TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 42 1 FEBRUARY 2013 PAGES 4501 TO 4614

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

© REALTIME TRANSCRIPTIONS
1 [PROCEEDINGS ON 1 FEBRUARY 2013]


3 Before I remind the witness he is under oath and cross- 
4 examination continues, I just to say that in the future, in 
5 relation to questions about the non-production of 
6 statements and other information that is outstanding, I 
7 would appreciate it if counsel who wishes to complain about 
8 this would raise it with the counsel who is allegedly in 
9 default. If they can't solve the problem among themselves, 
10 I would suggest they go and consult the evidence leader and 
11 if, after that – the head evidence leader – and if after 
12 that the problem still persists, it can then be raised with 
13 me in chambers. That way we don’t spend time in the 
14 Commission sitting itself, dealing with peripheral matters 
15 that can be dealt with outside the formal sitting of the 
16 Commission. You're still under oath, sir.

17 SENZENI ZOKWANA (CONTD): Yes.

18 CHAIRPERSON: You’re still cross- 
19 examining, I believe, Mr Semenya.

20 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD):

21 invite you to look at exhibit XX2?

22 MR ZOKWANA: Yes.

23 MR SEMENYA SC: Yes.

24 CHAIRPERSON: I'm sorry, which 
25 entry, Mr Semenya?
1st February 2013

Marikana Commission of Inquiry

Rustenburg

Page 4505

1 MR ZOKWANA: Yes?
2 MR SEMENYA SC: "The mass dispersed.
3 Management will not entertain their demands. Their view is to engage in work stoppage effective immediately." Do you see that?
4
5 MR ZOKWANA: Yes, I see that.
6 MR SEMENYA SC: Two lines at the bottom of that document you will see, "There was no good communication between management and workers. Management are not going to tolerate disruption, the workers must follow process." Do you see that?
7
8 MR ZOKWANA: I see that, yes.
9 MR SEMENYA SC: If you go to page 23 at the top of that document you will see it is written there, "No work no pay rule will apply. Those who do not report for duty will be dismissed. Workers participate in the illegal march, they will be dismissed."
10
11 MR ZOKWANA: Yes, I see that.
12 MR SEMENYA SC: If you run down that page against 11:08 20/12, against time 02:19 the record reads - are you there? It's at 02:19.
13
14 MR ZOKWANA: Yes.
15 MR SEMENYA SC: "R Beukes reported that NUM members informed him that they will go through the village and ask the workers to go to work and he, Beukes, urge people to loud hail around Wonderkop to follow process." Do you see that?
16
17 MR ZOKWANA: I see that.
18 MR SEMENYA SC: "NUM requested intervention by security to loud hail around Wonderkop to urge people" -
19
20 MR ZOKWANA: They could use a loudhailer around Wonderkop.
21 MR SEMENYA SC: - "to loud hail around Wonderkop to urge people to go to work while they loud hail at Wonderkop village."
22
23 MR ZOKWANA: I see that, yes.
24 MR SEMENYA SC: So as early as July, NUM is aware that there is this demand by the RDOs, is that fair to say?
25
26 MR ZOKWANA: NUM is not only - NUM is aware, as this shows, but it's also aware of the fact that the RDOs do not want to include NUM in their discussion with management.
27
28 MR SEMENYA SC: In July already?
29 MR ZOKWANA: At the meeting with Mr Da Costa you have referred to, it's clear that they say it was only the RDOs that met with Mr Da Costa at Karee Mine, not with NUM.
30
31 MR SEMENYA SC: No, I'm saying the record in July, the objection NUM has is that it is not involved in these negotiations, it's aware of the demand.
32 MR ZOKWANA: Yes, I agree with that and I want to put it that NUM objected to the fact that an agreement or an offer made by the company, without including it in those discussions.
33 MR SEMENYA SC: So your objection is, why exclude it, why exclude us? It is not, now that we know the demand we want to negotiate with you, the employer, around this demand, am I right?
34 MR ZOKWANA: You can only negotiate with the employer when a demand is put to you. In this case the employer gave workers what they believed to be an industry - they gave their workers what they think what the general industry bonus you could get, but there's nowhere it is said that there was a stage where the RDOs went to NUM to say, please go and negotiate on our behalf. And in the page you have referred me to, the objection of NUM is not to the offer to the machine drillers, it is the fact that it is not negotiated.
35 MR SEMENYA SC: I'm saying this is the opportune moment for NUM to say, please let us negotiate

Page 4506

36 must do the same thing inside the hostel."
37 MR ZOKWANA: Yes.
38 MR SEMENYA SC: At the bottom of the page, the recording but last will read, "Ludick" - do you see that?
39
40 MR ZOKWANA: Yes, I see that.
41 MR SEMENYA SC: "NUM requested intervention by security to loud hail around Wonderkop to urge people" -
42
43 MR ZOKWANA: They could use a loudhailer around Wonderkop.
44 MR SEMENYA SC: - "to loud hail around Wonderkop to urge people to go to work while they loud hail at Wonderkop village."
45
46 MR ZOKWANA: I see that, yes.
47 MR SEMENYA SC: So as early as J July, NUM is aware that there is this demand by the RDOs, is that fair to say?
48
49 MR ZOKWANA: NUM is not only - NUM is aware, as this shows, but it's also aware of the fact that the RDOs do not want to include NUM in their discussion with management.
50
51 MR SEMENYA SC: In July already?
52 MR ZOKWANA: At the meeting with Mr Da Costa you have referred to, it's clear that they say it was only the RDOs that met with Mr Da Costa at Karee Mine, not with NUM.
53
54 MR SEMENYA SC: No, I'm saying the record in July, the objection NUM has is that it is not involved in these negotiations, it's aware of the demand.
55 MR ZOKWANA: Yes, I agree with that and I want to put it that NUM objected to the fact that an agreement or an offer made by the company, without including it in those discussions.
56 MR SEMENYA SC: So your objection is, why exclude it, why exclude us? It is not, now that we know the demand we want to negotiate with you, the employer, around this demand, am I right?
57 MR ZOKWANA: You can only negotiate with the employer when a demand is put to you. In this case the employer gave workers what they believed to be an industry - they gave their workers what they think what the general industry bonus you could get, but there's nowhere it is said that there was a stage where the RDOs went to NUM to say, please go and negotiate on our behalf. And in the page you have referred me to, the objection of NUM is not to the offer to the machine drillers, it is the fact that it is not negotiated.
58 MR SEMENYA SC: I'm saying this is the opportune moment for NUM to say, please let us negotiate...
1st February 2013 Marikana Commission of Inquiry Rustenburg

Page 4509
1 MR SEMENYA SC: But you don't use that platform to say we recognise your demands are legitimate.
2 we, as your representative union, will engage the employer on it. Am I right?
3 MR ZOKWANA: At this stage, as I understand Chairperson, the debate was about NUM relating to members what the offer was by the employer that was not negotiated, but offered.
4 MR SEMENYA SC: You've said that already. I'm asking you a different question. Am I right that you don't use the mass meeting to announce to these RDOs that because, as a union representative of your interests, we do recognise this demand, we will negotiate it on your behalf with the employer. It's not the approach.
5 MR ZOKWANA: The way the organisation functions, Chairperson, is that members will put the demand to the union and the union will take those to the employer.
6 At this stage the branch committee was giving the members a feedback of what the employer has given.
7 MR SEMENYA SC: I take it you're refusing to answer the question. I did not ask you, did I, what the purpose for the mass meeting was. I'm asking you a different question. If NUM held the view that the agreement could still be open to negotiation, it would have taken that opportunity, taken the demand of the employees,
8 engaged the employer with it and said, there are now sufficient circumstances to justify a variation of the agreement we concluded. We now know what happened in Impala, we see these demands, we are au fait with the burden of the RDOs.
9 MR ZOKWANA: In the meeting that is related here, sir, of the unions, NUM raises that, its discomfort, on that the company has made it clear that this bonus was not for negotiation, it was what they decided upon. I'm not understanding then on what basis would NUM then say let's open negotiations, when the employer is saying this is what I'm giving my employees.
10 MR SEMENYA SC: Okay, finally on that, you could have said to the employer, we're not talking bonuses now, we're not talking discretionary allowances now, we're talking the increase of the salaries of RDOs which is a matter falling within the mandate, which is a matter falling within the agreement and now that we know there are new circumstances, we think it is justified to change that agreement to reflect the proper remuneration levels of the RDOs.
11 MR ZOKWANA: But at this stage what I've seen is where the employer gives numbers, whether that could have been possible I'm not sure because in this stage, as the minutes you have shown me, were dealing with

Page 4510
1 evidence, described that as a shortcoming in what he'd said to the members. But we have the situation that at branch level there was a shortcoming - what amounts, really, to wrong information was given to the workers. If you had been involved at head office, that wouldn't have happened. My impression is that Mr Semenya is concentrating on what happened at the branch level. You're looking at it from a different level but perhaps in light of that, Mr Semenya could proceed with his questioning -
2 MR SEMENYA SC: So from that exchange, Mr Zokwana, you do appreciate that the local branch level misunderstood its powers.
3 MR ZOKWANA: I think I will be allowed to explain before I come to that answer. Yesterday I made an example, Chairperson, that in 2005 negotiations the local people who were negotiating with Lonmin came to an agreement that was giving Lonmin a five year agreement at a lower premium. When the same matter was brought to head office by our members in Lonmin, we were able to approach the employer, reopen the negotiations, change the five year to two years and change the terms of the agreement. It is doable. If the attitude of the RDOs was amenable to us when we came to them to address them, or could they have made - because our members have got the ability to contact head office, they can
1st February 2013

Marikana Commission of Inquiry

Rustenburg

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

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

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

4 MR SEMENYA SC: I think you are being deliberate.

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

6 CHAIRPERSON: You see I think you may be putting too heavy a burden on the RDOs for that answer because if I was an ordinary RDO and I went to a meeting and the chairman of the local branch told me that NUM's attitude is, position is that you can't do anything, you've got to wait two years, I don't know that I would've realised, as an ordinary rock drill operator, that that's actually wrong, that if we go to head office the president may see it differently and perhaps come to our aid. So I think one must accept that the RDOs reasonably assumed that what Mr Setelele was telling them, was indeed correct and was the position of NUM and I think one has to approach the matter on that basis. And Commissioner Hemraj points out to me that in paragraph 4 of Mr Setelele's statement the point is made that this was discussed at various meetings by the NUM branches in Lonmin and NUM's position, as Mr Setelele mistakenly understood it, was consistently put forward at these meetings. So that's another factor one has to bear in mind.

7 MR ZOKWANA: I take that, Chairperson, and I agree that it was another branch - I want to put the point that some of the RDOs have been with NUM for many years, they participate in the NUM activities, they were one of the people who were just comfortable about [indistinct] was changing their - their conditions of work. And Chairperson, they highly benefited in the change thereof in 2005 and, Chairperson, the practice of mineworkers is that whenever they may be angry with the local leadership in some instances, but when the region or head office arrive they get, they're happy because they know that a national view will be given. I'm raising this because, Chairperson, no amount of - I mean this may have had the intention that, the aim is that NUM is saying they'll help you but I'm saying, Chairperson, in future - saying that it doesn't matter if an agreement has been reached. If conditions arise that demand that it be revisited, as we did with the mining houses and gold, this could have been done.

8 MR SEMENYA SC: So in July when there was a threat of a strike, you're saying national was not informed of such a development?

9 MR ZOKWANA: I know that and I understand that may - that's a matter, presumably, we'll have to consider more fully later.

10 CHAIRPERSON: So when these -

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

12 CHAIRPERSON: From the branch.

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

14 MR ZOKWANA: I know that and I understand that had that thing been done, maybe that held view by the local leadership could have been clarified - because I'm in the past, it would have been that whenever they [indistinct] level they will call the head office and our coming in has changed. With the Chamber, the same thing position happened, Chairperson. When head office came, we were able to make changes in the RDOs' conditions of pay.

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

16 MR ZOKWANA: It could have been the same as they did in '05 and yet in '05 they came to head office.
1st February 2013
Marikana Commission of Inquiry
Rustenburg

Chairperson: Mr Zokwana, I think you need to be clear about what time, about what time you –

Mr Zokwana: I repeat again, sir.

Chairperson: Perhaps you could take the point further in light of the distinction which the witness accepts, as I understand him.

Mr Zokwana: I would repeat again, sir.

Chairperson: That’s correct.

Mr Zokwana: That’s correct, Chair.

Chairperson: That’s what you say, right.

Mr Zokwana: I understand that, but Mr Semenya has actually got another aspect that he’s dealing with, as I understand him. If the local branch said to the workers, two things - one, unprotected strikes are out, we don’t support them, there

Mr Zokwana: You can always, Mr Semenya, be able to counsel – interact with such instances, when the people on whose behalf you’re negotiate request you. I think I repeat this to say this, that the attitude of the local branch viewed a threat of a strike to be unprotected and its view was that the workers must go to work, was national told about that?

Mr Zokwana: You can always, Mr Semenya, be able to counsel – interact with such instances, when the people on whose behalf you’re negotiate request you. I think I repeat this to say this, that the attitude of the local branch viewed a threat of a strike to be unprotected and its view was that the workers must go to work, was national told about that?

Chairperson: I think you should make it clear at what time, about what time you –

Mr Zokwana: In July and before the big march of 8th of August.

Mr Zokwana: In July and before the big march of 8th of August.

Chairperson: I think you should make it clear at what time, about what time you –

Mr Zokwana: I will repeat again, sir. I’m trying my best, senior counsel, to say that it is the NUM policy, you don’t have to be told about it, that an illegal strike that occurs, it is the duty of the local leadership of NUM to persuade members and show them the danger of embarking in such an action. I even said that in my own statement because we have seen the consequences thereof.

Chairperson: Mr Zokwana, I think you made that clear but there’s a further aspect to the point which I think Mr Semenya is trying to make too. I’d like to put it to you, just so we get clarity. You’ve made it clear that the attitude of NUM, very sensibly, is NUM is against unprotected strike because it puts a weapon in the hands of the employer, which can have very serious, catastrophic consequences for the workers. They can be dismissed, it’s a legal dismissal and then the employer can then re-engage certain of the people on different terms and so on. And that’s a very dangerous weapon, if I may use a metaphorical expression, to put in the hands of the mp.

That’s NUM’s attitude, right? Am I understanding you correctly?

Mr Zokwana: That’s correct.

Chairperson: Now – so the branch people didn’t have to go to head office to say, what’s NUM’s policy on that, because you would have just said to them, what are you wasting my time for - you know, we all know that NUM doesn’t support unprotected strike for the reason I’ve mentioned.

Mr Zokwana: They didn’t have to do that, sir.

Chairperson: That’s what you say, right.

Mr Zokwana: I understand that, but Mr Semenya has actually got another aspect that he’s dealing with, as I understand him. If the local branch said to the workers, two things - one, unprotected strikes are out, we don’t support them, there

Mr Zokwana: You can always, Mr Semenya, be able to counsel – interact with such instances, when the people on whose behalf you’re negotiate request you. I think I repeat this to say this, that the attitude of the local branch viewed a threat of a strike to be unprotected and its view was that the workers must go to work, was national told about that?

Mr Zokwana: You can always, Mr Semenya, be able to counsel – interact with such instances, when the people on whose behalf you’re negotiate request you. I think I repeat this to say this, that the attitude of the local branch viewed a threat of a strike to be unprotected and its view was that the workers must go to work, was national told about that?

Chairperson: I think you should make it clear at what time, about what time you –

Mr Zokwana: In July and before the big march of 8th of August.

Chairperson: I think you should make it clear at what time, about what time you –

Mr Zokwana: I will repeat again, sir. I’m trying my best, senior counsel, to say that it is the NUM policy, you don’t have to be told about it, that an illegal strike that occurs, it is the duty of the local leadership of NUM to persuade members and show them the danger of embarking in such an action. I even said that in my own statement because we have seen the consequences thereof.

Chairperson: Mr Zokwana, I think you made that clear but there’s a further aspect to the point which I think Mr Semenya is trying to make too. I’d like

Mr Zokwana: You can always, Mr Semenya, be able to counsel – interact with such instances, when the people on whose behalf you’re negotiate request you. I think I repeat this to say this, that the attitude of the local branch viewed a threat of a strike to be unprotected and its view was that the workers must go to work, was national told about that?
1st February 2013

Marikana Commission of Inquiry

Rustenburg

1st February 2013

Marikana Commission of Inquiry

Rustenburg

1

Page 4521

as we have done anywhere else and we have done in the same

2

mine before, to make sure that that is rectified.

3

MR SEMENYA SC: So finally, the only

4

reason why NUM head office did not see it fit to re-

5

negotiate the RDOs' salaries was because it was unaware of

6

demand?

7

MR ZOKWANA: Up to now, what you have

8

read and referred me, sir, with due respect, has been the

9

aspect of an offer by the employer that was done with RDOs

10

[indistinct] to that alone. I don't understand this issue

11

of NUM being engaged in negotiations.

12

CHAIRPERSON: Mr Semenya, can I – sorry,

13

Mr Semenya and Mr Zokwana, I think you're both talking past

14

each other again. There's really two issues here. We've

15

got to be alive to the fact that there are two issues. The

16

one point is, as I understand Mr Zokwana's evidence, NUM

17

never negotiates without a mandate.

18

MR ZOKWANA: Yes.

19

CHAIRPERSON: So to suggest that because

20

they knew of the demand, because NUM knew of the demand by

21

the RDOs for more money, NUM should then have said it's a

22

justifiable demand, we will go immediately and negotiate.

23

That's not the way NUM works, is that correct?

24

MR ZOKWANA: It's so.

25

CHAIRPERSON: Okay. Now what NUM could

Page 4522

have done, of course, is if NUM knew of the demand and knew

1

it was a justified demand in the circumstances, NUM could

2

have taken the initiative in calling a meeting of the

3

workers to say, look here, you've got this demand, we think

4

it's a justified demand because of the change in

5

circumstances, we would like you to give us a mandate to go

6

to Lonmin and re-negotiate. NUM could have done that.

7

MR ZOKWANA: Under normal situations,

8

Chairperson, the situation is that members who would have a

9

demand will approach their local office and put the demand

10

and explain what the demand is. In this case, as I have

11

been shown, led by the senior counsel, it is where RDOs

12

have gone to the employer, not to the branch and when they

13

met with Mr Da Costa they made it clear that we don't want a

14

union, we'll do it on our own. Chairperson, I want to

15

say this, that had this process been approached properly

16

and the demand had been put forward, it would have been

17

proper for NUM to meet with the employer and deal with it.

18

CHAIRPERSON: Yes. The problem we have

19

is this whole approach by the RDOs directly to the employer

20

and the employer's negotiation with them, it was very

21

dangerous because it upset the whole structure of

22

industrial relations and collective bargaining that was

23

operating at the time, isn't that correct?

24

MR ZOKWANA: It caused a disjuncture

Page 4523

because the unions are not part of the negotiations, but

1

the people who were having grievances chose to approach the

2

employer and when they were advised by Mr Sinclair, one of

3

the managers they went to, that I would like to talk around

4

this issue with your union, they said no, we don't want the

5

union.

6

CHAIRPERSON: I think Mr Semenya's point

7

- if I'm wrong he will correct me, but I think Mr Semenya's

8

point is that in a dangerous situation like that, it would

9

be appropriate perhaps for the union to take the

10

initiative, in the way I've suggested, to call a meeting of

11

the workers and say look here, we would like to do it within the

12

structures, we would like you to give us a mandate. So

13

normally obviously NUM waits for the workers to come to it, but

14

there are potentially dangerous situations where the

15

union has got to be proactive perhaps, in order to prevent

16

the kind of trouble that in fact happened here. Am I

17

interpreting your point correctly?

18

MR SEMENYA SC: Indeed, Chair.

19

CHAIRPERSON: Now that I've interpreted

20

it, would you like to proceed to put it to the witness

21

further? And let's – so I think to be fair to him, I'm not

22

sure that he understood it fully until now but perhaps in

23

the light of our discussion you can take it fruitfully

Page 4524

further with him.

1

MR SEMENYA SC: Mr Zokwana, we accept

2

that the RDOs' direct approach was undesirable. I'm

3

putting it to you that both national and the local

4

structure had it open to them to take the initiative, to

5

obtain the mandate and negotiate. Correct?

6

MR ZOKWANA: Under normal circumstances,

7

yes, it is correct. I want to put it that the situation in

8

Lonmin was not like any other branch where you would deal

9

with your members who may be angry with you. There was an

10

attitude towards NUM by that moment already.

11

MR SEMENYA SC: And I want to suggest to

12

you that part of the discontent by your own members was

13

your failure as a union to take up the cudgels for them

14

which you considered legitimate.

15

MR ZOKWANA: My view is this, that that

16

judgment could have been arrived at had they allowed the

17

union, presenting to it a demand to say, you go to the

18

employer and put this demand – and that judgment would be

19

right to say, NUM, after being approached by its own

20

members to go and negotiate, they did not do. I would take

21

that, but at this point the RDOs, some of them our members, chose to go their own route and disregard their own union.

22

COMMISSIONER HEMRAJ: Mr Zokwana, when it

23

became known to the executive at head office that the
mineworkers were going directly to the employer, they didn’t want the union, it must have been apparent that there was some misunderstanding, some dissatisfaction. What I’d like to know is did anyone take the initiative to enquire from the branch why that had come about? Why was there the dissatisfaction, had they been incorrectly advised?

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

COMMISSIONER HEMRAJ: Sorry?

MR ZOKWANA: Because the ability to interact with members is when they accept a leader from the upper structure to intervene and deal with them, but when members pronounce that they don’t want the union to be their agent, it becomes difficult to interact with them and to persuade them because in most instances it is not a stage where they would listen to you when you go.

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

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

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

MR ZOKWANA: I’m not sure but what I would want to point out is that there are two things that happened at the same time. The branch may have said to people, look, the issue you are raising cannot be entertained. At the same time the people who were grieving were saying, we don’t want you. And I think this, that you – I mean you are finding a situation where NUM is expected to have been able to take the horse to the river, when the horse cannot drink the water you say force it to drink because these machine drillers for years have been members of NUM, have been negotiated by the NUM. When they chose not to negotiate, I think in the minds of many they could have said, we have now a situation of Impala repeating itself. The same actions as Impala [indistinct], it ended where it ended. Anybody would have said these guys know that they can achieve what they could achieve, because they were clearly saying, we don’t any union to be our rep.

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

MR ZOKWANA: Yes.

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

And there’s another aspect, however, and in order to make it unnecessary for you to come back when other
NUM in this platinum belt and he says this, “One reason for the vulnerability, says NUM general secretary Frans Baleni, is” – now this is the, these are the very, the important words – “NUM’s negotiating strategy has been to raise the wages of lowest paid workers at the expense of differentiation between skills categories.” And then she goes on to deal with that further.

Now it may be, and I’m putting this out as a possibility and I’d like to put it to you at this stage, so if it’s not correct we can put it to bed immediately – it may be that the attitude of the RDOs was that they’d heard that NUM hadn’t been supportive of the rock drill operators at Impala being given a differential increase and they’d heard that NUM’s policy was – negotiating strategy, to use the words of the article – had been to raise the wages of lowest paid workers at the expense of differentiation between skill categories. They were effectively asking for a differentiation between skill categories. They understood, or they may well have understood that that wasn’t NUM’s negotiating strategy, NUM had been opposed to that at Impala, therefore they had to go on their own.

Now, I concede it’s speculation but speculation based upon evidence is given on this point, perhaps I can put it to you now. According to the article which was referred to yesterday, which you had a copy of with you, written by Carol Paton, which is exhibit XX8 she talks about, firstly, what happened at Impala and then she goes on to deal with Marikana. But what she says about, firstly about Impala, is very interesting and it may have a bearing on why these two gentlemen took the attitude that they didn’t want to involve the union. She says, she quotes Mr Paul Dunn, who was an executive director at Impala – this is in relation to the rock drill operator issue at Impala – she quotes Paul Dunn who said that, “Impala management had suggested to NUM that rock drill operators, which was the hardest job of all underground machine operators, be given a differential increase but the union had refused.” And then he says that there were subsequent problems. This is the second page, by the way, of that article, the first column. But they went the way they did which, of course, as we know had certain other consequences down the line.

And then in the middle column on that same page she says something about what she was told by Mr Baleni, Mr Frans Baleni, NUM general secretary, and I put this to one of the earlier NUM witnesses and he agreed that this was indeed correct, but maybe you have a different take on it. What he says is this, they’re talking about the vulnerability of lowest paid workers at the expense of differentiation between skills categories.  They were effectively asking for a differentiation between skill categories. They understood, or they may well have understood that that wasn’t NUM’s negotiating strategy, NUM had been opposed to that at Impala, therefore they had to go on their own. Now, I concede it’s speculation but speculation based upon material which we have before us and in order to save you having to come back later if that point emerges more clearly, perhaps I can put it to you now. You understand the point I’m putting to you? Is there any substance in that approach to the matter or is that a misunderstanding?

MR ZOKWANA:   Thanks, Chairperson, and I will maybe try to deal with this issue of the article that you have referred to and I am aware that the issue has been raised before with some of the NUM earlier - some.

Yesterday I tried to show that the witness is not in what NUM is doing in terms of differentiation, in terms of categories recognising jobs as to what a job entails. It is the Paterson grading that the industry has applied. That grading system recognises authority involved with the job. We have shown yesterday our frustration in trying to make sure that companies look at another grading and we even sent one of our personnel to go to study a different grading in Canada in 1998. A number of task teams have been formed in different mining houses, GoldFields, AngloGold Ashanti, in dealing with the same issue, specifically dealing with the machine drillers. In 2003 - that debate took place in 2005, the grading for machine drillers specifically was changed from group 4 to group 5 in the Chamber of Mines because the benefit there is that you have got one forum in which all companies are present, as opposed to the platinum industry.

This term, harmonisation of work, NUM prefers to say – because we have seen that if you are going to upgrade operators and you leave winch drivers, they will say you may drill the hole, blast, but who cleans it without me? That we said let’s be scientific, such that when you say to machine drillers you will be on group 8, we were able to give reasons why it is group 8, because that work has been done and we have changed the system. We have been involved in that. For that reason, in 2010 NUM head office, led by Frans Baleni, met with the leaders of the Chamber of Mines and agreed that in the [inaudible] of 2011 the issue of rock drillers will be taken up as an issue, more than what was agreed upon. And in 2012 the drillers got R500 more than what was given, that was 10% for everybody. Therefore it is wrong to put a view that says NUM would not have agreed to have a different for machine drillers. We have done that in the Chamber and companies are crying now because they are caught up into this problem, including Impala. Why is it that today they are [indistinct] when they could not do anything about their own workers in Impala? So everybody is trying now to appear as an asset, but we are dealing with an industry that refused to see it for many years. Maybe, Chairperson, allow me to deal with the question you raised, earlier question, on the issue whether the machine drillers may have known of the view that NUM could not negotiate a differentiated - that is not true.
1st February 2013
Marikana Commission of Inquiry
Rustenburg

25 Impala because they were against this whole principle of
24 for a differential increase for rock drill operators at
23 this point – is, is it true that NUM refused to negotiate
22 ask ourselves at this point – well, I have to ask you at
21 been NUM's attitude. So the first question we've got to
20 from their friends and relations at Impala that that had
19 gently, that Lonmin rock drill operators would have heard
18 for rock drillers.” That's next to the name Paul Dunn. If
17 underneath it is, “NUM had refused to negotiate higher pay
16 differential increases? That's the first point we've got
15 Is that correct?
14 about what Mr Baleni said, that NUM's negotiating strategy
13 you get onto the detail, the other point is what's said
12 you move on to that, the other point, general point, before
11 before you move on to the detail, the other point is what's said
10 demand emanated from a branch in which NUM –
9 a change to give the answer you wanted to in a moment but
8 or Amplats, what's going on in those mines. So each one
7 to have a cup of tea first, gather your forces and give us
6 big topics. I see it's two minutes to 11. Would you like
5 topics that you've got to deal with, they're probably quite
4 column on this page. I know it's a big – they're two
3 have heard that these rock drillers tend to, are able to
2 to grasp and thereafter the general policy as explained by
1 differential increases? That's the first point we've got

MR ZOKWANA: Thanks Chairperson, for the
break also. Chairperson, I think the issue deals with the
statement you have referred to and the implication if this
is true, it could have had in influencing machine drillers
of Lonmin to take a decision not to negotiate with trade
unions. Chairperson, I have had an interaction in relation
to this issue, with the senior negotiator in the company in
question and other people who are participating and my
report is that no such an offer was made and NUM rejected
it. What NUM demanded was that the company needs to look
at what it termed harmonisation of work and pay, the reason
being that there has been a [indistinct] Chair, the company
will maybe pay winch operators more than other operators
and that has, now and again, you end up with people
demanding more. So up to now, there has been no proof that
this assertion by Paul Dunn that they did, because I think
that negotiations is a thoroughly engaged process.
Whenever - so the point I am putting is that when the
company put an offer like that, it could have been reduced

Chairperson.

CHAIRPERSON: Before you carry on, we
have heard that these rock drillers tend to, are able to
communicate with each other so that the rock driller in
Lonmin will be able, or may well be able, to find out from
his friends or his brother or whatever working for Impala
or Amplats, what's going on in those mines. So each one
isn't in an island on his own. Now, I'm going to give you
a change to give the answer you wanted to in a moment but
what we are told in this article – and it may not be
correct - what we are told in this article is that Mr Paul
Dunn, the executive director of Impala said that Impala
management had wanted to give the rock drill operators a
differential increase but the union refused. And you'll
see the picture on that page of Mr Dunn and the wording
underneath it is, “NUM had refused to negotiate higher pay
for rock drillers.” That's next to the name Paul Dunn. If
that's true then there is a strong possibility, to put it
gently, that Lonmin rock drill operators would have heard
from their friends and relations at Impala that that had
been NUM's attitude. So the first question we've got to
ask ourselves at this point – well, I have to ask you at
this point – is, is it true that NUM refused to negotiate
for a differential increase for rock drill operators at
Impala because they were against this whole principle of

MR SEMENYA SC: Yes.

CHAIRPERSON: that because they were, seemed
to me to be relevant to the points you were busy with, but
I thought if we put them in a different perspective, we
might move forward quicker. Mr Zokwana?

MR ZOKWANA: Chairperson.

CHAIRPERSON: Mr Zokwana, you are still
under oath. Mr Semenya, before you continue with your
cross-examination, we must give Mr Zokwana a chance to
answer and I think it may appropriately be quite a long
1st February 2013 Marikana Commission of Inquiry Rustenburg

Chairperson, my own life was threatened. Had I taken - go
out of that people, I wonder if I will be here giving
evidence.

MR SEMENYA SC: Thank you, Chair. We now
have established that NUM does negotiate midstream an
greement, a wage agreement. It does do that, correct?

MR ZOKWANA: I can agree with you, where
conditions permit.

MR SEMENYA SC: In your entire history
with the union, has NUM negotiated midstream for a section
of the workforce?

MR ZOKWANA: I may have therefore,
Chairperson, to go and research that but the point I can
put is to say that NUM has been able and it has done that
in the same company we are dealing with. In 2005 an
agreement was signed when members called upon us to re-look
that agreement, we did. It is doable. But I am not able
to give you, to say on this group we did because I am
saying that, to do that I may have to go and research and I
evolve, because I didn't know the question would
arise. Let me recall that, Chairperson. I've shown,
Chairperson, here that my answer maybe was not well
thought. Chairperson, I've shown that in the middle of an
agreement at the Chamber of Mines, NUM engage the employers
and that agreement was accepted last year in October,

Points that you were intending to point -
Chairperson, the stance of the loco drivers from Impala to
Lonmin had nothing to do with the NUM attitudes towards
their grading. It has more with other elements that I
think this Commission, by the time it finishes, may come to
understand because what has appeared funny to us is that
they will say we don't want the union to negotiate on our
behalf. They will always in Impala, they will go and
congregate next to the railway station and in Lonmin they
will go to the koppie, until the time the strike ends,
there will be a new formation that is coming. Is that
accidental or is that plan? I don't know. I think the
Commission in its own work would be able to come to that.
But in both occasions in Impala, violence was used, NUM was
not being involved, our stewards being chased, our
offices were closed. In the same vein, the refusal of loco
drivers in Lonmin, I want to put that, Chairperson, have
got nothing with the failure of NUM to look at their
interests. They gave this impression - oh, sorry. Lastly,
Chairperson, NUM would have been willing, especially at
national level, to intervene on behalf of its members if
the environment was allowing and I want to say this, that
there was no way that NUM could have been able to negotiate
for people who didn't like it. More than that,
1st February 2013

Marikana Commission of Inquiry

Rustenburg

1 that it was for RDOs only.
2 CHAIRPERSON: That's the answer he wants.
3 MR ZOKWANA: Yes.
4 MR SEMENYA SC: Alright. When you were
5 going to the koppie on the 15th, there was no part of you
6 that wanted to send a message to the RDOs that said, go
7 back to work, we recognise your demand, we will engage the
8 employer around it and then report back to you. It was not
9 part of your approach.
10 MR ZOKWANA: That would be wrong for Mr
11 Semenya to say. Our approach, as debated during the
12 morning session, was to find a solution. A solution is to
13 appeal to those on strike to desist from using violence.
14 To do that, you have to give them and trust that he would
15 take up the issues that they are raising. When we went to
16 the koppie, to answer your question, it was to appeal all
17 the people to go back to work and as a union, saying that
18 all the issues you have tabled here that has put you here
19 will be dealt with by relevant structures that negotiate.
20 They made that undertaking.
21 MR SEMENYA SC: But clearly Lonmin was
22 not armed, so you could have engaged Lonmin before you go
23 to the koppie and say, “Lonmin, let's resolve this
24 complaint that's on the mountain. I know I don't have a
25 mandate, I will go and get my mandate.”

26 MR ZOKWANA: Our approach as a union was
27 to win those people, to agree first that they will allow
28 negotiations to take place, because our view was that it
29 would not have helped us to go and say to Lonmin, put up an
30 offer to people you are not going to be able to talk to.
31 The question would be from them, who mandated you to talk
32 on our behalf?
33 MR SEMENYA SC: Okay, let us now look at
34 the converse of this problem. It seems to me that you
35 accept that as far as Lonmin was concerned, it did
36 appreciate that its RDOs were underpaid. Is that your
37 understanding?
38 MR ZOKWANA: If I can just via that by
39 them, offering them that market related raise, my answer
40 may be yes. They may have seen that.
41 MR SEMENYA SC: And it too would have
42 appreciated the consequences following the Impala unrest.
43 Correct?
44 MR ZOKWANA: It may be the case, I am not
45 sure.
46 MR SEMENYA SC: No, speaking openly.
47 MR ZOKWANA: I am afraid that the reason
48 Lonmin gave this offer, the reason they gave, they were
49 saying that they are giving this offer as a market related
50 bonus to their own employees. They didn't say they'll do
51 it because of Impala. I am afraid to put that as what they
52 said.
53 MR SEMENYA SC: Walk with me, Mr Zokwana,
54 I am not saying it is because of it, I am saying we can
55 accept that they were aware of that.
56 MR ZOKWANA: I have answered that by
57 saying that if we justify that view by the fact that they
58 made an offer, yes, I can say yes, it could have been.
59 [11:38] MR SEMENYA SC: And I am sure for Lonmin
60 they would not have laboured under a misappréhension which
61 your local NUM suffered, that the agreement is binding and
62 it cannot be amended.
63 MR ZOKWANA: I am not sure, sir, on that.
64 I'm afraid giving an answer would be to think for Lonmin.
65 MR SEMENYA SC: Accepting that to be a
66 supposition you would have then expected Lonmin to say, you
67 know what, there is this complaint of the RDOs, we have an
68 agreement for two years, NUM, can we reopen negotiations on
69 this to answer to this demand. Correct?
70 MR ZOKWANA: Lonmin never called NUM to a
71 meeting to deal with the wages, so I am not - I would like
72 to be honest to say this, that I cannot think what Lonmin
73 could have done. The point anyway is that Lonmin never
74 invited NUM for negotiations and even if they did, I
75 Counsellor Semenya, I don't understand how NUM could have
76 been able to force people who didn't want to listen to it
77 to take a mandate from it. I put here that, sir, in the
78 course of negotiations it is a process of getting a
79 mandate, giving a feedback, I mean looking for fallback
80 positions, looking for settlement areas. You do that only
81 for people who are willing to be your client. You can't
82 just force people, hey guys, please come here, man,
83 nonetheless come, I want to stand for you. You will need -
84 and these people in question have made it clear that we
85 don't want a union on our behalf, we can do it ourselves.
86 MR SEMENYA SC: Mr Zokwana, I haven't
87 asked you whether the RDOs wanted or did not want to be
88 represented by NUM. Am I right at least about that?
89 MR ZOKWANA: Can you repeat the question,
90 please sir?
91 MR SEMENYA SC: There was nothing to
92 preclude Lonmin appreciating the market has changed,
93 appreciating its contractual rights to approach NUM to
94 reopen negotiations to meet the demands of the RDOs.
95 MR ZOKWANA: They could have done that if
96 they wanted.
97 MR SEMENYA SC: And had they done it as
98 NUM you would at least have attempted to engage.
99 MR ZOKWANA: We would have appreciated,
1st February 2013  Marikana Commission of Inquiry  Rustenburg

the company have made it clear through the words of the
mouth as well as through actions that they didn’t want NUM
to be their agent.

MR SEMENYA SC:  Do you mean after the
depth of some ten people, if Lonmin had come to NUM and
said, can we renegotiate this, you would have said no?

MR ZOKWANA:  Some of these 10 people you
referred to, sir, six of them are NUM local leaders and
we’re appreciating the very sensitive environment that
situation was in.  Obviously if we were called upon to
negotiate we would have been hampered by the fact that they
cannot give feedback.  What could have been better maybe
was for Lonmin maybe to see other means if there were any,
of interacting with the people because NUM at that moment,
our local leaders and negotiators, I don’t believe that any
of them could have gone next to the koppie and come alive.

MR SEMENYA SC:  But as a seasoned
unionist you are in agreement with me that the leader
framework that we have in this country is adequate to
resolve industrial disputes?

MR ZOKWANA:  I agree with you there.

MR SEMENYA SC:  It does not require the
police to intervene, am I right?

MR ZOKWANA:  At the time in question,
sir, maybe Chairperson will allow me to expand on this

question other than to say, yes.  From the 12th onwards, in
my view the situation was less of a labour relations
matter, it was more of a security matter because people
were embarking on violence, killing others, threatening to
burn property.  You cannot call the trade unionists in such
an environment and say, please come here guys, because
they’re not trained in that field, or capacitated or called
by law to do those things.

MR SEMENYA SC:  Because we’re going to
ask the Commission at the end that one of the
recommendations or findings that must be made is that it is
the rigidity of both labour and capital to formations
instead of resolving a palpable problem that’s in their
hands.

MR ZOKWANA:  Should I comment on that?

MR SEMENYA SC:  Yes.

MR ZOKWANA:  I think at the end the union
will prove and be able to explain that negotiations can
only take place in an environment that is peaceful, where
parties are able to get a mandate and seek a re-mandating,
where parties can be able to exchange ideas without threat
to life.  I don’t think that NUM was expected to be a
breaker of a situation where lawlessness has prevailed and
lives have been lost.  I think there are people trained for
such situations, sir.  What makes the situation worse,
1st February 2013

Page 4549

1 MR ZOKWANA: As a union, if we want to have a gathering at the roads of the municipality, we want to march, if we want to have a gathering of the union we do apply and if in that context, I will say therefore the gathering was illegal.

2 CHAIRPERSON: It was illegal for another reason, they had weapons. You can't have a gathering of armed people like that, that's not permitted under the law, so it was illegal for that reason also. I think that's the main reason Mr Semenya is putting to you.

3 MR ZOKWANA: I hear you, Mr Chairperson, and I agree with you. If on that level the gathering was illegal, because there is no gathering of weapons, because even if members meet of a union, if they are angry to march they will carry placards, no matter what words are on the placards but to carry weapons, I think it borders on being illegal.

4 MR SEMENYA SC: It is illegal at its core, not at any border, but –

5 MR ZOKWANA: I don't want to appear –

6 Chairperson, as if I only agree with you and I don't agree with the counsel, I agree with you.

7 MR SEMENYA SC: And there was a threat to law and order in that area, was there not?

8 MR ZOKWANA: Especially taking into account the attempt to burn our NUM office, the murder of a number of people including our shop steward, Mr Twala was murdered on the kopje, that was grossly out of line and [inaudible] only our members, to say this, that the carrying of weapons that leads to the death of anybody.

9 MR SEMENYA SC: And you even called for reinforcement of the police to try and resolve that problem.

10 MR ZOKWANA: Yes, I agree.

11 MR SEMENYA SC: And you would have expected the police to do everything that is within the law and their training to make sure that the continued carrying of weapons and threatening the lives of others should be stopped.

12 MR SEMENYA SC: So the difficult answer there – the answer is a yes?

13 MR ZOKWANA: In the context I have put, yes.

14 MR SEMENYA SC: Alright, now let me deal with you, something that is concerning to me. The Commission has been told that the group of people who were attacking the office of the NUM were at a certain point shot at. That you don't approve of, am I right?

15 MR ZOKWANA: It has been said that, yes, shots were fired, yes.

16 CHAIRPERSON: You didn't answer the question. The question is, it is not disputed that shots were fired. What Mr Semenya says is, do you agree that it was wrong?

17 [11:58] MR ZOKWANA: I understand, senior counsel, but that question would be better placed during legal prosecution where you can find whether the person who shot the gun was justified to do so, whether the gun was legal or not legal. I don't think we are in that session here, we are in that committee. The answer I gave is that shots were fired on people and the people who gave evidence here, especially Gegeleza, said he cannot determine whether the shots were from which grouping but shots were fired.

18 MR SEMENYA SC: The firing of shots at people is not what NUM would condone, am I right?

19 MR ZOKWANA: NUM would not encourage any sort of that, but NUM would understand if its people believe that they are under threat to their lives and our offices are under threat, that they will at the spur of the moment decide to take a stand - as the NUM we believe that those people in that circumstances found themselves and we don't condemn what they did.

20 CHAIRPERSON: Mr Zokwana, sorry, let the interpreter interpret it first, then I want to something to you.

Page 4550

1 MR ZOKWANA: Thank you, Mr Chairperson.

2 CHAIRPERSON: Mr Setelele in his evidence said that he wasn't present when this incident took place but when he got to the office after it had happened he received a report of what had taken place and in paragraph 21 of his statement, which is exhibit YY1 he said this, “At the office I was further briefed on the confrontation. During the course of this I was told that some shots had been fired by NUM members and that a couple of the attacking strikers may have been injured as a result.” Mr Gegeleza said that he was present at the time, in paragraph 21 of his statement of ZZ2 he said he heard some gunshots, page 3. He couldn't tell exactly from where the shots had been fired.

3 He said he was very startled by them and it seems the strikers were also. Almost immediately the strikers in front of the group began turning back and retreating, those behind did the same. Very quickly the strikers in front of us were dispersing. But the important point is that Mr Setelele says that he was told at the office when he arrived after the confrontation, that some shots had been fired by NUM members. When he gave evidence he declined to say who had fired the shots, according to - but he knew who they were or he certainly was aware of the identity but he
1st February 2013
Marikana Commission of Inquiry
Rustenburg

Page 4553

1 said it might endanger the lives of the people concerned,
2 so he didn’t give their names, but what we have been told
3 on evidence before this Commission is that shots were fired
4 by NUM members.
5
6 We’ve also been told that two dockets have been
7 opened by the police of attempted murder, but that’s as far
8 as the matter goes on the information before us, but I
9 think we must accept at least at this stage that the
10 information is or the indications are that the shots were
11 fired by NUM members, that two people were injured, that
12 there are two dockets of attempted murder which have been
13 opened. It’s in the light of that that Mr Semenya asked
14 the question. Perhaps he should repeat it so we can - to
15 enable you to deal with it comprehensively.
16
17 MR SEMENYA SC: NUM would denounce the
18 firing of shots at crowds, is that a fair statement for me
19 to make?
20
21 MR ZOKWANA: NUM would denounce any form
22 of violence, especially by its own leadership, but in this
23 case in question I have in my own statement put forward to
24 say, we are not approving of the methods, of the weapons
25 used. We understood the fact that the branch committee at
26 that moment had to defend their own union and their lives.
27
28 MR SEMENYA SC: That’s what disturbs me,
29 Mr Zokwana. You know if the message goes out here that
30

Page 4554

1 members of NUM would, in defence of the property of NUM, go
2 firing shots at crowds [indistinct] them instead of
3 reporting them to the police - now that’s my problem, sir.
4 I don’t want that message going out. Now I’m inviting you,
5 where appropriate -
6
7 CHAIRPERSON: Mr Semenya, before we carry
8 on, I don’t think your question is happily phrased.
9
10 MR SEMENYA SC: That’s why -
11
12 CHAIRPERSON: There you’ve got a group of
13 people approaching, on the evidence, another group of
14 people standing to defend the office, according to the
15 evidence that has been led so far the approaching strikers
16 were armed with dangerous weapons, pangas and so on. Now I
17 understand your point about firing at them certainly
18 without warning them and so forth, but to suggest that
19 somehow the people at the NUM office should have somehow
20 contacted the police by cell phone while the others were
21 approaching seems a question that’s not going to help us
22 very much.
23
24 MR SEMENYA SC: I was going to qualify
25 that -
26
27 CHAIRPERSON: Ja, I think you should
28 because otherwise it is, with respect, not a question
29 that’s going to help the Commission.
30
31 MR SEMENYA SC: Thanks for that.
I heard afterwards that the late Mr Bongo had distributed these weapons amongst those who had decided to defend the NUM office against the approaching strikers. And the point is also dealt with by Mr Gegeleza in paragraph 14 of his statement where he says that it is around this time that the security, Lonmin security that the information was that people were approaching to attack the office and burn it and that the security people couldn’t provide any protection – “around this time that the NUM WPO branch secretary, Mr Bongo, handed out some weapons to some of us at the office, including myself. He said these weapons had been obtained during the course of the previous evening from some of the strikers. I was given a knobkerrie and a spear. To the best of my knowledge there were usually no weapons at all in the office.” So it is not correct to put that weapons were kept at the office. The facts are, as I have read to you from the evidence of the two witnesses who’ve testified on this point.

MR SEMENYA SC: Well, the statement which the Chair has just read from, Mr Setelele who says about the weapons, others had been brought in by members.

MR ZOKWANA: But your question was about senior counsel, whether NUM would not condemn and I said, yes, we will condemn the keeping of weapons in NUM offices.

but in this case there is no proof presented before this Commission that NUM had weapons kept except those that were either fetched by members or that were taken from people the previous day.

MR SEMENYA SC: I was going to finish the sentence and say, others had been brought in by members who had gone home to fetch them in response to the experience of threat and intimidatory conduct by strikers when these members were assisting employees to get to work during the night. So they had deliberately gone out, fetched weapons, came to the offices in anticipation of what may be possible trouble to them. For now do you agree I’ve read the part of the statement correctly?

MR ZOKWANA: It is right, yes.

MR SEMENYA SC: Yes, okay. Now when you say these members were failed by the security you’re not referring to the South African Police, are you? You’re referring to the security of the mine who said they will not be able to protect the office.

MR ZOKWANA: The point I’m putting is that whenever such occurrences occur the NUM office will inform the management and the management will inform security who will, on analysing the extent of the problem, call upon the SAPS. At this stage we refer to the presence of security person who does not offer protection but says...
1st February 2013

Marikana Commission of Inquiry
Rustenburg

Page 4561

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

Page 4562

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

MR ZOKWANA: These benefits are detailed and they are known. It only happens where there may be deficiencies in the services rendered that the union will engage.

MS LEWIS: I’m sorry, Mr Zokwana, I don’t think I understand you entirely, deficiencies in which services rendered?

MR ZOKWANA: The benefits that are defined by the Provident Fund, the Death Benefit Scheme, if the company or the family in question did not get all that was due to them then they would inform the union and then the union will take that up.

MS LEWIS: An example, if in most cases the death is because of a mine accident the family may be possible, some of the people, the local people accompany the person to that area, but it is not NUM that phones the family. It is the company because NUM may know the person but the details about his family members and his address may not be at the disposal of that local branch committee.

MR ZOKWANA: No, Mr Zokwana, you wait for the family member to approach you with the problem or do you follow up with them as a standard procedure to ensure that they have been properly assisted and that they’re not experiencing any difficulties?

MS LEWIS: So, Mr Zokwana, do you wait for the family member to approach you with the problem or do you follow up with them as a standard procedure to ensure that they have been properly assisted and that they’re not experiencing any difficulties?

MR ZOKWANA: What happened mostly is that when the person is taken home for burial and that shop stewards or people who may know that family who are also NUM members, it can be [indistinct] but it would be difficult for NUM to follow up on every family to check whether everything is well. These things are not things that companies think of. They’re informed by an agreement signed and I think that if more families may know what was due to them in the event their next of kin is not more, so it would be difficult for NUM therefore to go to every family member and check if they paid because these are binding benefits that have been negotiated. And this is not always the case that after a person has passed on we do receive such complaints, but they do arise there and there and when they do arise we deal with them. And I’ve happened to have been present in some, not all, of the situations where members were buried and always, in most instances there will be a company employee in Lonmin - I’ve met some - and they will explain to the family what is due to the family having spoken to them.

MS LEWIS: Do you ensure that you’re always a party to those discussions and that you make sure that the company explains it properly to the family member and that the family member understands?

MR ZOKWANA: I will repeat my answer to say that it would be impossible that NUM will be at any - at all such funerals and I repeat to say that whenever the family raises issues of concern arising from the benefit payments, NUM will take that up to make the employer aware of the problem.

MS LEWIS: Mr Zokwana, when you are dealing with poor and illiterate people who live in rural and far flung areas of South Africa, do you think it is sufficient to simply leave it to the company and not to ensure that those family members are properly assisted?

MR ZOKWANA: With due respect, Chairperson, I take exception to the question – the question arises that only illiterate members of NUM die and they can’t read and write.

CHAIRPERSON: No, no, that’s not what she said. She says to you in the case of illiterate poor people, when they die, she asked you, do you think it is sufficient what you do to leave it to the company and only to respond if you get a complaint from the family. That’s the question. The answer is either, yes, I think it is appropriate what we do, or I don’t think it is appropriate. You don’t have to go to all these other by-ways, we’ll be here all week. I didn’t understand her to be suggesting that all your members are illiterate or even all your rock drill operators were illiterate although I think quite a lot of them were, but the question was confined to people who are illiterate and some certainly, I would imagine, of the family members of your members who die are illiterate and poor and that’s what the question is about. So perhaps repeat the question, Ms Lewis, and the witness, having received a lecture from me, will you give you a focussed answer.

MS LEWIS: Thank you, Chair. Mr Zokwana, my question is, for those NUM members who are poor and illiterate and who live in rural and far flung areas of South Africa, do you think it is sufficient to simply leave it to the company and not to ensure that claims for benefits are processed timely and properly?

MR ZOKWANA: Thanks, Chairperson, for that clarification and the question now is clearer and I
1st February 2013

Marikana Commission of Inquiry

Rustenburg

1 can say that NUM has made a point that these rights are
canvassed amongst members because they’re negotiated and
members know about them. And most of the companies
employed their people or run their administration in the
areas through TEBA offices, which you will find in most
towns. There will be a TEBA office that a family can go to
where there are problems, and other pluses, that most of
the mineworkers have got their next of kin who are also
working in the mines who are aware of these problems. And
I repeat this that whenever such come to our attention that
there may have been a problem which is not, I cannot say
that, it is not a ritual that you get such a complaint that
a person has been underpaid or whatever.

CHAIRPERSON: It sounds as if your answer
is, yes, you do think it is sufficient and you already
answered the next question as to why you think it is
sufficient, is that correct?

MR ZOKWANA: Yes.

MS LEWIS: Thank you, Mr Chair. So, Mr
Zokwana, I’m going to take you back to my point of
departure, which was your evidence yesterday. You said
that if necessary NUM officials will travel to the homes of
injured or killed mineworkers, even in distant provinces or
neighbouring countries, to render the necessary assistance
but I’m struggling to understand what assistance it is that
you render.

[12:38] MR ZOKWANA: One of the assistance we
render to families is to go to explain as a union, where
possible, the circumstances under which such death has
happened. That will be before the burial, once we know
that somebody has passed, then we go and visit and explain
what would have happened.

MS LEWIS: But, Mr Zokwana, when I first
asked you the question as to what it is that NUM does, you
said very categorically that it is the company, in this
instance Lonmin, who contacts the family member, tells them
that their relatives have died and the circumstances in
which they died. You went to great lengths to stress that
it would be too difficult for NUM to do that. Are you now
contradicting that?

MR ZOKWANA: Thank you, Chairperson, if I
may? Let me explain this because I don’t see the
contradiction, Chairperson. There are circumstances that
are extraordinary that causes death, other than mine
accidents. I can cite a few examples. One of our regional
chairpersons in Carletonville was murdered. We didn’t
think the company would have, or it would be enough to wait
for the company to go and address it. As a union, after
the company informed them, we drove to that family to make
sure that we are able to put them into understanding the

Page 4570

Page 4571

Page 4572

Page 4573

1 circumstances. With the case of the late Bongo I had to
travel to his family so that they could understand and
appreciate the circumstances as it was related to me - but
let me admit that we are not able to do such in each and
every family.

MS LEWIS: So, Mr Zokwana, you’ve
admitted that you do it for some family members. On what
basis do you draw that distinction? Which family members
get personally visited by NUM and which don’t?

MR ZOKWANA: I would not be able to say
which family we don’t visit, I’m saying that the
circumstances may place so much a burden that, example
myself, I can’t be able to visit each and every family who
have lost a next of kin but in our regions and other
structures, people do go - if you cannot be with the family
before, during the burial you go and visit. A clear answer
to that question, we don’t have categories of people who
deserve a special visit.

MS LEWIS: Now would you know whether
there were any NUM members who died on the 16th of August at
Marikana?

MR ZOKWANA: It is possible NUM members
who could have been part of those who died on that - yes.

MS LEWIS: Mr Zokwana, it is possible but
do you know definitely whether amongst those who were
killed at Marikana on the 16th of August, there were
included amongst there NUM members, do you know that or you
don’t know that?

MR ZOKWANA: I know they were part of
those who were killed.

MS LEWIS: Do you know how many of the 34
people who were killed on the 16th were NUM members?

MR ZOKWANA: Unfortunately I don’t have
those figures with me, but I know there were NUM members.

MS LEWIS: So, if you don’t know the
precise numbers I take it you also wouldn’t know the names
of your members who were killed on the 16th?

MR ZOKWANA: I don’t know of the names of
the people who were killed on the 16th, not only NUM members
because all of them to us matter.

MS LEWIS: Well, Mr Zokwana, can I help
you with that?

CHAIRPERSON: Before you help him, can I
ask a question? You don’t know the number or the names but
is there someone in NUM whose business it is to ascertain
how many members were involved and the names of the people?

MR ZOKWANA: I’m sure that that can be
made available to the Commission because that information
is there but I don’t have it with me now.

MS LEWIS: Alright, but I take it that
1st February 2013 Marikana Commission of Inquiry Rustenburg

Page 4573

1  someone within NUM somewhere might know the number and the names of the people.
2  
3  MR ZOKWANA: Yes.
4  
5  MS LEWIS: But the simple point I'm making, Mr Zokwana, is that you don't know it, is that correct?
6  
7  MR ZOKWANA: I know that amongst those who were killed or who died on that day, they were NUM members.
8  
9  MS LEWIS: Yes, but you don't the specific number or the names, correct?
10  
11  MR ZOKWANA: I don't know that, yes.
12  
13  MS LEWIS: Mr Zokwana, of the 34 people killed on the 16th of August 2012 at Marikana, nine were NUM members and I'm going to read their names to you and I apologise to the Commission and to the family members if I get the pronunciation wrong. Mr Henry Pato, Mr Ntandazo Nokamba, Mr Bonginkosi Yona, Mr Bongani Mdze -
14  
15  MR HANABE: The name?
16  
17  MS LEWIS: I'll let my colleague -
18  
19  MR HANABE: Bongani Mdze.
20  
21  MR HANABE: Yes?
22  
23  MS LEWIS: Mr Thabiso Mosebetsane, Mr Andries Msenyeno, Mr Molefi Ntsoele, Mr Khawamare Monesa and Mr Sagalala. Now, Mr Zokwana, do you know whether any of those members were visited by NUM officials?
24  
25  Page 4574

1 of those members were visited by NUM officials?
2  
3  MR ZOKWANA: I want to place in answering the question, Chairperson, the environment during, before and after -
4  
5  CHAIRPERSON: Before we get to the environment before and after, you can deal with that later. The first question is, do you know whether any of these people was visited by NUM people afterwards? If you don't know you don't know. If you do know then, depending on the answer, you can give the environment.
6  
7  MR ZOKWANA: I doubt if, Chairperson, any could have been visited and the reason I'm putting that, Chairperson, is because at the point of the death in question NUM shop stewards were no longer around Lonmin as they were compelled to run away and be in places of safety and they were being murdered and injured. They left the mine, Chairperson, precisely on the 12th of August because most of them were killed and one of them was killed soon after that incident. Therefore I don't believe that a NUM person known could have been - could have been able to either visit the family or to attend a funeral because of the atmosphere during that moment.
8  
9  CHAIRPERSON: I don't know if this applies to the nine people whose names were read out, but many certainly of the deceased were from Pondoland, some from Lesotho and I think one or two from Swaziland.
10  
11  MR ZOKWANA: Yes.
12  
13  CHAIRPERSON: So the absence - the fact that shop stewards weren't at Marikana at the time because they were in places of safety isn't a complete answer to the question as to why people, widows weren't visited in Lusikisi or Flagstaff or some other place in Pondoland -
14  
15  MR ZOKWANA: Let me explain it, Chairperson, with due respect. On the day a national memorial service was arranged, as the president of NUM I was advised or told not to be in attendance. When the team of Ministers visited the area and the meeting was arranged in one of the informal settlements I was told not to avail - when I was accompanying the Eastern Cape and the national leadership of CONTROLESA, I was told not to avail myself there. And I want to say that - and Chairperson, I'm not making this up to cover not caring, but in essence a number of people took over the process after the Marikana massacre, Ministers of government were already told. I think if any officers could have been in that presence, Chairperson, or try to avail, I cannot rule out the fact that they could have been assaulted and remember when these burials were taking place one of them happened to be in the area I was born from. I mean I'm from Iduwywa, The very mode that prevailed on the koppie was prevailing in the

Page 4575

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

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

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

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

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

MR ZOKWANA: I’m sorry, Chairperson, I
would not be able to furnish the answer because I don’t
know if NUM officials could have spoken. It is difficult,
that people still regard the scenario on the basis of
affiliation and they would not appreciate the fact that a
person has visited to give comfort.

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

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

MR ZOKWANA: Chairperson, the time -
half past one, two.

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

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

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

MS LEWIS: When did you hear of it?

MR ZOKWANA: I could have spoken with her
1st February 2013 Marikana Commission of Inquiry Rustenburg

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

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

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

MS LEWIS: Yes, Mr Zokwana, my point is
simply that none of the other family members whose
relatives were NUM members have appointed – have reported
intimidation of the type that you refer to.

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

MS LEWIS: Yes, Chair.

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

[COMMISSION ADJOURNS COMMISSION RESUMES]


Before Ms Lewis continues with her cross-examination, Mr
Mpfu, it has been brought to my attention that the
witnesses who have been subpoenaed were told to come back
on Monday, and in order to enable you to prepare for
leading witnesses, we have decided not to sit on Monday, so
you canprecogize your witnesses. Now, what are we going
to do about your witnesses who have been subpoenaed? Have
you any suggestions as to how we can solve the problem?

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

CHAIRPERSON: Do you undertake, you and
Lonmin together, jointly and severally -

MR MPOFU SC: No, with Mr Madlanga.

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

MR MPOFU: Yes.

CHAIRPERSON: And we will then extend
their subpoenas.

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

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

MR MPOFU SC: Yes.

CHAIRPERSON: If he doesn’t -

SENZENI ZOKWANA (CONTD):

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

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

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

MR ZOKWANA: I am not in a position to
disagree with that, Chairperson, given the scenario I have
1st February 2013

Marikana Commission of Inquiry
Rustenburg

Page 4585

given of the environment that developed up to the 16th and after.

CHAIRPERSON: Ms Lewis, I don't know how much further you propose taking this point. I think you've probably made it, insofar it has relevance at all. I understand why you asked the question, I didn't stop you, but I think we might move on to another aspect now.

MS LEWIS: Chair, there's just one point that I need to put on record and that's that, as I said my instructions are that the family - NUM family members have not at any stage been contacted, but that they were, during the lunch adjournment, approached by - my understanding is by NUM officials - and I am not saying that this witness knows anything about that but I just feel the need to take that on record that that's the first time that they have been approached. And Mr Zokwana, when Mr Mathunjwa testified he told us that AMCU has established a fund for all of the victims of the Marikana events. Can you tell us whether NUM has established any fund like that or a similar fund?

MR ZOKWANA: NUM did not formed or created a fund. What NUM did was to engage Lonmin with the view that there should be financial assistance to people and we appreciate the fact that the company agreed, that would cover even non-Lonmin employees.

Page 4586

MS LEWIS: And Mr Zokwana, to my final point then - this, I am sure we all agree, that this Commission is primarily to establish the reasons for, and the circumstances surrounding the deaths of the family members, relatives and loved ones. Do you agree?

MR ZOKWANA: I think the terms of reference for the Commission were outlined when it was formed and I would not like to cut those to conform to what you are saying as the Commission should cover these, and that led to what happened but not only limited on the day in question, and I think that Commissioners like yourselves, who are having those terms - I am sorry that I can't answer your question.

CHAIRPERSON: I take it you would agree that among the terms of reference, among the aspects which the Commission has to investigate are those that she has listed in her questions.

MR ZOKWANA: I agree with that, Chairperson, I thought that she was limiting the terms only to those she was - hence I answered the way I answered.

MS LEWIS: So, Mr Zokwana, you'd agree with me then that it would be very important for the family members to be able to participate in these proceedings.

MR ZOKWANA: I don't think I am qualified to make that judgment, Chairperson, given that I think this

Page 4587

1 Commission has got legal people who represent such people.
2 If in their opinion and interaction with the Chairperson of the Commission, come to that conclusion, I think you will come to that. I am not in a position or qualified to make that judgment at all. I am sorry I can't answer that question.

7 MS LEWIS: So Mr Zokwana, you agree with me then, I think, that in order for the family members to participate in these proceedings, they would need legal representation. Do you agree?
8 MR ZOKWANA: I think when you introduced yourself, you made it clear that you were on behalf of family members, and I take it that family members who are in this process has got such legal representation.

10 MS LEWIS: Mr Zokwana, I don't think you've answered my question, so let me rephrase it. If my colleague and I were not here and there was no-one else here representing the families, they wouldn't be able to participate in any meaningful way in these proceedings. Do you agree?

12 MR ZOKWANA: It is difficult to agree that only you could be the legal people to represent them, but I take it there could have been means made to ensure that everybody present had such a person, and I appreciate the importance of such an arrangement but not the fact that

14 it should have been only you.

15 CHAIRPERSON: No, no, I don't think she was talking about herself. She's talking about it's important that there should be legal representatives such as her colleague and herself appearing, but she wasn't saying, "if I wasn't here they wouldn't be properly represented." She was saying if a legal representative weren't here, then they wouldn't be properly represented.

17 MS LEWIS: Thank you, Chair.

18 MR ZOKWANA: I thought that, Chairperson, she made an example of me and my colleague and I took it that she meant that only if they are brought here but if the context, Chairperson - I, agree, Chairperson, with that.

19 CHAIRPERSON: I doubt that she was trying to say that, but she says she wasn't, so we must assume she wasn't.

21 MS LEWIS: Now Mr Zokwana, I think you'll also agree with me that persons who are of very, very limited means and who have just lost their sole breadwinner, wouldn't have the means to hire legal representatives, do you agree?

23 MR ZOKWANA: Possible.

24 MS LEWIS: Alright. And Mr Zokwana, I think you'll also agree that persons who are illiterate, who aren't advised of their rights, who live in rural
MR ZOKWANA: That is possible if no such assistance is offered, but in most cases when there are major accidents, like the one we are about, many people will come forward and say, we will be offering such assistance.

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

MR ZOKWANA: Thanks, Chairperson. I will always, maybe before I answer the question, I will have to out-sketch again the scenario that prevailed soon after the, August the 16th. Even during processes leading to the memorial service, NUM had people who were participating in the planning team but those people were removed because of the climate I have referred to before. And Chairperson, the atmosphere was such that even during, even the marquees planned for, that were paid for, were not used because there were many people who came forward and said we will give this one. Even people who were in prison as well as those who were in these situations, were promised assistance to get funds for bail and the rest and that moment when [indistinct] on the other side should not by body language detract my answer. I am not saying to you, madam, I am looking somebody else.

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

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

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

MR ZOKWANA: Maybe we need to qualify these family members because NUM has given assistance to some family members, who we could be able to, but to answer your question I would say this that the same scenario I have painted, we could not offer that assistance.

[14:03] MS LEWIS: Mr Zokwana, NUM gave no assistance to the family members of NUM members killed on the 16th, is that correct?

MR ZOKWANA: I would say it is incorrect in as far as – let me finish, please, madam - NUM could have assisted any member and again NUM would like to define, Chairperson, how do we define membership.

Membership on [indistinct] would be membership that behaves in a way that is un-NUM. Membership that would be chasing its leadership, members – but I state not, not who undermine it and our view therefore is, whether those people were NUM members in books of the company, but the manner led to the events that happened, makes us doubt that we could - as NUM members. And I can say therefore that those members unfortunately, we could have, because we didn’t have access to them, given the scenario in question.

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

CHAIRPERSON: He answered your question.

He said they [indistinct] that and he gave reasons why they didn’t, that was my reading of his answer.

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

MR ZOKWANA: Mr who?

MS LEWIS: Mr Nokamba.

MR ZOKWANA: The first one?

MS LEWIS: Pato.

MR ZOKWANA: Pato?

MS LEWIS: P-A-T-O.

MR ZOKWANA: Pato.

MS LEWIS: Pato.

MR ZOKWANA: Pato.

MS LEWIS: Sorry, I apologise again for the pronunciation. And after the Commission reconvened again at the end of October and when the families were enabled to attend again from about the end of October, the beginning of November, in the first week of November the
1st February 2013 Marikana Commission of Inquiry Rustenburg

<table>
<thead>
<tr>
<th>Page 4593</th>
<th>Page 4595</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 remaining NUM members, the other seven, approached my</td>
<td>1 allegations would have to have substantiation in order for</td>
</tr>
<tr>
<td>attorneys and requested legal representation because they</td>
<td>them to be fairly made.</td>
</tr>
<tr>
<td>hadn’t been informed by anyone else as to how to go about</td>
<td>2 MR ZOKWANA: An allegation is an</td>
</tr>
<tr>
<td>obtaining legal representation. Do you want to comment on</td>
<td>allegation, a fact I’m saying is a fact. I allege that</td>
</tr>
<tr>
<td>that?</td>
<td>this happened, it means that I cannot be able to say I’ve</td>
</tr>
<tr>
<td></td>
<td>got the following proof. But if you say it is fact, I must</td>
</tr>
<tr>
<td>MR ZOKWANA: I could not agree with that,</td>
<td>7 be able to say on the following reasons this is the reason</td>
</tr>
<tr>
<td>that - I note what you are saying in terms of those people</td>
<td>8 I am saying it. I allege. So it is up to you or maybe to</td>
</tr>
<tr>
<td>having come to your firm for assistance but the point is</td>
<td>9 show me that my allegation is not on, is not right.</td>
</tr>
<tr>
<td>that if people were NUM members and this incident happened,</td>
<td>10 MS BARNES: Sir, you have agreed with me</td>
</tr>
<tr>
<td>under normal circumstances NUM would take up their case.</td>
<td>11 that allegations must be substantiated. It’s not necessary</td>
</tr>
<tr>
<td>As I have shown and said that maybe as part of the</td>
<td>12 for us to go on about this any further. I’d just like to</td>
</tr>
<tr>
<td>Commission or the Commission ends, we will be able to</td>
<td>13 put this to you and I am sure that you’ll agree with this</td>
</tr>
<tr>
<td>understand whether the people who were on the kopje</td>
<td>14 as well. During the, what was an extremely volatile week</td>
</tr>
<tr>
<td>demonstrating and doing all those things, still believed</td>
<td>15 at Marikana, the week of the 9th to the 15th of August last</td>
</tr>
<tr>
<td>that they were NUM members because I am saying that in NUM</td>
<td>16 year, it was particularly important that public statements</td>
</tr>
<tr>
<td>to be a member, is not only to be in its books, it is the</td>
<td>17 made and allegations made, were – had a sound factual</td>
</tr>
<tr>
<td>manner and the way you behave, it is the manner in which</td>
<td>18 basis, do you agree with that?</td>
</tr>
<tr>
<td>you abide by its rules and policies. I cannot disqualify</td>
<td>19 MR HANABE: Where? The allegations made</td>
</tr>
<tr>
<td>people who are no longer alive - I don’t know what they</td>
<td>20 where?</td>
</tr>
<tr>
<td>could have, but I am saying this that the chances, the fact</td>
<td>21 MS BARNES: During the extremely volatile</td>
</tr>
<tr>
<td>that two families would come to you, to AMCU, tell the</td>
<td>22 week long period at Marikana from the 9th to the 15th of</td>
</tr>
<tr>
<td>story that - already other scenarios were at play.</td>
<td>23 August last year.</td>
</tr>
<tr>
<td>MS LEWIS: Mr Chair, I have no further</td>
<td>24 MR HANABE: Yes? I want the last part</td>
</tr>
<tr>
<td>questions for this witness.</td>
<td>25 then.</td>
</tr>
<tr>
<td>CHAIRPERSON: Thank you. Ms Barnes, you</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 4594</th>
<th>Page 4596</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 indicated you wanted to stand back for Ms Lewis but you</td>
<td>1 MS BARNES: It was particularly important</td>
</tr>
<tr>
<td>hadn’t surrendered your rights completely. Do you want to</td>
<td>2 to ensure that public statements that were made or</td>
</tr>
<tr>
<td>ask any questions now?</td>
<td>3 allegations that were made, had a sound factual basis.</td>
</tr>
<tr>
<td>CROSS-EXAMINATION BY MS BARNES: That's</td>
<td>4 MR ZOKWANA: It is common knowledge,</td>
</tr>
<tr>
<td>right, thank you, Chair. Good afternoon, Mr Zokwana. Mr</td>
<td>5 counsel, that when you debate with somebody and you put on</td>
</tr>
<tr>
<td>Zokwana, I take it that as a union leader you would take</td>
<td>6 allegations, you exchange ideas. It is the other</td>
</tr>
<tr>
<td>care to ensure that all the public statements that you make</td>
<td>7 participants in that forum who may be able to call and</td>
</tr>
<tr>
<td>are factually correct. Would I be right in assuming that?</td>
<td>8 prove that what you are saying is not on, except if such</td>
</tr>
<tr>
<td>MR ZOKWANA: It should be, yes.</td>
<td>9 were made in his or her absence.</td>
</tr>
<tr>
<td>MS BARNES: I take it also that you</td>
<td>10 MS BARNES: Sir, you haven’t answered the</td>
</tr>
<tr>
<td>wouldn’t make an allegation against any party in public</td>
<td>11 question. If you could please focus on the question and</td>
</tr>
<tr>
<td>without taking care to ensure that there was a sound</td>
<td>12 try and answer it, it will -</td>
</tr>
<tr>
<td>factual basis for that allegation. Would that be correct?</td>
<td>13 MR ZOKWANA: I disagree with you -</td>
</tr>
<tr>
<td>MR ZOKWANA: I believe that if it is an</td>
<td>14 MS BARNES: - save us a lot of time.</td>
</tr>
<tr>
<td>opinion I hold, and I don’t put it as a fact, is not a</td>
<td>15 MR ZOKWANA: I disagree with your line of</td>
</tr>
<tr>
<td>problem, because if I believe that this should be the case,</td>
<td>16 reasoning.</td>
</tr>
<tr>
<td>I don’t say it is a fact because of the following.</td>
<td>17 MS BARNES: The question is the</td>
</tr>
<tr>
<td>MS BARNES: But if it was an allegation</td>
<td>18 following, do you agree that during what you yourself have</td>
</tr>
<tr>
<td>or an accusation, then you would take care to ensure that</td>
<td>19 described, the week from the 9th to the 15th of August last</td>
</tr>
<tr>
<td>there was a sound factual basis for it, is that correct?</td>
<td>20 year at Marikana, as a particularly volatile time, do you</td>
</tr>
<tr>
<td>MR ZOKWANA: If the allegation can be</td>
<td>21 agree that it was particularly important during that time</td>
</tr>
<tr>
<td>substantiated by events or be proven, or facts brought that</td>
<td>22 to ensure that any public statements you made or</td>
</tr>
<tr>
<td>this allegation has got the following, and you happen not</td>
<td>23 allegations you made had a sound factual basis?</td>
</tr>
<tr>
<td>to be the only one who has that allegation.</td>
<td>24 MR ZOKWANA: I would agree that to make</td>
</tr>
<tr>
<td>MS BARNES: Good, so we agree,</td>
<td>25 allegations about somebody I am not able to discuss with,</td>
</tr>
</tbody>
</table>
or in his absence, no matter how the situation is in my view -

MS BARNES: Well, let me try and put the corollary to you, sir. You agree that it wouldn't be acceptable, particularly during the volatile time at Marikana in that week of August last year, to make public statements or allegations that had no factual basis.

MR ZOKWANA: It is difficult therefore to, on my part to understand, Chairperson, what would be this unsubstantiated allegation that is being referred to because you say, yes, I agree or not agree, without understanding the aim of the question, it's difficult.

MS BARNES: Sir, you don't have to worry about questions that may or may not come in the future, you just need to confine yourself to answering this question.

MR ZOKWANA: I disagree with the fact that when you are in a debate there are issues that should not be engaged upon.

CHAIRPERSON: She is not saying that.

What she's saying to you - it's a general question.

MR ZOKWANA: I see "IM" feature, written there.

MS BARNES: And this same allegation, the allegation that the proposal was made by Implats management and opposed by NUM, was also made in another article by a gentleman by the name of Gavin Hartford.

MR ZOKWANA: I heard that, yes.

substantial reason for making the allegation, for believing it to be true, before you make it and I take it, you'll agree with that?

MR ZOKWANA: I agree, Chairperson.

CHAIRPERSON: J'a.

MR ZOKWANA: Especially it being factual.

CHAIRPERSON: Now we will see if the question you expect is going to come.

MS BARNES: Perhaps a little later. We might start by looking at Impala, what happened at Impala, Mr Zokwana, and earlier this morning, the Chairperson referred you to the article Carol Paton that is exhibit XX8, if you could get that in front of you please. Do you have that?

MR ZOKWANA: Yes. I have that.

MS BARNES: Good. That article quotes Paul Dunn of Implats as saying that during the 2011 wage negotiations the Impala management had proposed that RDOs get a salary adjustment and that that proposal had been opposed by NUM and you said that that was false, as far as NUM is concerned. Is that correct?

MR ZOKWANA: I still say that according to my information from those who were negotiating, it's untrue.

MS BARNES: And you will see that in the article Carol Paton in fact quotes Paul Dunn, she actually quotes what he says, do you see that at the top of the second page? In any event, he's quoted. So according to you, either Carol Paton has got this horribly wrong or Paul Dunn is in fact not telling the truth here. Is that correct?

MR ZOKWANA: I am saying that according to the information I got from the people who negotiate in Impala, they put to me that there was no such a proposal that they, as alleged by this article.

[14:23] MS BARNES: Now this article was published in something called Investor Monthly and I must apologise here, I was given the wrong information previously. It's not in fact the Mining Weekly, it's the Investor Monthly, which is a publication by Business Day. You will see the letters "IM" on this exhibit, that refers to Investor Monthly but this article was also published in Business Day. You understand that?

MR ZOKWANA: I see “IM” feature, written there.

MS BARNES: And this same allegation, the allegation that the proposal was made by Implats management and opposed by NUM, was also made in another article by a gentleman by the name of Gavin Hartford.

MR ZOKWANA: I heard that, yes.

Do you know Mr Hartford?

MR ZOKWANA: I’ve seen him, I’ve met him, I’ve worked with him.

MS BARNES: In what capacity have you worked with him?

MR ZOKWANA: We requested his services as advisor on the E-swaps up until there was a problem at the E-swaps of one mine in Rustenburg where workers were cheated and he could not pick it, and our working arrangement ended there. To be precise, as an advisor, he was supposed to have shown us the facts that shares intended for workers were not allocated to workers. I won’t go deeper into details, because I don't think it has much to do with the Commission.

CHAIRPERSON: Ms Barnes, I see that Mr Hartford makes this allegation, page 4 of exhibit XX7, but I take it the point of your cross-examination which I hope we will get to soon, is that here is a publication which was not denied. If that's - if it was denied, then it's a different matter but it's not denied, then the next question is whether they knew about it, and if they didn’t know about it, the fact that they didn't deny it doesn't mean anything. If they did know about it and they didn't deny it, then you can draw an inference, but I mean that's - isn't that the way to go forward, rather than dealing
1st February 2013

Marikana Commission of Inquiry

Rustenburg

1st February 2013

Marikana Commission of Inquiry

Rustenburg

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

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

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

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

12 MR ZOKWANA: I would refer, I would take
it seriously if the people who make it, especially Mr Paul
Dunn, with respect to him, that he was in the company that
could not manage the same situation, plus the same strike.

16 I don't think that his advice or opinion should be taken as
the expert opinion because Impala was also swimming in the
same pool that Lonmin was in. To come to your question, I
still stand by the views of our negotiators, to the fact
that no such a proposal was made and I repeat to say that
proposals are made in writing, not a question of verbal
exchange of views.

21 CHAIRPERSON: I would - forgive me, Ms
Barnes, for interfering. I am trying to keep this within
manageable limits. The issue isn't whether what Mr Dunn
said was correct. The question is, the issue is if it's
reasonably likely that this allegation came to the notice
of the RDOs at Lonmin, it might have influenced their
conduct in acting as they did. That's the one aspect, but
the other aspect is again, if the allegation was made in a
well-circulated audited bureau of circulation audited
newspaper, in which this allegation was made, then the
failure to answer it might be foolish conduct on the part
of the person who fails to answer. Those are the two
points, aren't they? Perhaps we can avoid these side
issues, interesting though they may be on the other
occasions, and concentrate on the two matters that are
pertinent here.

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

19 MR ZOKWANA: Thanks Chairperson, I
disagree with that and I want to say why I disagree with
it. I disagree with it on the basis that no proof has been
shown to say well, Mr Paul Dunn says this. There's this
evidence as maybe a document that shows or that details the
process of negotiations, and I won't delve on the question
of the other author of the same article. And more, I
1st February 2013

Marikana Commission of Inquiry

Rustenburg

24 debate never occurred, as we were concerned about the fact
23 that there were two people killed on the day in question. But
22 the shooting, as raised by the president of AMCU, was as if
21 were told about the shooting incident when you went to
20 the local branch on Sunday, the 12th of August?
19 protest to NUM office.
17 interview with the president of AMCU who raised the fact
16 Yes, it was during the SAfm
15 Is the answer “yes?”
14 MR ZOKWANA: Yes, it was during the SAfm
13 interview with the president of AMCU who raised the fact
12 that NUM have shot and killed two of their members during a
11 MS BARNES: Yes, it was during the SAfm
10 Zokwana, because in NUM’s opening statements before the
9 numbers may be invaded, people are coming down the
8 day. He called me in the morning, he will say, look, our
7 decided to go into hiding. I didn’t meet with him on that
data. He called me in the morning, he will say, look, our
6 company, he was no longer around as the shop stewards
data. He called me in the morning, he will say, look, our
5 MS BARNES: Yes, it was during the SAfm
4 MS BARNES: So you knew before you
3 people have been injured and it is contained in the
2 I became aware during the course, that those shots were
1 incident on the 11th of August, is that correct?

1 bad, and my concern was to ensure that no further killings
2 take place. I only became aware of this incident when we
3 were having the interview with the president of AMCU, Mr
4 Mathunjwa.
5 MS BARNES: If you look at your
6 statement, sir, at page 3 paragraph 12, it was Mr Bongo
7 that phoned you on the 12th of August and told you what was
8 happening at Lonmin and it was in response to that
9 telephone call that you went there, is that correct?
10 MR ZOKWANA: Page?
11 MS BARNES: Page, sir, at page 3 paragraph 12.
12 MR ZOKWANA: 12, yes. Can you repeat
13 your question, because we didn’t hear you?
14 MS BARNES: It was Mr Bongo that
15 telephoned you on the morning of the 12th of August and told
16 what was happening at Lonmin and asked you to come, and it
17 was in response to that telephone call that you went to
18 that office.
19 MR ZOKWANA: That’s correct.
20 MS BARNES: Mr Bongo was the one who had
21 handed out the weapons to the people the day before when
22 the office was under attack, isn’t that correct?
23 [14:43] MR ZOKWANA: That statement that was
24 made, since I was not at the office and I could not speak
25 to the late Mr Bongo, I could not verify that but that has
26 been led in this Commission.
25 agreed we are both talking about the 12th at this stage, but
24 that there are two people killed on the day in question. But
23 MR ZOKWANA: To be honest with you, that
22 debate never occurred, as we were concerned about the fact
21 that two people had been killed and that the situation was
20 I was relying on the
19 evidence given by Setelele that he didn’t know where the
18 shots came from but he agreed that shots were fired –
17 sorry, Gegeleza, who was present during the incident.
16 MS BARNES: I find that quite strange, Mr
15 Zokwana, because in NUM’s opening statements before the
14 Commission it was stated that the firearms had been fired
13 by NUM members, and I would like to read the relevant
12 portion at paragraph 15 of NUM’s opening statement which
11 says, “Although there already appeared to be differing
10 versions regarding this incident, NUM will in due course
9 lead evidence that in the circumstances the use of firearms
8 by NUM members was justified.” Now did you, as the
7 president of NUM, not know that those guns had in fact been
6 fired by NUM members?
5 MS BARNES: If you look at your
4 MS BARNES: Mr Bongo was the one who had
3 handed out the weapons to the people the day before when
2 the office was under attack, isn’t that correct?
1 MS BARNES: I find that quite strange, Mr

Tel: 011 021 6457  Fax: 011 440 9119  RealTime Transcriptions  Email: realtime@mweb.co.za
1st February 2013

Marikana Commission of Inquiry

Rustenburg

Page 4609

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

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

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

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

Page 4610

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

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

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

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

5 MR ZOKWANA: Thanks, Chairperson. I think the scenario or the events of that day could not have been possible to deal with those matters. What we had learnt on that day was the fact that two people have been killed and the violence was ongoing and we never detailed as to what could have been the discussion or discussions, we were only looking at means of preventing further deaths.

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

7 MR ZOKWANA: Chairperson, I never raised that because of concern to me was the fact two lives have been lost, of people who were trying to protect mine property and the possibility of that - I was told more of possible other incidents happening, than to deal with what could have been the cause. To me, the cause would have come when we had – after the situation has been quelled.

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

9 MR ZOKWANA: Of great concern to me was the levels of violence. Legal strikes have taken place before and have been dealt with, but this one was causing loss of lives and I was more concerned about more people being killed than to look at the causes or non, thereof.

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

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

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

13 MR ZOKWANA: As I have said, when I arrived at Lonmin in the afternoon of the 12th the shop stewards of NUM, Mr Setelele included who was the branch chairperson, were already in hiding. There was no way I could have asked them the question you are referring to.
1. By the way, that in NUM a shop steward and a branch leader are different people within the union. A shop steward will be a person elected in a section. He doesn't have the authority of making decisions. Branch committees are unique and I think Setelele mentioned the fact that in a branch committee meeting of Lonmin, it is not all shop stewards therefore who attend such meetings but I, on that day in question I never met any of the branch committee members as they were in hiding.

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

3. **MR ZOKWANA:** Under normal circumstances that is possible because you will go and find out what would have been, but in the case of Lonmin on that day, on that afternoon, I can say that there was tension, there was fear, a lot of possibilities, hence one of our own shop stewards was found shot that same evening. I was concerned that if we don't get immediate people to come and keep law and order more lives – that is what concerned me more. I didn't debate the reasons why there was a strike, I debated the issue of violence and how to curb it.

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

5. **CHAIRPERSON:** If you are asking if this is a convenient stage -

6. **MS BARNES:** Yes, it would be, thank you.

7. **CHAIRPERSON:** - to take the adjournment. And in the circumstances we will adjourn until, as I indicated earlier, until Tuesday morning at 10 o'clock. On Monday I understand Mr Mpofu is going to be consulting with his witnesses after he's arranged with Lonmin for the subpoenaed gentlemen to come here on Tuesday. Very well, we will adjourn until Tuesday, at 10 o'clock.

8. **[COMMISSION ADJOURNED]**
clear 4506:25 4510:8
4517:22 4518:24
4519:2 4522:14
4524:9 4545:1
4556:11 4571:16
4581:18 4587:12
4605:3
clearer 4536:8 4568:25
clearly 4508:5 4516:15
4527:10 4530:25
4541:21 4581:19
client 4544:6
clients 4581:13
climax 4589:19
close 4537:7
closed 4538:17
closing 4537:17 4590:7
closure 4603:25
clothing 4582:6
crampedly 4604:18
cramp 4536:6
coal 4540:1
colleague 4573:20
4587:17 4588:5,11
collective 4522:23
column 4529:18,20
4534:4
come 4512:14 4513:25
4515:20 4523:15
4525:5 4528:25
4530:24 4536:9
4538:6,14 4544:7,8
4545:6,16 4546:6
4556:21 4569:10
4581:8 4582:20
4587:3,4 4589:8
4593:8,21 4597:14
4598:8 4601:18
4607:16 4611:16
4613:24 4614:13
comfort 4580:4
comfortable 4514:15
coming 4515:3 4538:12
4577:10 4608:9,11,12
comment 4546:15
4581:16 4593:4
Commission 4501:2,14
4501:16 4525:8
4534:21,21 4538:6,14
4546:10 4550:22
4553:3 4554:24
4556:3 4559:2
4560:17 4562:7
4572:23 4573:16
4577:25 4579:1
4582:16,16,17 4586:3
4586:7,9,16 4587:1,3
4592:3,22 4593:12,12
4600:14 4605:12
4606:5 4608:1 4611:6
4614:15
Commissioner 4502:24
4514:4 4515:12,18
4516:15 4524:24
4525:23 4526:6,16
Commissioners 4586:11
Page 4
1st February 2013
Marikana Commission of Inquiry
Rustenburg

11:30

1. The Commission this morning continued its hearing on the 27th of February 2013.

2. Mr. M. Mofokeng, the negotiator for the non-Lonmin miners, gave evidence this morning.

3. Mr. Mofokeng stated that the non-Lonmin miners had not had the opportunity to negotiate with the management of the companies they were employed by.

4. He said that the management had refused to negotiate with the miners.

5. Mr. Mofokeng further stated that the miners had been subjected to harassment and violence by the management.

6. The Commission adjourned at 11:45 am today.
subpoenas 4583:4,17
subsequent 4529:16
subject 4531:1
substantive 4598:1
substitute 4525:11
substantiated 4594:22
substantiation 4595:1
succeed 4548:6
suffered 4534:11
sufficient 4510:2
sufficiently 4519:17,25
supported 4530:4,14,20
strategy 4576:10
stoppage 4504:20
stood 4584:12
stopping 4505:12
stood 4518:12
story 4593:22
strange 4505:10
strategy 4530:4,14,20
stress 4570:13
strike 4503:4,14,18
strike 4517:15,27
strike 4538:11
strike 4576:11
strike 4601:15
strike 4603:10,22
strike 4611:21
strike 4613:16
strike 4614:1
strikers 4547:15
strikers 4552:11,17,19,17
strikers 4554:12,15
strikers 4558:3,14
strikers 4518:2,19
strike 4611:23
striking 4605:4,16
strong 4533:18
structure 4522:22
structure 4525:4,261:19
structures 4513:16
structures 4515:19
structures 4523:14
structures 4527:15
striking 4519:15
struggling 4569:25
study 4531:14
subpoenaed 4582:20
subpoenaed 4582:20
subpoenaed 4582:24
subpoenaed 4614:13
5495:13 4603:12
4605:14 4606:3,9,10
4606:7,23 4605:16
4609:24 4610:1
4612:5,8,15
statements 4501:6
4508:11,15 4594:7
4595:16 4596:22,2
4597:7 4605:11
4608:23
stating 4604:10
station 4538:10
stayed 4581:20
staying 4578:22,21
4579:23
steward 4505:2
4578:21 4613:1,2
stewards 4538:16
4566:13 4574:14
4575:4 4608:6,25
4609:6,6,8,10,12
4610:21 4612:23
4613:7,23
sticking 4548:23
sticks 4557:15
stood 4511:20
stop 4513:15
stopped 4513:15
stopped 4585:6
stopped 4585:6
stopped 4590:20
stopped 4590:4
stopped 4590:12
stopped 4590:14
stopped 4590:16
stopped 4590:18
stopped 4590:20
stoppage 4504:20
stoppage 4505:4,16,12
4518:12
stopped 4550:15
story 4593:22
strange 4505:10
strategy 4530:4,14,20
4536:14,19
stress 4570:13
strike 4503:4,14,18
4516:17,20 4517:2,18
4518:5,7,18 4519:3
4519:17,25,17
4538:11 4541:13
4576:11 4578:18
4601:15 4602:17
4603:10,22 4611:9,20
4611:21 4612:4
4613:16 4614:1
strikers 4547:15
4552:11,17,19,17
4554:12 4557:19,24
4558:3,14 4559:8
strikers 4518:2,19
4529:24
4611:23
striking 4605:4,16
strong 4533:18
structure 4522:22
structure 4525:4,261:19
structures 4513:16
structures 4515:19
structures 4523:14
structures 4527:15
structures 4528:11
structures 4541:19
structures 4576:25
structures 4594:25
subpoenaed 4582:20
subpoenaed 4582:24