RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 47   13 FEBRUARY 2013   PAGES 5111 TO 5224

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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1 [PROCEEDINGS ON 13 FEBRUARY 2013]
2 [10:12] CHAIRPERSON: The Commission resumes. Mr
3 Zokwana, you are still under oath.
4 SENZENI ZOKWANA (CONTD):
5 CHAIRPERSON: Who is next to cross-
6 examine the witness? I think, Mr Semenya, it was told to
7 me that the Minister of Police who was mentioned in the
8 evidence, his counsel had been instructed not to ask
9 questions but the questions were going to be asked by
10 counsel appearing for the police service. That was what I
11 was told on Friday. That message hadn't reached you yet.
12 I'll give someone else a chance in the meanwhile to cross-
13 examine, if there is anybody. I suggest you come forward
14 to the front so that we can see you and you can see us and
15 you can be as close as possible to the witness. More
16 importantly, have they found a place for you with a
17 microphone? I suggest you sit on Mr Semenya's left, there
18 is a microphone there. You're close then to the Legal
19 Resources Centre who will presumably assist you if you
20 require assistance. Mr Ramphele, am I correct in saying
21 that you appear for the families of the two security guards
22 employed by Lonmin who lost their lives on, I think it was
23 the 12th?
24 MR RAMPHELE: The 12th.
25 CHAIRPERSON: Of August, yes.

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1 MR RAMPHELE: And Mr Mabebe.
2 CHAIRPERSON: And?
3 MR RAMPHELE: Mr Mabebe who also lost his
4 life on the 12th.
5 CHAIRPERSON: On the 12th. Also an
6 employee of Lonmin?
7 MR RAMPHELE: Also an employee of Lonmin.
8 CHAIRPERSON: Very well.
9 MR RAMPHELE: And members of, two of them
10 are members of NUM.
11 CHAIRPERSON: And?
12 MR RAMPHELE: Two of them are members of
13 NUM.
14 CHAIRPERSON: Two of them are members of
15 NUM?
16 MR RAMPHELE: Yes.
17 CHAIRPERSON: Or they were, I suppose, at
18 the time.
19 MR RAMPHELE: Ja, ja.
20 CHAIRPERSON: Yes, alright. You are
21 ready to begin your cross-examination?
22 CROSS-EXAMINATION BY MR RAMPHELE: Thank
23 you, Chairperson. Thank you, Mr Zokwana. As the
24 Chairperson has already stated, I represent two of your
25 members, Mr Mabebe and one of the security, Fundi. And the

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1 reason why I am going to be questioning you is because the
2 families have requested me that at least, you know, from
3 your evidence they should be able to find some sort of
4 peace that NUM did what it could for their loved ones. So
5 I want to take you back to the terms of reference which
6 under 1.4 say, one of the issues to be probed in this
7 Commission is that the Commission must find out about the
8 conduct of the NUM, its members and officials and, in
9 particular, whether it had exercised its best endeavours to
10 resolve any disputes which may have arisen between itself,
11 Lonmin and AMCU or any other party. And further whether,
12 and the extent to which NUM exercised effective control
13 over its membership and those persons allied to it in
14 ensuring that their conduct was lawful and did not endanger
15 the lives and property of others and to ask you, whether by
16 act or omission, directly or indirectly, cost the lives of
17 Fundi, Mabebe or Mabelane that I represent.
18 Before I ask you the questions I want to put the
19 NUM in context. There's a lot of documentation here about
20 the experience of NUM and it's one of the few trade unions
21 that transcend from the time before the liberation of South
22 Africa, about 15 years before and 15 years after the
23 liberation of South Africa. Actually on page 20 of the
24 report of congress, the secretary described NUM as being in
25 the articulation phase of their development as a trade

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1 union and that entails foresight – you are the front line
2 of thought of leadership in modern trade unionism and you
3 have vision and you always advance the best interests of
4 your members. I suppose you agree with the description of
5 the report?
6 MR ZOKWANA: Yes, yes, I agree because it
7 was the NUM report to congress.
8 MR RAMPHELE: Now, let me just ask you a
9 direct question right at the beginning. Do you think it
10 was good foresight –
11 CHAIRPERSON: I suggest you ask direct
12 questions from the beginning right through to the end.
13 MR RAMPHELE: Yes. With your foresight
14 and the knowledge that you have, I'm trying to get an
15 answer from you because this is what I've been trying to
16 get all along – do you have an answer to the level of anger
17 that you said you were seeing for the first time in your 30
18 years of existence as a trade union member, do you have an
19 answer that you can assist this Commission that, you know,
20 this anger was caused probably by one, two or three? Can
21 you give us some sort of indication because with you –
22 CHAIRPERSON: I think he understands the
23 question, let's see - hear his answer. If he doesn't
24 understand, he'll let us know.
25 MR RAMPHELE: He does understand the

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1 question.

2   MR ZOKWANA: Thanks, Chairperson, senior

3 counsel. Let me say, counsel for the families –

4   MR RAMPHELE: Yes.

5   MR ZOKWANA: Let me say this that I tried

6 to say and fearing to be called to order again and to

7 apologise because some made the allegations, not factual,

8 but I think this was a turning point in the way things have

9 been done in the past within the industry. Members will be

10 angry because they believed that their demands were

11 genuine, which I agree they were genuine but what was

12 disturbing was to regard the union equal to the employer

13 and be so angry towards the union such that it became

14 difficult for shop stewards to enter and assist in the

15 process. I think one of – without inviting a further

16 grilling by the employer for AMCU I will say this, that the

17 role of the rumours that two people had been killed could

18 have, in many environments, made the people angry – that's

19 point number 1. Point number 2, the allegation that NUM

20 was colluding with the employer, preventing the employer to

21 make an offer, could have made such a situation. And in a

22 way that I hope that by the end of this Commission, the

23 Commission will have gathered evidence to prove as to what

24 could have made workers I claim to have known for all these

25 years, who have gone through strikes before, to be in the

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1 mood they were in, and again who could have benefited in

2 that anger? And as a union we would like to say to your

3 clients, those families, NUM was to pass its condolences to

4 the family, hoping that those who killed, when they are

5 asked questions, the mothers have the strength to answer.

6 I refer to the three families, not only to NUM members,

7 three families you are representing.

8   MR RAMPHELE: Now, if they were to ask

9 me, but if you say that NUM has got foresight, NUM said to

10 my father, go to work and my father was killed, do you

11 still maintain that that is foresight?

12   MR ZOKWANA: Thanks. That question may

13 arise in a family but I think we have shown the fact that

14 NUM has been responsible and the reason we were saying to

15 people go to work, between the employer and every employee

16 there is a contractual obligation that outlines what each

17 worker should be doing and I think NUM saying go to work,

18 it was not plunging them to murder because nobody could

19 have predicted that the response of those who were on

20 strike would be to kill those who were working and that has

21 been the trend, Chairperson, of how NUM will respond to any

22 unlawful strike. It was shown yesterday that one of the

23 major developmental projects to make sure that we have got

24 security of [inaudible], NUM members have not been on

25 strike – for one reason, that we believe that if there is

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1 to be a strike it must be within the ambit of the law, for

2 one reason, we don't want to plunge our members to be at

3 the mercy of the employer because the employer is powerful

4 at that time when workers go on an illegal strike. The

5 employer can dismiss anybody. When you go to court your

6 arguments are weakened. Those were the reasons that forced

7 us, but if you were to say to me, had we known what we know

8 now, what would've been our approach to that situation –

9 that's one of the reasons NUM was calling for

10 reinforcement, not to come and negotiate, not to come to do

11 what the company should be doing but to make sure that law

12 and order is sustained for the issue of people going on

13 strike illegally and killing others has not been with us

14 except from Impala up to Lonmin. Always people say that

15 for – I mean after an event we all become wiser than we

16 would have been before.

17   MR RAMPHELE: Maybe I did not understand

18 you properly. Are you saying that an employer that you

19 have been with for 30 years would dismiss someone for not

20 become to work because they fear for their lives?

21   MR ZOKWANA: There are two issues at

22 play. If the employer could establish that NUM was behind

23 the strike, we could be sued. We have been sued before -

24 with Eskom. Now as a union –

25   MR RAMPHELE: No –

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1   MR ZOKWANA: I'm coming to your question,

2 I'm coming to your question –

3   MR RAMPHELE: Sorry, sorry Mr Zokwana, I

4 have a very short memory. If you –

5   CHAIRPERSON: Give him a chance to answer

6 the question.

7   MR RAMPHELE: Chairperson –

8   CHAIRPERSON: You can ask your follow-up

9 question when he's given his answer.

10   MR RAMPHELE: Chairperson, no –

11   MR ZOKWANA: - to get confused.

12   CHAIRPERSON: Don't argue, just give him

13 a chance, then I'll give you a chance to ask further –

14   MR RAMPHELE: Okay, Chair.

15   MR ZOKWANA: The question of an employer

16 for 30 years, I think the report has been given that in the

17 previous strike of Karee a number of workers were not re-

18 employed. The employer now becomes choosey when people

19 have gone to an illegal strike and again it just shows you

20 that after most of the illegal strikes, it doesn't matter

21 how many years we have been with the employer, if the

22 employer was intending to retrench, that becomes an

23 opportunity because he won't be obliged to pay what he

24 would have paid in a normal process going forward. He

25 would be called upon to select according to the LIFO

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1   principle. He can decide I don't want you, John, for these
2   reasons he won't take you back. Lastly, Chairperson, there
3   can never be a situation where employers and employees are
4   friends. We happen to work in the same environment. Our
5   class differences will remain. If you – the union
6   therefore is stronger when the strike is legal. If it's
7   not legal, we are weakened.
8   MR RAMPHELE: Yes –
9   CHAIRPERSON: Now you want to ask your
10 follow-up question.
11 [10:32] MR RAMPHELE: Yes, thank you, Chair. But
12 the question that I'm asking is, let's say Mabebe, he was
13 not on strike but going to work was dangerous for him. Are
14 you saying that the employer that you have been engaged
15 with for 30 years could dismiss a person because they
16 feared for their lives and didn't come to work?
17   MR ZOKWANA: No, no, I get your question.
18 The employer would decide whether to dismiss or not
19 dismiss, based on the factual evidence that really this
20 person's life was in danger and that's why NUM, from the
21 12th onwards, could not say to people or transport them
22 because the situation changes drastically from the 9th
23 onwards when people were being beaten up. Therefore the
24 issue whether the employer would have understood if workers
25 could have said because the RDOs are on strike we fear for

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1   our lives, I think any employer would demand, what evidence
2   do you have that you would have been endangered, even
3   before the first one was beaten. So I'm not in a position
4   therefore to check what Lonmin would have been
5   understanding, the fear of workers even before there had
6   been any skirmish, but in the first place I don't think
7   there was supposed [inaudible] beating. When you go out
8   strike without asking others for solidarity, you can't
9   expect them to join you, that is my understanding.
10   MR RAMPHELE: Is it that understanding
11 that made you, in paragraph 8 of your statement, to say,
12 "It is for these reasons that NUM consistently urged its
13 members at Lonmin not to associate with the unprotected
14 strike and to continue reporting for duty." So
15 consistently members were encouraged and therefore Mabebe,
16 Fundi, as loyal members of NUM, consistently disassociated
17 themselves with the strike –
18   MR ZOKWANA: Let me maybe outline to the
19 Commission that it was a difference of people going to work
20 underground, who would have crossed the imaginary line
21 between those who were on strike but in the case of the two
22 clients you are representing, or three of them, they were
23 not in the same situation. Remember, security officers,
24 some of the medical people in the medical hospital, kitchen
25 people, even if the strike is legal there has to be an

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1   agreement that such services would be rendered
2   irrespective. Mabebe was not murdered for going to work,
3   he was murdered precisely because, in my understanding, of
4   being the leader of the union, equal to other leaders who
5   were murdered either on the koppie or around the mine, but
6   I take your point of saying they didn't just call for
7   people to go to work, contribute, and my view is, I don't
8   think we can qualify why people used violence to kill
9   others on the basis that people were called upon to fulfil
10 their duties. I think if those who wanted to go on strike
11 believed it was the right thing to do, it was their right
12 but that right cannot be at the expense of other people's
13 lives. And I think the Commission, by the end, will have
14 to pronounce as to how, if they can – I'm not sure whether
15 they will not be seen to be promoting acting outside the
16 law – to say how do you make sure that people, in
17 exercising their rights, don't impede other people's
18 rights? I'm saying this, Chairperson, the two people, the
19 two people I want to – the three people he is representing
20 are security guards, no matter if the strike was legal or
21 not, illegal, they were supposed by their own occupation to
22 be on the job and those jobs were categorised as essential
23 services I would have said security officials were held to
24 be at work because the company will need security and we
25 will need security, by the way, as well as people working

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1   in certain clinics – but Mabebe was killed on the night of
2   the 12th, no mistake, and he was killed precisely, I think,
3   like others who were murdered, in my view, by asso – being
4   seen to be leaders of the NUM.
5   MR RAMPHELE: Let me just finish with
6   this one of Mabebe – no, Mabebe was killed when he actually
7   reported to go underground and at the gate where he was
8   clocking, that's why he was killed. So that is my
9   instruction. But – but the question that I'm trying to, or
10 the answer I'm trying to get from you is, in circumstances
11 where the situation is volatile, was it not your
12 responsibility to go to Lonmin and say, we have members,
13 our members, if they're going to expose themselves to work,
14 need protection. So let us deal with that because they
15 have the right – at least those ones have the right to
16 [indistinct], yes, but these ones have the right to life.
17   MR ZOKWANA: I can't agree with you more,
18 sir, on that, that the employer was supposed to render that
19 protection. People were not supposed to be – as I said,
20 wisdom of hindsight would be, what happened - when the same
21 environment appeared so that people going to work, the
22 company was closed, so that before people can be endangered
23 or exposed to danger, you don't allow people to go to work
24 but I still maintain that our call for members not to join
25 the strike was not a wrong call, given what I have said

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1　that if people don't go to work then they end up being
2　dismissed unless such an agreement is – remember again that
3　by the 12th in morning our leadership of the branch on the
4　mine were compelled to run and be under, be in hiding,
5　given that they were being hunted. And I would seriously
6　say that even if you believed Mabebe was on the way to
7　work, it would have compounded his situation. He was going
8　to work and a well-known shop steward, the health and
9　safety person of the union. And remember I'm saying it, I
10　was not at the scene of the murder but I know very well
11　that people who were associated with the NUM, being office
12　bearers of the union, were targeted. If the branch could
13　have been, maybe to meet Lonmin, but at the time no branch
14　committee members were available on the mine – hence they
15　have known that they were being hunted.
16　　　　　MR RAMPHELE:　　　　Mr President, I don't agree
17　with you about the 12th. The 12th – or is it the 11th, when
18　the situation was volatile. It was 30 of your members who
19　could actually make thousands of people run helter-skelter,
20　you know, in what Rumsfeld would say shock and awe, just 30
21　of them – at that time, at that time it was obvious that
22　tensions were developing in the workplace and your members
23　had to be protected. There is nothing that stopped them
24　from going to Lonmin management and saying, we have a
25　situation here, we want our members, we are urging our

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1　members consistently to come to work, make sure they're
2　safe.
3　　　　　MR ZOKWANA:　　　　Thanks, thanks sir. I mean
4　I can't differ with you on some of the statements you are
5　making but you have not read my statement as well, that's
6　below the one you have read. I put that on hearing of what
7　was happening on the 12th where, unfortunately, one of the
8　people you are representing was killed, we put to the
9　employer the fact that people should not be exposed to
10　danger and the employer raised the fact that he did not
11　have enough personnel if – hence the call for extra police
12　personnel to be deployed. Unfortunately, being deployed on
13　the following day, two of them were murdered, one severely
14　injured, which means that it would not be a normal
15　situation you would be involved with in a strike because a
16　strike is not supposed to be in this manner where the
17　strike – the strike usually should be about demands of
18　workers with the employer but when the strike changes to
19　face this, it's no longer a labour relations matter in my
20　view because it becomes now violent, people are being
21　hunted down. And we raised this, remember, even before the
22　office was attacked on the 11th. Security was aware that
23　the guys, the people who were marching to NUM office had an
24　intention to burn it down but they could not give that
25　security to you if you speak of – it means, and I think it

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1　must go back, Chairperson, into understanding whether this
2　thing was scaling down operations on the mine. Sometimes
3　even outsourcing the security of the mine, what role does
4　it play in compromising the ability of the company to
5　respond to such challenges and expect SAPS, outside the
6　operations, to do even the normal security of the
7　operations, because I understand that security in Lonmin
8　has been privatised and any private company entering any
9　job will look at how you cut head costs to make sure that
10　they make money and reduce the – to look at to say that do
11　companies have enough security capacity internally before
12　they can call for other state organs to come in.
13　　　　　MR RAMPHELE:　　　　So we are agreed that when
14　it was clear that the situation was volatile and your
15　members may be killed and the situation is not normal, as
16　you put it, there was no message that was sent to these
17　members that, hey, we are not dealing with a normal
18　situation here. There was no message from your side, there
19　was no message from the side of Lonmin and you created
20　normality in an abnormal situation.
21　　　　　MR ZOKWANA:　　　　Again Chairperson, sometimes
22　we read selectively. NUM issued even a statement on the
23　13th after the murder of the two policemen, may their souls
24　rest in peace. I was horrified to see men of uniform being
25　killed on duty. That statement was read here by counsellor

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1　Mpofu, NUM making a special call on the 13th to say the
2　situation is such that if the police are also being killed,
3　we need more reinforcements. NUM was aware of the
4　situation. I won't speak on behalf of Lonmin, what they
5　did, what they didn't, but as a union from – even on the
6　11th NUM general secretary, the late Bongo, phoned the
7　company to say look, it seems our offices are going to be
8　invaded and hence the security guy came to say look, we
9　can't assist you, we don't have enough manpower to do. And
10　what I'm putting to you is that I agree with you that if
11　the company had kept enough personnel that would become an
12　obligation as well, not only to produce platinum but to
13　ensure that the safety of those it employs at all times is
14　taken care of. And I would be happy if the Commission
15　would look at whether, how prepared was Lonmin to deal with
16　these situations internally before it called others, but in
17　as far as NUM, I think we have proven that we have been
18　making calls to say to people, violence should not be the
19　norm. And if you accept the issue of the level, you won't
20　pick a single instance where NUM used violence against or
21　to ward off violence. What they chose, to prevent said
22　violence was to leave the area – of course against their
23　will because if they were not there, the issues you are
24　raising about consistently engaging the company, NUM was
25　deprived off because the local leadership was not there. I

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1 agree with you, they were supposed to have been measures to
2 ensure that no further lives are lost, but the unions
3 cannot be accused of not having done anything. What we
4 could do was only to call for people in authority to do
5 certain things. We didn't have the army, as the NUM, to go
6 there and say nobody would shoot another one. We didn't
7 have, we are not trained in that field. We are trained to
8 engage employers and bargaining, we are trained in
9 defending our members in cases. We don't have an army of
10 people to say if people become violent, there's a way to
11 respond.
12   MR RAMPHELE: I don't want you to run
13 away from the questions that I'm posing. The question, or
14 actually let me say the suggestion that I'm making to you
15 is, the situation was abnormal, you were aware that the
16 situation is abnormal, you were aware that Lonmin does not
17 have capacity to deal with the situation. Despite these
18 observations you did not go to your own members, either by
19 SMS or by loud hailer, and say please, let's halt because
20 we cannot guarantee that you are safe going there and
21 Lonmin cannot protect you. That's all I'm trying to get
22 from you.
23 [10:52] MR ZOKWANA: Yes, I understand your point
24 but I think you will, you must look at BBB7, that is the
25 document entered by the counsel on behalf of the families

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1 who were injured and those that were arrested and in that
2 evidence you'll find that NUM articulate the situation and
3 short of any other means to present protection to people,
4 it called upon the deployment of further security to make
5 sure that people are safe. And I get your point of saying
6 – and insofar as SMSes to members, it's one that I think we
7 – we have to ensure that all NUM members can interact with
8 SMSes, all forms of social media so that interaction is
9 quick and - and advanced. What you are asking me to check
10 is whether NUM did make a call to the members not to go to
11 work. I think that that judgment will be made by the
12 Commission and I think the person who has to answer that
13 question is the employer, seeing that he didn't have
14 capacity internally, since he could not get capacity from
15 outside quickly, how safe was his employee at that
16 juncture? But as a union I would say the only thing we
17 could do was to make sure that we don't expose ourselves to
18 dismissals and to your question, you can be saying then you
19 didn't want them dismissed but you could not prevent them
20 being killed and I can assure you, as NUM, we do care on
21 the safety of our members, given the number of calls we
22 have made. We are concerned about their future employment
23 as well as their security and I think these are some of the
24 things we need to deal with, as to how do we respond, given
25 the recent Harmony decision [inaudible] think is the best

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1 because when you say to people I will close down my shaft
2 up until you present to me tangible reasons why I should
3 open it, which means by that moment nobody will be going to
4 work but we are saying to all parties, come with ideas that
5 make the mine safe. It was not done in Lonmin but I think
6 what was done in Harmony was what you are driving to but
7 remember again, sir, NUM has no power to tell the employer,
8 close down your shaft. It is the employer – the employer
9 has got two obligations, to safeguard the security of his
10 employees to do production and you can't do production at
11 the expense of life. I'm not accusing of Lonmin but I'm
12 saying there was thing, I think, given this situation,
13 could have been looked at.
14   MR RAMPHELE: Mr President, at some stage
15 I want us to look at this issue that you are referring to,
16 which is an observation that I also have made, that there
17 is vulnerability of workers in the workplace because it is
18 going to be one of my submissions to the Commission that
19 amongst the other issues that have to be addressed, is the
20 issue of vulnerability of workers in the workplace and that
21 maybe the anger that both you and I say probably cannot be
22 explained very easily, but before we go to that let me come
23 to NUM now with this membership. I want to take it that
24 NUM is a caring union but you see what is really
25 disheartening to my families, as you know, is that there

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1 was a call that they should go to work, when they died no-
2 one came. Will you agree with me that it is one problem
3 area that makes your members vulnerable?
4   MR ZOKWANA: You can come to that
5 conclusion if you are reported like that. What is real,
6 what is real is that of the families who have lost their
7 next of kin, after – maybe after, not difficult for NUM to
8 interact with the families concerned. I have been in
9 contact, by the way, with the Mabebe family. I know that
10 they are staying here in Randfontein. We have been able to
11 send people to meet with them – of course, after, but again
12 remember, you know until we understand the atmosphere in
13 Lonmin, many people will come to the conclusion that NUM
14 didn't are because you know the leadership of NUM who knew
15 who is a member, who is not a member, are those people who
16 were compelled to run underground. And that could have
17 impeded our inability to go to each and every member. I
18 had a discussion, by the way, with the widow of Fundi and I
19 promised her that once we are through this we will be able
20 to visit her, sit down with her, be able to share her
21 frustrations and I extend that to all families because I
22 know as I sit here that promises by companies may be made,
23 obligations by companies may be explained but to seeing,
24 that is something else. But I want to say this, that none
25 of the family members who lost their lives is regarded as

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1 an enemy to NUM. We understand how they go through and
2 what they need is to ensure that NUM or any organisation
3 visits them to share and do whatever it could have done.
4 The promise I've made to Fundi is that as soon as I'm
5 through this I will make sure that I pay a visit to her
6 place to see the kids, to see how the things are going. It
7 is what I'm extending all families, time allowing, that we
8 sit down with them – maybe then NUM can be able to explain
9 even the rumours, I don't want to call them rumours now
10 because we know what was not, what was a rumour but not
11 true, because I can tell you that after the burial many
12 families believed that NUM could have been behind the
13 killing of their next of kin. And I take note of the point
14 you are raising and I can assure you that I've shown here
15 that NUM is a caring union, all the rights that these
16 families are enjoying are not rights that fell from heaven,
17 are rights bargained for by this union. The right of every
18 mineworker to belong to a burial society, it was an
19 agreement NUM has made. If you can revisit most mines in
20 Rustenburg, you will find unmarked graves of unknown
21 mineworkers because by that time there was no NUM. NUM
22 can't be accused of not caring but the environment, I agree
23 with you, should not be used as a reason not to do that
24 which is normal and I promise that as soon as I'm through
25 here, we will do exactly that. And I repeat, we have been

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1 interacting with the family of Mabebe, of course
2 telephonically – I haven't met with them physically myself,
3 but I know that a member of NUM has met with them. We plan
4 to give them comfort we could not give them in their hour
5 of need.
6   CHAIRPERSON: Please give the interpreter
7 a chance. It's a long slab he's got to interpret.
8   MR RAMPHELE: I hear you and I agree with
9 you that NUM has fought for rights of workers, that's why I
10 mentioned your history, but if I'm an employee and I'm a
11 member of NUM, I pay my subscription every month so that
12 NUM must protect me at work. If NUM does not come when I
13 die, do you think that my family will be happy?
14   MR ZOKWANA: The answer would not be -
15 and I repeat under normal circumstances where workers have
16 been killed underground, have died of any other nature, the
17 local structure of the union and in most companies they
18 would organise transport, they will go with the coffin down
19 home, they will meet with the family and I want to say this
20 was a situation that was not like other situations but
21 again you will understand this, I don't know, in our
22 African culture or way of doing things, if a person has
23 passed on you still visit the family thereafter to say to
24 them, I could not have been here during the burial and
25 therefore the family would outline the predicament they are

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1 in, if there are any problems or hindrances in dealing with
2 the after-effects and I can assure you NUM is a caring
3 union. In this instance it may not have been seen to be as
4 you outlined, all families in question, but I can tell you
5 this that whenever there has been a situation like this,
6 NUM would do all. If you were to visit the Vaal Reefs
7 disaster where 103 workers were killed, we tried to make
8 sure that all those killed have got dreams of their parents
9 fulfilled. A fund was created, not because the company
10 thought to but because NUM put pressure on them to do so,
11 that no child of an ex-mineworkers will not be able to go
12 to school. We know that Lonmin has made pledges of the
13 same kind. It is the duty of NUM and its shop stewards to
14 ensure that those killed are known where they are, they are
15 able to interact with them to check their progress. Where
16 there may be faulting by the company, we can follow up - it
17 is a pledge, I'm saying, it is a pledge, I'm saying as from
18 now on, ongoing, we cannot have any other reason not to
19 make sure that – I repeat, we have made promises to the
20 families because we have spoken to them, the two families
21 you referred to.
22   MR RAMPHELE: Mr Zokwana, this is – I
23 think we will agree and you have given a good number of
24 explanations about why things did not happen – can we agree
25 that, and we want to give you that respect but more must be

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1 done than said. It's better done than said, can we agree
2 on that?
3   MR ZOKWANA: We – I mean I will not say I
4 – NUM would not make, to a family in that state to say
5 we'll be coming and not come because it is those things
6 that you, those dealings that would give and tarnish this
7 history of this noble union and I promise you that we will
8 not wish to meet with you during the Commission and you are
9 asking me, have you been to the family and I said no,
10 because of that and that and that. Meeting with those
11 families is number one, not only these two but I think that
12 we need now to see how do we interact with families –
13 remember, I was cautioned before the Commission not to be
14 seen to be interfering in areas that seek to paint a view
15 that says NUM has seen its mistake, it's trying to correct
16 it but I'm assuring you this, that our task will be to make
17 sure that these families you have referred to are visited –
18 even others.
19   CHAIRPERSON: I'd like to ask a question
20 about a topic you were questioned about a few minutes ago
21 and that is in your statement para 14 you describe what you
22 did after you arrived at the mine –
23   MR ZOKWANA: Yes.
24   CHAIRPERSON: - about 1PM on the 12th.
25   MR ZOKWANA: Yes.

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1   CHAIRPERSON: You received a report of
2 what happened and then you requested a meeting with Lonmin
3 management.
4   MR ZOKWANA: Yes.
5   CHAIRPERSON: And you say that you had a
6 meeting later that afternoon in Middlekraal, several Lonmin
7 managers attended, their briefing indicated the high level
8 of risk, that the strikers would increasingly resort to
9 violent conduct in order to disrupt the operations of the
10 mine.
11   MR ZOKWANA: Yes.
12   CHAIRPERSON: You then say, "I expressed
13 my view that a larger law enforcement presence, involving
14 both Lonmin and the SAPS, was required at the mine to avoid
15 further violence and loss of life."
16   MR ZOKWANA: Yes.
17   CHAIRPERSON: Did you ask Lonmin – I know
18 you didn't have the power to order them to do so but did
19 you request Lonmin to close the shafts until that larger
20 law enforcement presence was available, so that in order to
21 prevent people who were obeying your call reporting for
22 work, would not be exposed to that high level of risk that
23 you mention in your statement?
24 [11:12] MR ZOKWANA: Yes, thank you, Chairperson.
25 I would be honest, I never raised that –

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1   CHAIRPERSON: Sorry, let's give the
2 interpreter a chance –
3   MR ZOKWANA: No, no, Chairperson, I
4 didn't and I understand, given what we have been able to
5 achieve with the recent example I've made of Harmony, that
6 it was one measure maybe that should be implemented
7 whenever these things happen but at the point in time it
8 never rose to me that one way of doing it was to close down
9 the shaft. And there's one thing I was saying, maybe the
10 Commission in its own deliberations will have to check
11 whether [inaudible] because remember Chairperson, this was,
12 this could have been in one element there has been violence
13 in Impala but the level is not nearer this, although people
14 lost their lives as well but I think it's one lesson I
15 think we need to take, of saying if the employer could not
16 give enough security to its employees, people are bent on
17 doing violence, what is the best measure to take going
18 forward? Do you negotiate while people are being attacked
19 or do you close operations and call all people involved to
20 say, before you come to a – come with tangible answers,
21 this is going to be the situation. I think, the idea I
22 think did not crop up then but I think since then we have
23 seen that's one measure we can take going forward.
24   CHAIRPERSON: Mr Ramphele may wish to ask
25 follow-up questions on that point but I suggest he does so

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1 after we take the tea adjournment, which we will now take.
2   [COMMISSION ADJOURNS   COMMISSION RESUMES]
3 [11:37] CHAIRPERSON: You're still under oath, Mr
4 Zokwana. Mr Ramphele, any more questions?
5   SENZENI ZOKWANA (CONTD):
6   CROSS-EXAMINATION BY MR RAMPHELE (CONTD):
7 Thank you, Chairperson. Mr Zokwana, just to follow up on
8 the question that was asked by the Chairperson, so you
9 would agree that if the union could have made suggestions
10 about the closure of the shaft as you have indicated, or
11 any other means of ensuring that the workers that come to
12 work are protected, maybe the violence that escalated could
13 not have escalated in the manner it did.
14   MR ZOKWANA: Yes, I have said that if
15 that idea could have come maybe it would have been one, but
16 I would like to add to say this that one further area we
17 need to deal with is whether people on strike have a right
18 to embark on violence and pose others' lives in danger and
19 even use violence for any other ulterior alternatives
20 because that is against the spirit NUM was trained in, NUM
21 has been built on – a state of you having the right to
22 decide because if RDOs decided not to go to work, my
23 understanding is that that right is limited only to them
24 but to plunge, and chase people who go to work – I don't
25 think that, I think the Commission will have to check

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1 whether this is not against the spirit of our Constitution
2 that guarantees the right to life to every citizen.
3   MR RAMPHELE: Yes, that is another
4 debate. I am just looking at what NUM, because remember I
5 read 1.4 – I'm looking at you, NUM, as president and I'm
6 happy unless you disagree, that if NUM were to suggest –
7 and you say that it didn't come to mind – that if there was
8 such a suggestion by the NUM then maybe lives could have
9 been saved and we agree, unless you disagree with it.
10   MR ZOKWANA: To the extent that people
11 would not have been exposed – do you remember, sir, the
12 killing were not only limited to those who were going to
13 work. Even shop stewards of NUM who were not going to work
14 were killed. On the basis that maybe the level of
15 vulnerability could have been reduced, let me put this that
16 you know this environment did not only end on the mine.
17 I've been told of instances, there's a local - in my home
18 town Idutywa, called [indistinct] – some of these comrades
19 either, some of them may know it here, it's on the road to
20 Mthatha. If you are from East London down, and you
21 [indistinct] it is the only place you can – but in that
22 people have tended to take this thing, Chairperson, to the
23 localities they come to, where people were say if it was in
24 Rustenburg you won't be wearing this NUM T-shirt here. And
25 it means that unless we are able to work very hard to

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1 ensure that people understand the fact that it is my right
2 to decide to wear a particular one, not another one, but
3 that right cannot infringe on the rights of others. Yes,
4 you say had the mines been closed maybe the confrontation
5 between those who were on strike, because there would be no
6 strike with the mine closed – but whether that could have
7 stopped the hunting of NUM shop stewards who were already
8 out of the mine, I'm not convinced that it could have not
9 continued amongst them but I'm not going to dwell with
10 that.
11 　　　　MR RAMPHELE:　　　　Now let me go on to the
12 next issue of the terms of reference. One of the issues
13 raised, the one of effective control of members. So my
14 understanding, and I'm sure anyone reading the terms of
15 reference, it means that the president assumes that a trade
16 union must have effective control of its members. Do we
17 agree on that?
18 　　　　MR ZOKWANA:　　　　Yes.
19 　　　　MR RAMPHELE:　　　　Now let me ask you this,
20 taking into account the situation that started with rock
21 drillers, some of them members of NUM, members of AMCU,
22 non-unionised, what would you say, would you say that NUM
23 had effective control of its members?
24 　　　　CHAIRPERSON:　　　　I take it you mean some of
25 its members?

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1 　　　　MR RAMPHELE:　　　　Some of its members, ja.
2 　　　　MR ZOKWANA:　　　　Yes, let me say this in
3 answering your question. NUM had control of its members up
4 until they took a decision to abandon their own union and
5 now think that we don't want NUM to be involved. And as I
6 said one day that it is like a horse that you take and
7 [inaudible], you drag it to the river. The choice of
8 drinking depends on that horse, you can't force it. Our
9 members decided to join the strike and, in joining the
10 strike, decided that they will not be [inaudible] by NUM.
11 So there was no way, therefore, NUM would go to them and
12 say, you will, because you are members and following that.
13 I think NUM was disqualified by those members to be their
14 agent. They chose another agent. But if your question
15 were to say, if the strike was not violent, could NUM
16 continue dealing with, engaging them? My answer would be
17 yes, we could have tried to engage them but once the
18 violent features of the strike came up, it was no longer
19 possible.
20 　　　　MR RAMPHELE:　　　　So what you have just said,
21 if one were to make a submission to the Commission, one
22 would say that NUM had control of its members, or some of
23 its members who joined the strike decided not to be bound
24 by NUM and therefore NUM lost control of some of its
25 members? Is that how I understand you?

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1 　　　　MR ZOKWANA:　　　　We did not only lose control
2 only, we lost lives. If it was only control, I think Twala
3 would still be alive – and many others, including your two
4 clients on whose families you are acting here. As I'm
5 saying, I would have understood your question if there was
6 no violence, to say what stopped you from persisting in
7 calling on them to understand what you are saying, but
8 remember from the 12th all our local leadership had to run
9 away, not because they chose to run but they were – they
10 could see that if they didn't run I think the NUM's would
11 have been more.
12 　　　　MR RAMPHELE:　　　　I'm very happy with the
13 answer that yes, indeed you lost control of some of the
14 members but I also want to go into what are the possible
15 reasons for losing effective control of the members. Now
16 at the heart of the RDO strike, was the issue of collective
17 bargaining, do you agree? Or your view on how it should be
18 done and then the rock drillers sort of, as you say, doing
19 it in the manner in which they deemed fit.
20 　　　　MR ZOKWANA:　　　　And your question is that
21 whether the strike was still an industrial matter?
22 　　　　MR RAMPHELE:　　　　No, no, I say at the heart
23 of this effective control was how you considered good
24 collective bargaining principles and how some of the
25 members that were yours, perceived their way of getting

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1 what they wanted, outside of the collective bargaining
2 [inaudible] used collective bargaining.
3 　　　　MR ZOKWANA:　　　　But if the loss of control
4 would be limited only to people, I would like this thing
5 not to be dealt with in isolation. Remember, it was not
6 accidental that lies were told about people killed in the
7 course of the – it was to make NUM more weaker. The fact
8 that NUM was, the allegation was that NUM was colluding
9 with the employer not to make an offer, all those things
10 added to NUM losing not only control but credibility
11 amongst those and I would be happy if, at the end of the
12 Commission, the truth may come as to whether these guys who
13 have been NUM members – just woke up and thought that NUM
14 was part of the employer, or they were told that NUM is
15 such. I agree with you that NUM in the beginning thought
16 that the matter was a labour matter, but it changed its
17 shape when people used violence and I repeat what I said,
18 that we are not trained to deal with violence, we are
19 training to deal with bargaining, we are trained to engage.
20 But one other matter you must always take into account is
21 this, that when – you cannot negotiate as an agent for any
22 grouping unless you have got their trust, unless you are
23 able to talk to them and you can get their mandate, unless
24 you are able to engage your opponent and wherever there are
25 offers made you are sure that you can be able to sell that

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1 offer. With NUM not being able to interact with those
2 workers in the form I have described, where violence was
3 the mood, there was no way NUM could have – but no, no, I
4 would be happy if you don't come to say NUM lost control,
5 we end there, without underlining the reasons that could
6 have, and what nature – because if workers could have said
7 we won't talk to NUM and at the end there was no violence,
8 I'm sure NUM could have been able to engage them until they
9 understood where it stands but when violence was used, it
10 was difficult and futile, by the way, to call on our
11 stewards who had to run away, to go back and say in the
12 mountain, guys, here we are, we have got your interests at
13 heart.
14   MR RAMPHELE: If the Chairperson would
15 allow me to chip – we have been asking the question about
16 NUM caring.
17   MR ZOKWANA: I gave an answer. I can
18 tell you this, that if NUM don't care for its members –
19   MR RAMPHELE: Mr President –
20   MR ZOKWANA: Allow me only a minute. A
21 lady was, a lady died in a mine called Anglo Platinum.
22 That lady was not an NUM member. For the sake of us
23 thinking it's sacrilege against women, Chairperson, we took
24 that member [inaudible], we campaigned against women abuse
25 by men in any situation. We were able to form a fund to

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1 take care of her kids, to elevate the matter globally.
2 Remember, not an NUM member but a co-worker. We don't
3 limit our work that we do to NUM members. We feel the pain
4 of every family, the pain of every member or any person,
5 all on duty. I'm not [inaudible] direct you in your
6 questioning, sir.
7   MR ZOKWANA: I think we must start from
8 this premise. NUM is not only respected here, it is
9 respected internationally. It has done a lot of good so
10 all the good is okay, but the Commission is about what
11 could have led to the deaths. So in order to be able to
12 solve that problem we have to find out whether there are no
13 weaknesses that could have led to the deaths. So the
14 questioning should not give you an impression that you say
15 no – no, NUM did not bring liberation, it did not do this,
16 it did not – no, we've read the report. Very, very good, I
17 mean that NUM is doing. At the moment we are looking at
18 that there are no weaknesses that led to the deaths. So
19 Chairperson, President, please don't take the questions as
20 an attack. It is a way of trying to build so that we don't
21 have a repeat of Marikana.
22   MR ZOKWANA: I agree with you and I
23 understand your point and as I've said on Friday, should
24 the Commission find any reason of any magnitude that NUM
25 could have not been at its best, even if we could not be

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1 found having done anything that would have led to this, NUM
2 will be able to participate and willing to ensure that no
3 child would ask where, where is my father, and the answer
4 is that other fellow workers killed him. That is what I've
5 taken. We will not only be informed by any witness being
6 found but we believe that if we are to create dignity for
7 the union, for the industry and ensure that families know
8 that their next of kin can die from rock falls, from
9 seismicity, from anything, it cannot be at the hands of
10 their fellow workers and I agree with you, if that will be
11 the undertaking we take, I am binding NUM to that process
12 going forward, even if one is found guilty of any omission.
13 [11:57] MR RAMPHELE: So in effect, your
14 admission of weaknesses will enable the country to
15 strengthen those weaknesses so that things like collective
16 bargaining, which I want to talk to you about now, we look
17 at it and say maybe in the 30 years that we've – we've done
18 a lot of good but there are still weaknesses that we have
19 to address. And that is the engagement that I want to have
20 with you.
21   MR ZOKWANA: I think we'll agree if we
22 also look at the constraints that could have limited the
23 ability to make progress, the attitude of employers
24 sometimes to certain demands and the limitations that the
25 current grading system presents as a hindrance.

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1   MR RAMPHELE: Thank you, President. I
2 want us to look at collective bargaining now and I also
3 want us to look at your report on what you say about
4 collective bargaining or about what the secretary general
5 says about collective bargaining, but I also want to give
6 an indication that the reason why I want us to go into this
7 is because it could be a source of frustration and anger,
8 not that NUM will be wrong but just because there will be a
9 weakness in the system that has to be corrected. Now, if I
10 look at page 82 of the report of the secretary general
11 under "Information management," 82 – are you having the big
12 bundle? In the big bundle.
13   MR ZOKWANA: I don't have, unfortunately
14 –
15   MR RAMPHELE: But so that we should not
16 waste time, let me just give you an indication of what the
17 –
18   MR ZOKWANA: Alright, alright.
19   MR RAMPHELE: - secretary general, in
20 general terms –
21   MR ZOKWANA: Alright.
22   MR RAMPHELE: So that one doesn't go
23 sentence for sentence. The secretary general's report, in
24 the first place let me say that from the report one can
25 deduce when one reads in collective bargaining that there

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1 are still a number of challenges. Would you agree with me?

2   MR ZOKWANA: Yes. One of the challenges

3 would have been the frustration that had been facing the

4 union, especially in platinum and other minerals, having to

5 bargain with different mining houses, as a result not being

6 able to improve your co-ordination, what you are doing – a

7 matter we have been presenting to the companies concerned,

8 and I've shown that it goes back to in the 90s. Even now,

9 it's only after Marikana that companies have come on board

10 to say they see it as a hindrance. It means that you must

11 spread your negotiators across the industry. Experiences

12 that would be used jointly are spread, whereas that's why

13 you'll find that it was not difficult within the other

14 sectors under the Chamber to even deal with the issue of

15 machine operators because all companies were present. You

16 didn't expect to get the person in from London or from

17 anywhere to give the go-ahead. Yes, such challenges would

18 have been shown but I think one weakness I think the

19 platinum industry had been having was this scattered

20 industry based or mining house based negotiations.

21   MR RAMPHELE: In this report it also

22 gives an indication of just the difficulty of NUM having to

23 deal – sort of point out local or, local based collective

24 bargaining is a problem, centralised bargaining poses a

25 problem and there's also a serious problem on just how

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1 agreements are processed to a point where – in one sentence

2 it says, "We have agreements that we never really look

3 into." So a very sort of serious challenge for anyone

4 reading the report.

5   MR ZOKWANA: I think the agreement raises

6 those things but I think again you should understand that

7 the reason we have made progress within the Chamber of

8 Mines processes was the nature that if the processes are

9 centralised, your are able to co-ordinate. The issue, I

10 think the issue you are raising is the implementation of

11 some of the agreements. You deal with wages, there may be

12 other issues to deal maybe with housing that may be

13 referred to mining house committees. If you are dealing

14 with 11 mining houses differently, the challenge is more

15 but when you centralise you are able therefore to have your

16 teams looking at broader – for instance in the case of

17 gold, all gold mines would be under the same roof and these

18 commodities are sold at the same market, it's not a

19 question that one mine sells its own commodity in New York,

20 another one sells it in Shanghai. No, but you are able

21 then after analysing – because this, it's not about waking

22 up and saying you want 10%. You first do your own

23 research, having researched you are able therefore to say

24 this is what the companies can afford and argue like why,

25 but I think this whole, the problem of the following up on

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1 those areas referred to sub-committees - but when you

2 centralise the processes, you are able then to have a focus

3 because when you meet you are able to demand that report.

4 It is worse when you are dealing with decentralised

5 processes. And again it shows that you are not negotiating

6 with your friends, you are negotiating with employers whose

7 sole reason of doing mining is to mark mine profits and if

8 you don't remind them that you owe us, they will not come

9 back and say yes, we know that we owe you. Example, what

10 triggered the Impala strike, I'm sure we've been told, was

11 the fact that the company could see that it was losing its

12 best miners to its competitors. If you're negotiating in

13 the centralised bargaining process, they would have paid

14 the equal amount of money to all their employees because

15 they would be sharing the same platform. It is what,

16 therefore, different processes, I mean, create challenges.

17   CHAIRPERSON: I don't want to interrupt

18 unnecessarily and restrict your cross-examination unfairly

19 but I'd like to restrict the discussion of centralised

20 bargaining because, according to the report filed at the

21 annual general meeting of Lonmin recently in London, Lonmin

22 have now come out in favour of centralised bargaining.

23 They concede that there were all sorts of errors and

24 problems created by the previous system and they're now

25 supporting centralised bargaining. So I don't know that we

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1 need go into that in any more depth, unless there's some

2 point you particularly want to draw to our attention but I

3 think in view of the stance adopted by Lonmin at their

4 annual general meeting, a number of the problem areas which

5 they now in effect concede existed, are clearly on the

6 table and they concede they're problem areas, so I think we

7 can -

8   MR RAMPHELE: Chair, I will just wrap up

9 –

10   CHAIRPERSON: - refrain from going into

11 too much detail in that regard.

12   MR RAMPHELE: Yes. Let me just go to –

13   CHAIRPERSON: Mr Ramphele, if you haven't

14 had access yet, the evidence leaders have copies and I'm

15 sure that they can make copies of that report available to

16 you over the lunch adjournment. If there's something extra

17 you want to deal with after you've studied that and even if

18 you've finished cross-examining, I'll allow you to come

19 back and ask further questions after lunch. In other

20 words, I don't want to unduly restrict you –

21   MR RAMPHELE: I understand –

22   CHAIRPERSON: On the other hand, I do

23 want to use as much of the expensive time of this

24 Commission as profitably as I can.

25   MR RAMPHELE: Yes. Thank you, Chair.

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1 Thank you, Chair. So the issue that I would like to bring
2 is that are we agreed that these weaknesses that even the
3 Chairperson has indicated having addressed and Lonmin had
4 acceded to, could have been what actually made the rock
5 drillers not to have full confidence in the collective
6 bargaining process as they perceived at that time?
7   MR ZOKWANA: At the heart of this debate
8 – I think I had this debate with Mr Mpofu – is the weakness
9 in the grading system that the companies are still using.
10 The grading system does not look at the conditions under
11 which a particular task is being performed or as to how
12 heavy that task is. When they speak of group force, the
13 script for group force is informed by the current grading
14 system that recognises authority and if that, if we can
15 change the grading system I think NUM can be able to
16 present a compelling case that says the machine operators
17 and – but other operators, but RDOs in particular – would
18 deserve a better pay because if you look at the conditions
19 I've mentioned, I was telling Mr Mpofu during - that once
20 those men are staying – with experience, are staying in
21 room B52, an old guy from Lesotho who had seen the mine
22 before these BPEs were introduced, told me a story that
23 when he is home, he could not talk with his wife when it is
24 dark, for he has learned to read her lips to establish what
25 she is saying, for he has lost his sense of hearing. That

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1 is the damage to which, the extent to which machine
2 drillers are faced with. So I'm saying therefore that if,
3 among the things we are going to deal with, we can revisit
4 the issue of grading and make sure that people are paid
5 properly according to the exposure to danger, the hard –
6 how difficult the job is – I believe that the case of RDOs
7 and other workers can be changed. The employers have been
8 reluctant to agree to that, as I've shown. In 1998 we went
9 to Canada to study their own methods of grading. Without
10 that grading being changed, I think we will be able to come
11 now and again, say they are not paid properly. Yes, I
12 agree, currently what they are being paid does not take
13 into account the risk to their exposure on a daily basis,
14 the physical risk, health risk and many other risks that
15 they should be dealing with. I always wondered whether a
16 machine operator is able to appreciate his family when he
17 knocks off, given the hard work he is engaged in during the
18 day.
19   MR RAMPHELE: This is a –
20   CHAIRPERSON: Mr Zokwana, again I don't
21 want us to be involved in too much detail on a matter that
22 may have fallen away, to some extent, but I see from the
23 amended agreement which was concluded in September last
24 year –
25   MR ZOKWANA: Yes.

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1   CHAIRPERSON: - which is page 92 and
2 following of, I think it's exhibit XX2, what has now
3 happened is that effective from the 1st October 2012, Lonmin
4 have agreed – certainly as far as their Marikana operation
5 is concerned –
6   MR ZOKWANA: Yes.
7   CHAIRPERSON: It's page 93 – to promote
8 all rock drill operators from Paterson grade A4 –
9   MR ZOKWANA: Yes.
10   CHAIRPERSON: To B1.
11   MR ZOKWANA: Yes.
12   CHAIRPERSON: And in addition to that,
13 they pay them, they're going to pay them a drilling – or
14 now apparently, paying them a drilling allowance as well
15 and all surface and underground general workers are
16 promoted from Paterson grade A3 to A4 with effect from the
17 1st of October. Now, am I correct in thinking that the
18 point that you've been telling us about, namely that
19 insufficient attention was paid, insufficient consideration
20 given to the terrible problems that rock drill operators
21 have, the unpleasant working conditions, the danger, the
22 damage to their hearing and so on – those have, to some
23 extent at least, now been addressed by this promotion of
24 all rock drill operators from Paterson grade A4 to B1.
25 Would that be correct or is that an oversimplification?

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1   MR ZOKWANA: One can say, Chairperson,
2 yes, at last there's been that acknowledgement but whether
3 it means that B1 is the relevant grade should be informed
4 by a scientific work being done and the danger therefore is
5 that Impala did it after the strike, Lonmin did a strike
6 and what our NUM would say is where the industry here
7 especially agrees that there has to this scientific process
8 of changing the grading system. Maybe they deserve more
9 than this but I agree with you that that acknowledgement
10 was that these people deserve a better pay.
11   CHAIRPERSON: Would it be fair to say
12 that you are suggesting to us, this Commission, that we
13 should recommend that attention be given to revisiting the
14 grading system, seeing whether it's capable of improvement,
15 I think you told us –
16   MR ZOKWANA: Yes.
17 [12:17] CHAIRPERSON: - at one stage you people
18 got information from Canada and I understand the platinum
19 mines, I think, in Australia as well but – although they
20 may not be operating as far underground as ours are, which
21 may introduce further aspects, but effectively are you
22 suggesting to us that we should recommend that perhaps the
23 Chamber of Mines in conjunction with the relevant trade
24 unions should commission a scientific study to be done into
25 the whole question of the grading of these various posts,

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1　particularly in regard to the rock drill operators.

2　　　　MR ZOKWANA:　　　I agree with that,

3　Chairperson.

4　　　　CHAIRPERSON:　　　Alright.　If we're agreed

5　on that then perhaps you can move to your next point, Mr

6　Ramphele.

7　　　　MR RAMPHELE:　　　Actually, I want – I agree

8　with the Chair and you that that recommendation should be

9　made.　My only problem is that it came after 45 people died

10　and it means that either you were not addressing it at

11　collective bargaining or Lonmin was not listening to you at

12　collective bargaining because you knew that that is a

13　problem.

14　　　　MR ZOKWANA:　　　We can deal with the

15　industry, we've been raising this matter and we have been

16　engaging the industry on this matter.　It didn't have to

17　happen after so many lives are lost.　As I said before,

18　major such catastrophes waking up the country to realities,

19　to do that which is right.　I don't think that those 44

20　lives should have been lost before this has been seen but

21　I'm saying that the fact now that there is an agreement

22　towards that means that we'll not only be doing what is

23　good, we'll be making sure that in the future we are guided

24　by a scientific approach as to what people should be paid

25　per the job in question.

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1　　　　MR RAMPHELE:　　　And you would agree with me

2　that as a result of you hammering that collective

3　bargaining and the employer not listening to you, the rock

4　drillers lost confidence that you were able to represent

5　them adequately, not because of your fault because you have

6　been raising it, but because your collective bargaining

7　struggles were not bearing fruit.

8　　　　MR ZOKWANA:　　　I think that I said when I

9　opened my evidence that I would be happy if, at the end, it

10　may come out whether these drillers just woke up on a day

11　and believed that they were not earning that which was due

12　to them or whether there were other influences that made

13　them to believe that NUM is not a preferred agent.　And

14　I've made examples of what workers would do in the event

15　such that they believed that the local negotiating team did

16　not do what was right.　And I made the example that in the

17　same company, Lonmin, in 2005 the same situation happened.

18　The second thing is this, that it should not be seen that

19　these machine drillers were not part of the people who

20　approved the previous agreement.　In NUM we negotiate, we

21　feed back before we sign an agreement.　It is only signed

22　when everybody says, or more, you must hold your fire, it

23　is time to sign.　And I'm still of the view that when

24　everything is done, you may be able to find, where these

25　people were having genuine concerns which we have raised,

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1　other processes were happening as well.　In my view the

2　reason they are so angry is not purely that the NUM could

3　not have agreed with – but the influences of others who

4　were saying this union is colluding with the employer, this

5　union has killed two of you, this union is doing this and

6　this.　Remember, I remember one journalist asking if I do

7　have shares in Lonmin, meaning that these were things, that

8　NUM is in bed with the company.　What would – what such

9　statements would have made in view of these drillers?　I

10　agree that if drillers are angry about these wages, there

11　could have been a manner in which they handle it but the

12　manner of violence, murdering others, should not be

13　justified under any circumstances.

14　　　　CHAIRPERSON:　　　I think we've got those

15　points, Mr Ramphele, perhaps you can – on the assumption

16　that we understand the points that you've been making, you

17　might like to move on to another point.

18　　　　MR RAMPHELE:　　　Did you get my point,

19　Chair?　The point I'm making is that the witness, president

20　of NUM, says that they considered the grading system and

21　other things, very important –

22　　　　CHAIRPERSON:　　　Yes, we heard –

23　　　　MR RAMPHELE:　　　- and they were raised –

24　　　　CHAIRPERSON:　　　We heard him say that –

25　　　　MR RAMPHELE:　　　And they were raised –

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1　　　　CHAIRPERSON:　　　We heard him say that, we

2　heard him say it was raised with the employer.　We heard

3　him say that the employer – we heard a long time ago, the

4　employer originally wouldn't listen.　What he then says is

5　they went back to their members and explained how far

6　they'd got with the negotiations and then got a mandate

7　which, on the strength of which they signed the agreement.

8　I mean all that material is before us, so I don't know that

9　it has to be gone over and over again.　We've also now got

10　the point that the employer has now, to some extent,

11　changed its stance on that point.　It made a concession, at

12　least as far as Marikana is concerned, and that can then

13　form the basis for further recommendations in our report

14　later on but I think for the purposes of the present phase

15　of the inquiry you've probably got enough material on the

16　table to enable you to move on to your next point.

17　　　　MR RAMPHELE:　　　Chair, only the witness,

18　Chair, if with your permission, the witness can admit then

19　that - because he said that he believed that the issue

20　raised by the rock drillers was illegitimate.　Now it

21　cannot be illegitimate after an agreement –

22　　　　CHAIRPERSON:　　　No, no –

23　　　　MR RAMPHELE:　　　Either it's illegitimate or

24　it's not.

25　　　　CHAIRPERSON:　　　No, it could be

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1 illegitimate for two years in the sense that you can't
2 strike about it but it doesn't mean that in two years' time
3 you can't raise the point again and if the circumstances
4 change because of what's happened at Impala, you're able –
5 you may not be able to strike but you can go to the
6 employer and say, look here, the whole situation has
7 changed in the platinum industry and it's appropriate for
8 you to agree to amend the agreement. He said all that,
9 over and over again. So as I've said before, the time of
10 this Commission is precious. It's very – every day is
11 expensive and if we have points being raised again and
12 again and again, we're not gaining much by further
13 repetition. I think the point you've made is clear to us.
14 Again, the function of cross-examination here isn't like
15 police interrogation, designed to extract an admission from
16 the witness at the end. All you need do is put your facts
17 on the table, if he doesn't admit as much as you want him
18 to admit, you can argue at the end of the day that he
19 should have admitted more but if we're going to sit here
20 while you go on and on and on, wearing him down, eventually
21 trying to get an admission out of him, then we'll have to
22 send you the bill for the waste of time.
23   MR RAMPHELE: Then you have to
24 [inaudible] – but thank you, Chair. I understand your
25 point, Chair, even though – let me just, one or two issues

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1 because Chair, the point I'm trying to make is that it is
2 the trust in the collective bargaining that will either
3 ensure that you have control of your members or you don't
4 have effective control of your members –
5   CHAIRPERSON: I think you've made that
6 point earlier today as well.
7   MR RAMPHELE: Yes.
8   CHAIRPERSON: And the Commission must be
9 credited with some intelligence in understanding the point
10 you're making.
11   MR RAMPHELE: Mr President, because I
12 want us to agree on the report, that the report I actually
13 very, could one say damning, on the ability of NUM in many
14 respects, especially around the issue of how employees are
15 protected. And I just want to – the view of the secretary
16 general on page 110, he says that – and I paraphrase – that
17 NUM should be a democratic organisation and what should
18 make it a democratic organisation should be that
19 information should filter down to ordinary members of the
20 NUM. And then he goes on to say it seems as though if it
21 doesn't filter. He asks the question, are we not equipping
22 capital to mislead – in other words [inaudible] members,
23 because we represent them poorly or not at all? How – he
24 goes on to say, "How strategic are we in assisting members
25 to understand their role and conditions of employment?" Do

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1 you agree that this type of view by the secretary general
2 is actually a very challenging view of the organisation?
3   MR ZOKWANA: Thanks. My understanding of
4 the context in which this view is presented, because the
5 danger of any organisation is to become complacent,
6 believing that all is going very well and refuse to admit.
7 It doesn't matter whether, how minute such weaknesses may
8 be, you need to raise them and I've been to many
9 organisations, any report that does not look at weaknesses
10 would not be a report because it seeks to glorify.
11 Remember, any comrade is a [inaudible] for those new shop
12 stewards coming on board. He was not admitting that NUM
13 has no systems, NUM is full of weaknesses. What he was
14 admitting was the fact that we need to ensure that any
15 decisions reached, reaches members and I can assure you
16 when it comes to bargaining, as far as I know, no agreement
17 can be signed by any shop steward or leader of a
18 negotiating team without a mandate by members to say 10%,
19 yes, we have got these issues but nonetheless, sign. That
20 report was not giving a view that says NUM is failing.
21 What it was doing, it was outlining flashlights or areas
22 that NUM has to pay more attention on.
23   MR RAMPHELE: Can I suggest that that is
24 actually incongruent to what he said earlier when, under
25 information management he says, "This means that it becomes

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1 increasingly difficult to know what the full agreement
2 looks like," referring to collective agreement, that you
3 have a situation where the organisation is actually
4 overwhelmed.
5   MR ZOKWANA: That is one area we have
6 dealt with together this morning where I said the challenge
7 of a staggered process of going to employer A, employer B,
8 employer C with different negotiators will present that
9 scenario but once you negotiate centrally you are sure – by
10 the way, in the NUM when you negotiate each and every
11 participating mine or company will have a rep, so that the
12 same day after negotiations mass meetings are held. What
13 becomes difficult then is when first processes are
14 staggered – this month you negotiate with Lonmin, that
15 month you go to Northam, that month you go to Anglo
16 Platinum, that month you go to Plant B and they're all
17 mining the same commodity. The advantage of a centralised
18 one is that the agreement will be one you would be able to
19 read from the same [inaudible]. The chances of explaining
20 it differently are very high. By the way, I can tell you
21 this that agreements are very tricky processes. The reason
22 you must get a mandate is to ensure that at least members
23 are clear of what the agreement is. Last week I read an
24 SMS from Chief Pathekhile Holomisa to Lonmin, questioning
25 the essence of the agreement because media chose to

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1 interpret it to be 22% across the board, whereas 22% was
2 the cost to the company and workers in Lonmin as we sit
3 believe that they have been underpaid by Lonmin. So it is
4 the essence that when you negotiate, you make sure that
5 workers understand exactly what is it that they're going to
6 get and mistakes of doing that is that you may get a
7 clapping from the koppie, being held as heroes [inaudible],
8 and yet workers don't understand what is that agreement
9 about which is key, those who are negotiating at
10 negotiations so that every worker must know what would be
11 the meaning of this agreement. By the way, we will split
12 it into groups, that group 4 will get R20, group 3 will get
13 R20 – nobody must ask another person. The danger it's
14 raising is that under this current situation in [inaudible]
15 bargaining you have spread your forces. The chances of
16 misinterpretation may happen but I can assure you that in
17 NUM when it comes to bargaining, preparing thereto, even
18 signing of agreements, we do our best to make sure that
19 workers do not find an agreement in the lockers without
20 [indistinct] stated in those. Every move made by the
21 employer gets [indistinct] workers – and even go back to
22 the employer and [indistinct] that this is a fallback
23 position, this is a strike breaker. You don't do that
24 without making sure that your forces down will take that.
25 [12:37] CHAIRPERSON: Now we're back at the

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1 anomalies of centralised bargaining –
2   MR RAMPHELE: Ja.
3   CHAIRPERSON: - which I thought we're
4 agreed that we were moving on.
5   MR RAMPHELE: Yes. I will inform you
6 that one of the submissions that we will make to the
7 Commission is that the conduct of the rock drillers was
8 possibly created by the weaknesses in the collective
9 bargaining by liaison with ordinary members as it appears
10 in your report, the knowledge they had about what is
11 happening and that as a union you could have done more to
12 ensure that these two are in place in order that you must
13 have effective control.
14   MR ZOKWANA: Thanks. I'm sure in doing
15 that, sir, you will not be condoning violence as a weapon
16 to be used by anybody when he demands something but let me
17 respond by saying this, that if this was caused by
18 witnesses in the bargaining process, I'm sure you're not
19 going to rely on the document you are reading because it's
20 not a prescription only for Lonmin, it's a broader
21 overview. The second thing is – and I'm sure NUM would put
22 – I'm sure you're still consulting, let me wait for you.
23   MR RAMPHELE: No, no, I'm just –
24   MR ZOKWANA: So I'm sure, counsel, you'll
25 find we'll be able to prove to you this, that any agreement

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1 you sign with the employers has got full confidence of
2 full, of members. Remember, counsellor, life is not
3 static. Since Wednesday the cost of living has been, is
4 worse than it was a week before with the 40 cents increase
5 in petrol. You can basically – if you can be able to
6 verify whether there were no changes in the lives and also
7 the conditions of life for those drillers. One other
8 element I'm sure this Commission will deal with is the area
9 of living conditions because I won't be here. I can assure
10 you, sir, one burden that migrant workers are having is a
11 situation of being divorced from their families and staying
12 in other areas away from their families and that creates a
13 major burden on them as they must take care of the two
14 environments whenever there are challenges or increases –
15 if for instance there's 40 cents increase in petrol, it
16 doesn't hit a mineworker only where he is, it hits him
17 because in his family in his area where he comes from his
18 wife will pay more to go to town, the cost of living will
19 be increased. It will increase even where he's staying.
20 So I'm saying this that it cannot be easy to say the only
21 causal for this was because of failures of NUM and I can
22 quote to you to say you may find that the other causals may
23 have been some influences by others that could have made
24 the drillers to believe that the better way of getting what
25 they would have got was to discard NUM, but I'm sure that

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1 will come – that it was not a simple situation whereby
2 workers would say we don't want NUM, without anybody to
3 have said if you don't want NUM we are the preferred
4 candidates. That would be explained by the way leaders
5 were receptive in the koppie, the way others could go to
6 the koppie, all those things must inform your decision but
7 let me [inaudible] senior counsel have a right to present
8 your concluding views and I'm sure our own counsel would be
9 able, or would be able to show that he is not limited also
10 to bring forward.
11   MR RAMPHELE: I agree with what you have
12 been saying actually, I'm –
13   MR MAHLANGU: Chairperson -
14   CHAIRPERSON: Before you can carry on, I
15 think Mr Mahlangu wants to either say something or change
16 positions with the other interpreter who's in position.
17   MR MAHLANGU: That's correct.
18   CHAIRPERSON: You'd better start again.
19   MR RAMPHELE: I agree with your
20 sentiments around the issue of the cost of living.
21 Actually how I see it is that it's not a socio-economic
22 issue, it's a physical issue because hunger is a physical
23 issue. If a family without food it's actually physical, so
24 I agree completely with what you're saying but that is the
25 reason why we have to go into what would make them have

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1　hope in NUM representing them, you see. Let me take on the
2　last issue of your view as NUM of collective bargaining and
3　that is the issue that NUM actually attained, of having a
4　majoritarian system where you have to be a majority to have
5　a voice, as an issue, and I want to – you will at a later
6　stage go to your secretarial report but on page 145,
7　talking about Eskom, NUM refers to minority unions sort of
8　as Mickey mouse unions and then I couple that with the word
9　that has been used quite extensively of "reclamation,"
10　reclaiming our position as the majority union. I want to
11　find out from you –
12　　　　CHAIRPERSON:　　　　Sorry to interrupt you, is
13　this relevant on phase 1? I can understand in phase 2 the
14　kind of issue that you talk about may come up.
15　　　　MR RAMPHELE:　　　　Yes.
16　　　　CHAIRPERSON:　　　　And in fact one of the
17　things that we may consider doing is referring the whole
18　question of this majoritarian principle to a body like
19　Nedlac to reconsider, but I'm not sure that it's relevant
20　at this stage
21　　　　MR RAMPHELE:　　　　I just want to ask one
22　question about what could have angered or – you know
23　because if you are a minority –
24　　　　CHAIRPERSON:　　　　Ask your – you don't have
25　to address me further, ask your one question, thank you, as

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1　shortly and sharply as you can.
2　　　　MR RAMPHELE:　　　　Thank you, Chair. The
3　issue that I want to find out is whether this terminology
4　and the fact that workers knew that to have a voice you
5　must be a majority did not actually bring about the
6　frustration and the anger, to say if we are not in the
7　majority we don't have a voice in this industry.
8　　　　MR ZOKWANA:　　　　Thanks Chairperson. NUM is
9　an affiliate of COSATU, it believes on the fact that in
10　COSATU in every industry there will be one union, but that
11　understanding does not delimit the right of any formation
12　to be formed, as long as it's not a COSATU formation. I
13　think that anybody knows very well that size counts when it
14　comes to bargaining. The employer should see that when you
15　demand 10% and he does not agree and you go through lawful
16　processes, you will carry the members to go to strike. It
17　is the [inaudible] views in building that majoritarian
18　status of that particular union, when – because members
19　don't go to NUM congress to know how the [inaudible] NUM
20　refer to other unions. When you go to a plant to organise
21　members you will not say join NUM, leave so-and-so. You
22　would say join NUM because we improve your conditions of
23　service, we'll defend you when you are dismissed, we make
24　sure that we build unity among yourselves and we'll sustain
25　your dignity in the organisation. [Inaudible] once NUM

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1　goes and says join us because we're not like so-and-so,
2　that is a negative form of recruiting and NUM does not use
3　that. When we [inaudible] that says reclaim a plant, we
4　are not saying reclaim a plant and leave so-and-so. We are
5　saying reclaim a plant by joining NUM. It is a normal form
6　in any operation that when you engage in that competition,
7　it is not a - you don't bad mouth those you are competing
8　with. You say, I even said when you operate in that way
9　you behave like people who sell on stands. If I'm selling
10　oranges I don't blame bananas. I explain why they must eat
11　oranges because they've got vitamin C, vitamin C will make
12　sure that in winter when it's cold I will be having a
13　strong immune system, not only sick from flu. I
14　[inaudible] bananas. So if NUM goes and says join NUM
15　because we are strong and if we are strong, we belong to
16　COSATU, 1.2 million members we belong to industry all – we
17　are known globally. It's what we say at NUM. We don't say
18　[inaudible], it's not our business to do that.
19　　　　MR RAMPHELE:　　　　It is going to be our
20　submission to the Commission that this Marikana issue that
21　is so distressing was because a rock driller, as you have
22　clearly explained, with very specific circumstances and
23　conditions, was subjected to a system that did not give
24　them a voice because they happened to be less than what is
25　supposed to be a majority union with a voice. So that

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1　frustration gave them no other but the outlet of doing
2　things outside of the collective bargaining system. That
3　is the submission that we are going to make to the
4　Commission.
5　　　　CHAIRPERSON:　　　　I take it the submission is
6　not going to be that that was the sole cause of what
7　happened. At the highest that you'll put the submission, I
8　take it, will be that it was a contributory cause, is that
9　correct?
10　　　　MR RAMPHELE:　　　　Yes, contributing –
11　　　　CHAIRPERSON:　　　　I think that's important
12　because –
13　　　　MR RAMPHELE:　　　　Yes.
14　　　　CHAIRPERSON:　　　　- the witness has dealt
15　with that aspect before.
16　　　　MR RAMPHELE:　　　　Yes.
17　　　　CHAIRPERSON:　　　　But do you understand the
18　point being made, Mr Zokwana?
19　　　　MR ZOKWANA:　　　　I think you are welcome to
20　make that submission but I can assure you now, that
21　submission will not be sound for the following reasons.
22　Rock drillers, as we speak, are NUM members. They are not
23　precluded from being NUM members. They are still NUM
24　members. Unless – and rock drillers don't form a trade
25　union, they're a group of workers who belong to a union.

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1 It could not therefore be them saying we, as drillers, we
2 are a minority. NUM is not a craft union that is based on
3 that which operates, which – I mean RDOs as organised – I
4 understand if RDOs were forming a union. RDOs are part of
5 other workers. That scenario can only arise in a craft
6 union basis where workers are organised on the job they do.
7 We have got drillers in NUM, we still have got drillers in
8 Lonmin. We had them before the strike. The answer to the
9 question is whether there was a union that believed that
10 its members in Lonmin were disadvantaged – not drillers.
11 [12:57] CHAIRPERSON: Mr Ramphele, it sounds as
12 if you're not going to get the witness to agree -
13   MR RAMPHELE: Yes.
14   CHAIRPERSON: - with your attack on the –
15   MR RAMPHELE: I am –
16   CHAIRPERSON: It may well be that you can
17 come back to it at some later stage –
18   MR RAMPHELE: Yes.
19   CHAIRPERSON: - with other witnesses,
20 possibly witnesses of your own, but I don't think there's
21 any –
22   MR RAMPHELE: No. It's just that I said
23 it's a submission I will make.
24   CHAIRPERSON: Yes.
25   MR RAMPHELE: And I'm not going to argue

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1 with the witness.
2   CHAIRPERSON: Do you have any more
3 questions?
4   MR RAMPHELE: Yes, yes.
5   CHAIRPERSON: Are they – will they be
6 capable of being dealt with before the adjournment in a few
7 minutes' time?
8   MR RAMPHELE: No, no, I'll try and move
9 into new areas.
10   CHAIRPERSON: No, I understand. I say
11 will those new areas take you three minutes or longer?
12   MR RAMPHELE: Chairperson, you see there
13 are certain things that the witness –
14   CHAIRPERSON: I want to take the lunch
15 adjournment shortly.
16   MR RAMPHELE: Oh.
17   CHAIRPERSON: The question is do I take
18 it now and you come back after lunch or is there a shot
19 little point you can make quickly before we take the lunch
20 adjournment [inaudible].
21   MR RAMPHELE: - finish with the issue of
22 the collective bargaining and how NUM is doing in the
23 collective bargaining. This is one of the submissions I
24 will make on the issue of collective bargaining, which I
25 want to finalise now, that even though you say that you've

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1 done everything you could in order to avoid Marikana, if
2 one has to benchmark you with unions internationally, for
3 instance do you sit on the board of directors of companies
4 like Lonmin where you can make input because – and the
5 reason why I'm asking is because for instance in Europe
6 when they describe corporate governance, they look at the
7 shareholder, they look at the union and the interests of
8 the workers. So is it something that is happening here?
9   MR ZOKWANA: In South Africa we don't
10 have trade unionists sitting in boards of companies for
11 which they are bargaining. You would find that mostly in
12 Germany in core determination where workers sit in such
13 boards but in our own environment it does not happen, but
14 that would not limit you. I said before we enter with
15 negotiations, research is done. There are many research
16 institutions between NUM capacity, that will look at all
17 the changes in all the prices of commodities, look at
18 inflation, look at all these things and come to say this is
19 the area we will believe – and we have shown here that NUM
20 in the last three years have been able to reach agreement
21 far above inflation. By the way, when we have claimed we
22 say nothing less than two digits, it's no good for
23 mineworkers. The Reserve Bank was not happy with us, that
24 that demand will be inflationary. The point I'm putting is
25 that you don't need to sit in those boards. The other

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1 danger, therefore, in a country like ours – not Germany –
2 is that you may find that we sit in a board and we are
3 convinced in that situation not to improve the conditions
4 of workers. The conditions of - Germany has got a social
5 background from the Second World War and rebuilding Germany
6 and the conditions of workers in Germany are far above our
7 own conditions. I wonder if such would survive here at
8 home.
9   MR RAMPHELE: Well, the last question
10 before lunch would be, if indeed your answer is correct,
11 then what I've read about you having a lot of influence in
12 the corridors of parliament and being able to change
13 legislation, which I think is a bigger forum than the board
14 of directors, then I have serious questions about that.
15   CHAIRPERSON: You may have questions
16 about it but what's the question you're asking now?
17   MR RAMPHELE: The question is, if you say
18 NUM is not as advanced as a German trade union to be able
19 to sit in the board of directors and make a meaningful
20 input in protection of the rights of workers, but at the
21 same time you say NUM is one union that has got most
22 influence in the corridors of parliament and they make sure
23 that legislation in parliament is in favour of workers,
24 then the two statements – the one you are making and the
25 influence you have in parliament – they make me wonder

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1 whether you consider parliament less important than a
2 meeting of a board of directors.
3 　　　CHAIRPERSON:　　　　- the question but I take
4 it what he means is, do you agree with the sentiments he's
5 expressed?
6 　　　MR ZOKWANA:　　　　No, I don't agree,
7 Chairperson, because parliament makes laws. When you
8 negotiate with companies it's outside parliament, you
9 negotiate with employers and there's nowhere government can
10 tell employers that you will give workers 20%. It is an
11 area in which the union uses its strengths through
12 organising and I repeat, I said that there's historical
13 background to the situation in Germany of co-determination.
14 　　　CHAIRPERSON:　　　　Alright.
15 　　　MR ZOKWANA:　　　　And even – here at home we
16 can agree that because of unemployment, because of job
17 losses, because of the [inaudible] that we lay down the
18 rules such that unions don't get used as conduits of
19 business and government.
20 　　　CHAIRPERSON:　　　　On that note we'll take the
21 lunch adjournment.
22 　　　MR RAMPHELE:　　　　Chairperson –
23 　　　CHAIRPERSON:　　　　You've just put the last
24 question before lunch –
25 　　　MR RAMPHELE:　　　　- can I finish off?

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1 　　　CHAIRPERSON:　　　　- question before lunch.
2 　　　MR RAMPHELE:　　　　The answer actually begs
3 just – because I want to finish with this before lunch.
4 　　　CHAIRPERSON:　　　　How long are you doing to
5 be?
6 　　　MR RAMPHELE:　　　　Just one question.
7 　　　CHAIRPERSON:　　　　Alright.
8 　　　MR RAMPHELE:　　　　Unless the answer takes
9 another –
10 　　　CHAIRPERSON:　　　　I'll allow you to ask one
11 question.
12 　　　MR RAMPHELE:　　　　Last question. It is an
13 issue that we will submit that you have to consider
14 seriously because it's not because Germany is advanced,
15 it's because they deal with multinationals, MMCs, as you do
16 and you have trans-national agreements which impact
17 directly on your workers and that is why they have to know
18 what the shareholders' interests are in the MMCs and
19 therefore the participation of unions in the board of
20 directors is not, I mean even as observers it would give
21 you more information that would enable you to assist the
22 workers and not just research outside of where decisions
23 are actually taken. And a classical example is 14 000 – a
24 company moving from South Africa elsewhere, something that
25 has been discussed at the board of directors and you get to

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1 know it when it's actually at the point of implementation.
2 　　　MR ZOKWANA:　　　　In my short stint as
3 serving, not in a board of a company, I was informed that
4 one of the roles that governs boards is that as a board
5 member you have got the interests of the shareholder and
6 members are the stakeholders, not shareholders. The danger
7 therefore is that you may be called upon to agree with the
8 company retrenching because in the circumstances
9 retrenching is the best order, so I don't think there is
10 one answer for what you are raising and I repeat, currently
11 in the European Union there's also a section of labour
12 sitting to look at laws. We don't have that in South
13 Africa, we don't have that in Africa. I don't think such
14 can be planted into our, in our environment. We need a
15 longer discussion to engage in that.
16 　　　CHAIRPERSON:　　　　We will now take the lunch
17 adjournment.
18 　　　[COMMISSION ADJOURNS　　　COMMISSION RESUMES]
19 [14:06] CHAIRPERSON:　　　　The Commission resumes. Mr
20 Zokwana, you're still under oath.
21 　　　SENZENI ZOKWANA (CONTD):　　　Yes.
22 　　　CHAIRPERSON:　　　　You're still questioning.
23 　　　CROSS-EXAMINATION BY MR RAMPHELE (CONTD):
24 Thank you, Chair. Mr Zokwana, I think we're done with the
25 issue of collective bargaining. Now let's go to the

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1 incident, coming from the 11th. Let me ask you, your main
2 concern when you went to Lonmin and when you spoke to the
3 police was the protection of your workers, your members, is
4 that correct?
5 　　　MR ZOKWANA:　　　　On the 12th it was the safety
6 of mine employees.
7 　　　MR RAMPHELE:　　　　And that is why you
8 proposed that there has to be more forces that come to
9 protect workers that would like to come to work.
10 　　　MR ZOKWANA:　　　　It was to protect workers on
11 the mine because not only people were being killed because
12 they were at work, others were being killed as we became
13 aware that there may be a list of leaders of NUM to be
14 killed.
15 　　　MR RAMPHELE:　　　　The one thing that I seem
16 to miss in this whole thing is the happenings of the 16th
17 that is, you know, the ultimate horrible incident of the
18 16th. Was this on the way to work of some of the workers or
19 how would that incident protect people that were coming to
20 work?
21 　　　MR ZOKWANA:　　　　As I have shown, that on the
22 15th we had a radio interview with the president of AMCU.
23 By that moment 10 lives had been lost and the public
24 callers as well as the host of the programme, three of
25 those are the people you are representing now, counsellor –

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1 and the issue was for us to go to the koppie and address
2 people so that they desist from the practices that were
3 taking place. It was to talk to them to agree to disarm
4 and allow processes of negotiations between the employer
5 and the unions to take place. My answer shortly is that it
6 was not about people going to work but people who were on
7 the koppie, armed.
8   MR RAMPHELE: Yes but the question that
9 I'm asking is, so in relation to people that could be
10 protected to go to work, the koppie was not really
11 relevant. If the intention was to protect people that were
12 going to work, the koppie could just be sort of ostracised
13 and these people could be protected and go to work – the
14 question that I'm asking, and that is if the koppie was not
15 on their way to work, that is if it had nothing to do with
16 ordinary NUM non-organised members who wanted to just go
17 and conduct business as workers.
18   MR ZOKWANA: Sir, if you have read the
19 statement of Akanyang Motlogeloa who was with two of your,
20 of the family clients, details what happened on that day.
21 They were deployed by the company to prevent people from
22 the koppie going to one of the operations to remove working
23 people. Therefore – and I'm not an expert in such issues
24 of protection but what I know is that the reason there was
25 deployment of people to prevent people from the koppie from

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1 going to working places or people going to work and harm
2 them.
3   MR RAMPHELE: In that statement it shows
4 that where people were on the koppie they were able to
5 travel to areas where people were working, as the incident
6 of that day, page 84 of that statement, will show you what
7 really happened.
8   MR ZOKWANA: So what you're saying is
9 that people that were at the koppie were moving into the
10 workplace to stop people from going to work and going back
11 to the koppie, is that what you're saying? One of the
12 reasons these people were deployed was to prevent people
13 from the koppie from going to the hostel, NUM offices in
14 some such areas. On the day in – they are marching on the
15 koppie to the NUM office and they instructed them to
16 prevent them to bus their vehicle since the two cars were
17 attacked and the two people were killed. So I'm saying is,
18 that there may have been other activities that the people
19 on the koppie were having. So your question to say if the
20 people in the koppie were prevented from going down, going
21 to work, I don't think that that is a right scenario as
22 shown by that statement.
23   MR RAMPHELE: Well, let me put it to you
24 that in my understanding and evidence that has been led
25 here, the koppie is actually far from the workplace and if

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1 the koppie could have been cordoned off, people, ordinary
2 workers could actually just go to work whilst that was kept
3 on guard.
4   MR TIP SC: Mr Chair –
5   CHAIRPERSON: This question as far as
6 this witness is concerned, I can understand you may want to
7 ask the other witnesses –
8   MR RAMPHELE: As it pleases –
9   CHAIRPERSON: I don't think that Mr
10 Zokwana is a position to give a meaningful answer to it.
11   MR RAMPHELE: Okay.
12   MR TIP SC: Mr Chair, I was going to make
13 the same objection. It's a policing question, it's got
14 nothing to do with Mr Zokwana.
15   CHAIRPERSON: Yes, I think you'll
16 withdraw the question, won't you?
17   MR RAMPHELE: Ja.
18   CHAIRPERSON: Alright.
19   MR RAMPHELE: Mr President, as the
20 president of the NUM I would like you to give your opinion
21 on this proposal that I'm putting, that it was possible to
22 actually cordon them off at the koppie and have normal work
23 activities going. Your opinion, if you agree you agree, if
24 you don't, you don't.
25   MR TIP SC: Mr Chair, I renew the

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1 objection. It's an irrelevant opinion, with respect. It
2 doesn't help at all to say I'm asking you as the president
3 of NUM whether that could be done. It's a policing
4 decision. Mr Zokwana has said that he called for
5 reinforcements and approached the Minister on the 12th
6 because of what he had seen. There's nothing to suggest
7 that he was involved in any discussions around the role of
8 the koppie and how police forces should be deployed.
9   CHAIRPERSON: What do you say about that?
10   MR RAMPHELE: The relevance to Mr Zokwana
11 is that his concern is protection of his workers going to
12 work and that was, as far as I understand –
13   CHAIRPERSON: The fact –
14   MR RAMPHELE: Can I finish, Chairperson?
15   CHAIRPERSON: Yes, of course.
16   MR RAMPHELE: As far as I understand,
17 that was his main concern and the question is being asked
18 to say it that were to, that could have happened, would his
19 members have been safer or would there have been a problem?
20   CHAIRPERSON: Now, is he in any position
21 to answer that?
22   MR RAMPHELE: In relation to –
23   CHAIRPERSON: He wasn't present at the
24 scene. He can only go on what other people have told him
25 happened.

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1   MR RAMPHELE: Yes.
2   CHAIRPERSON: Aren't we, as the
3   commissioners, in exactly the same position that he would
4   be in to decide that question because the information that
5   he has will obviously include all the information we've got
6   and we will have far more other information he hasn't got.
7   So I don't see how he can help us.
8   MR RAMPHELE: Well, Chairperson, and this
9   is my response to you and if you accept it, it's okay, if
10   you don't it's fine, but I'm saying as a leader in the
11   union his concern – and that is the concern that he
12   actually raised with the employer, that he raised with the
13   police – was the safety of the clients that I represent,
14   amongst others.
15   CHAIRPERSON: Yes.
16   MR RAMPHELE: And the question is
17   directed at what would make him satisfied that that safety
18   is actually being taken care of.
19   CHAIRPERSON: Yes but –
20   MR RAMPHELE: And I'm saying if, if I
21   were Mabebe and I was not going to go via the koppie and I
22   would be protected from where I would be coming from to
23   work and back, with the koppie cordoned off, would he be
24   satisfied about my safety.
25   CHAIRPERSON: I'm not sure that his

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1   degree of satisfaction is in any way relevant to answering
2   any of the questions the President has posed to us in terms
3   of the terms of reference. So I disallow the question.
4   Please proceed.
5   MR RAMPHELE: Thank you, Chairperson.
6   Now let's go to the issue of whether members were actually
7   directly involved on the 11th. The Commission has seen
8   video clips of, or taken by – I think it's security
9   officers of Lonmin – and I think it's three days before the
10   11th and in all of them they were recording incidents of
11   workers going to work, either getting into a shaft, and
12   almost all of them said – and it's five o'clock, this
13   happened and the situation is peaceful. What I'm trying to
14   get at is, as at that time, all of which are before the
15   11th, they record that the situation was peaceful.
16   CHAIRPERSON: What's the question?
17   MR RAMPHELE: Do you think that the
18   security officers who recorded had any reason not to
19   present their observations? Would you agree that they were
20   presenting the observation as they saw that –
21   CHAIRPERSON: What is the relevance of
22   his opinion on that question?
23   MR RAMPHELE: It is –
24   CHAIRPERSON: I can understand it's a
25   point you'd want to argue at the end.

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1   MR RAMPHELE: Yes.
2   CHAIRPERSON: It may well be an issue in
3   respect of which you would wish us to make a finding, but
4   will we be assisted one way or the other by his opinion on
5   the matter?
6   MR RAMPHELE: Yes.
7   CHAIRPERSON: How?
8   MR RAMPHELE: Because if indeed the
9   record by Lonmin was that there were no problems before the
10   11th, then that after the 11th the situation changed, then
11   as a leader of the union at least if they were one, they
12   were not involved in the incident of the 11th, then as a
13   leader of the union he's got to at least say my union was
14   involved at this point when the situation changed.
15   CHAIRPERSON: I still don't understand
16   the relevance of the answer that he gives. The mere fact
17   that he's the president of NUM, does that give his opinion
18   on the point any extra of the force in this context that
19   we're busy with?
20   MR RAMPHELE: It is very relevant. It is
21   actually – because remember, Chairperson, that we have
22   cross-examined witnesses and time and time again the issue
23   of how the situation changed after the 11th is actually the
24   crux.
25   CHAIRPERSON: Mm.

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1   MR RAMPHELE: And either the union has to
2   admit that what happened on the 12th they contributed to and
3   that that was the turning point, or the union can say that
4   no, this situation has been volatile all along, as
5   sometimes the evidence wants to suggest.
6   CHAIRPERSON: The difficulty I've got is,
7   this witness wasn't on the scene except for apart from what
8   happened later on – except he arrived on the afternoon of
9   the 12th at round about one o'clock, as I understand,
10   received reports and then went and spoke to the
11   representatives of Lonmin but he hasn't got any knowledge
12   of his own, dealing with the other matter that you referred
13   to. So how can anything he says on the point that you, the
14   subject of your question, assist us to make any findings
15   either in your favour or against you on the points you wish
16   to argue?
17   MR RAMPHELE: Yes. Chairperson, if the
18   terms of reference were saying Mr Zokwana, as president,
19   should or shouldn't have done one or two things, then I
20   would probably agree with you. The terms of reference
21   refer to a union, he is a leader of that union. The union
22   is supposed to have given a report on their activity on the
23   11th, or otherwise. And the response that this terms of
24   reference requires is not a personal response, it is an
25   organisational response.

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1   CHAIRPERSON: The union – he's here as a
2   witness, he's not here as a spokesman for the union, able
3   to make statements binding the union. At the end of the
4   matter, of the first phase, there'll be argument from the
5   various parties and NUM's counsel will be able to make
6   admissions or not, as the case may be, on behalf of NUM, in
7   respect of the issues you wish to raise but I'm not – it's
8   not at all clear to me how any statement he makes in his
9   capacity as a witness, not – he's not NUM, he's just Mr
10   Zokwana who happens to be president of NUM who has
11   knowledge about certain things that happened over the
12   relevant period. I'm not sure that anything he would say
13   with regards to the question you've asked will assist us.
14   MR RAMPHELE: He has said a lot of things
15   about things that he actually does not have personal
16   knowledge of. He has been –
17   [14:26] CHAIRPERSON: That is true and I allowed
18   many of those questions to be asked and answers to be
19   given, in the absence of objection, I don't think it
20   appropriate for me to appear to be more pro-NUM than NUM's
21   own counsel was, so that was why I allowed these questions
22   to be asked and inasmuch as he's a trade unionist and able
23   to speak with experience and understanding in many of these
24   matters, I allowed them but I'm not – I think that we've
25   gone even beyond the extended boundaries, which I allowed

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1   up to now.
2   MR RAMPHELE: Chairperson, I do
3   understand where the Chairperson is coming from, it's just
4   that I think the issue of the turning point is actually
5   very important for the Chairperson to either say – there
6   was cross-examination by, say, Mr Mpofu on what might or
7   might not have happened on the 11th and that was canvassed
8   quite extensively. And the Commission, the Commission is
9   going to hold a view on that, dependent on what he said in
10   relation to the 11th. Now, it would be –
11   CHAIRPERSON: [Inaudible] answer he gave,
12   is there a specific answer that he gave in answer to the
13   cross-examination to which you've referred which you wish
14   to discuss with him and which you wish to challenge because
15   if there's – if what you're asking relates to specific
16   answers he gave that you ought to challenge, I'll obviously
17   allow you to do that, subject to Mr Tip who turned his
18   microphone on a moment ago. But anyway, if you assure me
19   that you're only going to ask him about things he said that
20   you ought to challenge, subject to what Mr Tip says, I'll
21   allow you to ask the question but let's hear what Mr Tip
22   has to say.
23   MR TIP SC: Thank you, Mr Chair. The
24   question as framed is objectionable on another ground. The
25   question is based on the proposition that before the 11th,

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1   all the security records and occurrence book entries kept
2   by Lonmin reflect an entirely peaceful environment. That
3   proposition is factually wrong and evidence has been placed
4   before the Commission of the number of entries made by
5   security personnel of Lonmin in the course of the evening
6   and night of the 10th to the 11th, there were numerous
7   incidents of intimidation. Direct evidence has been given
8   here by, amongst others, Mr Setelele who accompanied the
9   NUM Quantum in the course of that night, speaking about
10   incidents of intimidation, of people who were evidently
11   preventing others from going to work, threatening those NUM
12   members in the Quantum, so that if my learned friend wants
13   a turning point then he must not look at the morning of the
14   11th of August, he must look at the evening of the 10th of
15   August and he must direct his attention not to Mr Zokwana
16   on behalf of NUM but to the strikers.
17   CHAIRPERSON: What do you say about that?
18   MR RAMPHELE: Whatever senior counsel Tip
19   is referring to, is not what we have as evidence of a group
20   that we're talking about. It's some information about
21   maybe things that happened between one or two or maybe a
22   number of individuals but we're referring to a situation
23   where you had an identifiable group of rock drillers having
24   grouped themselves with a particular purpose of venting
25   either their anger or frustration and working in unison.

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1   And when all of the clips that are being referred to, are
2   instances where you actually had groups of people that were
3   either singing – the one was, I think, on the 10th where the
4   singing was happening right in front of the Lonmin security
5   and there was no threat of life or damage –
6   CHAIRPERSON: Sorry to interrupt you but
7   it would be helpful if we looked at the exhibit XX2. If
8   you look at page, it looks like 23, this deals with the
9   10th. Do you have that page in front of you? You will see
10   that at 16:30, that's 4:30 in the afternoon, there's an
11   entry, "Intimidation at Wonderkop" it looks like "NUM
12   offices, complainer T Mahalu" and there's a reference.
13   Then at 17:15 on the 10th August, "Information received from
14   PPL hostel manager," et cetera so he received the
15   information, PPL hostels will be intimidated when they want
16   to go to work. Then there's an entry later on, 18:25 –
17   that's 6:25 in the evening – "K3 manager report of
18   intimidation of employees going to work." And then there's
19   another one – ja, those are the main entries, as far as I
20   can see –
21   MR RAMPHELE: Yes.
22   CHAIRPERSON: - relating to the 10th. So
23   the question based on the proposition that nothing happened
24   before the beginning of the 11th, isn't factually correct,
25   so Mr Tip is correct. May I suggest you withdraw both the

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1 questions, both of them and reformulate your question which
2 deals with the point that you raised with me. You said in
3 answer to a question I raised with you actually, something
4 that the witness said in answer to Mr Mpofu that you wish
5 to challenge, that you can obviously do and as long as you
6 don't base it on an incorrect premise as to what happened
7 on what date then Mr Tip won't object. So would you like
8 to reframe the question in a way that will meet the points
9 raised?
10 MR RAMPHELE: Thank you, Chair. Just as
11 a point of clarification, the intimidations that you have
12 read, do they relate to the – are they specific as to where
13 they came from?
14 CHAIRPERSON: I read the reference in the
15 logbook and it seems clear in the context of all these
16 entries what they're about. I have no more information
17 than is in the logbook.
18 MR RAMPHELE: Yes.
19 CHAIRPERSON: So it's no good asking me
20 anything about that because I know even less than Mr
21 Zokwana knows and he knows nothing.
22 MR RAMPHELE: It is my submission that in
23 a mine situation, you have a strike, intimidation could
24 come from anywhere but evidence that we have of
25 intimidation or of conduct that is before the Commission

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1 that we have on record, on clips, is information of a group
2 or video clips of a group singing, either with sticks and
3 what – my submission to you, Chair, is that before the 11th
4 this group had been singing and there was, at least on the
5 clips that were taken by Lonmin security, no one instance
6 where they said there was intimidation.
7 CHAIRPERSON: There are other entries
8 that there was intimidation.
9 MR RAMPHELE: Yes.
10 CHAIRPERSON: Now there's no evidence
11 that there was some phantom group or alternative group who
12 were going around with other acts of intimidation that
13 aren't –
14 MR RAMPHELE: We don't –
15 CHAIRPERSON: - highly unlikely, so I
16 think your question must have some basis in reality.
17 MR RAMPHELE: Alright.
18 CHAIRPERSON: Anyway, I've given you what
19 I'd like to think is friendly advice, to reformulate the
20 question along the lines we've discussed and then I'll
21 allow you to ask it.
22 MR RAMPHELE: Okay. Mr Zokwana, did I
23 hear you in your evidence stating that you do not consider
24 that NUM should be blamed, either in whole or in part, for
25 the incident that happened at the Lonmin office on the 11th

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1 August? NUM offices, the one next to the satellite police
2 station.
3 MR ZOKWANA: Thanks, Chairperson. The
4 question has been raised by counsellor Mpofu and my answer
5 to it was that it is this Commission which will have to
6 verify the information and as far as I'm concerned NUM shop
7 stewards who were in the office saw it fit to defend the
8 office and defend their lives. Whether that would be
9 putting blame to the NUM for that day, I think this
10 Commission has been supplied with statements of our people
11 who were at the office, so I cannot sit here and judge
12 whether that information is enough to find guilty with the
13 union but [inaudible] Chairperson, for showing page 23 of
14 this report which details events before the 11th, for I say
15 that, Chairperson, you are only interested on the 11th, you
16 want to make it the day on which everything was based on.
17 MR RAMPHELE: You have also in your
18 evidence said that if you look at the conduct of NUM, this
19 is what one can call an isolated incident, hat it does not
20 happen often.
21 MR ZOKWANA: I said that – not only
22 saying that, I said that no contrary evidence has been
23 presented to show otherwise. If it was a norm, it could
24 have been carried beyond the 11th as people's lives were
25 being threatened.

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1 MR RAMPHELE: You also said in your
2 evidence that NUM would not resolve issues by giving
3 violence back.
4 MR ZOKWANA: It's what I said.
5 MR RAMPHELE: And I take it that, I mean
6 if you really want to help the Commission, where you see
7 weaknesses you'll be the first to admit that there's a
8 weakness here we need to correct. Is that how we should
9 deal with this Commission?
10 MR ZOKWANA: I think the –
11 CHAIRPERSON: Sorry, Mr Zokwana. Surely
12 he can only give evidence along the lines that you've
13 indicated where he has personal knowledge, otherwise he
14 would just be giving his opinion as to the weakness of some
15 witnesses and strength of others. Won't he be usurping the
16 functions of the Commission, which is something that he
17 shouldn't be allowed to do?
18 MR RAMPHELE: No, Chairperson, I wouldn't
19 like him to usurp the function of the Commission and I'm
20 sure you don't want that to happen but I think we want a
21 country where, if there are weaknesses in the system of
22 organisations that are led by leaders in the country, then
23 those leaders would then look back in the weaknesses and
24 say there's a weakness here, let's see how we correct it,
25 because without that attitude we're going to have

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1 recurrence and leaders will, every time – and this is the
2 approach that I think we are – I'm sort of trying to get
3 out of our leaders that are giving evidence here, that you
4 cannot have in a country where you have such a serious
5 incident that very important stakeholders, instead of
6 looking at what has actually happened and admitting where
7 there are weaknesses, they go into a laager and become
8 defensive, because I mean whether it's the job of the
9 Commission or not, it is, I think, the responsibility of a
10 social partner that is as important as NUM that if there's
11 a problem they should be able to assist and say, you know,
12 we have a problem here. Not only will they be assisting
13 future processes of Lonmin, I mean as one of the biggest
14 unions in Africa, not the country, they will also be
15 assisting unions that are coming after it to take
16 responsibility where it is necessary to do so.
17   CHAIRPERSON: What you say may be true
18 for statements made from public platforms but where you
19 have a Commission which is sitting as a fact finding
20 tribunal, in effect, to find the facts, we should not allow
21 ourselves by people who haven't personal knowledge of the
22 facts but just come to express their opinions and then
23 we'll have other people coming and doing the same and the
24 inquiry will be unnecessarily lengthened by longer evidence
25 which in fact takes the matter no further. It's for us to

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1 decide on the evidence before us whether NUM can be blamed
2 for some of the things that you're referring to and what
3 the personal opinion of the president or the vice-president
4 or the secretary or the treasurer of NUM is on those
5 matters, is a matter of no concern to me. So I disallow
6 the question.
7   MR RAMPHELE: Thank you, Chairperson. Mr
8 Zokwana, would you still stick by your evidence that as a
9 leader of NUM you cannot apportion blame to anyone and that
10 except for a rival union that you have mentioned and that
11 the Commission, you leave everything, to take a decision.
12   MR ZOKWANA: I will be happy if,
13 Chairperson, I will not be – my statement will not be taken
14 as read. Where I mentioned the issue of a rival union and
15 what I presumed to be allegations, I was called to order
16 and I retracted that statement. I am saying that up to a
17 stage where it is shown, because I've seen your line, you
18 have been trying to curtail anything that happened before
19 the 20 – the 11th, to be non-existent even though people
20 were sent to hospital injured. To you it is a non-issue,
21 the issue has become the issue on the day there is this
22 incident at the NUM office and I'm still saying if the
23 Commission would find, no matter to extent NUM could have
24 erred, NUM will deal with that but I'm not going to submit
25 that NUM is guilty without giving concrete evidence as to

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1 what you are accusing NUM of having done.
2   MR RAMPHELE: And you have personal
3 knowledge that other unions should actually be looked at
4 because they are the ones to blame.
5   MR ZOKWANA: I have never accused of any
6 union – in my statement we can re-look it. I said that
7 what must be investigated is the implications of the
8 allegations, rumours made by certain individuals, unions -
9 I've not been, I didn't say that and I object to your line
10 of trying to bring, of even regarding the employees as a
11 group, being a union, being small and I don't know what
12 your line of questioning is but my answer to your question
13 is, NUM is not accusing anybody of having been behind the
14 strike except to say that it wonders, it creates a worry to
15 me that workers could behave the way they behaved and I
16 even said there should be a check if anybody was behind it
17 who could have – in the strike going forward. And I think
18 it is this Commission and through your own evidence, if you
19 believe that any union is involved, that could be – not
20 what I think – that must guide this Commission.
21 [14:46] MR RAMPHELE: So in brief, you're
22 actually just saying you don't have personal information or
23 a view on who might have caused this, the Commission must
24 see whether NUM caused it, whether AMCU caused it, whether
25 any other factors might have caused it and therefore you

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1 actually just move out of the situation and say,
2 Commission, check the facts and decide.
3   CHAIRPERSON: I'm not sure that's a
4 question but I'd already indicated to you that any view
5 that he may have on the matter is, as far as I'm concerned,
6 irrelevant. We have to form a view at the end on the
7 evidence. Whatever view he's formed on the evidence that
8 he has, is of no concern to us. I've already ruled that.
9 What you're now putting is an attempt to approach the same
10 point from another angle and I'm not going to fall for it
11 and I'm disallowing the question you haven't yet asked.
12   MR RAMPHELE: Let me just explain,
13 Chairperson, why I'm asking this question because it's very
14 important –
15   CHAIRPERSON: You're asking a question
16 about –
17   MR RAMPHELE: His view is –
18   CHAIRPERSON: Give me a chance. I'll
19 give you a chance in a moment. You're asking a question
20 about his view and I've told you I'm not interested, we're
21 not interested in his view -
22   MR RAMPHELE: Sure, sure.
23   CHAIRPERSON: You didn't help us. He may
24 well have views but I've got to put some check on the
25 evidence before us, I don't want to hear what his view is

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1 and the question you were asking was an attempt from the
2 other side to refer to his view and that's what I'm
3 disallowing. If you want to ask a question based on his
4 own knowledge or something that he can legitimately answer,
5 obviously I'll allow you to do so.
6   MR RAMPHELE: Chairperson, let me just
7 put the context of my question –
8   CHAIRPERSON: Well, let me hear what your
9 question – sorry, give me a chance. Firstly tell me what
10 your question is –
11   MR RAMPHELE: Yes. The question is, in
12 as far as he's given evidence on things that he has no
13 personal knowledge of, ascribing blame to others that he
14 says he cannot testify to and should not be considered, in
15 the same way –
16   CHAIRPERSON: I'm sorry to interrupt you.
17 He denies that he's attributed blame to anybody. He says
18 he didn't attribute blame to anybody. He says there are
19 other people who may be to blame but that's for us to
20 decide, to investigate. What evidence are you referring to
21 where he attributed blame to any other union or body?
22   MR RAMPHELE: Chairperson, I would not be
23 able to recall the exact words that were used but there was
24 a lot of insinuation of other unions that probably didn't
25 have a majority, that the Commission must see whether the

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1 smoke is not coming from those unions. Now that is
2 evidence and if a leader of a union says, well, I'm not to
3 blame but check, check others –
4   CHAIRPERSON: No, sorry. I'm not sure
5 that he said I'm not to blame. If he said I'm not to
6 blame, they're to blame, then I can understand the question
7 you want to ask. As I understand him – if I misunderstood
8 him he must correct me – he doesn't express an opinion as
9 to whether NUM is to blame, he says that's for the
10 Commission to decide. He doesn't specifically name
11 anybody. There may have been a bit of insinuation and
12 innuendo but he appears to have abandoned that in the
13 latest answers he gave because he says he doesn't blame
14 anybody. So if that's what he says then you've achieved
15 what you set out to achieve, namely to do away with any
16 insinuation or innuendo which might be interpreted as
17 blaming anybody so –
18   MR RAMPHELE: No, I –
19   CHAIRPERSON: Isn't that the long and the
20 short?
21   MR RAMPHELE: I – I agree with you
22 completely, Chair, it's just that there was a time when the
23 questioning then came - do you think your shop stewards in
24 defending the office, acted in a manner that is proper and
25 that is where the issue of returning of violence was

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1 actually taken up and –
2   CHAIRPERSON: But here again you're busy
3 with his opinion. Are you of the opinion that your shop
4 stewards were negligent or acted illegally in doing
5 something? Well, let's assume that he thinks they didn't
6 act illegally or they didn't act negligently, does it take
7 the matter any further? He wasn't there, we have to decide
8 on the evidence as to whether it could be said that the
9 shop stewards concerned were acting in accordance with the
10 principles of private defence or whether they in fact went
11 beyond what would be allowed under that doctrine. That's
12 for us to decide on the evidence, isn't it? What he thinks
13 about it –
14   MR RAMPHELE: Is not relevant.
15   CHAIRPERSON: I don't want to insult him,
16 but what he thinks on the matter doesn't interest me in the
17 least and it shouldn't interest you either.
18   MR RAMPHELE: Ja, Chairperson yes, I
19 agree with you but we have to accept that members get a cue
20 from the leadership and organisations take positions on how
21 they would react in particular situations. Say, for
22 instance, if defending NUM means that if they're advised
23 that no, it's better that you leave, but the position of
24 the organisation is that no, you don't leave the office,
25 you stay on and defend – then that is not an opinion, it is

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1 a position of an organisation. And that is a position of
2 the organisation that this Commission has to say, is this
3 the position of the organisation or is it not. If it's the
4 position of the organisation then obviously you have the
5 situation where that position may actually have resulted in
6 the conflict between the two unions and this is what I'm
7 just trying to get because if it is the position of the
8 organisation and it states –
9   CHAIRPERSON: Let's ask the question
10 briefly, shortly – Oprah Winfrey style. Is it the position
11 of NUM that it's the duty of shop stewards to stand and
12 defend the office of NUM even if, in doing so, they go
13 beyond what is permitted under the common law doctrine of
14 private defence? Is that the position of NUM, never mind
15 what the common law is, even if it's contrary to the common
16 law NUM's shop stewards must still stand there and defend
17 the office. Is that the position of NUM?
18   MR ZOKWANA: Thanks, Chairperson, for the
19 question, it's better clarified now by you. The position
20 of the NUM is not to indulge in violence. The shop
21 stewards were faced with the situation where the company
22 could not supply security. They saw it fit to defend the
23 union. It does not represent our view that we should use
24 violence to deal with such issues but I would like just,
25 Chairperson, to check whether the counsel has got an

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1 instruction from the AMCU counsellor because –

2 CHAIRPERSON: No – no, that's not your

3 function. He's not appearing for AMCU anyway. No, I'm not

4 going to allow that. I think you've answered the question.

5 MR RAMPHELE: I think you didn't allow it

6 but it's very important. This is not about the union –

7 CHAIRPERSON: He wants to know –

8 MR RAMPHELE: - it's about security of

9 the country.

10 CHAIRPERSON: Give me a chance. He

11 wanted to know whether you got instructions from AMCU.

12 MR RAMPHELE: Yes.

13 CHAIRPERSON: You're not appearing for

14 AMCU.

15 MR RAMPHELE: No.

16 CHAIRPERSON: It's not a proper question

17 for him to ask you and I've – even though he's not allowed

18 to ask questions, I've disallowed that question on two

19 grounds, a) he's not allowed to ask questions and b) it's

20 an improper question anyway. So you don't have to worry

21 about that, that's off the table. Carry on with your next

22 question if you have any.

23 MR RAMPHELE: Chairperson, just that the

24 public perception is very important in this and it has to

25 be – it has to be emphasised, especially because of his

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1 position, that the Commission is not about this or that

2 union, it's about saving lives in situations of this nature

3 and we have to delve into weaknesses as we see them and

4 obviously, Chair, you will always be there to be, to stop

5 us where we go wrong but unless we go into it, the

6 perception may actually be wrong from the other side so –

7 CHAIRPERSON: I don't know whether you're

8 challenging the ruling I just gave or you're challenging –

9 MR RAMPHELE: No, no, I'm just saying

10 public perception and therefore the Chairperson, the

11 president should understand that I don't –

12 CHAIRPERSON: I'm sure Mr Tip will speak

13 to him privately afterwards. The public perception, I

14 hope, is that this Commission is concerned with one thing,

15 to ascertain the truth in respect of the questions we've

16 been asked by the President – no matter who, who may be

17 injured or hurt or dissatisfied at the answers we come up

18 with. That's our only objective, to ascertain the truth.

19 That's where it starts, that's where it finishes.

20 MR RAMPHELE: Yes, yes.

21 CHAIRPERSON: The public, I hope, knows

22 that already. If they don't know that already, I hope they

23 know it now. Please proceed.

24 MR RAMPHELE: Thank you, Chair. Mr

25 Zokwana, in concluding my assessment then – this is the

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1 submissions that I will make to this Commission - my

2 assessment is that part of what contributed to Marikana is

3 that there was complacency within NUM, not only as a trade

4 union but as an important trade union in the country.

5 Would you agree? And the complacency is reflected in how

6 NUM actually defines itself as having reached phase 6 and

7 they call it articulation phase and that that belief that

8 you have reached that stage actually created complacency

9 and that complacency created weaknesses in how you control,

10 or effective control and liaison with your ordinary

11 membership.

12 CHAIRPERSON: Just give the interpreter a

13 chance to interpret the question.

14 MR ZOKWANA: Thanks, Chairperson. I

15 disagree with your assessment. I understand it because

16 you're not in our confidence, you are reading a document,

17 the background that you don't have. In essence, if NUM

18 could have been complacent, it could have been before the

19 Impala situation. We're not, we understood the fact that

20 there are challenges. If you check our report thoroughly,

21 it outlines challenges and how best to deal with them. If

22 we were to say we're the best union in South Africa, nobody

23 overtakes us, well I would agree with you but unfortunately

24 you didn't read the report with the background

25 understanding, you were dealing with words. And when you

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1 speak of articulation, we always believe that as a union we

2 have got an obligation not always to engage others but to

3 offer ideas and we do that, without believing that others

4 don't exist. By the way, in the industry we are in, we are

5 not dealing with NUM alone. We have got other players –

6 Solidarity, UASA – and respect their views. So it's not

7 about us thinking we are the only union in the industry and

8 nobody is above us, no, but always when we articulate or –

9 our things, we look inwardly, we look at what weaknesses do

10 we have and how do we plan. We don't blame others outside

11 to say, because of so and so is happening. We always do

12 inward looking. So there's nothing, I mean further from

13 the truth that – we are not complacent as a union. We

14 believe we have got tasks to do, we believe we have got

15 challenges, we believe we have got weaknesses. Those are

16 the ones you have referred to. A person who is complacent

17 will not see weaknesses, will not look at challenges.

18 MR RAMPHELE: That this complacency is

19 actually what caused this catastrophe. 30 days, 30 years

20 under your watch where you have been involved and after 30

21 years of involvement you still have this catastrophe.

22 MR ZOKWANA: I don't think that you can

23 define disasters on the basis of years. The world globally

24 has gone through two disasters, two world wars and you

25 can't blame the fact that such occurrences happen. By the

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1 way, it is not the first disaster to happen in the mining
2 industry, for confirmation, sir. In the '90s we had a
3 situation where another union was on the scene. I can
4 mention their name because it did exist, called
5 [inaudible]. There was violence in Rustenburg, people were
6 killed, but it cannot be said unless your inclination is to
7 blame NUM as having caused this situation – and I repeat
8 that let the Commission, with your information at your
9 disposal, present the view that says NUM has been the
10 cause. And I still repeat that to link all this to
11 complacency is really, you have not yet assisted me to
12 understand the basis of your argument at all, other than
13 reading what you found in our document and what you have
14 said has not assisted me. So the fact that we are 30 years
15 in existence doesn't mean that there would be no
16 challenges. They have been there before, they will be
17 there tomorrow but it is the manner by which we deal with
18 them – and I've shown here and I will prove that we could
19 not be found to have adopted violence as an instrument to
20 solve problems. I have shown that instances where we are
21 working a strike, we choose to call it off than to continue
22 with a [inaudible] that was weakening. Currently, I said
23 the strike currently in [inaudible], which is legal, we are
24 not involved in that strike – not because we are cowards,
25 we respect the law. There are things we cannot do as NUM

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1 that's contrary to the law. We can't plunge our members to
2 an illegal strike when the law dictates what should be done
3 to make the strike legal and get it on. So therefore,
4 Chairperson, I think as a senior – as a counsel of your
5 client you have a right to present whatever conclusion you
6 want to put forward and I'm sure NUM will challenge that,
7 as long as you bring facts.
8 [15:06] MR RAMPHELE: And the complacency is
9 actually confirmed by you, both in your address to your
10 conference and in your evidence today, that even though
11 some of the people that died, like Fundi, are you members,
12 Mabebe your member, you have not as a union at least gone
13 to those members and said this is what happened, this is
14 how we thought it would happen, it didn't happen this way,
15 so the uncaring that you referred to in your statement is
16 reflected by a union that almost three, four months down
17 the line has not visited a family of a fallen member that
18 they said must go back to work.
19 MR ZOKWANA: Thanks, Chairperson. If the
20 counsel has come to a conclusion on NUM, I can't assist him
21 but what I've shown here is to say that I have spoken to
22 the family members who represent, telephonically and in
23 person. I have articulated our sympathy with the family, I
24 have promised to visit them - unless you are saying what
25 I've said is not true. If you choose to put NUM in a light

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1 that you have chosen, I cannot be able to go and refute
2 that but I believe when this Commission has sat, it will
3 not be based on whether we have visited those families or
4 not, it will be the presentation of information I expect
5 you to present, compelling to prove that NUM was not only a
6 player that led to where we are and I've shown that if some
7 conclusion is reached, NUM is better placed to deal with
8 that because we are concerned about people, sir. We are
9 concerned about the loss of life. We exist to make sure
10 that the rights of mineworkers are recognised. You cannot
11 therefore judge us on the fact that we could not visit
12 those two families. I have spoken to them, I know where
13 they are – unless you can prove me lying on that basis,
14 that the sister of Mabebe is not currently staying in
15 Randfontein, nor that NUM has met with her. So if you have
16 got other issues, sir, with NUM, I'm sure you will present
17 that evidence before this Commission and I am concerned – I
18 would not play the issue of caring to cloud over any other
19 weakness that the Commission may find, Chairperson. I'm
20 concerned, like another person, as to say didn't we see the
21 signs of this happening, how ready were we to deal with it?
22 But to come here and present NUM as the uncaring union to
23 the extent that it could participate in the murdering of
24 its own members is really, sir, a strong statement to make
25 but I leave it to you because I'm sure you're going to

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1 prove that. If telling the truth, Chairperson, represents,
2 I mean, complacency, I may be failing to understand what
3 complacency means.
4 MR RAMPHELE: No, and it's this issue
5 that you have almost 65 000 members, say for instance in
6 Rustenburg alone, has actually created a situation where
7 your ordinary member, as in my client, and the leadership
8 has become too far and therefore that is why it is so
9 normal for you, after four months, to say I am still going
10 to visit that family. What has happened to the family
11 since they saw a defaced father [inaudible], having paid
12 premiums for years to NUM to protect that mineworker? You
13 see that is what I'm talking about and I'm saying – I'm not
14 saying that NUM is the only union to blame but I'm saying
15 there is more that NUM could do or can do to make sure that
16 those members relate to it and are protected better.
17 MR ZOKWANA: Thanks, Chairperson. You
18 know some words have been barbed words, like this one of
19 social distance between leaders and members, sometimes
20 distorted [inaudible]. If you have to understand, sir, the
21 structures of the union, it is not a head office with
22 members alone. There are structures below that. In every
23 section there will be a section shop steward linked with
24 those members and up until you will understand the scenario
25 that happened in Lonmin and appreciate it, than to be a

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1   judge that judges NUM in the light you have done, without

2   allowing it to present its own case. I'm saying this

3   because if all our shop stewards or leaders of the branch

4   could have been present, I'm not making an excuse in the

5   fact – maybe the situation you are detailing is – could

6   have changed, but I found it also presenting something

7   else, that the only statement or point you can cling to, to

8   prove NUM otherwise, is the fact that we did not visit the

9   families in question. I've dealt with that question when

10   it was raised by AMCU counsel. I have raised it when Mr

11   Mpofu raised it and I have shown the circumstances under

12   which this event happened. By the way, usually when a

13   member has died – be it, Chairperson, due to a mine or –

14   is the local branch committee that informs head office to

15   say so and so has passed on, on this date there will be a

16   funeral. Then we decide who goes. Without trying to be

17   defensive, at that point in time our shop stewards were in

18   hiding. That, in a way, weakened us. Hence when I met the

19   family of Fundi, may his soul rest in peace, because we

20   value his membership and again unless we can come to your

21   view that NUM did not care except for his contribution –

22   and I'm sure there are reasons why he valued of being a

23   member, unfortunately he's not here for him to tell that.

24   Any member of NUM has got a reason why he's in NUM. Most

25   of them will tell instances where they were on the verge of

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1   being dismissed, some of them have got kids in school

2   already who are studying through NUM, some of them have

3   seen the work we have done. I don't think we should be

4   judged on the basis that we couldn't attend those funerals

5   and I've told more than once that it is [inaudible] whether

6   I will go. I said as soon as I'm through with this

7   Commission I will be able to, because I will avoid going to

8   a place when I'm still under oath and I think that would be

9   used against me when I appear here. If you have checked, I

10   have not been – I've been avoiding any interview with the

11   media, knowing very well that those who want to hang NUM

12   will use it. I'm sure, Chairperson, the question –

13   CHAIRPERSON: I'm sorry – I'll take the

14   tea adjournment now and you can then make your remark you

15   were going to make after tea and you did say lastly a few

16   minutes ago but I'll give you an opportunity to gather your

17   thoughts during the tea adjournment so you can prepare your

18   final question.

19   MR RAMPHELE: I thought you were tired of

20   my asking questions.

21   CHAIRPERSON: No, on the contrary I want

22   to hear your questions –

23   MR RAMPHELE: Okay.

24   CHAIRPERSON: - with renewed interest

25   after the tea adjournment.

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1   MR RAMPHELE: Thank you, Chair.

2   [COMMISSION ADJOURNS   COMMISSION RESUMES]

3   [15:31] CHAIRPERSON: Mr Zokwana, you're still

4   under oath. Mr Ramphele, you've still got some questions?

5   SENZENI ZOKWANA (CONTD):   Sorry,

6   Chairperson, before we broke for – I requested to clarify

7   one point to the issue raised by the counsel of NUM as

8   uncaring. It's not true that NUM did not visit the family

9   of Fundi. NUM did, I verify that [inaudible] to go there.

10   So it would not be because of their religion -

11   CROSS-EXAMINATION BY MR RAMPHELE (CONTD):

12   Are you saying there's a problem with communication? Let's

13   leave it. Let's agree, president – and you see, the words

14   you use I think confuse the intention or the objective of

15   my question. I'm not saying NUM is guilty of anything.

16   I'm saying there is room for improvement in liaison with

17   ordinary members by the NUM. Are we – can we put it that

18   way and agree? That is the submission that I'm going to

19   make to this Commission.

20   MR ZOKWANA: That was the context in

21   which the word "complacency" was used, that we need to make

22   sure that our interaction with members is improved, our

23   ability to listen to their views taken into account.

24   MR RAMPHELE: And that if it can be

25   worked on and that there could be satisfactory improvement

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1   in this area, then the issue of effective control of

2   members will also improve as a result.

3   MR ZOKWANA: I would differ with this

4   view you are saying, it would improve control, because that

5   is subjective to particular conditions and if that was the

6   case, I mean NUM has got so many operations it is

7   participating in and only in two operations has that

8   control, in a way as you put it, could have been lost and

9   I've put here as to how that control was lost. So it would

10   be wrong to judge NUM wholly on the basis of two incidents

11   and I believe that when the process has gone, other

12   evidence may prove that these members did not act entirely

13   on their own but it's a view I'm only putting now as an

14   opinion. I'm not going to [inaudible] what do I mean by

15   that but my view is this, that these members of NUM for 30

16   years could not have woken up one day and believed that NUM

17   is not satisfying them, without coming with tangible, sound

18   reasons, but resort to the form they resorted to.

19   MR RAMPHELE: And further it will be a

20   submission that once the opposite has been achieved, then

21   your description of foresight, of trouble, will be greatly

22   enhanced and in future you will be able to know that we

23   have a very volatile situation, let's deal with it and deal

24   with it on time.

25   MR ZOKWANA: Well, I would be reluctant

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1 to take that line as if the incident on the koppie or
2 before the koppie were caused by lapses in NUM's foresight.
3 Yes, I admit that lessons will be drawn from this by all
4 parties involved in as far as how do we deal with this, how
5 do you become educational because it's not only NUM failing
6 – I wonder if workers could have understood those who
7 embark on this strike, thoroughly, the consequences of an
8 illegal strike, no matter whether NUM told them or any
9 other agent. And therefore it's difficult for me to say
10 only NUM will have foresight to deal with this because if
11 the foresight will be based as to the normal organisational
12 practices, I will say yes, but we are dealing with a
13 situation which was not the normal way of doing things.
14 Workers have gone on illegal strikes, we have dealt with
15 that, but this case of people being armed, ready to kill
16 even their own shop stewards, was something unheard of. So
17 foresight, yes, but I think the context must not be seen to
18 be because NUM was sleeping, therefore they have woken up
19 now to see that things have changed. Yes, I agree with you
20 that this should be – if you are saying this incident
21 before, after the Commission has done its work, should be a
22 lesson of us not repeating it, the role of tribunals to
23 study the current Labour Relations Act, the processes to be
24 followed of declaring a dispute and going through
25 processes, the issue of not encouraging illegal strike –

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1 but we need to speak clear and louder than no form or no
2 amount of anger should ever justify the processes that
3 people have gone through.
4   MR RAMPHELE: And what I have said about
5 the issue of liaison, I say in that very context that what
6 we have seen with your members feeling that they were not
7 given support, can be improved and if that were to happen
8 you are going to probably have a more harmonious workplace,
9 which is the ultimate objective of the union and that if
10 anything or anyone forces one of your members to do
11 otherwise, you would be the first to hear and not hear
12 after 45 people have died.
13   MR ZOKWANA: I don't think that statement
14 seems to suggest that NUM, the reason that people died is
15 because NUM didn't know that there's dissatisfaction. If
16 you look at the interaction and the role that NUM played
17 calling mass meetings, warning people against these acts,
18 if that is not enough as a union without powers to police
19 and do those things – but nonetheless I repeat, this should
20 not only be a lesson to NUM but to all parties involved and
21 in my view even the ministry in question, the Ministry of
22 Labour, should be in a position to put its foot down on
23 unions it has registered to work within the norms of trade
24 unions and I repeat it should, your conclusion should not
25 be seen as, I begin to feel that it is sent to portion

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1 blame on NUM that NUM didn't know that people were angry.
2 NUM could not know that people were going to take up arms
3 and kill other people because it's not a norm of what
4 should be happening. We saw this [inaudible] in Impala, it
5 became worse in – but you need not even for a moment to
6 begin to seem to condone that kind of behaviour.
7   MR RAMPHELE: I don't have qualms with
8 what you're saying. The only thing that sort of like comes
9 up as a question to me is, would you be happy if what
10 happened – and as we have heard, some of the people that
11 were involved were actually NUM members – obviously the
12 issue of not knowing how they felt, to the extent that they
13 actually engaged in that type of group, should be something
14 that is concerning to a union. I mean as – and that for
15 the future as a union you would like to have such contact
16 with your members that you don't have as many as the ones
17 we have seen deviating so far from what you believe.
18   MR ZOKWANA: I have shown this Commission
19 that the most participating period in the NUM is during
20 negotiations or when issues of finances are being mentioned
21 and I was doing that because in a normal situation where
22 people speak about other things, you won't have many people
23 attending. And I think the Commission in its work will
24 have to – I mean will, not have to, will assess the causal
25 of the statements that allegedly were made by other people

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1 against, saying that NUM was party to the employer, NUM was
2 against the negotiations, NUM was party to the killing of
3 two – and all those things. Because remember these people
4 didn't have, NUM didn't have recourse to go and say, this
5 being said is not true. Now what I'm saying is, before you
6 want to come to a view that says it was due to NUM's
7 distance from members that caused those – I don't think
8 that that's necessarily the answer because I repeat to say
9 that this, these people could not have acted in the way
10 they acted. One, they believed that the amount is
11 attainable, that's why they joined the strike but in as far
12 as what happened to those who were leading the strike,
13 anti-NUM sentiments and all those things, what role could
14 they play to turn those people against NUM? So I wonder if
15 there were not such allegations or rumours made that
16 everybody could have believed what he was told.
17   MR RAMPHELE: Now this is the very last
18 question. What you have said, I agreed with and I still
19 agree with it. All I'm saying is forget about the third
20 force or whatever you want to call – other outside factors.
21 I'm just talking about, because the terms of reference is
22 effective control of your members, so I want you to leave
23 out the others and say me, my member. And I'm saying if
24 there was a closer contact, what the others that you are
25 referring to were doing, you could have known, you could be

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1 having statements of people coming to you and saying, you

2 know, as a member I have this problem, so and so is saying

3 this and what do you say, is this possible or not – so that

4 that interaction gives not only control but belief of that

5 member of what you can achieve as a union. So I'm not

6 talking about others, I'm just talking about you and I'm

7 talking about the members that you say turned against you

8 and did something. I said if there could have been a

9 closer contact with those members you could have

10 appreciated either their doubt, frustration or fear. And

11 maybe I should finish this by saying – and I'm not saying

12 you are guilty because you are not guilty of this – I'm

13 saying there is room to improve in that area.

14 [15:51] MR ZOKWANA: Thanks. I think one needs

15 to understand the situation in Lonmin because there were

16 about five to six meeting were held at Impala – at the

17 Karee site of Lonmin and I'm sure you can do your research

18 as to what formations were playing there at Karee that led

19 – because it spread to the south and other areas. But

20 again I want to tell you this, when a person tells a lie he

21 has no obligation of explaining it to those because in most

22 cases people believe. If I'm told that you are – if I

23 spread that you are something you're not, without you being

24 able to explain that, in most cases that which I said,

25 people believe. And I'm saying, people were saying we can

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1 get you – in Karee these people approached management

2 without the union. Management gave them R700 and

3 [inaudible]. Obviously they believed that we can do more

4 but why, it began at Karee and the question I think we need

5 to analyse, what could have been the other influences – not

6 making allegations here, just saying in facts that it

7 started in Karee, from Karee to other mines and I'm saying

8 they need to understand then the Karee formation at that

9 point. But lastly, to your question – it would not, I have

10 said this [inaudible], if NUM would be found to have

11 weaknesses, it is the first one to say yes, there are, but

12 we are not going to follow the lines of saying because

13 you're saying it, therefore there are weaknesses. I

14 believe that the branch, the shop stewards had access to

15 this, they were aware of this immediately it cropped up.

16 They tried their best to interact with the people

17 concerned, hence a number of meetings were held but the

18 attitude of the RDOs was that we don't need you, we will do

19 it our own way. Maybe they gained the view that the

20 employer has given us the R700 without the unions, we could

21 push. If that is the case, I'm sure the evidence will

22 show. If somebody else was involved I think that wil come

23 as well. I can't make accusations here but I repeat to say

24 if there were to be a case that shows that NUM could have

25 had [inaudible] – remember we are not dealing with an

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1 ordinary situation where people are angry, want money. It

2 has happened before. If they distrusted the local

3 leadership of the branch, when national arrived they would

4 have been happy to say, thanks that you have come, these

5 are issues for discussion. It has happened before, we have

6 stopped illegal strikes through that motion but for them to

7 say no NUM at all was really an issue I'm still staggering

8 to appreciate or understand. I hope that when every

9 evidence is given, I will be clearer.

10 MR RAMPHELE: This is - the last question

11 for the day from me. Given a similar situation in the

12 future, are you saying that you are going to behave, as a

13 union, in the same manner you did preceding Marikana up to

14 the catastrophe or would you say that you would say to

15 South Africa, we would do things differently so that this

16 thing should not happen? That, was it 100% of what you

17 could do, was it your full capacity?

18 MR ZOKWANA: First answer, as a union we

19 could only engage the employer and try to persuade our

20 members but this morning the Chairperson raised a very

21 important question of saying had we put forward to the

22 employer that he closes down the operations and sends

23 people wherever, home, to cool off and I'm saying that this

24 is what has been done and we've been involved in that

25 process with, that when the operations were stopped they

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1 are now engaging into processes to do with that going

2 forward. And of course from this I'm sure lessons have

3 been drawn, not only by NUM, by many parties, many

4 stakeholders. I think companies must decide in future as

5 how do they respond but I don't think that it must be

6 saying it is normal for people to carry weapons and kill

7 others. I think the right to strike is entrenched in our

8 Constitution, it's clarified in our law as to what you

9 should be doing. I don't think we should, counsellor, work

10 as if we are saying it should be a norm for you to go on

11 illegal strikes and beat up. In my language they say "'n

12 belofte is 'n belofte," to say that was your last question.

13 CHAIRPERSON: Ek het nie geweet dat dit

14 jou taal was nie.

15 MR RAMPHELE: Nee, dit maak skuld, dit

16 maak skuld.

17 MR ZOKWANA: Ek stem saam.

18 MR RAMPHELE: Ja – no, thank you, Mr

19 Zokwana, that was my last question. I just hope that you

20 will draw lessons and then you will conduct NUM affairs in

21 such a manner that we don't have the catastrophe we had in

22 the future and I hope, I wish you strength in that. Thank

23 you, Chairperson.

24 CHAIRPERSON: Do I understand that there

25 are no questions from the LRC? Mr Semenya, there was a

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1 question raised as to whether questions were going to be
2 asked on behalf of the Minister of Safety and Security and
3 Police and are you proposing to ask such questions?
4 　　　　MR SEMENYA SC:　　　　Yes, Chair.
5 　　　　CHAIRPERSON:　　　　Can you ask them by four
6 o'clock?
7 　　　　MR SEMENYA SC:　　　　Yes, Chair.
8 　　　　CHAIRPERSON:　　　　Try anyway.
9 　　　　CROSS-EXAMINATION BY MR SEMENYA SC:　　　　Mr
10 Zokwana, the evidence relating to the contact, the
11 telephone contact with the Minister, recall that?　Do you
12 recall that evidence?
13 　　　　MR ZOKWANA:　　　　Yes.
14 　　　　MR SEMENYA SC:　　　　For the record, it will
15 not be disputed that such a conversation happened.　Do you
16 note that?
17 　　　　MR ZOKWANA:　　　　Yes.
18 　　　　MR SEMENYA SC:　　　　Also that the request
19 that there should be more deployment of police presence in
20 Marikana because of the events, right?
21 　　　　MR ZOKWANA:　　　　Yes.
22 　　　　MR SEMENYA SC:　　　　That too, for the record,
23 is not in dispute.　Do you note that?　More importantly,
24 should the evidence be required, what the Minister did was
25 to relay your request to the operational people.

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1 　　　　MR ZOKWANA:　　　　I understand him to say he
2 will, of course, deal with it in - I don't expect the
3 Minister to take a decision to say I will send so many, but
4 he was in a position to make it clear of what they need to
5 do.
6 　　　　MR SEMENYA SC:　　　　Those are the questions,
7 Chair.
8 　　　　CHAIRPERSON:　　　　Mr Madlanga, any questions
9 you wish to ask the witness?
10 　　　　MR MADLANGA SC:　　　　After so many questions,
11 Mr Chairperson, there are none, thank you.
12 　　　　CHAIRPERSON:　　　　No questions.　Do any of
13 the parties who haven't yet had an opportunity wish to ask
14 any questions in cross-examination?　No.　Mr Tip, how long
15 are you going to be in re-examination?　I understand that
16 depends on the length of the answers as well but can you
17 give me an indication?
18 　　　　MR TIP SC:　　　　It does.　Mr Chair, I propose
19 to re-examine on one topic only but, with interpretation,
20 it is likely to take about 20 minutes.
21 　　　　CHAIRPERSON:　　　　We will – it seems then
22 appropriate for us to take the – to adjourn at this stage
23 until 9:30 tomorrow morning.
24 　　　　[COMMISSION ADJOURNED]
25 .

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