

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

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

#### HELD ON

DAY 43      5 FEBRUARY 2013      PAGES 4615 TO 4735

#### HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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<p style="text-align: right;">Page 4615</p> <p>1 [PROCEEDINGS ON 5 FEBRUARY 2013]  2 [11:02] CHAIRPERSON: The Commission resumes.  3 Due to unforeseeable circumstances that arose yesterday,  4 it's not been possible for us to commence until now and I  5 wish to apologise to everyone concerned who has been kept  6 waiting because we didn't commence at the scheduled time.  7 You're still under oath. Ms Barnes, I think you're still  8 cross-examining?  9 MS BARNES: Yes, Chair, that's correct.  10 SENZENI ZOKWANA (CONTD): Yes.  11 CROSS-EXAMINATION BY MS BARNES (CONTD):  12 Good morning, Mr Zokwana. I'd like to start this morning  13 by introducing another article, also by Carol Paton. It's  14 an article that was published in the Business Day on the  15 14th June 2012.  16 CHAIRPERSON: What will this exhibit  17 number be, Ms Pillay?  18 MS PILLAY: Chair, it should be BBB2.  19 CHAIRPERSON: Triple?  20 MS PILLAY: BBB2.  21 CHAIRPERSON: BBB2, thank you.  22 MS BARNES: We do have copies for  23 everybody. We'll hand those out now.  24 CHAIRPERSON: You say it's an article by  25 Ms Carol Paton -</p>	<p style="text-align: right;">Page 4617</p> <p>1 test our ingenuity. The third unnumbered page, paragraph  2 beginning?  3 MS BARNES: Paragraph beginning "Impala"  4 and the word "Impala" is in bold –  5 CHAIRPERSON: "Impala executive director  6 Paul Dunn says" –  7 MS BARNES: That's correct.  8 CHAIRPERSON: And up till where is the  9 passage you want, Ms Barnes?  10 MS BARNES: It's that paragraph and the  11 next paragraph.  12 CHAIRPERSON: Now, the next paragraph,  13 the one after that begins "Either way", so are both of the  14 ways, as it were, covered in the two paragraphs that you've  15 drawn the witness's attention to?  16 MS BARNES: Yes, that's correct.  17 CHAIRPERSON: I see, alright. Mr  18 Zokwana, when you're ready let us know and then Ms Barnes  19 will start questioning you about it.  20 MR ZOKWANA: Do you want to go through  21 the whole or want to only read these two paragraphs?  22 MS BARNES: Yes, the focus is simply on  23 these two paragraphs.  24 MR ZOKWANA: Fine, I'm through.  25 MS BARNES: Have you had a chance to look</p>
<p style="text-align: right;">Page 4616</p> <p>1 MS BARNES: Yes, it's a different  2 article, also by Carol Paton – yes.  3 CHAIRPERSON: - published in Business Day  4 on the 14th last year.  5 MS BARNES: 2012.  6 CHAIRPERSON: Thank you, alright. Is  7 there a particular passage to which to draw the witness's  8 attention?  9 MS BARNES: Yes, there is indeed.  10 CHAIRPERSON: It might be an idea to give  11 him, to identify it, give him a chance to read it quickly –  12 or slowly, whichever speed he prefers – and then you can  13 question him about it.  14 MS BARNES: It's really on page 3 of the  15 article and you'll see that about halfway down the page on  16 page 3 the word "Impala" appears in bold, if you could read  17 that paragraph and the paragraph following that.  18 CHAIRPERSON: If you want to look  19 elsewhere in the article just to see if there's something  20 that is relevant for him but he will tell us what he needs,  21 I think, Ms Barnes.  22 MS BARNES: Are you with me, Mr Zokwana?  23 CHAIRPERSON: The reference – while I was  24 making a note – what is the passage, in particular?  25 They're unnumbered I see, the pages, but that's just to</p>	<p style="text-align: right;">Page 4618</p> <p>1 at them? You'll see that the first paragraph that I've  2 drawn your attention to is a reference to what Paul Dunn  3 said happened in the wage negotiations at Impala in 2011  4 and it's very similar to what was contained in the Carol  5 Paton articles that we looked at last week, is that  6 correct?  7 MR ZOKWANA: Except that it is in bold in  8 this new document as compared to the other document, the  9 only thing I can see as different.  10 MS BARNES: That's right, the font is  11 different. If I can just read the last sentence of the  12 first paragraph that I've asked you to –  13 CHAIRPERSON: I think to be fair, Ms  14 Barnes, there are a lot of people here in the auditorium  15 who have come to listen and they haven't got the advantage  16 of reading the article so I think in fairness to them you  17 should read – it's not a long passage – I think you should  18 read it, let the interpreter interpret it, because  19 otherwise they will be lost, they won't be able to follow  20 the cross-examination.  21 MS BARNES: Alright, I'll read the  22 relevant paragraph into the record then. This is now in  23 relation to wage negotiations at Impala in 2011. "Impala  24 executive director Paul Dunn says that during the talks,  25 management put a proposal on the table that rock drill</p>

1 operators who are more skilled and who are at risk of  
 2 resigning for better jobs, be given a higher increment. We  
 3 recognised that we were out of step with the rest of the  
 4 industry, both in job grading and in pay. It would have  
 5 been pre-emptive to stop them from leaving but that  
 6 suggestion never found its way into the final agreement.”  
 7 Then the next paragraph reads as follows, “Mr Dunn says  
 8 it’s because NUM rejected it. Sidwell Dikolwana, the NUM’s  
 9 provincial secretary, says it was never seriously on the  
 10 table.” So what is reported here, Mr Zokwana, is not that  
 11 your provincial secretary, when he was asked about this,  
 12 said that there was no proposal, but he said it was not a  
 13 serious proposal. Is that correct? Is that the  
 14 information you received?

15 MR ZOKWANA: I think we are dealing with  
 16 the same article, I gave an answer, because the only  
 17 difference between this one, Chairperson, and the one we  
 18 read last week is that the description of the job of  
 19 machine drillers in the first article is described as hard,  
 20 which I agree with. On the new, with bold font this time,  
 21 it regards them as skilled but I still say, as I said last  
 22 week, that there was never a proposal to deal with a  
 23 differential increase to rock drill operators and I said  
 24 the reason being that for every negotiation process, people  
 25 exchange documentation, proposals are given in writing and

1 my information from those who led, especially the leader of  
 2 that negotiation, no such was presented.

3 MS BARNES: Sir, this article is dated  
 4 the 14th of June 2012, as you’ve seen. Were you aware at  
 5 this time that it was being said, that this proposal had  
 6 been rejected by NUM and that your provincial was saying,  
 7 not that there was no proposal but that such a proposal was  
 8 not seriously on the table? Were you aware of that?

9 MR ZOKWANA: I have responded on Friday  
 10 to say this, that a number of articles were written. Many  
 11 people tend to be experts on these matters – only  
 12 unfortunately after the effect and if NUM chose not to  
 13 respond to each and every article that is issued. As to  
 14 your question whether I have checked with the NUM  
 15 secretary, in my view he is not saying that such a proposal  
 16 was made. He is just saying that such a proposal was never  
 17 tabled and I think what he’s saying concurs with what I  
 18 have given a response to say when you negotiate, you don’t  
 19 put things as if you are just in a conversation, you reduce  
 20 them down into paper as proposals.

21 MS BARNES: I’ll give you another  
 22 opportunity to answer the question. Were you aware in June  
 23 2012 that the allegations that appear in this article were  
 24 being made?

25 MR ZOKWANA: Personally I never saw this

1 document, although I know there were many documents flying  
 2 around of many people who have turned experts in these  
 3 matters.

4 MS BARNES: Alright, now let’s go back to  
 5 the events of the 11th and the 12th of August 2012. If I  
 6 could perhaps just refer you to your statement, to page 3  
 7 paragraph 12.

8 MR ZOKWANA: Yes?

9 MS BARNES: You’ll recall that I referred  
 10 you to this paragraph on Friday and I asked you to explain  
 11 the reference in that paragraph to the events that had  
 12 occurred at the NUM office the previous day, do you  
 13 remember that?

14 MR ZOKWANA: I remember that very well.

15 MS BARNES: What you said in response to  
 16 my question on Friday was that Mr Bongo had told you on the  
 17 phone on the 12th August that there had been an attempt to  
 18 invade the NUM offices but you’d not gotten any details, is  
 19 that correct?

20 MR ZOKWANA: That’s correct, but let me  
 21 explain. The reason of his calling was not to deal with  
 22 the issue of the 11th, it was to deal with the fact that a  
 23 group of people were marching towards the NUM office, but  
 24 he did mention that such was not the first, as the previous  
 25 day there had been such and we never went into detail what

1 happened the previous day.

2 MS BARNES: Now despite that, despite  
 3 having received that information from Mr Bongo, you took no  
 4 steps on the 12th to find out what in fact had happened, is  
 5 that correct?

6 MR ZOKWANA: My answer on Friday, and  
 7 I’ll repeat it again, was that when I arrived on the scene  
 8 on the 12th, either the late comrade Bongo or any other  
 9 leaders of the branch were already in hiding and what was  
 10 pressing at that time was the risk of more lives being  
 11 lost, hence I spent more time with the company trying to  
 12 look at measures, we can increase police presence so that  
 13 no more lives were lost.

14 MS BARNES: So the answer to the question  
 15 is no.

16 MR ZOKWANA: I couldn’t understand the  
 17 question because I’m saying that Mr Bongo – the late  
 18 comrade Bongo who could have explained, and other officers  
 19 of the branch, were not on the scene as they had been  
 20 compelled to run away from their lives, but from what we  
 21 have raised with Bongo on the phone - he wasn’t there when  
 22 I arrived.

23 CHAIRPERSON: The answer to the question  
 24 counsel asked you is no, but you’ve given explanation for  
 25 that answer.

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1 MR ZOKWANA: Yes.

2 CHAIRPERSON: But I think we can now move

3 on. Now we know you've given a negative answer and we know

4 what the negative answer is based on, you can now proceed

5 to your next question, Ms Barnes.

6 MS BARNES: And you also took no steps on

7 the 12th August to find out what your local NUM leaders'

8 attitude was to the RDOs' strike, did you?

9 CHAIRPERSON: I think his explanation is

10 going to be that they weren't there, they were already in

11 hiding so he couldn't – if he had been there he might've

12 asked them. I'm not – spending a lot of time on an issue

13 that isn't going to help us.

14 MS BARNES: Well, you did meet – on your

15 own version, sir, you did meet with shop stewards on the

16 12th of August, isn't that correct?

17 MR ZOKWANA: I tried to show you on

18 Friday how different our structures are and I showed you

19 that the shop stewards are leaders who were elected at

20 their work place and the leaders who take decisions in a

21 branch will be members of the branch committee and I

22 [inaudible] Chairperson that on the day of my arrival none

23 of the branch committee members were present and hence

24 they'd gone to – they were hiding.

25 MS BARNES: Now, on the 12th of August you

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1 had a meeting with Lonmin management, is that correct?

2 MR ZOKWANA: Yes.

3 MS BARNES: Surely at that meeting with

4 Lonmin management you should've suggested that all the

5 trade unions come together with Lonmin management and

6 attempt to establish the facts as to what was going on and

7 attempt to find a solution, surely you should've done that?

8 MR ZOKWANA: Sorry Chairperson, maybe if

9 she can assist me to understand which unions are we

10 referring to?

11 MS BARNES: All the unions that might

12 have an interest in the matter.

13 MR ZOKWANA: Let me explain that,

14 Chairperson. My concern was to ensure that relevant steps

15 are taken, as I was informed that already two lives had

16 been lost with the possibility of more being lost, if you

17 read the statement of the security Motlogeloa as to what

18 was happening on the day, page 94. I was not going to be a

19 shop steward of other unions. I think those unions had the

20 choice to prevail if they were concerned [inaudible]. With

21 due respect, Chairperson, I went to represent NUM to make

22 sure that what NUM can do to reduce any further carnage. I

23 was not going to say to management, where are other unions?

24 They never mandated me to raise that on their behalf.

25 [11:22] MS BARNES: We know that what you did do

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1 on the 12th of August, Mr Zokwana, was phone the police, is

2 that correct?

3 MR ZOKWANA: Yes, I said that in my view

4 and in terms of what I was given by the company, that only

5 the presence of the SAPS with the necessary skills in crowd

6 control would assist and they were telling me how

7 frustrated they were and if you read the statement of the

8 witness security Motlogeloa, he will tell you of their

9 frustrations that there was no backup from the police. The

10 reason I called was because I was aware that if, to say

11 that if nothing was done to increase the police – and I was

12 doing that as an NUM person, not on behalf of other unions.

13 MS BARNES: I'd like us to, I'd like you

14 to tell us, sir, about those phone calls that you made on

15 that day. You said that you phoned the office of the

16 provincial commissioner, is that correct?

17 MR ZOKWANA: That is in my statement,

18 yes.

19 MS BARNES: Who did you speak to?

20 MR ZOKWANA: Given the situation, I

21 couldn't remember who I spoke to. Whoever I spoke to did

22 not give mean answer I was happy with.

23 MS BARNES: Do you know the rank of the

24 person you spoke to?

25 MR ZOKWANA: I repeat, I could not have –

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1 I mean and if I could remember the rank I would be maybe

2 knowing the person. The only person I remember I spoke to

3 thereafter was the Minister of the Police.

4 MS BARNES: You said the response was

5 unsatisfactory. What did this person say to you?

6 MR ZOKWANA: They didn't have enough

7 personnel to deal with the situation as two of their

8 personnel had been to the scene, as claimed by the report

9 of the security officer.

10 MS BARNES: What level of personnel did

11 you think was required?

12 MR ZOKWANA: Given the numbers of people

13 who were involved here, I mean between 2 000 and 3 000 and

14 how they were described in manner, in terms of being armed,

15 I thought that the security had to decide that, I'm not in

16 a position to determine. My training has not given me to

17 know if people are armed this way, you need so many.

18 MS BARNES: You then phoned the Minister

19 of Police directly, is that correct?

20 MR ZOKWANA: I was given his office and I

21 got somebody in the office and I left a message. He came

22 back to me.

23 MS BARNES: What did you ask the Minister

24 of Police to do?

25 MR ZOKWANA: I gave him the report as

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1 given to me by the company and told him that the company  
 2 was frustrated, as I was as well, for the fact that there  
 3 was this situation of anarchy happening on the mine, people  
 4 being killed, a threat to turn down property. That's what  
 5 I told him.

6 MS BARNES: How long was your call with  
 7 the Minister?

8 MR ZOKWANA: Unfortunately I didn't  
 9 record but I can imagine it's – I did give him enough  
 10 information so that he can make his mind.

11 MS BARNES: Assist us, Mr Zokwana, give  
 12 us an estimate.

13 MR ZOKWANA: Sorry Chairperson, I don't  
 14 want to create a view that says 10, 20 minutes. I say I  
 15 took long enough to make sure that the Minister  
 16 comprehended what the situation was. I can't even say 20,  
 17 30 minutes. I would not be basing that on fact, I didn't  
 18 observe that.

19 CHAIRPERSON: I think what she wants to  
 20 know is, was it a fairly short conversation or one that  
 21 can't be described as short but –

22 MR ZOKWANA: Not short.

23 CHAIRPERSON: I'm not exactly sure where  
 24 she's getting with the question but I'm sure she has a  
 25 reason for asking it, so I'm not going to disallow the

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1 question. Was it longer than 10 minutes?

2 MR ZOKWANA: It could have been longer  
 3 than that.

4 MS BARNES: And what did the Minister say  
 5 he would do?

6 MR ZOKWANA: He said to me he will  
 7 consult his structures, I mean he was referring to his  
 8 senior personnel and I didn't know whom he was going to  
 9 call to deal with that and I think he's in a position to  
 10 know whom to call when such requirements are made.

11 MS BARNES: Were you satisfied after you  
 12 spoke to him that action would be taken?

13 MR ZOKWANA: As a person I trusted the  
 14 Minister. I was aware, I was sure that having been given  
 15 the briefing, he will take the necessary steps.

16 MS BARNES: And the information that you  
 17 gave to the Minister was the information that you'd  
 18 received from Lonmin about what had happened on the 12th of  
 19 August, is that correct?

20 MR ZOKWANA: I said that I got a briefing  
 21 from our local shop stewards as well as the management.  
 22 That's the briefing I gave the Minister, but more around  
 23 the fact that two security guys have been killed and how  
 24 they were killed.

25 MS BARNES: You didn't tell the Minister

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1 anything about what had happened on the 11th because you  
 2 didn't know anything about what had happened on the 11th, is  
 3 that correct?

4 MR ZOKWANA: I said – again, and I repeat  
 5 – that I informed the Minister of the situation as detailed  
 6 to me, which was mostly around the events of the 12th and I  
 7 was able to impress on him the need to increase police  
 8 presence. I didn't go into details of the 11th, as I've  
 9 said, I couldn't meet with the late Mr Bongo so that he  
 10 would give me what he gave me on the phone. The issue of  
 11 the 11th appeared to me on the 15th when the president of  
 12 AMCU raised it at SABC. And let me say that, Chairperson,  
 13 your question, I didn't inform the Minister of the issues  
 14 of the 11th as that didn't form part of the briefing I  
 15 received.

16 MS BARNES: And we know that the SAfm  
 17 interview – and we'll get to that in a moment – took place  
 18 on the 15th, Wednesday the 15th of August, is that correct?

19 MR ZOKWANA: That's correct, yes.

20 MS BARNES: So from the 12th to the 15th  
 21 you took no steps to find out what had happened on the NUM,  
 22 at the NUM offices on Saturday the 11th, is that correct?

23 MR ZOKWANA: The reports I got were such  
 24 that on the same evening of the day I was in Marikana  
 25 confirming my concerns, one of our leaders, Mr Mabebe, was

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1 killed that night and a number of other incidents happened,  
 2 including the murder of other leaders of NUM. So we were  
 3 preoccupied in trying to find what could be done –  
 4 including the killing of the two police by the same people.  
 5 So I did not deal with the 11th until the 15th when it was  
 6 raised to me as a question by, an observation by the leader  
 7 of AMCU.

8 MS BARNES: And during the period from  
 9 the 12th to the 15th August you also did not find out what  
 10 your local branch's attitude was to the RDO strike, did  
 11 you?

12 MR ZOKWANA: Chairperson, it would have  
 13 been difficult for a person to look at such a matter when  
 14 at that moment we were receiving reports as to the fact  
 15 that our branch committee members were in hiding,  
 16 allegations of [indistinct] of those murdered, people  
 17 having been killed already. It would've been difficult for  
 18 you to begin to look at what could have been the issue of –  
 19 as I've said that at that moment the branch committee was  
 20 no longer available for anybody to enquire whether this  
 21 issue you are raising was really an issue. We were  
 22 concerned about more lives being lost.

23 MS BARNES: But surely, sir, you could  
 24 have phoned your branch committee members and if you had,  
 25 they would've told you what they'd said to the RDOs and you

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1 would've established that they'd given them incorrect  
 2 advice, isn't that correct?  
 3 MR ZOKWANA: You can only do that, senior  
 4 counsel, if the branch committee was available to meet with  
 5 me. At the point you are referring to they were all in  
 6 hiding and their fears were not unfounded as a number of  
 7 those who were unable to run before, were killed - to  
 8 understand maybe the situation we were in as a union.  
 9 MS BARNES: During the period from the  
 10 12th to the 15th of August you didn't even issue a press  
 11 statement condemning the violence, did you?  
 12 MR ZOKWANA: Our position at NUM has been  
 13 consistent and I've raised that in my statement. We are  
 14 not a union that believes that we can add to numbers by  
 15 embarking on violence, we are not a union that would  
 16 encourage families losing their next of kin just to be big  
 17 after that. And we have made that all clear, to say that  
 18 NUM is against violence, NUM is against illegal strikes,  
 19 NUM is for processes where issues are debated through  
 20 negotiations.  
 21 MS BARNES: Sir -  
 22 MR ZOKWANA: And by this I'm saying in  
 23 paragraph - in paragraph 1, page 84 of Mr Motlogeloa's  
 24 statement, the security guy, as to why were NUM - it's  
 25 because our local branch committee were assisting the non-

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1 strikers to say, don't go on illegal strike because if you  
 2 do so you are going to - this shows as to what stand did  
 3 NUM take around the illegal strike, around all these  
 4 occurrences.  
 5 MS BARNES: Sir, it was a simple  
 6 question. You didn't issue a press statement during the  
 7 period from the 12th to the 15th of August condemning the  
 8 violence, did you?  
 9 MR ZOKWANA: Many statements were issued  
 10 by the union around these matters, from Impala to Lonmin.  
 11 That is the reason why on the 15th I went to SAfm so that  
 12 our position is put clearly for the public. If maybe that  
 13 can - maybe we can go and check how many statements NUM  
 14 made, or interviews. I don't have them with me but I know  
 15 that NUM stood clear that we are against violence, we are  
 16 against people being killed, we are against illegal  
 17 strikes.  
 18 MS BARNES: Well, I'm sure if there was  
 19 such a statement you'll show it to us, sir, we haven't seen  
 20 one.  
 21 MR ZOKWANA: Unfortunately, Chairperson,  
 22 I could not pre-empt what the questions were going to be  
 23 but I'm saying this, that if you read my position during  
 24 the interview and the fact that our local leadership of NUM  
 25 knew what role they were to play in assisting those who

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1 were being threatened not to go to work, in assisting them  
 2 to access the work places, shows very clearly that NUM who  
 3 are a non-violent organisation will stand by that.  
 4 CHAIRPERSON: May I ask you a question at  
 5 this point? The statements issued by NUM, do you put them  
 6 up on a website for people to see?  
 7 MR ZOKWANA: Yes, we do, Chairperson, but  
 8 the point is that I did not prepare -  
 9 CHAIRPERSON: No - no, I understand. So  
 10 if there's any statement that Ms Barnes wants to see, she  
 11 or her attorneys can go to your website -  
 12 MR ZOKWANA: She can do -  
 13 CHAIRPERSON: Presumably your website -  
 14 sorry, presumably your statements are arranged  
 15 chronologically so if they wish to study your statements at  
 16 the relevant time, they can do so and if there's something  
 17 that's material they can then raise it with you in cross-  
 18 examination. If necessary, if you've finished your  
 19 evidence already and they find something that's important,  
 20 they can have you recalled so it can be dealt with? Is  
 21 that so?  
 22 MR ZOKWANA: I'm aware that, Chairperson,  
 23 we had press conferences. Even on the day of the 16th NUM  
 24 had a press conference where our views were clearly made  
 25 and I was saying this, that if the need may be that I go

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1 back and check on which days we issued - but I'm clear that  
 2 for any day our stance would've been consistent that we're  
 3 against violence, we're against people being killed, we're  
 4 against any form that would undermine the Labour Relations  
 5 Act of this country.  
 6 MS BARNES: Thank you, sir, we'll  
 7 certainly have a look at your website. Now if I can take  
 8 you to page 4, paragraph 15 of your statement.  
 9 MR ZOKWANA: Yes?  
 10 [11:42] MS BARNES: You say there that when you  
 11 left the meeting with Lonmin management on Sunday, the 12th  
 12 of August, you stayed in touch with your local NUM  
 13 officials for the next few days and they kept you informed  
 14 of the events that were taking place, is that correct?  
 15 MR ZOKWANA: That's correct, yes.  
 16 MS BARNES: Now I'd like to take you to  
 17 exhibit QQ2 but perhaps before I asked you about that  
 18 exhibit, I asked you last week -  
 19 MR ZOKWANA: No, sorry, give me time to  
 20 check QQ2. I don't have them in the chronology you may be  
 21 having them, because you knew what you were going to ask  
 22 questions as I'm sure you were clearly prepared, than I  
 23 would be.  
 24 MS BARNES: I'll certainly give you an  
 25 opportunity, sir, but before I take you to the document

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1 itself can I just check with you that – when I asked you  
 2 last week whether you'd heard the rumour that was doing the  
 3 rounds that two people had been killed as a result of the  
 4 incident which took place at the NUM offices on Saturday,  
 5 the 11th of August, you said you had not heard that rumour,  
 6 is that correct?  
 7 MR ZOKWANA: Where – what page –  
 8 MS BARNES: You don't need the document  
 9 to answer that question, if you could answer that question  
 10 first and then I'll take you to the document.  
 11 MR MAHLANGU: If the question could be  
 12 repeated please?  
 13 MS BARNES: Last week I said to you that  
 14 a rumour started that two people had been killed as a  
 15 result of the incident which took place at the NUM offices  
 16 on Saturday, the 11th of August, you said you had not heard  
 17 that rumour. I'm now talking about the period from the 12th  
 18 to the 15th of August.  
 19 MR ZOKWANA: As I've said, the details of  
 20 that incident were brought to me by the president of AMCU  
 21 who put it to me that we have killed the two people on the  
 22 day in question.  
 23 MS BARNES: Yes, we've established that,  
 24 sir. We've established that you knew nothing about that  
 25 incident –

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1 MR ZOKWANA: Yes.  
 2 MS BARNES: - from the 12th to the 15th.  
 3 The question is different. The question is, did you hear  
 4 the rumour that two people had been killed in that  
 5 incident?  
 6 MR ZOKWANA: We always encourage our  
 7 local leadership, when they present issues to national  
 8 leadership, to verify the information that they give us.  
 9 We were given the incident I have referred to, of people  
 10 killed, the two security people. I was present on the day  
 11 [inaudible] our guys and all other murders, including that  
 12 of Twala and others were given because we are avoiding of  
 13 dealing with rumours because rumours in most cases can be –  
 14 cannot be based on truth, as I think this Commission  
 15 formed, how a remark can be.  
 16 MS BARNES: Yes and it would be important  
 17 to correct rumours if they were false, wouldn't it?  
 18 MR ZOKWANA: As a union we always  
 19 question and I think the approach would be that rumours can  
 20 be dangerous and people aware of them may take them as true  
 21 and make decisions and as a union we always avoid people  
 22 reporting on rumours.  
 23 MS BARNES: Alright, well let's look at  
 24 what happened. Let me take you to exhibit QQ2 and I'll  
 25 explain to you what it is because you may not know what it

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1 is. The background is that there was an incident on the  
 2 Monday the 13th of August where, at the railway line at  
 3 Lonmin, where there was an incident that happened between a  
 4 group of striking workers and the police and as a result of  
 5 that incident two policemen were killed and three strikers  
 6 were killed. Are you aware of that incident?  
 7 MR ZOKWANA: I am aware of the two police  
 8 personnel who were killed on that day.  
 9 MS BARNES: You weren't aware that three  
 10 strikers were also killed on that day in the same incident?  
 11 CHAIRPERSON: I'm not sure it's three.  
 12 It may be two plus a civilian.  
 13 MR ZOKWANA: Reports about murders,  
 14 including those of the people who may have been killed,  
 15 were made but I don't have real info, what incident really  
 16 happened.  
 17 MS BARNES: Yes, I know you weren't  
 18 there, I'm just drawing your attention to the incident  
 19 which you obviously became aware of subsequently, just in  
 20 an attempt to introduce this document.  
 21 MR ZOKWANA: Yes, I think that is  
 22 confirmed by even my statement I made during the interview  
 23 on the 15th, that two policemen have been killed and I agree  
 24 with you that other people may have been killed but I don't  
 25 have, in terms of how it happened.

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1 MS BARNES: What this document is, sir,  
 2 it's a transcript of a conversation that took place between  
 3 the group of striking workers and General Mzembe on Monday,  
 4 the 13th of August.  
 5 MR ZOKWANA: Yes?  
 6 MS BARNES: If you look at page 9 of the  
 7 document –  
 8 MR ZOKWANA: I've got that, yes.  
 9 MS BARNES: One, this is one of the  
 10 striking workers speaking to General Mzembe and he says the  
 11 following, "On Saturday when we came back the mine security  
 12 shot at us, together with the people from NUM, and killed  
 13 two of our people. That is the reason why we are carrying  
 14 these weapons. We did not fighting with anybody." Do you  
 15 see that?  
 16 MR ZOKWANA: I see that.  
 17 MS BARNES: And then if you go on to page  
 18 11 of the same document –  
 19 MR ZOKWANA: Yes.  
 20 MS BARNES: It says, "The person from NUM  
 21 is the one who shot at us, he killed two of our people."  
 22 Do you see that just near the top of the page?  
 23 MR ZOKWANA: Yes.  
 24 MS BARNES: Now did you not hear, sir,  
 25 from your people on the ground that this was being said?

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1 MR ZOKWANA: That the people at NUM have  
 2 killed two people from the strikers, is that the question?  
 3 I'm checking, Chairperson, I want it clear before I answer.  
 4 MS BARNES: Yes, that this is what the  
 5 strikers were saying, did you not hear this?  
 6 MR ZOKWANA: Unfortunately not, I didn't  
 7 hear that because I had been relying, as I'm saying on page  
 8 84, on the security personnel who are the company, the  
 9 strikers, were then intending to burn - and the reasons he  
 10 gave are contrary to the reasons given by this striker -  
 11 your question - I didn't hear that.  
 12 MS BARNES: If I could take you then to  
 13 exhibit OO2.  
 14 MR ZOKWANA: I would request assistance  
 15 again. Some of these things I don't have. Yes, I've got  
 16 that now.  
 17 MS BARNES: Now this is the media release  
 18 statement by AMCU and on the second page of the media  
 19 statement, in the second paragraph -  
 20 MR MAHLANGU: Page 2.  
 21 MR ZOKWANA: Yes?  
 22 MS BARNES: There's a reference to  
 23 occurred on the NUM office -  
 24 MR ZOKWANA: Yes.  
 25 MS BARNES: - and it says "People came

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1 out of the NUM office wearing NUM T-shirts, opened fire to  
 2 the marchers and one workers was killed on the spot while  
 3 others were wounded and taken to hospital." Now did you  
 4 not hear about this? This is on Tuesday, the 14th of  
 5 August.  
 6 MR ZOKWANA: Unfortunately I didn't catch  
 7 that statement of AMCU and the alleged killing of people.  
 8 MS BARNES: So the first time you heard  
 9 about this was at the SAfm interview which took place on  
 10 the 15th of August?  
 11 MR ZOKWANA: Chairperson, I have said in  
 12 my - that when the late comrade Bongo called me on the 12th  
 13 he did mention, but not in detail, the fact - not the first  
 14 time that people have marched to NUM offices. I didn't get  
 15 details thereof up until we were at the interview with Mr  
 16 Xolani Gwala that I got details from the president of AMCU.  
 17 MS BARNES: If you go to exhibit LL -  
 18 MR ZOKWANA: Yes, the interview.  
 19 MS BARNES: That's right, the transcript  
 20 of the interview you refer to.  
 21 MR ZOKWANA: I've got that, yes.  
 22 MS BARNES: Now if you go to page 13 of  
 23 exhibit LL you'll see that at the top of that page Mr Gwala  
 24 refers to a caller that phoned in and talked about the  
 25 incident at the NUM office.

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1 MR ZOKWANA: Yes.  
 2 MS BARNES: And Mr Gwala says, "Now a  
 3 little earlier on there was a witness who spoke to one of  
 4 our reporters. He says there was a march on Friday and  
 5 when we went past the offices of the NUM, something like  
 6 that, we were fired upon." And you then asked what  
 7 happened, do you see that?  
 8 CHAIRPERSON: He did not ask, Mr Gwala  
 9 asked what happened and Mr Zokwana then answers, line 9 and  
 10 following.  
 11 MS BARNES: Sorry yes, Mr Gwala is  
 12 telling you what he's heard from this caller and is asking  
 13 you what happened, do you see that?  
 14 MR ZOKWANA: Yes, I see that, yes.  
 15 MS BARNES: And you then say that, "You  
 16 know, when people tell lies after the lives of 10 innocent  
 17 people" - and you then say that you think AMCU is not  
 18 telling the truth, do you see that?  
 19 MR ZOKWANA: Yes.  
 20 MS BARNES: But surely, Mr Zokwana, you  
 21 were in no position to dispute this at this time on your -  
 22 you have said to us that you had no details of what  
 23 happened don the 11th of August, isn't that correct?  
 24 MR ZOKWANA: Let me explain what I was  
 25 disputing on that day, Chairperson. The president of AMCU

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1 was making a view that these strikers or marchers were to  
 2 march through the NUM to the stadium, then I was showing  
 3 him that it would need for them to march past the NUM  
 4 office, if you understand the location of the NUM office  
 5 vis-à-vis the stadium. It was the issue that we were  
 6 dealing with.  
 7 MS BARNES: No, sir. This is the first  
 8 time that you hear about this. This has not yet been  
 9 mentioned in the interview. It is the very first time that  
 10 you ever hear about this, on your version, and you accuse  
 11 the caller and Mr Mathunjwa of telling lies but on your own  
 12 version you know nothing about what happened on -  
 13 MR ZOKWANA: Chairperson -  
 14 CHAIRPERSON: No, he's making another  
 15 point. The point he's making, as I understand him, is to  
 16 say the allegation was they were walking past the NUM  
 17 offices on the way to the stadium and he says that that's  
 18 not true because you don't have to go past the NUM offices  
 19 to go to the stadium.  
 20 MR ZOKWANA: Yes.  
 21 CHAIRPERSON: Do I understand correctly?  
 22 MR ZOKWANA: Yes.  
 23 CHAIRPERSON: That's his point.  
 24 MS BARNES: That allegation is made  
 25 later. This is, in terms of time, the very first time that



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1 you hear of this allegation, according to you.

2 CHAIRPERSON: That's not right either, Ms

3 Barnes, I'm sorry to interrupt you. Mr Gwala, on page 13

4 from line 3, is reporting what someone who telephoned the

5 SAFm and spoke to a reporter, had said. And what he says

6 is this, "A little earlier on there was a witness who spoke

7 to one of our reporters. He says there was a march on

8 Friday and when we went past the offices of the NUM,

9 something like that, we were fired upon. What happened?"

10 And that's when he takes it further. Now –

11 MR ZOKWANA: I agree, Chairperson, the

12 conversation was –

13 CHAIRPERSON: Sorry to interrupt. To be

14 fair to Ms Barnes, I thought that that passage actually

15 said in terms that they were on the way to the stadium when

16 they went past. It doesn't say that, so when I intervened

17 and told Ms Barnes that she wasn't understanding the

18 answer, I was actually wrong. I withdraw what I said, so

19 please proceed with the cross-examination.

20 MS BARNES: Very well –

21 CHAIRPERSON: I made –

22 MR BURGER SC: In fairness to the

23 witness, what is being debated here is what happened on

24 Friday the 10th –

25 MR ZOKWANA: Yes.

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1 MR BURGER SC: Not Saturday the 11th.

2 MR ZOKWANA: Yes -

3 CHAIRPERSON: - cross-examination, if the

4 witness didn't know anything about what happened on either

5 the Friday or the Saturday and therefore it is, the

6 question asked is, how can you deny it and accuse other

7 people of telling lies. I think that's the point of the

8 question. I was aware of the fact - they're actually all

9 talking nonsense because the incident that forms the

10 subject of the present cross-examination happened on the

11 Saturday, whereas at one – on a number of occasions Mr

12 Mathunjwa himself talks about it having happened on the

13 Friday and also a suggestion is that someone phoned the

14 SAFm and spoke to a reporter and spoke about something that

15 happened on the Friday. So there was a fair measure of

16 confusion but I'm not sure that that confusion is a reason

17 for my disallowing Ms Barnes's question. But anyway, she's

18 heard the discussion between us and so has the witness, and

19 presumably they can all proceed, or both of them, in a

20 focused way from now on.

21 MS BARNES: Thank you, Chair. Mr

22 Zokwana, a little later in the transcript, and we'll get to

23 it, there's a debate about where the workers were marching

24 to and which direction they were coming from, but that

25 comes later. This is the first time you hear about an

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1 incident at the NUM office and I put it to you that you had

2 no basis on which to accuse the caller and Mr Mathunjwa of

3 lying about the incident since, on your own version, you

4 did not have information. Would you like to comment?

5 [12:02] MR ZOKWANA: Chairperson, I would like

6 again to say that there is, I agree that the dates are

7 wrong. It's the 12th, but nonetheless if you read point

8 number 15 on page 13, I clearly say AMCU is not telling the

9 truth, not the caller. I was not talking about what the

10 caller was saying. I was saying that the president of AMCU

11 at that point where he was alleging that people were

12 marching past the NUM offices towards the stadium – I

13 wasn't dealing with what happened, I was dealing with the

14 direction they were supposed to take if they would go to

15 wherever they were going, because the debate at that moment

16 –

17 MS BARNES: Sir, Mr Mathunjwa hasn't said

18 it yet. It's only the caller who said it at this time and

19 it's in response to Mr Gwala telling you what the caller

20 has said that you say, "You know when people tell lies."

21 Would you like to comment on that?

22 MR ZOKWANA: My view and my version is

23 that I was debating with Mr Mathunjwa and the issue of the

24 call was made by Mr Gwala.

25 MS BARNES: Sir, you earlier told us that

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1 when you spoke to Mr Bongo on Sunday the 12th he said that

2 there had been a previous attempt to invade the NUM

3 offices, those were your words. So for all you know, this

4 could have happened, isn't that correct? For all you knew

5 at the time, what the caller was saying here, happened.

6 Isn't that correct?

7 MR ZOKWANA: I didn't have to rely on

8 anybody telling me of the stadium and where NUM offices

9 are. I was only dealing with the issue that you didn't

10 need to go through, past the NUM office if your aim was

11 marching to where he claimed they were marching.

12 MS BARNES: If you go on in exhibit LL,

13 sir, to page 16 –

14 MR ZOKWANA: Yes, I've got that.

15 MS BARNES: This is now the first time

16 that Mr Mathunjwa refers to the incident and you can check

17 the transcript in the break and satisfy yourself. This is

18 the first time it's mentioned by Mr Mathunjwa and he then

19 says, "On Friday" – on Friday, and we know that the date

20 was wrong. He then goes on, if you go on to the next page,

21 page 17, and he says he's received a report from the

22 strikers and they say, "We were shot by NUM and the demands

23 are not directed to NUM. NUM is not a company but we were

24 surprised when they were killing us."

25 MR ZOKWANA: Chairperson, I think –

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1 MS BARNES: I haven't put the question –  
 2 MR ZOKWANA: Chairperson, I think that  
 3 this recording and the way the dates and times were  
 4 presented and how did it flow, would give the impression  
 5 that for first time the matter was mentioned but I put it  
 6 to you, this that – I respond that the matter of the march  
 7 – as I've mentioned before, I get what you're saying, that  
 8 it's only referred to here and I still stand by the fact  
 9 that in the discussion when I spoke of AMCU not telling the  
 10 truth, I was referring to the fact that the march was  
 11 supposed to went past NUM offices.  
 12 MS BARNES: The point is, sir, and I put  
 13 it to you again you had no basis to dispute what Mr  
 14 Mathunjwa was saying, did you?  
 15 MR ZOKWANA: My only basis is that I know  
 16 the area, I know the mine and when I put up to him, he  
 17 could not dispute what I was saying.  
 18 MS BARNES: Now, Mr Mathunjwa has already  
 19 given evidence in this commission of inquiry and you  
 20 indicated that you were not present while he gave his  
 21 evidence, is that correct?  
 22 MR ZOKWANA: But not being present is  
 23 true but the process itself was broadcast on television. I  
 24 was able to follow what was happening.  
 25 MS BARNES: Good, then you will know that

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1 it was not put to Mr Mathunjwa during his evidence before  
 2 this Commission that AMCU had been responsible for the  
 3 killing of security guards on the 12th of August, correct?  
 4 MR ZOKWANA: That was not in the  
 5 Commission, I would not be able to answer questions because  
 6 I was not part of that, for the record of the Commission  
 7 can show that. What I picked was only what I saw in the  
 8 snippets on the news and the news doesn't go into details.  
 9 MS BARNES: I thought you said you  
 10 watched it on TV?  
 11 MR ZOKWANA: What? Chairperson, sorry,  
 12 can you repeat the question?  
 13 MS BARNES: I obviously misunderstood  
 14 your earlier answer that you watched the proceedings of the  
 15 Commission on the television.  
 16 MR ZOKWANA: No, no, I said I only saw  
 17 the Commission through the snippets of the news.  
 18 MS BARNES: Anyway, I can tell you, sir,  
 19 that what I've just indicated to you was not put to Mr  
 20 Mathunjwa in his evidence, do you agree with me?  
 21 MR ZOKWANA: Chairperson, I don't know  
 22 how I would agree to that question because I was not part  
 23 of the Commission as to say yes or no.  
 24 CHAIRPERSON: Do you suggest that – is it  
 25 that he was here when Mr Mathunjwa was cross-examined, or

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1 was he? I don't think that's – were you here when Mr  
 2 Mathunjwa was cross-examined?  
 3 MR ZOKWANA: No, Chairperson, I was not.  
 4 CHAIRPERSON: You can ask him if he knows  
 5 that it was put to Mr Mathunjwa but if he says he doesn't,  
 6 I don't know that you can take it much further.  
 7 MS BARNES: Sir, if there was evidence,  
 8 if you had evidence that AMCU was responsible for the  
 9 killing of the two security guards on Sunday the 12th of  
 10 August, you would have given that evidence or you would  
 11 have alerted your legal representatives to that evidence,  
 12 is that correct?  
 13 MR ZOKWANA: I never made the allegation  
 14 in question.  
 15 MS BARNES: Well, if we can go then to  
 16 page 13 of exhibit LL.  
 17 MR ZOKWANA: Yes?  
 18 MS BARNES: On the bottom of page 13 you  
 19 say, "On Friday" – this is you speaking – "and those  
 20 security guards were the people who were at the offices.  
 21 Two of the security guys killed by what I will call AMCU."  
 22 You said this on national radio, is that correct?  
 23 MR ZOKWANA: Where is that?  
 24 MR MAHLANGU: Page 13.  
 25 MR ZOKWANA: Yes but these pages have got

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1 numbers 20, 25.  
 2 MS BARNES: Page 13 -  
 3 CHAIRPERSON: In fairness I think, Ms  
 4 Barnes, you can't just take passage by itself. I think you  
 5 should go on to probably line 17 on page 14, so the whole  
 6 passage can be read in context. It does say what you said  
 7 at the top of page 14 but then he seems to qualify it a bit  
 8 later. So in fairness to him, you've got to get the whole  
 9 passage. I understand the point you're making which – and  
 10 I also un its relevance, but if you want to drive the point  
 11 home you've got to put the full context to him and not sort  
 12 of, not just one answer.  
 13 MS BARNES: Alright, let's read on. Are  
 14 you with me so far, Mr Zokwana, at the top of page 14?  
 15 MR ZOKWANA: Yes.  
 16 MS BARNES: You then go on to say, "On  
 17 Friday" – no, sorry, that's Mr Gwala, "On Friday" –  
 18 MR ZOKWANA: Yes.  
 19 MS BARNES: Then you say, "At NUM  
 20 offices, yes."  
 21 MR ZOKWANA: Yes.  
 22 MS BARNES: Then Mr Gwala says, "How were  
 23 they killed?" You say "They were in their cars. Guys came  
 24 and they stabbed them and they burned those cars and I saw  
 25 one of those cars being pulled from the shaft and" – and

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1 then Mr Gwala says "And they were burnt by AMCU members."  
 2 And you then say, "I believe now, having heard to the, from  
 3 the president of AMCU that AMCU instigated the march, it is  
 4 the style they have been using before. They did this thing  
 5 in Impala, they are doing it again." Do you see that?  
 6 MR ZOKWANA: Yes, I see that, yes.  
 7 MS BARNES: You have no evidence, though,  
 8 that AMCU was responsible for these events. If you had  
 9 such evidence you would've given it to your legal  
 10 representatives, isn't that correct?  
 11 MR ZOKWANA: Chairperson, I repeat, this  
 12 was my view based on the historical events in Impala, as  
 13 I've referred to. The point I was qualifying was saying  
 14 that in that debate, which is not appearing here, the  
 15 president of AMCU admitted the fact that they had been to  
 16 the mountain, to the koppie to be precise, to the koppie  
 17 and that their general secretary had met with the members.  
 18 Then I said, if you've been to the koppie, therefore AMCU  
 19 is better placed to understand what's happening on the  
 20 koppie but given the likeliness of what is happening in  
 21 Lonmin, what happened in Impala, I can come to a view that  
 22 therefore this may have been – and I can support this,  
 23 Chairperson, by going to page, I think it's page 80, a  
 24 statement by one of the senior executives of Lonmin, Mr  
 25 Bello, in saying to the CEO that this march of AMCU – which

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1 I'm not the only one to conclude that AMCU was behind this  
 2 march. I never said they killed, I said that AMCU was  
 3 behind the march, not they had been killing.  
 4 MS BARNES: Sir, you said on the top of  
 5 page 14, "Two of the security guards were killed by what I  
 6 will call AMCU." You said that on national radio in the  
 7 absence of any evidence. Do you think that is responsible,  
 8 as a president of a union?  
 9 MR ZOKWANA: I understand that in that  
 10 meeting I was with the president of AMCU who was able to  
 11 dispute what I said and I think he did. We were in an  
 12 interview of that day and we were able therefore to put  
 13 forward our views and my view therefore was that, given  
 14 what happened in Impala, given that there's been this union  
 15 that has been in interaction with the strikers, by his own  
 16 admission I could – that therefore AMCU would have known of  
 17 these developments leading to this march.  
 18 MS BARNES: Sir, will you retract this  
 19 statement now? Will you retract the allegation that AMCU  
 20 was responsible for the death of two security guards now?  
 21 MR TIP SC: Chair, before the witness –  
 22 CHAIRPERSON: Mr Tip.  
 23 MR TIP SC: Before the witness answers  
 24 that particular question, this is based on the two lines at  
 25 the top of page 14. Regard must be had to the phrase

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1 "organised march" and –  
 2 CHAIRPERSON: When Ms Barnes read the  
 3 passage she actually stopped before the end of the line.  
 4 Perhaps it would be helpful if I read the whole thing out  
 5 and then you can go on with your – and those in the  
 6 auditorium would understand the debate between us. What Mr  
 7 Zokwana said is this, Mr Gwala says initially, "What  
 8 happened, tell me the truth?" And he says, this is because  
 9 he says AMCU is not telling the truth. "The fact is, the  
 10 security guys of management were requested by NUM to go and  
 11 guard our offices after the meeting was held in the  
 12 stadium." Mr Gwala, "On Friday?" Mr Zokwana, "On Friday.  
 13 And those security guys were the people who were at the  
 14 offices. Two of the security guys were killed by what I  
 15 will call AMCU and organised march." Mr Gwala then  
 16 interrupts, "On Friday?" Mr Zokwana, "At NUM offices,  
 17 yes." Mr Gwala, "How were they killed?" Mr Zokwana, "they  
 18 were in their cars, guys came, they stabbed them, they  
 19 burnt those cars. I saw one of the cars being pulled to  
 20 the shaft." And Mr Gwala then says, "And they were burnt  
 21 by AMCU members." Mr Zokwana says this, "I – I believe  
 22 now, having heard to the, from the president of AMCU, that  
 23 AMCU instigated this march. It is the style they've been  
 24 using before. They did this thing in Impala, they are  
 25 doing it again." And then Mr Mathunjwa then deals with

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1 that. So that's the full passage on which this cross-  
 2 examination is based.  
 3 MR TIP SC: Yes.  
 4 CHAIRPERSON: Do you wish to – now what  
 5 exactly is the point you want to make?  
 6 MR TIP SC: Well, the point –  
 7 CHAIRPERSON: I read that out, so those  
 8 in the audience can follow what, the point you're going to  
 9 make.  
 10 MR TIP SC: There is, with respect,  
 11 differences between a proposition that has a full stop at  
 12 the end of AMCU and that one that has regard to it being an  
 13 organised march or AMCU instigated march, which it quite  
 14 clearly, from the context, states.  
 15 CHAIRPERSON: Well, Ms Barnes, what do  
 16 you say? Sorry, have you –  
 17 MR TIP SC: Yes. Thank you, Chair.  
 18 CHAIRPERSON: Ms Barnes, what do you say  
 19 about that point?  
 20 MS BARNES: Well, the whole passage has  
 21 now been read. Perhaps I can – I can reformulate my  
 22 question to the witness.  
 23 CHAIRPERSON: Yes.  
 24 MS BARNES: Will you retract any  
 25 allegation that AMCU was responsible for the act, any acts

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1 of violence that have been referred to on those particular  
 2 days?  
 3 MR ZOKWANA: Chairperson, I would like to  
 4 say this, that it was a view I held, informed by that  
 5 meeting, by AMCU that they have been in interaction with  
 6 the strikers on Monday. I never accused AMCU of killing.  
 7 I said AMCU could have known of this march since they are  
 8 part of those interactions. I don't know if it's what I  
 9 should – I should withdraw, because I was saying this, that  
 10 it is the same carbon paper of what happened in Impala  
 11 where strikers will be called, five Madoda, but immediately  
 12 the strike ends AMCU will be the union with – to come  
 13 forward. I [inaudible] withdraw that, Chairperson.  
 14 CHAIRPERSON: Mr Zokwana, I hope Ms  
 15 Barnes will not be offended if I try to put her point to  
 16 you. If she is, if she doesn't want me to, I won't but can  
 17 I try and put the point clearly?  
 18 MS BARNES: Please, Chair.  
 19 CHAIRPERSON: The point being made to you  
 20 is this, there was a march, you say it was organised by  
 21 AMCU. The march was on the Friday. The security guards  
 22 were killed by people on the Sunday. Now you, it's clear  
 23 from the passage that was read that you believed that the  
 24 people who killed the security guards were AMCU people.  
 25 You base that belief, you base that belief on two things,

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1 as I understand it. Firstly, the statement that the march  
 2 on the Friday had been instigated by AMCU and secondly the  
 3 fact that it was, as you put it, the style they'd been  
 4 using before – they did this thing in Impala, they're doing  
 5 it again. So you inferred that because this is what had  
 6 happened at Impala and your understanding was it had been  
 7 done by AMCU people at Impala, you thought this was now a  
 8 repetition of the same kind of conduct at Lonmin, again by  
 9 AMCU people. Now, it's clear from what's been put that  
 10 this was your inference. You didn't have direct knowledge  
 11 that that was so, it was an inference you were drawing and  
 12 I think what Ms Barnes wants you to deal with is, in view  
 13 of the fact that it was an inference and you had no solid  
 14 evidence to back it up, are you now prepared to withdraw  
 15 the statement you made of what you believed because there  
 16 isn't any evidence, direct evidence which supports what  
 17 you've said? Is that your question, Ms Barnes? If I've  
 18 got it wrong, please correct me.  
 19 MS BARNES: That's correct, thank you,  
 20 Chair.  
 21 [12:22] MR ZOKWANA: Chairperson, if I'm obliged,  
 22 but I would like to put this, that if that is the view I  
 23 held I was not the only one who held that view as I've  
 24 shown that one of the executives of Lonmin have that view,  
 25 based on the fact that the scenario – and on that day in

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1 question the president of AMCU admitted to the fact that  
 2 AMCU had been to the mountain and, Chairperson, I never  
 3 said AMCU killed, I said AMCU was behind the march, but  
 4 again, Chairperson, it's - of the discussion because if you  
 5 go to page 14 - you look on the same sentence, it's  
 6 unfinished – to be able to look what I was saying beyond  
 7 that because the [inaudible] is that their recording was  
 8 poor [inaudible]. The only leader of union who has been to  
 9 the koppie, by evidence of the AMCU president, was the AMCU  
 10 president and I was saying you said you were interacting  
 11 with these workers, you would have known what they were  
 12 planning to do. I only linked, Chairperson, AMCU only with  
 13 the march, not with the murders.  
 14 CHAIRPERSON: Mr Zokwana, that's not  
 15 strictly accurate. Let me put again to you the point that  
 16 Ms Barnes is making. At the foot of page 13 you say,  
 17 "Those security guys were the people who were at the  
 18 offices. Two of the security guys" – now listen very  
 19 carefully to the following words – "Two of the security  
 20 guys were killed by what I will call AMCU and organised  
 21 march" - it's true that the sentence wasn't finished, but  
 22 as far as the sentence had gone you had said two of the  
 23 security guards were killed by what I will call AMCU and  
 24 organised march. So there was a statement, admittedly  
 25 incomplete, but there was a statement that the security men

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1 were killed by people you called AMCU people. That's the  
 2 statement that Ms Barnes is asking you about. So Ms  
 3 Barnes, do you want to ask something further about it  
 4 before the witness gets a chance to answer?  
 5 MS BARNES: I'd like to give the witness  
 6 –  
 7 MR ZOKWANA: Chairperson, I would not  
 8 find it difficult to say this, that I cannot produce that  
 9 evidence but I believe when this process is concluded the  
 10 world will know who was behind the march. It was not NUM.  
 11 I cannot prove to say it was AMCU but I – Chairperson, I'm  
 12 not the only person who held the view that this process  
 13 smacks of AMCU footprints as informed by incidents of  
 14 Impala. For the sake, Chairperson, I would like to say if  
 15 what I said on that day doesn't sit well with AMCU that I  
 16 said they were behind the march, because at present I can't  
 17 prove that I withdraw that statement.  
 18 CHAIRPERSON: Mr Zokwana, it's not as  
 19 simple as that. There are actually two days and two  
 20 incidents that we're busy with. The one is the march on  
 21 the Friday, the second is the killing of the security men  
 22 actually on the Sunday. There was confusion in the radio  
 23 programme.  
 24 MR ZOKWANA: Yes.  
 25 CHAIRPERSON: And I think Ms Barnes is

1 concentrating on the Sunday and presumably, although it's  
 2 not for me to put words in her mouth, presumably she will,  
 3 may say never mind what happened on the Friday, it may well  
 4 have been an AMCU march on the Friday but I'm interested in  
 5 the Sunday and she's really trying to get you to withdraw  
 6 what you said. I know you believe what you said but that's  
 7 a different question. She's trying to get you to withdraw  
 8 what you said about what happened on the Sunday. Am I  
 9 correct, Ms Barnes?

10 MS BARNES: That's correct, Chair.

11 MR ZOKWANA: Chairperson, I will – I  
 12 repeat to say this that, one, I am not the only person who  
 13 held the view at that time and that, and the dates were  
 14 messed up. I was not accusing AMCU of having killed. I  
 15 was accusing AMCU of having instigated the march that led  
 16 in the deaths.

17 CHAIRPERSON: Perhaps easier –

18 MR ZOKWANA: - reason, Chairperson, I  
 19 withdraw any view that may say that I accused AMCU of  
 20 organising marches that led to the two deaths.

21 CHAIRPERSON: No, no, we're not busy with  
 22 the march, we're busy with the killing on the Sunday but it  
 23 seems what you now say may well solve the problem because I  
 24 understand you to say you weren't intending to accuse them  
 25 of being responsible for the killing on the Sunday. If

1 what you said, it sounded like that, I take it it wasn't –  
 2 you now say that wasn't what you intended, so you have no  
 3 difficulty withdrawing the –

4 MR ZOKWANA: I'm withdrawing, Chairperson  
 5 –

6 CHAIRPERSON: If the suggestion is, if  
 7 that's the way it came out, that's not what you intended  
 8 and you're sorry and you withdraw it. Is that, would that  
 9 be fair?

10 MR ZOKWANA: Yes because -

11 CHAIRPERSON: Or am I putting words in  
 12 your mouth that you're not happy with?

13 MR ZOKWANA: Because, Chairperson, I want  
 14 to say, Chairperson, the senior counsel put words to say I  
 15 accuse AMCU of killing.

16 CHAIRPERSON: She's not senior counsel  
 17 yet, but I'm sure she won't mind your [inaudible]  
 18 anticipate –

19 MR ZOKWANA: Alright, the counsel seems  
 20 to think that I accused AMCU of murder. I agree,  
 21 Chairperson, and I put the point that says this strike,  
 22 given what the president of AMCU has said during the  
 23 interview, in my view and my past knowledge of how this  
 24 organisation organises things, the march was organised at  
 25 their behest and I'm saying I withdraw because I'm only

1 saying this, that I don't say AMCU killed, I said AMCU  
 2 organised the march that led to the killing. And I  
 3 withdraw that, Chairperson – hoping that when the  
 4 Commission process, the truth will be clear as to who was  
 5 behind those marches because in my history, Chairperson, of  
 6 leading workers, workers don't sleep and dream what to do  
 7 the following day, they are guided.

8 MS BARNES: Sir, you also have no  
 9 evidence that AMCU organised the march, do you?

10 CHAIRPERSON: He's already said that,  
 11 he's already withdrawn that. He withdrew that statement  
 12 about Friday – you've been trying to get him to withdraw  
 13 the statement about the Sunday, which I think he's just  
 14 about done so it may well be that you've achieved what you  
 15 set out to achieve and you can move on to the next point  
 16 but if there's something else that you want to make in  
 17 relation to this incident, I won't stop you.

18 MR BURGER SC: Chair, may I just add -  
 19 because there was a reference to one of the officials of  
 20 Lonmin in this context – may I just add the following. The  
 21 people who can tell us as to AMCU's involvement would  
 22 presumably be the senior officials of AMCU at Lonmin.  
 23 They've been identified, they in fact went to the koppie on  
 24 the 12th and spoke to the people. We've recently been  
 25 informed that AMCU does not intend to call them.

1 CHAIRPERSON: Inferences may have to be  
 2 drawn against them because of their failure to call those  
 3 witnesses or alternatively, if it's necessary, we may well  
 4 have to call them ourselves. We have the power to do so  
 5 and if it's necessary we won't hesitate to use that power  
 6 but perhaps Ms Barnes can continue in the meanwhile.

7 MS BARNES: Mr Zokwana, at this stage  
 8 now, at the stage of the SAfm interview on the 15th of  
 9 August, you know two things. You know, one, that there was  
 10 an incident at the NUM offices where, as Mr Bongo put it,  
 11 there was an attempt to invade the office. You know that  
 12 and the second thing you know is that it is alleged that  
 13 people were killed, is that correct?

14 MR ZOKWANA: We have gone there,  
 15 Chairperson, when Mr Xolani was quoting what he had from a  
 16 caller, is that there had been – but the only contention  
 17 was the fact that what route was the march supposed to  
 18 take.

19 CHAIRPERSON: I must tell you on my  
 20 reading of the transcript, it may be wrong but on my  
 21 reading of the transcript he appears to have known about  
 22 the march. He thought he knew who instigated it and he  
 23 knew about the killing of the security guards on the  
 24 Sunday. I couldn't find a passage – I did spend some time  
 25 looking for it – which indicates that he knew at that stage

1 already that it was alleged that marching strikers had been  
 2 killed on the Saturday, but if there is a passage which  
 3 I've missed I'd be grateful if you'd bring it to my  
 4 attention, I couldn't see it. Then maybe you're talking  
 5 past each other at this stage.  
 6 MS BARNES: Perhaps you can go to page  
 7 17, sir, of the transcript. There it's Mr Mathunjwa  
 8 speaking, it's from line 7 and Mr Mathunjwa is reporting  
 9 what he's heard from the striking workers and he says,  
 10 "They say" – because there's inverted commas, do you see  
 11 that, the last sentence in that paragraph – "We were shot  
 12 by NUM and the demands were not directed to NUM, NUM is not  
 13 a company but we were surprised when they are killing us."  
 14 You'd heard that, is that correct?  
 15 MR ZOKWANA: This is what Mr Mathunjwa  
 16 said, yes.  
 17 MS BARNES: So presumably at this stage  
 18 you would've investigated the matter and established the  
 19 facts and issued a statement, is that correct?  
 20 CHAIRPERSON: I don't understand the  
 21 question, Ms Barnes. It appears from what he's now saying  
 22 that he heard it for the first time, the allegation that  
 23 people had been killed at the NUM office – which we now  
 24 know to be untrue – but he appears to be saying that from  
 25 the lips of Mr Mathunjwa at the SABC studios on the morning

1 Chairperson, I only heard about these alleged deaths from  
 2 the mouth of Mr Mathunjwa and when I left that studio to  
 3 the mine, we were going there to ensure that we play any  
 4 role we could in defusing the situation.  
 5 MS BARNES: I understand all of that, Mr  
 6 Zokwana, but surely – given the information you now had  
 7 about this incident that occurred sometime over the weekend  
 8 at the NUM offices, you would have conducted an  
 9 investigation to find out what happened, correct?  
 10 MR ZOKWANA: You want to check if we  
 11 checked after, or soon after I heard – you mean in the  
 12 morning of that Friday I was supposed to have left the  
 13 studios to Marikana to verify that, or do you want to know  
 14 whether NUM did check to verify these killings?  
 15 MS BARNES: Sometime after the 15th, with  
 16 some sense of urgency presumably, NUM would have conducted  
 17 an investigation into this, isn't this correct?  
 18 MR ZOKWANA: Thanks, Chairperson. One of  
 19 the reasons why NUM made a submission and presented  
 20 witnesses was to clarify this Commission as to what our  
 21 information is. NUM did verify that there was no truth to  
 22 the fact that there were two people who were killed on the  
 23 day in question.  
 24 MS BARNES: You knew, Mr Zokwana, that  
 25 the strikers on the koppie were saying this. Wasn't it

1 of the 15th. So are you asking him about the possibility of  
 2 further investigations and a statement to be issued after  
 3 that?  
 4 MS BARNES: That's correct, but perhaps  
 5 if I can summarise up to now. You have information from Mr  
 6 Bongo, but no detail. You have a caller alleging that they  
 7 were fired upon and you have Mr Mathunjwa saying he'd heard  
 8 from the workers that "NUM is killing us." That's the  
 9 information you have at this stage, is that correct?  
 10 CHAIRPERSON: This stage being?  
 11 MS BARNES: 15th of August.  
 12 CHAIRPERSON: In the radio studio on the  
 13 morning of the 15th of August.  
 14 MS BARNES: That's correct.  
 15 MR ZOKWANA: Maybe let me try to detail  
 16 to you, counsel – Chairperson, I'm sorry about – I've  
 17 withdrawn that already.  
 18 CHAIRPERSON: It's fine if you call her  
 19 junior counsel.  
 20 MR ZOKWANA: Alright. Chairperson,  
 21 Chairperson, if the counsel should understand what was  
 22 happening that day and the call that was made by the  
 23 caller, it was for both of us to go to the mine, make sure  
 24 that we talk to the strikers. At that moment what was key  
 25 was to do what we could to stop further deaths and also,

1 important for you to find out at that stage, as soon as you  
 2 could, what had actually happened?  
 3 MR ZOKWANA: I don't want to come to  
 4 conclude that the counsel is supposing that I would have  
 5 gone to the koppie knowing that I would be killed but let  
 6 me answer the question, Chairperson, that at that moment it  
 7 was clear that any leader of NUM who would approach the  
 8 koppie would be really asking to be killed, as it had been  
 9 shown that a number had been killed before. And I've said  
 10 that between NUM and the strikers there was no interaction  
 11 at all.  
 12 MS BARNES: No, sir, I'm not talking  
 13 about you going to the koppie. I'm not suggesting that at  
 14 all. What I'm saying is that you know there are NUM  
 15 members on the koppie, it's a volatile situation and they  
 16 are saying that NUM have shot at their members and killed  
 17 them. Do you not take steps to find out whether that is  
 18 correct or not?  
 19 MR ZOKWANA: Chairperson, in trying to  
 20 answer the question, you know, is that if we were able to  
 21 link as the reasons why NUM was not able to address those  
 22 workers, the only reason given by the strikers to the  
 23 security personnel as to why they're marching to NUM was  
 24 because NUM was assisting people to go back to work against  
 25 the decision of the strikers. There's no mention in that

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1 statement of the security personnel who were interacting  
 2 with them as to why they were burning the NUM offices. I  
 3 can't understand then as to where do we get this view that  
 4 says there was another reason why the strikers were willing  
 5 to burn or to do harm to NUM. The second thing is that,  
 6 Chairperson, we have shown that none of our local officials  
 7 or leaders could interact with the strikers at that point.  
 8 I don't know how then was I going to be able to verify the  
 9 reason why because the reason they didn't want NUM is  
 10 because NUM, as per the statement I have read, is that it  
 11 has assisted and abetted those who wanted to go back to  
 12 work against their decision.

13 MS BARNES: If you had investigated you  
 14 would have found that there was an incident where shots  
 15 were fired by NUM members and that two strikers were  
 16 injured – not killed but injured. Do you agree with me?

17 [12:42] MR ZOKWANA: Again Chairperson, I'm  
 18 saying this that there are different versions that it seems  
 19 were given by the strikers. One version is consistent in  
 20 the statement of Mr Motlogeloa, is that on the day when  
 21 they marched, if you read point number 5 of his statement,  
 22 the reason they marched is because they were angry. They  
 23 were going to burn the NUM office because NUM has assisted  
 24 the strikers, the non-strikers to go back to work.

25 CHAIRPERSON: You're not actually

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1 answering the question at the moment and I'm concerned that  
 2 an enormous amount of time is being spent on an issue which  
 3 may, in the last analysis, not prove terribly helpful to  
 4 us. It seems the question has then lost its answer but  
 5 it's a matter for argument later, but let me put to you  
 6 what I understand Ms Barnes's point to be. I'd be grateful  
 7 if you'd answer it because then we save a lot of time.  
 8 What Ms Barnes says to you, if you had investigated this  
 9 allegation about what happened on the Saturday, you would  
 10 have discovered a couple of things. You would have  
 11 discovered, one, that people were marching to the NUM  
 12 office – not on their way, of course, to the stadium –

13 MR ZOKWANA: Yes.

14 CHAIRPERSON: - but coming directly to  
 15 the NUM office. You would've discovered that shots were  
 16 fired by NUM people and you would've discovered that two  
 17 people were not killed but two people were injured. What  
 18 in fact has happened, as we know, and that's what your  
 19 legal team have done, they've investigated what happened  
 20 and they've presented evidence as part of NUM's case as to  
 21 what happened. Now, what Ms Barnes is busy with is if, at  
 22 the time, you had made the investigation that has now been  
 23 made by your legal team, you would've discovered those  
 24 three facts that I put to you. And that's the springboard  
 25 from which she is proposing to ask the next question. You

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1 were answering something different. So let her put the  
 2 next question and I will see where you're answering it. Ms  
 3 Barnes, would you like to proceed?

4 MS BARNES: Well, let me put this to you,  
 5 Mr Zokwana, that up until this Commission started, we had  
 6 no statement from NUM setting out the correct position in  
 7 relation to what had happened on the 11th, isn't that  
 8 correct?

9 MR ZOKWANA: I think that, Chairperson,  
 10 with due respect to the question, all statements were made  
 11 during this Commission and the reason the Commission was  
 12 appointed was to collect such information. I don't know to  
 13 which structure were we supposed to give that statement.

14 CHAIRPERSON: The point seems to be that  
 15 you hadn't issued a statement. They will argue later on  
 16 that that somehow is a point against you. Your side will  
 17 presumably argue it takes the case no further, for the  
 18 reason you gave, and we will then have to look at it to see  
 19 if there's anything in the point either way. But I would  
 20 have thought, Ms Barnes, if you'll forgive me, that you've  
 21 got all the juice that you can possibly get out of this  
 22 particular lemon, you might like to pick up another one.

23 MS BARNES: Mr Zokwana, at the meeting  
 24 that you held at the offices of Lonmin on the 15th of  
 25 August, the meeting at which General Mpembe spoke to you,

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1 he indicated to you not only that there were NUM members  
 2 that were on the koppie, which you already knew, but that  
 3 NUM members were part of the leadership of the strike on  
 4 the koppie, is that correct?

5 MR ZOKWANA: Yes, correct.

6 MS BARNES: Now surely what you could  
 7 have done and should have done is find out who those people  
 8 were and attempt to meet with them privately, isn't that  
 9 correct?

10 MR ZOKWANA: I think that without maybe  
 11 trying to – because I was present when Gcilitshana was  
 12 being questioned – Dali Mpofu made a statement, the fact  
 13 that those workers were [indistinct] and I'm sure he raised  
 14 that from a background of what he has done in  
 15 investigating. In any said situation, Ms Barnes, once you  
 16 call a section of strikers, your aim is to break them and  
 17 there's no way they would allow that to happen - but the  
 18 situation, it's not even possible for any leader of NUM to  
 19 come near the koppie.

20 MS BARNES: I'm not saying, Mr Zokwana,  
 21 that you should have walked up to the koppie. I'm saying  
 22 you should have found out the names of the NUM people that  
 23 were leaders of the strike and you should have made an  
 24 attempt to meet with them privately.

25 MR ZOKWANA: I would like again to say

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1 this, that General Mpembe made it clear to us that an  
2 urgent action was needed and we were to do things as per  
3 his own dictates. It was not for NUM to decide maybe to  
4 call for a meeting of our own stewards. It was for all  
5 leaders who were there to meet with all the leaders of the  
6 strikers.

7 MS BARNES: Did you establish the names  
8 of the people that were NUM members that were leading the  
9 strike?

10 MR ZOKWANA: I repeat again, I didn't,  
11 for one reason – I could only do that if I was having  
12 access to the local leadership who know those workers. NUM  
13 was at a situation where the people who were supposed to  
14 assist with that information were in hiding and the urgency  
15 we were having then was to ensure that the sooner we  
16 address the strikers, before it was dark, could have meant  
17 that to go around and demanding who was leading, not  
18 leading the strike, would have taken more time.

19 MS BARNES: Now, when General Mpembe  
20 asked you if you would go and address the strikers on the  
21 koppie, you agreed to do so. Correct?

22 MR ZOKWANA: In my own statement,  
23 Chairperson, I have thought to say when I arrived at the  
24 offices and this proposal was made, there was an objection  
25 from our local stewards to allow me to the koppie, giving

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1 reasons. That was the reason why we had to go for a caucus  
2 and after caucusing we agreed that going to the koppie and  
3 doing everything we could to prevent any situation that may  
4 prevail later.

5 MS BARNES: Yes, it was a difficult  
6 situation but you were nevertheless prepared to go and try  
7 to do everything that you could and –

8 MR ZOKWANA: The reason, Chairperson, we  
9 agreed in the morning during the interview under LLB – LL,  
10 sorry – was because we were made aware, not only by the  
11 callers, that the only thing we could do as leaders is to  
12 ensure that we persuade the strikers to disarm and desist  
13 from using violence.

14 MS BARNES: Yes, Mr Zokwana, we agree at  
15 least that this approach was very important and I put it to  
16 you and I'm sure you'll agree with me that in order to have  
17 the best chance of persuading the people to go back to work  
18 you had to try, try to do two things. One, try to win  
19 their trust and, two, try to give them a way out – in other  
20 words a way of dealing with their grievances. You'd agree  
21 with that?

22 MR ZOKWANA: Chairperson, let me say it  
23 is true, before you can address people to stop whatever  
24 they're doing they must, they should trust you that you are  
25 with them, but I'm sure this Commission has been shown

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1 videos that detailed what the other party was doing, the  
2 party who represent Ms Barnes.

3 MS BARNES: It is more difficult than  
4 that, it's more difficult than that. You were going to try  
5 to win their trust. When you arrived there, people start  
6 singing, "How will we kill NUM? We hate NUM. How will we  
7 kill Zokwana? We hate Zokwana." So it's scarcely a  
8 situation in which it's easy to gain anyone's trust.

9 MR ZOKWANA: Yes, Chairperson, I agree  
10 with them, that to win their trust there are two things one  
11 could have done. To deny all the allegations made against  
12 you before you arrival, or you will say to them, I agree  
13 with all that you have done, you are good citizens, can we  
14 go forward. And that would have been contrary to the basic  
15 tenet of our beliefs as a union. For years of being a  
16 union in that company it cannot happen that a person NUM  
17 trusts could have been wished away. A number of incidents,  
18 I believe, happened that made to doubt where NUM is  
19 standing, as informed by the statements of the witnesses I  
20 have referred to, then the other people woke up and say we  
21 don't like NUM, we want to kill it. The fact that union  
22 leaders sang this song tells a lot.

23 MS BARNES: Sir, what you could've done  
24 if you'd got your facts straight is, you could've said to  
25 the workers, look, no-one was killed by NUM on Saturday,

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1 that is inaccurate. You could've at least corrected that,  
2 is that right?

3 MR ZOKWANA: Sorry, Chairperson, I will  
4 quote one of, an historian I read about, Joseph Goebbels,  
5 the Minister of Propaganda in Germany, when he said, "When  
6 a lie is told repeatedly when no truth is told, the lie  
7 becomes the truth." In this case NUM could not be on the  
8 koppie to defuse the lies told about it, only those who  
9 were lying have got access to those members. Hence they  
10 were angry, they were against NUM, they got killed.

11 MS BARNES: Sir, it appears that even you  
12 didn't know the truth at that stage because you hadn't  
13 investigated it, isn't that correct?

14 MR ZOKWANA: The truth I know, Ms Barnes,  
15 is that the strike was illegal. Carrying those arms was  
16 against any policy of this country. Gathering everywhere  
17 you want to, was wrong. Killing people cannot be anybody's  
18 right, that truth I know.

19 MS BARNES: Chair, I see it's just before  
20 1 o'clock. I'm almost done, I just have one more section  
21 to do but perhaps this would be an appropriate time.

22 CHAIRPERSON: I think it would be best to  
23 deal with it after the lunch adjournment. We will resume  
24 at 1:30 in order to make up for the fact that this was a  
25 late start, which we were going to do that anyway – we will



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1 adjourn at this stage till half past one.  
 2 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 3 [13:42] CHAIRPERSON: The Commission resumes. Mr  
 4 Zokwana, you're still under oath. Ms Barnes, before you  
 5 proceed with your cross-examination, I just want to say  
 6 I've decided to alter the sequence of cross-examination. I  
 7 did indicate that Mr Mpofo would cross-examine after you.  
 8 It occurs to me in view of some of the evidence that the  
 9 witness gave in relation to his conversation with the  
 10 minister, it would be appropriate for me to call on Ms  
 11 Nkosi Thomas to cross-examine next if there's anything she  
 12 wishes to put in relation to the conversation with the  
 13 minister. Mr Mpofo would obviously appreciate being able  
 14 to cross-examine on that as well, and not have to deal with  
 15 this later. So Ms Nkosi Thomas is here. I take it she's  
 16 heard what I said. Ms Barnes?  
 17 MS BARNES: Thank you, Chair.  
 18 MS THOMAS SC: Chairperson, if I may at  
 19 this stage, I'm not sure if this is a proper moment to  
 20 address you, Chair and honourable Commissioners, about this  
 21 whole cross-examination issue. Should we do that now or  
 22 perhaps at a later stage?  
 23 CHAIRPERSON: As I've indicated to you,  
 24 I'm going to call on you and give you an opportunity to  
 25 cross-examine next. You don't have to avail yourself of

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1 it, but if you choose to do so and put material in  
 2 relation, possibly get answers from the witness relating to  
 3 his conversation with the minister, it will then enable Mr  
 4 Mpofo to cross-examine further on that.  
 5 MS THOMAS SC: The only request that that  
 6 would have been for, Chairperson and honourable  
 7 Commissioners, to let Mr Mpofo to go in first because we're  
 8 still taking instructions on this specific issue, and our  
 9 instructions are to –  
 10 CHAIRPERSON: Well, don't tell me what  
 11 your instructions are. You're taking instructions.  
 12 MS THOMAS SC: Thank you –  
 13 CHAIRPERSON: Mr Mpofo, I tried to  
 14 shorten proceedings. We'll have to do it the long way.  
 15 Anyway, Ms Barnes, please carry on.  
 16 MS BARNES: Mr Zokwana, when you  
 17 addressed the workers on the 15th of August 2012 at the  
 18 koppie, you could have from within the safety of the Nyala,  
 19 you could have said to them the following, and I'm going to  
 20 put this to you and I want you to please comment. You  
 21 could have said to them, "Look, although there's a two-year  
 22 wage agreement, that agreement can still be changed; we can  
 23 still entertain fresh demands. Go back to work. Give us a  
 24 mandate and we will negotiate for you." Isn't it true that  
 25 you could have said that?

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1 MR ZOKWANA: Thanks, Chairperson. As a  
 2 union, or trade unions, we have got ways of addressing our  
 3 members and one of those was to assure them that going back  
 4 to work was not the end of their demands, but that such  
 5 demands can only be dealt with when law and order is  
 6 retained, and when nobody will be threatened with violence.  
 7 That I did, because one of the key things, Chairperson, you  
 8 should do as a leader, is never to leave an impression that  
 9 you want a shortcut to be applauded when the truth is not  
 10 being told. You rather have people understanding what is  
 11 it about to happen. To me as a person, the issue of the  
 12 agreement of two years or three years was not an issue. As  
 13 I've said here that at national level the issue of how many  
 14 years the agreement has been signed has no bearing to the  
 15 matter in question being addressed. The fact is that those  
 16 members were not willing at that point to listen to NUM.  
 17 Let me put it in answer [inaudible], even management was  
 18 saying we cannot negotiate with people on an illegal strike  
 19 armed, meaning that had people agreed to disperse,  
 20 proceedings, and we agreed that NUM would be their agent,  
 21 we could have let the following day to go forward, provided  
 22 they give us a mandate.  
 23 MS BARNES: Yes, but the simple point, Mr  
 24 Zokwana, is that you didn't make it clear to the workers  
 25 that notwithstanding the two-year agreement, NUM could

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1 still assist them if they gave them a mandate. Did you?  
 2 MR ZOKWANA: Chairperson, I did not see  
 3 the issue of two-year agreement as a hindrance in us  
 4 engaging, provided the environment and the atmosphere was  
 5 perfect, and Chairperson, I made the [inaudible] in 2005,  
 6 the same kind of agreement was signed with Lonmin. When  
 7 members came to NUM in a decent way, Lonmin management was  
 8 willing to listen. That agreement was changed and we were  
 9 able to establish peace in the industry. What was wrong  
 10 this time was the issues of violence, killing of people,  
 11 sitting in koppies, because in the mining industry,  
 12 Chairperson, we hold our meetings in stadiums. We don't go  
 13 to mountains to handle such processes.  
 14 MS BARNES: Let's look at what you did  
 15 say on the 15th. I'd like to hand up the statement of Mr  
 16 Simphiwe Booi. He's going to give evidence in this  
 17 Commission. The parties are already in possession of the  
 18 statement, if I could just, the statement could be made  
 19 available to the Commissioners and to the witness.  
 20 CHAIRPERSON: Ms Pillay, what do you  
 21 suggest we should call this? Obviously Mr Booi is going to  
 22 come and give evidence, so presumably logically it would be  
 23 the first exhibit – Mr Mpofo, you turned your light on.  
 24 MR MPOFU: I'm sorry, Chairperson, to  
 25 interrupt. I just wanted to point out that this might be

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1 an older version of that statement. There is a revised  
 2 statement of Booi, which has been distributed as well. I  
 3 don't think it makes any difference to the point that –  
 4 CHAIRPERSON: Alter the exhibit, it  
 5 doesn't alter the exhibit number, so let's sort that out  
 6 first while you're finding out from Ms Barnes whether she's  
 7 using the old or new version.  
 8 MR MPOFU: I have found out –  
 9 CHAIRPERSON: Ms Pillay, I imagine,  
 10 seeing, it will probably be CCC1, would you think? I'm in  
 11 your hands.  
 12 MS PILLAY: Chair, it would be BBB3.  
 13 That's the way we've done it in the past. Even though a  
 14 witness –  
 15 CHAIRPERSON: It would be triple?  
 16 MS PILLAY: BBB3.  
 17 CHAIRPERSON: That's the next one that  
 18 follows from where we are, but I thought in –  
 19 MS PILLAY: That's right.  
 20 CHAIRPERSON: If that's what you suggest,  
 21 we'll do it.  
 22 MS BARNES: Alright, do you have the  
 23 statement in front of you, Mr Zokwana?  
 24 MR ZOKWANA: Yes.  
 25 MS BARNES: Now this is a statement by Mr

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1 Booi who is going to give evidence in this Commission. He  
 2 was on the koppie when you addressed the people on the 15th  
 3 of August 2012. You understand that?  
 4 MR ZOKWANA: Ja, I'm told that  
 5 [inaudible] Mr Booi in one of those crowds.  
 6 MS BARNES: I'd like you to look at what  
 7 Mr Booi says you said to the workers on the 15th, if you  
 8 could go to paragraph 36 of the statement, and if you could  
 9 please read just that paragraph into the record.  
 10 CHAIRPERSON: I think if you'd read it  
 11 into the record for the benefit of those in the auditorium  
 12 who will be very puzzled if the questions proceed on the  
 13 basis of a paragraph that's very important, that they're  
 14 ignorant about.  
 15 MS BARNES: Perhaps the witness can read  
 16 the paragraph. Just paragraph 36, please. If you could  
 17 read it into the record, Sir.  
 18 CHAIRPERSON: Perhaps if you read it. He  
 19 might be a bit grumpy about some of the things, I think you  
 20 should read it. You can read it less grumpily than he  
 21 will.  
 22 MS BARNES: Alright, I'll read it into  
 23 the record.  
 24 MR ZOKWANA: Yes.  
 25 MS BARNES: "On the 15th of August 2012,

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1 NUM president Mr Senzeni Zokwana arrived around 6 o'clock  
 2 and said we must go to work. We asked him what about the  
 3 money we were demanding. He said if we did not want to go  
 4 to work, the police will have to do their work. He said he  
 5 would leave us to call president "Nyanaya" AMCU, which can  
 6 be loosely translated as little or so-called president of  
 7 AMCU. He was speaking from a Nyala. I did not see him,  
 8 but I recognised his voice."  
 9 CHAIRPERSON: The copy that I've got is  
 10 dated December 2012, although the date isn't filled in and  
 11 it's unsigned. Is this indeed the latest copy of the  
 12 statement?  
 13 MS BARNES: No, Chair, the –  
 14 CHAIRPERSON: If it isn't, you know we'd  
 15 better put the latest one in instead.  
 16 MR MPOFU: Yes -  
 17 CHAIRPERSON: If it's the latest one then  
 18 we've got it.  
 19 MS BARNES: The latest one is February  
 20 2013, but this paragraph is –  
 21 MR MPOFU: Is the same.  
 22 MS BARNES: - is identical, but the –  
 23 CHAIRPERSON: I see. No, it's okay.  
 24 MS BARNES: We will have to hand up the  
 25 more recent February 2013 statement in due course.

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1 CHAIRPERSON: Alright.  
 2 MR ZOKWANA: Chairperson, I think the, Ms  
 3 Barnes has read my own statement, and one thing as myself,  
 4 President – sorry, Chairperson, I would never go so low as  
 5 to describe another leader of another union because that  
 6 president "Nyanaya," which you may not have pronounced  
 7 properly, means a person you regard as a smaller than  
 8 yourself. I wouldn't do that. NUM would not go so low as  
 9 to deal with other organisation. We have been trained to  
 10 deal with issues affecting us, than to deal with other  
 11 unions, so that workers when they make their choice, it's  
 12 not about us ridiculing others. The statement is not only  
 13 wrong, but is a lie.  
 14 CHAIRPERSON: In dealing with the fourth  
 15 sentence in that paragraph, what do you say about the third  
 16 sentence, which I should read again. "He said if we did  
 17 not want to go to work, "the police will have to do their  
 18 work."  
 19 MR ZOKWANA: Given, Chairperson, the  
 20 short time I could have in talking to those workers, with  
 21 the manner that I'm sure the, this Commission has been made  
 22 aware in videos, it was impossible for me to detail what I  
 23 was saying. What I did say was people should disarm to  
 24 allow the police to do their work. The issues they are  
 25 raising will be dealt with at relevant structures. By that

<p style="text-align: right;">Page 4683</p> <p>1 moment already the singing went louder and the clashing of 2 arms, which was mistaken to be hands by one other leader in 3 this Commission. 4 MS BARNES: Mr Zokwana, I put it to you, 5 and this is what we're going to argue at the end of this 6 Commission, that you took no steps during the week of the 7 9th to the 16th of August to establish the facts or to 8 engage in order to find a solution to the matter. Would 9 you like to comment on that? 10 MR ZOKWANA: Chairperson, I have made 11 this statement that what created a problem for NUM was the 12 fact that not only the attempt to burn our office, but also 13 that we lost a number of leaders in the, on the mine, as 14 well as that our leaders have to go to hiding. 15 Notwithstanding that, nonetheless we have made attempts 16 like going to the mine, making sure that the security 17 arrangements are made, as well as making sure that we avail 18 ourselves on the day in question. It was limited, 19 Chairperson, for NUM because one you'd get cut off from the 20 people you are supposed to talk to, and I think that, 21 Chairperson, it will be clearer at the end as what cut us 22 off, because people we have led for many years changed 23 against us. It's not accidental. We're informed that not 24 only the songs were sung against NUM, but were labelled as 25 part of management, as part of the system, as refusing to</p>	<p style="text-align: right;">Page 4685</p> <p>1 – and we've been able to resolve strikes where members 2 still regard us as their agent. But it is untrue to put a 3 view that says NUM was happy to see what happened. It 4 conforms, by the way, to what was made to be the case by 5 those you represent, in saying that NUM has called the 6 police to do what they did. Let me put it to saying, Ms 7 Barnes, why I'm raising this response, is that if you read 8 page 39 of the statement, it confirms what we have been 9 saying that wrong insinuations were made about NUM at the 10 koppie, that NUM was sitting with the employer and AMCU was 11 not allowed to go in. Same statement you are reading 12 confirms that these members on the koppie were told that 13 NUM was colluding with the employer, meeting behind doors, 14 refusing to allow AMCU on. I don't know what aim was that 15 statement meant to create in view of those workers on NUM. 16 MS BARNES: Thank you, Chair. I have no 17 further questions. 18 MR ZOKWANA: Thank you. 19 CHAIRPERSON: Thank you, Ms Barnes. Mr 20 Mpofo. 21 MR MPOFU: Thank you, Chairperson. 22 Before I commence, I just want to comment on your earlier 23 suggestion put to Ms Nkosi Thomas, just to indicate that if 24 she does get instructions and she wants to do the cross- 25 examination before I finish, I won't mind, at an</p>
<p style="text-align: right;">Page 4684</p> <p>1 open up negotiations, and it's clear, Chairperson, that 2 people who believed that they have got a genuine case, 3 would look at you as being opposed to what they are looking 4 for. So whoever was planning these strikes, whoever was 5 behind its planning, made their point that NUM is 6 discredited. So if you are asking what NUM could have 7 done, what could we have done if people were killing our 8 leaders? What could we have done if people don't want to 9 listen to us? What we could have done if they were 10 planning to burn our offices? Because they refused to have 11 NUM negotiating on their behalf. You can only be able to 12 engage the employers when those you came to represent 13 accept you as their leader. 14 [14:02] MS BARNES: You yourself in your 15 evidence, Mr Zokwana, have referred to the people on the 16 koppie as "NUM in transit or un-NUM." We will argue that 17 the evidence shows that you were not interested in engaging 18 with the people on the koppie and that you were happy for 19 the police to come and break the strike. Would you like to 20 comment on that? 21 MR ZOKWANA: Ms Barnes yesterday said – 22 careful of statements we make. To come to that conclusion 23 that NUM was happy when the police came and did what they 24 did, is not only far from the truth, but is not – NUM has 25 got a record of – as long as the strike allows interaction</p>	<p style="text-align: right;">Page 4686</p> <p>1 appropriate stage. Maybe me and her we can talk, because I 2 do accept, Chair, that your suggestion – 3 CHAIRPERSON: No, I don't think that's a 4 good idea. You cross-examine. When you're finished, I'll 5 give her a chance, depending – she may not ask anything. 6 Depending what she asks, I'll then have to give everyone an 7 opportunity – 8 MR MPOFU: Perfect. 9 CHAIRPERSON: - who wishes to do so in 10 order, as it were, to deal with the new matter. 11 MR MPOFU: Yes. 12 CHAIRPERSON: So I think you just finish 13 your cross-examination. 14 MR MPOFU: Okay, thanks, Chairperson. 15 CHAIRPERSON: And we will then see 16 whether she has any cross-examination. 17 MR MPOFU: At that stage, ja. Thank you, 18 Chairperson. Good afternoon, Mr Zokwana. 19 MR ZOKWANA: Afternoon. 20 MR MPOFU: You remember the, I have to 21 start this on a very conciliatory note. I made some 22 suggestion when I was cross-examining one of the NUM guys – 23 MR ZOKWANA: Gcilitshana. 24 MR MPOFU: - witness, Gcilitshana, yes, 25 about you having been shown photographs to prove that there</p>

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1 were NUM members. Remember that?

2 MR ZOKWANA: Yes.

3 MR MPOFU: Yes, and I thereafter made a  
4 retraction. I think you were in the room, that since  
5 you're there I think I wanted to take the apology to,  
6 rather the opportunity to increase the retraction into an  
7 apology. It was not meant to mislead.

8 MR ZOKWANA: Accepted.

9 MR MPOFU: Okay, and perhaps before Mr  
10 Semenya says anything, it also, that apology is extended to  
11 General Mpenbe as well.

12 MR SEMENYA SC: We'll relay the message  
13 to General Mpenbe.

14 MR MPOFU: Thank you. Right, Mr Zokwana,  
15 now that that's behind us, I will come back to your  
16 attitude, or rather the attitude that you displayed about  
17 going to the mountain, but at a later stage.

18 MR ZOKWANA: Okay.

19 MR MPOFU: Now I just wanted, you know,  
20 for the Commission just to understand that you are a very  
21 important witness who might give us some unique insight, Mr  
22 Tip did introduce you but I don't think he did complete  
23 justice. You are, as we know, the president of the NUM;  
24 you have been since 2000.

25 MR ZOKWANA: Yes.

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1 MR MPOFU: You also hold a very important  
2 position in the ANC. You are a member of the national  
3 executive committee, having been elected in Mangaung.  
4 Correct? Which is the ruling party.

5 MR ZOKWANA: On my personal capacity as  
6 an ANC member I was elected, not for being NUM president.  
7 There's no relationship between the two.

8 MR MPOFU: Yes, no sorry, I'm sure you  
9 misunderstood me. I was not linking the two.

10 MR ZOKWANA: Yes, I accept what you are  
11 saying.

12 MR MPOFU: And you also hold, what  
13 position do you hold in the South African Communist Party?

14 MR ZOKWANA: As a member of the South  
15 African Communist Party, Chairperson, I'm the national  
16 chairperson of the party.

17 MR MPOFU: Right, so you're the  
18 chairperson of the Politburo.

19 MR ZOKWANA: I'm the chairperson of South  
20 African Communist Party, a member of the PB.

21 MR MPOFU: Of the PB.

22 MR ZOKWANA: Correct. So before you go  
23 on, maybe to help you, I'm also the chairperson of the  
24 Energy Water SITA.

25 MR MPOFU: No, that I –

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1 MR ZOKWANA: I'm making sure that all the  
2 – you don't ask me, I tell you before.

3 MR MPOFU: You have been warned about  
4 that. Thank you. Thank you anyway, but the chairperson  
5 has warned you about trying to answer the next question,  
6 but we'll – therefore, would it be correct to say that in  
7 the political life of the country you hold quite a unique  
8 position, being maybe one of few people that you can count  
9 with your hands, who sit in the central executive committee  
10 of COSATU, National executive of the ANC and the Politburo  
11 of the SACP?

12 MR ZOKWANA: I wouldn't agree with that  
13 because in the nature of the alliance historically members  
14 of the, of COSATU, the party and the ANC were sitting in  
15 all positions, as long as they [inaudible] of their  
16 different roles in those different organisations.

17 MR MPOFU: Yes, thank you. No, don't get  
18 me wrong, Mr Zokwana, I'm not criticising the phenomenon.  
19 I'm simply saying you are one of a few people in South  
20 Africa now, not historically, who sits in all those three  
21 important structures.

22 MR ZOKWANA: I will disagree with that  
23 because the president of COSATU, Sidumo Dlamini, sits in  
24 all.

25 MR MPOFU: Yes, anyone else that you can

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1 think of?

2 MR ZOKWANA: Majola.

3 MR MPOFU: Anyone else?

4 MR ZOKWANA: Oh, there are many. If I'm  
5 going to count it, Chairperson, how many, maybe I must  
6 bring the ANC document to check who sits where and what I'm  
7 saying that it is not, it's not only me. There are many  
8 currently who are sitting in those.

9 MR MPOFU: No, I didn't say it was you.  
10 I said you can count them in your hands. That doesn't mean  
11 it's only you. It means it's less than five, but anyway,  
12 let's move on. You accept that you can count them on one  
13 hand?

14 MR ZOKWANA: I'm, I wouldn't like to  
15 venture into that and confirm, because I haven't done that  
16 counting.

17 MR MPOFU: Okay, I have. Right, now  
18 reason I'm asking you this is because among others, I'm  
19 sure that you hold a particular view about the relationship  
20 between labour, capital and the State. Correct?

21 MR ZOKWANA: And that view will be  
22 informed by the conditions applying at home. If you're  
23 asking me about that view, if I was in another country,  
24 maybe I would say yes, I do, but I must take into account  
25 the conditions we work under in our own country, and apply

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1 that principles, informed by the conditions as they apply.  
 2 MR MPOFU: Okay, please once again, don't  
 3 answer the next question. I only asked you a simple  
 4 question, whether you have a view –  
 5 MR ZOKWANA: Yes, I do.  
 6 MR MPOFU: Yes, thank you. That would  
 7 have sufficed. And that view, well you're a Marxist-  
 8 Leninist, correct?  
 9 MR ZOKWANA: That is a [inaudible] that  
 10 guides my way of work.  
 11 MR MPOFU: Yes, we'll do. Now as far as  
 12 I know, in terms of that ideology the relationship between  
 13 capital and labour is inherently antagonistic. Is that  
 14 correct?  
 15 MR ZOKWANA: Lenin prescribed that such  
 16 conditions will never be resolved, but it further informs  
 17 me that the only way you can be able to minimise the extent  
 18 to which capital exploits is to have strong trade unions  
 19 that lead and engage in negotiations.  
 20 MR MPOFU: Okay, Mr Zokwana, once again  
 21 you are running ahead of me. You're quite right that -  
 22 actually it's Marx, ja, but Lenin does say that that  
 23 relationship is irreconcilable, correct? Agreed?  
 24 MR ZOKWANA: Yes.  
 25 MR MPOFU: And as far as the State is

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1 concerned, Lenin says that the State is an instrument of  
 2 oppression of one class by another. Correct? Agreed?  
 3 MR ZOKWANA: Yes.  
 4 MR MPOFU: And that there's no such thing  
 5 as a neutral state. It either is a capitalist state, it's  
 6 an instrument to oppress the working class. If it's a  
 7 social state I suppose it's an instrument to support the  
 8 working class, correct?  
 9 MR ZOKWANA: Generally yes, but such  
 10 conditions can be mitigated by the role of other classes.  
 11 In this case strong trade unions can dent the intention of  
 12 capital and influence the State. Hence our situation is  
 13 unique.  
 14 MR MPOFU: Thank you. In other words, in  
 15 that tension the trade unions are fundamentally there to  
 16 intervene on the side of the working class?  
 17 MR ZOKWANA: That is correct.  
 18 MR MPOFU: And they should never be found  
 19 siding with either capital or the State against the working  
 20 class.  
 21 MR ZOKWANA: It's difficult to concur  
 22 with you without understanding, because in any environment,  
 23 whatever you do there will be those who disagree with you.  
 24 As the case is, it means if we disagree with the fact that  
 25 the situation in China is the best in the world, nor is it

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1 in Cuba, so in every environment you will find those who  
 2 will differ with that view.  
 3 [14:22] Chairperson, my studies or my readings or my  
 4 training the union, I was told that trade unions should  
 5 remain reformists. They are not formed to change the  
 6 state, they are to mitigate the extent which people can be  
 7 oppressed by the ruling classes. They don't become an  
 8 instrument to change the state. They always work within  
 9 that system.  
 10 MR MPOFU: But is correct that COSATU,  
 11 which is a member, rather an affiliation that you belong  
 12 to, believes that that narrow view of trade unions should  
 13 be extended to matters of the state?  
 14 MR ZOKWANA: I may not be able to agree  
 15 with you, counsellor Mpofo, on the basis that it depends in  
 16 which context are you putting that point because COSATU  
 17 will not only be stuck with labour issues. If for instance  
 18 this issue of the electricity hikes through - COSATU will  
 19 have a view, if it's the matter of tollgates, that view is  
 20 not in as far as saying we are now a fickle party whose  
 21 aim is to led. It's where it becomes the format, the form  
 22 comes from.  
 23 MR MPOFU: Okay. Okay, I will stop that  
 24 discussion interesting as it might be before the  
 25 Chairperson intervenes.

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1 MR ZOKWANA: Alright.  
 2 MR MPOFU: Can we accept that typically,  
 3 at least it is the view of the NUM that typically the state  
 4 and capital collude against the workers and that's one of  
 5 the reasons why the NUM was formed?  
 6 MR ZOKWANA: Chairperson, in answering  
 7 the question I will refer the counsellor to the stages or  
 8 phase in which NUM has operated. When NUM was formed in  
 9 '82, we were under a racist state that was anti-workers in  
 10 terms of its laws, in terms of its behaviour when there are  
 11 strikes. Under the current regime we are in a situation  
 12 where we believe that the current Labour Relations Act was  
 13 highly influenced by COSATU. It has improved the role of  
 14 workers. It has given workers the right to go to a strike,  
 15 a right that didn't exist before. Therefore it is  
 16 difficult to answer the question as if the situation has  
 17 been the same since NUM was formed.  
 18 MR MPOFU: Alright, I'm just going to  
 19 read you something from the NUM website and without  
 20 burdening the record, I will only make it an exhibit if  
 21 there is a debate about it. It's under NUM history and  
 22 that's the website printed today, not historically. Okay,  
 23 it says "the history of the National Union of Mineworkers  
 24 is a history of class struggle. This struggle is embedded  
 25 in the inherent contradictions that exist between capital

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1 and labour. For their own survival and dignity the workers  
2 learnt through history that unity was strength, hence the  
3 logic of forming trade unions at the work place. This  
4 alone has cemented the strength of coming together but more  
5 so believe, so the belief through solidarity". I take it  
6 you agree with that?

7 MR ZOKWANA: I agree, Chairperson,  
8 because one of our founding principles of trade unions is  
9 the principle of an injury to one is an injury to all. The  
10 ability of workers organised we have seen the framework of  
11 the law acting in a way that they complimented each other.  
12 That applies in that context.

13 MR MPOFU: And you would agree with me  
14 that of these three components, capital, state and labour,  
15 the labour is invariably the weakest and most vulnerable,  
16 correct?

17 MR ZOKWANA: It depends, Chairperson, on  
18 the political choice or choices labour has taken. In our  
19 context the fact that COSATU is part of the alliance not of  
20 the ANC an alliance, meaning that the chief components in  
21 government, the ANC, the party and COSATU are in alliance.  
22 A number of legislations that go through, COSATU has an  
23 input. I can't therefore regard us as the weakest. Yes,  
24 in general in some countries I can agree with Zimbabwe, I  
25 will say yes you know the weakest but not here.

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1 difficult to concur with Mr Mpofu, depending on where one  
2 stands. In this country before a company can lay off  
3 workers, there are processes that the law requires for them  
4 to go through. When a worker is dismissed, you can't just  
5 dismiss in a worker in the morning if those workers are  
6 organised without facing the law going forward. Yes, in  
7 terms of the ability employers have got one power, if they  
8 can stop investing there would be no trade unions. But our  
9 law is such that it has got 50 valves for workers. One of  
10 those would be the right to strike. When you apply the law  
11 you can be able to force the employer to do certain things  
12 as long as you are within the law. It is when you divert  
13 the law and disregard it that you are exposed to severe  
14 situations that NUM was avoiding in Marikana.

15 MR MPOFU: So your view is that the  
16 massacre at Marikana was caused because the people did not  
17 obey the law?

18 MR ZOKWANA: With due respect,  
19 Chairperson, I have never alluded to that. I never made a  
20 statement that seeks to condone the killing of people in  
21 Marikana and I hope that as Mr Mpofu is putting that view,  
22 he is not basing it on my statement. And I am,  
23 Chairperson, from the level of the shop stewards we are  
24 pleading with our members not to embark on an illegal  
25 strike. NUM has been saying let us deal with these issues

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1 MR MPOFU: Well to cut it short, I will  
2 suggest to you that that is definitely not correct. There  
3 is no country in the world now as we speak where the labour  
4 or the workers have stronger powers than the state or  
5 capital, let alone a combination of the two.

6 MR ZOKWANA: That is debatable  
7 Chairperson, and I agree with Mpofu, we are not here to run  
8 a lesson of political choices. If you go to China the  
9 secretary of the Federation of the Chinese Workers will be  
10 occupying a very senior position in many companies. If you  
11 go to Cuba, trade unions sit and decide on how they will  
12 distribute their productivity. To it depends what  
13 formation and I don't think that we can agree with Mpofu on  
14 that, because I don't think it's correct to claim that yes  
15 in as far as the global climate and the challenge is  
16 therefore, I would partly but not to say that workers have  
17 no powers in all countries.

18 MR MPOFU: Okay, once again I will move  
19 on because I know that you know that I did not say that  
20 workers have no power. I was doing a comparison between  
21 three components but be that as it may, in South Africa,  
22 lets come to South Africa would you agree that at the  
23 present juncture labour or the workers in general are in a  
24 weaker position as opposed to capital and the state?

25 MR ZOKWANA: Chairperson, again it is

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1 within the ambit of the LRA. When we say that Chairperson,  
2 we are not saying that any form of force was qualified to  
3 be used whenever. If what Mr Mpofu is saying he wants to  
4 predict that NUM therefore wants to say the police have the  
5 right to do what they did, he is wrong.

6 MR MPOFU: Okay, Mr Zokwana, once again I  
7 don't want to waste time I'm going to move on, but you know  
8 as well as I do that I am basing what I said on your  
9 statement. You and I were here debating issues about Cuba  
10 and all sorts of places. You are the one who brought  
11 Marikana into the discussion by saying that if people do  
12 things within the law, things such as those that happened  
13 in Marikana would not happen.

14 MR ZOKWANA: In Marikana President not  
15 only people were killed, which was very-very unfortunate.  
16 But people lost their work, Mr Mpofu, when the strike was  
17 over, over 1 000 workers could not find work after that.  
18 The point NUM is putting, not debating the issue of how  
19 many were killed and how. For that we are saying to those  
20 families who are with them we feel that was not the price  
21 they were supposed to pay. I speak about how workers gets  
22 what it deserves, Chairperson, when a strike is legal.  
23 That the legal - from the country protects workers from  
24 being expelled, from being dismissed when they are in a  
25 strike that is lawful it allows channels of negotiations.

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1 The point I'm putting, so Mr Mpofo must not come with his  
2 own ideas to come and say NUM is saying that the police  
3 were right to have done what they did. I'm not saying  
4 that.

5 MR MPOFU: Okay, once again you were the  
6 first one to mention Marikana and you were the first one to  
7 mention the police. Don't ascribe that to me.

8 CHAIRPERSON: That's not a question, Mr  
9 Mpofo. Please confine yourself to asking questions.

10 MR MPOFU: Yes, Chairperson, I'm trying  
11 to cut this short because otherwise I will have to do it by  
12 a series of questions. I appreciate what you are saying,  
13 Chairperson. Let's just agree on one thing, Mr Zokwana,  
14 that it is undesirable from the point of view of workers to  
15 be saying to the situation where the state and business or  
16 capital is colluding against them. They have no chance of  
17 success in that kind of duel, would you agree?

18 MR ZOKWANA: Chairperson, in answering  
19 the question, NUM was amongst those unions that campaigned  
20 for the Labour Relations Act. When the commission of  
21 Professor Viaan and Riekert was formed, culminating with  
22 its recommendations that recognised trade unions, NUM knew,  
23 Chairperson, that there was an instrument that would  
24 mitigate the scenario that Mr Mpofo is coming up with.  
25 Within the ambit of the law, working within structures,

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1 workers can be able to put one pressure on employers  
2 refusing to go to work within the law, putting pressure on  
3 the employers and I don't foresee any government in this  
4 country that would say go back to work because capital is  
5 losing money. I know that what and only in our neighbours  
6 in Zimbabwe, not here.

7 [14:42] Yes, Chairperson, lastly I will agree with you,  
8 Mr Mpofo, where there's no clearly defined Labour Relations  
9 Act empowering workers to put pressure on employers with  
10 the right to strike, the situation you are painting is  
11 possible.

12 MR MPOFU: Well okay, I don't know what  
13 you have against the Zimbabweans, but I put it to you that  
14 that situation happens in every capitalist state, since you  
15 and I had agreed that in a capitalist state, the state is  
16 an instrument of the ruling class.

17 MR ZOKWANA: Chairperson, one would dwell  
18 on our neighbouring country. Maybe I was wrong to mention  
19 Zimbabwean and so, but I know very well that the president  
20 of the Zimbabwean electrical workers, who is a colleague of  
21 us, as we speak he's on suspension because he took a  
22 strike, trying to force the company to implement a wage  
23 agreement reached by all. But don't think, we were not  
24 there, by the way, Chairperson. I withdraw that reference,  
25 but coming to the situation at home, I repeat, Chairperson,

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1 that our labour relations, our legal framework in dealing  
2 with labour issues, I don't know of any company after an  
3 agreement is reached through bargaining, can regain, can  
4 renege against such. That's why even this morning the  
5 Minister of Labour has promulgated new wages for farm  
6 workers. It shows that our labour relation framework  
7 functions, and I think that our labour is such that it can  
8 be able to bend the aspirations of employers. If your  
9 answer was to say how was my experience before NUM was  
10 formed, I will say yes, the situation you're creating is  
11 true. If you ask now, I will say where there may be some,  
12 there's some witness then there, but at least the law is  
13 such that it gives workers the right to strike.

14 MR MPOFU: Okay, the question was simply  
15 whether you agree that it's undesirable for the State to  
16 collude with capital against the workers.

17 MR ZOKWANA: Chairperson, I'm really  
18 struggling to understand how to answer that question.

19 CHAIRPERSON: I don't understand  
20 immediately the relevance of the question, but presumably  
21 Mr Mpofo will explain that to us later, but all he asks you  
22 is do you agree that it's undesirable for the State to  
23 collude with capital against the workers, and I would have  
24 thought, regard being had to the high offices you hold, you  
25 would have no difficulty in saying it's very undesirable

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1 that the State should collude with capital against the  
2 workers.

3 MR ZOKWANA: I get that, Chairperson, and  
4 the answer is no. We would not [inaudible] Mpofo approve  
5 of where capital and –

6 MR MPOFU: The State.

7 MR ZOKWANA: - the State work in  
8 collusion in denying workers their defined rights as  
9 contained in the Labour Relations Act.

10 MR MPOFU: Thank you, Chairperson. I'm  
11 indebted to the chairperson. Do you also agree that it  
12 would be undesirable for organised labour to collude with  
13 capital against unorganised labour?

14 MR ZOKWANA: Yes.

15 MR MPOFU: Thank you, and then you must  
16 certainly agree that if there's a tripartite collusion with  
17 the State, capital and organised labour, that unorganised  
18 labour then doesn't stand a chance?

19 MR ZOKWANA: I don't agree with that,  
20 Chairperson, because in this country we do have organised  
21 labour that is under different affiliations. We have got  
22 unorganised workers. I haven't seen in a situation where  
23 these three will collude, and I don't understand how that  
24 would happen. I disagree with that.

25 MR MPOFU: Yes, no I accept that you've

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1 never seen it, but if it did happen, would you agree that  
 2 unorganised labour wouldn't stand a chance against that  
 3 alliance?  
 4 MR ZOKWANA: Chairperson, I wouldn't like  
 5 this Commission to be made to believe that the organised  
 6 labour is only those who are part of the alliance. We do  
 7 have NATO outside the alliance. We have got many other  
 8 federations outside the alliance. I don't understand how  
 9 will therefore the alliance decide to collude with, against  
 10 anybody.  
 11 CHAIRPERSON: I don't think you're  
 12 understanding the question correctly. I'm not sure that I  
 13 understand it fully either, but let me tell you what I  
 14 understand about it and Mr Mpofo will then explain a bit  
 15 [inaudible]. I think by organised labour he means non-  
 16 unionised labour. In other words, if you have workers who  
 17 don't belong to a union, who are embarking upon some kind  
 18 of campaign, if they were then opposed, had opposed to them  
 19 a combination of the State, the employers and organised  
 20 labour, they would probably come second. I think that's  
 21 the point he's putting. The difficulty I've got is he uses  
 22 the word "collude" and I'm not quite sure what he means by  
 23 that. But if he's going to explain that to us, then he'll  
 24 put the question again, then –  
 25 MR ZOKWANA: Ja.

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1 CHAIRPERSON: And you will then  
 2 understand by unorganised labour he means, I think he means  
 3 workers who aren't members of –  
 4 MR ZOKWANA: Any union.  
 5 CHAIRPERSON: A union, then we may get  
 6 some –  
 7 MR ZOKWANA: Thanks, Chairperson –  
 8 MR MPOFU: Yes, sorry. As a unionist I  
 9 thought that I was using the language that you are more  
 10 familiar with, of organised labour and unorganised labour,  
 11 but the chairperson is quite correct; I mean non-unionised  
 12 workers, in normal English. The question, the issue –  
 13 CHAIRPERSON: - said what you mean by  
 14 collude. I think the witness –  
 15 MR MPOFU: Yes, that's what I'm trying to  
 16 –  
 17 CHAIRPERSON: - is entitled to know what  
 18 that means before he answers the question when you repeated  
 19 it.  
 20 MR MPOFU: Yes, I was responding to that,  
 21 Chairperson. Sorry, Chairperson, yes, when I said the  
 22 question, I was doing both. The collusion that I'm  
 23 alluding to, Mr Zokwana, is the same collusion that you and  
 24 I had agreed was undesirable between capital and State.  
 25 Now the only thing I've done is to add thereon as to what

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1 you and I had agreed in that collusion, organised labour.  
 2 So if you understood it the first time, I'm sure you still  
 3 understand it now.  
 4 MR ZOKWANA: I would not agree with you,  
 5 Mr Mpofo, because as I understand the trade unions there's  
 6 no way unions would collude with the employer that deal  
 7 harshly with unemployed – or sorry, unorganised workers.  
 8 It could have been a scenario in the past when there were  
 9 things like closed shop agreement, that people in a  
 10 particular grouping will have to belong to a union.  
 11 Currently people join trade unions out of their own free  
 12 will. As long, and I'm not having a big, a situation where  
 13 I can be able to put an example to the question you are  
 14 posing, that unions and government and employers will come  
 15 together and collude that this is the manner we will deal  
 16 or present such that if these workers were to go on strike,  
 17 therefore their situation will be worse than others.  
 18 MR MPOFU: Okay, once again I'll accept,  
 19 if you say you've never seen it, you've never seen it.  
 20 Have you ever seen a situation where business, or capital  
 21 colludes with one union against another union?  
 22 MR ZOKWANA: Thanks, Chairperson. I will  
 23 say no because our Labour Relations Act is so structured  
 24 such that if unions are registered, the framework of how  
 25 they should function, how would they run their businesses,

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1 is clear and there are recourses, means there's a recourse  
 2 if any deviation is done by that collusion. I haven't seen  
 3 that. I don't think it is possible.  
 4 MR MPOFU: Okay, I know you've never seen  
 5 that as well, but I will disagree with you when you say it  
 6 is not possible, and the reason for that – and I'll invite  
 7 your comment – is that you, and I mean in your capacity as  
 8 president of the NUM, or the NUM have repeatedly accused  
 9 the employers in the mining sector of colluding with AMCU.  
 10 So how can it be impossible?  
 11 MR ZOKWANA: Chairperson, it doesn't  
 12 include government at this stage because the question to me  
 13 was saying when the three components collude against a  
 14 formation, but in this case, Chairperson, I think NUM in  
 15 raising those things have come up with examples as to why  
 16 it believed that specifically the Impala management was  
 17 colluding. It has been able, because NUM offices,  
 18 Chairperson, were closed at the behest of AMCU. That made  
 19 NUM not to operate inside there, when the company was  
 20 supposed to call upon law enforcers to play their role. It  
 21 was only in as far as that I was saying is that here is a  
 22 union, it forces another union, using violence, out of its  
 23 space, so that even a case where AMCU will say we don't  
 24 want so-and-so here because he's pro NUM, that person will  
 25 be taken out, sometimes paid by the company, not being on –



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1 it's where collusion ends, but I thought that if you were  
 2 speaking of – I want to clarify that I was responding to  
 3 your question in as far as you are saying where the  
 4 government and the labour collude with the employer, but in  
 5 this case what specific [inaudible] we say Impala has made  
 6 the point that AMCU uses unusual forms of organising. It  
 7 uses coercion. It has led our offices to be closed. It  
 8 has allowed our people to be out of the operations, and the  
 9 company has not done what they should be doing. That's  
 10 where, I mean our position as NUM is. Sorry Chairperson, I  
 11 know my rights are limited in dealing with questions in as  
 12 far as possible and being honest, but my hands are dirty.  
 13 Can you allow me to go to the bathroom to wash my hands,  
 14 please?

15 CHAIRPERSON: I am proposing to take the  
 16 tea adjournment at this point, and I was requested by both  
 17 of my Commissioners to do that. I wasn't listening to  
 18 them, but in view of the fact that you've asked as well,  
 19 we'll take the tea adjournment now.

20 MR ZOKWANA: Thank you.

21 [INQUIRY ADJOURNS INQUIRY RESUMES]

22 [15:18] CHAIRPERSON: The Commission resumes.  
 23 During the tea adjournment, by arrangement between Mr Mpofo  
 24 and Mr Madlanga, the chief evidence leader, we extended the  
 25 subpoenas of the witnesses who were subpoenaed to come here

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1 yesterday. Mr Madlanga, have you got their names or has Mr  
 2 Mpofo got their names? I think we should put it on record  
 3 what happened so that –

4 MR MPOFU: Chairperson, I think you've  
 5 caught both of us by surprise –

6 CHAIRPERSON: Before we adjourn then  
 7 we'll do that. You're still under oath, Mr Zokwana.  
 8 Before Mr Mpofo continues with his cross-examination, I  
 9 want to ask you a question. I didn't understand your  
 10 evidence about your never having encountered a situation  
 11 where an employer colludes with one union against another.  
 12 Have you never experienced a situation where there are two  
 13 unions and one of them is a sweetheart or Uncle Tom union,  
 14 and the other one isn't, and the employer then colludes  
 15 with the sweetheart or Uncle Tom union to favour it by way  
 16 of attempting to frustrate the [inaudible] of the other  
 17 union?

18 MR ZOKWANA: I can only come to the same  
 19 example, Chairperson, to say that if the Commission will  
 20 have time maybe, or do more into the situation in Impala,  
 21 it may find that scenario, Chairperson, where NUM is not  
 22 only denied by violence to operate, but the employer  
 23 clearly in this case favours AMCU. It does not only lock  
 24 offices, it [inaudible] them. Whenever AMCU raises a  
 25 discomfort with a shop steward who operates in that area,

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1 or a member who does not want to agree that NUM should not  
 2 be the union, AMCU will say to the employer, get that  
 3 person transferred. That has happened, I'm sure when such  
 4 information will be made, I'm sure it will be led later as  
 5 to what had been the experience of NUM in as far the  
 6 scenario is concerned. Besides that, Chairperson, I can't  
 7 give another example of a union colluding with the  
 8 employer, except Impala colluding with AMCU to get rid of  
 9 NUM.

10 MR MPOFU: Just to save time I'll accept  
 11 that answer to mean that you are amending your statement  
 12 that you had never seen this, to say that you have seen it  
 13 only in the case of AMCU.

14 MR ZOKWANA: Chairperson, before it is  
 15 interpreted, I made a point that Counsellor Mpofo made this  
 16 analysis based on three components colluding. If I may  
 17 have heard him wrongly, if you referred to an employer  
 18 colluding with a union, my answer is yes, I've seen one.  
 19 That is Impala, the employer, AMCU, the union.

20 MR MPOFU: Ja. Yes, for the record, I  
 21 did confine my question to only an employer and the union,  
 22 but we won't quibble about that. What I want to ask you is  
 23 in your experience as a trade unionist - let's just say,  
 24 confine it to the mining industry - you have never had or  
 25 seen or experienced a situation where some of the

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1 conservative unions for example even participated in  
 2 beatings in collusion with the employer?

3 MR ZOKWANA: Chairperson, I've always  
 4 confined myself to the era under the new regime, the Labour  
 5 Relations Act. The era before that I've said has got all  
 6 those hallmarks of what you are saying, but in as far as  
 7 union working with the employer, so they're defined into  
 8 recognition agreements and how such agreements are drafted.  
 9 Unions can be in meetings only if they qualify in terms of  
 10 the number of people that they represent to be in a  
 11 meeting. That what defines you to be in a meeting is not  
 12 because of the name you carry; it's the number of employees  
 13 in that operation that you represent. I have not seen by a  
 14 union that is recognised by the employer as for the  
 15 agreement being denied that right. That's my answer.

16 Sorry, Chairperson, the answer is no, I haven't seen that.

17 MR MPOFU: Alright, honestly I don't know  
 18 to which question that answer is, but once again to save –

19 MR ZOKWANA: Chairperson, you wanted to  
 20 know from me if I have ever seen a situation where a union  
 21 is denied by the employer through collusion to be in a  
 22 meeting where another union is sitting, and my answer is  
 23 no.

24 MR MPOFU: No, that was not my question.  
 25 I said in your experience as a trade unionist, have you

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1 never seen a situation where some of the conservative  
2 unions even participate in beatings in collusion with the  
3 employer. That was my question.

4 MR ZOKWANA: The answer is no.

5 MR MPOFU: You've never heard of this?

6 MR ZOKWANA: My, because you need to  
7 understand, being in meetings with employers I said it is  
8 defined by the Labour Relations Act in as far as how unions  
9 are recognised in a company. You can only be in a meeting  
10 provided that you meet the required threshold of members  
11 you represent. It's not by any other definition.

12 MR MPOFU: Okay, Mr Zokwana, I'll move  
13 on, but I'll really suggest that you listen to the question  
14 before you answer it.

15 MR ZOKWANA: Apology.

16 MR MPOFU: Thank you. Now moving on,  
17 maybe before I move on, let me do this, explain to you why  
18 I'm asking you these questions, which maybe I should have  
19 done before I asked the questions. You know that I  
20 represent the injured and arrested protesters?

21 MR ZOKWANA: Yes.

22 MR MPOFU: You know, or you may not know,  
23 if you don't I'm telling you now that one of the issues  
24 that we have said we are going to argue at the end of the  
25 Commission is that the massacre was caused by what we

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1 termed "toxic collusion" between primarily the State and  
2 capital. I'm sure you are aware of that. Are you aware of  
3 that?

4 MR ZOKWANA: Unfortunately, Chairperson,  
5 I was not present when you presented your line, or what you  
6 intend to put forward. I can't comment on that. I was not  
7 around.

8 MR MPOFU: And you never read about it  
9 anywhere?

10 MR ZOKWANA: I can't remember that.

11 MR MPOFU: Okay, fair enough.

12 MR ZOKWANA: What I remember is only when  
13 you informed this Commission, when you were going to cross-  
14 examine Gcilitshana, was who you were representing. In as  
15 far as what your closing argument, or what you intend to  
16 prove, you didn't go there.

17 MR MPOFU: Okay. And you are also aware  
18 that after a lot of questions were put to you, Mr Semenya  
19 said that – I might not be quoting him verbatim, but  
20 alluded to a collusion between yourselves as the union and  
21 Lonmin. Remember that?

22 MR ZOKWANA: Chairperson, with due  
23 respect, I understood Mr Semenya's line of questioning,  
24 being that he wanted to establish whether the two parties  
25 did enough to negotiate such that the strike could be

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1 averted, and our position as NUM was that it was impossible  
2 to negotiate under those circumstances of violence where  
3 there was no mandate. Chances of feed backing was  
4 impossible.

5 MR MPOFU: In any event, our version is  
6 going to be that the collusion between the State,  
7 represented by SAPS, and capital, represented by Lonmin,  
8 was the primary cause, or the main cause of the massacre,  
9 and that the other collusion alluded to by Mr Semenya  
10 between yourselves as organised labour and Lonmin was a  
11 secondary cause, but that they were both causally connected  
12 to the massacre.

13 MR ZOKWANA: Chairperson, I don't think I  
14 have to respond to the question because it's what the  
15 counsel will present to this Commission, and I think it  
16 would be on the basis of evidence to prove that. I'm sure  
17 NUM has got views as to why do we think what is being  
18 proposed is not the truth, but that will come. I'm sure  
19 the Commission will call a number of witnesses who will  
20 mill through the evidence, and I don't think therefore that  
21 I have to answer whether I concurred what you are thinking,  
22 because I mean, I didn't instruct you to represent my views  
23 and you are putting forward a particular view of your own  
24 client.

25 CHAIRPERSON: Mr Mpofo, the witness is

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1 quite right. You haven't asked a question. You told him  
2 what your case was, which he listened to with interest, and  
3 now I expect you to ask questions based as it were on what  
4 you put to him.

5 MR MPOFU: Yes, Chairperson, I did  
6 preface that by saying that I was just giving him context,  
7 so it was not intended to be a question. So I agree with  
8 you, Mr Zokwana, and I apologise that I didn't frame it as  
9 a question. Now you say you need evidence. I will deal  
10 with you – right now let's set aside the, what I called the  
11 main collusion, which does not involve you, between the  
12 State and capital, for the purposes of what I'm going to  
13 say to you now. You have heard the evidence that was given  
14 here that the NUM held twice-a-day meetings with the police  
15 and Lonmin regarding the strike, and other unions – sorry,  
16 to be fair.

17 MR ZOKWANA: I understand those would  
18 mean the -

19 MR TIP SC: Mr Chair, it must be put  
20 accurately. Mr Gcilitshana's evidence was that on occasion  
21 members of the SAPS would attend, but they were not there  
22 regularly and the principal purpose of the debriefings was  
23 for Lonmin security to advise the parties as to the state  
24 of security around the mine.

25 MR MPOFU: That's correct. Actually you

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1 can assume for the purposes of this that the police were  
 2 never there. You've heard the evidence that says that the  
 3 Lonmin and NUM and other unions met twice a day to discuss  
 4 the strike?  
 5 MR BURGER SC: Chair, may I just have  
 6 clarity? What my learned friend is now putting is that's  
 7 the factual basis for accusing Lonmin of being party to a  
 8 toxic relationship?  
 9 MR MPOFU: No, I haven't said anything of  
 10 the sort.  
 11 MR BURGER SC: Then I don't know what  
 12 we're debating, Chair, then I'm losing the debate.  
 13 MR MPOFU: Well, then you must listen.  
 14 CHAIRPERSON: He's apparently going to  
 15 ask questions – I've been waiting for about five minutes  
 16 for him to start asking questions. I haven't seen a  
 17 question mark for the last five minutes, but he's going to  
 18 deal with what he calls a secondary cause of the shootings,  
 19 which he says was the fault of the combined actions, or  
 20 inactions, more accurately, of Lonmin and NUM. He's going  
 21 to deal with that. The toxic collusion part only relates  
 22 to the State and Lonmin, but he's not busy with the toxic  
 23 part, he's busy with the non-toxic part of the cause. So  
 24 let's wait for him to ask a question before you object.  
 25 Carry on, Mr Mpofo.

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1 [15:38] MR MPOFU: Thank you, Chairperson. Now  
 2 still dealing with the secondary cause, or the collusion  
 3 alluded to by Mr Semenya, I was just asking you a question  
 4 that whether you are aware of those twice-a-day meetings,  
 5 and you confirmed that Mr Gcilitshana testified about them.  
 6 Correct?  
 7 MR ZOKWANA: I don't think such meetings  
 8 will qualify as the theory of a collusion. What I know is  
 9 that there were briefing sessions that the company would do  
 10 at a time necessary to brief the people on what was  
 11 happening around the mine, how many have reported to work,  
 12 what is going to happen. I don't understand, I don't  
 13 regard that as collusion.  
 14 MR MPOFU: Mr Zokwana, two things.  
 15 Firstly, do not answer a question that I have not asked.  
 16 Secondly, don't allow yourself to be distracted by the  
 17 sledging, as we call it in cricket, between counsel. I've  
 18 asked you a simple question. Were you aware of these  
 19 twice-a-day meetings, yes or no?  
 20 MR ZOKWANA: Meetings [inaudible] Sir.  
 21 MR MPOFU: Thank you.  
 22 MR ZOKWANA: So but you mentioned the  
 23 word "collusion" –  
 24 MR MPOFU: No, in my question there was  
 25 no word "collusion." I simply said were you aware of those

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1 meetings, question mark, yes or no.  
 2 MR ZOKWANA: Chairperson, I would be  
 3 happy if these processes would happen in the way that – if  
 4 I misunderstood the question, it is not a sign that I –  
 5 that is a question -  
 6 CHAIRPERSON: No, no, no, no –  
 7 MR ZOKWANA: And I happen to understand –  
 8 CHAIRPERSON: You thought he was  
 9 suggesting collusion.  
 10 MR ZOKWANA: Yes.  
 11 CHAIRPERSON: He now assures us he's not.  
 12 He simply asks you were you aware of the fact that  
 13 debriefing meetings were taking place twice a day.  
 14 MR ZOKWANA: I was aware that some  
 15 meetings were taking place. I was aware.  
 16 CHAIRPERSON: You've got an Oprah Winfrey  
 17 answer, now carry on with the next question.  
 18 MR MPOFU: Thank you.  
 19 MR ZOKWANA: But again, Chairperson, I  
 20 will not be able to say these meetings were twice a day,  
 21 but I know that some meetings did take place for briefing.  
 22 I wouldn't confirm whether twice or thrice.  
 23 MR MPOFU: At a much higher level, were  
 24 you party to other discussions with the senior leadership  
 25 of Lonmin regarding the situation?

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1 MR ZOKWANA: - to the first question Mr  
 2 Mpofo raised this with Gcilitshana. The answer is no. If  
 3 that refers to me as a person, no.  
 4 MR MPOFU: Yes, it refers to you as a  
 5 person. So you never had such discussions with the senior  
 6 leadership of Lonmin?  
 7 MR ZOKWANA: No.  
 8 MR MPOFU: Do you know a person called Mr  
 9 Cyril Ramaphosa?  
 10 MR ZOKWANA: He's the former general  
 11 secretary of NUM, former SG of the ANC, a businessperson,  
 12 the current deputy president of the ANC.  
 13 MR MPOFU: Mr Zokwana, do you know the  
 14 person, yes or no?  
 15 MR ZOKWANA: My answer is yes. I'm  
 16 trying to tell you how I know him.  
 17 CHAIRPERSON: I want to appeal to members  
 18 of the public in the auditorium to try to restrain  
 19 themselves, not laugh and make noises. It makes it  
 20 difficult for us to hear the evidence. If it continues I  
 21 shall have to consider clearing the auditorium, which is  
 22 something I don't want to do. To put it simply, please try  
 23 to keep quiet while the evidence is being given.  
 24 MR MPOFU: Chairperson, I beg leave to  
 25 hand out exhibit – I suspect it's BBB4.

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1 CHAIRPERSON: How would one describe this  
 2 exhibit?  
 3 MR MPOFU: A set of emails exchanged  
 4 between the senior leadership of Lonmin, or among -  
 5 CHAIRPERSON: Among -  
 6 MR MPOFU: Yes.  
 7 CHAIRPERSON: - the senior membership,  
 8 the senior leadership -  
 9 MR MPOFU: Leadership of Lonmin.  
 10 CHAIRPERSON: Of Lonmin. Thank you.  
 11 I'll mark it accordingly.  
 12 MR MPOFU: Is it BBB4, Ms Pillay?  
 13 MS PILLAY: It is BBB4, Chair.  
 14 MR MPOFU: Thank you.  
 15 CHAIRPERSON: I'm not quite sure of the  
 16 order in which these documents are stapled together.  
 17 MR MPOFU: I've made an attempt, Chair,  
 18 the one at the bottom of the page is number 1.  
 19 CHAIRPERSON: Yes.  
 20 MR MPOFU: And the next page is number 2,  
 21 to 89B, and then if you go back to the front page it's  
 22 number 3 at the top.  
 23 CHAIRPERSON: - to me slowly. The one at  
 24 the foot of the first page, that's -  
 25 MR MPOFU: It's number 1.

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1 CHAIRPERSON: - the one on 15 August at  
 2 00 -  
 3 MR MPOFU: 15th August, 00:47, that's -  
 4 CHAIRPERSON: Yes, that's number 1.  
 5 MR MPOFU: 1AM in the morning -  
 6 CHAIRPERSON: Then the one above that, I  
 7 take it we must appreciate is 3.  
 8 MR MPOFU: 9th, the one above it is 3,  
 9 yes.  
 10 CHAIRPERSON: Then on page 2 -  
 11 MR MPOFU: That's -  
 12 CHAIRPERSON: - that's 2.  
 13 MR MPOFU: "Hello Cyril," yes, that's  
 14 number 3.  
 15 CHAIRPERSON: Then page, and then the  
 16 next one -  
 17 MR MPOFU: 2.  
 18 CHAIRPERSON: - is 289C -  
 19 MR MPOFU: C, that's number 4.  
 20 CHAIRPERSON: There's a whole lot. There  
 21 -  
 22 MR MPOFU: No, but I -  
 23 CHAIRPERSON: There are a couple -  
 24 MR MPOFU: I didn't go far enough.  
 25 Number 4 is certainly the top one, Chair.

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1 CHAIRPERSON: "Thank you, Cyril, I had a  
 2 planned briefing." Is that 4?  
 3 MR MPOFU: No, sorry, Chairman, I'm  
 4 wrong. Number 4 is at the bottom, it's 12:18, and that  
 5 would be 5 on top.  
 6 CHAIRPERSON: That "Thank you for your  
 7 email. I'm currently in Cape Town?"  
 8 MR MPOFU: Yes.  
 9 CHAIRPERSON: That's number 4.  
 10 MR MPOFU: Number 4.  
 11 CHAIRPERSON: And number 5 is -  
 12 MR MPOFU: Number 5, "Thank you, Cyril."  
 13 CHAIRPERSON: "I had a planned briefing."  
 14 That's 5.  
 15 MR MPOFU: Yes.  
 16 CHAIRPERSON: And then the next one is  
 17 289E -  
 18 MR MPOFU: E, which is "Many thanks" -  
 19 CHAIRPERSON: No, no -  
 20 MR MPOFU: No, no, the -  
 21 CHAIRPERSON: - 3:13, "I just had a  
 22 discussion at 2:58." So presumably the one at the foot of  
 23 the page -  
 24 MR MPOFU: Number 6.  
 25 CHAIRPERSON: - 289E is number 6, "I just

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1 had a discussion," and then 7 is "Many thanks, Cyril."  
 2 MR MPOFU: "Many thanks."  
 3 CHAIRPERSON: Yes, okay, and then the  
 4 following page, what's 8 then?  
 5 MR MPOFU: No, the 7th page, sorry, that's  
 6 repetition, Chair, sorry.  
 7 CHAIRPERSON: I see, so we ignore that.  
 8 MR MPOFU: Yes -  
 9 CHAIRPERSON: Alright, okay. So now we  
 10 know when you're referring to particular emails, we'll know  
 11 which ones you're referring to.  
 12 MR MPOFU: Yes.  
 13 CHAIRPERSON: Mr Burger, you look as if  
 14 you want to say something.  
 15 MR MPOFU: But can you -  
 16 MR BURGER SC: - to this witness, Chair.  
 17 I don't have anything to say.  
 18 MR ZOKWANA: Chairperson, can you help me  
 19 again to, number 1 is 289A. Is it so?  
 20 MR MPOFU: At the bottom.  
 21 MR ZOKWANA: Yes.  
 22 MR MPOFU: Yes, and number 3 is just the  
 23 one above it, and number 2 is on the next page. So just  
 24 write 3 next to the one above, the one that says, "Thanks,  
 25 Cyril."

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1 MR ZOKWANA: Yes. Oh yes, it's 3.  
 2 MR MPOFU: Yes, and then number 2 is the  
 3 one, "Hello, Cyril."  
 4 MR ZOKWANA: Yes.  
 5 MR MPOFU: And then on the next page at  
 6 the top, "Thank you, Cyril," is number 5.  
 7 MR ZOKWANA: Oh, yes.  
 8 MR MPOFU: And the one below that, "Thank  
 9 you for your email. I'm currently in Cape Town," is number  
 10 4.  
 11 MR ZOKWANA: Yes.  
 12 MR MPOFU: And then on the next page,  
 13 skip the next page, that's just the end of that number 4.  
 14 MR ZOKWANA: Yes.  
 15 MR MPOFU: Then on 289E at the top, "Many  
 16 thanks, Cyril," is number 7.  
 17 MR ZOKWANA: Yes.  
 18 MR MPOFU: At bottom of that, "I've just  
 19 had a discussion with Susan Shabangu," is number 6.  
 20 MR ZOKWANA: Hold on. Oh, yes.  
 21 MR MPOFU: Ja. Now sorry, maybe when you  
 22 were giving the credentials, I stopped you maybe. So let  
 23 me just ask you, do you also know that on top of all those  
 24 things that Mr Ramaphosa is, or was at the time at least a  
 25 director of Lonmin?

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1 MR ZOKWANA: Yes.  
 2 MR MPOFU: And did you know that he  
 3 seemed in that short space of time to have been having  
 4 quite a busy exchange of emails with various parties, which  
 5 involve your name?  
 6 MR ZOKWANA: Yes, I'm mentioned on  
 7 paragraph 2 on 22A, yes.  
 8 MR MPOFU: Chairperson, for the sake of  
 9 the record, what I will do is when we refer to a particular  
 10 email I'll just read it out and then place the question.  
 11 CHAIRPERSON: [Inaudible]  
 12 MR MPOFU: Yes, for context, thank you.  
 13 This one, number 1 says, it's sent in the early hours of  
 14 the morning, 00:47. It's sent by Mr Ramaphosa to Roger  
 15 Phillimore, who's also part of the senior leadership of  
 16 Lonmin.  
 17 MR ZOKWANA: Sorry, Chairperson,  
 18 according to this it is from Roger Phillimore to –  
 19 MR MPOFU: No, no, it's number 1, not  
 20 number 2.  
 21 MR ZOKWANA: Oh, alright.  
 22 MR MPOFU: Not number 3, sorry.  
 23 CHAIRPERSON: The way it works, Mr  
 24 Zokwana, is obviously Mr Ramaphosa sent an email to Mr  
 25 Phillimore. Mr Phillimore replied. So his reply then when

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1 you print it out –  
 2 MR ZOKWANA: Yes.  
 3 CHAIRPERSON: - there's a letter he  
 4 received, which is the first, or rather the bottom of the  
 5 page.  
 6 MR MPOFU: Correct.  
 7 CHAIRPERSON: And his reply, which in  
 8 fact I think is on the next page –  
 9 MR ZOKWANA: Yes, yes. No, thanks,  
 10 Chairperson.  
 11 CHAIRPERSON: - that's 2, and then we  
 12 have this one.  
 13 MR ZOKWANA: I get that now. Thank you.  
 14 CHAIRPERSON: It is technically the email  
 15 sent by Phillimore –  
 16 MR ZOKWANA: Yes.  
 17 CHAIRPERSON: - but he's actually sending  
 18 it back because he's replying to it.  
 19 MR MPOFU: Thank you, and I'm reading the  
 20 part that he's replying to. You see at the bottom 00:47?  
 21 MR ZOKWANA: Yes, I see that, yes, 15  
 22 August.  
 23 MR MPOFU: Ja, okay. It says the  
 24 following, I'll read it quickly. "Dear Roger, thank you  
 25 for your briefing note. I have had some interaction with

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1 some of the role-players and pen hereunder some of the  
 2 discussions I have had. 1, discussion with Minister Susan  
 3 Shabangu. I called her and told her that her silence and  
 4 inaction about what is happening at Lonmin was bad for her  
 5 and the government. She said she was going to issue a  
 6 statement. She was going to be in Cape Town to attend a  
 7 joint parliamentary session and would be back in  
 8 Johannesburg later today to attend to the Lonmin matter. I  
 9 told her that I would also be in Cape Town and suggested  
 10 that we should have a discussion and see what she needs to  
 11 do. 2, I spoke to Senzeni Zokwana, president of the NUM.  
 12 He said he and Frans Baleni wanted to meet me and former  
 13 NUM president James Motlatsi to discuss what they should do  
 14 as a union going forward. James and I will meet them on  
 15 Friday and exchange some ideas. He told me that the NUM  
 16 had held a successful meeting where some 500 to 700 workers  
 17 had stated that they wanted to work. 3, I will be speaking  
 18 to Gwede Mantashe, the ANC secretary general, and suggest  
 19 that the ANC should intervene. 4, Mike Teke, the deputy  
 20 chairman of the Chamber of Mines, said that the Chamber had  
 21 discussed the matter yesterday. There should be contact  
 22 with the Chamber of Mines. Maybe Albert would follow this  
 23 up. I will keep you updated on progress. Cyril."  
 24 MR ZOKWANA: Yes, I see that. Yes, I saw  
 25 that.

<p style="text-align: right;">Page 4727</p> <p>1 MR MPOFU: Yes. Thank you. Chairperson,  2 I see that it's about 4. What I was proposing is one of  3 two things. I don't want to deal with this in a piecemeal  4 fashion, so if the chairperson still has a bit of time I  5 can use that time to read in the other emails and then  6 continue –</p> <p>7 CHAIRPERSON: I suggest you read in the  8 other emails.</p> <p>9 MR MPOFU: Yes, and then -</p> <p>10 CHAIRPERSON: We'll then –</p> <p>11 MR MPOFU: - questions tomorrow.</p> <p>12 CHAIRPERSON: Members of the people in  13 the auditorium will then know what it's all about, and then  14 tomorrow morning starting at 9:30 - and by the way, I was  15 going to announce at the end, I may as well announce it now  16 that I've decided we will have a short lunch adjournment  17 tomorrow, resuming at 1:30, and the same again on Thursday.  18 The idea is that that way we'll make up for the hour which  19 we unfortunately lost this morning.</p> <p>20 MR MPOFU: Thank you, Chairperson.</p> <p>21 CHAIRPERSON: So carry on as you suggest.</p> <p>22 [15:58] MR MPOFU: Thanks, Chairperson, I'll read  23 fast. The next e-mail is at 09:42 on the 15th of August,  24 number 2, Mr Zokwana?</p> <p>25 MR ZOKWANA: Yes, I see that.</p>	<p style="text-align: right;">Page 4729</p> <p>1 that the police have about 800 on site. Our next challenge  2 is sustaining this and ensuring that they remain and take  3 appropriate action so that we can get people back to work.</p> <p>4 It would be good to have some independent  5 confirmation, the police have plans to sustain a presence  6 for at least at week and numbers don't wane by the weekend.</p> <p>7 If you can talk to the Minister, please could you influence  8 these things with her and encourage her to make time to  9 talk to Roger. I've gathered support from the CEOs and  10 have a planned call with COM, Chamber of Mines to brief  11 them. Many thanks, Albert Jameson, Chief Commercial  12 Official Lonmin."</p> <p>13 Thank you, the next one is insignificant, I'll  14 read it just for the record and then continue to read  15 number 4. The next one is at 1:07 pm, 15th August, from  16 Roger Philemon to Cyril Ramaphosa. "Thanks, Cyril, very  17 much appreciated, I look forward to talking with you later  18 when you have a moment. Best wishes, Roger," and if Mr  19 Interpreter will allow me, can I move on to the next one  20 just to save time?</p> <p>21 MR HANABE: Where exactly were you  22 reading from?</p> <p>23 MR MPOFU: I'm reading number 3, sorry.</p> <p>24 MR HANABE: On page?</p> <p>25 MR MPOFU: On page 1, okay, well, you</p>
<p style="text-align: right;">Page 4728</p> <p>1 MR MPOFU: It reads as follows, it is  2 from Mr Jameson, Albert Jameson who is also a senior leader  3 at Lonmin, to Mr Ramaphosa. "Hello Cyril, thank you for  4 your help so far. Thankfully last night was relatively  5 peaceful as is this morning, we have had approached from  6 NUM Eastern Plat that they would like to return to work if  7 the police can offer adequate protection. Two areas of  8 concern," and he puts the first one, it is two bullets, the  9 first bullet, "The Minister was on radio today saying she  10 has been briefed that this was a wage dispute and  11 management and unions should sit down and sort it out. Not  12 so, have briefed her. We are waiting to talk to her,  13 Roger, and although not too damaging, it is also not too  14 helpful. I've had two discussions with the DG and in his  15 case he has categorised this as not an industrial relation  16 issue, but a civil unrest/destabilisation/criminal issue  17 that could not be resolved without political intervention  18 and he needs the situation stabilised by the police or  19 army."</p> <p>20 I think on both occasions, sorry, I must read,  21 police/army. "I think on both occasions he agreed with me  22 and it reflected what was in our letter but now I'm not  23 sure, I have a call to him this morning." The second  24 bullet, "We are grateful that the police have now 800 on  25 site." Oh yes, thank you, Chairperson. "We are grateful</p>	<p style="text-align: right;">Page 4730</p> <p>1 might as well deal with it. Okay, I'll now deal with  2 number 4, number 4 and important one. It is 12:18 pm on  3 the same day, it is from Mr Ramaphosa to Albert Jameson,  4 Bernard Mokoena, Tandigai Ncube and Roger Philemon. Its  5 subject reads, "Security situation. Dear Albert, thank you  6 for your e-mail, I'm currently in Cape Town and we'll have  7 a discussion with her. I thank you for the consistent  8 manner in which you are characterising the current  9 difficulties we are going through. The terrible events  10 that have unfolded cannot be described as a labour dispute.  11 They are plainly dastardly criminals and must be  12 characterised as such. In line with this characterisation  13 there needs to be concomitant action to address this  14 situation."</p> <p>15 The next page, "You are absolutely correct in  16 insisting that the Minister and indeed all government  17 officials need to understand that we are essentially  18 dealing with a criminal act. I have said as much to the  19 Minister of Safety and Security. I will trust that  20 Minister Shabangu should have a discussion with Roger.  21 Regards, Cyril." Alright, then I go to number 5, sent at  22 2:58 pm on the same day, it is from, - no, sorry, okay, it  23 looks like we, it is 1:18 or 1:13. 1:18, anyway, it  24 doesn't matter.</p> <p>25 CHAIRPERSON: Yes.</p>

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1 MR MPOFU: Okay, and it is from Albert  
 2 Jameson to Ramaphosa, Mokoena, Barnard - Ncube, Tandigai  
 3 Ncube and Roger Philemon, subject, "Re security situation.  
 4 Thank you, Cyril, I had a planned briefing with Bheki  
 5 today," I'll suggest later to the commission that that's  
 6 probably Mr Bheki Khumalo who is the spokesperson of the  
 7 department, but putting that aside, "today and have also  
 8 carried that message over which they 100% support. He will  
 9 also convey this to the Minister tomorrow morning. He  
 10 asked for a copy of our letter that I will e-mail him."  
 11 MR ZOKWANA: Without me offering to know  
 12 who this Bheki is, there is a Bheki Sibiyi, the Chamber of  
 13 Mines CEO, but I don't know if he is -  
 14 MR MPOFU: Sure enough, sure enough, I  
 15 think that's a fair point, thank you, we'll have to  
 16 establish it through somebody, thanks very much. Thank  
 17 you, unfortunately I know both those Bheki's, so we'll  
 18 establish which one. The next one is number 6 -  
 19 CHAIRPERSON: Are you going to give  
 20 evidence on the matter?  
 21 MR MPOFU: Chair, well if the chair  
 22 insists then there is nothing I can do. No, Chair, we'll  
 23 establish through my attorneys, only if there is no cross-  
 24 examination, Chair. Number 6 -  
 25 CHAIRPERSON: - your colleagues of their

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1 right in that regard.  
 2 MR MPOFU: Thank you, Chair. Number 6  
 3 reads as follows, it is at 2:58 pm, the 15th August 2012,  
 4 from Cyril Ramaphosa to Albert Jameson, Bernard Mokoena,  
 5 Tandigai Ncube, Roger Philemon and Ian Farmer. The same  
 6 subject, re the security situation. "Dear all, I have just  
 7 had a discussion with Susan Shabangu in Cape Town. One,  
 8 she agrees that what they are going through is not a labour  
 9 dispute, but a criminal act. She will correct her  
 10 characterisation of what we are experiencing. Two, she is  
 11 going into cabinet and will brief the President as well and  
 12 get the Minister of Police, Nathi Mthethwa to act in a more  
 13 pointed way. Three, she will be in Johannesburg by 5 pm  
 14 and would be able to speak to Roger. Let us keep the  
 15 pressure on them to act correctly."  
 16 The next one, or before, I was just about to say,  
 17 the last time but unfortunately, Chairperson, I have bad  
 18 news, I think that last page which I thought was a  
 19 repetition is not a repetition, so we have two more. It is  
 20 just that one of the times looked the same. The one at the  
 21 bottom is repetition, it is the one of 12:18 which is  
 22 number 4, but the one on top which is sought is not, so we  
 23 can call that number 4(B). I'm saying, if you can call old  
 24 number 4, Chair, that old number 4, we call it 4(A).  
 25 CHAIRPERSON: You're on 289(F)?

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1 MR MPOFU: Yes, 289(F), yes. Can you  
 2 call the one at the top -  
 3 CHAIRPERSON: "Thank you, Cyril," what  
 4 should that be called?  
 5 MR MPOFU: Can we call it 4(B)?  
 6 CHAIRPERSON: 4(B)?  
 7 MR MPOFU: And then the one -  
 8 CHAIRPERSON: 4 is 4(A)?  
 9 MR MPOFU: The one that was 4 we call  
 10 4(A), that will solve the problem.  
 11 CHAIRPERSON: Alright.  
 12 MR MPOFU: Thank you, Chair.  
 13 CHAIRPERSON: Are you going to read it in  
 14 quickly before we adjourn?  
 15 MR MPOFU: Yes, I might as well, the two  
 16 are short, the question, thank you, Chair. Okay, I'll  
 17 start with 7, it is quite a quick one. It is 3:22 pm on  
 18 the 15th of August, basically to the same parties and it  
 19 says, "Many thanks, Cyril, that is very helpful. I have a  
 20 call into the DG, so we'll reinforce," and then the last  
 21 one, excuse me, Mr Interpreter, which is the next page,  
 22 4(B), the one on top.  
 23 [16:18] MR ZOKWANA: 4(B) is 289(F)?  
 24 MR MPOFU: Yes, the one on top, ignore  
 25 the one at the bottom, it is a repetition, ja. That one is

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1 1:18 pm from Albert Jameson. Oh, is it the same as 5? Oh,  
 2 well, then I was right the first time, Chairperson.  
 3 CHAIRPERSON: So this is actually 5?  
 4 MR MPOFU: 5, yes, that's correct.  
 5 CHAIRPERSON: Because the layout is  
 6 different?  
 7 MR MPOFU: The layout is different, even  
 8 on the other one, so we revert 4 to 7, in other words the  
 9 one that I've just read to you, Mr Zokwana, is number 7 and  
 10 the last one, and we reinstate 4 as 4, and you interpret.  
 11 Thank you, Chairperson, very much.  
 12 CHAIRPERSON: Have you got the names of  
 13 the gentlemen -  
 14 MR MPOFU: Oh, yes -  
 15 CHAIRPERSON: - whose subpoenas were  
 16 extended in Chambers?  
 17 MR MPOFU: Thank you, Chairperson, yes.  
 18 They are Mr Fusi Mohale, Mr Mlambisa Gxokogxokwana, Mr  
 19 Lungani Mabutyana, Sithembele Ntakana, Mr Lebogang Mokone  
 20 and the last one is Thembinkosi Mtyho. Thank you,  
 21 Chairperson.  
 22 CHAIRPERSON: Alright, you confirm that  
 23 that is correct, Mr Mahlangu, and they have been told that  
 24 their subpoenas are extended until the 18th of February and  
 25 they must be here at 09:30 on that morning.

1 MR MAHLANGU: I confirm the names, thank  
2 you, Mr Chairman.  
3 CHAIRPERSON: The commission will now  
4 adjourn until 09:30 tomorrow morning.  
5 [COMMISSION ADJOURNED]  
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<p><b>A</b>  <b>abetted</b> 4667:11  <b>ability</b> 4695:10 4697:7  <b>able</b> 4618:19 4629:7              4647:24 4648:5              4652:10,12 4657:6              4666:20,21 4667:8              4675:13 4678:9              4684:11 4685:1              4691:17 4693:14              4697:11 4700:1              4701:8 4705:13              4706:17 4717:20              4732:14  <b>absence</b> 4652:7  <b>absolutely</b> 4730:15  <b>accept</b> 4684:13 4686:2              4688:10 4690:12              4694:2 4702:25              4705:18 4709:10  <b>Accepted</b> 4687:8  <b>access</b> 4633:2 4671:12              4674:9  <b>accidental</b> 4683:23  <b>account</b> 4690:24  <b>accurate</b> 4657:15  <b>accurately</b> 4714:20              4715:20  <b>accuse</b> 4642:10 4644:6              4645:2 4659:24              4660:15  <b>accused</b> 4655:6              4659:19 4660:20              4706:8  <b>accusing</b> 4659:14,15              4715:7  <b>achieve</b> 4661:15  <b>achieved</b> 4661:14  <b>act</b> 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