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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 46 8 FEBRUARY 2013 PAGES 5011 TO 5110

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@pixie.co.za
Web Address: <http://mysite.mweb.co.za/residents/pak06278>



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1 [PROCEEDINGS ON 8 FEBRUARY 2013]
 2 [09:47] CHAIRPERSON: The Commission resumes.
 3 President Zokwana, you are still under oath.
 4 MR ZOKWANA: Yes, Sir.
 5 CHAIRPERSON: Adv Mpofo, I take it you
 6 have some more questions for the witness.
 7 MR MPOFU: That is correct, Chairperson.
 8 CHAIRPERSON: I see some kind person has
 9 prepared for us a typed version of Mr Mabuyakhulu's
 10 statement. I don't know who am I to thank for that, but
 11 whoever is responsible, thank you.
 12 MR MPOFU: It's my learned friend, Mr
 13 Tip.
 14 CHAIRPERSON: Thank you, Mr Tip. Is it
 15 going to be an exhibit?
 16 MR MPOFU: I think he's going to use it
 17 in re-examination, Chair.
 18 CHAIRPERSON: Okay, we don't know what
 19 you're going to do in the meanwhile, so we won't mark it
 20 yet because there may be other exhibits interposed with
 21 that.
 22 MR MPOFU: Thank you, Chair.
 23 CHAIRPERSON: Ms Pillay will be able to
 24 help us at the appropriate stage.
 25 MR MPOFU: Thank you. Thanks,

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1 Chairperson. Good morning, Mr Zokwana.
 2 MR ZOKWANA: Morning.
 3 MR MPOFU: Hopefully we are drawing
 4 towards the end and we started this on a conciliatory note,
 5 I want us to end it on the same note. I want to – remember
 6 we were talking about the crucial, or crucial to us, issue
 7 of the 11th and what role it may or may not have played.
 8 MR ZOKWANA: Yes.
 9 MR MPOFU: Before I go on in that line, I
 10 just wanted you to, just to assure that we're not
 11 suggesting, at least not the people I represent, that the
 12 NUM directly was responsible for the massacre.
 13 MR ZOKWANA: Yes.
 14 MR MPOFU: We have reserved that for, you
 15 know, the people who were directly involved, who pulled the
 16 trigger, and all that.
 17 MR ZOKWANA: Ja.
 18 MR MPOFU: And we're certainly not
 19 suggesting, you understand, that you or your union wanted
 20 the massacre to happen. You understand?
 21 MR ZOKWANA: Yes.
 22 MR MPOFU: And we believe the words that
 23 you made yesterday about the regret that NUM feels about
 24 the tragedy is something that I will convey to the clients,
 25 and I'm sure they will accept, and that after all, one of

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1 the purposes, one of the key purposes of this Commission,
 2 as we can see in the banners there, one of the purposes is
 3 reconciliation. What we do say, Mr Zokwana, is that
 4 parties such as your union, wittingly or unwittingly, may
 5 have contributed, or may have done things which may have
 6 contributed ultimately to the massacre. We don't seek to
 7 prove anything further than that.
 8 CHAIRPERSON: Mr Mpofo, I got the
 9 impression that you used the expressing "wittingly or
 10 unwittingly" incorrectly, if I may say so. I don't think
 11 you meant to put that NUM may have deliberately, i.e.
 12 wittingly, done something that contributed to the massacre.
 13 I think the whole tenor, or the whole thrust as you would
 14 say, of what you were saying was you may have done things,
 15 but you didn't intend to cause the massacre, which in fact
 16 did. Am I interpreting whatever you were saying –
 17 MR MPOFU: Thank you very much, Sir, yes,
 18 yes. Thank you, Chair, yes. No, that's quite clear.
 19 Thank you. Rather it was unclear the way I put it. You
 20 understand that, Mr Zokwana, that what I'm saying is that
 21 parties that we do not accuse as having been directly the
 22 cause, we will say that that perseveres, we will say that
 23 they may have taken actions which contributed, without
 24 wanting the result to ensue, and one of those issues that
 25 have been cited as the possible causes is the issue of

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1 union rivalry mainly between yourselves and AMCU. You
 2 understand that?
 3 MR ZOKWANA: Let me, Chairperson, try to
 4 understand this rivalry.
 5 MR MPOFU: Okay.
 6 MR ZOKWANA: You know, I'm not a
 7 mechanic, I'm not a car mechanic or a car designer or an
 8 engine designer. What I know is that what makes an engine
 9 move is the way the pistons are designed to create a torque
 10 and the power. Therefore in my view a contradiction cannot
 11 lead to violence. A contradiction can mean an exchange of
 12 ideas, not that it may lead to. So I still condemn that
 13 the presence of AMCU and NUM in itself would not contribute
 14 to anything unbecoming.
 15 MR MPOFU: Yes, thank you, Mr Zokwana. I
 16 accept that. Do I understand you correctly that what you
 17 are saying is that such rivalry, competition, whatever you
 18 call it, should not lead to any form of tragedy or
 19 violence? Whether it did or didn't in this case is a
 20 matter that the Commission obviously –
 21 MR ZOKWANA: Yes, yes, I agree with you,
 22 Mr Mpofo, because my view is this, that we should not be on
 23 the basis of beginning to create what I would term in my
 24 lay language, trade union war logisim, where trade unions
 25 use methods that are not designed to build peace and

<p style="text-align: right;">Page 5015</p> <p>1 harmony of people to co-exist, but use methods of coercion 2 and the rest, and in saying that I'm not accusing anybody. 3 The Commission will decide and see who may have done that. 4 MR MPOFU: Yes. What I'd like to know, 5 Mr Zokwana, is whether you accept that a person like you, 6 and maybe, well not maybe, Mr Mathunjwa, therefore become 7 very important witnesses to this Commission in respect of 8 this aspect that we are discussing, because when the 9 Commission is all done and dusted, that reconciliation at 10 that level will be in the hands of yourselves and obviously 11 with your leadership core, and so on. 12 MR ZOKWANA: I would say yes, provided 13 that as the commission that took place to reconcile the 14 different groupings after the elections was based on people 15 telling the truth. I think every person who lost his or 16 her next-of-kin of all parties involved have to know who 17 played what role, and those [inaudible] in deciding to say 18 I do forgive the person because I know. Reconciliation 19 that will not be based on truth and commitment by those who 20 are reconciling, that whatever happened then would not 21 happen again. That's why NUM was of the view that that 22 signing of the Peace Accord was a step going forward 23 because when you sign that Peace Accord as a leader, you 24 command all those who follow you to follow suit. It has 25 been, and remains, so unfortunate that my counterpart, the</p>	<p style="text-align: right;">Page 5017</p> <p>1 promises everybody, and if, and as a union we would accept 2 any recommendation that the Commission will come up with, 3 if that will include us having to sign some pledge, and I 4 think you will be able to implore your own people you stand 5 on, on behalf, because I think the accord – I can just go 6 back to how important when leaders take that stand, when 7 the president of the ANC then stood with the president of 8 IFP, notwithstanding their differences and the blood that 9 was spilled, they were able to take that stand to 10 discourage any of their followers to do so. So the failure 11 of leadership to take a stand is regrettable, and I can say 12 as NUM if that comes to, at the end by the Commission, we 13 would be willing to sign any document that would work 14 towards that. 15 MR MPOFU: And would you also agree with 16 me that part of that pledge or recommendation would, should 17 encompass the behaviour of leaders, as you've just said, 18 including the use of language which may be understood by 19 their followers as calls to violence or the like? 20 MR ZOKWANA: I would agree with you 21 because if leaders cannot be able to work, act exemplary to 22 their followers, you would be equal to [inaudible] head of 23 a crab being angry at its own – I don't know how to call 24 small crabs, I don't want to say children or piglets – 25 about the way the –</p>
<p style="text-align: right;">Page 5016</p> <p>1 person you have mentioned, Mr Mathunjwa, has not seen it 2 fit to sign it. So in essence I agree with you. 3 MR MPOFU: Thank you, and it is in the 4 direct interest of the people I represent that what you've 5 touched on, which is the other function of the Commission, 6 to ensure that this never happens again, quite apart from 7 finding out what happened, that that goal is achieved and 8 to the extent that you raise the issue of AMCU not having 9 been a signatory, would you be in a position to ask the 10 Commission when it makes recommendations to ensure that all 11 affected parties are part of some pledge that ensures that 12 this doesn't happen again? 13 MR HANABE: Senior Counsel, you said 14 something about the AMCU, that the fact that AMCU never 15 signed, can you say the rest – 16 MR MPOFU: Yes, I was saying, the 17 president of NUM says AMCU did not sign the Peace Accord 18 and I was saying, or rather the question was whether he 19 would, as we would and the people I represent, ask the 20 Commission, when the time for recommendations come, to urge 21 all affected parties to pledge to ensuring that this kind 22 of tragedy does not happen again. 23 MR ZOKWANA: I would not have qualms 24 about that because for one reason, as a union we believe 25 that the right to life is that which our Constitution</p>	<p style="text-align: right;">Page 5018</p> <p>1 MR MPOFU: I think they're crablets, Mr – 2 MR ZOKWANA: Ja, the form they take as 3 they walk while they were imitating exactly what he is 4 doing. So leadership is about, Mr Mpofu, being 5 responsible, is about taking a point that says whatever you 6 say in public may be taken as a command by others. A 7 president when he makes a speech, without declaring what, 8 it can lead to war, depending at the language he uses. 9 People who follow that our's views may think that if I speak 10 bad about you, Counsellor Mpofu, those who believe in me 11 they can see it as a form of matter to kill you. A 12 culture, I want to say this again, a culture must exist in 13 this country where trade unions are working in a way that 14 it forges unity, and unity can be forged only through 15 respecting other people's rights to co-exist, the methods 16 we use in doing this. But I agree with you with singing, 17 with what we say in public about others, and I'm sure, Mr 18 Mpofu, without saying I'm an angel, if you go through my 19 speech you will see no words that seek to have been 20 designed to create that animosity towards other fellow 21 participants. That speech was done only two weeks after 22 Impala, but I chose to use a language that would always 23 mean that look internally, check your own witnesses, don't 24 blame others. So in essence, I'm agreeing with you 100%. 25 [10:07] Yes, and finally would you agree with me that one</p>

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1 of the obstacles to the climate that we now agree should be
2 built by people such as yourself, is the culture of
3 denialism, of digging of heels fixed positions, people not
4 being prepared to acknowledge their mistakes or follow the
5 example that you and hopefully I have displayed here, of
6 when you make a mistake, retract and apologise, and maybe
7 let's move on. That is hopefully something that will come
8 out of this Commission, the ability of leaders to admit
9 even some of the unpleasant things that happened in their
10 own stable.

11 MR ZOKWANA: I would not disagree with
12 you, Mr Mpofo, because my belief is that life is not
13 static. You deal with switches of life as they change on
14 daily basis, but one of the traits of leadership is the
15 ability to say sorry. Not to say sorry to please others,
16 or to be seen to be, but to say it with your whole heart
17 and be able to move forward – move forward, because it
18 allows even those you may have erred towards to find it
19 easier to come close to you, but I'm not going therefore to
20 justify or to understand, because the as I've been dealing
21 with you, I have been struggling to out pick to say, what
22 is the intention of this sentence you are making, because
23 I'm not dealing with a friend, not that there are an enemy,
24 I'm dealing with a counsel who represent the particular
25 features or particular people. So in general life, Mr

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1 Arbitrator, I agree to admit for a leader or any person, to
2 admit where faults have been made. Only on the basis of
3 those faults can they not be re-appeared, to stand by them
4 and defend them is not right. And I don't think I have
5 done that in my own representation.

6 MR MPOFU: No, thank you, Mr Zokwana.
7 Well, I can assure you I also don't regard you as an enemy,
8 but my own views are unimportant. I'm just an agent. The
9 people that I represent, I'm sure, also do not regard you
10 or the NUM as their enemy. Thank you for that, Mr Zokwana.
11 Now going back to what we were dealing with. We – you and
12 I had troubles as far as to say that you could not dispute,
13 obviously because you were not there, that the matters of
14 the protestors that morning on the 11th had made no decision
15 to go and burn the NUM offices. You remember that part?

16 MR ZOKWANA: That is what you've said,
17 Sir, you will be able to prove. What has been bothering
18 me, Chairperson, is that if there was any other intention,
19 we will have to establish if all those who were marching
20 were NUM members, for they could only do that if they
21 wanted to consult NUM. If, among those who were marching,
22 there were no AMCU members, or any other formation, if they
23 marched to NUM, they're not carrying any other weapons I
24 think those that think the Commission will shift on, I
25 can't deal with that as a layperson, myself, because if

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1 your friend is to visit you to say, Baba, I've reached an
2 age to get married, I don't have enough cattle, he cannot
3 come with a bunch of other people – other families, that
4 will argue that with you. He will come alone assigned to a
5 father, and I'm saying that I'm putting that to say we need
6 to clarify to say if the people who were marching, 1) were
7 going to NUM in peaceful form, they were all NUM members in
8 good standing. They were not carrying weapons. There were
9 no other unions amongst them, and I think those are things
10 that, through the Commission, you will sift and find you
11 come to your conclusion.

12 MR MPOFU: Thank you, Mr Zokwana. Well,
13 through you, will you be able to assist the Commission in
14 that regard, since the people we represent are the only
15 people who lived to tell the tale, as it were, and I can
16 say – I'll put their version to you and invite your
17 comment. Taking into account what you've just said, I can
18 confirm to you that there were only NUM members, but that
19 there were NUM members, yes, there were AMCU members and
20 there were even people who did not belong to any union. Do
21 you understand that?

22 Secondly, their version will be that they went –
23 or rather they decided to march to the NUM, among other
24 things, to ask why is the NUM, which is what they believed
25 had stopped the employer from talking to them.

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1 And, thirdly, before you answer, the reason for
2 that particular decision was because the employer, on the
3 10th, had told them that they could only pass these demands
4 through the NUM and also there's an allegation that an NUM
5 spokesperson had addressed them, I think outside LTD on the
6 10th, basically saying the same thing.

7 MR ZOKWANA: I can just comment to say,
8 "All these things will come, but what you have just said,
9 Counsel Mpofo, confirms one of the things I could not
10 present here – I was avoiding to present here to say that
11 one of the causes of animosity towards NUM was the
12 statement you have just mentioned, that it was being said
13 that NUM – it was being said that the employer has made the
14 offer. What is blocking this offer to be tabled is that
15 NUM is refusing to open negotiations, and I can tell you
16 that are not, in my knowledge, that NUM would do. NUM
17 would not negotiate, but to stop the employer from
18 negotiating, I'm not being informed that it happened that
19 it way, but I want to confirm that, as such, it was being
20 said, which made workers more angrier. How can NUM stop us
21 getting money? And I'm saying that if there's truth to
22 that I think the Commission will sift through your own
23 witnesses.

24 Sorry, Sir, what that more funny on my part is
25 that when the machine drillers in Karee met with Mr Da

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1 Costa, the amount we have referred to was offered, without
 2 NUM being part of that. I can't understand now, but I'm
 3 sure when that is – there was truth, no truth, I think the
 4 Commission would be able to find more, but in my view,
 5 where I stand, I find it very awkward that the employer
 6 could not make an offer, because NUM told them not to make
 7 offer.

8 MR MPOFU: Yes. Is it possible – let's
 9 put it this way, to be fair to both NUM and the employer in
 10 respect to what we are discussing. As an experienced trade
 11 unionist, would you agree that it is at least possible, or
 12 one of the possibilities, that actually nothing sinister
 13 was intended by either NUM or Lonmin, more than simply to
 14 point out what we – even I know, which is that the so-
 15 called ordinary rules prescribe that the NUM, as the sole
 16 recognised union, is the normal conduit through which these
 17 grievances should be channelled and that both the employer
 18 and the NUM spokesperson – if such a spokesperson said it,
 19 may have just been expressing that without any ulterior
 20 motive, is that possible?

21 MR MOTAU SC: Chair, before the witness
 22 answers, it's got to be very clear and I think it should be
 23 put to the witness in its proper context that Lonmin's
 24 version, as was put, is that these were not wage
 25 negotiations. It was an allowance which was not subject to

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1 negotiations. So I think Mr Mpfu should put that in its
 2 proper context. A discretionary allowance is not subject
 3 to negotiations.

4 CHAIRPERSON: I think you're talking
 5 about one thing, and Mr Mpfu is talking about something
 6 else. What happened initially, as I understand it, was
 7 that Lonmin having received a demand or a request, whatever
 8 you want to call it, from the RDOs at Karee. It was
 9 discussed by the board. They decided to pay this allowance
 10 of 750. That was rejected by the RDOs who wanted more.
 11 They wanted their – they didn't an allowance, they wanted
 12 their wages to be increased to 12 500, and as I understand
 13 it, what Mr Mpfu is dealing with is when that demand was
 14 put, that our wages must be 12 500, that the attitude of
 15 Lonmin was that's a wage demand. If it comes to us, it
 16 must come to us through the union and not for you people.
 17 That's what he's putting. So, you, with respect, if I may
 18 say so, are dealing with something else. If I
 19 misunderstood it, I hope I'll be corrected, because that's
 20 the way I see it.

21 MR MPOFU: No, no, Chairperson, no you
 22 haven't. My learned colleague, I think it was answer from
 23 the witness, not from me, in this discussion, where he made
 24 the example that what surprised him is that the 750 was
 25 given, but I'm not dealing with that at all, Chairperson.

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1 MR ZOKWANA: Let me repeat what I said,
 2 Mr Mpfu, to help, because I said that if one of the
 3 contentions NUM has been making from Impala and also to
 4 Lonmin, was the tendency of companies to make offers
 5 outside bargaining forums, but NUM has not and would not be
 6 – I mean protest if the employer and believe that employers
 7 were paid, hence we didn't call a strike when that first
 8 offer was made. So what I'm saying is it remains an
 9 allegation – an allegation to say would not be an
 10 allegation I think would taken as true until taken to a
 11 test. What I want to say that it is one of the allegations
 12 – I was even told a story – I'm not sure how true, because
 13 when secretion is like that you hear many stories, that one
 14 leaders of the strikers pointed to a white general, to say
 15 that man is a manager. He is here to give us money. If
 16 only NUM can give approval. I'm not sure how true, but I'm
 17 saying is this that that particular allegation was made
 18 during the strike, which mitigated to the anti NUM attitude
 19 by strikers, but I'm not saying it's true, I'm saying that
 20 maybe in the course your witnesses coming forward, and
 21 other processes, we may be able to find what the truth is.
 22 But again NUM would be never be adverse to where workers
 23 are given an offer. It may object to the forum used, but
 24 not stand that this offer should not be given.
 25 [10:27] But, Chairperson, that question, Mr Mpfu, I

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1 don't think you intended to moot the point of saying that
 2 NUM is the sole organised union, it is not. In
 3 negotiations in Impala there, I mean in Lonmin, there are
 4 about three organised unions who participate.

5 MR MPOFU: Okay, I was referring
 6 specifically to that bargaining unit but obviously you
 7 know, you can assist the Commission better than me in that
 8 regard. Unfortunately, through that objection, we lost the
 9 question that was asking you, which was – and that's why I
 10 was surprised by the objection because I was saying
 11 something favourable about Lonmin, which I don't usually
 12 do. That -

13 CHAIRPERSON: Not previously, but
 14 possibly the future may, a different –

15 MR MPOFU: Thank you, Chairperson. And
 16 the question –

17 CHAIRPERSON: Repeat the question.

18 MR MPOFU: Yes, thank you, Chair.

19 CHAIRPERSON: And hopefully you won't get
 20 an objection.

21 MR MPOFU: The question was this, in your
 22 experience is it possible that nothing sinister was
 23 intended by either Lonmin nor the NUM spokesperson, if
 24 there was such a spokesperson who said this, in conveying
 25 to the protesters that the NUM would be the ordinary

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1 conduit, given the legal agreements and so on and so on,
 2 through which such a request or such a demand, should be
 3 processed. I am not saying how it might have been
 4 perceived by the protesters and so on, but that it was – it
 5 might have been said in such a spirit of what you and I
 6 know that there's a recognition agreement, you can't simply
 7 just arrive at the office, and say, I want such and such,
 8 and there are established procedures. Is it possible that
 9 that is what was – that's all that was intended?
 10 MR ZOKWANA: I answered this question, I
 11 don't know it was which counsel who raised it, I think it
 12 was the AMCU counsel, my answer was simple that mineworkers
 13 are seasoned members, especially – and I say that I think
 14 even AMCU members who were NUM then, can remember that in
 15 2005 an agreement was reached which was stipulating that
 16 NUM and Lonmin an only sit after five years. When that was
 17 brought to our attention at head office, we were able to
 18 change that to be – to be in line with other agreements.
 19 What I am saying is that, I am not going to deny that it
 20 may have been not said, the point I am saying is that those
 21 members could not have forgotten the fact that whenever
 22 head office is made aware of such utterances, it always
 23 intervenes to their best interest.
 24 MR MPOFU: Thank you. I couldn't find
 25 the statement but one of the NUM witnesses testified, it's

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1 either Mr Setelele –
 2 MR ZOKWANA: Setelele, yes, I remember.
 3 MR MPOFU: Yes.
 4 MR ZOKWANA: And that's why I am saying,
 5 is that amongst those AMCU members, there's Steve Kologi.
 6 I know him, he was present in 2005. He knows what happened
 7 when the company colluded, not colluded the word to use,
 8 because collusion is a – with many meanings, agreed with
 9 the local branch and the members were not happy about that
 10 agreement. They approached us. I am saying this that when
 11 that person made that, he was not making law articulating
 12 how NUM functions and I am saying that had these members
 13 approached us, even if the issue they were raising was
 14 outside the agreement, and I've made an example,
 15 Chairperson, of what happened in the gold and coal. In the
 16 gold, there were agreements that were reached that would
 17 have said, drillers like any other employee will get 10%,
 18 but when drillers showed their discomfort through the NUM
 19 head office were able to roll them up from group for the
 20 group [inaudible] because they've got a single bargaining
 21 council to be able to make sure that in October, they got
 22 R500 and I am saying that the fact that you have signed an
 23 agreement cannot allow you to go a strike, but you can
 24 still raise those, and request the employer. So I
 25 understand that - but it's not law or not that those

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1 members don't know that they could have gone about.
 2 MR MPOFU: Sorry, Mr Zokwana, you
 3 answered the question before I asked it. I was going to
 4 deal with something else and by the way, you used the word
 5 "collusion" in your speech as well, but the issue that I
 6 wanted to say to you was, yes, let's accept that head
 7 office may have had a particular view or another, what I
 8 wanted to point to you is the fact that Mr Setelele on
 9 paragraph 5 of his statement, says that the branch, the NUM
 10 branch did not escalate this issue to the regional office.
 11 Now, if we accept that as a fact, can we also accept that
 12 if the branch did not see it fit to escalate it to the
 13 regions, that would minimise the chances of it then being
 14 escalated further to head office?
 15 MR ZOKWANA: Yes, he could have done that
 16 Mr Mpofo, provided it was being addressed to novices or new
 17 NUM members, who have got no historical background. I
 18 still point that some of the members who were on strike
 19 were present in 2005, they know that, and on daily basis we
 20 deal with such things where maybe a branch does not reflect
 21 things the way they should be. Members of the union – of
 22 NUM are very bold. There were about ten last week at head
 23 office, demanding to meet with me, no anybody else, and I
 24 know there's a problem that has come from the regions and
 25 all that. They don't resort to anti NUM attitudes, they

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1 will demand that we demand we come. In 2005, how I knew
 2 about that agreement was not through the regions, and
 3 seeing that those members may have heard the statement you
 4 are saying, and I am saying if they were newly NUM members,
 5 they would have said, this is the end of the road, but I
 6 know amongst them there were those who were on that mine on
 7 that day, in years before, like the person I have
 8 mentioned, they could have known that in most instances
 9 when the branch doesn't give them comfort, they would come
 10 to head office. So my answer is twofold, saying that yes,
 11 that is we are raising could have been, but I am also
 12 saying that to seasoned workers, but let's look at this, Mr
 13 Mpofo, I've seen this practically in life, where members
 14 are angry with the branch, with the region, but it is my
 15 view that when a senior arrives, they will happy that he
 16 has come and would be able therefore to run through all
 17 their frustrations, and that gives you a chance to address
 18 those things, and unfortunately the day I was at the
 19 koppie, that did not happen. I can tell you, Mr Mpofo,
 20 lastly, lastly now an example, lastly, there was a
 21 situation where the members were angry at their branch at
 22 Kloof for a week not going to work, inform the members
 23 there. When I arrived they were able to, they were happy
 24 first, receptive, and they put to me compelling reasons
 25 that the branch has had and they can assure you if you can

1 go there, none of those branch leaders are still in that
 2 branch, and there's harmony in that branch. So head office
 3 would act if it is made aware of any unbecoming behaviour.
 4 I am not saying there was, I am saying that those members
 5 could have been able when I arrived on the koppie to tell
 6 me that these are our frustrations.

7 MR MPOFU: Mr Zokwana, if I can appeal to
 8 you just to shorten the answers. I heard what you are
 9 saying. The issue of the 15th, I think it's accepted that
 10 by then attitudes had hardened and so on. I am just
 11 talking about the 11th, just following on what you've said,
 12 as you said, what I put to you might be the case, now if it
 13 was the case, then surely you would agree with me that the
 14 members, those members, the seasoned members and all, would
 15 exactly do what I have just said to you, wants to enquire
 16 as to why all of a sudden, unlike 2005, unlike all these
 17 other times, the union is suddenly standing in their way.
 18 And in doing so, they would go to the nearest NUM office to
 19 where they were, near the stadium, which was down the road,
 20 to make that inquiry.

21 MR ZOKWANA: I have said, Counsellor
 22 Mpofo, that will be what I think we have to verify factors
 23 to, if – because I would expect therefore that NUM members
 24 will know that we have an office. And I can tell you what
 25 NUM members would be in most instances. They would not go

1 as a group, marching, and I am sure you know it, Mr Mpofo,
 2 is that when you go to march, it is when your delegation
 3 that has been sent, could not receive the answers, then you
 4 go and march but for the first interaction with the person
 5 engaging with, you don't send a delegation, you send a
 6 team. So I am saying that we need to look at all those
 7 things, that given the situation we have outlined, we need
 8 to come to that conclusion, when we've been able to verify
 9 that only NUM members were marching, and you already said,
 10 not all of them. And I am saying, to my view it is not
 11 that those people were marching to NUM to acquire the
 12 information you say wanted to acquire. And I am saying to
 13 you it may have surprised them maybe to see NUM shop
 14 stewards saying, this is the end of it, you cannot go
 15 forward and negotiate but I am still saying, it cannot be a
 16 qualification for them to do what is alleged that they did.

17 MR MPOFU: Maybe just to be, so that we
 18 can take this conversation in its proper context, I should
 19 tell you what else the – would be the version of what they
 20 were coming to do, and you talked about anger. It is so
 21 that another issue that had been raised which was intended
 22 to be raised at the NUM office, were the activities of the
 23 people, the NUM people in the Quantum vehicle which had
 24 been experienced the day before where there were
 25 allegations that strikers had been assaulted or forced to

1 go to work, that kind of thing. And that was one of the
 2 issues which was going to be raised, and before you answer,
 3 the third issue was that if indeed the union was the only
 4 conduit through which they could pass their demands to the
 5 employer, then the NUM should do so, as it were, even
 6 though they were not all NUM members.

7 [10:47] MR ZOKWANA: Thanks, counsel. The
 8 allegations of people being harassed, I am not in a
 9 position to confirm or say it is not, I'm sure is an area
 10 that I think you will present evidence. But let me show
 11 this that the only disadvantage that – what's presented,
 12 was blocking NUM doing what it could have done, is what I
 13 have gone through to say, it was the attitude of the
 14 strikers towards NUM. Let me say this why. Counsel,
 15 you're seeming to be looking for other documents. I wonder
 16 if you are going to hear. You're starting that and it's
 17 distracting you, not giving you more –

18 MR MPOFU: I'm looking, thank you.

19 MR ZOKWANA: Alright, alright. But I can
 20 assure you of one thing that, you know, when these strikes
 21 were happening, not only in Rustenburg, what made them to
 22 come to an end, was the ability of the striking members and
 23 remember this demand is not only limited to Lonmin. There
 24 were almost in a number of other areas. NUM was even able
 25 to lead, because you know it's one thing of a Union leading

1 the strikers, that you can retain discipline to make sure
 2 that people don't break other people's things. And we did
 3 that - companies. Now the issue of people being beaten up,
 4 allegation in Quantums, a similar thing will be
 5 investigated and I think as NUM it's not something we would
 6 – because even to conform to how we do things going
 7 forward. Our shop stewards represent workers and I won't
 8 find anything wrong in them assisting them to go to work,
 9 but if it meant that they were beating people to go to
 10 work, that would have gone beyond what NUM would be doing.
 11 The other question you wanted to know whether NUM was the
 12 only channel through which, I think you asked that
 13 question?

14 MR MPOFU: Yes, I did, I said that was
 15 the third that they gave, yes.

16 MR ZOKWANA: No, no, as I've shown
 17 earlier that NUM –

18 MR MPOFU: According to the employer,
 19 sorry.

20 MR ZOKWANA: Sorry?

21 MR MPOFU: I'm saying according to what
 22 they were told at the time, ja.

23 MR ZOKWANA: I'm sure the employer will
 24 have to answer that question. I'm not sure if I can be –
 25 I've not been – I mean on our mandate the employers are not

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1 members of NUM, unfortunately. We differ a lot with them.
 2 So I cannot be able to say it was true that they said that.
 3 CHAIRPERSON: I think you're quite right
 4 in saying that – I understand why Mr Mpofu is putting the
 5 points to you, to get comment and to tell the other parties
 6 essentially what your client's version is. But you can't
 7 really answer directly at all, because you weren't present
 8 and you don't know.
 9 MR ZOKWANA: I said, Chairperson, I don't
 10 know.
 11 CHAIRPERSON: Well, he put the points, so
 12 we all now know what his client's version is and
 13 particularly Mr Tip knows and the representatives of Lonmin
 14 know and I'm sure this information will be useful going
 15 forward with the inquiry.
 16 MR TIP SC: Mr Chair, it is indeed so
 17 that it is useful for all parties and the Commission to
 18 hear a version being articulated and we certainly don't
 19 take the approach that I might otherwise have in respect of
 20 a civil law criminal trial where there is a bilateral
 21 arrangement and I've allowed the cross-examination to
 22 continue on that basis. But there is one aspect that I
 23 need to raise. A version is being put inter alia in
 24 respect of why persons went to NUM office on that day.
 25 That will be contested in due course, but there are

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1 particulars now that have been put forward in respect of
 2 NUM persons and the quantum and the course of the –
 3 CHAIRPERSON: I was going to raise those
 4 myself –
 5 MR TIP SC: Yes.
 6 CHAIRPERSON: With Mr Mpofu, because Mr
 7 Sikelele says he was responsible for the vehicle and he
 8 actually went – was on it during the night of the 10th when
 9 these things happened or didn't happen. But I didn't think
 10 it appropriate to raise it while Mr Mpofu is cross-
 11 examining Mr Zokwana. It is something I was going to refer
 12 to, but yes, it's now on the table anyway. But I –
 13 MR TIP SC: I –
 14 CHAIRPERSON: Let Mr Mpofu proceed with
 15 his cross-examination, unless there is some other point you
 16 want to make at this stage?
 17 MR TIP SC: I just want to make this
 18 point and it's precisely for that reason that I haven't
 19 intervened, but that is – Mr Mpofu has been good enough to
 20 provide a series of statements and some of them relate to
 21 the 11th. None of them contains any allegations in respect
 22 of this particular aspect and it is of consequence for us
 23 to be certain that we will in good time receive such
 24 statements.
 25 CHAIRPERSON: Again Mr Tip, you may

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1 remember, previously I said this kind of thing that can be
 2 dealt with between colleagues, is best dealt with between
 3 colleagues first and then if that fails, with the evidence
 4 leaders and only finally with the Commissioners in
 5 Chambers. It's not necessary to raise it – I'm not
 6 criticising you, I'm just reminding you. It's not
 7 necessary to raise it now in the open Commission. The
 8 point you raise is one that occurs to us all, but I trust
 9 that while the rest of us are enjoying a cup of tea, you'll
 10 raise it with Mr Mpofu. Mr Mpofu, would you like to carry
 11 on?
 12 MR MPOFU: Thanks, Chairperson. Mr
 13 Zokwana, all I'm putting to you now, I appreciate that you
 14 were not – I'm fully aware that you were not there on the
 15 11th. I'm just tapping into your knowledge, particularly as
 16 you have referred to previous occasions and so on. And
 17 really the gist of what I'm saying, I'll summarise it in
 18 the following. Would you agree with me or not that if and
 19 it's a big if, all these things as you correctly say, will
 20 have to be proved and what have you, but if those were the
 21 three things that they wanted to come and table at the
 22 office, would you agree that it would be reasonable for the
 23 RDOs who had been told the previous day, rightly or
 24 wrongly, that you can only come here through the NUM, to
 25 want to go to the nearest NUM office to raise those issues,

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1 maybe to complain. I'm not going to say that they were not
 2 concerned about this, but to go and do that. In other
 3 words, to go for peaceful reasons as opposed to the
 4 belligerent reasons ascribed to them.
 5 MR ZOKWANA: I have listened to Mr Mpofu,
 6 but I want to put it this way to say, in the – you wanted
 7 my own view, not because I was there, to say that,
 8 Chairperson, in the history I have been in the Union,
 9 members don't march to the office. When they have got
 10 problems, there are ways which they would use.
 11 CHAIRPERSON: Mr Zokwana, but you're not
 12 answering the question, you know. The question that was
 13 asked, is this. Never mind the surrounding circumstances,
 14 which may in fact paint another picture, but all the
 15 questions, all counsel wants to know from you, is the three
 16 reasons he gave, which he says his clients say were their
 17 reasons for going to the NUM office. He said, were those
 18 reasons taken by themselves, would they have constituted
 19 good satisfactory sensible reasons, justifiable reasons for
 20 a visit being paid to the NUM offices to raise those
 21 points. I think that's his question.
 22 MR MPOFU: That's -
 23 CHAIRPERSON: I would imagine the answer
 24 to that is, 'yes' or am I wrong?
 25 MR ZOKWANA: It will be a 'yes',

<p style="text-align: right;">Page 5039</p> <p>1 Chairperson, provided and I would think that the Commission 2 will clarify that. I said, if it was NUM members marching 3 to NUM office, minus any weapons, not in a threatening 4 form, yes, they could have done and I think the counsel has 5 already admitted that it was not only NUM members who were 6 marching. And I wonder what would have been the approach 7 of those NUM members marching to an organisation they don't 8 belong to by their own choice? I'm saying therefore, my 9 answer I'm giving, is yes and no. Yes, in as far as NUM 10 members marching to their office, peacefully without arms, 11 to raise these concerns. But no, if there were other 12 Unions implicated who did not want anything to do with NUM, 13 and I wonder what would have been. And if there were 14 weapons that they carried, because when you march to your 15 own organisation, you can write a placard and you can 16 insult, because insults don't get written on your back when 17 you go home. But when you stung or hit by a stick, anybody 18 can see that you have been hit. I'm saying that, Mr Mpofu, 19 the answer is difficult to be yes or no. It depends on the 20 circumstances.</p> <p>21 CHAIRPERSON: I think you will forgive me 22 if I say this, what you've now been saying is really 23 arguments, which your counsel will present. Perhaps not as 24 ably as you have done but they will present it at the 25 appropriate time. Shall we now take the tea adjournment?</p>	<p style="text-align: right;">Page 5041</p> <p>1 MR MPOFU: No. 2 MR TIP SC: Not for the moment. 3 CHAIRPERSON: President Zokwana, you're 4 still under oath. 5 MR ZOKWANA: Yes, Sir. 6 CHAIRPERSON: Mr Mpofu, you're still 7 cross-examining? 8 MR MPOFU: Thank you, Chairperson. Mr 9 Zokwana has – 10 MR ZOKWANA: Can I be allowed to make one 11 correction, Chairperson? Unless my reading of the 12 Chairperson's statement you referred to, Sikelele is wrong. 13 In the, if you would check page 6, paragraph 24 of that 14 statement, he addressed the mass meeting on the 12th, a day 15 after the march. If that being so, the reasons to marching 16 to NUM by the strikers could not have been informed by the 17 understanding the NUM was saying that they can only have 18 that discussions after two years, unless I'm wrong. Maybe 19 you can help me. 20 MR MPOFU: Yes. No, I will try and help 21 you. 22 CHAIRPERSON: - look at paragraph 4 of 23 his statement on page 1. 24 MR MPOFU: 4? 25 MR ZOKWANA: I've done that, Chairperson,</p>
<p style="text-align: right;">Page 5040</p> <p>1 MR MPOFU: Thank you, Chairperson. 2 CHAIRPERSON: - why those instructions 3 aren't in the statements. The Commission will now adjourn. 4 [COMMISSION ADJOURNS COMMISSION RESUMES] 5 [11:31] CHAIRPERSON: The Commission resumes. Mr 6 Tip, did you and Mr Mpofu have the opportunity to deal with 7 the matter that you raised before the adjournment? 8 MR TIP SC: We had a discussion – 9 CHAIRPERSON: Things were put which 10 didn't come from the, as instructions, which didn't come 11 from the statements that you already had, so obviously some 12 extra statement is still outstanding. Did you raise that 13 with Mr Mpofu? 14 MR TIP SC: Well, I did. I don't want – 15 CHAIRPERSON: It's been attended to? 16 MR TIP SC: Well, I just want to say 17 this, I don't want to detail our discussion but what 18 happened as that Mr Mpofu pointed to a passage in a 19 statement which he relies on, and we will deal with that in 20 due course. 21 CHAIRPERSON: Okay, well that 22 satisfactorily deals with the problem. 23 MR TIP SC: Yes. 24 CHAIRPERSON: There isn't a problem 25 anymore in that regard.</p>	<p style="text-align: right;">Page 5042</p> <p>1 but the only meeting he addressed where he announced the 2 NUM position to the strikers which could have made them, as 3 the counsellor was saying, to want to go to NUM to explain, 4 could have only happened after the 12th, which was the day 5 after the march had taken place. I'm saying I think that 6 you may help me if I'm wrong, but the meeting he addressed 7 where he told them that the strike is illegal and all those 8 things, was on afternoon, on the 12th. 9 MR MPOFU: Yes, thank you. No, okay, I 10 don't want to, we'll debate that, I'm sure, in due course, 11 but just for your own satisfaction, what I was putting to 12 you was not that Mr Sikelele had addressed the workers. It 13 was that the allegation is that an NUM person on the 10th 14 had said more or less what the employer had said. 15 CHAIRPERSON: You'll notice Mr Sikelele 16 doesn't allege that he was at the LPD on the morning of the 17 10th when the strikers were there, and the allegation, 18 whether it's true or not we'll find out later, but the 19 allegation is that an official of the NUM was there and 20 said what Mr Mpofu had said, but whether that's so or not 21 we will discover in the course of the inquiry, and the 22 Lonmin witnesses who dealt with the marches on the morning 23 of the 10th will be able to help us, I take it, as to 24 whether an NUM official was present and also spoke on this 25 topic. But anyway, we don't have to worry that for the</p>

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1 moment.

2 MR MPOFU: Thank you, Chair. Yes, if my

3 memory serves me well, a Mr Sinclair almost confirms, but

4 we'll deal with it in due course.

5 CHAIRPERSON: Ja.

6 MR MPOFU: Mr Zokwana –

7 MR ZOKWANA: Yes, Sir.

8 MR MPOFU: I'm going to, I've arranged

9 with Ms Pillay for a short footage to be played, which I

10 will ask you questions about, but before I do that, just to

11 put that footage into context, I want to say to you, your

12 last answer was that if these people wanted to raise these

13 reasonable or legitimate concerns at the NUM, then why

14 would they come with non-members, something to that effect.

15 Remember?

16 MR ZOKWANA: Yes.

17 MR MPOFU: Now I want to say to you that

18 our version at least on that is that when, or if they were

19 told that the NUM is the agent through which they should

20 come, they had already taken a deliberate decision to

21 approach this matter not as members of union X or union Y,

22 but as RDOs, and would that not explain therefore why, when

23 they came to make the inquiry, subject to it being proved,

24 they would also come in the same fashion? In other words,

25 not come in a partisan type of grouping.

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1 MR ZOKWANA: Yes, let me come to say, Mr

2 Mpofo, I would understand it two ways to say, 1, it could

3 not have disappointed those who chose not to join NUM if

4 such was said, could have reason for not joining it, but to

5 NUM members would have puzzled at that, and their going to

6 the office would have been to verify if it is true. So in

7 my view what would have informed them would be different,

8 and I'm still saying that NUM members could have heard the

9 reason if that was the approach they took, provided they

10 were unarmed, they were peaceful. They, even they could

11 have requested leaders to come forward and address that,

12 but I'm saying that it can only be an answer I would give

13 provided the intended probing of your witnesses can –

14 [inaudible] know that it doesn't sit well with me that non-

15 NUM members who have chosen to join other organisations

16 would have the same view as NUM members. First, NUM member

17 will be puzzled, how can this union I have joined all these

18 years change to say this about me, but an AMCU guy will not

19 be surprised by the way because, I mean he is not a member

20 of NUM and he [inaudible] not saying member of NUM, I'm

21 saying that the, while they may be together and so their

22 response won't be the same. And again, Chairperson,

23 remember that I'm giving these answers not because I've got

24 information at my disposal.

25 MR MPOFU: But what you do know, and what

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1 you can confirm to the Commission, isn't it, is that in

2 actual fact even the AMCU members who were there would have

3 mostly been people who had only defected from the NUM round

4 about 2011. So they too might be puzzled because they knew

5 what the NUM, how it works or doesn't work, as ex-NUM

6 members. Isn't that correct?

7 MR ZOKWANA: It would depend, Mr Mpofo.

8 I mean I said yesterday some of the AMCU members who joined

9 or who led AMCU currently were dismissed by the

10 organisation, and I said there's no pain – I can speak

11 because I've seen the behaviour of those who have been

12 dismissed in the organisation, that is painful, that you'll

13 still be cold, that there is a home but you are still on

14 the veld, and I'm saying that what would have informed

15 those people would depend, and I'm saying this, that I

16 cannot be able to say whether they would have doubted that

17 it is true that NUM has said these things or not, but I'm

18 saying that among those people there may be those who may

19 get a view that NUM is a good organisation, you can't go

20 back, when that was said, say it confirmed our view, by the

21 way. I'm saying again I'm not in a position to give that

22 answer as a fact.

23 MR MPOFU: Yes, but surely the people

24 that you are talking about who might have felt that pain,

25 would be a few people, and that pain would not be

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1 necessarily spread to the masses of the members, the

2 thousands of people that we're talking about. Would you

3 agree with me?

4 MR ZOKWANA: Again, Counsellor Mpofo,

5 there's a possibility, there's not. Sometimes you may have

6 very few people, but you say a few but better, but at the

7 same time quantity may not be the best formula at the

8 position; quality may, so it depends what role were those

9 guys playing because only few guys may dream about the road

10 forward but influence others to follow. It's not that we

11 can think the same way, and I'm saying that it depends on

12 the role that those were playing, but I know that the

13 people that NUM has dismissed, [inaudible]. The reason

14 that there was a strike in Karee was because those people

15 were powerful.

16 MR MPOFU: Yes, but also what we do know,

17 Mr Zokwana, is that the people who marched to the NUM

18 offices were not those few people but the masses, or let's

19 say a large crowd, as the Commissioner asked me to say,

20 which was estimated variously by different people at

21 between 2 000 and 3 000. That we know.

22 MR ZOKWANA: That I think is unsuitable,

23 but again, Counsellor Mpofo, I'm sure you agree with me

24 that in any other form of action you need a few individuals

25 [inaudible] things through. I may not be saying amongst

<p style="text-align: right;">Page 5047</p> <p>1 those that NUM flushed off for any other reason, they're 2 not leading, they were leading. I'm saying this, that it 3 is those people, being 2 or 3 000, it would be, I mean 4 unlikely that they could have just woken to say tomorrow go 5 to NUM offices. There could have been influential people, 6 there could have been – and who they are, I mean it's not 7 the issue. What I'm putting to you is to say this, that it 8 is not easy for me to say that the reasons you put forward 9 are the right ones, and I'm saying again that when you 10 present that report, or sorry, your evidence, you may prove 11 that, you may find then maybe that the version you are 12 having is not what really happened on the day in question. 13 Without putting allegation, Counsellor Mpfu, this thing 14 began at Karee when the formal request was made to the 15 employer with Mr Da Costa. There was a team of five 16 people. I can't be sure whether those people formed or 17 played what role in going forward, and I know that NUM lost 18 its foothold in Karee by that moment, given the strength 19 that happened the year before, so I'm saying that I'm not 20 in a position to come here and say it is so that maybe 21 these people, the strike was of people who believed that 22 there was really a genuine reason or a stand what NUM was 23 saying. Others may have said, it confirms, by the way, 24 what view we have held about NUM. Others may say we are 25 disappointed, don't know why. I'm saying that there are</p>	<p style="text-align: right;">Page 5049</p> <p>1 MR MPOFU: No, it's not that one – 2 CHAIRPERSON: - of a statement that that 3 witness, I think it's that witness, made himself f- 4 MR MPOFU: Yes, that one was made to the 5 police. 6 CHAIRPERSON: Have you got another one? 7 MR MPOFU: Yes, this is our – 8 CHAIRPERSON: Okay, that we'll get after 9 lunch, alright. 10 MR MPOFU: If at least the witness can – 11 I'm just going to read it out so long, Mr Zokwana. It's 12 not long. He says, Mr Mabuyakhulu – sorry, Chairperson, I 13 didn't anticipate this. "On 9 August 2012," the parties 14 have the statement, it's just the bench that doesn't, 15 Chair. Paragraph 2 says, "On 9 August 2012 there was a 16 meeting of all RDOs from Karee, Rowland, and Eastern 17 Companies. The meeting was held at Wonderkop outside the 18 stadium. In the meeting we discussed the salaries of the 19 RDOS. 20 [11:51] In that meeting it was decided that no union 21 should be engaged in the wage negotiations. The reasons 22 for the decision were that the RDOs belonged to different 23 unions, and we wanted to negotiate only for the RDOs 24 without involving other employees which the unions were not 25 keen to do. The RDOs had complained to NUM since 2006 and</p>
<p style="text-align: right;">Page 5048</p> <p>1 all those possibilities. 2 MR MPOFU: Thank you, that's all I 3 require from you, just to say that it's a possibility, and 4 what you are saying, that there might have been influential 5 people, is also another possibility. I'll grant you that. 6 The issue then is, I just want to put to you before we do 7 the footage, two statements which basically constitute the 8 version, apart from this issue of the quantum, the version 9 that we're going to put from the witnesses on this point. 10 The first witness is – Chairperson, I'm sorry, I didn't 11 anticipate this, so we didn't have copies of the statement. 12 I know that it has been submitted. If the Chairman can 13 allow me to read – 14 CHAIRPERSON: - and you can give us the 15 copies later. 16 MR MPOFU: Thank you, Chairperson. 17 There's just one – 18 CHAIRPERSON: It may be after the 19 luncheon adjournment. 20 MR MPOFU: Yes, thank you, Chair. The 21 first statement, and we'll give it an exhibit number after 22 lunch, is a statement of Vusi Musi Mandla Mabuyakhulu. 23 CHAIRPERSON: This statement which, well 24 unless you've got a different one, Mr Tip has given us a 25 typed version –</p>	<p style="text-align: right;">Page 5050</p> <p>1 7, as stated by those who had been working for Lonmin for 2 some time. They reported that they had not received any 3 feedback from NUM negotiators. It was agreed that on the 4 10th, we would go to the employer at LPD. We agreed to meet 5 at 8, at Wonderkop, where we were gathered. NUM is the 6 only union recognised by Lonmin to speak for everybody." 7 And then on the point that you and I were discussing, he 8 says at paragraph 7. "On the 11th at nine, we met at 9 Wonderkop and we exchanged views. It was then decided that 10 we approach the NUM and enquired from them why they had 11 prevented the employer from engaging with us. The 12 gathering then marched to the offices of NUM. We walked to 13 the offices which are situated near the satellite police 14 station." And then the other statement which I think is 15 BBB3, Chairperson, and it's just one line that I am - 16 CHAIRPERSON: In fact it's Simphiwe Booi. 17 MR MPOFU: That's correct, Chair. Mr 18 Booi incidentally was one of the people who had been in the 19 5 Madoda that met with Mr Da Costa, but that's not the – 20 the point now is he says at paragraph 23, "On 11 August 21 2012, we had several discussions and agreed to march to the 22 NUM offices as management had said, they would only talk to 23 the NUM." So I am just saying those are some of the 24 reasons that were cited. You and I have already discussed 25 this, but I just wanted to put it in its proper context.</p>

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1 The issue that you have raised, apart from this issue of
 2 why would non-members march to NUM? Is that the second
 3 rhetorical question you asked is, why, if they wanted to
 4 make these enquiries would they come heavily armed?
 5 Remember that?
 6 MR ZOKWANA: Yes.
 7 MR MPOFU: Now the evidence on that
 8 aspect is going to be that on the 10th and the 11th although
 9 there were people carrying sticks, the kind of weapons that
 10 you admittedly observed on the 15th, were not part of the
 11 equation at all, and that if that can be so, would you
 12 agree with me that that would yet be another find that they
 13 may not have been coming with belligerent intentions?
 14 MR ZOKWANA: Chairperson, I have been
 15 enjoying this seat all this time, answering Mr Mpofo at the
 16 best of my ability, but it has been a bit difficult now
 17 because I have to give my view on untested evidence of his
 18 witnesses, whether the version that they present, they
 19 present the facts, I will say this, Chairperson, supporting
 20 it by the statement made by the AMCU president when we met
 21 at the SABC. He differs with the version given here by
 22 your two witnesses, and you will find that difference in
 23 page 17, paragraph 15, it says, "they were passing the NUM
 24 offices to the stadium. It is then they were shot at by
 25 NUM." This means, sorry, Sir, please allow me, I am saying

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1 this that you are putting this version that is presenting.
 2 There's a version again of the security guy, Ikageng, who
 3 have got his own reasons as given by David, and I am saying
 4 that it is difficult then for me to make a view,
 5 Chairperson, to whether the version that you are presenting
 6 is true, for one reason, that that's been tested in this
 7 process, as mine was tested. He is not – and I am saying
 8 that if you read different versions given by many people,
 9 it is not possible for me to say that it is the version
 10 that these people were marching to the NUM because – and
 11 again, on the statement of the first statement, you –
 12 there's a mistake I think it has been made twice to present
 13 NUM as the sole agent is wrong, is wrong, it's not only NUM
 14 and if this is based on - Chairperson, it may have created
 15 a wrong view that only NUM could have been approached in
 16 dealing with this. For negotiations to be reopened you
 17 needed all unions will sign during negotiations. It was
 18 the case when negotiations were reopened, after the
 19 massacre, but nonetheless, I am saying again, Chairperson,
 20 I always put in a situation where I have to comment on
 21 untested evidence. So I am saying, I am showing you as
 22 well that beyond these two views presented, other views are
 23 presented as I've shown you that if you go to the president
 24 of AMCU's record, that is contained, I am saying that you
 25 can show me the video, I am willing to look at it.

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1 MR MPOFU: Sure.
 2 MR ZOKWANA: But I am not in a position
 3 to make an opinion because I think up until all these
 4 versions, sometimes by your own clients that can assist the
 5 Commission to come to a conclusion. Let me correct one
 6 word I used, Chairperson, that I am happy to be here. I am
 7 not happy to be here. I meant to say, I have been willing
 8 to present facts as they are, because this place, is not a
 9 place one can be happy to come on, after this gruesome
 10 incident. Myself I am not be happy to be here and see
 11 families who have lost their next of kin. But I was saying
 12 that I have been willing, Chairperson, to present issues as
 13 factual as possible but the current scenario I find myself
 14 in, of having to deal with untested evidence, presents me
 15 with problems.
 16 CHAIRPERSON: Mr Zokwana, I know it's
 17 untested, but I think we will get to the end of this part
 18 of the case much sooner, if we proceed on this basis, that
 19 Mr Mpofo is doing, he is saying, this is my case, I am
 20 going to lead evidence on it. If it's accepted by the
 21 court, then certain things will happen. But what he is
 22 putting to you, is this is my case, what comment do you
 23 have to make about it? And that's all he wants you to do.
 24 He must obviously keep it as short as he can, and you must
 25 keep your answers as short as you can, so we can get to the

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1 end of this what you say is an unhappy experience, but
 2 that's the way to do it. Just accept for the moment that
 3 those are his instructions and just comment. Whether his
 4 instructions turn out to be correct or not, is a matter
 5 that we will know the answer to later on, as the Commission
 6 proceeds.
 7 MR ZOKWANA: Thanks, Chairperson. I can
 8 say that when that point is put forward, my view is that he
 9 cannot accord with the version, and I am sure when that he
 10 presented and the cross-examination is done it will be
 11 shown otherwise. I am not going to go deeper as to why I
 12 say that.
 13 MR MPOFU: Okay. Alright.
 14 CHAIRPERSON: We've now been handed a
 15 statement which is the witness statement of Vusi Musi
 16 Mandla Mabuya Nkuhlu. What is the exhibit number?
 17 MS PILLAY: Chair, it will be BBB8.
 18 CHAIRPERSON: BBB?
 19 MS PILLAY: 8.
 20 CHAIRPERSON: 8. Thank you.
 21 MR MPOFU: Chairperson, if may I ask that
 22 the footage be played. It's not long. It's both clips, Ms
 23 Pillay, if it can be played back to back, just to save
 24 time.
 25 CHAIRPERSON: Would you tell us shortly

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1 what they are.
 2 MR MPOFU: It's the marchers on the 10th
 3 to the LTD.
 4 CHAIRPERSON: Yes?
 5 MR MPOFU: There might be other places
 6 but that's the main.
 7 CHAIRPERSON: That's on the Friday?
 8 MR MPOFU: Yes, on the Friday, the 10th,
 9 yes.
 10 MS PILLAY: Mr Chair, it's exhibit W3 and
 11 W5, and Mr Mpofo has asked that they be shown back to back.
 12 VIDEO BEING SHOWN
 13 MR MPOFU: Thank you. Mr Zokwana –
 14 MR ZOKWANA: Yes?
 15 [12:11] MR MPOFU: I am going to try and lead you
 16 by, by making descriptions of what you saw and then if you
 17 disagree you'll say so and if you agree you'll say so, just
 18 to make it quicker.
 19 MR MPOFU: Would it be correct to say
 20 that in the first clip, rather let me start by saying, in
 21 the last clip when we see the people dispersing there are
 22 virtually no arms, not even sticks that you can observe.
 23 And that in the first one, there are people carrying
 24 sticks, some carrying nothing, others carrying placards and
 25 others carrying branches of trees. Sorry, Chair, for

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1 completion, and at least one of the placards that we saw,
 2 was written, "We want to have 1 500."
 3 MR ZOKWANA: Yes, I saw that.
 4 MR MPOFU: Now the evidence – or let me
 5 put it this way. Compared to what you saw on the 15th, in
 6 terms of the arms that were carried, would you agree that
 7 this was almost insignificant?
 8 MR ZOKWANA: Not only the arms, even the
 9 mood itself is not as it was on the 15th.
 10 MR MPOFU: Yes. Despite the unfortunate
 11 lyrics of the song, you would agree that this crowd was not
 12 as threatening as the one that you experienced?
 13 MR ZOKWANA: I did not see signs of
 14 threat, but of course I was not there, but I can say that
 15 on the picture and the way they are walking I can't venture
 16 to say there could have been no, as they were presenting or
 17 whatever stage, but at that stage I'm saying yes. And the
 18 song is not saying kill NUM or shoot a particular person.
 19 MR MPOFU: Yes. Well, okay, I don't want
 20 to be - to the issue of songs, maybe we will get there,
 21 maybe we won't. But the evidence will be that on the
 22 morning – or rather, that was when they went to the LPD,
 23 when they were allegedly told that the NUM and so on, what
 24 we went through this morning. The evidence will be that on
 25 the – after that dispersal, on the 11th they then gathered

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1 in the same fashion, some people were carrying sticks and
 2 this is when the decision was taken to march to the NUM.
 3 The evidence will also be that it is only after the
 4 shooting by the NUM that they fled towards the Koppie and
 5 thereafter people went home to fetch more traditional
 6 weapons and what has been described as dangerous weapons?
 7 MR ZOKWANA: I think on that area there
 8 will be contestation because there are different views.
 9 The views of NUM that's put forward that some workers were
 10 injured, it being the day before, I'm not in a position to
 11 say what weapons were carried. And I believe that – my
 12 issue is that it can go as far as whether what kind of
 13 weapons were carried when they marched to the NUM office,
 14 whether the intention as you put it, because the other -
 15 and I'm sure that will be cleared by the evidence. All I
 16 can say now, I cannot support your view that they were not
 17 armed on that day.
 18 MR MPOFU: Yes, and apart from the
 19 question of the escalation of arms, you also are not in a
 20 position to dispute the fact that they decided or they
 21 started to gather at the Koppie also as a result of the
 22 shoot out or the shooting by NUM?
 23 MR ZOKWANA: Neither can I confirm it,
 24 Sir.
 25 MR MPOFU: Now which takes us to the – my

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1 closing statement on this issue, which is –
 2 CHAIRPERSON: Has the witness answered
 3 the question yet?
 4 MR MPOFU: He said he can never confirm
 5 or deny, yes, Chair, or rather refute, thank you, Chair.
 6 And that is this, Mr Zokwana.
 7 MR ZOKWANA: Yes.
 8 MR MPOFU: I know I've already made this
 9 statement to you yesterday, but I would like you to now
 10 answer it in the light of what we have canvassed today.
 11 Would it then be reasonable for me to argue, as I will at
 12 the end of the case, that but for the shooting at the NUM,
 13 at least two things which lead to the massacre may not have
 14 happened. One being the allegedly dangerous weapons, the
 15 presence of that in the equation and also the gathering of
 16 the people at the Koppie. And if you remember, before you
 17 answer, what I had postulated there is that surely the
 18 massacre as it happened, with the victims that it had,
 19 would the same people who died, same people who were
 20 arrested, same people who were injured would not have
 21 happened, but for those events. I know it's a long
 22 question, but I'm sure you get the gist?
 23 MR TIP SC: Before Mr Zokwana answers, Mr
 24 Chair, this is a repeated theme that arises in the course
 25 of cross-examination of this kind and I make an objection

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1 which has been heard on several occasions before. It's
 2 necessary to make it again and that is the question
 3 requires from the witness a judgment in respect of an
 4 assessment of facts on issues that this Commission will
 5 ultimately determine. It goes far beyond putting
 6 propositions related to facts about which he can, on the
 7 basis of experience, assist the Commission with a view.
 8 This is a judgment call on the conclusions.
 9 CHAIRPERSON: You know, he's been asked a
 10 whole lot of these questions this morning. You didn't
 11 object. I considered whether I should not – disallow the
 12 questions, but in view of the fact you didn't object, I
 13 thought – I didn't want to be accused of being more pro-
 14 than you were.
 15 If this is the sort of culmination of the
 16 questions, you've allowed all the other questions, I'll be
 17 minded to hear the answer and then on the basis that Mr
 18 Mpfu then moves onto something else.
 19 I understand the objection, it's not a bad
 20 objection. It's an objection that could have been raised a
 21 long time ago, but let's – we've got the President of NUM
 22 here. He's been asked for his opinion. Let's hear it.
 23 MR TIP SC: Mr Chair, I'm sorry, I have
 24 to reiterate, but with respect, this is a different class
 25 of objection. I've sat, as I indicated earlier, because of

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1 the nature of these proceedings, I have restrained myself
 2 from objecting repeatedly and interfering with the course
 3 of the evidence. The previous questions, which I sat
 4 through, involved an expression of experience and that was
 5 the basis of those questions which I did not object to.
 6 What is now being put and which I do object to, is that it
 7 is a conclusion. He says, would it be reasonable for me to
 8 argue, in other words, should this not be a potential
 9 finding of the Commission and it's a conclusion that
 10 requires the witness to draw together a great number of
 11 considerations, including factual consideration, to make an
 12 assessment and to give a view, and he should not, with
 13 respect, be required to do that.
 14 CHAIRPERSON: Mr Semanya?
 15 MR SEMENYA SC: Chair, I was going to say
 16 Mr Mpfu must be precluded from making any argument on the
 17 strength of the opinion of the President of NUM. That
 18 opinion is entirely irrelevant and Mr Mpfu shouldn't rely
 19 on the evidence of this witness for it.
 20 CHAIRPERSON: That presupposes the
 21 opinion of the President of NUM, maybe something that he
 22 wanted to rely on in his argument. But Mr Mpfu, let me
 23 just get this right, aren't you really asking the witness
 24 to, I'm using a strong word, but I'm using it in a friendly
 25 way, to reserve the functions of the Commission, it's not

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1 for him to say whether the argument is reasonable or not.
 2 We have to do that. So I think the objection is
 3 technically correct and I don't think we need his answer.
 4 MR MPOFU: No.
 5 CHAIRPERSON: And in fact you might even
 6 want his answer when you get it. So shouldn't we move onto
 7 another point?
 8 MR MPOFU: As you please, Chairperson, I
 9 withdraw the question. And in its place, as my last
 10 question on this topic, I'll put this question or at least
 11 tell you what we will argue, which I would like you to
 12 comment on. One of the things we're going to argue
 13 regarding this aspect, Mr Zokwana and I'd like to give you
 14 an opportunity and I know you were not there, is that on
 15 the 11th the NUM officials should have taken the expert
 16 advice of the security – of the Lonmin security guards, to
 17 vacate the place and we will argue that they did – they
 18 must have had the opportunity to do so, since the evidence
 19 is that the quantum was removed, they could have left in
 20 the quantum or with it and also the further evidence is
 21 that the – at least 10 or so people left the premises.
 22 Would you care to comment if you will on that one?
 23 CHAIRPERSON: I've got the same problem
 24 with that question as the other one. It seems common cause
 25 that they could have left, because some of them did. So

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1 that part of it isn't in dispute. Whether they should have
 2 left, again is a judgment call, which –
 3 MR MPOFU: It's a different matter, I
 4 accept that.
 5 CHAIRPERSON: I think you should leave it
 6 and move onto the next.
 7 MR MPOFU: Thank you. Thank you very
 8 much. Now Mr Zokwana, I just want to deal with an issue of
 9 where we do need your special knowledge. And it is this,
 10 that in these kinds of atmospheres of protest, mass
 11 meetings and strikes and so on, and it's something you
 12 commented on, there is a prevalence of rumours and all
 13 sorts of exaggerations flying around in respect of which a
 14 leader or at least the people involved in those activities,
 15 have to be very careful. You've said something along these
 16 lines, but would you take my non-expert summary of the
 17 situation as a fact?
 18 MR ZOKWANA: I will wait for the
 19 instruction.
 20 MR MPOFU: Thank you, yes, I'm ready for
 21 the answer.
 22 [12:31] MR ZOKWANA: Thanks. The two officials
 23 that determines, Chairperson, the process of negotiations
 24 feedback, as the leader of the people whom you are
 25 representing, you should make then understand that

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1 negotiations is about give and take. You prepare them for
 2 the fact that they may not get what they demanded at the
 3 first, so that we are able to have – to take a fallback
 4 position in the event – in the fact that the wage demanded,
 5 could not be given. An example, if the members are
 6 demanding R400 000 a person, I must say, look, I'm going to
 7 the employer, a number of factors will determine that: the
 8 economic environment, the issue dealing with inflation, all
 9 those things put together will determine whether we get
 10 this. The profitability of the company, the commodity
 11 prices and the rest. And as seasoned leader then, in
 12 addressing those members, you don't create a view that says
 13 only this and this only, unless you are really not
 14 understanding the game, because you prepared them to go
 15 forward.

16 The second thing is, you always present facts,
 17 because that moment, Mr Mpofo, is where I said members are
 18 attentive. Attendance to meeting is huge, as they only
 19 believe that it may change their living conditions. So you
 20 are always very careful of what you report back to members
 21 to avoid dwelling on issues that would create an
 22 unrealistic expectation, or you present one other party as
 23 being the cause for non-achievement thereof.

24 CHAIRPERSON: Purely in answer to the
 25 question you were asked, the question you were asked is in

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1 these strikes and demonstration and incidents of this kind,
 2 is it common, in your experience, for rumours and
 3 exaggerations to fly around in various directions?

4 MR ZOKWANA: No, it's not. Again I must
 5 say - the answer, Chairperson, that NUM and in my time of
 6 leadership, we have never - or promoted illegal strikes.

7 CHAIRPERSON: No, the suggestion – no,
 8 the question wasn't a suggestion that you had disseminated
 9 rumours, it's just a question that rumours fly around on
 10 these occasions. You answered that, you said it's not so –

11 MR ZOKWANA: Ja, if they do – if they
 12 happen to, I will answer the question now, as a leader, you
 13 are obliged to make sure that you rectify them.

14 CHAIRPERSON: Yes.

15 MR MPOFU: Yes, thank you. In fact, you
 16 said previously the union will always discourage people
 17 from on acting on rumours, but be that as it may, the –
 18 I'll just give you a couple of examples to demonstrate. I
 19 was hoping you would say yes, then I would have to do this.
 20 On XX2 – and if you forgive me, I'll read this – many of
 21 these things and then ask you to comment on at the end. On
 22 page 26 of XX2, against the time 2012 – have got it, Mr
 23 Zokwana?

24 MR ZOKWANA: I'm still checking, but
 25 maybe you should read -

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1 MR MOTAU SC: I'll read it, yes, you'll
 2 find – you will catch up with me. That one says, "There's
 3 a rumour that people are assaulting workers at the stalls.
 4 One already at the – what, arcane, but nothing is
 5 happening. In an event it looks like there's a rumour that
 6 is not true, is the reading of that entry. The next one is
 7 on page 27, XX2, against 1946, Chairperson. That there's a
 8 rumour that West One Shaft will be attacked in the morning
 9 of 14.08.

10 MR ZOKWANA: Yes.

11 MR MOTAU SC: And then go to the next
 12 page, 28, {Received a call that a car is burning at -
 13 CHAIRPERSON: What time?
 14 MR MPOFU: Oh, I'm sorry, Chairperson,
 15 901. "Received a call that a car is burning at Safi.
 16 Visuals indicated that there are no vehicles burning.

17 MR ZOKWANA: Yes.

18 MR MPOFU: Next one, same page, the last
 19 the entry against 11.08.

20 MR ZOKWANA: Yes.

21 MR MPOFU: "Frans, from UG2 called and
 22 wanted to know if the rumours of the mob marching to,"
 23 someplace, and then it says – "Confirmed with Dirk Botes
 24 that it is not true." And then if we – sorry, that's all
 25 on XX2, Chair. If you go to Mr Sitelele's statement, UU1,

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1 paragraph 24 –

2 CHAIRPERSON: This is of course on XX2,
 3 sorry I'm quite – on page 23?

4 MR MPOFU: 23, Sir.

5 CHAIRPERSON: 23?

6 MR MPOFU: 23, yes.

7 CHAIRPERSON: Right at the foot of the
 8 page it's the last entry for it looks like 6 36 on the 11th
 9 of August, "Reports that a person of two killed still
 10 unfounded."

11 MR MPOFU: Yes.

12 CHAIRPERSON: "Crime intelligence to
 13 investigate the rumour."

14 MR ZOKWANA: Yes?

15 MR MPOFU: Yes, those are just some of
 16 the examples, as the Chair indicated the others on –

17 MR ZOKWANA: But are you sure not to read
 18 this one because it's from AMCU – I'm talking.

19 MR MPOFU: No, of course you are, Mr
 20 Zokwana. It looks like our discussion this morning has not
 21 had an impact, but then on Mr Sithole in paragraph 24 –

22 MR ZOKWANA: 24, alright.

23 MR MPOFU: And this is just another
 24 example. He says, "On the morning of the 12th, I received a
 25 call informing me that NUM office had been set alight. I

<p style="text-align: right;">Page 5067</p> <p>1 cannot now recall who called me. I immediately contacted 2 with Mr Dietrich, who told me that it is not the NUM office 3 had been set alight, but a Lonmin security vehicle.” 4 MR ZOKWANA: Yes. 5 MR MPOFU: Ja, it's that kind of thing 6 that I'm talking about, that in these events you invariably 7 find all sorts of rumours flying around, some true, some 8 not true. Is that correct? 9 MR ZOKWANA: Chairperson, a situation 10 like this will create uncertainty, many possibilities, as 11 it is accompanied with fear, but the duty of a leader is, 12 like Setelele is, when that happens, you call to verify, as 13 he did. You don't go on spreading the rumour without 14 verification. 15 MR MPOFU: Yes, thank you, no, that I 16 expect. 17 CHAIRPERSON: - that you were actually 18 going to put another rumour, I think, from one of the 19 exhibits, one of the statements, when I draw your attention 20 to some other rumours. Have you finished with that? 21 MR MPOFU: Yes, no, I put that one, 22 Chair, yes. It was the Setelele one, paragraph 24, yes. 23 Let's play open cards here, Mr Zokwana. The gist of this 24 questioning is to suggest to you that this thing about two 25 people have been killed at the NUM and so on, which</p>	<p style="text-align: right;">Page 5069</p> <p>1 loco inspection, it was not two days after the incident. 2 The people could have verified this very clearly. My 3 question is what was the motive to put this lie now and 4 again because they were still saying, even showing that I 5 was present. I mean if you say I heard saying somebody is 6 killed, but if you say I saw this person being killed, it 7 means that there was an intention not only to start a 8 rumour, but to create a lie so that other people get angry. 9 And I say that rumours, I agree with you, where there's 10 uncertainty, where people are in that mood, they are bound 11 to happen, but the leadership has a duty to ensure that 12 before they go on with that toxic information to others, 13 they verify it, because you are responsible. 14 MR MPOFU: Mr Zokwana, as a leader, are 15 you able to accept that whether the NUM's actions in 16 shooting at those people is un-union like or deserves for 17 you to be expelled from an international body, does not 18 depend on whether those people who fortunately did not die 19 or not, it's just their luck that by shooting at them, in 20 the first place, and having a case of attempted murder, 21 whether it's murder or attempted murder is fortuitous. 22 That the union, if it's un-union like it is, or it's not, 23 it's not dependant on whether the people died on the spot 24 or two days later, or did not die. Are you able to accept 25 that?</p>
<p style="text-align: right;">Page 5068</p> <p>1 obviously spread like a wild fire, many have been one of 2 these rumours that fly around in this kind of occasions, as 3 opposed to the deliberate lie that you seem to have placed 4 a lot of store in as something that was being deliberately 5 used, as it were, to create animosity towards NUM. 6 MR ZOKWANA: Thanks, Chairperson. You 7 know, Chairperson, when this incident happened, it's 8 ramifications it had and the picture is created of NUM 9 compelled the national board we're affiliated to, to send a 10 delegation to do it their own investigation. Possibilities 11 of - could have been there, because it would have been un- 12 trade union to have embarked into that situation, but you 13 cannot page almost a week, even a month, presenting – or a 14 long time, that reaches newspapers without you verifying. 15 I'm saying that the failure of leadership is to take what 16 is the rumour and make it as fact and present it as fact, 17 it becomes toxic, it becomes inflammable. It can cause to 18 take certain decisions and yet you didn't verify your own 19 people. You can only do that, Mr Mpofu, if, in your own 20 view, the person accused of the rumour, in your own view, 21 is capable of doing that. 22 Sorry, Chairperson, there are two versions on 23 this, the person who would have fuelled the rumour and the 24 one who spread it. I'm sure in this previous videos I was 25 able to watch, was when the Commission began to do an in</p>	<p style="text-align: right;">Page 5070</p> <p>1 MR ZOKWANA: Counsel Mpofu, I think this 2 that I made the point clear that as NUM, we don't believe 3 in confrontation and I'm saying this to you this, that I 4 wouldn't like to plant into a situation I venture in to 5 processes that are still in the court of law. And I'm sure 6 those people who may have done that have seen in the 7 statements that some of your clients know who they are. 8 Some of our clients have refused to divulge them. 9 [12:51] The reason being that you present a danger unto 10 themselves, and I repeat what I said, that NUM under normal 11 circumstances or not under – at all times, will not promote 12 violence, will not act in a way that seeks to revenge will 13 not act, Chairperson, in a way that we use violence as an 14 instrument. And as such, Chairperson, the way I understand 15 the stand those people took as they found themselves in and 16 I'm sure the Commission would be able to find whether they 17 could have run away and survived, whether in doing that you 18 have to - but Chairperson, I'm not in a position to be 19 judgmental into their own actions as whether those actions 20 constitute attempted murder or not. 21 MR MPOFU: You didn't answer the 22 question, but I'll move on. The – what I want to put to 23 you, Mr Zokwana, is that yourself were not immune to either 24 believing or spreading some rumours without any foundation. 25 And once again, if you forgive me, I will read a cluster of</p>

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1 excerpts just as an example and then you can comment. On –
 2 at page 9, this is the consultation you were having with
 3 General Mpembe, remember General Mpembe was trying to
 4 convince you that NUM people are there and –
 5 MR ZOKWANA: Yes.
 6 MR MPOFU: And they did not want to go
 7 and so on.
 8 MR ZOKWANA: Hm.
 9 MR MPOFU: And they took various
 10 positions. You refused, then you said you – if you want to
 11 go, you want to go with AMCU?
 12 MR ZOKWANA: Yes, yes.
 13 MR MPOFU: Remember that, ja?
 14 MR ZOKWANA: I remember that.
 15 MR MPOFU: Ja. Now on page 9 you said
 16 things like, I suppose to prove that there were no NUM
 17 people there, what is happening now is that our members
 18 have been –
 19 CHAIRPERSON: I'm sorry, what -
 20 MR MPOFU: This is on page 9, sorry,
 21 Chairperson, page 9, 009.
 22 CHAIRPERSON: Ja, I know it's page 9, but
 23 where?
 24 MR MPOFU: Line 5, sorry, Chair.
 25 MR ZOKWANA: Yes.

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1 MR MPOFU: What is happening now is that
 2 our members have been grabbed against their will to that
 3 mountain.
 4 MR ZOKWANA: Hm.
 5 MR MPOFU: There have been allegations
 6 regard some of their parts have been cut off. It shows the
 7 level of brutality that is involved in that mountain?
 8 MR ZOKWANA: Yes.
 9 MR MPOFU: And then if you go just down,
 10 against 20.
 11 MR ZOKWANA: Yes.
 12 MR MPOFU: We know that NUM members in
 13 the mountain were pushed from their houses, against their
 14 will and therefore those that you claim – in other words
 15 you're saying to Mpembe that these are the people he claims
 16 to be your members. And then on – you repeated this during
 17 the interview at LL, page 47.
 18 MR ZOKWANA: Yes.
 19 MR MPOFU: Again against the letter 5.
 20 MR ZOKWANA: Hold on, please.
 21 MR MPOFU: Sorry.
 22 MR ZOKWANA: What page?
 23 MR MPOFU: 47 of LL.
 24 MR ZOKWANA: 47, yes.
 25 MR MPOFU: People against their will were

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1 forced to go to the mountain. They have been calling us
 2 and so on and so on.
 3 MR ZOKWANA: Hm.
 4 MR MPOFU: And can I say these are a few
 5 examples, there are others.
 6 MR ZOKWANA: Yes.
 7 MR MPOFU: Ja. And the point I'm making
 8 is that, would you agree that these kinds of rumours, on
 9 both sides, and I can find equal examples on the AMCU side,
 10 I can assure you, of things which were just, you know, out
 11 there. Would you agree that the spreading, particularly in
 12 public forum of these kinds of rumours might also fuel the
 13 kinds of situation that you want to prevent in -
 14 CHAIRPERSON: Mr Mpofu, I'm not sure of
 15 the two examples you've cited, are examples of rumours –
 16 MR MPOFU: Oh -
 17 CHAIRPERSON: A rumour is a story, a
 18 rumour is a story that goes around. You don't know who
 19 said it –
 20 MR MPOFU: Ja.
 21 CHAIRPERSON: Where it comes from.
 22 MR MPOFU: Hm.
 23 CHAIRPERSON: That's a rumour.
 24 MR MPOFU: Ja.
 25 CHAIRPERSON: These are allegations which

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1 he talks about?
 2 MR MPOFU: Correct.
 3 CHAIRPERSON: So you're going to
 4 rephrase?
 5 MR MPOFU: Fair enough, thank you, Chair.
 6 MR ZOKWANA: Chairperson -
 7 MR MPOFU: Can I just finish the question
 8 in the light of what the Chairperson has said. He helped
 9 me as well. The issue – whatever the label and I put the
 10 wrong label on it, these are what I would call
 11 exaggerations, which, remember when I asked you the
 12 catchall question, I said rumours and exaggerations?
 13 MR ZOKWANA: Hm.
 14 MR MPOFU: So this would fall under the
 15 category of exaggerations, but yes, they are factual
 16 allegations. But nevertheless, their level of toxicity or
 17 what you described as a problematic nature, would be the
 18 same, would you agree?
 19 MR ZOKWANA: Let me answer, because the
 20 Chairperson has really assisted in clarify the form of
 21 question. Yes, Mr Mpofu, it is important to me, because my
 22 answer would have been different. But answering it as it
 23 is, let me put it to you, I made allegations, based on the
 24 report I attended and I happened to see one of the people
 25 who was found on the Koppie with a cow's skull, I don't

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1 know, but it is framed somehow, was not part of those
 2 delegation. He is a NUM leader who was taken to the
 3 mountain against his will in the - Yes, I'm saying that
 4 what I have been informed of and I'm sure the Commission
 5 will go through and will go through. That people in the –
 6 some of them in the mountain, like the example I'm making,
 7 are not people who could have been on the Koppie on their
 8 own free will. And up until that is shown to be untrue,
 9 I'm still saying that the report I got, is not a report I
 10 should have - And lastly, Chairperson, pictures shown by
 11 the SAPS, will confirm that some of the people who were
 12 from the two police security guards and others thereafter
 13 and I'm sure the reason when Sikelele was giving evidence,
 14 he was questioned by the counsel from the SAPS, was to deal
 15 with some of those issues and I'm saying to you this that I
 16 still believe that the issues I raised will be confirmed by
 17 evidence that is before this Commission that in some
 18 instances the issues I raise, I didn't say all people were
 19 found. I said, in some instances people were found with
 20 their body parts cut, cut off. But again, I want to repeat
 21 this, I said in my statement you read, with General Mpembe,
 22 I did not just meet with him and dream those things. I had
 23 a meeting with our local shop stewards, who took me through
 24 what the reports were that I reflected to him. And I have
 25 no reason to doubt that when they say that people were

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1 taken to the Koppie against their will. They could be
 2 wrong. One of the reasons why I'm told the police ended up
 3 in confrontation with the strikers, was because the
 4 continuation of people being stopped from going to work and
 5 others taken to the Koppie. And I'm saying that is the
 6 process that this Commission will go through and I still
 7 stand in my view of what I said here, they aren't rumours,
 8 they're allegations based on what I have been told. And
 9 I'm sure in the evidence collected by SAPS, you would find
 10 HR, but I'm not nice to look at, of people – of people who
 11 have been found dead.

12 MR MPOFU: I'm going to ask you a
 13 question which you might end up answering after lunch, but
 14 to round off this issue, I just want to put a proposition
 15 to you. Based on paragraph 6 of Sitelele's statement, and
 16 it is this. Sitelele's says that on the 8th they had a
 17 meeting. This is apart from all the other several meetings
 18 that he eludes to.

19 MR ZOKWANA: Hm.
 20 MR MPOFU: And where your position was
 21 consistently put and so on. To report back to the members
 22 concerning the allowances that has been decided upon by
 23 Lonmin.
 24 MR ZOKWANA: Hm.
 25 MR MPOFU: At this meeting some of the

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1 RDOs indicated that they would approach management
 2 directly, concerning their 12 500 wage demand and that they
 3 did not want to talk to NUM about it. Now what I'm saying
 4 is that surely this was a NUM meeting. Can we accept that
 5 much?

6 MR ZOKWANA: Thanks. The question is
 7 whether the meeting was NUM meeting? The meeting was a NUM
 8 meeting.

9 MR MPOFU: Thank you.

10 MR ZOKWANA: But the attendance thereof
 11 can't be confined to NUM, as I've said is that in making it
 12 like this in a branch or on a mine, you cannot verify if
 13 people coming in and but I agree with you that the meeting
 14 was arranged by NUM. What I cannot confirm is whether
 15 everybody in that meeting were NUM members. And that I'm
 16 giving the answer, I say in that meeting, chairperson, it
 17 could have been any other body, I'm not sure, I don't know.
 18 I agree that the meeting was a NUM meeting. What I can't
 19 guarantee is that everybody who was in that meeting was a
 20 NUM member.

21 CHAIRPERSON: Mr Mpofu, I take it, it is
 22 appropriate for us to take the lunch adjournment at this
 23 stage. How long do you think – I know it's difficult to
 24 predict, because you don't know how long injury time would
 25 be.

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1 MR MPOFU: Yes.
 2 CHAIRPERSON: How long do you anticipate
 3 will cross-examination still be?
 4 MR MPOFU: Chair, maybe another hour.
 5 How long, how much longer do we have –
 6 CHAIRPERSON: Well, we're supposed to sit
 7 till – because it's Friday.
 8 MR MPOFU: Yes.
 9 CHAIRPERSON: We're going to resume after
 10 a half an hour's lunch break.
 11 MR MPOFU: Yes.
 12 CHAIRPERSON: We adjourn at three. So do
 13 you think you'll be finished before that?
 14 MR MPOFU: If we come back in half an
 15 hour, I should be finished by three, Sir.
 16 CHAIRPERSON: Very well.
 17 MR MPOFU: Chair, I don't know, I don't
 18 want to commit myself.
 19 CHAIRPERSON: Can't you give an
 20 indication, I'm not going to –
 21 MR MPOFU: Yes –
 22 CHAIRPERSON: If you can't –
 23 MR MPOFU: As long as I don't go to jail
 24 for it, yes, I should be finished by then. Thank you.
 25 CHAIRPERSON: It's now eight minutes past

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1 one by my watch. We will resume at 20 to. The Commission
2 is now adjourned.

3 MR MPOFU: Thank you, Chair.

4 [COMMISSION ADJOURNS COMMISSION ADJOURNS]

5 [13:45] CHAIRPERSON: The Commission resumes.

6 You are still under oath, Mr Zokwana. Is this the last –

7 MR MPOFU: Leg.

8 CHAIRPERSON: - furlong, or the last leg.

9 MR MPOFU: Yes, Chairperson. Mr Zokwana,
10 I just want to round off the points that we were discussing
11 before lunch, and I'll round it off as to how I am going to
12 argue it as usual, and then you can comment. The point
13 that I was making by referring you to that statement, which
14 I will argue is that if indeed there were these series of
15 meetings, and in particular, the meeting of the 8th of
16 August, and if, as you and I agree that that was
17 essentially an NUM meeting, a meeting of NUM members.

18 MR ZOKWANA: Yes.

19 MR MPOFU: There may or may not have been
20 one or two other people. Then surely – sorry, and if in
21 that meeting as Mr Setelele says, the RDOs told you point
22 blank or in Xhosa, as we says [African Language].

23 MR ZOKWANA: Mm.

24 MR MPOFU: They told you point blank that
25 they will go directly to the employer. I am saying, if

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1 that is the scenario and indeed these are people like
2 Setelele who briefed you about all these developments, then
3 what you were saying to General Mpmembe was not the correct
4 reflection or at best, it was an exaggeration, and I'll ask
5 you to comment. Sorry, I know this is a long statement,
6 but I'd rather cover all, everything, and the reason why I
7 am saying that, Mr Zokwana, is because remember you were
8 discussing with General Mpmembe, was in the context of you
9 trying to demonstrate that there were no NUM members on the
10 koppie. Sorry, not to break it down, that's the gist of
11 the issue I would like you to comment on.

12 MR ZOKWANA: Thanks, Counsellor Mpofo.

13 Let me put it this way, at the time I met with Counsellor
14 Mpmembe and I am sure you've seen my own statement, other
15 statements, already the person you referred to was no
16 longer in circulation or around the mine, given what has
17 been - they will run away and be in place of protection.
18 But let me put to you to say that, and here I am not using
19 any information I have, I am just putting what I have know,
20 as an experience. Whenever there may be demands for money,
21 or already at this point the reason NUM called that meeting
22 was to clarify its position and the chances of people who
23 are not NUM attending is very high. I am not in a position
24 to say who they were, but I am saying that, in times likes
25 this, where are these problems of confrontation and the

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1 rest, you cannot say that only NUM attended, and because we
2 don't have the mechanism to protect – you know, Counsellor
3 Mpofo, I always appreciate that even if I always spend more
4 of my time in a liquor store and go home drunk, but what
5 the moral service for me, people of the cloth will come
6 hunting those who are my friends, who are still alive to
7 chase them where I am. As a result, as NUM, we don't say
8 to people don't come because they are NUM members. We
9 welcome them because it is a form of organising them to
10 join. So I am saying that, we don't say to people, if you
11 come to NUM meeting, produce proof that you are a member of
12 the union. No, I am not saying that it was I am saying
13 that it is possible that people who were there may have
14 been NUM members and also non NUM members.

15 MR MPOFU: Thank you. Now I'll leave
16 that topic and I will leave it on the basis that you and I
17 agree that – no sorry, before I leave the topic, let me say
18 this, you'd agree that these dangers of rumour-mongering
19 and exaggeration, you've already agreed that there must be
20 a watch out for, but that they can occur both in the form
21 of commission, in other words, spreading the rumour, but
22 omission, which is failing to stop the rumour from
23 spreading. At least, will you agree that that is a general
24 statement?

25 MR ZOKWANA: You put it, both I agree

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1 with you that it may be because by design, which is you do
2 it because it serves to benefit you, if by omission because
3 you didn't follow up, sometimes purposely.

4 MR MPOFU: Okay.

5 MR ZOKWANA: Because if rumours are
6 spread about you, and I don't like you, but not that I
7 don't like you, I may be quiet, you may know that they are
8 wrong, because they assist my own mission, but I won't do
9 that to you, I can promise.

10 MR MPOFU: Thank you. And I am saying
11 that because I am going to argue that the NUM failed to
12 clarify or to curb the spreading of this rumour about the
13 two people who had died, when its leaders knew that that
14 rumour was not true and that had they done so on time, they
15 – whatever the effects of that rumour became, could have
16 been prevented. And sorry, I am sorry, I am just giving
17 you long questions now, compounding them. I am basing that
18 –

19 MR TIP SC: Chair, the proposition is
20 based on a premise that there were NUM leaders who were
21 aware that this rumour was in circulation amongst those on
22 the koppie, and that hasn't been demonstrated at all.

23 MR MPOFU: Okay, well, the evidence, I
24 can't remember which one now, I asked one of the NUM
25 witnesses if they were aware of the rumour, and he said,

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1 yes, but I am basing the question on what Mr Setelele says
 2 on paragraph – at paragraph 21.
 3 MR ZOKWANA: I've got that here.
 4 MR MPOFU: Ja, where he says here, people
 5 were fired and so on, and then he says, "I was also told
 6 that nine of the strikers had been killed by these shots."
 7 In other words, he is suggesting that he was told on the
 8 spot that none of the people had been killed.
 9 CHAIRPERSON: But he said he knew that a
 10 rumour was going around that two people had been killed.
 11 MR MPOFU: Yes.
 12 CHAIRPERSON: And the point of the
 13 objection is you can go about scotching, if that's the
 14 right word, a rumour, unless you know there is a rumour to
 15 scotch. Scotch is the right word, is it?
 16 MR MPOFU: Yes, that's correct. No, but
 17 Chair, I thought I had already answered that by saying that
 18 to my recollection, I did put to one of the witnesses –
 19 CHAIRPERSON: I can't remember that, but
 20 I won't quarrel with you, your recollection –
 21 MR MPOFU: I'll find it.
 22 CHAIRPERSON: - will be better than mine.
 23 Perhaps, the way to do is to say to the witness, if the NUM
 24 leaders had known about the existence of the rumour, should
 25 they not have set about scotching it.

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1 MR MPOFU: Thank you.
 2 CHAIRPERSON: And then you could take it
 3 from there. I take it, Mr Tip wouldn't object to the
 4 question formulated in that way.
 5 MR TIP SC: There is no objection to
 6 that, the witness can deal with that.
 7 CHAIRPERSON: I am please my questions
 8 aren't being objected to. Carry on, Mr Mpofo, I give you
 9 my question, you can use it.
 10 MR MPOFU: Thank you, Chairperson. Mr
 11 Zokwana, if it is established that the NUM members who were
 12 aware of the rumour, doing the rounds at the mountain, and
 13 other places, and also if what Mr Setelele say at paragraph
 14 21, is to be believed, that he was told on the spot that
 15 nobody had died, those two factors combined, then would you
 16 agree that the NUM, not solely, equal with the people who
 17 were spreading the rumour but also had a responsibility to
 18 curb the rumour or to scotch it.
 19 MR ZOKWANA: Thanks, Chairperson. Under
 20 different circumstances, the issue you are raising is
 21 possible, but let's look at the environment at which and
 22 the – at the point of this rumour being spread, because
 23 none of the NUM leaders were the local leaders, Mr Setelele
 24 who may have known as the - shows were around the mine at
 25 that point. 2) The rumour in my view was designed in a way

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1 that it projects NUM in a bad light, and if that was the
 2 intention as I want to put it was, it succeeded because
 3 none of the NUM members could have been next to the koppie,
 4 Chairperson, to try to challenge the rumour in question.
 5 Nor could any NUM member be able to visit any of the
 6 families, those who passed on, on the mountain, because of
 7 the fact that the rumour added more on the anti-NUM
 8 sentiment.
 9 CHAIRPERSON: A further point, which of
 10 course that worries me is that even if NUM had set about
 11 scotching the rumour, and said, no one was killed, on what
 12 basis could one accept that they would have been believed
 13 by the people to whom the rumour has been communicated?
 14 MR ZOKWANA: Not only that, Chairperson,
 15 it would be impossible to go and meet with them and tell
 16 them that, but none of them would make you have a chance to
 17 say it. The only time I became, Counsellor Mpofo, aware of
 18 this, was when I read the article from the Daily Maverick
 19 by a researcher called, if he did research in this
 20 instance, Jack Fass but I can assure you this, that it
 21 could not have been in the interest of NUM that a false
 22 rumour is spread and it could counter that, because
 23 countering would have been presenting a picture that would
 24 put NUM in a better light, but under that circumstances, I
 25 think it would be not only impossible but anyone of NUM to

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1 go to the koppie and say, you are being lied to. I don't
 2 it would have been possible, Chairperson.
 3 MR MPOFU: Okay, I don't want to debate
 4 that right now. Can just I ask you about something else.
 5 The, is it my understanding that when you left the Xolani
 6 Gwala interview, it was your understanding that all the
 7 parties there represented, Lonmin, AMCU and NUM, were going
 8 to make attempts to address the strikers at the mountain.
 9 MR ZOKWANA: Thanks for the question. I
 10 think that is detailed clearly in our, in the later part of
 11 the conversation. Having listened to callers, we both, me
 12 and Mathunjwa agreed that the only thing we can do is to do
 13 all in our power to persuade the strikers to desist from
 14 which they were doing, creating an environment where we can
 15 create peace around that area. But I did not know that
 16 when I arrived at the mine, I would be meeting with – we
 17 didn't say in what form, but we know that we want to
 18 address the strikers and change the situation. But the
 19 form of doing that what not outlined at the interview
 20 itself.
 21 MR MPOFU: I am sorry, maybe the question
 22 wasn't clear.
 23 MR ZOKWANA: Yes?
 24 [14:06] MR MPOFU: The issue that I want to find
 25 out is whether all the parties there represented, including

<p style="text-align: right;">Page 5087</p> <p>1 Lonmin and maybe to assist you we will go to paragraph 15 2 of your statement.</p> <p>3 MR ZOKWANA: Yes?</p> <p>4 MR MPOFU: Where you say that on the 5 morning of 15th August you stated in a FM radio interview 6 hosted by Mr Xolani Gwala together with the President of 7 AMCU, Mr Mathunjwa -</p> <p>8 MR ZOKWANA: Yes.</p> <p>9 MR MPOFU: And Mr Barnard Mokwena of 10 Lonmin. "We were challenged by Mr Gwala in various colours 11 to engage further with the strikers. This is the important 12 part."</p> <p>13 MR ZOKWANA: Yes.</p> <p>14 MR MPOFU: "At the end of the interview 15 we all agreed to travel to the mine to endeavour to address 16 the striking workers to get them back to work and stop any 17 further killings."</p> <p>18 MR ZOKWANA: Yes.</p> <p>19 MR MPOFU: The only point I'm making is 20 that, that all means all the parties there represented had 21 committed to address the strikers to end the strike and so 22 on.</p> <p>23 MR ZOKWANA: Let me say this, that this 24 in my understanding was referred to the leaders of the 25 workers, the two unions. Because it was me and Mathunjwa</p>	<p style="text-align: right;">Page 5089</p> <p>1 suggest that you may be making a mistake in that regard and 2 I will invite your comment and I will take you to, what I 3 will say is that secondly Mr Gwala was asking everybody to 4 go whether that is how it was received we can debate. If 5 you go to page 50 of LL?</p> <p>6 MR ZOKWANA: Yes, I'm there.</p> <p>7 MR MPOFU: Mr Mokwena, "when leaders are 8 ready to go, everybody must go to Lonmin. Yes I'm on the 9 operations every day I don't have to go there for a visit 10 or go and meet the workers. I'm there every day he says. 11 Yes, but what I'm saying is now, Gwala kind of insists," 12 and then you Mr Mokwena again explains that he is there 13 every day and then later at paragraph 15 of 51.</p> <p>14 MR ZOKWANA: Yes?</p> <p>15 MR MPOFU: Rather, I'm sorry line 15 or 16 thereabouts, Gwala says, "I think we are all in agreement 17 that there had to be a meeting today right, we are agreeing 18 Mr Zokwana that there has to be a meeting among leaders and 19 the company today," and so it goes.</p> <p>20 MR ZOKWANA: I understand and I get the 21 version of how it was put.</p> <p>22 MR MOTAU SC: Before Mr Zokwana answers, 23 there is a problem with the version as it is sought to be 24 put now by Mr Mpofu. Unless he is going to present some 25 form of evidence that indicates that the agreement</p>
<p style="text-align: right;">Page 5088</p> <p>1 at the stadium. Then there has been other issues that 2 Barnard would have done, but in terms of us addressing the 3 masses I agree with you, it was said that even callers were 4 saying that we had guards to be debating in there when ten 5 people have died already hours ago and make sure peace is 6 retained there. Remember - at the stadium, he was at an 7 office in Pretoria. In the studio it was me and Mr 8 Mathunjwa. Let me read you, sorry, the, if you go to page 9 51 of that interview -</p> <p>10 MR MPOFU: Exhibit LL?</p> <p>11 MR ZOKWANA: Yes, yes and you find, if 12 you go to paragraph 10, Mr Mokwena commits management only 13 in as far as releasing buses so that employees are safe to 14 attend the meetings. Me and Mr Mathunjwa we agree that a 15 meeting is necessary. What I'm saying is in that interview 16 we did not display, Chairperson, the nature of meeting 17 whether we addressed this meeting at the same time or 18 whether we were to meet in what form we didn't, but both 19 agree that we are going to go there. For instance if you 20 go again to page 15 you will find that Mr Mathunjwa is 21 plotting to say that, he says he is ready lets go then, 22 let's go. Let's go to that mountain is Mathunjwa saying to 23 me, not to Mr Mokwena. Mr Mokwena was not part of that 24 debate as far as the meeting being addressed.</p> <p>25 MR MPOFU: Thank you. I'm going to</p>	<p style="text-align: right;">Page 5090</p> <p>1 incorporated management and both unions going to the 2 koppie, which is something that is appearing for the very 3 first time and this witness clearly says that, that part 4 never related to Lonmin forming part of the delegation that 5 was going to go to the koppie. Bearing in mind that the 6 evidence up to this point is everything was going to happen 7 as per the indication by General Mpembe. There is nothing 8 in the form of evidence that suggests that Mpembe 9 contemplated that Lonmin was going to be part of the 10 delegation to the koppie. Unless my learned friend lays a 11 basis for that we object to that question.</p> <p>12 CHAIRPERSON: I can't see any statements 13 in the transcript by Mr Mokwena on behalf of Lonmin 14 indicating that Lonmin was prepared to go and meet. The, 15 what they apparently undertook or what Mr Mokwena undertook 16 is set out on page 51 at the top. But I couldn't find 17 anything, I had a quick perusal of it where you can say Mr 18 Mokwena said Lonmin will go along as well and so in the 19 absence of such a statement, you have to put, you can't put 20 it the witness as Lonmin was prepared to do, what you can 21 put is there was an agreement clearly between Mr Mathunjwa 22 on behalf of AMCU and the present witness on behalf of NUM, 23 that they would go. Is that correct?</p> <p>24 MR MPOFU: No, Chair, I'm sorry this is 25 exactly why I qualified the question very carefully by</p>

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1 saying, I'm not saying that what the witness is saying by
 2 himself and Mathunjwa is wrong. The only thing I'm putting
 3 to him is that certainly Gwala was asking for all of them
 4 to go. Whether they agreed or not is another question.
 5 That's the only question that I was putting and I used, I
 6 cited the -
 7 CHAIRPERSON: That's entirely correct.
 8 MR MPOFU: Yes.
 9 CHAIRPERSON: But as you put it now, it's
 10 the same page 51 the line 15 that you cite, in fact it
 11 reads "we agree Mr Zokwana that there has to be a meeting
 12 among leaders and the company".
 13 MR MPOFU: That's all.
 14 CHAIRPERSON: Mr Gwala asks for that, but
 15 I couldn't find a passage where Mr Mokwena on behalf of the
 16 company accepts it. Anyway the witness wants to say
 17 something.
 18 MR ZOKWANA: Let me clarify, Chairperson.
 19 MR MPOFU: Sorry, Mr Zokwana, I will give
 20 you a chance to clarify. I just want us to be clear that,
 21 Chairperson, that is all the question entailed. It isn't
 22 to say that there was a reciprocal answer. It was
 23 carefully crafted.
 24 CHAIRPERSON: The Lonmin objection falls
 25 away? He doesn't say, he nods his head so I suppose that's

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1 good enough.
 2 MR MOTAU SC: Chair, my understanding is,
 3 Mr Mpofu, unless I am misunderstanding him. He is saying
 4 there was an agreement to go and have a meeting which we
 5 know that they, then thereafter they went to have a
 6 meeting. It doesn't go to the extent of going to the
 7 koppie and if that is not what he is saying -
 8 MR MPOFU: It's not.
 9 MR MOTAU: Then surely my objection falls
 10 away.
 11 MR MPOFU: Ja.
 12 MR MOTAU: Because we know that the
 13 subsequent meeting did take place.
 14 MR MPOFU: Yes.
 15 MR MOTAU: On the evidence.
 16 MR MPOFU: Now, Chair, in fairness to my
 17 learned colleague that is the gist of the question that I
 18 had put. The witness corrected me and said no it was
 19 Mathunjwa and I. Then I said to him, which is what he is
 20 responding to, but certainly from Gwala's request it was,
 21 and then I read the thing. That's all.
 22 MR MOTAU: Thank you.
 23 MR ZOKWANA: Chairperson, let me clarify
 24 this. If you go to page 49 and you go to paragraph 20,
 25 there are two versions of meeting, Chairperson, that were

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1 proposed by the caller and then Mr Gwala. Was for, it says
 2 achieving that, it is sure and one way of achieving that is
 3 if the leaders of unions come together, go there publicly
 4 together and say okay for now let's go back to work and
 5 afterwards we shall discuss the legal issues amongst
 6 ourselves, it's that difficult. Therefore what he foresaw
 7 was a question where AMCU and NUM will go public and say to
 8 strikers please stop what is happening, go back to work.
 9 Then Mr Mokwena and management will meet with the leaders
 10 to look at the grievances that are called. So those are
 11 two scenarios.
 12 MR MPOFU: Okay, thank you Mr Zokwana.
 13 Once again to avoid a debate, the passage that I have read
 14 which says in the company.
 15 MR ZOKWANA: Yes.
 16 MR MPOFU: Will be what I will rely on to
 17 say the request at least was for everyone to go and I will
 18 go further to say that also General Mzembe's appeal seems
 19 to anticipate all the three parties going, although in
 20 fairness Mr Mokwena seems to correct him. If you go to
 21 paragraph 27 of 005, page 27 of 005, Chair. Are you there?
 22 MR ZOKWANA: Not yet, Mr Mpofu.
 23 MR MPOFU: Okay.
 24 MR ZOKWANA: The document is 66, because
 25 it has got also these bold pages at the top here.

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1 MR MPOFU: Oh yes, it is 005 page 27.
 2 MR ZOKWANA: That is the meeting between
 3 the union -
 4 MR MPOFU: And General Mzembe, yes.
 5 MR ZOKWANA: Unless our document I'm
 6 looking at, I don't have page 27. It ends at page 22.
 7 MR MPOFU: And it's 005?
 8 MR ZOKWANA: If it is the meeting between
 9 the unions and -
 10 MR MPOFU: What does it say on your page
 11 22 at the top?
 12 MR ZOKWANA: 22 says certificate at the
 13 bottom.
 14 MR MPOFU: No, it's the wrong document.
 15 It's the wrong document. Yes, I will put it anyway -
 16 CHAIRPERSON: Let's see whether we can
 17 manage without -
 18 MR MPOFU: It's not important. Yes, the
 19 point I wanted to make, Mr Zokwana, is that the facilitator
 20 whoever it was of that meeting after the to-ing and fro-ing
 21 as we will go with AMCU, we will go without.
 22 MR ZOKWANA: Yes.
 23 MR MPOFU: Then says, "I'm asking you,
 24 you had the chance to speak lets Barnard speak. NUM have
 25 had a chance, General has had a chance. Barnard you have

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1 the floor, please speak." Then he says, "our position is
 2 as Lonmin manager, our position is as follows, while
 3 willing to engage our employees within the structures that
 4 are known, in a very safe environment where there are no
 5 weapons, not on the mountain. So we are willing to meet
 6 our employees through their structures, through their
 7 leaders to discuss any issue and so on." He goes on. And
 8 the simple point I'm making again here is that clearly Mr
 9 Mokwena did not agree with it but that like Mr Gwala,
 10 General Mpembe also had expressed a wish as it were, that
 11 all three parties should go and address the workers.

12 MR MATHIBEDI: Sorry, Mr Chairman, with
 13 due respect, if Mr Mpofo could indicate where he -
 14 CHAIRPERSON: The problem is it is 004
 15 not 005.

16 MR MPOFU: Oh I see.
 17 CHAIRPERSON: 004 page 27 thereabouts.
 18 MR MPOFU: Okay, sorry then my marking is
 19 wrong. I apologise. 004, sorry Mr Mathibedi. Any
 20 comment?

21 MR ZOKWANA: Well I would argue that
 22 maybe it would meet because the version I put as I
 23 understood it, there are two versions in this case. What
 24 was made clear by callers was that the company needs to
 25 engage the employers.

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1 MR MPOFU: Yes.
 2 MR ZOKWANA: The employees, but not on
 3 the koppie as the first step. The first step was for me
 4 and Mr Mathunjwa to make sure that members disarm, members
 5 are ready to go back to work but the employers were to
 6 address the grievances thereto and I will not be able maybe
 7 to stand here and said what Mr Mokwena understood or didn't
 8 understood. I mean I cannot do that. But I think having
 9 my understanding of the meetings happening between the two
 10 of them. Now actually I stumbled upon this passage you
 11 were reading, in my document it's page 19 665 but it has
 12 the same wording you have read.

13 [14:26] MR MPOFU: Okay, now the next point
 14 unrelated to what I was talking to you about now, is I want
 15 to suggest to you that – and I am not accusing you of this,
 16 but would you agree that there is a tendency to undermine
 17 the intelligence of these people like RDOs, who are
 18 uneducated and sometimes to, not to give them credit for
 19 wisdom, as it were? And sorry, and I am saying that from
 20 you, coming from where you come, in the mining industry, I
 21 am sure you know more about me, about that kind of
 22 attitude.

23 CHAIRPERSON: I think it might be helpful
 24 for the witness, if you told him, who has this attitude.
 25 You say there is an attitude, underestimate the

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1 intelligence of the RDOs but you didn't say who has that
 2 attitude.

3 MR MPOFU: Generally.
 4 CHAIRPERSON: Is it generally or in the
 5 case of employers, or what is it?

6 MR MPOFU: Thank you, Chair. Yes,
 7 generally, that's correct, I didn't specify, I am placing
 8 at a general level.

9 MR ZOKWANA: I wouldn't take the attitude
 10 to be towards only machine drillers, the attitude, let me
 11 come back to answer maybe straight so that I don't
 12 frustrate you, that attitude I am not aware of, that
 13 machine drillers are looked upon as the lowest paid.
 14 Remember, below machine drillers will find other grouping
 15 like winch drivers, loco drivers, other operators in the
 16 same group and they form the biggest bulk of the NUM
 17 membership. If such do exist, I am not aware of.

18 CHAIRPERSON: Mr Zokwana, I am sorry, I
 19 don't think you understood the question. Mr Mpofo was
 20 asking you about something else. He is asking you about
 21 general attitudes towards people like RDOs that people in
 22 general tend to think that they are stupid, that they are
 23 not intelligent, and I tried to suggest to him, make it
 24 clear who had that attitude, and he said it was a general
 25 attitude. But let's take it step by step, as far as the

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1 union is concerned, does the union underestimate the
 2 intelligence people like RDOs?

3 MR ZOKWANA: No.
 4 CHAIRPERSON: Right, the next question.
 5 The employers, in your experience, as a trade unionist in
 6 the mining area, do employers tend to underestimate the
 7 intelligence of workers such as RDOs?

8 MR ZOKWANA: It is difficult to come to a
 9 conclusion on that one, but one can venture to say, Mr
 10 Mpofo, there's a possibility maybe on part of employers not
 11 value their contribution given the fact that we have
 12 struggled to show the employers that they do a very
 13 compelling work that may have impacts on their physical
 14 being. But I can't quantify that but I am saying that the
 15 fact that they could not understand that, and be able to do
 16 all they could to improve their condition, may be informed
 17 by that. But I am not saying that it is the case.

18 MR MPOFU: Are you also unaware of
 19 general – or rather similar general attitudes towards
 20 migrant workers, who might be looked down upon, or assumed
 21 to be not of average intelligence?

22 MR ZOKWANA: Would you want me to limit
 23 the answer to RDOs or general mineworkers? Or migrants?

24 MR MPOFU: No, as the Chair explained,
 25 forget the RDOs, he was saying people who are uneducated –

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1 MR ZOKWANA: I see.

2 MR MPOFU: - low level staff as RDOs.

3 MR ZOKWANA: No, I get your point now.

4 There is that view, for instance, most of miners who are

5 sitting there, will tell you that they are called "ama-

6 join." "Ama-join" will mean that somebody who is employed

7 by contract, when in the early days if you were approach a

8 young mistress being a miner, it would hard for her even to

9 listen to you, because you are a mineworker. That view is

10 there that they are regarded be less intelligent. That is

11 the general view, and that's why in most instances, there

12 has been even demonstrations against the employment of

13 migrant workers because it creates a view that says, this

14 job should only for our own people, that is there, and it's

15 something that we've been saying to Contralesa, let's

16 engage on it because it has got very bad repercussions in

17 the way going forward.

18 MR MPOFU: And I am sure you will agree

19 with me that that view is very mistaken, that there are

20 people who might have menial jobs, who are, and if I may

21 say so, without patronising you, that you are an example of

22 that. The mere fact that you started as a mining hand, and

23 all that, has got absolutely nothing to do with your level

24 of intelligence.

25 MR ZOKWANA: Generally speaking, of

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1 course, like any perception, sometimes not based on facts.

2 MR MPOFU: And I am saying this in

3 connection with this, Mr Zokwana, I put it I think to Mr

4 Gcilitshana, and he agreed with me but I would like to hear

5 your view on it, I put it to him that given the fact that

6 the RDOs knew that the NUM had these constraints that Mr

7 Semanya did a good job on discussing with you, so I am not

8 going to visit that, the constraints about the two year

9 agreement and so on and so on, and that on the one hand,

10 and that on the other hand, AMCU to whom some of them

11 belonged, did not have the requisite recognition status,

12 that the RDOs were exercising wisdom in therefore

13 approaching the employer, as RDOs and excluding both of

14 these unions which had different types of constraints.

15 Would you care to comment? Mr Gcilitshana agreed that it

16 was, I am not sure what he answered but I put that

17 proposition to him.

18 MR ZOKWANA: Thanks, Chairperson. While

19 I would be tempted to agree with, but I've got some serious

20 questions in agreeing to that, because RDOs in platinum

21 would not find a condition different from other mining

22 RDOs, and I've shown here what RDOs in other operations

23 have done while they knew that NUM has got a two year

24 agreement, they are able to go to the NUM office, and NUM

25 was able to engage the employer and a number of issues were

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1 done. So I would not take that case to say, there was

2 nothing wrong in drillers saying, right we take our case to

3 employer, we march to the employer, but when the employer

4 says let NUM come, they will say, NUM, we've opened the

5 door for you, go and negotiate. Rather than to say, we

6 will on our own – because in other mining houses, Mr Mpofu,

7 they didn't do so. They are able to put, there are many

8 forms for instance, not propagating those forms in any

9 other forum, where machine drillers, if they were drilling

10 20 holes, holes are the holes in which you charge. They

11 will drill five. The employer will know something is

12 wrong, and that would make the employer to talk to people,

13 but I cannot understand and appreciate this new phenomenon

14 on where – didn't only decide to shun an existing union,

15 they become hostile towards it as I think evidence will

16 show in the end, whether that evidence will be shown but

17 issues we are raising that maybe the shooting, but I am

18 saying to you that the process they took does not convince

19 me that they didn't know what they were doing. In the same

20 scenario in this, maybe your counsel at this stage wanted

21 to continue back and say that she is talking to you, and I

22 don't want you to miss something. Is that I am sympathetic

23 to take your point you are putting forward, but I am still

24 struggling to understand why should drillers at Driefontein

25 Mine in the same category as these drillers, on the same

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1 villages maybe in some instances, would not see NUM the

2 same way. It was fine for them to know that the two year

3 agreement is binding, but I repeat binding only meant to me

4 that you can't go on strike on that area, but you can force

5 negotiations to take place. It has happened in the gold

6 industry and I am sure this Commission will be able maybe

7 at the end to find what could have been the underlying

8 circumstances. One such wild unfounded, an allegation here

9 would be that maybe the very AMCU knowing that it has no

10 threshold so it's an opportune time to make sure that

11 behind the driller's strike they can get membership to

12 grow. I am saying that as only a mere speculation. I have

13 no facts of that.

14 MR MPOFU: Okay, you didn't answer the

15 question, but I'll move on to something else. Would it be

16 fair to say to you that you were very reluctant to accede

17 to the call by General Mpembe to go to the mountain? In

18 fact you refused and at some stage you then said you would

19 go but not with AMCU and so on. But there were various

20 stages, you started like refusing and then, and eventually

21 had the caucus. We don't know what happened after the

22 caucus, but we assumed that then it was agreed.

23 MR ZOKWANA: Yes, there were words I used

24 in my statement was I was reluctant. You get that on page

25 5 of my statement, paragraph 18, but nonetheless without

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1 debating whether it was a refusal or agreeing, it is true
 2 that when I arrived at Lonmin after caucusing with the
 3 local stewards as contained in the statement, it became
 4 clear to them that my going to the mountain will present a
 5 number of scenarios, one to know that I may be ridiculed,
 6 given what they have gathered, their attitude towards NUM.
 7 [14:46] As well as that the life of those were part,
 8 because they began to believe that if they're to discuss
 9 details of going to the mountain, it may show that the
 10 President at that juncture, the trust level between AMCU
 11 shop stewards or branch from Karee and NUM were strained
 12 and that was informed by a number of things that happened
 13 from the 12th up to where it was said that the chances of
 14 what we discuss being, being passed onto the Koppie was
 15 very high. And our guys were saying, no, it would be not
 16 safe for you to go to the Koppie. After negotiating,
 17 understanding the persistence of General Mpembe that only
 18 such meetings may avert what could happen, we agreed to go
 19 and agreed to go in the manner we have applied. And also
 20 mind you that what was happening needed our attention,
 21 given my agreement earlier in the morning. I mean, if I
 22 would, I couldn't have gone. I could have lied to the
 23 nation that I can go and I could see the situation as
 24 detailed to me, meant that going there was the best thing
 25 to do.

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1 MR MPOFU: Well, I'll just put it to you
 2 that the – despite that promise you made on the radio, your
 3 position had somewhat changed to what is on page 26 of 004,
 4 from line 12 or 13 which indicates exactly that you refused
 5 and then through the intervention of the General, you
 6 changed. It says, "I said NUM is not in a position to go
 7 to the mountain and address people who were armed in the
 8 mountains. But NUM will consider the views put by the
 9 General and if you go, if you go, I said we won't be
 10 accompanying AMCU to undo what they did."
 11 MR ZOKWANA: I want to repeat again that
 12 – and I will not be able, I would not like to go to the
 13 second, because I have already said that I cannot
 14 substantiate that, but the point I'm putting is that,
 15 remember I said, when I arrived at LPD offices, I was met
 16 by the local shop stewards and I was given a graphic
 17 description of what was happening since my last day on the
 18 12th. And the report that they were gathering from the
 19 people of the Koppie and more their concern about what
 20 would happen if I were to go to the Koppie. The possible
 21 physical harm as well as being ridiculed and I think at
 22 first it didn't happen, but I would say, given the report
 23 by the Sowetan the following day, it proved that in
 24 people's mind I was seen as somebody who failed to persuade
 25 people, who left the Koppie with this tail between his

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1 legs. That is what they wrote. I'm saying it is what I
 2 think our guys were avoiding.
 3 MR MPOFU: Thank you, Mr Zokwana. What I
 4 would have wanted to ask you about another subject, but I'm
 5 going to – I won't deal with it, because it's also belongs
 6 to phase 2. I'll just ask you one question and this is the
 7 whole issue of the economic state of people like the RDOs.
 8 Am I correct that in the BEE deal at Lonmin there was no
 9 stake as it is usually the case, that was reserved for the
 10 workers or are you aware of that? Did you at the NUM
 11 facilities hear such a thing or were you involved?
 12 MR ZOKWANA: I would be happy if you can
 13 assist me, because I'm – I'm not saying to avoid the
 14 question, because there are two processes in Lonmin as I
 15 understand. There was the initial deal given to -
 16 MR MPOFU: Yes.
 17 MR ZOKWANA: Let me explain that. There
 18 was a portion for workers. The portion for workers ended
 19 up being used as part of the funding of the deal. As a
 20 result, that's why when – and I'm sure even new members can
 21 confirm that when the new deal was established, there were
 22 some payments due to workers in lieu of that portion, which
 23 the new [inaudible] has to pay. Workers didn't receive a
 24 portion. If your answer is, didn't that maybe disadvantage
 25 workers, my answer is, yes.

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1 MR MPOFU: Mr Zokwana, the next point
 2 which I would have wanted to canvass with you, I'll sum it
 3 up as follows. We have instructions that at some stage we
 4 should ask the Commission to do another inspection and this
 5 time to go underground and see some of the conditions under
 6 which people like the RDOs work. If we make that
 7 application, would it have your support?
 8 MR ZOKWANA: I'm not sure, Chairperson,
 9 if my answer will assist the process. Let me say to Mr
 10 Mpofo, whether that will be relevant to this Commission –
 11 MR MPOFU: It will.
 12 MR ZOKWANA: - please trust me what I'm
 13 saying. Towards the end of the strikes, we had a meeting
 14 with the senior – sorry, with the CEOs of the industry,
 15 raising a number of concerns. One of them was the housing
 16 conditions under which mineworkers are subjected to. The
 17 fact that there is no horrendous talk around the mine. The
 18 other issue raising was the work of RDOs in as far as the
 19 grading, because the key question there is, is the payment
 20 that they receive commensurate with the work that they
 21 perform and they danger they face. Whether that will be
 22 dealt with here, I think the senior counsel, I don't think
 23 it would be me who would be deciding whether that is. I
 24 think there are people who are here, as a person I think
 25 that may assist with the issue of re-grading of RDOs and I

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1 will be sympathetic to that as a person, but supporting, I
 2 may not have that power.
 3 MR MPOFU: Okay. Yes, finally, Mr
 4 Zokwana, well, by the way that previous question was not
 5 calculated to inference even among my colleagues might not
 6 be looking forward to go underground. But finally I'd like
 7 to ask you this, if and it's a big if, if it were to be
 8 found that the NUM played any role or contributed to the
 9 events that ultimately led to this massacre, then the
 10 people that I represent would appreciate, if you may, to
 11 know whether should that eventuality arise the NUM would be
 12 without accepting responsibility, prepared to participate
 13 in a reconciliation process and maybe to engage with them,
 14 going forward and also to give some assurances that it will
 15 play its part, obviously not – there are all sorts of other
 16 people who have responsibility, but it will play its part
 17 in ensuring that something like this is not allowed to
 18 happen again.
 19 MR ZOKWANA: Thanks, Mr Mpfu, for
 20 raising this and I can tell you, it's a very emotional
 21 issue you are raising and you know, the reason I became a
 22 member of the Union, was to build unity and I was clear
 23 this unity whom it was supposed to serve and have shown in
 24 the history before, the history of Section 5, it pained me
 25 every time a member is carried home dead, knowing very well

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1 that family will face a situation where now and again in
 2 December the child would ask the mother, [African
 3 language], 'where is my father' and that woman not being
 4 able to tell. That is a painful story. Even if NUM is not
 5 found to have contributed, one thing, Chairperson, NUM will
 6 be committed not only to make sure that this never happens,
 7 but to make sure that mineworkers are proud of that unity.
 8 Mineworkers believe that they can differ in views, but no
 9 justification can be given in a mineworker killing another
 10 mineworker, Chairperson. It pains me when a worker is cast
 11 underground by stone and every mineworker there, I'm sure
 12 in his life, he has seen his brother or his neighbour dying
 13 under rocks. That should be enough in terms of uniting
 14 them. The conditions they work under, the exclusion that
 15 they live under from their families, should be the only
 16 bond that binds them together. I don't think we need to be
 17 found guilty, Mr Mpfu, to participate. We will do because
 18 it is the only honest gesture any human being can do and I
 19 hope that the day will come when the truth is told, when
 20 families know what really happened, when they can judge any
 21 of us, not based on rumours, but on facts and is allowed to
 22 come and say, here we stand, we apologise when all those
 23 workers in Karee, in Impala can go to that spot where these
 24 things happen and make a vow that never in our lifetime
 25 will we allow that to happen again. That's the call you're

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1 making, I'm telling you that we'll participate, not because
 2 we want to appear as brave. It is the only thing we can do
 3 to those kids who will not see their fathers again. Thank
 4 you very much.
 5 MR MPOFU: Thank you, Chairperson. I
 6 don't expect you to respond to this one, I just want to say
 7 that the – our instructions also from those people is that
 8 their wish that, every time so you say, that this
 9 Commission – or rather the massacre for to make the deaths
 10 and the blood of those people that was split there, to be –
 11 to not have been in vain. That one of the results of this
 12 whole episode would be that the mining industry, which has
 13 been responsible for so many hardships over a long time
 14 should not be the same.
 15 [15:06] MR ZOKWANA: Mr Mpfu, I think that what
 16 you are saying, is that incidents like this always awaken
 17 us to reality. It reminds me of the sinking of Ormandy,
 18 the ship that was carrying African people, during the first
 19 World War. As he came by the poet says, your blood has not
 20 perished, your blood should have bonded those masters who
 21 don't regard us as equal. And I am not a poet to, but in
 22 essence he was saying this that this blood of – and he was
 23 saying that these are not martyrs but the fact that this
 24 happened, has put this Marikana as an area, Rustenburg as a
 25 province, the mining industry in the spotlight of the

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1 globe. May it be therefore that the things we do beyond
 2 this is not only to make it never to happen but to change
 3 the conditions that could have led to happen. Be it lies,
 4 be it the manner leaders have behaved, be it the manner the
 5 industry did not do certain things, - normal things
 6 happened. Don't ever again look at those mines, so that
 7 when those kids of those people who passed on come back
 8 they can say, our fathers, their death was not in vain. It
 9 can only happen, Chairperson, if we do all beyond this, and
 10 such that when recommendations are made to the unions, to
 11 government, to the company owners, they are not seen as
 12 being punishment, but as enlightening to create a better
 13 world, that we can live on in peace forever.
 14 MR MPOFU: Thank you, Chairperson, I have
 15 nothing further.
 16 CHAIRPERSON: We obviously won't be able
 17 to take any further cross-examination or re-examination
 18 today. I understand that we were going to proceed on
 19 Tuesday, because there were reasons why we couldn't sit on
 20 Monday. I understand however, that the – Mr Mpfu is to
 21 lead his first witness next. He is not available on
 22 Tuesday, because of the appearance in court of his clients,
 23 so we accordingly adjourn now until Wednesday morning at
 24 ten o'clock. The Commission will adjourn.
 25 [COMMISSION ADJOURNED]

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