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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 42 1 FEBRUARY 2013 PAGES 4501 TO 4614

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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<p style="text-align: right;">Page 4501</p> <p>1 [PROCEEDINGS ON 1 FEBRUARY 2013] 2 [09:41] CHAIRPERSON: The Commission resumes. 3 Before I remind the witness he is under oath and cross- 4 examination continues, I just to say that in the future, in 5 relation to questions about the non-production of 6 statements and other information that is outstanding, I 7 would appreciate it if counsel who wishes to complain about 8 this would raise it with the counsel who is allegedly in 9 default. If they can't solve the problem among themselves, 10 I would suggest they go and consult the evidence leader and 11 if, after that – the head evidence leader – and if after 12 that the problem still persists, it can then be raised with 13 me in chambers. That way we don't spend time in the 14 Commission sitting itself, dealing with peripheral matters 15 that can be dealt with outside the formal sitting of the 16 Commission. You're still under oath, sir. 17 SENZENI ZOKWANA (CONTD): Yes. 18 CHAIRPERSON: You're still cross- 19 examining, I believe, Mr Semenya. 20 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD): 21 Mr Zokwana, to put context to our conversation, can I 22 invite you to look at exhibit XX2? 23 MR MAHLANGU: Which one is that? 24 CHAIRPERSON: It's a lengthy document, 25 where do you want him to look in XX2?</p>	<p style="text-align: right;">Page 4503</p> <p>1 MR SEMENYA SC: The very top entry 2 against 10H00. The entry continues, "Negotiations between 3 VP Mike da Costa and Thumelo Mkisi and two reps from the 4 RDOs. Demand rejected at EXCO level, threat strike 5 action." 6 MR ZOKWANA: I see that, yes. 7 MR SEMENYA SC: And if you go to the date 8 of 23, which is the one following – 9 MR ZOKWANA: Yes? 10 MR SEMENYA SC: EXCO approved an 11 allowance of R750 per month, R500 allowance for WPL and 12 EPL, R250 allowance for RDOs' assistants. Most 13 importantly, the next entry, "NUM, UASA, AMCU informed and 14 NUM not happy that they were not involved in the 15 negotiation." Do you see that? 16 MR ZOKWANA: I see that, yes. 17 MR SEMENYA SC: RDO meeting informed of 18 the allowance. The 1st of August 2012 – 19 MR ZOKWANA: Yes, I see that. 20 MR SEMENYA SC: One of the last entrances 21 there says, "VP Mike da Costa and his team instructed by 22 the EXCO not to entertain the demands anymore." Do you see 23 that? 24 MR ZOKWANA: I see that, yes. 25 MR SEMENYA SC: Against the reference of</p>
<p style="text-align: right;">Page 4502</p> <p>1 MR SEMENYA SC: In particular page 21. 2 MR MAHLANGU: Which statement would that 3 be, the witness wants to know? 4 CHAIRPERSON: Have you found it? Have 5 you not found it yet? 6 MR ZOKWANA: I don't have it. I don't 7 have it, we are still looking for it. 8 CHAIRPERSON: When you've found it will 9 you let me know? 10 MR MAHLANGU: We don't seem to have it 11 here. 12 MR ZOKWANA: Yes, I think we have it, 13 sir. 14 MR SEMENYA SC: Can I draw your attention 15 to the date of 21 July 2012, time 10 o'clock? That's the 16 first block there. 17 MR ZOKWANA: Yes, I can see that. 18 MR SEMENYA SC: You will see that by July 19 already, Lonmin is logging in that the RDOs' first illegal 20 march to the general office, Karee, further demands made 21 for an increase from R5 400 to R12 500, did you see that? 22 MR ZOKWANA: Yes. 23 MR SEMENYA SC: Page 21. 24 COMMISSIONER HEMRAJ: I'm sorry, which 25 entry, Mr Semenya?</p>	<p style="text-align: right;">Page 4504</p> <p>1 the 1st of August 2012, I think the time there is 16H43, are 2 you there? 3 MR ZOKWANA: Yes. 4 MR SEMENYA SC: The record says, "The 5 workers were not happy about the 750 offered by the 6 management but they accepted it. They will go to work as 7 normal. No distribution." And against 02.08.2012 7:30 we 8 find there recorded, "KPL accepted the allowance, top 5 9 wants to negotiate more," do you see that? 10 MR ZOKWANA: Yes. 11 MR SEMENYA SC: Two lines below, "EPL 12 E107-50 RDO wants confirmation that the allowance is fixed. 13 They want to negotiate a drilling bonus." 14 MR ZOKWANA: I see that, yes. 15 MR SEMENYA SC: Over the page at 22 16 against 10:08, 12:12, 12:20 – are you there? 17 MR ZOKWANA: 12:20. 12, yes. 18 MR SEMENYA SC: The record reads, "The 19 mass dispersed. Management will not entertain their 20 demands. Their view is to engage in work stoppage 21 effective immediately." Do you see that? 22 MR ZOKWANA: Hold on. Is that the second 23 page? 24 MR SEMENYA SC: Ja, page 22 against hour 25 .</p>

<p style="text-align: right;">Page 4505</p> <p>1 MR ZOKWANA: Yes?</p> <p>2 MR SEMENYA SC: "The mass dispersed.</p> <p>3 Management will not entertain their demands. Their view is</p> <p>4 to engage in work stoppage effective immediately." Do you</p> <p>5 see that?</p> <p>6 MR ZOKWANA: Yes, I see that.</p> <p>7 MR SEMENYA SC: Two lines at the bottom</p> <p>8 of that document you will see, "There was no good</p> <p>9 communication between management and workers. Management</p> <p>10 are not going to tolerate disruption, the workers must</p> <p>11 follow process." Do you see that?</p> <p>12 MR ZOKWANA: I see that, yes.</p> <p>13 MR SEMENYA SC: If you go to page 23 at</p> <p>14 the top of that document you will see it is written there,</p> <p>15 "No work no pay rule will apply. Those who do not report</p> <p>16 for duty will be dismissed. Workers participate in the</p> <p>17 illegal march, they will be dismissed."</p> <p>18 MR ZOKWANA: Yes, I see that.</p> <p>19 MR SEMENYA SC: If you run down that page</p> <p>20 against 11:08 20/12, against time 02:19 the record reads –</p> <p>21 are you there? It's at 02:19.</p> <p>22 MR ZOKWANA: Yes.</p> <p>23 MR SEMENYA SC: "R Beukes reported that</p> <p>24 NUM members informed him that they will go through the</p> <p>25 village and ask the workers to go to work and he, Beukes,</p>	<p style="text-align: right;">Page 4507</p> <p>1 only the RDOs that met with Mr Da Costa at Karee Mine, not</p> <p>2 with NUM.</p> <p>3 MR SEMENYA SC: No, I'm saying the record</p> <p>4 records in July, the objection NUM has is that it is not</p> <p>5 involved in these negotiations, it's aware of the demand.</p> <p>6 MR ZOKWANA: Yes, I agree with that and I</p> <p>7 want to put it that NUM objected to the fact that an</p> <p>8 agreement or an offer made by the company, without</p> <p>9 including it in those discussions.</p> <p>10 MR SEMENYA SC: So your objection is, why</p> <p>11 exclude it, why exclude us? It is not, now that we know</p> <p>12 the demand we want to negotiate with you, the employer,</p> <p>13 around this demand, am I right?</p> <p>14 MR ZOKWANA: You can only negotiate with</p> <p>15 the employer when a demand is put to you. In this case the</p> <p>16 employer gave workers what they believed to be an industry</p> <p>17 – they gave their workers what they think what the general</p> <p>18 industry bonus you could get, but there's nowhere it is</p> <p>19 said that there was a stage where the RDOs went to NUM to</p> <p>20 say, please go and negotiate on our behalf. And in the</p> <p>21 page you have referred me to, the objection of NUM is not</p> <p>22 to the offer to the machine drillers, it is the fact that</p> <p>23 it is not negotiated.</p> <p>24 MR SEMENYA SC: I'm saying this is the</p> <p>25 opportune moment for NUM to say, please let us negotiate</p>
<p style="text-align: right;">Page 4506</p> <p>1 must do the same thing inside the hostel."</p> <p>2 MR ZOKWANA: Yes.</p> <p>3 MR SEMENYA SC: At the bottom of the</p> <p>4 page, the recording but last will read, "Ludick" – do you</p> <p>5 see that?</p> <p>6 MR ZOKWANA: Yes, I see that.</p> <p>7 MR SEMENYA SC: "NUM requested</p> <p>8 intervention by security to loud hail around Wonderkop to</p> <p>9 urge people" –</p> <p>10 MR ZOKWANA: They could use a loudhailer</p> <p>11 around Wonderkop.</p> <p>12 MR SEMENYA SC: - "to loud hail around</p> <p>13 Wonderkop to urge people to go to work while they loud hail</p> <p>14 at Wonderkop village."</p> <p>15 MR ZOKWANA: I see that, yes.</p> <p>16 MR SEMENYA SC: So as early as July, NUM</p> <p>17 is aware that there is this demand by the RDOs, is that</p> <p>18 fair to say?</p> <p>19 MR ZOKWANA: NUM is not only – NUM is</p> <p>20 aware, as this shows, but it's also aware of the fact that</p> <p>21 the RDOs do not want to include NUM in their discussion</p> <p>22 with management.</p> <p>23 MR SEMENYA SC: In July already?</p> <p>24 MR ZOKWANA: At the meeting with Mr Da</p> <p>25 Costa you have referred to, it's clear that they say it was</p>	<p style="text-align: right;">Page 4508</p> <p>1 it. We are the majority union in this, at that place.</p> <p>2 MR ZOKWANA: If we can go to the – I</p> <p>3 think that, the fact that NUM could have done that or not</p> <p>4 is explained by the attitude of the employer. It is</p> <p>5 clearly explained in the interview with Mr Barnard at SAfm</p> <p>6 – [indistinct] I think is the interview – where he said the</p> <p>7 issuing of this bonus is a company's prerogative. You</p> <p>8 don't negotiate for it.</p> <p>9 MR SEMENYA SC: We're going to argue, Mr</p> <p>10 Zokwana, that this recording is consistent with the</p> <p>11 statements of NUM officials that the bonuses – I mean the</p> <p>12 increases for RDOs was not open to negotiation until the</p> <p>13 agreement ran its course.</p> <p>14 MR ZOKWANA: That, as it may, as it</p> <p>15 appears maybe in those statements – Mr Sinclair, in meeting</p> <p>16 with the RDOs, proposing that to them, they should leave</p> <p>17 this to a forum for negotiation, in which the union is</p> <p>18 present – which means that even the employer was wishing –</p> <p>19 was willing to engage on this, on this matter.</p> <p>20 MR SEMENYA SC: And in that mass meeting</p> <p>21 they don't tell the RDOs, your demand is legitimate, we</p> <p>22 will take it up with the employer. Am I right?</p> <p>23 [10:01] MR ZOKWANA: Maybe – the aim of that</p> <p>24 meeting, in my understanding, was revert back, what the</p> <p>25 employer has offered their employees.</p>

<p style="text-align: right;">Page 4509</p> <p>1 MR SEMENYA SC: But you don't use that 2 platform to say we recognise your demands are legitimate, 3 we, as your representative union, will engage the employer 4 on it. Am I right? 5 MR ZOKWANA: At this stage, as I 6 understand Chairperson, the debate was about NUM relating 7 to members what the offer was by the employer that was not 8 negotiated, but offered. 9 MR SEMENYA SC: You've said that already. 10 I'm asking you a different question. Am I right that you 11 don't use the mass meeting to announce to these RDOs that 12 because, as a union representative of your interests, we do 13 recognise this demand, we will negotiate it on your behalf 14 with the employer. It's not the approach. 15 MR ZOKWANA: The way the organisation 16 functions, Chairperson, is that members will put the demand 17 to the union and the union will take those to the employer. 18 At this stage the branch committee was giving the members a 19 feedback of what the employer has given. 20 MR SEMENYA SC: I take it you're refusing 21 to answer the question. I did not ask you, did I, what the 22 purpose for the mass meeting was. I'm asking you a 23 different question. If NUM held the view that the 24 agreement could still be open to negotiation, it would have 25 taken that opportunity, taken the demand of the employees,</p>	<p style="text-align: right;">Page 4511</p> <p>1 what the employer has offered workers. There was never a 2 stage where workers have said to NUM, can you please engage 3 the employer on this. 4 CHAIRPERSON: Mr Zokwana, I get the 5 impression that you and Mr Semenya are talking past each 6 other. The problem, as I see it and I want to put this to 7 you so you can help me – 8 MR ZOKWANA: Yes. 9 CHAIRPERSON: - to see if I've seen it 10 correctly. You've explained that if you at head office had 11 been asked to attend to the matter specifically, you might 12 well have been prepared to go and to get a mandate from the 13 workers and go to Lonmin and negotiate a variation. 14 MR ZOKWANA: That would have been done. 15 CHAIRPERSON: The problem appears to be 16 that that was not the way the matter was dealt with at 17 branch level because we know from Mr Setelele's evidence 18 that he, at the various meetings that were held of the NUM 19 branches at Lonmin, that it was consistently put that the 20 two year agreement stood for the whole two year period and 21 it would be a breach of the agreement for fresh wage 22 demands to be raised. Now we know that part wasn't right. 23 Fresh wage demands could be raised by way of attempted, an 24 attempt to reopen negotiations with a view to a variation. 25 And Mr Tip, very fairly when Mr Setelele was giving</p>
<p style="text-align: right;">Page 4510</p> <p>1 engaged the employer with it and said, there are now 2 sufficient circumstances to justify a variation of the 3 agreement we concluded. We now know what happened in 4 Impala, we see these demands, we are au fait with the 5 burden of the RDOs. 6 MR ZOKWANA: In the meeting that is 7 related here, sir, of the unions, NUM raises that, its 8 discomfort, on that the company has made it clear that this 9 bonus was not for negotiation, it was what they decided 10 upon. I'm not understanding then on what basis would NUM 11 then say let's open negotiations, when the employer is 12 saying this is what I'm giving my employees. 13 MR SEMENYA SC: Okay, finally on that, 14 you could have said to the employer, we're not talking 15 bonuses now, we're not talking discretionary allowances 16 now, we're talking the increase of the salaries of RDOs 17 which is a matter falling within the mandate, which is a 18 matter falling within the agreement and now that we know 19 there are new circumstances, we think it is justified to 20 change that agreement to reflect the proper remuneration 21 levels of the RDOs. 22 MR ZOKWANA: But at this stage what I've 23 seen is where the employer gives numbers, whether that 24 could have been possible I'm not sure because in this 25 stage, as the minutes you have shown me, were dealing with</p>	<p style="text-align: right;">Page 4512</p> <p>1 evidence, described that as a shortcoming in what he'd said 2 to the members. But we have the situation that at branch 3 level there was a shortcoming – what amounts, really, to 4 wrong information was given to the workers. If you had 5 been involved at head office, that wouldn't have happened. 6 My impression is that Mr Semenya is concentrating on what 7 happened at the branch level. You're looking at it from a 8 different level but perhaps in light of that, Mr Semenya 9 could proceed with his questioning - 10 MR SEMENYA SC: So from that exchange, Mr 11 Zokwana, you do appreciate that the local branch level 12 misunderstood its powers. 13 MR ZOKWANA: I think I will be allowed to 14 explain before I come to that answer. Yesterday I made an 15 example, Chairperson, that in 2005 negotiations the local 16 people who were negotiating with Lonmin came to an 17 agreement that was giving Lonmin a five year agreement at a 18 lower premium. When the same matter was brought to head 19 office by our members in Lonmin, we were able to approach 20 the employer, reopen the negotiations, change the five year 21 to two years and change the terms of the agreement. It is 22 doable. If the attitude of the RDOs was amenable to us 23 when we came to them to address them, or could they have 24 made – because our members have got the ability to contact 25 head office, they can do that through the region, they can</p>

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1 do that through a delegation. We have had that before,
2 hence in 2005 we did it. It is doable, sir. Therefore, in
3 answer to your question, yes, I understand the point of
4 putting that maybe our local branch committee could have
5 put a view, that is all what I'm saying.

6 MR SEMENYA SC: And this misunderstanding
7 they held, they communicated it to the RDOs. Do you accept
8 that?

9 MR ZOKWANA: It could have been the same
10 as they did in '05 and yet in '05 they came to head office.

11 MR SEMENYA SC: I think you are being
12 deliberate.

13 MR ZOKWANA: I'm saying it could have
14 happened that way, but I'm saying in the same vein it
15 didn't stop our members who may have been - with that
16 answer, to approach other offices of the union structures.

17 CHAIRPERSON: You see I think you may be
18 putting too heavy a burden on the RDOs for that answer
19 because if I was an ordinary RDO and I went to a meeting
20 and the chairman of the local branch told me that NUM's
21 attitude is, position is that you can't do anything, you've
22 got to wait two years, I don't know that I would've
23 realised, as an ordinary rock drill operator, that that's
24 actually wrong, that if we go to head office the president
25 may see it differently and perhaps come to our aid. So I

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1 in the past, it would have been that whenever they
2 [indistinct] level they will call the head office and our
3 coming in has changed. With the Chamber, the same thing
4 position happened, Chairperson. When head office came, we
5 were able to make changes in the RDOs' conditions of pay.

6 CHAIRPERSON: I understand what you say
7 but you're really crediting the RDOs with more knowledge of
8 NUM's real position than was held by the chairman of the
9 branch. That may – that's a matter, presumably, we'll have
10 to consider more fully later.

11 MR SEMENYA SC: So when these –

12 COMMISSIONER HEMRAJ: Thank you, Mr
13 Semenya, I'm sorry. In paragraph 5 of Mr Setelele's
14 statement he says that the NUM regional office was not
15 involved in these discussions, there was no official
16 communication to the branch –

17 CHAIRPERSON: From the branch.

18 COMMISSIONER HEMRAJ: From the branch to
19 the regional office. So the higher structures of NUM did
20 not come to the assistance of the mineworkers and the
21 question must be why was this not communicated when it was
22 a matter of such import?

23 MR ZOKWANA: I know that and I understand
24 that had that thing been done, maybe that held view by the
25 local leadership could have been clarified – because I'm

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1 think one must accept that the RDOs reasonably assumed that
2 what Mr Setelele was telling them, was indeed correct and
3 was the position of NUM and I think one has to approach the
4 matter on that basis. And Commissioner Hemraj points out
5 to me that in paragraph 4 of Mr Setelele's statement the
6 point is made that this was discussed at various meetings
7 by the NUM branches in Lonmin and NUM's position, as Mr
8 Setelele mistakenly understood it, was consistently put
9 forward at these meetings. So that's another factor one
10 has to bear in mind.

11 MR ZOKWANA: I take that, Chairperson,
12 and I agree that it was another branch – I want to put the
13 point that some of the RDOs have been with NUM for many
14 years, they participate in the NUM activities, they were
15 one of the people who were just comfortable about
16 [indistinct] was changing their – their conditions of work.
17 And Chairperson, they highly benefited in the change
18 thereof in 2005 and, Chairperson, the practice of
19 mineworkers is that whenever they may be angry with the
20 local leadership in some instances, but when the region or
21 head office arrive they get, they're happy because they
22 know that a national view will be given. I'm raising this
23 because, Chairperson, no amount of – I mean this may have
24 had the intention that, the aim is that NUM is saying
25 they'll help you but I'm saying, Chairperson, in future -

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1 saying that it doesn't matter if an agreement has been
2 reached. If conditions arise that demand that it be
3 revisited, as we did with the mining houses and gold, this
4 could have been done.

5 MR SEMENYA SC: So in July when there was
6 a threat of a strike, you're saying national was not
7 informed?

8 MR ZOKWANA: Can you please make me
9 understand in what sense would that be?

10 MR SEMENYA SC: In July the RDOs are
11 threatening to strike. They're saying we are going,
12 there's going to be a work stoppage. Are you saying
13 national was not informed of such a development?

14 MR ZOKWANA: I think, sir, the paragraph
15 that's read by the Commissioner clearly defines that.

16 MR SEMENYA SC: I'm going to ask you
17 again. In July when these RDOs threatened a strike, is it
18 your evidence that national was not informed of that
19 development?

20 MR ZOKWANA: The strike that you refer to
21 of the RDOs in July may have been dealt with by other
22 structures but as NUM at head office we were never involved
23 into because some of these issues are managed at mine
24 level, as the case shows here.

25 MR SEMENYA SC: I'll ask it for the last

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1 time. My question is very pointed. Are you saying head
 2 office was not informed of the potential strike that was
 3 threatened?
 4 [10:21] MR ZOKWANA: I get you now, saying it was
 5 informed. It may have been informed, yes, but not – I mean
 6 I can't say that it was informed.
 7 MR SEMENYA SC: And with the information
 8 and its attitude that the agreement could be altered, we
 9 would have expected national to intervene and alter the
 10 agreement, am I right?
 11 MR ZOKWANA: You can always, Mr Semenya,
 12 be able to – counsel – interact with such instances, when
 13 the people on whose behalf you're negotiate request you. I
 14 think I repeat this to say this, that the attitude of the
 15 RDOs in Lonmin was always believing that they can do it on
 16 their own, terms on their own.
 17 MR SEMENYA SC: Was national told that
 18 local branch viewed a threat of a strike to be unprotected
 19 and its view was that the workers must go to work, was
 20 national told about that?
 21 CHAIRPERSON: I think you should make it
 22 clear at what time, about what time you –
 23 MR SEMENYA SC: In July and before the
 24 big march of 8th of August.
 25 MR ZOKWANA: Thank you, Mr Semenya.

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1 NUM's position is always at all times against illegal
 2 strikes. Whenever members engage on such, our call always
 3 is to persuade them to stop such actions, rather get other
 4 avenues. So the branch didn't need to inform us of the
 5 strike being illegal, for we know our position as a union.
 6 MR SEMENYA SC: Was national informed –
 7 MR ZOKWANA: That the strike was illegal?
 8 MR SEMENYA SC: No.
 9 MR ZOKWANA: Oh, sorry.
 10 MR SEMENYA SC: Was NUM informed,
 11 national that is, that the regional, the local – the local
 12 NUM leadership held the view that any work stoppage would
 13 be illegal, instead the employees must be urged to go to
 14 work instead?
 15 MR ZOKWANA: I will repeat again, sir.
 16 I'm trying my best, senior counsel, to say that it is the
 17 NUM policy, you don't have to be told about it, that an
 18 illegal strike that occurs, it is the duty of the local
 19 leadership of NUM to persuade members and show them the
 20 danger of embarking in such an action. I even said that in
 21 my own statement because we have seen the consequences
 22 thereof.
 23 CHAIRPERSON: Mr Zokwana, I think you
 24 made that clear but there's a further aspect to the point
 25 which I think Mr Semenya is trying to make too. I'd like

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1 to put it to you, just so we get clarity. You've made it
 2 clear that the attitude of NUM, very sensibly, is NUM is
 3 against unprotected strike because it puts a weapon in the
 4 hands of the employer, which can have very serious,
 5 catastrophic consequences for the workers. They can be
 6 dismissed, it's a legal dismissal and then the employer can
 7 then re-engage certain of the people on different terms and
 8 so on. And that's a very dangerous weapon, if I may use a
 9 metaphorical expression, to put in the hands of the mp.
 10 That's NUM's attitude, right? Am I understanding you
 11 correctly?
 12 MR ZOKWANA: That's correct.
 13 CHAIRPERSON: Now – so the branch people
 14 didn't have to go to head office to say, what's NUM's
 15 policy on that, because you would have just said to them,
 16 what are you wasting my time for - you know, we all know
 17 that NUM doesn't support unprotected strike for the reason
 18 I've mentioned.
 19 MR ZOKWANA: They didn't have to do that,
 20 sir.
 21 CHAIRPERSON: That's what you say, right.
 22 I understand that, but Mr Semenya has actually got another
 23 aspect that he's dealing with, as I understand him. If the
 24 local branch said to the workers, two things - one,
 25 unprotected strikes are out, we don't support them, there

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1 will be no problem with that. But they went further and
 2 they said there's nothing you can do except go back to
 3 work, you've got to wait until the two year agreement is up
 4 before you can do anything. So he says that, which is what
 5 they did say, that was wrong. It's not what you would've
 6 said if you'd been there, is that right? It's that second
 7 part of this matter that Mr Semenya is busy with.
 8 MR SEMENYA SC: Yes.
 9 CHAIRPERSON: Is that correct, Mr
 10 Semenya?
 11 MR SEMENYA SC: That's correct, Chair.
 12 CHAIRPERSON: Perhaps you could take the
 13 point further in light of the distinction which the witness
 14 accepts, as I understand him.
 15 MR SEMENYA SC: Do you agree that if it,
 16 head office was informed, you would have known that no, but
 17 this is about a legitimate demand, this is about a matter
 18 we can re-negotiate and we can re-negotiate it within the
 19 time frame of that agreement as well, am I right?
 20 MR ZOKWANA: I have said, sir - I've
 21 said, senior counsel, that NUM doesn't agree with the view
 22 that if an agreement is signed it cannot be reopened and
 23 should we have known or the RDOs could have made a point
 24 that, not being happy with what they were told by the branch
 25 committee, as you put it to me, NUM could have intervened

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1 as we have done anywhere else and we have done in the same
2 mine before, to make sure that that is rectified.

3 MR SEMENYA SC: So finally, the only
4 reason why NUM head office did not see it fit to re-
5 negotiate the RDOs' salaries was because it was unaware of
6 the demand?

7 MR ZOKWANA: Up to now, what you have
8 read and referred me, sir, with due respect, has been the
9 aspect of an offer by the employer that was done with RDOs
10 [indistinct] to that alone. I don't understand this issue
11 of NUM being engaged in negotiations.

12 CHAIRPERSON: Mr Semenya, can I – sorry,
13 Mr Semenya and Mr Zokwana, I think you're both talking past
14 each other again. There's really two issues here. We've
15 got to be alive to the fact that there are two issues. The
16 one point is, as I understand Mr Zokwana's evidence, NUM
17 never negotiates without a mandate.

18 MR ZOKWANA: Yes.

19 CHAIRPERSON: So to suggest that because
20 they knew of the demand, because NUM knew of the demand by
21 the RDOs for more money, NUM should then have said it's a
22 justifiable demand, we will go immediately and negotiate.
23 That's not the way NUM works, is that correct?

24 MR ZOKWANA: It's so.

25 CHAIRPERSON: Okay. Now what NUM could

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1 have done, of course, is if NUM knew of the demand and knew
2 it was a justified demand in the circumstances, NUM could
3 have taken the initiative in calling a meeting of the
4 workers to say, look here, you've got this demand, we think
5 it's a justified demand because of the change in
6 circumstances, we would like you to give us a mandate to go
7 to Lonmin and re-negotiate. NUM could have done that.

8 MR ZOKWANA: Under normal situations,
9 Chairperson, the situation is that members who would have a
10 demand will approach their local office and put the demand
11 and explain what the demand is. In this case, as I have
12 been shown, led by the senior counsel, it is where RDOs
13 have gone to the employer, not to the branch and when they
14 met with Mr Da Costa they made it clear that we don't want
15 a union, we'll do it on our own. Chairperson, I want to
16 say this, that had this process been approached properly
17 and the demand had been put forward, it would have been
18 proper for NUM to meet with the employer and deal with it.

19 CHAIRPERSON: Yes. The problem we have
20 is this whole approach by the RDOs directly to the employer
21 and the employer's negotiation with them, it was very
22 dangerous because it upset the whole structure of
23 industrial relations and collective bargaining that was
24 operating at the time, isn't that correct?

25 MR ZOKWANA: It caused a disjuncture

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1 because the unions are not part of the negotiations, but
2 the people who were having grievances chose to approach the
3 employer and when they were advised by Mr Sinclair, one of
4 the managers they went to, that I would like to talk around
5 this issue with your union, they said no, we don't want the
6 union.

7 CHAIRPERSON: I think Mr Semenya's point
8 – if I'm wrong he will correct me, but I think Mr Semenya's
9 point is that in a dangerous situation like that, it would
10 be appropriate perhaps for the union to take the
11 initiative, in the way I've suggested, to call a meeting of
12 the workers and say look here, we would like to negotiate
13 directly with Lonmin, we would like to do it within the
14 structures, we would like you to give us a mandate. So
15 normally obviously NUM waits for the workers to come to it,
16 but there are potentially dangerous situations where the
17 union has got to be proactive perhaps, in order to prevent
18 the kind of trouble that in fact happened here. Am I
19 interpreting your point correctly?

20 MR SEMENYA SC: Indeed, Chair.

21 CHAIRPERSON: Now that I've interpreted
22 it, would you like to proceed to put it to the witness
23 further? And let's – so I think to be fair to him, I'm not
24 sure that he understood it fully until now but perhaps in
25 the light of our discussion you can take it fruitfully

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1 further with him.

2 MR SEMENYA SC: Mr Zokwana, we accept
3 that the RDOs' direct approach was undesirable. I'm
4 putting it to you that both national and the local
5 structure had it open to them to take the initiative,
6 obtain the mandate and negotiate. Correct?

7 MR ZOKWANA: Under normal circumstances,
8 yes, it is correct. I want to put it that the situation in
9 Lonmin was not like any other branch where you would deal
10 with your members who may be angry with you. There was an
11 attitude towards NUM by that moment already.

12 MR SEMENYA SC: And I want to suggest to
13 you that part of the discontent by your own members was
14 your failure as a union to take up the cudgels for them
15 which you considered legitimate.

16 MR ZOKWANA: My view is this, that that
17 judgment could have been arrived at had they allowed the
18 union, presenting to it a demand to say, you go to the
19 employer and put this demand – and that judgment would be
20 right to say, NUM, after being approached by its own
21 members to go and negotiate, they did not do. I would take
22 that, but at this point the RDOs, some of them our members,
23 chose to go their own route and disregard their own union.

24 COMMISSIONER HEMRAJ: Mr Zokwana, when it
25 became known to the executive at head office that the

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1 mineworkers were going directly to the employer, they
2 didn't want the union, it must have been apparent that
3 there was some misunderstanding, some dissatisfaction.
4 What I'd like to know is did anyone take the initiative to
5 enquire from the branch why that had come about? Why was
6 there the dissatisfaction, had they been incorrectly
7 advised?

8 MR ZOKWANA: And I'm sure the Commission,
9 therefore, will appreciate the fact that what I was putting
10 forward will be my views that I might not be able to
11 substantiate or support but I'm going to respond to the
12 question you asked. This incident happens on the footsteps
13 of what happened in Impala. The same question of the RDOs
14 deciding to go their way, disregarding the union and chose
15 to negotiate. They formed a committee of five or six here
16 and after, from that committee they began to embark on
17 illegal strike the same way, being very violent towards the
18 union and its own leadership. Therefore, it was not a new
19 thing happening in terms of only happening in Impala, it
20 was a trend that set in and we began to find that at the
21 end of those five madoda, or six or seven, a new formation
22 will be born, because – sorry.

23 COMMISSIONER HEMRAJ: Sorry?

24 MR ZOKWANA: Because the ability to
25 interact with members is when they accept a leader from the

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1 upper structure to intervene and deal with them, but when
2 members pronounce that they don't want the union to be
3 their agent, it becomes difficult to interact with them and
4 to persuade them because in most instances it is not a
5 stage where they would listen to you when you go.

6 COMMISSIONER HEMRAJ: Did anyone, sir,
7 from the executive of the head office enquire from, at
8 branch level, what had gone wrong and why it was – can I
9 just finish that – and why it was that the mineworkers were
10 approaching the employer directly instead of going through
11 the structures?

12 MR ZOKWANA: Yes, I will not be able to
13 pin but I know very well that our national secretary, who
14 is the Lonmin negotiator, is as well an employee of Lonmin.
15 He interacts with them on issues of negotiations.

16 [10:41] COMMISSIONER HEMRAJ: And he would've
17 been able then to correct this misconception that was
18 possibly created by the branch office with the workers?

19 MR ZOKWANA: I'm not sure but what I
20 would want to point out is that there are two things that
21 happened at the same time. The branch may have said to
22 people, look, the issue you are raising cannot be
23 entertained. At the same time the people who were grieving
24 were saying, we don't want you. And I think this, that you
25 – I mean you are finding a situation where NUM is expected

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1 to have been able to take the horse to the river, when the
2 horse cannot drink the water you say force it to drink
3 because these machine drillers for years have been members
4 of NUM, have been negotiated by the NUM. When they chose
5 not to negotiate, I think in the minds of many they could
6 have said, we have now a situation of Impala repeating
7 itself. The same actions as Impala [indistinct], it ended
8 where it ended. Anybody would have said these guys know
9 that they can achieve what they could achieve, because they
10 were clearly saying, we don't any union to be our rep.

11 CHAIRPERSON: Mr Zokwana, I'd like to ask
12 you a question about that. You talk – I hope Mr Semenya
13 will forgive me for interrupting his cross-examination –
14 you're talking about the attitude of the RDOs wanting to go
15 it alone, not go through the union structures and, you
16 know, the question is why did they do that. Now, we
17 haven't yet heard the evidence yet of Mr Da Costa, the vice
18 president of Lonmin's Karee mining operation. We have his
19 statement and he talks about discussions he had early in
20 July, I think it was, with – no, it was in, in fact it was
21 still in June, about a march on his office and thereafter
22 he had a discussion with two people from the Karee, two
23 RDOs from the Karee operation. And this is – I'm not
24 pronouncing it correctly but its Magqabane and Mofokeng.

25 MR ZOKWANA: Yes.

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1 CHAIRPERSON: M-A-G-Q-A-B-I-N-E and
2 Mofokeng. They were RDOs at Karee Mine and it looks from
3 his statement as if this demand for 12 500 emanated at
4 Karee and these two gentlemen were involved in it. And Mr
5 Da Costa says he had a meeting with them on the 21st of
6 June, as I read it, and he raised with them the question of
7 procedure for negotiating salaries and he said, this is
8 paragraph 3.18 of his statement, that he told these two
9 gentlemen there was a procedure for negotiating salaries
10 and that the issue they were raising should be dealt with
11 through the established central bargaining structures.
12 They objected to dealing with the matter in this way
13 because, so they told me – he says – they didn't want any
14 union involvement in the matter. He then says this, "I was
15 slightly taken aback by their response. They went on to
16 express the view that trade" – and I'm quoting now – "trade
17 union involvement would only be appropriate if the issue
18 raised was one which affected the entire workforce. They
19 stated that the issue they came to see me about affected
20 only RDOs at Karee and for that reason the union should not
21 be involved," and then he goes on. Now that appears to be
22 the reason they put forward at the time for not wanting to
23 involve the union.

24 And there's another aspect, however, and in order
25 to make it unnecessary for you to come back when other

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1 evidence is given on this point, perhaps I can put it to
 2 you now at the same time. According to the article which
 3 was referred to yesterday, which you had a copy of with
 4 you, written by Carol Paton, which is exhibit XX8 she talks
 5 about, firstly, what happened at Impala and then she goes
 6 on to deal with Marikana. But what she says about, firstly
 7 about Impala, is very interesting and it may have a bearing
 8 on why these two gentlemen took the attitude that they
 9 didn't want to involve the union. She says, she quotes Mr
 10 Paul Dunn, who was an executive director at Impala – this
 11 is in relation to the rock drill operator issue at Impala –
 12 she quotes Paul Dunn who said that, "Impala management had
 13 suggested to NUM that rock drill operators, which was the
 14 hardest job of all underground machine operators, be given
 15 a differential increase but the union had refused." And
 16 then he says that there were subsequent problems. This is
 17 the second page, by the way, of that article, the first
 18 column. But they went the way they did which, of course,
 19 as we know had certain other consequences down the line.
 20 And then in the middle column on that same page she says
 21 something about what she was told by Mr Baleni, Mr Frans
 22 Baleni, NUM general secretary, and I put this to one of the
 23 earlier NUM witnesses and he agreed that this was indeed
 24 correct, but maybe you have a different take on it. What
 25 he says is this, they're talking about the vulnerability of

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1 NUM in this platinum belt and he says this, "One reason for
 2 the vulnerability, says NUM general secretary Frans Baleni,
 3 is" – now this is the, these are the very, the important
 4 words – "NUM's negotiating strategy has been to raise the
 5 wages of lowest paid workers at the expense of
 6 differentiation between skills categories." And then she
 7 goes on to deal with that further.
 8 Now it may be, and I'm putting this out as a
 9 possibility and I'd like to put it to you at this stage, so
 10 if it's not correct we can put it to bed immediately – it
 11 may be that the attitude of the RDOs was that they'd heard
 12 that NUM hadn't been supportive of the rock drill operators
 13 at Impala being given a differential increase and they'd
 14 heard that NUM's policy was – negotiating strategy, to use
 15 the words of the article – had been to raise the wages of
 16 lowest paid workers at the expense of differentiation
 17 between skill categories. They were effectively asking for
 18 a differentiation between skill categories. They
 19 understood, or they may well have understood that that
 20 wasn't NUM's negotiating strategy, NUM had been opposed to
 21 that at Impala, therefore they had to go on their own.
 22 Now, I concede it's speculation but speculation based upon
 23 material which we have before us and in order to save you
 24 having to come back later if that point emerges more
 25 clearly, perhaps I can put it to you now. You understand

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1 the point I'm putting to you? Is there any substance in
 2 that approach to the matter or is that a misunderstanding?
 3 MR ZOKWANA: Thanks, Chairperson, and I
 4 will maybe try to deal with this issue of the article that
 5 you have referred to and I am aware that the issue has been
 6 raised before with some of the NUM earlier - some.
 7 Yesterday I tried to show that the witness is not in what
 8 NUM is doing in terms of differentiation, in terms of
 9 categories recognising jobs as to what a job entails. It
 10 is the Paterson grading that the industry has applied.
 11 That grading system recognises authority involved with the
 12 job. We have shown yesterday our frustration in trying to
 13 make sure that companies look at another grading and we
 14 even sent one of our personnel to go to study a different
 15 grading in Canada in 1998. A number of task teams have
 16 been formed in different mining houses, GoldFields,
 17 AngloGold Ashanti, in dealing with the same issue,
 18 specifically dealing with the machine drillers. In 2003 -
 19 that debate took place in 2005, the grading for machine
 20 drillers specifically was changed from group 4 to group 5
 21 in the Chamber of Mines because the benefit there is that
 22 you have got one forum in which all companies are present,
 23 as opposed to the platinum industry.
 24 This term, harmonisation of work, NUM prefers to
 25 say – because we have seen that if you are going to upgrade

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1 operators and you leave winch drivers, they will say you
 2 may drill the hole, blast, but who cleans it without me?
 3 That we said let's be scientific, such that when you say to
 4 machine drillers you will be on group 8, we were able to
 5 give reasons why it is group 8, because that work has been
 6 done and we have changed the system. We have been involved
 7 in that. For that reason, in 2010 NUM head office, led by
 8 Frans Baleni, met with the leaders of the Chamber of Mines
 9 and agreed that in the [inaudible] of 2011 the issue of
 10 rock drillers will be taken up as an issue, more than what
 11 was agreed upon. And in 2012 the drillers got R500 more
 12 than what was given, that was 10% for everybody. Therefore
 13 it is wrong to put a view that says NUM would not have
 14 agreed to have a different for machine drillers. We have
 15 done that in the Chamber and companies are crying now
 16 because they are caught up into this problem, including
 17 Impala. Why is it that today they are [indistinct] when
 18 they could not do anything about their own workers in
 19 Impala? So everybody is trying now to appear as an asset,
 20 but we are dealing with an industry that refused to see it
 21 for many years.
 22 Maybe, Chairperson, allow me to deal with the
 23 question you raised, earlier question, on the issue whether
 24 the machine drillers may have known of the view that NUM
 25 could not negotiate a differentiated – that is not true,

<p style="text-align: right;">Page 4533</p> <p>1 Chairperson.</p> <p>2 CHAIRPERSON: Before you carry on, we</p> <p>3 have heard that these rock drillers tend to, are able to</p> <p>4 communicate with each other so that the rock driller in</p> <p>5 Lonmin will be able, or may well be able, to find out from</p> <p>6 his friends or his brother or whatever working for Impala</p> <p>7 or Amplats, what's going on in those mines. So each one</p> <p>8 isn't in an island on his own. Now, I'm going to give you</p> <p>9 a change to give the answer you wanted to in a moment but</p> <p>10 what we are told in this article – and it may not be</p> <p>11 correct – what we are told in this article is that Mr Paul</p> <p>12 Dunn, the executive director of Impala said that Impala</p> <p>13 management had wanted to give the rock drill operators a</p> <p>14 differential increase but the union refused. And you'll</p> <p>15 see the picture on that page of Mr Dunn and the wording</p> <p>16 underneath it is, "NUM had refused to negotiate higher pay</p> <p>17 for rock drillers." That's next to the name Paul Dunn. If</p> <p>18 that's true then there is a strong possibility, to put it</p> <p>19 gently, that Lonmin rock drill operators would have heard</p> <p>20 from their friends and relations at Impala that that had</p> <p>21 been NUM's attitude. So the first question we've got to</p> <p>22 ask ourselves at this point – well, I have to ask you at</p> <p>23 this point – is, is it true that NUM refused to negotiate</p> <p>24 for a differential increase for rock drill operators at</p> <p>25 Impala because they were against this whole principle of</p>	<p style="text-align: right;">Page 4535</p> <p>1 answer, to the points that I put to him –</p> <p>2 MR SEMENYA SC: Yes.</p> <p>3 CHAIRPERSON: - because they were, seemed</p> <p>4 to me to be relevant to the points you were busy with, but</p> <p>5 I thought if we put them in a different perspective, we</p> <p>6 might move forward quicker. Mr Zokwana?</p> <p>7 MR ZOKWANA: Thanks Chairperson, for the</p> <p>8 break also. Chairperson, I think the issue deals with the</p> <p>9 statement you have referred to and the implication if this</p> <p>10 is true, it could have had in influencing machine drillers</p> <p>11 of Lonmin to take a decision not to negotiate with trade</p> <p>12 unions. Chairperson, I have had an interaction in relation</p> <p>13 to this issue, with the senior negotiator in the company in</p> <p>14 question and other people who are participating and my</p> <p>15 report is that no such an offer was made and NUM rejected</p> <p>16 it. What NUM demanded was that the company needs to look</p> <p>17 at what it termed harmonisation of work and pay, the reason</p> <p>18 being that there has been a [indistinct] Chair, the company</p> <p>19 will maybe pay winch operators more than other operators</p> <p>20 and that has, now and again, you end up with people</p> <p>21 demanding more. So up to now, there has been no proof that</p> <p>22 this assertion by Paul Dunn that they did, because I think</p> <p>23 that negotiations is a thoroughly engaged process.</p> <p>24 Whenever - so the point I am putting is that when the</p> <p>25 company put an offer like that, it could have been reduced</p>
<p style="text-align: right;">Page 4534</p> <p>1 differential increases? That's the first point we've got</p> <p>2 to grasp and thereafter the general policy as explained by</p> <p>3 Mr Baleni, allegedly explained by Mr Baleni in the middle</p> <p>4 column on this page. I know it's a big – they're two</p> <p>5 topics that you've got to deal with, they're probably quite</p> <p>6 big topics. I see it's two minutes to 11. Would you like</p> <p>7 to have a cup of tea first, gather your forces and give us</p> <p>8 a comprehensive exposition on these two points, which seem</p> <p>9 to be quite important, when we're taking the tea</p> <p>10 adjournment?</p> <p>11 MR ZOKWANA: I have thought about these</p> <p>12 issues, Chairperson, because they've been raised - but I</p> <p>13 would agree with you that we take tea – if the offer still</p> <p>14 stands – but not that I cannot answer now, I'm ready.</p> <p>15 MR SEMENYA SC: I'm sorry, Mr Semenya,</p> <p>16 I've taken over your cross-examination but I'm trying to</p> <p>17 get to the – I'm not suggesting you weren't, but I'm trying</p> <p>18 to get to the nub of the matter as it concerns me. It is</p> <p>19 relevant to the point that you – but I take it you're not</p> <p>20 unduly - right, we'll take the tea adjournment.</p> <p>21 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>22 [11:18] CHAIRPERSON: Mr Zokwana, you are still</p> <p>23 under oath. Mr Semenya, before you continue with your</p> <p>24 cross-examination, we must give Mr Zokwana a chance to</p> <p>25 answer and I think it may appropriately be quite a long</p>	<p style="text-align: right;">Page 4536</p> <p>1 in writing, so that NUM should go and look at it and be</p> <p>2 able to respond likewise accordingly. Such an attitude by</p> <p>3 our negotiators in Impala would not have been in accordance</p> <p>4 with our national view, as I've displayed, what we have</p> <p>5 done with within the other mining operations especially in</p> <p>6 the gold and coal. So my statement is that there is no</p> <p>7 truth in this. I hope that Paul Dunn will be able, one</p> <p>8 time or another, to put forward the clearer view as to this</p> <p>9 but let me come to what I would term – the fact that this</p> <p>10 demand emanated from a branch in which NUM –</p> <p>11 CHAIRPERSON: Before you move on – before</p> <p>12 you move on to that, the other point, general point, before</p> <p>13 you get onto the detail, the other point is what's said</p> <p>14 about what Mr Baleni said, that NUM's negotiating strategy</p> <p>15 has been to raise the wages of the lowest paid workers at</p> <p>16 the expense of differentiation between skill categories.</p> <p>17 Is that correct?</p> <p>18 MR ZOKWANA: Let me agree with the</p> <p>19 statement but explain its meaning. NUM adopted a strategy</p> <p>20 of dealing with the wage gap, and you will find that then,</p> <p>21 Chairperson, there were about nine categories for black</p> <p>22 mineworkers and our campaign has been to campaign for</p> <p>23 rolling up the lower categories, so that you can increase</p> <p>24 their earnings, by cutting the lower categories out. And</p> <p>25 we find that in this instance, this statement by Frans</p>

<p style="text-align: right;">Page 4537</p> <p>1 would not have affected the machine, because the machine 2 operators – the RDOs, the language used here, is that we've 3 seen the lower earning categories. In every statement we 4 have been shown here you will find that NUM will say 10% 5 from group 4 to group 7, 8, and group 6 or – and then from 6 that group upwards, you will get a lower, but the reason 7 was that we are trying to close the wage gap in between the 8 lower and the higher earners. So this statement would not 9 have an impact in NUM refusing to accept an offer that 10 would have taken into account the fact that RDOs – but what 11 NUM wanted was the scientific approach in dealing with 12 grading, so we – we don't upgrade the category of loco 13 drivers and tomorrow you end up with other operators like 14 loaders who will say - as loader driver, say that we are 15 doing a better job. Rather go and do a grading system that 16 takes into account what is work and pay in terms all the 17 aspects of a job. In closing, Chairperson, this evidence – 18 at NUM we are saying -</p> <p>19 CHAIRPERSON: I interrupted you. You 20 were going to talk about the local branch and that aspect 21 of the matter, but I interrupted you and said before you 22 get to that point, deal please with what Mr Baleni said.</p> <p>23 MR ZOKWANA: Yes.</p> <p>24 CHAIRPERSON: Have you now finished 25 dealing with that? Now you can deal with the further</p>	<p style="text-align: right;">Page 4539</p> <p>1 Chairperson, my own life was threatened. Had I taken – go 2 out of that people, I wonder if I will be here giving 3 evidence.</p> <p>4 MR SEMENYA SC: Thank you, Chair. We now 5 have established that NUM does negotiate midstream an 6 agreement, a wage agreement. It does do that, correct?</p> <p>7 MR ZOKWANA: I can agree with you, where 8 conditions permit.</p> <p>9 MR SEMENYA SC: In your entire history 10 with the union, has NUM negotiated midstream for a section 11 of the workforce?</p> <p>12 MR ZOKWANA: I may have therefore, 13 Chairperson, to go and research that but the point I can 14 put is to say that NUM has been able and it has done that 15 in the same company we are dealing with. In 2005 an 16 agreement was signed when members called upon us to re-look 17 that agreement, we did. It is doable. But I am not able 18 to give you, to say on this group we did because I am 19 saying that, to do that I may have to go and research and I 20 haven't that, because I didn't know the question would 21 arise. Let me recall that, Chairperson. I've shown, 22 Chairperson, here that my answer maybe was not well 23 thought. Chairperson, I've shown that in the middle of an 24 agreement at the Chamber of Mines, NUM engage the employers 25 and that agreement was accepted last year in October,</p>
<p style="text-align: right;">Page 4538</p> <p>1 points that you were intending to point -</p> <p>2 MR ZOKWANA: Our view is that, 3 Chairperson, the stance of the loco drivers from Impala to 4 Lonmin had nothing to do with the NUM attitudes towards 5 their grading. It has more with other elements that I 6 think this Commission, by the time it finishes, may come to 7 understand because what has appeared funny to us is that 8 they will say we don't want the union to negotiate on our 9 behalf. They will always in Impala, they will go and 10 congregate next to the railway station and in Lonmin they 11 will go to the koppie, until the time the strike ends, 12 there will be a new formation that is coming. Is that 13 accidental or is that plan? I don't know. I think the 14 Commission in its own work would be able to come to that. 15 But in both occasions in Impala, violence was used, NUM was 16 not being involved, our stewards were being chased, our 17 offices were closed. In the same vein, the refusal of loco 18 drivers in Lonmin, I want to put that, Chairperson, have 19 got nothing with the failure of NUM to look at their 20 interests. They gave this impression – oh, sorry. Lastly, 21 Chairperson, NUM would have been willing, especially at 22 national level, to intervene on behalf of its members if 23 the environment was allowing and I want to say this, that 24 there was no way that NUM could have been able to negotiate 25 for people who didn't like it. More than that,</p>	<p style="text-align: right;">Page 4540</p> <p>1 giving machine operators or RDOs an amount of R500. It is 2 doable, sir, we have done it, counsel Semenya.</p> <p>3 MR SEMENYA SC: My question is very 4 specific. I am not discussing matters where there is a 5 general discussion, I mean negotiations relating to the 6 entire workforce. I am saying there is an agreement - 7 within the life of that agreement there is a legitimate 8 claim by section of the workforce.</p> <p>9 MR ZOKWANA: Yes.</p> <p>10 MR SEMENYA SC: Do you recall ever NUM 11 going to negotiate for that section, to the exclusion of 12 the other sections of the workforce?</p> <p>13 MR ZOKWANA: Thanks, Mr Chairperson. 14 Thanks and sorry for - maybe I didn't understand your 15 question well in that. I am not trying to evade your 16 question. My answer to you is that when NUM engaged the 17 Chamber, that led to the [indistinct] R500, it was 18 specifically to deal with machine drillers because there 19 was a number of grumblings within the industry around only 20 machine operators, RDOs.</p> <p>21 CHAIRPERSON: Do I understand you to 22 answer Mr Semenya as follows, yes, there is an instance 23 where mid-term we negotiated an increase, not for the whole 24 workforce, but for a particular category of workers?</p> <p>25 MR ZOKWANA: Yes, Chairperson, and I said</p>

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1 that it was for RDOs only.

2 CHAIRPERSON: That's the answer he wants.

3 MR ZOKWANA: Yes.

4 MR SEMENYA SC: Alright. When you were

5 going to the koppie on the 15th, there was no part of you

6 that wanted to send a message to the RDOs that said, go

7 back to work, we recognise your demand, we will engage the

8 employer around it and then report back to you. It was not

9 part of your approach.

10 MR ZOKWANA: That would be wrong for Mr

11 Semenya to say. Our approach, as debated during the

12 morning session, was to find a solution. A solution is to

13 appeal to those on strike to desist from using violence.

14 To do that, you have to give them and trust that he would

15 take up the issues that they are raising. When we went to

16 the koppie, to answer your question, it was to appeal all

17 the people to go back to work and as a union, saying that

18 all the issues you have tabled here that has put you here

19 will be dealt with by relevant structures that negotiate.

20 They made that undertaking.

21 MR SEMENYA SC: But clearly Lonmin was

22 not armed, so you could have engaged Lonmin before you go

23 to the koppie and say, "Lonmin, let's resolve this

24 complaint that's on the mountain. I know I don't have a

25 mandate, I will go and get my mandate."

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1 MR ZOKWANA: Our approach as a union was

2 to win those people, to agree first that they will allow

3 negotiations to take place, because our view was that it

4 would not have helped us to go and say to Lonmin, put up an

5 offer to people you are not going to be able to talk to.

6 The question would be from them, who mandated you to talk

7 on our behalf?

8 MR SEMENYA SC: Okay, let us now look at

9 the converse of this problem. It seems to me that you

10 accept that as far as Lonmin was concerned, it did

11 appreciate that its RDOS were underpaid. Is that your

12 understanding?

13 MR ZOKWANA: If I can just via that by

14 them, offering them that market related raise, my answer

15 may be yes. They may have seen that.

16 MR SEMENYA SC: And it too would have

17 appreciated the consequences following the Impala unrest.

18 Correct?

19 MR ZOKWANA: It may be the case, I am not

20 sure.

21 MR SEMENYA SC: No, speaking openly.

22 MR ZOKWANA: I am afraid that the reason

23 Lonmin gave this offer, the reason they gave, they were

24 saying that they are giving this offer as a market related

25 bonus to their own employees. They didn't say they'll do

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1 it because of Impala. I am afraid to put that as what they

2 said.

3 MR SEMENYA SC: Walk with me, Mr Zokwana,

4 I am not saying it is because of it, I am saying we can

5 accept that they were aware of that.

6 MR ZOKWANA: I have answered that by

7 saying that if we justify that view by the fact that they

8 made an offer, yes, I can say yes, it could have been.

9 [11:38] MR SEMENYA SC: And I am sure for Lonmin

10 they would not have laboured under a misapprehension which

11 your local NUM suffered, that the agreement is binding and

12 it cannot be amended.

13 MR ZOKWANA: I am not sure, sir, on that.

14 I'm afraid giving an answer would be to think for Lonmin.

15 MR SEMENYA SC: Accepting that to be a

16 supposition you would have then expected Lonmin to say, you

17 know what, there is this complaint of the RDOs, we have an

18 agreement for two years, NUM, can we reopen negotiations on

19 this to answer to this demand. Correct?

20 MR ZOKWANA: Lonmin never called NUM to a

21 meeting to deal with the wages, so I am not – I would like

22 to be honest to say this, that I cannot think what Lonmin

23 could have done. The point anyway is that Lonmin never

24 invited NUM for negotiations and even if they did,

25 Counsellor Semenya, I don't understand how NUM could have

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1 been able to force people who didn't want to listen to it

2 to take a mandate from it. I put here that, sir, in the

3 course of negotiations it is a process of getting a

4 mandate, giving a feedback, I mean looking for fallback

5 positions, looking for settlement areas. You do that only

6 for people who are willing to be your client. You can't

7 just force people, hey guys, please come here, man,

8 nonetheless come, I want to stand for you. You will need -

9 and these people in question have made it clear that we

10 don't want a union on our behalf, we can do it ourselves.

11 MR SEMENYA SC: Mr Zokwana, I haven't

12 asked you whether the RDOs wanted or did not want to be

13 represented by NUM. Am I right at least about that?

14 MR ZOKWANA: Can you repeat the question,

15 please sir?

16 MR SEMENYA SC: There was nothing to

17 preclude Lonmin appreciating the market has changed,

18 appreciating its contractual rights to approach NUM to

19 reopen negotiations to meet the demands of the RDOs.

20 MR ZOKWANA: They could have done that if

21 they wanted.

22 MR SEMENYA SC: And had they done it as

23 NUM you would at least have attempted to engage.

24 MR ZOKWANA: We would have appreciated,

25 sir, the fact that the people who have got a dispute with

<p style="text-align: right;">Page 4545</p> <p>1 the company have made it clear through the words of the 2 mouth as well as through actions that they didn't want NUM 3 to be their agent.</p> <p>4 MR SEMENYA SC: Do you mean after the 5 death of some ten people, if Lonmin had come to NUM and 6 said, can we renegotiate this, you would have said no?</p> <p>7 MR ZOKWANA: Some of these 10 people you 8 referred to, sir, six of them are NUM local leaders and 9 we're appreciating the very sensitive environment that 10 situation was in. Obviously if we were called upon to 11 negotiate we would have been hampered by the fact that they 12 cannot give feedback. What could have been better maybe 13 was for Lonmin maybe to see other means if there were any, 14 of interacting with the people because NUM at that moment, 15 our local leaders and negotiators, I don't believe that any 16 of them could have gone next to the koppie and come alive.</p> <p>17 MR SEMENYA SC: But as a seasoned 18 unionist you are in agreement with me that the leader 19 framework that we have in this country is adequate to 20 resolve industrial disputes?</p> <p>21 MR ZOKWANA: I agree with you there.</p> <p>22 MR SEMENYA SC: It does not require the 23 police to intervene, am I right?</p> <p>24 MR ZOKWANA: At the time in question, 25 sir, maybe Chairperson will allow me to expand on this</p>	<p style="text-align: right;">Page 4547</p> <p>1 senior counsel, is that NUM leaders were targeted for 2 murder, so it was difficult for NUM to say in that 3 scenario, you can intervene. Just suppose that workers in 4 general were angry, but still recognising NUM as their 5 agent, I think in that case NUM could have played a role 6 but in this case NUM leaders were regarded as part of the 7 problem. I don't understand then how could we engage in 8 the scenario you are proposing.</p> <p>9 MR SEMENYA SC: And we will also argue 10 that both labour and capital, acting responsibly, would 11 pre-empt this lawlessness that you're talking about.</p> <p>12 MR ZOKWANA: I disagree with that 13 assumption on the part of NUM.</p> <p>14 MR SEMENYA SC: Now let's talk about the 15 strikers. I think you described them as, in your whole 16 life never having seen a group of people armed the way they 17 were.</p> <p>18 MR ZOKWANA: Yes.</p> <p>19 MR SEMENYA SC: And being very 20 belligerent, right?</p> <p>21 MR ZOKWANA: If that description includes 22 what has happened from the 12th onwards, in my view the 23 attitude was threatening.</p> <p>24 MR SEMENYA SC: It was your observation 25 on the 15th that they were resolute that they were not going</p>
<p style="text-align: right;">Page 4546</p> <p>1 question other than to say, yes. From the 12th onwards, in 2 my view the situation was less of a labour relations 3 matter, it was more of a security matter because people 4 were embarking on violence, killing others, threatening to 5 burn property. You cannot call the trade unionists in such 6 an environment and say, please come here guys, because 7 they're not trained in that field, or capacitated or called 8 by law to do those things.</p> <p>9 MR SEMENYA SC: Because we're going to 10 ask the Commission at the end that one of the 11 recommendations or findings that must be made is that it is 12 the rigidity of both labour and capital to formations 13 instead of resolving a palpable problem that's in their 14 hands.</p> <p>15 MR ZOKWANA: Should I comment on that?</p> <p>16 MR SEMENYA SC: Yes.</p> <p>17 MR ZOKWANA: I think at the end the union 18 will prove and be able to explain that negotiations can 19 only take place in an environment that is peaceful, where 20 parties are able to get a mandate and seek a re-mandating, 21 where parties can be able to exchange ideas without threat 22 to life. I don't think that NUM was expected to be a 23 breaker of a situation where lawlessness has prevailed and 24 lives have been lost. I think there are people trained for 25 such situations, sir. What makes the situation worse,</p>	<p style="text-align: right;">Page 4548</p> <p>1 to disarm, or that you're saying -</p> <p>2 MR ZOKWANA: If my answer will be saying 3 that I failed to persuade them to put down their weapons, 4 as I pleaded with them, then I can base only on that, yes.</p> <p>5 MR SEMENYA SC: Well, Mr Mathunjwa tells 6 us also that he did not succeed to persuade them to be 7 disarmed.</p> <p>8 MR ZOKWANA: Unfortunately I was not 9 present on the day he gave evidence.</p> <p>10 MR SEMENYA SC: The point I'm making is 11 that your assessment when you were there, this was - it was 12 a group of people who were not going to get off, who were 13 not going to disarm and go back to work, am I right?</p> <p>14 MR ZOKWANA: Whether they would have gone 15 back and laid down arms I'm not sure, but at the point when 16 I spoke to them and they did not even wish to listen to 17 what I was saying - but again remember the reception I 18 received at the koppie and that that Mr Mathunjwa received 19 are different. I can't therefore position myself as to 20 whether it could have been able on the day we went there 21 together to do that, I am not sure and again when he 22 addressed them I was not there.</p> <p>23 MR SEMENYA SC: Ja, but sticking around 24 the group of people at the koppie, we know that that was an 25 illegal gathering even on your assessment, correct?</p>

<p style="text-align: right;">Page 4549</p> <p>1 MR ZOKWANA: As a union, if we want to 2 have a gathering at the roads of the municipality, we want 3 to march, if we want to have a gathering of the union we do 4 apply and if in that context, I will say therefore the 5 gathering was illegal.</p> <p>6 CHAIRPERSON: It was illegal for another 7 reason, they had weapons. You can't have a gathering of 8 armed people like that, that's not permitted under the law, 9 so it was illegal for that reason also. I think that's the 10 main reason Mr Semenya is putting to you.</p> <p>11 MR ZOKWANA: I hear you, Mr Chairperson, 12 and I agree with you. If on that level the gathering was 13 illegal, because there is no gathering of weapons, because 14 even if members meet of a union, if they are angry to march 15 they will carry placards, no matter what words are on the 16 placards but to carry weapons, I think it borders on being 17 illegal.</p> <p>18 MR SEMENYA SC: It is illegal at its 19 core, not at any border, but –</p> <p>20 MR ZOKWANA: I don't want to appear, 21 Chairperson, as if I only agree with you and I don't agree 22 with the counsel, I agree with you.</p> <p>23 MR SEMENYA SC: And there was a threat to 24 law and order in that area, was there not?</p> <p>25 MR ZOKWANA: Especially taking into</p>	<p style="text-align: right;">Page 4551</p> <p>1 shots were fired, yes.</p> <p>2 CHAIRPERSON: You didn't answer the 3 question. The question is, it is not disputed that shots 4 were fired. What Mr Semenya says is, do you agree that it 5 was wrong?</p> <p>6 [11:58] MR ZOKWANA: I understand, senior 7 counsel, but that question would be better placed during 8 legal prosecution where you can find whether the person who 9 shot the gun was justified to do so, whether the gun was 10 legal or not legal. I don't think we are in that session 11 here, we are in that committee. The answer I gave is that 12 shots were fired on people and the people who gave evidence 13 here, especially Gegeleza, said he cannot determine whether 14 the shots were from which grouping but shots were fired.</p> <p>15 MR SEMENYA SC: The firing of shots at 16 people is not what NUM would condone, am I right?</p> <p>17 MR ZOKWANA: NUM would not encourage any 18 sort of that, but NUM would understand if its people 19 believe that they are under threat to their lives and our 20 offices are under threat, that they will at the spur of the 21 moment decide to take a stand - as the NUM we believe that 22 those people in that circumstances found themselves and we 23 don't condemn what they did.</p> <p>24 CHAIRPERSON: Mr Zokwana, sorry, let the 25 interpreter interpret it first, then I want to something to</p>
<p style="text-align: right;">Page 4550</p> <p>1 account the attempt to burn our NUM office, the murder of a 2 number of people including our shop steward, Mr Twala was 3 murdered on the koppie, that was grossly out of line and 4 [inaudible] only our members, to say this, that the 5 carrying of weapons that leads to the death of anybody.</p> <p>6 MR SEMENYA SC: And you even called for 7 reinforcement of the police to try and resolve that 8 problem.</p> <p>9 MR ZOKWANA: Yes, I agree.</p> <p>10 MR SEMENYA SC: And you would have 11 expected the police to disarm them, correct?</p> <p>12 MR ZOKWANA: I expected the police to do 13 everything that is within the law and their training to 14 make sure that the continued carrying of weapons and 15 threatening the lives of others should be stopped.</p> <p>16 MR SEMENYA SC: So the difficult answer 17 there – the answer is a yes?</p> <p>18 MR ZOKWANA: In the context I have put, 19 yes.</p> <p>20 MR SEMENYA SC: Alright, now let me deal 21 with you, something that is concerning to me. The 22 Commission has been told that the group of people who were 23 attacking the office of the NUM were at a certain point 24 shot at. That you don't approve of, am I right?</p> <p>25 MR ZOKWANA: It has been said that, yes,</p>	<p style="text-align: right;">Page 4552</p> <p>1 you.</p> <p>2 MR ZOKWANA: Thank you, Mr Chairperson.</p> <p>3 CHAIRPERSON: Mr Setelele in his evidence 4 said that he wasn't present when this incident took place 5 but when he got to the office after it had happened he 6 received a report of what had taken place and in paragraph 7 21 of his statement, which is exhibit YY1 he said this, "At 8 the office I was further briefed on the confrontation. 9 During the course of this I was told that some shots had 10 been fired by NUM members and that a couple of the 11 attacking strikers may have been injured as a result." Mr 12 Gegeleza said that he was present at the time, in paragraph 13 21 of his statement of ZZ2 he said he heard some gunshots, 14 page 3. He couldn't tell exactly from where the shots had 15 been fired.</p> <p>16 He said he was very startled by them and it seems 17 the strikers were also. Almost immediately the strikers in 18 front of the group began turning back and retreating, those 19 behind did the same. Very quickly the strikers in front of 20 us were dispersing. But the important point is that Mr 21 Setelele says that he was told at the office when he 22 arrived after the confrontation, that some shots had been 23 fired by NUM members. When he gave evidence he declined to 24 say who had fired the shots, according to – but he knew who 25 they were or he certainly was aware of the identity but he</p>

<p style="text-align: right;">Page 4553</p> <p>1 said it might endanger the lives of the people concerned, 2 so he didn't give their names, but what we have been told 3 on evidence before this Commission is that shots were fired 4 by NUM members.</p> <p>5 We've also been told that two dockets have been 6 opened by the police of attempted murder, but that's as far 7 as the matter goes on the information before us, but I 8 think we must accept at least at this stage that the 9 information is or the indications are that the shots were 10 fired by NUM members, that two people were injured, that 11 there are two dockets of attempted murder which have been 12 opened. It's in the light of that that Mr Semenya asked 13 the question. Perhaps he should repeat it so we can - to 14 enable you to deal with it comprehensively.</p> <p>15 MR SEMENYA SC: NUM would denounce the 16 firing of shots at crowds, is that a fair statement for me 17 to make?</p> <p>18 MR ZOKWANA: NUM would denounce any form 19 of violence, especially by its own leadership, but in this 20 case in question I have in my own statement put forward to 21 say, we are not approving of the methods, of the weapons 22 used. We understood the fact that the branch committee at 23 that moment had to defend their own union and their lives.</p> <p>24 MR SEMENYA SC: That's what disturbs me, 25 Mr Zokwana. You know if the message goes out here that</p>	<p style="text-align: right;">Page 4555</p> <p>1 Chairperson, I want to put –</p> <p>2 MR ZOKWANA: Thank for that, Chairperson</p> <p>3 –</p> <p>4 MR SEMENYA SC: No, let me put the 5 question.</p> <p>6 CHAIRPERSON: Let him rephrase his 7 question first.</p> <p>8 MR ZOKWANA: Alright.</p> <p>9 CHAIRPERSON: So thank him when he has 10 rephrased it, don't thank me.</p> <p>11 MR ZOKWANA: Alright, Chairperson.</p> <p>12 MR SEMENYA SC: The message, as the 13 president of NUM, you would want to send out there is that 14 where appropriate you would advise the police rather to be 15 contacted than for members to take the action as has 16 happened, perhaps this time justified.</p> <p>17 MR ZOKWANA: I agree, Chairperson, but I 18 want to put it this way. I think the branch committee of 19 NUM was frustrated. The mine security personnel arrives 20 and says, look guys, a group of people is marching to your 21 office, they are about to burn it down and they may kill 22 you. Instead of him saying we are making a point that we 23 are going to get reinforcement and prevent the office, he 24 leaves them to say, run. I mean I don't think that they 25 were given an option. In a normal situation such a person</p>
<p style="text-align: right;">Page 4554</p> <p>1 members of NUM would, in defence of the property of NUM, go 2 firing shots at crowds [indistinct] them instead of 3 reporting them to the police - now that's my problem, sir. 4 I don't want that message going out. Now I'm inviting you, 5 where appropriate –</p> <p>6 CHAIRPERSON: Mr Semenya, before we carry 7 on, I don't think your question is happily phrased.</p> <p>8 MR SEMENYA SC: That's why –</p> <p>9 CHAIRPERSON: There you've got a group of 10 people approaching, on the evidence, another group of 11 people standing to defend the office, according to the 12 evidence that has been led so far the approaching strikers 13 were armed with dangerous weapons, pangas and so on. Now I 14 understand your point about firing at them certainly 15 without warning them and so forth, but to suggest that 16 somehow the people at the NUM office should have somehow 17 contacted the police by cell phone while the others were 18 approaching seems a question that's not going to help us 19 very much.</p> <p>20 MR SEMENYA SC: I was going to qualify 21 that –</p> <p>22 CHAIRPERSON: Ja, I think you should 23 because otherwise it is, with respect, not a question 24 that's going to help the Commission.</p> <p>25 MR SEMENYA SC: Thanks for that,</p>	<p style="text-align: right;">Page 4556</p> <p>1 as NUM will never encourage people taking the law unto 2 themselves. As a reason of that I think in the course of 3 the Commission, even with events of murders against NUM, I 4 wonder if they will find a place where NUM armed people 5 beyond that date in question to go back and retaliate or do 6 anything like that.</p> <p>7 It is not the way we work. We respect the law of 8 this country, we are - but on that day NUM can say that 9 they were failed by the system that was supposed to protect 10 them. The answer therefore, Chairperson, to your question 11 is, NUM have made it clear to all that we don't engage in 12 violence. What we should be doing whenever such a 13 situation arises, we should alert the people who have got 14 authority, if on a mine, the mine security management and I 15 think on that day in question both people were informed.</p> <p>16 MR SEMENYA SC: We are told that on the 17 10th, I think it is, NUM officials had assembled all 18 dangerous weapons in the NUM offices, of pangas, etcetera, 19 and that is not to be condoned, Mr President, am I right?</p> <p>20 MR ZOKWANA: The statement I have read, 21 while I may come to your, the question, is that NUM 22 leaders, as they were assisting people who were going to 23 work, they found armed groupings and they retrieved their 24 weapons and kept them in the office. And if the question 25 is, NUM would not condone the keeping of weapons in any</p>

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1 office with the intention to do violence, that is yes, and
 2 I think on that day in question they did not take them from
 3 those people with the view of keeping them to use them for
 4 violence.
 5 MR SEMENYA SC: No, Mr Setelele had a
 6 spear or something that was kept at the office, that's what
 7 I'm talking about.
 8 CHAIRPERSON: I don't think that's
 9 correct, Mr Semenya.
 10 MR SEMENYA SC: Mm.
 11 CHAIRPERSON: The evidence is, there are
 12 two passages that are relevant. What Mr Setelele says is
 13 that, it is paragraph 19 of his statement, exhibit YY1, he
 14 says, "There were at the time a number of weapons such as
 15 knobkerries, sticks and spears in the NUM office. That was
 16 not usually the case, ordinarily there would be none." So
 17 none were kept. "Some of the weapons that were there that
 18 morning" – some, in other words that were that morning,
 19 "had been taken away from strikers in the course of the
 20 night before," and that's an aspect dealt with by Mr
 21 Gegeleza in a passage I'll read to you in a moment.
 22 "Others had been brought in by members who had gone home to
 23 fetch them in response to their experience of threats and
 24 intimidatory conduct by the strikers when these members
 25 were assisting employees to get to work during the night.

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1 I heard afterwards that the late Mr Bongo had distributed
 2 these weapons amongst those who had decided to defend the
 3 NUM office against the approaching strikers." And the
 4 point is also dealt with by Mr Gegeleza in paragraph 14 of
 5 his statement where he says that it is around this time –
 6 that's after they had received information from the
 7 security, Lonmin security that the information was that
 8 people were approaching to attack the office and burn it
 9 and that the security people couldn't provide any
 10 protection – "around this time that the NUM WPO branch
 11 secretary, Mr Bongo, handed out some weapons to some of us
 12 at the office, including myself. He said these weapons had
 13 been obtained during the course of the previous evening
 14 from some of the strikers. I was given a knobkerrie and a
 15 spear. To the best of my knowledge there were usually no
 16 weapons at all in the office." So it is not correct to put
 17 that weapons were kept at the office. The facts are, as I
 18 have read to you from the evidence of the two witnesses
 19 who've testified on this point.
 20 MR SEMENYA SC: Well, the statement which
 21 the Chair has just read from, Mr Setelele who says about
 22 the weapons, others had been brought in by members.
 23 MR ZOKWANA: But your question was about,
 24 senior counsel, whether NUM would not condemn and I said,
 25 yes, we will condemn the keeping of weapons in NUM offices

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1 but in this case there is no proof presented before this
 2 Commission that NUM had weapons kept except those that were
 3 either fetched by members or that were taken from people
 4 the previous day.
 5 MR SEMENYA SC: I was going to finish the
 6 sentence and say, others had been brought in by members who
 7 had gone home to fetch them in response to the experience
 8 of threat and intimidatory conduct by strikers when these
 9 members were assisting employees to get to work during the
 10 night. So they had deliberately gone out, fetched weapons,
 11 came to the offices in anticipation of what may be possible
 12 trouble to them. For now do you agree I've read the part
 13 of the statement correctly?
 14 MR ZOKWANA: It is right, yes.
 15 MR SEMENYA SC: Yes, okay. Now when you
 16 say these members were failed by the security you're not
 17 referring to the South African Police, are you? You're
 18 referring to the security of the mine who said they will
 19 not be able to protect the office.
 20 MR ZOKWANA: The point I'm putting is
 21 that whenever such occurrences occur the NUM office will
 22 inform the management and the management will inform
 23 security who will, on analysing the extent of the problem,
 24 call upon the SAPS. At this stage we refer to the presence
 25 of security person who does not offer protection but says

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1 to them, run away.
 2 MR SEMENYA SC: In evidence-in-chief I
 3 heard you say and please, if I'm wrong just tell me, I
 4 heard you say that you spoke to General Mbombo who told you
 5 that they do not have enough personnel, is that correct?
 6 MR ZOKWANA: I said I spoke with a
 7 provincial official at the offices of the SAPS and the
 8 response thereof was not satisfactory that they will be
 9 able to act accordingly. I didn't mention the name of any
 10 person.
 11 [12:18] MR SEMENYA SC: Okay, do you know that
 12 official?
 13 MR ZOKWANA: I am sorry, I can't
 14 remember.
 15 MR SEMENYA SC: Alright. My last
 16 question, President, is this, Mr Mathunjwa tells this
 17 Commission in full confidence that when the people were
 18 clattering weapons like that and clashing them like that,
 19 it was not threatening, it was merely because they had
 20 weapons in their hands, otherwise they would have been
 21 clapping with their hands.
 22 MR ZOKWANA: Thanks, Chairperson, you
 23 know this debate about weapons is reminiscent of the debate
 24 that took place in the '90s, some people qualifying the
 25 carrying of weapons as the means to protect women from

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1 snakes. It doesn't hold water. You cannot go around
2 carrying a weapon and use it for any other reason. I
3 disagree with that version of Mathunjwa. There is no
4 reason to carry weapons. When you sing, you want to clap,
5 you use your hands you don't use weapons.
6 MR SEMENYA SC: At least on this point we
7 agree, yes.
8 MR ZOKWANA: I agree with you that you
9 don't use weapons or anything when you want to create a
10 rhythm when you are singing. You use your hands, that's
11 what they're meant for.
12 MR SEMENYA SC: Those are all the
13 questions we have for the witness, Chair.
14 CHAIRPERSON: Thank you, Mr Semenya. Ms
15 Barnes?
16 MS BARNES: Chair, Ms Lewis has just a
17 few questions for the witness.
18 CHAIRPERSON: I see, alright.
19 MS BARNES: It might be appropriate for
20 her to go first?
21 CHAIRPERSON: I see, so you're not
22 waiving your opportunity to cross-examine, –
23 MS BARNES: Certainly not.
24 CHAIRPERSON: - you're just seeking to
25 postpone it? Alright, let's see how Ms Lewis does first.

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1 MS BARNES: Thank you, Chair.
2 CHAIRPERSON: Alright, Ms Lewis?
3 CROSS-EXAMINATION BY MS LEWIS: Thank
4 you, Chair. Mr Zokwana, I represent the families of the
5 people, of 33 of the 34 miners who were killed on the 16th.
6 Now yesterday you went into some detail explaining to the
7 Commission that NUM is a responsible and caring trade
8 union, is that correct?
9 MR ZOKWANA: That is true.
10 MS LEWIS: Thank you. And Mr Zokwana,
11 you told us and I'm paraphrasing, so if I'm not
12 paraphrasing correctly you'll correct me, I'm sure, but you
13 told us that every incident where – every instance whether
14 there is an accident on the mine or a death, NUM would
15 become involved and take the matter up. You would take
16 part in the inspection in loco to make sure that the right
17 skills are applied so that the family can get what is due
18 to them, is that correct?
19 MR ZOKWANA: That is what I have said.
20 MS LEWIS: And Mr Zokwana, if I
21 understood you correctly you also said that NUM officials
22 would even travel to the homes of injured or killed mine
23 workers in order to fulfil the functions, even this is in a
24 distant province or a neighbouring country, is that
25 correct?

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1 MR ZOKWANA: That is correct.
2 MS LEWIS: Now what you didn't explain
3 and what I want to try and understand is the procedure or
4 the process that NUM would follow in order to do that, and
5 so what I would like to do is put an outline to you of what
6 I think the procedure would be and you can tell me if I'm
7 correct or not and fill in any gaps.
8 MR ZOKWANA: Sorry, that would be dealing
9 with visits to people or loco inspections, what will be the
10 –
11 MS LEWIS: Yes, let me clarify. That
12 would be dealing with ensuring that family members of
13 miners who have been killed get what is due to them and it
14 would be dealing specifically with liaising with the family
15 members concerned.
16 MR ZOKWANA: Yes.
17 MS LEWIS: Now, Mr Zokwana, I imagine
18 that the first thing that you would do, would be to contact
19 the family member and tell them that their relative has
20 died and the circumstances in which they died, is that
21 correct?
22 MR ZOKWANA: Let me assist upon you
23 leading me, let me tell you what NUM does.
24 MS LEWIS: Mr Zokwana, I'm sorry, I just
25 want to be sure that I don't miss anything and I prefer to

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1 –
2 MR ZOKWANA: Then I disagree with the
3 point you are putting –
4 CHAIRPERSON: It is much easier if he
5 just tells you, I mean you can pick up any points that
6 still haven't been dealt with.
7 MR ZOKWANA: When a member of the union,
8 usually members are employed in companies who organise, is
9 involved in an accident of any nature the company will,
10 because –
11 MS LEWIS: Perhaps it would be easier and
12 more efficient if we confine ourselves specifically to
13 Lonmin because I'm not referring to different procedures.
14 So if miners died in an incident at Lonmin, what would the
15 procedure be for liaising with their families?
16 MR ZOKWANA: When a person has passed or
17 has died, there is a department in Lonmin, like in most
18 companies, that will be having trained people who will know
19 the person because they have got all the information in
20 their books. They would inform the family, in some
21 instances they will send a person to go down and check -
22 what the NUM will do, if the person is a member and the
23 incident, especially if it is a mine accident there will be
24 a memorial service in honour of the person in question and
25 then on the day of burial NUM will make sure that, where

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1 possible, some of the people, the local people accompany
 2 the person to that area, but it is not NUM that phones the
 3 family. It is the company because NUM may know the person
 4 but the details about his family members and his address
 5 may not be at the disposal of that local branch committee.
 6 MS LEWIS: Now once you know who the NUM
 7 member is who has been killed and once you know who the
 8 family members are, because you would have know to know
 9 those things to have a memorial service, do you then assist
 10 them in any way with accessing benefits that are due to
 11 them?
 12 MR ZOKWANA: These benefits are detailed
 13 and they are known. It only happens where there may be
 14 deficiencies in the services rendered that the union will
 15 engage.
 16 MS LEWIS: I'm sorry, Mr Zokwana, I don't
 17 think I understand you entirely, deficiencies in which
 18 services rendered?
 19 MR ZOKWANA: The benefits that are
 20 defined by the Provident Fund, the Death Benefit Scheme, if
 21 the company or the family in question did not get all that
 22 was due to them then they would inform the union and then
 23 the union will take that up.
 24 MS LEWIS: An example, if in most cases
 25 the death is because of a mine accident the family may be

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1 having a chance to give or to render another family member
 2 to work in his place so that there is continuity of income
 3 in that family. If such don't happen and NUM is made aware
 4 by the family, then NUM will take the matter up with the
 5 employer.
 6 MS LEWIS: So, Mr Zokwana, do you wait
 7 for the family member to approach you with the problem or
 8 do you follow up with them as a standard procedure to
 9 ensure that they have been properly assisted and that
 10 they're not experiencing any difficulties?
 11 MR ZOKWANA: What happened mostly is that
 12 when the person is taken home for burial and that shop
 13 stewards or people who may know that family who are also
 14 NUM members, it can be [indistinct] but it would be
 15 difficult for NUM to follow up on every family to check
 16 whether everything is well. These things are not things
 17 that companies think of. They're informed by an agreement
 18 signed and I think that if more families may know what was
 19 due to them in the event their next of kin is not more, so
 20 it would be difficult for NUM therefore to go to every
 21 family member and check if they paid because these are
 22 binding benefits that have been negotiated. And this is
 23 not always the case that after a person has passed on we do
 24 receive such complaints, but they do arise there and there
 25 and when they do arise we deal with them. And I've

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1 happened to have been present in some, not all, of the
 2 situations where members were buried and always, in most
 3 instances there will be a company employee in Lonmin - I've
 4 met some - and they will explain to the family what is due
 5 to the family having spoken to them.
 6 MS LEWIS: So do you ensure that you're
 7 always a party to those discussions and that you make sure
 8 that the company explains it properly to the family member
 9 and that the family member understands?
 10 MR ZOKWANA: I will repeat my answer to
 11 say that it would be impossible that NUM will be at any -
 12 at all such funerals and I repeat to say that whenever the
 13 family raises issues of concern arising from the benefit
 14 payments, NUM will take that up to make the employer aware
 15 of the problem.
 16 MS LEWIS: Mr Zokwana, when you are
 17 dealing with poor and illiterate people who live in rural
 18 and far flung areas of South Africa, do you think it is
 19 sufficient to simply leave it to the company and not to
 20 ensure that those family members are properly assisted?
 21 MR ZOKWANA: With due respect,
 22 Chairperson, I take exception to the question - the
 23 question arises that only illiterate members of NUM die and
 24 they can't read and write.
 25 CHAIRPERSON: No, no, that's not what she

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1 said. She says to you in the case of illiterate poor
 2 people, when they die, she asked you, do you think it is
 3 sufficient what you do to leave it to the company and only
 4 to respond if you get a complaint from the family. That's
 5 the question. The answer is either, yes, I think it is
 6 appropriate what we do, or I don't think it is appropriate.
 7 You don't have to go to all these other by-ways, we'll be
 8 here all week. I didn't understand her to be suggesting
 9 that all your members are illiterate or even all your rock
 10 drill operators were illiterate although I think quite a
 11 lot of them were, but the question was confined to people
 12 who are illiterate and some certainly, I would imagine, of
 13 the family members of your members who die are illiterate
 14 and poor and that's what the question is about. So perhaps
 15 repeat the question, Ms Lewis, and the witness, having
 16 received a lecture from me, will you give you a focussed
 17 answer.
 18 MS LEWIS: Thank you, Chair. Mr Zokwana,
 19 my question is, for those NUM members who are poor and
 20 illiterate and who live in rural and far flung areas of
 21 South Africa, do you think it is sufficient to simply leave
 22 it to the company and not to ensure that claims for
 23 benefits are processed timely and properly?
 24 MR ZOKWANA: Thanks, Chairperson, for
 25 that clarification and the question now is clearer and I

<p style="text-align: right;">Page 4569</p> <p>1 can say that NUM has made a point that these rights are 2 canvassed amongst members because they're negotiated and 3 members know about them. And most of the companies 4 employed their people or run their administration in the 5 areas through TEBA offices, which you will find in most 6 towns. There will be a TEBA office that a family can go to 7 where there are problems, and other pluses, that most of 8 the mineworkers have got their next of kin who are also 9 working in the mines who are aware of these problems. And 10 I repeat this that whenever such come to our attention that 11 there may have been a problem which is not, I cannot say 12 that, it is not a ritual that you get such a complaint that 13 a person has been underpaid or whatever.</p> <p>14 CHAIRPERSON: It sounds as if your answer 15 is, yes, you do think it is sufficient and you already 16 answered the next question as to why you think it is 17 sufficient, is that correct?</p> <p>18 MR ZOKWANA: Yes.</p> <p>19 MS LEWIS: Thank you, Mr Chair. So, Mr 20 Zokwana, I'm going to take you back to my point of 21 departure, which was your evidence yesterday. You said 22 that if necessary NUM officials will travel to the homes of 23 injured or killed mineworkers, even in distant provinces or 24 neighbouring countries, to render the necessary assistance 25 but I'm struggling to understand what assistance it is that</p>	<p style="text-align: right;">Page 4571</p> <p>1 circumstances. With the case of the late Bongo I had to 2 travel to his family so that they could understand and 3 appreciate the circumstances as it was related to me - but 4 let me admit that we are not able to do such in each and 5 every family.</p> <p>6 MS LEWIS: So, Mr Zokwana, you've 7 admitted that you do it for some family members. On what 8 basis do you draw that distinction? Which family members 9 get personally visited by NUM and which don't?</p> <p>10 MR ZOKWANA: I would not be able to say 11 which family we don't visit, I'm saying that the 12 circumstances may place so much a burden that, example 13 myself, I can't be able to visit each and every family who 14 have lost a next of kin but in our regions and other 15 structures, people do go - if you cannot be with the family 16 before, during the burial you go and visit. A clear answer 17 to that question, we don't have categories of people who 18 deserve a special visit.</p> <p>19 MS LEWIS: Now would you know whether 20 there were any NUM members who died on the 16th of August at 21 Marikana?</p> <p>22 MR ZOKWANA: It is possible NUM members 23 who could have been part of those who died on that - yes.</p> <p>24 MS LEWIS: Mr Zokwana, it is possible but 25 do you know definitely whether amongst those who were</p>
<p style="text-align: right;">Page 4570</p> <p>1 you render.</p> <p>2 [12:38] MR ZOKWANA: One of the assistance we 3 render to families is to go to explain as a union, where 4 possible, the circumstances under which such death has 5 happened. That will be before the burial, once we know 6 that somebody has passed, then we go and visit and explain 7 what would have happened.</p> <p>8 MS LEWIS: But, Mr Zokwana, when I first 9 asked you the question as to what it is that NUM does, you 10 said very categorically that it is the company, in this 11 instance Lonmin, who contacts the family member, tells them 12 that their relatives have died and the circumstances in 13 which they died. You went to great lengths to stress that 14 it would be too difficult for NUM to do that. Are you now 15 contradicting that?</p> <p>16 MR ZOKWANA: Thank you, Chairperson, if I 17 may? Let me explain this because I don't see the 18 contradiction, Chairperson. There are circumstances that 19 are extraordinary that causes death, other than mine 20 accidents. I can cite a few examples. One of our regional 21 chairpersons in Carletonville was murdered. We didn't 22 think the company would have, or it would be enough to wait 23 for the company to go and address it. As a union, after 24 the company informed them, we drove to that family to make 25 sure that we are able to put them into understanding the</p>	<p style="text-align: right;">Page 4572</p> <p>1 killed at Marikana on the 16th of August, there were 2 included amongst there NUM members, do you know that or you 3 don't know that?</p> <p>4 MR ZOKWANA: I know they were part of 5 those who were killed.</p> <p>6 MS LEWIS: Do you know how many of the 34 7 people who were killed on the 16th were NUM members?</p> <p>8 MR ZOKWANA: Unfortunately I don't have 9 those figures with me, but I know there were NUM members.</p> <p>10 MS LEWIS: So if you don't know the 11 precise numbers I take it you also wouldn't know the names 12 of your members who were killed on the 16th?</p> <p>13 MR ZOKWANA: I don't know of the names of 14 the people who were killed on the 16th, not only NUM members 15 because all of them to us matter.</p> <p>16 MS LEWIS: Well, Mr Zokwana, can I help 17 you with that?</p> <p>18 CHAIRPERSON: Before you help him, can I 19 ask a question? You don't know the number or the names but 20 is there someone in NUM whose business it is to ascertain 21 how many members were involved and the names of the people?</p> <p>22 MR ZOKWANA: I'm sure that that can be 23 made available to the Commission because that information 24 is there but I don't have it with me now.</p> <p>25 MS LEWIS: Alright, but I take it that</p>

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1 someone within NUM somewhere might know the number and the
 2 names of the people.
 3 MR ZOKWANA: Yes.
 4 MS LEWIS: But the simple point I'm
 5 making, Mr Zokwana, is that you don't know it, is that
 6 correct?
 7 MR ZOKWANA: I know that amongst those
 8 who were killed or who died on that day, they were NUM
 9 members.
 10 MS LEWIS: Yes, but you don't the
 11 specific number or the names, correct?
 12 MR ZOKWANA: I don't know that, yes.
 13 MS LEWIS: Mr Zokwana, of the 34 people
 14 killed on the 16th of August 2012 at Marikana, nine were NUM
 15 members and I'm going to read their names to you and I
 16 apologise to the Commission and to the family members if I
 17 get the pronunciation wrong. Mr Henry Pato, Mr Ntandazo
 18 Nokamba, Mr Bonginkosi Yona, Mr Bongani Mdze –
 19 MR HANABE: The name?
 20 MS LEWIS: I'll let my colleague –
 21 Bongani Mdze.
 22 MR HANABE: Yes?
 23 MS LEWIS: Mr Thabiso Mosebetsane, Mr
 24 Andries Msenyeno, Mr Molefi Ntsoele, Mr Khawamare Monesa
 25 and Mr Sagalala. Now, Mr Zokwana, do you know whether any

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1 of those members were visited by NUM officials?
 2 MR ZOKWANA: I want to place in answering
 3 the question, Chairperson, the environment during, before
 4 and after –
 5 CHAIRPERSON: Before we get to the
 6 environment before and after, you can deal with that later.
 7 The first question is, do you know whether any of these
 8 people was visited by NUM people afterwards? If you don't
 9 know you don't know. If you do know then, depending on the
 10 answer, you can give the environment.
 11 MR ZOKWANA: I doubt if, Chairperson, any
 12 could have been visited and the reason I'm putting that,
 13 Chairperson, is because at the point of the death in
 14 question NUM shop stewards were no longer around Lonmin as
 15 they were compelled to run away and be in places of safety
 16 and they were being murdered and injured. They left the
 17 mine, Chairperson, precisely on the 12th of August because
 18 most of them were killed and one of them was killed soon
 19 after that incident. Therefore I don't believe that a NUM
 20 person known could have been – could have been able to
 21 either visit the family or to attend a funeral because of
 22 the atmosphere during that moment.
 23 CHAIRPERSON: I don't know if this
 24 applies to the nine people whose names were read out, but
 25 many certainly of the deceased were from Pondoland, some

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1 from Lesotho and I think one or two from Swaziland.
 2 MR ZOKWANA: Yes.
 3 CHAIRPERSON: So the absence - the fact
 4 that shop stewards weren't at Marikana at the time because
 5 they were in places of safety isn't a complete answer to
 6 the question as to why people, widows weren't visited in
 7 Lusikisiki or Flagstaff or some other place in Pondoland -
 8 MR ZOKWANA: Let me explain it,
 9 Chairperson, with due respect. On the day a national
 10 memorial service was arranged, as the president of NUM I
 11 was advised or told not to be in attendance. When the team
 12 of Ministers visited the area and the meeting was arranged
 13 in one of the informal settlements I was told not to avail
 14 - when I was accompanying the Eastern Cape and the national
 15 leadership of CONTROLESA, I was told not to avail myself
 16 there. And I want to say that - and Chairperson, I'm not
 17 making this up to cover not caring, but in essence a number
 18 of people took over the process after the Marikana
 19 massacre, Ministers of government were already told. I
 20 think if any officers could have been in that presence,
 21 Chairperson, or try to avail, I cannot rule out the fact
 22 that they could have been assaulted and remember when these
 23 burials were taking place one of them happened to be in the
 24 area I was born from. I mean I'm from Idutywa, The very
 25 mode that prevailed on the koppie was prevailing in the

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1 funerals because NUM was being insulted as the cause for
 2 these deaths and therefore I don't foresee how we could
 3 have anybody from NUM being able to attend such - and by
 4 that moment, Chairperson, of the funerals, the anti-NUM
 5 element had not abated, hence Bongo having run away. When
 6 he came back he was killed. Hence Mtini was taken in his
 7 own house and murdered on the koppie even beyond the date.
 8 It means that the atmosphere could not have allowed any of
 9 the NUM members known to those, because when you go to a
 10 funeral, Chairperson, it is not only the family members you
 11 meet. The people who were leading the strike, the
 12 delegates were visiting each and every province where the
 13 funerals were and in the way they were explaining it was
 14 that it is NUM, it is government who has caused this.
 15 MS LEWIS: Mr Zokwana, you've heard what
 16 the Chairperson has said, the family members did not live
 17 in or around Lonmin, they were from Pondoland, Lesotho and
 18 Swaziland.
 19 MR ZOKWANA: The question?
 20 MS LEWIS: And I'm not suggesting that
 21 you personally should have visited each and every family
 22 member, but –
 23 MR ZOKWANA: Let me explain this –
 24 MS LEWIS: But I haven't asked the
 25 question yet, but what I'm saying is, not one NUM official

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1 on your version has been to visit any of the family
2 members, is that correct?

3 CHAIRPERSON: He didn't say that. At
4 best for you I think he said he doesn't know, but if you
5 are going to put to him as a fact that no NUM officials
6 visited the widows, then put it and then we can move on.
7 This anticipatory sparring doesn't [inaudible].

8 MR ZOKWANA: I am not in a position to
9 confirm if any of the NUM members may have attended a
10 funeral, what I'm coming up with is the scenario of the
11 environment at which - and I want to go further to say
12 this, that it doesn't matter, Chairperson, whether the
13 funeral was in Lesotho or in Gwangwa, in Swaziland, the
14 people who were controlling the delegation on the mountain
15 would visit each and every area. The reason we were to
16 postpone the processing of the negotiations was to allow
17 them to conduct the burials. So it doesn't matter whether
18 they were buried in Lusikisiki, the same people who were
19 singing and blaming NUM for all this would be - but I
20 cannot say no NUM person could have visited, but I'm
21 putting the fact that there could not have been an official
22 NUM delegation going to this -

23 MS LEWIS: Mr Zokwana, since the family
24 members have been here, they were here for at least
25 November, they've been here since the Commission reconvened

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1 in January, they were here for part of October, whilst the
2 family members were in attendance here in Rustenburg have
3 any NUM officials contacted them or spoken to them?

4 MR ZOKWANA: I'm sorry, Chairperson, I
5 would not be able to furnish the answer because I don't
6 know if NUM officials could have spoken. It is difficult,
7 it is impossible by the way to know who greets whom or who
8 asks whom because I would not be everywhere.

9 MS LEWIS: In their official capacities,
10 Mr Zokwana, have any of - do you know whether any of the
11 officials contacted the family members to find out about
12 their wellbeing, etcetera?

13 MR ZOKWANA: My answer will remain the
14 same, but I will give the reason why such a scenario,
15 Chairperson, could not be - is like that. I had an
16 interaction with one of the family members of those who
17 passed on, Ms Mtini, whose husband was found dead soon
18 after the strike came to an end. She was telling me that
19 she could not be part of the family members who are here in
20 court on the basis that while she was where they are
21 staying, NUM shop steward or she said people in red shirts
22 went to where they were staying. After that incident there
23 was discomfort and I must be honest with you, she said that
24 AMCU leaders arrived and questioned why she was speaking to
25 NUM, it's what she told me. She is not here, she said that

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1 she would have loved to have been part of this Commission
2 but when that incident happened when NUM people visited her
3 and there was that situation, she felt threatened. So I'm
4 saying, therefore, that I cannot be able to - to say but I
5 can, Chairperson, anybody who wants to put a view that says
6 we have been able to deal with those events to the fullest,
7 such that people can meet as people, share the pain they
8 have, exchange their experiences - has not yet arrived
9 Chairperson, during - up to now.

10 [12:58] CHAIRPERSON: It sounds from your answer
11 that, certainly on the basis of what this lady told you,
12 that some NUM people at least did visit some of the widows
13 -

14 MR ZOKWANA: Yes, they did.

15 CHAIRPERSON: On the assumption that the
16 people in red - and I think we can assume the people in red
17 are NUM and the people in green are AMCU. So the
18 probabilities are that the people in red who visited the
19 widows here at Rustenburg were from NUM.

20 MR ZOKWANA: Yes.

21 CHAIRPERSON: And was it only this lady
22 who was visited by the people in red or were there general
23 visits to the place where some of the widows were staying?
24 I'm not quite sure what you said about that.

25 MR ZOKWANA: This is the instance,

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1 Chairperson - to say that this alone showed me to the fact
2 that people still regard the scenario on the basis of
3 affiliation and they would not appreciate the fact that a
4 person has visited to give comfort.

5 CHAIRPERSON: Ms Lewis, when it's
6 appropriate for us to take the lunch adjournment let me
7 know and we'll take the adjournment, but you can carry on
8 with this point if you wish until an appropriate stage is
9 reached.

10 MS LEWIS: Thank you, Chair. I have two
11 follow-up questions on this point and then we can take the
12 adjournment.

13 MR MAHLANGU: Chairperson, the time -
14 half past one, two.

15 CHAIRPERSON: We haven't adjourned yet
16 because she's got two questions to ask and Mr Mpofu's going
17 to count them for me.

18 MS LEWIS: Chair, I should qualify that
19 by saying depending on the witness's answers. Mr Zokwana,
20 did you inform your lawyers of this incident, because it's
21 the first that we've heard of it?

22 MR ZOKWANA: No, because I only heard of
23 it recently as well.

24 MS LEWIS: When did you hear of it?

25 MR ZOKWANA: I could have spoken with her

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1 about two – last week I did spoke to her because she was,
 2 she came down to Johannesburg and I could not be able to go
 3 and visit her to where she was and then I called her last
 4 week and he told me of the reasons why she could not be
 5 here and I didn't think that it was fitting to raise with
 6 the legal team because it showed me attitudes of people
 7 towards others based on affiliation. To be precise, as she
 8 has to come to Joburg for consultation and I could not meet
 9 with her then and I called her because I was the one who
 10 called her to come to Joburg then.

11 MS LEWIS: And Mr Zokwana, before we
 12 adjourn I'm going to put it to you that we have, in total,
 13 nine – families of nine NUM members who are our clients and
 14 who are in attendance and they are all perfectly happy to
 15 attend and they happened reported any sort of threats or
 16 intimidation. Do you have any comment on that?

17 MR ZOKWANA: Chairperson, I have made it
 18 clear to say this, that Mrs Ntini did not complain of being
 19 threatened by fellow widowers. She said clearly that AMCU
 20 leaders who arrived at the same place where she stayed,
 21 questioned her, what she was talking to these people of
 22 NUM. It's not other widows who would, so – and therefore I
 23 would appreciate the fact that none has been intimidated
 24 because [indistinct]05-59 what should be happening.

25 MS LEWIS: Yes, Mr Zokwana, my point is

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1 simply that none of the other family members whose
 2 relatives were NUM members have appointed – have reported
 3 intimidation of the type that you refer to.

4 CHAIRPERSON: He's not suggested that any
 5 of the nine or any of the others were visited by a NUM
 6 person dressed in NUM clothing, which then led to -
 7 according to the information he received, have been
 8 interrogated by other people thereafter. So I'm not sure
 9 that point helps us. Can we take the adjournment at this
 10 stage?

11 MS LEWIS: Yes, Chair.

12 CHAIRPERSON: We'll re – I normally
 13 adjourn, on Fridays till half past. In view of the fact
 14 that it's 1 o'clock now, we'll adjourn till 25 to two.
 15 We'll resume at 25 to two.

16 [COMMISSION ADJOURNS COMMISSION RESUMES]

17 [13:43] CHAIRPERSON: The Commission resumes.
 18 Before Ms Lewis continues with her cross-examination, Mr
 19 Mpofo, it has been brought to my attention that the
 20 witnesses who have been subpoenaed were told to come back
 21 on Monday, and in order to enable you to prepare for
 22 leading witnesses, we have decided not to sit on Monday, so
 23 you can precognize your witnesses. Now, what are we going
 24 to do about your witnesses who have been subpoenaed? Have
 25 you any suggestions as to how we can solve the problem?

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1 MR MPOFU SC: Yes, Chairperson. Can we –
 2 the suggestion is that if you can leave it to us and maybe
 3 Lonmin. We will – well, we would prefer it if the
 4 subpoenas – if the intention is to extend them, then of
 5 course we could just even by agreement extend them in
 6 absentia, alternatively we can try and get them here on
 7 Tuesday, Chairperson, one of the two alternatives.

8 CHAIRPERSON: Do you undertake, you and
 9 Lonmin together, jointly and severally –

10 MR MPOFU SC: No, with Mr Madlanga.

11 CHAIRPERSON: - with Mr Madlanga, I don't
 12 know if he's got any powers in this regard but anyway,
 13 we'll involve him as a sort of third party. Do you
 14 undertake to have the people here on Tuesday?

15 MR MPOFU: Yes.

16 CHAIRPERSON: And we will then extend
 17 their subpoenas.

18 MR MPOFU SC: Yes, Chair, unless, as I
 19 say unless it's by agreement we can extend them in their
 20 absence, with Mr Madlanga. The first option is to get them
 21 here.

22 CHAIRPERSON: If Mr Madlanga agrees to
 23 that, he can raise that with us on Tuesday.

24 MR MPOFU SC: Yes.

25 CHAIRPERSON: If he doesn't –

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1 MR MPOFU SC: Then they will be here.

2 CHAIRPERSON: - you will see to it that
 3 they are here.

4 MR MPOFU SC: Yes.

5 CHAIRPERSON: And Lonmin will assist you.

6 MR MPOFU SC: Yes, Chairperson.

7 CHAIRPERSON: Alright, thank you. You
 8 are still under oath, sir. You are still cross-examining,
 9 I think, Ms Lewis.

10 SENZENI ZOKWANA (CONTD):

11 CROSS-EXAMINATION BY MS LEWIS (CONTD):

12 Thank you, Chair. Mr Zokwana, there was no Mr Ntini killed
 13 on the 16th or on the days preceding the 16th that form part
 14 of this Commission's inquiry, do you accept that?

15 MR ZOKWANA: Chairperson, I have made the
 16 point that Mr Ntini was only killed after the 16th.

17 MS LEWIS: Mr Zokwana, if you said that I
 18 missed it, I apologise, but let me proceed then. Mr
 19 Zokwana, my instructions from the NUM family members who I
 20 represent, which I've now confirmed during lunch time, is
 21 that none of them have at any stage been contacted by any
 22 NUM officials. Do you accept that they – that that's what
 23 they say?

24 MR ZOKWANA: I am not in a position to
 25 disagree with that, Chairperson, given the scenario I have

<p style="text-align: right;">Page 4585</p> <p>1 given of the environment that developed up to the 16th and 2 after.</p> <p>3 CHAIRPERSON: Ms Lewis, I don't know how 4 much further you propose taking this point. I think you've 5 probably made it, insofar it has relevance at all. I 6 understand why you asked the question, I didn't stop you, 7 but I think we might move on to another aspect now.</p> <p>8 MS LEWIS: Chair, there's just one point 9 that I need to put on record and that's that, as I said my 10 instructions are that the family – NUM family members have 11 not at any stage been contacted, but that they were, during 12 the lunch adjournment, approached by - my understanding is 13 by NUM officials - and I am not saying that this witness 14 knows anything about that but I just feel the need to take 15 that on record that that's the first time that they have 16 been approached. And Mr Zokwana, when Mr Mathunjwa 17 testified he told us that AMCU has established a fund for 18 all of the victims of the Marikana events. Can you tell us 19 whether NUM has established any fund like that or a similar 20 fund?</p> <p>21 MR ZOKWANA: NUM did not formed or 22 created a fund. What NUM did was to engage Lonmin with the 23 view that there should be financial assistance to people 24 and we appreciate the fact that the company agreed, that 25 would cover even non-Lonmin employees.</p>	<p style="text-align: right;">Page 4587</p> <p>1 Commission has got legal people who represent such people. 2 If in their opinion and interaction with the Chairperson of 3 the Commission, come to that conclusion, I think you will 4 come to that. I am not in a position or qualified to make 5 that judgment at all. I am sorry I can't answer that 6 question.</p> <p>7 MS LEWIS: So Mr Zokwana, you agree with 8 me then, I think, that in order for the family members to 9 participate in these proceedings, they would need legal 10 representation. Do you agree?</p> <p>11 MR ZOKWANA: I think when you introduced 12 yourself, you made it clear that you were on behalf of 13 family members, and I take it that family members who are 14 in this process has got such legal representation.</p> <p>15 MS LEWIS: Mr Zokwana, I don't think 16 you've answered my question, so let me rephrase it. If my 17 colleague and I were not here and there was no-one else 18 here representing the families, they wouldn't be able to 19 participate in any meaningful way in these proceedings. Do 20 you agree?</p> <p>21 MR ZOKWANA: It is difficult to agree 22 that only you could be the legal people to represent them, 23 but I take it there could have been means made to ensure 24 that everybody present had such a person, and I appreciate 25 the importance of such an arrangement but not the fact that</p>
<p style="text-align: right;">Page 4586</p> <p>1 MS LEWIS: And Mr Zokwana, to my final 2 point then - this, I am sure we all agree, that this 3 Commission is primarily to establish the reasons for, and 4 the circumstances surrounding the deaths of the family 5 members, relatives and loved ones. Do you agree?</p> <p>6 MR ZOKWANA: I think the terms of 7 reference for the Commission were outlined when it was 8 formed and I would not like to cut those to conform to what 9 you are saying as the Commission should cover these, and 10 that led to what happened but not only limited on the day 11 in question, and I think that Commissioners like 12 yourselves, who are having those terms - I am sorry that I 13 can't answer your question.</p> <p>14 CHAIRPERSON: I take it you would agree 15 that among the terms of reference, among the aspects which 16 the Commission has to investigate are those that she has 17 listed in her questions.</p> <p>18 MR ZOKWANA: I agree with that, 19 Chairperson, I thought that she was limiting the terms only 20 to those she was - hence I answered the way I answered.</p> <p>21 MS LEWIS: So, Mr Zokwana, you'd agree 22 with me then that it would be very important for the family 23 members to be able to participate in these proceedings.</p> <p>24 MR ZOKWANA: I don't think I am qualified 25 to make that judgment, Chairperson, given that I think this</p>	<p style="text-align: right;">Page 4588</p> <p>1 it should have been only you.</p> <p>2 CHAIRPERSON: No, no, I don't think she 3 was talking about herself. She's talking about it's 4 important that there should be legal representatives such 5 as her colleague and herself appearing, but she wasn't 6 saying, "if I wasn't here they wouldn't be properly 7 represented." She was saying if a legal representative 8 weren't here, then they wouldn't be properly represented.</p> <p>9 MS LEWIS: Thank you, Chair.</p> <p>10 MR ZOKWANA: I thought that, Chairperson, 11 she made an example of me and my colleague and I took it 12 that she meant that only if they are brought here but if 13 the context, Chairperson - I agree, Chairperson, with that.</p> <p>14 CHAIRPERSON: I doubt that she was trying 15 to say that, but she says she wasn't, so we must assume she 16 wasn't.</p> <p>17 MS LEWIS: Now Mr Zokwana, I think you'll 18 also agree with me that persons who are of very, very 19 limited means and who have just lost their sole 20 breadwinner, wouldn't have the means to hire legal 21 representatives, do you agree?</p> <p>22 MR ZOKWANA: Possible.</p> <p>23 MS LEWIS: Alright. And Mr Zokwana, I 24 think you'll also agree that persons who are illiterate, 25 who aren't advised of their rights, who live in rural</p>

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1 areas, wouldn't know where to go to secure legal
2 representation for persons who would act on their behalf
3 for free. Do you agree with that? Without some – without
4 some sort of assistance, do you agree?

5 MR ZOKWANA: That is possible if no such
6 assistance is offered, but in most cases when there are
7 major accidents, like the one we are about, many people
8 will come forward and say, we will be offering such
9 assistance.

10 MS LEWIS: Mr Zokwana, can I ask you what
11 NUM did to help, at the very least, the NUM family members
12 secure legal representation to participate in this inquiry?

13 MR ZOKWANA: Thanks, Chairperson. I will
14 always, maybe before I answer the question, I will have to
15 out-sketch again the scenario that prevailed soon after
16 the, August the 16th. Even during processes leading to the
17 memorial service, NUM had people who were participating in
18 the planning team but those people were removed because of
19 the climate I have referred to before. And Chairperson,
20 the atmosphere was such that even during, even the marquee
21 planned for, that were paid for, were not used because
22 there were many people who came forward and said we will
23 give this one. Even people who were in prison as well as
24 those who were in these situations, were promised
25 assistance to get funds for bail and the rest and that

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1 moment when [indistinct] on the other side should not by
2 body language detract my answer. I am not saying to you,
3 madam, I am looking somebody else.

4 CHAIRPERSON: If I were you, I wouldn't
5 bother to even look at them.

6 MR ZOKWANA: And I am saying this that
7 therefore, Chairperson, in closing, this situation was such
8 that the atmosphere was tense. NUM was seen to be the
9 causal for these unfortunate events and it would have been
10 difficult for NUM in any way to begin to say here we are,
11 as we could not, even before the incidents. For instance,
12 I would have loved to have been part of the people on the
13 day of memorial service to give my support, but I was told
14 that my presence won't be welcome. I had to leave Joburg.

15 MS LEWIS: Mr Zokwana, you've give me a
16 very long reason but you still haven't answered my question
17 and I take it from this long reason that you've given, the
18 answer to my question for whatever reason, and putting the
19 reasons aside, the answer to my question is that NUM did
20 nothing to assist the NUM family members to obtain legal
21 representation.

22 MR ZOKWANA: Maybe we need to qualify
23 these family members because NUM has given assistance to
24 some family members, who we could be able to, but to answer
25 your question I would say this that the same scenario I

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1 have painted, we could not offer that assistance.
2 [14:03] MS LEWIS: Mr Zokwana, NUM gave no
3 assistance to the family members of NUM members killed on
4 the 16th, is that correct?

5 MR ZOKWANA: I would say it is incorrect
6 in as far as – let me finish, please, madam - NUM could
7 have assisted any member and again NUM would like to
8 define, Chairperson, how do we define membership.
9 Membership on [indistinct] would be membership that behaves
10 in a way that is un-NUM. Membership that would be chasing
11 its leadership, members – but I state not, not who
12 undermine it and our view therefore is, whether those
13 people were NUM members in books of the company, but the
14 manner led to the events that happened, makes us doubt that
15 we could - as NUM members. And I can say therefore that
16 those members unfortunately, we could have, because we
17 didn't have access to them, given the scenario in question.

18 MS LEWIS: Mr Zokwana, I am putting it to
19 you that NUM didn't do anything or didn't help the NUM
20 family members of NUM members killed on the 16th to obtain
21 legal representation. Do you deny that?

22 CHAIRPERSON: He answered your question.
23 He said they [indistinct] that and he gave reasons why they
24 didn't, that was my reading of his answer.

25 MS LEWIS: Yes, sorry, Chair. I want to

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1 give the reasons for why I say that. Mr Zokwana, I will
2 explain to you why I say that. In the month leading up to
3 the start of this Commission, AMCU referred to the
4 attorneys who instruct me, the Socio Economic Rights
5 Institute, 20 family members of persons killed on the 16th.
6 18 of those were AMCU people and two were NUM members who
7 AMCU had already been in contact with and who had requested
8 assistance with obtaining legal representation. I take it
9 you are not in a position to dispute that. I can read you
10 the names of those two NUM members if you would like, in
11 order for you to answer. They were Mr Pato and Mr Nokamba.

12 MR ZOKWANA: Mr who?

13 MS LEWIS: Mr Nokamba.

14 MR ZOKWANA: The first one?

15 MS LEWIS: Pato.

16 MR ZOKWANA: Pato?

17 MS LEWIS: P-A-T-O.

18 MR ZOKWANA: Pato.

19 MS LEWIS: Pato.

20 MR ZOKWANA: Pato.

21 MS LEWIS: Sorry, I apologise again for

22 the pronunciation. And after the Commission reconvened
23 again at the end of October and when the families were
24 enabled to attend again from about the end of October, the
25 beginning of November, in the first week of November the

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1 remaining NUM members, the other seven, approached my
 2 attorneys and requested legal representation because they
 3 hadn't been informed by anyone else as to how to go about
 4 obtaining legal representation. Do you want to comment on
 5 that?

6 MR ZOKWANA: I could not agree with that,
 7 that - I note what you are saying in terms of those people
 8 having come to your firm for assistance but the point is
 9 that if people were NUM members and this incident happened,
 10 under normal circumstances NUM would take up their case.
 11 As I have shown and said that maybe as part of the
 12 Commission or the Commission ends, we will be able to
 13 understand whether the people who were on the koppie
 14 demonstrating and doing all those things, still believed
 15 that they were NUM members because I am saying that in NUM
 16 to be a member, is not only to be in its books, it is the
 17 manner and the way you behave, it is the manner in which
 18 you abide by its rules and policies. I cannot disqualify
 19 people who are no longer alive - I don't know what they
 20 could have, but I am saying this that the chances, the fact
 21 that two families would come to you, to AMCU, tell the
 22 story that - already other scenarios were at play.

23 MS LEWIS: Mr Chair, I have no further
 24 questions for this witness.

25 CHAIRPERSON: Thank you. Ms Barnes, you

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1 indicated you wanted to stand back for Ms Lewis but you
 2 hadn't surrendered your rights completely. Do you want to
 3 ask any questions now?

4 CROSS-EXAMINATION BY MS BARNES: That's
 5 right, thank you, Chair. Good afternoon, Mr Zokwana. Mr
 6 Zokwana, I take it that as a union leader you would take
 7 care to ensure that all the public statements that you make
 8 are factually correct. Would I be right in assuming that?

9 MR ZOKWANA: It should be, yes.

10 MS BARNES: I take it also that you
 11 wouldn't make an allegation against any party in public
 12 without taking care to ensure that there was a sound
 13 factual basis for that allegation. Would that be correct?

14 MR ZOKWANA: I believe that if it is an
 15 opinion I hold, and I don't put it as a fact, is not a
 16 problem, because if I believe that this should be the case,
 17 I don't say it is a fact because of the following.

18 MS BARNES: But if it was an allegation
 19 or an accusation, then you would take care to ensure that
 20 there was a sound factual basis for it, is that correct?

21 MR ZOKWANA: If the allegation can be
 22 substantiated by events or be proven, or facts brought that
 23 this allegation has got the following, and you happen not
 24 to be the only one who has that allegation.

25 MS BARNES: Good, so we agree,

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1 allegations would have to have substantiation in order for
 2 them to be fairly made.

3 MR ZOKWANA: An allegation is an
 4 allegation, a fact I'm saying is a fact. I allege that
 5 this happened, it means that I cannot be able to say I've
 6 got the following proof. But if you say it is fact, I must
 7 be able to say on the following reasons this is the reason
 8 I am saying it. I allege. So it is up to you or maybe to
 9 show me that my allegation is not on, is not right.

10 MS BARNES: Sir, you have agreed with me
 11 that allegations must be substantiated. It's not necessary
 12 for us to go on about this any further. I'd just like to
 13 put this to you and I am sure that you'll agree with this
 14 as well. During the, what was an extremely volatile week
 15 at Marikana, the week of the 9th to the 15th of August last
 16 year, it was particularly important that public statements
 17 made and allegations made, were - had a sound factual
 18 basis, do you agree with that?

19 MR HANABE: Where? The allegations made
 20 where?

21 MS BARNES: During the extremely volatile
 22 week long period at Marikana from the 9th to the 15th of
 23 August last year.

24 MR HANABE: Yes? I want the last part
 25 then.

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1 MS BARNES: It was particularly important
 2 to ensure that public statements that were made or
 3 allegations that were made, had a sound factual basis.

4 MR ZOKWANA: It is common knowledge,
 5 counsel, that when you debate with somebody and you put on
 6 allegations, you exchange ideas. It is the other
 7 participants in that forum who may be able to call and
 8 prove that what you are saying is not on, except if such
 9 were made in his or her absence.

10 MS BARNES: Sir, you haven't answered the
 11 question. If you could please focus on the question and
 12 try and answer it, it will -

13 MR ZOKWANA: I disagree with you -

14 MS BARNES: - save us a lot of time.

15 MR ZOKWANA: I disagree with your line of
 16 reasoning.

17 MS BARNES: The question is the
 18 following, do you agree that during what you yourself have
 19 described, the week from the 9th to the 15th of August last
 20 year at Marikana, as a particularly volatile time, do you
 21 agree that it was particularly important during that time
 22 to ensure that any public statements you made or
 23 allegations you made had a sound factual basis?

24 MR ZOKWANA: I would agree that to make
 25 allegations about somebody I am not able to discuss with,

<p style="text-align: right;">Page 4597</p> <p>1 or in his absence, no matter how the situation is in my 2 view -</p> <p>3 MS BARNES: Well, let me try and put the 4 corollary to you, sir. You agree that it wouldn't be 5 acceptable, particularly during the volatile time at 6 Marikana in that week of August last year, to make public 7 statements or allegations that had no factual basis.</p> <p>8 MR ZOKWANA: It is difficult therefore 9 to, on my part to understand, Chairperson, what would be 10 this unsubstantiated allegation that is being referred to 11 because you say, yes, I agree or not agree, without 12 understanding the aim of the question, it's difficult.</p> <p>13 MS BARNES: Sir, you don't have to worry 14 about questions that may or may not come in the future, you 15 just need to confine yourself to answering this question.</p> <p>16 MR ZOKWANA: I disagree with the fact 17 that when you are in a debate there are issues that should 18 not be engaged upon.</p> <p>19 CHAIRPERSON: She is not saying that. 20 What she's saying to you - it's a general question. 21 Generally speaking, but particularly in a very volatile 22 period, it's not right to make unsubstantiated factual 23 allegations which reflect on other people. It may be that 24 the allegations turn out to be incorrect but that's not the 25 point of her question. The point is you should have a</p>	<p style="text-align: right;">Page 4599</p> <p>1 article Carol Paton in fact quotes Paul Dunn, she actually 2 quotes what he says, do you see that at the top of the 3 second page? In any event, he's quoted. So according to 4 you, either Carol Paton has got this horribly wrong or Paul 5 Dunn is in fact not telling the truth here. Is that 6 correct?</p> <p>7 MR ZOKWANA: I am saying that according 8 to the information I got from the people who negotiate in 9 Impala, they put to me that there was no such a proposal 10 that they, as alleged by this article.</p> <p>11 [14:23] MS BARNES: Now this article was 12 published in something called Investor Monthly and I must 13 apologise here, I was given the wrong information 14 previously. It's not in fact the Mining Weekly, it's the 15 Investor Monthly, which is a publication by Business Day. 16 You will see the letters "IM" on this exhibit, that refers 17 to Investor Monthly but this article was also published in 18 Business Day. You understand that?</p> <p>19 MR ZOKWANA: I see "IM" feature, written 20 there.</p> <p>21 MS BARNES: And this same allegation, the 22 allegation that the proposal was made by Implats management 23 and opposed by NUM, was also made in another article by a 24 gentleman by the name of Gavin Hartford.</p> <p>25 MR ZOKWANA: I heard that, yes.</p>
<p style="text-align: right;">Page 4598</p> <p>1 substantial reason for making the allegation, for believing 2 it to be true, before you make it and I take it, you'll 3 agree with that?</p> <p>4 MR ZOKWANA: I agree, Chairperson.</p> <p>5 CHAIRPERSON: Ja.</p> <p>6 MR ZOKWANA: Especially it being factual.</p> <p>7 CHAIRPERSON: Now we will see if the 8 question you expect is going to come.</p> <p>9 MS BARNES: Perhaps a little later. We 10 might start by looking at Impala, what happened at Impala, 11 Mr Zokwana, and earlier this morning, the Chairperson 12 referred you to the article Carol Paton that is exhibit 13 XX8, if you could get that in front of you please. Do you 14 have that?</p> <p>15 MR ZOKWANA: Yes. I have that.</p> <p>16 MS BARNES: Good. That article quotes 17 Paul Dunn of Implats as saying that during the 2011 wage 18 negotiations the Impala management had proposed that RDOs 19 get a salary adjustment and that that proposal had been 20 opposed by NUM and you said that that was false, as far as 21 NUM is concerned. Is that correct?</p> <p>22 MR ZOKWANA: I still say that according 23 to my information from those who were negotiating, it's 24 untrue.</p> <p>25 MS BARNES: And you will see that in the</p>	<p style="text-align: right;">Page 4600</p> <p>1 MS BARNES: Do you know Mr Hartford?</p> <p>2 MR ZOKWANA: I've seen him, I've met him, 3 I've worked with him.</p> <p>4 MS BARNES: In what capacity have you 5 worked with him?</p> <p>6 MR ZOKWANA: We requested his services as 7 advisor on the E-swaps up until there was a problem at the 8 E-swaps of one mine in Rustenburg where workers were 9 cheated and he could not pick it, and our working 10 arrangement ended there. To be precise, as an advisor, he 11 was supposed to have shown us the facts that shares 12 intended for workers were not allocated to workers. I 13 won't go deeper into details, because I don't think it has 14 much to do with the Commission.</p> <p>15 CHAIRPERSON: Ms Barnes, I see that Mr 16 Hartford makes this allegation, page 4 of exhibit XX7, but 17 I take it the point of your cross-examination which I hope 18 we will get to soon, is that here is a publication which 19 was not denied. If that's - if it was denied, then it's a 20 different matter but it's not denied, then the next 21 question is whether they knew about it, and if they didn't 22 know about it, the fact that they didn't deny it doesn't 23 mean anything. If they did know about it and they didn't 24 deny it, then you can draw an inference, but I mean that's 25 - isn't that the way to go forward, rather than dealing</p>

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1 with Mr Hartford's record as a consultant acting for the
2 union. I mean, that's not going to take us any further, is
3 it?

4 MS BARNES: Yes, I wasn't going to dwell
5 on that, Chair, that is where I was going. sir, now did
6 you hear about this allegation, the allegation that we've
7 referred to in these two articles? Did you hear of it?

8 MR ZOKWANA: Yes, I did. Hence I checked
9 with the people who were negotiating.

10 MS BARNES: You agree with me that it's
11 an extremely serious allegation?

12 MR ZOKWANA: I would refer, I would take
13 it seriously if the people who make it, especially Mr Paul
14 Dunn, with respect to him, that he was in the company that
15 could not manage the same situation, plus the same strike.
16 I don't think that his advice or opinion should be taken as
17 the expert opinion because Impala was also swimming in the
18 same pool that Lonmin was in. To come to your question, I
19 still stand by the views of our negotiators, to the fact
20 that no such a proposal was made and I repeat to say that
21 proposals are made in writing, not a question of verbal
22 exchange of views.

23 CHAIRPERSON: I would - forgive me, Ms
24 Barnes, for interfering. I am trying to keep this within
25 manageable limits. The issue isn't whether what Mr Dunn

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1 disagree with this assertion that this article or the
2 implications of what is alleged to have happened should be
3 put as the cause of the Marikana disaster. I disagree with
4 that.

5 MS BARNES: Yes, but sir, but the point
6 is that this was in the public domain at the end of last
7 year and even before that, this allegation was being made
8 and it was being averred that this fact, NUM's opposition
9 to the proposed increase for RDOs at Implats had triggered
10 the Implats strike and triggered the violence. If that
11 allegation was in the public domain, then why did NUM not
12 do a public statement denying that?

13 MR ZOKWANA: Thanks, Chairperson. I
14 don't think that NUM is obliged to respond to every article
15 or anything said by anybody because by sometimes you may
16 give credence or importance to an article by any person.
17 We didn't feel obliged that we should respond to every
18 article written, appearing on newspapers in as far as what
19 was happening, but I am still saying this that as far as we
20 are concerned as NUM, no such a proposal was made.

21 MS BARNES: We know that during the
22 Implats strike the anti-NUM sentiment was extreme, wasn't
23 it?

24 MR ZOKWANA: Intimidation, violence,
25 closure of NUM offices, injuring of human - of people, and

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1 said was correct. The question is, the issue is if it's
2 reasonably likely that this allegation came to the notice
3 of the RDOs at Lonmin, it might have influenced their
4 conduct in acting as they did. That's the one aspect, but
5 the other aspect is again, if the allegation was made in a
6 well-circulated audited bureau of circulation audited
7 newspaper, in which this allegation was made, then the
8 failure to answer it might be foolish conduct on the part
9 of the person who fails to answer. Those are the two
10 points, aren't they? Perhaps we can avoid these side
11 issues, interesting though they may be on the other
12 occasions, and concentrate on the two matters that are
13 pertinent here.

14 MS BARNES: Both of the articles that we
15 have referred to, sir, both take the view that this fact
16 that - this allegation, let's call it an allegation for the
17 moment - triggered the Implats strike and triggered the
18 violence that followed. Do you see that?

19 MR ZOKWANA: Thanks Chairperson, I
20 disagree with that and I want to say why I disagree with
21 it. I disagree with it on the basis that no proof has been
22 shown to say well, Mr Paul Dunn says this. There's this
23 evidence as maybe a document that shows or that details the
24 process of negotiations, and I won't delve on the question
25 of the other author of the same article. And more, I

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1 the emergence of AMCU thereafter happened in Impala, I know
2 that, and four lives were lost also in Impala.

3 MR TIP SC: Mr Chair, could I ask my
4 learned friend, in view of the propositions that these
5 events at Impala had triggered those at Marikana, that she
6 deal with the fact that the dates of the publication that
7 appear in this document are September 26 to October 30,
8 2012.

9 CHAIRPERSON: I didn't understand her
10 point to be that the publication of these articles stating
11 what had allegedly happened at Implats triggered the
12 trouble at Marikana, because obviously they were published
13 afterwards. I understood the allegation she was putting to
14 be that the - what had allegedly happened at Implats the
15 previous year had eventually led, together with a whole lot
16 of other factors of course, to what happened at Marikana.
17 I think that's the point she's making, but perhaps I should
18 leave her to deal with it herself, and not try clumsily to
19 deal with it on my own.

20 MS BARNES: Let's look now at some of the
21 events that happened at Lonmin, Mr Zokwana.

22 MR ZOKWANA: Alright.

23 MS BARNES: I'd like to start by looking
24 at what happened on Saturday the 11th of August, that's the
25 shooting incident at the NUM offices. Are you with me?

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1 MR ZOKWANA: Yes.

2 MS BARNES: Now you said earlier in your
3 evidence this morning that it wasn't clear to you whether
4 the shots had been fired by the NUM group or the striking
5 group. Is that correct?

6 MR ZOKWANA: I was relying on the
7 evidence given by Setelele that he didn't know where the
8 shots came from but he agreed that shots were fired –
9 sorry, Gegeleza, who was present during the incident.

10 MS BARNES: I find that quite strange, Mr
11 Zokwana, because in NUM's opening statements before the
12 Commission it was stated that the firearms had been fired
13 by NUM members, and I would like to read the relevant
14 portion at paragraph 15 of NUM's opening statement which
15 says, "Although there already appeared to be differing
16 versions regarding this incident, NUM will in due course
17 lead evidence that in the circumstances the use of firearms
18 by NUM members was justified." Now did you, as the
19 president of NUM, not know that those guns had in fact been
20 fired by NUM members?

21 MR ZOKWANA: NUM became aware of the
22 shooting incident on the day in question and what made it
23 difficult for us to comprehend thoroughly was the fact that
24 the shooting, as raised by the president of AMCU, was as if
25 two people have been killed on the day in question. But

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1 when here - I understood that yes, shots were fired and two
2 people have been injured and it is contained in the
3 statement of the mine security.

4 MS BARNES: So you knew before you
5 started giving evidence in this Commission, that the shots
6 had been fired by the NUM group? Is that correct?

7 MR ZOKWANA: Not that it was NUM people.
8 I became aware during the course, that those shots were
9 fired from NUM office, as Setelele's statement is showing
10 and the statement of the mine security is showing.

11 MS BARNES: Now you testified in your
12 evidence yesterday that you weren't informed about the
13 incident on the 11th of August, is that correct?

14 MR ZOKWANA: Yes.

15 MS BARNES: Is the answer "yes?"

16 MR ZOKWANA: Yes, it was during the SAFm
17 interview with the president of AMCU who raised the fact
18 that NUM have shot and killed two of their members during a
19 protest to NUM office.

20 MS BARNES: Sir, are you saying you
21 weren't told about the shooting incident when you went to
22 visit the local branch on Sunday, the 12th of August?

23 MR ZOKWANA: To be honest with you, that
24 debate never occurred, as we were concerned about the fact
25 that two people had been killed and that the situation was

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1 bad, and my concern was to ensure that no further killings
2 take place. I only became aware of this incident when we
3 were having the interview with the president of AMCU, Mr
4 Mathunjwa.

5 MS BARNES: If you look at your
6 statement, sir, at page 3 paragraph 12, it was Mr Bongo
7 that phoned you on the 12th of August and told you what was
8 happening at Lonmin and it was in response to that
9 telephone call that you went there, is that correct?

10 MR ZOKWANA: Page?
11 MS BARNES: Page 3, paragraph 12.
12 MR ZOKWANA: 12, yes. Can you repeat
13 your question, because we didn't hear you?

14 MS BARNES: It was Mr Bongo that
15 telephoned you on the morning of the 12th of August and told
16 what was happening at Lonmin and asked you to come, and it
17 was in response to that telephone call that you went to
18 that office.

19 MR ZOKWANA: That's correct.
20 MS BARNES: Mr Bongo was the one who had
21 handed out the weapons to the people the day before when
22 the office was under attack, isn't that correct?

23 [14:43] MR ZOKWANA: That statement that was
24 made, since I was not at the office and I could not speak
25 to the late Mr Bongo, I could not verify that but that has

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1 been led in this Commission.

2 MS BARNES: Are you saying that Mr Bongo
3 didn't tell you about what had happened the previous day?

4 MR ZOKWANA: The late Mr Bongo, by the
5 time I arrived on the – I mean on the premises of the
6 company, he was no longer around as the shop stewards
7 decided to go into hiding. I didn't meet with him on that
8 day. He called me in the morning, he will say, look, our
9 offices may be invaded, people are coming down the
10 mountain, that's what he told me - not the mountain but
11 coming to the office. I don't know where they were coming
12 from. And this discussion took place on the 12th of August,
13 it's not the 11, on which the incident happened, it was the
14 12th of August.

15 MS BARNES: Yes, that we do agree on. We
16 agree we are both talking about the 12th at this stage, but
17 now were you told why Mr Bongo had gone into hiding on the
18 12th?

19 MR ZOKWANA: What I was informed of was
20 that a group of workers marched from the koppie towards the
21 NUM office - sorry for that - on the day in question and
22 before they arrived at the office, they met – I am sure
23 that is detailed on people's statements, and that two
24 security vehicles were torched and two people lost their
25 lives that I was told of and that all the NUM shop stewards

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1 went into hiding. We never debated what would have
2 happened on the 11th on that day since the late Mr Bongo was
3 no longer in the office at that moment.

4 MS BARNES: Well, you say in paragraph 13
5 of your statement, "I was briefed on the events by NUM shop
6 stewards." So who briefed you? Which shop stewards?

7 MR ZOKWANA: I am saying that on arrival
8 on the mine, I met NUM shop stewards including Gcilitshana
9 and the deputy chairperson of the branch and other shop
10 stewards but not shop, leadership of the branch, in that
11 branch because they were gone by then. There were other
12 stewards of Lonmin, not necessarily from that branch and
13 the discussions that we held was only on the events of the
14 day in question.

15 MS BARNES: Can you explain then why you
16 say in paragraph 12 of your statement, why you say, if you
17 look at the very last line on page 3, paragraph 12, it
18 says, "Bongo voiced his concerns regarding potential for
19 violence," and this is still Mr Bongo I think talking to
20 you on the phone on the 12th, but you then say, "given the
21 events near the NUM office of the previous day it was plain
22 that there was a real risk of violence and I decided to
23 drive to the mine." Can you explain why you say that in
24 your statement if you hadn't been told anything about the
25 events of the 11th on the 12th?

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1 MR ZOKWANA: Yes, that statement refers
2 to the discussion with Bongo on the 12th and it is him who
3 refers to me that it is not the first attempts to invade
4 the NUM office, but we don't go to details as to what was
5 the previous day, up until I met with members of AMCU who
6 told me or alleged that NUM has killed people at his
7 offices.

8 MS BARNES: Were you not aware, sir, of a
9 rumour that began circulating that two people had been
10 killed in that shooting incident on the 11th of August?

11 MR ZOKWANA: No, no, I never heard about
12 that on the 12th. As I am saying that what was debated on
13 the 12th was the issue of the fact that there was this
14 incident where two squatter guys were killed and I could
15 see the cars that are being torched from the event. We
16 never went into debate as to what happened, up until the
17 15th when we were debating with the president of AMCU that
18 this matter was raised.

19 MS BARNES: Now during that meeting that
20 you had on the 12th of August, did you ask the local shop
21 stewards that you met with, what the discussions had been
22 with the RDOs at Lonmin?

23 MR ZOKWANA: Thanks, Chairperson. I
24 think the scenario or the events of that day could not have
25 been possible to deal with those matters. What we had

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1 learnt on that day was the fact that two people have been
2 killed and the violence was ongoing and we never detailed
3 as to what could have been the discussion or discussions,
4 we were only looking at means of preventing further deaths.

5 MS BARNES: So are you telling this
6 Commission, sir, that you did not ask the local leadership
7 at your meeting with them on the 12th of August what the
8 RDOs were striking about and what NUM's position was in
9 relation to their strike?

10 MR ZOKWANA: Chairperson, I never raised
11 that because of concern to me was the fact two lives have
12 been lost, of people who were trying to protect mine
13 property and the possibility of that - I was told more of
14 possible other incidents happening, than to deal with what
15 could have been the cause. To me, the cause would have
16 come when we had - after the situation has been quelled.
17 At that moment it was making sure that no further incidents
18 happened.

19 MS BARNES: The killings had happened in
20 the context of an unprotected strike. Surely it was
21 important to understand the cause of that strike.

22 MR ZOKWANA: Of great concern to me was
23 the levels of violence. Legal strikes have taken place
24 before and have been dealt with, but this one was causing
25 loss of lives and I was more concerned about more people

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1 being killed than to look at the causes or non, thereof.

2 MS BARNES: If you had asked the local
3 leadership what NUM's position was in relation to the
4 strike, you would have got the answer that we see on
5 paragraph 4 on page 1 of the statement of Mr Setelele, is
6 that correct?

7 MR ZOKWANA: Chairperson, I've given a
8 statement to say this, that when I arrived on the scene on
9 the 12th, none of the local leaders were available to talk
10 to me, that is Setelele and others because at that moment
11 they were in hiding as they believed that their lives in
12 danger. [Inaudible] where they were, as to raise the
13 question you are raising, counsel.

14 MS BARNES: Yes, but it's not just Mr
15 Setelele. It happens to be in his statement but what the
16 evidence is, is that a number of meetings were held and
17 NUM's position at those meetings was consistently that it
18 would be a breach of the two year agreement to raise fresh
19 wage demands. So if you'd asked what NUM's position was at
20 Lonmin, that's what you would have been told. Correct?

21 MR ZOKWANA: As I have said, when I
22 arrived at Lonmin in the afternoon of the 12th the shop
23 stewards of NUM, Mr Setelele included who was the branch
24 chairperson, were already in hiding. There was no way I
25 could have asked them the question you are referring to.

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1 By the way, that in NUM a shop steward and a branch leader
2 are different people within the union. A shop steward will
3 be a person elected in a section. He doesn't have the
4 authority of making decisions. Branch committees are
5 unique and I think Setelele mentioned the fact that in a
6 branch committee meeting of Lonmin, it is not all shop
7 stewards therefore who attend such meetings but I, on that
8 day in question I never met any of the branch committee
9 members as they were in hiding.

10 MS BARNES: Yes, sir, that's not really
11 the point. The point is that if you'd heard that your
12 local NUM leaders had said to the workers, you can't raise
13 fresh demands, that would be in breach, you would have said
14 no, no, no, that's wrong, we must tell the workers that
15 that is wrong, it is possible to raise these demands, it's
16 just not possible to strike over them. Isn't that what you
17 would have said?

18 MR ZOKWANA: Under normal circumstances
19 that is possible because you will go and find out what
20 would have been, but in the case of Lonmin on that day, on
21 that afternoon, I can say that there was tension, there was
22 fear, a lot of possibilities, hence one of our own shop
23 stewards was found shot that same evening. I was concerned
24 that if we don't get immediate people to come and keep law
25 and order more lives – that is what concerned me more. I

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1 didn't debate the reasons why there was a strike, I debated
2 the issue of violence and how to curb it.

3 MS BARNES: Chair, I see that it's 3
4 o'clock.

5 CHAIRPERSON: If you are asking if this
6 is a convenient stage –

7 MS BARNES: Yes, it would be, thank you.

8 CHAIRPERSON: - to take the adjournment.

9 And in the circumstances we will adjourn until, as I
10 indicated earlier, until Tuesday morning at 10 o'clock. On
11 Monday I understand Mr Mpofu is going to be consulting with
12 his witnesses after he's arranged with Lonmin for the
13 subpoenaed gentlemen to come here on Tuesday. Very well,
14 we will adjourn until Tuesday, at 10 o'clock.

15 [COMMISSION ADJOURNED]

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