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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 45 7 FEBRUARY 2013 PAGES 4871 TO 5010

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 7 FEBRUARY 2013]
 2 [09:41] CHAIRPERSON: The Commission resumes. Mr
 3 Zokwana, you're still under oath. Mr Mpofo, I take it you
 4 want to continue with your cross-examination.
 5 MR MPOFU: Thank you, Chairperson, yes I
 6 do. Sorry, Chairperson, I just want to switch off the
 7 phone.
 8 CHAIRPERSON: While Mr Mpofo is switching
 9 off his phone, I'd like to ask everybody else to switch off
 10 their phones. I've already turned mine off. It's very
 11 disturbing when cell phones go off during the course of the
 12 proceedings.
 13 MR MPOFU: Good morning, Mr Zokwana.
 14 MR ZOKWANA: More, meneer.
 15 MR MPOFU: I'm just going to continue
 16 with the questioning on the topic that we were dealing
 17 with, just to round it up, but before I do so I just wanted
 18 to clear something up. My attorney brought it to my
 19 attention that when we were dealing with BBB5, I don't know
 20 whether it was you or the Chair or both, there was some
 21 suggestion that the document had been stolen or something
 22 like that.
 23 CHAIRPERSON: I didn't say that. I
 24 thought the witness had said it, but –
 25 MR MPOFU: Yes, I think it was the

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1 witness.
 2 CHAIRPERSON: But no objection was taken
 3 to your using.
 4 MR MPOFU: Yes.
 5 CHAIRPERSON: And so, but I suppose if
 6 you want to put something on record about that –
 7 MR MPOFU: Yes, I do, Chair.
 8 CHAIRPERSON: - it wouldn't be right for
 9 me to stop you.
 10 MR MPOFU: Thank you, Chair. Mr Zokwana,
 11 I just wanted to assure you and put it on the record that
 12 the document in question was obtained from the NUM website.
 13 Are you happy with that?
 14 MR ZOKWANA: Oh well, since you represent
 15 some of our former members, it could have been from them or
 16 from website. I cannot argue that, and I [inaudible] with
 17 your answer.
 18 MR MPOFU: Thank you. Okay, now we were
 19 at the stage where I was putting to you that some of the
 20 things that strikers normally view as provocation would
 21 include the phenomenon of "amagundwane," or literally the
 22 translation is bereft, but it actually means dissenters, I
 23 think. You are aware of that phenomenon, or the attitude
 24 towards "amagundwane," are you?
 25 MR ZOKWANA: Thanks, Chairperson. In NUM

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1 we don't have such features of people being classified as
 2 dissenters. On, I have shown yesterday occasions where our
 3 strikes were faltering and the only avenue to avoid
 4 confrontation amongst members where we work in terms of the
 5 strike not supported, we would call the strike off. I'm
 6 aware of this phenomenon in terms of other unions and as
 7 NUM I repeat we don't abide by such a behaviour. But
 8 again, that would never apply if the strike is illegal,
 9 Chairperson, because you only dissent from what has been
 10 agreed upon. In an illegal strike it cannot be right that
 11 a faction of workers wake up that they're influenced to go
 12 on strike and they regard others as dissenters. Dissenting
 13 from what?
 14 MR MPOFU: Okay, I'm going to move on,
 15 but I want you to note that the way I'm phrasing my
 16 question is, deliberately starts with the words "from the
 17 point of view of the strikers." In other words not,
 18 objectively you might say look, it's an illegal strike or
 19 whatever, but from the subjective point of view of the
 20 strikers. Do you –
 21 CHAIRPERSON: So by strikers do you mean
 22 your clients?
 23 MR MPOFU: Any, in general the phenomenon
 24 of threat –
 25 CHAIRPERSON: The witness I think draws a

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1 distinction between those who participate in a legal
 2 protected strike –
 3 MR MPOFU: Yes.
 4 CHAIRPERSON: - and those who participate
 5 in an unprotected strike.
 6 MR MPOFU: In an illegal, correct.
 7 CHAIRPERSON: And it may well be that the
 8 answer will be different, depending upon which kind of
 9 striker you are referring to.
 10 MR MPOFU: Yes.
 11 CHAIRPERSON: So I think you should make
 12 it clear if you're either talking about both kind of
 13 strikers together, alternatively the one or the other,
 14 otherwise we may get answers that don't do justice to what
 15 the witness really intends to say.
 16 MR MPOFU: Correct, Chair. Yes, in fact
 17 –
 18 MR ZOKWANA: Yes, Counsellor Mpofo, my
 19 answer is bigger now. If the strike is legal, like the
 20 strike of -
 21 MR MPOFU: No –
 22 MR ZOKWANA: Look, let me finish. That
 23 may be used with qualification, NUM will use it, but if the
 24 strike is illegal, I wonder how will you use that term.
 25 MR MPOFU: Mr Zokwana, that is exactly

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1 the point that we are clarifying. The Chair is right. In
 2 fact, yesterday I phrased the question like that. From the
 3 point of view of the strikers, legal or illegal, okay, in
 4 other words both types, as the Chair has now helpfully
 5 clarified, from the subjective point of view of any group
 6 of strikers –

7 MR ZOKWANA: Yes.

8 MR MPOFU: - the people who are send as
 9 dissenters, who do not abide by that decision to strike,
 10 legal or illegal, are viewed as “amagundwane” and it is
 11 seen as provocation. You are aware of that phenomenon or
 12 not, from the point of view of the strikers?

13 MR ZOKWANA: The phenomenon would be
 14 unknown by me in NUM as a person.

15 MR MPOFU: Really? Okay, now also from
 16 the same preface, from the point of view of strikers, legal
 17 or illegal, they would also see the phenomenon of scab
 18 labour, the bringing in of scab labour as provocation.
 19 Yes, no?

20 MR ZOKWANA: I said yesterday in NUM we
 21 would not view scab labour as such in as far as looking at
 22 them as dissenters deserving to be attacked, but
 23 nonetheless, I know that even globally scab labour always
 24 is looked upon in a particular way, but I would understand
 25 scab labour only in the context of a strike being legal and

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1 then the employer, instead of negotiating, he'd bring scab
 2 labour. I don't know of features where the scab labour is
 3 used when the strike is illegal, and I don't understand how
 4 would that happen in a case where even, or even employees
 5 of the company are beaten up, I don't know whether this
 6 scab labour will be in the form of soldiers who must come
 7 and work and defend themselves.

8 MR MPOFU: Mr Zokwana, you are a seasoned
 9 trade unionist. You're not seriously suggesting that the
 10 strikers, when they see other people doing their work, must
 11 first say oh, no, but remember our strike is illegal, so
 12 now we understand, but when it's legal they frown upon it.
 13 I mean –

14 MR ZOKWANA: I agree with you, Mr Mpofo.
 15 Such a view, as I made that example, there was a stage
 16 where the strike was legal, but the strike was faltering
 17 and when I came to those shop stewards there was anger that
 18 people were going to work and there was protection, but the
 19 stand of NUM was guys, don't be angry at those people who
 20 go to work; be angry at your failure to make sure that
 21 workers understand the strike. Just recently, Chairperson,
 22 there was a strike by SACCAWU in one of the area,
 23 pharmaceutical companies where I'm, next to where I'm
 24 staying. As a concerned person I visited them to give them
 25 support. They were angry at the people who were still

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1 working, part of their own labour. I said guys,
 2 immediately you use violence your strike changes from being
 3 legal and you'd be arrested. By the time the strike is
 4 over some of you would be prisoners. The answer is in
 5 COSATU we don't support people defining others deserving
 6 such, but if you ask the attitude of strikers, the answer
 7 will be yes, but such must be controlled by leaders. If
 8 you just leave people when they beat others, they do
 9 nothing, those leaders are not worth being called leaders.

10 MR MPOFU: Okay, from that long answer
 11 I'm just going to take one word, yes, which you've
 12 mentioned. Thank you. You also testified that, I think
 13 you were being asked about why you did not go and remove
 14 NUM members from the mountain and so on. You remember
 15 that? By Ms Barnes -

16 MR ZOKWANA: Very well.

17 MR MPOFU: - if I'm not mistaken, and
 18 your answer was this. I'm trying to quote it verbatim, but
 19 I might miss one word or two. You said, “In any strike
 20 situation, once you call a section of the strikers, your
 21 aim is to break the strike.” Is that your understanding?

22 MR ZOKWANA: I, that version I put it as
 23 follows. I said, taken from your word when you said that
 24 when workers are on strike they develop what you called
 25 brotherhood, [inaudible] said solidarity, but when you were

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1 shown that solidarity as another organisation, then you
 2 said brotherhood, then I said there are two scenarios that
 3 would have made NUM unable to talk to its own members. 1,
 4 violence was used. Even people on the koppie were not in
 5 [inaudible] NUM would not find it easy to even call to
 6 speak to them. To us they were committed into one mission,
 7 to make sure that the strike is run the way it was run, and
 8 I said the fact that our own shop stewards were killed, the
 9 fact that they would not talk to NUM, those, all of those
 10 reasons could not make it easy for NUM to talk to anybody,
 11 and I use your word by saying those people, yes, they were
 12 committed, they were in brotherhood in doing what was un-
 13 NUM in character, and I used that word to say generally if
 14 workers are on strike and you call some of them, they may
 15 not take it kindly, but in this situation it was more than
 16 that.

17 MR MPOFU: Okay, once again I'll take the
 18 word “yes” from the long answer, and I think you've partly
 19 answered my next question, which should be that the
 20 strikers would see it as provocation.

21 MR ZOKWANA: Chairperson, I would be
 22 happy if the counsellor would not choose which word of my
 23 answer he takes as the answer to the question. I put two
 24 scenarios, Chairperson. I said it could have been
 25 difficult for NUM to talk to its own members, given the

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1 attitude towards NUM, point number 1. Point number 2, by
2 the way, in any strike situation those who may speak with
3 anybody should get the mandate of those they are with, and
4 they would view it fine if you, a group of them would meet
5 with anybody who's got a mandate. If that is the answer
6 you are taking, I agree with you. If the answer you are
7 taking is the one you choose, it's not my answer.

8 MR MPOFU: Mr Zokwana, I'm doing this
9 only to try and make sure that we do finish this cross-
10 examination at some stage. Let me remind you, I asked you
11 a very simple question. Did you, when Ms Barnes asked you
12 a question, say these words, A, B, C, D? It's either yes
13 or no. There's no point number 1 or point number 2. If
14 you said those words to Ms Barnes, then you did –

15 CHAIRPERSON: Mr Mpofo, his complaint is
16 that he doesn't always agree with the interpretation you
17 put on his answer –

18 MR MPOFU: But then he must say no.

19 CHAIRPERSON: - and he said – no well,
20 the trouble is I take it as yes, you say. The way to do
21 it, if I may suggest to you, is to say to him am I correct,
22 I take, your answer then is yes. When he gives a long
23 answer, you think he means yes. You then say, your answer
24 then is yes, and if he says yes, that's fine; if he says
25 no, then you've got to go back on it. But he's entitled to

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1 exactly what the Chairperson has advised me to do. You
2 gave an answer and I was saying I'll take it as a yes,
3 because all I said to you is did you say this to Ms Barnes,
4 then you went on and on, but as part of the answer you said
5 yes, I said those words. So I was basically saying I will
6 take that as a yes. Do you accept that? And maybe let me
7 remind you, in fairness, because a lot has happened. You
8 say in the answer to Ms Barnes, "In any strike situation
9 once you call a section of the strikers, your aim is to
10 break the strike." Did you say that?

11 MR ZOKWANA: The answer is no.

12 MR MPOFU: You didn't say that?

13 MR ZOKWANA: Yes, because the context you
14 are putting is cutting it and denying me some of the
15 answers I gave, therefore my answer is no.

16 MR MPOFU: Do you regard in general in
17 the same vein as we spoke about scab labour and
18 "amagundwane" and so on, in general do you regard, would
19 you regard, or would strikers regard such action of
20 isolating a section of them away from their brotherhood as
21 provocation?

22 MR ZOKWANA: Chairperson, it depends.

23 Maybe I should frustrate Mr Mpofo unintentionally in my
24 answer by saying that if you want to define the components
25 of brotherhood, it may be informed and cemented by

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1 complain about your summarising his evidence in a way that
2 he doesn't agree with, which he thinks creates the wrong
3 impression. So –

4 MR MPOFU: Which I –

5 CHAIRPERSON: But anyway, what I've said
6 is something that you can bear in mind.

7 MR MPOFU: Thank you.

8 CHAIRPERSON: And we can carry on.

9 MR MPOFU: Thank you, Chair.

10 MR ZOKWANA: Thank you, Chairperson. I'm
11 here to give evidence on behalf of NUM. If it means I'm up
12 to here for a month, I will take a month, Chairperson. I
13 will not be suiting by giving answers that I don't want to
14 give just to go home. I can stay here as long as Mr Mpofo,
15 as long as I'm given a chance to answer my questions, not
16 in the way he wants me to answer them.

17 MR MPOFU: Okay, Mr Zokwana –

18 CHAIRPERSON: I hope that that threat
19 won't be implemented on either side. I don't propose
20 acting as umpire in the time and test

21 MR MPOFU: No –

22 CHAIRPERSON: I think we must have some
23 time limits.

24 MR MPOFU: Yes, Chairperson, don't worry,
25 we'll handle it. Mr Zokwana, I'm sorry, I was doing

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1 religious beliefs. It might be political views. It might
2 be, it may be family, trades of those people together. In
3 the mountain I doubt if there was brotherhood. If there
4 was brotherhood, it would have been defined by the
5 willingness of everybody on the koppie, without usage of
6 violence, without people killed mercilessly, that people
7 together say here we stand, because we are powerful, we are
8 rock drillers, and no production will take place without
9 us, and therefore we'll use that power without coercion. I
10 don't think there was brotherhood in that mountain in the
11 manner you have defined it, and I disagree with your
12 definition, and then my answer is no.

13 [10:01] MR MPOFU: No Mr Zokwana, you're not
14 disagreeing with me. I think once again you are
15 disagreeing with Mr Gcilitshana. It is Mr Gcilitshana who
16 agreed that the workers at the mountain were in a form of
17 brotherhood.

18 MR ZOKWANA: Chairperson, I said
19 yesterday I'm coming here on behalf of the union and I'm
20 presenting a view as I see it, informed by own experience
21 as a leader in the NUM. I'm not obliged to agree with
22 anybody who has been here before me. I'm putting it to
23 you, Counsellor Mpofo, that I as a person would disagree
24 with anybody who says there was brotherhood, there was
25 unity, because unity is not going to be fudged by people

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1 forced others to go on strike, threatening them. There's
 2 no unity there. What is there is a use of force, use of
 3 violence, to coerce others against their will. That is not
 4 unity. It might be those who use force, but not those who
 5 are coerced to join the process. You can't say when you
 6 make [inaudible] you say that I'm going along with you
 7 because we're in brotherhood.

8 MR MPOFU: Ja, you mentioned COSATU. Are
 9 you aware, or did you, like most South Africans, recently
 10 in the truck drivers strike, did you see the visuals of the
 11 gentleman who was removed from a moving truck and all the
 12 truck drivers whose trucks were burnt throughout the
 13 country during the strike, and let me, are you also aware
 14 that in the security guard strike 59 people were killed,
 15 most of whom were either scab labourers or, or rather scab
 16 labour or people who were working?

17 MR ZOKWANA: Chairperson, the scenario
 18 the counsel is using is what I brought to the Commission,
 19 and if my words is that that driver who was driving a
 20 truck, while at the stop he saw, approached by strikers,
 21 and he left the truck in motion and the police has to go
 22 and make sure that he climb and then stop the truck, and
 23 those are features of strikes NUM will never approve of.
 24 Those are features COSATU has been condemning in almost all
 25 our meetings we have been, that you have a right to strike;

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1 that right does not give you the right to put undue
 2 pressure on others. And I can assure you, Chairperson, you
 3 won't find such examples in NUM.

4 MR MPOFU: Would you agree that as a
 5 general statement, the only weapon that the workers have in
 6 an industrial setting is their unity and cohesion?

7 MR ZOKWANA: If that unity is defined in
 8 the, by my definition, I'll agree with you.

9 MR MPOFU: Okay.

10 MR ZOKWANA: Not unity that is informed
 11 by people fearing others.

12 MR MPOFU: And do you also agree that
 13 their strength, the strength of the workers is the most
 14 vulnerable sector, although you don't agree that they are
 15 the most vulnerable sector, as the most vulnerable sector
 16 of the three, their strength is in numbers?

17 MR ZOKWANA: Again, Mr Mpofo, I want to
 18 say I never put a view that says workers have got the same
 19 power as to government, or therefore I agree with it if you
 20 say that workers at all times, unless organised, unless
 21 united, unless under a union, they remain vulnerable. But
 22 if the, to answer your question, yes I agree, the only
 23 power workers have is their labour power.

24 MR MPOFU: And once again from their
 25 point of view any action or conduct which is meant to

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1 undermine that unity, or those numbers, will be seen as
 2 provocation, or at least unwelcome? Let's not put it more
 3 than that.

4 MR ZOKWANA: I mean that is obvious, Mr
 5 Mpofo. As I said to you that striking workers will not
 6 take kind to a situation where production continues, but it
 7 depends how they respond to that and I said in NUM if we
 8 were to withdraw and go back and regroup and come back
 9 strong, we'll never use violence. There's a saying, Mr
 10 Mpofo, in Sotho, which has guided us, which says [African
 11 language], meaning that when two rams are fighting and one
 12 moves back, he's not intending to run, but to gather more
 13 strength.

14 MR MPOFU: So we'll come back to –

15 MR ZOKWANA: I'm raising this,
 16 Chairperson, because it has guided us as NUM. If we feel
 17 that we are weak, rather than plunging into a fight we are
 18 going to lose where numbers don't save us, we just move
 19 back like that ram and gather more strength and new plans,
 20 and rejoin the war in the second negotiations. We never
 21 appreciate violence.

22 MR MPOFU: Well, all I can tell you is
 23 that Mr Khekheleza doesn't subscribe to that theory. He
 24 thinks you just fight on, whatever the numbers are, without
 25 –

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1 MR ZOKWANA: Let me assist the senior
 2 counsel, because I was present when that evidence was
 3 given. His version was that as a man from Pondoland he
 4 even said [African language] and I made a scenario, that,
 5 Chairperson, in my view he was saying that being faced with
 6 the crowd that were approaching the office, he did not have
 7 to count how many they were, for he knew that there is a
 8 weakness also in numbers as their plan, and he stood his
 9 ground. He was not speaking about NUM using that if you
 10 are weak you just, if you fail to garner support you must
 11 kill people, and Khekheleza has not shown that he has been
 12 able or influenced NUM to attack those who were beating
 13 other people. If that is, I think that we differ in the
 14 way of the understanding of what, of the term he used. He
 15 said [African language].

16 MR MPOFU: Okay –

17 MR ZOKWANA: That's what he said, he said
 18 from the –

19 MR MPOFU: Chairman, I won't complain. I
 20 think I asked for that one.

21 MR ZOKWANA: - the Pondoland, it's not –

22 MR MPOFU: I shouldn't have made any
 23 remark. Okay, I'll withdraw that one.

24 CHAIRPERSON: Interesting to note is Mr
 25 Mathunjwa [inaudible] question.

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1 MR MPOFU: Thank you, Chairperson.
 2 CHAIRPERSON: [Inaudible]
 3 MR MPOFU: Ja, okay, okay, okay. Now the
 4 issue I'm canvassing with you, Mr Zokwana, is simply this.
 5 From the answers you've given me you understand what from
 6 the point of view of the strikers is viewed as provocation,
 7 rightly or wrongly. Now what I want to put, do you think
 8 it was therefore wise for the NUM, knowing what you know,
 9 and when there's a strike, to actively, not just oppose the
 10 strike but actively go and take people who are NUM members
 11 and people who are not NUM members, for them to work and
 12 weaken the strike?
 13 MR ZOKWANA: I can say, Sir, again repeat
 14 what I said before. What the branch of NUM did conforms
 15 with our principles. It conforms with it in the sense that
 16 you know we need to understand, maybe my understanding of a
 17 strike and yours may differ. You are a trained lawyer and
 18 I am a mere trade unionist.
 19 MR MPOFU: I'm also a former trade
 20 unionist.
 21 MR ZOKWANA: And the times may have
 22 changed, or maybe not within the industry I'm in, or the
 23 training may differ. In NUM a strike can only occur if all
 24 due processes have been followed, Chairperson, and no
 25 formula has been found to find the two parties in agreeing

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1 or disagreeing, and the right to strike is only confined to
 2 those who believe that what they were looking for has not
 3 been achieved, and I'm not going to stand here,
 4 Chairperson, to conform to a situation that says some
 5 people have rights over others. Every employee of a
 6 company has got an obligation, because they will sign a
 7 contract, to present himself to work. A failure to do so
 8 may render that contract null and void, or it can be
 9 cancelled. Therefore NUM would not sit back to expose
 10 those it leads to a situation where without processes
 11 followed, not being at work. NUM did not push people,
 12 Chairperson, from their rooms, and say come back to work.
 13 NUM was assisting those who were willing to go to work, and
 14 the manner they did it was to call a mass meeting, to use a
 15 loudhailer and say those who want to go to work, not
 16 forcing them from their rooms, they were saying those who
 17 want to go to work, we'll assist you, we'll accompany you
 18 to go to work. So nobody can come and claim he was forced
 19 against his will by NUM shop stewards to be at work. They
 20 accepted the willing.
 21 MR MPOFU: And do you really think that
 22 the strikers would differentiate and say oh no, those
 23 people, it's fine that they go to work and weaken the
 24 strike, because they assisting the willing as opposed to –
 25 I mean really, do you, are you seriously making that

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1 distinction from the point of view of the strikers to bear
 2 any significance at all?
 3 MR ZOKWANA: I don't think, Chairperson,
 4 I have to justify usage of violence by a section of
 5 workers. RDOs as a section of workers decided to take a
 6 strike and there is nowhere it has been shown that they
 7 have consulted their fellow workers to take the same
 8 strike. In all the meetings, in all delegations to
 9 management, they said we are earning R4 000, we want
 10 R12 500. You cannot therefore expect me when you choose to
 11 demand something, that I will just follow you because
 12 you've demanded that. So in this case we had a strike of
 13 RDOs that took place, led by them. When the company I
 14 think issued threats to dismiss, it's then that they
 15 followed, the same manner they did, Chairperson, in Impala,
 16 and to me the two are related, and I think the end of this
 17 Commission must be able to find if these machine drillers
 18 were acting on their own, were not advised by somebody. My
 19 own view as a layman is that they were not alone; they were
 20 being assisted. Somebody was hiding behind the forest,
 21 waiting for this to happen, for him to match the major
 22 union. My answer therefore, Sir, is that it would have
 23 been wrong for the RDOs to have expected others to
 24 understand why they are on strike. It would have been
 25 wrong of them to expect other workers to follow suit. It

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1 would have been wrong of them to be angry at those who are
 2 working.
 3 MR MPOFU: Mr Zokwana, I just want to
 4 assure you, you have made it clear before and just now that
 5 you believe in this third force theory, that there was a
 6 third force. We'll deal with that in due course, I can
 7 assure you. What we are dealing with now –
 8 MR ZOKWANA: The answer to your question,
 9 Sir, is I think if the strikers would have been angry at
 10 those who were going to work, my answer, it would have been
 11 wrong of them to believe that they were not supposed to go
 12 to work. I have answered your question.
 13 MR MPOFU: Thank you. Thank you. Okay,
 14 I'll rephrase the question because I think it was
 15 distracted by the other things. What I'm putting to you,
 16 Mr Zokwana, is that the NUM – let's look, the NUM's actions
 17 in actively assisting people to go to work, knowing that
 18 from the strikers' point of view that would be seen as
 19 something that will weaken the strike, was unwise. It
 20 might be legal and all these things that you are saying.
 21 That's what I said, and you've already - just hang on,
 22 please. You've already answered that and given all these
 23 scenarios. Now all I want to ask you now is would your
 24 answer be different if I show you that the reasons that you
 25 have given are not valid? For example that the RDOs had

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1 consulted with other RDOs throughout the other plants, if I
2 could show you that you're wrong about that. 2, if I could
3 show you that you are wrong that they actually went and
4 used the loudhailer in the hostels to encourage people to
5 go to work, not necessarily just helping the, the so-called
6 winning, and thirdly, if I show you that the NUM assisted
7 not only the people it leads, as you say, but also non-
8 members of the NUM, if I showed you those three pieces of
9 evidence, would that change your answer?

10 MR ZOKWANA: It will not change it, Sir,
11 for one reason. Maybe we don't listen to each other. I
12 said RDOs on their own agreement in different – I'm aware
13 of this main point you are putting – did not only, it began
14 in Karee when they met with Mr Da Costa. Then it spread to
15 other shafts of Lonmin. Yes, I agree with you, RDOs as a
16 group of workers were part of this and believed that it was
17 the right thing to do. I agree with that with you.
18 [10:21] What I disagree with you is where you said it
19 was, where I differ is this that they were supposed
20 therefore, beyond consulting among themselves as a group of
21 workers, to have consulted other workers like stop team
22 workers, winch operators, any other worker on the mine, and
23 say guys we're on strike, we would like you to join us on
24 this strike, and if there's agreement to that position and
25 if you can show me that they did that, I may reconsider my

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1 answer. My answer still stands, it could have been wrong
2 of them after only consulting among themselves, to have
3 urged everybody to follow suit, and I've said again, Mr
4 Mpofo, that yes, NUM shop stewards using such hailer, they
5 even requested security office, were saying to workers
6 those who want to go to work – they didn't say NUM members
7 – avail yourselves, NUM will assist you to go to work, and
8 I'm saying that was conforming to the agreement we have
9 signed with the company, and the reason being that,
10 Chairperson, there have been instances where unions have
11 been on the verge of being sued by employers for being part
12 of illegal strikes, for the loss of production. But what
13 was key to NUM on that bat, what was key was that tags have
14 been used by companies, or may be used by companies to cut
15 their labour cost by using an illegal strike action as the
16 means to dismiss workers without paying them their
17 severance packages, and there's a, as a disciplined union
18 we would not have been part of that action. So my answer
19 to you, Mr Mpofo, all this long, is that it would have been
20 wrong on the part of the RDOs to expect everybody else,
21 when they only contact among themselves, to follow them
22 suit, and there's something called in law secondary strike
23 actions and you can only apply that part if the strike is
24 lawful and there are relations between the two operations,
25 and you can prove the reasons thereof, but in this case,

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1 Sir, I repeat, no consultation was done. To expect
2 somebody to follow you when you are walking, when he
3 doesn't know where you are going, would not be fair on that
4 person.

5 MR MPOFU: Right, ja to round off this
6 point, I'm going to put to you, and invite your comment,
7 what I'm going to argue at the end of the case in respect
8 of this aspect, and then you can comment. I'm going to
9 argue that typically, or generally strike violence is
10 usually associated with these issues that you and I have
11 been discussing this morning, scab labour, "amagundwane,"
12 or people being seen as dissenters, or some other form of
13 trying to break the strength of the strikers. Sorry, if I
14 may, before you answer, you can just answer the whole
15 thing, and the sting of that argument will be that the NUM
16 in acting as it did, knowing what it knows about the
17 behaviour of strikers, knew that the strikers would regard
18 their actions as provocation. So you can comment.

19 MR ZOKWANA: Chairperson, in trying to
20 answer the question I will use two scenarios. As a
21 sportsperson at a very junior level at school I was always
22 advised that it is never right for you to retaliate when
23 your opponent has kicked you, for if you do so you remove
24 the power of the referee, by the way you're undermining
25 that there is a person of authority on the field. You

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1 cannot, I don't think you can argue that because something
2 is done wrong by somebody, he deserves to die, my first
3 point. My second point would be this, Mr Mpofo. I don't
4 think your argument seeks to say people have a right to do
5 whatever they want, even to kill others, no matter how
6 provoked they are, and I hope that when that, when you put
7 that view, that argument of yours, I think NUM through
8 itself or through its legal team will show to you that the
9 same, even if – that is my view, Chairperson – even if
10 there were no people called to go to work, violence was
11 going to accompany this strike for two reasons, for two
12 reasons. It had been shown, Chairperson, here that when
13 these NUM shop stewards were assisting these people, even
14 before the strikers knew that NUM was to intervene, the
15 strikers were carrying assegais and sticks, threatening
16 others. So violence was bent. That's what I'm saying to
17 you.

18 MR MPOFU: Ja.

19 MR ZOKWANA: If you follow what has
20 happened in Impala, Chairperson, without shop stewards in
21 Impala doing what other shop stewards did in Lonmin, the
22 same fate that happened in Lonmin befell our shop stewards.
23 I don't think it should fit in this Commission,
24 Chairperson, to give a qualification as to under what
25 circumstances is violence permissible, the [inaudible] of

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1 murder and disregarding of the law, I don't think that,
 2 Chairperson, it should be the area, but if that is brought
 3 forward by the counsel on behalf of the strikers, on behalf
 4 of the families, because to me, I may be wrong,
 5 Chairperson, they look like a triumvirate of firms. I may
 6 be wrong. I will withdraw if it is wrong.
 7 MR MPOFU: I'm going to argue further
 8 that the provocation, the main provocation which was
 9 demonstrated, or meted out by the NUM, was on the 11th when
 10 it shot the people, a topic to which we will come, but in
 11 respect of what we are discussing now I'll say that it was
 12 also provocative to do something which you knowingly knew
 13 was calculated to break the strike.
 14 MR ZOKWANA: Thanks. Let me respond to
 15 that by saying this, that, Chairperson, Ms Barnes I think
 16 when she cross-examined me wanted me to agree with her that
 17 it is wrong during a situation like the one prevailing on
 18 Lonmin, to make unsubstantiated statements, and I'm saying
 19 that the singing of songs by the un-NUM in the presence by
 20 participation of AMCU leadership, was provocative. The
 21 spreading of lies to the fact that two people have been
 22 killed, telling those who are already angry, was not meant
 23 to build peace at all. The insinuation that NUM was part
 24 of management, were in, on the same bed, was not helping
 25 NUM. It was designed – that is my view – to prevent NUM as

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1 a union that is not standing for those workers. It's a
 2 question that I'm having. I hope by the end of this
 3 Commission, Chairperson, we'd be able to find out what were
 4 the ulterior motives of those who were doing that, AMCU in
 5 particular in this case. I don't think that it should only
 6 be the question of you proving that NUM did that, and if
 7 you presented that I think NUM will come along to show that
 8 the real, real, real provocation that you have alluded to,
 9 which maybe you may have some, it is to say that these guys
 10 were angry because NUM shop stewards assisted, abated,
 11 caused people to go to work. It is what statement they
 12 gave when they were asked initially. Maybe they said so
 13 before they were thrown the lies that NUM has killed some
 14 of them. But I wonder again if they knew themselves that
 15 they were marching and that was that some, one of you is
 16 killed, why didn't they ask who amongst of us is no longer
 17 amongst us? But nonetheless I know, Sir, it is also easy
 18 to lie because when you lie those you lie to sometimes,
 19 most cases they believe the lie, unless the truth is told,
 20 and the point I'm putting is this, that you are welcome,
 21 Sir, to bring that view, and I think NUM would be able to
 22 show that all that is not going to qualify the extent to
 23 which violence was used. And lastly, Sir, one of the key
 24 challenges I think not only this Commission, this country
 25 should deal with, is the definition of a trade unionist

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1 vis-à-vis a phenomenon that is creeping within trade
 2 unions, a phenomenon of family trade unionism, [inaudible]
 3 unionism, often just using their spouses as business
 4 partners, and how that can influence the urge to grow at
 5 all cost, even if it means the murdering of people. And
 6 I'm raising this, Chairperson, because it can answer the
 7 behaviour of, my behaviour or some of us as to how do we
 8 regard a union. Do we see it as a business or do we see it
 9 as a union? If we see it as a union, Chairperson, what
 10 would be key is the unity of workers, their safety. You
 11 may never ever sit back when you know that they may lose
 12 their jobs or be killed.
 13 MR MPOFU: Mr Zokwana, please, you must
 14 be patient with me. We're going to come to the question of
 15 spreading of lies.
 16 MR ZOKWANA: I will be – I'm sorry, Sir,
 17 I will be – I promise to be patient.
 18 MR MPOFU: Thank you. We will come to
 19 the question of spreading of lies, including by you, and we
 20 will come to that. Please be, just take my word for it.
 21 The issue I'm dealing with now is simply this, that what I
 22 will argue is that that provocation – and I take your point
 23 about the killing and so on. Let's assume that there are
 24 no killings, that's why I didn't use the word "kill."
 25 CHAIRPERSON: - make that assumption if

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1 we know there was killing. I mean it doesn't help us in
 2 this inquiry to say, where there is a background of
 3 killing, to say well let's assume there wasn't any killing.
 4 I mean I don't see how that helps us. You can't wish away
 5 something that happened. Who was responsible for –
 6 MR MPOFU: It did not happen. That's the
 7 issue.
 8 CHAIRPERSON: Hang on.
 9 MR MPOFU: The people were just shot and
 10 not killed.
 11 CHAIRPERSON: I think, I'm not confining
 12 myself to that. There was not only the absence of killing
 13 on the 11th, but there were other killings that are
 14 relevant, and we can't wish away those. They happened. If
 15 your question is confined to –
 16 MR MPOFU: To the 11th.
 17 CHAIRPERSON: - to ignoring the
 18 allegation that there was killing by NUM –
 19 MR MPOFU: That's all.
 20 CHAIRPERSON: - of two strikers on the
 21 11th, then obviously you can carry on with the question.
 22 MR MPOFU: Thank you. Let's more than
 23 assume; let's accept, maybe that's better, that the two
 24 people were not killed, okay. That would only affect the
 25 degree of provocation. What I'm saying to you is that the

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1 fact that these people were shot at by NUM, two of them
 2 were seriously injured and hospitalised, was itself
 3 provocation. It might well be that if they were killed, it
 4 would have been bigger provocation, but that was
 5 nevertheless provocation. Would you accept that?
 6 MR ZOKWANA: No, no, Sir, I have, I think
 7 NUM has shown the fact that that is an issue you are going
 8 to raise and I'm sure it will be engaged at that point.
 9 What I'm putting to you is this, that even the marching of
 10 people armed to NUM offices was as well provocation to
 11 those stewards who were in the office. So I think when we
 12 debate it I think we will be able as NUM to show to you
 13 this, that we believe that well they may have regarded it
 14 as such, those stewards in the office had been shown by the
 15 statements of the people who have been before me, they saw
 16 it as so that you can just march to somebody's place
 17 allocated to lawfully and threaten to burn it. The extent
 18 thereof I think is for argument. But again, Mr Mpofo, I'm
 19 sure when we argue that point, we need to look at to what
 20 extent could therefore those lies being toxic, could have
 21 made the situation worse to people who know that here we
 22 are, two of us have been killed by those guys in the
 23 office. What extent could those lies play the role? I'm
 24 saying that when you argue that point I'm sure all those
 25 things will be taken into account.

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1 MR MPOFU: Would your answer be different
 2 if I tell you that the evidence which we will lead will
 3 show that at least one of the people who were injured was
 4 found by the NUM members and hacked while he was lying
 5 down, bleeding, and possibly left for dead?
 6 MR ZOKWANA: I can't comment on that.
 7 I'm sure as you are saying you're going to give evidence to
 8 that, maybe the person will come and give evidence. I
 9 can't at this point comment on that.
 10 [10:41] MR MPOFU: No, I'm saying, Mr Zokwana,
 11 sorry, maybe we don't understand each other. Assume for
 12 now that that will be the evidence and it will be
 13 established; it may not be, but would your answer be
 14 different as to the extent of the provocation?
 15 MR ZOKWANA: I'm not in a position,
 16 Chairperson, to predict that before even that evidence is
 17 led.
 18 MR MPOFU: I'm going to take it you don't
 19 want to answer the question.
 20 MR ZOKWANA: Chairperson, you know in
 21 some of the – I'm not a sangoma to throw bones and
 22 understand what would the after effects of that evidence.
 23 The evidence has not been presented, Chairperson, and that
 24 person, and the version you created had been, is true, if
 25 it is true I may have another view. If it is not, no view.

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1 I can't be able to pre-empt what that evidence will come up
 2 to be at the end.
 3 MR MPOFU: Mr Zokwana, I accept that you
 4 cannot know what the fate of the evidence is, and if it is
 5 not true, don't comment on it, okay, but if it is true,
 6 would you change your answer?
 7 MR ZOKWANA: I intend not to comment on
 8 that.
 9 MR MPOFU: Yes, that's what I said. You
 10 don't want to answer that question.
 11 MR ZOKWANA: Yes.
 12 MR MPOFU: Okay. Now I want to put to
 13 you that it is clear from the evidence that you've given
 14 that you, you personally, and the NUM regarded this strike
 15 as an AMCU strike, and that that was the real reason why
 16 you acted in the ways you did in respect of the strike.
 17 MR ZOKWANA: Chairperson, I would always
 18 avoid having been called upon to retrench my earlier
 19 statement I made during the SAFM discussion to make
 20 conclusions not based on fact. I think the Commission that
 21 will go through this, will find the similarities between
 22 the strike in Impala and the strike in Lonmin, especially
 23 what could have happened after the strike, who was able to
 24 address those members on the mountain, the singing of
 25 songs, all those things, but I still remain to say the

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1 strike was a strike of RDOs initially, that turned violent.
 2 AMCU emerged as the beneficiary of the strike after the
 3 strike. Whether they could have been part of the strike,
 4 I'm not in a position to put that as a fact, Mr Mpofo, but
 5 I'm sure when the rat is dead you don't see it, just smell
 6 and tell something wrong is happening. I'm not saying AMCU
 7 is smelling. I'm making a, the way of saying is that there
 8 are more reasons for me to believe that by the end of the
 9 Commission when all evidence is collected, we'll be able to
 10 find whether this is not a new form of organising, that
 11 when you fail to organise workers, you unleash this kind of
 12 strikes with aim of you emerging the victory. I'm not
 13 saying AMCU is behind the strike. I'm not saying AMCU is
 14 behind the killing. I can't make that – I don't have
 15 evidence at my disposal, Chairperson. I'm avoiding being
 16 called upon to apologise.
 17 MR MPOFU: Mr Zokwana –
 18 MR ZOKWANA: Yes, Sir.
 19 MR MPOFU: Please listen to me carefully.
 20 I'm going to argue, and I'm going to base that on not only
 21 what you believe or believed, but also on what you said,
 22 that it was your view that this was an AMCU thing. Yes or
 23 no?
 24 MR ZOKWANA: Chairperson, I don't know
 25 whether I have to respond to a statement I've withdrawn in

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1 this Commission.

2 MR MPOFU: No, no –

3 MR ZOKWANA: Because I withdrew that

4 statement and I was called upon to withdraw it; I withdrew

5 it.

6 MR MPOFU: No, my understanding is that

7 you withdrew the allegation that AMCU killed people.

8 MR ZOKWANA: No, I withdrew the

9 allegation that AMCU was behind the strike. I withdrew

10 that, and I said up until such time that evidence is

11 presented, can that stand.

12 MR MPOFU: Okay, let's put it like this

13 then, instead of quibbling about what you withdrew. Until

14 the point of that withdrawal you believed that the AMCU was

15 behind the strike, correct?

16 MR ZOKWANA: I suspected that.

17 MR MPOFU: Did you believe it, Mr

18 Zokwana?

19 MR ZOKWANA: Sir, I have been called upon

20 to withdraw. When you withdraw something, you can't go and

21 say you believe. I don't believe it anymore, until proof

22 is there that it is AMCU.

23 MR MPOFU: Okay, you don't believe it

24 anymore –

25 CHAIRPERSON: - a different question.

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1 You were asked whether, before you withdrew it, at an

2 earlier stage did you believe it?

3 MR ZOKWANA: I did.

4 CHAIRPERSON: You say you no longer

5 believe it, you –

6 MR ZOKWANA: I did. I did, Sir.

7 MR MPOFU: Thank you, and as you know,

8 even using similar metaphors as you have just used now,

9 Lonmin also believed that this was an AMCU thing.

10 MR ZOKWANA: I think Lonmin is a better

11 place to explain that. I'm explaining what I believed.

12 MR MPOFU: No, Sir –

13 MR ZOKWANA: I can't speak on behalf of

14 Lonmin. I don't know what they believed. That statement

15 was made and the person, unless Lonmin's senior counsel can

16 confirm that his client who has mandated this, can say he

17 believes so. I was, and I was called even when I quoted

18 that statement withdraw, and I did withdraw. I can't stand

19 by that anymore.

20 MR MPOFU: Mr Zokwana, you are evading my

21 question intentionally. How many times did you say to Ms

22 Barnes "I was not the only one who believed that AMCU was

23 behind this, even Lonmin did?" Now when I'm asking you,

24 suddenly you have this –

25 MR ZOKWANA: I can only speak of, say

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1 that as a person I did believe then. After withdrawing

2 that statement, I cannot make that same statement again,

3 but Lonmin is here, he can sort of, say that statement.

4 MR MPOFU: Mr Zokwana, please Sir –

5 MR ZOKWANA: For one reason, Chairperson,

6 the Lonmin executive has not yet withdrawn his view. I

7 have withdrawn mine, so I cannot be here therefore to say

8 whether he still believes.

9 MR MPOFU: I'm sorry, Sir, I'm not going

10 to let you get away with this one. I'm putting it to you

11 that you are evading this question deliberately. You

12 repeatedly said –

13 CHAIRPERSON: I'm sorry, Mr Mpofo, I

14 don't see the evasion. When he says the representative of

15 Lonmin can say whether his client still believes that, he's

16 clearly saying, "They did believe it; whether they still

17 believe it, I don't know." He says, "I believed it. I

18 don't believe it anymore. I withdrew," I'm afraid I don't

19 see evasion. If there's something I've overlooked, please

20 draw it to my attention, but I don't think on the material

21 before us at the moment I can allow you to put to him that

22 he's deliberately evading the question.

23 MR MPOFU: Okay, Chairperson, there is

24 something you've overlooked, Chairperson. Mr Zokwana, let

25 me rephrase the question. You have accepted to the

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1 Chairperson at least that you believed that AMCU was behind

2 the strike. All I'm saying to you is that to your

3 knowledge, Lonmin believed the same thing.

4 MR ZOKWANA: I repeat, Sir, again,

5 Chairperson, I had those beliefs up until the day when I

6 was called upon to withdraw my statement, and I cannot say

7 that I do believe AMCU was behind the strike without

8 presenting evidence, as I was shown. Whether Lonmin still

9 believes or not, I don't think the onus is on me to speak

10 on their behalf.

11 MR MPOFU: Okay, Mr Zokwana, can you

12 disabuse your mind about what Lonmin still believes or

13 currently believes or whatever. Let me just finish the

14 question. I'm just begging you to do that. What they

15 still believe or what they believe today and so on, let's

16 take that out of the equation. Am I correct that during

17 the time of your belief that AMCU was behind the strike,

18 which expired at the point of your withdrawal, to your

19 knowledge Lonmin believed the same thing?

20 MR ZOKWANA: Mr Mpofo, trying to answer

21 you as best as I can, I repeat again, I extended my belief

22 to say that I was not the only one who believed so, and I

23 withdraw that belief even that Lonmin could have believed

24 it's so, but it's up to Lonmin to say if they still believe

25 in what they believed in.

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1 MR MPOFU: Well, having clarified the
2 question now, I'm going to suggest to the Commission later
3 that you are evading this question, and base that on the
4 fact that you repeatedly, but repeatedly said to Ms Barnes
5 when she was putting this proposition to you, that you were
6 not the only one, and you cited the fact that somebody from
7 Lonmin said this thing reeks of AMCU.

8 MR ZOKWANA: And I repeat to say, Sir,
9 it, and I think in the record of the Commission that will
10 be shown and in the same record it will show that I did
11 retract that statement.

12 MR MPOFU: And I'm going to argue that
13 this common belief between yourselves and Lonmin that this
14 was an AMCU thing, formed one of the bases for what
15 yesterday we described as the unholy alliance in respect of
16 the strike.

17 MR ZOKWANA: I think NUM will be equally
18 be able to argue that you have not shown any shrink of
19 evidence that there was such an alliance which you describe
20 as unholy.

21 CHAIRPERSON: Mr Mpofo, in an endeavour
22 to cut the cross-examination at this point short, it's
23 obvious that the witness was referring to the statement
24 which appears at page 76 of exhibit XX2, which is the, it
25 was an email sent by Mr Frank Russo-Bello to Mr Ian Farmer,

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1 which was discovered, as I understand it, by Lonmin, and
2 which is as I've said at pages 76, 75 and 76 –

3 MR MPOFU: Ja.

4 CHAIRPERSON: - of exhibit XX2, and there
5 Mr Russo-Bello says that, it's the second paragraph on page
6 76, "I would like to say, and have indicated as much to
7 Barnard," that's obviously to Mr Mokwena, as you know,
8 "that this whole thing reeks of AMCU involvement and
9 orchestration, and is almost a carbon copy of what
10 transpired at Impala." Now that seems to be what the
11 witness was referring to, so he was entitled to say that it
12 appears from the discovered documents of Lonmin that in an
13 internal email from one Lonmin official to another, that
14 view was expressed; I wasn't alone in thinking that.
15 That's all he said. Now I don't know that the point needs
16 to be taken much further. I don't want to stop you
17 completely, but I would suggest if we focus on that, we
18 could thus bring this point to a conclusion before I take
19 the tea adjournment.

20 MR MPOFU: Yes, Chairperson, yes, I'm
21 afraid, with respect, and it's probably my fault, you may
22 need, the thrust of attempting is this, the witness said,
23 quoting Mr Russo-Bello, that both him and Lonmin believed
24 this, citing the same issues, the Impala and so on and so
25 on, and now he is unwilling to say the same thing. That's

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1 all he's evading. All I'm saying is that he, when Ms
2 Barnes asked him in a different context, he said "I was not
3 the only one," and quoted this, and all I'm asking him now
4 is to say, and now he says no, Lonmin will answer for
5 themselves and what have you.

6 CHAIRPERSON: That's the point I want to
7 put to you, is I think you've made the point that you
8 wanted to make.

9 MR MPOFU: Thank you. Thank you, Chair.

10 CHAIRPERSON: And I don't think we need
11 to spend any time repeating it and underlining it over and
12 over again.

13 MR MPOFU: No.

14 CHAIRPERSON: It doesn't get any
15 stronger. It is either strong already, or it's not.

16 MR MPOFU: Yes, fair enough.

17 CHAIRPERSON: Alright, so on that note,
18 would it be appropriate for us, before you move on to the
19 next point, to take the tea adjournment?

20 MR MPOFU: It will, Chairperson, yes.

21 CHAIRPERSON: Alright, we take the tea
22 adjournment.

23 [COMMISSION ADJOURNS COMMISSION RESUMES]

24 [11:31] CHAIRPERSON: The Commission resumes,
25 you're still under oath, Mr Zokwana. Mr Mpofo, are you

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1 ready to move on to the next point?

2 MR MPOFU: Thank you, Chairperson. Mr
3 Zokwana, the essence of what I was putting to you was that
4 the common belief which you and Lonmin held regarding this
5 being an AMCU strike, was one of the bases of what I will
6 allege at the end to be the collusion or alliance between
7 Lonmin and the NUM, and I just want to expand on that
8 before you respond by saying that for different reasons the
9 NUM was therefore prepared to work as one team, to put it
10 mildly, with Lonmin in crushing or opposing the strike.
11 Now you can comment.

12 MR TIP SC: Chair, before the comment is
13 given could I ask the question to be clarified?

14 MR MPOFU: Okay.

15 MR TIP SC: The position is that, as it
16 has been remarked already, the email in question from Mr
17 Russo-Bello is something that was discovered in the Lonmin
18 bundle and it has been traversed in the evidence here to
19 the extent that the witness, Mr Zokwana has said, well, my
20 belief was not the sole belief, but the proposition that is
21 now being put is that on that basis there was a joint view
22 on the part of Lonmin and NUM which led, as I understand
23 the thrust of the question, to a joint approach to the
24 factual management of the existence of the strike, and that
25 is a large step away from where we were in respect of the

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1 true nature of the email. Perhaps if that can be clarified
 2 on the basis for a proposition of an active unholy alliance
 3 should be made clear to the witness before he is required
 4 to answer it.

5 MR MPOFU: Okay.

6 CHAIRPERSON: It looks as if you wanted
 7 to say something?

8 MR BURGER SC: Chair, if I may add to
 9 what my learned friend says, that Russo-Bello email was
 10 made available to this Commission weeks, if not months
 11 after the incident. If my learned friend does not
 12 establish when this witness knew about the email, the whole
 13 thesis is false, and I understood, I listened to the
 14 evidence of the witness, I have a very clear impression of
 15 when he became aware of Mr Russo-Bello's email, and perhaps
 16 my learned friend should put that in context before he
 17 starts exploring –

18 CHAIRPERSON: Some basis should be laid
 19 for finding that at the time that these events took place,
 20 which is actually effectively before the 16th of August, NUM
 21 was aware of the belief held by Lonmin in this regard. So
 22 I think it may well be that you putting the proposition at
 23 this stage is premature in the absence of a basis, as has
 24 been suggested.

25 MR MPOFU: Thank you, Chairperson, yes.

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1 Thanks, Chairperson, in reply I must say firstly that Mr
 2 Tip is quite correct in how he defines the thrust of my
 3 question. As far as the issue of the email is concerned,
 4 what I'm busy exploring, Chairperson, has got nothing to do
 5 with the email per se. The email is simply proof of the
 6 fact that I'm saying that at that time the two parties
 7 formed common cause, so to speak, and one of the bases of
 8 that common cause was the belief that this was an AMCU
 9 thing. As to whether it subsequently appeared in an email
 10 or in a radio broadcast, that's neither here nor there. So
 11 the email, if it helps anything, it just supports as proof
 12 of that belief. It is not the source of the belief.

13 CHAIRPERSON: Then there must be some
 14 evidential basis surely for the suggestion that long before
 15 the NUM people knew about that email, that there was
 16 nevertheless a common cause, a common action, a common
 17 belief. In fact they may have held the same belief
 18 independently without being aware of the fact, that each of
 19 them held as the other held it. So before you get the
 20 basis for, before you suggest joint action there must be
 21 some basis laid surely and that email itself doesn't do it.
 22 So if there is something else then obviously you must then
 23 put it to him.

24 MR MPOFU: Okay, Chair, I –

25 CHAIRPERSON: I don't think you must ask

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1 the question into the air.

2 MR MPOFU: Yes, thank you, Chairperson.

3 MR BURGER SC: Well, then I object to the
 4 question that's been put. It is quite clear this is
 5 another conspiracy theory now. My learned friend has got
 6 no evidence to that effect and he is now postulating the
 7 possibility of something coming out of the wash in future.
 8 He is not entitled to do that in cross-examination.

9 CHAIRPERSON: I understood he was
 10 actually going to reformulate the question.

11 MR MPOFU: Yes.

12 MR ZOKWANA: And implicitly he has
 13 withdrawn the question to which you objected, so you're
 14 also now objecting to questions that haven't been asked
 15 yet, like some people answer them before they've been
 16 asked. So let's hear the question first before we hear
 17 whether you're going to object to it.

18 MR MPOFU: Mr Zokwana, I want you to
 19 comment on my proposition that the NUM was prepared to work
 20 as a team with Lonmin in combating the strike.

21 CHAIRPERSON: Are you putting it or
 22 you're asking him? Because there is no –

23 MR MPOFU: I'm putting it –

24 CHAIRPERSON: - evidential basis.

25 MR MPOFU: Fair enough, yes, - well,

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1 there will be, I'm putting it for now, Chair.

2 CHAIRPERSON: The question is until there
 3 is, you can't ask the question.

4 MR MPOFU: Yes, fair enough. Yes, I'm
 5 putting it to you.

6 MR ZOKWANA: There was never ever any
 7 such team work and I can only comment to say my
 8 understanding of the words "unholy alliance," I only came
 9 upon that when I was doing history in Sub B, during the
 10 second World War when the Soviet army joined the allied
 11 forces, when they are disagreeing in terms of ideology, and
 12 I don't think it is featuring therefore to use it that way,
 13 but nonetheless in your question, the last question, Mr
 14 Mpofo, there was never ever any meeting of minds as to how
 15 we should deal with the strike. NUM was working, informed
 16 by its own policies, policies I have taken you through.

17 MR MPOFU: Yes, that is exactly why I was
 18 using a milder term like a team.

19 CHAIRPERSON: Mr Mpofo, in order to save
 20 time, it may be that what you're looking for is at page 73.

21 MR MPOFU: No, it is 78 actually, Chair,
 22 if you'll allow me, Chair, please?

23 CHAIRPERSON: 78?

24 MR MPOFU: Yes.

25 CHAIRPERSON: Alright, then put your

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1 question.

2 MR MPOFU: Can you turn to page 78?

3 MR ZOKWANA: Yes.

4 MR MPOFU: That is an email sent by Mr

5 Daluvuyo Bongo –

6 MR ZOKWANA: Yes –

7 MR MPOFU: - to various people, including

8 Lonmin management, correct?

9 MR ZOKWANA: Yes.

10 MR MPOFU: And he says various things

11 about buses and where the buses must pick people up, and

12 then there are four points that are listed there. Can you

13 read out number 4?

14 MR ZOKWANA: What about it?

15 MR MPOFU: Can you read it out?

16 MR ZOKWANA: I take the instruction,

17 "There were no buses at the bus rank," is that it?

18 MR MPOFU: No, number 4, the very last

19 one before it says, regards.

20 MR ZOKWANA: Oh, point number 4, not –

21 MR MPOFU: Point number 4, ja.

22 MR ZOKWANA: "Security work with NUM as a

23 team."

24 CHAIRPERSON: I think you ought to be

25 clear, the introductory words should be read, the numbers

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1 you see, if you go to, "accompanied by the NUM," "Because

2 of the points mentioned above we request the following, 1,

3 extra security; 2, the buses to be in their normal places;

4 3, crush to be opened to allow the situation; 4, security

5 work with NUM as a team."

6 MR MPOFU: The team, thank you.

7 CHAIRPERSON: The people in the

8 auditorium can't understand if you just say –

9 MR MPOFU: Oh yes, no, I'm sorry, Chair

10 yes, if it is just one sentence out of context.

11 MR ZOKWANA: It is my understanding, this

12 was not a statement of saying NUM worked with Lonmin. It

13 was, it is what NUM would appreciate to happen.

14 CHAIRPERSON: Yes –

15 MR ZOKWANA: You can't therefore collude

16 that there were unholy alliances.

17 MR MPOFU: Okay, fine. Are you prepared

18 to accept now that at the lowest, at that time NUM was

19 proposing to work with Lonmin security as a team?

20 MR ZOKWANA: The proposition should be

21 read as I have read it, Sir, with my limited, with no

22 knowledge of what was happening, it seeks to say the

23 workers want to go to work. For that to succeed let the

24 following happen. The team work is only in as far as

25 people being able to go to work without hindrance. It does

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1 not mean that NUM and security were a team to do any other

2 thing. And again, Chairperson, this is not the first

3 occurrence where NUM shop stewards have done so in, during

4 strike actions. Where workers want to go work and they are

5 being stopped against their will and there is no basis to

6 use any other methods, NUM shop stewards will do so and

7 we'll stand by that, this shop steward on that day.

8 MR MPOFU: And –

9 CHAIRPERSON: Perhaps in fairness, the

10 introductory portion should also be read. "We request the

11 release of all stewards tomorrow," this is sent at 10:43PM.

12 MR MPOFU: Yes.

13 CHAIRPERSON: On the 10th of August, which

14 was the Saturday, - the Friday?

15 MR MPOFU: Yes, Chair.

16 CHAIRPERSON: "We request the release of

17 all stewards tomorrow, the 11th August 2012. The reason for

18 that, we want their assistance in accompanying the

19 employees to work. We observed the following issues, the

20 employer is relieving in the side of Bapo dropped at B3 by

21 the buses. The shortage of security, some employees were

22 assaulted by chased away by the RDO's. We even phoned the

23 ER when we see the incidents. The securities were gathered

24 in one place near Rowland Shaft, while the employees," I

25 presume the next word should be were, "intimidated and

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1 assaulted near the stadium. There were no buses at the bus

2 ranks, meaning the employees are not protected," and then

3 there is a passage read earlier, the numbers succeed to go

4 to work accompanied by the NUM. Because of the points

5 mentioned above," those are the ones I read out, "we

6 request the following, exit security, buses to be in their

7 normal places, crush to be opened to allow the situation

8 and security work with NUM as a team." So one has to read

9 that passage in the full context –

10 MR MPOFU: Absolutely –

11 CHAIRPERSON: - before the point can be

12 made, so you can proceed on the basis the context has now

13 been explained.

14 MR MPOFU: Fair enough, and Mr Zokwana, I

15 don't want us to waste time, the Chair has now read the

16 full thing. Let me tell you why I'm asking this question.

17 Remember what we are busy dealing with is, I'm saying that

18 from the point of view of the workers, some of the

19 activities and conduct of the NUM might have been seen by

20 them, rightly or wrongly, as provocation. Now all I'm

21 saying is that when the NUM for - I've alleged that it was

22 because you believed it was an AMCU thing - was prepared to

23 even go to the extent of working with Lonmin management as

24 a team, those in the eyes of the strikers would be some of

25 the things that would have contributed to the animosity

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1 towards the NUM. I'm not saying anything further than
2 that.

3 MR ZOKWANA: Chairperson, let me say
4 this, that I don't think it is right for the counsel to
5 always refer to a belief I have withdrawn. The point I'm
6 putting –

7 MR MPOFU: No –

8 MR ZOKWANA: No, no, no, no, please Sir,
9 and I think again you asked me to be cool, I have been cool
10 and it won't help us maybe to get worked up because of
11 emotions. My answer to your question is simple, is to say
12 that it would be wrong on your part to say that workers
13 would view the NUM. If you say strikers I may tend to
14 agree with you. It is not all the workers at Lonmin who
15 would view NUM wrongly; they do accompany workers to work,
16 and this view was not built in NUM, Chairperson. NUM held
17 mass meetings in which if workers wanted to go to work, ex
18 miners, the RDOs.

19 MR MPOFU: Thank you.

20 MR ZOKWANA: So I mean if you use the
21 word "workers," that's everybody willing to go on strike –

22 MR MPOFU: Yes, Mr Zokwana, if I used the
23 word "workers" then I apologise to you. What I meant was,
24 strikers, and I understand that if I mean strikers then you
25 agree with me?

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1 MR ZOKWANA: Sir, I would not believe
2 that it would have been the only reason for them to do what
3 they did. Those strikers could have viewed anything the
4 way they viewed it and I have not been able to meet with
5 them to understand what their view would have been.

6 MR MPOFU: Okay, please forgive me again,
7 Mr Zokwana, I thought you said if I use the word "strikers"
8 you agree with me, so I was wrong.

9 MR ZOKWANA: If you have withdrawn the
10 word "workers" I would say that maybe as you say, those
11 strikers, because I'm sure you have consulted them, that is
12 the view they may have held, not a view I agree with.

13 MR MPOFU: I also put it to you that one
14 of your contributory reasons for your going this far in
15 your opposition to the strike was because you regarded AMCU
16 as an enemy, not only as a competitor, or a rival.

17 MR ZOKWANA: A competitor and a rival, Mr
18 Mpofo, what would be the difference?

19 MR MPOFU: Okay, the issue is that
20 competition is acceptable and obviously you have no
21 obligation to like your competitor. Rivalry is also
22 acceptable, but what would not be acceptable is to regard
23 the rival or competing union as your enemies, because that
24 is likely to breed violence and all the things that go with
25 it.

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1 [11:51] MR ZOKWANA: NUM never regarded any
2 competitor in the industry in terms of membership. There
3 have been many instances where different entrants have come
4 in, we, in drafting, especially on, in Anglo operations and
5 Platinum, we had FMU, which was the union, we had a number
6 of features, Madolo and many others. We have never
7 regarded them, Chairperson, as rebels. If you –

8 MR MPOFU: As enemies?

9 MR ZOKWANA: As enemies, we have not done
10 that and the reason that I put to you yesterday, if we were
11 to go around and say, what is the view of NUM plus AMCU you
12 will not find, because NUM is with the people who don't
13 only, don't agree, but they go beyond disagreeing where
14 they may use other methods to show that situation. NUM
15 don't regard AMCU as an enemy. We regard AMCU as any other
16 union, until they may be proven by the AMCU counsels, which
17 I include you to be one of them, to come forward with the
18 view that says, these are the examples that define NUM
19 stand towards AMCU regarding as an enemy, and one issue,
20 Chairperson lastly, when NUM was able to change the
21 limitations of the scope, we were able to organise members
22 of Solidarity, the union, hence we were in a position to
23 negotiate in Impala, and the two unions never fought. They
24 also have been in existence in Rustenburg; we don't treat
25 them as rivals or enemies. We believe that unions must

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1 have the belief that says, which is a globally held view by
2 the IO, that the right to join a union is your choice. No
3 employer, nobody can force you to do otherwise, and as NUM
4 it is what we believe in. We would not regard AMCU as an
5 enemy at all, Sir. What you may have a view on is the
6 method it applies in the way of competition, but as a union
7 we have refused to embrace the matter of the youth.

8 MR MPOFU: Okay, the proof will come,
9 Sir, but for now I take it that you are saying that it
10 would be incorrect and improper for the reasons you've
11 mentioned, that it might breed an atmosphere of violence
12 and so on, to refer to AMCU as an enemy.

13 MR ZOKWANA: We have never regarded AMCU
14 as an enemy. We regard AMCU as a competitor in the
15 industry. It is the method that they have been using that
16 can be seen that they regard NUM as an enemy and I'm sure
17 we have seen here that songs were sung, lies were told, un-
18 NUM attitude was built. I wonder if you'll find in your
19 documentation or any other papers before you where NUM sung
20 songs in any koppie that is saying, kill AMCU, kill
21 Mathunjwa, or anything like that. It is not our culture,
22 it is not the way we believe it, it is not how we work as a
23 union.

24 MR MPOFU: Do you accept that the
25 animosity towards the NUM that you have described now was

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1 displayed after the activities that you and I had discussed
 2 this morning, and more importantly the shooting of the
 3 protestors by NUM members?
 4 MR ZOKWANA: What we have presented to
 5 this Commission is, if you were to look at these incidents,
 6 divorced from incidents from Impala, you will not be able
 7 to get the grasp of what is happening. So in our view this
 8 animosity between, as you say it now, between AMCU and NUM
 9 –
 10 MR MPOFU: I said the strikers, sorry,
 11 Sir.
 12 MR ZOKWANA: Alright, Sir, I will say,
 13 I'm not in a position to agree with you because even if you
 14 call them strikers, they've got a feature of five Madotta,
 15 they've got a feature in Impala, it was a feature in
 16 Lonmin, stop orders were signed in the mountains and they
 17 were signed in the railway lines in Rustenburg, so to me it
 18 was a carbon paper of the same process happening at
 19 different times. The tactic has been the same; use
 20 intimidation, use violence, use a threat action as a cloth
 21 to cover the real intentions. So my view, Chairperson, my
 22 short answer, Chairperson is, to the question, I don't
 23 agree with your proposition.
 24 MR MPOFU: To be fair, I've forgotten
 25 what the proposition was.

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1 MR ZOKWANA: It was if I agree with you
 2 that the shooting by NUM was the causal for whatever
 3 happened.
 4 MR MPOFU: But all that you are saying
 5 now, the carbon paper and all that, just reaffirms your
 6 belief at the time, which you have withdrawn, that it was
 7 an AMCU thing.
 8 MR ZOKWANA: I'm responding to your
 9 question, Sir, and I'm saying that in my answer, that is
 10 the view I held and I believe up until a time I was calm,
 11 but in as far as the Impala is concerned I have been able
 12 to show you this, that the belief there is that after the
 13 incidents of whatever happened in Impala, AMCU was the
 14 victorious union that came into being, camouflaging this
 15 Five Madotta. What I withdraw is that I cannot say that
 16 AMCU was behind the strike or the marches because that
 17 evidence will come, but I think if you look at its motive,
 18 if you look at the issues you have raised yourself in terms
 19 of people having to look at issues that happened, I'm not
 20 going to [inaudible] that view again that AMCU was behind
 21 it. I'm saying that I think the Commission by the end it
 22 finishes, it will be able to find maybe that there was some
 23 relationship between the incidents, but I cannot stand here
 24 and say it is because I don't have evidence for that fact.
 25 MR MPOFU: Where will that evidence come?

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1 As I understand it you are the last witness for the NUM.
 2 Is that evidence still to come, that AMCU was behind the
 3 strike?
 4 MR ZOKWANA: My understanding is that you
 5 are also going to present your own witnesses, maybe in
 6 their own cross-examination they may tell who are the real
 7 people who pushed them too, so I'm putting a theory that in
 8 the event of all these things happening, I hope that the
 9 Commission by the end will be able to find as per your own
 10 term you used, which I understand Mathunjwa used,
 11 metaphors. Maybe in that process you will tell at what
 12 stage did AMCU come to be the player, but not in the
 13 position to tell it now.
 14 MR MPOFU: I'm just going to round off
 15 this by going back to something that we discussed
 16 yesterday. Do you remember that I suggested, that in
 17 respect of the issue of violence that I suggested that the
 18 rosy picture painted by you of the relationship between NUM
 19 and violence was false, and one of the instances that I
 20 cited was the injury at the hands of NUM members, which you
 21 disputed, of the deputy president, Mr Matosa. Remember
 22 that?
 23 MR ZOKWANA: Very well.
 24 MR MPOFU: Yes. Now do you also dispute
 25 that NUM members killed one NUM comrade, Selby Mayise?

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1 MR ZOKWANA: Thanks, Chairperson, you
 2 know it seems as if we have constantly been studying, or
 3 understanding the incidents you have raised and I happened
 4 to be present in all. As I was present [inaudible] in '98,
 5 as I was present in a number of areas, I was present in the
 6 meeting, it was in 1998, to assist the Commission, and it
 7 would be incorrect for Mr Mpofo to come with the view that
 8 says NUM murdered Selby Mayise.
 9 MR MPOFU: I said NUM members murdered –
 10 MR ZOKWANA: You're saying that, yes.
 11 MR MPOFU: Killed him.
 12 MR ZOKWANA: Yes, it is not correct. If
 13 I believe that, Sir - I'm not a lawyer, but you don't use
 14 hearsay evidence that you could not substantiate. In the
 15 court records nobody was found guilty of that murder. Let
 16 me inform you, Sir, NUM was not the only formation at
 17 Driefontein Mine. Sorry, the year was wrong, it is 1999, I
 18 remember very well we were doing elections in the Eastern
 19 Cape, I came back to that meeting. Now there was a union
 20 there called UPUSA. It was also organising and competing
 21 with NUM on the mine and before this incident there has
 22 been a plethora of other problems between the manner that
 23 union was using violence against NUM; some leaders were
 24 killed. I cannot that this court put a view that says
 25 UPUSA was responsible because nobody was found guilty. I

<p style="text-align: right;">Page 4927</p> <p>1 still remain to say, Sir, please find evidence that NUM 2 used violence and substantiate it than using all the ones 3 you have used because in none of them was anybody found 4 guilty and he was shown to be an NUM member. 5 MR MPOFU: No, Mr Zokwana, I'm not 6 suggesting anybody was found guilty, all I'm suggesting is 7 that you, Mr Zokwana, believed that NUM members killed the 8 one and injured the other. 9 MR ZOKWANA: I said it yesterday and I 10 will repeat it again, Chairperson, that I'm not in a 11 position to assume that the people who injured Comrade 12 Madosa as well as the late Selby Mayise were NUM members. 13 Both of them were injured; Mr Madosa, you know during the, 14 Chairperson, you know during the elections, - sorry, during 15 the negotiations it is a time when all workers in the mine 16 have got an interest in what will be the final results of 17 the processes. It is where you get mandates, it is where 18 you interact more than any other time. For instance if you 19 call a mass meeting in a mine it is rare to get two-thirds 20 of the workers into a stadium, but once, when you negotiate 21 everybody is keen to know what the report has been. It is 22 the most heightened part, stating period of workers in 23 their own union, and there is no measure therefore, 24 Chairperson, to know if those in a stadium are only NUM 25 members. We bar no-one; people come, they listen and in</p>	<p style="text-align: right;">Page 4929</p> <p>1 personality, I respect your team, therefore my language 2 have been coached in a way that at all times I avoid anger 3 and emotion. 4 CHAIRPERSON: I think what Mr Mpofu said 5 should be interpreted into English, so we can then proceed 6 on the basis of what he said. 7 MR MAHLANGU: What Mr Mpofu said before 8 Mr Zokwana started reacting was that, "we ya thlokwa" Mr 9 Zokwana. In Xhosa that means you are lying, Mr Zokwana. 10 MR ZOKWANA: And my response, Chairperson 11 was, I have chosen to avoid using such terms because the 12 English word said the taste of the pudding is in the 13 eating. I must be able to present irrefutable evidence to 14 the effect that what I'm telling you is not true, you 15 produced NUM documentation, you have done everything you 16 have done. Up to now you have not been able to say that 17 I'm working contrary, but I will forgive you for calling me 18 a liar, at my age. 19 CHAIRPERSON: Mr Mpofu – 20 MR MPOFU: Can I sort it out, Sir? 21 CHAIRPERSON: No, I want you to sort it 22 out, I don't approve of counsel making general allegations 23 of that kind. I can understand you're saying, such and 24 such a statement you made is untrue; you can possibly say 25 you know it is untrue, but just to make a general</p>
<p style="text-align: right;">Page 4928</p> <p>1 the two instances there was an atmosphere, I will call it, 2 to have been opportunistic for anybody to cause harm to 3 anybody. Let's take the first instance he refers to, of 4 the injury to the late, the fatal injury to the late Selby 5 Mayise. Workers in that mine, Sir, were demanding 6 accessing their provident fund and NUM was assuring them 7 that according to law there is no way you can access the 8 provident fund. They may assist you, Mr Mpofu, you may 9 have this as an argument to prove NUM hasn't used violence, 10 in view of what happened. In that meeting, I cannot stand 11 here and say the people who killed Mayise were NUM members, 12 as I'm saying that at that point there was also other 13 formations. You can only say [African language] NUM if you 14 can identify the person, you can look at records, it is an 15 NUM member. Without that, I mean, the record been showing 16 of who did it, you can't be able to do that. 17 MR MPOFU: All I can say is, [African 18 language], Mr Zokwana. 19 MR ZOKWANA: I would never use that 20 language towards you, Sir, with due respect. 21 MR MAHLANGU: What Mr Mpofu said was that 22 – 23 MR ZOKWANA: You can only show that I'm 24 lying provided that you are able to show your reasons 25 because, Chairperson, I respect this forum, I respect your</p>	<p style="text-align: right;">Page 4930</p> <p>1 allegation, you're a liar or you're lying, is not 2 appropriate behaviour. 3 MR MPOFU: Okay. 4 CHAIRPERSON: I don't expect counsel in 5 your position to do that. 6 MR MPOFU: Alright. 7 [12:11] CHAIRPERSON: And I trust it will never 8 happen again, and I'm saying and I'm saying obviously not 9 only to you, but to every other counsel here as well. If 10 you want to make an allegation he's not telling the truth 11 and deliberately not telling the truth, then you must 12 specify clearly what you are saying. 13 MR MPOFU: I will. I will specify, 14 Chair. Mr Zokwana, the only thing I will withdraw is in 15 Xhosa I should have said [African language], but that also 16 means what you are saying is untrue and let me – I will 17 assist you. If you – 18 CHAIRPERSON: Are you now saying you 19 withdraw your statement – 20 MR MPOFU: No, I'm – 21 CHAIRPERSON: Would you just give me – 22 MR MPOFU: I'm just saying I used the 23 wrong word. 24 CHAIRPERSON: No, no, okay. 25 MR MPOFU: Not the statement, I'm not</p>

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1 withdrawing anything.

2 CHAIRPERSON: Be patient with me, and

3 I'll try to be patient with you.

4 MR MPOFU: Oh.

5 CHAIRPERSON: I hope both of us agree.

6 MR MPOFU: Sorry.

7 CHAIRPERSON: Are you saying that you

8 withdraw the allegation he was lying, because you used the

9 wrong word; what you are saying is that what he was saying

10 was untrue. Is that what you're doing?

11 MR MPOFU: Effectively, Chair. And Mr

12 Zokwana, although the thrust of my accusation remains the

13 same, I hope you will forgive me for using a harsher word

14 and I'm sticking to [African language] and as you have

15 said, I will present –

16 MR ZOKWANA: You are forgiven, Mr Mpfu,

17 I have chosen to my training never to emulate what others

18 are saying towards me.

19 MR MPOFU: I take it as accepted.

20 CHAIRPERSON: Mr Interpreter, would you

21 please translate the Xhosa word which Mr Mpfu used in

22 substitution for the word he used earlier?

23 MR MAHLANGU: The word Mr Mpfu used, is

24 [African language], which he then interpreted as it's

25 untrue, but the true meaning of [African language] is,

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1 you're making a mistake.

2 CHAIRPERSON: Thank you.

3 MR MPOFU: No, Chair, I'm sorry, it's

4 much stronger than that. It's – [African language] it

5 basically means [African language] means, basically means

6 to say you are telling a lie and [African language] would

7 be a kind of a more respectful euphemism, which says what

8 you are saying is untrue. In other words, it's still

9 disputed, but it's the way –

10 MR ZOKWANA: Let me help you, Sir –

11 MR MPOFU: Not you are making a mistake.

12 [African language] would be you're making a mistake.

13 CHAIRPERSON: I think there's a big

14 difference - we can't all talk together. There is a big

15 difference between saying you were saying something untrue

16 and you know it's untrue, which means you're being

17 mendacious, which means you're lying, saying that on the

18 one hand, and saying, what you were saying is incorrect,

19 you are mistaken, it's wrong, incorrect. The second

20 statement is, do I understand –

21 MR MPOFU: You're lying.

22 CHAIRPERSON: The first one is you're

23 lying, what you say is untrue and you know that. The

24 second statement is simply, what you're saying is not

25 correct, without the suggestion that the witness is

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1 deliberately telling an untruth. Now did I understand that

2 the second word you used was, the second phrase you used,

3 was, as I paraphrased it, what you're saying is untrue, I

4 don't suggest that you are deliberately telling an untruth?

5 MR MPOFU: No, Sir I did –

6 MR ZOKWANA: Let me help, Chairperson,

7 because Mr Mpfu – let me help you, Mr Mpfu, in Xhosa.

8 You know, when you deal with an elder person, when you are

9 saying he is lying, like in Afrikaans, you can say 'jy'.

10 But if the person is older you will say 'u'.

11 MR MPOFU: It's the same thing, ja.

12 MR ZOKWANA: But now what Mr Mpfu is

13 saying, he is saying the same thing with some respect,

14 because you can't say to a person older, he is lying. What

15 you will say, you're not saying you are mistaken. It says

16 you are lying, but in a more normal defined way.

17 CHAIRPERSON: As we would say in English,

18 with respect, you're lying.

19 MR ZOKWANA: Yes.

20 CHAIRPERSON: As opposed to you are

21 lying?

22 MR ZOKWANA: Yes.

23 MR MPOFU: Thank you, Chair.

24 CHAIRPERSON: Now I don't think that you

25 should with or without respect make an allegation of that

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1 kind in a public forum such as this, unless you specify

2 specifically what it is that you are making that allegation

3 about. and it doesn't help to sort of soften the blow by

4 using a euphemism which has the same meaning.

5 MR MPOFU: Got it. Chairperson –

6 MR ZOKWANA: [Inaudible], sorry, Mr Mpfu

7 [inaudible]. I'm happy with both. Let me help you,

8 Chairperson –

9 MR MPOFU: [Inaudible] Chairperson

10 CHAIRPERSON: Let Mr Zokwana speak first,

11 then you can answer to what I said and what he said.

12 MR ZOKWANA: Another term in Sotho would

13 be saying, [African language], meaning that that I have

14 said, I may say I apologise, but the message is carried,

15 and I repeat, Chairperson, I as a person, I forgave Mr

16 Mpfu, because I will do that to any human being.

17 MR MPOFU: Okay. Now that that's behind

18 us –

19 CHAIRPERSON: You still have got to

20 either withdraw the allegation that he was lying, whether

21 euphemistically phrased or not, or you must specify what

22 the lie is.

23 MR MPOFU: Yes.

24 CHAIRPERSON: I'm not going to allow this

25 kind of general allegation to be made in this Commission.

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1 MR MPOFU: No, Chair, you definitely
 2 didn't understand. I specified what it was. It was what
 3 he was saying. I will repeat it. What he was saying is
 4 that, I had put a specific allegation and a serious one at
 5 that, that he, Zokwana, believed or believes that the
 6 people who killed Mr Mayise, were NUM members, and that
 7 those who assaulted Mr Matosa were NUM members. That is
 8 the serious allegation I put to him. He then went on a
 9 long rambling rave about the fact that the people were not
 10 found guilty, he could never have said those things, and to
 11 that I am speaking to the fact that that answer is not only
 12 incorrect, it is untruthful.

13 MR ZOKWANA: Chairperson, I will say
 14 again, everybody is entitled to his own opinion of another
 15 one, but Mr Mpofo up to now has not given me a reason to
 16 change my view that, because if ever any NUM member was
 17 found to have done those acts, NUM could have acted. To
 18 say that nobody was dealt with, is because we could not put
 19 the finger to who did what. So if your view is that I'm
 20 lying or whatever, saying not true, I'm challenging you to
 21 say bring the proof of what you could say these are reasons
 22 you believe other than, because this remains an allegation
 23 that is not true, because in your own fishing you could
 24 only find those two instances and I repeat to say, after
 25 today we are still waiting for evidence to implicate a

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1 person, and I'm saying it would be wrong to come to the
 2 view that you have in those two instances. It was only NUM
 3 members present in those meetings.

4 MR MPOFU: Thank you.

5 MR ZOKWANA: Let me put it to you,
 6 Chairperson, in terms of the way we run our meetings, if
 7 you call a conference at a branch region, you invite
 8 delegates. A delegate and a member are two different
 9 things, and a delegate will be recorded so you know that in
 10 this conference only NUM delegates were present and those
 11 invited. But if you call a mass meeting, Mr Mpofo, there
 12 is no way you will know if all people there were NUM
 13 members, because there is no such a record to show that.

14 MR MPOFU: Okay, Mr Zokwana, if you bear
 15 with me, the truth will come in about four questions' time
 16 or so. Do you remember that there was a suggestion which
 17 came, I think from Mr Tip, that among other things the –
 18 and I suppose those – he didn't mention by name, there
 19 was an attack on the NUM as uncaring.

20 MR ZOKWANA: That attack was from you, Mr
 21 Mpofo.

22 MR MPOFU: Yes. Do you, or have you ever
 23 shared my belief that the NUM is uncaring?

24 MR ZOKWANA: Shared with whom?

25 MR MPOFU: Have you, Mr Zokwana, ever

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1 shared my belief that the NUM is uncaring?
 2 MR ZOKWANA: I'm not in a position to
 3 answer the question, Chairperson, because I don't
 4 understand, because if Mr Mpofo would say, have you ever
 5 said this for example with Ms Barnes, that NUM is such, I
 6 may say yes or no, or anybody you can mention. But if you
 7 want to generalise, I don't know who we are talking about
 8 and that time I was there on the podium as a person who was
 9 sitting, but I heard you saying that.

10 MR MPOFU: Yes, no, I'm sorry - okay,
 11 maybe let me put it directly. Do you believe, or have you
 12 ever believed that the NUM is uncaring?

13 MR ZOKWANA: We never believed, have we
 14 been made to believe that NUM is uncaring. What we noted,
 15 and I think our report will show of the shortcomings in the
 16 manner by which services are rendered, but caring, we have
 17 remained caring.

18 MR MPOFU: Have you ever believed or
 19 expressed the view that the NUM is not only uncaring, but
 20 thankless?

21 MR ZOKWANA: I mean not believing or
 22 believing that view, I'm not understanding on what basis
 23 are you raising that.

24 MR MPOFU: First forget the basis. Have
 25 you, Mr Zokwana, ever believed or expressed the view that

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1 the NUM was not only uncaring but thankless?
 2 MR ZOKWANA: I may have raised that view,
 3 but not to NUM as a whole, but within sections of people
 4 who were part of our beneficiaries and I still believe that
 5 NUM is a caring organisation, but it may not be that
 6 everybody who have received that assistance have been
 7 thankful to the organisation, but in such instances do not
 8 represent the whole belief, and I can tell you when I said
 9 that. I can tell you the incident. I was addressing a
 10 congress and I can tell you under which circumstances and
 11 to whom I was saying it.

12 MR MPOFU: Did you ever express the view
 13 that the NUM, although it might not have reached that stage
 14 when you were expressing the view, was at the risk of
 15 becoming like a pig that eats its children?

16 MR ZOKWANA: The only time I have known
 17 pigs to devour their own piglets - pigs don't have
 18 children, Mr Mpofo - is when they are not fed properly by
 19 their owners.

20 CHAIRPERSON: You haven't answered the
 21 question. The question is, did you ever express that view
 22 about –

23 MR ZOKWANA: The view, the view I have
 24 expressed, Chairperson, on a number of occasions, has been
 25 the view that we should avoid a situation where broadly

<p style="text-align: right;">Page 4939</p> <p>1 speaking, even politically, a term that is generally used 2 of a situation where the revolution devoured its own 3 children. That stage arises when leadership of an 4 organisation ceases to listen to the views of those they 5 lead. When they raise their views, they use the power at 6 their disposal. The general view I hold, is the view I 7 believe in, that in any formation people can't think the 8 same way, but leaders must at all times be patient to 9 listen to all views. Generally I may have said that on 10 many occasions, I can't deny that. It does not represent 11 how I view NUM as a pig that is hungry, that is devouring 12 its own piglets.</p> <p>13 MR MPOFU: Ja, actually you – maybe I 14 used the wrong word, not on the children part. You 15 actually said that it devours its children, not its 16 piglets.</p> <p>17 MR ZOKWANA: Mr Mpofo, you know, when you 18 have gone through and Googled our statements, the 19 disadvantage you may be at, is not understanding the 20 context in which that statement was made, and if you do 21 that at this forum in trying to fish for evidence of 22 violence in NUM, you may come to wrong conclusions.</p> <p>23 MR MPOFU: And finally, do you believe 24 that the NUM has become so uncaring and thankless, that its 25 founding president, Elijah Barayi, must be turning in his</p>	<p style="text-align: right;">Page 4941</p> <p>1 worship richness, you may end there. Even NUM, 2 Chairperson, when we make these statements, we don't 3 generalise that every NUM member may share those 4 tendencies, but we are saying that, admitting that there 5 may be few people who have got those tendencies. Thanks, 6 Chairperson, for that.</p> <p>7 MR MPOFU: Thank you, Chairperson. I am 8 now going to distribute an exhibit on the basis of which I 9 will demonstrate my earlier statement that what you have 10 been saying is untrue, without having to travel through 11 these camels and elephants and piglets.</p> <p>12 MR ZOKWANA: And I hope it's not an NUM 13 document, Mr Mpofo.</p> <p>14 MR MPOFU: It is.</p> <p>15 CHAIRPERSON: Mr Mpofo, I take it Ms 16 Pillay will confirm that this will be exhibit BBB6.</p> <p>17 MS PILLAY: That's correct, Chairperson.</p> <p>18 CHAIRPERSON: How do you describe it, Mr 19 Mpofo?</p> <p>20 MR MPOFU: You describe it, Chair, the 21 opening address at the National Congress of NUM –</p> <p>22 MR ZOKWANA: By Senzeni Zokwana.</p> <p>23 MR MPOFU: - by NUM president, Senzeni 24 Zokwana.</p> <p>25 MR ZOKWANA: That's it.</p>
<p style="text-align: right;">Page 4940</p> <p>1 grave?</p> <p>2 MR ZOKWANA: I don't believe that. I 3 never believed it. You know, Mr Mpofo should understand 4 how congresses are run. When you go to a congress you deal 5 with different views and persuasions. You find that some 6 of the people you lead has embraced foreign likes, foreign 7 tendencies, where they want to [inaudible] people within a 8 trade union. But when you address a congress, you don't 9 become personal and saying, John So-and-So, you're doing 10 this and that. You become overall. Your aim is to warn 11 that these tendencies should not find foot within the 12 organisation, and all the things you have quoted, Mr Mpofo, 13 I'm aware of, but the context in which they were said, does 14 not confirm the line you want to push. Lastly, 15 Chairperson, when Jesus said it would be hard for a rich 16 man to enter the doors of heaven, equal to an elephant 17 going through, this is –</p> <p>18 CHAIRPERSON: A camel, it was a camel 19 through the eye of a needle.</p> <p>20 MR ZOKWANA: Oh yes, yes, sorry, 21 Chairperson. Thanks, Chairperson, for corrections. I have 22 been doing that to many others that you've done to me. I 23 accept it, Chairperson.</p> <p>24 [12:31] But that statement, Chairperson, means that every 25 rich person will go to hell. He was making that, if you</p>	<p style="text-align: right;">Page 4942</p> <p>1 CHAIRPERSON: Well, the date's relevant, 2 opening address – opening address by –</p> <p>3 MR MPOFU: It is so, Chair, that being 4 the 14th national congress, date 23 May 2012, venue Emperors 5 Palace, Johannesburg.</p> <p>6 MR ZOKWANA: I've got it, Sir.</p> <p>7 MR MPOFU: Okay. Actually we're just 8 distributing it.</p> <p>9 CHAIRPERSON: This is an 11-page 10 document. Are we going to have to go through all 11 pages?</p> <p>11 MR MPOFU: Not at all.</p> <p>12 CHAIRPERSON: Or is there some particular 13 passage, or are there some particular passages to which you 14 wish to direct our attention?</p> <p>15 MR MPOFU: Very short part, Chair, it 16 won't be more than a page or two that we deal with, but as 17 Mr Zokwana says, one needs the full context. Okay. Mr 18 Zokwana, I'd like you to help us by reading out at the 19 bottom of page 4, and I'll tell you when to stop.</p> <p>20 MR ZOKWANA: Where to begin?</p> <p>21 MR MPOFU: At the, right at the bottom. 22 The last sentence, "The telling of lies."</p> <p>23 MR ZOKWANA: Yes?</p> <p>24 MR MPOFU: Ja, if you can read from –</p> <p>25 CHAIRPERSON: I am sorry to interrupt</p>

<p style="text-align: right;">Page 4943</p> <p>1 you, effectively what you want him to read, I take it, is</p> <p>2 the section on "Physical attacks on our leaders."</p> <p>3 MR MPOFU: That is correct, Chair.</p> <p>4 CHAIRPERSON: Which is three paragraphs,</p> <p>5 beginning the foot of page 4, and ending about a quarter of</p> <p>6 the way down page 5.</p> <p>7 MR MPOFU: That is correct, Chair.</p> <p>8 CHAIRPERSON: Perhaps that whole passage</p> <p>9 should be read.</p> <p>10 MR MPOFU: Thank you, Chair. Sorry, Mr</p> <p>11 Zokwana, the -</p> <p>12 MR ZOKWANA: Sorry, Mr Mpofo.</p> <p>13 MR MPOFU: Yes, yes. I am sorry.</p> <p>14 CHAIRPERSON: It is his narration,</p> <p>15 perhaps we should let the person read it himself.</p> <p>16 MR MPOFU: Yes, Chair. Okay, go for it.</p> <p>17 MR ZOKWANA: "Physical attacks on our</p> <p>18 leaders, telling of lies, comrades, led to the killing of</p> <p>19 late Comrade Selby Mayise by our members in recent years.</p> <p>20 We buried him, yet we have not changed. In this term of</p> <p>21 office, Comrade Deputy President, Piet Madosa, was almost</p> <p>22 killed when he suffered several attacks in Rustenburg by</p> <p>23 our own members."</p> <p>24 MR MPOFU: Okay, you can stop right</p> <p>25 there. He might as well -</p>	<p style="text-align: right;">Page 4945</p> <p>1 to explain this?</p> <p>2 CHAIRPERSON: Read the next paragraph and</p> <p>3 then you can deal with it.</p> <p>4 MR ZOKWANA: Oh.</p> <p>5 CHAIRPERSON: The next paragraph</p> <p>6 beginning "Democracy must be there."</p> <p>7 MR ZOKWANA: "Democracy must be there in</p> <p>8 our structures, but it must have a caring human face.</p> <p>9 Comrade Madosa also almost died undertaking [inaudible]</p> <p>10 responsibilities. NUM must not become a pig that devours</p> <p>11 its own children. I believe we have not denigrated to that</p> <p>12 level." Oh, that word, what you mean, Mr, Counsellor</p> <p>13 Mpofo.</p> <p>14 CHAIRPERSON: Give the interpreter chance</p> <p>15 to interpret that, then we can deal with the context.</p> <p>16 MR ZOKWANA: Must I go on, Chairperson?</p> <p>17 MR MPOFU: No.</p> <p>18 MR ZOKWANA: Alright.</p> <p>19 MR MPOFU: Do you want -</p> <p>20 CHAIRPERSON: What might be sensible,</p> <p>21 seeing specific passages were put to you, and you</p> <p>22 suggested, you did say something like that, but the context</p> <p>23 was different from that suggested by Mr Mpofo.</p> <p>24 MR ZOKWANA: Yes, Chairperson.</p> <p>25 CHAIRPERSON: It may be helpful for you</p>
<p style="text-align: right;">Page 4944</p> <p>1 CHAIRPERSON: - paragraph, because you've</p> <p>2 founded your cross-examination on them as well.</p> <p>3 MR MPOFU: Yes. No, that's fair. To</p> <p>4 save time, Mr Zokwana, can you read it, and read it loudly,</p> <p>5 as you have been speaking up to now.</p> <p>6 MR ZOKWANA: I will start with "The</p> <p>7 physical attack on our leaders. The telling of lies,"</p> <p>8 underline that, "led to the killing of the late Comrade</p> <p>9 Selby Mayise by our members in recent years. We buried</p> <p>10 him, yet we have not changed. In terms of this office,</p> <p>11 Comrade Deputy President NUM was also almost killed when he</p> <p>12 suffered serious attacks in Rustenburg by our own members."</p> <p>13 You want the context of why I say that?</p> <p>14 MR MPOFU: No. Just read the whole</p> <p>15 passage first.</p> <p>16 MR ZOKWANA: Oh.</p> <p>17 MR MPOFU: We will come to the context,</p> <p>18 don't worry.</p> <p>19 MR ZOKWANA: "We are lucky that he is</p> <p>20 alive, given the degree of attack on him. He suffered</p> <p>21 disability, yet the National Union of Mineworkers is now</p> <p>22 thankless and after the debilitating attack on him, his</p> <p>23 position is being contested. What a thankless movement we</p> <p>24 have become. Barayi must be turning in his grave. We are</p> <p>25 not only thankless but uncaring also." Can I help you just</p>	<p style="text-align: right;">Page 4946</p> <p>1 then -</p> <p>2 MR ZOKWANA: Because Chairperson -</p> <p>3 CHAIRPERSON: - to deal with the first</p> <p>4 paragraph -</p> <p>5 MR ZOKWANA: Yes.</p> <p>6 CHAIRPERSON: - then the second, and then</p> <p>7 the third -</p> <p>8 MR MPOFU: No, can I please do this -</p> <p>9 MR ZOKWANA: Let's take this, Chairperson</p> <p>10 -</p> <p>11 CHAIRPERSON: Look, this is Mr Mpofo's</p> <p>12 cross-examination, so we mustn't test this on his</p> <p>13 prerogatives. So he can ask the questions that he wants</p> <p>14 to, provided they are proper questions. Carry on, Mr</p> <p>15 Mpofo.</p> <p>16 MR MPOFU: Mr Zokwana, let's start with</p> <p>17 the easy part. You remember that, or let me put it this</p> <p>18 way - well, firstly you accept that you said that NUM must</p> <p>19 not become a pig that devours its own children.</p> <p>20 MR ZOKWANA: I said that, yes.</p> <p>21 MR MPOFU: Okay.</p> <p>22 MR ZOKWANA: Let me give you the context.</p> <p>23 Because if you want me to admit that and end there, you may</p> <p>24 leave here with a wrong understanding of what the meaning</p> <p>25 thereof is.</p>

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1 MR MPOFU: Please, I request you to – no
 2 you were just correcting me that a pig doesn't have
 3 children. I am just putting that –
 4 MR ZOKWANA: Well, forget that, Mr Mpofu.
 5 MR MPOFU: Thank you. Okay, now when it
 6 comes to that statement which you have made, I am going to
 7 say something in your favour, you remember that I – when I
 8 put the question, I said, did you believe that even though
 9 NUM might not have been there at that stage, it was at the
 10 risk of becoming a pig that devours its own children. Do
 11 you remember, do you just remember that I framed that
 12 question that way?
 13 MR ZOKWANA: I remember that.
 14 MR MPOFU: Now, I am going to give you a
 15 chance, don't rush. You said we are going to take it step
 16 by step. Okay. Now, all I am saying is as far as that
 17 part is concerned =
 18 MR ZOKWANA: Yes?
 19 MR MPOFU: - do you now accept that you
 20 sounded that warning of the NUM becoming a pig that devours
 21 its own children, even though it had not –
 22 MR ZOKWANA: Let me clarify it. Let me
 23 help you, Mr Mpofu, by clarifying this way. I was not
 24 making a general judgment on NUM. I was speaking of a
 25 phase in the organisation in which campaigning has tended

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1 to be the feature I referred to. You know, Mr Mpofu, an
 2 organisation will have two scenarios, where you go to a
 3 congress, in some instances, I am sure as a person who has
 4 been involved in a union or politically, during a congress
 5 people can choose to be personal, not dealing with your
 6 weaknesses as a person, but dealing with your personality.
 7 It was the sole reason to say, it is wrong for delegates or
 8 those who attend congress to turn to a stage where – and if
 9 you read it correctly, I was saying this that the kind of
 10 language we use can open up leadership to attacks, and
 11 because you know, as a union, we are only in as strong as
 12 members of the union are able to defend their own
 13 organisation. So once leadership begins therefore to tear
 14 each other apart, you become more vulnerable. That is the
 15 context I was making that statement.
 16 MR MPOFU: Okay, now let's go to the
 17 other part which you did not qualify. Do you now accept
 18 that you, Mr Zokwana, that it was not true for you to say
 19 that you never said that that Selby Mayise was killed by
 20 NUM members? Is that untrue?
 21 MR ZOKWANA: I remain convinced that I
 22 could not have put that judgment - let me finish, please.
 23 If you read that sentence, it speaks of lies spread by our
 24 own members, and I want to put this to you at the start,
 25 when you tell lies about somebody, you are preparing a

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1 stage for anybody to do anything. So when people began to
 2 tell lies, not tell you what the lies were - no, no, let me
 3 help you, because if you don't do that, Mr Mpofu, you may
 4 fail to understand as to under which are we using this
 5 term. Minister Selby was a bit huge.
 6 MR MPOFU: Now –
 7 MR ZOKWANA: No, no, please, Chairperson,
 8 the -
 9 CHAIRPERSON: Mr Mpofu, I think you must
 10 give him a chance to give his answer.
 11 MR MPOFU: Sure.
 12 MR ZOKWANA: Let me do that.
 13 CHAIRPERSON: You ask long questions
 14 yourself, and if he gives you a long answer you're just
 15 being paid back –
 16 MR MPOFU: Not a long question.
 17 CHAIRPERSON: You are being paid back in
 18 your own coin. Let him -
 19 MR ZOKWANA: Please, Mr Mpofu. And the
 20 people who were spreading lies were going around saying
 21 that he has got a big belly because he is chowing your
 22 money, and the people began to believe that, Chairperson.
 23 Those lies led to his killing.
 24 MR MADLANGA SC: Mr Chairman,
 25 Commissioners, we are getting long responses to an issue

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1 that before I say I object, I would like to get an idea
 2 perhaps from my learned friend, Mr Mpofu, as to what its
 3 relevance is to what is being inquired into by the
 4 Commission. I am not at this stage, prior to that
 5 explanation, saying that the matter is not relevant.
 6 MR MPOFU: Chairperson, the relevance is
 7 twofold. 1, it is relevant as to the main issue, which is
 8 the propensity or the relationship between the organisation
 9 which is the NUM, which is being accused of having caused
 10 by the use of violence the turning point which led to the
 11 massacre as, if I need to elaborate on that, I did
 12 elaborate earlier, so I don't want to bore everyone about
 13 that. That's the first relevance, and in respect of still
 14 that first point, I thought I would have assisted my
 15 learned friend by having prefaced this segment of the
 16 cross-examination by saying that I am going to demonstrate
 17 that the rosy picture which has been painted by the witness
 18 in respect of his union's relationship with violence was
 19 false. The second basis for its relevance, Chairperson, is
 20 obviously the question of credibility. The witness, as
 21 everyone - including my learned friend, I am sure would
 22 have noticed, was given every opportunity to deal with the
 23 matters that he is testifying upon which are relevant in
 24 the manner that I've explained, and we now have a statement
 25 made by him, not even by somebody else, which clearly seeks

1 to diminish or undermine, quite frankly, all the answers
2 that he gave earlier.

3 MR MADLANGA SC: On the first point, the
4 sense that I get, Mr Chairman, Commissioners, is that it's
5 basically a matter of character evidence; because NUM might
6 have been guilty of violence at some point in the past,
7 they must have been guilty of violence even during the
8 period that the Commission is inquiring into. I would want
9 to submit that we can only go so far with something like
10 this. We have had quite a lengthy cross-examination on
11 this matter, which as I submit, is a matter of character
12 evidence. I do not want to submit to you that character
13 evidence in a forum of this nature would be inadmissible.
14 The Commissioners will recall that in respect of the matter
15 or the question of hearsay evidence, I referred to two
16 authorities, the judgment by Innes JA, or CJ, and also
17 another one by Mr Justice Jafta, and I said, according to
18 them hearsay evidence is admissible in a forum of this
19 nature, basically the principle being that evidence of
20 whatever nature, subject to the exercise of a discretion by
21 a commission is admissible.

22 [12:51] So I would not want to go so far as to say that
23 character evidence would be inadmissible, but I would
24 submit that it's something that should be done within
25 reason. We have listened to this for quite a while now and

1 I would submit that we have reached a point where the
2 Commission should put a stop to it.

3 Even at a second level, the level of credibility,
4 it's something that is so remote in my view and in my
5 submission to what we are about, that it cannot be extended
6 to the extent that it has been, and I will submit that we
7 have heard enough of it and that this line of questioning
8 should be stopped. Thank you.

9 CHAIRPERSON: There were two microphones
10 turned on, one Mr Tip, and one Mr Burger. In view of the
11 fact that it's Mr Tip's witness in the box, I call on Mr
12 Tip first, thereafter Mr Burger and then Mr Mpofo can
13 reply.

14 MR TIP SC: I'm indebted to you, Mr
15 Chair. I've been sitting for some time listening to the
16 debate and being reluctant to intervene, precisely because
17 Mr Zokwana has been called by us. But I have also at the
18 same time been waiting for some demonstration that there is
19 a germane point that is going to be made in the course of
20 the cross-examination, and in particular a point that will
21 assist this Commission in determining the questions that it
22 must in time determine, and that point has become more and
23 more remote. I want to express my gratitude to the chief
24 evidence leader for taking the initiative to raise the
25 question of relevance and just where this is all going.

1 What we have had in the last hour and more is Mr Zokwana
2 being timed for questions on the basis that phrases are
3 taken from a speech which he admittedly made in the course
4 of an annual congress last year and he's then asked at
5 great length about whether he ever used a phrase like that,
6 and we've had all sorts of responses that are unhelpful.
7 That evidently falls under the topic of credibility,
8 because now a particular phrase is shown to have been used.
9 There is then some stultified debate as Mr Zokwana seeks to
10 put the proper context to that, and ultimately I share the
11 view, with respect, that even when one is dealing with
12 matters of credibility, there comes a point where the
13 remoteness is such that it no longer serves any useful
14 purpose to entertain.

15 But there is another point that is more
16 important. My learned friend, Mr Madlanga spoke about this
17 under the rubric of character evidence, but it's really
18 something more pointed than that perhaps. What these
19 passages relate to that Mr Zokwana has now read out, are
20 that there have been two instances, one where a member of
21 NUM was killed, Mr Mayise, and Mr Zokwana was about to
22 explain what it is about him that led to anger about him.
23 There is also the attack on the deputy president of NUM,
24 which was a very serious attack, by our own members. Now
25 Mr Zokwana has already more than once explained that there

1 are differences in an understanding of what NUM as an
2 organisation does, and what certain of its members may do,
3 and he has said that more than once and that where NUM
4 members stepped outside of the established principles of
5 NUM, then NUM will react. Now what my learned friend, Mr
6 Mpofo, is seeking to do, is to use those passages to
7 demonstrate that there is some apparent predisposition on
8 the part of NUM as an organisation, which should be taken
9 into account as a factor by this Commission when it
10 interprets and it judges the events of 11 August 2012 in
11 the vicinity of the NUM office. In other words, certain
12 NUM members may have been involved in these two episodes.
13 Now that is being put forward as being relevant, because it
14 will show that NUM is a violent organisation and that when
15 its president, Mr Zokwana says that it is not a violent
16 organisation, that NUM stands against violence, that that
17 is to be treated with grave reservations, and we have real
18 concerns about an approach of that kind, particularly when
19 there is no factual foundation laid for propositions of
20 that kind against the background of the information that
21 has been placed before this Commission in respect of inter
22 alia its clearly demonstrated opposition to violence at the
23 time of the events during the period from 8, 9, 10 August
24 onwards, until the tragedy of 16 August. Those are
25 documented. Those are the matters that should, with

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1 respect, weigh with the Commission and not these distant
2 and ultimately anecdotal incidents that Mr Mpofu has been
3 exploring now for a considerable length of time. So we,
4 with respect, align ourselves with the concerns raised by
5 my learned friend, Mr Madlanga.

6 CHAIRPERSON: Mr Burger.
7 MR BURGER SC: Thank you, Chair. As I
8 understand the two grounds relied upon by my learned
9 friend, Mr Mpofu, for leading this evidence, the first
10 ground relates to the violence which he says caused or
11 might have contributed to the tragedy. I take it by that
12 he refers to the incidents of the Saturday, the 11th of
13 August. His second point is one of credibility. Let me
14 deal with both those points in turn.

15 There may well be an argument at the end of these
16 proceedings that what happened on the Saturday near the NUM
17 office might have had an affect of what transpired
18 thereafter. But we know what happened. It's quite clear
19 on the evidence what happened. A group of workers
20 approached the NUM office and shots were fired at them, two
21 were injured and it seems to be, with respect, reasonably
22 clear, that shots were fired by NUM people. Those are the
23 facts before us.

24 The question might be, is there a causal link
25 between that and what happened thereafter? Well, we'll

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1 make submissions on that. But on the inherent facts of
2 what happened in that incident, we have heard that, we've
3 cross-examined on it and there is not really a lis on that.
4 All the NUM officials who gave evidence accepted that it
5 was the position, and AMCU has accepted that people were
6 not killed, they were injured. So event that has been
7 thoroughly considered.

8 Why we now have to listen to what happened with
9 President Brand in 1959 or in Klerksdorp in 1993, or
10 whether you refer to small pigs as piglets or children,
11 does not assist us at all. It's not even fun to listen to
12 it. It's quite irrelevant. So what my learned friend has
13 been busy with for a day and a half now, is off the only
14 issue which has become a non-issue, which is common cause
15 before you, and let us remember whom Mr Mpofu represents.
16 Listening to the cross-examination one might have
17 mistakenly believed that he represents AMCU, but he doesn't
18 represent AMCU. None of these issues were addressed by
19 counsel representing AMCU. He represents people who were
20 injured in the incident, people who were arrested as a
21 result of the results following. Now why it's relevant to
22 decide whether Lonmin buses took workers to the mine and
23 what the perception of striking workers might be because
24 there is a Lonmin bus taking employees to work, as they
25 should work, personally I am at a loss to understand. I

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1 don't think it advances the debate. I don't think it helps
2 you, Chair, and it's with some frustration and it's with
3 some great relief that I listened to my learned friend, Mr
4 Madlanga, making what I suggest is a belated objection to
5 this.

6 The second point, credibility. My learned friend
7 is obviously entitled to probe credibility and if the
8 witness has said, A and it appears there is a document
9 which says, I never said A, I said B, my learned friend is
10 entitled to ask a question on that, not to make a speech on
11 it, not to regurgitate what he's asked yesterday, but to
12 ask a question on it. But that's a collateral issue. He
13 is bound to the answer he gets. He can't probe the
14 credibility of the answer on credibility. So it's a very
15 limited inquiry and my objection, my association does not
16 go that far as to suggest my learned friend cannot ask
17 questions on credibility, but in my submission that is
18 extremely narrow. It really borders on showing this speech
19 quite irrelevant for our purposes, the speech saying to the
20 witness words to the effect, hopefully in the form of a
21 question, did you say this and didn't you say something
22 else, and then we can debate the shades of lying in due
23 course to come. So we associate ourselves with the
24 objection.

25 CHAIRPERSON: Are you going to be lengthy

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1 in reply, because if you're going to be short, then we can
2 take lunch after that. If you're going to take some time,
3 more than three or four minutes, then it's appropriate, I
4 think, to take lunch until say 25 to 2 and then you can
5 carry on?

6 MR MPOFU: Yes, I'll respond after lunch,
7 Chair.

8 CHAIRPERSON: Adjourned for lunch until
9 25 to 2.

10 [COMMISSION ADJOURNS COMMISSION RESUMES]
11 [13:40] CHAIRPERSON: Mr Mpofu.
12 MR MPOFU: Thank you very much,
13 Chairperson. Chairperson, firstly, before I respond, I
14 just want to correct a factual issue, which is the
15 suggestion by my learned friends that the cross-examination
16 on the speech had, by the time I was interrupted, taken any
17 length of time, and place on record that the record will
18 show that between the presentation of the speech and when I
19 was interrupted it can't have been more than 10 minutes,
20 and I was still in my fourth or fifth –

21 CHAIRPERSON: I think the point of the
22 observation was you'd actually started cross-examining on
23 the speech before you mentioned the speech. You asked a
24 series of questions which were leading up to something, you
25 in fact said in four questions' time you'll find the

1 answer.

2 MR MPOFU: Yes.

3 CHAIRPERSON: And then came the speech.

4 I think what was being referred to, was the whole section
5 of cross-examination, not just a bit of - I don't anything
6 turns on it. You've made the point.

7 MR MPOFU: Thank you, yes, yes. Well, if
8 that is so, then it might be slightly more understandable
9 but I'll still say that those questions were relevant for
10 other reasons, the questions about enmity between the
11 unions and so on and so on. But I just wanted to put that
12 behind us, and I am raising that, because if the true
13 motive of the objection is time saving, then my suggestion
14 will be that by now, we probably would have covered the
15 ground, so if there's anything that is likely to waste time
16 it is this.

17 Having said that, by the time we have had a
18 ruling, and so on, I can guarantee you, we will have spent
19 more time on this than I could ever have spent in asking
20 the few questions on the statement. So if the issue, the
21 two issues on the legal side, Chair, to cut to the chase,
22 one is relevance, the other one is credibility, and I'll
23 address you on both. Evidence, as everybody knows, the
24 relevance of evidence is weighed effectively by its
25 probative value to the issues. So I will have to

1 demonstrate the probative value and also the relevance as
2 to the issues. Chairperson, I must say that I am somewhat
3 surprised –

4 CHAIRPERSON: In view of your preliminary
5 remarks about all the fact being before us, do you propose
6 asking any more questions on this point, or are you content
7 with the evidential material which is before us at the
8 moment?

9 MR MPOFU: Yes, Chairperson, only to a
10 limited extent, and I will come to that when I talk about
11 credibility. As far as credibility is concerned, I'd go
12 along with what Mr Burger said towards the end, but I am
13 still now dealing with relevance, and in respect of
14 relevance, Chair, I was saying that I would be very, very
15 surprised if the issue of the predisposition towards
16 violence of one of the parties, who in the terms of
17 reference has been postulated as possibly one of the causes
18 in so many words, because what the terms of reference, the
19 particular one I am referring to will say, whether NUM by
20 its actions or omissions caused, da-da-da, and then it
21 covers the preamble material.

22 Now, any of the parties that are posited there as
23 having been the cause, and there are four parties that are
24 posited as the cause, the possible cause, is the police,
25 it's Lonmin, it's AMCU, and it's NUM, and the fifth one is,

1 I think is term of reference number 5, which is the
2 catchall that says if any other individual or loose
3 grouping was also causally connected. Now whether we have
4 before us at any given point, NUM, AMCU, the police,
5 Lonmin, or any loose grouping, surely one of the things
6 that needs to be proved, particularly if that party itself
7 has made it an issue of portraying itself in a particular
8 light, so to say, in respect to the crucial question of
9 whether it is predisposed towards the use of violence. Of
10 course, Chair, we are not so childish as to say, because
11 you are predisposed towards violence on a previous
12 occasion, therefore automatically on the 16th you are the
13 one. That's far from it.

14 But what we are busy with now, is to demonstrate
15 that this particular party whose president is now before
16 us, and is possibly the last witness of one of the parties
17 postulated in the terms of reference, is to show that the
18 picture he has painted is incorrect. We have done so, this
19 evidence now must not be seen just in isolation, it must
20 also be seen in conjunction with BBB5, which was presented
21 yesterday, wherein the same issue was being proved and
22 wherein it emerged that this is -

23 CHAIRPERSON: We know what BBB5 is.

24 MR MPOFU: Yes.

25 CHAIRPERSON: The reason I asked you the

1 question, was what we have now before us is BBB5. We also
2 have BBB6.

3 MR MPOFU: Yes.

4 CHAIRPERSON: So it's material before us.
5 It contains, BBB6 contains certain statements made by the
6 witness, which he doesn't deny, which form a basis for you
7 to argue at the appropriate stage, in this question whether
8 – in regard to the question whether NUM is a violent
9 organisation, but it's own president admitted that certain
10 things happened, because they are set out in his speech.
11 So that's before us.

12 MR MPOFU: Yes.

13 CHAIRPERSON: The statements in the
14 general secretary's report are before us, that's BBB5. Now
15 what we are asking you, is, is there anything more that you
16 want to get before the Commission in that regard? Because
17 prima facie I am inclined to be of the view that these are
18 collateral matters and they are remote from the events of
19 the 16th, but they are not irrelevant. But the material
20 that you want to rely on in argument is now before us, and
21 I think we've spent a lot of time on it and – but it's
22 before us, and there is it. So I don't know if one has to
23 take it any further. I am not asked to rule any evidence
24 that's been given so far inadmissible. I am not asked to
25 exclude from the record any of the material we have. It's

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1 here. Is it not appropriate now for us to say, fine it's
 2 here, that's the end of that point, you can move onto the
 3 next one.
 4 MR MPOFU: No, Chair. I am sorry. I
 5 will require a ruling on this one. I think it would be
 6 doing an injustice on the people that I represent if the
 7 cross-examination is curtailed on a crucial aspect. Mr
 8 Burger suggests that this is not relevant to the people I
 9 represent. Nothing could be further from the truth, Chair.
 10 The people I represent were injured, some of them injured
 11 on the 11th of – as I've already said in this Commission, on
 12 the 11th of August, allegedly having been shot at by the
 13 NUM. In response to that, a series of witnesses has been
 14 called by the –
 15 CHAIRPERSON: Sorry to interrupt you. Mr
 16 Burger made the point that it's common cause –
 17 MR MPOFU: Ja.
 18 CHAIRPERSON: You don't know what I am
 19 going to say is common cause. They say it's common cause
 20 that persons were shot by NUM. That's not been denied.
 21 NUM witnesses have come, one of them conceded, one said he
 22 didn't know, the other one said he did know, but declined
 23 to give the name of the NUM person who did it, and he
 24 wasn't pressed on that, but what he did say was it was an
 25 NUM person who fired the shots which caused the injuries.

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1 So that's common cause. So no injustice is being done to
 2 anybody in that regard because you have evidence,
 3 unchallenged evidence. That's why Mr Burger says there is
 4 no lis on that issue. NUM people fired, or an NUM person,
 5 at least one, fired shots which injured two of the strikers
 6 on the 11th. That's a fact which is already proven before
 7 this Commission, not challenged. So you of course are
 8 going to argue later that that factor was one of the
 9 important things that caused the events that took place
 10 thereafter, and that's a matter that we have to
 11 investigate. But if you seek to – if one of the facta
 12 probanda that you are seeking, that be facts requiring to
 13 be proved, that you want to establish is that shots were
 14 fired by at least one NUM member, and two of the strikers
 15 were injured in consequence, that's before us.
 16 MR MPOFU: No, Chair, with the greatest
 17 respect, that is not the issue at all. It's cause, it's
 18 common cause that the shots were fired by the NUM, but
 19 that's not the issue before the Commission. The issue
 20 before the Commission is whether those shots were fired in
 21 some form of self-defence when these people were being
 22 attacked by the protesters, or whether, as we contend, it
 23 was unprovoked, and an attack on the protesters. That's
 24 the issue. That whether who shot, that's common cause of
 25 course.

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1 CHAIRPERSON: Are you suggesting that Mr
 2 Zokwana was present when that took place?
 3 MR MPOFU: No, no.
 4 CHAIRPERSON: So how can he throw any
 5 light on that?
 6 MR MPOFU: No, Chair, please, if I may
 7 finish? We are busy dealing with the issue of relevance.
 8 All I am saying is that the suggestion that merely because
 9 it is common cause of who shot something, cannot dispose of
 10 the real question before this Commission, which is the
 11 circumstances under which that common cause occurrence took
 12 place, because really that's the issue. It's undeniable
 13 that the, if we are going to argue – if we are going to
 14 argue, Chair, if we are going to argue at the end and say
 15 this was a turning point, this unprovoked attack on us was
 16 a turning point which caused us to go to the mountain,
 17 which caused my clients to arm themselves even more, then
 18 surely I will – if I don't take this extra step, that
 19 argument will be met by the suggestion that well, it's your
 20 own fault.
 21 CHAIRPERSON: What extra step do you want
 22 to take?
 23 MR MPOFU: Well, I am saying, Chair, in
 24 logic, step in logic, I am saying if I don't take –
 25 CHAIRPERSON: Answer my question. What

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1 extra step do you want to take?
 2 MR MPOFU: Of establishing the further
 3 point - accepting that this is common cause, establishing
 4 the further point that the attack was not provoked by the
 5 protesters. That's the crucial issue. Because if, I can't
 6 complain, if indeed we provoked it, then we can't be heard
 7 later to be saying oh, well, that was a turning point, so
 8 what? Because we would have provoked it. But if we did
 9 not provoke it, if it was, as it says in BBB5, part of the,
 10 these people resorting to violence without any provocation,
 11 including against leadership, if it was an exhibition of
 12 that, that throws a completely, but completely different
 13 light on the turning point itself. So that's the, with the
 14 greatest of respect, I accept that the shooting is common
 15 cause but that doesn't help us at all.
 16 CHAIRPERSON: - BBB5 before us,
 17 indicating incidents of various kinds involving violence
 18 took place in the past. What we have of course is the
 19 statement of Mr Mabuyakhulu, which is part of exhibit XX6.
 20 He was one of those who was shot, and you've indicated that
 21 he will be called. If you don't call him, I shall request
 22 the evidence leaders to have him subpoenaed so that he
 23 comes and tells his story. He will be able to tell us what
 24 happened, as will Mr Bongani Ngema, who was the other
 25 gentleman who was shot, whose statement is before us as

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1 part of XX5. So those two witnesses at least, and also
 2 will be able to give evidence on that, in that regard, and
 3 you've given notice of your intention to call a witness, Mr
 4 Booi, whose statement is already before us. He hasn't been
 5 – he obviously hasn't come yet, but he is coming. He also,
 6 according to the statement, was present on that occasion
 7 and will also be able to describe what happened. So no
 8 injustice has been done to your clients, preventing them
 9 from leading evidence in that regard. If you want to
 10 establish that there have been violent incidents in the
 11 past involving NUM people, not on the 11th of August, but in
 12 the past, you've already got the admission, as it were, by
 13 the president of the organisation in his speech, that's
 14 before us.

15 MR MPOFU: Yes, Chair.

16 CHAIRPERSON: I am having difficulty in
 17 understanding how much further you can go on this point.
 18 No one is precluding you from arguing other points later.
 19 There will be direct evidence as to what happened on the
 20 11th from eyewitnesses, so that material will be before us.

21 MR MPOFU: Chairperson, I am sorry, I
 22 think we are talking at cross purposes. I must say it, we
 23 are talking at complete cross purposes. All I am doing is
 24 to establish, as I've been, I've said I am going to talk
 25 about two things, the first one is relevance. If I can be

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1 thinking ahead. All I've done – the only thing I've done
 2 Chair, the only thing at this stage that was committed is
 3 simply to ask the witness whether this is his statement.
 4 If, Chair, this objection had come when ad nauseam we were
 5 twisting and turning about the statement, then one might
 6 say something, but all that has been done is what honestly
 7 any person in that position would do, which is simply to
 8 say to the witness, did you say this, blah, blah, blah, and
 9 so on. If I go further than that, well, the objection must
 10 come at that stage. But all I've done now is simply to ask
 11 the witness, unfortunately the witness wanted to put
 12 context, as usual. That's not my fault. The issue, I only
 13 asked him a simple question, did you make the statement,
 14 and then he said, let me explain, Mr Mpofo, warrah, warrah,
 15 warrah. But that is all. So that cannot be curtailed,
 16 with the greatest respect, and that also talks to Mr
 17 Burger's point, and I accept once again, that let's assume
 18 relevance was not accepted. Let's assume this was only
 19 about credibility. If that was so, I would be the first
 20 one to accept that I am thereby bound by the answers, but
 21 unfortunately it's not as simple as that, but let's assume
 22 that it was, but I can't be bound by the answers when I am
 23 not being allowed to put the questions because without the
 24 questions, there are no answers. That's the real issue.
 25 What I am being asked now, is not that I must accept to be

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1 allowed –

2 CHAIRPERSON: I said to you, I indicated
 3 that I haven't got a problem with relevance.
 4 MR MPOFU: Okay, then that's a different
 5 - thank you Chair. In that case, if the relevance is
 6 accepted, then, but if I may just say this, Chair, that
 7 there are two points there, the one of violence we have
 8 covered, and I accepted that the Chair accepts it. The
 9 second one, which is an issue, which at least has become an
 10 issue, is the issue of the caring union and so on, and by
 11 that the chair knows what I mean, which has been canvassed
 12 from various angles and I would submit that it is also
 13 relevant. I don't have to justify why, or at least nobody
 14 has suggested until now that it is not relevant. So the
 15 relevance is – and I can go on, the relevance is – but as I
 16 say, don't kill a dead snake. If the chair accepts the
 17 point of relevance, then I'll leave it at that.

18 CHAIRPERSON: - caring union point, what
 19 other material, based on the speech, that line of cross-
 20 examination, do you want to have put before us? The speech
 21 is here, there are number of passages which you've quoted
 22 without indicating you were quoting, in the course of your
 23 earlier questions, that's also before us.

24 MR MPOFU: Yes, no, no, Chair, you must
 25 remember Chair, you see, I think we are all now guilty of

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1 bound by the answers, but that I must not put the questions
 2 in the first place. That, with the greatest of respect,
 3 cannot be the true position.

4 CHAIRPERSON: What question that do you
 5 want to put?

6 MR MPOFU: Well, the same one that I had
 7 put, which is –

8 CHAIRPERSON: Just remind me.

9 MR MPOFU: Chair, if you allow me,
 10 honestly –

11 CHAIRPERSON: Answer my question, and
 12 then I'll allow you, but answer my question first. What
 13 question do you want to ask?

14 MR MPOFU: Well, the question –

15 CHAIRPERSON: I will tell you, subject to
 16 what other arguments I may receive, whether I am prepared
 17 to allow the question.

18 MR MPOFU: Oh, thank you, Chair.

19 CHAIRPERSON: But I want to know what the
 20 question is.

21 MR MPOFU: Yes. No, it's not one
 22 question, the questions, it's a couple of questions, Chair,
 23 as we were doing until the interruption, where I was doing
 24 it literally paragraph by paragraph, there are three
 25 paragraphs, for God's sake, and we had dealt with the one

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1 paragraph. I was now dealing with the other two, for him
 2 to confirm if he made those statements, and that would be
 3 the end of that.
 4 [14:00] Now, Chair, let me just add this so that we don't
 5 have another hullabaloo. The only other thing that I was
 6 going to canvas on the same page, Chair, is at the bottom,
 7 the last paragraph, and I'm sure the Chair would see why I
 8 would want to canvas that.
 9 CHAIRPERSON: Yes.
 10 MR MPOFU: Quite frankly, it won't take
 11 long at all.
 12 CHAIRPERSON: Mr Madlanga, is there
 13 anything you wish to add?
 14 MR MADLANGA SC: Nothing, Chairman,
 15 Commissioner, thank you.
 16 CHAIRPERSON: Mr Zokwana, you are still
 17 under oath.
 18 MR ZOKWANA: Yes.
 19 CHAIRPERSON: I take it you don't dispute
 20 that this is a correct reflection of your speech -
 21 MR ZOKWANA: No, I don't. I don't at
 22 all.
 23 CHAIRPERSON: - in which you made all the
 24 statements -
 25 MR ZOKWANA: Yes.

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1 CHAIRPERSON: - contained in this
 2 exhibit?
 3 MR ZOKWANA: Yes, I don't dispute it.
 4 CHAIRPERSON: So that disposes of the
 5 first line you want to deal with, Mr Mpofo. The questions
 6 are collateral; they are somewhat remote from the matter
 7 under investigation. In my opinion all the relevant
 8 information that you need, subject to one point, is before
 9 us. Those of collateral issue, one of the exceptions of
 10 the collateral is the ability of the cross-examiner to
 11 cross-examine the collateral matters, to challenge answers
 12 on a collateral matter, is a prior inconsistent statement.
 13 The statement has been proved or has been admitted, so that
 14 point now falls, has been dealt with.
 15 MR MPOFU: Thank you.
 16 CHAIRPERSON: So in my opinion further
 17 questioning in regard to the statement, the matters covered
 18 by the three paragraphs read, I'm not prepared to allow.
 19 We have everything before us that we need, but I will allow
 20 Mr Mpofo to ask the question that he wanted to ask in
 21 relation to the last sentence on page 5 of the exhibit
 22 because I can see the relevance of that. Please proceed,
 23 Mr Mpofo, in the light of the ruling I gave.
 24 MR MPOFU: Thank you Chairperson, all I
 25 will do at this stage is just to note that we will deal

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1 with this issue in argument at the end when the issue of
 2 propensity to violence arises. If it is raised, then we
 3 will object seriously, having been curtailed here. Okay,
 4 now -
 5 CHAIRPERSON: - where relevant evidential
 6 material you have been permitted to put before the
 7 Commission. I want no misunderstanding on that basis.
 8 MR MPOFU: Yes, thank you.
 9 CHAIRPERSON: You want to move on to a
 10 statement in the last sentence on page 5, which I can see
 11 is important for the cross-examination we heard earlier.
 12 MR MPOFU: Thank you, Chair, and I don't
 13 know now anymore whether I'm allowed to cross-examine as to
 14 credit on that as well or simply just to put, because that
 15 is exactly what I had wanted to do.
 16 CHAIRPERSON: Which you can put the
 17 question, is the credibility of the witness. There is a
 18 point in the last sentence that I think you want to put to
 19 him.
 20 MR MPOFU: Thank you.
 21 CHAIRPERSON: Let's put the question.
 22 You may then ask, give the witness an opportunity possibly
 23 to explain the point that you are hoping to make. We will
 24 get his answer and then you will move on to something else.
 25 MR MPOFU: Thank you, Chair. Mr Zokwana,

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1 can you go to the bottom paragraph of page 5 of your
 2 speech?
 3 MR ZOKWANA: Yes, sir.
 4 MR MPOFU: Can you please read it out?
 5 I'm sorry, let me just see if it will make sense. Yes,
 6 maybe start with the one just before it, just for the sake
 7 of the people who don't have the statement.
 8 MR ZOKWANA: Read and justify?
 9 MR MPOFU: "With this in mind."
 10 MR ZOKWANA: "Once grounded on this
 11 understanding -
 12 CHAIRPERSON: Mr Mpofo, wants you to read
 13 the previous paragraph as well.
 14 MR ZOKWANA: Oh, yes.
 15 CHAIRPERSON: It begins, "With this in
 16 mind."
 17 MR ZOKWANA: Oh yes, "With this in mind
 18 no member or leader of NUM must forget the primary task of
 19 our union as being recruiting, uniting, improving
 20 conditions of service, developing class consciousness, and
 21 defending our members in the class at large. Our ground,
 22 once grounded on this understanding, there will be no room
 23 for our enemy to find fertile ground to recruit, mobilise
 24 our own members, like what has happened, this is in
 25 Rustenburg, not Eastern Highveld."

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1 MR MPOFU: Sorry, Mr Zokwana, before I
2 ask you a question, through the Chairperson, I'm sorry,
3 could you also read the following page, which is the
4 continuation of that, just the first two paragraphs?
5 MR ZOKWANA: "The situation in Rustenburg
6 poses a serious threat to NUM after this congress. NUM
7 after congress should mobilise its members to remain active
8 and vigilant, be ready to defend the union against any, in
9 anyone intended to subordinate this organisation to
10 [inaudible] property or liquidation. We must stand guard
11 to protect the union from our, from union leaders who are
12 also businessmen and women who hope to use the union to
13 advance business ambitions. We must mobilise the
14 importance -
15 MR MPOFU: We must remember.
16 MR ZOKWANA: "We must remember that the
17 importance of [inaudible] motivated by Marx when he said,
18 workers of the world unite, you have nothing to lose except
19 your chains."
20 MR MPOFU: Thank you very much. Okay,
21 like the other material I take it you confirm that you said
22 this?
23 MR ZOKWANA: Chairperson, I have
24 confirmed that this was my statement, all the words that we
25 said were what I said.

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1 MR MPOFU: Fair enough. Now the first
2 question that I wanted to ask you is, on the previous page,
3 page 5, when you were talking about there should be no room
4 for your enemy to find fertile grounds to recruit and
5 mobilise your own members, like what we have seen in
6 Rustenburg North, not Eastern Highveld, who were you
7 referring to?
8 MR ZOKWANA: Thanks, Chairperson, I was
9 focusing on tendencies of leadership. As you will see the
10 following passages, saying that the new tendencies in
11 leadership of using the union for their own ulterior
12 motives than those of the union, and I speak of those
13 tendencies as being leaders who would regard the union as a
14 place to expand their business interests. I was speaking
15 internally to tendencies within the NUM, new cultures,
16 Chairperson, developing, cultures that seeks to believe
17 that when the organisation has acquired so much in
18 reserves, they should be consumed at will, and I didn't
19 refer this to any external force other than people working
20 within the organisation to create an unbecoming
21 environment. Historically, Chairperson, in the history of
22 the union there have been instances where leaders would, in
23 differing with the norm of the union, would leave and form
24 other formations. Without going through names, it was the
25 culture I was calling against, Counsellor Mpofu.

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1 MR MPOFU: You know, I don't see any
2 reason why you don't want to name names. In fact lets
3 curtail this by, I'm going to put it to you and then you
4 can respond, to put it to you that you were referring to
5 AMCU as the only other agent that could have recruited and
6 mobilised our own members, as you put it in that statement.
7 Comment?
8 MR ZOKWANA: Chairperson, let me say
9 this, that that answer cannot be correct, Counsellor Mpofu,
10 because in mining as well as in energy and also in
11 construction there are other contending unions who are busy
12 trying to take members from NUM, and I can expand on that
13 if you need that, but I don't think that is what you need.
14 It's not limited to AMCU that we have got people who are
15 recruiting. Even other sister unions of COSATU are doing
16 the same. But I didn't have the justice of going and
17 saying so and so, and so and so. What I was saying is that
18 a general norm is that this happens when you don't service
19 members and keep their consciousness intact and leaders
20 being thoughtful to their members. Shortly, Counsellor,
21 you will find that in construction we have got another
22 contesting union. In energy we have got NUM, you have got
23 NUMSA. In mining you have got a plethora of others,
24 TAWUSA, the union you have mentioned, AMCU, and others. I
25 will not be specific to say it was the union, but I am only

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1 saying that is only leadership that's being honest to its
2 own members, servicing them properly.
3 MR MPOFU: Okay, let's, seeing that I
4 accept your answer that it was not limited to AMCU, but
5 would you agree that it included AMCU?
6 MR ZOKWANA: AMCU is also a part, but I
7 want to explain, Chairperson, the usage of the word
8 "enemy," because I touch a lot on it. Enemy traits would
9 be features of leadership in NUM that seeks to change the
10 organisation into family business units, and I have said
11 that we have seen that happening where leaders, where NUM,
12 where a union has got more money in reserves, you fight
13 about accessing it. You change your lifestyle. Those are
14 enemy behaviours, Mr Mpofu. AMCU was not represented here
15 in a light that says we are targeting AMCU. There is no
16 mention, but AMCU of course is the factor in the
17 organisation and I was dealing with internal weaknesses,
18 not calling for war over anybody. I'm sure your speech
19 shows that.
20 MR MPOFU: So it's worse than we
21 initially feared. You don't only regard AMCU as the enemy,
22 but also other unions. Is that what you are saying?
23 MR ZOKWANA: I have said, Chairperson,
24 and I will repeat again, if I could have regarded unions as
25 enemy formations, obviously my language could have been

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1 harsher than it is. The language I use here, Chairperson,
2 is dealing with internal tendencies that seeks to change
3 the union from being a caring union of its members, but the
4 union in which people fight over resources, and I'm calling
5 the leadership in that, only if when you work together and
6 service members will these things go. I was not regarding
7 AMCU or any other union as an enemy because, have I done
8 that, Counsellor, I could have, I'm sure, used the language
9 that would show that. My understanding of a class enemy,
10 reminds as the one you defined. I don't regard any other
11 formation as an enemy. I regard any other formation it as
12 a competitor.

13 MR MPOFU: Okay, I'm not going to
14 belabour this. I think in the same way as the other
15 passages, and as the Chairperson would soon point out if I
16 went on, the speech will speak for itself and we will deal
17 with it in argument.

18 [14:20] CHAIRPERSON: If I can put one question
19 to the witness, Mr Mpofu. In regard to your statement that
20 you didn't regard AMCU as an enemy but as a competitor, I
21 would like you to look at page 2 at the fourth paragraph on
22 that page and tell me whether that language is appropriate
23 to use merely of a competitor. The third as well, I think.
24 Page 2, I will read it. The third and fourth paragraph is
25 as follows, "A typical potentiality of the deep state

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1 scenario in South Africa is unfolding in the North-West
2 province Rustenburg. We are well aware that conditions
3 that encourage conflict between members of NUM and AMCU are
4 being nurtured by lack of peace, proactive action. Where
5 arrests were made, the management of Impala bails the
6 suspects, which is very strange and confirms collusion.
7 These suspects are bailed because AMCU works closer with
8 management. So there is a clear tripartite collusion
9 between law enforcers, business and criminals, under the
10 banner of AMCU. As a consequence of this collusion NUM
11 members get killed daylight," I take it that means in broad
12 daylight, "forced to choose between resignations from NUM,
13 or death." Perhaps the interpreter can read that passage
14 and then I will ask you a question.

15 MR HANABE: It's page 2, second
16 paragraph?

17 CHAIRPERSON: Third, the third paragraph
18 beginning at typical potentiality, and then the other
19 paragraph beginning the suspects. The question I want to
20 ask you is, are those two paragraphs, do they contain
21 language describing a competitor or an enemy?

22 MR ZOKWANA: In my view, President, as I
23 presented this view it is the view of NUM that the scenario
24 in that area is that the powers that were supposed to make
25 sure that those who are guilty of transgressions are dealt

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1 with and therefore AMCU and NUM end up being at
2 loggerheads. But my belief is that if the police could
3 have done their work and the courts tried those who were
4 accused of being in complicity there would be no problem
5 between NUM and AMCU. But more that, we are saying that is
6 the failure of the Department of Safety and Security that
7 could have made the situation as it is. I'm not declaring
8 AMCU here as an enemy. I'm only detailing the scenario
9 that prevails and what makes it worse because those who
10 were supposed to have acted accordingly have not done their
11 work.

12 CHAIRPERSON: Mr Mpofu, you might like to
13 move on to your next point now.

14 MR MPOFU: Thank you, Chairperson. I'm
15 going to also suggest, and I'm giving you an opportunity,
16 that in as much as you were accusing other unions of
17 collusion with management, as the accusations of collusion
18 which have been read out to you are concerned, that the NUM
19 - I have already used the once instance of why I said there
20 was a collusion between NUM and Lonmin and I used the issue
21 of the view of AMCU, we have gone past that, the view that
22 AMCU, this was an AMCU strike. Now I'm saying a second, or
23 another reason which would demonstrate the meeting of the
24 minds or collusion between Lonmin and the NUM is that both
25 entities believed that the army should be deployed. What

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1 is your comment? Sorry, when I say both entities, I mean
2 NUM and AMCU.

3 MR BURGER: Now my learned friend has put
4 that proposition only halfway and he must put the whole
5 proposition. It's nonsense to suggest between two parties
6 both want the army, therefore they collude, absent the
7 negation that they have spoken to each other and agreed to
8 call for the army. So the proposition doesn't make any
9 sense as put, Chair.

10 CHAIRPERSON: Yes, Mr Mpofu?

11 MR MPOFU: Chairperson, maybe some of
12 this will also come up in argument. The collusion -

13 CHAIRPERSON: It is not a proper question
14 at this stage. I can understand you may wish to found an
15 argument on email number 2 in Exhibit BBB4. That of course
16 is an internal Lonmin email and it talks about police/army,
17 so it's in the alternative. But I can't see any reference
18 in that email to NUM or any connection between NUM and
19 Lonmin, so as it is posed at the moment, I don't think it's
20 a proper question. Maybe you can solve the problem, but
21 this is a NUM witness remember. You will have plenty of
22 chance to ask the Lonmin witnesses about this when they
23 come, but on what basis do you suggest that NUM colluded or
24 collaborated or worked together with Lonmin to invoke a
25 military response?

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1 MR MPOFU: Thank you, Chairperson. Two
 2 things, I just really would like to make an appeal that
 3 before my cross-examination is interrupted, particularly
 4 when I want to pose the questions in a particular series,
 5 that I'm not put in a position where I have to reveal where
 6 I'm going with the question prematurely. I'm just making
 7 that as a general statement. Apropos this concern, let me
 8 disabuse anybody of the notion that any of the collusions
 9 to which I have alluded, that I have ever suggested that
 10 people met under some dark room and so on and so on. All
 11 that we have said, whether it's this collusion or even the
 12 big toxic collusion, we are making allegations based upon
 13 those parties finding common cause. If at some point they
 14 do meet, as they did in the case of the JOC and all that,
 15 well then so be it. But the basis of our, of that
 16 collusion is going to be demonstrated both in the meeting
 17 sense, which is suggested by Mr Burger, but also in what we
 18 will show as common cause having been formed by parties on
 19 a subject, such as the team that was formed to deal with
 20 security. It's a series of events, some belonging to that
 21 class, but others, not all of them belonging to the class
 22 where there is a big conspiracy meeting.

23 CHAIRPERSON: If don't I understand Mr
 24 Burger to require you to show your hand fully when you ask
 25 a question, but I think he does expect you, if you put a

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1 proposition to a witness, to preface it by saying that
 2 there will be evidence that, and identifying the evidence
 3 so that it can be dealt with. Otherwise counsel can just
 4 stand up, throw a whole lot of stones in the bush and see
 5 whom it hits, and that kind of loose question, not prefaced
 6 by the kind of introduction that Mr Burger suggests is
 7 necessary, can sometimes lead to problems of that kind.
 8 Anyway, you understand the point I take it, and I trust you
 9 can deal with it.

10 MR MPOFU: Okay, let me just capture this
 11 like this. There will be evidence presented to the
 12 Commission which will suggest that like Lonmin, the NUM
 13 believed, 1, that the army should be deployed; and 2, that
 14 the people at the koppie were criminals.

15 MR ZOKWANA: I can only say, Counsellor
 16 Mpofu, that is your right as a counsellor to present
 17 information. I have no comment to make on that. It's a
 18 promise you are making that you are going to do that.

19 CHAIRPERSON: But you haven't answered
 20 the question. He is suggesting to you that he is going to
 21 lead evidence to the effect that NUM, I take it not only
 22 wanted but he didn't put it, it seemed to follow from the
 23 question that he asked earlier, actually requested or
 24 desired, so not only desired but requested some kind of
 25 military intervention at Lonmin. Now what do you say about

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1 that? In fact if such evidence is led, will it be true?
 2 MR ZOKWANA: I retained, I'm saying that,
 3 Chairperson, NUM did not regard people on the koppie as
 4 criminals, nor do we call the army to deal with criminals.
 5 So if that is presented I'm sure on the basis of that,
 6 Chairperson, we need to be engaged if it justifies the
 7 allegation made by the counsel. I think that allegation,
 8 Counsel, that allegation we dealt with but I want to
 9 mention, Chairperson, I have admitted that I as a person
 10 did call the Minister of Police to make sure that security
 11 and the role of law is retained in Lonmin. That was not
 12 defining those people on the koppie, if you are raising
 13 that, and I'm sure if you raise it in other manners as
 14 senior counsellor, it's fine, we'll then deal with it then.

15 CHAIRPERSON: Okay, counsel's question
 16 related to the army. You told us that you spoke to the
 17 Minister of Police. You have never told us that you spoke
 18 to the Minister of Defence. Did you speak to the Minister
 19 of Defence? Did you or didn't you?

20 MR ZOKWANA: No, no, I never spoke to the
 21 Minister of the army at all. So if that is the view that
 22 he's going to present and argue, I'm sure it would be
 23 engaged at that basis.

24 CHAIRPERSON: Ms Pillay, this will be
 25 BBB7, I take it?

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1 MS PILLAY: That's correct, Chairperson.
 2 [14:40] MR MPOFU: Okay, Chair, I'll continue.
 3 To pre-empt the question about where I found this, I found
 4 it on the COSATU website.

5 MR ZOKWANA: Chairperson, I stopped –
 6 CHAIRPERSON: Before we talk about where
 7 it comes from, I take it those in the auditorium who
 8 haven't been favoured with copies should be told, I don't
 9 think you necessarily have to read the whole thing, you
 10 must decide what you read –

11 MR MPOFU: Yes, Chair, I'll –
 12 CHAIRPERSON: - but certainly the second
 13 paragraph, the second paragraph is relevant.

14 MR MPOFU: Second and third, definitely.
 15 It is an NUM media statement of 13th August 2012, issued by
 16 Frans Baleni, NUM general secretary, and Lesiba Seshoka,
 17 the spokesperson of NUM. The second paragraph, the second
 18 and third paragraph of the statement says, "We call for the
 19 deployment of a special task force or the SANDF to deal
 20 decisively with the criminal elements in Rustenburg and its
 21 surrounding mines, says Frans Baleni, the NUM general
 22 secretary. Meanwhile, some police officers have reportedly
 23 been disarmed of their service rifles and a huge group of
 24 these criminals has been gathering at the mountain top near
 25 Karee Mine for a possible attack tonight."

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1 CHAIRPERSON: I think that the next two
2 paragraphs should also be read out, for the sake of
3 completeness, and so that any cross-examination based on
4 this document can be followed.

5 MR MPOFU: Thank you, Chairperson, yes, I
6 agree. The next two paragraphs read at follows, "We appeal
7 for the deployment of the special task force as a matter of
8 urgency before things run out of hand. For months on end
9 we have argued that the situation in Rustenburg requires
10 special intervention and we are seeing no difference, says
11 Baleni. The NUM maintains that there have not been any
12 clashes between its members and members of a rival union.
13 'Our members have been attacked and that cannot be said to
14 be clashes of rivalry, it is pure criminality,' says
15 Baleni. Meanwhile there has not been any work at Karee
16 Mine today." Now as usual I have to ask you whether you
17 confirm that this is a statement of the NUM?

18 MR ZOKWANA: Chairperson, minus the NUM
19 emblem - and I'm sure those who Googled could not retrieve
20 it from whatever source they got it - I understand the
21 statement to be the NUM statement. I merely saying so,
22 Chairperson, because the people referred to I know and I
23 would be happy if maybe, Chairperson, I would be allowed
24 time in retrospect to go back and research if this is it,
25 because I cannot be able to say, I'm saying the people

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1 referred to, I know, the scenario created of what happened
2 in Rustenburg, as to the reason -

3 CHAIRPERSON: The reason, their telephone
4 numbers are at the foot of the document -

5 MR ZOKWANA: I'm saying -

6 CHAIRPERSON: And during the tea
7 adjournment you could ring one -

8 MR ZOKWANA: I can, yes, I'll do that,
9 Chairperson, -

10 CHAIRPERSON: - to find out -

11 MR ZOKWANA: Ja, we'll do that.

12 CHAIRPERSON: Would it be convenient for
13 us to take, or do you want to go on to something else -

14 MR MPOFU: No, Chair, it would be
15 convenient, very -

16 CHAIRPERSON: It is a bit early for the
17 tea adjournment, but we did start earlier today than we
18 usually do to make up the lost time on Tuesday. Very well,
19 we'll take the tea adjournment at this stage.

20 MR MPOFU: Thank you, Chair.
21 [COMMISSION ADJOURNS COMMISSION RESUMES]
22 [15:11] CHAIRPERSON: The Commission resumes. Mr
23 Zokwana, you are still under oath. Mr Mpofo, I take it you
24 have more questions in cross-examination.
25 MR MPOFU: I do.

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1 CHAIRPERSON: I think the witness
2 indicated that he wanted to make some inquiries during the
3 adjournment. Perhaps it might be helpful to give him a
4 chance to -

5 MR MPOFU: Yes.

6 CHAIRPERSON: - deal with those, unless
7 you want to ask him about them.

8 MR MPOFU: Yes, I may, Chairperson.
9 Thank you. Mr Zokwana, you remember that when we adjourned
10 you had undertaken to inquire as to the authenticity I
11 suppose of the statement, if you can please give us the
12 report.

13 MR ZOKWANA: That I must give you the
14 position, or must I report what I have found? Chairperson,
15 I have phoned the office, the statement is confirmed to be
16 the NUM statement issued on the day in question.

17 MR MPOFU: Mr Zokwana, unlike the first
18 statement, which was your speech, in respect of which I
19 said you were making untruths, of stating untruths, which I
20 still stand by, on this statement, since it was not issued
21 by you personally I am prepared to accept that maybe you
22 were not aware of its contents, but nevertheless the
23 submission that I will make at the end of the Commission is
24 that this statement confirms the two propositions which I
25 had put to you, namely that you, also like Lonmin - when I

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1 say you now, I mean the NUM - called for the deployment of
2 the SANDF and referred to the protesters as criminals. I
3 am not going to argue anything stronger than that in
4 respect of this but in respect of the earlier one, I stick
5 by what I said, thank you. Sorry, I didn't get a response,
6 maybe it's because I didn't ask a question. The question
7 is, have you got any comment?

8 MR ZOKWANA: My view is that,
9 Chairperson, this statement was issued by NUM in
10 frustration, given the situation pertaining at Rustenburg
11 at the time in question, but it does not, I mean,
12 constitute any collusion with anybody.

13 MR MPOFU: You do, however, accept what I
14 said to you yesterday that - and I am inviting your comment
15 again - that in this, it would have been the first time,
16 let me put it that way, according to your evidence, that
17 you'd have experienced, had your request been acceded to,
18 you'd have experienced a situation where the army was
19 deployed against strikers.

20 MR ZOKWANA: Without trying to create a
21 dialogue, Mr Mpofo, if your question was saying it could
22 have been the first time that NUM has made this appeal,
23 with an appeal for such to be deployed is not saying that
24 the army is deployed. If your question is whether it's the
25 first time for NUM to appeal for army to be brought, the

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1 answer is yes.
 2 MR MPOFU: No, that was not my question,
 3 but I'll accept that answer as well, that it was according
 4 to you the first time that the NUM would call for the
 5 deployment of the police. My question was really about
 6 something different, which is the evidence that you gave
 7 yesterday that you as a person have never seen a situation
 8 where the army is deployed against strikers, and all I am
 9 saying is that had this happened, what you are calling for,
 10 that deployment would have been the first of its kind in
 11 your experience.

12 MR ZOKWANA: It would have been the first
 13 time, Chairperson, not only for soldiers to be deployed,
 14 but the nature of the strike was the first time for us to
 15 see where serving policemen get killed, and people were
 16 killed on daily basis.

17 MR MPOFU: And I take it that you would
 18 agree with me - if you don't you will say so - that the
 19 SANDF is not an instrument of policing.

20 MR ZOKWANA: Yes, I think SANDF has got a
 21 number of particular services they render, other than
 22 defending the country. They are sent during situations
 23 where there are uncontrolled or disasters, like the
 24 situation in Mozambique where there were floods, and when
 25 circumstances arise, as the case was in the Western Cape

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1 when Madam Zille called for their deployment, I think such
 2 calls are made but normally the SANDF would preferable be
 3 dealing with situations of defending the country and
 4 rendering services where such are needed.

5 MR MPOFU: And you are, I am sure, aware
 6 that that similar call by the person you call Madam Zille,
 7 was rejected inter alia on the basis that the SANDF is not
 8 an agent, or agency for policing.

9 MR BURGER SC: Chair, I object to that
 10 question on the basis of relevance. It doesn't advance
 11 this inquiry, it's wasting time.

12 MR MPOFU: Chairperson, you know, I can
 13 only tolerate this for so long -

14 CHAIRPERSON: Mr Mpofo, behave yourself.
 15 There's an objection -

16 MR MPOFU: I get interrupted all the
 17 time, Chair.

18 CHAIRPERSON: There's an objection raised
 19 -

20 MR MPOFU: I have -

21 CHAIRPERSON: - and please answer the
 22 objection, and don't make comments, it just makes matters
 23 worse. Just carry on, deal with the objection that's been
 24 raised.

25 MR MPOFU: Well, Chairperson, the

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1 material that I am dealing with here is very relevant to
 2 the issues. We have said -

3 CHAIRPERSON: I think the objection was
 4 the reference to what happened in the Western Cape -

5 MR MPOFU: Well, that's a matter for -
 6 that's the witness who raised that issue, honestly.

7 CHAIRPERSON: He is correcting the
 8 witness. Please carry on with your answer.

9 MR MPOFU: Thank you, Chairperson.
 10 Please answer the question.

11 CHAIRPERSON: No, you must deal with the
 12 objection. The objection raised by Mr Burger was that the
 13 question deals with a matter that's not strictly relevant
 14 and takes the inquiry no further and it's wasting our time.
 15 That's the objection. What do you say to that?

16 MR MPOFU: No, Chairperson, honestly I
 17 thought, that answer to that is exactly what I've already
 18 said, I am not going to say anything further. My reference
 19 to this is in response to an answer elicited from the
 20 witness. That, if my questioning based on an answer
 21 supplied by the witness can be objected to, then well,
 22 maybe there's something I am missing. All I was doing is
 23 to persist on the same question, the only question is that
 24 the army is not an instrument for policing. That's the
 25 only question. Now the witness comes with an example -

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1 CHAIRPERSON: - Mr Burger says in reply.
 2 Mr Burger?

3 MR BURGER SC: I would like to have a
 4 ruling, Sir. It's clearly irrelevant; it's got nothing to
 5 do with what we are busy with. This whole debate about the
 6 army's involvement, it's common cause now that two parties
 7 called for the army. It's common cause the army did not
 8 come. What the constitutional duty now of the army in
 9 South Africa and the Hex Valle is, is beyond me, and the
 10 very fact that the witness in desperation tried to answer
 11 what is a non-question doesn't entitle my learned friend to
 12 off on a tangent.

13 CHAIRPERSON: Yes, I agree with the
 14 objection, your question is disallowed.

15 MR MPOFU: Mr Zokwana, do you accept or
 16 do you not accept that the South African National Defence
 17 Force is not an agency that is competent in policing?

18 CHAIRPERSON: Repetition of a question
 19 I've already disallowed -

20 MR MPOFU: No, the question was about
 21 Zille, Chairperson.

22 CHAIRPERSON: Also about the
 23 inappropriateness of using the Defence Force. Please move
 24 on to the next point.

25 MR TIP SC: Chair, may I intervene also

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1 and ask Mr Mpofo to deal with this, he's dealing with the
 2 duties of the South African National Defence Force and
 3 section 201(2) of the Constitution of the Republic of South
 4 Africa says the following, "Only the President, as head of
 5 the National Executive, may authorise the employment of the
 6 Defence Force, (a) in co-operation with the Police
 7 Service," and various other functions are then stipulated.
 8 CHAIRPERSON: That of course, I am not
 9 going to ask you to deal with hit, but it illustrates the
 10 point which I think is to be clear to all, that this
 11 question of whether the Defence Force is an appropriate
 12 body to intervene is really a matter of argument. We don't
 13 need the views of the witness on it. That's why, please
 14 proceed to the next point. You can raise the matter again
 15 in argument when the advisability or suitability of the
 16 Defence Force may or may not become an issue.
 17 MR MPOFU: Thank you, yes, Chairperson,
 18 yes, I will raise it in argument in respect of whether the
 19 SANDF is ordinarily a policing agent. Now, Mr Zokwana, are
 20 you aware that, and I am not suggesting that it is linked
 21 to your call or not, but are you aware that the SANDF was
 22 at some stage deployed, which resulted in at least one
 23 death.
 24 CHAIRPERSON: I don't think that's
 25 relevant, that is a matter beyond the Terms of Reference of

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1 the Commission. I don't allow the question.
 2 MR MPOFU: Well, Chairperson, with the
 3 greatest respect, you said –
 4 CHAIRPERSON: It's been suggested to me
 5 that I should make it clear that our Terms of Reference do
 6 not cover the period when an incident took place in the
 7 middle of September, in which a councillor died where the
 8 Defence Force, were, as far as I understand, involved, and
 9 the basis of my ruling was that incident falls outside the
 10 Terms of Reference of the Commission and therefore the
 11 question was disallowed on the grounds of irrelevance.
 12 MR MPOFU: Chairperson, I don't want to
 13 debate this, I just want to place the following on record.
 14 What the Chairperson has now just said, alters the ruling
 15 that was made by the Commission earlier on this point, and
 16 also the letter from the President, which I read out in
 17 respect of our letter to the President regarding that
 18 incident. I'll just leave it at that.
 19 CHAIRPERSON: - if you are debating it
 20 indirectly, but on the side, the basis, if it's necessary
 21 we can deal with that at another stage. I am fully aware
 22 of what this Commission said. I am also aware of what the
 23 President said in his letter. The question asked was not
 24 strictly relevant, it fell outside the Terms of Reference
 25 and I disallowed it. I suggest you move on to the next

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1 point.
 2 MR MPOFU: Thank you, Chair. And once
 3 again, since this is not your personal statement, if you
 4 are not able to assist us you are not, but since you are
 5 here, do you know what, if anything, materialised about the
 6 attack of that evening that was postulated in your
 7 statement? Paragraph 3.
 8 MR ZOKWANA: I understand this to be
 9 saying there is a possibility. It does not say there was,
 10 and I am not in a position to speculate whether such did
 11 happen.
 12 [15:31] MR MPOFU: Are you able to assist the
 13 Commission, apart from what has already been said in the
 14 previous paragraphs as to what the "special intervention"
 15 that you were calling for entailed?
 16 MR ZOKWANA: I believe, of course,
 17 Chairperson, I will not be putting forward what could have
 18 been the intent of that sentence, but at the point in time
 19 NUM was frustrated at the fact that people have been
 20 killed, [inaudible] others being killed were cited and I
 21 think NUM was appealing for a situation where violence can
 22 be curtailed, of course through [inaudible] as detected by
 23 the law and I'm not going to be in a position to say that
 24 special means, maybe if therefore you want that to be
 25 special, to be explained, maybe the best would be for the

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1 people, who is for them saying that as an organisation,
 2 special attention would have meant that any other form that
 3 was at that moment available, because at that moment the
 4 violence was continuing, two policemen have been murdered
 5 and a person was found, so exactly we are saying that we
 6 were frustrated, can something more available be done?
 7 MR MPOFU: If you forgive me, before I
 8 move on to the next topic, I just want to put one
 9 proposition out of place which belongs to the issue we were
 10 dealing with earlier about AMCU and the strike, then I'll
 11 move to something else, and it is this, I'm going to argue
 12 at the end that one of the reasons why you were so actively
 13 instigating or acting against the strike was that you did
 14 want to prohibit a repeat of what happened at Impala, but
 15 the real thing you wanted to prohibit which happened at
 16 Impala was the fact that there your membership had dropped
 17 down to 38% and you did not want the same to happen if the
 18 strike, which you regarded as AMCU, was successful. I know
 19 it is a long question but I hope you get the gist of it.
 20 Any comment?
 21 MR ZOKWANA: Nothing is far from the
 22 truth at what you have said, Counsellor Mpofo. As a union
 23 our concern was the fact that people were being killed,
 24 chaos was reigning, it seemed, and I don't believe that
 25 counsel wants to say violence should be allowed so that one

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1 union loses membership. I don't think you are saying that.
 2 What you are saying is, what could have made NUM eager to
 3 do all these things, was to prevent in losing membership.
 4 Sir, we don't organise through violence, we don't get
 5 members when people are killed. We don't approve that
 6 violence be used by anybody against anybody. Our concern
 7 was simple, it was that people were being hunted, more than
 8 the person who you referred to by that juncture, other
 9 people have been killed, and our view was that if nothing
 10 was done, what happened later could not have happened, and
 11 had it being done earlier in terms of the police being
 12 present, people being disarmed, we believe that maybe what
 13 we saw later couldn't have happened. It is only our
 14 concern about this and the security of people, not
 15 membership. We don't believe that membership should be got
 16 at all cost, that you must use all means, that you say the
 17 means justify, the ends justify the means. It is not the
 18 way NUM functions.

19 MR MPOFU: Thank you, and to be sure, I'm
 20 going to argue that while the competition and the rivalry,
 21 or rather in the context of the competition and rivalry
 22 between the unions, it would be naive to expect the one
 23 rival to want the other rival to succeed, that in the
 24 context of that competition, what is not allowed is to go
 25 to the extent to which the NUM did, which was to shoot at

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1 the protestors.
 2 MR ZOKWANA: Chairperson, I'm sure that
 3 argument will be presented by the senior counsel, but I'm
 4 still saying that NUM does not approve violence. NUM will
 5 not use violence to organise members and if you can go to
 6 all the mines, Senior Counsel Mpofo, you will never find
 7 that NUM grew either after a strike, after violence, where
 8 forms were signed in the same venue. People who join NUM
 9 will go to its offices, they will join in the offices. We
 10 don't run joining ceremonies or joining sessions where
 11 threat is used. Therefore I'm saying therefore that NUM
 12 would never by its own policies endorse such a situation
 13 and I repeat, you have presented my speech, which I made by
 14 the way, for three months after, Chairperson, the situation
 15 of Impala and I remember a statement made by one historian
 16 that the reason the league of nations could not sustain
 17 order is because it was signed when the wounds were still
 18 wet and they could be seen. NUM at that time was still
 19 reeling from that pressure, we lost membership. In my
 20 speech in that debate we never called for war. That's the
 21 stand we stand by, that is what NUM at all times will
 22 propagate. We have not called for people to arm, people to
 23 do anything. Membership that will come with blood of
 24 others is not with NUM.

25 MR MPOFU: Mr Zokwana, I want to inform

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1 you that evidence is going to be led from some of the
 2 people who partook in the march to the NUM offices on the
 3 11th, the gist of which will be that there was no decision
 4 to burn the offices or to cause any harm to any person or
 5 property, and I suppose, in other words at the stadium
 6 before they left. I'm sure you are not in a position to
 7 dispute that.

8 MR ZOKWANA: I cannot be able,
 9 Chairperson, to refute what the counsellor is promising to
 10 put forward, but I believe in the same vein statements have
 11 been made by officials at Lonmin detailing what the reasons
 12 were of the strikers, and I'm sure in the test of that
 13 debate, even your own witnesses will have to be questioned,
 14 not by me of course, on the version they may present. I
 15 don't expect them to come here and say, we were to burn NUM
 16 offices, but I believe through grilling they may show that
 17 it was the part. I'm not saying that is going to happen,
 18 I'm saying that is possible. You cannot say that whatever
 19 they'll bring forward will be the truth, but I think in the
 20 same vein they will have to prove that when you march
 21 peacefully, Counsellor Mpofo, you will agree with me in
 22 your time as, before you became a lawyer, when you marched
 23 in the institutions of learning as a member of the student
 24 movement you would not carry weapons to do so, and I'm sure
 25 if they come and give evidence they will explain why they

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1 carried weapons.
 2 MR MPOFU: Thank you, Mr Zokwana. If,
 3 and I accept what you're saying, the evidence will be
 4 tested and so on, but if after the grilling that you talk
 5 about, if the evidence is accepted either because it is not
 6 disputed or it is, the grilling didn't yield the intended
 7 result, would you be prepared to accept that the shooting
 8 of the protestors on the 11th was responsible at least for
 9 these two things - which will also be part of that evidence
 10 - the escalation of the armament of the people, in other
 11 words they took more arms; and 2, that they were forced to
 12 change their meeting venue and then from that point onwards
 13 to meet at the koppie. Would you accept just those two
 14 consequences of the shooting of those people?

15 MR BURGER SC: I object to the question,
 16 Chair. It is for the Chair and for the Commission to make
 17 that decision, not for this witness, whatever he says is
 18 completely irrelevant. Precisely the same objection.

19 CHAIRPERSON: Mr Mpofo, do you persist in
 20 asking the question?

21 MR MPOFU: No, Chair, I'm tired of these
 22 interruptions, I won't pursue the question.

23 CHAIRPERSON: If you're not going to
 24 persist in the question -

25 MR MPOFU: Ja -

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1 CHAIRPERSON: - don't make, I understand
 2 one gets irritated and frustrated from time to time –
 3 MR MPOFU: It is more than irritated –
 4 CHAIRPERSON: We're all human but good
 5 counsel restrains those feelings and doesn't express them.
 6 MR MPOFU: Yes, I will, by not engaging
 7 in the debate. If again in the same vein, that event did
 8 constitute the turning point as I've been postulating - and
 9 I won't invite your comment, we are going to argue that but
 10 for that event, the massacre of the 16th would not have
 11 occurred, and if you allow me to expand or maybe if you
 12 want to interpret that part?
 13 MR BURGER SC: No, I object to that also,
 14 that's quite irrelevant and it is the same objection which
 15 I repeat and I'll frustrate my learned friend until he asks
 16 a proper question.
 17 CHAIRPERSON: Mr Burger, before you carry
 18 on, I don't expect to have murmurs of either approval or
 19 dissent from people in the auditorium. I've already said I
 20 expect them to behave. If they don't behave I have to
 21 clear the auditorium, so please, sit quietly and listen.
 22 Mr Burger -
 23 MR MPOFU: Well, Chairperson, all I'm
 24 going to say in response is that the very same Mr Burger
 25 found it necessary to waste the time of the Commission by

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1 asking Mr Mathunjwa questions regarding the fact that had
 2 he done X or had he not done Y, and the record will show
 3 it, it was a long series of propositions, the massacre on
 4 the 16th - he might not have used those words, but the
 5 events, the strategy or whatever he said, could not have
 6 unfolded.
 7 [15:51] That line of questioning has been followed by
 8 every counsel, or at least every team. Mr Semenya has
 9 followed it obviously in relation to the police, and if it
 10 was so irrelevant, the line of cross-examination – because
 11 it's a line really, it's not the question as such, then Mr
 12 Burger is – in fact what I am suggesting is that what, his
 13 objection is not something that he genuinely believes that
 14 if a witness –
 15 CHAIRPERSON: [Inaudible] the objection
 16 was bad.
 17 MR MPOFU: It's a bad objection and it's
 18 bad for – I won't go further, it's bad because –
 19 CHAIRPERSON: Mr Burger, do you have any
 20 reply?
 21 MR BURGER SC: Yes, let me just explain
 22 what my objection is. It is put to this witness that it
 23 will be argued at the end that the incident on the Saturday
 24 is causally related to the death of the people at the
 25 koppie. Now, Chair, with respect, that's a very relevant

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1 argument. It's a very relevant consideration. It's
 2 completely irrelevant what Mr Zokwana's view on that is,
 3 and that's my only objection.
 4 MR MPOFU: If I may, Chair, I'll allow Mr
 5 Burger to reply again, I am sorry – if, or rather, yes, the
 6 Chair will allow me, I mean I won't object. Sorry, Chair,
 7 I've just lost my –
 8 CHAIRPERSON: If the question is just
 9 asked and elicits a simple short crisp answer, then I think
 10 it will be, we will save time by allowing you to ask the
 11 question, and get a short crisp answer. But if we don't
 12 get a short crisp answer, then –
 13 MR MPOFU: Ja, as it happens –
 14 CHAIRPERSON: Mr Burger, for those
 15 reasons I disallow your objection.
 16 MR MPOFU: Thank you, Chair.
 17 CHAIRPERSON: Put the question, you heard
 18 the question?
 19 MR ZOKWANA: I've heard the question.
 20 CHAIRPERSON: What's your answer, do you
 21 agree with the proposition?
 22 MR ZOKWANA: My answer, Chairperson, is
 23 simple. I am not empowered to come to that view. It will
 24 be the determination that this forum of, informed by
 25 evidence in what happened -

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1 CHAIRPERSON: We have your answer. Your
 2 next point, Mr Mpofo.
 3 MR MPOFU: Chairperson, if I may just for
 4 two seconds address you, with respect. One of the reasons
 5 that I really take exception to the objections,
 6 particularly when they are unfounded, is not only that it
 7 interrupts the flow of the cross-examination, but just as
 8 happened now, sometimes it also assists in suggesting the
 9 answers to the witness, and we all know that as lawyers, so
 10 I suppose I am making my own appeal that –
 11 CHAIRPERSON: It's not for counsel to
 12 take objection to objections; it's for the presiding
 13 officer to decide whether the objections are good or bad,
 14 and so, I don't want to hear anymore about that. If I
 15 think a number of objections are being raised without
 16 merit, designed to hamper cross-examination, I shall
 17 endeavour to deal with that. That wasn't my –
 18 MR MPOFU: Or to assist the witness, ja.
 19 CHAIRPERSON: Or whatever. It wasn't my
 20 judgment that that was happening at the time but I shall
 21 keep an eye open for that sort of thing.
 22 MR MPOFU: Thank you, Chairperson.
 23 CHAIRPERSON: I do try to protect not
 24 only witnesses but sometimes cross-examiners as well, but
 25 let's carry on with the evidence.

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1 MR MPOFU: Thank you, Chairperson. Yes,
 2 thank you. Mr Zokwana, the union over which you preside
 3 has been - accused might be a strong word - is postulated
 4 as maybe being one of the causes, either by action or
 5 omission, of the events over which this Commission was
 6 instituted to investigate. Now, all I am putting to you, I
 7 am putting to you propositions on the basis of which my
 8 team will argue that indeed the NUM is causally connected
 9 to the massacre, and I would have thought that I need to
 10 give you an opportunity to comment on those, either
 11 negatively or positively, or as you say, you might say you
 12 don't, you're indifferent to it. But in fairness, that is
 13 the exercise that I was doing. It's not going to be a long
 14 thing, but I was just putting a series of propositions,
 15 which I have been doing. When I finish any section to say,
 16 in this section this is what I am going to argue at the
 17 end. So, the thrust - and this is my last question on
 18 this, and I am inviting your comment once again. The
 19 thrust of what we are going to argue in respect to what you
 20 have just said, is going to be that the massacre of the
 21 16th, which as you know happened at the koppie with heavily
 22 armed protesters and so on, would not have happened. In
 23 other words -
 24 CHAIRPERSON: Mr Mpofu, I don't - did you
 25 mean heavily armed protesters or heavily armed policemen?

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1 MR MPOFU: Heavily armed policemen.
 2 CHAIRPERSON: Yes, so I think, go back to
 3 the beginning of the question, and put it again.
 4 MR MPOFU: Okay.
 5 CHAIRPERSON: You made a mistake in
 6 giving it.
 7 MR MPOFU: No, in fact, Chair, I'll also
 8 cover the protesters, because I don't want to colour it too
 9 much. I am trying to do it as neutrally as possible. I'll
 10 recap, and the Chair is right, I almost, I could have been
 11 held to this at a later stage. What I am saying is, the
 12 massacre as we know it, you and I, as we saw it on
 13 television and so on - maybe let me put it this way. Had
 14 the protesters not been forced to spend the subsequent days
 15 at the koppie, then the massacre as we know it would not
 16 have occurred. I am trying to summarise, but you get what
 17 I mean.
 18 Sorry, Mr Zokwana, I am sorry to do this, I know,
 19 I am just trying to save time because we are finishing, so
 20 I can just finish and so that you answer to both
 21 propositions. By saying what I am saying, I am even
 22 prepared to accept that another type of calamity might have
 23 occurred had the strikers continued to meet at the stadium.
 24 All I am saying to you is that the massacre as we know it
 25 now, would not have occurred.

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1 MR ZOKWANA: Thanks, Chairperson. The
 2 incident of the 16th, the massacre of those workers, is the
 3 most unfortunate in the history of this country, not only a
 4 loss to family members, but it changed the way our country
 5 is viewed by those who invest in mining. It created a
 6 situation that has caused this Commission to be formed, and
 7 I think this Commission, Chairperson, is by people so
 8 appointed because of their particular skills in dealing
 9 with such matters. I won't be judgmental here and say if
 10 that and that could have happened, could have done what, Mr
 11 Mpofu. If I have to be in that area, I would be maybe
 12 plunging myself in an area I am not qualifying to do.
 13 What I am saying it, had we been able to find a
 14 system in which nobody was placed, to what we were placed
 15 with, the shock of people killed, the shock of the families
 16 before the 16th, the situation that on that day,
 17 Chairperson, I think we would not be here. We are here
 18 because certain things did not happen and I am not in a
 19 position, Chairperson, to say so and so is guilty of that,
 20 so and so is guilty of that. I think this Commission is
 21 empowered at the end of collecting evidence, to come to
 22 that conclusion. [African language] Chairperson, I want
 23 to do this in Xhosa, I am helping the interpreter, there's
 24 something he has left. I am saying that the incident of
 25 before the 16th, on the 15th [African language].

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1 MR MPOFU: I suppose now we are left to
 2 translate into English.
 3 CHAIRPERSON: I understand, I am told by
 4 Mr Tokota, who is a fluent isiXhosa linguist, his home
 5 language, that what the witness was doing, was himself
 6 acting as interpreter, interpreting what he had previously
 7 said.
 8 MR MPOFU: I can confirm that.
 9 CHAIRPERSON: So he interpreted
 10 apparently, you as a isiXhosa linguist will be able to
 11 confirm that. You asked a question, you said it was the
 12 last question of the day. You didn't quite get the answer,
 13 a direct answer, but I suspect indirectly the answer was
 14 there. Would this be an appropriate stage for us to take
 15 the adjournment?
 16 MR MPOFU: Yes, Chairperson, I'll round
 17 up this issue tomorrow morning, but I think it is an
 18 appropriate stage, thank you.
 19 CHAIRPERSON: The Commission will
 20 adjourn. Thank you, Mr Mpofu. Adjourned to -
 21 [COMMISSION ADJOURNED]
 22 .
 23 .
 24 .
 25 .

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