

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 278

26 AUGUST 2014

PAGES 35536 TO 35761



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<p style="text-align: right;">Page 35536</p> <p>1 [PROCEEDINGS ON 26 AUGUST 2014] 2 [09:11] CHAIRPERSON: The Commission resumes. Mr 3 Badenhorst, I believe you're going to call your witness 4 this morning. 5 MR BADENHORST SC: [Microphone off, 6 inaudible] 7 CHAIRPERSON: Oh, I see. I'm sorry, I 8 was informed that the chamber was ready for us, but no I 9 understand. Obviously I was misinformed. 10 MR BADENHORST SC: [Microphone off, 11 inaudible] 12 CHAIRPERSON: Can you tell me while we're 13 waiting why we didn't get an affidavit from her? 14 MR BADENHORST SC: [Microphone off, 15 inaudible] 16 CHAIRPERSON: Can you tell me why we 17 didn't get an affidavit from her? We've had affidavits 18 from witnesses so far. We didn't get an affidavit from 19 her. Is there a reason? 20 MR BADENHORST SC: I don't know the 21 answer to that question. The document that was submitted 22 can obviously now be affirmed under oath – 23 CHAIRPERSON: Yes, yes. 24 MR BADENHORST SC: And that's perhaps the 25 solution. I do apologise if we applied the wrong format.</p>	<p style="text-align: right;">Page 35538</p> <p>1 CHAIRPERSON: Quadruple? 2 MS PILLAY: C5. 3 CHAIRPERSON: Thank you. Is there any 4 other document you wish to hand in? 5 MR BADENHORST SC: Mr Chairman, there's 6 only one page which is simply a correction of one paragraph 7 in that statement. We have prepared it in a written form 8 which I propose if it's acceptable to you should be marked 9 CCCC5.1, which will be handed to you in a moment. 10 CHAIRPERSON: [Microphone off, inaudible] 11 MR BADENHORST SC: CCCC5.1. 12 CHAIRPERSON: [Microphone off, inaudible] 13 MR BADENHORST SC: Yes, it has its 14 heading, it is called "Corrected paragraph 12 of the 15 statement by Ms Susan Shabangu, former Minister of Mineral 16 Resources, signed on 22 January 2014." I will deal with 17 that in the course of the evidence. 18 CHAIRPERSON: I see you've marked it – 19 MR BADENHORST SC: Indeed we have. 20 CHAIRPERSON: I've written in my book, 21 "Corrected version of paragraph 12 of the statement dated 22 22 January." 23 MR BADENHORST SC: Thank you, Mr 24 Chairman. May I proceed? 25 CHAIRPERSON: Yes.</p>
<p style="text-align: right;">Page 35537</p> <p>1 CHAIRPERSON: Yes. No, I see. The 2 witness sits in the chair there. 3 MR BADENHORST SC: Thank you, Mr 4 Chairman. The witness has no objection to taking the oath. 5 CHAIRPERSON: Thank you. Would you stand 6 please, Ms Shabangu? Do you swear that the evidence you 7 will give before this Commission will be the truth, the 8 whole truth, and nothing but the truth? Would you please 9 raise your right hand and say, "I swear, so help me God." 10 SUSAN SHABANGU: [Inaudible] so help me 11 God. 12 CHAIRPERSON: Thank you, you may be 13 seated. Thank you, Mr Badenhorst. 14 MR BADENHORST SC: Thank you, Mr 15 Chairman. 16 CHAIRPERSON: I take it you want to, the 17 statement which is not in affidavit form – 18 MR BADENHORST SC: Yes, that's the only – 19 CHAIRPERSON: I take it you want that to 20 be an exhibit. 21 MR BADENHORST SC: Yes, Mr Chairman, it 22 will be exhibit – 23 CHAIRPERSON: So shall we call that – is 24 it an exhibit already, Ms Pillay? 25 MS PILLAY: Chair, it's CCCC5.</p>	<p style="text-align: right;">Page 35539</p> <p>1 EXAMINATION BY MR BADENHORST SC: Thank 2 you, Mr Chairman. Ms Shabangu, good morning to you. You 3 were formerly the Minister of Mineral Resources. Is that 4 correct? 5 MS SHABANGU: That's correct. 6 MR BADENHORST SC: You are now the 7 Minister in the Presidency responsible for women? 8 MS SHABANGU: That's correct. 9 MR BADENHORST SC: And you were appointed 10 to your new position with effect from 25 May 2014. 11 MS SHABANGU: That's correct. 12 MR BADENHORST SC: Minister, you have 13 submitted a written statement to the Commission which you 14 signed on the 22nd of January 2014. 15 MS SHABANGU: That's correct. 16 MR BADENHORST SC: Mr Chairman, we have 17 identified that statement as CCCC5 and I have mentioned to 18 the Commission that the Minister requires, or requests a 19 correction in relation to paragraph 12 of that statement. 20 Minister, first of all could you just confirm that the 21 corrected statement, paragraph 12, is what you regard as a 22 corrected version of the original paragraph 12? 23 MS SHABANGU: I do confirm para 12. 24 MR BADENHORST SC: Subject to that 25 correction, do you confirm the correctness of CCCC5, your</p>

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1 original statement which you signed on 22 January 2014?
 2 MS SHABANGU: That's correct.
 3 MR BADENHORST SC: Very briefly,
 4 Minister, if you could just explain to the Chairman that
 5 correction which you requested this morning.
 6 MS SHABANGU: Thank you very much. Mr
 7 Chairman, the correction which I requested to be done was
 8 in relation to para 12, because if you read the paragraph
 9 on the main statement, Mr Chairman –
 10 MR BADENHORST SC: Perhaps do you have
 11 the original statement?
 12 MS SHABANGU: I do.
 13 MR BADENHORST SC: It might be an idea
 14 just to compare the two –
 15 MS SHABANGU: Okay.
 16 MR BADENHORST SC: - for the benefit of
 17 the Commission.
 18 MS SHABANGU: I have it, Mr Chairman. If
 19 we look at para 12 in the main document it reads as
 20 follows, "I was in Cape" –
 21 CHAIRPERSON: On page 5.
 22 MR BADENHORST SC: Thank you, Mr
 23 Chairman.
 24 MS SHABANGU: I'm at page – yes, that's
 25 page 5. Can I proceed, Mr Chairman?

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1 CHAIRPERSON: Please do.
 2 MS SHABANGU: Thank you. It reads as
 3 follows, "I was in Cape Town at that time, scheduled to
 4 attend the cabinet committee meeting on National Planning
 5 the same afternoon, 15 August 2012. It turned out that Mr
 6 Ramaphosa was also in Cape Town, so he suggested that we
 7 meet to discuss the deteriorating situation in Marikana.
 8 As I considered the situation in a very serious light, I
 9 agreed to meet with Mr Ramaphosa, which we did shortly
 10 before the cabinet." Hence the correct –
 11 CHAIRPERSON: Before the cabinet
 12 committee meeting?
 13 MS SHABANGU: Cabinet committee meeting.
 14 Hence on reading the paragraph 12 I realised that it does
 15 not reflect the true processes of the day, but the content
 16 is the same, hence I saw that it's important for me to
 17 correct it in making sure that para 12 does make sense, and
 18 I want to read the corrected version. "I was in Cape Town
 19 on 15 August to attend a meeting of the cabinet committee
 20 on Economic Sector Employment Infrastructure Development.
 21 Mr Ramaphosa was also in Cape Town to attend the National
 22 Planning Commission meeting on the same day. He suggested
 23 that we meet to discuss the deteriorating situation in
 24 Marikana. As I considered the situation in a very serious
 25 light, I agreed to meet with Mr Ramaphosa, which we did

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1 shortly before the cabinet committee meeting." If you read
 2 the main statement it assumes that the National Planning
 3 Commission it's a cabinet committee and that's what we're
 4 correcting. The National Planning Commission, it's had its
 5 own different processes led by former Minister Trevor
 6 Manuel, and the National Planning Commissioners were not
 7 participating in the cabinet. That is why I thought that
 8 we need to give effect in correcting that paragraph.
 9 MR BADENHORST SC: Yes.
 10 MS SHABANGU: Thank you.
 11 MR BADENHORST SC: Thank you, Minister
 12 Shabangu. Minister, your statement, which we do not, Mr
 13 Chairman, intend to go through, it is before the
 14 Commission. Your statement responds essentially to certain
 15 questions which were raised by the evidence leaders. Is
 16 that correct, Minister Shabangu?
 17 MS SHABANGU: Yes, it's correct.
 18 MR BADENHORST SC: And those questions
 19 are stated in paragraph, in the initial paragraph at the
 20 beginning of the statement, which is in paragraph 6.
 21 MS SHABANGU: That's correct. Yes, para
 22 6, it raises the issues that "I make this statement at the
 23 request of the Commission's evidence leaders to address the
 24 following questions which were submitted to me.
 25 1, What I was told about the problems/violence at

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1 Marikana;
 2 2, When and by whom was I informed of the problem
 3 at Marikana;
 4 3, What my response was to the information."
 5 So that's the correct, that's why – or that's
 6 what made me to be here, Mr Chairman, to come and give
 7 evidence to the Commission.
 8 MR BADENHORST SC: Yes, and Minister
 9 Shabangu, it is correct that you informed the Commission
 10 through your legal representatives at day 1 of the
 11 Commission, as you record in your statement, that you will
 12 participate and assist in the Commission's inquiry.
 13 MS SHABANGU: Mr Chairman, that's correct
 14 to say indeed I was willing to come and participate and
 15 contribute to the Commission in making sure that as it
 16 continues with its proceedings they are able – I can also
 17 share my own experiences during this process and in
 18 assisting the Commission in finding a closure to the
 19 matter.
 20 MR BADENHORST SC: Minister, the incident
 21 which the Commission is investigating is defined or
 22 described in its Terms of Reference. Subject to
 23 correction, Mr Chairman, I think there's one small error
 24 about the Thursday, at least the start date of the period
 25 being Saturday 9 August, as I recall, and that has been

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1 corrected.

2 CHAIRPERSON: Yes, it was Thursday the 9th

3 of August there was a meeting of some of the –

4 MR BADENHORST SC: As it pleases –

5 CHAIRPERSON: - strikers, or the future

6 strikers I think as they were then. That was on the

7 Thursday, the 9th.

8 MR BADENHORST SC: Yes, until the

9 Thursday 16th, as it pleases the Commission. Minister, I

10 think you are aware of the matter which the Commission is

11 investigating and how that incident is described. The one

12 paragraph in the Commission's Terms of Reference which I

13 would like to put to you is paragraph 1.5 which refers

14 specifically to the department which was your portfolio as

15 minister at the relevant time, and that, I'll read it to

16 you, it's paragraph 1.5 and what I'm going to ask you,

17 Minister, if you can just hear that paragraph again and I

18 want you simply to answer very simply and briefly to the

19 question put, and I'm sure that the questioners may wish to

20 explore that.

21 CHAIRPERSON: No, 1.5 has been deleted –

22 MR BADENHORST SC: Oh, I see.

23 CHAIRPERSON: - by a proclamation issued

24 by the President –

25 MR BADENHORST SC: I see, Mr –

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1 CHAIRPERSON: - in May of this year.

2 MR BADENHORST SC: Oh, I see. I wasn't

3 aware –

4 CHAIRPERSON: And that has substantially

5 reduced the ambit of the investigations being conducted by

6 the Commission. But in paragraph 1.1.3 of the proclamation

7 there is a reference to the actions and failures perhaps of

8 Lonmin. Now 1.1.3 and 1.5 of course go together –

9 MR BADENHORST SC: Yes.

10 CHAIRPERSON: - because Lonmin had to

11 perform under the social and labour plan.

12 MR BADENHORST SC: Yes.

13 CHAIRPERSON: They had to be monitored by

14 the Department –

15 MR BADENHORST SC: Yes.

16 CHAIRPERSON: - of Mineral Resources.

17 The extent to which the department discharged its

18 responsibilities in relation to that monitoring is no

19 longer a matter for us to investigate, but in terms of a

20 ruling we gave yesterday we do intend to spend some time on

21 looking at one particular aspect, or the evidence leaders

22 propose to spend some time looking at one particular aspect

23 of Lonmin's performance. So I think I should explain that

24 to you because clearly –

25 MR BADENHORST SC: I appreciate –

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1 CHAIRPERSON: - it's something that's not

2 been brought to your attention.

3 MR BADENHORST SC: Yes, I appreciate

4 that. I'm aware of the ruling, Mr Chairman, so with

5 respect, perhaps what I'll do is the Commission, the

6 Minister as you will have seen from the statement was

7 requested to deal with specific issues, which she has done,

8 and that concludes our evidence-in-chief. Thank you, Mr

9 Chairman.

10 CHAIRPERSON: Thank you, Mr Badenhorst.

11 Ms Pillay, you're going to cross-examine I understand on

12 behalf of the evidence leaders.

13 MS PILLAY: I am, Chair

14 CHAIRPERSON: Can you give me the order

15 in which the various parties are going to cross-examine the

16 witness?

17 MS PILLAY: Chair, Mr Wesley has the

18 order –

19 CHAIRPERSON: And the time allocations.

20 So is Mr Wesley going to do it?

21 MR WESLEY: Yes.

22 CHAIRPERSON: The first is the evidence

23 leaders. How long are they going to be given?

24 MR WESLEY: Yes, Chair, thank you. The

25 evidence leaders have 90 minutes. They'll be followed by

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1 the Legal Resources Centre with 30 minutes, the injured and

2 arrested parties with 60 minutes, the families with 30

3 minutes, Lonmin then with 30 minutes, and then re-

4 examination of half an hour as far as it's necessary.

5 CHAIRPERSON: I see. Thank you very

6 much.

7 MR BADENHORST SC: I wonder of my learned

8 friend can just do it a little slower –

9 CHAIRPERSON: I'll give it to you.

10 MR BADENHORST SC: Thank you.

11 CHAIRPERSON: Evidence leaders, that's Ms

12 Pillay, 90 minutes. LRC, the Legal Resources Centre 30

13 minutes, injured and arrested persons 60 minutes, families

14 30 minutes, Lonmin 30 minutes, and re-examination by Mr

15 Badenhorst SC 30 minutes.

16 MR BADENHORST SC: Thank you, Mr

17 Chairman. I appreciate it.

18 MS PILLAY: Thank you, Chair. Chair, if

19 we may begin with a bit of housekeeping. There are only –

20 what we've done is we have compiled all the predominantly

21 media articles and speeches which we intend to rely on,

22 Chair, into one bundle, which I propose we mark as exhibit

23 QQQQ1.

24 CHAIRPERSON: Q?

25 MS PILLAY: Q. You will see, Chair, that

<p style="text-align: right;">Page 35548</p> <p>1 the bundle is paginated, so if we refer to a particular 2 page it will be 1 point whatever the page number is. 3 CHAIRPERSON: So Q1 – 4 MS PILLAY: We can call it the evidence 5 leaders' bundle. 6 CHAIRPERSON: QQQQ1 is evidence leaders' 7 bundle, then we've got [inaudible] – 8 MS PILLAY: Microphone. Chair, I think 9 the microphone – 10 CHAIRPERSON: Oh yes, sorry. I forgot to 11 turn my microphone on. QQQQ1 is evidence leaders' bundle. 12 You've given us the bundle which contains 27 pages and 13 there are 10 items in it, so I suppose what we will do is 14 the first item, which is a media article headed "Shabangu 15 in Brakpan while chaos persists in Lonmin," which appeared 16 in Moneyweb on the 14th of August, that will be QQQQ1.1 and 17 the 10th item is a copy of the address by the Minister at 18 the special parliamentary debate following the Marikana 19 tragedy on the 21st of August. So that will be QQQQ1.10 and 20 then the others will follow the same line. 21 MS PILLAY: That's correct, Chair. 22 Chair, there is a second document and it's a document we've 23 just handed to you now and I think we've placed a copy on 24 the witness's desk, Minister. It's page 278 of the Lonmin 25 discovery bundle –</p>	<p style="text-align: right;">Page 35550</p> <p>1 email in paragraph 1 Mr Ramaphosa refers to discussions he 2 had with you. 3 Now before we deal with the content of that 4 discussion, Minister, can you just tell us in terms of your 5 own recollection if Mr Ramaphosa's referring to a 6 discussion he had with you and the email is 47 minutes past 7 midnight on the 15th, do you have a recollection of when 8 those discussions were held? You see, in your statement 9 you refer to telephone calls which you had with Mr 10 Ramaphosa – telephone discussions which you had on the 15th. 11 I just wanted to check with you whether it's not possible 12 that those discussions were actually on the 14th and not the 13 15th. 14 MS SHABANGU: My recollection is that on 15 the 14th we never had discussions with Mr Ramaphosa. I know 16 that we had some few calls which we missed between the two 17 of us. 18 [09:30] But I can't recall about what – what I can recall 19 is that on the 15th that's when we had an extensive, sort of 20 a very brief, but very detailed discussion. 21 MS PILLAY: And that would have been 22 during the day on the 16th, I mean, or could it have been - 23 MS SHABANGU: Not 16th, not 16th, on the 24 15th in the morning. 25 MS PILLAY: But it wouldn't have been</p>
<p style="text-align: right;">Page 35549</p> <p>1 CHAIRPERSON: Yes. 2 MS PILLAY: - and it's a letter dated 13th 3 of August. 4 CHAIRPERSON: So what shall we call that? 5 MS PILLAY: That will be QQQQ2. 6 CHAIRPERSON: Letter from Lonmin to the 7 witness dated 13 August 2012, and for convenience I'll just 8 put in brackets "(Lonmin bundle pages 278-9)." Is that all 9 the housekeeping you want to do? 10 CROSS-EXAMINATION BY MS PILLAY: That's 11 the housekeeping, Chair. Good morning, Minister. 12 MS SHABANGU: Morning. 13 MS PILLAY: Minister, if we may begin by 14 looking at exhibit BBB4, this – I'm not sure if – 15 MS SHABANGU: It's not here. 16 MS PILLAY: We did give your team notice 17 that the exhibits are going to be used, Minister. I'm not 18 sure if they've got a hardcopy for you. It's on the screen 19 before you, Minister. If we can start with exhibit BBB4.1 20 and you will see, Minister, that this is an email addressed 21 by Mr Ramaphosa to Roger Phillimore of Lonmin and the email 22 you will see has been sent on the 15th of August 2012. The 23 important part, Minister, which I'd like to draw your 24 attention to is the time of the email and we see that it's 25 sent at 47 minutes past midnight on the 15th. Now in that</p>	<p style="text-align: right;">Page 35551</p> <p>1 before 47 minutes past midnight. 2 MS SHABANGU: Definitely not. 3 MS PILLAY: So in this email when Mr 4 Ramaphosa is referring to these discussions that he had 5 with you, specifically in relation to what was happening at 6 Lonmin. What discussion is he referring to? 7 MS SHABANGU: Well I'm unable to respond 8 on his behalf. I mean I can't understand because you're 9 showing me this, my understanding, Mr Chairman, is that on 10 the 14th we didn't have any discussions which was extensive, 11 but what I know is that we had a very short brief over the 12 phone just indicating that he'd be in Cape Town then we can 13 talk about these issues. 14 CHAIRPERSON: Am I correct in saying 15 essentially you had two discussions with him? One 16 telephonic discussion and one face to face? 17 MS SHABANGU: Yes, Mr Chairman. 18 CHAIRPERSON: The face to face one was in 19 the afternoon. 20 MS SHABANGU: No. 21 CHAIRPERSON: Before you went to the 22 cabinet committee. Is that right? 23 MS SHABANGU: Mr Chairman, it was in the 24 morning. Cabinet committees sit in the morning, not in the 25 afternoon. The Economic Cluster Committee sit in the</p>

<p style="text-align: right;">Page 35552</p> <p>1 morning, it's a regular Cape committee meeting which 2 happens on Wednesdays. It was not in the afternoon. Mr 3 Chairman, can I clarify? 4 CHAIRPERSON: Sorry, I just want to get 5 clarity in my own mind as to what happened. Your original 6 statement which you corrected said that you were going to 7 attend a cabinet committee meeting that afternoon, the 8 afternoon of the 15th. The phrase "that afternoon" doesn't 9 appear in the corrected version. Now you say that cabinet 10 meeting, cabinet committee meeting was in the morning. 11 MS SHABANGU: Yes, Mr Chairman. 12 CHAIRPERSON: And what time did it start? 13 MS SHABANGU: Normally the Economic Cab 14 Meeting starts at 10:30. 15 CHAIRPERSON: 10:30 and did this one 16 start at 10:30 or thereabouts? 17 MS SHABANGU: It always starts at 10:30. 18 CHAIRPERSON: I see. 19 MS SHABANGU: It's a standing 20 arrangement. 21 CHAIRPERSON: I see, so at some stage 22 before that you had a meeting with Mr Ramaphosa, before you 23 went to the cabinet committee meeting. 24 MS SHABANGU: Yes, Mr Chairman, before I 25 went into the cabinet meeting I saw Mr Ramaphosa.</p>	<p style="text-align: right;">Page 35554</p> <p>1 building? 2 MS SHABANGU: No, no, no. Mr Manuel's 3 office is at Good Hope which has access into Tuinhuis. 4 CHAIRPERSON: Yes, yes. 5 MS SHABANGU: And come through the 6 passage which we normally use for the cabinet meetings. 7 CHAIRPERSON: I see, so you met Mr 8 Ramaphosa at Good Hope or in the Tuinhuis or in the passage 9 between? 10 MS SHABANGU: Outside Tuinhuis. 11 CHAIRPERSON: Outside Tuinhuis. 12 MS SHABANGU: Yes. 13 CHAIRPERSON: And how long was your 14 discussion with him? 15 MS SHABANGU: It was not very long 16 because I was also – I would say maybe about five minutes. 17 CHAIRPERSON: Five minutes, I see. So 18 that was before half past ten on the Wednesday morning. 19 MS SHABANGU: It was before half past 20 ten. 21 CHAIRPERSON: Now you clearly have a 22 recollection that you had the telephone conversation with 23 him earlier that morning. But it appears from 24 contemporaneous email that Mr Ramaphosa sent to Mr 25 Phillimore, who is the chairman of Lonmin, at 47 minutes</p>
<p style="text-align: right;">Page 35553</p> <p>1 CHAIRPERSON: Where did you meet him? 2 MS SHABANGU: It was in the morning. 3 CHAIRPERSON: Where? 4 MS SHABANGU: In Cape Town. 5 CHAIRPERSON: Where in Cape Town? 6 MS SHABANGU: Normally cabinet meetings 7 takes place at Tuinhuis. 8 CHAIRPERSON: No, no sorry, you're not 9 understanding me, I'm sorry. I'm sure it's my fault, I'm 10 not putting the question clearly enough. Where did you 11 meet Mr Ramaphosa? 12 MS SHABANGU: Where? 13 CHAIRPERSON: Where. 14 MS SHABANGU: In Cape Town. 15 CHAIRPERSON: Yes I know, but where in 16 Cape Town? 17 MS SHABANGU: Tuinhuis, that's where we 18 met. 19 CHAIRPERSON: In the Tuinhuis. 20 MS SHABANGU: Tuinhuis, yes. That's 21 where we hold, Mr Chairman, our cab meetings. Because he 22 was the Deputy chair of the National Planning Commission 23 and the Chairperson was Mr Trevor Manuel, I bumped into him 24 coming from Minister Manuel's office. 25 CHAIRPERSON: I see so was that in Mark's</p>	<p style="text-align: right;">Page 35555</p> <p>1 after midnight on the Wednesday morning that he said he had 2 a discussion with you, he'd already had the telephonic 3 discussion with you and had arranged to meet you in Cape 4 Town which clearly is a reference to the meeting which you 5 had as you explained to us. Now it does look, does it not, 6 your memory must be failing you on the question as to when 7 the telephonic conversation took place. I don't think 8 anything turns on it, but it looks as if it must have been 9 at some stage on the Tuesday. Would that be a fair 10 assumption? 11 MS SHABANGU: Mr Chairman, I've said 12 there were two – he called me, which was the 14th, I 13 returned his call and he called me, we had a discussion 14 about having a meeting. We never had – it's like arranging 15 a meeting, Mr Chairman, more than having an extensive 16 discussion. That was on the 14th. 17 CHAIRPERSON: Yes he of course does say 18 he didn't just arrange a meeting. He does say and I don't 19 know whether you agree with this, perhaps Ms Pillay will 20 take that up, but he does say that he told you in the 21 telephonic conversation it would appear, that your silence 22 and inaction about what was happening at Lonmin was bad for 23 you and the government. Did he say that to you in the 24 telephonic conversation before the face to face meeting? 25 MS SHABANGU: Well he did indicate that</p>

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1 he's concerned about my failings and hence I never
 2 responded to that. I said let's meet tomorrow.
 3 CHAIRPERSON: Yes did you say – he says
 4 here that you were going to issue a statement.
 5 MS SHABANGU: Well on the 14th I had
 6 indicated that we had started planning because the matter
 7 was coming to our attention as a department to say indeed
 8 we are going to respond in relation to what was going on.
 9 CHAIRPERSON: And by the response you
 10 meant, I take it, that you'd respond by issuing a
 11 statement.
 12 MS SHABANGU: Yes and clarifying the
 13 situation because there was a sense that it's our
 14 responsibility as DMR.
 15 CHAIRPERSON: So to go back to the
 16 question I asked initially. It does look, would you agree
 17 with me, I don't think anything turns on it, it does look
 18 though as if you had a discussion on the Tuesday, at some
 19 stage, with Mr Ramaphosa, a discussion of a fairly brief
 20 nature in which you arranged to meet face to face the
 21 following day in Cape Town. You would be there for the
 22 cabinet committee meeting and he would be there for an
 23 announcement in respect of the National Planning
 24 Commission, is that –
 25 MS SHABANGU: Correct, Mr Chairman.

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1 CHAIRPERSON: All right, thank you.
 2 MS PILLAY: Well, Minister may we look at
 3 exhibit JJJJ3 which is a summary of the list of calls made
 4 by Mr Ramaphosa to yourself and to Minister Mthethwa,
 5 you'll see it, it will come up on the screen in a few
 6 minutes. And you'll see from this list of telephone calls
 7 Mr Ramaphosa called you, Minister, at 6:34pm on the 14th and
 8 that it appears it's a five second telephone call. So it
 9 appears that it was probably a message left for you, but
 10 there's two further calls on the 14th. There's one at
 11 6:34:59 for 18 seconds and there's one at 6:35:31 for 218
 12 seconds. Now do have recollection of these telephone
 13 calls?
 14 MS SHABANGU: Can you do arithmetic for
 15 me, how many minutes are there?
 16 MS SHABANGU: It's around four minutes,
 17 the 218 seconds.
 18 CHAIRPERSON: It's -
 19 MS PILLAY: 218 seconds, around three and
 20 a half –
 21 CHAIRPERSON: 280?
 22 MS PILLAY: 218, two, one, eight.
 23 CHAIRPERSON: 218, oh I see, thank you.
 24 MS PILLAY: It's about a three and a half
 25 minute conversation.

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1 CHAIRPERSON: Yes it's 3.6, so just over
 2 three and a half minutes.
 3 MS SHABANGU: Thank you, Mr Chairman. I
 4 think it does confirm that we did discuss the issue of
 5 meeting.
 6 MS PILLAY: But your testimony is that
 7 there was no content to the meeting in terms of what was
 8 happening at Lonmin and what was expected of you or asked
 9 of you.
 10 MS SHABANGU: Can you come again?
 11 MS PILLAY: Your testimony is that during
 12 that telephone call all that was discussed was an
 13 arrangement to meet the next day in Cape Town, but there
 14 was no discussion between you and Mr Ramaphosa in relation
 15 to the situation at Lonmin and what he was asking of you.
 16 MS SHABANGU: Mr Chairman, nothing was
 17 asked from me, hence I'm saying that when he raised the
 18 issue of my silence I felt that was an issue for a
 19 discussion and we couldn't do that over the phone. And if
 20 he was going to be in Cape Town and I was going to be in
 21 Cape Town I said it's important for us to meet and discuss
 22 the matter.
 23 MS PILLAY: So you're saying, Minister,
 24 that during that telephone call on the 14th Mr Ramaphosa did
 25 raise with you what he perceived to be your silence on what

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1 was happening at Lonmin.
 2 MS SHABANGU: That's correct, Mr
 3 Chairman.
 4 MS PILLAY: So what we see in BBB4.1, if
 5 we can just go back to BBB4.1, when Mr Ramaphosa refers to
 6 a discussion he had with you, where he called you and he
 7 told you that your silence and inaction was bad for you and
 8 the government that that discussion actually did happen on
 9 the 14th.
 10 MS SHABANGU: Well what he raised I can't
 11 – Mr Chairman, I can't, I don't know what he wrote to Mr
 12 Roger, but what I can attest is that indeed I felt it
 13 important for us to talk when we were in Cape Town more
 14 than having a telephonic discussion.
 15 MS PILLAY: Minister, my question is a
 16 different one. My question is whether what Mr Ramaphosa
 17 has reflected in this email is that consistent with your
 18 recollection of the telephone call between you and Mr
 19 Ramaphosa on the 14th?
 20 MS SHABANGU: Well if you talk about what
 21 is here what I can tell you in terms of what he said about
 22 the inaction and on the basis of that, Mr Chairman, I
 23 didn't want to enter into a discussion with him on the
 24 matter. Hence I felt it important for us to talk about
 25 this matter when I see him.

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1 CHAIRPERSON: It sounds actually as if
 2 you said two things along with what he said and I think
 3 you've already agreed with that. Let's just get clarity.
 4 He spoke to you about your silence and I take it indicated
 5 he didn't think it was a good idea for you to be silent and
 6 then you made two answers as I understand it. The first
 7 thing is we're going to respond and you've already said you
 8 were going to respond by issuing a statement. So you said
 9 we're going to issue a statement, but you then said – it
 10 then turned out you'd both be in Cape Town on the Wednesday
 11 and you then said let's have a meeting and discuss it. Is
 12 that essentially what happened?
 13 MS SHABANGU: Exactly, that's correct, Mr
 14 Chairman.
 15 MS PILLAY: Now, Minister, according to
 16 Mr Ramaphosa, based on his discussion with you on the 14th,
 17 you agreed to issue a statement. Now I'll take you to the
 18 records and we'll show you that in fact your spokesman does
 19 issue a statement the next day. Now what I want to clarify
 20 with you was that the outcome of the discussion you had
 21 with Mr Ramaphosa on the 14th?
 22 MS SHABANGU: It did not arise. Mr
 23 Chairman, it did not arise out of a discussion with Mr
 24 Ramaphosa. We already had agreed that we were going to
 25 issue a statement, it does not arise because of that

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1 discussion.
 2 MS PILLAY: Now when Mr Ramaphosa refers
 3 to you silence and your inaction, Minister, did you agree
 4 with him that you had been silent and that there hadn't
 5 been sufficient action from you in respect of what was
 6 happening at Lonmin?
 7 CHAIRPERSON: That's two questions rolled
 8 up in one.
 9 MS PILLAY: I apologise.
 10 CHAIRPERSON: The first question is – I
 11 take it she, in a sense, responded to the first part
 12 because she said – her answer was we're going to issue a
 13 statement, in effect we are going to respond and the
 14 response that was envisaged was going to be a statement
 15 which I take it had already being prepared or had been
 16 prepared. The second part of the question is, of course,
 17 the reaction one. So perhaps you can put the two questions
 18 separately and we'll then get two separate answers.
 19 MS PILLAY: Let me do that, Chair.
 20 Minister, I apologise. Let me deal with the first issue.
 21 When Mr Ramaphosa indicated to you that he thought that you
 22 were silent on what had happened at Lonmin did you agree
 23 with him?
 24 MS SHABANGU: Well what happened on the
 25 day when he raised the matter telephonically to say that

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1 we're silent and as I said that we said we're not silent.
 2 Already during the day we had agreed that we must issue a
 3 statement in relation to what was going on, Mr Chairman,
 4 there.
 5 MS PILLAY: And in fact it went further
 6 than that had it not, Minister? Can we look at QQQQ1.1?
 7 We see, Minister, that this is a press article dated the
 8 14th of August, it's at 16:55, so will you confirm that that
 9 would have been before any discussions between you and Mr
 10 Ramaphosa?
 11 MS SHABANGU: No I can't recall, I can't
 12 recall.
 13 CHAIRPERSON: It looks like it doesn't
 14 it? The telephone conversation that we saw on the
 15 telephone records occurred – you know the one of three and
 16 a half minutes, occurred at about some time just after half
 17 past six in the evening. And this article written by Mr
 18 Reese has a timeline 16:55, that's five to five. So this
 19 was slightly over an hour and a half before you had your
 20 conversation with Mr Ramaphosa. That appears right doesn't
 21 it?
 22 MS SHABANGU: Yes, it means I spoke to
 23 him after I had gone to Brakpan.
 24 CHAIRPERSON: Yes, no you spoke to him,
 25 according to the telephone records, after half past six in

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1 the evening whereas this report that Advocate Pillay is
 2 putting to you was apparently published, electronically at
 3 least, at five to five that afternoon. So it was about an
 4 hour and a half before you spoke to Mr Ramaphosa. That
 5 appears to be correct, am I right?
 6 MS SHABANGU: Well if I look at the time
 7 and the previous one in the records of the telephones, of
 8 the phone calls it will be correct.
 9 MS PILLAY: And in this press report,
 10 Minister, we see that the writer is referring to a visit
 11 that you made to Brakpan and certain comments that you made
 12 there in relation to what was transpiring at Lonmin. And
 13 specifically if you look at the third paragraph it stated
 14 "Meanwhile Minister of Mineral Resources, Susan Shabangu
 15 was in Brakpan where she told the media that finding peace
 16 is now the key concern." But did that relate to what was
 17 happening at Lonmin at the time?
 18 MS SHABANGU: That's correct.
 19 MS PILLAY: And you further, Minister,
 20 "As a country we have a law and we must abide by the law,
 21 she said, indicating that if workers wanted to go on
 22 strike they have to use the steps provided by the Labour
 23 Relations laws."
 24 MS SHABANGU: Indeed, it's true.
 25 MS PILLAY: And further "It is not only

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1 about Lonmin at the moment, it is about the mining industry
 2 as a whole. It is about stabilising the whole platinum
 3 sector." Do you see that, Minister?
 4 MS SHABANGU: That's correct.
 5 MS PILLAY: Do you confirm that that's
 6 what you said in Brakpan?
 7 MS SHABANGU: Confirmed.
 8 MS PILLAY: And importantly and this is
 9 the part I'd like to deal with. You say "It is
 10 unacceptable to see people dying."
 11 MS SHABANGU: Indeed, that's correct.
 12 MS PILLAY: So from this we see,
 13 Minister, that by the 14th you were aware that there had
 14 been multiple deaths as a result of what was happening at
 15 Lonmin during the period.
 16 MS SHABANGU: That's correct.
 17 MS PILLAY: And you clearly were speaking
 18 out about those, both the strike and the violence because
 19 you made this statement on the 14th.
 20 MS SHABANGU: That's correct.
 21 MS PILLAY: So when Mr Ramaphosa says to
 22 you on the evening of the 14th that your silence and
 23 inaction is not appropriate, that's not exactly an accurate
 24 reflection of what you knew and what you were saying at
 25 that stage.

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1 MS SHABANGU: Well if you look at, Mr
 2 Chairman, the statement it was a statement made with the
 3 media whilst I was at Brakpan and it was not yet published
 4 by then. I would assume that it was not in the public
 5 space because I had gone to deal with issues of illegal
 6 mining. So when the media approached me and raised these
 7 issues this is how I responded. So it was not in the
 8 public space yet.
 9 MS PILLAY: But the important part I just
 10 want to emphasise, Minister, is that at that stage you knew
 11 about the violence at Lonmin.
 12 MS SHABANGU: Well if, Mr Chairman, I
 13 would say I didn't know I would be telling a lie because it
 14 was public knowledge. It was in the media, it was all
 15 over. So if I say I didn't know I would really be lying to
 16 the Commission.
 17 MS PILLAY: And because you saw what was
 18 happening at Lonmin, to be closely related to what was
 19 happening to the platinum sector at large, it was of keen
 20 interest to be kept abreast of what was happening at
 21 Lonmin.
 22 MS SHABANGU: Well, Mr Chairman, I would
 23 say yes. Indeed, because we regulate the industry, it's in
 24 our interests to know what is going on there.
 25 MS PILLAY: Now if we can go back to

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1 BBB4.1. The last thing I want to deal with you on this
 2 particular email, Minister, is the last line of paragraph
 3 1. Where Mr Ramaphosa says, "I told her that I will also be
 4 in Cape Town and suggested that we have a discussion.
 5 [09:50] This is the important bit, "and see what she
 6 needs to do." Does that accord with your recollection of
 7 your telephone discussion with Mr Ramaphosa?
 8 MS SHABANGU: Whether I recall, but
 9 indeed it was important for me to respond, Mr Chairman,
 10 because it was a cause for concern, if you read my
 11 statement then that statement they are correlating.
 12 MS PILLAY: Minister, my question is a
 13 different one. Mr Ramaphosa says here, that the discussion
 14 that you and he were to have the next day, would be about
 15 what you need to do. That's the important bit. You are
 16 confirming that that was what you and he had agreed on the
 17 14th?
 18 MS SHABANGU: That's correct, Mr
 19 Chairman.
 20 MS PILLAY: Now we know, Minister, that
 21 on the 13th of August, you received a letter from Lonmin.
 22 Can I just refer you to QQQQ2? It's QQQQ2, the letter from
 23 Lonmin. We see, Minister, that this is a letter addressed
 24 to you by Mr Albert Jameison who was the chief commercial
 25 officer of Lonmin at the time. Do you recall whether you

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1 actually received this letter, Minister?
 2 MS SHABANGU: Only with the following
 3 week.
 4 MS PILLAY: So you didn't receive this
 5 letter on the –
 6 MS SHABANGU: I never receive the letter,
 7 only find it in my office after the following week because
 8 –
 9 CHAIRPERSON: You will notice, it's sent
 10 to her office in Pretoria, at the Trevona Campus.
 11 MS PILLAY: Now the one issue I wanted to
 12 deal with in relation to this letter, Minister, and –
 13 CHAIRPERSON: The question I want to deal
 14 with before Adv Pillay deals with a further question, to
 15 get the context right, the letter was sent to your Pretoria
 16 office at the Trevona Campus, that's why you say you only
 17 saw it the following week. Is that correct?
 18 MS SHABANGU: That's correct, Mr
 19 Chairman.
 20 CHAIRPERSON: I see at the end of the
 21 letter, it was copied to Dr Rameneja, he was the DG in your
 22 department, was he?
 23 MS SHABANGU: That's correct, Mr
 24 Chairman.
 25 CHAIRPERSON: Now did you have

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1 discussions with Dr Rameneja during the course of the
 2 period from the 13th of August to the 16th?
 3 MS SHABANGU: Let me explain, Mr
 4 Chairman. On the 13, I was not in the office. On the 14,
 5 I was not in the office, I was out in the field. On the
 6 15, I was in Cape Town until on the, I then came back on
 7 the 15, in the evening from Cape Town to prepare for my
 8 Women's Day conference which was on the 16th. So before
 9 then, this letter, whilst it was sent to the office, I
 10 never had an opportunity or it was never brought directly
 11 to my attention before then.
 12 CHAIRPERSON: You didn't answer my
 13 question, I will repeat it. During the period from the 13th
 14 to the 16th of August, did you have any discussions or
 15 communications with the DG of your department?
 16 MS SHABANGU: No, not yet, Mr Chairman.
 17 CHAIRPERSON: I see, thank you.
 18 MS PILLAY: Minister, if I could ask you
 19 to turn to the second page of that letter, and you see in
 20 the last paragraph of that letter, that Lonmin is making
 21 two suggestions to you. Now we accept that you didn't
 22 receive the letter on the 13th, but I'd like to deal with
 23 these two suggestions very briefly with you, Minister. The
 24 two suggestions they are making is that 1) the State should
 25 bring its might to bear on this crucial sector, which is

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1 more or less consistent with what we see happened during
 2 the period in question. Do you agree, Minister?
 3 MS SHABANGU: Mr Chairman, can you repeat
 4 yourself?
 5 MS PILLAY: I am saying the first bullet
 6 point, now when we look back with hindsight, the two
 7 suggestions made by Lonmin before the tragedy of the 16th,
 8 let's deal with the first one, where Lonmin is saying that
 9 there are two suggestions. The first suggestion is that
 10 the State should bring its might to bear on this crucial
 11 sector, using resources at its disposal to resolutely bring
 12 the situation under control. Now you will agree that when
 13 we look at, for example BBBB4, and your meeting with Mr
 14 Ramaphosa, Mr Ramaphosa's discussions with the Minister of
 15 Police at the time, etcetera, that that seems to be
 16 consistent with how, what transpired during the period.
 17 MS SHABANGU: Well, I can't say "yes,"
 18 because I saw it very late. It never came to my attention,
 19 so I can't confirm it.
 20 MS PILLAY: What the question is,
 21 Minister, is when you look at the first suggestion, that
 22 the State put its full might to bear in order to bring the
 23 situation in Lonmin under control, that that is consistent
 24 with what actually happened over the period in question.
 25 Isn't that correct

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1 MS SHABANGU: I am not privy to this
 2 detail which you are referring me to, so hence I can't
 3 confirm the issue of State intelligence, the issue of the
 4 Army, all those issues, I can't confirm, you know.
 5 MS PILLAY: But let's deal with the
 6 second suggestion, Minister, and I raise this with you
 7 because it's going to become quite an important theme for
 8 the further questions that I am going to pose to you during
 9 the course of the morning. The second one is, perhaps you
 10 could invite NUM and AMCU top leadership with our executive
 11 and others in the mining industry to meet with you in an
 12 effort to understand the drivers of the situation, but at
 13 the very least to issue a joint statement condemning the
 14 violence and urging all to work together to restore peace
 15 and stability. Now the second suggestion, Minister,
 16 wouldn't that have been a very logical way to approach the
 17 violence at Lonmin, at the time?
 18 MS SHABANGU: Well, we regarded that as a
 19 Labour matter, whilst we were concerned about the violence,
 20 to invite them. Maybe it would have been logic, but
 21 unfortunately we never saw this proposal.
 22 MS PILLAY: You, as Minister, were aware
 23 about the Labour matter, we accept that. You were also
 24 keenly aware of the violence which accompanied the strike?
 25 Isn't that correct?

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1 MS SHABANGU: Indeed it was, I was aware.
 2 MS PILLAY: You were concerned about the
 3 effect of the strike and the violence on the platinum
 4 sector as a whole? Isn't that correct?
 5 MS SHABANGU: Indeed, it was a concern
 6 for anyone who is a South African.
 7 MS PILLAY: In fact, we see from your
 8 statement, Minister, that it was beyond that, that you were
 9 keenly aware of the importance of presenting the mining
 10 section as the sector of choice for investment in South
 11 Africa. Isn't that correct?
 12 MS SHABANGU: I am not privy about making
 13 mining a sector of choice in South Africa.
 14 MS PILLAY: Did you not, Minister,
 15 weren't you keen on attracting foreign investment to the
 16 mining sector during your time as Minister of Mineral
 17 Resources?
 18 MS SHABANGU: Well, that's part of a
 19 responsibility of any government to invite investments into
 20 its country.
 21 MS PILLAY: And so the stability of the
 22 mining sector was an important factor in respect of how you
 23 conducted your work as the Minister of Mineral Resources.
 24 MS SHABANGU: That's correct.
 25 MS PILLAY: And the stability of the

<p style="text-align: right;">Page 35572</p> <p>1 platinum section would have been a key component to you 2 effectively performing your function as Minister of Mineral 3 Resources. 4 MS SHABANGU: That's correct. 5 MS PILLAY: And therefore instability at 6 Lonmin was key, a key concern for you in terms of not only 7 what was happening at Lonmin, but the platinum sector as a 8 whole, and therefore the economy as a whole. 9 MS SHABANGU: That's correct. 10 MS PILLAY: So at the time when you were 11 aware about the strike, you were aware about the underlying 12 labour issue, but you were also aware of the violence that 13 accompanied the strike and the instability that this 14 caused, why did you not consider bringing about all of the 15 stakeholders to try and understand, or bringing together 16 all the stakeholders to try and understand what was the 17 drivers of the violence, what was causing the violence and 18 whether or not there was any possibility of bringing about 19 an amicable resolution? 20 MS SHABANGU: Well, we had engaged with 21 the Chamber of Mines, Mr Chairman, which was better placed 22 to bring the parties together because at that point, what 23 was at play, it was not AMCU as such but there were workers 24 committees which were involved. So we had a discussion 25 with the Chamber of Mines to intervene in trying to bring</p>	<p style="text-align: right;">Page 35574</p> <p>1 that arrangement, we had never engaged with AMCU before. 2 MS PILLAY: Did not the deteriorating 3 circumstances perhaps call for a different approach 4 initiated by your offices? 5 MS SHABANGU: We never initiated the 6 office, because the Chamber also does become involved when 7 it comes to labour matters at various points, and hence we 8 thought that the proposal by the Chamber as we are having a 9 discussion that they must take over and bring the parties 10 together was better. 11 MS PILLAY: And so you accept, Minister, 12 that there was no initiative driven by your office, driven 13 by the DMR, to try and bring the stakeholders together in 14 order to understand the cause of the violence, and to try 15 and bring about an amicable resolution? 16 MS SHABANGU: We didn't become involved 17 at the initial stages. 18 MS PILLAY: I think, Minister, I think we 19 should just go back to BBBB4.1 very briefly. I just want 20 to tie up one loose end. If we can go back to 4.1, I did 21 mention to you that on the 15th, we do see a press report 22 reflecting a statement by your spokesperson and I just want 23 us to refer to that press report, it's QQQQ1.3 And if we 24 can just go further down, you will see that's your 25 spokeswoman issues the statement, Minister. "The Minister</p>
<p style="text-align: right;">Page 35573</p> <p>1 parties together. 2 MS PILLAY: Minister, if I understand 3 your statement, the initiative by the Chamber of Mines was 4 just that, it was their initiative. That was not an 5 initiative that was instigated by the government. 6 MS SHABANGU: We did influence that, 7 because I spoke to Mr Theke who was the Deputy President of 8 the Chamber. 9 MS PILLAY: So do I understand you, 10 Minister, to be saying that you requested the Chamber of 11 Mines to initiate a process which would bring all the 12 stakeholders together, to try and resolve the situation? 13 MS SHABANGU: We had a discussion with 14 the Deputy President of the Chamber to facilitate because 15 at that point in time, for us as a department of government 16 we had never interacted with AMCU and the information we 17 had was that there were various players through, what do 18 you call it? Committees, workers committees at Lonmin. 19 MS PILLAY: But Minister, was it not open 20 to your office at that stage to take the initiative and 21 bring about the situation, in the second bullet point 22 there, rather than wait for the Chamber of Mines to do it? 23 MS SHABANGU: Well the Chamber was 24 already involved and I was expect – the issue was about 25 workers committees at that point, and in terms of our make</p>	<p style="text-align: right;">Page 35575</p> <p>1 is gravely concerned and is condemning the violence at 2 Lonmin's Marikana Mine, and will engage the Minister of 3 Police." Do you see that? 4 MS SHABANGU: That's correct. 5 MS PILLAY: Now, Minister, I am going to 6 put to you that there's a clear difference in tone between 7 this statement issued by your spokesperson on the 15th and 8 the statement you made at Brakpan on the 14th. On the 14th, 9 you recognised the deaths at Lonmin and you indicate that 10 the deaths are unacceptable. On the 15th, after your 11 discussions with Mr Ramaphosa, we see a different tone to 12 your statement because now your statement's indicating "we 13 will engage with the Minister of Police." Now can you tell 14 us, Minister, specifically what is it that you were going 15 to engage with the Minister of Police about? 16 MS SHABANGU: Well, if you read my 17 statement on the 14 and what was issued by the 18 spokesperson, it's two different statements. I've never 19 said I'll engage the police, Mr Chairman. 20 MS PILLAY: So when your spokeswoman is 21 quoted as saying that the minister is concerned, that she's 22 condemning the violence and that she will engage with the 23 Minister of Police, are you saying that she was wrongly 24 quoted, that you never indicated that you will engage with 25 the Minister of Police?</p>

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1 MS SHABANGU: Well, I've never said I
 2 will engage with the Minister of Police, Mr Chairman. In
 3 fact during this period, the spokesperson was sick because
 4 she was responsible for planning for the Women's Day, and
 5 she was not at work. We only saw her on the 16th. There
 6 were other issues she was supposed to deal with and she was
 7 not to be found anywhere.

8 MS PILLAY: So you deny, Minister, that
 9 on the 15th, you were intending to engage with the Minister
 10 of Police, on what was happening at Lonmin.

11 MS SHABANGU: Well, on the 15, I have
 12 raised – I raised it with Minister - with Mr Ramaphosa, but
 13 I've never said that the spokesperson must issue the
 14 statement.

15 CHAIRPERSON: Do we know what time this
 16 statement that is now on the screen, which is the third
 17 item in the bundle, so it's presumably exhibit QQQQ1.3, do
 18 we know at what time that statement was issued?

19 MS PILLAY: Chairperson, unfortunately
 20 this is SAPA press report, so there's no time reflected in
 21 the actual report.

22 CHAIRPERSON: Alright, well perhaps I can
 23 interrupt you for a moment, Ms Pillay, by asking this
 24 question. Can you tell us, I don't think you've told us
 25 yet, you told us more or less, but can you tell us roughly

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1 what time you met Mr Ramaphosa on the Wednesday in the
 2 passage between Good Hope and the Tuinhuis? The meeting
 3 was half past ten. I understood you to say it was before
 4 the meeting.

5 MS SHABANGU: It was before half past
 6 ten, Mr Chairman.

7 CHAIRPERSON: Before half past ten. Was
 8 it just before half past ten, closer to ten o'clock, or?

9 MS SHABANGU: Well, I cannot be specific,
 10 but it was just –

11 CHAIRPERSON: It was before half past
 12 ten?

13 MS SHABANGU: It was before half past
 14 ten.

15 CHAIRPERSON: And did you at any stage
 16 speak to anyone in your department, or was someone from
 17 your department present, when you spoke to Mr Ramaphosa, so
 18 that people in the department, apart from you, would know
 19 that you'd had this discussion with Mr Ramaphosa, and
 20 there'd been mention of your communication with the
 21 Minister of Police?

22 MS SHABANGU: Mr Chairman, no one was
 23 there, I was alone with Mr – we bumped into each other so –

24 CHAIRPERSON: Well, you bumped into each
 25 other by design, it wasn't a –

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1 MS SHABANGU: Yes, it was by design, yes,
 2 coming out of that.

3 CHAIRPERSON: You see, it does look as if
 4 someone in your department, even if Ms Tekuja was off sick,
 5 presumably she spoke to the journalist concerned, and she
 6 appears to have known or possibly to have thought, that you
 7 were going to engage with the Minister of Police and we
 8 know that you spoke to Mr Ramaphosa just before half past
 9 ten, about talking to the Minister of Police, because that
 10 you have told us, so is it possible that that information
 11 somehow got across to someone in the department, even
 12 though the discussion between you and Mr Ramaphosa was on a
 13 one to one basis?

14 MS SHABANGU: Well, Mr Chairman, I must
 15 say that no one in the department knew about what I was
 16 going to illustrate or discuss with Mr Ramaphosa.

17 CHAIRPERSON: - is something different,
 18 and that after you had your meeting with Mr Ramaphosa,
 19 according to what you've told us, you were going to, am I
 20 right, you were going to endeavour to contact the Minister
 21 of Police, I think you told us you weren't able to do so,
 22 but you were going to endeavour to contact him, so which I
 23 take it means you were going to engage with him whatever
 24 that expression means. Now did, my question is, did
 25 anybody in your department after your brief meeting with Mr

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1 Ramaphosa in the passage between Good Hope and the
 2 Tuinhuis, did anybody in your department know that you were
 3 going to endeavour to contact the Minister of Police, that
 4 you were going, in other words, to endeavour to "engage
 5 with" the Minister of Police?

6 MS SHABANGU: Mr Chairman, may I state no
 7 one knew. I was in Cape Town, and the spokesperson was in
 8 Pretoria, or around Pretoria, and I never had an
 9 opportunity to engage anyone from the department.

10 CHAIRPERSON: I think when you are in
 11 Cape Town, you have officials with you, do you, you don't
 12 come in – you were not the only person from the
 13 parliamentary office of the department in Cape Town at that
 14 stage? Was parliament not sitting at the time?

15 MS SHABANGU: Mr Chairman, can you
 16 rephrase your question?

17 CHAIRPERSON: I say, you were in Cape
 18 Town to attend this meeting. Was no one else from your
 19 department or the parliamentary office of your department
 20 in Cape Town that day?

21 [10:10] MS SHABANGU: Mr Chairman, when I'm in
 22 Cape Town. We have a parliamentary officer, who works
 23 there, then I have my personal assistant, I have the
 24 receptionist, I have the clerk in the office. So when it
 25 comes to such matters, Mr Chairman, I don't discuss with

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1 them, because it's issues distant from them.

2 CHAIRPERSON: Are you telling us that you

3 didn't tell anybody in your department that you were going

4 – about your discussion with Mr Ramaphosa, and what you

5 were going to try to do after your discussion with Mr

6 Ramaphosa?

7 MS SHABANGU: Indeed, Mr Chairman, no

8 one, I had no discussion with my office, nor anyone in the

9 department about first, my engagement with Mr Ramaphosa,

10 two, on what is it that I was going to discuss with Mr

11 Ramaphosa.

12 CHAIRPERSON: After the meeting with Mr

13 Ramaphosa, you went straight into the cabinet committee

14 meeting, didn't you.

15 MS SHABANGU: Indeed, I went into the

16 straight cabinet meeting.

17 CHAIRPERSON: Yes, and how long did the

18 cabinet committee meeting take?

19 MS SHABANGU: Well, it was not a long

20 committee that day, because there were fewer items on the

21 agenda.

22 CHAIRPERSON: And when it was over, what

23 did you do?

24 MS SHABANGU: Well, when it was over, I

25 went back to the office –

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1 CHAIRPERSON: Went back to, that's the

2 parliamentary office of your department?

3 MS SHABANGU: Yes, Mr Chairman.

4 CHAIRPERSON: Did you meet anybody there

5 who's in the staff of the department, your PA?

6 MS SHABANGU: The PA was there. I don't

7 discuss substantive issues with a personal assistant, Mr

8 Chairman.

9 CHAIRPERSON: Anybody else in the

10 parliamentary office there?

11 MS SHABANGU: Well, the parliamentary

12 officer, she's responsible for coordination of

13 parliamentary issues. So I don't discuss with her such

14 matters.

15 CHAIRPERSON: You say you told no one in

16 your department about what you discussed with Mr Ramaphosa?

17 Is that your evidence?

18 MS SHABANGU: That's true, Mr Chairman.

19 CHAIRPERSON: Did you tell anybody at

20 all, apart from office, because information might have got

21 to this Tekuja by some slightly longer route. Did you tell

22 anybody at all, after your meeting with Mr Ramaphosa, what

23 – briefly, what you had discussed with him and what you had

24 undertaken to do?

25 MS SHABANGU: Well, Mr Chairman, I told

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1 nobody, because the people I thought I was going to raise

2 with, they were not there. So because the actual people I

3 wanted to raise with this matter, were not available, I

4 didn't see any necessity to raise it with my office.

5 CHAIRPERSON: Thank you. Did Mr

6 Ramaphosa communicate any sense of urgency to you when he

7 spoke to you?

8 MS SHABANGU: We spoke about the

9 violence.

10 CHAIRPERSON: And action to deal with the

11 violence, would have been urgent, I take it?

12 MS SHABANGU: Well, we didn't talk about

13 the action. I just indicated that I was going to raise it

14 with the president and raise it with the Minister of

15 Police.

16 CHAIRPERSON: But raising, never mind the

17 president at the moment, raising it with Minister of

18 Police, would that have been an urgent matter or is that

19 something that you could do in the course of time?

20 MS SHABANGU: Well, I intended to raise with them,

21 because it had a direct bearing with violence which was

22 going on, but also with the president to say the sector is

23 facing a challenge.

24 CHAIRPERSON: No, my question was more

25 concerned about the urgency of the matter. Urgency of the

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1 need, as Mr Ramaphosa had mentioned, for you to raise it

2 with the Minister of Police. Was that an urgent matter

3 that you had to do as quickly as you could, as soon as you

4 could, or was it something that could wait till next week?

5 MS SHABANGU: Well, I wanted to raise it

6 with the cabinet, because that would have been the

7 appropriate forum for me, with the president, who is my

8 employer, or who I account to. I was going to raise it

9 with the president. Unfortunately, I did not find the

10 president, because it means I was also going to seek

11 guidance from those people in dealing with the matter.

12 CHAIRPERSON: From which people were you

13 going to seek guidance?

14 MS SHABANGU: From the president and the

15 Minister of Police.

16 CHAIRPERSON: And now, the president, I

17 take it, wouldn't have been at this cabinet committee

18 meeting, would he?

19 MS SHABANGU: The president was not

20 available on that particular day, and the Minister of

21 Police was not there.

22 CHAIRPERSON: I see, thank you.

23 MS PILLAY: Now, Minister, I'd like to go

24 to exhibit BBB, 4.2, which –

25 MR BADENHORST SC: Mr Chairman, I am so

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1 sorry to intervene, I just know from the exchange which has
 2 just occurred that it may save a lot of time and delay
 3 later on if the witness can simply clarify who normally
 4 attends these cabinet committee meetings. It might be
 5 helpful.

6 CHAIRPERSON: A good suggestion, Mr
 7 Badenhorst. I'm sure, Ms Pillay, you don't mind adopting
 8 Mr Badenhorst's questions?

9 MS PILLAY: Not at all, as long as I get
 10 some of Mr Badenhorst' time. No, that's in jest. No, I
 11 don't.

12 CHAIRPERSON: Of course. Well, he's
 13 given you quite a lot of his time, because he didn't take
 14 very long in chief. Alright, you've heard Mr Badenhorst'
 15 question, which Ms Pillay has adopted. Repeat the question
 16 just so the witness understands exactly what it is?

17 MR BADENHORST SC: Yes, Mr Chairman, I
 18 could see that this is something that might save a lot of
 19 time later on and by all means my learned friend can have
 20 all the time she needs from me, subject to your approval.
 21 The question is –

22 MR MPOFU: I'm in the queue, Chairperson.

23 MR BADENHORST SC: The witness should
 24 perhaps be requested to explain who she expected might be
 25 at this cabinet committee meeting from normal attendance,

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1 because I think we normally would suppose that the cabinet
 2 committee meetings are not attended by the president or the
 3 Minister of Police, and that's something that perhaps she
 4 should clarify.

5 CHAIRPERSON: Don't explain the answer
 6 you expect, let's just – Ms Shabangu, you've heard what Mr
 7 Badenhorst said. Who are the people whom you normally
 8 would expect to see at a cabinet committee meeting of the
 9 kind that you were going to attend?

10 MS SHABANGU: We have about five cabinet
 11 committees, which differs, and this particular one is the
 12 one on economy and employment infrastructure committee.
 13 You would normally expect that – it sits on a fortnight,
 14 they sit on fortnight, and fortnight it's the cabinet
 15 meeting, the full cabinet. In the committees it's those
 16 who attended, the relevant ministers, when it comes to the
 17 economic cluster who'll deal with economy, and their
 18 deputies. That would also include the president, if he's
 19 around, and the deputy president. And also to further say
 20 that with ministers, ministers can attend any cabinet
 21 committee, if they want to. So on the basis of that, I had
 22 thought that the Minister of Police will be attending,
 23 because on Wednesdays the Social Cluster Cap Committee sits
 24 before the Economic cluster, so I was hoping to see him
 25 there, if he had attended, or together with the economic

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1 committee meeting. So that is how it's structured. And
 2 the president can attend, the deputy president can attend,
 3 if they want to or they are available.

4 CHAIRPERSON: I take it none of those
 5 gentlemen was present?

6 MS SHABANGU: No, none of those were –

7 CHAIRPERSON: The president I think was
 8 in Maputo at the SADEC meeting, that's according to the
 9 evidence we've heard.

10 MS SHABANGU: On the Wednesday he had not
 11 left for Maputo.

12 CHAIRPERSON: He hadn't left yet, but he
 13 was going there.

14 MS SHABANGU: He was going to go Maputo.

15 CHAIRPERSON: He was there when a message
 16 was sent to him stating in the course of that evening, or
 17 early of the next morning, what had happened at Marikana.
 18 So he was either – he was on his way to Maputo, or shortly
 19 to leave for Maputo. Is that correct?

20 MS SHABANGU: That matter is incorrect,
 21 because the SADEC was starting on Thursday.

22 CHAIRPERSON: Yes. And the deputy
 23 president, he wasn't there either, not at the cabinet
 24 committee meeting?

25 MS SHABANGU: He was not, if my memory

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1 serves me well, I don't think he was there.

2 CHAIRPERSON: And according to the
 3 Minister of Police, he was travelling around in KwaZulu –
 4 the KwaZulu-Natal Province in the course of his duties as
 5 Minister of Police. So he wasn't there either?

6 MS SHABANGU: Well, he was not available
 7 in the meeting. He didn't attend the cab committee
 8 meeting.

9 MS PILLAY: Minister, you were intending
 10 to speak to the Minister of Police, and the president.
 11 What is it that you were intending to raise with them?

12 MS SHABANGU: I intended to raise the
 13 violence which was going on around Marikana.

14 MS PILLAY: But we know that you knew
 15 about the violence already on the 14th. So why is it that
 16 you only waited until after your discussion with Mr
 17 Ramaphosa in order to urgently raise these issues with the
 18 Minister of Police and the president?

19 MS SHABANGU: It had nothing to do with
 20 Mr Ramaphosa. I had already made my own decision that when
 21 I see my colleagues, I will raise this matter.

22 MS PILLAY: So your discussion with Mr
 23 Ramaphosa didn't serve as some form of catalyst which
 24 pointed you to raising the issue with the Minister of
 25 Police and the president?

<p style="text-align: right;">Page 35588</p> <p>1 MS SHABANGU: Not at all.</p> <p>2 MS PILLAY: Now, when you raised the</p> <p>3 matter – when you discussed the violence with the Minister</p> <p>4 of Police and the president, what is it that you wanted</p> <p>5 them to do?</p> <p>6 MS SHABANGU: Well, when you reach a</p> <p>7 point and you realise that the issue is bigger than you,</p> <p>8 you raise it with relevant people, because I thought it's</p> <p>9 important, and it is a convention in government that if a</p> <p>10 minister has an issue which he believes he wants to share</p> <p>11 with the president, we do that. So there was nothing</p> <p>12 untoward.</p> <p>13 MS PILLAY: That wasn't really the</p> <p>14 question, Minister, but before I deal with that can I just</p> <p>15 ask you, you said when you reach a point when you realise</p> <p>16 the issue is bigger than you, when did you reach that</p> <p>17 point, Minister, when you realised that the issue at Lonmin</p> <p>18 was bigger than you?</p> <p>19 MS SHABANGU: When deaths started</p> <p>20 occurring.</p> <p>21 MS PILLAY: Sorry, when what started</p> <p>22 occurring, Minister?</p> <p>23 MS SHABANGU: People started being killed</p> <p>24 during this process.</p> <p>25 MS PILLAY: Well, we know that people</p>	<p style="text-align: right;">Page 35590</p> <p>1 You choose to raise this with the Minister of Police and</p> <p>2 with the president. Now, why specifically the Minister of</p> <p>3 Police?</p> <p>4 MS SHABANGU: I raised it because people</p> <p>5 were dying.</p> <p>6 CHAIRPERSON: I think it was more</p> <p>7 complicated than that. It wasn't just people were dying,</p> <p>8 people were being killed, and prima facie when people have</p> <p>9 been killed, there is very often an element of criminal</p> <p>10 responsibility. If people are killed, unless they die of</p> <p>11 natural causes or something akin to that, there are very</p> <p>12 often circumstances of the kind that we're dealing with,</p> <p>13 would be killed because they either being murdered, or</p> <p>14 someone is killing them in circumstances, which amounts to</p> <p>15 culpable homicide. So there's a criminal element in the</p> <p>16 case – very often in a case of this kind. Is that correct?</p> <p>17 MS SHABANGU: Yes, Mr Chairman.</p> <p>18 CHAIRPERSON: Now, when Mr Ramaphosa</p> <p>19 spoke to you in the passageway that you've talked about,</p> <p>20 did he ask you to speak to the Minister of Police?</p> <p>21 MS SHABANGU: No, Mr Chairman.</p> <p>22 CHAIRPERSON: Did he suggest to you, you</p> <p>23 should consider speaking to the Minister of Police?</p> <p>24 MS SHABANGU: No, Mr Chairman, I'm the</p> <p>25 one who raised the matter. I'm the one who said to him I</p>
<p style="text-align: right;">Page 35589</p> <p>1 started being killed already early on, already on the</p> <p>2 morning of the 11th. Sorry, early in the morning on the</p> <p>3 12th. So when you say, Minister, that when that happened,</p> <p>4 that was on the 12th, so when did that issue become bigger</p> <p>5 than you?</p> <p>6 MS SHABANGU: It became bigger than me</p> <p>7 when I realised that I've got to report to the president,</p> <p>8 to the Minister of Police.</p> <p>9 MS PILLAY: And when did you realise</p> <p>10 that?</p> <p>11 MS SHABANGU: I don't know.</p> <p>12 MS PILLAY: Now, I asked, Minister, I'm</p> <p>13 not sure that the answer was a direct one to my question.</p> <p>14 I asked you what is it that you wanted the Minister of</p> <p>15 Police or the president to do?</p> <p>16 MS SHABANGU: Well, if you have an issue,</p> <p>17 Mr Chairman, which you realise it's not in your control,</p> <p>18 you raise it with relevant people. It was not going to be</p> <p>19 correct for me just to keep quiet, because I had to brief</p> <p>20 the president to say there's this situation happening</p> <p>21 within the mining industry through the Lonmin situation.</p> <p>22 MS PILLAY: But you see, Minister, you</p> <p>23 choose specifically the Minister of Police. You don't want</p> <p>24 to raise this, for example, with the Minister of Labour,</p> <p>25 even though you have characterised this as a labour issue.</p>	<p style="text-align: right;">Page 35591</p> <p>1 intend to raise the matter with the president and intend to</p> <p>2 raise the matter with the Minister of Police.</p> <p>3 CHAIRPERSON: And what else did you tell</p> <p>4 him?</p> <p>5 MS SHABANGU: Those are the issues which</p> <p>6 I said I'm going to raise with the president.</p> <p>7 CHAIRPERSON: Did you say what you were</p> <p>8 going to say to the Minister of Police?</p> <p>9 MS SHABANGU: No, we never discussed what</p> <p>10 I was going to say to the president or to the Minister of</p> <p>11 Police. When he also said there was a need for me to meet</p> <p>12 with their chairman, who was coming to South Africa. His</p> <p>13 proposal was that I must meet with Mr Roger.</p> <p>14 CHAIRPERSON: Now, is Mr Jameison correct</p> <p>15 in this email that we have on the screen at the moment,</p> <p>16 BBBB4, when he says that that morning, so the morning of</p> <p>17 Wednesday the 15th of August, you said that you had been</p> <p>18 briefed that this was wage dispute and that management and</p> <p>19 unions should sit down and sort it out? Or let me ask you</p> <p>20 a couple of questions. Did you appear on – did you have an</p> <p>21 interview with the radio on that Wednesday morning?</p> <p>22 MS SHABANGU: Yes, Mr Chairman, I did.</p> <p>23 CHAIRPERSON: Was it on SAFM?</p> <p>24 MS SHABANGU: It was on SAFM.</p> <p>25 CHAIRPERSON: On the AM Live programme, I</p>

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1 think.

2 MS SHABANGU: I think so.

3 CHAIRPERSON: Yes. So if necessary, we

4 can get a recording from them what you've said. Can you

5 remember what you said?

6 MS SHABANGU: I was phoned by Mr Xolani

7 Gwala, asking me about the situation, what is happening

8 there and I said, the issue, the current challenge was

9 there were killings there. It was a labour dispute, it

10 emanates from wage negotiations of the two parties and the

11 conflict between NUM and what was then the worker's

12 committees at Lonmin.

13 CHAIRPERSON: And did you make the

14 statement that is reported in this letter, that having said

15 it was a wage dispute, which you've just told us, did you

16 say that management and the union should sit down and sort

17 it out?

18 MS SHABANGU: Yes, I did say the parties

19 need to come together, and address the wage dispute.

20 CHAIRPERSON: Now, when Mr Ramaphosa

21 spoke to you, did he mention what you'd said on the radio

22 and the characterisation you'd given to the dispute?

23 MS SHABANGU: I don't think he did raise

24 it.

25 CHAIRPERSON: Did he not say to you –

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1 sorry, I shouldn't put in a leading form, did he say to you

2 that this is far more than a wage dispute, this is a tragic

3 series of events which involve criminal issues, because

4 serious crimes would appear to have been committed? Did he

5 say that to you?

6 MS SHABANGU: I raised it first to say

7 there's a criminal element.

8 CHAIRPERSON: Oh, you raised it.

9 MS SHABANGU: People are dying and indeed

10 we're seeing a criminal act coming, creeping in into the

11 situation.

12 CHAIRPERSON: And what was his comment

13 when you said that?

14 MS SHABANGU: Well, he agreed with me.

15 CHAIRPERSON: And you then told him

16 you're going to raise it, as you said, with the president

17 and with the Minister of Police?

18 MS SHABANGU: Mr Chairman, then I said

19 that's precisely why I want to raise it with the president

20 and the Minister of Police.

21 CHAIRPERSON: I take it he was satisfied

22 when you told him that? As far as you could tell.

23 MS SHABANGU: Ja, he was fine with it, Mr

24 Chairman.

25 CHAIRPERSON: Yes, thank you.

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1 MS PILLAY: Now, if we can go to BBB 4.6,

2 Minister? This is an email from Mr Ramaphosa to Mr

3 Jameison and others, where he reports back on the

4 discussion he had with you in Cape Town. Now, he says,

5 "Dear All, I have just had a discussion with Susan Shabangu

6 in Cape Town. 1. She agrees that what we are going

7 through is not a labour dispute, but a criminal act, and

8 she will correct her characterisation of what we are

9 experiencing." Now, what it appears from 1. is that this

10 specific issue was raised with you, Minister, by Mr

11 Ramaphosa during the discussion, and that he persuaded you

12 that what they are going through is not a labour dispute,

13 but a criminal act.

14 CHAIRPERSON: I'm not sure that the

15 persuasion element appears in paragraph 1. Paragraph 1

16 expresses, or conveys the fact there was agreement and it

17 conveys the fact that she would correct the

18 characterisation, but I'm not sure whether you can say that

19 these words in themselves convey unmistakably the

20 impression that this agreement was a result of persuasion.

21 MS PILLAY: I think, Chair, if you – let

22 me rephrase the question, particularly if you look at the

23 last line of paragraph 1. She will correct her

24 characterisation of what we are experiencing. So it's

25 clear from this, Minister, that Mr Ramaphosa raised with

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1 you his view that you had incorrectly characterised the

2 problem as labour problem and not a criminal problem. What

3 is your response to that?

4 MS SHABANGU: I disagree, Mr Chairman.

5 MS PILLAY: So you disagree that that was

6 raised with you by Mr Ramaphosa?

7 MS SHABANGU: I disagree what is written

8 here to say I will correct my characterisation.

9 CHAIRPERSON: Did you not say to him that

10 having said already what you told us you said during the

11 radio interview with Mr Gwala, about it being a wage

12 dispute, and management, the unions and so on must sort it

13 out. Did you not say to him that you would correct that

14 characterisation and you would mention in future the

15 statement that there was this aspect of criminality which

16 required attention. Did you not say that?

17 [10:30] MS SHABANGU: Well, Mr Chairman, the

18 issue of saying that it's no longer a labour dispute,

19 that's what I'm correcting, and now it's being

20 characterised as a criminal act. I've never said we were

21 characterising that dispute now as criminal, because the

22 dispute was relevant. What I said, what was creeping in

23 was criminality or a criminal act, but it does not change

24 the strike, or the labour dispute to be a criminal, or

25 criminalising the strike itself or the illegal action.

<p style="text-align: right;">Page 35596</p> <p>1 MS PILLAY: Minister, I accept that. If 2 I can – I asked you earlier what it is that you wanted the 3 President, and specifically the Minister of Police to do, 4 and if you look at paragraph 2 of Mr Ramaphosa's email it 5 seems to address that point because he says "She is going 6 into cabinet and will brief the President," and this is the 7 important part, "as well and get the Minister of Police 8 Nathi Mthethwa to act in a more pointed way." Now is that 9 a correct reflection of your discussion with Mr Ramaphosa? 10 MS SHABANGU: It's not a correct 11 reflection. When I say I will raise it with the President 12 and the Minister of Police it does not necessarily talk 13 about a pointed way. I will raise it. I will raise it 14 with the Minister. I think we need to realise – 15 CHAIRPERSON: What's point of raising it 16 with the Minister – I'm sorry to interrupt, sorry. Do you 17 want to finish your answer first? 18 MS SHABANGU: Ja, I'm saying, saying that 19 I will raise it, it does not mean that I wanted to have, or 20 in the way it's written here. I've never – my intention 21 was to raise it with him. 22 CHAIRPERSON: You wanted to raise it with 23 him, but what did you want him to do about it? Why raise 24 it with him if you intend him to do anything? You must 25 have intended him to do something –</p>	<p style="text-align: right;">Page 35598</p> <p>1 an issue which was beyond myself as the Minister of Mineral 2 Resources. 3 CHAIRPERSON: Yes, I understand that, but 4 what Mr Ramaphosa says apparently you said that you were 5 going to get the Minister of Police to act in a more 6 pointed way. Now you were going to raise it with him. You 7 concede that, and I understand you to concede – or am I 8 wrong in my understanding? – that your intention in 9 raising it with him was to get him to take some action. 10 Would that be fair? 11 MS SHABANGU: Well, for him to look at 12 the situation as a Minister of Police. 13 CHAIRPERSON: Yes, and obviously to do 14 something. 15 MS SHABANGU: Indeed we expect him to do 16 something about it. 17 CHAIRPERSON: Yes, so it is correct to 18 say that you wanted him – you were going to raise it with 19 him to get him to do something. That's correct, is it? 20 MS SHABANGU: Well, Mr Chairman, when you 21 have something which it's beyond your control, you pass it 22 on to other people – 23 CHAIRPERSON: Yes, no, no, I understand 24 that. Ms Pillay, it's now time when we normally take the 25 first comfort break. When it's convenient for you please</p>
<p style="text-align: right;">Page 35597</p> <p>1 MS SHABANGU: Well, Mr Chairman – 2 CHAIRPERSON: That's why you raised it, 3 surely. 4 MS SHABANGU: Well, Mr Chairman, I had to 5 raise it with him because people were dying. 6 CHAIRPERSON: Yes, no – 7 MS SHABANGU: And – yes. 8 CHAIRPERSON: I understand that. 9 MS SHABANGU: You know, you raise an 10 issue not on the basis of that you want a particular 11 action. You, yes you might look for an action, but many 12 actions could come up. He's the Minister of Police. He 13 knows what is going on. 14 CHAIRPERSON: So you raised it with him, 15 I take it – look, I don't want to put words in your mouth 16 because this is very important, but it's important we 17 should understand what you're saying. You raised it with 18 him, I take it because you wanted him to do something, or 19 cause something to be done. Would that be correct? 20 MS SHABANGU: Well, if you're going to a 21 cabinet committee or a cabinet meeting and you raise the 22 issue at that level, you're also looking at a possibility 23 that they might come up with a solution or discuss it in 24 cabinet, hence that's why I'm, I mean I'm talking about the 25 President, I'm talking about the Minister, because it was</p>	<p style="text-align: right;">Page 35599</p> <p>1 let me know, we'll take the break. 2 MS PILLAY: Chair, it's a convenient time 3 now. 4 CHAIRPERSON: Alright, we'll take a break 5 now for quarter of an hour. 6 [COMMISSION ADJOURNS COMMISSION RESUMES] 7 [10:52] CHAIRPERSON: The Commission resumes. Ms 8 Shabangu, you're still under oath to give your evidence. 9 Ms Pillay? 10 MS PILLAY: Thank you Chair. Minister, 11 I'd like to go to a new issue now and if I could refer you 12 to exhibit QQQ1.4. 13 CHAIRPERSON: Page 5 of the bundle? 14 MS PILLAY: That's at page 5, that's 15 correct, Chair. Which is a report entitled Marikana 16 event/or Shabangu and if I can ask that we look at the 17 paragraph that says Shabangu, it's the one just before the 18 end of the page. "Shabangu said having spent countless 19 hours either in meetings or consultations with the affected 20 parties she had come to understand the events that started 21 from a wild cat strike by about 3 000 rock drillers on 22 August 10". 23 CHAIRPERSON: Sorry to interrupt you. 24 The report that you're quoting from is of course a report 25 of a speech she made in parliament?</p>

<p style="text-align: right;">Page 35600</p> <p>1 MS PILLAY: That's correct, Chair. 2 CHAIRPERSON: We have the full text of 3 that speech from pages 22 and following. 4 MS PILLAY: That's correct, Chair. 5 CHAIRPERSON: And the passage you're 6 referring to is on page 33. 7 MS PILLAY: That's correct, Chair, I'm 8 going to that, it's exhibit QQQ1.10 and page 23 of that 9 speech, of the bundle, sorry of the bundle. Exhibit 10 QQQ1.10 and if we could go to page 23 of the bundle. Now 11 this address, Minister, was given at a special 12 parliamentary debate following the tragedy at Marikana on 13 the 21st of August – 14 CHAIRPERSON: We have the right page now 15 on the screen but I think, yes. 16 MS PILLAY: Isn't that correct, Minister? 17 MS SHABANGU: Yes. 18 MS PILLAY: Now if we look at paragraph 3 19 on this page you'll see that there you state to parliament 20 that having spent countless hours either in meetings or 21 consultations with the affected parties I had come to 22 understand the events that started from a wild cat strike 23 by approximately 3 000 rock drillers on the 10th of August, 24 a day after we celebrated our National Woman's Day. So 25 this speech was given on the 21st of August and you're</p>	<p style="text-align: right;">Page 35602</p> <p>1 MS SHABANGU: That's correct. 2 MS PILLAY: You say in paragraph 20 we 3 were requested to meet with the local representatives of 4 NUM and that NUM presented their views to the DMR 5 delegation. Is that correct? 6 MS SHABANGU: That's correct. 7 MS PILLAY: You say also at 21 that you, 8 that's the DMR delegation together with other government 9 officials who were then briefed by SAPS who clearly 10 informed you of their role in what transpired on the 16th. 11 Is that correct, Minister? 12 MS SHABANGU: That's correct. 13 MS PILLAY: Now apart from those 14 stakeholders, apart from Lonmin and NUM and SAPS who else 15 did you see before the 21st of August in order to understand 16 what transpired at Marikana? 17 MS SHABANGU: Well we had various 18 meetings with the unions, or the parties affected or 19 involved in the process of, after the 16th. 20 MS PILLAY: Minister, before the 21st. 21 MS SHABANGU: That's correct, that's what 22 I'm referring to. 23 MS PILLAY: You tell us in your statement 24 that you met with Lonmin, you met with NUM and you met with 25 SAPS, now what didn't you mention in your statement, who</p>
<p style="text-align: right;">Page 35601</p> <p>1 telling Parliament that obviously between the 16th and the 2 21st you spend countless hours either in meetings or 3 consultations with the affected parties. Is that correct? 4 MS SHABANGU: That's correct. 5 MS PILLAY: Now can we deal with those 6 countless hours that you spent in meetings or 7 consultations. If you look at your statement, Minister, 8 that's CCCC5 and specifically at page 7 of CCCC5 you set 9 out in paragraph 17 of your statement that you called the 10 Minister to obtain better information from him. This is 11 presumably immediately after you became aware of what 12 transpired on the 16th, is that correct? 13 MS SHABANGU: That's correct. 14 MS PILLAY: And you say at paragraph 18 15 you decided to travel to Marikana the following day in 16 order to establish the facts and that you were accompanied 17 by senior officials from the Department of Mineral 18 Resources, do you see that? 19 MS SHABANGU: That's correct. 20 MS PILLAY: So you say that you arrived 21 at Marikana at 8 o'clock in the morning of the 17th and from 22 paragraph 19 onwards you describe the stakeholders that you 23 interacted with and if you look at paragraph 19 you say "we 24 were initially briefed by Lonmin management and that the 25 briefing lasted for an hour" is that correct?</p>	<p style="text-align: right;">Page 35603</p> <p>1 did you meet before the 21st in order to understand what 2 transpired in Marikana? 3 MS SHABANGU: I don't understand your 4 question. 5 MS PILLAY: I'm saying is there anyone 6 else that you met that you don't mention in your statement 7 in order to have, to try and get an understanding of what 8 transpired? 9 MS SHABANGU: I'm saying stakeholders and 10 stakeholders refer to people we engage with on a regular 11 basis. So if you're in my space, when I talk about 12 stakeholders, Mr Chairman, you'd understand I mean labour, 13 I mean government departments, yes and business. That is 14 when we call them stakeholders Mr Chairman there's an 15 understanding amongst ourselves to say which people are we 16 referring to. 17 MS PILLAY: Alright so when you talk to 18 Parliament about affected parties and that's the 19 terminology you used, Minister, its affected parties – 20 MS SHABANGU: Yes, those are the affected 21 parties. 22 MS PILLAY: So can you tell us who those 23 affected parties were? 24 MS SHABANGU: It's business through the 25 Chamber of Mine, its labour through the various unions and</p>

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<p>1 government departments which is us and Labour now.</p> <p>2 MS PILLAY: So you're saying it was the</p> <p>3 Chamber of Mines, it was Labour, you say the unions?</p> <p>4 MS SHABANGU: Yes.</p> <p>5 MS PILLAY: Before the 21st of August,</p> <p>6 Minister, did you meet with both unions involved?</p> <p>7 MS SHABANGU: With all unions, not just</p> <p>8 both, al unions, Solidarity, WASA, AMCU, NUM.</p> <p>9 MS PILLAY: Minister, at this stage we're</p> <p>10 talking about and if you go back to your speech we're</p> <p>11 talking about the affected parties in respect of the</p> <p>12 Marikana tragedy. So there were really two affected</p> <p>13 unions. Now my question to you is before the 21st of</p> <p>14 August, so between the 16th of August or even before that,</p> <p>15 before the 21st of August did you consult with both unions</p> <p>16 who were affected parties?</p> <p>17 MS SHABANGU: Mr Chairman, I want to</p> <p>18 state clearly before the 21st as asked we met, when I say</p> <p>19 meeting with convinced stakeholders we met with the unions</p> <p>20 which are organising in the mining industry, not only two.</p> <p>21 There are four.</p> <p>22 CHAIRPERSON: So you met with all four?</p> <p>23 MS SHABANGU: With all four.</p> <p>24 CHAIRPERSON: Including AMCU?</p> <p>25 MS SHABANGU: Including AMCU.</p>	<p>1 CHAIRPERSON: Between the 16th and the</p> <p>2 21st of August.</p> <p>3 MS SHABANGU: Between the 16th?</p> <p>4 CHAIRPERSON: The 16th is the Thursday,</p> <p>5 the day when the –</p> <p>6 MS SHABANGU: No, before the 16th –</p> <p>7 CHAIRPERSON: Where the 34 died.</p> <p>8 MS SHABANGU: That's why I'm saying he</p> <p>9 must be specific because if he talks about before the 16th</p> <p>10 or before –</p> <p>11 CHAIRPERSON: She says before the 21st</p> <p>12 and, before the 21st she says did you meet with amongst</p> <p>13 others AMCU and I've understood you to say yes, or I</p> <p>14 misunderstood. You see what you, and the real question I</p> <p>15 think that you've been asked in the period between the</p> <p>16 tragedy on the 16th when 34 people died and the 21st did you</p> <p>17 have meetings with amongst others AMCU? That's your</p> <p>18 question -</p> <p>19 MS SHABANGU: Before the 16th?</p> <p>20 CHAIRPERSON: No, no, no after the 16th.</p> <p>21 MS SHABANGU: After the 16th we met –</p> <p>22 CHAIRPERSON: The 16th is the day when you</p> <p>23 were –</p> <p>24 MS SHABANGU: Yes.</p> <p>25 CHAIRPERSON: You were at another meeting</p>
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<p>1 MS PILLAY: Alright, that's a general</p> <p>2 level, Minister, your testimony today is this is very</p> <p>3 important, your testimony is that before the 21st you met</p> <p>4 with AMCU specifically?</p> <p>5 MS SHABANGU: Mr Chairman, she's</p> <p>6 confusing me. Because I'm saying we met with NUM, AMCU,</p> <p>7 Solidarity, WASA.</p> <p>8 CHAIRPERSON: Yes.</p> <p>9 MS SHABANGU: That's the labour.</p> <p>10 CHAIRPERSON: She's made it quite clear</p> <p>11 before the 21st she met with most other with AMCU.</p> <p>12 MS PILLAY: And just to understand,</p> <p>13 Minister, because that's at a general level, now my</p> <p>14 question to you is specifically in the context of the</p> <p>15 Marikana tragedy and specifically before the 21st of August</p> <p>16 did you meet with AMCU?</p> <p>17 MS SHABANGU: I'm confused, I don't</p> <p>18 understand the question because after the incident of the</p> <p>19 16th we did meet, started meeting with AMCU and all other</p> <p>20 unions. Not AMCU on one on one.</p> <p>21 CHAIRPERSON: Ja, but you were at</p> <p>22 meetings with amongst others AMCU?</p> <p>23 MS SHABANGU: Yes.</p> <p>24 CHAIRPERSON: Is that right?</p> <p>25 MS SHABANGU: Yes.</p>	<p>1 in Brakpan I think weren't you?</p> <p>2 MS SHABANGU: Yes.</p> <p>3 CHAIRPERSON: And that's the day when the</p> <p>4 killing took place, the killings took place of the 34</p> <p>5 people. That was the culmination of the events at Marikana</p> <p>6 and the question that you've been asked as I understand it</p> <p>7 is from that day, the 16th, Thursday the 16th to the 21st did</p> <p>8 you meet with amongst others AMCU?</p> <p>9 MS SHABANGU: The meeting I'm referring</p> <p>10 to on para 22 where I say we convened a meeting where we</p> <p>11 met with the unions except AMCU on the 18th.</p> <p>12 MS PILLAY: Your testimony today,</p> <p>13 Minister, is that when you told Parliament that you spent</p> <p>14 countless hours in meetings with affected parties in order</p> <p>15 to understand the situation at Marikana that one of the</p> <p>16 parties who you met with was AMCU, specifically in that</p> <p>17 context?</p> <p>18 MS SHABANGU: I don't understand your</p> <p>19 question.</p> <p>20 CHAIRPERSON: Let me have a go. I was</p> <p>21 wrong when I said you were in Brakpan on the 16th, you were</p> <p>22 in fact at Boksburg.</p> <p>23 MS SHABANGU: No, we were having a</p> <p>24 conference on the –</p> <p>25 CHAIRPERSON: In Boksburg.</p>

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1 MS SHABANGU: Yes, on the 15th.
 2 CHAIRPERSON: That's where you were when
 3 you got the news.
 4 MS SHABANGU: The news in the afternoon.
 5 CHAIRPERSON: In the afternoon.
 6 MS SHABANGU: Yes.
 7 CHAIRPERSON: Of the shootings and the
 8 killing of 34 people. Now I think what Ms Pillay wants to
 9 know from you is from that time, the 16th when you were at
 10 Boksburg to the 21st did you have meeting with amongst
 11 others AMCU, that's your question, Ms Pillay? Ms Pillay,
 12 is that your question?
 13 MS PILLAY: Yes, Chair, that's the
 14 question.
 15 MS SHABANGU: We met on the 18th with the
 16 stakeholders as I say. Because we had never had a meeting
 17 with AMCU and we didn't even have any details about them we
 18 met as stakeholders, myself and the Minister of Labour, met
 19 with the existing unions which were NUM, Solidarity and
 20 WASA.
 21 CHAIRPERSON: AMCU was an existing union,
 22 it had been in existence for some years.
 23 MS SHABANGU: Well in our, in our
 24 negotiations
 25 CHAIRPERSON: It's registered with the

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1 Department of Labour.
 2 MS SHABANGU: Well with us, we had never
 3 had a meeting with them.
 4 CHAIRPERSON: I see. Now you see
 5 stakeholder in a normal ordinary meaning of the word means
 6 someone who's got a stake, someone who holds a stake and I
 7 would have thought that AMCU would have qualified for
 8 invitation to a stakeholders meeting because they
 9 undoubtedly held a stake in the mining industry and in
 10 particular they held a stake in what was happening at
 11 Lonmin because they even had some rights, not wage
 12 negotiation rights but certain organisational rights and at
 13 least the Karee shaft of Lonmin. So they were certainly
 14 stakeholders in the ordinary sense of the word and Mr
 15 Mathunjwa, the President of AMCU was invited by Lonmin
 16 together with Mr Zokwana, the President of NUM to address
 17 the strikers on the 15th, the Wednesday which he did and he
 18 went back on the Thursday and he addressed the strikers
 19 again and in fact to his eternal credit pleaded with the
 20 strikers on his bended knees to leave the koppie because he
 21 was afraid they were going to be killed. So on any
 22 definition, I would have thought AMCU qualified to be a
 23 stakeholder, would you agree with that or am I
 24 misunderstanding the situation?
 25 MS SHABANGU: Well, Mr Chairman, at that

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1 point when the incident happened our understanding was that
 2 AMCU was not existing, that's the information we had.
 3 There were workers committees and that's the issue raised
 4 with us, not AMCU as an institution or as an organisation
 5 which was representing workers. What was said to us is
 6 that they, there were workers committee in Lonmin.
 7 CHAIRPERSON: Had you never heard of AMCU
 8 at all before that?
 9 MS SHABANGU: No, Mr Chairman.
 10 CHAIRPERSON: Oh. There was trouble
 11 previously at Impala, wasn't it, platinum miners Impala and
 12 later trouble with Amplats.
 13 MS SHABANGU: As Minister of Mineral
 14 Resources wasn't it your duty to find out and keep in touch
 15 with what was happening at Impala and Amplats?
 16 MS SHABANGU: Well at Impala and Amplats
 17 again it was workers committees and when we engage with
 18 them right from the beginning they said its workers
 19 committees and there was a tension between workers
 20 committees and management, it was not AMCU. Because we
 21 also have to look at that and say at what point was
 22 therefore AMCU brought on board as recognised by the
 23 companies themselves as representing the workers.
 24 CHAIRPERSON: Never mind when they were
 25 recognised by the companies. All the news reports about

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1 the trouble with Impala and Amplats, did none of those
 2 reports at any stage mention that AMCU was involved, there
 3 was friction between NUM. There were people in possession,
 4 they were the recognised union and AMCU were the new union
 5 trying to get recognition and take, and oust NUM and take
 6 NUM's place, was that not mentioned in any of the reports
 7 you read about in, the trouble at Impala and Amplats?
 8 MS SHABANGU: Well the report we got on a
 9 regular basis was workers committee.
 10 CHAIRPERSON: No reports about AMCU at
 11 all?
 12 MS SHABANGU: No, not to us.
 13 CHAIRPERSON: I see.
 14 MS PILLAY: Minister, we are in
 15 possession of an interview that you conducted with Karima
 16 Brown, specifically on the Marikana matter. Does that, do
 17 you remember the interview you did with Karima Brown?
 18 MS SHABANGU: Yes, on the 17th of August.
 19 MS PILLAY: That's correct and in that
 20 interview you informed Ms Brown that you first came to know
 21 of AMCU during the strike at Amplats, at Impala.
 22 CHAIRPERSON: Do you have a copy of that
 23 interview?
 24 MS PILLAY: Chair, the evidence leaders
 25 are in possession of that interview and we can play it

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1 unless the Minister accepts that she did say that during
 2 the interview.
 3 CHAIRPERSON: [inaudible] sorry in, to be
 4 fair to the Minister in terms of the rules we've laid down
 5 in this Commission, if you want to confront a witness with
 6 a statement or document of any kind the witness should get
 7 an opportunity to see it. So I think it's only fair that
 8 it should be shown to the witness before she answers
 9 questions further and I don't understand why we weren't
 10 given it before hand either but anyway we, or the Minister.
 11 We won't go there now. I will insist upon it being shown
 12 to us, to the Minister before she answers.
 13 MS PILLAY: Chair, we can arrange to do
 14 that. In the meantime, Minister may I refer you to your
 15 statement and if I can ask that CC5, CCCC5 be put up on the
 16 screen and if we could go to paragraph 9 of the statement.
 17 Now, Minister, apart from the fact that you've testified
 18 today that you met with AMCU as a union before the 21st of
 19 August, besides that fact, let's look at what you say in
 20 your statement. You say, "I first heard of the unrest at
 21 Lonmin mine Marikana around 9 August 2012. According to
 22 media reports at the time the unrest was started by wage
 23 demands by a group of the mine workers employed at the
 24 Lonmin mine. There were further reports of rivalry between
 25 two of the labour unions who represented workers at Lonmin.

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1 Namely AMCU and NUM. That was how I initially understood
 2 the problem". So clearly from this Minister by the 9th of
 3 August you were not only aware of the existence of AMCU but
 4 you understood the issue to be a rivalry between two of the
 5 labour unions who represented workers at Lonmin. What's
 6 your comment to that?
 7 MS SHABANGU: That's what we were reading
 8 in the papers.
 9 MS PILLAY: This is what you say in your
 10 statement, Minister.
 11 MS SHABANGU: Yes, that's what I'm saying
 12 because, let me also, Mr Chairman, explain the situation.
 13 When we were engaging with the various companies and trying
 14 to understand the situation there was no AMCU. That's what
 15 I'm saying. But you would hear that AMCU is trying to
 16 organise itself and if you also have to confirm that later
 17 even when the strike or the situation and violence had
 18 stopped there was a continuous engagement by the companies
 19 and AMCU in finding a recognition agreement.
 20 [11:12] And what we knew is that there were workers
 21 committees which were at that point in time negotiating,
 22 but AMCU as a union, or as a force as one would understand
 23 was not part of our engagement.
 24 MS PILLAY: And yet you –
 25 MS SHABANGU: And the issue of the rival

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1 arises because when the fights were on there was the issue
 2 of AMCU and NUM fighting amongst themselves, hence some of
 3 the members who died who we were told were NUM members.
 4 MS PILLAY: And yet you testified just a
 5 few minutes ago, Minister, when I specifically asked the
 6 question you testified that before the 21st of August you
 7 liaised with AMCU as a stakeholder. Those were your words,
 8 and I repeatedly asked the question and you repeatedly
 9 answered the question in that way, that you met with AMCU
 10 as a stakeholder, as you did all the other unions. That
 11 was your evidence.
 12 MS SHABANGU: Well later indeed we did
 13 meet. I might have made a mistake, as you know that these
 14 are issues of the past for me.
 15 MS PILLAY: So are you now changing your
 16 evidence, Minister? Do you accept that before the 21st of
 17 August you did not meet with AMCU?
 18 MS SHABANGU: Well, Mr Chairman, I've
 19 said because of the way he, she was asking, indeed we never
 20 met AMCU before. That is why I was saying she must clarify
 21 herself.
 22 CHAIRPERSON: So what you said a minute
 23 ago was you suggested you may have made a mistake. I must
 24 say it does sound as if you did make a mistake, which you
 25 are now correcting. Would that be fair?

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1 MS SHABANGU: Yes.
 2 CHAIRPERSON: The question that still
 3 puzzles me is why - you called a stakeholders meeting
 4 presumably to try to find a solution to the problem - why
 5 you didn't regard AMCU as being a party who, (a), had a
 6 stake in what was happening; and (b), would be in a
 7 position to contribute to the resolution of the problem.
 8 MS SHABANGU: Well, Mr Chairman, for us
 9 AMCU, we had never met before. We had regular meetings
 10 with the various stakeholders and AMCU was never there.
 11 MS PILLAY: And apart from the exclusion
 12 of AMCU, Minister, before the 21st of August – and please,
 13 before the 21st of August – which, how did you engage, or
 14 did you engage with the strikers?
 15 MS SHABANGU: I don't understand your
 16 question.
 17 MS PILLAY: You say to parliament that
 18 you had countless meetings with the affected parties.
 19 Those were your words. Now my question to you is when you
 20 go before parliament on the 21st of August and you say that
 21 you've had countless meetings with affected parties, did
 22 you meet the strikers during any of these countless
 23 meetings?
 24 MS SHABANGU: Well, I can't remember.
 25 What I know is that by the time we went to parliament the

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1 first meeting we had was with the regular stakeholders
 2 where we agreed to include AMCU.
 3 MS PILLAY: Minister, by the 21st 44
 4 people had died, 34 of them killed on the 16th. Is your
 5 testimony before this Commission that you cannot recall
 6 whether you met with strikers when you went to Marikana
 7 after the 16th?
 8 MS SHABANGU: I never went to Marikana to
 9 meet with the strikers.
 10 MS PILLAY: You went to try and
 11 understand what had transpired. In the course of that
 12 exercise did you engage with any of the strikers?
 13 MS SHABANGU: Well, all workers were on
 14 strike. We did, met with NUM.
 15 MS PILLAY: The question was did you meet
 16 with any of the strikers, because we know, Minister, and
 17 that's been testimony before this Commission, that the
 18 strikers didn't recognise NUM as a legitimate vehicle to
 19 raise their concerns. Did you meet with any of the
 20 strikers when you, before you went to parliament on the 21st
 21 of August and said that you had spent countless of hours in
 22 meeting with the affected parties?
 23 MS SHABANGU: Mr Chairman, I can't
 24 remember that. I think I've done my – I've answered when,
 25 on the 18th when we meet we agree that we're going to meet

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1 with everybody and we tasked the Minister of Labour to
 2 bring onboard AMCU.
 3 COMMISSIONER HEMRAJ: On the 18th were the
 4 strikers represented by anyone at that meeting?
 5 MS SHABANGU: Well, I've already said no,
 6 they were not. Hence we tasked the Minister of Labour, who
 7 is the, who clarified at that meeting that AMCU's status
 8 with the Department of Labour, it was a registered union.
 9 CHAIRPERSON: What it means is when you
 10 made your speech to parliament on the 21st of August and you
 11 said that you had spent countless hours either in meetings
 12 or consultations with the affected parties, you didn't
 13 mention that there was one affected party whom you hadn't
 14 spent countless hours meeting with or consulting with, and
 15 that was AMCU. Would that be fair?
 16 MS SHABANGU: That would be fair, Mr
 17 Chairman.
 18 CHAIRPERSON: And you also hadn't spent
 19 hours, countless or otherwise, meeting with or consulting
 20 with the strikers. That's also fair, isn't it?
 21 MS SHABANGU: Well, there were NUM
 22 members who were also affected, and we met with the
 23 employers who were part of the process –
 24 CHAIRPERSON: No, I asked about the
 25 strikers. Did you spend countless hours or any hours at

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1 all, even those that could be counted, in meetings or
 2 consultations with the strikers, any of the strikers?
 3 MS SHABANGU: Well, Mr Chairman, all
 4 workers at that time were on strike, so whether it's two or
 5 three, they were on strike.
 6 CHAIRPERSON: Did you actually meet with
 7 people who were on strike? I understand you met with
 8 people from NUM and I take it people like Mr Zokwana and
 9 perhaps Mr Baleni and some of the other senior people of
 10 NUM, but did you actually meet with anyone, whether or not
 11 that person was a member of NUM, who had actually been, was
 12 at that stage still on strike at Lonmin?
 13 MS SHABANGU: [Microphone off, inaudible]
 14 met with individuals who were on strike and who were
 15 members of NUM.
 16 MS PILLAY: On the topic of your
 17 interaction with NUM, can I ask that we go to JJJJ6? And
 18 while it's being put on the screen, Minister, you will see
 19 that this is an email from Thandeka Ncube of Shanduka to Mr
 20 Cyril Ramaphosa and others. Now can we go to paragraph 4
 21 of this email? You'll see, and I want to just pick up from
 22 where it appears "Both AMCU and NUM are still denying
 23 involvement." Do you see that, Minister?
 24 CHAIRPERSON: I see it's the paragraph
 25 headed "HR process in dealing with the strikers" and it's

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1 the second subparagraph, as it were, in that section. It's
 2 the sentence beginning, "Both AMCU and NUM are still
 3 denying."
 4 MS PILLAY: It says, Minister, "Both AMCU
 5 and NUM are still denying involvement, but NUM has been
 6 supportive," and this is the important part, "with the
 7 president of NUM visiting the operations and liaising with
 8 both Minister Shabangu and Mthethwa." Now in your
 9 statement, Minister, you deal with interaction with Mr
 10 Ramaphosa in relation to the events at Marikana. Did you
 11 have interaction with Mr Zokwana about the events at
 12 Marikana?
 13 MS SHABANGU: Not to my memory.
 14 MS PILLAY: So you could have liaised
 15 with Mr Zokwana around what was happening, the strike at
 16 Lonmin and –
 17 MS SHABANGU: Maybe. Maybe.
 18 MS PILLAY: It could have happened?
 19 MS SHABANGU: Maybe.
 20 MS PILLAY: Now can I ask you, Minister,
 21 to look at QQQQ1.10?
 22 CHAIRPERSON: 1.10, that's the address to
 23 parliament, or page 10, which is actually –
 24 MS PILLAY: No, it's 1.10, that's the –
 25 CHAIRPERSON: 1.10, that's the address to

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1 parliament. Page 10 is 1.7 which is the interview with
 2 Carol Paton of Business Day. That's at page 10.
 3 MS PILLAY: That's right, Chair –
 4 CHAIRPERSON: Is this what you want?
 5 MS PILLAY: I'm sorry, it's actually page
 6 10. I apologise. It's 1.7.
 7 CHAIRPERSON: Alright.
 8 MS PILLAY: QQQQ1.7. Chair, I see I have
 9 five minutes left. I have a few issues that I need to
 10 raise with the Minister. Is there any way I could possibly
 11 apply for an extension of time?
 12 CHAIRPERSON: Mr Badenhorst didn't use
 13 the full time. To be fair, I've asked a number of
 14 questions and taken up some of your time, so I think it's
 15 only fair that I should give you extra time to make up for
 16 my using of some of your time and there is the time
 17 available that Mr Badenhorst made available to us. So you
 18 may carry on, but how long do you need?
 19 MS PILLAY: Chair, I think I will
 20 probably wrap up in 20 minutes.
 21 CHAIRPERSON: Alright, I'll give you
 22 extra time for that.
 23 MS PILLAY: I'm indebted, Chair.
 24 Minister, if we can look at QQQQ1.7, you'll see this is an
 25 article by Carol Paton dated the 24th of May 2013 and it

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1 refers, Minister, to remarks made by you during a NUM, a
 2 meeting with NUM shop steward and leaders of a central
 3 committee. Do you recall this meeting, Minister?
 4 MS SHABANGU: I do.
 5 MS PILLAY: Now let's see what you said
 6 at the meeting. It says in paragraph 1 that, "Mineral
 7 Resources Minister Susan Shabangu on Friday expressed her
 8 solidarity and support with the National Union of
 9 Mineworkers which she said was 'under siege from a force
 10 determined to remove it from the face of the earth.'" Do
 11 you recall those remarks, Minister?
 12 MS SHABANGU: I do. I do.
 13 MS PILLAY: Now can you tell us what it
 14 is that you meant? Which force determined to remove it
 15 from the face of the earth were you referring to?
 16 MS SHABANGU: Well, the force I was
 17 referring to, hence if you look at how I qualify it, I
 18 qualify it with the Britain, Mr Chairman, unions. So I was
 19 referring to the employers.
 20 MS PILLAY: You were referring to the
 21 employer, to Lonmin?
 22 MS SHABANGU: Exactly. Exactly.
 23 MS PILLAY: And you took the view that
 24 Lonmin was determined to remove NUM from the face of the
 25 earth?

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1 MS SHABANGU: Indeed.
 2 MS PILLAY: And why did you form that
 3 view, Minister? Because the evidence before this
 4 Commission is that Lonmin was for example dealing with a
 5 very violent strike, that NUM was directly opposed to that
 6 strike and in fact was encouraging its members to go to
 7 work. So why in that context would Lonmin want to remove
 8 NUM from the face of the earth?
 9 MS SHABANGU: Well, if you look at
 10 behaviour of employers and you look at behaviour of Lonmin
 11 not only on this particular strike, how they've been
 12 handling union matters, it's on the basis of that that I
 13 was raising it, because sometimes we tend to look at an
 14 environment of a strike on the basis of rivalry amongst
 15 unions and we forget sometimes the key player which becomes
 16 the employer in that space.
 17 CHAIRPERSON: You talk about these forces
 18 determined to use every trick in the book. Now what tricks
 19 in the book did Lonmin use against NUM to your knowledge?
 20 MS SHABANGU: Well, it would be the
 21 divide and rule amongst the workers where they're unable to
 22 unite amongst themselves, and at the end of the day the
 23 employer wins.
 24 MS PILLAY: Now if we can go further
 25 down, Minister, in this article, and this is really the

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1 thrust of why we say this is relevant to what transpired at
 2 Marikana, I want to refer you specifically to the following
 3 comments you make where you say, "You are under siege by
 4 forces determined to use every trick in the book to remove
 5 you from the face of the earth. They want to make sure
 6 that no progressive trade union will be permitted in the
 7 mining sector. It is only those who are wilfully blind who
 8 cannot see that the agenda is to defeat and drive the
 9 African National Congress from power and reverse the gains
 10 of the national democratic revolution." Now can you tell
 11 us what it is that you were referring to, Minister?
 12 MS SHABANGU: I'm referring to the forces
 13 which normally would come through companies and make sure
 14 that they weaken government, or they weaken the ANC.
 15 MS PILLAY: And apart from the fact that
 16 Mr Ramaphosa was a non-executive director of Lonmin and
 17 also at that time the NEC of the ANC – or let me start
 18 there; given that fact, did you still see Lonmin as being
 19 part of the agenda to defeat and drive the ANC from power
 20 and reverse the gains of the national democratic
 21 revolution?
 22 MS SHABANGU: Well, there were many
 23 issues at Lonmin which were happening to workers by
 24 management, including racism.
 25 MS PILLAY: Now Minister, in that

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1 paragraph, I'm going to put to you that you draw a parallel
 2 between the forces who are targeting NUM as being the same
 3 forces who are seeking to defeat and drive the ANC from
 4 power. Isn't that correct?
 5 MS SHABANGU: That's correct.
 6 MS PILLAY: So you have drawn here a
 7 synergy of interest between NUM and the African National
 8 Congress.
 9 MS SHABANGU: That's correct.
 10 MS PILLAY: So to go back to your
 11 involvement in the Marikana tragedy, is it true that even
 12 at that time in August 2012 you saw a synergy of interest
 13 between the ruling party which you represent, the ANC, and
 14 NUM?
 15 MS SHABANGU: That's not true. I saw the
 16 employer continuing to divide workers.
 17 MS PILLAY: No, Minister, my question is
 18 a different one. If as you accept in May 2013 you saw a
 19 synergy of interest between the ANC and NUM, as you clearly
 20 articulate at this meeting, it must be that in August 2012
 21 you saw that synergy of interest.
 22 MS SHABANGU: [Microphone off, inaudible]
 23 interest arises based, Mr Chairman, on the employer
 24 dividing workers because for a while Lonmin has been
 25 involved in the process of attacking workers.

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1 MS PILLAY: And that therefore when NUM
 2 is faced with the difficulties it was faced with at Lonmin
 3 you saw that as being reflective of a similar attack on the
 4 ANC?
 5 MS SHABANGU: Similar attack on the ANC
 6 through workers.
 7 MS PILLAY: So when you were asked,
 8 Minister, to intervene at Marikana by Mr Ramaphosa, and
 9 when you conducted yourself in putting together stakeholder
 10 meetings, in holding countless hours of meetings and
 11 consultations, your approach was shaped by your
 12 understanding that an attack on NUM is analogous to an
 13 attack on the ANC?
 14 MS SHABANGU: If you attack workers in
 15 South Africa, it all, who contributed to the liberation of
 16 South Africa, who are also members of the ANC, we see that
 17 as an attack on the ANC.
 18 MS PILLAY: I'm going to put to you,
 19 Minister, that's the reason why AMCU was not part of the
 20 consultative process you engaged in on the 18th of August.
 21 MS SHABANGU: Mr Chairman, that's her
 22 view. I've never said that.
 23 CHAIRPERSON: When you made this speech
 24 to the NUM shop stewards and leaders at their central
 25 committee meeting in May 2013 which Ms Paton writes about

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1 in the article which is being referred to, were you aware
 2 of the fact which she mentions in the third paragraph of
 3 her report, that that week the unions, that's NUM, had said
 4 that it had lost 44 000 members over the past year, with
 5 more losses expected to be confirmed, then Amplats, the
 6 world's largest platinum mine, completes a union
 7 verification exercise shortly, and then she goes on, "The
 8 exodus from the NUM followed a violent and chaotic
 9 recruitment campaign by the rival Association of
 10 Mineworkers and Construction Union, AMCU." Were you aware
 11 of that fact that NUM had said it had lost 44 000 members
 12 over the past year during the very week when you addressed
 13 this central committee meeting of NUM stop stewards and
 14 leaders, and were you aware of the fact that this exodus
 15 from NUM when they lost 44 000 members had followed a
 16 violent and chaotic recruitment campaign by AMCU? I know
 17 that's two questions, but I hope you can answer them both.
 18 [11:32] MS SHABANGU: Well, Mr Chairman, I must
 19 say that I was not aware. I, when I made this speech it
 20 was on the basis of my analysis of the broader situation
 21 and its implication to the organisation, which it's the
 22 ANC.
 23 MS PILLAY: Chair, we have no further
 24 questions to this witness.
 25 CHAIRPERSON: Well, except that there is

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1 that document that you're going to put to her.
 2 MS PILLAY: Chair, it's not a document,
 3 it's footage of –
 4 CHAIRPERSON: Footage of an interview
 5 with Ms Karima Brown.
 6 MS PILLAY: That's correct, Chair.
 7 CHAIRPERSON: So when is that going to be
 8 available?
 9 MS PILLAY: We can during the lunch
 10 adjournment make that available to the team of the
 11 Minister, Chair.
 12 CHAIRPERSON: I see. Well, you were
 13 asking her questions about it, so I presume you wish to
 14 reserve your right to question her about that once you've
 15 got it available.
 16 MS PILLAY: I would be grateful, Chair.
 17 CHAIRPERSON: Alright, well thank you.
 18 So the next party to cross-examine is LRC and they have 30
 19 minutes.
 20 CROSS-EXAMINATION BY MR NGCUKAITOBI:
 21 Thank you, Mr Chairman. Good morning, Minister. Can I
 22 start with the aspects of the interaction with Mr
 23 Ramaphosa, the Deputy President. As I understand your
 24 evidence that you gave when you were being cross-examined
 25 by the evidence leaders –

<p style="text-align: right;">Page 35628</p> <p>1 CHAIRPERSON: Sorry, Mr Ngcukaitobi, 2 before you carry on, we were given a bundle of documents 3 this morning to be relied on by the LRC. I take it that 4 includes in respect of topics where I didn't allow cross- 5 examination, but we won't go there now. What I want to 6 know is has the witness been given this bundle of 7 documents? 8 MR NGCUKAITOBI: Yes, we have, Mr 9 Chairman. 10 CHAIRPERSON: When did she get it? Did 11 she also get it this morning when I got it? 12 MS PILLAY: Chair, the documents were 13 emailed to all of the parties in the course of last week. 14 CHAIRPERSON: I see. 15 MS PILLAY: Sorry, towards the end of 16 last week. 17 CHAIRPERSON: So the witness has had an 18 opportunity to look at them. 19 MR NGCUKAITOBI: The physical copy was 20 delivered today, but the – 21 CHAIRPERSON: Yes, I see. 22 MR NGCUKAITOBI: The email was sent, 23 circulated last week. 24 CHAIRPERSON: Okay. 25 MR NGCUKAITOBI: On that score, Mr</p>	<p style="text-align: right;">Page 35630</p> <p>1 understand – 2 CHAIRPERSON: And the witness has 3 sufficient time to read the documents, I understand that. 4 MR BADENHORST SC: Yes, I'm so sorry, Mr 5 Chairman, I just want to clarify, I'm not saying – I 6 understand that we are not told the topics. I'm just 7 telling you the difficulty we have, having received them 8 late. If there are going to be questions where the witness 9 needs to consult the document that may cause a difficulty – 10 CHAIRPERSON: Yes, well but – 11 MR BADENHORST SC: But we are hopeful 12 that it won't arise. 13 CHAIRPERSON: Yes, if there are problems 14 of that nature they can be mentioned and we can do 15 something to try to ensure that there's no prejudice as a 16 result of an ambush. But as you say, it may well be that 17 that won't happen, but it's my duty always to seek to 18 protect the witness insofar as I can against unfair 19 procedures. 20 MR NGCUKAITOBI: Thank you, Mr Chairman. 21 The only thing I wanted to mention was that there are two 22 speeches that I will be making reference to that were 23 handed in this morning. 24 CHAIRPERSON: The speeches by the witness 25 herself?</p>
<p style="text-align: right;">Page 35629</p> <p>1 Chairman – 2 CHAIRPERSON: No, I didn't want her to be 3 ambushed as it were by documents that she hadn't seen 4 before, but it would appear that that fear of an ambush is 5 unjustified. 6 MR NGCUKAITOBI: Thank you, Mr Chairman. 7 MR BADENHORST SC: Sorry, Mr Chair, so 8 sorry, Chair, I – 9 MR NGCUKAITOBI: There are two – 10 CHAIRPERSON: Mr Badenhorst wants to say 11 something. Yes, Mr Badenhorst? 12 MR BADENHORST SC: I would like to 13 qualify, because I don't know what the questions might be 14 about these documents, there is the fear of ambush because 15 these documents arrived with us very late. I think it was 16 on, late on Friday. So I think when my learned friend says 17 last week, it means the end of last week, so I'm not 18 objecting at this stage because I simply don't know – 19 CHAIRPERSON: No, well we never tell 20 parties who are calling witnesses what topics they will be 21 asked about in cross-examination because we think that's 22 unfair to the cross-examining party, but we do request the 23 documents to be relied on should be given to the witness 24 beforehand. 25 MR BADENHORST SC: Mr Chairman, I</p>	<p style="text-align: right;">Page 35631</p> <p>1 MR NGCUKAITOBI: By the Minister herself. 2 CHAIRPERSON: Well, she can scarcely be 3 prejudiced by being, having her own words quoted or so. 4 MR NGCUKAITOBI: Indeed. 5 CHAIRPERSON: If they are correctly 6 reported, of course. 7 MR NGCUKAITOBI: Indeed. Thank you, Mr 8 Chairman. Now Minister, can I start with the, by the 15th 9 of August in the morning you had the conversation with Mr 10 Xolani Gwala on SAfm where as I understand in your evidence 11 you told him that this was a labour matter and it must be 12 resolved between management and the workers. Is that 13 correct? 14 MS SHABANGU: That's correct. 15 MR NGCUKAITOBI: Yes, thank you. Now at 16 that point in time you had also had I think on the 14th 17 according to your statement a conversation with Mr Teke, 18 the deputy president of the Chamber of Mines, who informed 19 you about a possible mediation, although he didn't invite 20 you to facilitate the mediation. Is that correct? 21 MS SHABANGU: That's correct. 22 MR NGCUKAITOBI: Yes, now at this stage, 23 the morning of the 15th of August, it was your view that 24 this was a labour matter to be resolved between management 25 and the workers. Is that correct?</p>

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1 MS SHABANGU: That's correct.
 2 MR NGCUKAITOBI: Yes, it was certainly
 3 not your view that the police must step in and resolve the
 4 situation?
 5 MS SHABANGU: That's correct.
 6 MR NGCUKAITOBI: Yes, now at that stage
 7 of the morning of the 15th you had not yet met with Mr
 8 Ramaphosa, the Deputy President. Is that correct? At the
 9 time you spoke to Mr Xolani Gwala.
 10 MS SHABANGU: That's correct.
 11 MR NGCUKAITOBI: Now you met with Mr
 12 Ramaphosa we know some time in the morning of the –
 13 CHAIRPERSON: I'm sorry, Mr Ngcukaitobi,
 14 just a matter of housekeeping, you say you're going to
 15 refer to two speeches. You're now moving on to a slightly
 16 different topic.
 17 MR NGCUKAITOBI: They were handed –
 18 CHAIRPERSON: Yes, no, no –
 19 MR NGCUKAITOBI: They were handed in –
 20 CHAIRPERSON: No, no, perhaps we should
 21 mark them now. The one is I take it the address that the
 22 Minister gave at the opening of the Twistdraai Colliery,
 23 Thubelisha Shaft on the 22nd of May 2012, and the other is
 24 an address she'd given a month before on the occasion of
 25 the launch of the Lonmin Artisan College at KwaMarikani

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1 North West on the 18th of April. Is that correct?
 2 MR NGCUKAITOBI: Yes, correct,
 3 Chairperson.
 4 CHAIRPERSON: Now we will mark them QQQQ3
 5 and QQQQ4. I take it you want to deal with them in
 6 chronological order, do you?
 7 MR NGCUKAITOBI: Yes.
 8 CHAIRPERSON: So we'll deal with the
 9 Lonmin Artisan College one as QQQQ –
 10 MR NGCUKAITOBI: 3.
 11 CHAIRPERSON: - 3, and the Twistdraai
 12 Colliery at Thubelisha as QQQQ4.
 13 MR NGCUKAITOBI: Yes, thank you, Mr
 14 Chairman.
 15 CHAIRPERSON: So now we've got that out
 16 of the way you can carry on with your cross-examination.
 17 MR NGCUKAITOBI: Yes, thank you, Mr
 18 Chairman. Now Minister, just at the time you spoke to Mr
 19 Ramaphosa and what your view or your characterisation of
 20 the situation was, now I want to take you to the discussion
 21 that you then have with Mr Ramaphosa. So let us first look
 22 at his account of that discussion. It is in BBB4, if it
 23 could be put up. It was part of the evidence that you gave
 24 when you were being cross-examined by Ms Pillay, BBB4.2. I
 25 think it's – no, not that one. It's the email from Mr

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1 Ramaphosa to Mr Jamieson and others. No, it's the later
 2 one at 2:58PM. Alright, now this is what the Deputy
 3 President records was the content of the conversation. The
 4 first paragraph, "I have just had a discussion with Susan
 5 Shabangu in Cape Town. 1, She agrees that what we are
 6 going through is not a labour dispute." Put a full stop
 7 there. Did you agree that what was going on was not a
 8 labour dispute?
 9 MS SHABANGU: I've never said it's not a
 10 labour dispute.
 11 MR NGCUKAITOBI: No, just look there,
 12 just answer the question. Did you agree in the
 13 conversation with Mr Ramaphosa that what was going on was
 14 not a labour dispute?
 15 MS SHABANGU: Mr Chairman, I've never
 16 said it's not a labour dispute.
 17 MR NGCUKAITOBI: So is the answer yes or
 18 no to my question?
 19 CHAIRPERSON: I take it that means you
 20 didn't agree with Mr Ramaphosa?
 21 MS SHABANGU: Yes.
 22 MR NGCUKAITOBI: Yes, when he records
 23 that you agreed, he is giving an inaccurate recordal?
 24 MS SHABANGU: Come again.
 25 MR NGCUKAITOBI: Minister –

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1 MS SHABANGU: Come again.
 2 MR NGCUKAITOBI: - I'm asking you a
 3 question. When Mr Ramaphosa says in the email that you
 4 agreed that what was going on was not a labour dispute, he
 5 is giving an inaccurate recordal of the conversation?
 6 MS SHABANGU: Yes.
 7 MR NGCUKAITOBI: I see. Now the next
 8 sentence in the same line, "She will correct her
 9 characterisation of what we are experiencing." Did you
 10 agree to correct your characterisation?
 11 MS SHABANGU: I've indicated earlier on,
 12 Mr Chairman, that I had never characterised or what he's
 13 saying that I was going to correct my characterisation.
 14 I've said I've never said that.
 15 MR NGCUKAITOBI: This statement is false?
 16 CHAIRPERSON: It might be politer to call
 17 it incorrect –
 18 MR NGCUKAITOBI: Sorry, I apologise.
 19 CHAIRPERSON: - Mr Ngcukaitobi.
 20 MR NGCUKAITOBI: I apologise, Mr
 21 Chairman. This statement is inaccurate, Minister?
 22 MS SHABANGU: Indeed, because it was not,
 23 I never even saw it.
 24 MR NGCUKAITOBI: Yes, alright. Now in
 25 terms of your recollection of that conversation the

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1 statement is inaccurate?

2 MS SHABANGU: Well, we never discussed

3 this as it's stated here.

4 MR NGCUKAITOBI: Yes, alright. The

5 second paragraph, "She is going into cabinet and will brief

6 the President, as well as get the Minister of Police, Nathi

7 Mthethwa, to act in a more pointed way." Let's forget

8 about the first part because we know that to be true.

9 Let's look at the second part, "get the Minister of Police,

10 Nathi Mthethwa, to act in a more pointed way." Is this

11 statement accurate?

12 MS SHABANGU: I don't understand what he

13 meant by more pointed way.

14 MR NGCUKAITOBI: There was no

15 conversation that the Minister would be made to act in a

16 more pointed way?

17 MS SHABANGU: I said I'm going to brief

18 the Minister and the President. I never said they must act

19 in a pointed way.

20 MR NGCUKAITOBI: Alright, so you don't

21 really know where the statement emanates from. I don't

22 want to make problems about inaccuracy. Alright –

23 CHAIRPERSON: Can I ask you a question

24 about that? The last sentence of that email says, "Let us

25 keep the pressure on them to act correctly." Did you

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1 regard what Mr Ramaphosa was doing when he was talking to

2 you as being putting pressure on you?

3 MS SHABANGU: Well, Mr Chairman, as you

4 can understand he's the one who was under pressure, so he

5 had to find a way of making sure that his colleagues feel

6 that he's doing well.

7 MR NGCUKAITOBI: Yes, now I also want to

8 take you to your statement which is CCCC5, particularly at

9 paragraph 11. That is when you recount the conversation

10 with Mr Ramaphosa. At 11(b) you say here, "He shared his

11 view that what was happening then in Marikana could no

12 longer be characterised as a labour dispute, but that the

13 issue had escalated to involve acts of criminality." Now

14 let's look at what you say was your reaction to that

15 statement. "I agreed with him," and if you put a full stop

16 there, there are two things that you say. The first is

17 that what is happening is not a labour dispute, can no

18 longer be characterised as a labour dispute –

19 CHAIRPERSON: No, no, no, I'm not sure

20 that summary is entirely correct. What he says is it could

21 no longer be characterised as a labour dispute, it has

22 escalated to involve acts of criminality.

23 MR NGCUKAITOBI: Yes, indeed, Mr

24 Chairman.

25 CHAIRPERSON: It has escalated to involve

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1 acts of criminality.

2 MR NGCUKAITOBI: Yes, Mr Chairman.

3 CHAIRPERSON: It doesn't necessarily mean

4 that it ceased to be a labour dispute. It's a labour

5 dispute which has now escalated to involve acts of

6 criminality.

7 MR NGCUKAITOBI: Yes.

8 CHAIRPERSON: There is a distinction, a

9 fine distinction, but there is a distinction.

10 MR NGCUKAITOBI: Yes, I'll deal with it

11 with caution –

12 CHAIRPERSON: I think the distinction

13 doesn't harm the point you're making in cross-examination,

14 but I just try to get it clear that you are summarising

15 accurately what the witness said.

16 MR NGCUKAITOBI: Thank you, Mr Chairman.

17 Minister, I want to take you to the first part of the

18 statement. "He shared his view that what was happening in

19 Marikana could no longer be characterised as a labour

20 dispute." Let's put a pause there. Did you agree with

21 that statement? This is your own recollection of what

22 happened.

23 MS SHABANGU: Yes.

24 MR NGCUKAITOBI: So you agreed that what

25 was happening could no longer be characterised as a labour

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1 dispute?

2 MS SHABANGU: Well, if you look at – I

3 agree with him, but in particular that's why I'm making an

4 emphasis that this has escalated into acts of criminality.

5 MR NGCUKAITOBI: Yes, I'm going to deal

6 with that. I'm just dealing with the first part of your

7 statement, because what you say is "I agreed with him."

8 Did you agree with him that what was happening could no

9 longer be characterised as a labour dispute?

10 MS SHABANGU: I agree.

11 MR NGCUKAITOBI: Yes, and then the next

12 part is "There are acts of criminality," and then you say

13 you also agreed with that and that the acts of criminality

14 should be dealt with accordingly. Can you see that?

15 MS SHABANGU: Yes, I see it.

16 MR NGCUKAITOBI: Now Minister, we have

17 gone through this to establish exactly at what point did

18 you change your mind. Can I put to you that the only point

19 that you change your mind about the characterisation, the

20 morning of the conversation with Mr Gwala you saw this as a

21 labour dispute and it did not warrant the involvement of

22 the Minister of Police. The conversation with Mr Ramaphosa

23 then changes your characterisation of the situation. Now

24 you see that it now requires the involvements of the

25 police. Is that a fair statement to make?

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1 MS SHABANGU: It's a fair statement. Why
 2 should I go public when I have not spoken? Because in my
 3 mind when I went to Cape Town, Mr Chairman, I was clear
 4 that I was going to raise the matters with the President,
 5 but I could not raise it with the media before talking to
 6 the leadership.
 7 CHAIRPERSON: You had raised the matter
 8 in the media in the sense that you had appeared on a
 9 nationwide radio program and given, made certain
 10 statements, which you agree you made, in your interview
 11 with Mr Gwala. So that wasn't with the media in general,
 12 but it was on a nationwide radio station where everybody in
 13 the country who listens to AM Live in the morning would
 14 have known what you said. Isn't that right?
 15 MS SHABANGU: Well, Mr Chairman, I speak,
 16 or made sure that I talk to the labour dispute more than
 17 the violence because I wanted to get an opinion or hear
 18 what the President, are we agreeing on what is going on at
 19 that time. So I kept my point to a labour dispute to the
 20 media.
 21 MR NGCUKAITOBI: Yes, now your
 22 characterisation changed only after the conversation with
 23 the Deputy President. Is that correct?
 24 MS SHABANGU: It had not changed.
 25 MR NGCUKAITOBI: Well, it included the

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1 criminal element, which was not included, only after the
 2 conversation with the Deputy President. Is that correct?
 3 MS SHABANGU: Mr Chairman, it was not
 4 only after him. If you look at the statement I made in
 5 Brakpan I did raise a concern about the deaths which had
 6 already occurred.
 7 MR NGCUKAITOBI: Yes, well the decision
 8 then to engage with the Minister of Police to take action
 9 only arose after the conversation with the Deputy
 10 President. Is that correct?
 11 MS SHABANGU: Well, Mr Chairman, it did
 12 not arise after I had a discussion with Mr Ramaphosa. Some
 13 of the things I kept in my mind and I was looking forward
 14 to the cab committee to raise some of my concerns to.
 15 MR NGCUKAITOBI: Yes, well it certainly
 16 manifested after that meeting, even if it was in your mind
 17 before. Do you agree with that?
 18 MS SHABANGU: I don't agree, Mr Chairman.
 19 It did not manifest. I had it in my mind, hence I had, I
 20 was looking forward to the Wednesday's meeting to raise it
 21 with the President and the Minister.
 22 MR NGCUKAITOBI: Yes, now if in the
 23 morning of the 15th of August your view which was
 24 articulated publicly was that this is a labour dispute to
 25 be resolved between the labour and management, did you know

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1 the fact that by the 14th of August already 10 people had
 2 been killed, including two security guards and including
 3 two policemen?
 4 MS SHABANGU: Well, Mr Chairman, that's a
 5 fact. It was in the paper. It was public knowledge.
 6 MR NGCUKAITOBI: And notwithstanding your
 7 knowledge about these deaths you still took the view that
 8 this is primarily a labour matter which must be resolved
 9 between management and labour?
 10 MS SHABANGU: Well, up to the last point
 11 where the matter was resolved it remained a labour dispute.
 12 MR NGCUKAITOBI: Yes, and your
 13 understanding about this being a labour dispute seems – and
 14 I want to go back to this for the last time – seems to
 15 change then after the conversation with the Deputy
 16 President.
 17 MS SHABANGU: Mr Chairman, I've
 18 indicated, I've been consistent; it was a labour dispute,
 19 even after it continued to be a labour dispute, which was
 20 resolved through a labour process.
 21 MR NGCUKAITOBI: Yes. Now can I move on
 22 then to the next part of my cross-examination. I have
 23 handed in a bundle of documents. I want to refer you to a
 24 report by the predecessor of IPID. It was called the ICD.
 25 CHAIRPERSON: What page in this thick

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1 bundle of documents is that?
 2 MR NGCUKAITOBI: It's apparently a
 3 number, Mr Chairman, and –
 4 CHAIRPERSON: Sorry?
 5 MR NGCUKAITOBI: In the index.
 6 CHAIRPERSON: The schedule of documents
 7 that's relied on by LRC contains, it's a thick bundle,
 8 there are 26 numbered items. Now which is the numbered
 9 item that you –
 10 MR NGCUKAITOBI: Number 10, Mr Chairman.
 11 CHAIRPERSON: Number 10, that's IPID
 12 research report 2007?
 13 MR NGCUKAITOBI: Yes, indeed, Mr
 14 Chairman.
 15 CHAIRPERSON: Okay, so shall we make that
 16 QQQQ5, IPID research report 2007.
 17 MR NGCUKAITOBI: 5555.
 18 CHAIRPERSON: QQQQ5.
 19 MR NGCUKAITOBI: QQQQ5, yes, Chairperson.
 20 Thank you, Mr Chairman. Now Minister, you will remember
 21 that prior to you being the Minister of Minerals & Energy
 22 you had held the position of Deputy Minister of Police?
 23 MS SHABANGU: That's correct.
 24 MR NGCUKAITOBI: Yes, and that was a
 25 five-year position.

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1 MS SHABANGU: That's correct.
 2 MR NGCUKAITOBI: And you became the
 3 Minister of Minerals & Energy in, is it April 2009?
 4 MS SHABANGU: Mineral Resources.
 5 MR NGCUKAITOBI: Mineral Resources, in
 6 April 2009.
 7 [11:52] MS SHABANGU: That's correct.
 8 MR NGCUKAITOBI: Yes. Now –
 9 CHAIRPERSON: This document is quite a
 10 lengthy document I see.
 11 MR NGCUKAITOBI: Yes.
 12 CHAIRPERSON: And I also see, unless I'm
 13 looking at the wrong place the pages don't appear to be
 14 paginated. Am I right?
 15 MR NGCUKAITOBI: Yes, the pages are not
 16 paginated, I would be making reference to the pages in the
 17 actual report, to the numbers in the actual report, Mr
 18 Chairman.
 19 CHAIRPERSON: Oh I see, the paragraph
 20 numbers. The paragraphs are numbered. I see.
 21 MR NGCUKAITOBI: Well –
 22 CHAIRPERSON: You're going to refer to a
 23 particular paragraph, even if you can't give the page
 24 numbers you can give us the paragraph number so that we can
 25 find it.

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1 MR NGCUKAITOBI: Yes.
 2 CHAIRPERSON: Is that what you're going
 3 to do.
 4 MR NGCUKAITOBI: Yes, thank you, Mr
 5 Chairman. There are page references at the bottom of the
 6 report, so that's what I would be referring to.
 7 CHAIRPERSON: Oh, oh I see. I was wrong,
 8 the pages are numbered.
 9 MR NGCUKAITOBI: Yes, they are numbered.
 10 CHAIRPERSON: Okay well that's the answer
 11 then.
 12 MR NGCUKAITOBI: Yes. Now Minister you
 13 will obviously remember the statement that you made, its
 14 generated a lot of press in April of 2008 about the police
 15 having to shoot criminals. You remember the statement,
 16 Minister?
 17 MS SHABANGU: Yes.
 18 MR NGCUKAITOBI: Yes. Now I'll refer you
 19 to that statement later. Now if you look at this report of
 20 the ICD. This was an investigation into the causes of
 21 people dying in the hands of the police, that's what it
 22 says on the cover page. Conducted in 2007. Can you see
 23 that?
 24 MS SHABANGU: I can see that.
 25 CHAIRPERSON: May I ask what the

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1 relevance is of this line of questioning?
 2 MR NGCUKAITOBI: Well, Mr Chairman, the,
 3 I will come back to it because the –
 4 CHAIRPERSON: You've got to satisfy me
 5 there's a relevance before you –
 6 MR NGCUKAITOBI: It's relevant in
 7 relation to the statements that were made by the Minister
 8 in April 2008.
 9 CHAIRPERSON: This report is 2007.
 10 MR NGCUKAITOBI: Yes, it was in 2007, the
 11 fact that it existed in 2007 is relevant to the statement
 12 that was made in 2008. What I'm trying to illustrate is
 13 that the statements that were made in 2008 were
 14 inconsistent with the findings of the report which must
 15 have been known to the Minister.
 16 CHAIRPERSON: Well how is that going to
 17 help us to answer the terms of reference of this
 18 Commission. If the Minister made ill-considered remarks
 19 when she was Deputy Minister of the Police and these
 20 remarks that she made were not borne out by this
 21 investigation into deaths as a result of police action in
 22 KwaZulu Natal, Eastern Cape and Gauteng issued by the
 23 Independent Complaints Directorate, that may or may not be
 24 so. But how's that going to help us, we've got enough
 25 questions to answer in the terms of reference without

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1 taking extra questions aboard that the President hadn't
 2 asked us to deal with.
 3 MR NGCUKAITOBI: It's only one paragraph,
 4 Mr Chairman, that I really want to make reference to. It
 5 relates to the causes of police shooting civilians that
 6 were identified already by 2007 and that generated a lot of
 7 publicity.
 8 CHAIRPERSON: I can understand that. It
 9 may well be that you could put this before us as a document
 10 that you hand in which we can deal with during the argument
 11 stage and during, in our reports. But how is it going to
 12 help to put to the witness that the report says one thing,
 13 she said something else four years before the events at
 14 Marikana. Unless there's a connection I don't think I
 15 should allow the question. We've got enough matters to
 16 look at as it is without extraneous factors or possibly
 17 extraneous factors.
 18 MR NGCUKAITOBI: I'm going to make one
 19 more proposal on the topic. The passage I want to refer to
 20 is at page 50 and it is an explanation into the causes, why
 21 do policeman kill civilians and the heading there is one of
 22 the explanations given by IPID. Page 50 and that's the
 23 first bullet point.
 24 CHAIRPERSON: I see that, they're
 25 criticising I take it comments that this witness made when

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1 she was Deputy Ministers, comments which may have been
 2 singularly inappropriate and unfortunate but I'm not
 3 directly sure, I'm not clear in my mind the direct
 4 relevance to our findings what she now may have to say to
 5 either justify or repent in respect of what she said.
 6 MR NGCUKAITOBI: Chairperson, I put the
 7 proposition and the argument that will be made is that the
 8 statements contribute to the climate of brutality and
 9 unaccountability.
 10 CHAIRPERSON: Well that point's been
 11 traversed in great detail earlier in these hearings of the
 12 Commission. The speech that the witness made and the
 13 speech that the Minister made, we've spent a lot on time on
 14 them. They are before us and we will obviously have to
 15 deal with such arguments as based upon them. But my
 16 problem is I don't understand the relevance of asking this
 17 witness to either justify what she said or possibly to
 18 repent what she said. It's not going to take us one way or
 19 further is it, in relation to the questions we have to
 20 decide in relation to what happens in 2012. It may well be
 21 that the climate, an unfortunate climate of the reckless
 22 use of, inappropriate use of violence by the police in
 23 suppressing what they saw to be civil disorder contributed
 24 to the problems and that's the matter, that's a net we will
 25 have to grasp and we will do so. But I fail to see how

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1 this witness with all due deference and respect to her can
 2 help us in that exercise.
 3 MR NGCUKAITOBI: Mr Chairman, I will not
 4 pursue the point any further. I think the ruling is
 5 certainly implicit in the questions that you are asking.
 6 CHAIRPERSON: You're correct.
 7 MR NGCUKAITOBI: Yes.
 8 CHAIRPERSON: Mr Badenhorst, I believe
 9 you turned your light on?
 10 MR BADENHORST: I was, with my finger on
 11 the trigger but I believe the problem has now been resolved
 12 because –
 13 CHAIRPERSON: Yes.
 14 MR BADENHORST: As you have reminded our
 15 learned friend it has been traversed.
 16 CHAIRPERSON: Okay.
 17 MR BADENHORST: And we don't need to take
 18 a formal objection.
 19 CHAIRPERSON: Mr Mpopu gets into trouble
 20 for delivering concurring speeches after I've made rulings.
 21 Please don't do the same.
 22 MR BADENHORST: I won't do that.
 23 MR NGCUKAITOBI: Alright, can I move onto
 24 the next topic?
 25 CHAIRPERSON: Can we now then take the

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1 tea adjournment and you can move onto the next point –
 2 MR NGCUKAITOBI: Indeed, Mr Chairman.
 3 CHAIRPERSON: When we've been refreshed.
 4 We'll take a quarter hour tea adjournment.
 5 [COMMISSION ADJOURNS COMMISSION RESUMES]
 6 [12:16] CHAIRPERSON: The Commission resumes.
 7 Minister Shabangu you're still under oath. Mr Ngcukaitobi.
 8 MR NGCUKAITOBI: Thank you, Mr Chairman.
 9 I am moving ahead with the hope that Mr Mpopu will take up
 10 the cudgels. Minister, could I refer you to QQQQ3? That
 11 is your speech given on the 18th of April 2012 at the Lonmin
 12 Artisan College.
 13 CHAIRPERSON: Which passage in the speech
 14 do you want to refer to?
 15 MR NGCUKAITOBI: It is a passage in the
 16 third page, the fifth paragraph from the top.
 17 CHAIRPERSON: How does the paragraph
 18 begin?
 19 MR NGCUKAITOBI: It starts with "This
 20 province" but I'm just waiting for the – so it is the
 21 fourth page, fifth paragraph. The page before that, sorry
 22 the third page rather. Yes the sentence starts with –
 23 Minister, this was your speech, I have no doubt you
 24 recognise it, correct?
 25 MS SHABANGU: Correct, I see that, Mr

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1 Chairman.
 2 MR NGCUKAITOBI: Yes now I just want you
 3 to consider the passage which starts with "This province
 4 also experienced several high profile industrial actions
 5 which were protracted and of real concern. So this will
 6 require sober minds and practical approaches. We all need
 7 cool heads and steady hands. In some cases the genesis of
 8 these protests lay in the failure to implement commitment
 9 and undertakings in social and labour plans and the absence
 10 of healthy and sustainable relations between mines and host
 11 communities." Now I just want to put emphasis on the words
 12 "In some cases the genesis of these protests lay in the
 13 failure to implement commitment and undertakings in social
 14 and labour plans." Can you see those lines?
 15 MS SHABANGU: Yes.
 16 MR NGCUKAITOBI: Now this was a view you
 17 held in April 2012 that in some instances the industrial
 18 action is called by the failure to implement commitment in
 19 the SLPs, correct?
 20 MS SHABANGU: It's not correct, Mr
 21 Chairman. It's not correct because here at this particular
 22 point in time we were facing challenges of communities
 23 around Marikana, around Rustenburg, not labour disputes.
 24 It was more of communities around the area which were
 25 protesting.

<p style="text-align: right;">Page 35652</p> <p>1 MR NGCUKAITOBI: Yes when you say 2 industrial action, industrial action is labour action. 3 CHAIRPERSON: That's surely between 4 protests and labour action, labour action very often takes 5 the form of a strike, sometimes protected, sometimes 6 unprotected. So what you say here is this province also 7 experience several high profile industrial action. So that 8 must refer to strikes. 9 MS SHABANGU: Yes, Mr Chairman. 10 CHAIRPERSON: Which were protracted and a 11 real concern. Solutions require sober minds and practical 12 approaches. We all need cool heads and steady hands. In 13 some cases the genesis of these protests but you're still 14 talking in the context surely about these industrial 15 actions - 16 MS SHABANGU: Correct, Mr Chairman. 17 CHAIRPERSON: - lay in failure to 18 implement commitment and undertakings in social and labour 19 plans and then you go on to deal with something else as 20 well. Namely, in the absence of healthy and sustainable 21 relations between mines and host communities. 22 MS SHABANGU: Correct, Mr Chairman. 23 CHAIRPERSON: The answer is stressed in 24 the next sentence the importance of these communities. Is 25 that correct? Now in the Rustenburg area, as I understand</p>	<p style="text-align: right;">Page 35654</p> <p>1 significant number of non-local people who were sent by the 2 so-called labour sending areas. That's right isn't it, 3 Pondoland for example? 4 MS SHABANGU: Yes which used to be the 5 case. 6 CHAIRPERSON: Yes anyway that's the 7 background again which Ngcukaitobi is going to carry with 8 in his cross-examination. 9 MR NGCUKAITOBI: Yes now first I want to 10 just dwell on this issue of the industrial action. What 11 you are referring to here, Industrial action that's labour 12 action, it is true that there is also community protests. 13 You have said that, Minister. 14 MS SHABANGU: It's true. 15 MR NGCUKAITOBI: Yes now you say that 16 both the community protests and the industrial action their 17 genesis in some instances lies in the failure by mining 18 companies to comply with their SLP obligations. 19 MS SHABANGU: It is true. 20 MR NGCUKAITOBI: Yes now the next speech 21 which is QQQQ4, you gave that speech at Sasol, presumably 22 that's Mpumalanga on the 22nd of May 2012 and I want to 23 refer you to pages 6 and 7 of that speech. 24 MS SHABANGU: [African language]. 25 MR NGCUKAITOBI: All right, sorry,</p>
<p style="text-align: right;">Page 35653</p> <p>1 it, there are local communities who are basically Tswana 2 speaking people. And there is a fairly large number of 3 migrant labourers who come from elsewhere, the so-called 4 labour sending areas and one of the biggest labour sending 5 areas, according to the evidence we've heard, is Pondoland 6 which I think it would be fair to say couldn't subsist 7 properly without the ability to send its labour elsewhere 8 and to receive remittances from those – the migrant 9 labourers who have gone off to [inaudible]. And they of 10 course are Xhosa speaking people. Now some of the 11 industrial actions that you refer to I take it involved 12 those people, the migrant labourers, the ones who weren't 13 members of local Tswana speaking communities, but were 14 migrant labourers who came from the so-called labour 15 sending areas. Is that correct? 16 MS SHABANGU: Part of it is correct, Mr 17 Chairman. 18 CHAIRPERSON: What part is correct and 19 what part is incorrect? 20 MS SHABANGU: If you look at that area 21 already you had locals who were already working in the 22 space. 23 CHAIRPERSON: I wasn't intending to say 24 there weren't any locals, I'm sure a significant number of 25 local people were employed, but there were also a</p>	<p style="text-align: right;">Page 35655</p> <p>1 Minister, I'm going to hold back. So are you at pages 6 2 and 7? 3 MS SHABANGU: [African language] I have 4 it now. 5 MR NGCUKAITOBI: Under the heading 6 Transformation. 7 MS SHABANGU: What page? 8 MR NGCUKAITOBI: Six. 9 MS SHABANGU: Thank you. 10 MR NGCUKAITOBI: Now the last sentence 11 that starts with "Areas such as low levels of 12 implementation of employment equity by some mining 13 companies and low level of women representation at senior 14 management level, especially in decision making structures, 15 fronting especially by women who do it on behalf of men, 16 during the implementation of SLPs would have also detected 17 an irregular practise by some companies that often change 18 approved social and labour plans without appropriate 19 consent from the Department and without properly informing 20 – consulting communities." And then you say "I can only 21 say that this constitutes a recipe for conflict and 22 instability and must be avoided." Can you see that? 23 MS SHABANGU: Yes. 24 MR NGCUKAITOBI: Now I take it from here 25 that one of your concerns which you say constitutes as</p>

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1 recipe for conflict and instability is not just a failure
 2 to implement SLPs, but it is also the conduct of amending
 3 SLPs without consent by the Department.
 4 MS SHABANGU: It's in my speech, Mr
 5 Chairman.
 6 CHAIRPERSON: You still hold that view.
 7 MS SHABANGU: I still hold it, Mr
 8 Chairman.
 9 CHAIRPERSON: Yes, I think that's what Mr
 10 Ngcukaitobi is saying.
 11 MR NGCUKAITOBI: Now I know that in your
 12 two speeches you were talking about the industry in
 13 general, but presumably your speeches equally applied to
 14 Lonmin. Do you accept that?
 15 MS SHABANGU: It would apply, Mr
 16 Chairman, to all companies which at the point when we do
 17 the review would not have complied. At this point we had
 18 an indication because we had just done a review of some of
 19 the companies and there were concerns that there was a
 20 general trend of non-compliance.
 21 MR NGCUKAITOBI: Yes now you became
 22 Minister of Minerals in 2009, correct?
 23 MS SHABANGU: Correct.
 24 MR NGCUKAITOBI: There was a review
 25 conducted in September of 2009 particularly in relation to

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1 the SLP compliance by Lonmin.
 2 MS SHABANGU: Mr Chairman, it was not
 3 only SLPs it was everything in the mining charter.
 4 MR NGCUKAITOBI: Yes including SLPs.
 5 MS SHABANGU: Yes it's one of the
 6 aspects.
 7 MR NGCUKAITOBI: Yes now in relation to
 8 Lonmin one of the undertakings made in 2006 was that they
 9 would build 5500 houses. Do you know anything about that
 10 commitment?
 11 MS SHABANGU: I'm not aware.
 12 MR NGCUKAITOBI: You're not aware.
 13 MS SHABANGU: Yes, Mr Chairman.
 14 MR NGCUKAITOBI: So you are not aware
 15 that Lonmin undertook in 2006 to build 5500 houses for
 16 their workers.
 17 MS SHABANGU: I was not in Mineral and
 18 Energy then, Mr Chairman.
 19 MR NGCUKAITOBI: But when you became
 20 Minister in 2009 did you not take it upon yourself to
 21 familiarise yourself with the facts?
 22 MS SHABANGU: The first point of the
 23 Minerals and myself was the review of the charter which was
 24 done by the previous minister. That's the first point of
 25 call for me.

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1 MR NGCUKAITOBI: And you never
 2 familiarised yourself with whether or not Lonmin had
 3 complied with its SLP obligations?
 4 MS SHABANGU: Well it's not only Lonmin,
 5 I had to do all other companies. I could not specifically
 6 pick on Lonmin alone when you had all the mining companies
 7 in terms of the initial report who were not complying.
 8 MR NGCUKAITOBI: Now I have gone through
 9 the reports. I don't want to spend a lot of time on this.
 10 2009, 2010 and 2011 reports that come from your department.
 11 CHAIRPERSON: You haven't got much time
 12 left, your time is up actually, but it sounds to me as if
 13 you are now going over into the area covered by a former
 14 term of reference, 1.5 which has not been deleted by the
 15 President.
 16 MR NGCUKAITOBI: No, Mr Chairman, I'm
 17 only focusing on the non-compliance by Lonmin.
 18 CHAIRPERSON: Well the apparently said
 19 she doesn't know about it. She says when she took over
 20 there were a number of these companies that hadn't complied
 21 and she didn't give her attention to a specific
 22 [inaudible]. Am I right, is that what you're saying?
 23 MS SHABANGU: Mr Chairman is correct.
 24 MR NGCUKAITOBI: There's one issue, Mr
 25 Chairman, that is vital on this point and it's relevant to

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1 not Lonmin's non-compliance because the Minister says in
 2 her speech of the 22nd of May she complains about the
 3 practise of amending SLPs without consent by the
 4 Department. Now that's the point I want to pursue.
 5 CHAIRPERSON: She still holds that view.
 6 MR NGCUKAITOBI: Yes.
 7 CHAIRPERSON: And then she goes on to say
 8 this is a recipe for conflict and instability. Is that
 9 correct?
 10 MS SHABANGU: That's correct, Mr
 11 Chairman.
 12 MR NGCUKAITOBI: Now, Minister, in 2010
 13 Lonmin amended its SLP so as to remove the requirement to
 14 build 5500 houses.
 15 CHAIRPERSON: Did you know that?
 16 MS SHABANGU: Mr Chairman, I'm not aware
 17 of that.
 18 CHAIRPERSON: Then that's the end of the
 19 matter surely, Mr Ngcukaitobi as far as this witness is
 20 concerned. It may not be the end of the matter as far as
 21 the Commission is concerned, that will depend on other
 22 factors.
 23 MR NGCUKAITOBI: Yes, Mr Chairman. I'll
 24 leave that point.
 25 CHAIRPERSON: Your time is up, Mr

<p style="text-align: right;">Page 35660</p> <p>1 Ngcukaitobi. Sorry I always get it wrong, Mr Ngcukaitobi, 2 I've got it right now. I'm sorry for previous errors. 3 MR NGCUKAITOBI: Yes. 4 CHAIRPERSON: Your time is up. If you 5 have matters that you want to deal with and you did lose a 6 bit of time dealing with other issues where I stopped you, 7 you apply for an extension and tell me exactly how long you 8 want and if you have a specific point that you want to deal 9 with that's relevant, that's important then I'll consider 10 it. 11 MR NGCUKAITOBI: Yes I need five more 12 minutes, Mr Chairman and – 13 CHAIRPERSON: Can you tell me what the 14 point is without showing your hand unduly to the witness? 15 MR NGCUKAITOBI: The first area is to 16 cover the 2011 and 2012 SLP periods. 17 CHAIRPERSON: Haven't we already disposed 18 of that? 19 MR NGCUKAITOBI: There is one issue, Mr 20 Chairman, the amendments to SLPs must be done through the 21 Minister. 22 CHAIRPERSON: But we know that. 23 MR NGCUKAITOBI: Yes, so the only issue 24 that I want to put is whether this application was ever put 25 before the attention of the Minister.</p>	<p style="text-align: right;">Page 35662</p> <p>1 Mpofo and I have agreed that I'll go next. 2 CHAIRPERSON: You ask me to ratify that 3 agreement. I'm prepared to do so, you appear for the 4 families, 30 minutes. 5 MS LEWIS: Thank you, Chair. 6 MR MPOFU: Part of the recommend is that 7 if any time remains it will be transferred. 8 CHAIRPERSON: We'll deal with such 9 problem if it arises. Any decision in advance – 10 MS LEWIS: Good afternoon, Minister 11 Shabangu. 12 CHAIRPERSON: Before Ms Lewis starts, I 13 take it Mr Nzuzza is available if necessary to continue with 14 his evidence today if we reach that stage. He is in the 15 chamber I see. 16 MR MPOFU: He's in the chamber, 17 Chairperson, but I'll have to talk to him. My arrangement 18 with him was that – 19 CHAIRPERSON: Well you can talk to him 20 during the lunch hour. 21 MR MPOFU: Something we needed to cover. 22 Well I won't be able to cover it with him later if he's 23 under cross-examination, but we can deal with that problem. 24 CHAIRPERSON: You can perhaps deal with 25 it at lunch time.</p>
<p style="text-align: right;">Page 35661</p> <p>1 CHAIRPERSON: I understood her to say she 2 knows nothing about it. Am I correct. 3 MR NGCUKAITOBI: Yes that was in 2010, Mr 4 Chairman. 5 CHAIRPERSON: Do you know about 2011 and 6 2012 as well? 7 MS SHABANGU: Mr Chairman, let me explain 8 the processes. The process of amendment is an 9 administrative process which I don't deal with. It's done 10 by the DG, it's a delegated power to the DG, hence I would 11 not be able to deal with specifics. I deal with the 12 broader issues, but not specifically. 13 CHAIRPERSON: Thank you. That's the end 14 of the matter, Mr Ngcukaitobi. 15 MR NGCUKAITOBI: I won't pursue that 16 point any further. May I just ask my attorney if she's got 17 any other questions for us? 18 CHAIRPERSON: Yes of course. 19 MR NGCUKAITOBI: Those are the questions, 20 Mr Chairman. 21 CHAIRPERSON: Thank you. Next is the 22 injured and arrested persons, 60 minutes. 23 MR MPOFU: Chairperson, there's a 24 rearrangement with that. 25 MS LEWIS: Mr Chair, with your leave, Mr</p>	<p style="text-align: right;">Page 35663</p> <p>1 MR MPOFU: If it arises. 2 CHAIRPERSON: Well anyway, Ms Lewis, 3 sorry. 4 CROSS-EXAMINATION BY MS LEWIS: Good 5 afternoon, Minister. Minister, I appear on behalf of the 6 families of the three strikers who were killed on the 13th 7 of August 2012 and 33 of the 34 strikers who were killed on 8 the 16th of August 2012. Minister, a large number of the 9 issues that I was going to deal with has been dealt with by 10 my learned friend, Ms Pillay and I won't repeat them. 11 There's really one issue that I want to address with you, 12 but just by way of context Ms Pillay has dealt with you in 13 detail about the manner in which you characterised the 14 situation at Lonmin and I'm not going to repeat that or to 15 ask you to repeat your characterisation of that. Do you 16 understand that? 17 MS SHABANGU: I hear. 18 MS LEWIS: And Minister, the second issue 19 or another issue that Ms Pillay's dealt with by way of 20 context for the issue that I'm going to deal with was Mr 21 Ramaphosa's email on the 15th of August 2012 that he sent at 22 2:58pm to Mr Jamieson and I'm wonder if we could just have 23 that up on the screen. It's exhibit BBB4.6 I think. Now 24 what Ms Pillay has put to you is that what Mr Ramaphosa is 25 conveying in this email to Mr Jamieson is that he, in</p>

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1 essence, got you to change your characterisation of what
 2 was happening at Lonmin and Ms Pillay relied on the word
 3 "correct." Do you remember that Minister?
 4 MS SHABANGU: Ja.
 5 MS LEWIS: And Minister, I won't get you
 6 to respond again because you have given your answer to Ms
 7 Pillay, but what I also want to bring to your attention is
 8 Mr Ramaphosa's evidence, under oath, before this Commission
 9 and can I have day 271, page 34593, line 17? Can I have
 10 that up on the screen please? That's 34593, line 17.
 11 You'll see that this is a question from the Chairperson and
 12 the Chairperson says to Mr Ramaphosa "Did you in fact
 13 persuade her in any event to abandon the characterisation
 14 that it was just a wage dispute and to take a different
 15 view of the matter?" And Mr Ramaphosa says "Yes." And the
 16 Chairperson continues. "As it were withdraw her, correct
 17 her previous public statement." Mr Ramaphosa again says
 18 "Yes." The Chairperson carries on "That it was just a wage
 19 dispute. Management and the workers must get together and
 20 sort this thing out." And Mr Ramaphosa says "Indeed." So
 21 you see, Minister, aside from what we will argue the
 22 wording of the particular email clearly conveys, Mr
 23 Ramaphosa also testified, under oath, before this
 24 Commission that he in fact got you to change or abandon
 25 your characterisation of what was happening at Lonmin. And

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1 I just wanted to put that to you for you to comment on.
 2 MS SHABANGU: Mr Chairman, I must say it
 3 is not true. He never influenced me. He never persuaded
 4 me and that cannot happen in about four or five minutes to
 5 be persuaded and I want to put it to you, through you, Mr
 6 Chairman, that Mr Ramaphosa never convinced me. I had
 7 already made up my mind what I need to do. Hence my
 8 keynote was about briefing the President and the minister
 9 of police.
 10 [12:36] CHAIRPERSON: Are you telling us that
 11 even if you hadn't spoken to Mr Ramaphosa, if he hadn't
 12 contacted you, you still intended on that Wednesday, to
 13 mention the matter to the President, and to raise it with
 14 the Minister of Police.
 15 MS SHABANGU: That's true, Mr Chairman.
 16 MS LEWIS: Thank you, Chair, those are
 17 our questions.
 18 CHAIRPERSON: Thank you, now we have the
 19 injured and arrested persons. You did have half-an-hour,
 20 so I think it would be appropriate, how much did she use,
 21 Mr Wesley?
 22 MR WESLEY: Chair, that was five minutes.
 23 CHAIRPERSON: Five minutes, oh. So
 24 there's 25 minutes which I award to Mr Mpofo -
 25 MR MPOFU: Yes, thank you.

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1 CHAIRPERSON: - because I know he's
 2 straining at the leash to get more time, but I am not going
 3 to give you any more than that.
 4 MR MPOFU: Well -
 5 CHAIRPERSON: Obviously, the time you've
 6 got which is 60 minutes. I am giving you an extra 25.
 7 MR MPOFU: Extra half-an-hour, thank you,
 8 Chairperson. Good morning, Minister.
 9 MS SHABANGU: Good afternoon, Mr Mpofo.
 10 CROSS-EXAMINATION BY MR MPOFU: Good
 11 afternoon, yes. Ja, now we have been here for too long.
 12 Alright, I am going to ask you because there's not
 13 sufficient time, I am going to cover two or so broad
 14 things. One deals with the issue of transformation of the
 15 industry, which was one of your, the key aspects of your
 16 job, correct?
 17 MS SHABANGU: Indeed, it's true.
 18 MR MPOFU: Yes. And the second broad
 19 aspect will deal with the issue of corruption which I am
 20 sure you would agree, is something that is undesirable
 21 among people like you, who are public officials, correct?
 22 MS SHABANGU: I am not sure what, Mr
 23 Chairman -
 24 MR MPOFU: You are not sure if it's
 25 desirable or undesirable?

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1 MS SHABANGU: I don't understand the
 2 question, Mr Chairman.
 3 MR MPOFU: Do you know that corruption is
 4 undesirable?
 5 MS SHABANGU: I don't understand the
 6 question, Mr Chairman.
 7 MR MPOFU: Do you know what corruption
 8 is?
 9 MS SHABANGU: Yes, I know.
 10 MR MPOFU: Yes, is it a good thing or a
 11 bad thing?
 12 MS SHABANGU: Mr Chairman, corruption is
 13 a bad thing in general.
 14 MR MPOFU: Thank you. Okay, so those are
 15 the areas. Now, I take it that you also know that it's a
 16 criminal offence to, not to tell the truth when you are
 17 under oath, correct?
 18 MS SHABANGU: That's true.
 19 MR MPOFU: And in fact, you are bound,
 20 not just by the oath that you took this morning, but you
 21 are also bound by another oath which you took when you were
 22 sworn in as a minister, correct?
 23 MS SHABANGU: That's a given.
 24 MR MPOFU: Ja, and I think I am going to
 25 read out the, that oath that you took. "I Susan Shabangu,

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1 so solemnly affirm that I will be faithful to the Republic
 2 of South Africa and will obey, respect, and uphold the
 3 constitution and all other laws of the Republic, and I
 4 undertake to hold my office as minister with honour and
 5 dignity, to be a true and faithful councillor, not to
 6 divulge directly or indirectly any secret matters entrusted
 7 upon me and to perform the functions of my office
 8 conscientiously and to the best of my ability." You took
 9 that oath?
 10 MS SHABANGU: Yes.
 11 MR MPOFU: Thank you. Now, let's start
 12 with the broad theme of transformation. You'd agree that
 13 obviously if you are going to transform something from one
 14 state to another, you must first understand the problem of
 15 what it is that you are about to transform. Correct?
 16 MS SHABANGU: Yes.
 17 MR MPOFU: And in respect of the sector
 18 that you, that was entrusted upon you, surely you know that
 19 the mining sector is at the centre of the South African
 20 economy, and was by extension also at the centre of not
 21 only the apartheid system but the other systems that
 22 preceded it, since the discovery of minerals, correct?
 23 MS SHABANGU: Yes.
 24 MR MPOFU: And also that in essence, the
 25 migrant labour system is at the core of what is rotten

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1 about the mining sector, correct?
 2 MS SHABANGU: I don't know that it's
 3 rotten but I know that it's a system used before and
 4 currently.
 5 MR MPOFU: Okay, you know that it is, the
 6 mining sector is in bad shape, let's put it that way.
 7 MS SHABANGU: I can't say it's in bad
 8 shape. It has challenges.
 9 MR MPOFU: You don't think that the 100
 10 years of migrant labour, you know, forced searches,
 11 beatings and all that goes with the mining sector
 12 historically made it into bad shape, or brought it into bad
 13 shape?
 14 MS SHABANGU: In the past.
 15 MR MPOFU: And in the past 20 years, do
 16 you think that bad shape has been sufficiently transformed?
 17 MS SHABANGU: Transformation is a
 18 process, it's not an event.
 19 MR MPOFU: Yes. And insofar as it is a
 20 process, would you say that we, as a country at this stage
 21 have succeeded in transforming or have we failed so far?
 22 MS SHABANGU: We can't succeed a legacy
 23 of 100 years over a century, in 20 years.
 24 MR MPOFU: Exactly. So it's still in bad
 25 shape.

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1 MS SHABANGU: Well, it is in the process
 2 of transforming.
 3 MR MPOFU: Ja, but it's still in bad
 4 shape.
 5 MS SHABANGU: I am not sure about bad
 6 shape, Mr Chairman.
 7 MR MPOFU: You – well, okay, let's just
 8 take that one aspect, the migrant labour system which – or
 9 let me put it this way, if you can just put up XX7, page 2,
 10 this is an article by Gavin Hartford think.
 11 CHAIRPERSON: Did you give notice to the
 12 witness beforehand?
 13 MR MPOFU: Yes, I did of course.
 14 CHAIRPERSON: Have you had a chance to
 15 read this article beforehand?
 16 MS SHABANGU: Mr Chairman, I don't have
 17 it.
 18 MR MPOFU: You can read the one on the
 19 screen. It's – the parts that I want to read it on page 2
 20 –
 21 CHAIRPERSON: I am trying to find out
 22 from the witness if she's had a chance to read the article.
 23 And it's not the practice in the Commission just to say to
 24 a witness, well, so it doesn't matter if the witness hasn't
 25 seen it before, the witness can read it on the screen.

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1 Have you had a chance to read the article?
 2 MS SHABANGU: No, Mr Chairman.
 3 CHAIRPERSON: Was it sent, details were
 4 sent electronically? Mr Badenhorst?
 5 MR BADENHORST SC: Yes, Mr Chairman, we
 6 received a very large number of documents but of course,
 7 receiving something and reading and understanding it is a
 8 different matter.
 9 CHAIRPERSON: Let's see what passage Mr
 10 Mpofo wants to concentrate on, and if the Minister has a
 11 problem, she can tell us, and she may well be able, she's
 12 after all the Minister of Mineral Resources, she may well
 13 be able to deal with the problem without any further
 14 problem -
 15 MR MPOFU: Yes.
 16 CHAIRPERSON: - or further difficulty.
 17 Yes, what's the passage you particularly want to refer to?
 18 MR MPOFU: Thanks, Chairperson, it's on
 19 page 2 and if there's a further difficulty, the Minister
 20 can always come back, she can read it.
 21 CHAIRPERSON: What's the passage you want
 22 to rely on?
 23 MR MPOFU: Page 2.
 24 CHAIRPERSON: Yes, I know page 2, the
 25 whole of page 2?

<p style="text-align: right;">Page 35672</p> <p>1 MR MPOFU: On the second, ja, the second 2 paragraph. 3 CHAIRPERSON: "It is a well known and 4 historical," is that? 5 MR MPOFU: Ja. Can I read it now? Thank 6 you. Okay, the passage says, Minister, it's not very 7 controversial, "It's a well known historical - that migrant 8 labour was not only the core foundation and economic 9 imperative of South African mining industry but also the 10 labour market infrastructure from which the entire 11 Bantustan system in the apartheid order were built post- 12 1948." I am sure you would agree with that. 13 MS SHABANGU: I don't know. I can't 14 agree, I don't know. 15 MR MPOFU: Which part don't you know? 16 You don't know whether it was the core imperative and 17 whether the system, the apartheid system was founded upon 18 it, which don't you know? 19 MS SHABANGU: I don't know. 20 MR MPOFU: You don't know what? 21 MS SHABANGU: What you are saying there. 22 What you are reading right now, I say I don't know, Mr 23 Chairman. 24 MR MPOFU: What does that mean? 25 MS SHABANGU: It means I don't know, why</p>	<p style="text-align: right;">Page 35674</p> <p>1 don't know, or you don't understand? 2 CHAIRPERSON: Mr Mpofu, that's not an 3 appropriate comment either. I am trying to be fair, 4 throughout this Commission I've leant over backwards to try 5 to be fair to all the witnesses. This witness is no 6 exception. 7 MR MPOFU: Minister, I don't want to 8 waste more time on this, do you not understand when someone 9 says that the labour, migrant labour was only a core 10 foundation and economic imperative of the South Africa 11 mining industry? Do you understand that part? 12 MS SHABANGU: I don't understand that, Mr 13 Chairman. 14 MR MPOFU: You don't understand that the, 15 didn't you just agree when I started to say that migrant 16 labour was at the core of the mining industry, as one of 17 the things that needed to be transformed? 18 MS SHABANGU: I said they are in the 19 process of transformation, I've never said they need to 20 transform. They are busy with transformation. 21 MR MPOFU: Minister, I am going to 22 suggest that you are evading my question. Do you have a 23 comment to that. 24 CHAIRPERSON: Just ask the questions, if 25 you want to argue later she is evading, you can do so at</p>
<p style="text-align: right;">Page 35673</p> <p>1 should I agree to something which I don't understand. And 2 you are reading a passage which for me doesn't make logic, 3 I don't know what leads to this. 4 MR MPOFU: Are you wanting to answer my 5 questions, or do you want to be obstructionate? 6 CHAIRPERSON: No, I don't think that's an 7 appropriate comment, Mr Mpofu. 8 MR MPOFU: Well – 9 CHAIRPERSON: You asked her if she agrees 10 with the passage, she says she doesn't understand it, so 11 how can you ask her whether she agrees with it? I think 12 that's a perfectly appropriate answer. I suggest you move 13 onto the next point. 14 MR MPOFU: No, that's not what she said, 15 Chairperson. She said, she doesn't know. Let's not – 16 CHAIRPERSON: - explained by saying the 17 passage that I repeated, if I don't understand something, I 18 can't be expected to say I agree with it. 19 MR MPOFU: Alright, which is why I said, 20 which part don't you understand, Minister? 21 MS SHABANGU: You have just read a 22 passage, and I am referring to what you have just read and 23 put it, and to say I know it, I said I don't know. 24 MR MPOFU: No, I think, I thought the 25 Chairperson was trying to rescue you there. You say you</p>	<p style="text-align: right;">Page 35675</p> <p>1 the end. But let's carry on with the questions and the 2 answers. 3 MR MPOFU: Which part don't you 4 understand when I say migrant labour was not only the core 5 foundation and economic imperative of the South African 6 mining industry as a former Minister of Minerals, how can 7 you not understand that? 8 MS SHABANGU: I don't understand it. 9 MR MPOFU: Alright, the next one is, it 10 says, still in that paragraph, towards the end, "In South 11 Africa's mining industry true to global migrant - 12 extraction, colonial history delivered a double blow by 13 statutorily entrenching the edifice of apartheid to enforce 14 the migrant labour system." Do you agree with that? 15 MS SHABANGU: Mr Chairman, this is, it's 16 part of the rest which I have not read, I don't know what 17 informs it. 18 MR MPOFU: Okay, forget the article now, 19 do you agree that the migrant labour system was statutorily 20 entrenched in order to prop up the edifice of apartheid? 21 MS SHABANGU: I agree. 22 MR MPOFU: Thank you. Okay, now you are 23 effectively the – you were the regulator of the industry, 24 correct? 25 MS SHABANGU: Indeed, it's true.</p>

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1 MR MPOFU: And to do that you were guided
 2 by the act, called MPRDA. Correct?
 3 MS SHABANGU: Yes.
 4 MR MPOFU: And that Act says that in its
 5 preamble, one of the things is reaffirming the state's
 6 commitment to reform and bring about equitable access to
 7 South Africa's mineral and petroleum resources, correct?
 8 MS SHABANGU: Correct.
 9 MR MPOFU: And it also says it – state
 10 commitment to eradicate all forms of discriminatory
 11 practices in the mineral and petroleum industries, correct?
 12 MS SHABANGU: Yes.
 13 MR MPOFU: And one of the imperatives of
 14 that Act is the advancement of the lot of the - of
 15 historically disadvantaged persons, correct?
 16 MS SHABANGU: Yes.
 17 MR MPOFU: And that would include people
 18 such as the workers at Lonmin, correct?
 19 MS SHABANGU: All workers in South
 20 Africa.
 21 MR MPOFU: That includes, that's why I
 22 use the word "include" that include the workers at Lonmin,
 23 correct?
 24 MS SHABANGU: All workers in South
 25 Africa, yes.

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1 MR MPOFU: Yes. Alright. Now, you are
 2 aware that, or rather from where you were positioned, there
 3 were two aspects of the problem at Lonmin, or in Marikana,
 4 one was what was described to you as union rivalry between
 5 AMCU and the NUM, and the other one was the labour dispute
 6 between the company and its employees, the wage dispute,
 7 correct?
 8 MS SHABANGU: Correct.
 9 MR MPOFU: And from that, your evidence
 10 you had not heard about AMCU before the 16th of August, is
 11 not true, would you agree?
 12 MS SHABANGU: Before the 16th?
 13 MR MPOFU: Yes.
 14 MS SHABANGU: We had never engaged with
 15 AMCU.
 16 MR MPOFU: No, I am not talking about
 17 engaging, you did not know –
 18 MS SHABANGU: Only it's a hearsay. It
 19 was a hearsay, I can't –
 20 CHAIRPERSON: It's actually a hearsay
 21 question if I can call it that.
 22 MS SHABANGU: Mm.
 23 CHAIRPERSON: What he says is, it's not
 24 correct to say that you hadn't heard about AMCU, before the
 25 16th of August. You may not have engaged with them. There

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1 may have been all sorts of other aspects relating to the
 2 remoteness as it were between you, and the department on
 3 the one hand, and AMCU on the other, but he is not
 4 concerned with that, he only asks you whether you heard
 5 about AMCU before the 16th of August, and he is suggesting
 6 to you, that you had heard about AMCU before the 16th. Am I
 7 paraphrasing your question correct?
 8 MR MPOFU: That is exactly Chairperson,
 9 yes.
 10 CHAIRPERSON: Do you understand the
 11 question as I have summarised?
 12 MS SHABANGU: Let me also explain, Mr
 13 Chairman, we only heard about it but we've never engaged
 14 with it.
 15 MR MPOFU: Yes. No, I accept that you
 16 didn't engage about it. So any evidence that you might
 17 have given that you haven't heard about it before the 16th,
 18 would be false?
 19 MS SHABANGU: Well, the context of – when
 20 the issue arises we have not heard about it because we've
 21 never engaged it.
 22 MR MPOFU: Now surely you understand the
 23 difference between hearing about something and engaging
 24 with it.
 25 MS SHABANGU: Well, that's -

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1 MR MPOFU: I haven't, you don't – well,
 2 I've heard about the United Nations but I have never
 3 engaged with them. So you know what I mean, so you know
 4 the difference, I am sure.
 5 MS SHABANGU: Well, Mr Chairman, our
 6 argument was more about having not engaged AMCU.
 7 MR MPOFU: So if somebody said you had
 8 not engaged with AMCU, that would be true?
 9 MS SHABANGU: Before the 16, indeed, it's
 10 true.
 11 MR MPOFU: Yes. And if they had said you
 12 had not heard about it, that would be false?
 13 MS SHABANGU: Well, that's your own
 14 words, don't put words into my mouth, please.
 15 MR MPOFU: Okay, would it be true if you
 16 said you hadn't heard of AMCU, that's my last attempt?
 17 MS SHABANGU: Well, that's English, Mr
 18 Mpofo. I –
 19 MR MPOFU: You can say in whatever
 20 language you choose, [African language].
 21 MS SHABANGU: Our understanding when that
 22 question was asked was about, have you engaged with AMCU,
 23 which you said we never engaged with AMCU, we have never
 24 heard of AMCU in terms of our tripartite arrangement.
 25 CHAIRPERSON: You never heard of them in

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<p>1 that context?</p> <p>2 MS SHABANGU: Yes, Mr Chairman.</p> <p>3 MR MPOFU: Oh, I see. Which tripartite</p> <p>4 arrangement are you talking about now?</p> <p>5 MS SHABANGU: Labour, business,</p> <p>6 government.</p> <p>7 MR MPOFU: Oh, that one.</p> <p>8 MS SHABANGU: Indeed, indeed, I mean</p> <p>9 that.</p> <p>10 CHAIRPERSON: You know, this is not a</p> <p>11 circus or a comedy show. It's not appropriate for the</p> <p>12 people who sit at the back to laugh, if they want to go and</p> <p>13 laugh, I suggest you go outside and laugh to your heart's</p> <p>14 content. I find it disturbing and difficult to concentrate</p> <p>15 on the evidence when those sort of behaviours are indulged</p> <p>16 in. Please carry on, Mr Mpofo.</p> <p>17 MR MPOFU: Thank you, Chairperson.</p> <p>18 Right, now just the part that you have acknowledged, let's</p> <p>19 deal with that. You knew before the tragedy, that AMCU was</p> <p>20 a role-player, that goes without saying that what Ms Pillay</p> <p>21 dealt with you.</p> <p>22 [12:56] You knew that, hey?</p> <p>23 MS SHABANGU: Mr Chairman, let me further</p> <p>24 clarify the issue of knowing that people are a role-player.</p> <p>25 The first process is that we engage on a regular basis with</p>	<p>1 I've never heard that –</p> <p>2 MR MPOFU: No, I'm not asking you about</p> <p>3 now. At the time –</p> <p>4 MS SHABANGU: I'm talking about the time.</p> <p>5 How can I say they were a problem when we're not engaging</p> <p>6 with them and when we've never even analysed what they are</p> <p>7 doing, then we start saying they're a problem? They're a</p> <p>8 problem because we would understand what is it that they're</p> <p>9 doing which leads you to saying that they are a problem.</p> <p>10 MR MPOFU: And did you think – okay,</p> <p>11 let's say, did you think that they were part of the</p> <p>12 solution?</p> <p>13 MS SHABANGU: Well, if indeed they were</p> <p>14 there and after we realised that it's important to engage</p> <p>15 with them they had to be part of the solution.</p> <p>16 MR MPOFU: No, I'm saying before, before</p> <p>17 you knew that, before the 16th.</p> <p>18 MS SHABANGU: Well, if their status was</p> <p>19 not defined to us –</p> <p>20 MR MPOFU: They couldn't be part of the</p> <p>21 solution?</p> <p>22 MS SHABANGU: No, nor a problem to us.</p> <p>23 MR MPOFU: Okay, then why on the 14th of</p> <p>24 August according to your statement in paragraph 4 –</p> <p>25 paragraph 10, page 4, I'm going to suggest that your answer</p>
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<p>1 stakeholders and on the basis of that the other issues that</p> <p>2 we engage with unions which are registered through the</p> <p>3 Department of Labour, and 2, AMCU we had never engaged at</p> <p>4 all and therefore in our space one would assume that it</p> <p>5 never existed even if you hear about it. One would have</p> <p>6 seen AMCU on the basis of a union which is entering the</p> <p>7 industry and recruiting members within the mining industry,</p> <p>8 which it's fine for them to do that, and I also want to</p> <p>9 say, Mr Chairman, subsequent to the various meetings which</p> <p>10 took place, after the incident of the 16th the companies we</p> <p>11 were engaging with confirmed that AMCU was not a recognised</p> <p>12 union to us, or for them, and hence the process of engaging</p> <p>13 with the unions, with AMCU in the verification of its</p> <p>14 membership whilst they were busy with those processes. So</p> <p>15 it's within that context when we say AMCU was not part of</p> <p>16 the process.</p> <p>17 MR MPOFU: Ja, no that's not the question</p> <p>18 I've asked you. Did you know that AMCU was part of the</p> <p>19 problem, or even that it was part of the solution?</p> <p>20 MS SHABANGU: That's a difficult question</p> <p>21 to answer when –</p> <p>22 MR MPOFU: Okay, let's break it down.</p> <p>23 Did you know that AMCU was part of the problem in Marikana,</p> <p>24 or the situation in Marikana?</p> <p>25 MS SHABANGU: I've never – I don't know.</p>	<p>1 is untruthful because this is what you said in your</p> <p>2 statement. "On the 14th of August 2012 I received a call</p> <p>3 from vice president of the Chamber of Mines, Mr Mike Teke.</p> <p>4 He informed me that he wanted to convene a meeting with</p> <p>5 both Mr Frans Baleni, the general secretary of NUM, and Mr</p> <p>6 Joseph Mathunjwa, the president of AMCU, to engage in</p> <p>7 mediation to find a solution to the situation in Marikana."</p> <p>8 Can you see that this shows that your previous answer was</p> <p>9 untruthful?</p> <p>10 MS SHABANGU: It was truthful. Mr</p> <p>11 Chairman, can I elaborate on point 10 –</p> <p>12 MR MPOFU: Yes.</p> <p>13 CHAIRPERSON: Of course.</p> <p>14 MS SHABANGU: - so that we can, so that</p> <p>15 all of us can understand. Mr Teke raises the issue to say</p> <p>16 he knows Mathunjwa personally, he's been working with</p> <p>17 Mathunjwa and he believes that he can bring Frans and Mr</p> <p>18 Mathunjwa together in trying to find a solution. That's</p> <p>19 when the issue of AMCU and them coming together, therefore</p> <p>20 I'm trying to say whilst we did not see them as a problem,</p> <p>21 but if the Chamber vice president brings to our attention</p> <p>22 to say a solution can be found by bringing the two parties</p> <p>23 through the, Mr Mathunjwa and Mr Baleni it will bring</p> <p>24 stability, I couldn't say no.</p> <p>25 MR MPOFU: Thank you.</p>

<p style="text-align: right;">Page 35684</p> <p>1 MS SHABANGU: But for me it was never, 2 I've never characterised Mr Mathunjwa as a problem or a 3 solution, but when he's saying that's the route which has 4 to be taken, any form of help would – any form of 5 assistance or intervention was very critical at this point. 6 CHAIRPERSON: Yes, I can understand that, 7 but surely it's implicit in what you've told us in 8 paragraph 10 that you were told on the 14th of August that 9 the Chamber of Mines – 10 MS SHABANGU: Yes. 11 CHAIRPERSON: - is of the view that AMCU 12 are in a position to make a contribution to finding a 13 solution to the situation at Marikana. 14 MS SHABANGU: That is why I'm saying, I'm 15 trying to elaborate on this particular statement, in 16 finding a solution, because whoever when there's a dispute 17 or there's a challenge, who's prepared to contribute to 18 finding a lasting solution, it's welcomed. 19 CHAIRPERSON: No, but it does go a little 20 bit further than that. Doesn't it indicate that the 21 Chamber of Mines, which after all is a fairly influential 22 body, plays an important role in the mining industry, I 23 would think, the Chamber of Mines appears to take the view 24 that it's important that AMCU should be involved in finding 25 a solution to the situation at Marikana and they were not</p>	<p style="text-align: right;">Page 35686</p> <p>1 me. 2 MR MPOFU: Thank you, Chairperson. In 3 fact on paragraph 15 of your statement Mr Sibiya also told 4 you about their efforts, correct? 5 MS SHABANGU: It's true. 6 MR MPOFU: And you say that, and it was 7 the same mediation effort that Mr Teke had referred to, 8 correct? 9 MS SHABANGU: Indeed, it's true. 10 MR MPOFU: And you say there, "He 11 confirmed that the mediation process to resolve the 12 conflict in Marikana was being arranged and would be funded 13 by the Chamber of Mines. I pledged my full support for 14 such mediation process." 15 MS SHABANGU: Yes. 16 MR MPOFU: Yes, now you wouldn't pledge 17 your full support to a mediation process that involved two 18 parties if one of them was not part of the solution, or at 19 least part of the problem. 20 MS SHABANGU: Well, if – 21 MR MPOFU: So there would be nothing to 22 mediate. 23 MS SHABANGU: Well, if parties are in 24 conflict, whether you recognise them or you don't recognise 25 them, if they should form part of the solution you will</p>
<p style="text-align: right;">Page 35685</p> <p>1 only of that view, but the Chamber of Mines was actually 2 taking action because the vice president wanted to convene 3 a meeting between these two gentlemen, and these two 4 gentlemen only, Mr Baleni of NUM and Mr Mathunjwa of AMCU, 5 so that a solution could be found to the situation in 6 Marikana. That's all clear, isn't it? 7 MS SHABANGU: That's very much clear. 8 CHAIRPERSON: So that conveyed to you, I 9 would imagine, unmistakably that AMCU were indeed an 10 important enough role-player in the situation to be a 11 possible source of contribution to solving the problems. 12 That's fair too, isn't it? 13 MS SHABANGU: That's very fair, Mr 14 Chairman. 15 MR MPOFU: Yes, and you fully supported 16 this mediation, as you call it, between the two by the 17 Chamber of Mines, correct? 18 MS SHABANGU: Correct. 19 CHAIRPERSON: Mr Mpofo, when we reach a 20 convenient stage we'll take the lunch adjournment. Just 21 tell me when – 22 MR MPOFU: Yes – 23 CHAIRPERSON: I'm not stopping you now. 24 MR MPOFU: I'll just round off this – 25 CHAIRPERSON: When it's convenient, tell</p>	<p style="text-align: right;">Page 35687</p> <p>1 recognise that. 2 MR MPOFU: Okay, so they did form part of 3 the solution, and you are also saying that they were part 4 of a conflict, which is a problem, so they were also part 5 of the problem. 6 MS SHABANGU: I've never said they were 7 part of the problem. 8 MR MPOFU: You said they were part of a 9 conflict. 10 MS SHABANGU: If the, if their part of 11 the conflict, or they were involved in a conflict they have 12 to be brought onboard to find a solution. 13 MR MPOFU: Yes. Yes, I agree with that, 14 and a conflict is a problem. 15 MS SHABANGU: That's English. 16 MR MPOFU: No, in any language is a 17 conflict a problem or not? 18 MS SHABANGU: No, I'm just saying it's 19 English. You're using the same word, it's English. 20 MR MPOFU: Does that mean – 21 CHAIRPERSON: What she's saying to you is 22 that conflict by definition must be a problem. 23 MR MPOFU: No, that's not what she's 24 saying – 25 CHAIRPERSON: It's taking the case no</p>

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1 further. She's saying that's what it amounts to in
 2 English, as I understand her.
 3 MR MPOFU: Well, maybe you can get her to
 4 say that. It would be better if she says what you say she
 5 says, which she's not saying. Is conflict a problem?
 6 MS SHABANGU: It's English, Mr Mpfu, and
 7 that's not my mother tongue.
 8 MR MPOFU: Will you answer my question in
 9 any language of your choice?
 10 MS SHABANGU: It's English. [African
 11 language]
 12 MR MPOFU: Is conflict a problem?
 13 MS SHABANGU: [African language]
 14 dictionary, check if it's a problem or not.
 15 MR MPOFU: You don't have to be petulant.
 16 CHAIRPERSON: No, Mr Mpfu, I don't
 17 think –
 18 MR MPOFU: Well, you didn't even hear
 19 what she said, Chairperson.
 20 CHAIRPERSON: I heard exactly what she
 21 said. I don't think it's being petulant.
 22 MR MPOFU: Ja.
 23 CHAIRPERSON: She indicates that she has
 24 a linguistic difficulty with the words you used because
 25 English is not her first language. That's what I –

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1 MR MPOFU: Which you heard, Chairperson –
 2 CHAIRPERSON: That's what I –
 3 MR MPOFU: It's not a problem, is that
 4 the word she doesn't understand?
 5 CHAIRPERSON: Well, let's ask her. What
 6 exactly do you want to use a dictionary for? What word do
 7 you want to look up in a dictionary?
 8 MS SHABANGU: I'm just saying he used the
 9 same words simultaneously and it's English.
 10 CHAIRPERSON: Alright, I think this is
 11 possibly an appropriate note for us to take the lunch
 12 adjournment and you can resume this discussion after lunch,
 13 alright?
 14 MR MPOFU: Ja, wouldn't it – oh, you mean
 15 take the lunch before I get an answer?
 16 CHAIRPERSON: Yes, Mr Mpfu.
 17 MR MPOFU: Well, it wouldn't be better to
 18 get an answer and then we go to lunch?
 19 CHAIRPERSON: Well, I fear our lunch may
 20 be long delayed if we have to do that.
 21 MR MPOFU: Yes, no I agree. It might
 22 take longer, the lunch might be shorter. Thank you,
 23 Chairperson.
 24 CHAIRPERSON: We'll come back at 10 to 2.
 25 [COMMISSION ADJOURNS COMMISSION RESUMES]

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1 [13:59] CHAIRPERSON: The Commission resumes.
 2 You're still under oath, Ms Shabangu.
 3 MS SHABANGU: [s.u.o.]
 4 CHAIRPERSON: Mr Mpfu.
 5 MR MPOFU: Thank you, Chairperson.
 6 Chairperson, yes, we made arrangements for Mr Mahlangu to
 7 be on standby in case the witness still have problems with
 8 English.
 9 CHAIRPERSON: Mr Madlanga, oh Mr
 10 Mahlangu. I told you Mr Madlanga he left –
 11 MR MPOFU: No.
 12 CHAIRPERSON: I am sure he could
 13 interpret quite nicely as well.
 14 MR MPOFU: Yes, if there's another
 15 problem with language, Mr Mahlangu will be on hand.
 16 CHAIRPERSON: Alright. Okay, that may be
 17 an unnecessary precaution that you've taken.
 18 MR MPOFU: Yes.
 19 CHAIRPERSON: Let's carry on with the
 20 evidence.
 21 MR MPOFU: Right. Minister, I hope you
 22 had the opportunity over the last break to consult your
 23 dictionary.
 24 CHAIRPERSON: Repeat the question –
 25 MR MPOFU: Yes, I will.

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1 CHAIRPERSON: So that the witness and I
 2 can remember what it is and she can give you the answer.
 3 MR MPOFU: Yes, but I first wanted to
 4 ascertain if –
 5 CHAIRPERSON: Sarcastic remarks don't
 6 take it any further. Let's just carry on with the case.
 7 MR MPOFU: Do you want me to ask the
 8 question? Minister, I was saying to you that if you said
 9 in part of your answer that AMCU and NUM were part of a
 10 conflict, and I was saying if they were part of a conflict,
 11 therefore they were part of a problem, because a conflict
 12 is by definition a problem. Do you agree?
 13 MS SHABANGU: That's your interpretation,
 14 Mr Mpfu.
 15 MR MPOFU: Pardon?
 16 MS SHABANGU: It's your interpretation.
 17 MR MPOFU: What is yours? Is –
 18 CHAIRPERSON: - the correct
 19 interpretation. You know, if there's a conflict, then it
 20 gives rise to all sorts of difficulties and so on –
 21 MS SHABANGU: Of challenges, Mr Chairman.
 22 CHAIRPERSON: Of challenges, which amount
 23 effectively to a problem. A conflict, one kind of problem
 24 in this industrial area is conflict between different trade
 25 unions. I think that's really the point that he's trying

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1 to make. Would you agree with that?
 2 MS SHABANGU: I would agree that there is
 3 a conflict.
 4 CHAIRPERSON: Ja, alright.
 5 MR MPOFU: But in this case it was not
 6 just challenges, this particular conflict had resulted in
 7 10 human beings dying. Do you think that's a problem?
 8 MS SHABANGU: That's a concern.
 9 MR MPOFU: Oh, it's just a concern.
 10 MS SHABANGU: Yes.
 11 MR MPOFU: Alright. Now, let's – you
 12 know, Minister, I have to say this to you in fairness. You
 13 do realise the seriousness of these proceedings?
 14 MS SHABANGU: Well, Mr Chairman, I would
 15 not have volunteered to come and make presentation to this
 16 Commission if I did not realise the seriousness –
 17 CHAIRPERSON: No, I understand.
 18 MR MPOFU: Yes. And in line with that
 19 voluntary spirit, you understand that once you are here you
 20 have to answer questions truthfully?
 21 CHAIRPERSON: - she's got to answer the
 22 questions. If I allow the question, she must answer them,
 23 and I'm sure she will, and if she doesn't, then –
 24 MR MPOFU: I'm not asking you,
 25 Chairperson, I'm just saying that does she understand that

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1 she has to answer the question truthfully. That's the
 2 question I was asking.
 3 CHAIRPERSON: I take it the answer to
 4 that is yes.
 5 MS SHABANGU: Yes, Mr Chairman.
 6 CHAIRPERSON: Mr Ntsebeza -
 7 MR MPOFU: - cross-examination. Must I
 8 ask her or must I –
 9 CHAIRPERSON: We had cross-examination
 10 like that for Mr Ntsebeza long ago, I don't think it's
 11 necessary to repeat it every time, but carry on with your
 12 cross-examination.
 13 MR MPOFU: And do you understand the
 14 implications of a person like you giving false evidence?
 15 MS SHABANGU: Mr Chairman, I have no
 16 intention of giving false evidence.
 17 MR MPOFU: Yes, but despite that –
 18 CHAIRPERSON: That's not the question.
 19 The question is do you understand the implication if you do
 20 give false evidence?
 21 MS SHABANGU: Mr Chairman, I took an oath
 22 in this particular Commission, and by implication it means
 23 exactly that.
 24 CHAIRPERSON: Yes.
 25 MR MPOFU: Yes. And you know that Mr

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1 Ramaphosa also gave evidence here and he took an oath as
 2 well, and also an oath of office, like you, correct?
 3 MS SHABANGU: I can't answer on behalf of
 4 him, Mr Chairman.
 5 MR MPOFU: No, but you were present when
 6 he took the oath of office.
 7 MS SHABANGU: Mr Chairman, oath of office
 8 I know.
 9 MR MPOFU: Yes. Okay, fine, then I can
 10 tell you – you can take it from me that he also took an
 11 oath here. Now, Mr Ramaphosa says under oath that you
 12 changed your characterisation of the situation at Lonmin,
 13 and you say under oath that you did not change the
 14 characterisation, so one of you must be telling a falsity.
 15 Is it him or is it you?
 16 MS SHABANGU: Mr Chairman, I've made my
 17 submission, I can't do it on behalf of Mr Ramaphosa.
 18 MR MPOFU: No. I accept that, Minister.
 19 All I'm saying is that you say you never changed your
 20 characterisation. So anyone who says you changed your
 21 characterisation is lying?
 22 CHAIRPERSON: That doesn't follow.
 23 MR MPOFU: Can we leave that for
 24 argument?
 25 CHAIRPERSON: No, it's not a proper

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1 question. It doesn't follow from the fact that the
 2 witness' evidence conflicts that one or other is lying.
 3 There's also the possibility that one of them is mistaken.
 4 MR MPOFU: Yes, I know, Chairperson.
 5 Cross-examination, I'm sure you've heard this one before,
 6 Chairperson. If the statement by one witness and another
 7 witness, then you ask the other witness. It happens every
 8 day in all the courts in our country.
 9 CHAIRPERSON: Put it on the basis it
 10 follows, I understood you, that it follows that one of the
 11 two of you must be lying and I - that.
 12 MR MPOFU: Alright, you say that you
 13 never changed your characterisation and he says that he
 14 did, and if we exclude the possibility of anyone making a
 15 mistake, then one of you is lying, correct?
 16 MS SHABANGU: It's your own words, Mr
 17 Mpofo. Mr Chairman, I haven't lied. I have presented
 18 myself to this Commission.
 19 MR MPOFU: Yes, okay, and if we accept
 20 that, then he's the one that is presenting something that
 21 is not actually true?
 22 MS SHABANGU: Mr Chairman, I can't answer
 23 on behalf of Mr Ramaphosa.
 24 MR MPOFU: No, not just Mr Ramaphosa,
 25 anybody.

<p style="text-align: right;">Page 35696</p> <p>1 CHAIRPERSON: Mr Mpofo, at the end of the 2 day it's a finding we may have to make. There's 3 submissions to us in that regard and we will have to make 4 the finding, unless we find there's scope for genuine 5 misunderstanding or mistake, but I think it's a bit unfair 6 to expect the witness to, as it were, express a value 7 judgment regarding the evidence of another witness, 8 particularly value judgements of the kind that you've 9 mentioned. You've made your point. You have all the 10 material on record from which you can make all the 11 submissions you wish at the appropriate time.</p> <p>12 MR MPOFU: Chairperson, it's also unfair 13 - you know, people died in this thing, and there are people 14 who were seriously injured, and it's unfair on them for 15 witnesses to be allowed not to answer questions. They want 16 to know the truth, and they want to know if - the opposite 17 is if someone is not telling the truth, and they want to 18 know that too. They are entitled to it. That's what we 19 say behind you there, Chairperson, truth, restoration and 20 justice. So the opposite of truth is lie.</p> <p>21 CHAIRPERSON: No, the opposite of truth 22 is inaccuracy, which could either be deliberate or not 23 deliberate. The witness, by implication, has answered your 24 question. When you put to her the alternatives, she said, 25 well, I am telling the truth. So you don't need to a</p>	<p style="text-align: right;">Page 35698</p> <p>1 characterisation. My explanation earlier on was that the 2 labour dispute continued, but as it escalates, then there 3 was an element, or the criminality started cropping in, 4 hence I mentioned that, if you read my statement, it also 5 talks about escalation of violence as a concern.</p> <p>6 MR MPOFU: Please answer the question. 7 Did you say that you had intended to change your 8 characterisation only after speaking to the president or 9 not?</p> <p>10 MS SHABANGU: Mr Chairman, I've never 11 said I've changed the characterisation.</p> <p>12 MR MPOFU: Did you say that you would 13 mention the fact that the situation now needed the 14 intervention of the Minister of Police only after meeting 15 with the president? Did you say that this morning?</p> <p>16 MS SHABANGU: Mr Chairman, I've never 17 said only after I have met with the Minister of Police, I 18 said I'm going to brief, there was no either or in my 19 answer.</p> <p>20 MR MPOFU: No, you were asked by Mr 21 Ngcukaitobi and you said that you would, although you only 22 said to Mr Gwala that it was a labour dispute, it was in 23 anticipation that you would only articulate the fuller view 24 once you had met with the president. You said that, it's 25 on the record. Are you denying that?</p>
<p style="text-align: right;">Page 35697</p> <p>1 rocket scientist to follow what the consequences of that 2 answer is.</p> <p>3 MR MPOFU: Okay. And I'll ask you this, 4 if either you or Mr Ramaphosa is not telling the truth, you 5 also understand the serious implications of that - under 6 oath?</p> <p>7 MS SHABANGU: I am under oath and what 8 I've said it's truthful.</p> <p>9 MR MPOFU: Alright. Then you said that - 10 let's go to the issue of the characterisation. It's quite 11 clear that Mr Ramaphosa's mission to meet with you was for 12 you to change your characterisation, whether it was a 13 successful mission or not is another matter, but you can 14 tell that that was one of his missions, correct?</p> <p>15 MS SHABANGU: He never said he intend to, 16 Mr Chairman, he intends to change or influence me on the 17 characterisation, because the issue of characterisation of 18 the situation was never mentioned to me, or his intention 19 to influence me was never there.</p> <p>20 MR MPOFU: Yes, but you said that your 21 intention was to only articulate your change of the 22 characterisation after you had spoken to the president, 23 correct?</p> <p>24 MS SHABANGU: Mr Chairman, I indicated at 25 the beginning that I have never changed the</p>	<p style="text-align: right;">Page 35699</p> <p>1 MS SHABANGU: Well, Mr Chairman, I 2 indicated that I will brief the president and when I was 3 asked earlier on, I stated that because Mr Xolani Gwala is 4 a radio personnel and he was talking to the broader 5 community, I could not divulge everything. I just made 6 sure that I focus on the part of the labour dispute, but at 7 the back of my mind I was clear that I'll brief the 8 president fully, and I've sort of tried to qualify the 9 reasons why I couldn't go public on saying exactly what is 10 it that I was going to tell the president.</p> <p>11 MR MPOFU: And yet before you met with 12 the president, you indicated to Mr Ramaphosa that you 13 agreed with him?</p> <p>14 MS SHABANGU: Well, I agreed with Mr 15 Ramaphosa that, because we're talking about the violence 16 which was happening or 10 people who had already died in 17 that space.</p> <p>18 MR MPOFU: And when you agreed with him, 19 you agreed with his characterisation, which was that it was 20 not a labour dispute?</p> <p>21 MS SHABANGU: Well, Mr Chairman, I think 22 earlier on I clarified that when we spoke about it, you 23 cannot isolate the labour dispute, even if there was an 24 issue of people who were killed. It never stopped being a 25 labour dispute. I think I explained that earlier on, Mr</p>

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1 Chairman.

2 MR MPOFU: Yes, but my point of view was

3 not that. We've gone through that, where I gave him the A,

4 B, C, and the hybrid and all that. The view articulated in

5 the emails by him was that it was not – in capital letters

6 – a labour dispute at all.

7 MS SHABANGU: Well, Mr Chairman, the

8 email which I've just seen during these proceedings was an

9 email sent to Lonmin and never shared with me, or gave me

10 an opportunity to say yes or no.

11 MR MPOFU: Alright. Mr Ramaphosa's

12 statement is FFF32. If you can bring up paragraph 13.5.

13 This is what he said under oath. This is the exact point

14 I'm making, we need to find out which one was telling the

15 truth under oath. He says that, "I also discussed the

16 matter with Minister of Mineral Resources," that's you,

17 "the import of my discussion with her was to bring to her

18 attention the increasing acts of violence taking place at

19 Marikana, which, in Lonmin's view, were criminal and which

20 were not going to be resolved without political

21 intervention." Did you agree with those two statements,

22 they were criminal and were not going to be resolved

23 without political intervention?

24 MS SHABANGU: Well, I don't remember

25 hearing Mr Ramaphosa to say it needs a political

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1 intervention.

2 MR MPOFU: Okay, if you don't remember,

3 it means it's possible that it happened?

4 MS SHABANGU: Well, Mr MPOFU, that's your

5 own assumption.

6 MR MPOFU: Ja, and then he goes on to

7 say, "Minister Shabangu agreed with Lonmin's

8 characterisation of the situation." Again, I've told you

9 what Lonmin's characterisation of the situation was. It

10 was that it was not labour dispute at all, it was a

11 criminal act which needed the army or the police. Is it

12 true what is said here under oath that you agreed with

13 Lonmin's characterisation of the situation?

14 MS SHABANGU: Once more, Mr Chairman, can

15 I state I've expressed myself with the characterisation of

16 the situation, but also I am neither employee, or employer

17 of Lonmin, hence what was discussed between Mr Ramaphosa

18 and Lonmin, I can't confirm.

19 MR MPOFU: Yes, no, I am sorry, maybe I'm

20 not clear. He's busy discussing what was agreed between

21 you and him, nothing to do – he says, "Minister Shabangu,"

22 that is you, "agreed with Lonmin's characterisation of the

23 situation." Is that true or false?

24 MS SHABANGU: Mr Chairman, I can't say

25 yes or no, because for me this is a hearsay. I was not

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1 there, and I never agreed with Lonmin's characterisation.

2 I don't even know where was it characterised.

3 MR MPOFU: And he goes on to say, "and

4 indicated to me that she would bring the matter to the

5 attention of the cabinet and the president." Is that true

6 or false?

7 MS SHABANGU: Well, I said I'll bring the

8 matter to the attention of the president and the Minister

9 of Police.

10 MR MPOFU: And I think, forgive me if

11 you've already answered this one, but did you also tell him

12 that the Minister of Police would be asked to act a more

13 pointed way?

14 MS SHABANGU: Well, I don't understand

15 what is this pointed way, once more.

16 CHAIRPERSON: - Mr Ramaphosa used, you

17 see, in his email.

18 MS SHABANGU: He might have –

19 MR MPOFU: In relation to you.

20 MS SHABANGU: Mr Chairman, I'm trying to

21 say this pointed way, if you say you are going to raise

22 something with a person, that's what I said, but a pointed

23 way, because for me when you say pointed way, it's like a

24 particular direction. So that was not my intention, my

25 intention was to raise it with the minister.

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1 CHAIRPERSON: Did you simply say I'll

2 raise it with the minister, or did you go further and say

3 give an indication of what you were going to say to the

4 minister?

5 MS SHABANGU: Well, I was going to say

6 there's violence going on, but also the industry is getting

7 affected as a whole because of the violence or the killings

8 around Marikana, and the issue which was of concern was

9 also to say are the police in that particular in that

10 space? But my intention was to make sure that whether –

11 because I don't have that authority to tell another

12 minister what to do, nor tell the president what to do, but

13 my responsibility was to raise the matters with them.

14 CHAIRPERSON: Yes. I asked you something

15 slightly different. Did you tell Mr Ramaphosa what you

16 intended to say to the minister, or did you simply say,

17 "I'll discuss the matter with the minister, I'll raise it

18 with him, and no more?"

19 MS SHABANGU: Mr Chairman, I said I will

20 raise the issue, without going into detail what is it that

21 I was going to raise with the president, nor the Minister

22 of Police.

23 MR MPOFU: In an answer to Mr Ngcukaitobi

24 this morning, you said that when you spoke to Mr Xolani

25 Gwala, you did not think at that stage the situation

1 needed the intervention of the police, correct?

2 MS SHABANGU: I repeat, I said because Mr

3 Gwala was on radio and in the public space, I could not

4 raise everything, I only focussed on the labour dispute to

5 say yes, it's a labour dispute, which needs the parties to

6 come together. That's what I said in the morning, and I

7 even went further to say the reason I did not say that,

8 because I had still to consult with the Minister of Police,

9 with the president, hence I could not characterise that as

10 in that particular way, because I would have gone beyond my

11 own mandate.

12 MR MPOFU: Okay. I don't understand it,

13 but let's move on. Mr Ramaphosa said to you that your

14 silence and inaction about what was happening at Lonmin was

15 that for you and for the government?

16 MS SHABANGU: Well, that his own

17 observation, I agree.

18 MR MPOFU: You agree with what? Do you

19 agree that it was that for you?

20 MS SHABANGU: Well, that's his own

21 option. I agree that he did say that to me.

22 MR MPOFU: And did you agree with him

23 that it was that for you and the government?

24 MS SHABANGU: Mr Chairman, he made a

25 statement which I never responded to.

1 [14:19] MR MPOFU: Well, now I am asking you do

2 you agree that your silence and inaction was bad for you

3 and the government.

4 MS SHABANGU: Well Mr Mpofu, at that time

5 I decided that for us was good to keep quiet because the

6 issues for us was more about labour disputes.

7 MR MPOFU: No, but that can't be true,

8 Minister, because once Mr Ramaphosa criticised you like

9 this your response was that you were going to rectify that

10 problem. You were going to issue a statement.

11 MS SHABANGU: Let me remind you - Mr

12 Chairman, let me remind Mr Mpofu when I raised, when the

13 issue of me issuing a statement arose, it arose on the

14 basis of if you look at it there was the statement shown by

15 SAPA which was the 6th, on, which was held on that

16 particular day at 16:55. Already I was in line with that

17 because if you look at that, already I had made statements

18 during the day to the various medias, which was published

19 the following day -

20 MR MPOFU: Ja, but this -

21 MS SHABANGU: - or the same day.

22 MR MPOFU: It was shown to you by Ms

23 Pillay that that could not have been the statement you are

24 referring to because you were saying you were going to

25 issue a statement and you spoke to Mr Ramaphosa around 6

1 o'clock.

2 MS SHABANGU: Well Mr Mpofu, if I can say

3 to you if that's not the statement, if I said I was going

4 to issue a statement it was on the basis of that we had

5 already started talking to the media.

6 MR MPOFU: So once again Mr Ramaphosa is

7 giving an incorrect picture when he said "she said," she

8 being you, "that she was going to issue a statement,"

9 because now you're telling us about a statement which was

10 already issued by the time you spoke to Mr Ramaphosa.

11 MS SHABANGU: Well Mr Mpofu, during the

12 day in Brakpan I had already started issuing statements and

13 if you follow that, even if I had said I'm going to issue a

14 statement, there was no further statement issued by me.

15 MR MPOFU: Yes, well either you were

16 misleading him or he was misleading Roger. That's the one

17 aspect I want to know.

18 MS SHABANGU: Well, a statement, I'm not

19 committed to making a statement. If I say something and

20 that doesn't happen, it doesn't mean therefore the

21 intention, Mr Chairman, was to mislead. There might have

22 been other reasons which overtake the situation.

23 MR MPOFU: So did you, then when he

24 criticised you for silence you said you were going to issue

25 a statement. Is that possible?

1 MS SHABANGU: It was not arising out of,

2 Mr Mpofu, out of the silence.

3 MR MPOFU: Well, he also complained -

4 let's leave the silence for now. He also complained about

5 inaction. So that one calls for action, correct?

6 MS SHABANGU: Well, inaction can mean

7 many things, Mr Chairman. Already we had made a statement

8 whilst we were at Brakpan, so I could not respond to an

9 inaction because already we were starting to say something

10 about the situation.

11 MR MPOFU: And he says he's going to be

12 in Cape Town to have a discussion with you and see what you

13 need to do. Why did you have to take orders from Mr

14 Ramaphosa about what you need to do?

15 MS SHABANGU: Well, Mr Chairman, Mr Mpofu

16 might say it's an instruction. I understand as two

17 parties, two adults looking at a situation and agreeing to

18 that, I don't think it's an instruction.

19 MR MPOFU: Well, Mr Ramaphosa used the

20 words, or at least he was asked to influence you and this

21 was part of that endeavour.

22 MS SHABANGU: Well Mr Chairman, whoever

23 asked him to influence me, Mr Chairman, I think he failed

24 to influence me because I was never influenced by him.

25 MR MPOFU: He was asked to influence you

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1 and encourage you.

2 MS SHABANGU: Well Mr Chairman, I was

3 never influenced by Mr Ramaphosa.

4 MR MPOFU: Well, he reported that he did,

5 that he succeeded in influencing you and encouraging you.

6 MS SHABANGU: Well, I cannot say, Mr

7 Chairman, I know that because at the end of the day the

8 emails he wrote, it was about him and the company. What he

9 writes there I cannot confirm. For whatever reason he

10 decided to say that he has influenced me, I can't see that

11 being my responsibility because I never saw that until I

12 come to this Commission.

13 MR MPOFU: Do you accept that it would be

14 unlawful for you as a minister to allow yourself to be

15 influenced for somebody's personal or financial benefit?

16 MS SHABANGU: Well Mr Chairman, I'm one

17 person, if I may say, who is very, very independent. I was

18 not influenced by Mr Ramaphosa.

19 MR MPOFU: No, that's not what I'm asking

20 you. Do you accept that it would be unlawful for you as a

21 minister of State who has taken the oath, to allow yourself

22 to be influenced and encouraged by someone for financial

23 gain?

24 MS SHABANGU: Well Mr Chairman, I was

25 never influenced. I'm a very independent person to be

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1 influenced by people who want to make gains out of me.

2 MR MPOFU: I'm asking the question for

3 the last time. Do you accept that it would be unlawful for

4 you as a minister of State who has taken the oath under the

5 Constitution, to allow yourself to be influenced

6 politically by someone for financial gain?

7 MS SHABANGU: Mr Chairman, it has nothing

8 to do what Mr Mpofo is raising with me.

9 MR MPOFU: Okay, I'll take it you don't

10 want to answer the question. Well, I'll answer it for you.

11 It is not only unlawful, it is a criminal act. Do you know

12 about the concept of abuse of power?

13 MS SHABANGU: I know.

14 MR MPOFU: And you know that abuse of

15 power is an element of corruption under the new act?

16 MS SHABANGU: Well, I'm not a lawyer.

17 I'm not aware that it's become a corruption –

18 MR MPOFU: Okay, well, I'm a lawyer and I

19 also happen to have been one of the people who helped to

20 draft the new Prevention and Combating of Corruption

21 Activities, 12 of 2004, when I was the chairperson of the

22 National Anticorruption Forum and it says the following –

23 CHAIRPERSON: Which section are you

24 referring to?

25 MR MPOFU: 3, Chairperson. "Any person

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1 who directly or indirectly accepts" – or I'll just jump the

2 non-relevant parts, Chairperson, just to save time. "Any

3 person who directly or indirectly gives or agrees or offers

4 to give to any person any gratification, whether for the

5 benefit of that other person or for the benefit of another

6 person, in order to act personally or by influencing" –

7 that's the word that is in the email – "another person to

8 act in a manner that amounts to misuse, or illegal,

9 dishonest, unauthorised, incomplete or biased exercise,

10 carrying out the performance of any powers," and so on,

11 "amounts to, or any other legal obligations which amounts

12 to the abuse of a position of authority," which is what I'm

13 accusing you of, "is guilty of an offence of corruption."

14 So it's a criminal offence. Were you aware of that?

15 MS SHABANGU: Well Mr Mpofo, I haven't

16 committed any criminal act. Mr Chairman, I was never

17 influenced. I'm still saying that. That's an

18 insinuation –

19 MR MPOFU: No –

20 MS SHABANGU: - from Mr Mpofo –

21 MR MPOFU: All I'm asking you is if – I

22 accept that that is your answer. I'm saying that if a

23 person in public authority would allow himself or herself

24 to be influenced in the manner that is described for

25 gratification, and you can accept that gratification

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1 includes financial gain, that that would amount to

2 corruption.

3 CHAIRPERSON: What is the financial gain

4 which you are suggesting this witness was going to get in

5 exchange –

6 MR MPOFU: No, it's not the witness,

7 obviously, Chairperson. Okay, let me ask then, do you

8 understand that in corruption you have to charge the

9 corruptor and the corruptee?

10 MS SHABANGU: That's your opinion, Mr

11 Mpofo.

12 MR MPOFU: What is your opinion? Do you

13 think you just charge the corruptor, or just the corruptee,

14 or both?

15 MS SHABANGU: Mr Chairperson –

16 MR BADENHORST SC: Mr Chairman, with

17 respect, if I may just be allowed, with the greatest of

18 respect to my learned friend, I don't see what the

19 witness's opinion of the law might be of any interest to

20 this Commission. With respect, whatever the witness

21 answers will not change the law, as Your Lordship pleases.

22 MR MPOFU: Okay. Ja, no, thank you for

23 that, Mr Badenhorst. I'm not asking her about the law.

24 I'm asking her just as a minister of State whether she

25 agrees that corruption involves a corruptor and a corruptee

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1 and that both should be held liable.

2 CHAIRPERSON: Well, you said you're

3 asking for her views on the law –

4 MR MPOFU: No, her views on corruption.

5 CHAIRPERSON: No, you're talking about in

6 the context of corruption. Obviously you have the person

7 who does the bribing and the person who accepts the bribe.

8 Both of them are guilty of criminal offences. That's

9 right, isn't it?

10 MS SHABANGU: That's correct, Mr

11 Chairman.

12 MR MPOFU: Thank you, and to –

13 CHAIRPERSON: Now Mr Mpofo, I've

14 difficulty in following this. You say you don't accept,

15 you're not suggesting that this witness was going to get

16 any financial gratification. So regard being had to the

17 fact that we're dealing with Mr Ramaphosa on the one side

18 and the witness on the other, you never suggested to Mr

19 Ramaphosa when he gave evidence that he was guilty of

20 corruption, did you?

21 MR MPOFU: No, well Chairperson, are you

22 suggesting –

23 CHAIRPERSON: So how is it going to

24 help –

25 MR MPOFU: - I never suggested to Mr

Page 35713

1 Ramaphosa that he did this for financial gratification?

2 Me? It's all over the record.

3 CHAIRPERSON: You never suggested to him

4 that he was –

5 MR MPOFU: Ja.

6 CHAIRPERSON: Was he the – I'm not sure

7 whether you're saying he was the briber or the bribee, but

8 you never suggested to Mr Ramaphosa in your lengthy cross-

9 examination of him that he had contravened the provisions

10 of the Prevention and Combating of Corrupt Activities Act,

11 12 of 2004 –

12 MR MPOFU: And so what, Chairperson?

13 That means that –

14 CHAIRPERSON: No, you were –

15 MR MPOFU: - (a), does that mean he's not

16 guilty of it; or (b), does that mean no one else is?

17 CHAIRPERSON: No, no –

18 MR MPOFU: What is –

19 CHAIRPERSON: All I'm saying is I have

20 difficulty now in – regard being had to the fact that you

21 don't make that, or didn't make that allegation against Mr

22 Ramaphosa, I have difficulty to understand on what basis

23 you're now suggesting to this witness that she was involved

24 in what amounts to a corrupt transaction involving Mr

25 Ramaphosa on the one side and her on the other. So I don't

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1 understand where this cross-examination is getting us.

2 MR MPOFU: No, Chairperson, with the

3 greatest respect, I'm sure everyone else understands that

4 if –

5 CHAIRPERSON: Well, thank you for that –

6 MR MPOFU: - if I didn't put something to

7 Mr Ramaphosa –

8 CHAIRPERSON: Thank you for that. Sorry,

9 can I say something?

10 MR MPOFU: You're now interrupting –

11 CHAIRPERSON: Thank you for that

12 gratuitous –

13 MR MPOFU: I thought we don't interrupt,

14 Chairperson.

15 CHAIRPERSON: No, if you gratuitously

16 insult me I suppose I just have to sit here and bear it,

17 but I just want you to know that I'm aware of the fact that

18 you've done it and I don't expect counsel of your standing

19 at the Bar to indulge in conduct of that kind, but if you

20 want to do it I suppose I can't stop you.

21 MR MPOFU: No, Chairperson, I'm saying

22 that – well, you gave me a lecture the other day about

23 interrupting. I'm still talking and I'm saying that if the

24 point was not put to, let's say four or five members of

25 some conspiracy because of constraint of time or for

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1 whatever reason, how can that disentitle me to put it to

2 this witness? Remember Mr Ramaphosa was accused of

3 something much higher, which is murder. I'm saying to this

4 witness that she is, if she, being the minister who was

5 influenced – remember Mr Ramaphosa was not a member of the

6 cabinet at the time, she was, and I'm saying to her if she

7 allowed herself or any member of the cabinet to be

8 influenced politically by someone for gratification, then

9 that minister would be guilty of corruption. There's a

10 difference between her and him.

11 CHAIRPERSON: Yes, are you finished now?

12 Can I respond to you now without interrupting you?

13 MR MPOFU: Yes, thank you.

14 CHAIRPERSON: Good. What exactly is the

15 offence that you say she's guilty of? I think in fairness

16 you must put that to her to give her an opportunity to deal

17 with it.

18 MR MPOFU: I thought that's all I was

19 doing. I've just said to her that she accepts that abuse

20 of authority of a person in that position is, would be

21 unlawful. She said she's not a lawyer, so I said then I'm

22 going to explain to her that if a person acts in terms of

23 the new act, which obviously I'll argue, I'm not going to

24 argue the law with the witness, I'll argue with you at the

25 end of the case but I'm just showing her in layman's terms

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1 that should a minister allow herself to be unduly, or to be
 2 influenced or encouraged, as the act says, by someone for
 3 financial gratification, that person must be guilty of the
 4 offence of corruption. That's a simple proposition.
 5 CHAIRPERSON: This is a legal question.
 6 I don't think it's fair to expect an answer from the
 7 witness, but the section actually reads, "Any person,
 8 whether directly or indirectly, accepts or agrees or offers
 9 to accept any gratification from any other person, whether
 10 for the benefit of himself or herself or for the benefit of
 11 any other person, or who gives or agrees or offers to give
 12 to any other person any gratification, whether for the
 13 benefit of that other person or for the benefit of another
 14 person, in order to act personally or by influencing
 15 another person so to act in a manner which amounts to the
 16 illegal, dishonest, unauthorised, incomplete or biased, or
 17 misuse or selling of information or material acquired in
 18 the course of the exercise, carrying out or performance of
 19 his powers, duties and functions, arising out of a
 20 constitutional, statutory, contractual or any other legal
 21 obligation, or that amounts to" – and this is the language
 22 you rely on – "the abuse of a position of authority, the
 23 breach of trust or a violation of a legal duty or set of
 24 rules." Those appear to be, and it goes on, "is guilty of
 25 the offence of corruption." Those appear to be the

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1 sections you rely on.
 2 Now it's not suggested that this witness agreed
 3 to accept any gratification, so the gratification wasn't
 4 going to come to her. So then the other side of the coin
 5 is Mr Ramaphosa. Was he giving or agreeing or offering to
 6 give any other person any gratification? The answer to
 7 that is also no. So that's why the mystification we see –
 8 MR MPOFU: Why is the answer no,
 9 Chairperson, when I put it so squarely to Mr Ramaphosa that
 10 when he was running around he was doing that for financial
 11 gratification? How can that be –
 12 CHAIRPERSON: Well, that's a –
 13 MR MPOFU: How do we know the answer
 14 for –
 15 CHAIRPERSON: Well, that's a – I'm
 16 inclined to think that the construction you're putting on
 17 the section is incorrect, but I don't think we need argue
 18 it now.
 19 MR MPOFU: No.
 20 CHAIRPERSON: It's something you can
 21 argue at the end of the matter. I'm not going to allow you
 22 to ask this witness any more questions on the matter
 23 because as Mr Badenhorst said, her views on the matter
 24 aren't going to take it any further. But I'll give you the
 25 fullest opportunity to argue in the written heads that you

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1 submit to us at the end –
 2 MR MPOFU: That's fine.
 3 CHAIRPERSON: - what you say in this
 4 regard.
 5 MR MPOFU: Yes. Well, just for you,
 6 Chairperson, let me for your purposes now – we'll peg it
 7 for later, as you say – gratification is defined in the
 8 section, if you go to page –
 9 CHAIRPERSON: I've read –
 10 MR MPOFU: 443 –
 11 CHAIRPERSON: I've read the definitions
 12 section –
 13 MR MPOFU: And includes any loss,
 14 financial loss, which I cross-examined extensively on. But
 15 that's fine, if we don't want to ask the witness we don't
 16 want to ask the witness.
 17 CHAIRPERSON: No, I'm not interested,
 18 with respect, in her answers to the question. I understand
 19 you may want to argue the point later. You can do so in
 20 the written heads you'll file, but I'm not going to allow
 21 you to ask any more questions of this witness on the point
 22 because I don't think her answers are going to contribute
 23 to the debate in any way.
 24 MR MPOFU: Ja, well –
 25 CHAIRPERSON: So let's carry on. I –

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1 MR MPOFU: Okay, that's fine. Then let
 2 me do this, Minister, then without giving you the benefit
 3 of explaining what I'm going to say. I'm going to argue at
 4 the end of the case that you are guilty of corruption in
 5 terms of at least section, the section that I read to you,
 6 which is section 3 of the act. Do you have any comment?
 7 MS SHABANGU: Mr Chairman, that's his own
 8 view. May I say the Commission will make the finding. I'm
 9 here to present to the Commission.
 10 MR MPOFU: Yes, and I'll also say that
 11 because –
 12 CHAIRPERSON: [Microphone off, inaudible]
 13 judgment of the Commission on the point. She's giving her
 14 own views on that. Let's carry on with the next point.
 15 MR MPOFU: Ja, thank you. I'll also say
 16 that you knew exactly what the reason for the change in
 17 characterisation was, which was to facilitate the
 18 highhanded action, or what was called in one of the
 19 passages that Ms Pillay put to you, the full might of the
 20 State and the army and the police and all those things,
 21 that's what Lonmin wanted and you knew that changing the
 22 characterisation, that's what it would bring.
 23 MS SHABANGU: Mr Chairman, once more, I
 24 don't work for Lonmin, nor they have communicated those
 25 issues they raised with me and therefore I can't see myself

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1 in the space which the, Mr Mpfu is saying.
 2 MR MPOFU: Well, I'm saying that you knew
 3 that what the characterisation would do, it was going to be
 4 to militarise the situation and bring about violence, State
 5 violence, State sponsored violence.
 6 MS SHABANGU: Well, Mr Chairman –
 7 CHAIRPERSON: Did you know that?
 8 MS SHABANGU: I didn't know, Mr Chairman.
 9 MR MPOFU: Well okay, now then I'm going
 10 to put it, you must have known that that is what it would
 11 do because somebody said this, "You must kill the bastards
 12 if they threaten you or the community. You must not worry
 13 about the regulations. I want no warning shots. You have
 14 one shot and it must be a kill shot. I want to assure the
 15 police station commissioners and policemen and women from
 16 these areas that they have permission to kill these
 17 criminals. I will not tolerate any pathetic excuses for
 18 you not being able to deal with crime. You have been given
 19 guns; now use them. If criminals dare to threaten the
 20 police or the livelihood of lives of innocent men, women
 21 and children, then they must be killed." Who said that?
 22 MS SHABANGU: Mr Chairman, Mr Mpfu is
 23 very pathetic.
 24 CHAIRPERSON: No, that's not an answer to
 25 the question. He put a quotation to you which I suspect is

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1 a quotation from a speech you made when you were Deputy
 2 Minister of Police in 2008. Am I right?
 3 MS SHABANGU: Yes, Mr Chairman.
 4 CHAIRPERSON: Alright, so he's put the
 5 quotation to you. Now what's the follow-up from that
 6 quotation?
 7 [14:39] MR MPOFU: Who said those words?
 8 CHAIRPERSON: No she admits it. I put it
 9 to her she said it and she agrees. So you can carry on to
 10 the next point.
 11 MR MPOFU: She said what?
 12 CHAIRPERSON: I put it to her that she
 13 said it when she was Deputy Minister of Police in 2008 and
 14 she agreed, so you don't have to ask that again, I've
 15 asked.
 16 MR MPOFU: All right, thank you. The
 17 Chairperson put the question that I put to you, do you
 18 think that he's pathetic? Because he put the same
 19 question. Okay thank you. Right it's fine. Now the point
 20 I'm putting to you, Minister, is that you said that people
 21 must be killed, there must be no warning shots. They have
 22 one shot and it must be a kill shot, that they have
 23 permission to kill the criminals. You will not tolerate
 24 any excuses, they have been given guns now they must use
 25 them and if criminals dare to threaten the police they must

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1 be killed. And therefore what I'm saying is that you knew
 2 that the re-characterisation of what was going on at Lonmin
 3 of those people to criminals would bring them within the
 4 ambit of your statement, namely that they must be killed.
 5 What do you say to that?
 6 MS SHABANGU: Mr Chairman, I refuse to
 7 answer that.
 8 MR MPOFU: I don't think you have a
 9 choice.
 10 CHAIRPERSON: Mr Badenhorst.
 11 MR BADENHORST SC: Mr Chairman, I had
 12 understood that precisely the same debate had previously
 13 been raised and the Commission had made a ruling in
 14 relation to the question being raised by our learned friend
 15 for the evidence leaders. As with respect the Chairman had
 16 pointed out, whatever the comments –
 17 CHAIRPERSON: No it was the counsel for
 18 the Legal Resources Centre who asked the question and I
 19 didn't allow it to be put. So in effect you're asking me
 20 to reaffirm my ruling in the case of questions put now by
 21 Mr Mpfu. What do you say about it, Mr Mpfu?
 22 MR MPOFU: No, Chairperson. The question
 23 that was put by Mr Ngcukaitobi was different. He was
 24 saying that I think in –
 25 CHAIRPERSON: Mr Ngcukaitobi I think is

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1 the correct –
 2 MR MPOFU: Yes what you are saying was
 3 that there was some reports which I'm also in possession of
 4 that dealt with these matters and the Chairperson correctly
 5 pointed out that that report referred to a particular
 6 period. I'm busy dealing with this issue of
 7 characterisation and this line of questioning was allowed
 8 when I put it to Mr Ramaphosa who was not even a maker of
 9 those statement. So it cannot be disallowed when I'm
 10 talking to the maker of the statement. All I'm saying is
 11 that in terms of her statement the characterisation of
 12 something as criminal would bring about the fact that those
 13 people must be killed, that's what she said, not Mr
 14 Ramaphosa, not anyone else.
 15 CHAIRPERSON: Let me put the question
 16 that you're putting as I understand the witness and let's
 17 see what her answer is. Mr Mpfu is putting the following
 18 proposition to you. He's saying, I'm paraphrasing it, in
 19 2008 you made a statement which attracted quite a lot of
 20 unfavourable publicity at the time in which you urged the
 21 police to act in the way that he read, but to do that to
 22 criminals, that's what you said, what exactly you meant is
 23 neither here nor there, that's what you said. Now what
 24 he's saying to you, he's putting this proposition to you,
 25 he says because you were prepared to accept the

<p style="text-align: right;">Page 35724</p> <p>1 characterisation that the strikers, or some of them, were 2 criminals because they were guilty of criminal acts that 3 meant you were in effect saying they must be treated 4 because they "criminals" in the way that you had said the 5 police must act in that speech you made in 2008. Now did 6 you intend that consequence to follow from your approach to 7 accept the conduct of which some of the strikers were 8 guilty amounted to criminal conduct? If that was your 9 intention when you made that statement.</p> <p>10 MS SHABANGU: Mr Chairman, there was 11 never an intention of classifying a labour dispute to be 12 the same as criminals who carry guns, AK47s killing police. 13 It can never be characterised as the same, it's a 14 completely different situation and the context are 15 completely different.</p> <p>16 MR MPOFU: No I'm afraid it's not that 17 easy. In your statement you did not just talk about people 18 killing police, you actually said in your favour that if 19 criminals threaten the police that say or the livelihood or 20 lives of innocent men, women and children they must be 21 killed. So you never confined it to police killers. Be 22 that as it may these people were also labelled as police 23 killers.</p> <p>24 CHAIRPERSON: Mr Mpofo, for what it's 25 worth. Again you may have all the material you need to</p>	<p style="text-align: right;">Page 35726</p> <p>1 Ramaphosa. Therefore it has nothing to do with me because 2 I had nothing to do with Lonmin or any beneficiary or 3 become a beneficiary to any matters of Lonmin.</p> <p>4 MR MPOFU: Yes but when you made your 5 statement as a leader it would have only influenced the 6 police, men on the ground, correct?</p> <p>7 MS SHABANGU: I am not a minister of 8 police, I don't have influence on the police.</p> <p>9 MR MPOFU: No when you made the statement 10 you were the Deputy Minister of police. It would have 11 influenced the policemen on the ground as you were their 12 leader. Yes or no.</p> <p>13 MS SHABANGU: Well the leader in terms of 14 the constitution is the Minister.</p> <p>15 MR MPOFU: And the deputy leader is not a 16 leader.</p> <p>17 CHAIRPERSON: Mr Mpofo, I understand the 18 point you're putting, but I don't know how it's going to 19 help us. It's a point you can argue whether she realised 20 at the time because she was Deputy Minister, the police 21 would listen is a matter which may be of interest 22 elsewhere. But not sure if it interests us, she said 23 certain things, they may, objectively speaking, have had a 24 consequence in inducing certain police or certain parts of 25 the police, whether she intended that or not isn't really</p>
<p style="text-align: right;">Page 35725</p> <p>1 make submissions at the end. What the witness has said 2 whether you accept her evidence or not is neither here nor 3 there, you may well contend that the evidence she gives 4 mustn't be accepted. What she says is when she said that 5 some of the strikers being guilty of criminal conduct she 6 didn't intend to bring into operation against them these 7 remarks that she made in 2008. You may say that that's not 8 correct. You may make submissions in that regard but 9 that's the answer she's given. I don't know that one can 10 take it any further at this stage particularly in regard 11 being had to the fact that you know your time is limited 12 and I'm sure you've got other points you want to raise 13 before your time runs out.</p> <p>14 MR MPOFU: And I also want to put to you 15 that when Mr Jamieson said that he had had two discussions 16 with the DG and in his case characterised this not as 17 industrial issue but a civil unrest, destabilisation, 18 criminal issue which could not be resolved without 19 political intervention and needs the situation to be 20 stabilised by the police or the army. Those exactly are 21 the words that were used by Mr Ramaphosa that he says you 22 agreed with under oath.</p> <p>23 MS SHABANGU: Mr Chairman, the discussion 24 between employees or directors of Lonmin in written 25 correspondence don't characterise my interaction with Mr</p>	<p style="text-align: right;">Page 35727</p> <p>1 relevant. If it had that result it may well have had 2 unfortunate consequences. I don't know if there's any 3 point in investigating with her further. Your time is 4 running out, if you've got any other points which you 5 consider to be of substance to put to her I suggest you put 6 them to her in the time still available to you.</p> <p>7 MR MPOFU: Okay. Did Mr Ramaphosa in the 8 email on I think it's BBB4.5 –</p> <p>9 CHAIRPERSON: Put that on the screen, I 10 think it should be put on the screen. What exactly is the 11 exhibit number?</p> <p>12 MR MPOFU: That's not on the screen.</p> <p>13 CHAIRPERSON: No it's not on the screen, 14 I suggested you put it on the screen. Tell the operator 15 what the exhibit number is and he will put it up for the 16 witness to see.</p> <p>17 MR MPOFU: You say that –</p> <p>18 CHAIRPERSON: What's the exhibit number, 19 Mr Mpofo? Which one is it? Give us a date and give us the 20 time.</p> <p>21 MR MPOFU: 2:58pm.</p> <p>22 CHAIRPERSON: Is that the one we now have 23 on the screen?</p> <p>24 MR MPOFU: Ja.</p> <p>25 CHAIRPERSON: Thank you.</p>

<p style="text-align: right;">Page 35728</p> <p>1 MR MPOFU: You say that you had the 2 meeting with Mr Ramaphosa in the morning, correct? And Mr 3 Ramaphosa said in that email that he – this is about 3pm 4 and he said “I have just had a discussion with Susan 5 Shabangu.” Well firstly is he allowed to just call you by 6 your name without any title? Is that the kind of 7 relationship – 8 CHAIRPERSON: Surely in private 9 correspondence to a third person he can call her what he 10 likes. But have you known him for a long time? 11 MS SHABANGU: I’ve known Mr Cyril for a 12 very, very long time. 13 CHAIRPERSON: And what do you call him, 14 do you call him Mr Ramaphosa Sir? What do you call him 15 when you speak to him? 16 MS SHABANGU: Mr Chairman, I called him 17 Cyril. 18 CHAIRPERSON: And what does he call you? 19 MS SHABANGU: He calls me Susan. 20 CHAIRPERSON: There we are. 21 MR MPOFU: Well he never called you 22 Minister Shabangu? 23 MS SHABANGU: Well in official situations 24 he would refer to me as the Minister. 25 MR MPOFU: And in other situations? If</p>	<p style="text-align: right;">Page 35730</p> <p>1 joke or a laughing matter. But he said that you just had a 2 discussion with him, was that correct or not? 3 MS SHABANGU: I’ve confirmed that it’s 4 true, Mr Chairman. 5 MR MPOFU: And the time was 3pm. 6 CHAIRPERSON: That obviously can’t have 7 been right because he says she’ll be in Johannesburg by 8 5pm. Now we all know it takes two hours ten minutes at 9 least. You have to be at the airport about an hour before. 10 So if she was going to be in Johannesburg by 5pm she would 11 have had to leave before 3:00. If she were at the airport 12 before 2:00, so he couldn’t have just have had a discussion 13 with her. Obviously it’s an inaccurate expression. 14 Whether it was really – what time did you say you saw him? 15 MS SHABANGU: In the morning before half 16 past ten. 17 CHAIRPERSON: Whether it was before 10:00 18 or a little bit later Mr Ramaphosa must have been wrong 19 there if you just work out how long it takes to get to 20 Johannesburg from Cape Town. Is this going to help us to 21 answer the questions in the terms of reference? 22 MR MPOFU: Yes it will, Chairperson. 23 CHAIRPERSON: Oh all right, you’ll deal 24 with this in your heads of argument. Carry on cross- 25 examining.</p>
<p style="text-align: right;">Page 35729</p> <p>1 we go to - he says “I will stress that Minister Shabangu 2 should have a discussion with Roger.” Have you known him 3 for a long time? 4 CHAIRPERSON: She said she has. I’m sure 5 you can ask questions that will help us to write our 6 report. I don’t find these questions helpful at all. 7 MR MPOFU: So you don’t know under which 8 situation he calls you Minister Shabangu and others where 9 he calls Susan Shabangu. 10 CHAIRPERSON: Mr Mpofu I disallow that 11 question, I have the power to disallow a question on the 12 grounds that they’re [inaudible] sufficient probative 13 value. I suggest you ask questions in a more pointed way. 14 MR MPOFU: Chairperson, this is not a 15 joke by the way. If someone is going to influence another 16 one politically it’s relevant what the hierarchical 17 relationship between them is. Some might think it’s a 18 joke, but it’s not. 19 CHAIRPERSON: She’s already said they 20 were on first name terms. In an official context he might 21 call her Minister, but when they meet each other they call 22 each other by their first names. We’ve got that evidence 23 on record. Surely there are other, better points you can 24 advance in the time available 25 MR MPOFU: All right. Well it’s not a</p>	<p style="text-align: right;">Page 35731</p> <p>1 MR MPOFU: I’m sorry, Chairperson, I 2 suggested to Mr Ramaphosa that he had performed a 3 miraculous feat if you remember, of converting a minister 4 from a particular characterisation in the space of five 5 hours. That’s what I said, it turns out now from this 6 witness that he did so in five minutes. Now if you think 7 that is not important that he had the power to change a 8 minister of state’s characterisation in five minutes as 9 opposed to the five hours that I had suggested to him then 10 well – 11 CHAIRPERSON: Well you can argue that 12 she’s already said that she already was of that mind before 13 he spoke to her, but anyway let’s move onto a point that 14 will help us to write the report. 15 MR MPOFU: Anyway just to confirm you 16 said – 17 CHAIRPERSON: Sorry, Mr Mpofu, Mr Wesley 18 how much longer has Mr Mpofu got? 19 MR WESLEY: Chair, there’s eight minutes. 20 CHAIRPERSON: Eight minutes, fine. 21 You’ll bear that in mind. 22 MR MPOFU: Well I’m sure - maybe Mr 23 Wesley can give us the time if I’m allowed to just carry 24 on. You accept that one of the key things for you as 25 Minister of Minerals was to ensure that the human dignity</p>

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1 of the workers is restored. That's part of the
 2 transformation process, the mining industry had almost
 3 taken all their human dignity away, correct?
 4 MS SHABANGU: Mr Chairman, that is
 5 defined in our constitution of the country.
 6 MR MPOFU: He's making the point that as
 7 Minister of Human Resources the mining industry came under
 8 you, you were regulating them and one of the things you had
 9 to look to was if the dignity of miners was respected and I
 10 take it that's something that you did.
 11 MS SHABANGU: In line with the
 12 constitution, yes.
 13 CHAIRPERSON: Yes in line with the
 14 constitution.
 15 MR MPOFU: Yes, and the workers have said
 16 that one of the issues that concerned them and where their
 17 dignity was being violated was the fact that the employer
 18 was not prepared to even talk to them. You'd agree that
 19 one of the ways to affirm someone's dignity would be to
 20 listen and talk to them, correct?
 21 MS SHABANGU: Yes, Mr Chairman.
 22 MR MPOFU: And you took no steps, when
 23 you were interacting with the shareholders of Lonmin to
 24 ascertain that they give an ear to the workers.
 25 MS SHABANGU: Well, Mr Chairman, they

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1 interacted with me. They are the ones as the
 2 correspondence indicates which I have alluded to.
 3 MR MPOFU: And you yourself –
 4 CHAIRPERSON: She was answering the
 5 question, I think you must let her complete –
 6 MS SHABANGU: And further, if you look at
 7 the various – or my submission was that one of the ways was
 8 to talk to the chamber which then facilitated the process.
 9 That's part of engagement.
 10 MR MPOFU: And I've established that even
 11 when you went to Marikana you yourself took no steps to
 12 give them any kind of hearing, the workers.
 13 MS SHABANGU: I'm not sure, Mr Chairman,
 14 where was I going to give a hearing to the workers because
 15 at that time they were at the koppie.
 16 MR MPOFU: Ja then you'd give them a
 17 hearing at the koppie. You took no steps.
 18 CHAIRPERSON: When did you go to the
 19 koppie? When did you go to Marikana?
 20 MS SHABANGU: On the 17th in the morning.
 21 CHAIRPERSON: The shooting was already
 22 over on the 16th. When you went on the 17th after the
 23 killings on the 16th did you receive any requests from any
 24 of the strikers that you should give them an interview?
 25 MS SHABANGU: Well the strikers from NUM

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1 did ask to see me.
 2 CHAIRPERSON: Did you see them?
 3 MS SHABANGU: Yes I did, Mr Chairman.
 4 CHAIRPERSON: Did any other strikers ask
 5 to see you?
 6 MS SHABANGU: No further request was
 7 made, Mr Chairman.
 8 MR MPOFU: Do you think that as a
 9 minister when there's a problem you need to be invited as
 10 the Chairperson is suggesting? Wouldn't you take the
 11 initiative to address the two sides to the problem?
 12 MS SHABANGU: Well, Mr Chairman, I think
 13 all parties have the right to approach one another. If you
 14 understand the situation I would not have gone to the
 15 koppie.
 16 MR MPOFU: Yes, but you addressed Lonmin
 17 without them having given you a special invitation,
 18 correct?
 19 MS SHABANGU: Well the President said I
 20 must go and find out what is going on.
 21 MR MPOFU: Yes what was going on was
 22 that, according to you, Lonmin was having a wage dispute
 23 with its workers. So you only spoke to one side of the
 24 equation.
 25 MS SHABANGU: Mr Chairman, if you

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1 understood the situation on the day I don't think I would
 2 have been able to go there including the police were not
 3 allowed there.
 4 MR MPOFU: No the police were there the
 5 following day to supervise a meeting by a political leader,
 6 but anyway one of the ways in which the restoration of the
 7 dignity of the workers would be through giving them a stake
 8 in the mining companies that they work for, correct?
 9 MS SHABANGU: Mr Chairman, it's up to
 10 individual engagement who would define and determine the
 11 space.
 12 MR MPOFU: No I'm asking you the question
 13 whether any of you as someone who was entrusted with
 14 transformation which included empowering historically
 15 disadvantaged individuals, would one of the ways to do that
 16 be to give the workers a stake or shareholding in the
 17 mining companies?
 18 MS SHABANGU: Mr Chairman, that space
 19 gets defined by the parties which are engaged.
 20 MR MPOFU: Okay let me put it this way.
 21 Maybe in a more pointed way.
 22 [14:58] I am going to criticise you for having allowed
 23 during your tenure a situation where Mr Ramaphosa's company
 24 acquired a stake where the workers had a shareholding and
 25 narrowed it to a stake which should be held by a few fat

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1 cats, that that act contributed directly or indirectly to
 2 the tragedy.
 3 MS SHABANGU: Mr Chairman, I believe that
 4 the situation is up to the parties, same – and that’s his
 5 opinion, and same as he has shares in some assets of
 6 mining.
 7 MR MPOFU: No, I –
 8 CHAIRPERSON: I don’t think that’s a
 9 direction in which we should go, Ms Shabangu. The
 10 proposition is put to you just to know, I think it’s one of
 11 his closing points because his time is running out, is he
 12 says to you there was a share transaction in terms whereof
 13 individual miners had shares, they lost them – we don’t
 14 know the circumstances – and their place was taken by a
 15 number of people whom he describes in a way I don’t have to
 16 repeat, one of whom was Mr Ramaphosa, and they then got a
 17 substantial parcel of shares in Lonmin. He says the
 18 result, having said that he then moves on to the next point
 19 and he suggests that that was causally connected in some
 20 way with the troubles that arose at Lonmin during the
 21 period that we’re busy with in August 2012 and he asks you
 22 whether you agree with that. I think that’s a fair summary
 23 of what he says.
 24 MR MPOFU: It is a fair summary,
 25 Chairperson.

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1 CHAIRPERSON: Your time is up, but let’s
 2 get the witness’s answer before we –
 3 MS SHABANGU: Well, Mr Chairman, I’m must
 4 say that in my understanding at the level of what was
 5 declared by the company to the DMR, at that time the
 6 workers didn’t have shares with Lonmin. What had shares
 7 was the tribal, or the traditional leader or the clan in
 8 that particular area had shares with the company, and what
 9 we would also find is that they were working on an ESOP,
 10 which is an employer owner share scheme at that point.
 11 MR MPOFU: Well, I put it to you that the
 12 workers – and fortunately the worker who’s currently on the
 13 stand who says, and Mr Ramaphosa confirmed this, that the
 14 workers’ share was liquidated by his company, that they had
 15 held in Incwala, and all I’m saying to you is that, I’m
 16 making the proposition that had the workers had a stake in
 17 the company and by extension been represented on the board
 18 of Lonmin, the chances would have been higher that they
 19 would have been engaged because they would have had
 20 representation there, and that strike – and I daresay even
 21 the five-month strike that we’ve just come out of – might
 22 not have happened because they had a stake in the company
 23 and they would be hurting themselves as it were by striking
 24 and reducing the profits of the company, or the dividend.
 25 CHAIRPERSON: Well, you’ve heard the

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1 point. So we’re going to adjourn in a moment, but let’s
 2 get your answer to that question first. Please answer it.
 3 MS SHABANGU: Thank you, Mr Chairman.
 4 The Incwala transaction when I came into the department was
 5 a failure and it had collapsed, so it never took off. It’s
 6 one of those transactions by virtue of their construction
 7 were not going to be successful. So Incwala transaction
 8 which he’s referring to never succeeded, nor got off the
 9 ground.
 10 CHAIRPERSON: So you say there’s no
 11 causal connection between the collapse of the Incwala
 12 transaction and the subsequent troubles which took place in
 13 August 2012 and brought us here today? Is that your
 14 answer?
 15 MS SHABANGU: That’s my answer, Mr
 16 Chairman.
 17 CHAIRPERSON: Alright.
 18 MR MPOFU: So that means you would be
 19 generally speaking in support of a so-called broad-based
 20 BEE transaction that actually narrows the scope of
 21 beneficiaries to exclude the workers?
 22 MS SHABANGU: Mr Chairman, Incwala, by
 23 virtue of its structure it was very, it was a non-starter
 24 because it was structured in a way that would not have
 25 allowed it to take off.

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1 CHAIRPERSON: Yes, I think maybe –
 2 MS SHABANGU: And that – let me further
 3 say, Mr Chairman, this transaction, it did not happen
 4 during my time. It happened before. So when I came in, in
 5 2009, already it was a failure, it was in tatters. It was
 6 a failure.
 7 MR MPOFU: No, we accept that. If I can
 8 just –
 9 CHAIRPERSON: Last question, Mr Mpofo.
 10 MR MPOFU: Yes, Chairperson. I also put
 11 to you that your answer that when you were addressing the
 12 NUM meeting and you referred to a force that is bound to
 13 destroy the ANC and so on, that you were not referring to
 14 Lonmin, you were referring to AMCU and your answer to that
 15 effect is, you are being untruthful.
 16 CHAIRPERSON: That’s his last question.
 17 What’s your answer to that?
 18 MS SHABANGU: Mr Chairman, I’ve been a
 19 trade unionist. I will never refer to other workers as
 20 counter to, or being in opposition or trying to discourage
 21 them. They’ve got the right. That is why even in my
 22 speech I mentioned the right to associate and I think
 23 earlier on I elaborated that the biggest challenge in
 24 Lonmin at that time was the management and there was a
 25 perception that management is there to destroy work - or to

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1 divide workers. That's what I said earlier on, and I stand
 2 by that.
 3 CHAIRPERSON: Alright, thank you. Mr
 4 Mpfu –
 5 MR MPOFU: Well, Chairperson, if I can
 6 just follow up on this, please? I'm going to put just two
 7 propositions, Chairperson.
 8 CHAIRPERSON: No, Mr Mpfu, I'm sorry,
 9 I've given you more time than I allotted you –
 10 MR MPOFU: I'm sorry, Chairperson, too –
 11 CHAIRPERSON: I'm sorry too, but I'm not
 12 going to allow you to do that. We will now take the
 13 adjournment.
 14 MR MPOFU: Chairperson, I must put on
 15 record that this is unfair to the people I represent. This
 16 Commission has been allowed to reduce the number of times
 17 that other people are saying. It's grossly –
 18 [COMMISSION ADJOURNS COMMISSION RESUMES]
 19 [15:20] CHAIRPERSON: The Commission resumes.
 20 Minister Shabangu, you're still under oath.
 21 SUSAN SHABANGU: [s.u.o.]
 22 CHAIRPERSON: Mr Van As, I believe you're
 23 going to –
 24 MR MPOFU: Chairperson –
 25 CHAIRPERSON: Yes, Mr Mpfu.

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1 MR MPOFU: Sorry, Chairperson.
 2 Chairperson, this won't take long, but I have to say that
 3 the people that we represent have asked me to make an
 4 application, which that was the only way I could resolve
 5 their sentiments, that this witness if need be will have to
 6 be recalled because there's still important material that
 7 has not been able to put –
 8 CHAIRPERSON: Why didn't you put them
 9 during the time that was allotted to you and asking the
 10 other questions you asked?
 11 MR MPOFU: Well, because I was busy
 12 putting other questions and the reason –
 13 CHAIRPERSON: What you are effectively
 14 saying is if I allot time to you, you don't accept it –
 15 MR MPOFU: Yes, it was –
 16 CHAIRPERSON: You just want the time you
 17 asked for.
 18 MR MPOFU: No, Chairperson, I'm not –
 19 CHAIRPERSON: [Inaudible] –
 20 MR MPOFU: Well, I'll ask, I'll relay
 21 those questions to them. I think you are hitting the
 22 messenger.
 23 CHAIRPERSON: No, I'm sorry, you're
 24 conveying to me your instructions.
 25 MR MPOFU: Yes, I'm saying –

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1 CHAIRPERSON: I'll listen to your
 2 instructions.
 3 MR MPOFU: Yes, I'm saying – and ja,
 4 Chairperson, I think the rule on interruptions must be
 5 observed by all of us. I'm simply saying that the clients
 6 have asked me to convey their unhappiness, which it's
 7 something that I've already said before, because their
 8 kind, or their own witnesses were here for many days and
 9 cross-examined and they feel that there's a special
 10 category of witnesses that has been created here. When
 11 Minister Mthethwa was here there was this fast forward,
 12 same with Mr Ramaphosa, and they feel that the same thing
 13 is happening with this witness and therefore if need be – I
 14 told them what the outcome of their application is, without
 15 being a rocket scientist, but I have to make it
 16 nevertheless - that the witness for the sake of fairness
 17 and justice, which is what this Commission is about, if
 18 need be will have to be recalled in order to answer to some
 19 of the issues which they feel strongly should be put to
 20 her. That's all. I'm not going to motivate it. I'm
 21 simply saying that is the instruction I've received and as
 22 you know better than me, which I have to discharge.
 23 CHAIRPERSON: Mr Budlender, do you wish
 24 to say anything in response to what Mr Mpfu said?
 25 MR BUDLENDER SC: Chair –

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1 CHAIRPERSON: I'm not criticising you.
 2 You're responsible for some of the programming –
 3 MR BUDLENDER SC: I think in –
 4 CHAIRPERSON: - cross-examination of days
 5 and so on of witnesses.
 6 MR BUDLENDER SC: Yes.
 7 CHAIRPERSON: Necessitated by the fact
 8 that we have an extension until the end of September, we
 9 have to finish by then. But I don't know if you wish to
 10 say anything further.
 11 MR BUDLENDER SC: Chair, I would like to
 12 say this; in fact it ought to be on record. I think it can
 13 fairly be said that the Commission is proceeding now at a
 14 more rapid pace than it proceeded in its early period.
 15 That's because in the early period there wasn't the same
 16 sense of urgency caused in part by a looming deadline when
 17 the Commission's term of office comes to an end. We know
 18 that the Commission's term of office in terms of the
 19 hearings comes to an end at the end of September. As a
 20 result we have had to, the Commissioners had to do whatever
 21 it can to ensure that it completes the work within that
 22 period. That means that all of the witnesses have to be
 23 dealt with within a limited period, and in fact Mr Nzuzza
 24 who is presently giving evidence, parties have had to apply
 25 for leave to cross-examine him and they've had to stipulate

<p style="text-align: right;">Page 35744</p> <p>1 times and none of them, and in many cases witnesses, 2 parties are not given the time which they request because 3 things, we have to move forward and bring the matter to an 4 end. 5 So it's not a matter of treating witnesses 6 differently. It's a matter of using the time available to 7 the Commission most effectively to ensure that the 8 Commission completes its task within the time which is 9 available to it. 10 In the case of Minister Shabangu, all of the 11 parties who wanted to cross-examine made applications, 12 allocations were made by you and by and large those 13 allocations were accepted and complied with by the parties. 14 CHAIRPERSON: I even disallowed one party 15 completely the right to cross-examine, which caused a great 16 deal of distress, but anyway, be that as it may. Thank you 17 for that, Mr Budlender. Mr Mpofu has discharged his 18 mandate from his clients. If there are questions he wishes 19 later to address to the witness I suggest they be given to 20 me in writing and if I consider them appropriate questions 21 to be sent to the Minister for her reply, I shall do so. 22 But perhaps this can be interpreted to the people 23 present in the hearing who don't quite understand what's 24 going on. They think we're unfair because we've imposed 25 time limits. We've imposed time limits because we've got</p>	<p style="text-align: right;">Page 35746</p> <p>1 10 000 and I say I'd love to give you 10 000 but I've only 2 got a thousand rand in my bank account. Now Mr Mpofu with 3 his usual good nature has accepted that and I am sure that 4 that point is understood by those whom I'm primarily 5 addressing at the moment, they will realise that what may 6 appear to be unfairness isn't intended to be so and I 7 believe ultimately will not have the result of being 8 unfair. Mr Van As, I believe you want to cross-examine the 9 witness. You've got half an hour. 10 MR VAN AS: I do, Mr Chair. 11 CHAIRPERSON: You've got half an hour. 12 MR VAN AS: Just bear with me. 13 CHAIRPERSON: It looks as if the 14 microphone on the seat in front of you is working, or was 15 working a minute ago. If I may say this; that we've given 16 Mr Van As half an hour, which means we will have to sit a 17 little bit later this afternoon than we normally do in 18 order to accommodate re-examination, but you've got half an 19 hour, Mr Van As, and thereafter, Mr Badenhorst, we will 20 give you a short time to re-examine. 21 CROSS-EXAMINATION BY MR VAN AS: Thank 22 you, Mr Chairperson. Good afternoon, Minister Shabangu. I 23 appear on behalf of Lonmin. 24 MS SHABANGU: Afternoon. 25 MR VAN AS: I'd like to refer you to page</p>
<p style="text-align: right;">Page 35745</p> <p>1 to finish in the time which we've been given and it's 2 important that we do finish so that we can consider the 3 written arguments we get, hear the exchanges that take 4 place when the written arguments are highlighted and oral 5 hearings and questions are put to counsel, and thereafter 6 we can write our report. I don't think anybody here wants 7 us to say we can't write our report because we haven't 8 heard all the evidence. That's an important point. 9 I personally would have preferred to have had 10 time limits from earlier on, but my views on the matter did 11 not prevail, but I can understand the impression created, 12 but we've done a number of things to speed things up. 13 We've finally persuaded the department to bring in 14 simultaneous translation, which has helped. But there were 15 witnesses called from the side of the strikers who were 16 cross-examined at great length and I can understand their 17 discomfiture to see the present crop of witnesses are not 18 dealt with in the same way, but we have to do the best we 19 can with the time available. I believe we can if we stick 20 to the time limits do the job we've been called upon to do 21 and produce the report which will I believe address the 22 questions we've been asked to deal with. 23 I've said to Mr Mpofu on several occasions that 24 I'm a bit like the father who's got a thousand rand in his 25 bank account, the son comes to him and says please give me</p>	<p style="text-align: right;">Page 35747</p> <p>1 10 of exhibit QQQQ1, if you'd go there please, and if we 2 could have it up on the screen, please. You've already 3 been cross-examined on this document and you've already 4 confirmed that the force that you refer to is in fact 5 Lonmin. Is that correct? 6 CHAIRPERSON: I'm sorry to interrupt you. 7 That's what we call exhibit QQQQ1.7 – 8 MR VAN AS: Correct, Mr Chairperson. 9 CHAIRPERSON: That's page 10 of the 10 bundle. Forgive my interrupting. 11 MR VAN AS: Minister Shabangu, you 12 testified that the force which you say is determined to 13 remove NUM from the face of the earth is Lonmin. 14 MS SHABANGU: I agree. 15 MR VAN AS: And you testified that you 16 arrived at this conclusion after assessing the facts. Do 17 you recall saying that? 18 MS SHABANGU: Mr Chairman, let me 19 explain. If Mr? 20 CHAIRPERSON: Van As. 21 MS SHABANGU: Manas? 22 CHAIRPERSON: Van As. 23 MS SHABANGU: Van As, okay. Mr Van As, 24 we have a history with Lonmin where even prior to what 25 happened in Marikana we were exchanging correspondence</p>

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1 which was showing that the company indeed, many things were
 2 done by Lonmin, including dismissals of workers and some of
 3 the issues were, and racial issues were raised with us.
 4 MR VAN AS: Minister, your allegation is
 5 that Lonmin wanted to remove NUM from the face of the
 6 earth.
 7 MS SHABANGU: Yes, if they - Mr Chairman,
 8 Lonmin at that point was a company, when you look at the
 9 general trend in the mining industry, which was more like
 10 in a space of divide and rule of workers, even before the
 11 incidents of Marikana in August.
 12 MR VAN AS: And you're aware of the fact
 13 that two Lonmin security guards lost their lives protecting
 14 NUM's office?
 15 MS SHABANGU: I am very much aware.
 16 MR VAN AS: Hardly the behaviour of an
 17 employer who wants to wipe NUM off the face of the earth,
 18 is it?
 19 MS SHABANGU: Well, we need to - I also
 20 need, Mr Chairman, to bring to your attention they had to
 21 do it because those offices were within reach of the
 22 company and those were company premises which they had
 23 allowed NUM to be part of.
 24 MR VAN AS: And Minister, neither NUM nor
 25 AMCU - and I say it with all respect to my learned friend

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1 Mr Mpofo - even Mr Mpofo hasn't put a version before this
 2 Commission that Lonmin wants to wipe NUM off the face of
 3 the earth.
 4 MS SHABANGU: Well, Mr Van As, if a
 5 company has tendencies of dividing workers and treating
 6 workers in a particular way, that signifies an intention of
 7 doing away, or not being happy with the union.
 8 MR VAN AS: And this is a very serious
 9 allegation you're making against Lonmin, is it not?
 10 MS SHABANGU: Well, Mr Van As, indeed it
 11 is a serious allegation, or it's a fact, it's not an
 12 allegation. It does not start here, Mr Chairman. It's an
 13 issue which was there even before this particular incident.
 14 MR VAN AS: And can you please explain to
 15 the Commission why you made no mention of it in your
 16 statement?
 17 MS SHABANGU: I was dealing with issues
 18 relating to, from the 9th of August, but the
 19 characterisation of the behaviour of Lonmin was not about
 20 this particular period, has been there even before.
 21 MR VAN AS: And you also made no mention
 22 of it in your evidence-in-chief.
 23 MS SHABANGU: Well, my evidence-in-chief
 24 talks about the incident from the 9th to the 16th.
 25 MR VAN AS: Let's look at the document in

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1 question. There's reference to Amplats and a loss of jobs
 2 over there in paragraph 3. Do you see that?
 3 MS SHABANGU: Which document are you
 4 referring to?
 5 MR VAN AS: The newspaper report, the
 6 report that you're quoted in.
 7 CHAIRPERSON: He's referring to page 10
 8 of the bundle, what we call -
 9 MR VAN AS: It's up on the screen.
 10 CHAIRPERSON: What we call QQQQ -
 11 MS SHABANGU: I thought it's up there.
 12 I'm looking at the -
 13 CHAIRPERSON: QQQQ1.7.
 14 MR VAN AS: "The union said this week
 15 they had lost 44 000 members over the past year, with more
 16 losses expected to be confirmed when Amplats, the world's
 17 largest platinum mine, completes a union verification
 18 exercise shortly. The exodus from NUM followed a violent
 19 and chaotic recruitment campaign by the rival Association
 20 of Mineworkers and Construction Union, AMCU." Do you see
 21 that, Minister Shabangu?
 22 MS SHABANGU: I can see that. It's true.
 23 MR VAN AS: Now why on earth would there
 24 be reference to this in this newspaper report if you were
 25 talking about Lonmin being the sinister force determined to

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1 remove NUM off the face of the earth?
 2 MS SHABANGU: Well, it's the company
 3 itself, because the issues raised before for me was an
 4 issue that Lonmin was not happy with the union, or a strong
 5 union.
 6 MR VAN AS: Now Minister Shabangu, with
 7 the greatest of respect, all the evidence before this
 8 Commission up to this stage indicates exactly the opposite.
 9 The -
 10 MS SHABANGU: Well Mr -
 11 MR VAN AS: Let me please finish. The
 12 criticism that Lonmin has faced from the evidence leaders,
 13 from various parties and with respect has been alluded to
 14 by the Commission itself, is that it should have spoken to
 15 the workers and to AMCU and it should not instead have
 16 insisted on only speaking to NUM through organised
 17 structures.
 18 CHAIRPERSON: [Microphone off, inaudible]
 19 MS SHABANGU: Mr Chairman, when you
 20 characterise a situation you don't characterise or look at
 21 it from the immediate. You look at the history of the
 22 behaviour of a particular person or subject. In this case
 23 it was not about the characterisation only of what was
 24 going on. If you look at me, I was addressing NUM on the
 25 issue of how best they need to move forward.

<p style="text-align: right;">Page 35752</p> <p>1 MR VAN AS: In relation to membership, 2 Minister Shabangu. 3 MS SHABANGU: In relation to a behaviour 4 which is cropping in, in the country where we see a lot of 5 forces coming in, as we characterise them with an intention 6 of weakening, or some of them cropping in through, by 7 various managers with an intention of weakening the unions. 8 MR VAN AS: The unions or NUM, Minister 9 Shabangu? 10 MS SHABANGU: I must say unions in 11 general. But in this particular space because I was 12 talking to mineworkers it was in relation to this, but 13 generally in the country there is a trend when it comes to 14 unions to be weakened in many ways. 15 MR VAN AS: And can you please explain 16 why you make absolutely no reference to Lonmin itself in 17 this article? 18 MS SHABANGU: Well, I – 19 MR VAN AS: Such a serious allegation. 20 MS SHABANGU: I was addressing workers 21 about the general situation in the country and when it 22 arises in the Commission in respect of this I'm mentioning 23 Lonmin in particular because we're here about Lonmin, but 24 the general trend I had indicated when Impala had 25 challenges again there was the issue of workers being</p>	<p style="text-align: right;">Page 35754</p> <p>1 employer is always responsible for problems on mines? 2 MS SHABANGU: Mr Van As, through you, Mr 3 Chair, indeed employers are responsible for many, many ills 4 which happens in any industry. 5 MR VAN AS: No, Minister Shabangu, the 6 employer is always responsible for all problems on mines. 7 That is your evidence. 8 MS SHABANGU: Well, Mr Van As, through 9 you, Mr Chair, indeed. If you want me to bring evidence, 10 some of them has been led here where Lonmin specifically 11 was altering some of the commitments it has made to the 12 department. 13 MR VAN AS: And what on earth has that 14 got to do with wiping NUM from the face of the earth? 15 MS SHABANGU: That's part of a union, or 16 bosses which are hostile to unions and that's nothing new. 17 Through the number of years in South Africa we've seen 18 bosses who are hell-bent to wipe off unions from the earth. 19 MR VAN AS: I'd like to also take you to 20 exhibit QQQQ2, please, if we could have that up on the 21 screen. If we could go to the second page, please. My 22 instructions are that this document was both hand-delivered 23 and emailed to your office, Minister Shabangu. 24 MS SHABANGU: Well, Mr Van As, I never 25 saw this document.</p>
<p style="text-align: right;">Page 35753</p> <p>1 divided and some of the workers being frogmarched in that 2 process. So it's everybody here, or it's all the mines 3 which, or employers in the mining industry which were 4 undermining workers' rights. 5 MR VAN AS: So it's not only Lonmin, it's 6 Amplats and Implats as well? 7 MS SHABANGU: Mainly it's Lonmin in that 8 particular space and Implats. Those were the unions, if I 9 have to characterise where I'm referring to here. 10 MR VAN AS: What we'll be arguing before 11 the Commission, and I must afford you an opportunity to 12 comment on, Minister, is who you're referring to over here 13 is AMCU. The force who you saw determined to remove NUM 14 from the face of the earth was AMCU, not Lonmin, not 15 Impala, not Amplats. 16 MS SHABANGU: Mr Chairman, that's your 17 own opinion. I will never ever, ever see a new union being 18 a rival, I will never ever. Always it's the employer who's 19 the cause of the tension and the conflict. 20 MR VAN AS: Always the employer, Minister 21 Shabangu? 22 MS SHABANGU: Indeed so. 23 MR VAN AS: The Minister of Mineral 24 Resources in an open forum, or the former Minister of 25 Mineral Resources in an open forum, you're saying that the</p>	<p style="text-align: right;">Page 35755</p> <p>1 MR VAN AS: And isn't that unfortunate? 2 Because you'll see one of the recommendations, if you look 3 at the last bullet point, is "Perhaps you could invite NUM 4 and AMCU top leadership with our executives and others in 5 the mining industry to meet with you in an effort to 6 understand the drivers of the situation, but at the very 7 least issue a joint statement condemning the violence and 8 urging all to work together to restore peace and 9 stability." 10 MS SHABANGU: Well, Mr Van As, through 11 you, Mr Chair, if you look at the statement which I had 12 issued earlier on when I was in Brakpan, I spoke about the 13 parties coming together. 14 [15:40] I spoke about recognition or realising that all 15 people have to abide by the law and work towards making 16 sure that they find an amicable solution. So, Mr Chair, I 17 want to once more state right from the beginning I 18 indicated whilst for them it might an exhibition, an 19 exhibit on their side. I was out of the office the whole 20 week and therefore it only came to my attention on the 19th 21 which was the Monday when I was back at the office. 22 MR VAN AS: Perhaps let me ask the 23 question more clearly, Minister Shabangu. That's hardly 24 the approach or the offer of an employer whose intent on 25 removing a union from the face of the earth is it?</p>

<p style="text-align: right;">Page 35756</p> <p>1 MS SHABANGU: Well, Mr van As if you look 2 at this that's your own perception or your own opinion. It 3 might come up because the employer realises that they are 4 in trouble. 5 MR VAN AS: I see. And you're also aware 6 of the fact that a number of people have been killed on the 7 platinum belt both during that strike and the subsequent 8 strike in 2014 and for that matter during the life of the 9 Commission. 10 MS SHABANGU: I am aware, Mr van As. 11 MR VAN AS: Allegations of kill the NUM, 12 are you aware of those allegations having been made, 13 witnesses having been giving evidence before this 14 Commission that such words were chanted? 15 MS SHABANGU: Well, Mr van As, I've 16 stated here that this was an issue which was long there, 17 not only during this particular era. 18 MR VAN AS: You were aware of those 19 allegations of violence and allegations of kill the NUM? 20 Please answer the question. 21 CHAIRPERSON: I understood her to say yes 22 she was because it's been around for a long time. That's 23 her answer. 24 MS SHABANGU: Yes, Mr Chair. 25 MR VAN AS: Allegations of kill the NUM</p>	<p style="text-align: right;">Page 35758</p> <p>1 and indeed irresponsible that you make remarks like "remove 2 the unions off the face of the earth" under circumstances 3 in which a number of people have unfortunately, a number of 4 union leaders from both sides have unfortunately been 5 killed during the course of this Commission of Inquiry. 6 MS SHABANGU: Mr Chair, may I also say in 7 my life before I've seen as we built this democratic and 8 pre democracy where union indeed were wiped off the earth. 9 MR VAN AS: I'm going to afford you an 10 opportunity to withdraw the comment that you made during 11 this newspaper – in this newspaper article. Do you wish to 12 do so? 13 MS SHABANGU: Well I'm unable to do that. 14 MR VAN AS: All right, well that's even 15 more unfortunate. And then finally I'd like to refer you 16 to page 27 of exhibit QQQQ1. I think that's item QQQQ1.10, 17 Mr Chairperson, the last page. This is an extract from 18 your address to parliament on the 21st of August 2012. I'd 19 like to refer you to the page on top of - the paragraph on 20 top of the page and these are your own words, Minister 21 Shabangu. "Finally I should like to make an appeal to this 22 house, not only to share in our nation's collective grief – 23 MS SHABANGU: Can you give a chance, you 24 said what page? 25 MR VAN AS: It's up on the screen, it's</p>
<p style="text-align: right;">Page 35757</p> <p>1 made during the strike of 9 to 16 August. 2 MS SHABANGU: Well, van As, I've never, 3 ever heard about an allegation which you're stating, I've 4 never said that, but it never referred to kill the NUM on 5 the 16th and I don't remember hearing that too. 6 CHAIRPERSON: I don't know if you heard 7 about it, but on the 15th the evidence was that when Mr 8 Sekwano went to address the strikers at the koppie there 9 was a chant or a song, kill NUM, kill Sekwano. And Mr 10 Sekwano tried to address the people, they didn't listen, so 11 he left and then Mr Mathunjwa came. He got a different 12 reception, but were you following the events, watching 13 television news bulletins? 14 MS SHABANGU: Well as you know, Mr Chair, 15 that some of us don't have sufficient time to sit next to 16 the television because sometimes we come back at night. 17 CHAIRPERSON: On this particular occasion 18 though, on the evening of the 15th of August did you watch 19 the TV news bulletin? I'm not sure they broadcast that, 20 but some of the events that happened on the 15th. 21 MS SHABANGU: Chair, on the 15th I was 22 preparing for my Woman's Day and I came back at home at 9 23 o'clock. 24 MR VAN AS: What I want to put to you, 25 with respect, Minister Shabangu is that it's unfortunate</p>	<p style="text-align: right;">Page 35759</p> <p>1 the last page, top paragraph. Are you with me now, 2 Minister Shabangu? 3 MS SHABANGU: Mm-mm. 4 MR VAN AS: "Finally I should like to 5 make an appeal to this house, not only to share in our 6 nation's collective grief, which all our members all 7 readily do, but to exercise restraint when it comes to 8 rushing to judgments pending the outcome of the inquiry." 9 And that's exactly what you did, Minister Shabangu. You 10 rushed to a judgment pending the outcome of this inquiry by 11 unfairly blaming my client. 12 MS SHABANGU: Well, Mr van As, in this 13 particular case we found people rushing ahead in terms of 14 the Commission and on the basis of that I was referring to 15 this particular Commission because there were people who 16 wanted to make particular statements in respect of the 17 Commission itself. 18 MR VAN AS: And you do not believe making 19 a statement that one of the parties to this Commission is 20 actually intent on crushing - one of the representative 21 trade unions is rushing to a conclusion that can have an 22 effect on the findings of the Commission. 23 MS SHABANGU: Well that statement in 24 South Africa – we have a history as I've indicated, Mr 25 Chair, of companies getting rid or destroying unions even</p>

1 in this democracy and we still that happening. So we are
 2 warning NUM to be careful instead of fighting amongst
 3 themselves they need to unite.
 4 MR VAN AS: Let me try once more. You do
 5 not believe you prejudged one of the very issues that this
 6 Commission is required to determine by making the public
 7 statement you made to NUM.
 8 MS SHABANGU: Well, Mr van As, unless you
 9 are not from South Africa there's a history in this country
 10 which continues, which has not completely been eradicated
 11 where undermining of unions still continues in this
 12 country.
 13 MR VAN AS: And is that not one of the
 14 issues that this Commission is supposed to have a look at
 15 whether Lonmin in fact treated its unions fairly?
 16 MS SHABANGU: Well it's your opinion that
 17 they treated their work fairly or –
 18 MR VAN AS: Please listen to my question,
 19 Minister Shabangu. Is that not one of the issues that this
 20 union is looking at, sorry I beg your pardon, this
 21 Commission is looking at? Lonmin's attitude and behaviour
 22 towards trade unions.
 23 MS SHABANGU: Well that's another aspect,
 24 but I was talking to NUM to make sure that they become
 25 strong and they don't fight amongst themselves, Mr Chair.

1 MR VAN AS: I have no further questions,
 2 thank you, Mr Chair.
 3 CHAIRPERSON: Thank you, Mr van As. Mr
 4 Badenhorst do you have re-examination of the witness?
 5 MR BADENHORST SC: I have no questions,
 6 Mr Chair.
 7 CHAIRPERSON: No questions. Yes well
 8 then that concludes the evidence for today. I take it Mr
 9 Nzuzi is not ready to continue with his evidence and he'll
 10 do it tomorrow morning.
 11 MR MPOFU: I think he was part of the
 12 walk out that just happened, Chairperson.
 13 CHAIRPERSON: Oh I see. All right well
 14 we'll adjourn then till 9 o'clock tomorrow morning.
 15 [COMMISSION ADJOURNED]
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<p>A</p> <p>abandon 35664:13,24 abide 35563:20 35755:15 ability 35653:7 35668:8 able 35543:16 35578:21 35661:11 35662:22 35671:11 35671:13 35720:18 35735:2 35741:7 aboard 35647:1 abreast 35565:20 absence 35651:9 35652:20 absolutely 35752:16 abuse 35709:12,14 35710:12 35715:19 35716:22 accept 35568:21 35570:23 35574:11 35596:1 35614:16 35624:18 35656:14 35678:15 35694:18 35695:19 35708:13 35708:20 35709:3 35710:22,25 35712:14 35716:9 35717:3 35723:25 35724:7 35725:2 35731:24 35739:7 35741:14 acceptable 35538:8 accepted 35725:4 35744:13 35746:3 accepts 35612:1 35710:1 35712:7 35715:19 35716:8 access 35554:3 35676:6 accommodate 35746:18 accompanied 35570:24 35572:13 35601:16 accord 35566:6 account 35583:8 35633:22 35745:25 35746:2 accurate 35564:23 35636:11 accurately 35638:15 accused 35715:2 accusing 35710:13 acknowledged 35680:18 acquired 35716:17 35735:24 act 35593:10 35594:7 35594:13 35595:20 35595:23 35596:8 35598:5 35636:7,10 35636:15,18,25 35676:2,4,14 35701:11 35702:12 35709:11,15 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