <p>8 MR TIP SC: Objection, Chair –</p> <p>9 MR RAMAPHOSA: So I heard.</p> <p>10 MR TIP SC: This objection I've had to</p> <p>11 make previously. It is not the first act of violence.</p> <p>12 There are several acts of violence and acts of intimidation</p> <p>13 that have been logged by Lonmin in respect of strikers</p> <p>14 taking action against persons who wished to go to work.</p> <p>15 MR MPOFU: Okay.</p> <p>16 MR TIP SC: So this is not being put</p> <p>17 correctly and again it needs to be put in context.</p> <p>18 MR MPOFU: Okay, Chairperson, I'll refer</p> <p>19 to my previous answer to that, but you are aware that one</p> <p>20 of the –</p> <p>21 CHAIRPERSON: No, no, wag, wag, wag.</p> <p>22 Let's take this point slowly. I think, am I correct in</p> <p>23 saying that the first live ammunition that was fired in</p> <p>24 this whole saga as far as we know on the evidence before us</p> <p>25 at the moment was on the Saturday morning by NUM officials</p>

<p style="text-align: right;">Page 34686</p> <p>1 who gave evidence, they claimed they were acting in self-  2 defence. There may be a basis for arguing, which we'll  3 hear at the end, that the bounds of self-defence were  4 exceeded, but I think it's correct to say, Mr Tip, that  5 there is evidence from the unabridged Lonmin occurrence  6 book that rubber bullets were fired on the Friday night,  7 but I think it's also correct to say there's no entry that  8 I'm aware of that anybody on either side actually, either  9 the strikers' side or the employer's side, or the police  10 side, fired live ammunition on the Friday night. The first  11 live ammunition was fired by NUM officials, they say in  12 defence of itself on the Saturday morning. That's correct,  13 isn't it?</p> <p>14 MR MPOFU: That's correct, Chairperson.  15 CHAIRPERSON: So I think, so subject to  16 those qualifications I think Mr Mpofo may proceed.  17 MR MPOFU: Thank you, Chairperson.  18 MR TIP SC: Well Chair, let me just  19 complete what I have to say on that because it is my  20 recollection that there are indeed entries in the logs and  21 in the evidence concerning shots of a live ammunition kind  22 that were fired in the course of the evening of the 10th,  23 but with respect, that is not the pertinent question here  24 at all.  25 MR MPOFU: Ja.</p>	<p style="text-align: right;">Page 34688</p> <p>1 is there's no evidence really before us in any depth at all  2 of what happened –  3 MR MPOFU: No, it did. There was a body  4 that was found with five shots but it was –  5 CHAIRPERSON: No, no, there's no evidence  6 before us as to its relation, if any, to the things we're  7 busy with.  8 MR MPOFU: Thanks, Chair.  9 CHAIRPERSON: Anyway we can concentrate –  10 MR MPOFU: This much we –  11 CHAIRPERSON: - on the issues before us  12 we can make progress.  13 MR MPOFU: Ja, thank you, Chairperson.  14 In fact, if one goes to your biography written by Anthony  15 Butler, a copy of which was supplied – I'll just read it  16 out, it's a short – on page 195 it says the following,  17 "While the strike," it's about the 1987 strike, "While the  18 strike unfolded in various ways, no two mines were alike.  19 Violence, at least, was everywhere. The worst of the  20 violence was inflicted by NUM's own members. Strikers  21 assaulted non-strikers and strike breakers with  22 unprecedented viciousness. In some compounds armed workers  23 set up kangaroo courts and strikers received 'death  24 sentences' for betraying their comrades." You remember  25 that?</p>
<p style="text-align: right;">Page 34687</p> <p>1 MR TIP SC: It is simply that my learned  2 friend Mr Mpofo must put facts to the Deputy President in a  3 balanced and complete way so that he can deal with it in an  4 equally balanced and complete way.  5 MR MPOFU: Yes, I'm happy to do it on the  6 basis that the Chairperson –  7 CHAIRPERSON: Mr Mpofo, maybe you can  8 reformulate it this way. It's not necessarily relevant who  9 fired what first. What is relevant is that, what you are  10 putting is that NUM officials did fire live ammunition and  11 injured two strikers on the Saturday morning and that,  12 unless they were acting in self-defence, which they say  13 they were of course, that would not have been covered by  14 the strike rules to which the witness has referred.  15 MR MPOFU: Yes.  16 CHAIRPERSON: Alright.  17 MR MPOFU: And I think in fairness the  18 witness has agreed. Is that correct?  19 MR RAMAPHOSA: Yes.  20 [11:21] MR MPOFU: And by the way, by the way,  21 Chairperson, apropos – I don't want to be sidetracked but  22 the so-called five shots that were heard turned out to be  23 an unrelated incident but we'll deal with that on another  24 day.  25 CHAIRPERSON: We don't know, the trouble</p>	<p style="text-align: right;">Page 34689</p> <p>1 MR RAMAPHOSA: Yes.  2 MR MPOFU: Ja, and that's a correct  3 reflection of what happened?  4 MR RAMAPHOSA: Well, I remember the  5 reference to it in the biography.  6 MR MPOFU: Yes.  7 MR RAMAPHOSA: It does not follow that  8 it's exactly what happened.  9 MR MPOFU: That is exactly why I'm asking  10 you the second question.  11 CHAIRPERSON: Mr Mpofo, just for  12 housekeeping in a proper form, you've given us a copy of an  13 extract from Professor Anthony Butler's biography of the  14 witness.  15 MR MPOFU: That is correct.  16 CHAIRPERSON: That is, that extract will  17 be JJJ9, it's page 22 and following of your bundle but  18 that won't go into the record. All that will go into the  19 record as an exhibit will be this extract you've given us  20 and you are quoting from, I think it's page 29 of the  21 bundle which is 195 of the published book.  22 MR MPOFU: Thank you, thank you. Okay,  23 let me put it this way. I see there is a distinction. I  24 was making the same distinction. You remember that that's  25 what it says in the biography. Now I'm saying in relation</p>

<p style="text-align: right;">Page 34690</p> <p>1 to the events generally that occurred during that strike, 2 you wouldn't quarrel with what the author says. 3 MR RAMAPHOSA: You know, I do quarrel. 4 MR MPOFU: Okay. 5 MR RAMAPHOSA: Because that's not 6 entirely the truth. 7 MR MPOFU: Oh, so there was no violence 8 from NUM members? 9 MR RAMAPHOSA: I'm not saying that there 10 was no violence. There was violence during that strike. A 11 number of people died. The description that he attached to 12 how people died and the kangaroo courts is in question 13 because he clearly has a particular view as a writer, as an 14 author. What he's saying has not been tested. 15 MR MPOFU: Okay, can we then say, going 16 again for a minimalist approach, that during that strike 17 there were some attacks and murders of non-strikers? 18 MR RAMAPHOSA: There were people who were 19 killed, yes, non-strikers as well. 20 MR MPOFU: Yes. 21 MR RAMAPHOSA: A number of people were 22 killed. 23 MR MPOFU: Yes, so you are not completely 24 unfamiliar with the notion of strike violence yourself. 25 MR RAMAPHOSA: I am very familiar with</p>	<p style="text-align: right;">Page 34692</p> <p>1 were being sent to people, including yourself, some of the 2 things that were being highlighted was the impact of the 3 strike financially on the shareholders obviously, correct? 4 MR RAMAPHOSA: Well, it could well be 5 articulated in the circular. My intervention had to do 6 with people losing their lives. I think we need to 7 understand that. 8 MR MPOFU: No, your intervention had 9 nothing to do with people losing their lives. It had 10 everything to do with your financial interests and the fact 11 that your shares were diminishing as a result of the 12 strike. 13 MR RAMAPHOSA: Mr – 14 MR MPOFU: That's what I'm putting to 15 you. 16 MR RAMAPHOSA: Mr Mpofo, I disagree with 17 you completely on that one. 18 MR MPOFU: Alright, let's get, let's go 19 there. You accept that, you have accepted that if Lonmin 20 had engaged with the strikers, the violence would not have 21 occurred. 22 MR RAMAPHOSA: Well, Lonmin needed to 23 engage with the strikers, negotiate with them, that I think 24 we've already covered. 25 MR MPOFU: And if they had done so, one</p>
<p style="text-align: right;">Page 34691</p> <p>1 it, Mr Mpofo. 2 MR MPOFU: Yes. And you are also 3 familiar with the COSATU study that says that increasingly 4 workers are regarding strike violence as an acceptable way 5 of perpetrating a strike, which is obviously undesirable 6 but that is what is happening? 7 MR RAMAPHOSA: I have read that. 8 MR MPOFU: Yes. And you know that in 9 recent times one of the most vicious strikes was, I think 10 29 people died, was by a COSATU union, I think it was 11 SATAWU, correct? 12 MR RAMAPHOSA: Yes. 13 MR MPOFU: Right. Now the bottom line 14 really in what I'm saying is that we are going to argue 15 that your actions in this whole saga were motivated by your 16 own financial interest. 17 MR RAMAPHOSA: Mm-mm. 18 MR MPOFU: Do you understand and do you 19 agree? 20 MR RAMAPHOSA: I hear you. I do not 21 agree. 22 MR MPOFU: So your actions had nothing to 23 do with your financial interests? 24 MR RAMAPHOSA: No, they did not. 25 MR MPOFU: And yet in the circulars that</p>	<p style="text-align: right;">Page 34693</p> <p>1 of the possible consequences is that the violence would not 2 have occurred? 3 MR RAMAPHOSA: I don't know whether it 4 would not have occurred. 5 MR MPOFU: But it's possible. You 6 conceded that yesterday. 7 MR RAMAPHOSA: Yes, it is. 8 MR MPOFU: It is possible, yes. Now you 9 see, that's because – that proposition was put, let me put 10 it this way, generously by Mr Budlender by saying that no 11 further deaths would have occurred, in other words alluding 12 to the deaths of the 34 miners. Do you remember that? 13 MR RAMAPHOSA: Yes, I do. 14 MR MPOFU: Ja. Now what I'm putting to 15 you is that Lonmin's obligation from all the discussions 16 that have taken place, I don't want to re-canvass all that 17 so I'll just put the proposition, if Lonmin did not adopt 18 what you have called and the NUM have called an inflexible 19 approach on the 10th of August, which is when the strikers 20 first marched to LPD and refused to talk to them, then all 21 the deaths could have been avoided. 22 CHAIRPERSON: [Microphone off, inaudible] 23 – the question badly. It's, the strikers marched to the 24 LPD and Lonmin refused to talk to them. You said "and 25 refused to talk to them." It's Lonmin refused to talk to</p>

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1 them –

2 MR MPOFU: Yes, at the top of the

3 sentence was Lonmin, so I was still talking about Lonmin.

4 CHAIRPERSON: No, anyway, I've added in

5 the sentence, the second –

6 MR MPOFU: Alright –

7 CHAIRPERSON: - which it needed.

8 MR MPOFU: - but anyway with that

9 addition do you accept what I'm saying?

10 MR RAMAPHOSA: Yes, yes.

11 MR MPOFU: Yes. So that this whole

12 notion of yours that you were intervening to stop

13 criminality, to stop violence and all that is actually

14 baseless because the very violence that resulted in the 10

15 people, would have been avoided had you performed your

16 duties to ensure that Lonmin talks to the strikers in

17 accordance with their duties that were shown to you this

18 morning. Do you understand that?

19 MR UNTERHALTER SC: Chair, that's a very,

20 very long set of questions, perhaps my learned friend –

21 MR MPOFU: I'm not asking you. I'm

22 asking the witness.

23 MR UNTERHALTER SC: Chair, I am making –

24 MR MPOFU: So why do you –

25 MR UNTERHALTER SC: Chair –

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1 CHAIRPERSON: Mr Mpofu, I think you must

2 give Mr Unterhalter an opportunity to raise his objection

3 without interrupting him –

4 MR MPOFU: No, well, the length of a

5 question has never been an objection, Chairperson.

6 CHAIRPERSON: Mr Mpofu, please, please.

7 Mr Unterhalter is still addressing me on the objection, he

8 is entitled to do that. I will call upon you to reply when

9 he's finished.

10 MR MPOFU: Thank you, Chair.

11 MR UNTERHALTER SC: Chair, my objection

12 is simply this, that it's unfair to a witness to ask

13 compound questions with multiple variants within them.

14 I'd ask my learned friend simply to ask one question at a

15 time and solicit the answers sequentially.

16 CHAIRPERSON: Mr Mpofu, that is correct.

17 We have frequently in this Commission disallowed, or I have

18 disallowed questions that are double, treble questions.

19 This one, I'm not sure how many questions were bound up in

20 this one. There is no objection, as I understand it, to

21 the substance of what you're asking. The request is that

22 you ask your questions singly. I think that sounds like a

23 valid request.

24 MR MPOFU: Chairperson, really, with the

25 greatest respect, I qualified the question by saying to the

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1 witness I don't want to re-canvass all the things that have

2 been re-canvassed, I'm going to compound a few propositions

3 in order to save time and I'm sure the witness understands

4 the question, you know.

5 MR RAMAPHOSA: Chair, I don't understand

6 the question. Could you rephrase the question?

7 MR MPOFU: Okay.

8 MR UNTERHALTER SC: Chair, and if I may,

9 just whilst we're having this intervention, it's precisely

10 the problem that by putting multiple propositions one after

11 the other and then –

12 CHAIRPERSON: I've agreed, I've agreed to

13 that point.

14 MR MPOFU: Ja.

15 CHAIRPERSON: And I have frequently,

16 before you joined us, ruled against questions which are not

17 single questions and said that questions must be put singly

18 and I reaffirm that ruling and Mr Mpofu will obey it, I'm

19 sure.

20 MR MPOFU: Thank you, Chairperson. You

21 have also said you don't want concurring judgments. Thank

22 you. So I'm saying to you, this is very important, you

23 have conceded that had Lonmin – or let me start a bit there

24 - you've conceded that you knew that all the employees

25 wanted was to be talked to. You knew that?

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1 MR RAMAPHOSA: That's a given.

2 MR MPOFU: Yes. You, of all people, know

3 that as you said, one of the achievements that you have

4 made in the past was to restore the dignity of mineworkers,

5 correct?

6 MR RAMAPHOSA: Yes.

7 MR MPOFU: And one of the ways in which

8 to assert the dignity of a person or a group of persons is

9 to talk to them. Whether you're going to agree with them

10 or not, as a skilled negotiator as you were described, you

11 would know that.

12 MR RAMAPHOSA: Yes.

13 MR MPOFU: Yes. So the inflexible stance

14 of Lonmin in refusing even to engage, not to give 12 500

15 but to talk to the workers, was an affront to their

16 dignity, among other things. Correct?

17 MR RAMAPHOSA: Yes.

18 MR MPOFU: Yes. Now what I'm saying is

19 that had that affront to their dignity not been perpetrated

20 on the 10th, because we know that the first death occurred

21 on the 12th, you know that, of the 10th.

22 MR RAMAPHOSA: Mm-mm.

23 MR MPOFU: Do you know that the first

24 death of those 10 occurred on the 12th of August?

25 MR RAMAPHOSA: Yes.



<p style="text-align: right;">Page 34698</p> <p>1 MR MPOFU: Yes, so had the affront to the 2 dignity of the workers not been perpetrated on the 10th and 3 they had been engaged, the ensuing deaths could have been 4 avoided. That's the only proposition I'm making. 5 MR UNTERHALTER SC: Chair, I'm not 6 certain how this witness can help on that issue of 7 causation. 8 MR RAMAPHOSA: I can't. 9 CHAIRPERSON: Isn't it for the witness to 10 say that he can't help us? 11 MR MPOFU: Yes. 12 CHAIRPERSON: Yes – 13 MR MPOFU: Please answer the question – 14 MR RAMAPHOSA: I was about to say I would 15 not be able to say – 16 MR MPOFU: Well, you were able to say 17 yesterday. You were able to say when it was put to you by 18 Mr Budlender that had the approach which was taken by Mr Da 19 Costa been followed, further deaths could have been 20 avoided. 21 MR UNTERHALTER SC: I think the 22 proposition was different. It was that – 23 CHAIRPERSON: The answer – sorry, Mr 24 Unterhalter. 25 MR MPOFU: Sorry.</p>	<p style="text-align: right;">Page 34700</p> <p>1 MR MPOFU: Yes. So that your crusade or 2 attempts to save lives would have been unnecessary had the 3 simple duty of engaging the workers been adhered to, 4 possibly, correct? 5 MR RAMAPHOSA: Possibly. The premise – 6 MR MPOFU: Sorry? 7 MR RAMAPHOSA: Ja. 8 MR MPOFU: Thank you, no, ja, you can – 9 MR RAMAPHOSA: Where I want to come in, 10 Mr Mpofo, is with all this having happened and the failure 11 to engage with the workers and then the deaths start, it 12 still does not justify how one seeks to address problems, 13 to go and kill other workers and kill them in the brutal 14 way that they were killed. It still does not justify it. 15 MR MPOFU: Mr Ramaphosa, you know me 16 better. I've said that we go a long way. I would never 17 justify the killing, brutal or otherwise, of any person. 18 MR RAMAPHOSA: Yes. 19 MR MPOFU: That's not the point I'm 20 making. I'm saying to you that even if we take – even 21 let's say for example your intervention, belated as it 22 might have been, had happened after the two, the first two 23 deaths had occurred on the 12th, brutal and so on. If your 24 intervention had been to say, well, there are these two 25 brutal deaths, let's engage with the workers, then I'm</p>
<p style="text-align: right;">Page 34699</p> <p>1 CHAIRPERSON: The question really was put 2 on the basis of "might," it was put on the basis that it 3 was a possibility – 4 MR MPOFU: Really – 5 CHAIRPERSON: It was a possibility. It's 6 one thing to say it's a possibility, it's another thing to 7 say it's a definite proposition. So if you put it on the 8 basis that you concede that it was a possibility then you 9 can proceed. 10 MR MPOFU: Yes, I'm putting it on that 11 basis. 12 MR RAMAPHOSA: If it's being put as a 13 possibility my answer would be yes. 14 MR MPOFU: Thank you. 15 MR RAMAPHOSA: But you have put it 16 forward as though it was a fact - 17 MR MPOFU: I am so – 18 MR RAMAPHOSA: - an absolute reality. 19 MR MPOFU: Okay, thanks. 20 MR RAMAPHOSA: It is a possibility. 21 MR MPOFU: It's a possibility – 22 MR RAMAPHOSA: Yes. 23 MR MPOFU: - the deaths could have been 24 avoided. 25 MR RAMAPHOSA: It is a possibility.</p>	<p style="text-align: right;">Page 34701</p> <p>1 saying possibly the further eight deaths might have been 2 avoided. You can't quarrel with that, given where we've 3 come from with this questioning. 4 MR RAMAPHOSA: Possibly. 5 MR MPOFU: Possibly, yes. So that that's 6 really the nub of the issue, Mr Ramaphosa, which is to say 7 had you expended a quarter of the energy that you expended 8 with multiple e-mails and airtime and phoning this one and 9 that one in ensuring that the simple duty of Lonmin to 10 affirm the dignity of the workers by engaging them, that 11 energy would have been much more usefully expended – thank 12 you, Chairperson – in that it would have achieved what you 13 claim was your purpose, which was to avoid further deaths. 14 I stop it there because I don't want to ask another long 15 question and I'm told length is a problem. 16 MR RAMAPHOSA: Yes. 17 CHAIRPERSON: No, it's simplicity that's 18 more the problem but, Mr Ramaphosa, can you answer the 19 question you've been asked? 20 MR RAMAPHOSA: Well, the answer that I 21 would give is that we had people on the ground who were 22 engaging with the workers in a variety of ways and clearly 23 there were weaknesses here and there in as far as engaging 24 with them in the form where they could sit down and 25 negotiate, and what I was then called upon to do, even if</p>

<p style="text-align: right;">Page 34702</p> <p>1 you look at all those e-mails to say could you assist us  2 because the situation is getting out of control, many more  3 people are being killed and that is where I entered because  4 I entered at the level at where they believed I could give  5 more effective help.  6 MR MPOFU: Yes. No, I accept that. All  7 I'm saying is, I'm making a simple proposition which says  8 you probably had easier access to the Lonmin people than  9 you had to government ministers, would that be a fair  10 statement?  11 MR RAMAPHOSA: I had access to both,  12 almost equally.  13 MR MPOFU: Almost equally?  14 MR RAMAPHOSA: Yes.  15 MR MPOFU: Well, okay. Let's accept that  16 –  17 MR RAMAPHOSA: But when it comes to the  18 Lonmin people, they are the executives on the ground  19 dealing with the matter.  20 MR MPOFU: Yes.  21 MR RAMAPHOSA: On a day to day basis, on  22 a hands-on basis.  23 MR MPOFU: Yes, that's fine. Let's  24 accept that you had equal access. Now all I'm saying is  25 that that equal access would have been better utilised to</p>	<p style="text-align: right;">Page 34704</p> <p>1 your questions.  2 MR MPOFU: Unfortunately.  3 MR RAMAPHOSA: And all I'm saying is that  4 there was a situation of great exigency, emergency, that  5 needed to be dealt with and that is what I was requested to  6 help in dealing with or solving.  7 MR MPOFU: Yes.  8 [11:41] MR RAMAPHOSA: On the ground they were  9 dealing with other issue – situation of interacting with  10 the workers and doing whatever needed to be done there.  11 MR MPOFU: No, I'm sorry, there's no  12 other issue. Your mission was to prevent the deaths of  13 people, wasn't it?  14 MR RAMAPHOSA: That is what I was doing  15 when I was interacting with all those people that I was  16 interacting with –  17 MR MPOFU: Yes.  18 MR RAMAPHOSA: - in the emails.  19 MR MPOFU: Ja, I'm simply putting a  20 proposition to you that says if it was true that your  21 mission was simply to prevent the deaths of people and it  22 had nothing to do with the fact that the strike was  23 affecting you in the pocket, then you would have taken the  24 easiest route in preventing those deaths, namely to ensure  25 that the strikers are engaged with.</p>
<p style="text-align: right;">Page 34703</p> <p>1 say to Lonmin management the obvious, that people are  2 dying, engage with them. In my experience as a former  3 trade unionist, if you engage with them, engaging with them  4 does not mean you give them what they want. You spoke  5 yesterday of give and take and so on and the workers have  6 given evidence here that they understood that, that the  7 employer might not have the 12 500 and so on and so on.  8 And that, I'm suggesting that instead of flying to Cape  9 Town and e-mailing this one and phoning that one, you  10 should have just performed the simple task – or let me put  11 it this way, had you performed that simple task then all  12 the deaths would have been avoided, could have been avoided  13 possibly.  14 MR RAMAPHOSA: No, no. All of us were  15 performing various tasks and I was performing the task that  16 I had been asked more directly to help in. I was  17 performing that and on the ground, and I'm repeating this a  18 few times now and I'm sure that you will also understand –  19 maybe I should ask you whether you agree but –  20 MR MPOFU: No, you are here to answer  21 questions –  22 MR RAMAPHOSA: I'm here to answer your  23 questions, fair enough.  24 MR MPOFU: - not to ask questions.  25 MR RAMAPHOSA: Ja, I'm here to answer</p>	<p style="text-align: right;">Page 34705</p> <p>1 MR RAMAPHOSA: Mr –  2 MR MPOFU: I'm sorry. Okay, you can  3 answer.  4 MR RAMAPHOSA: I did what I had to do in  5 terms of interacting with all those people who I believed  6 could bring the situation under stability. That is what we  7 were dealing with.  8 MR MPOFU: Well, also you knew that the  9 management was reticent, or reluctant to engage with the  10 workers because of the floodgates argument, that it would  11 open floodgates and there would be other groups of  12 employees also making these demands, and that by the way is  13 also a financial consideration, but the point I'm making is  14 that you knew about that.  15 MR RAMAPHOSA: I knew that in their  16 interaction with the employees they had put forward the  17 views that are articulated in the report that I got from Ms  18 Ncube.  19 MR MPOFU: No, I'm afraid it's more than  20 that. There's a new exhibit, Chairperson, which is the  21 extract from the minutes of Lonmin PLC board meeting held  22 on 25 July 2012.  23 CHAIRPERSON: [Microphone off, inaudible]  24 the documents we got? I don't remember reading it last  25 night.</p>

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1 MR MPOFU: Yes, it was only given  
 2 yesterday, Chairperson. It's just half a page.  
 3 CHAIRPERSON: What you've got in the list  
 4 that we got was under new documents it says item 20,  
 5 relevant Lonmin board minutes still to be specified.  
 6 MR MPOFU: And 21 –  
 7 CHAIRPERSON: I haven't got a 21.  
 8 MR MPOFU: Oh ja, no then you've got the  
 9 provisional list. There is a –  
 10 CHAIRPERSON: Anyway, something is now on  
 11 the screen.  
 12 MR MPOFU: That's the one.  
 13 CHAIRPERSON: I see, and there's now a  
 14 page 78 in my file. Alright, so that will be JJJ10,  
 15 extract minutes, this is the LPC company, Lonmin – I mean  
 16 sorry, Lonmin PLC, sorry - PLC dated 25 July.  
 17 MR MPOFU: Yes, thank you, Chairperson.  
 18 In that it says –  
 19 CHAIRPERSON: So that's JJJ10.  
 20 MR MPOFU: 10, thank you, Chairperson.  
 21 In that it says, I'll just read the first paragraph, this  
 22 is presumably the CEOs report to you, to the board,  
 23 "Ongoing tension between AMCU and NUM continue to pose the  
 24 biggest risk to production. Both unions are actively  
 25 recruiting members across the business with current

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1 membership of AMCU and NUM at 18% and 52% respectively. A  
 2 two-year wage agreement was in place with the NUM and  
 3 whilst limited recognition rights had been granted to AMCU  
 4 there was a possibility that AMCU could seek to demand a  
 5 different settlement ahead of the implementation of this  
 6 2012. In addition" – that's the important part – "rock  
 7 drill operators were seeking an additional increase to  
 8 align their remuneration with their counterparts at Impala  
 9 and Amplats. Given that we have wage bargaining structures  
 10 agreed with those unions entitled to collective bargaining  
 11 rights we were resisting" – underline resisting – "any such  
 12 separate deals as this would effectively open the door to  
 13 demands from a potentially unlimited number of other  
 14 parties, including conflicting and overlapping groupings of  
 15 workers." You knew about this.  
 16 MR RAMAPHOSA: Yes.  
 17 MR MPOFU: In fact you were at this  
 18 meeting.  
 19 MR RAMAPHOSA: I believe I would have  
 20 been, yes.  
 21 MR MPOFU: Well, you were. If you read  
 22 further down –  
 23 MR RAMAPHOSA: Yes, I was actually.  
 24 MR MPOFU: Yes, thank you. It actually  
 25 says that "Mr Farmer noted that the potential volatility of

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1 the situation between the two unions was apparent in a  
 2 recent incident where an NUM representative took a  
 3 handgun" –  
 4 MR RAMAPHOSA: Yes.  
 5 MR MPOFU: - "to Saffy Shaft. The police  
 6 were able to intervene before anyone was hurt. Mr Farmer  
 7 assured the meeting that there was police presence at the  
 8 hostels and there were regular checks for weapons.  
 9 However, the hostels only house approximately 10% of our  
 10 workforce. Mr Ramaphosa suggested that electronic security  
 11 devices be installed throughout the property to  
 12 automatically check for firearms and that serious  
 13 disciplinary action be taken against all individuals  
 14 involved in any kind of intimidation or violent behaviour."  
 15 Remember that?  
 16 MR RAMAPHOSA: That is correct.  
 17 MR MPOFU: Ja, so in that meeting, apart  
 18 from suggesting that they must erect electric fences and  
 19 all that –  
 20 MR RAMAPHOSA: Sure.  
 21 MR MPOFU: - you did not say this idea of  
 22 yours in the first paragraph that we must resist talking to  
 23 people because it might open floodgates is dangerous and  
 24 might lead to violence, did you?  
 25 MR RAMAPHOSA: Well, what I would have

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1 said clearly, minutes never record everything but what I  
 2 would have said is – well, what I did say is that we need  
 3 to take care to negotiate or to talk to the unions and if  
 4 anything explain to them the difficulty that this would  
 5 give rise to that you give an increase to one bargaining  
 6 unit and then it starts going, it starts creating problems  
 7 all round. That is the type of thing that any management  
 8 should be able to explain to workers and say may not be  
 9 able to do it now, but if we do it now this is the problem  
 10 that it would give rise to. That is the view that I put  
 11 forward.  
 12 MR MPOFU: Well –  
 13 MR RAMAPHOSA: But it's obviously not  
 14 recorded.  
 15 MR MPOFU: Well, it's not just, it's not  
 16 about not being recorded. If you had put that forward, if  
 17 indeed you had put that view forward and not been defeated  
 18 then on the 10th of August the stance that was adopted,  
 19 which I've said was causally linked to all the deaths, all  
 20 44 of the deaths, the stance that was taken could not have  
 21 been taken because what would have happened here, you would  
 22 have pooh-poohed this idea and it would have been clear  
 23 that this is not the approach to be taken and yet, and then  
 24 two weeks later or so when the workers came at LPD they  
 25 would not have been told that management is refusing to

<p style="text-align: right;">Page 34710</p> <p>1 talk to them, using the same lame excuse about agreements.  2 MR UNTERHALTER SC: Again, Chair, my  3 learned friend is simply giving an address. If he could  4 either ask questions or break down the propositions he  5 wants to put.  6 MR MPOFU: Ja. Are you unable to answer  7 the question that your counsel suspects –  8 CHAIRPERSON: No, no, Mr Mpofu –  9 MR RAMAPHOSA: I don't know what the  10 question is.  11 CHAIRPERSON: Mr Mpofu, it helps us –  12 MR MPOFU: The question is simple –  13 CHAIRPERSON: Sorry, Mr Mpofu, it helps  14 us when we read the record later to have single questions,  15 single answers, otherwise you ask a whole lot of questions  16 in one, get an answer yes. What's he saying yes to? So  17 please adhere to that ruling I gave.  18 MR MPOFU: Chairperson, honestly. The –  19 CHAIRPERSON: It was an honest ruling and  20 I'm sure you can deal with it honestly to –  21 MR MPOFU: Ja sure, you know I'm sure  22 many questions have been asked in this Commission much  23 longer and more multiple than that, but be that as it may.  24 I'm saying to you, okay, let me do it like this. Did you  25 or did you not raise an objection to this proposal?</p>	<p style="text-align: right;">Page 34712</p> <p>1 putting forward. You say that they refused to speak to  2 management – I mean to the workers.  3 MR MPOFU: Yes. No, no, I'm saying there  4 are two, there are only two possibilities; it's either they  5 refused to speak to the workers in line with what they had  6 presented here, or they refused to speak to them in  7 contravention of what you had raised.  8 MR RAMAPHOSA: Well, I think we would  9 need to look at the various sequences that followed,  10 whether meetings were held, any real attempt was made to  11 meet and at the executive management level whether they  12 sought to meet, and I know for sure that management were,  13 there was a time when they were even afraid to go to the  14 koppie, when they were called to go to the koppie they  15 thought that they would be attacked and killed.  16 MR MPOFU: Fair enough.  17 MR RAMAPHOSA: Ja.  18 MR MPOFU: You see, that excuse is even  19 lamer than the first one because by all accounts on the 10th  20 of – even in one of your emails on the 10th of August the  21 march was peaceful, so nobody was afraid of anything. So  22 that could never have been the reason why they did not  23 engage. The only reason they did not engage is because of  24 what is stated here.  25 MR RAMAPHOSA: Well, as I say, one would</p>
<p style="text-align: right;">Page 34711</p> <p>1 MR RAMAPHOSA: Well, I raised the issue  2 of discussing this problem that the CEO had raised with the  3 unions and articulating to them the difficulty and getting  4 them to understand how this increase in between wage  5 agreements would create a problem.  6 MR MPOFU: Then why did the board not  7 adopt your suggestion, or warning?  8 MR RAMAPHOSA: Well, I don't know. I was  9 just one board member out of many.  10 MR MPOFU: No, you can't not know, Mr  11 Ramaphosa. It's either you did not raise the thing, as the  12 minutes suggest, or you raised it and then you were  13 defeated. You can't say I don't know.  14 MR RAMAPHOSA: Well clearly it's  15 something that management would have needed to act on and  16 as it turns out, yes, they didn't act on it.  17 MR MPOFU: Alright.  18 MR RAMAPHOSA: Yes.  19 MR MPOFU: So then it's even worse. Then  20 it means that the management, despite your warning that the  21 path that they were following might be dangerous, on the  22 10th of August nevertheless refused to speak to the workers,  23 knowing that this might lead to violence. Is that your  24 evidence?  25 MR RAMAPHOSA: Well, that's what you're</p>	<p style="text-align: right;">Page 34713</p> <p>1 need to understand the number of attempts that were made on  2 both sides. I don't have line of sight of that right now,  3 to be quite truthful.  4 MR MPOFU: No, fair enough.  5 MR RAMAPHOSA: Ja.  6 MR MPOFU: That I understand. I'm simply  7 saying to you the evidence so far – you can take it from  8 me, otherwise I'm sure somebody will object – is that the  9 march of the 10th was peaceful and that management refused  10 to speak to the workers, and we are going to argue that  11 that was – I don't want to bore you with – that was the  12 event that then snowballed into a whole lot of tragic  13 events.  14 MR RAMAPHOSA: Okay.  15 MR MPOFU: I'm just summarising. You  16 understand that?  17 MR RAMAPHOSA: I understand.  18 MR MPOFU: Yes, and there was no question  19 of anybody being afraid of anything on the 10th. Actually  20 Mr Sinclair was the security person, I think he was  21 surprised that, you know, that's what he was told; go and  22 tell them we're not going to speak to them. I'm saying had  23 that not happened – well, you and I have agreed had that  24 not happened possibly the rest might have been –  25 MR RAMAPHOSA: Ja.</p>

<p style="text-align: right;">Page 34714</p> <p>1 MR MPOFU: - the day might have been 2 saved, correct? And we would not be sitting here. 3 MR RAMAPHOSA: I understand what you say. 4 MR MPOFU: Yes. So let's then go to the 5 question of – I just wanted to deal with, I've dealt with 6 the question of what I call the conflicts. I want to deal 7 now with the element of unlawfulness of some of the – 8 remember we said there were those activities and I'm going 9 to attach certain things to them, as it were. 10 MR RAMAPHOSA: Which conflicts are you 11 referring to? 12 MR MPOFU: The conflicts that you and I 13 have gone through of the lowest common denominator and all 14 that, that whole discussion, ANC, Lonmin, NUM, sitting on 15 both sides, shareholder – 16 CHAIRPERSON: That's the way you 17 presented it, but of course the conflict of interest 18 actually goes a bit further than that. You can, if you 19 wear three hats you can wear, provided they don't clash 20 with each other you can wear all of them simultaneously 21 when you engage in negotiations or do other things, but 22 it's the clash between your different interests which 23 causes you to either say I'm only acting in this capacity 24 or to recuse yourself completely because you can't, your 25 loyalty is to two sides and you can't –</p>	<p style="text-align: right;">Page 34716</p> <p>1 either advance the common purpose of everyone, it should 2 never be seen as a conflict of interest. You came to me 3 here yesterday as counsel and you said "I've been trying to 4 be certified as senior counsel. Is there anything you can 5 do for me?" 6 MR MPOFU: No, that's not true. 7 MR RAMAPHOSA: And I said – 8 MR MPOFU: No, that is untrue. You 9 mustn't – 10 CHAIRPERSON: No, Mr Mpofu, please 11 don't – 12 MR MPOFU: No, but he can't come here and 13 make up stories – 14 MR RAMAPHOSA: I haven't finished – 15 CHAIRPERSON: Mr Mpofu, please – 16 MR MPOFU: You can't make up stories. He 17 said to me – 18 CHAIRPERSON: Mr Mpofu – 19 MR MPOFU: - "Are you senior counsel 20 yet?" 21 CHAIRPERSON: Mr Mpofu, please – 22 MR MPOFU: Tell the story as it happened, 23 Mr Ramaphosa. 24 CHAIRPERSON: Mr Mpofu, please don't 25 interrupt the witness –</p>
<p style="text-align: right;">Page 34715</p> <p>1 MR MPOFU: Ja, but that's exactly – 2 CHAIRPERSON: But you didn't specify – 3 MR MPOFU: I did, Chairperson. I spoke 4 about being in NUM and being in a union at the same time as 5 being in management. What more – 6 CHAIRPERSON: Well, I'm just saying to 7 you that's the point that's inherent in a conflict of 8 interest. 9 MR MPOFU: Yes. 10 CHAIRPERSON: If you're satisfied you've 11 dealt with the point adequately and you'll be able to argue 12 it at the end, well then I won't stop you. 13 MR RAMAPHOSA: Mr Chairman, I do want to 14 respond to this issue of conflict of interest because it 15 does seem to be quite central in Mr Mpofu's cross- 16 examination and I would have thought that the issue of 17 conflict of interest, a problem of conflict of interest 18 really should only arise when one believes that there is, 19 the connection between the parties is improper, it's either 20 fraudulent or even, maybe even criminal. 21 MR MPOFU: Yes. 22 MR RAMAPHOSA: Now in all these 23 relationships that you tried to even suggest are incestuous 24 I would say that if someone is trying to help solve a 25 situation, a situation which would either save lives, would</p>	<p style="text-align: right;">Page 34717</p> <p>1 MR MPOFU: No, but he must not lie. 2 CHAIRPERSON: When he's finished – well, 3 that's a question we don't have to go into now. When he's 4 finished his answer you can deal with it, but if you're 5 going to interrupt, you're going to interrupt him or he 6 interrupt you, then things will get out of hand. 7 MR MPOFU: Ja. 8 CHAIRPERSON: Let's keep the temperature 9 down. Let him finish his answer and you can then deal with 10 it. 11 MR RAMAPHOSA: Mr Chairman, this – 12 MR MPOFU: Let him go on. 13 MR RAMAPHOSA: Mr Mpofu and I had a 14 fairly friendly discussion here yesterday and I asked him, 15 "Are you now senior counsel?" He said – 16 MR MPOFU: Now that's true. 17 MR RAMAPHOSA: He says, "Yes, I'm 18 supposed to be senior counsel." And I said, "Silk?" and he 19 said, "I'm supposed to be. All that remains is for the 20 President to sign the certificate that I should be clothed 21 with the proper robe of being a silk." 22 MR MPOFU: Yes. 23 MR RAMAPHOSA: And then he said – 24 MR MPOFU: And I showed you Ms Pillay. 25 MR RAMAPHOSA: And you even referred to</p>

<p style="text-align: right;">Page 34718</p> <p>1 Ms Pillay –</p> <p>2 MR MPOFU: Correct.</p> <p>3 MR RAMAPHOSA: And you said there are</p> <p>4 quite a number of other counsels who are waiting for the –</p> <p>5 MR MPOFU: Including, I said –</p> <p>6 MR RAMAPHOSA: - the certification.</p> <p>7 MR MPOFU: I referred to the Judge's son</p> <p>8 as well.</p> <p>9 MR RAMAPHOSA: And I said – and he said</p> <p>10 it awaits the President's signature, and he said, "Is there</p> <p>11 anything you can do for me?"</p> <p>12 MR MPOFU: No, I did not say that.</p> <p>13 MR RAMAPHOSA: And I said, "Dali" –</p> <p>14 CHAIRPERSON: Mr Mpofu, please, Mr</p> <p>15 Mpofu –</p> <p>16 MR MPOFU: No, but I can't allow somebody</p> <p>17 to lie about me, Chairperson.</p> <p>18 CHAIRPERSON: Mr Mpofu, I can't allow</p> <p>19 people to interrupt other people.</p> <p>20 MR MPOFU: Ja.</p> <p>21 CHAIRPERSON: If he's saying things you</p> <p>22 don't agree with I'll give you an opportunity. Don't –</p> <p>23 MR MPOFU: Ah okay, you say what you</p> <p>24 want.</p> <p>25 CHAIRPERSON: Don't interrupt him –</p>	<p style="text-align: right;">Page 34720</p> <p>1 and I even raised it with him and I said, "Oh, this could</p> <p>2 be a conflict of interest." But then I said, "It cannot be</p> <p>3 a conflict of interest because I do want you to get that</p> <p>4 certificate, I do want you to be a silk, properly with the</p> <p>5 proper certificate," and I say so even as I know that he's</p> <p>6 opposed to me, he's on another sort of side of the</p> <p>7 political divide. It is for me of great interest that his</p> <p>8 career and everything should be advanced. So there is no</p> <p>9 conflict of interest when it comes to that because there's</p> <p>10 nothing fraudulent about it, there's nothing criminal about</p> <p>11 it, and similarly when I intervened for the people to, the</p> <p>12 killings to stop. What he calls an incestuous relationship</p> <p>13 cannot be so because what I was seeking to do is to advance</p> <p>14 the common purpose of everyone and save lives, just like I</p> <p>15 am prepared to ensure that one intervenes so that he can</p> <p>16 get his certificate to be able to practice as a senior</p> <p>17 counsel. That's what I was referring to as on the issue of</p> <p>18 conflict of interest.</p> <p>19 MR MPOFU: Well, Mr Ramaphosa –</p> <p>20 CHAIRPERSON: Mr Mpofu, what do you want</p> <p>21 to say?</p> <p>22 MR MPOFU: Thank you, ja. Mr Ramaphosa,</p> <p>23 if you can misrepresent something that happened less than</p> <p>24 24 hours ago and tell an untruth about the sequence of what</p> <p>25 happened, then one shudders what, how much</p>
<p style="text-align: right;">Page 34719</p> <p>1 MR MPOFU: But you know that is not true.</p> <p>2 MR RAMAPHOSA: And I –</p> <p>3 CHAIRPERSON: Mr Mpofu, don't interrupt</p> <p>4 me either.</p> <p>5 MR MPOFU: Let him do what he wants.</p> <p>6 He's wasting my –</p> <p>7 CHAIRPERSON: Mr Mpofu, don't interrupt</p> <p>8 me either.</p> <p>9 MR MPOFU: Okay, well –</p> <p>10 CHAIRPERSON: Keep the temperature down.</p> <p>11 Let the witness continue his answer. If you don't like it</p> <p>12 and you want to put something to him you can do so.</p> <p>13 MR MPOFU: Let him –</p> <p>14 CHAIRPERSON: Otherwise we won't get</p> <p>15 anywhere with this –</p> <p>16 MR MPOFU: - say what he wants so that we</p> <p>17 can go back to the –</p> <p>18 CHAIRPERSON: You're interrupting me</p> <p>19 again –</p> <p>20 MR MPOFU: - [inaudible] murder which</p> <p>21 the –</p> <p>22 CHAIRPERSON: Mr Mpofu, you're</p> <p>23 interrupting the again. Please –</p> <p>24 MR RAMAPHOSA: The point I'm trying to</p> <p>25 get to, Mr Chairman, is this issue of conflict of interest,</p>	<p style="text-align: right;">Page 34721</p> <p>1 misrepresentation and falsification you can put to the</p> <p>2 events where your integrity and your criminality is in</p> <p>3 question. Now what I'm saying to you –</p> <p>4 CHAIRPERSON: Mr Mpofu, let's ask a</p> <p>5 question. If there's a conflict of fact between you as to</p> <p>6 what was said yesterday then it's a matter for evidence,</p> <p>7 but it's not an issue covered by our terms of reference –</p> <p>8 MR MPOFU: No.</p> <p>9 CHAIRPERSON: - and I don't propose to</p> <p>10 investigate it.</p> <p>11 MR MPOFU: Well, you allowed it,</p> <p>12 Chairperson, so I must have a say. You understand? If he</p> <p>13 can make falsifications about me in the public forum, the</p> <p>14 least you can allow, Chairperson, is for me to refute it,</p> <p>15 if you are a fair chairperson.</p> <p>16 CHAIRPERSON: Of course I am a fair</p> <p>17 chairperson.</p> <p>18 MR MPOFU: Oh, well that's what I</p> <p>19 thought.</p> <p>20 [12:01] CHAIRPERSON: I would have hoped that</p> <p>21 there'd be no question about it.</p> <p>22 MR MPOFU: Yes. No, there isn't,</p> <p>23 Chairperson. What, let me - I don't want to be</p> <p>24 sidetracked. What I said to the gentleman is that your</p> <p>25 son, I even said the judge's son, Ms Pillay sitting there</p>

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1 and myself [inaudible], are in the same position and he  
 2 said – I never said is there anything you can do, that is  
 3 just a fabrication. He then said I will speak to whoever  
 4 he is going to speak to, that's all. And he even said, and  
 5 I'm sure that the majority of those people are black people  
 6 who are on that list and therefore I will intervene. He  
 7 offered that himself gratuitously, so don't come and  
 8 patronise me, I did not ask you for any favours.

9 MR RAMAPHOSA: It's not a conflict of  
 10 interests.

11 MR MPOFU: Okay, fine. Now –

12 CHAIRPERSON: Okay, well, it's not going  
 13 to help us to resolve the issues before us. Anyway you've  
 14 replied to what –

15 MR MPOFU: Thank you, Chairperson.

16 CHAIRPERSON: - Mr Ramaphosa said and I  
 17 propose taking the tea adjournment now and then hopefully  
 18 after the break occasioned by the tea break, the last one  
 19 was supposed to be quarter of an hour, it was half an hour  
 20 because we had to discuss the programme for tomorrow and  
 21 the day after, this time let's stick to quarter of an hour.

22 MR MPOFU: Thank you, Chairperson.

23 [COMMISSION ADJOURNS COMMISSION RESUMES]

24 [12:21] CHAIRPERSON: The Commission resumes.  
 25 Before we carry on with the evidence I've been asked to

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1 address an appeal to those who are present in the chamber.  
 2 I see there are some people who aren't here and I'd be  
 3 grateful if those who are here would convey to them what  
 4 I'm now going to say. Apparently yesterday two people took  
 5 sets of headphones and then didn't hand them in when they  
 6 left. So at the moment we're three sets of headphones  
 7 short. We had a problem with a set of headphones earlier  
 8 and these headphones belong to the contractor and the  
 9 Department of Justice is going to have to recompense their  
 10 contractor if there are headphones missing. Now I'm sure  
 11 the people who took them didn't take them intending to keep  
 12 them permanently. It was probably just forgetfulness, but  
 13 I'd be grateful if those who took headphones yesterday, if  
 14 they're here in the chamber will please bring them back and  
 15 hand them in. And if anybody here knows anybody who did  
 16 that I'd be grateful if they'd tell them and pass on the  
 17 message. So that's the first thing I want to say. The  
 18 second thing I want to say is that Ms Michele Le Roux who  
 19 appears for the Human Rights Commission reminded me that  
 20 today is the second anniversary of those who died on the  
 21 12th, that's the Sunday, that's the two security guards and  
 22 the worker who went to Karee 4. And I think it's  
 23 appropriate for us to mark the occasion. I ask you all  
 24 please that we have a minute's silence and we all stand and  
 25 we'll pray that their souls may rest in peace with light

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1 perpetually shining on them. Thank you very much. And  
 2 those who are family members or loved ones of the three  
 3 persons I have mentioned who are present today we convey to  
 4 you once again our condolences and sympathy. Thank you Mr  
 5 –

6 MR MPOFU: Thank you, Chairperson, if you  
 7 allow may I just maybe implore you to use that very welcome  
 8 symbolic gesture in respect of all the victims so that –

9 CHAIRPERSON: I will do so tomorrow and  
 10 the rest of the week. Tomorrow, the 13th anniversary on the  
 11 Friday we will remember – sorry the 13th is for those who  
 12 died on the 13th, the 14th for those died, well actually Mr  
 13 Twala and we will also, of course, remember the 34 who died  
 14 on the 16th. All of them –

15 MR MPOFU: On Friday?

16 CHAIRPERSON: Yes, yes –

17 MR MPOFU: Because the 16th happens to  
 18 fall on the Saturday.

19 CHAIRPERSON: The anniversary is over the  
 20 weekend.

21 MR MPOFU: Yes, thanks, Chairperson.

22 CHAIRPERSON: But all 44 of them are very  
 23 much in our thoughts.

24 MR MPOFU: Thank you, Chairperson.

25 CHAIRPERSON: We certainly will observe,

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1 as closely as we can, the anniversary videos. And we also,  
 2 while I'm about it, when Bishop Seoka came he suggested  
 3 that some kind of a memorial should be put up at the scene  
 4 for the people concerned and there were crosses put up. I  
 5 understand many have been removed, but one of the matters  
 6 we will address in our reports is that something be done of  
 7 a permanent nature because as the witness himself said in  
 8 the article to which you referred us this was a horrific  
 9 act in the new South Africa –

10 MR MPOFU: That's correct, Chairperson.

11 CHAIRPERSON: - which must never be  
 12 forgotten and never be repeated.

13 MR MPOFU: Thank you, Chairperson. On  
 14 that we are at one. Now, Mr Ramaphosa.

15 MR RAMAPHOSA: Yes, Mr Mpofo.

16 MR MPOFU: You know time is of the  
 17 essence.

18 MR RAMAPHOSA: Indeed.

19 MR MPOFU: Ja you and I am sure will find  
 20 other terrain to deal with each other. So let's just  
 21 concentrate on the business of the Commission.

22 MR RAMAPHOSA: Heaven forbid that we deal  
 23 with each other, Mr Mpofo.

24 CHAIRPERSON: May I say that I hope that  
 25 despite what happens you will still put in a good word for

<p style="text-align: right;">Page 34726</p> <p>1 all those people who are waiting, for are waiting for -</p> <p>2 MR MPOFU: The Chairperson is conflicted</p> <p>3 because his -</p> <p>4 CHAIRPERSON: Conflict means there are</p> <p>5 conflicting interests then there's one interest that we all</p> <p>6 share, as you yourself pointed out and I hope that you'll</p> <p>7 do your best to ensure that the letters patterned that are</p> <p>8 awaiting the President's signature will soon be signed.</p> <p>9 Thank you very much.</p> <p>10 MR MPOFU: Thank you, Chairperson.</p> <p>11 MR RAMAPHOSA: Mr Chairman, I can assure</p> <p>12 you that I will not see it as a conflict of interest which</p> <p>13 is what I was trying to communicate and indeed it is</p> <p>14 something that needs to be addressed and we will duly put</p> <p>15 in a good word, Mr Mpofu that this should be done more so</p> <p>16 also that the judge has articulated it.</p> <p>17 MR MPOFU: Thank you, Chairperson.</p> <p>18 MR RAMAPHOSA: It makes a lot better,</p> <p>19 thank you very much. So we close the chapter on this</p> <p>20 matter.</p> <p>21 MR MPOFU: No we do.</p> <p>22 CHAIRPERSON: May I say one thing? We</p> <p>23 will not regard it as political intervention.</p> <p>24 MR MPOFU: The oppression. Thank you.</p> <p>25 No in curiousness I accept that term, Mr Ramaphosa. In</p>	<p style="text-align: right;">Page 34728</p> <p>1 financial interest in the company. Okay let me put it this</p> <p>2 way, people died at Impala a few months before that,</p> <p>3 correct?</p> <p>4 MR RAMAPHOSA: Yes that's what thought -</p> <p>5 MR MPOFU: You did not phone Minister</p> <p>6 Mthethwa, the do-gooder as a person who was just interested</p> <p>7 with the loss of life. You only did it when it was your</p> <p>8 company in which you had a financial interest. Is that</p> <p>9 correct?</p> <p>10 MR RAMAPHOSA: Now if you were to know,</p> <p>11 Mr Mpofu, when incidents like this do occur in the mining</p> <p>12 industry, which I've been associated with for nine years of</p> <p>13 my life, I do pick up the phone and talk to those who are</p> <p>14 in authority. So in the Impala situation I did speak to</p> <p>15 Minister Mthethwa as well and said the people who died</p> <p>16 there should not have died because the police presence was</p> <p>17 weak.</p> <p>18 MR MPOFU: Did you send emails left,</p> <p>19 right and centre?</p> <p>20 MR RAMAPHOSA: No I did not send emails</p> <p>21 because I did not get any emails from the company</p> <p>22 representatives of Impala. What initiated the emails was</p> <p>23 that I was dealing with a situation at closer range and</p> <p>24 received an email from one of my colleagues Thandika Ncube.</p> <p>25 MR MPOFU: Yes because this was a company</p>
<p style="text-align: right;">Page 34727</p> <p>1 fact the reason why I pointed to all those people was</p> <p>2 because you thought maybe it was just me and I said no</p> <p>3 it's not just me, there are others. So I assumed the</p> <p>4 President has not directed his wrath at me.</p> <p>5 MR RAMAPHOSA: The President likes you</p> <p>6 actually.</p> <p>7 MR MPOFU: Well I like him too. I won't</p> <p>8 quote what Budlender is saying. Now what I was saying, Mr</p> <p>9 Ramaphosa, about the conflict is, remember in fairness what</p> <p>10 I was saying to you is that you have a financial interest</p> <p>11 in this matter as a shareholder. That we accept, correct?</p> <p>12 MR RAMAPHOSA: In which matter, Mr Mpofu?</p> <p>13 MR MPOFU: When there is a strike as</p> <p>14 there was now in this case, one of the consequences, in</p> <p>15 fact it's not even just one of the consequences, it's the</p> <p>16 intention of the strikers is to hurt the shareholders.</p> <p>17 Isn't that self evident?</p> <p>18 MR RAMAPHOSA: Well if you put it that</p> <p>19 way. I mean I never saw this as a matter where one should</p> <p>20 protect one's financial interest. I was much more</p> <p>21 interested and you may not agree, with the loss of life.</p> <p>22 Financial interest is basically the very last thing if at</p> <p>23 all that one thinks of. Thank you.</p> <p>24 MR MPOFU: Yes. No, no that may well be</p> <p>25 so. We'll explore that. All I'm saying is that you had a</p>	<p style="text-align: right;">Page 34729</p> <p>1 in which you had a financial interest. Why is that so</p> <p>2 difficult to admit?</p> <p>3 MR RAMAPHOSA: Mr Mpofu, what I'm trying</p> <p>4 to say to you that I do have interests in what happens not</p> <p>5 only in one company in the mining industry, but in several</p> <p>6 other companies as well. But if it will please you the</p> <p>7 answer will be yes.</p> <p>8 MR MPOFU: It will please me very much</p> <p>9 especially since it is true. Also it is not so that on the</p> <p>10 25th of July you raised or objected or even raised a finger</p> <p>11 against the suggestion that the workers should not be</p> <p>12 spoken to lest we open the floodgates and have to pay more</p> <p>13 money to more people and so on. Because A, if that was</p> <p>14 true and it would have been reflected in the minutes, B, if</p> <p>15 it was not reflected in the minutes you would have</p> <p>16 corrected it in a subsequent meeting, not here in the</p> <p>17 Commission two years later.</p> <p>18 MR RAMAPHOSA: Mr Mpofu, not everything</p> <p>19 that it tends to be said is reflected in minutes, but I</p> <p>20 will leave it there because it's not an issue that I'm</p> <p>21 prepared to have a big argument over.</p> <p>22 MR MPOFU: No, it is an issue, Mr</p> <p>23 Ramaphosa, unfortunately. Remember that the gist of the</p> <p>24 criticism that we level against you centres around your</p> <p>25 failure to act in a particular way in relation to Lonmin</p>



<p style="text-align: right;">Page 34730</p> <p>1 and its management and so on which may possibly have 2 resulted in the deaths. There's nothing more important in 3 this Commission than anything which may have contributed to 4 avoiding the deaths of 44 people. There can't be anything 5 more important than that. Do you understand, do you accept 6 that? 7 MR RAMAPHOSA: I understand. 8 MR MPOFU: Ja, thank you. Now you – it's 9 correct isn't it that when you were talking about this 10 dastardly criminal act you were referring to the ten deaths 11 that had preceded the massacre, correct? 12 MR RAMAPHOSA: Yes. 13 MR MPOFU: Yes, you were referring to all 14 ten deaths. 15 MR RAMAPHOSA: Yes. 16 MR MPOFU: Indiscriminately. 17 MR RAMAPHOSA: Yes. 18 MR MPOFU: Did you really know the 19 details of how these people had died? 20 MR RAMAPHOSA: The detail was related to 21 me by the people in management, yes. 22 MR MPOFU: How did they say these ten 23 people had died? 24 MR RAMAPHOSA: As I was trying to 25 describe and explain yesterday that the two security guards</p>	<p style="text-align: right;">Page 34732</p> <p>1 police, correct? 2 MR RAMAPHOSA: Yes, I mean if they were 3 murdered, yes. 4 MR MPOFU: And those were dastardly acts. 5 MR RAMAPHOSA: Yes. 6 MR MPOFU: Yes. Now – and the shooting 7 of workers by NUM were dastardly acts too. 8 MR RAMAPHOSA: Yes. 9 MR MPOFU: Yes and so your prescription 10 to this problem was that the people who murdered those 11 three workers you must increase the number of the 12 murderers. Is that really what you - you understand what 13 I'm saying. You were saying if those people were murdered 14 by the police bring another 1000 so that they can murder 15 more which they did, by the way. 16 MR RAMAPHOSA: No I would say – 17 CHAIRPERSON: Mr Semenya. 18 MR SEMENYA SC: For one or other reason 19 one thought it imprudent to intervene, but clearly this 20 reference to police murdering people is inappropriate. My 21 learned colleague would know what murder is and what the 22 elements of that is. That the people were killed and some 23 of them at the hands of the police is common cause. He's 24 able to put his propositions without inflaming the 25 situation with conclusions that are not borne by the</p>
<p style="text-align: right;">Page 34731</p> <p>1 were on patrol or in their vehicle and their vehicle was 2 attacked and they were burnt and the two policemen as well. 3 I don't remember the exact, fuller detail, but what was 4 described to me sounded quite horrific. 5 MR MPOFU: Yes. Ja you see the thing is 6 your view was that these were criminal acts and these 7 people had been murdered, correct? 8 MR RAMAPHOSA: Yes. 9 MR MPOFU: And putting aside the two 10 policemen, the two security guards, six workers in your 11 language were murdered. 12 MR RAMAPHOSA: Yes. 13 MR MPOFU: Yes. Were you aware that to 14 use the word, three of those six of those workers, 50% half 15 of them were murdered by the police according to you? 16 MR RAMAPHOSA: I was aware that they were 17 killed. 18 MR MPOFU: No. 19 MR RAMAPHOSA: The detail of the police 20 or killing them I did not know. 21 MR MPOFU: No, Mr Ramaphosa, you said 22 that six workers were murdered. 23 MR RAMAPHOSA: Yes. 24 MR MPOFU: So you can't change now, so if 25 they were murdered, those three were murdered by the</p>	<p style="text-align: right;">Page 34733</p> <p>1 evidence. 2 MR MPOFU: Thank you, Chairperson. If I 3 may reply by referring to 13.2 of the witnesses statement. 4 He says "Arising from the violence which included the 5 brutal murder of six employees" and so on and so on. And 6 I'm talking about – 7 CHAIRPERSON: I think you've made the 8 point. 9 MR MPOFU: Thank you, Chairperson. 10 CHAIRPERSON: The witness described these 11 six employees, he includes the three people who were killed 12 on the 13th near the railway line as having been murdered. 13 That was his impression. 14 MR MPOFU: His words. 15 CHAIRPERSON: You put the question, as I 16 understand it, to the witness if they were murders then 17 they were by the police because they had been killed. Of 18 course it will be argued later we know that the witnesses 19 statement here that six of the employees were brutally 20 murdered the police will deny that and there'll be an 21 argument about it. So it's not a given that we can accept 22 as a fact. But anyway you've made the point. If the 23 witness is correct they were murdered by the police if they 24 were murdered. The witness may well have been erroneously 25 informed, the statement he makes may not be correct and</p>

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1 that's something we'll deal with later. But I think the  
 2 point's been made and we can move on.  
 3 MR MPOFU: Thank you, Chairperson. And  
 4 the real point, Mr Ramaphosa, you of all people you know  
 5 the difference between just killing and murder, correct?  
 6 MR RAMAPHOSA: I would know.  
 7 MR MPOFU: Yes, you would. But that's  
 8 not even the point I'm making. The point I'm making is  
 9 much more subtle than that. I'm saying what – the  
 10 prescription, what you are prescribing as a solution, you  
 11 claim your mission was to curtail any further violence.  
 12 What you are prescribing was to bring more of the police  
 13 who "had murdered" those three workers.  
 14 MR RAMAPHOSA: Mr Mpofo, I think I should  
 15 say and possibly confess that I did not know that some of  
 16 those people who were killed were killed by the police.  
 17 MR MPOFU: Aha.  
 18 MR RAMAPHOSA: What I do know is that the  
 19 ten people were killed prior to the tragedy that occurred  
 20 and as it was put to me and as it was described to me it  
 21 sounded quite horrific.  
 22 MR MPOFU: Yes.  
 23 MR RAMAPHOSA: Thank you.  
 24 MR MPOFU: Thank you very much. Ja  
 25 that's exactly what I suspected. You did not know the

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1 details of who had killed who, which side had shot which  
 2 side. You only knew that there were ten people who had  
 3 died.  
 4 MR RAMAPHOSA: I knew about some of the  
 5 people and we can go back to some of the communication that  
 6 I received at the time. So there was a description that  
 7 prompted me to react in the way that I did. And the  
 8 description was to the effect that two security guards and  
 9 two police people and some of the workers were actually  
 10 killed by people who came marching through and they killed  
 11 them. That's what I was sensitised to.  
 12 MR MPOFU: Ja. You had no idea even in  
 13 relation to the security guards what transpired, who shot  
 14 who first and all those kinds of things for you to conclude  
 15 that they were murdered, correct?  
 16 MR RAMAPHOSA: Well I had the general  
 17 picture, an idea that was put forward to me. So in terms  
 18 of actual detail, no.  
 19 MR MPOFU: You did not know?  
 20 MR RAMAPHOSA: Yes.  
 21 [12:40] MR MPOFU: And this detail such as it  
 22 was, was given to you by the one side of the picture, as it  
 23 were, by Lonmin, correct?  
 24 MR RAMAPHOSA: Yes, by people in the  
 25 management, yes.

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1 MR MPOFU: In the management of Lonmin.  
 2 So if you had bothered to, because if – I'm just trying to  
 3 show that this thing, this mission of yours of saving lives  
 4 is something that is untrue and basically made up after the  
 5 fact. Remember my theory, which you disagree with, is that  
 6 you were motivated by your personal financial interest.  
 7 MR RAMAPHOSA: Which I disagree with.  
 8 MR MPOFU: Of course. So I'm exploring –  
 9 we stand on opposite sides on this question, so I'm  
 10 exploring your theory of general benevolence and I'm saying  
 11 that firstly, you knew that just as a South African, a  
 12 prominent leader and so on, you knew that there are  
 13 questions about police brutality in South Africa, correct?  
 14 MR RAMAPHOSA: Yes.  
 15 MR MPOFU: You knew that there are  
 16 questions about some of the utterances made by ministers,  
 17 various Ministers of Police or people in that ministry,  
 18 shoot to kill, fight fire with fire, that kind, those kinds  
 19 of controversies were taking place in the political arena,  
 20 correct?  
 21 MR RAMAPHOSA: Yes.  
 22 MR MPOFU: And one of the key things  
 23 about those debates, at least as explained by Mr Mthethwa  
 24 here, is that the theory of fight fire with fire, use  
 25 maximum force, kill the bastards and all that was confined

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1 only for criminals. You understand this, you know that?  
 2 MR RAMAPHOSA: I know that and -  
 3 MR MPOFU: Yes, you knew it at the time.  
 4 MR RAMAPHOSA: - I should say that I, I  
 5 don't agree with fight fire with fire –  
 6 MR MPOFU: With it, yes.  
 7 MR RAMAPHOSA: No, I don't.  
 8 MR MPOFU: No, fair enough.  
 9 MR RAMAPHOSA: Ja.  
 10 MR MPOFU: But you knew that the  
 11 explanation, which I'm sure you and I wouldn't accept, was  
 12 that, you know, normal citizens mustn't worry about this  
 13 war talk, it's confined for criminals. That was the  
 14 excuse, valid or invalid.  
 15 MR RAMAPHOSA: Mm-mm.  
 16 MR MPOFU: You knew about that.  
 17 MR RAMAPHOSA: I've heard about it.  
 18 MR MPOFU: Yes. And so it's of, that is  
 19 why it was of crucial importance for you people at Lonmin  
 20 to ensure that the strikers are characterised as criminals  
 21 so that the full brutality of the South African Police  
 22 Services might be visited upon them.  
 23 MR SEMENYA SC: Chair –  
 24 MR MPOFU: Your mission to go to Cape  
 25 town was to ensure that the characterisation was changed,

<p style="text-align: right;">Page 34738</p> <p>1 was it not?</p> <p>2 MR SEMENYA SC: I object to that</p> <p>3 question.</p> <p>4 CHAIRPERSON: Mr Semenya has objected.</p> <p>5 MR SEMENYA SC: There is no basis on the</p> <p>6 evidence to say there was a full brutality of the police</p> <p>7 service on individuals.</p> <p>8 MR MPOFU: Well –</p> <p>9 MR SEMENYA SC: That's precisely why we</p> <p>10 have this Commission.</p> <p>11 MR MPOFU: No, Chairperson, with the</p> <p>12 greatest respect, I think Mr Semenya is just wasting my</p> <p>13 time. I'm making a submission, he can argue at the end of</p> <p>14 the case. I'm saying, making a very –</p> <p>15 CHAIRPERSON: The complaint is that</p> <p>16 you're putting something as a fact which is in fact</p> <p>17 controversial. If you reformulate the question to indicate</p> <p>18 that what you are putting is what, is your assertion which</p> <p>19 is controversial, then I don't think the objection can be</p> <p>20 upheld.</p> <p>21 MR MPOFU: Right, okay. So let's try</p> <p>22 again. Given the fact that the theory of maximum force,</p> <p>23 the theory of fight fire with fire, kill the bastards and</p> <p>24 all that has been explained on the basis that it only is</p> <p>25 attributed to criminals.</p>	<p style="text-align: right;">Page 34740</p> <p>1 and the previous Deputy Minister. That's the basis of the</p> <p>2 question.</p> <p>3 MR UNTERHALTER SC: Yes, but –</p> <p>4 MS NKOSI THOMAS SC: Chair –</p> <p>5 MR UNTERHALTER SC: The factual predicate</p> <p>6 for that contention has firstly to be laid by suggesting</p> <p>7 that either the witness or somebody in Lonmin had adopted</p> <p>8 that frame of reference and understood that that was what</p> <p>9 the police would be likely to do. That has not been</p> <p>10 established and it wouldn't even be –</p> <p>11 CHAIRPERSON: I'm sorry, Mr Unterhalter,</p> <p>12 the witness conceded that he had heard that talk of that</p> <p>13 kind. He was aware obviously of the statements that had</p> <p>14 been made, unfortunate statements as it happened that had</p> <p>15 been made and he said he didn't agree with them. All that</p> <p>16 Mr Mpofo is putting, I don't know what the answer will be</p> <p>17 but I think I can suspect, all Mr Mpofo is putting is that</p> <p>18 you knew about those statements, you knew the police had</p> <p>19 received those exhortations from people in high authority</p> <p>20 in the Department of Police – I think one of the National</p> <p>21 Commissioners of Police had said similar unfortunate things</p> <p>22 when he was in office – you knew about that and you used</p> <p>23 this expression “dastardly criminal conduct” to try to</p> <p>24 persuade the police to act in the way they'd been exhorted</p> <p>25 to act. That's the point, I don't think there's a problem</p>
<p style="text-align: right;">Page 34739</p> <p>1 MR RAMAPHOSA: Mm-mm.</p> <p>2 MR MPOFU: It becomes important when one</p> <p>3 is sending the police for them to know whether, on this</p> <p>4 occasion, they're going to be dealing with ordinary</p> <p>5 citizens or they're going to be dealing with criminals.</p> <p>6 You understand that?</p> <p>7 MS NKOSI THOMAS SC: Chairperson –</p> <p>8 MR UNTERHALTER SC: I'm afraid we now</p> <p>9 object. My learned friend articulates a theory, he doesn't</p> <p>10 explain who it is attributable to, who had the relevant</p> <p>11 belief at the relevant time and why that has a bearing on</p> <p>12 whatever actions were taken by Lonmin. Until those</p> <p>13 matters –</p> <p>14 CHAIRPERSON: We've had a lot of evidence</p> <p>15 – he's saying the statements by the Minister of Police, the</p> <p>16 then Deputy Minister of Police and so on and the point that</p> <p>17 Mr Mpofo is putting, if I can perhaps reformulate it, I</p> <p>18 think would be in order. What he's putting is, he is</p> <p>19 saying you, he is saying to the witness, whether it's</p> <p>20 correct or not of course is a matter that is not clear at</p> <p>21 this stage, he is putting to the witness, you use this</p> <p>22 terminology “dastardly criminals” because you wanted to put</p> <p>23 the people against whom you wanted the police to act, into</p> <p>24 the class of people against, in respect of whom they had</p> <p>25 been exhorted to act in a particular way by the Minister</p>	<p style="text-align: right;">Page 34741</p> <p>1 with that.</p> <p>2 MR UNTERHALTER SC: Well, if that is what</p> <p>3 is being asked –</p> <p>4 CHAIRPERSON: Ms Nkosi Thomas?</p> <p>5 MS NKOSI THOMAS SC: Thank you, Chair,</p> <p>6 just to bring balance to the question my learned friend</p> <p>7 should also refer to the fact that the evidence given by</p> <p>8 the Minister of Police was that statements such as fire</p> <p>9 with fire were directed at criminals within a particular</p> <p>10 context and that context is the cash in transit context and</p> <p>11 no other context. In other words, it wasn't meant to apply</p> <p>12 to criminals in their totality, as it were –</p> <p>13 CHAIRPERSON: That may apply to remarks</p> <p>14 that the Minister made but of course that point doesn't</p> <p>15 apply to remarks that the previous National Commissioner</p> <p>16 made or the Deputy Minister made, so subject to that</p> <p>17 excision, I'll allow the question to be put. It's been</p> <p>18 put.</p> <p>19 MR MPOFU: Thank you.</p> <p>20 CHAIRPERSON: The witness will answer.</p> <p>21 MR MPOFU: And in fairness to the</p> <p>22 witness, because of the debate, I can – because I know him</p> <p>23 well, I know that he didn't, he's lost the question.</p> <p>24 MR RAMAPHOSA: Oh, my –</p> <p>25 CHAIRPERSON: It's one thing to ask the</p>

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1 witness questions, it's another thing to insult the  
2 witness's intelligence. I'm quite sure the witness  
3 understands the question. Mr Ramaphosa, what's your  
4 answer? Did you use that expression, "dastardly  
5 criminals," in order to induce the police to think that  
6 they would be dealing with the kind of people who were  
7 subject to the exhortations that the police had, in years  
8 gone by, received from the Deputy Minister and the  
9 previous, yes, the previous National Commissioner?  
10 MR RAMAPHOSA: My answer to that is, no.  
11 MR MPOFU: Okay, now that the Chairperson  
12 has repeated it himself, I wanted to repeat it –  
13 MR RAMAPHOSA: I hadn't forgotten the  
14 question, Mr Mpofu, I just wanted to know whether you would  
15 be able to have the capability that the Judge has displayed  
16 of repeating it in the way that he did.  
17 MR MPOFU: Oh, ja, no. Look, it's Bantu  
18 education. Now I know why you have a white team. Okay,  
19 now what –  
20 CHAIRPERSON: Mr Mpofu, that is a  
21 thoroughly objectionable –  
22 MR MPOFU: I withdraw –  
23 CHAIRPERSON: I know it was said in jest  
24 but you know that's the kind of joke which doesn't go down  
25 well –

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1 MR MPOFU: It's not a joke, Chairperson,  
2 it's not a joke. It's a serious, the witness is seeking to  
3 insult my intelligence without an intervention from –  
4 MR RAMAPHOSA: No, that was –  
5 MR MPOFU: - said earlier that was –  
6 CHAIRPERSON: You're now making remarks  
7 about why he has the team he has and –  
8 MR MPOFU: No, no, I'm not going to take  
9 that from a witness.  
10 CHAIRPERSON: Anyway, let's move on.  
11 MR MPOFU: Thank you. I won't take that  
12 from any witness, but this is what I was saying to you, Mr  
13 Ramaphosa, if you – I'll try with my slow thinking to say  
14 it slowly – Mr Mthethwa once said, for example, we don't  
15 believe that when you are faced with criminals armed with  
16 sophisticated weapons that the police task would be to take  
17 out some human rights charter, because we are on the field,  
18 on the killing field where criminals are killing law  
19 abiding citizens and so on. So that they are able on the  
20 field to teach those people a lesson – sorry, to fight fire  
21 with fire. There's no other way on that. That's just one  
22 of the quotes and then he said on the 8th of July 2011,  
23 "There must be a good appreciation of the distinction  
24 between the need to use maximum force against violent  
25 criminals and minimum force in dealing with fellow

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1 citizens," which is what I was trying to explain to you in  
2 my broken English. And then he said in May 2012, "Police  
3 must return fire with fire" – I'm sorry, Chairperson, this  
4 is FFF14. I'm just, it's a collection of extracts which  
5 I'm reading for the benefit maybe of Mr Unterhalter. Those  
6 who have been here have heard it many times now. You can  
7 put it up, FFF14.  
8 CHAIRPERSON: Mr Mpofu, haven't you made  
9 the point, the witness says he was aware of these  
10 statements. He said he didn't agree with him but he was  
11 aware they were made and he said he didn't give, he didn't  
12 use that terminology in his e-mail in order to encourage  
13 the police to act in a way that they had been exhorted to  
14 act against the strikers. That's the point you made. You  
15 obviously don't agree with that, your submission will be –  
16 MR MPOFU: Okay.  
17 CHAIRPERSON: - that that denial is not –  
18 MR MPOFU: That's fine, that's fine.  
19 CHAIRPERSON: Can't we move on to  
20 something else now?  
21 MR MPOFU: No, I'm not going to move to  
22 something else. I'm going to show you that your answer, if  
23 that is indeed your answer, cannot hold any water. If you  
24 go to BBB4.2, this e-mail has been dealt with but I'm just  
25 going to zoom in on the thing that I'm talking about.

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1 "Hello Cyril," says the e-mail and then the first bullet,  
2 "The Minister was on radio today saying she'd been briefed  
3 that this was a wage dispute and management and unions  
4 should sit down and sort it out. Not sure who briefed her.  
5 We are waiting to talk to her (Roger) and although not too  
6 damaging, it is also not too helpful." Firstly, would you  
7 agree that as we have agreed repeatedly, that the  
8 management and unions or the workers should have sat down  
9 to sort this out?  
10 MR RAMAPHOSA: Yes, we have said so  
11 already.  
12 MR MPOFU: Yes, so how can something that  
13 is true be damaging? It can't be damaging because they  
14 should sit down and sort it out. Is that, you agree with  
15 that?  
16 MR RAMAPHOSA: I think you'll have to  
17 talk to Mr Albert Jameson –  
18 MR MPOFU: No.  
19 MR RAMAPHOSA: - about that.  
20 MR MPOFU: This e-mail was written to  
21 you.  
22 MR RAMAPHOSA: Yes.  
23 MR MPOFU: It was communicating to you.  
24 MR RAMAPHOSA: Yes.  
25 MR MPOFU: So this refer to Jameson story

<p style="text-align: right;">Page 34746</p> <p>1 is not going to help.</p> <p>2 MR RAMAPHOSA: It cannot be damaging,</p> <p>3 you're right.</p> <p>4 MR MPOFU: It can't be damaging.</p> <p>5 MR RAMAPHOSA: Mm-mm.</p> <p>6 MR MPOFU: Neither can it be unhelpful.</p> <p>7 MR RAMAPHOSA: Mm-mm.</p> <p>8 MR MPOFU: Okay, so this was wrong, what</p> <p>9 you were saying, correct?</p> <p>10 MR RAMAPHOSA: Yes.</p> <p>11 MR MPOFU: Yes. Now that we've got that</p> <p>12 out of the way he then says, proceeding on this wrong</p> <p>13 basis, "I have had two discussions with DG. In each case</p> <p>14 I've characterised this as not" – and N-O-T is in capital</p> <p>15 letters for emphasis – "NOT an industrial relations issue</p> <p>16 but," underline "but" as well, "a civil</p> <p>17 unrest/destabilisation/criminal issue that could not be</p> <p>18 resolved without political intervention and needs the</p> <p>19 situation to be stabilised by the police or army." So if</p> <p>20 the first part is wrong, the second part must be wrong as</p> <p>21 well because this can be resolved without political</p> <p>22 intervention by people sitting down. So again his second</p> <p>23 statement is incorrect.</p> <p>24 MR RAMAPHOSA: Well, I think if you take</p> <p>25 the whole e-mail into context, the very part that you have</p>	<p style="text-align: right;">Page 34748</p> <p>1 MR MPOFU: No, but what he's saying is</p> <p>2 that it is not an industrial relations issue, which is</p> <p>3 false, patently.</p> <p>4 MR RAMAPHOSA: Well, that's the view that</p> <p>5 he had come to.</p> <p>6 MR MPOFU: Yes, it's a view, it's a wrong</p> <p>7 view. It doesn't make it not a view. I'm saying it is</p> <p>8 incorrect.</p> <p>9 MR RAMAPHOSA: That's where we disagree.</p> <p>10 MR MPOFU: You're saying it's correct?</p> <p>11 MR RAMAPHOSA: Yes, I'm saying he was</p> <p>12 saying, he has characterised it as an issue that is now</p> <p>13 criminal and he then paints a picture of saying this is</p> <p>14 almost civil unrest because he is on the ground and he has</p> <p>15 seen what is happening.</p> <p>16 MR MPOFU: Yes, but the point of the</p> <p>17 matter is that he is asking you to act as a messenger to go</p> <p>18 and influence that change of characterisation.</p> <p>19 MR RAMAPHOSA: Yes.</p> <p>20 MR MPOFU: Which you gladly did.</p> <p>21 MR RAMAPHOSA: Yes.</p> <p>22 MR MPOFU: Ja, that's the point. The</p> <p>23 point is that this person mischaracterises the situation,</p> <p>24 asks you to swallow that mischaracterisation and go and</p> <p>25 spew it out to a Minister of state, which you do</p>
<p style="text-align: right;">Page 34747</p> <p>1 just read, to me raises quite an alarm. For a senior</p> <p>2 executive like that to then say this is civil unrest,</p> <p>3 destabilisation and a criminal issue and he even goes on to</p> <p>4 say this requires the police/the army, because that</p> <p>5 conjures up in one's head that this is a rather serious</p> <p>6 situation.</p> <p>7 MR MPOFU: Ja, and that's not my</p> <p>8 question, Mr Ramaphosa.</p> <p>9 MR RAMAPHOSA: So I cannot say that it's</p> <p>10 wrong.</p> <p>11 MR MPOFU: No.</p> <p>12 MR RAMAPHOSA: No.</p> <p>13 MR MPOFU: Surely you can say it's wrong</p> <p>14 if you've agreed with me that it's wrong that, or that it</p> <p>15 can be sorted out by sitting down.</p> <p>16 MR RAMAPHOSA: Yes, that's why I say</p> <p>17 you've got to look at everything in the broader context.</p> <p>18 MR MPOFU: Yes, exactly.</p> <p>19 MR RAMAPHOSA: And if you take the whole</p> <p>20 context into account, then you've got to say what he is</p> <p>21 saying with the second part, it's quite a serious</p> <p>22 situation.</p> <p>23 MR MPOFU: No.</p> <p>24 MR RAMAPHOSA: And that is what I reacted</p> <p>25 to.</p>	<p style="text-align: right;">Page 34749</p> <p>1 unquestioningly. That is not the role of black economic</p> <p>2 empowerment partners. You should have said to him, no,</p> <p>3 this is not a situation that needs the army to kill our</p> <p>4 people. This is an industrial relations issue, you must</p> <p>5 talk to those people, instead of running around, flying to</p> <p>6 Cape Town to ask Minister Shabangu to change her</p> <p>7 characterisation. That is a shame.</p> <p>8 MR UNTERHALTER SC: Again my learned</p> <p>9 friend is offering an address to the witness. Perhaps he</p> <p>10 could again break down the questions into parts.</p> <p>11 MR MPOFU: Okay.</p> <p>12 MR UNTERHALTER SC: So that they can be</p> <p>13 dealt with.</p> <p>14 MR MPOFU: Fair enough. Thank you,</p> <p>15 Chairperson. Do you accept that the whole notion of black</p> <p>16 economic empowerment is so that people like you must bring</p> <p>17 to the table the views, fresh views, fresh perspectives,</p> <p>18 fresh values, ubuntu and not things to go as they always</p> <p>19 have? Do you accept that?</p> <p>20 MR RAMAPHOSA: I would accept that –</p> <p>21 MR MPOFU: Yes.</p> <p>22 MR RAMAPHOSA: - but in this case we were</p> <p>23 dealing with actions of criminality, people were being</p> <p>24 killed and that, Mr Mpofu, has nothing to do with black</p> <p>25 economic empowerment.</p>

<p style="text-align: right;">Page 34750</p> <p>1 MR MPOFU: No.</p> <p>2 MR RAMAPHOSA: That is just plainly</p> <p>3 people getting killed and when people get killed, whether</p> <p>4 you are black or you are white or whether you are a black</p> <p>5 economic empowerment advocate or whatever, you've got to</p> <p>6 act and I acted to try and save the lives of further people</p> <p>7 being killed.</p> <p>8 MR MPOFU: Yes, but your actions – I have</p> <p>9 no problem with you acting, I'm saying the nature of your</p> <p>10 actions was to go to Cape Town and ensure that Minister</p> <p>11 Susan Shabangu also mischaracterises the situation so that</p> <p>12 the people, to make the conditions fertile for the people</p> <p>13 to be massacred, you did that.</p> <p>14 MR RAMAPHOSA: As an aside, Mr Mpofu, I</p> <p>15 did not go to Cape Town specially. I was on a scheduled</p> <p>16 trip –</p> <p>17 MR MPOFU: I know.</p> <p>18 MR RAMAPHOSA: - to Cape Town to go and</p> <p>19 launch the National Development Plan.</p> <p>20 MR MPOFU: Development Plan, on the 15th.</p> <p>21 MR RAMAPHOSA: That is what I was going</p> <p>22 for, so your throwing this remark about that I went to Cape</p> <p>23 Town specially is incorrect.</p> <p>24 MR MPOFU: No, that's not –</p> <p>25 MR SEMENYA SC: Chair –</p>	<p style="text-align: right;">Page 34752</p> <p>1 CHAIRPERSON: After you raised the point</p> <p>2 I looked at my dictionary and it talks about wanton</p> <p>3 killing, or murders. So if it was –</p> <p>4 MR MPOFU: No –</p> <p>5 CHAIRPERSON: That's what my dictionary</p> <p>6 says.</p> <p>7 MR MPOFU: Well, my dictionary doesn't.</p> <p>8 CHAIRPERSON: Well, I'll looked at the</p> <p>9 shortened Oxford –</p> <p>10 MR MPOFU: Anyway, it's fine. Everyone</p> <p>11 in the country except this Commission uses the word</p> <p>12 "massacre," so I will use – what must I say?</p> <p>13 CHAIRPERSON: Mr Mpofu, what I say –</p> <p>14 MR MPOFU: According to Mr Semenya it's</p> <p>15 an incident actually.</p> <p>16 CHAIRPERSON: No, no, no, say killings-</p> <p>17 MR MPOFU: That's what he has said</p> <p>18 before. But it's fine, let's –</p> <p>19 CHAIRPERSON: No, please –</p> <p>20 MR MPOFU: Let's call it whatever, but 34</p> <p>21 people were killed on the 16th of August, human beings like</p> <p>22 you and me. You accept that? Whatever we call it.</p> <p>23 MR RAMAPHOSA: Yes, indeed.</p> <p>24 MR MPOFU: Yes.</p> <p>25 MR RAMAPHOSA: Unfortunately people were</p>
<p style="text-align: right;">Page 34751</p> <p>1 MR MPOFU: You'll find that I've actually</p> <p>2 made that point to Minister Mthethwa.</p> <p>3 CHAIRPERSON: Mr Mpofu, Mr Semenya has</p> <p>4 got an objection.</p> <p>5 MR MPOFU: Oh, sorry.</p> <p>6 MR SEMENYA SC: In very repeated</p> <p>7 occasions, Chair, at your, at your ruling, the word</p> <p>8 "massacre" has always been an unfortunate word and I</p> <p>9 beseech you, Chair, that you –</p> <p>10 CHAIRPERSON: Yes, you're quite right. I</p> <p>11 hadn't actually concentrated on hearing that word. We have</p> <p>12 in the past, you'll remember, said whether it's a massacre</p> <p>13 is a matter we'll decide at the end of the day. If the</p> <p>14 police acted in self-defence then, on the appropriate</p> <p>15 definition of massacre I don't think it could be described.</p> <p>16 But if they didn't, if they had not acted in self defence</p> <p>17 then of course it would qualify.</p> <p>18 [13:00] The problem is always one can't put as an</p> <p>19 accepted fact something which is still the subject of</p> <p>20 debate before the Commission.</p> <p>21 MR MPOFU: Ja. No, Chairperson, I won't</p> <p>22 waste time on that. You and I have had our differences on</p> <p>23 that. "Massacre" is a simple English word that means the</p> <p>24 killing of many people. So it's got nothing to do with</p> <p>25 whether they're killed in self-defence or whatever –</p>	<p style="text-align: right;">Page 34753</p> <p>1 killed.</p> <p>2 MR MPOFU: Unfortunately.</p> <p>3 CHAIRPERSON: Mr Mpofu, it's now</p> <p>4 lunchtime.</p> <p>5 MR MPOFU: Yes.</p> <p>6 CHAIRPERSON: We'll now take the lunch</p> <p>7 adjournment. I plead with those people who make</p> <p>8 interjections and laugh loudly and so on to desist from</p> <p>9 that otherwise I'll have to implement what I said I'd do</p> <p>10 yesterday. I don't want to do that. I know everybody</p> <p>11 wants to be here to hear the evidence of Mr Ramaphosa, but</p> <p>12 we want to hear it in peace without disturbance.</p> <p>13 MR MPOFU: Thanks, Chairperson.</p> <p>14 CHAIRPERSON: We now adjourn until</p> <p>15 quarter to 2. I'm going to see – I hope we can be back at</p> <p>16 quarter to 2. I'm going to see some of the counsel in</p> <p>17 respect of the presentations to be presented tomorrow and</p> <p>18 partly on Thursday, so we may not be back at quarter to 2,</p> <p>19 but we'll try hard. Mr Budlender, do you want me to</p> <p>20 adjourn till 2 o'clock?</p> <p>21 MR BUDLENDER SC: Chair, let's aim for</p> <p>22 quarter to 2, on the understanding it may be a few minutes</p> <p>23 late.</p> <p>24 CHAIRPERSON: We now take the lunch</p> <p>25 adjournment.</p>

<p style="text-align: right;">Page 34754</p> <p>1 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>2 [13:53] CHAIRPERSON: The Commission resumes. We</p> <p>3 weren't able to get back exactly at quarter to, but we at</p> <p>4 least didn't have to wait until two o'clock. Mr Ramaphosa,</p> <p>5 you're still under oath. Mr Mpofo, do you have any more</p> <p>6 questions for the witness?</p> <p>7 MR MPOFU: [Microphone off, inaudible]</p> <p>8 CHAIRPERSON: - two or 200?</p> <p>9 MATAMELA CYRIL RAMAPHOSA: (s.u.o.)</p> <p>10 CROSS-EXAMINATION BY MS MPOFU (CONTD.):</p> <p>11 Thank you, Chairperson. Yes, Mr Ramaphosa, we were still</p> <p>12 busy with BBB, rather BBBB4.2 and just to recap what I was</p> <p>13 saying to you is that in these arrangements, and there</p> <p>14 should be no need for me to say this to you as chairman of</p> <p>15 the Transformation Committee and former chairperson of the</p> <p>16 Black Empowerment Commission, but insofar as it is</p> <p>17 necessary, one of the things that the BEE partners should</p> <p>18 bring to bear in that relationship is that, a different</p> <p>19 perspective, would you agree with that?</p> <p>20 MR RAMAPHOSA: Sometimes, yes.</p> <p>21 MR MPOFU: Yes. It's not just about</p> <p>22 money, it's not just about getting into your deal and</p> <p>23 making money but it's also about transforming, in the</p> <p>24 literal sense of the word, the organisation as well.</p> <p>25 Correct?</p>	<p style="text-align: right;">Page 34756</p> <p>1 National Union of Mineworkers, the general secretary of the</p> <p>2 National Union of Mineworkers had said as much, that in as</p> <p>3 far as the violence and the killings that were happening,</p> <p>4 we were facing a criminal action type of situation. So</p> <p>5 Jameson did not need to be convincing me and I did not need</p> <p>6 to be his conveyor belt in as far as this is concerned.</p> <p>7 MR MPOFU: Ja. Let me explain something</p> <p>8 to you and this is something that the Chairperson and I, I</p> <p>9 think, developed on this point to assist another witness.</p> <p>10 There are three situations which can be used to</p> <p>11 characterise what was happening there, okay? A would be to</p> <p>12 say it's only industrial action, okay. B would be to say</p> <p>13 it's only criminal acts and C would be to say it's a</p> <p>14 hybrid, it's obviously an industrial action which has</p> <p>15 developed criminal elements. Do you appreciate the</p> <p>16 distinction between those three?</p> <p>17 MR RAMAPHOSA: Yes.</p> <p>18 MR MPOFU: Ja. It was – if you look at</p> <p>19 it that way, inasmuch as let's assume then that, or rather</p> <p>20 let me put it to you that our argument is going to be that</p> <p>21 the situation that was obtaining there was the hybrid</p> <p>22 situation.</p> <p>23 MR RAMAPHOSA: Mm-mm.</p> <p>24 MR MPOFU: And therefore to say that it</p> <p>25 is not an industrial relations issue would be as false as</p>
<p style="text-align: right;">Page 34755</p> <p>1 MR RAMAPHOSA: Yes.</p> <p>2 MR MPOFU: Yes. So that a duty of a</p> <p>3 person in your position is not just to be a conveyor belt</p> <p>4 of the views of the Albert Jamesons of this world and</p> <p>5 simply take them to a Minister, you know, and say well,</p> <p>6 this is what Mr Albert Jameson's view is, therefore you</p> <p>7 must change your view. Surely that is against every</p> <p>8 principle that is what is to be expected of somebody in</p> <p>9 your position, I mean now just in your capacity as a</p> <p>10 partner, as a business partner. Could you, would that be a</p> <p>11 fair statement to make?</p> <p>12 MR RAMAPHOSA: Could be.</p> <p>13 MR MPOFU: Yes. Now therefore, what we</p> <p>14 are really saying here is that Mr Jameson may or may not</p> <p>15 hold a view legitimately that the situation can only be</p> <p>16 resolved or cannot be resolved without political</p> <p>17 intervention and needs this to be stabilised by the police</p> <p>18 or the army. Yours was to disabuse him of that notion</p> <p>19 rather than simply going to parrot that view with Minister</p> <p>20 Shabangu. Would that be a fair criticism?</p> <p>21 MR RAMAPHOSA: Well, let me say that in</p> <p>22 as far as the acts of violence and the deaths that were</p> <p>23 occurring, I agreed that these were acts of criminality.</p> <p>24 So it was not even a hard pushy for him to convince me and</p> <p>25 this had also been articulated by other people, the</p>	<p style="text-align: right;">Page 34757</p> <p>1 to say it is not a matter that involves criminality because</p> <p>2 it's a combination of both. Do you understand that?</p> <p>3 MR RAMAPHOSA: Mm-mm.</p> <p>4 MR MPOFU: Pardon?</p> <p>5 MR RAMAPHOSA: Yes, I understand.</p> <p>6 MR MPOFU: Yes. So that is the nub of</p> <p>7 the issue. If you look at the e-mail properly, that's</p> <p>8 exactly the fallacy that it portends. It says that the</p> <p>9 Minister says it's a labour issue which, it can be resolved</p> <p>10 and so on and so on, but it says in each case it should or</p> <p>11 rather "the DG in each case has characterised this as not</p> <p>12 an industrial relations issue but a civil/criminal" – in</p> <p>13 other words, it's one or the other, not the hybrid that you</p> <p>14 and I have agreed on. Do you understand?</p> <p>15 MR RAMAPHOSA: Well, I don't know whether</p> <p>16 I've agreed with you on the hybrid.</p> <p>17 MR MPOFU: Okay, fine. Well, of those A,</p> <p>18 B, C, do you think it was a hybrid or do you think it was</p> <p>19 only –</p> <p>20 MR RAMAPHOSA: The way I understand it,</p> <p>21 Mr Mpofo, is that this issue started off as an industrial –</p> <p>22 MR MPOFU: Relations issue.</p> <p>23 MR RAMAPHOSA: Yes, if one can put it</p> <p>24 that way.</p> <p>25 MR MPOFU: Sure.</p>

<p style="text-align: right;">Page 34758</p> <p>1 MR RAMAPHOSA: And it started mutating or 2 started becoming a very criminal issue where people were 3 now getting killed and the point is the killing of the 4 people was so bad and in a way so savage that the issue of 5 it being a labour relations issue at that time as people 6 are getting killed, becomes diluted because we are now 7 facing a criminal issue where people are getting killed. 8 MR MPOFU: Yes, that's fine, but just as 9 you have agreed that in the 1987 strike there were, people 10 were killed and non-strikers were killed, that was 11 criminal. You and I agree on that. 12 MR RAMAPHOSA: Mm-mm. 13 MR MPOFU: Okay? But that did not mutate 14 or transform or change the 1987 strike from stopping 15 becoming an industrial dispute, do you understand? So I'm 16 not denying, I'm the last person who is going to say, oh 17 no, there was no criminality. 18 MR RAMAPHOSA: Okay. 19 MR MPOFU: But I'm saying this was at the 20 root, the root cause of this was a labour dispute. 21 MR RAMAPHOSA: Yes, that's where it 22 started. 23 MR MPOFU: Yes. 24 MR RAMAPHOSA: Indeed. 25 MR MPOFU: No, that's where it started</p>	<p style="text-align: right;">Page 34760</p> <p>1 MR MPOFU: Yes. 2 MR RAMAPHOSA: - Mr Chairman, he makes 3 statements and you then lead me to say - 4 MR MPOFU: Yes, yes - 5 MR RAMAPHOSA: It's not really a 6 question. 7 MR MPOFU: Ja, ja, no - 8 MR RAMAPHOSA: And if it is a question, I 9 am then able to evaluate it and respond to it. 10 MR MPOFU: Okay. When I make the 11 statement, the minute I say at the end, "do you agree" you 12 must assume there's a question mark at the end of that. 13 That's the question, okay? 14 MR RAMAPHOSA: Okay. 15 MR MPOFU: Ja. I'm saying to you it was 16 false to characterise the situation as only a criminal act, 17 yes? 18 MR RAMAPHOSA: I think where - the 19 intervention that I was making, the intervention I was 20 making, Mr Mpofu, is directed at stopping the killings. 21 That is where I come in. 22 MR MPOFU: No. We've gone through that, 23 I don't want to go through that - 24 MR RAMAPHOSA: And that is how the 25 characterisation then comes that we are dealing here with</p>
<p style="text-align: right;">Page 34759</p> <p>1 and that's where it finished. It was resolved in September 2 by negotiation as a labour dispute. 3 MR RAMAPHOSA: Precisely. 4 MR MPOFU: Yes. 5 MR RAMAPHOSA: Yes. 6 MR MPOFU: It never stopped being a 7 labour dispute. The point here is that what Jameson and 8 you were doing incorrectly was to put pressure, or whatever 9 means you used, to say to Minister Susan Shabangu this is 10 not, capital letter N-O-T an industrial relations issue but 11 a criminal act, which is false. 12 MR RAMAPHOSA: Yes. 13 MR MPOFU: Okay. So okay, I'm glad at 14 least we agree on that. Yes? 15 MR RAMAPHOSA: What do we agree on, Mr 16 Mpofu? 17 MR MPOFU: Well, you just said yes, what 18 were you saying yes to? 19 MR RAMAPHOSA: I was saying yes to the 20 way you were articulating, I didn't know you were leading 21 to a question. What is the question? 22 MR MPOFU: Okay, I'm saying - I'll repeat 23 it gladly. 24 MR RAMAPHOSA: The problem is you make 25 statements, with respect -</p>	<p style="text-align: right;">Page 34761</p> <p>1 what Jameson has painted as civil unrest, destabilisation 2 and that's where I enter. 3 MR MPOFU: Yes, but my criticism is that 4 you swallowed that theory - 5 MR RAMAPHOSA: I may well have swallowed 6 the theory but that is the situation that I was confronted 7 with. 8 MR MPOFU: No - 9 MR RAMAPHOSA: The killings of people. 10 MR MPOFU: No - no, it's not that easy. 11 If you go to BBB4.5, you now yourself, let's put Jameson 12 out, you are saying when you are writing to him, "I thank 13 you for the consistent manner in which you are 14 characterising the current difficulties we are going 15 through." 16 MR RAMAPHOSA: Yes. 17 MR MPOFU: That's you now. 18 MR RAMAPHOSA: Indeed. 19 MR MPOFU: And then you say, "The 20 terrible events that have unfolded" - 21 CHAIRPERSON: Sorry - 22 MR MPOFU: I'm sorry, Chairperson. 23 CHAIRPERSON: Yes, thank you. What 24 happened was that all we had on the screen was the letter 25 from Mr Jameson. What you wanted was the letter to Mr</p>



<p style="text-align: right;">Page 34762</p> <p>1 Jameson, which is now on the screen.</p> <p>2 MR MPOFU: Thank you, Chairperson,</p> <p>3 thanks. You then, I won't reread the first part.</p> <p>4 MR RAMAPHOSA: Sure.</p> <p>5 MR MPOFU: You then say, "The terrible</p> <p>6 events that have unfolded cannot be described as a labour</p> <p>7 dispute."</p> <p>8 MR RAMAPHOSA: Yes.</p> <p>9 MR MPOFU: "They are plainly dastardly</p> <p>10 criminal acts and must be characterised as such." In other</p> <p>11 words what you are doing here again is to extend the false</p> <p>12 notion that it cannot be an industrial, sorry, a labour</p> <p>13 dispute which – I'm sorry, I'm going to come, no, we'll – I</p> <p>14 just want to, just to save time, to cross-refer you to what</p> <p>15 you said to Ms Ncube.</p> <p>16 MR RAMAPHOSA: Yes.</p> <p>17 MR MPOFU: At JJJ1 which runs counter to</p> <p>18 this new Ramaphosa/Jameson theory of saying it's not, but –</p> <p>19 you know what I mean about A, B, C. You said there, "This</p> <p>20 is a grave situation," which is probably true and then you</p> <p>21 say, "The problem with this situation is that we know the</p> <p>22 cause of it."</p> <p>23 MR RAMAPHOSA: Yes.</p> <p>24 MR MPOFU: "The real cause is the huge</p> <p>25 differential between the wages paid to the RDOs in other</p>	<p style="text-align: right;">Page 34764</p> <p>1 MR RAMAPHOSA: Okay.</p> <p>2 MR MPOFU: I'm saying you wouldn't, if</p> <p>3 you knew what the root cause is you, of all people, would</p> <p>4 not resolve a problem – you've been negotiating conflicts</p> <p>5 for a long time, you know that you can't resolve the</p> <p>6 problem just at the branches, the root cause, and ignore</p> <p>7 the root cause, what you have identified yourself as the</p> <p>8 root cause. It's like to resolve the conflict in South</p> <p>9 Africa by saying, well, these people must live here and</p> <p>10 these others must live here and not understanding that the</p> <p>11 root cause was apartheid and the root cause was the</p> <p>12 unfairness of the situation or, in your case, of the NUM as</p> <p>13 you always said in your speeches, the root cause was the</p> <p>14 migratory system and so on. You surely, surely, you don't</p> <p>15 expect anyone to believe that you, of all people, would</p> <p>16 ignore the root cause and say it is NOT, in capital</p> <p>17 letters, part of the problem.</p> <p>18 MR RAMAPHOSA: Mr Mpofu, I was dealing</p> <p>19 here with a situation where people were getting killed -</p> <p>20 MR MPOFU: Yes but –</p> <p>21 MR RAMAPHOSA: - and my intervention –</p> <p>22 MR MPOFU: I'm sorry, I'm sorry.</p> <p>23 MR RAMAPHOSA: My interventions were</p> <p>24 aimed at reducing further loss of life.</p> <p>25 MR MPOFU: Yes, and the only way you</p>
<p style="text-align: right;">Page 34763</p> <p>1 companies and what we pay them."</p> <p>2 MR RAMAPHOSA: Yes.</p> <p>3 MR MPOFU: That's the real cause, you</p> <p>4 knew that all along.</p> <p>5 MR RAMAPHOSA: Mm-mm.</p> <p>6 MR MPOFU: Okay, I call it the root</p> <p>7 cause. The real cause, root cause, it doesn't matter.</p> <p>8 MR RAMAPHOSA: It doesn't matter.</p> <p>9 MR MPOFU: Ja. Now if this is the real</p> <p>10 cause or the root cause of the situation, then surely it</p> <p>11 must be false to say it is not a labour relations issue.</p> <p>12 That must follow, please Mr Ramaphosa.</p> <p>13 MR RAMAPHOSA: Soon after that people</p> <p>14 start getting killed and that is what, as I said earlier,</p> <p>15 Mr Mpofu, what I am dealing with. I am trying to make an</p> <p>16 intervention for the prevention of further loss of life to</p> <p>17 other people. That is where I enter.</p> <p>18 MR MPOFU: Yes. That's –</p> <p>19 MR RAMAPHOSA: I don't know whether that</p> <p>20 is clear or not.</p> <p>21 MR MPOFU: No, it is very – it's been</p> <p>22 clear all along.</p> <p>23 MR RAMAPHOSA: Oh, okay.</p> <p>24 MR MPOFU: That's what you claim, which I</p> <p>25 am contesting.</p>	<p style="text-align: right;">Page 34765</p> <p>1 could have done that sensibly and logically was to address</p> <p>2 the root cause. Surely you must agree with that?</p> <p>3 MR RAMAPHOSA: We wanted to stabilise the</p> <p>4 situation and it's very clear what the objective was.</p> <p>5 Stabilise the situation, prevent further deaths, get the</p> <p>6 situation normalised and get those who are responsible for</p> <p>7 these acts of violence to be identified and to be arrested</p> <p>8 and thereafter, when the situation is normalised then you'd</p> <p>9 then be able to embark on various other initiatives that</p> <p>10 can more fully consolidate the situation.</p> <p>11 MR MPOFU: Ja, but I'm saying, Mr</p> <p>12 Ramaphosa, I understand that.</p> <p>13 MR RAMAPHOSA: Thank you, thank you.</p> <p>14 MR MPOFU: All I'm saying is that that is</p> <p>15 a cockeyed way of looking at the problem. If you really</p> <p>16 wanted to prevent further deaths you would have dealt with</p> <p>17 the underlying issue which you've identified here and say,</p> <p>18 let's resolve the – as you say in your nice article in the</p> <p>19 Sunday Times, "We must learn to resolve," - you use that</p> <p>20 word advisedly – "to resolve conflict." You can never</p> <p>21 resolve conflict by ignoring or turning a deliberate blind</p> <p>22 eye to the root cause. That you must –</p> <p>23 MR RAMAPHOSA: Mr Mpofu, it's possible</p> <p>24 that we differ on this one.</p> <p>25 MR MPOFU: Okay.</p>

<p style="text-align: right;">Page 34766</p> <p>1 MR RAMAPHOSA: Thank you.</p> <p>2 MR MPOFU: Anyway, that's what we're</p> <p>3 going to argue. And the issue, and in fairness I must put</p> <p>4 to you, is that if you do that then it means that</p> <p>5 effectively you were simply assimilated into the way of</p> <p>6 thinking of the Lonmin management and you did not play your</p> <p>7 duty or your role of using the skills that you've</p> <p>8 accumulated in order to change their thinking and to that</p> <p>9 extent you sold out.</p> <p>10 MR RAMAPHOSA: I do not agree with you.</p> <p>11 Thank you.</p> <p>12 MR MPOFU: And what is worse, and I'm</p> <p>13 sure you don't agree with me as well but I have to put it</p> <p>14 to you, what is worse is that you did this, what I have</p> <p>15 described, for financial gain and at the expense of the</p> <p>16 lives of the very people whose lives you were meant to</p> <p>17 transform and therefore it's like selling out for 30 pieces</p> <p>18 of silver.</p> <p>19 MR RAMAPHOSA: Mr Mpofo, I must tell you</p> <p>20 that financial gain was not really even an issue. Shanduka</p> <p>21 invested R300 million into this transaction or into this</p> <p>22 company and that R300 million was lost, was lost as early</p> <p>23 as 2011. So we were not even talking about financial gain.</p> <p>24 In fact it was a catastrophic financial loss for Shanduka.</p> <p>25 So financial gain was not even part of it. We did not even</p>	<p style="text-align: right;">Page 34768</p> <p>1 MR RAMAPHOSA: Yes.</p> <p>2 MR MPOFU: Yes.</p> <p>3 MR RAMAPHOSA: As a debt on fairly fair</p> <p>4 debt financing conditions and everything else.</p> <p>5 MR MPOFU: Vendor financing it is called.</p> <p>6 [14:13] MR RAMAPHOSA: And it is still owed.</p> <p>7 MR MPOFU: Yes.</p> <p>8 MR RAMAPHOSA: It's still money that's</p> <p>9 owed.</p> <p>10 MR MPOFU: Ja. Another reason for you to</p> <p>11 stay in. Ja, now I'm saying that you have said – and I'll</p> <p>12 paraphrase just to save time – when you were being</p> <p>13 interviewed by Mr Xolani Gwala after the Marikana issue –</p> <p>14 MR RAMAPHOSA: Yes.</p> <p>15 MR MPOFU: - he said to you, "What's</p> <p>16 wrong with Lonmin as an asset?" and your answer was, "It's</p> <p>17 a good asset. It has good fundamentals, but the cost</p> <p>18 structure has just been rising and the settlement that has</p> <p>19 now been reached is going to put pressure on the cost of</p> <p>20 the company." You remember saying that?</p> <p>21 MR RAMAPHOSA: Yes, as happens with any</p> <p>22 company –</p> <p>23 MR MPOFU: Yes.</p> <p>24 MR RAMAPHOSA: - whenever you increase</p> <p>25 your costs –</p>
<p style="text-align: right;">Page 34767</p> <p>1 expect to recoup any of the investment, nor do we even</p> <p>2 begin to think that we will recoup the investment.</p> <p>3 MR MPOFU: Yes.</p> <p>4 MR RAMAPHOSA: So to that effect it's</p> <p>5 written off.</p> <p>6 MR MPOFU: Well, I don't think it can be</p> <p>7 that easy. Surely by you staying in the investment you,</p> <p>8 (a) did not want to suffer any further financial loss or</p> <p>9 (b) were hoping that the situation would turn around.</p> <p>10 MR RAMAPHOSA: Well –</p> <p>11 MR MPOFU: Why would anyone, it would be</p> <p>12 thankless to stay –</p> <p>13 MR RAMAPHOSA: We have thought many times</p> <p>14 over whether we need to just abandon it and walk away or to</p> <p>15 stay in, so that's a debate that is still on the table.</p> <p>16 MR MPOFU: But for now you are in.</p> <p>17 MR RAMAPHOSA: Well, Shanduka is still</p> <p>18 in.</p> <p>19 MR MPOFU: Yes.</p> <p>20 MR RAMAPHOSA: Ja.</p> <p>21 MR MPOFU: And remember also that you</p> <p>22 paid R300 million for this investment.</p> <p>23 MR RAMAPHOSA: Yes.</p> <p>24 MR MPOFU: And 2.5 billion was actually</p> <p>25 provided by Lonmin.</p>	<p style="text-align: right;">Page 34769</p> <p>1 MR MPOFU: In other words –</p> <p>2 MR RAMAPHOSA: - it's a fundamental law</p> <p>3 of economics and finance that when you increase your cost</p> <p>4 it puts pressure on –</p> <p>5 MR MPOFU: Ja, even I am aware of that.</p> <p>6 MR RAMAPHOSA: Thank you.</p> <p>7 MR MPOFU: But I'm saying that the point</p> <p>8 here is that what you were articulating to Mr Gwala was</p> <p>9 that the increase that was given to the workers was</p> <p>10 inimical to your financial interest in that it was</p> <p>11 increasing the cost structure.</p> <p>12 MR RAMAPHOSA: No, it was not inimical.</p> <p>13 It was not inimical. It was an increase that was given,</p> <p>14 which was absorbed by the company. The company agreed that</p> <p>15 they would absorb it and if you do that you've got to</p> <p>16 realise that your costs go up. There's nothing wrong in</p> <p>17 talking about your cost structure going up.</p> <p>18 MR MPOFU: Okay.</p> <p>19 MR RAMAPHOSA: If you don't talk about it</p> <p>20 then you're not running a good business.</p> <p>21 MR MPOFU: Exactly, and that's exactly</p> <p>22 the point I'm making. The running of a good business is</p> <p>23 otherwise known as maximising profit, which is what you</p> <p>24 were after.</p> <p>25 MR RAMAPHOSA: Being in business means</p>

<p style="text-align: right;">Page 34770</p> <p>1 you want to make profit.  2 MR MPOFU: Yes.  3 MR RAMAPHOSA: And it's like being - for  4 instance in the public sector you want to make sure that  5 there is a good return for the citizens of the country so  6 that there can be social service delivery.  7 MR MPOFU: Yes.  8 MR RAMAPHOSA: It's as simple as all  9 that.  10 MR MPOFU: Yes, it is very simple.  11 MR RAMAPHOSA: Yes.  12 MR MPOFU: It's profit maximisation. You  13 don't get into business for any other reason except to  14 maximise your profit.  15 MR RAMAPHOSA: Fair enough.  16 MR MPOFU: Ja. Now the - and I don't  17 want to belabour this point. All I'm saying is that let's  18 just say you were not in favour of the wage settlement that  19 was reached with the workers.  20 MR RAMAPHOSA: There's no statement, no  21 position, no evidence to suggest that we were not in  22 favour. I have been in favour of getting workers to get a  23 really good wage.  24 MR MPOFU: No, but you spoke against that  25 settlement.</p>	<p style="text-align: right;">Page 34772</p> <p>1 the -  2 MR MPOFU: You can say it's a video that  3 has audio and video material of interviews with Mr  4 Ramaphosa.  5 CHAIRPERSON: Have you seen it?  6 MR UNTERHALTER SC: Could I ask my  7 learned friend to just identify it in the index we've  8 received?  9 MR MPOFU: Okay, yes. It's -  10 CHAIRPERSON: I've been given -  11 MR MPOFU: It's item number 24.  12 CHAIRPERSON: You see, I was given a  13 provisional list. I haven't got the latest one, but you  14 say it's item - so how is it described in the index?  15 MR MPOFU: Chairperson, we have -  16 actually if you look at the index -  17 CHAIRPERSON: Well I haven't got the  18 index up to 24. Just tell me what -  19 MR MPOFU: Alright, let me then start  20 with my learned friend. It's a combination of 23 and 24 on  21 the index. Chairperson, 23 is video interview with Mr  22 Rehad Desai, and 24 is audio interview with Xolani Gwala.  23 It's a combo of the two -  24 CHAIRPERSON: So combination of, is it TV  25 interviews, is it? Or radio, or TV and radio or what?</p>
<p style="text-align: right;">Page 34771</p> <p>1 MR RAMAPHOSA: I did not speak against  2 the settlement.  3 MR MPOFU: Okay, well this is what you  4 said.  5 CHAIRPERSON: Mr Mpofu, is this an  6 exhibit?  7 MR MPOFU: Yes, Chairperson -  8 CHAIRPERSON: What exhibit?  9 MR MPOFU: It's the - no, it's a new -  10 CHAIRPERSON: Oh, it's a new exhibit.  11 That's -  12 MR MPOFU: Audio video, yes. Audio  13 visual that we submitted. Maybe it can be played -  14 CHAIRPERSON: Well, it's not an exhibit,  15 it hasn't been given an exhibit number. That's not an  16 objection to it, but just -  17 MR MPOFU: No, fair enough, Chairperson.  18 CHAIRPERSON: - for me to enter it on the  19 record -  20 MR MPOFU: Yes, no.  21 CHAIRPERSON: So this will be JJJJ11, and  22 what is it? A video?  23 MR MPOFU: It's a video, it's kind of a  24 collage that -  25 CHAIRPERSON: How do I describe it in</p>	<p style="text-align: right;">Page 34773</p> <p>1 Combination of interviews -  2 MR MPOFU: Yes.  3 CHAIRPERSON: - by Mr Ramaphosa with Mr  4 Desai, Mr R Desai I think is his initial, and Mr - I think  5 he's X, isn't he? - he is Xolani, and Mr X Gwala.  6 MR MPOFU: Yes, and the -  7 CHAIRPERSON: Now if they're going to be  8 exhibits we've got to see them quickly. How long are they  9 going to take?  10 MR MPOFU: It's very short, Chairperson.  11 I'm going to do -  12 CHAIRPERSON: Well, let's have them  13 quickly then.  14 MR MPOFU: Yes. The exhibit itself is  15 long, but what I'm going to deal with -  16 CHAIRPERSON: [Microphone off, inaudible]  17 MR MPOFU: Ja, if you can go to 15:45 -  18 or no, no, I'm sorry - yes, it is, it is, 15:45.  19 CHAIRPERSON: It seems to be stuck - oh,  20 here we go. 15:45, you say.  21 MR MPOFU: Yes.  22 CHAIRPERSON: So we go back a little bit,  23 it's 15:56 at the moment. There we are. Alright, it's now  24 at 15:44. Let's watch the video.  25 MR MPOFU: Ja, let's maybe start at</p>

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1 15:40, just –

2 CHAIRPERSON: Go back a bit to 15:40,

3 please. 15:43, is that good enough?

4 MR MPOFU: Yes, that's good enough.

5 CHAIRPERSON: So let's watch it from now

6 on.

7 [VIDEO IS SHOWN]

8 [Microphone off, inaudible]

9 MR MPOFU: No –

10 CHAIRPERSON: I think that someone please

11 take a hand at preparing a transcript of that for us, so

12 that will also be part of the exhibit, it will be easier

13 for us to handle.

14 MR MPOFU: Yes, Chairperson –

15 CHAIRPERSON: That's just the little

16 piece that you wanted to refer to?

17 MR MPOFU: Yes, for now, yes thank you,

18 Chairperson, we'll ensure that that happens. You would

19 agree that that clip is not exactly indicating what you are

20 saying. It does indicate that you were not in favour – to

21 put it nicely – of the settlement.

22 MR RAMAPHOSA: No, that's not putting it

23 nicely at all. That is being taken out of context. What

24 we were talking about is the bargaining system in the

25 mining industry, that what you have is a situation where

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1 one company offers an increase and the others offer

2 completely different types of increases and that is what

3 leads to raising expectations amongst workers –

4 MR MPOFU: Yes.

5 MR RAMAPHOSA: - who work in the same

6 industry for different companies, and I still hold the view

7 that that is dangerous.

8 MR MPOFU: It's a bad thing.

9 MR RAMAPHOSA: It is not a good thing.

10 MR MPOFU: Yes.

11 MR RAMAPHOSA: It is actually very

12 dangerous. What you need to do is – and this is what we

13 were talking about, we were not talking specifically about

14 this. We were talking about its impact as well on the

15 whole collective bargaining system in the industry.

16 MR MPOFU: No, that's not true.

17 MR RAMAPHOSA: Okay.

18 MR MPOFU: You said that the Marikana

19 wage settlement –

20 MR RAMAPHOSA: Yes.

21 MR MPOFU: - sets a dangerous precedent.

22 There's only one Marikana – there was only one Marikana

23 wage settlement at that time. It was this one. It was not

24 – so all I'm saying is that you thought it was a bad thing,

25 for all the good reasons you've put –

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1 MR RAMAPHOSA: No, I would not agree that

2 that is what you mean for this one because we were talking

3 also about happened at Impala, what happened here as well,

4 and we were actually talking about a more centralised

5 collective bargaining system.

6 MR MPOFU: Anyway –

7 CHAIRPERSON: Mr Ramaphosa, may I ask you

8 this; you did talk about it being bad for the collective

9 bargaining system. Now you've already told us that you

10 believe there should be centralised –

11 MR RAMAPHOSA: Yes.

12 CHAIRPERSON: - wage bargaining in the

13 platinum industry, as there is in coal and gold.

14 MR RAMAPHOSA: Indeed.

15 CHAIRPERSON: But that isn't the case and

16 hasn't been the case for a long time.

17 MR RAMAPHOSA: Ja.

18 CHAIRPERSON: So there's still collective

19 bargaining in the platinum industry, even though it's not

20 centralised.

21 MR RAMAPHOSA: Yes.

22 CHAIRPERSON: But you said this

23 particular one was bad for the collective bargaining

24 system. Now what I want to know from you is this; were you

25 concerned about the contents of the agreement, or were you

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1 more concerned about the method and the consequences of

2 that particular method being adopted in future for the

3 collective bargaining system?

4 MR RAMAPHOSA: It is more the latter that

5 I was more concerned about.

6 MR MPOFU: Yes, well the latter, the

7 former, the whatever, but it was not a good thing, correct?

8 MR RAMAPHOSA: As –

9 CHAIRPERSON: The latter was the method,

10 you see.

11 MR MPOFU: Ja, but alright –

12 CHAIRPERSON: So that is, in other words

13 were you –

14 MR MPOFU: Whether it –

15 CHAIRPERSON: Sorry, let me just, just to

16 get clarity. Were you opposed to the RDOs getting the

17 extra money which the agreement involved, or were you

18 opposed to the fact that it was got in a particular manner

19 outside the pre-existing collective bargaining system with

20 possible knock-on effects for the future?

21 MR RAMAPHOSA: I was not opposed to the

22 RDO getting extra increases. I was more concerned about

23 the system itself that had given rise to this because it

24 needs to be wholesome and it needs to apply right across

25 the industry to avoid precisely this problem that we had,

<p style="text-align: right;">Page 34778</p> <p>1 and it had started at Impala and Impala had gone off on 2 their own and granted this increase. It would have been a 3 lot better if all companies had agreed that this should be 4 the going rate for all the RDOs and all of them had agreed 5 to pay that and we would not have had this problem. 6 MR MPOFU: No, with respect, that's 7 wrong. I think that is untruthful because you've now 8 forgotten the first clip that we played where you say that 9 the settlement has now been reached, it's going to put 10 pressure on the cost of the company. 11 MR RAMAPHOSA: Yeah, but it is true. Any 12 settlement does put pressure and the companies, it behaves 13 on the company thereafter to realign all their cost centres 14 and cost structures, sure. 15 MR MPOFU: But for the workers who will 16 get the money it's a good thing, obviously. 17 MR RAMAPHOSA: It is a good thing – 18 MR MPOFU: Ja, and for the – 19 MR RAMAPHOSA: It is a good thing, and 20 for the company – 21 MR MPOFU: - company that it's saying it 22 impacts on the cost structure. 23 MR RAMAPHOSA: It does impact on the cost 24 structure and I think, you know, if, one needs to 25 understand how companies work.</p>	<p style="text-align: right;">Page 34780</p> <p>1 or see it, depending on what it is – 2 MR MPOFU: Yes, thank you. 3 CHAIRPERSON: And then we'll best be able 4 to judge – 5 MR MPOFU: Yes. 6 CHAIRPERSON: - how accurate your summary 7 is. I'm not suggesting it's inaccurate, but we'll best be 8 able to judge. 9 MR MPOFU: Yes, no fair enough. If you 10 go to 11:40 till 12:00. 11 [VIDEO IS SHOWN] 12 CHAIRPERSON: Can you please stop this 13 one? This is – it's interesting to hear about the glass is 14 half full and the glass is half empty, but it's not 15 relevant to the question you're being asked. 16 MR MPOFU: No. 17 CHAIRPERSON: So let's get the relevant 18 section – 19 MR MPOFU: Yes, Chairperson, I'll – 20 CHAIRPERSON: - which doesn't deal with 21 half empty or half full glasses, but deals with something 22 else. 23 MR MPOFU: No, it deals with how the 24 settlement puts pressure on the cost of the company. We 25 will find it. We'll come back to it, Chairperson, with</p>
<p style="text-align: right;">Page 34779</p> <p>1 MR MPOFU: Oh. 2 MR RAMAPHOSA: I mean companies need to 3 watch their cost structure all the time. 4 MR MPOFU: Yes, and it's a bad thing to 5 increase your cost structure if you are a company. Even I 6 understand that. 7 MR RAMAPHOSA: No, it's not necessarily a 8 bad thing, but there are things – 9 MR MPOFU: How do you maximise profits? 10 MR RAMAPHOSA: You need to look at all 11 these – 12 CHAIRPERSON: Please don't interrupt him. 13 MR MPOFU: Yes, Chairperson. 14 CHAIRPERSON: Carry on, Mr Ramaphosa. 15 MR RAMAPHOSA: - cost structures. 16 MR MPOFU: Ja, listen – 17 CHAIRPERSON: Mr Mpofu, sorry, before you 18 carry on, you talked about the other clip. Now in fact 19 we've only heard this one. You did give us a quotation 20 from the other – 21 MR MPOFU: That's true, Chairperson. 22 CHAIRPERSON: But we didn't actually hear 23 it. 24 MR MPOFU: Fair enough. 25 CHAIRPERSON: I think we should hear it</p>	<p style="text-align: right;">Page 34781</p> <p>1 your permission. Now this was a remarkable achievement, if 2 I may say so. 3 MR RAMAPHOSA: Which one, Mr Mpofu? 4 MR MPOFU: The one I'm just about to tell 5 you – 6 MR RAMAPHOSA: The half full glass or the 7 full glass? 8 MR MPOFU: No, the half full glass is 9 irrelevant. 10 MR RAMAPHOSA: Okay. 11 CHAIRPERSON: He's going to tell us now. 12 He's going to let us into the secret now of what the 13 achievement is that he's talking about. What's this 14 achievement, Mr Mpofu? 15 MR MPOFU: Well, if I'm allowed to 16 speak – 17 CHAIRPERSON: Is it an underachievement 18 or an overachievement? What are you dealing with? 19 MR MPOFU: It's an overachievement in 20 this case. 21 MR RAMAPHOSA: On whose part? 22 MR MPOFU: On yours, Mr Ramaphosa. 23 MR RAMAPHOSA: Enlighten me. 24 MR MPOFU: Yes. To manage to change a 25 Minister of Minerals in the space of about four to five</p>

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1 hours from her characterisation of the situation is an  
 2 overachievement. Wouldn't you agree? Not everyone can  
 3 manage that, to get a Minister of State to change, make a  
 4 360 degree turn –  
 5 CHAIRPERSON: No, a 360 degree is back  
 6 where she started.  
 7 MR MPOFU: Okay, yes. 180.  
 8 CHAIRPERSON: [Microphone off, inaudible]  
 9 MR MPOFU: Yes.  
 10 CHAIRPERSON: You're referring to BBB4.2.  
 11 MR MPOFU: Yes.  
 12 CHAIRPERSON: Quote, "The Minister was on  
 13 radio today saying she'd been briefed that this was a wage  
 14 dispute and management and unions should sit down and sort  
 15 it out."  
 16 MR MPOFU: Right.  
 17 CHAIRPERSON: Then that was the –  
 18 MR MPOFU: That's the one.  
 19 CHAIRPERSON: - caused the witness to  
 20 speak to her.  
 21 MR MPOFU: Yes, that's correct. Yes,  
 22 that was what I call the conveyor belt, the message where  
 23 the witness was a messenger, but be that as it may, it was  
 24 a remarkable feat. Would you agree?  
 25 MR RAMAPHOSA: I wouldn't call it a

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1 remarkable feat. No, I wouldn't call it remarkable feat.  
 2 MR MPOFU: Ja, I suppose it's where it  
 3 comes from. Well, some of us don't have that amount of  
 4 influence. So for a normal person it would be remarkable,  
 5 who didn't wield as much power as you do, would it?  
 6 MR RAMAPHOSA: For a normal person? I  
 7 don't know what that means, Mr Mpofo.  
 8 MR MPOFU: Well, for someone other than a  
 9 person who wields an enormous amount of political power to  
 10 change a minister's view in the space of four to five hours  
 11 would be a remarkable achievement. Would you agree?  
 12 MR RAMAPHOSA: No, I wouldn't agree.  
 13 MR MPOFU: So you think any citizen of  
 14 South Africa can just "sommer" hear a minister saying  
 15 something on the radio at 9 and within a matter of hours  
 16 that same minister somehow changes the view completely? Is  
 17 it –  
 18 MR RAMAPHOSA: Yes, it is possible.  
 19 MR MPOFU: It's possible?  
 20 MR RAMAPHOSA: Yes.  
 21 MR MPOFU: I want to live in that  
 22 country.  
 23 CHAIRPERSON: Wouldn't it depend on how  
 24 erroneous the view the minister had originally expressed  
 25 was and what degree of extra facts had to be put to the

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1 minister to persuade the minister that her original view  
 2 was erroneous, and where –  
 3 MR MPOFU: Well, Chairperson –  
 4 CHAIRPERSON: - where what she said what  
 5 she'd been briefed it mightn't be so difficult to rebrief  
 6 her and give her extra facts that hadn't been brought to  
 7 her attention earlier. I'm –  
 8 MR MPOFU: No, that's –  
 9 CHAIRPERSON: So it's not necessarily a  
 10 remarkable feat –  
 11 MR MPOFU: It's a fair question,  
 12 Chairperson –  
 13 CHAIRPERSON: - it depends on the facts,  
 14 doesn't it?  
 15 MR MPOFU: Ja, it's a fair question. The  
 16 answer to that is that that issue doesn't even arise. An  
 17 average citizen would not even be able to speak to the  
 18 minister in that short space of time. But the –  
 19 CHAIRPERSON: Then the feat is getting  
 20 the access to the minister –  
 21 MR MPOFU: It's either the –  
 22 CHAIRPERSON: - rather than persuading  
 23 the minister –  
 24 MR MPOFU: No, it's both –  
 25 CHAIRPERSON: - to come to other

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1 insights.  
 2 MR MPOFU: Well, it's both. It's both,  
 3 because you can't do the one without the other. So if you  
 4 can't even reach her then you can't influence her. He, the  
 5 witness managed both feats; to speak to her, to have a  
 6 meeting with her and to change her view. Actually there  
 7 are three remarkable feats in the space of a few hours, and  
 8 you say that an average citizen can achieve this?  
 9 MR RAMAPHOSA: Yes.  
 10 MR MPOFU: Alright, as I said I'd like to  
 11 live in that country. No, the reality, Mr Ramaphosa, and  
 12 you know it, is that you achieved that purely because of  
 13 the political power and the political influence that you  
 14 wield, which your partners at Lonmin were sending you to  
 15 wield and which you did so dutifully. Isn't that correct?  
 16 MR RAMAPHOSA: No.  
 17 MR MPOFU: And you said yesterday that  
 18 they asked you to go to speak to the Minister because you  
 19 can. Is that correct? Something like that.  
 20 MR RAMAPHOSA: Ja, they know –  
 21 MR MPOFU: Ja.  
 22 MR RAMAPHOSA: - I have the ability to  
 23 talk to the Minister.  
 24 MR MPOFU: Yes.  
 25 MR RAMAPHOSA: I have the ability to talk

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1 to people.

2 MR MPOFU: Ja, which they don't have as

3 average citizens.

4 MR RAMAPHOSA: No, they also have.

5 MR MPOFU: Oh, then why on earth if Mr

6 Phillimore wanted Ms Shabangu to change her

7 characterisation, like a normal citizen like me, why did he

8 need you to be his messenger?

9 MR RAMAPHOSA: Maybe you should ask Mr

10 Phillimore.

11 MR MPOFU: Well, you should have asked Mr

12 Phillimore. That's what I'm saying; why did you say, if

13 you are truthful - which I suggest you are not - in saying

14 that anybody can do this, then you should have said Mr

15 Phillimore, what are you talking about?

16 MR RAMAPHOSA: Yes, I –

17 MR MPOFU: Just pick up the phone, fly to

18 Cape Town and the Minister will change her characterisation

19 in four hours, don't bother me. You didn't do that because

20 you knew that the difference between you and him is that

21 you wield a considerable amount of political power which he

22 wanted to use.

23 [14:32] And transform it into political pressure with

24 outcome, the fast, instant outcome that it indeed achieved.

25 MR RAMAPHOSA: No. I just had access to

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1 her.

2 MR MPOFU: Yes. So the access was such

3 that she would say to you not only have I changed my

4 characterisation, but I'm actually going to take this to

5 cabinet and brief the President. Anybody in South Africa

6 can do that. That's your evidence, are you being serious?

7 MR RAMAPHOSA: No, I'm being very

8 serious.

9 MR MPOFU: Yes.

10 MR RAMAPHOSA: But what is your question,

11 Mr Mpofu?

12 MR MPOFU: The question is, is that your

13 evidence that any citizen of South Africa can hear

14 something on the radio, fly to Cape Town, meet with the

15 Minister and the Minister then undertakes to take it to the

16 President of the cabinet within the space of four to five

17 hours. Is that your evidence, is that your serious

18 evidence?

19 MR RAMAPHOSA: It is not for me to judge

20 whether any citizen in South Africa would have that ability

21 and when somebody does have access then that they can use

22 it, they can. I suppose you too could have access to other

23 people which many other people would not have. We

24 demonstrated it with my conversation with you yesterday.

25 There are many other counsels who do not have access to me

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1 and you had access to me and we agreed that we are going to

2 do certain things.

3 MR MPOFU: Don't start with me, Mr

4 Ramaphosa.

5 MR RAMAPHOSA: It's not –

6 MR MPOFU: Don't you start with me. You

7 know that, I told you yesterday you called me to come to

8 you. Please don't start with me.

9 MR RAMAPHOSA: Let's leave it there.

10 MR MPOFU: Ja. Let's speak the truth.

11 If you want to tell –

12 MR RAMAPHOSA: Let's just leave it there,

13 Mr Mpofu.

14 CHAIRPERSON: Mr Mpofu, let's just leave

15 that –

16 MR RAMAPHOSA: Carry on with your

17 questions.

18 MR MPOFU: Ja answer my questions now.

19 CHAIRPERSON: Let's bury those two battle

20 axes and carry on with the case.

21 MR MPOFU: Thank you, Chairperson. No

22 you must understand what's happening here. Okay, I ask you

23 questions you answer them. You don't make snide remarks

24 and I don't make snide remarks. As the Chairperson calls

25 you don't raise the temperature and the temperature will

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1 remain calm otherwise you'll get ten times of what you

2 give. Okay. All right, now –

3 CHAIRPERSON: Mr Mpofu, that's a threat.

4 I don't like witnesses being threatened in my court or

5 before my Commission.

6 MR MPOFU: Well no –

7 CHAIRPERSON: Just carry on.

8 MR MPOFU: It's a promise, Chairperson,

9 it's not a threat.

10 CHAIRPERSON: It sounds like a threat to

11 me, but anyway carry on with the case.

12 MR MPOFU: Okay. This Mr Phil Jamieson

13 said to you, the two big things in his email were the

14 characterisation and the police numbers, remember that?

15 MR RAMAPHOSA: Yes.

16 MR MPOFU: Yes, and then he says, the

17 parting shot he says to you "If you can talk to the

18 Minister please can you influence this thing with her and

19 encourage her to make time to talk to Roger." Now I think

20 he was just being polite. Really he was saying that use

21 your political influence to ensure that these things

22 happen. Would you like to comment? That's what I'm saying

23 that's the interpretation which I will place onto that

24 particular –

25 MR RAMAPHOSA: Well he asked me, he did

<p style="text-align: right;">Page 34790</p> <p>1 ask me as is clearly set out there which I've admitted that 2 he said you know we're facing a terrible situation and it 3 will be good if the Minister could also talk to Roger. 4 MR MPOFU: Yes, ja and you were not as 5 diplomatic as he is. You said that you are absolutely 6 correct in insisting, those are the words you used, that 7 the Minister needs to understand blah, blah, blah and then 8 you say I will stress that Minister Shabangu should have a 9 discussion with Roger. 10 MR RAMAPHOSA: Yes. 11 MR MPOFU: That's something this was 12 stress, insisting, those are not things you do, you know, 13 in a relationship of equals as it were. You were insisting 14 on certain things, you were stressing certain things. Mr 15 Jamieson would not have been in a position because of his 16 lack of your political power to stress or insist on what 17 the Minister should or should not do. Do you accept that? 18 MR RAMAPHOSA: I don't know what the 19 question is. 20 MR MPOFU: Do you accept that? 21 MR RAMAPHOSA: What do I accept? 22 MR MPOFU: What I just put to you. 23 MR UNTERHALTER: Chair, again. My 24 learned has now repeatedly been making long statements and 25 again they are always followed up, do you accept that. One</p>	<p style="text-align: right;">Page 34792</p> <p>1 that's what you asked her to do. 2 MR RAMAPHOSA: That's what I said. 3 MR MPOFU: Yes. 4 MR RAMAPHOSA: Yes. 5 MR MPOFU: And when you're saying he must 6 act in a more pointed way surely you meant that he must act 7 fast and act decisively, correct? 8 MR RAMAPHOSA: As I said yesterday on 9 describing what pointed way meant I did say that I expected 10 the police should do what they do which is their job, 11 investigating crime, identifying the perpetrators of crime 12 and arresting them. 13 MR MPOFU: No but, Mr Ramaphosa that's 14 laughable. You can't be flying to Cape Town just to say to 15 the police you must be police. They know that they must 16 arrest people, they know that they must identify criminals, 17 why do you have to waste your money, your airtime and your 18 breath to state the obvious? That can't be the reason. 19 CHAIRPERSON: Mr Mpofo, he's already said 20 he was flying to Cape Town anyway to launch the national 21 development plan. So he wasn't wasting his airtime. He 22 was going to Cape Town, but he was using time while he was 23 there for this particular purpose. 24 MR MPOFU: No, Chairperson – 25 CHAIRPERSON: Your question is over –</p>
<p style="text-align: right;">Page 34791</p> <p>1 has to frame a question around a particular passage or what 2 did a word mean. Phrase a pointed question, these long 3 soliloquies followed by do you accept that, it's really not 4 a helpful way of engaging in questioning. 5 CHAIRPERSON: Now you've heard what Mr 6 Unterhalter is suggesting, why not follow his advice for a 7 moment or two and see how far we get? 8 MR MPOFU: Do you accept that Mr Jamieson 9 was not in a position, unlike you, to insist and stress 10 what a Minister must or must not say? 11 MR RAMAPHOSA: He was not in a position 12 like me to insist. 13 MR MPOFU: Thank you. Thank you and it 14 gets better. You then say at BBB4.6 after you've now said 15 that she has now miraculously corrected her 16 characterisation – 17 CHAIRPERSON: He didn't say miraculously 18 – 19 MR MPOFU: Yes that's in my insert 20 miraculously which I put or in that seat that you and I 21 were talking about. You then say "She's going to cabinet 22 and will brief the President and get the Minister of 23 Police, Nathi Mthethwa to act in a more pointed way. 24 MR RAMAPHOSA: Yes. 25 MR MPOFU: That's what she told you. Or</p>	<p style="text-align: right;">Page 34793</p> <p>1 MR MPOFU: Chairperson, understandably 2 maybe you – the concept of airtime has something to do with 3 cell phones, Chairperson. 4 CHAIRPERSON: Oh yes thank you – yes I 5 had overlooked that. Thank you for drawing it to my 6 attention. 7 MR MPOFU: No that's fine. Can you 8 answer the question please? 9 MR RAMAPHOSA: Mr Mpofo, it may be 10 laughable to you with regards to what I did, but I did 11 precisely what I described yesterday and I did precisely 12 what I had just said to you and you dismiss it as being 13 laughable. 14 MR MPOFU: Okay maybe laughable is 15 putting it too high. All I'm saying is that it would be 16 redundant to say the least. 17 MR RAMAPHOSA: That's what you say, but 18 that's exactly what happened. 19 MR MPOFU: No, okay let's listen to you. 20 If you go – you fly from one place to another just to tell 21 a teacher that they must teach children would you think 22 that's a useful utilisation of time and travelling 23 resources? 24 MR RAMAPHOSA: Mr Mpofo, I think we're 25 splitting hairs here. I did answer the question yesterday.</p>



<p style="text-align: right;">Page 34794</p> <p>1 I've just answered it, I'll answer it again. What I said 2 to you was that I went there and communicated to the 3 Minister and we said we would like the Minister of Police 4 communicate that they should act in a pointed way. What 5 does pointed way mean? It means that we've got a 6 situation, a very dangerous situation out there and we 7 would like the police to intervene, to stabilise the 8 situation, to investigate, arrest the perpetrators of crime 9 and those who are killing people and stabilise the 10 situation. That's what pointed way means. 11 MR MPOFU: No I put it to you that 12 pointed way in this context meant the concomitant action 13 which you wanted to be taken against these people that you 14 had re characterised as criminals which is that they should 15 be brutally murdered as they were. 16 MR RAMAPHOSA: Mr Mpofu – 17 MR SEMENYA SC: Chair, Chair, Chair - 18 CHAIRPERSON: That's again putting 19 something as a proven fact, it isn't. I understand your – 20 MR MPOFU: Okay brutally killed. Well 21 I'm using the witness's own expression. 22 CHAIRPERSON: Mr Semenya's got his light 23 on perhaps we should both listen to him. 24 MR MPOFU: Brutal murder comes from the 25 witness.</p>	<p style="text-align: right;">Page 34796</p> <p>1 what happened on the 13th that the police killed three of 2 the strikers – 3 MR MPOFU: That's what we think. 4 CHAIRPERSON: - was a murder or not. 5 That's still a matter that's under debate. So anyway I'm 6 sure you could ask the question in a way which avoids – 7 MR MPOFU: Okay, I thought I had already 8 changed the question. I was just responding to the 9 objection. I'm say, Mr Ramaphosa, I'm putting it to you 10 that the pointed way which was going to be communicated to 11 Minister Mthethwa was the concomitant action which you had 12 described needed to be taken against so-called dastardly 13 criminal acts. – 14 MR UNTERHALTER: Is my learned friend 15 what the witness did convey to the Minister? As a matter 16 of fact it could be a question that could be posed or is he 17 suggesting that there was some meaning that the witness had 18 in mind that he never conveyed? The question is 19 extraordinarily unclear. 20 MR MPOFU: Perhaps – 21 MR UNTERHALTER: If I may finish and then 22 of course you can answer. And until these points are 23 clarified as to where the facts are being elicited or 24 whether there is simply a general claim being made that is 25 somehow attributed on same basis, it's really not again</p>
<p style="text-align: right;">Page 34795</p> <p>1 CHAIRPERSON: Mr Semenya's got his light 2 on, Mr Semenya. 3 MR SEMENYA SC: Chair, even a witness may 4 have their own description of the event, but it surely is 5 incumbent on us as a Commission sitting here, Chair, with 6 respect that the proper language and description of things 7 be done and I may even add we owe to all ourselves to 8 address witnesses properly. The language that is used in 9 this hearing is really unbecoming and I beseech you, Chair, 10 I implore you, we depend on your guidance for the proper 11 conduct of this hearing. 12 MR MPOFU: Well, Chairperson, with the 13 greatest respect I beseech you as well to allow me use the 14 language employed by the witness, to a particular witness. 15 If another witness had said the people had been hugged and 16 kissed then I would used that expression. This witness has 17 said brutal murder in his statement which I showed you 18 earlier. 19 CHAIRPERSON: The witness is talking 20 about the events of the 13th, I'm not sure of - events of 21 the 13th, I'm not sure if he's still adheres to that because 22 I understood him to say that it was based on his 23 understanding of the facts and it was suggested that the 24 evidence before us may be slightly different. But in any 25 event it's a disputed fact at the moment before us whether</p>	<p style="text-align: right;">Page 34797</p> <p>1 helpful. 2 MR MPOFU: Again, Chairperson, I think 3 that I don't even understand that. I mean if someone says 4 he acted in a more pointed way obviously that's a figure of 5 speech unless if you meant it literally that they must 6 point guns at these people and shoot them. What I'm saying 7 is that I'm busy exploring what the witness meant, I'm 8 assuming in his favour that he was using the word not 9 literally but figuratively. 10 CHAIRPERSON: Mr Mpofu, Mr Mpofu, let's 11 just be short and sweet. Tell us again, just repeat again 12 what did you mean by the phrase get the Minister to act in 13 a pointed way? 14 MR RAMAPHOSA: Mr Chairman, thank you. I 15 meant that the Minister should get the police to do what 16 they do. Do their work and their work is to identify 17 people who are committing acts of crime, arrest them and 18 make sure that the acts of criminality are brought to an 19 end. That is what I meant and learned counsel has also 20 brought in this other statement where I referred to 21 concomitant action needs to be taken. I did explain it 22 yesterday in my evidence in chief that when I used the term 23 concomitant action I meant the police must take appropriate 24 steps, appropriate steps, to make sure that the deaths that 25 were occurring and the violence that was underway must be</p>

<p style="text-align: right;">Page 34798</p> <p>1 brought to an end and we must stabilise the situation.  2 There is no other meaning to those words and indeed my  3 intention other than what I have described to the  4 Commission.  5 MR MPOFU: Yes, no what I'm putting to  6 you, Mr Ramaphosa, is that if you wanted to say the best  7 action and appropriate way that's what you would have said  8 you know. You wouldn't have used these terms of  9 concomitant action, act in a pointed way. In any event you  10 made it clear at the next sentence. "Let us keep the  11 pressure on them to act correctly." You said that.  12 MR RAMAPHOSA: Mr Chairman, I repeat what  13 I said yesterday. I did say let's put the pressure on  14 them, the pressure on them was meant to say let us make  15 sure that they act in a way that police normally act so  16 that people are arrested who are perpetrating all these  17 crimes. That's all I meant.  18 MR MPOFU: Ja again we'll argue that if  19 you simply wanted the police to act naturally as they  20 always do there's no need to put pressure. But you were  21 putting pressure for them to do something more which is  22 what they did in acting in a pointed way, concomitant  23 action and as a result of the pressure killing the  24 strikers.  25 CHAIRPERSON: How do you respond to that?</p>	<p style="text-align: right;">Page 34800</p> <p>1 an update on the situation –  2 MR RAMAPHOSA: Yes.  3 CHAIRPERSON: - which had been prepared  4 by Tanya, whoever Tanya is. That's at page 13 of your  5 bundle, it's part of this exhibit BBB4.  6 MR RAMAPHOSA: Yes.  7 CHAIRPERSON: Now what it says in the  8 first paragraph, I won't read the whole first paragraph but  9 perhaps it could be put up on the screen. The fourth  10 paragraph says following this, that's following the death  11 of two policemen and so forth in the last 24 hours, that's  12 on the 13th. "Two policeman fatally wounded during clashes.  13 Following this the National Commissioner visited our  14 operations to assess the situation and lend support.  15 Police numbers have increased further and the intention is  16 to increase them to between 800 and 1000." Overnight the  17 police had been developing a strategy and so forth.  18 MR RAMAPHOSA: Yes.  19 CHAIRPERSON: Which aimed at peacefully  20 corralling the mobs of people who had been gathering daily  21 on the property arresting those suspected to have been  22 involved in criminal activity.  23 MR RAMAPHOSA: Yes.  24 CHAIRPERSON: So you were already told on  25 the Tuesday that the police were intending to bring 800 to</p>
<p style="text-align: right;">Page 34799</p> <p>1 It's suggested that you wanted them to do more than the  2 normal, you used the word pressure. Now what were they not  3 doing at that stage, to your knowledge, which you thought  4 they should be, to use a gentle word, should be encouraged  5 to do?  6 MR RAMAPHOSA: Mr Chairman, some people  7 have become killed and as they got killed we realised that  8 a very dangerous situation was unfolding and underway and  9 we wanted the police to have a presence that would prevent  10 further deaths from happening. Further deaths from  11 happening would easily be prevented by the police having a  12 presence, being seen, but more importantly being able to  13 arrest those who were perpetrating those acts. And the  14 arrest part is important to underscore because it would  15 have meant that those acts would not be repeated and those  16 who may well have wanted to perpetrate these acts would not  17 do so because police would be in place and they would be  18 able to make sure that they arrest those who were  19 perpetrating these acts.  20 CHAIRPERSON: Mr Ramaphosa you got an  21 email which is BBB4, it's page 12 of your bundle and that  22 was from Mr Phillimore and that was on the 14th of August,  23 that's the Tuesday.  24 MR RAMAPHOSA: Yes.  25 CHAIRPERSON: 4:28pm. Attached to it was</p>	<p style="text-align: right;">Page 34801</p> <p>1 1000 people, in fact the evidence, I think, indicates that  2 they had approximately that number of police men and women  3 on the scene at the time. They had the strategy aimed at  4 corralling the people and then arresting those suspected to  5 have been involved.  6 MR RAMAPHOSA: Yes.  7 CHAIRPERSON: Now what extra, if  8 anything, did you want? You were told on the Tuesday that  9 that was what the police were going to do.  10 MR RAMAPHOSA: Yes.  11 CHAIRPERSON: So what extra did you want  12 them to do? What did you that would be "more pointed" than  13 that?  14 MR RAMAPHOSA: More pointed is the people  15 who had perpetrated these acts had not been arrested.  16 Nobody who had done so had been apprehended and that's what  17 a person like myself would have wanted to see. So that  18 would have been part of the more pointed action that needed  19 to be taken so that what was prominent in my mind and  20 thinking, Mr Chairman, was that those who were perpetrating  21 these acts should be apprehended so that there is no repeat  22 of these acts.  23 [14:52] And indeed those others who may well want to do  24 other similar things should know that they will be arrested  25 on the spot by the police. That is what was prominent in</p>

<p style="text-align: right;">Page 34802</p> <p>1 my own mind and nothing else.</p> <p>2 MR MPOFU: Well, were you aware, if you</p> <p>3 read on from what the Chairperson has just pointed out to</p> <p>4 you, were you aware that the employees reported to be</p> <p>5 involved in the murder of Lonmin security guards had been</p> <p>6 identified and the information was with SAPS?</p> <p>7 MR RAMAPHOSA: No, I was not aware, Mr</p> <p>8 Mpofu.</p> <p>9 MR MPOFU: Well, you should have been</p> <p>10 because there was an email to that effect sent to you on</p> <p>11 the 14th of August at 4:28PM.</p> <p>12 MR RAMAPHOSA: Yes –</p> <p>13 MR MPOFU: By Roger.</p> <p>14 MR RAMAPHOSA: Yes, I was not aware of</p> <p>15 those details.</p> <p>16 MR MPOFU: So that's the whole point.</p> <p>17 The point is that if the people had been identified, the</p> <p>18 information is with SAPS and as you say the police must do</p> <p>19 what they normally do, then there's no need for you to be</p> <p>20 moving around asking, putting pressure, to do what?</p> <p>21 Because what was being done has already been done. That's</p> <p>22 why I'm saying you were asking to act in a more pointed way</p> <p>23 than simply identifying the people who allegedly were</p> <p>24 involved in the murders, and that's exactly what they did.</p> <p>25 They acted in a more pointed way because the following day</p>	<p style="text-align: right;">Page 34804</p> <p>1 to –</p> <p>2 MR MPOFU: Yes, which is –</p> <p>3 CHAIRPERSON: - is not on the screen at</p> <p>4 the moment.</p> <p>5 MR MPOFU: Oh, yes. No, no, no, go back</p> <p>6 a little bit. Yes, it's that one. This is, Mr Ramaphosa,</p> <p>7 this conversation –</p> <p>8 CHAIRPERSON: I think you need a couple</p> <p>9 of lines above what's on the screen at the moment.</p> <p>10 MR MPOFU: Okay. Yes –</p> <p>11 CHAIRPERSON: This is a passage that was</p> <p>12 read by Mr Budlender in his cross-examination of the</p> <p>13 witness.</p> <p>14 MR RAMAPHOSA: That's right.</p> <p>15 MR MPOFU: Yes, yes, I was trying to</p> <p>16 avoid reading – that's why I said to the witness what has</p> <p>17 been read I will leave out. Can I paraphrase; the first</p> <p>18 part that was read by Mr Budlender relates to the National</p> <p>19 Commissioner taking into account the perceptions about the</p> <p>20 collusion –</p> <p>21 CHAIRPERSON: [Microphone off, inaudible]</p> <p>22 MR MPOFU: Provincial Commissioner, yes,</p> <p>23 and the National Commissioner, yes.</p> <p>24 CHAIRPERSON: [Microphone off, inaudible]</p> <p>25 MR MPOFU: Yes, yes. That's exactly what</p>
<p style="text-align: right;">Page 34803</p> <p>1 they killed 34 people at your instigation.</p> <p>2 CHAIRPERSON: I don't know whether the</p> <p>3 phrase "at your instigation" is entirely justified –</p> <p>4 MR MPOFU: Well, I'll get to that now.</p> <p>5 CHAIRPERSON: But the first point you've</p> <p>6 got is, take out the "at your instigation," the police did</p> <p>7 on the following day kill 34 people. That part is correct.</p> <p>8 MR MPOFU: Yes.</p> <p>9 CHAIRPERSON: Now what's the question you</p> <p>10 want to ask the witness based on that assertion?</p> <p>11 MR RAMAPHOSA: Yes, what's the question?</p> <p>12 MR MPOFU: Ja, would you agree with that?</p> <p>13 MR RAMAPHOSA: No, I wouldn't agree with</p> <p>14 that, that it was at my instigation.</p> <p>15 MR MPOFU: Okay.</p> <p>16 MR RAMAPHOSA: I vehemently deny that.</p> <p>17 MR MPOFU: Yes, let's go there. Can we</p> <p>18 go to JJJ192, and keep at the back of your mind that you</p> <p>19 said you're going to apply pressure, okay. JJJ192, page 9,</p> <p>20 part of this was read to you, I think it ended, so I won't</p> <p>21 read the part that was already read to you.</p> <p>22 MR RAMAPHOSA: Sure.</p> <p>23 MR MPOFU: It ended somewhere –</p> <p>24 CHAIRPERSON: The particular passage in</p> <p>25 that transcript that I think you want to refer the witness</p>	<p style="text-align: right;">Page 34805</p> <p>1 Mr Budlender put to you that the Provincial Commissioner</p> <p>2 and the National Commissioner had spoken about "killing" or</p> <p>3 discouraging a perception of collusion with AMCU. You</p> <p>4 remember that?</p> <p>5 MR RAMAPHOSA: Yes.</p> <p>6 MR MPOFU: Yes, so I'm not going to read</p> <p>7 that part, but the Chairperson is right, that's the</p> <p>8 background.</p> <p>9 CHAIRPERSON: What you're interested in I</p> <p>10 would think is a bit, round about line 15 –</p> <p>11 MR MPOFU: That's correct, Chairperson.</p> <p>12 CHAIRPERSON: - about arresting people.</p> <p>13 MR MPOFU: Yes, it says there, "But when</p> <p>14 I was speaking to Minister Mthethwa," it's a misprint, "he</p> <p>15 mentioned a name to me" – or rather let me start just</p> <p>16 before. It says, "Because I think even when we were trying</p> <p>17 to talk about it last night she [being the National</p> <p>18 Commissioner] asked me a question that says you know, well</p> <p>19 this one I'm not sure because the Lonmin shareholders, I do</p> <p>20 not know much about them." Mr Mokwena says, "Yes." Then</p> <p>21 she, the Provincial Commissioner says, "But when I was</p> <p>22 speaking to Minister Mthethwa he mentioned a name to me</p> <p>23 that is also calling him, that is pressurising him.</p> <p>24 Unfortunately it is a politically high [individual, we can</p> <p>25 assume]." You see that part?</p>

<p style="text-align: right;">Page 34806</p> <p>1 MR RAMAPHOSA: Yes.</p> <p>2 MR MPOFU: Ja, and so you on your side</p> <p>3 were applying pressure. According to this Minister</p> <p>4 Mthethwa, if this part is believed, perceived what you were</p> <p>5 doing as pressurising him and then, and Mr Mokwena says,</p> <p>6 "It is Cyril." Remember that's not even a question mark.</p> <p>7 He makes a statement. He hasn't even heard the name. He</p> <p>8 just says, "There's someone who is pressuring him," and he</p> <p>9 says, "It is Cyril." You see that?</p> <p>10 CHAIRPERSON: Mr Mpofo, Mr Semenya wants</p> <p>11 to make a point.</p> <p>12 MR SEMENYA SC: Chair, the witness was</p> <p>13 not in the auditorium when the evidence was given by</p> <p>14 General Mbombo. In fairness he must be told that General</p> <p>15 Mbombo's own evidence is that the word "pressure" was her</p> <p>16 own, it did not come from the Minister.</p> <p>17 MR MPOFU: Well, Chairperson, we've gone</p> <p>18 through this before. I don't –</p> <p>19 CHAIRPERSON: That is correct. That</p> <p>20 was –</p> <p>21 MR MPOFU: I've said, that's why I used</p> <p>22 the words "if this evidence is believed," because the point</p> <p>23 of the matter – I don't want to take the witness through</p> <p>24 legalese about that, that we are going to argue that the</p> <p>25 explanation she gave was wishy-washy and so on. I'm saying</p>	<p style="text-align: right;">Page 34808</p> <p>1 asking a postulated question –</p> <p>2 CHAIRPERSON: I don't think he's being</p> <p>3 evasive. I think there is scope for misunderstanding</p> <p>4 because the question is a little –</p> <p>5 SPEAKER: [Inaudible]</p> <p>6 CHAIRPERSON: No, please, if anyone wants</p> <p>7 to say something I suggest they go outside and say it. The</p> <p>8 question is a rather complicated hypothetical one and I'm</p> <p>9 not quite sure that it's clear, it's full ambit, to me.</p> <p>10 MR MPOFU: I'm sorry –</p> <p>11 CHAIRPERSON: But can I have an endeavour</p> <p>12 to summarise it as I understand it?</p> <p>13 MR MPOFU: Yes, thank you, Chairperson.</p> <p>14 CHAIRPERSON: What the Provincial</p> <p>15 Commissioner was saying was that the National Commissioner</p> <p>16 had in turn reported – is that right? No, can we just have</p> <p>17 the bit at the foot of page 9?</p> <p>18 MR MPOFU: Yes.</p> <p>19 CHAIRPERSON: No, what the Provincial</p> <p>20 Commissioner is saying is she spoke to Mr Mthethwa, the</p> <p>21 Minister Mthethwa, and he said to her that he's had a</p> <p>22 conversation with Mr Ramaphosa and that he said that Mr</p> <p>23 Ramaphosa had pressurised him. The witness then said when</p> <p>24 she gave evidence here, that's the Provincial Commissioner,</p> <p>25 that that word "pressurised" was not a word used by the</p>
<p style="text-align: right;">Page 34807</p> <p>1 if this evidence is taken at face value – let me put it</p> <p>2 that way, ja – despite whatever explanations, good, bad or</p> <p>3 indifferent, that were given, if this evidence is taken at</p> <p>4 its face value it would at least suggest that the Minister</p> <p>5 said to the Commissioner that you were pressurising him.</p> <p>6 Agreed?</p> <p>7 MR RAMAPHOSA: Well, I don't know what</p> <p>8 the question is because you yourself said if it is to be</p> <p>9 taken –</p> <p>10 MR MPOFU: Yes, that's –</p> <p>11 MR RAMAPHOSA: - at its face value and if</p> <p>12 it is to be believed.</p> <p>13 MR MPOFU: Yes.</p> <p>14 MR RAMAPHOSA: So Mr Chairman, I don't</p> <p>15 quite understand what the question is.</p> <p>16 MR MPOFU: What is it you don't</p> <p>17 understand? I'm saying to you – you understand perfectly</p> <p>18 well. Don't be evasive. I'm saying –</p> <p>19 MR RAMAPHOSA: No, no, no –</p> <p>20 CHAIRPERSON: No, no, Mr Mpofo –</p> <p>21 MR MPOFU: No, he's being evasive. What</p> <p>22 is it –</p> <p>23 CHAIRPERSON: No, I don't think he's</p> <p>24 being evasive.</p> <p>25 MR MPOFU: It's not the first time I'm</p>	<p style="text-align: right;">Page 34809</p> <p>1 Minister to her but was her attempt to summarise or repeat</p> <p>2 what had been said to her by the Minister. Now what you</p> <p>3 are asking the witness, Mr Mpofo, as I understand it, is to</p> <p>4 say if it is correct that the word "pressurised" was used</p> <p>5 in its ordinary sense and if it is correct that what the</p> <p>6 Minister had conveyed to the Provincial Commissioner was</p> <p>7 that Mr Ramaphosa had pressurised him, or attempted to</p> <p>8 pressurise him, what is his comment on that. Is that a</p> <p>9 fair summary of your question?</p> <p>10 MR MPOFU: That's correct, Chairperson.</p> <p>11 CHAIRPERSON: Alright, okay. Do you get</p> <p>12 it, Mr Ramaphosa?</p> <p>13 MR RAMAPHOSA: I did not –</p> <p>14 CHAIRPERSON: Do you understand the</p> <p>15 question?</p> <p>16 MR RAMAPHOSA: I think I do now.</p> <p>17 CHAIRPERSON: Alright, can you answer it</p> <p>18 now?</p> <p>19 MR RAMAPHOSA: Yes, I did not pressurise</p> <p>20 the Minister.</p> <p>21 MR MPOFU: Yes, and do you – okay, one of</p> <p>22 the other things we're going to argue, which is curious</p> <p>23 about this conversation is that as I say after she uses the</p> <p>24 word pressurising him and unfortunately – mark that word,</p> <p>25 unfortunately –</p>

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1 CHAIRPERSON: This is on the next page.  
 2 It's not on the screen.  
 3 MR MPOFU: Yes – unfortunately, which  
 4 means the pressure is quite uncomfortable –  
 5 CHAIRPERSON: No, no, I don't think that  
 6 – what's unfortunate is it was a politically high  
 7 individual, as you put it.  
 8 MR MPOFU: Yes, it was – unfortunately  
 9 it's a politically high individual. Well, if it was a  
 10 lightweight I'm sure it would be fortunate.  
 11 CHAIRPERSON: Alright.  
 12 MR MPOFU: What I'm saying is that  
 13 unfortunately it is a politically high individual and Mr  
 14 Mokwena says immediately, "It is Cyril," not "Is it Cyril?"  
 15 He already knows who would have put that pressure.  
 16 CHAIRPERSON: Alright, now what's  
 17 question? I'd like to take the tea adjournment when this  
 18 point is finished.  
 19 MR MPOFU: Yes.  
 20 CHAIRPERSON: But I think I must give you  
 21 an opportunity to finish, round it off first.  
 22 MR MPOFU: Ja, do you see that Mr Mokwena  
 23 immediately identified the source of the alleged pressure?  
 24 MR RAMAPHOSA: He identified my name.  
 25 MR MPOFU: Ja.

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1 MR RAMAPHOSA: That's what I see.  
 2 MR MPOFU: Yes, and then she goes on to  
 3 say, "Cyril Ramaphosa, yes. Now remember now when I was  
 4 talking to the National Commissioner last night she said to  
 5 me 'Look, General, who are the shareholders here?' So I  
 6 said I do not know the shareholders, but I know that when I  
 7 spoke to the Minister he mentioned Cyril." So here she  
 8 acknowledged that the Minister mentioned you by name, and  
 9 then she says, "Now I got it. You know why she said she  
 10 got it? Remember Cyril was in the Appeal Committee of  
 11 Malema, remember." You had that discussion with Mr  
 12 Budlender and you agreed that this is an inappropriate  
 13 consideration for the police.  
 14 MR RAMAPHOSA: Yes.  
 15 MR MPOFU: Remember, yes. And again what  
 16 is being said here is that connected to the pressure that  
 17 you have exerted steps – just listen to this – steps must  
 18 be taken so that Mr Malema does not come and resolve the  
 19 problem. Remember you are all about stopping the deaths  
 20 and solving the problems, but here it is being said that  
 21 steps must be taken so that the situation is not defused.  
 22 In other words because of your pressure more deaths may  
 23 have resulted because these people understood your pressure  
 24 to be related to a desire not to resolve the problem if  
 25 that solution was going to come from Mr Malema. Surely

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1 that must be despicable. Would you agree?  
 2 MR RAMAPHOSA: I mean I would agree that  
 3 that's not –  
 4 MR MPOFU: Yes, thank you.  
 5 MR RAMAPHOSA: - desirable.  
 6 CHAIRPERSON: I'm sorry, what was that?  
 7 MR RAMAPHOSA: I said that not to solve  
 8 the problem is not –  
 9 MR MPOFU: Proper.  
 10 MR RAMAPHOSA: - proper.  
 11 CHAIRPERSON: Alright, can we now take  
 12 the tea adjournment, Mr Mpofo?  
 13 MR MPOFU: Yes, Chairperson.  
 14 CHAIRPERSON: Alright, with your  
 15 permission we'll adjourn for 15 minutes.  
 16 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 17 [15:20] CHAIRPERSON: The Commission resumes. Mr  
 18 Ramaphosa, you're still under oath. Mr Mpofo?  
 19 MATAMELA CYRIL RAMAPHOSA: (s.u.o.)  
 20 CROSS-EXAMINATION BY MS MPOFU (CONTD.):  
 21 Thank you very much, Chairperson. So yes, Mr Ramaphosa,  
 22 just to round off that point. Again reading from that  
 23 passage it would, it's clear that here what was effectively  
 24 being said is that the political considerations were not  
 25 even just being taken into account, as Mr Budlender said,

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1 but that the political considerations would override the  
 2 security considerations. Would you agree with that?  
 3 MR RAMAPHOSA: Well, I don't know whether  
 4 you would call them political considerations.  
 5 MR MPOFU: Well, okay, well it must be  
 6 political considerations if you say don't let Malema come  
 7 here and defuse the situation so that the police can manage  
 8 the situation. We've never had a police who don't want to  
 9 manage a situation, surely?  
 10 MR RAMAPHOSA: Mr Chairman, it's  
 11 obviously difficult to deal with other people's statements  
 12 without know what their true intention was.  
 13 MR MPOFU: Oh.  
 14 MR RAMAPHOSA: To the extent that it  
 15 would satisfy the honourable counsel here, I would say yes.  
 16 MR MPOFU: Yes, thank you, as you did  
 17 yesterday. Okay –  
 18 CHAIRPERSON: What it amounts to is it  
 19 appears that the desire that was one of the considerations,  
 20 if not the main consideration, was to prevent Mr Malema  
 21 getting any credit for defusing the situation.  
 22 MR MPOFU: Yes.  
 23 CHAIRPERSON: And inasmuch as Mr Malema  
 24 at that stage was, I think, on his way to setting up his  
 25 own political party and was a political figure in any event

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1 in a previous office that he held, there was a political  
2 aspect to the whole matter, it would appear.

3 MR RAMAPHOSA: I would agree, yes.

4 MR MPOFU: Yes. Thank you, Chairperson.

5 And now we come to – and then there's the thing about once  
6 again remember Malema's views that the mines should be  
7 nationalised and so on and you dealt with that with Mr  
8 Budlender.

9 MR RAMAPHOSA: Yes, I did.

10 MR MPOFU: The issue here is, you know a  
11 Commission of this size and magnitude can actually, or  
12 certain issues can be resolved just by looking at one word  
13 or two words, given the millions of words that have been  
14 given out here. She then says, "So it has got a serious  
15 connotation that we need to take into account" –

16 CHAIRPERSON: No, no, you've gone past –

17 MR MPOFU: Sorry, Chairperson –

18 CHAIRPERSON: No, it's not your fault,  
19 not your fault, it's the operator. We've now got it. It's  
20 928 on page 10 of this document.

21 MR MPOFU: Yes, after "nationalised."  
22 "So it has got a serious" – first she says "I once again  
23 remember Malema's views that mines should be nationalised"  
24 and all that, "so it has got a serious political  
25 connotation that we need to take into account but which we

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1 need to find a way of defusing" and this is the important  
2 word, "hence" – hence - "hence I just told these guys that  
3 we need to act such that we kill this thing immediately."  
4 "Yes," says Mr Mokwena. Then she says, "When tomorrow we  
5 have to move in, if today we do not find co-operation in  
6 these people, we need to move in such that we kill it  
7 because" – another important word – "we need to protect a  
8 situation where any Jik and Jill from a political area" and  
9 then she gets interrupted.

10 CHAIRPERSON: I think that probably means  
11 Jack and Jill but –

12 MR MPOFU: Yes, I should think so, Jack  
13 and Jill, Jik and Jill but –

14 CHAIRPERSON: - and Jeff, is that what  
15 you're saying?

16 MR MPOFU: Yes, thank you, thank you,  
17 Chairperson. I'm sorry. Again I'll paraphrase because we  
18 don't have time. What I'm really saying here, Mr  
19 Ramaphosa, is that the use of those words, "hence" which  
20 means, you know, because of or connected to the above and  
21 so on and so on, you know what "hence" means and "because,"  
22 those words allude to what I call the causal connection  
23 between your action, which has been described there, about  
24 "remember he was in the appeal committee of Malema" and so  
25 on and so on and so on, and the timing at the very least of

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1 the operation, that it must happen immediately. I know  
2 that the operation, you can say well, maybe it would have  
3 happened on another day and so on, I'm not there but I'm  
4 saying the mere fact that what she's saying is that "hence  
5 we must kill this thing," using those unfortunate words,  
6 immediately and because we want to protect a situation  
7 where any Jack and Jill from a political area can claim  
8 responsibility, what the Chair –

9 CHAIRPERSON: To get credit, I –

10 MR MPOFU: Can get that credit, ja. Now  
11 that places you right at the centre of the decision to rush  
12 with headlong haste and with the tragic consequences that  
13 we know followed.

14 MR UNTERHALTER SC: Chair -

15 CHAIRPERSON: Do you agree with that?

16 MR MPOFU: Would you agree with that?

17 MR UNTERHALTER SC: I'm sorry, I would  
18 ask my learned friend on this point to please indicate  
19 either textually or by any other means what the reference  
20 to the witness in the passages earlier and then the issues  
21 around Mr Malema which is then introduced subsequently and  
22 then the "hence" word –

23 MR MPOFU: Okay.

24 MR UNTERHALTER SC: - how he makes these  
25 connections?

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1 MR MPOFU: Sure.

2 MR UNTERHALTER SC: I mean you can't just  
3 sort of say somewhere in the text –

4 CHAIRPERSON: Mr Unterhalter, he said  
5 "sure" so it sounds as if he's going to accede to your  
6 request. Yes, Mr Mpofo?

7 MR MPOFU: Ja. No, that's very easy,  
8 Chairperson. The passage I've been taking the witness  
9 along, I'll paraphrase. It says, "Minister Mthethwa said  
10 Mr Ramaphosa is pressurising him." We've gone through  
11 this. Then you see she says, "When I mentioned Cyril's  
12 name the National Commissioner said, 'ah, now I've got it'.  
13 And she says, do you know why she says she's got it? She  
14 says yes, because he was in the appeal committee of Malema  
15 and remember Malema solved the situation at Impala. We  
16 don't want him to come and solve it here and he also wants  
17 mines to be nationalised, hence I just told you this, guys,  
18 that we need to act such that we kill this thing  
19 immediately and then we need to move in such that we kill  
20 it because we need to protect a situation where any Jik and  
21 Jill from a political area" – that's obviously still a  
22 reference to Mr Malema – "will take credit." I'm sorry, Mr  
23 Ramaphosa, I was just answering to your counsel but the  
24 short question to you is that this passage shows beyond any  
25 doubt that, at the very least, the timing of the operation,

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1 we know what happened on the evening of the 15th, I won't  
 2 take you there, that's got nothing to do with you as such  
 3 but the headlong haste with which this botched operation,  
 4 if I may call it that, was then executed was linked  
 5 directly by the Provincial Commissioner, who issued the  
 6 order by the way, to your pressure. That's all I'm saying.  
 7 Whether that's correct, you put the pressure, you didn't  
 8 put the pressure, you've already said that. I'm just  
 9 saying that that's what she was saying, do you accept that?  
 10 MR RAMAPHOSA: No, I don't accept the  
 11 connection and I don't accept the pressure and we differ on  
 12 that.  
 13 MR MPOFU: Yes. You don't think the  
 14 words "hence" and "because" show that that is linked to  
 15 what goes below, "hence we must kill this thing  
 16 immediately," to you is not linked?  
 17 MR RAMAPHOSA: No, it isn't.  
 18 MR MPOFU: It's not, okay. Alright,  
 19 well, just to crown it, if you go to – just to show that,  
 20 well, we're going to argue that the deaths that followed  
 21 from this kind of conversation were foreseeable, both to  
 22 the Provincial Commissioner and to yourself and –  
 23 MR UNTERHALTER SC: What –  
 24 MR MPOFU: - to her, I've put whatever  
 25 I've put to her to show that.

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1 CHAIRPERSON: He's going to put them now  
 2 apparently.  
 3 MR MPOFU: Yes.  
 4 CHAIRPERSON: Why do you say, never mind  
 5 the Provincial Commissioner, why do you say that the deaths  
 6 that eventuated on the 16th were on a nature that they could  
 7 have been or should have been or were foreseen, whichever  
 8 of the three you choose, by the witness.  
 9 MR MPOFU: That's exactly what I'm going  
 10 into. Let's just for reference go to paragraph or rather  
 11 page 6.  
 12 CHAIRPERSON: Is this exhibit JJJ192?  
 13 MR MPOFU: Of the same exhibit, yes.  
 14 CHAIRPERSON: Exhibit triple 192, JJJ192.  
 15 Yes, what line on page 6?  
 16 MR MPOFU: About 18, Chairperson, or  
 17 let's start at about 15. They talk, "But I said let us beg  
 18 now, please remember we are tied up by these new" – that's  
 19 about 11, Chairperson – "these new amendments in our law  
 20 that says you should not shoot, you should not do this.  
 21 You know these things, you know from the Tatane incident,"  
 22 that's just a misprint, "and all that. So I said to them  
 23 if, and once again the other thing why I delayed them,  
 24 remember what was happening yesterday. It was annoying to  
 25 the cops and we could have sent them there, emotions are

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1 high, emotions are very high, whatever instructions you  
 2 will have given but because emotions, they will have  
 3 forgotten about the instructions, yes. They will have  
 4 forgotten about the instructions and I do not want a  
 5 situation where 20 people will be dead." And so it goes.  
 6 That passage would show that at least because of the  
 7 emotions that were running high, one of the things that was  
 8 foreseeable was that if the police move in, 20 – well, she  
 9 was wrong by 14 people, 20 or more people could be dead –  
 10 CHAIRPERSON: No, Mr Mpofo, I'm sorry. I  
 11 don't think the passage you're putting there will bear the  
 12 weight you seek to put on it. What she said is, my people  
 13 – she's talking on Tuesday afternoon, remember, Tuesday the  
 14 14th – she said she delayed her people, as she calls them,  
 15 from going in on the Tuesday morning.  
 16 MR MPOFU: I know.  
 17 CHAIRPERSON: Why? Because of what had  
 18 happened on the Monday where police were killed and so on  
 19 and emotions were running very high. So, and she goes on  
 20 to say because, and Mokwena actually also says it.  
 21 MR MPOFU: Ja.  
 22 CHAIRPERSON: If they'd gone in on the  
 23 Tuesday, emotions were still running high, whatever  
 24 instructions I'd given them to make sure they didn't shoot  
 25 and didn't injure people would have been ignored because,

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1 as Mokwena puts it, they would have forgotten about the  
 2 instructions. She says they will have forgotten about the  
 3 instructions.  
 4 MR MPOFU: And kill people.  
 5 CHAIRPERSON: So what I'm saying to you  
 6 is that the passage that you're now putting appears to be  
 7 primarily based upon her fear that if they'd been allowed  
 8 to go in on the Tuesday morning, their emotions would have  
 9 been high and they would have forgotten her instructions to  
 10 act carefully and so on –  
 11 MR MPOFU: Sorry, Chairperson –  
 12 CHAIRPERSON: - but then she says that's  
 13 why they must go in tomorrow, i.e. Wednesday. They in  
 14 fact didn't go in Wednesday for reasons that you and I  
 15 know, we won't worry the witness with.  
 16 MR MPOFU: Yes.  
 17 CHAIRPERSON: And in fact she sent them  
 18 in on the Thursday with the consequences which the whole  
 19 world unfortunately knows of.  
 20 MR MPOFU: Yes. I know, Chairperson, but  
 21 with the greatest respect, we've gone through this before.  
 22 Tuesday, Wednesday, Thursday, I don't know what's magical.  
 23 If the emotions were high within a particular period, such  
 24 that you could predict the death of 20 people, I don't know  
 25 that we can say, oh, now the clock has just ticked, it's 20

<p style="text-align: right;">Page 34822</p> <p>1 past, it's gone past midnight therefore you can go in. It 2 doesn't work like that, emotions don't work like that but 3 the point I'm making – 4 MR UNTERHALTER SC: Chair, I'm sorry and 5 I'm sorry to interrupt my learned friend, just so that we 6 can move on because time is short, I'm not certain how any 7 of this concerning what state of mind the Commissioner was 8 in at the time she spoke of these matters has got, is 9 linked to the witness. 10 MR MPOFU: No, fair enough. 11 MR UNTERHALTER SC: Perhaps if my learned 12 friend could explain some linkage by which he is trying to 13 explore foreseeability. 14 MR MPOFU: Yes. No, if you listened I 15 had said I am giving this as background about the 16 Commissioner. I'm now coming to the witness, that's 17 exactly what I'm doing. You know, you know as everybody 18 does that the – or at least you knew that a policeman had 19 been killed on the Monday, on the 13th, correct? 20 MR RAMAPHOSA: Yes. 21 MR MPOFU: And you know that when, it is 22 alluded here that when police, even one policeman, let 23 alone two have been killed then the – anywhere in the world 24 for that matter – the police will come down like a ton of 25 bricks, as it were, and that emotions run high generally.</p>	<p style="text-align: right;">Page 34824</p> <p>1 MR MPOFU: There's no "so far," I'm still 2 talking. 3 CHAIRPERSON: He hasn't finished the 4 question. 5 MR UNTERHALTER SC: I'm sorry. 6 CHAIRPERSON: Let him finish. 7 MR UNTERHALTER SC: I'm sorry, let my 8 learned friend lay his factual foundation for calling the 9 witness a liar. Let's hear the facts. 10 MR MPOFU: Yes. 11 MR UNTERHALTER SC: For one. 12 CHAIRPERSON: No, he doesn't call the 13 witness a liar – [microphone off, inaudible.] 14 MR MPOFU: No, I didn't. 15 CHAIRPERSON: [Microphone off, inaudible] 16 MR MPOFU: We don't say liar in this 17 Commission, we say untruthful which is more – 18 MR UNTERHALTER SC: It's a distinction 19 without a – 20 MR MPOFU: Ja. 21 MR UNTERHALTER SC: - if you don't have a 22 factual foundation. 23 MR MPOFU: Well, say that to the 24 Chairperson, he is the one who made that ruling. I agree 25 with you, but I'm putting to you that it is a well-known</p>
<p style="text-align: right;">Page 34823</p> <p>1 MR UNTERHALTER SC: What's the question 2 to this witness – 3 MR MPOFU: Do you know? That is the 4 question, do you know that when that happens, emotions run 5 high and the police come down on the situation? 6 MR RAMAPHOSA: I wouldn't know – 7 MR MPOFU: Never heard of this? 8 MR RAMAPHOSA: No, I wouldn't know, Mr 9 Mpofo – 10 MR MPOFU: Okay, that's fine. 11 MR RAMAPHOSA: Ja, I wouldn't know. 12 MR MPOFU: If you've never heard of it, 13 you have never heard of it. 14 MR RAMAPHOSA: Ja. 15 MR MPOFU: You are in the minority. What 16 I want to put to you is that that answer is not, is not 17 truthful and that – 18 MR UNTERHALTER SC: What basis is my 19 learned friend have to call the witness a liar. 20 CHAIRPERSON: [Microphone off, inaudible] 21 question, Mr Unterhalter, I take it he's going to give us 22 the basis now. 23 MR UNTERHALTER SC: Well, so far we've 24 had – 25 CHAIRPERSON: No, no –</p>	<p style="text-align: right;">Page 34825</p> <p>1 fact that once police killings happen, in fact it's also 2 related to some of the passages that I read to you about 3 what the government ministers have been saying about 4 killing of policemen or when they're in danger, all that 5 gung ho stuff, that the police react and I must say in 6 favour of our police force, it's not a uniquely South 7 African thing. Anywhere, when a policeman has been killed 8 or there's a so-called cop killer on the loose, the police 9 come out in full force to avenge or to act against the cop 10 killer, so-called. That's the basis upon which I'm saying 11 you are denying the obvious, everybody knows it. 12 MR RAMAPHOSA: Well, I know that when a 13 police is killed the police usually get extremely concerned 14 about that killing. 15 MR MPOFU: Yes, thank you. And therefore 16 armed with that knowledge, it should have been foreseeable 17 to you that, in that atmosphere, to instigate and put 18 pressure and all the things that we've said, on the police 19 with the result that they brought, quite literally, guns 20 blazing, the special task force the NIU, what have you, 50 21 people with machine guns who finally mowed down those 34 22 people, that that kind of reaction one doesn't have to be a 23 genius to predict that to – it's like putting, trying to 24 put a fire by pouring petrol on it. That's what you were 25 doing, or oil. I think the Chairperson corrected me</p>



<p style="text-align: right;">Page 34826</p> <p>1 before. You understand the gist of what I'm saying and 2 that's what, it's on the basis of that theory which I will 3 advance that I say you could foresee that there could be a 4 disaster. Would you agree? 5 MR RAMAPHOSA: I did not foresee all 6 this. 7 MR MPOFU: Yes. 8 MR RAMAPHOSA: In fact I did not foresee 9 all the events that unfolded on that fateful day. 10 MR MPOFU: Sure. 11 MR RAMAPHOSA: Yes. 12 MR MPOFU: You should have foreseen, 13 that's what we will argue. If you did not foresee, you 14 should have foreseen but that's something we'll argue at 15 the end – 16 MR UNTERHALTER SC: Chair, again it's not 17 a matter for argument. If the proposition is that there 18 was some duty to have foreseen in the sense that it ought 19 to have been foreseen, again in fairness to a witness one 20 has to place the facts from which you can derive a duty. 21 CHAIRPERSON: I don't think a duty is 22 required. All that would be required would be that 23 something is foreseeable by a reasonable man in the 24 circumstances. That, as you correctly say, is a question 25 of argument.</p>	<p style="text-align: right;">Page 34828</p> <p>1 colleagues has been killed and I think the argument, the 2 way I see it, the argument is going to be based on more 3 than that. 4 MR MPOFU: Thank you, Chair – 5 MR UNTERHALTER SC: [Microphone off, 6 inaudible] - quite content. 7 CHAIRPERSON: It's been put to the 8 witness, the witness doesn't agree with it as far as I can 9 make out, is that right? You don't agree with the 10 proposition being put to you by Mr Mpofo? 11 MR RAMAPHOSA: I don't. 12 CHAIRPERSON: Okay, Mr Mpofo, next one? 13 MR MPOFU: Yes. The other, we are also 14 going to argue that your excuse or your defence, if one can 15 even call it that, which really runs something like this, I 16 wanted to save lives, I wanted criminals to be arrested, I 17 was only a non-executive director, that things were not 18 linked, that those don't hold water particularly because 19 you wanted, you agreed with Jameison that they must bring 20 the police and the army. 21 [15:40] How was the army going to achieve what you wanted 22 to be achieved? 23 MR RAMAPHOSA: Is that the question? 24 MR MPOFU: That is the question, yes. 25 MR RAMAPHOSA: The army was never brought</p>
<p style="text-align: right;">Page 34827</p> <p>1 MR MPOFU: Yes. 2 CHAIRPERSON: He is just putting it to 3 the witness so that he can't be accused later, not that I 4 would accuse him later, of not having put it to the witness 5 to give him a chance to – 6 MR UNTERHALTER SC: Chair, it's not a 7 matter of a conclusory argument, it's a question of, if you 8 mean to place certain facts from which you derive a 9 conclusion on reasonable foreseeability or subjective 10 foreseeability, you have to put those facts clearly and 11 squarely. All that we've heard is a long account as to 12 what will be argued. Well, what are the facts that are 13 being advanced? That's all I – it's just in simple 14 fairness because ultimately, Chair, you won't be in a 15 position to make conclusions if the facts that are relied 16 upon haven't been fairly and squarely put to the witness. 17 So what are the facts? 18 MR MPOFU: Chairperson, I put the facts. 19 Whether my learned friend likes it or not or you eventually 20 like it or not – 21 CHAIRPERSON: Mr Unterhalter – 22 MR MPOFU: - is another matter. 23 CHAIRPERSON: The witness conceded that 24 he's aware of the fact that the police react in 25 particularly, in a particular way when one of their</p>	<p style="text-align: right;">Page 34829</p> <p>1 in – 2 MR MPOFU: We're waiting for an answer. 3 MR RAMAPHOSA: - was it? 4 MR MPOFU: Pardon? 5 MR RAMAPHOSA: The army was not brought 6 in. 7 MR MPOFU: No, you were – 8 MR RAMAPHOSA: As far as the police being 9 brought in is concerned I have answered that question 10 before and I have said we wanted that the police should be 11 brought in so that they can stabilise the situation. 12 CHAIRPERSON: Mr Jamieson did speak about 13 police – 14 MR MPOFU: Or the army. 15 CHAIRPERSON: - slash army, which meant 16 or army. 17 MR MPOFU: Yes. 18 CHAIRPERSON: You didn't speak to the 19 Minister of Defence, as I understand it. 20 MR RAMAPHOSA: No, I didn't. 21 CHAIRPERSON: Which you would have had to 22 do, or the President, to get the army there. 23 MR RAMAPHOSA: Indeed. 24 CHAIRPERSON: You spoke to the Minister 25 of Police –</p>

<p style="text-align: right;">Page 34830</p> <p>1 MR RAMAPHOSA: Yes.</p> <p>2 CHAIRPERSON: Who was the person who</p> <p>3 would be able to speak to the National Commissioner in</p> <p>4 relation to deployment of the police. Is that so?</p> <p>5 MR RAMAPHOSA: That's correct.</p> <p>6 MR MPOFU: No, that's not the point, with</p> <p>7 the greatest respect. The point is that I've said you've</p> <p>8 agreed with Mr Jamieson's characterisation which said the</p> <p>9 situation could only be resolved by political intervention</p> <p>10 and the bringing in of the police or the army. You agreed</p> <p>11 with that.</p> <p>12 MR RAMAPHOSA: Yes.</p> <p>13 MR MPOFU: Yes, and as it happens the</p> <p>14 National Union of Mineworkers either by coincidence or by</p> <p>15 some conspiracy also issued a statement dated the 13th of</p> <p>16 August –</p> <p>17 MR TIP SC: Sorry, I object to that –</p> <p>18 MR MPOFU: - after you –</p> <p>19 MR TIP SC: Chair, one can't put a</p> <p>20 proposition either by coincidence or by conspiracy.</p> <p>21 MR MPOFU: Okay, if –</p> <p>22 MR TIP SC: If there is going to be a</p> <p>23 conspiracy alleged then it must be explained on what</p> <p>24 precise factual and evidential basis a conspiracy has</p> <p>25 been –</p>	<p style="text-align: right;">Page 34832</p> <p>1 CHAIRPERSON: It's a statement issued on</p> <p>2 the Monday, statement issued on the Monday the 13th.</p> <p>3 MR MPOFU: Yes.</p> <p>4 CHAIRPERSON: In relation to what had</p> <p>5 happened on, it must have been the Monday evening because</p> <p>6 it's on the Monday –</p> <p>7 MR MPOFU: Correct, Chairperson.</p> <p>8 CHAIRPERSON: It relates to what happened</p> <p>9 on the Monday, including the events on the Monday</p> <p>10 afternoon.</p> <p>11 MR MPOFU: Yes. So and then it says from</p> <p>12 "We call," "We call for the deployment of a Special Task</p> <p>13 Force [that is of the police] or the SANDF to deal</p> <p>14 decisively with the criminal elements" –</p> <p>15 CHAIRPERSON: Sorry, that part is not on</p> <p>16 the screen.</p> <p>17 MR MPOFU: It is.</p> <p>18 CHAIRPERSON: Oh, it's just the foot of</p> <p>19 the page, yes.</p> <p>20 MR MPOFU: And there's where [inaudible]</p> <p>21 said Frans Baleni and so on and so on. The point I'm</p> <p>22 making here is, so that I can –</p> <p>23 CHAIRPERSON: I interrupted you, Mr</p> <p>24 Mpofo. Let's get it straight, in fairness to you. What is</p> <p>25 in quotation marks is, I think it's the second paragraph,</p>
<p style="text-align: right;">Page 34831</p> <p>1 MR MPOFU: Okay –</p> <p>2 CHAIRPERSON: I understand –</p> <p>3 MR TIP SC: - contended for because that</p> <p>4 is a long way away from coincidence.</p> <p>5 CHAIRPERSON: Yes, Mr Tip, what is</p> <p>6 happening as I understand it - Mr Mpofo is right near the</p> <p>7 end of his cross-examination, because his time is running</p> <p>8 out so we must give him a chance – he's going to put a</p> <p>9 statement that was issued. He's then presumably, once he's</p> <p>10 put a question to the witness about it he's going to</p> <p>11 indicate that he's going to argue I presume on some kind of</p> <p>12 Govern &amp; Skidmore basis, sort of civil circumstantial</p> <p>13 evidence basis, that it indicates something sinister.</p> <p>14 MR MPOFU: Yes.</p> <p>15 CHAIRPERSON: But anyway, whether the</p> <p>16 argument will be a good one or a bad one is something –</p> <p>17 MR MPOFU: For another day.</p> <p>18 CHAIRPERSON: - we'll deal with when we</p> <p>19 hear it, but let's hear what he wants to put to the</p> <p>20 witness. It's a new exhibit, is it?</p> <p>21 MR MPOFU: No, Chairperson, it's BBB7.</p> <p>22 It's an old one.</p> <p>23 CHAIRPERSON: Alright. Let's put BBB7 up</p> <p>24 on the screen then.</p> <p>25 MR MPOFU: Next, it's the following page.</p>	<p style="text-align: right;">Page 34833</p> <p>1 "We call for the deployment of a Special Task Force [which</p> <p>2 presumably would be the police]" –</p> <p>3 MR MPOFU: Yes.</p> <p>4 CHAIRPERSON: - "or the SANDF to deal</p> <p>5 decisively with the criminal elements in Rustenburg and its</p> <p>6 surrounding mines" says Frans Baleni, the NUM general</p> <p>7 secretary.</p> <p>8 MR MPOFU: Yes.</p> <p>9 CHAIRPERSON: So they've got the general</p> <p>10 secretary part right, and your point presumably is linked</p> <p>11 to the fact that Mr Jamieson, I think it was, also spoke</p> <p>12 about the police or army.</p> <p>13 MR MPOFU: Yes.</p> <p>14 CHAIRPERSON: That's your point.</p> <p>15 MR MPOFU: Yes.</p> <p>16 CHAIRPERSON: Put your question to the</p> <p>17 witness so he can understand it properly.</p> <p>18 MR MPOFU: The question is - and in</p> <p>19 fairness, the witness I think alluded to this yesterday.</p> <p>20 The point I'm making here, Mr Ramaphosa, is that this call</p> <p>21 coincided exactly with the call of Mr Jamieson, or at least</p> <p>22 to the extent that it called for the army and the police.</p> <p>23 CHAIRPERSON: Or.</p> <p>24 MR MPOFU: Or the police, yes, on both</p> <p>25 counts. You accept that?</p>

<p style="text-align: right;">Page 34834</p> <p>1 MR RAMAPHOSA: Yes.</p> <p>2 MR MPOFU: Yes, and whether it's a</p> <p>3 coincidence or not and so on will be debated on another</p> <p>4 day. Now what I want to put to you to round this off is</p> <p>5 that because all the actions that you took, which we've</p> <p>6 explored extensively, and because the issue of political</p> <p>7 pressure would obviously be unlawful, or at least against</p> <p>8 the spirit of the Constitution, you would agree with that?</p> <p>9 MR RAMAPHOSA: Putting –</p> <p>10 MR MPOFU: Placing political pressure</p> <p>11 would be unlawful.</p> <p>12 MR RAMAPHOSA: Political pressure on who?</p> <p>13 On the Minister –</p> <p>14 MR MPOFU: On for example the Minister so</p> <p>15 that they can lean on the operational people and then they</p> <p>16 lean on the other operational people and then they kill</p> <p>17 people. That would be unlawful.</p> <p>18 MR RAMAPHOSA: Yes.</p> <p>19 MR MPOFU: Yes, and the fact that, as I</p> <p>20 said because of who you are, because of your experiences</p> <p>21 and so on, you know about the history of collusion between</p> <p>22 the police and mines more than anyone else probably in the</p> <p>23 country, correct?</p> <p>24 MR RAMAPHOSA: Yes, in the past, yes.</p> <p>25 MR MPOFU: Yes, in the past.</p>	<p style="text-align: right;">Page 34836</p> <p>1 MR MPOFU: Yes.</p> <p>2 MR RAMAPHOSA: Completely.</p> <p>3 MR MPOFU: Yes. And on the basis of</p> <p>4 those actions and your part in that chain of causality, as</p> <p>5 it were, where you brought the pressure, it was transmitted</p> <p>6 to Minister Mthethwa, transmitted down to General Mbombo</p> <p>7 who gave the instruction at, or rather made the decision on</p> <p>8 the 15th and which was executed on D-day, which was the</p> <p>9 following day, on the basis of that we are going to ask the</p> <p>10 Commission to recommend that you be charged with murder</p> <p>11 alongside the people who pulled the trigger, and other</p> <p>12 role-players, in the domestic court –</p> <p>13 CHAIRPERSON: Please, I don't want any</p> <p>14 interruptions or heckling.</p> <p>15 MR MPOFU: Thank you, Chairperson.</p> <p>16 CHAIRPERSON: We're trying to listen to</p> <p>17 what Mr Mpofo said. I've spoken about that previously. I</p> <p>18 don't want to have to clear the chamber at this stage. Mr</p> <p>19 Mpofo, repeat the question. I couldn't hear it properly</p> <p>20 because some ill-mannered rude person interrupted and</p> <p>21 made –</p> <p>22 MR MPOFU: Thank you very much,</p> <p>23 Chairperson. I'll summarise it. We're going to argue, Mr</p> <p>24 Ramaphosa, that you be charged with murder alongside other</p> <p>25 of the people that I've mentioned, Minister Mthethwa,</p>
<p style="text-align: right;">Page 34835</p> <p>1 MR RAMAPHOSA: I'm aware of that, yes.</p> <p>2 MR MPOFU: Ja, well and we've all</p> <p>3 established that nothing much has changed in the industry</p> <p>4 to date, correct?</p> <p>5 MR RAMAPHOSA: I have no evidence of</p> <p>6 that.</p> <p>7 MR MPOFU: Ja, well that's fine. We'll</p> <p>8 argue that because of that you, as I said earlier, and all</p> <p>9 the other factors, foresaw, or should have foreseen that</p> <p>10 your pressure, such as you called it in your emails, would</p> <p>11 result, as we will argue it did, in the killing of the 34</p> <p>12 people, at least. Then – and sorry I'm putting all these</p> <p>13 things together - in relation to the 10 deaths we're going</p> <p>14 to argue that you are responsible for those deaths - I'm</p> <p>15 now talking criminal responsibility of the 34 and the 10 -</p> <p>16 because had you performed your duty to ensure that the mine</p> <p>17 negotiate instead of saying let's see what happens in the</p> <p>18 next day, or something, as you said, then those 10 deaths</p> <p>19 could possibly have been avoided, at the very least. You</p> <p>20 understand the theory?</p> <p>21 MR RAMAPHOSA: I hear you –</p> <p>22 MR MPOFU: You don't agree with it, I</p> <p>23 know.</p> <p>24 MR RAMAPHOSA: Of course I don't agree</p> <p>25 with you.</p>	<p style="text-align: right;">Page 34837</p> <p>1 National Commissioner, some of the generals, right up to</p> <p>2 the people who pulled the trigger, because that whole chain</p> <p>3 is what was responsible. At the top of the chain is your</p> <p>4 putting pressure which resulted in the immediacy, or timing</p> <p>5 of the situation. You know what I mean? I'm trying to</p> <p>6 round it off, but based on what you and I have discussed</p> <p>7 that's the recommendation we will make. Do you have any</p> <p>8 comment?</p> <p>9 MR RAMAPHOSA: Well, clearly you've taken</p> <p>10 a considerable amount of time building this proposition.</p> <p>11 MR MPOFU: Yes.</p> <p>12 MR RAMAPHOSA: And reaching to the</p> <p>13 conclusion that you have now come to that all manner of</p> <p>14 people should be charged criminally –</p> <p>15 MR MPOFU: Yes.</p> <p>16 MR RAMAPHOSA: - for the deaths of all</p> <p>17 the people at Marikana. I deeply regret, deeply regret the</p> <p>18 deaths of all the people who died at Marikana –</p> <p>19 SPEAKER: Absolutely, you killed them.</p> <p>20 MR RAMAPHOSA: Deeply –</p> <p>21 SPEAKER: He killed them.</p> <p>22 CHAIRPERSON: Please would you leave the</p> <p>23 chamber?</p> <p>24 SPEAKER: This man killed the people at</p> <p>25 Marikana.</p>

<p style="text-align: right;">Page 34838</p> <p>1 CHAIRPERSON: Would you leave the 2 chamber? 3 SPEAKER: Yes, he killed them. 4 [Disruption by audience] He is a killer. 5 CHAIRPERSON: Would you please leave – 6 SPEAKER: He must be charged for murder, 7 ja. 8 CHAIRPERSON: Leave the chamber, please. 9 SPEAKER: He's a sell-out this man, for 10 profit. 11 MR MPOFU: Can you go? 12 SPEAKER: I will leave. 13 MR MPOFU: Okay. 14 CHAIRPERSON: [Microphone off, inaudible] 15 SPEAKER: But he's a sell-out, this man. 16 CHAIRPERSON: Will you please leave – 17 SPEAKER: Ja. 18 SPEAKER: He's a killer. 19 SPEAKER: He's a sell-out, this man. He 20 should be [inaudible], a capitalist. Capitalists are using 21 him. 22 CHAIRPERSON: Will you leave the chamber, 23 please? 24 MR MPOFU: Chairperson – alright, let – 25 CHAIRPERSON: [Microphone off, inaudible]</p>	<p style="text-align: right;">Page 34840</p> <p>1 MR MPOFU: Yes, literally two short ones, 2 Chairperson. 3 CHAIRPERSON: No, your time is up, Mr 4 Mpofu, I'm sorry. 5 MR MPOFU: I know, Chairperson – 6 CHAIRPERSON: I'm sorry, Mr Mpofu. 7 MR MPOFU: Okay. 8 CHAIRPERSON: Your time is up. 9 MR MPOFU: Chairperson, can I just round 10 off one issue? It's very important. 11 CHAIRPERSON: What's the issue? 12 MR MPOFU: It's, I wanted to refer to Mr 13 Phatsha who has asked me to put one proposition to Mr 14 Ramaphosa. 15 CHAIRPERSON: Alright, one proposition – 16 MR MPOFU: Yes, one. 17 CHAIRPERSON: But one. 18 MR MPOFU: Ja. Mr Ramaphosa, Mr Phatsha 19 here sitting next to me is a gentleman who lost his big toe 20 in the shootout on the 16th. He's also a gentleman who has 21 been working in the mines for more than 30 years. He 22 joined the NUM in 1982 when it was formed and he 23 specifically asked me to say to you that as someone who was 24 used to be his hero and as somebody who is now in high 25 office he does not believe that even if I put the</p>
<p style="text-align: right;">Page 34839</p> <p>1 SPEAKER: For profit. Murderer. 2 Protecting yourself. 3 MR MPOFU: Alright, Chairperson, I'm 4 sorry – [disruption by audience] 5 And lastly – 6 CHAIRPERSON: Mr Mpofu, wait for these 7 people to leave. Alright, please leave the room now. 8 Leave the room and close the door. 9 MR MPOFU: Thank you, Chairperson. Okay, 10 for the sake of time and – 11 CHAIRPERSON: Yes, no your time is up but 12 you've got – 13 MR MPOFU: And the temperature. It's 14 just – 15 CHAIRPERSON: He just I think was busy 16 answering the question. Had you finished your reply, Mr 17 Ramaphosa? 18 MR RAMAPHOSA: I had finished and I was 19 saying that I deeply regret, and as I was interrupted, the 20 deaths of all those people who died at Marikana. I do not 21 agree with the proposition that the learned advocate has 22 put forward. Thank you. 23 MR MPOFU: Yes. 24 CHAIRPERSON: Thank you. Yes, Mr Mpofu, 25 that's it, is it?</p>	<p style="text-align: right;">Page 34841</p> <p>1 proposition that I put to you, which is that you should be 2 charged criminally, but he also believes that because of 3 your current position and the other positions of the 4 politicians that I've mentioned, that we should also make a 5 recommendation, successfully or not, to the Chairperson 6 that you and those people should be charged criminally in 7 the International Criminal Court. Do you have any comment? 8 CHAIRPERSON: Your comment on that? 9 MR RAMAPHOSA: No, I don't believe – I 10 don't agree with that proposition. 11 CHAIRPERSON: Alright, thank you. 12 MR MPOFU: Thank you very much, 13 Chairperson. 14 CHAIRPERSON: Thank you, Mr Mpofu. Mr 15 Unterhalter. 16 RE-EXAMINATION BY MR UNTERHALTER SC: 17 Thank you, Chair. If I might summarise a central part of 18 what has been a long cross-examination, it seems to come 19 down to three propositions and I want to ask you a couple 20 of short questions about each. The first proposition is to 21 suggest that you placed pressure on ministers to cause the 22 police to take extreme measures to suppress the strike, 23 including a shoot-to-kill policy or something akin to it. 24 Secondly that that pressure was understood as 25 such by the ministers concerned and they took action in</p>

<p style="text-align: right;">Page 34842</p> <p>1 consequence, and that in the light of that you should have  2 foreseen when the events of the 16th occurred, you should  3 have foreseen what happened there because it followed from  4 the very kind of pressure that you were seeking to place on  5 the ministers. That appears to be in a nutshell the three  6 propositions that are pursued.</p> <p>7 So if I could take each one of them in turn.  8 When it is said of you that you sought to pressure or in  9 some way instigate the ministers to cause the police to  10 take extreme measures against the strike to suppress it,  11 including shooting to kill, could you just convey to us  12 again what precisely you said to each of the ministers and  13 so we can be clear what so-called pressure you sought to  14 apply?</p> <p>15 MR RAMAPHOSA: Mr Chairman, what I sought  16 to do as I was getting all these reports about people dying  17 and being killed as I said in the most brutal way, I felt  18 that I was duty-bound as a non-executive director and as a  19 concerned South African and as a person who did have access  20 to those who could do something about the situation that  21 was spiralling out of stability in the Marikana area, I  22 then took it upon myself to, yes, call the Minister of  23 Police who I know, who I know quite well and talk to often,  24 and I called him and said this is the situation that is  25 unfolding on the Platinum Belt and people are getting</p>	<p style="text-align: right;">Page 34844</p> <p>1 objective. There was no other agenda. The, I did not even  2 foresee that further deaths would ensue when police sought  3 to intervene and took action.</p> <p>4 MR UNTERHALTER SC: Did you say or imply  5 to either minister that the kind of action that you  6 envisaged or recommended to them was the strongest most  7 coercive intervention by the police or the army?</p> <p>8 MR RAMAPHOSA: I never sought to  9 prescribe to the two ministers what type of action should  10 be taken other than just saying the police should do their  11 normal work. Their normal work as I described it was that  12 people should be arrested. It is when people are arrested  13 for perpetrating crimes that those who might either get  14 tempted to do the same realise that this is not the best  15 thing to do. So that is the sum total of my communicating  16 to them the details of what needed to be done. Further  17 than that I did not communicate anything.</p> <p>18 MR UNTERHALTER SC: Did either of the  19 ministers say anything to you which would give you the  20 impression that what they were then going to do or what  21 they understood you to want was extreme coercive measures  22 by the police or the army? Did they say anything to you  23 that conveyed that impression?</p> <p>24 MR RAMAPHOSA: No, none of the ministers  25 conveyed any of that to me.</p>
<p style="text-align: right;">Page 34843</p> <p>1 killed and it behoves on the police to intervene in a way  2 that will prevent a further loss of life and prevent  3 further deaths happening, and I did say what would be  4 helpful is that in order to prevent further loss of life  5 those who are perpetrating those acts should be arrested so  6 that they do not participate in those actions on an ongoing  7 basis and kill more people.</p> <p>8 I also took it upon myself to talk to the  9 Minister of Minerals Resource Development, Ms Susan  10 Shabangu, and I implored on her to make sure that she  11 communicates with the Minister of Police so that we prevent  12 all further loss of deaths – loss of life rather, and that  13 further injuries do not take place, and it was in that vein  14 that I also discussed with her the way that she had  15 characterised the situation because with the information  16 that was being put to me by the management people, Mr  17 Jamieson, Mr Mokwena and others, the picture that was being  18 drawn for me on the canvass was that there was a serious  19 situation of unrest, of instability, and the mine security  20 people had lost complete control and people were just being  21 killed and there was mayhem, and so therefore I implored on  22 her to make sure that whomsoever could bring about any type  23 of influence to bring stability to the place should do so,  24 and my main objective, as I have said, Sir, was to make  25 sure that we don't lose further lives. That was the sole</p>	<p style="text-align: right;">Page 34845</p> <p>1 [15:59] MR UNTERHALTER SC: And then lastly on  2 this line of questioning –</p> <p>3 CHAIRPERSON: Before you move on to that,  4 what exactly did they say? Can you remember? You say they  5 didn't say anything about extreme coercive action, but what  6 did they say?</p> <p>7 MR RAMAPHOSA: Well, all - much of what  8 they said was that they will look into the situation and  9 they will talk to their people on the ground. That's the  10 sum total of what Minister Mthethwa said. So to me he  11 never responded by giving me details of what would be done.  12 From my side it was more, Minister, let the police do their  13 work, let them arrest those who are perpetrating these  14 acts. So the detail was never really covered and there was  15 no coercion.</p> <p>16 CHAIRPERSON: And Minister Shabangu?</p> <p>17 MR RAMAPHOSA: Minister Shabangu, less so  18 about what specifically needed to be done, save to say we  19 need police on the ground, could she also communicate that  20 to the Minister of Police so that we can forestall or stop  21 whatever other further acts of violence can take place.</p> <p>22 CHAIRPERSON: What did she say about the  23 President?</p> <p>24 MR RAMAPHOSA: What she said about the  25 President, it was my request really. I thought that she</p>

<p style="text-align: right;">Page 34846</p> <p>1 had gone to Cape Town because there was going to be a 2 cabinet meeting. As it turns out, there was no cabinet 3 meeting but a cabinet committee meeting and I said could 4 she also communicate this to the President. She said she 5 will also inform the President about what is happening. 6 CHAIRPERSON: Mr Unterhalter? 7 MR UNTERHALTER SC: Was there, from what 8 you've now conveyed to us of what you said to the Ministers 9 and what the Ministers said to you, did you have any reason 10 to think, on the basis of that exchange, that the events 11 that did unfold on the 16th were likely, foreseeable, 12 possible in any way? 13 MR RAMAPHOSA: No, I never even began to 14 think or even foresaw that the events of the 16th would 15 unfold, not at all. 16 MR UNTERHALTER SC: It was also put to 17 you in a separate theory of foresight that because the 18 police are disposed, so it was contended, to revenge the 19 killings of their members, that when you recommended that 20 the police presence be increased and that actions be taken, 21 it was foreseeable that the kind of events that unfolded on 22 the 16th would occur. Did you so foresee it? 23 MR RAMAPHOSA: No, I did not foresee all 24 that. Much as I had received reports that two of the 25 people who had lost their lives were police, I did not</p>	<p style="text-align: right;">Page 34848</p> <p>1 going on an unprotected strike. 2 MR UNTERHALTER SC: So if I could then 3 finally take you to BBB4.5 which is page 16 of the bundle, 4 your bundle, in the much debated passage in your e-mail of 5 the 15th of August to Mr Jameson – 6 CHAIRPERSON: We need the lower part of 7 this slide. Yes, okay. 8 MR UNTERHALTER SC: It is the lower part, 9 it's the bit that begins, "The terrible events." 10 CHAIRPERSON: It's now on the screen. 11 MR UNTERHALTER SC: So if I could just 12 pick up the language in that third paragraph, it says, "The 13 terrible events that have unfolded cannot be described as a 14 labour dispute. They are plainly dastardly criminal and 15 must be characterised as such." What were you referring to 16 when you referred to the terrible events? 17 MR RAMAPHOSA: I was referring, as I 18 said, when I said dastardly criminal acts, I was referring 19 to the killing of the people who had already died, the 20 injuries that had been inflicted on some of the people and 21 the terrible way in which some of the people had been 22 killed, where they were burned in their vehicles and their 23 body parts were cut out and they – it was just a gory 24 picture that was painted to me. That is what I was 25 referring to as acts of criminality.</p>
<p style="text-align: right;">Page 34847</p> <p>1 foresee that sending more police would mean or could mean 2 that some of them could want to take revenge. I did not 3 foresee that. 4 MR UNTERHALTER SC: What indeed was your 5 expectation of what more police might do to the situation? 6 MR RAMAPHOSA: My expectation about more 7 police presence in that situation was that, one, they would 8 stabilise the situation and that with their mere presence 9 they would be able to bring a measure of stability in the 10 area and that they would also go about their normal task of 11 finding out precisely what acts of crime had been committed 12 and how the people who had already been killed, had been 13 killed, and who had perpetrated those acts and that that 14 would be followed up by arresting those who had been 15 involved in perpetrating those acts. That is what I did 16 foresee. 17 MR UNTERHALTER SC: Can I then finally 18 come to question of characterisation which was much debated 19 with you? If I could ask you this to begin with, if all 20 that had happened during August was that workers had gone 21 out on an unprotected strike, would you ever have 22 considered that conduct alone to constitute criminal 23 conduct? 24 MR RAMAPHOSA: No, I would not have 25 characterised that as criminal conduct, that is workers</p>	<p style="text-align: right;">Page 34849</p> <p>1 MR UNTERHALTER SC: And did the terrible 2 events in any way refer to the fact that workers had gone 3 out on an unprotected strike? Was that any part of what 4 you were referring to when you referred to the terrible 5 events? 6 MR RAMAPHOSA: No, no. 7 MR UNTERHALTER SC: Thank you, Chair, 8 those are our questions. 9 CHAIRPERSON: Thank you, Mr Unterhalter. 10 Have you got any questions? Yes, thank you, Mr Ramaphosa. 11 You'll be excused on the usual basis that if it's necessary 12 for you to come back, you'll come back without our having 13 to serve a subpoena upon you. I don't know that that'll be 14 necessary but it's what I say to every witness when I 15 excuse them. 16 MR RAMAPHOSA: Could I say thank you to 17 you and thank you for – 18 SPEAKER: Ramaphosa. 19 MR RAMAPHOSA: - that you are doing. I'd 20 like to - 21 SPEAKER: Mr Ramaphosa. [Speaking in the 22 vernacular.] 23 MR RAMAPHOSA: - to thank you – 24 SPEAKER: [Speaking in the vernacular.] 25 CHAIRPERSON: No, please stop that.</p>

1           SPEAKER:        [Speaking in the vernacular.]  
2           CHAIRPERSON:       We don't want –  
3           SPEAKER:        [Speaking in the vernacular.]  
4           CHAIRPERSON:       No, please. Take the  
5 microphone away from him and remove him from the chamber.  
6 Sorry, Mr Ramaphosa, it sounds as if you've finished your  
7 evidence and I've excused you.  
8           MR RAMAPHOSA:       Thank you.  
9           CHAIRPERSON:       And I think we can ignore  
10 this unfortunate incident that's taking place  
11 simultaneously with my excusing you. Sorry, do you want to  
12 say something in response to what was said by, I think it  
13 was Mr –  
14          MR RAMAPHOSA:       No, no, I don't want to  
15 say, I don't want to say all that.  
16          CHAIRPERSON:       Alright.  
17          MR RAMAPHOSA:       Thank you.  
18          CHAIRPERSON:       Thank you. We will adjourn  
19 until 9 o'clock tomorrow morning.  
20          [COMMISSION ADJOURNED]  
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