

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 35 23 JANUARY 2013 PAGES 3741 TO 3860

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 23 JANUARY 2013]
 2 [09:34] CHAIRPERSON: The Commission resumes.
 3 Brigadier, you're still under oath.
 4 BRIG MKHWANAZI: Thanks.
 5 CHAIRPERSON: This is the ninth day, I
 6 believe, in which you're giving evidence. When you started
 7 you never thought you'd be a nine-day wonder. Mr Semanya,
 8 are you going to re-examine the nine-day wonder?
 9 MR SEMENYA SC: Chair, perhaps that's
 10 even the appropriate stage to start. Brigadier, let's deal
 11 with your statement, exhibit SS1.
 12 BRIG MKHWANAZI: Got it.
 13 MR SEMENYA SC: You deal in paragraph 3
 14 with the work you do, and can I just refresh your memory
 15 and read it out to you.
 16 BRIG MKHWANAZI: Correct.
 17 MR SEMENYA SC: You say, "I was initially
 18 based in division Visible Policing from December 2004 until
 19 January 2011. The split between divisions Visible Policing
 20 to form Operational Response Services in 2011 resulted that
 21 the office specialist skills development be transferred
 22 with all its functions to division Operational Response
 23 Services." Then I'd like to invite your focus here. "My
 24 responsibility under ORS was skills development facilitator
 25 to all specialised units." Do you see that?

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1 BRIG MKHWANAZI: That's correct.
 2 MR SEMENYA SC: Then you say your
 3 responsibility under ORS includes identifying training
 4 needs as identified through operational shortcomings.
 5 BRIG MKHWANAZI: It's correct.
 6 MR SEMENYA SC: Can you please break it
 7 down for us? When you go to the office in the morning,
 8 what do you do in relation to that area? What do you
 9 actually do?
 10 BRIG MKHWANAZI: Normally what happens is
 11 that it will depend what is happening in the country.
 12 Under Visible Policing or Operational Response Services
 13 there will be maybe some incidents that are taking place in
 14 the country, like I made an example about GP shooting to
 15 the police official walking to one of the buildings, and I
 16 will receive maybe instruction to do some research to check
 17 how the incident took place, and we will be in a position
 18 to sit down and say how are we going to rectify that if
 19 there are training gaps that emanate with how members
 20 actually intervene in that circumstances.
 21 MR SEMENYA SC: Brigadier, please break
 22 it down for us still. What do you as Brigadier Mkhwanazi
 23 do when you get to your office in relation to
 24 identification of training needs which are identified
 25 through operational shortcomings? What do you do?

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1 BRIG MKHWANAZI: Firstly there will be a
 2 report on that issue after I've receive instruction and the
 3 research has been conducted to say what went wrong.
 4 MR HANABE: You said what happened?
 5 BRIG MKHWANAZI: After we have a research
 6 we have a report, then with the report then we will have to
 7 look at it then now.
 8 MR SEMENYA SC: Who would be doing the
 9 research?
 10 BRIG MKHWANAZI: Trainers working with
 11 me. In the office they will be actually instructed to
 12 conduct that research and the trainers in the area, or the
 13 cluster itself, there will be trainers who will do the same
 14 thing as well, get more information from them.
 15 MR SEMENYA SC: Who would do the report
 16 that is placed on your desk?
 17 BRIG MKHWANAZI: Normally it will be the
 18 person appointed by me if I was not involved. If I was
 19 involved, I will do the report myself.
 20 MR SEMENYA SC: And what do you do on
 21 that report? I want to understand the depth of your
 22 experience, Brigadier.
 23 BRIG MKHWANAZI: The report will consist
 24 of how the incident took place. The report will entail
 25 what are the gaps as far as training is concerned. Then

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1 thereafter there will be a recommendation how to address
 2 it.
 3 MR SEMENYA SC: And what do you do as
 4 Brigadier Mkhwanazi with regard to that recommendation,
 5 whatever it is?
 6 BRIG MKHWANAZI: Once I got that
 7 recommendation and it's given to the divisional
 8 commissioner, and the divisional commissioner agrees with
 9 that recommendation, then I will actually now start talking
 10 with division Human Resource Development, if it needs their
 11 intervention.
 12 MR SEMENYA SC: On the hypothesis that it
 13 requires human resources?
 14 BRIG MKHWANAZI: If it requires Human
 15 Resource Development.
 16 MR SEMENYA SC: Then what do you do?
 17 BRIG MKHWANAZI: Then we will have to
 18 come up –
 19 MR SEMENYA SC: Let's not use plurals.
 20 BRIG MKHWANAZI: I will submit to
 21 division HRD.
 22 MR SEMENYA SC: This may be a matter
 23 relating to Special Task Force as a unit.
 24 BRIG MKHWANAZI: Correct.
 25 MR SEMENYA SC: Or to Public Order

<p style="text-align: right;">Page 3745</p> <p>1 Policing as a unit.</p> <p>2 BRIG MKHWANAZI: Correct.</p> <p>3 MR SEMENYA SC: Or any of the other</p> <p>4 units.</p> <p>5 BRIG MKHWANAZI: Any of the other units.</p> <p>6 MR SEMENYA SC: What specialised</p> <p>7 knowledge do you have say on Special Task Force as a unit?</p> <p>8 What specialised knowledge do you as a person have?</p> <p>9 BRIG MKHWANAZI: All training</p> <p>10 intervention of Special Task Force, my job was to</p> <p>11 coordinate them, meaning they will identify their training</p> <p>12 needs, it will be given to me, and I will be the person who</p> <p>13 consolidates and submits to division HRD. In other words,</p> <p>14 I will know all of their training intervention, when they</p> <p>15 start, when they finish, and it will be my job to check if</p> <p>16 everything is followed properly into that.</p> <p>17 MR SEMENYA SC: Please help us unpack</p> <p>18 this intervention. You have used it quite several times</p> <p>19 earlier. What coordination do you do?</p> <p>20 BRIG MKHWANAZI: If we talk, if I'm</p> <p>21 talking about training intervention, I'm talking about the</p> <p>22 programmes in different phases in, under, maybe it can be</p> <p>23 under Special Task Force, those are the training</p> <p>24 interventions, the programmes they undergo, because they</p> <p>25 are within certain periods. That's what I'm talking about.</p>	<p style="text-align: right;">Page 3747</p> <p>1 compiling the syllabus for that training?</p> <p>2 BRIG MKHWANAZI: Yes, I do.</p> <p>3 MR SEMENYA SC: Do you do any research in</p> <p>4 relation to the subject content of that training?</p> <p>5 BRIG MKHWANAZI: Yes, I got involved,</p> <p>6 yes.</p> <p>7 MR SEMENYA SC: You see, I'm trying to</p> <p>8 help establish for the Commission what expertise you hold,</p> <p>9 if any. Do you do research?</p> <p>10 BRIG MKHWANAZI: Yes.</p> <p>11 MR SEMENYA SC: You have written on</p> <p>12 training of STF?</p> <p>13 BRIG MKHWANAZI: Ja, I'm getting</p> <p>14 confused, but I said in compiling of programmes, yes, but</p> <p>15 in presentation they've got their own trainers that</p> <p>16 present.</p> <p>17 MR SEMENYA SC: So the trainers</p> <p>18 themselves would do the research and they would know the</p> <p>19 subject on which they train, correct?</p> <p>20 BRIG MKHWANAZI: Yes, they will</p> <p>21 definitely, because – okay, after a programme has been</p> <p>22 developed, of which we don't do it every time, Counsellor,</p> <p>23 it's done in a certain period. It can take three years</p> <p>24 before we do reviewal. If it comes to that position,</p> <p>25 because of the circumstances that require that, we will</p>
<p style="text-align: right;">Page 3746</p> <p>1 MR SEMENYA SC: In regard to training, do</p> <p>2 you participate in formulating the content of the training?</p> <p>3 BRIG MKHWANAZI: Most of the time if we</p> <p>4 have to develop a new programme, obviously I would be part</p> <p>5 of it if I'm invited into it. I would say yes, most of the</p> <p>6 time I actually form part of the team that actually puts</p> <p>7 the programme together.</p> <p>8 MR SEMENYA SC: No, Brigadier, it is your</p> <p>9 experience I'm interested in, not we. Don't use the "we."</p> <p>10 In relation to subject formulation say of the training of</p> <p>11 STF, what do you do there?</p> <p>12 BRIG MKHWANAZI: In the Special Task</p> <p>13 Force training, or in actual, the true sense is each unit</p> <p>14 has got its own trainers. As a specialised, or skills</p> <p>15 development facilitator it's my task to make sure each and</p> <p>16 every unit has got its own trainers. We develop trainers.</p> <p>17 So my job within this part is to make sure that these</p> <p>18 trainers are available to present training, but what role</p> <p>19 do I play in that position? My job is to make sure the</p> <p>20 trainers are presenting and they are following the</p> <p>21 programmes as they are outlined on the book.</p> <p>22 MR SEMENYA SC: Do you teach?</p> <p>23 BRIG MKHWANAZI: Special Task Force no, I</p> <p>24 don't teach.</p> <p>25 MR SEMENYA SC: Do you participate in</p>	<p style="text-align: right;">Page 3748</p> <p>1 definitely develop. After developing, we'll be, train the</p> <p>2 trainer to make sure trainers know what to do.</p> <p>3 MR SEMENYA SC: You remember Mr Budlender</p> <p>4 went with you through various academic writings in relation</p> <p>5 to Public Order Policing?</p> <p>6 BRIG MKHWANAZI: Correct.</p> <p>7 MR SEMENYA SC: And I recall that you</p> <p>8 could not identify any of the material that he referred to</p> <p>9 you, right?</p> <p>10 BRIG MKHWANAZI: Correct.</p> <p>11 MR SEMENYA SC: And your evidence was</p> <p>12 that you don't recall any of the books that you yourself</p> <p>13 have read in relation to Public Order Policing. Remember</p> <p>14 that?</p> <p>15 BRIG MKHWANAZI: Yes.</p> <p>16 MR SEMENYA SC: Now I'm trying to</p> <p>17 understand the depth of your expertise then. In Public</p> <p>18 Order Policing, as you go to the office day-to-day, do you</p> <p>19 do any research in that area?</p> <p>20 BRIG MKHWANAZI: We have done it, or I</p> <p>21 have done it many a times, yes – but it depends, it's not</p> <p>22 to say every day. It depends which programme that needs to</p> <p>23 be developed. If it's day-to-day it means I, and I do</p> <p>24 research. It's not like that, Counsellor. It depends what</p> <p>25 needs to be looked at, looking to the situation in the</p>

<p style="text-align: right;">Page 3749</p> <p>1 country, then if we have to go outside the country, we'll 2 go outside the country. That we can do; it's not a 3 problem. 4 MR SEMENYA SC: Have you published 5 anything on Public Order Policing? 6 BRIG MKHWANAZI: No. 7 MR SEMENYA SC: Have you testified before 8 as an expert on Public Order Policing? 9 BRIG MKHWANAZI: You mean before? 10 MR SEMENYA SC: Before you were called an 11 expert in this Commission – 12 BRIG MKHWANAZI: No. 13 MR SEMENYA SC: - have you ever testified 14 as an expert in – 15 BRIG MKHWANAZI: No. 16 MR SEMENYA SC: - Public Order Policing? 17 BRIG MKHWANAZI: No. 18 MR SEMENYA SC: You see, your evidence 19 was introduced on a very limited – 20 CHAIRPERSON: I don't think he's answered 21 that question yet, before you explain. I must say, it 22 sounds to me as if you're bordering on cross-examining your 23 own witness, but we won't take that any further at this 24 stage; we will have to later. But let him answer your 25 question first before you put the next point.</p>	<p style="text-align: right;">Page 3751</p> <p>1 the individual who told you? 2 BRIG MKHWANAZI: Ja, it's Warrant Officer 3 Maphefo, surname is Masenya, and he's well-known as Big 4 Show, he is a Public Order video operator. 5 MR SEMENYA SC: You also testified about 6 the negotiation course that gets done under Public Order 7 Policing, recall that? 8 BRIG MKHWANAZI: That's correct. 9 MR SEMENYA SC: Can you please explain a 10 little further what negotiation course is offered? 11 BRIG MKHWANAZI: The course was provided 12 to Public Order Policing for negotiation and it was 13 outsourced, it was not presented within, as police. It was 14 outsourced by a private sector. The course was taking five 15 days and it was presented by Spoelstra, S-P – Professor, 16 actually it's Professor Spoelstra, S-P-O-E-L-S-T-R-A, and 17 it has been stopped now and we rely to the presentation 18 that is normally being presented to the members under the 19 Regulation of Gathering Act. 20 MR SEMENYA SC: Is that all you wanted to 21 say on that subject? 22 BRIG MKHWANAZI: That's correct. Maybe I 23 can just go back a little bit on the video footage itself, 24 that I met Masenya at AD Building, where he indicated that 25 he submitted all video footage which actually he managed to</p>
<p style="text-align: right;">Page 3750</p> <p>1 MR SEMENYA SC: Have you ever given 2 evidence as an expert? 3 [09:54] BRIG MKHWANAZI: As an expert, this is my 4 first time, however with the Commission it is the second 5 time. 6 MR SEMENYA SC: Have you ever been 7 referred to as an expert in Public Order Policing, 8 Brigadier? 9 BRIG MKHWANAZI: No. 10 MR SEMENYA SC: Okay. When your evidence 11 was introduced, it was common cause between us and the 12 evidence leaders that you're only going to be telling us 13 what training gets given to various units of the police 14 service, remember that? 15 BRIG MKHWANAZI: That's correct. 16 MR SEMENYA SC: And it was the Chair who 17 said maybe you shouldn't be too modest, you should tell us 18 more beyond to that and that's explains your Monday 19 evidence, right? 20 BRIG MKHWANAZI: That's correct. 21 MR SEMENYA SC: Now, onto a different 22 matter, Mr Ntsebeza dealt with the video footage where you 23 said somebody told you about it, do you recall that? 24 BRIG MKHWANAZI: It's correct. 25 MR SEMENYA SC: Do you recall the name of</p>	<p style="text-align: right;">Page 3752</p> <p>1 capture during the incident in Marikana. That's all. 2 MR SEMENYA SC: Those are all the 3 questions we have in re-examination, Chair. 4 CHAIRPERSON: Any questions you want to 5 ask. 6 COMMISSIONER HEMRAJ: Can I just ask 7 something? Brigadier, this outsourced negotiation course, 8 when did it stop being offered to the member of Public 9 Order Policing? 10 BRIG MKHWANAZI: It's quite a long time, 11 Commissioner. If I can remember it can be around 2004, 12 2005, it's quite a long time. 13 COMMISSIONER HEMRAJ: The current 14 negotiations in the Public Order Policing unit would have 15 been trained by the professor or in-house training? 16 BRIG MKHWANAZI: Yes, as I've said, it 17 was outsourced. It was actually given by the professor, we 18 only have to arrange and make sure members are available 19 and they will be trained by them on the other side. 20 Everything was done by them, not within the police, itself. 21 COMMISSIONER HEMRAJ: What I wanted to 22 know, Brigadier, was that the current negotiators in Public 23 Order Policing, are they trained by the professor or have 24 they had in-house training? 25 CHAIRPERSON: What happened to the people</p>

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1 who were trained by Professor Spoelstra? Are they still in
 2 the service?
 3 BRIG MKHWANAZI: Chairperson, due to
 4 promotions, transfers and everything, some people have
 5 left, but I think there are a few that are still around
 6 that are still assisting, but some have definitely moved
 7 out.
 8 CHAIRPERSON: And those who were trained
 9 by Professor Spoelstra, do any of them presently
 10 participate in the in-house training which is given? It
 11 other words, do they pass on what they learnt from
 12 Professor Spoelstra to the present generation of trainees?
 13 BRIG MKHWANAZI: I will be definitely
 14 wrong to say yes on that question. We haven't had them
 15 utilised as trainers, because normally it should be Train
 16 the Trainer before they can train others. Yes, to share
 17 the knowledge, it is done, but not as trainers to the
 18 others, because they must train the trainer, themselves.
 19 CHAIRPERSON: Thank you, Brigadier.
 20 Unless there's someone else who wishes to ask any further
 21 supplementary questions, in which case you have to apply to
 22 me for permission to do so. It looks as if no one can
 23 think of any information that you haven't given us already.
 24 Thank you very much for participating in the Commission and
 25 giving us your evidence. You are excused.

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1 BRIG MKHWANAZI: Thank you.
 2 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 3 CHAIRPERSON: Mr Semenya, I understand
 4 that the next witness will be lead by Mr Tip. You will
 5 come back later to lead other witnesses. This was one of
 6 your witnesses, but we're now going to have some evidence
 7 being led by Mr Tip on behalf of NUM, is that correct?
 8 MR SEMENYA SC: That's correct, Chair.
 9 CHAIRPERSON: Mr Tip, you told us
 10 yesterday you had your batsman in the pavilion with his
 11 pads on and everything, is he still here.
 12 MR TIP SC: He's still here, Mr Chair –
 13 CHAIRPERSON: I think it's best to see to
 14 it that he's not run out earlier on.
 15 MR TIP SC: I was about to say that I'm
 16 pleased that he didn't come in as night watchman. I call
 17 Mr Erick Gcilitshana . I will spell that for the benefit
 18 of the transcribers. Erick is E-R-I-C-K, Gcilitshana is G-
 19 C-I-L-I-T-S-H-A-N-A.
 20 CHAIRPERSON: Mr Tip, my colleague,
 21 Advocate Hemraj says the gremlins have eaten up her copy of
 22 the statement and my copy is in Cape Town, is it possible
 23 to give us two extra copies? You may not be able to do it
 24 immediately, but if you can do it at some stage, I'd
 25 appreciate it.

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1 MR TIP SC: Mr Chair, I can do that
 2 immediately, and indeed if I may take a few moments before
 3 the witness is sworn in just to deal with a few matters
 4 relating to housekeeping and documentation and the like in
 5 the hope that that will facilitate the smooth presentation
 6 of the evidence?
 7 In the first place, we have here a signed
 8 original of the statement, together with two copies, which
 9 we've prepared for the Commission, and if I may hand those
 10 up?
 11 CHAIRPERSON: Thank you. Do you want the
 12 statement to be given an exhibit number?
 13 MR TIP SC: Yes, indeed, Mr Chair.
 14 CHAIRPERSON: And I take it we move on to
 15 the WW sequence. This is now X.
 16 MS PILLAY: Chair, it will be XX1.
 17 CHAIRPERSON: Thank you.
 18 MR TIP SC: Then secondly, Mr Chair,
 19 Commissioners, at the time that we drew up the statement
 20 and lodged it towards the end of November last year, we
 21 thought that it would assist the Commission for us to
 22 compile a bundle of the documents that are referred to in
 23 the statement –
 24 CHAIRPERSON: XX2?
 25 MR TIP SC: XX2. I did discuss this with

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1 Ms Pillay this morning and we thought that it might be most
 2 convenient simply to give the entire bundle that exhibit
 3 number and then individual items can be XX2.1 and .2 and so
 4 forth.
 5 CHAIRPERSON: Yes, that seems a sensible
 6 way of proceeding.
 7 MR TIP SC: I appreciate that, Mr Chair.
 8 Now I was reminded by Ms Pillay that there should also be
 9 on record a source for every document, because all of these
 10 are drawn from material that has already been distributed.
 11 We will prepare a comprehensive schedule of those cross-
 12 references, which we will provide first thing tomorrow
 13 morning.
 14 In the course of the presentation of Mr
 15 Gcilitshana's evidence, there will be a small handful of
 16 additional documents and we would think that it might be
 17 helpful for those to be handed up at the same time and for
 18 them to be given separate exhibit numbers. May I firstly
 19 check that the commissioners all have that bundle, the
 20 bundle that was filed, which is now XX2.
 21 CHAIRPERSON: The same gremlin that
 22 attacked Commissioner Hemraj's copy of the statement by Mr
 23 Gcilitshana was active here as well, so –
 24 MR TIP SC: Then in anticipation of the
 25 possibility of gremlins, we prepared three extra copies of

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1 that as well. There they are.

2 CHAIRPERSON: Thank you. I must say I'm

3 very grateful to Ms Pillay for her efforts, but I'm not

4 sure that she is paid a special fee to act as usher and I

5 think that possibly parties should – whatever the correct

6 verb is – usher their own documents, if you want have to be

7 handed up.

8 MR TIP SC: We will certainly make

9 available an usher –

10 CHAIRPERSON: Sorry, so XX2 then is the

11 bundle which is preceded by an index, because they're all

12 stapled together as one?

13 MR TIP SC: All bound together as one.

14 I'm afraid that we will organise a bound copy in this way,

15 because it's more – it's easier for the Commission to use.

16 So we will replace that in the course of the day, Sir.

17 Then in respect of the remaining documents, our usher went

18 so far as Ms Pillay, if we could ask her to be gracious

19 enough just to transmit them? There are essentially five

20 documents. The first two are communiqués from Lonmin. The

21 one is dated 20 June 2012. There are two dockets also as

22 well as – I'm sorry, it's the first communiqué is 20 July,

23 I think I said June, it's July.

24 CHAIRPERSON: The first document is an

25 internal communiqué marked – of Lonmin marked 147?

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1 MR TIP SC: Yes, is that exhibit 20 July?

2 CHAIRPERSON: Yes, whatever it is. Is

3 that Exhibit XX3?

4 MR TIP SC: XX3, Mr Chair.

5 CHAIRPERSON: Hang on, internal

6 communiqué –

7 COMMISSIONER HEMRAJ: And for the benefit

8 of the parties, do these documents appear somewhere or are

9 they entirely new and copies are to be made available?

10 CHAIRPERSON: They look as if they come

11 from some Lonmin bundle of some sort, because they're

12 Lonmin documents. I don't know whether either Mr Tip or Mr

13 Burger can help us on that?

14 MR BURGER SC: It will be very helpful if

15 those documents are simply distributed to us also in hard

16 copy.

17 MR TIP SC: Yes, Mr Chair, hardcopies

18 have been provided to Ms Pillay, so those are available,

19 all of them.

20 CHAIRPERSON: Ja, internal communiqué

21 dated what?

22 MR TIP SC: The second one is –

23 CHAIRPERSON: No wait, I'll just put page

24 147, I think that's – it obviously comes from some

25 collection of documents that Lonmin provided, I would

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1 suspect.

2 MR TIP SC: It does.

3 CHAIRPERSON: Oh okay, that is Exhibit

4 XX3, right?

5 MR TIP SC: Yes. Then the one with the

6 page number 149, will be XX4.

7 CHAIRPERSON: Ja.

8 MR TIP SC: There are then two crime

9 dockets, SAPS crime dockets –

10 CHAIRPERSON: XX5 will be a crime docket.

11 MR TIP SC: Crime dockets, perhaps it

12 could be case number 6708-2012.

13 CHAIRPERSON: Sorry, Case?

14 MR TIP SC: Case 67.

15 CHAIRPERSON: 67?

16 MR TIP SC: 08-2012.

17 CHAIRPERSON: Yes.

18 MR TIP SC: And the second crime docket –

19 CHAIRPERSON: Which is the XX6?

20 MR TIP SC: XX6, and that is CAS number

21 6808-2012. Mr Chair, the Commission –

22 CHAIRPERSON: I haven't got those yet, so

23 let me get them first. They're being sorted out to be

24 handed to me.

25 MR BUDLENDER: Chair, while that's being

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1 done, could we just have the numbers of the XX's again,

2 because we have –

3 CHAIRPERSON: I'll read them out. XX1 is

4 the statement of the witness. XX2 is the bundle of

5 documents, consolidated as it were. XX3 is an internal

6 Lonmin communiqué which is headed 147. It's headed – the

7 heading is Management Condemns Illegal Work Stoppages, and

8 it's dated 20 July. The XX4 is another internal

9 communiqué, this time dated 31 July, heading "Demands for

10 separate wage negotiations." XX5 is crime docket

11 CAS67/08/2012, and XX6 is crime docket CAS68/08/2012. Is

12 there any other document? Because we've been handed one

13 document which is –

14 [10:14] MR TIP SC: It's a three-page document,

15 Mr Chair. What that is, is an enlarged copy of certain

16 pages in the bundle because those pages are so small that

17 it makes it very difficult to read.

18 CHAIRPERSON: No, we don't have to give

19 that a separate exhibit number. It looks like pages 22, 23

20 and 24 of XX2. Is that correct?

21 MR TIP SC: That is correct, Mr Chair,

22 and those are then just the –

23 CHAIRPERSON: I must confess, during the,

24 what for want of a better term one can call a recess, I

25 battled with that particular document.

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1 MR TIP SC: Yes.

2 CHAIRPERSON: And I'm grateful to have an
3 enlarged one, enlargement. Is that your housekeeping –

4 MR TIP SC: Those are all the additional
5 documents. Then perhaps if I may also just say one or two
6 things by way of introduction –

7 CHAIRPERSON: Before you start saying one
8 or two things, Mr Burger indicated that though some of
9 these documents originally emanate from Lonmin, he would
10 appreciate hard copies, it would be obviously easier for
11 him to follow.

12 MR BURGER SC: Thank you, Chair. We were
13 handed hard copies by Ms Pillay, so thank you so much.

14 MR TIP SC: Then Mr Chair, just by way of
15 introduction and then Mr Gcilitshana will take the floor,
16 the statement that we've prepared is in part, it takes the
17 form of a presentation in that it does contain certain
18 matters that are hearsay in respect of Mr Gcilitshana's
19 knowledge. They are there in order to give a full picture
20 of the relevant history. We believe that, or our
21 submission is that aspects of that hearsay material are
22 very unlikely to be placed in dispute. They are sourced to
23 court documents, to affidavits. If there are disputes
24 about them, then we'll assess the nature of the dispute.

25 CHAIRPERSON: Well, you will remember

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1 that Mr Madlanga drew our attention to a case which was
2 held in a commission of this kind; the ordinary rules of
3 evidence don't strictly apply.

4 MR TIP SC: Yes.

5 CHAIRPERSON: And it is possible in
6 certain circumstances to have regard to hearsay. Obviously
7 one must in doing so bear in mind the problems that relate
8 to hearsay evidence because it can't be checked, and so
9 forth, but generally speaking we proceed on the basis that
10 rules of evidence apply, but it's not the end of the matter
11 and there would be appropriate circumstances in which they
12 could be relaxed. That what you're saying would apply
13 here, particularly of course in the case of matters which
14 aren't in dispute. You know, even the matters which are in
15 dispute in which it might be appropriate to relax the
16 rules, but we'll cross that bridge when we get there, if we
17 have to.

18 MR TIP SC: Indeed, Mr Chair. The one
19 aspect that is fairly briefly alluded to in the statement
20 of Mr Gcilitshana concerns the events at the NUM office on
21 the 11th of August 2012. Clearly that's a matter of
22 controversy and we will present two witnesses who will deal
23 directly with that. So again to the extent that it's
24 traversed here, it's for the sake of completeness and also
25 as a peg on which to hang in the crime documents and to

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1 report on certain investigations that NUM have undertaken
2 in regard to the allegations that there were two persons
3 who were killed there.

4 CHAIRPERSON: One point that arises in
5 respect of the events of the 11th was, you will recall that
6 we were shown certain marks on the windows of the NUM
7 offices at the inspection in loco and the person who was
8 going to give evidence before the Commission, who was
9 subsequently murdered, gave a narrative which he was going
10 to presumably confirm under oath later, which was recorded,
11 and certain other persons present who were either AMCU
12 members, or alternatively were non-unionised protesters, if
13 one can call them that, they also pointed out spots and
14 also made statements which were going to be confirmed.
15 Presumably they will confirm them, but the main NUM
16 narrative can't be confirmed by the person who gave it for
17 the reasons I've mentioned. Now I haven't seen a
18 transcript of that. I don't know whether one has been
19 prepared, but I think that's something that if it hasn't
20 been done, should be taken in hand immediately, and if it
21 has been transcribed then copies of it must be made
22 available to us, because that's obviously very important in
23 relation to the allegations as to what happened or didn't
24 happen on the 11th of August.

25 Mr Tip, it may also be necessary in order to

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1 refresh our memories for video clips to be shown of that
2 part of the inspection in loco because a mere transcript of
3 what was said won't adequately, or may not – I don't want
4 to make a definite statement at this stage, it's something
5 to be considered – may not adequately convey what exactly
6 was pointed out to us, which presumably would have some,
7 would be evidential material which might well be important.

8 MR TIP SC: Mr Chair, we are, with
9 respect, in full agreement with that observation. We have
10 indeed taken the first steps towards that, to locate where
11 the video that was made at the time is and we will see to
12 it that those portions are played, that a transcript is
13 prepared. It won't be necessary to do that for the purpose
14 of Mr Gcilitshana's evidence, but certainly for those two
15 witnesses who will testify on the events. The final
16 preliminary observation, Mr Chair, is that the statement of
17 Mr Gcilitshana will have a few supplementary observations
18 which have flowed from further and fuller consultations.
19 In respect of each of those I will identify the paragraph
20 so that there can be a coupling of the further material.

21 CHAIRPERSON: Thank you.

22 MR TIP SC: That then, if he could be
23 called.

24 CHAIRPERSON: Mr Gcilitshana, would you
25 please stand up? Are you prepared to take the oath or do

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1 you wish to affirm?
 2 MR GCILITSHANA: I'm prepared.
 3 CHAIRPERSON: You're prepared to take the
 4 oath. Will you swear that the evidence you will give
 5 before this Commission will be the truth, the whole truth,
 6 and nothing but the truth? Would you raise your right hand
 7 and say, "I swear, so help me God?"
 8 ERICK GCILITSHANA: I swear, help me God.
 9 CHAIRPERSON: Yes, thank you, you may be
 10 seated. Mr Tip.
 11 MR TIP SC: Mr Gcilitshana, you have
 12 before you the statement that you have made, that has been
 13 presented to the Commission.
 14 MR GCILITSHANA: Yes.
 15 MR TIP SC: And you have carefully read
 16 and considered that statement?
 17 MR GCILITSHANA: Yes, Commissioner.
 18 MR TIP SC: Now that you are under oath,
 19 do you confirm the correctness of it?
 20 MR GCILITSHANA: I do confirm.
 21 MR TIP SC: Thank you. Then let us begin
 22 at paragraph 1. Would you just read that onto the record?
 23 MR GCILITSHANA: "I am the national
 24 secretary of the National Union of Mineworkers, NUM, and an
 25 employee of Lonmin Platinum Limited. I am currently the

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1 union national secretary for Health and Safety. I'm also
 2 its chief negotiator in Lonmin."
 3 MR TIP SC: Yes. As an addition to
 4 paragraph 1, I would like you to place before the
 5 Commission just a few short details about your experience
 6 within the mining industry. When did you first become
 7 involved in the mines?
 8 MR GCILITSHANA: On the 23rd December
 9 1985.
 10 MR TIP SC: Is it correct that you began
 11 work at Western Platinum as an underground drain cleaner?
 12 MR GCILITSHANA: Yes, it's correct.
 13 CHAIRPERSON: Western Platinum, I
 14 understand was the then name of either the whole of the
 15 Lonmin operation or part of it. Is that correct?
 16 MR GCILITSHANA: Yes, it's correct.
 17 MR TIP SC: And in the following year,
 18 after a year of service you were promoted. Is that
 19 correct?
 20 MR GCILITSHANA: It's correct.
 21 MR TIP SC: To what post?
 22 MR GCILITSHANA: I was promoted to a loco
 23 driver.
 24 MR TIP SC: Also underground?
 25 MR GCILITSHANA: Correct.

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1 MR TIP SC: When did you first join NUM?
 2 MR GCILITSHANA: If my memory serves me
 3 well, it was 1987.
 4 MR TIP SC: Is it correct, Mr
 5 Gcilitshana, that you developed a particular interest in
 6 matters of health and safety?
 7 MR GCILITSHANA: That's correct,
 8 Commissioner.
 9 MR TIP SC: And you became the regional
 10 secretary for that portfolio in 1994?
 11 MR GCILITSHANA: That's correct,
 12 Commissioner.
 13 MR TIP SC: Subsequently you became the
 14 national secretary for the same portfolio?
 15 MR GCILITSHANA: That's correct,
 16 Commissioner.
 17 MR TIP SC: And when was that?
 18 MR GCILITSHANA: It was in 2000.
 19 MR TIP SC: Those were full-time posts
 20 within the union structure?
 21 MR GCILITSHANA: I started to be based in
 22 head office in 2001. All other posts were part-time.
 23 MR TIP SC: You nevertheless remained a
 24 paid employee of Lonmin and that, is it correct, is in
 25 accordance with an agreement between Lonmin and NUM?

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1 MR GCILITSHANA: That's correct,
 2 Commissioner.
 3 MR TIP SC: When did you become involved
 4 in negotiations at Lonmin?
 5 MR GCILITSHANA: I started in 2005, but I
 6 was helped working with Jeffrey Magita, who was the chief
 7 negotiator by then.
 8 MR TIP SC: You yourself became the chief
 9 negotiator?
 10 MR GCILITSHANA: I started in 2007 to be
 11 the chief negotiator.
 12 MR TIP SC: And that is a role that you
 13 continued to play?
 14 MR GCILITSHANA: That's correct,
 15 Commissioner.
 16 MR TIP SC: I want to move to paragraph 4
 17 of your statement, and this is under the heading of the
 18 context of the Impala Platinum Mine events. Now before we
 19 deal with that narrative, it is correct, is it, that you
 20 yourself are not involved in negotiations at Impala?
 21 MR GCILITSHANA: That's correct,
 22 Commissioner.
 23 MR TIP SC: What is the name of the
 24 person who is the negotiator there on behalf of NUM?
 25 MR GCILITSHANA: It's Eddie Majadibodu.

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1 MR TIP SC: Perhaps we should just spell
 2 that. M-A-J-A-D-I-B-O-D-U. Is that correct?
 3 MR GCILITSHANA: Yes, that's correct,
 4 Commissioner.
 5 MR TIP SC: In the normal course of your
 6 work would you maintain regular contact with your colleague
 7 at Impala?
 8 MR GCILITSHANA: At times we do share
 9 experiences.
 10 MR TIP SC: In respect of the events at
 11 Impala during the period towards the latter part of 2011
 12 and early in 2012, were you kept informed essentially of
 13 what took place there?
 14 MR GCILITSHANA: Yes, I do have
 15 information. It may not be as full as I indicated that we
 16 used to just share. I'm not particularly involved.
 17 MR TIP SC: Now I'm going to move to
 18 paragraph 5 and subject to your direction, Mr Chair, it may
 19 be the swiftest manner is if I read onto the record
 20 paragraphs of this kind, and Mr Gcilitshana, if you'll just
 21 follow in your statement and I'll ask you to confirm that
 22 these are correct.
 23 CHAIRPERSON: Yes, I think that's the
 24 appropriate way to do it.
 25 MR TIP SC: Yes.

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1 CHAIRPERSON: Possibly it won't be
 2 necessary to read everything, but if you can read, because
 3 we have it before us, but you can read enough for those in
 4 the auditorium to be able to follow if they wish to do so.
 5 MR TIP SC: Yes, I'll endeavour to be
 6 selective and that the relevant portions are highlighted.
 7 "In October 2006 NUM and the union UASA, United Association
 8 of South Africa, concluded a recognition agreement with
 9 Impala Platinum. NUM had as its members the majority of
 10 employees employed at Impala and NUM and Impala had also
 11 entered into a collective agreement in terms of the Labour
 12 Relations Act." Mr Chair, the Commission will have seen
 13 that from time to time there are footnotes in the narrative
 14 and those –
 15 CHAIRPERSON: I don't think you need read
 16 the footnotes unless they're important. We can see them
 17 and I don't think people in the auditorium would be
 18 interested in them.
 19 [10:34] MR TIP SC: We will highlight only those
 20 matters that are of particular value. Then of consequence
 21 is paragraph 6, Mr Gcilitshana, "On 7 October 2011 NUM and
 22 Impala entered into a collective agreement, regulating
 23 wages and other conditions of employment. That agreement
 24 was valid for two years and it's expiring on 30 June 2013.
 25 Notwithstanding this agreement, on or about 18 December

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1 2011, Impala unilaterally granted an additional wage
 2 increase effective from January 2012 to one category of its
 3 workers, being the miners. No similar increase was
 4 afforded to any other categories of workers in respect of
 5 then the wage agreement applied." Now as an addition to
 6 what is recorded in your statement, Mr Gcilitshana, I'd
 7 like to place before the Commission a little more detail
 8 about the place of miners. We've given the miners here a
 9 capital M to distinguish them from other general
 10 mineworkers. Is that correct?
 11 MR GCILITSHANA: Yes.
 12 MR TIP SC: How important a person in the
 13 mining production process is a Miner, the category Miner?
 14 MR GCILITSHANA: It is very much
 15 important, because the Miner is the person who have to do
 16 the early examination to ensure that the area is safe
 17 before other workers can get in, one. Secondly, the Miner
 18 is a person who should be pointing the holes, where the
 19 hole drillers have to drill and after the shift, have to
 20 blast and clear the shift.
 21 MR TIP SC: Would the Miner be the
 22 competent person – the competent official as defined in the
 23 relevant Act?
 24 MR GCILITSHANA: That's correct.
 25 MR TIP SC: And would it also be so that

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1 he would be the person who holds the blasting certificate?
 2 MR GCILITSHANA: That's correct.
 3 MR TIP SC: Put shortly, can a mining
 4 team operate underground without a Miner being in charge?
 5 MR GCILITSHANA: It is not allowed,
 6 unless there's a competent person that is appointed at that
 7 point in time to be a supervisor.
 8 MR TIP SC: Now in your experience, are
 9 Miners, competent Miners sought after by the mining houses?
 10 MR GCILITSHANA: Can you repeat your
 11 question?
 12 MR TIP SC: From the point of view of the
 13 mining companies, would competent, able, skilled Miners be
 14 a valuable resource as an employee? Would they want to
 15 have competent Miners on their staff?
 16 MR GCILITSHANA: It's very much
 17 important.
 18 MR TIP SC: And to your knowledge, does
 19 poaching amongst different mining companies ever take
 20 place?
 21 MR GCILITSHANA: That's correct.
 22 MR TIP SC: It would be important, would
 23 it not, for a company like Impala not to run the risk of
 24 losing its miners?
 25 MR GCILITSHANA: Yes.

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1 MR TIP SC: Do you recall what the
2 increase was that Impala granted its Miners? And by that I
3 mean the increase over and above the one that had been
4 recorded in the collective agreement that was concluded in
5 October 2011?
6 MR GCILITSHANA: Yes, I recall, it was
7 18%.
8 MR TIP SC: And that was over and above
9 the increase, do you recall, what NUM had agreed as the
10 increase for Miners in that collective agreement?
11 MR GCILITSHANA: - says well, Miners were
12 at around 9% and the lower categories were at 10%.
13 MR TIP SC: Was NUM concerned about this
14 unilateral increase?
15 CHAIRPERSON: The agreement which was
16 concluded in October 2011, to expire on the 30th of June
17 2013, provided apparently for increase of between 9 and 10%
18 for different categories of Miners, is that right? Then
19 the subsequent increase you say was 18%. Is that 18% over
20 and above the already increased amount or is it 18 instead
21 of the nine and the 10?
22 MR TIP SC: Over and above.
23 CHAIRPERSON: Thank you.
24 MR TIP SC: Nothing turns on this, but
25 perhaps just for the record, might the increase in that

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1 collective agreement have been 8.5% specifically for the
2 Miners, do you recall?
3 MR GCILITSHANA: Yes, that could be
4 correct.
5 MR TIP SC: Now going back to the
6 question of whether NUM was concerned about this unilateral
7 increase, Mr Gcilitshana, can you tell the Commission about
8 that?
9 MR GCILITSHANA: Yes, it was concerned.
10 MR TIP SC: Can you give us some of the
11 reasons that gave rise to its concern?
12 MR GCILITSHANA: One, it was outside the
13 collective bargaining agreement. And that was undermining
14 the collective agreement that have been signed on the 7th
15 of October. The third point, it was putting the Union at
16 spot that have been negotiating the agreement, the
17 collective agreement. Why I say so, because the company
18 indicated that their coffers have been exhausted.
19 MR TIP SC: If I can just interrupt you
20 there, just to be clear, was that indication given in the
21 course of the negotiations that led to the conclusion of
22 the collective agreement in October?
23 MR GCILITSHANA: Can you repeat the
24 question again?
25 MR TIP SC: Yes, certainly. You've just

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1 said to the Commission that there was a concern because
2 Impala had indicated that its coffers were exhausted?
3 MR GCILITSHANA: Yes.
4 MR TIP SC: Now I just want to establish
5 when that indication was and I was asking whether that
6 indication had been given by Impala during the negotiations
7 that it had with NUM, leading up to the collective
8 agreement of October 2011?
9 MR GCILITSHANA: That's correct.
10 MR TIP SC: Why NUM was prepared to agree
11 to the increase of between nine and 10% if they thought
12 that the company couldn't afford more?
13 MR GCILITSHANA: That's correct,
14 Commissioner.
15 MR TIP SC: When it turned out they could
16 afford more, because they were prepared to pay more to the
17 Miners a matter of two months later. I take it NUM felt
18 outraged?
19 MR GCILITSHANA: Can you repeat your
20 question again?
21 MR TIP SC: When it turned out the
22 company could afford to pay more, because about two months
23 later they agreed to pay this extra increase to the Miners,
24 I take it NUM was outraged - outraged, very angry?
25 MR GCILITSHANA: Correct.

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1 MR TIP SC: And Mr Gcilitshana, let us
2 look at the other aspect of this. There is NUM as an
3 organisation representing the employees at Impala. How did
4 the employees feel about the fact that there was this
5 additional increase after NUM had concluded the agreement
6 for a certain percentage?
7 CHAIRPERSON: I take it you mean the
8 employees other than the Miners?
9 MR TIP SC: Correct so, Mr Chair, thank
10 you, yes, the employees other than the Miners?
11 MR GCILITSHANA: They were angry.
12 MR TIP SC: And how did that anger
13 translate into their attitude to NUM as their
14 representative?
15 MR GCILITSHANA: They felt that NUM
16 didn't represent them well or the company is not honest
17 with NUM, because a month and a half after having signed
18 agreement and having reported to the workers that the
19 company is saying that their coffers had been exhausted,
20 then later they come back and give 18%, that really raised
21 anger with the workers.
22 MR TIP SC: And as it happens, there may
23 have been another factor, how many branches of NUM –
24 CHAIRPERSON: Before you get on to the
25 other factors?

<p style="text-align: right;">Page 3777</p> <p>1 MR TIP SC: Yes, Chair.</p> <p>2 CHAIRPERSON: You said the Miners were –</p> <p>3 I mean the non-miner workers, the workers who weren't</p> <p>4 Miners, didn't get the extra increase. So they were angry</p> <p>5 with the company and with NUM. I can understand why they</p> <p>6 were angry with the company. Why were they angry with NUM?</p> <p>7 You did shortly, but can you elaborate on that?</p> <p>8 MR GCILITSHANA: Because NUM have been in</p> <p>9 majority and if the NUM that had been confidently giving</p> <p>10 feedbacks to the employees that the company is saying that</p> <p>11 they don't have money any more, later on the company is</p> <p>12 providing 18%, these workers also will be angry to NUM,</p> <p>13 because they thought that NUM was lying to them about the</p> <p>14 company.</p> <p>15 MR TIP SC: How many branches of NUM were</p> <p>16 there at Impala?</p> <p>17 MR GCILITSHANA: If I may recall, it's</p> <p>18 about three.</p> <p>19 MR TIP SC: There were at least what is</p> <p>20 called the North branch and the South branch?</p> <p>21 MR GCILITSHANA: That's correct and the</p> <p>22 third one will be services branch.</p> <p>23 MR TIP SC: The main branches concerned</p> <p>24 with mining and Miners would have been the North and South</p> <p>25 branches?</p>	<p style="text-align: right;">Page 3779</p> <p>1 correct?</p> <p>2 MR GCILITSHANA: That's correct.</p> <p>3 [10:54] MR TIP SC: "They too, that is the RDOs,</p> <p>4 fell within the bargaining unit and the two year wage</p> <p>5 agreement applied as much to the Miners as to them. They</p> <p>6 embarked on an unprotected strike in support of the demand</p> <p>7 for a R9 000 basic wage." Now is it correct, Mr</p> <p>8 Gcilitshana?</p> <p>9 MR GCILITSHANA: Yes, that's correct.</p> <p>10 MR TIP SC: Now was that demand and the</p> <p>11 decision to embark on an unprotected strike action in any</p> <p>12 way processed through NUM structures?</p> <p>13 MR GCILITSHANA: No, it was not involved.</p> <p>14 MR TIP SC: In paragraph 9, "The strike</p> <p>15 by the RDOs was characterised by high levels of violence</p> <p>16 and intimidation, much of which was directed at NUM and its</p> <p>17 members." Correct?</p> <p>18 MR GCILITSHANA: That's correct.</p> <p>19 MR TIP SC: We'll come to one of the</p> <p>20 communiqués shortly. The point was reached, to your</p> <p>21 knowledge, Mr Gcilitshana, that the NUM branch offices at</p> <p>22 Impala were forcibly closed. Did you hear of that?</p> <p>23 MR GCILITSHANA: Yes, they were closed.</p> <p>24 We were told that the office had been closed.</p> <p>25 MR TIP SC: And did the branch leadership</p>
<p style="text-align: right;">Page 3778</p> <p>1 MR GCILITSHANA: That's correct.</p> <p>2 MR TIP SC: Now as it happened at the</p> <p>3 time, what positions were held by the NUM chairmen at those</p> <p>4 two branches?</p> <p>5 MR GCILITSHANA: He was a Miner.</p> <p>6 MR TIP SC: At both of them?</p> <p>7 MR GCILITSHANA: Yes, both South and</p> <p>8 North the Chairpersons were Miners also.</p> <p>9 MR TIP SC: Did that give rise to any</p> <p>10 reaction by the general employees, the general membership</p> <p>11 of NUM?</p> <p>12 MR GCILITSHANA: Yes. The employees felt</p> <p>13 that certain individuals in NUM have benefited in the</p> <p>14 increase.</p> <p>15 MR TIP SC: And what did – what was their</p> <p>16 feeling about it? Did it give rise to discontent about the</p> <p>17 NUM Chairmen and the structures?</p> <p>18 MR GCILITSHANA: Correct.</p> <p>19 MR TIP SC: Now I want to move passed the</p> <p>20 point of the Miners to paragraph 8 of your statement, Mr</p> <p>21 Gcilitshana. We've dealt with the position of the Miners.</p> <p>22 We're now turning to a different category and I'll just</p> <p>23 read this paragraph onto the record. "As at January 2012</p> <p>24 the RDOs at Impala had become aggrieved by the company's</p> <p>25 decision", namely to give an increase only to the Miners,</p>	<p style="text-align: right;">Page 3780</p> <p>1 have to be removed from the office for fear of their</p> <p>2 safety?</p> <p>3 MR GCILITSHANA: That's correct,</p> <p>4 Commissioner.</p> <p>5 MR TIP SC: Is it also so that over 60</p> <p>6 people sustained injuries during these incidents and that</p> <p>7 four people at Impala lost their lives?</p> <p>8 MR GCILITSHANA: That's information that</p> <p>9 we got.</p> <p>10 MR TIP SC: Paragraph 10, "In response to</p> <p>11 the unprotected strike Impala had by 2nd of February of</p> <p>12 last year, 2012, dismissed about 17 200 employees. The</p> <p>13 majority of those dismissed employees were, however, later</p> <p>14 reinstated." Mr Chair, these are instances where there are</p> <p>15 footnotes of communiqués; we're not going to spend time to</p> <p>16 turn to them.</p> <p>17 CHAIRPERSON: - about the fact that page</p> <p>18 3, which is a news release, is dated the 20th of February.</p> <p>19 It appears not to be incomplete, because it says "more" at</p> <p>20 the bottom, and then the next one, page 4, is actually from</p> <p>21 almost three weeks earlier. It's dated the 2nd of February</p> <p>22 and from that it appears that the, initially something like</p> <p>23 4 200 employees were dismissed - we don't know in what</p> <p>24 circumstances – and then a further 13 000 were dismissed on</p> <p>25 the 1st of February. It may not be necessary for us to go</p>

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1 into the detail of that, but all I'm pointing out to you is
 2 there is an element of incompleteness which may or may not
 3 be relevant.
 4 MR TIP SC: Mr Chair, perhaps I might
 5 just point out that at page 4 the communiqué does towards
 6 the end of the principal paragraph say, "This brings the
 7 total number of employees dismissed to in the region of
 8 17 000 –
 9 CHAIRPERSON: No, no, that's correct.
 10 That's where I got my figure of 4 200 from. There were 4
 11 200 dismissed earlier apparently for, we don't know why, it
 12 may not be relevant, and then a further 13 000 were
 13 dismissed at the end of the 1st of February, bringing the
 14 total to 17 200 by that date that you have mentioned, 2nd
 15 of February. But anyway, it may be that the detail is
 16 irrelevant, so, unless I'm unnecessarily raising it.
 17 MR TIP SC: Let me establish from Mr
 18 Gcilitshana, can you cast some light on the sequence of the
 19 dismissals at Impala?
 20 MR GCILITSHANA: The first batch of
 21 dismissals were the RDOs as who were the leaders of the
 22 strike, who initiated the strike. I think that might be
 23 why you have got two different figures, and the second
 24 batch was the total workforce. That's how I understand it.
 25 MR TIP SC: Should we gather from that

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1 that the entire workforce went out in due course in support
 2 of the strike which had been led by the RDOs initially?
 3 MR GCILITSHANA: That's correct.
 4 CHAIRPERSON: Even the miners?
 5 MR GCILITSHANA: Not the miners. That is
 6 people who are from part 329 that we normally call people
 7 who are unskilled labourers normally. That's language that
 8 is used in the mine. But miners also won't be able to go
 9 to work because of the level of intimidation and others.
 10 CHAIRPERSON: The reason I asked the
 11 question, because you said the whole workforce was
 12 dismissed. Did that include the miners who got the
 13 increase, who apparently weren't striking but were being
 14 intimidated, or certainly unable to work because the people
 15 who would go with them down into the mine hadn't turned up
 16 to work, but what exactly happened? Perhaps you could sort
 17 this out after the tea adjournment?
 18 MR TIP SC: Yes.
 19 CHAIRPERSON: We will take the tea
 20 adjournment at this stage.
 21 [COMMISSION ADJOURNS COMMISSION RESUMES]
 22 [11:24] CHAIRPERSON: The Commission resumes. Mr
 23 Gcilitshana, you are still under oath. Mr Tip, have you
 24 sorted out that problem we were discussing before the
 25 adjournment?

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1 MR TIP SC: Yes, thank you, Mr Chair. Mr
 2 Gcilitshana, the position concerning the miners in relation
 3 to the strike action at Impala and the resultant
 4 dismissals, have you clarified that?
 5 MR GCILITSHANA: Correct, Commissioner.
 6 MR TIP SC: And what is the position?
 7 MR GCILITSHANA: Also the miners were
 8 part of those who were dismissed. As I indicated that the
 9 first batch of people to be dismissed were RDOs. After the
 10 dismissal of RDOs, RDOs started to stop, intimidate and
 11 stop everybody from going to work. The company had by then
 12 issued a memo that if people didn't return to work, they
 13 will be dismissed. Then the miners could not go to work
 14 because of being intimidated and stopped by RDOs.
 15 Therefore they were part of those who were dismissed.
 16 MR TIP SC: Right, thank you, Mr
 17 Gcilitshana. Then let us proceed with paragraph 11, and
 18 I'll just highlight this. Is it so that in the course of
 19 April 2012 Impala made a further unilateral decision to
 20 adjust salaries and that this time it extended increases of
 21 various kinds to the entire workforce that was subject to
 22 the collective agreement?
 23 MR GCILITSHANA: It's correct.
 24 MR TIP SC: And if necessary, you could
 25 give further details of that. Again there is some material

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1 in the footnotes; we won't trouble the Commission at this
 2 stage with further detail of that kind. Mr Gcilitshana –
 3 CHAIRPERSON: Let me just make one point.
 4 I think you do refer in one of the footnotes to the bundle,
 5 communication from Impala Platinum Communications
 6 Department, or rather two communications, 5 and 6,
 7 management brief number 11.12, which sets out effectively
 8 what they were now getting in terms of the adjustment to
 9 which you've referred, and that might be helpful moving
 10 forward. Perhaps you can deal with that shortly. That's
 11 pages 5 and 6 I think, of the bundle.
 12 MR TIP SC: Yes. Thank you, Mr Chair.
 13 Perhaps I should just have highlighted that. That's in
 14 footnote 9 of the statement.
 15 CHAIRPERSON: Perhaps you could refer to
 16 the document, because that's the figures they were getting,
 17 or were going to get after the adjustments.
 18 MR TIP SC: Yes. Perhaps we - Mr
 19 Gcilitshana, you've got that document before you, page 5
 20 and 6 of the bundle.
 21 MR GCILITSHANA: That's correct,
 22 Commissioner.
 23 MR TIP SC: And looking at the general
 24 increases for the various categories, can you say anything
 25 about how those would have been received by the general

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1 employees who were affected by them?

2 MR GCILITSHANA: Increase was going to be

3 given to each employee by category, all the categories, and

4 then the RDOs will be upgraded. That will be from category

5 4, number 4, if I'm not mistaken at, up to category 7.

6 MR TIP SC: Incidentally, Mr Gcilitshana,

7 the grading of rock drill operators has been a matter of

8 particular concern to them. Is that correct? At Impala

9 and Lonmin as well.

10 MR GCILITSHANA: That's correct.

11 MR TIP SC: And we will deal with aspects

12 of the position at Lonmin later when we come to your

13 negotiations.

14 CHAIRPERSON: The thing I was interested

15 in was on page 5 where the effective, the unilateral salary

16 adjustments were set out, details in respect of rock drill

17 operators at Rustenburg, category 3 to 8, the employees at

18 Rustenburg, and miners, union men and officials, but as far

19 as the rock drill operators, that's the point that

20 interests me, they were all promoted from A4 to B1. There

21 was a further market adjustment. The wage increase date

22 was brought forward to the 1st of July 2012 to the 22nd of

23 April 2012, and the accommodation increase was also

24 effective from the 22nd of April as opposed to the 1st of

25 July, and what it amounted to therefore by way of a

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1 discussion was that the guaranteed pay for a rock drill

2 operator covered by the illustration was R9 991, the 6 540

3 being the rate, the basic rate, I take it, 545 was the

4 holiday leave allowance, 1 850 was now the living out

5 allowance – that was increased from 1 500. There was also

6 a retirement contribution, the 1 056. So the total

7 guaranteed pay was 9 991, as it had previously been 7 643.

8 So it's an increase of over R2 000, in fact over R2 300.

9 This was at Impala in respect of rock drill operators, by

10 way of illustration. I think that that's the important

11 point I would think, for what follows.

12 MR TIP SC: Yes. Mr Chair, I'm indebted

13 to you. I follow the point. Let me just canvass one

14 aspect that flows from that. Mr Gcilitshana, if you turn

15 to page 5 of the bundle, that is the management brief to

16 which the chairman has just referred, you will see under

17 the first heading that management there records, it says,

18 "Management is pleased to announce the following unilateral

19 salary adjustments," so it's clear that that was the basis

20 of it. Correct?

21 MR GCILITSHANA: That's correct.

22 MR TIP SC: And the chairman has pointed

23 to the substantial increase in the guaranteed pay of rock

24 drill operators in particular, as in those figures that are

25 set out in the first table.

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1 MR GCILITSHANA: That's correct.

2 MR TIP SC: Now those related to matters

3 that had been included in the collective agreement that was

4 binding for two years and which had been signed in October

5 2011.

6 MR GCILITSHANA: Can you repeat the

7 question?

8 MR TIP SC: Yes, the wages and other

9 benefits payable to rock drill operators, is it correct

10 that all of those payments would have been governed by the

11 collective agreement that was signed up in October 2011 at

12 Impala?

13 MR GCILITSHANA: That's correct.

14 MR TIP SC: Therefore am I correct in

15 concluding in essence the following, that after the

16 unilateral increase to the miners, there was an unprotected

17 strike led by RDOs in support of a demand for 9 000 basic?

18 MR GCILITSHANA: Yes.

19 MR TIP SC: After the unprotected strike,

20 and after the dismissals and the reinstatements that had

21 occurred, then the RDOs in fact received very substantial

22 increases, despite the fact that those had been governed by

23 the collective agreement. Is that correct?

24 MR GCILITSHANA: That's correct.

25 MR TIP SC: NUM was not part of the

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1 negotiations that led to this unilateral increase?

2 MR GCILITSHANA: As far as I know NUM did

3 not.

4 MR TIP SC: Now that sort of event in a

5 labour relations environment where collective bargaining is

6 critical, how did that event affect the attitude of

7 employees and NUM members to the union?

8 MR GCILITSHANA: That put, had to put

9 union on a bad side in terms of workers having trust to the

10 leaders because they felt that leaders were not honest as

11 they were giving feedbacks.

12 MR TIP SC: Again what one has here in

13 respect of a number of categories in addition to miners is

14 that Impala finds a good deal of extra money to pay

15 employees, which it had told NUM during negotiations it did

16 not have.

17 MR GCILITSHANA: That's correct, because

18 it indicates that the company was not negotiating in good

19 faith.

20 CHAIRPERSON: Mr Tip, sorry to interrupt

21 you. You might like to refer to the first sentence of the

22 last paragraph on page 6, which is relevant in this regard.

23 MR TIP SC: Thank you, Mr Chair. Mr

24 Gcilitshana, perhaps you could turn to page 6 of the

25 bundle. You've just told the Commission that workers

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1 distrust NUM leadership in circumstances such as this
 2 because the NUM leadership has said this is all that the
 3 company can afford at the time of the conclusion of
 4 agreements. Do you see the first sentence of the last
 5 paragraph on page 6?
 6 MR GCILITSHANA: That's, yes.
 7 MR TIP SC: I'm going to read that and
 8 the following sentence onto the record and then you can
 9 comment. Quote, "These adjustments are made in good faith,
 10 based on what the company can afford at this stage. It is
 11 imperative that we return to full production to ensure
 12 sustainability of the organisation." Now perhaps I can
 13 just, the sentences speak for themselves and they were sent
 14 out to all Impala employees. Would I be correct to
 15 understand that what the company was really saying from the
 16 perspective of NUM negotiators, is that it has now found
 17 more money in order to pay substantial increases, and
 18 clearly its objective is to keep its production running,
 19 and for that objective it now has additional money? Is
 20 that how it would have been understood?
 21 MR GCILITSHANA: Yes, that's correct.
 22 Especially when you look on the second sentence, because it
 23 does talk direct to the production.
 24 MR TIP SC: Now you're going to deal
 25 later, as I've already said, in some detail with NUM's

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1 approach to negotiations, but I just want to highlight one
 2 aspect of it in the context of the developments at Impala,
 3 and you've just mentioned it a minute or so ago. When NUM
 4 negotiates, does it report regularly to its members on the
 5 progress of the negotiations and what the company is saying
 6 that it can afford in respect of their demands?
 7 MR GCILITSHANA: That's correct.
 8 MR TIP SC: And is that an important part
 9 of the mandate obtaining process that NUM has when it seeks
 10 the attitude of its members to propose settlements?
 11 MR GCILITSHANA: That's correct.
 12 MR TIP SC: And Mr Gcilitshana, you've
 13 already said in respect of what happened with the
 14 particular category of miners that when they got their
 15 unilateral increase, there was a good deal of
 16 dissatisfaction, and if I understood, implicitly suspicion
 17 about NUM's approach to negotiations?
 18 MR GCILITSHANA: That's correct.
 19 MR TIP SC: Did the same thing now
 20 present itself in respect of all the other employees at
 21 Impala in the light of this unilateral increase?
 22 MR GCILITSHANA: That's correct.
 23 MR TIP SC: I'm going to leave the
 24 position at Impala for the time being, Mr Gcilitshana, and
 25 to go on to the background of events at Karee Mine, and

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1 that is at paragraph 12 of your statement, and I'll read it
 2 onto the record. "On or about 12 May 2011 NUM suspended
 3 its branch chairperson and secretary at the Karee Mine,
 4 arising out of their non-compliance with the NUM
 5 constitution relating to branch elections. The Karee
 6 branch committee was also dissolved."
 7 CHAIRPERSON: I think those in the
 8 auditorium might like to know that the branch chairperson
 9 and the secretary who were suspended, were Steve
 10 Khululekile and Daniel Mongwaketsi.
 11 [11:44] MR HANABE: - and other name, Commission?
 12 CHAIRPERSON: That's Daniel Mongwaketsi.
 13 MR TIP SC: I'm indebted to you, Mr
 14 Chairperson. Mr Gcilitshana, let me just take you to the
 15 annexures in the bundle, and you will see those referred to
 16 in footnote 13 and at page 7 of the bundle, there is a
 17 letter from NUM to Lonmin management and that was probably
 18 on the 12th of May 2011, because it proposes a meeting for
 19 the 13th of May 2011, but you will see that that is from
 20 NUM regional secretary, and in the second paragraph of that
 21 letter you will see that it records that the branch has
 22 been dissolved. Do you see that?
 23 MR GCILITSHANA: Correct.
 24 MR TIP SC: And in the same paragraph it
 25 says that Steve Khululekile and Daniel Mongwaketsi were

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1 suspended from all union activities.
 2 MR GCILITSHANA: Yes, I could see.
 3 MR TIP SC: Now, is it correct that
 4 proper conduct of elections within NUM is a matter of great
 5 importance to it?
 6 MR GCILITSHANA: Yes, it's very much
 7 important.
 8 MR TIP SC: And that the proper election
 9 and functioning of branch committees is likewise important?
 10 MR GCILITSHANA: That's correct.
 11 MR TIP SC: Generally speaking, when NUM
 12 members wish to interact with the union, at what level do
 13 they go for assistance?
 14 MR GCILITSHANA: It depends on the
 15 problem where it comes from. If it's at the workplace, you
 16 have got your section steward that will attend to the
 17 problem. If it's at shaft level – if you have a problem at
 18 the workplace, you've got a shaft committee that attends.
 19 Then from this, if there are problems with the shaft
 20 committee, it goes up to the branch committee. Then if
 21 there are problems that could not be resolved at the shaft
 22 committee level it goes to the branch committee. From the
 23 branch committee, if that could not be resolved, that's
 24 when it goes to the regional level and so on.
 25 MR TIP SC: Now, Mr Gcilitshana, I'm not

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1 going to ask you to detail the particular difficulties
 2 relating to those elections, or generally how elections
 3 take place. If necessary, is it correct that you could
 4 provide those details?
 5 MR GCILITSHANA: That's correct.
 6 MR TIP SC: And is it correct also that
 7 when problems do surface in respect of the functioning of a
 8 branch committee, then it is for the regional structure to
 9 take action?
 10 MR GCILITSHANA: Yes, as I indicated, it
 11 is the line of protocol.
 12 MR TIP SC: What happened at Lonmin on
 13 the dissolution of that branch committee and the suspension
 14 of the two gentlemen, Steve Khululekile and Daniel
 15 Mongwaketsi?
 16 MR GCILITSHANA: That resulted to an un-
 17 protested strike on the 18th of May.
 18 MR TIP SC: What was the demand? Why did
 19 that strike take place?
 20 MR GCILITSHANA: The demand was
 21 reinstatement of the suspended leadership, in particular
 22 Steven Khululekile.
 23 MR TIP SC: Again the details of that are
 24 something that you can speak about, but they're not
 25 immediately sufficiently relevant for – to take the time of

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1 Commission. How widespread was the participation in the
 2 strike?
 3 MR GCILITSHANA: The strike was only in
 4 the Karee operation. Lonmin have got about four
 5 operations. You've got your Karee, Eastern Platinum,
 6 Western Platinum and your LPD, which is your LPD division.
 7 Therefore the strike was only at Karee where Steven and his
 8 team was working.
 9 MR TIP SC: And in paragraph 14, you deal
 10 with one of the consequences of the strike, namely that
 11 approximately 11 000 Karee employees were dismissed by
 12 Lonmin.
 13 MR GCILITSHANA: That's correct.
 14 MR TIP SC: NUM and Lonmin negotiated?
 15 MR GCILITSHANA: We did engage Lonmin on
 16 a re-engagement of those workers.
 17 MR TIP SC: You've recorded the details
 18 in paragraph 14 of your statement from where it appears
 19 that almost all of the employees were reinstated,
 20 approximately 2 000 were not reinstated, and those included
 21 the former NUM branch leadership members.
 22 MR GCILITSHANA: That's correct.
 23 MR TIP SC: If you turn to paragraph 15,
 24 you set out there that Lonmin attached a condition to the
 25 reinstatement process.

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1 MR GCILITSHANA: That's correct. They
 2 said they are not going to reinstate, but re-employ those
 3 workers.
 4 MR TIP SC: Thank you, yes. And in
 5 respect of union membership, did Lonmin take up a position?
 6 MR GCILITSHANA: Lonmin refused to
 7 reinstate the membership of those workers who were re-
 8 employed.
 9 MR TIP SC: The result of that was that
 10 there had to be fresh recruitment efforts, is that correct,
 11 by the various unions in order to obtain members from
 12 scratch?
 13 MR GCILITSHANA: That's correct.
 14 MR TIP SC: You will see in paragraph 16
 15 of your statement that this process resulted in a very
 16 different position at Karee, is that correct, in terms of
 17 NUM membership?
 18 MR GCILITSHANA: Yes, correct.
 19 MR TIP SC: And by December 2011, AMCU
 20 had recruited sufficient employees to persuade Lonmin to
 21 enter into a Limited Organisational Rights Agreement at
 22 Karee?
 23 MR GCILITSHANA: That's the information
 24 we got, yes.
 25 MR TIP SC: And AMCU also obtained access

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1 and stop order facilities?
 2 MR GCILITSHANA: Yes.
 3 MR TIP SC: And further agreements were
 4 entered into with AMCU. Those are detailed in paragraph
 5 18. By May 2012, AMCU's membership had risen sufficiently
 6 for it to establish a branch at Karee mine, is that
 7 correct?
 8 MR GCILITSHANA: That's what I was
 9 informed, yes.
 10 CHAIRPERSON: I don't want to interrupt
 11 you, but the document to which you refer – or the witness
 12 refers in para 13 of the statement – sorry, footnote 13,
 13 which is a footnote to paragraph 18 of the statement, is I
 14 think an exhibit which was handed in when Mr Mathunjwa was
 15 giving evidence, and I'm not sure, but I think the one
 16 referred to in footnote 12 maybe as well. I don't expect
 17 you to give me the answer now, but it will be convenient if
 18 at some stage we can be told whether these documents are
 19 already before us as exhibits and what the exhibit numbers
 20 are, so as to make reference thereto easier later on.
 21 MR TIP SC: We'll see to that cross-
 22 referencing. Mr Chair, it is indeed so that they were put
 23 in, and we didn't want to duplicate. Mr Gcilitshana, I
 24 just want to move on to paragraph 19 where you note that
 25 AMCU had achieved majority membership at Karee, but that

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1 NUM remained the majority union at Lonmin's Marikana
 2 operations as a whole.
 3 MR GCILITSHANA: That's correct.
 4 MR TIP SC: And that NUM also, as a
 5 result, remained the sole collective bargaining agent in
 6 respect of all the employees at the relevant bargaining
 7 unit, being Lonmin as whole, is that correct?
 8 MR GCILITSHANA: That's correct, in
 9 Marikana operations.
 10 MR TIP SC: In paragraph 20, Mr
 11 Gcilitshana, you deal with the fact that were numerous
 12 incidents of violence at Karee mine over this period.
 13 MR GCILITSHANA: That's correct.
 14 MR TIP SC: There were assaults and one
 15 person died of severe head injuries and we know that, from
 16 other statements before the Commission, that that was a
 17 person who was reporting for work.
 18 MR GCILITSHANA: That's correct.
 19 MR TIP SC: And in May 2012, the keys to
 20 the NUM offices at Karee mine were forcibly confiscated by
 21 some persons from the position of NUM's branch leadership.
 22 MR GCILITSHANA: That's correct, same
 23 attempt on the 7th of January 2013.
 24 MR TIP SC: I want to turn now to a
 25 matter that deals with NUM's approach to negotiations, and

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1 all of that is described in respect of the 2011
 2 negotiations that were conducted between NUM and Lonmin.
 3 And I want you to begin at paragraph 21 of your statement.
 4 Are you at that place?
 5 MR GCILITSHANA: Correct.
 6 MR TIP SC: Again, if you don't mind,
 7 I'll just read the particularly relevant aspects on to the
 8 record and then ask you for any additional comment. NUM's
 9 approach to wage negotiations generally is one that has as
 10 its priority an inclusive process in terms of which
 11 mandates are sourced from its membership before the
 12 commencement of the negotiation process?
 13 MR GCILITSHANA: That's correct.
 14 MR TIP SC: And perhaps I should just
 15 underline the word before – before you even begin
 16 negotiations, you obtain mandates?
 17 MR GCILITSHANA: That's correct.
 18 MR TIP SC: And you go on to say that
 19 where appropriate, report back meetings are also held with
 20 the membership.
 21 MR GCILITSHANA: That's correct, also for
 22 new mandate.
 23 MR TIP SC: And before any final decision
 24 is taken, a mass meeting of workers is arranged in order to
 25 obtain final mandates?

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1 MR GCILITSHANA: That's correct.
 2 MR TIP SC: In paragraph 22, you describe
 3 what took place at Lonmin's division during 2011, and you
 4 begin by pointing out that with the exception of Karee
 5 mine, Shop Stewards' Councils were convened at every
 6 branch.
 7 MR GCILITSHANA: That's correct.
 8 MR TIP SC: And those councils interacts
 9 with their constituencies and during that process branch
 10 representatives receive workers' demands?
 11 MR GCILITSHANA: That's correct.
 12 MR TIP SC: And we understand from that,
 13 and I want to just ensure that it's correct, that it is the
 14 workers who generate the demands and not the union that
 15 tells the workers what its demands should be.
 16 MR GCILITSHANA: That's correct.
 17 [12:04] MR TIP SC: Going on with the process,
 18 paragraph 23, after the convening of the Shop Stewards'
 19 Council each NUM branch then convenes separate mass
 20 meetings at their respective divisions, again with the
 21 exception of Karee mine during 2011, during which members
 22 and other employees who attended were informed of the
 23 demands presented to the branch leadership at Shop Stewards
 24 Council?
 25 MR GCILITSHANA: That's correct.

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1 MR TIP SC: What does a meeting like
 2 that, where demands that had been gathered in a preliminary
 3 way, are presented to all members?
 4 MR GCILITSHANA: To refine - that you are
 5 in line with the workers of the – if there is anything that
 6 you have missed out, they can be able to [inaudible] or if
 7 there's something that have not been added, that it is not
 8 important, that could be taken out of the list.
 9 MR TIP SC: In other words, is it correct
 10 that the demands that have been gathered at a preliminary
 11 stage by the Shop Stewards Council are presented at mass
 12 meetings for debate and amendment?
 13 MR GCILITSHANA: That's correct.
 14 MR TIP SC: Then the next phase is set
 15 out in paragraph 24 of your statement, and we're at the
 16 stage of October 2011 now. This involves firstly that the
 17 executives of each of NUM's branches meet to discuss the
 18 demands?
 19 MR GCILITSHANA: That's correct.
 20 MR TIP SC: That 12 o'clock on the same
 21 day a central Steward's Council is convened at which the
 22 full branch committee and the unions, shop stewards meet to
 23 discuss and go through the demands?
 24 MR GCILITSHANA: That's correct.
 25 MR TIP SC: And at 4 o'clock in the

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1 afternoon of the same day, a central mass meeting of
 2 workers was called in order to present a final list of the
 3 demands received from workers before they go to the
 4 employer?
 5 MR GCILITSHANA: That's correct.
 6 MR TIP SC: As the chief negotiator, were
 7 you in attendance at these events and steps?
 8 MR GCILITSHANA: This process was led by
 9 the branches of Lonmin. I was not practically involved.
 10 MR TIP SC: Is that because certain
 11 preliminary demands have to be processed and debate have to
 12 take place before they reach your level?
 13 MR GCILITSHANA: That's correct.
 14 MR TIP SC: Now the meeting, the central
 15 mass meeting you describe in paragraph 24 also as one that
 16 was being held at Wonderkop Stadium and attended by several
 17 thousand employees, including employees from Karee Mine?
 18 MR GCILITSHANA: That's correct, Karee
 19 have been included, simply because NUM had members in
 20 Karee, regardless of that they were in minority in Karee,
 21 but members, there was interaction with the members and we
 22 would request the company to send buses and they would do
 23 so.
 24 MR TIP SC: And of course at that stage
 25 NUM was still the central bargaining agent?

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1 MR GCILITSHANA: That's correct.
 2 MR TIP SC: Now Mr Gcilitshana, I just
 3 want to take a step sideways as an annotation, Mr Chair,
 4 to paragraph 25. We want to deal with this aspect of
 5 negotiations quite fully, so that there is a proper
 6 appreciation of what collective bargaining entails and how
 7 it should be done. In paragraph 25 you deal with the entry
 8 into the picture of a person called NUM's Mining House
 9 Coordinator, but before we deal with that, I want to take
 10 you to an annual event in March of every year, where, is it
 11 correct that NUM holds a bargaining conference?
 12 MR GCILITSHANA: It's correct, in
 13 particular on the year of the negotiation.
 14 MR TIP SC: That is a NUM internal
 15 conference, is it?
 16 MR GCILITSHANA: That's correct.
 17 MR TIP SC: What is its principal
 18 purpose?
 19 MR GCILITSHANA: The purpose is to look
 20 on the agreements that have been signed in the previous
 21 agreements, one. Two, look on the market in terms of
 22 inflation, what is the inflation. And then compare the
 23 achievement that we have made with other sectors of
 24 economy. Then it also looks at what could be the possible
 25 percentage that could be looked at in terms of the demands.

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1 MR TIP SC: Has it obtained input from an
 2 organisation called Naledi?
 3 MR GCILITSHANA: Yes, we normally call
 4 them to do presentation as people who are experts in
 5 research and they will do that.
 6 MR TIP SC: Naledi is a research
 7 institute linked with COSATU, is that right?
 8 MR GCILITSHANA: That's correct.
 9 MR TIP SC: Is it also so that the annual
 10 bargaining conference is attended by all regional
 11 structures as well as a large number of branch committees?
 12 MR GCILITSHANA: We normally arrange it
 13 for about 300 to 400 delegates that will constitute members
 14 from the region and from the branch committee.
 15 MR TIP SC: And what I gather from what
 16 you've already said to the Commission, you look at matters
 17 like the situation of the market?
 18 MR GCILITSHANA: Correct.
 19 MR TIP SC: Generally how collective
 20 agreements have performed in the course of the previous
 21 year?
 22 MR GCILITSHANA: That's correct.
 23 MR TIP SC: You identify where
 24 negotiations and demands could have been better formulated?
 25 MR GCILITSHANA: That's correct.

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1 MR TIP SC: Do you also examine the
 2 annual reports of the relevant employers?
 3 MR GCILITSHANA: Yes, as part of the
 4 presentation we normally get from Naledi.
 5 MR TIP SC: In short, would it be fair to
 6 say that what NUM does at a conference of that kind, is to
 7 ensure that it doesn't make unreasonable demands of the
 8 employers?
 9 MR GCILITSHANA: That's correct.
 10 MR TIP SC: Why is it concerned not to
 11 make unreasonable demands?
 12 MR GCILITSHANA: Because as indicated
 13 that we look at the market and its performance. Then the
 14 reason is that if you raise expectation that can also fire
 15 back to you, because if you haven't done your research
 16 properly of where – how inflation is performing, you may
 17 end up demanding something that may not be achievable,
 18 therefore hasn't raised the expectation of the workers that
 19 may fire back to you as a Union.
 20 MR TIP SC: If there are unreasonable
 21 expectations, does that affect the credibility of the
 22 negotiation process that NUM is conducting?
 23 MR GCILITSHANA: Can you repeat the
 24 question again?
 25 MR TIP SC: There are such unreasonable

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1 expectations that are created amongst workers. Does that
 2 have the potential of affecting the credibility of NUM's
 3 negotiation process?
 4 MR GCILITSHANA: That's correct.
 5 MR TIP SC: Just going back to your
 6 statement at paragraph 25, and I'll try to abbreviate,
 7 you've introduced the NUM's Mining House Coordinator. He
 8 submits worker demands to the head office and are those
 9 demands then again subjected to a process of examination
 10 within NUM's head office?
 11 MR GCILITSHANA: Yes, that's correct, the
 12 demands will be researched and the senior researcher would
 13 look on the demands, also the general secretary would look
 14 on the demands.
 15 MR TIP SC: And you've put it in these
 16 words in that paragraph that the purpose is primarily to
 17 establish consistency with the Union's policies and to
 18 evaluate the demands against industry and market norms and
 19 practices?
 20 MR GCILITSHANA: Yes, that's correct.
 21 MR TIP SC: And only if the demands
 22 satisfy those criteria can NUM in fact clear them for
 23 submission to the employer as a demand, as a demand?
 24 MR GCILITSHANA: Yes, that's correct.
 25 MR TIP SC: In this case, the demands

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1 were approved and on 17 October 2011 they were submitted to
 2 Lonmin?
 3 MR GCILITSHANA: That's correct.
 4 MR TIP SC: I'm looking now at paragraph
 5 26 of your statement. And is it so that RDOs received
 6 particular attention in these demands?
 7 MR GCILITSHANA: Yes, correct, they have
 8 been looked after.
 9 MR TIP SC: What was the demand?
 10 MR GCILITSHANA: The demand was to move
 11 them from category 4 to category 7.
 12 MR TIP SC: Would a shift of that kind
 13 have significant remuneration implications?
 14 MR GCILITSHANA: Yes, the intention you
 15 ask to improve their salaries, taking into account the kind
 16 of work that they are doing.
 17 MR TIP SC: And that shift would be –
 18 CHAIRPERSON: Sorry, can I ask quickly.
 19 You described the process that preceded the formulation of
 20 these demands. This particular demand in relation of the
 21 RDOs, was it in accordance with what they had asked for?
 22 MR GCILITSHANA: It was a mandate
 23 obtained from the mass meeting.
 24 MR TIP SC: Mr Chair, we'll return to
 25 that aspect in a moment with a subsequent meeting. Now you

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1 say – you've detailed in paragraph 27 and 28 of your
 2 statement certainly preliminary matters you've identified
 3 the teams. I would like to move on to paragraph 30 of your
 4 statement. And you will see there that what you have done,
 5 Mr Gcilitshana, is to set out a number of the meetings that
 6 took place between NUM negotiators, including yourself, and
 7 Lonmin?
 8 MR GCILITSHANA: That's correct.
 9 MR TIP SC: The dates of those meetings
 10 are set out and they span the period 18 October 2011
 11 through to 22 November 2011?
 12 MR GCILITSHANA: Yes.
 13 MR TIP SC: And minutes are kept of these
 14 negotiations, they're in the bundle, correct?
 15 MR GCILITSHANA: Correct.
 16 MR TIP SC: I don't want to take the time
 17 of the Commission by working through each set of
 18 discussions at each meeting, but would it be so that there
 19 would be a process of give and take in respect of demands
 20 and offers as these meetings took place?
 21 [12:24] MR GCILITSHANA: That's correct.
 22 MR TIP SC: What I do want to ask you is
 23 particularly in relation to the position of RDOs. Did
 24 their position enjoy attention in the course of these
 25 negotiation meetings?

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1 MR GCILITSHANA: Yes, we did as NUM to
 2 put our case on the importance of the role of the RDOs.
 3 That's why we had a demand of category 7.
 4 MR TIP SC: Were you able to succeed with
 5 that particular demand?
 6 MR GCILITSHANA: We could not succeed.
 7 MR TIP SC: Did you, however, succeed in
 8 obtaining a percentage increase at least in respect of the
 9 wages of RDOs?
 10 MR GCILITSHANA: That's correct.
 11 MR TIP SC: Now after this process of –
 12 well, in the course of the process of these meetings, did
 13 you from time to time have report-back meetings at which
 14 the state of the negotiations were conveyed to the
 15 membership of NUM?
 16 MR GCILITSHANA: Yes, we did have. If
 17 one can also go to the, back to the RDOs issue, on the
 18 reason not, for the reason not being, for the reason not
 19 for the RDOs be upgraded to category 7, company indicated
 20 that they are busy with the programme of developing youth
 21 in the surrounding communities who can be able to be
 22 prepared to take the job of the RDOs, because we have been
 23 taking RDO role as a scarce skill, as a -
 24 MR TIP SC: These negotiations were
 25 conducted with a facilitator being present. Is that

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1 correct?

2 MR GCILITSHANA: That's correct.

3 MR TIP SC: That is a normal arrangement,

4 is it, with NUM's approach to negotiations?

5 MR GCILITSHANA: That's – yes.

6 MR TIP SC: Now again in respect of the

7 RDO situation, I just want to turn to a particular aspect

8 of the final negotiating meeting, the sixth meeting held on

9 22 November 2011, and if I may ask you to turn to paragraph

10 30.6 of your statement. At this stage, was it correct that

11 you hadn't succeeded in obtaining a change of the

12 categories of RDOs from 4 to 7?

13 MR GCILITSHANA: Yes.

14 MR TIP SC: Were you still concerned

15 about their position, the RDOs?

16 MR GCILITSHANA: Yes.

17 MR TIP SC: And if I can record what you

18 said in this paragraph, "NUM informed the company that if

19 the position of the category 4 employees, namely the RDOs,

20 was not addressed, they would become a time-bomb," as you

21 put it. "NUM proposed that their basic wage be increased

22 by 10% for both years and that their grade should be rolled

23 up to category 7, as previously demanded."

24 MR GCILITSHANA: That's correct.

25 MR TIP SC: Now what was your thinking at

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1 that time, why was it that you used a phrase like "time-

2 bomb" in what you said to the company at that concluding

3 negotiating meeting?

4 MR GCILITSHANA: I was advising the

5 company on the scarce skills of the demand by the RDOs,

6 taking into account that - if I can take you back - in 2009

7 when the company was restructuring or retrenching, some of

8 the RDOs wanted to take voluntarily separation packages.

9 They were not allowed. The reason was that they're doing

10 the scarce skills, therefore they can't take a separation

11 package, therefore that remained with the RDOs as we

12 collected that month. That remained on the minds of the

13 RDOs that their job is a scarce skill.

14 CHAIRPERSON: I didn't hear that word.

15 He said their jobs were a?

16 MR TIP SC: Scarce skills.

17 CHAIRPERSON: Scarce skill?

18 MR TIP SC: Is that right, Mr

19 Gcilitshana?

20 MR GCILITSHANA: Yes, scarce skills.

21 MR TIP SC: And generally were you in

22 particular, and NUM generally, concerned that there were

23 particular tensions either existing or potential in respect

24 of the position of RDOs at Lonmin?

25 MR GCILITSHANA: No.

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1 MR TIP SC: The final mandate from the

2 workers is something that you obtained at paragraph 31,

3 that you discuss in paragraph 31. Are you there?

4 MR GCILITSHANA: Yes.

5 MR TIP SC: That was a meeting that was

6 held at Wonderkop in late November 2011 with approximately

7 5 000 workers in attendance, you say, many of them being

8 RDOs.

9 MR GCILITSHANA: That's correct.

10 MR TIP SC: Was that meeting held

11 subsequent to the conclusion of the sixth and final

12 negotiation meeting?

13 MR GCILITSHANA: That's correct.

14 MR TIP SC: And you presented the

15 position in respect of where you stood with demands and

16 offers?

17 MR GCILITSHANA: Leadership of the

18 branch. I was not involved on that day, but the leadership

19 of the branch, of branches did because if I'm not available

20 comrades will select a spokesperson who'll do the report-

21 back.

22 MR TIP SC: Is what takes place at such a

23 meeting that the current, the status of the demands and the

24 offers from the company are discussed and workers decide

25 whether or not they should give the union a mandate to

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1 accept them?

2 MR GCILITSHANA: That's correct.

3 MR TIP SC: And was such a mandate in

4 fact given by the employees, the workers, the members, at

5 that mass meeting?

6 MR GCILITSHANA: That what was agreed

7 that the leadership can sign the agreement.

8 MR TIP SC: And in accordance with that

9 then the wage agreement was in fact signed on 2 December

10 2011, valid for two years?

11 MR GCILITSHANA: Yes.

12 MR TIP SC: Details are given in that

13 paragraph, and the agreement itself is part of the bundle.

14 It's not necessary to go into that detail.

15 CHAIRPERSON: May I just interpose at

16 this stage just to get clarity on what they achieved for

17 the RDOs in comparison with what they sought to get. You

18 say in paragraph 30.6 that, you pointed out the position of

19 the RDOs could become a time-bomb if not addressed, and you

20 proposed a 10% increase for both years of the two-year

21 agreement, and that their grades be rolled up to category

22 7. Now what you in fact achieved was an increase of 10%

23 for the first year and 9% for the second. Is that correct?

24 Because that's what you achieved in respect of people in

25 category 4.

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1 MR GCILITSHANA: Yes, correct.
 2 CHAIRPERSON: So for the second year you
 3 didn't get them the 10% you had sought; you only got them
 4 9% and you didn't get them up to category 7, they stayed in
 5 category 4. That's right?
 6 MR GCILITSHANA: Yes, that's correct.
 7 CHAIRPERSON: And as far as the housing
 8 allowance was concerned, that of course applied to other
 9 workers as well, other employees as well, but you got an
 10 increase from 1 700 a month to 1 850 a month. Is that
 11 right?
 12 MR GCILITSHANA: Yes.
 13 CHAIRPERSON: This is about 8% -
 14 MR GCILITSHANA: But with the intention -
 15 CHAIRPERSON: - about 8%, with a further
 16 increase to 1 950 the following year, which is an increase
 17 of course of, the annual increase is of course round about
 18 5%.
 19 MR GCILITSHANA: Correct.
 20 CHAIRPERSON: Is that correct?
 21 MR GCILITSHANA: Yes, that's correct.
 22 CHAIRPERSON: It sounds as if what you
 23 achieved for the RDOs left the time-bomb ticking. Is that
 24 correct?
 25 MR GCILITSHANA: That is possible,

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1 Commissioner.
 2 MR TIP SC: Mr Gcilitshana, you've given
 3 a full account of the approach of NUM in the way that it
 4 deals with negotiations and the obtaining of mandates,
 5 including the final mandate. Is that the normal practice
 6 of NUM? Has it been conducting negotiations in that way
 7 for many, many years?
 8 MR GCILITSHANA: That's correct.
 9 MR TIP SC: I want to go on to a
 10 different topic now, which is the RDO wage dispute at
 11 Lonmin and the background to it. You deal with that in
 12 paragraph 33 and following of your statement. You refer
 13 there to the internal communiqués issued by Lonmin on 20
 14 and 31 July of 2012. Those are now exhibits.
 15 CHAIRPERSON: Mr Tip, if I can just
 16 interrupt at this stage.
 17 MR TIP SC: Yes.
 18 CHAIRPERSON: There's something I'm
 19 interested in, and that is you take up the story in respect
 20 of what you call the RDO wage dispute, or well, the witness
 21 does, with the internal communications of the 20th and 31st
 22 of July 2012. Of course what had happened in the meanwhile
 23 is that being the Impala adjustment which you referred to
 24 earlier in paragraph 11, and what interests me is whether
 25 the news - I take it the news of that reached Lonmin -

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1 whether the news of that decision, that adjustment by
 2 Impala, impacted in any way on the situation at Lonmin. So
 3 that would have been something that would have happened in
 4 April, early May, and perhaps that should be dealt with
 5 before we then proceed with what happened in July. It's
 6 just a suggestion, but it would help me if you dealt with
 7 it in that order.
 8 MR TIP SC: We are very happy to follow
 9 that suggestion. It makes a great deal of sense, with
 10 respect. Mr Gcilitshana, you've heard the observation of
 11 the chairperson. You had taken us in the earlier part of
 12 your evidence through the events at Impala - you'll recall
 13 that - and in particular that there was the second round of
 14 unilateral wage adjustments, which were quite extensive, in
 15 the course of April 2012. You remember that?
 16 MR GCILITSHANA: I recall.
 17 MR TIP SC: And just for cross-reference,
 18 that's paragraph 11 of your statement, read with footnote 9
 19 where details of Impala's offer, unilateral, well, not an
 20 offer, unilateral increase was set out. Now bearing that
 21 in mind, the question is what impact did that have on the
 22 position at Lonmin?
 23 MR GCILITSHANA: It created an
 24 expectation.
 25 MR TIP SC: Perhaps you could just

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1 enlarge on that a little. What sort of expectation did it
 2 give rise to?
 3 [12:44] MR GCILITSHANA: One expectation would be
 4 workers, RDOs who are working in Lonmin maybe cross and go
 5 and look for employment at Impala where there's better
 6 salary. Secondly, also at Lonmin itself, because the
 7 workers do communicate, the thought that there is this
 8 achievement at Impala, therefore that might have raised
 9 expectation from them, from the workers in Lonmin, that
 10 they would also go that route to get this - to get their
 11 demand addressed, I mean their expectations resolved.
 12 MR TIP SC: I just want to ask you to
 13 pause and to clarify for us the phrase which you have just
 14 used, which is to go that route. Are you referring there
 15 to the route that was followed by the RDOs at Impala,
 16 namely the unprotected action or are you referring to
 17 something else?
 18 MR GCILITSHANA: Yes, that's correct.
 19 MR TIP SC: Did you - did any of this
 20 come to your ears personally at that time in the period
 21 after April, May and June of 2012?
 22 MR GCILITSHANA: No.
 23 MR TIP SC: Let us then go on with your
 24 statement at paragraph 33 and Mr Gcilitshana, I'm going to
 25 ask you to just bear in mind as we go along, that if

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1 anything occurs to you that is relevant to the question of
 2 the impact of Impala on the position at Lonmin, you'll let
 3 us know?
 4 MR GCILITSHANA: Okay, thank you.
 5 MR TIP SC: Have you've got Exhibit XX3
 6 and XX4 available to you?
 7 MR GCILITSHANA: Yes, I got.
 8 MR TIP SC: You will see that – well, let
 9 me ask you firstly, have you had an opportunity to read
 10 through these communiqués?
 11 MR GCILITSHANA: Yes, correct.
 12 MR TIP SC: And if I may, to summarise
 13 XX3, the first of those being 20 July 2012, Lonmin conveys
 14 to all its employees that the market is difficult, finances
 15 are difficult, the environment is competitive and it draws
 16 the attention of employees pertinently to the fact that
 17 there is in existence a two year wage agreement. And in
 18 the communiqué dated 31 July 2012, Lonmin somewhat
 19 similarly addresses the fact that there are certain groups
 20 of employees who insist in engaging management on separate
 21 wage negotiations. It again makes reference to the
 22 existence of the current two year agreement and it warns
 23 employees that any illegal work stoppages will be dealt
 24 with firmly. Did those communicates and the situation that
 25 they reflected, come to your attention?

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1 MR GCILITSHANA: I was not involved.
 2 MR TIP SC: At what stage did you become
 3 aware of the subject matter dealt with in paragraph 34,
 4 that RDOs had marched to the Karee Main Office with
 5 demands, which was submitted to Mr De Costa?
 6 MR GCILITSHANA: It was a few days after
 7 the march from our structures.
 8 CHAIRPERSON: Before we move onto that, I
 9 just want to ask a question if I may, about these internal
 10 communicates, Exhibits XX3 and XX4. To whom were they
 11 normally addressed, these internal communiqués?
 12 MR GCILITSHANA: To Lonmin employees.
 13 CHAIRPERSON: Who?
 14 MR GCILITSHANA: To Lonmin employees.
 15 CHAIRPERSON: That would include, not
 16 only management, but also ordinary employees, would it?
 17 MR GCILITSHANA: Yes, correct.
 18 CHAIRPERSON: I see XX4 in the third
 19 paragraph says, "We therefore caution employees against any
 20 attempt to embark on unprotected industrial action and
 21 intimidation." So that was clearly directed to the
 22 employees who were dissatisfied and who were presumably
 23 considering embarking upon an unprotected industrial
 24 strike. Is that – would that be correct reading of it?
 25 MR GCILITSHANA: That will be correct.

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1 CHAIRPERSON: I thought that I heard you
 2 say that you weren't aware of these communications? Have
 3 you only become aware of them later? Did I hear you
 4 correctly?
 5 MR GCILITSHANA: Yes.
 6 CHAIRPERSON: You were the chief
 7 negotiator, NUM's chief negotiator at Lonmin, you were an
 8 employee of Lonmin and you never heard about these internal
 9 communiqués?
 10 MR GCILITSHANA: The communication is
 11 internal communication, Commissioner and I'm not based in
 12 Lonmin. I'm based in NUM head office. This communication
 13 was internally within the mine premises, not outside. I
 14 was not aware of it.
 15 CHAIRPERSON: So effectively you were
 16 dependant upon the NUM members at Lonmin to draw your
 17 attention to these communicates, and they didn't do so? Is
 18 that what you're telling us?
 19 MR GCILITSHANA: Yes, I relied on them to
 20 give me communication. As I've indicated that a few days
 21 later they did communicate with us.
 22 MR TIP SC: The information that reached
 23 you came from NUM members. Did it come from Lonmin at any
 24 stage?
 25 MR GCILITSHANA: Not according to my

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1 understanding myself. I know at times some communication
 2 is directed to the general secretary, but I don't recall
 3 general secretary communicating it with me.
 4 MR TIP SC: Now similar questions arise
 5 in respect of the content of paragraph 35 of your
 6 statement. Let me just read it. "On or about 23 July
 7 2012, Lonmin's EXCO approved an allowance of R750 per month
 8 for RDOs at Karee Mine, R500 per month for RDOs at WPO
 9 Western Platinum and EPO and R250 per month for assistant
 10 RDOs. The RDOS were informed about these allowances at a
 11 meeting that day.
 12 CHAIRPERSON: I'm sorry to interrupt you,
 13 but I'd like chronological clarity as things happened.
 14 Paragraph 34 says that, "On the 21st of July the RDOs
 15 march illegal to Karee Mine office and submitted a demand
 16 to Mike De Costa, Lonmin's vice president at Karee Mine,
 17 for a wage increase of R12 500." Now when did you first
 18 learn about that?
 19 MR GCILITSHANA: As I indicated it was
 20 after the 21st. I'm not sure if - I'm not sure that was
 21 two days later or three days later, but it was after the
 22 21st.
 23 MR TIP SC: Were you able to establish
 24 whether the decision of the RDOs to embark on that march
 25 had been done in conjunction with NUM at all?

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1 MR GCILITSHANA: I was informed that NUM
 2 was not informed and was not involved.
 3 MR TIP SC: Then perhaps I can move on to
 4 paragraph 35. The announcements on 23 July by Lonmin on
 5 the various increases for RDOs, when did that come to your
 6 attention?
 7 MR GCILITSHANA: It was after the
 8 decision was taken by EXCO.
 9 MR TIP SC: Mr Chair, would this be a
 10 convenient time to take the lunch adjournment. I see it's
 11 just run past 1 o'clock.
 12 CHAIRPERSON: I'm waiting for you to
 13 finish at paragraph 36, which you haven't done yet.
 14 MR TIP SC: Yes, well, let me do that.
 15 It's – yes, paragraph 36, Mr Gcilitshana, it's related to
 16 that point. You say there, "These allowances were decided
 17 upon unilaterally by Lonmin, without any negotiations with
 18 NUM."
 19 MR GCILITSHANA: That's correct.
 20 MR TIP SC: Those increases were decided
 21 upon by Lonmin during the currency of a binding two year
 22 agreement?
 23 MR GCILITSHANA: That's correct.
 24 MR TIP SC: And as the chief negotiator
 25 of NUM, how did you respond to the fact that this action

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1 had been taken? What was your feelings about that?
 2 MR GCILITSHANA: As NUM we were not happy
 3 the way the company did it, because we believe that we
 4 should have been involved as Union with collective
 5 bargaining rights in Lonmin. I must also indicate that we
 6 are not against any money that goes to the workers, it's
 7 more of the processes.
 8 CHAIRPERSON: The Commission will adjourn
 9 until 2 o'clock.
 10 [COMMISSION ADJOURNS COMMISSION RESUMES]
 11 [14:02] CHAIRPERSON: The Commission resumes.
 12 You're still under oath, Sir, and you're still leading the
 13 witness in chief, Mr Tip.
 14 MR TIP SC: Indeed, Mr Chairperson. Mr
 15 Gcilitshana, we were on the point just before the lunch
 16 adjournment of moving to a different topic, which is the
 17 fact of the unprotected strike and the role of NUM in
 18 relation to it, and if you go to paragraph 37 of your
 19 statement you will see that we begin to deal with that
 20 subject there. You say there that although you don't know
 21 the details, it is clear that the RDOs resolved not to
 22 accept Lonmin's offer of the additional allowances and that
 23 they would persist with their demand for R12 500 as their
 24 basic rate.
 25 MR GCILITSHANA: That's correct.

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1 MR TIP SC: Then you describe in the next
 2 paragraph the meeting that NUM convened of 8 August 2012.
 3 That was a NUM report-back meeting which had been arranged
 4 in any event. Is that correct?
 5 MR GCILITSHANA: That's correct.
 6 MR TIP SC: And the convenor of that
 7 meeting was the late Mr Daluvuyo Bongo.
 8 MR GCILITSHANA: Yes, correct.
 9 MR TIP SC: At that stage it was clear to
 10 NUM that there was an imminent prospect of an unprotected
 11 strike.
 12 MR GCILITSHANA: That's correct.
 13 MR TIP SC: And NUM then at that meeting
 14 set out its position and its attitude to the unprotected
 15 strike, and in this regard I want to take you in the bundle
 16 to pages 71 to 73. You will see there, Mr Gcilitshana,
 17 that the second email – of course emails as you know always
 18 run back to front, but the second email on that page is
 19 from Mr Bongo, addressed to various of the management of
 20 Lonmin on August the 8th, 2012.
 21 MR GCILITSHANA: Yes.
 22 MR TIP SC: And Mr Bongo there reports,
 23 he says, "The mass meeting went peaceful and the attendance
 24 was very good. We educated the RDOs and showed the danger
 25 that will be achieved in their wrongdoing. Some NUM

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1 members advised them as well."
 2 MR GCILITSHANA: Yes, I could see.
 3 MR TIP SC: And would that in essence
 4 have reflected NUM's position that it was opposed to the
 5 strike and that it cautioned people against participating
 6 in it?
 7 MR GCILITSHANA: Yes, correct.
 8 MR TIP SC: And I think it's appropriate
 9 also to note that the reaction from members of Lonmin's
 10 management to what Mr Bongo had said, and at page 71 at the
 11 top of the page you will see that there is a reaction, an
 12 answering email from Mr Larry Dietrich on the evening of 8
 13 August to Mr Bongo. Do you see that?
 14 MR GCILITSHANA: Yes.
 15 MR TIP SC: And he says, "Good evening.
 16 Thank you very much, greatly appreciated. Indeed you are a
 17 leader and a man of your word. Thanks, Larry."
 18 MR GCILITSHANA: Yes, I could see.
 19 MR TIP SC: And as a further example of
 20 the response of Lonmin, if you turn to page 73, again at
 21 the top of the page you will see a response from Mr Etienne
 22 Hamman of Lonmin's management, also to Mr Bongo, the same
 23 email. You have that? And he says, "Thanks, Daluvuyo, for
 24 the feedback. Hope they understand and can get back to
 25 adding value at the shaft. The rumour is that they will

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1 not be at work tomorrow. Hope your influence is effective.
 2 The visit from the DMR was tough, but good work was done by
 3 the NUM guys that joined the various groups. Any info
 4 please let me know. Thanks for your friendship.”
 5 MR GCILITSHANA: Yes, I could see.
 6 MR TIP SC: And perhaps I may just add,
 7 although you had to negotiate with Lonmin about things like
 8 wages and working conditions, does the tone of these emails
 9 reflect the cordial nature of the relationship that Lonmin
 10 and NUM had generally?
 11 MR GCILITSHANA: Yes.
 12 MR TIP SC: Then moving on to paragraph
 13 39 of your statement, you note there what we already know,
 14 that “The strike began in earnest on 10 August 2012 when
 15 strikers marched to the Lonmin LPD office.”
 16 MR GCILITSHANA: Yes.
 17 MR TIP SC: Now I just want to interpose
 18 here. As you know, the question has previously arisen of
 19 the relationship between the location of Lonmin's LPD
 20 office and the NUM office and we had undertaken at that
 21 stage to deal with that before the Commission by somebody
 22 who really understands the layout, and Mr Gcilitshana, you
 23 do understand the layout of the various components of
 24 Lonmin and the offices and so forth?
 25 MR GCILITSHANA: Yes.

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1 MR TIP SC: And I'm going to ask you,
 2 please, if you could turn to exhibit PP1, which is an
 3 annotated Google photograph. Do you have PP1 there?
 4 MR GCILITSHANA: Yes, I do.
 5 MR TIP SC: Yes, right. Mr Gcilitshana,
 6 if you look at that you will see that LPD is at the lower
 7 edge of that page. Do you see it?
 8 MR GCILITSHANA: Yes.
 9 MR TIP SC: And then you see that there
 10 is a yellow line marking a road leading up to the vicinity
 11 of the stadium.
 12 MR GCILITSHANA: Yes, I could see.
 13 MR TIP SC: That's the Wonderkop stadium?
 14 MR GCILITSHANA: Yes, correct.
 15 MR TIP SC: And then there is, to the
 16 right of that there is a red line again indicating a road.
 17 You see that?
 18 MR GCILITSHANA: Yes, I could see.
 19 MR TIP SC: And then there is a little
 20 beacon showing the location of the NUM offices.
 21 MR GCILITSHANA: Yes, I could see.
 22 MR TIP SC: And to the left there is the
 23 koppie.
 24 MR GCILITSHANA: Yes, I could see.
 25 MR TIP SC: Now I just want to ask you

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1 whether you're in a position to confirm the relationship of
 2 these points, and in particular whether people marching
 3 from the LPD office to the stadium would at any time pass
 4 the NUM office.
 5 MR GCILITSHANA: No.
 6 MR TIP SC: I also want you to tell the
 7 Commission, please, there's been referring to the Karee
 8 Mine. Can you tell us where it is in relation to this
 9 photograph? Is it on it or off it?
 10 MR GCILITSHANA: I think that Karee Mine
 11 would be on the far left.
 12 MR TIP SC: Would it still be on this
 13 exhibit or off the page, as it were?
 14 MR GCILITSHANA: No, it won't be in this
 15 exhibit.
 16 MR TIP SC: In other words it's further
 17 to the left than is depicted here?
 18 MR GCILITSHANA: Correct.
 19 MR TIP SC: Whilst we're dealing with
 20 this topic, I just want to take you also to page 22 of that
 21 bundle, and it may best be done by reference to the
 22 enlarged copy. You will see there that there are entries
 23 for the 10th of August, the same day that we're speaking
 24 about. You'll see the date on the left-hand column.
 25 MR GCILITSHANA: Yes, I could see.

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1 MR TIP SC: And towards the top of the
 2 page you will see against the time of 6 o'clock that RDOs
 3 begin to gather at Wonderkop opposite the stadium.
 4 MR GCILITSHANA: Yes, I could see.
 5 MR TIP SC: And if you go down that long
 6 entry you will see the time of 8 o'clock in the morning
 7 where the group is noted as having started to march to LPD.
 8 MR GCILITSHANA: Yes, I could see.
 9 MR TIP SC: And if you go further down
 10 you will see that it is recorded by Lonmin Security at
 11 12:20, 20 minutes past noon, do you have the time?
 12 MR GCILITSHANA: Yes, I see.
 13 MR TIP SC: And there it's noted, "The
 14 mass dispersed. Management will not entertain their
 15 demands. Their view is to engage in work stoppage
 16 effective immediately." You see that?
 17 MR GCILITSHANA: Yes, I could see.
 18 MR TIP SC: And at 12:25 it's recorded
 19 that the mass is marching towards Wonderkop.
 20 MR GCILITSHANA: Yes, I could see.
 21 MR TIP SC: At 13:30 the security notes
 22 that the first group arrives at Wonderkop opposite the
 23 stadium.
 24 MR GCILITSHANA: Yes, I could see.
 25 MR TIP SC: 13:45, the mass and the

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1 police arrive at Wonderkop.
 2 MR GCILITSHANA: Yes, I could see.
 3 MR TIP SC: And 10 minutes later at 13:55
 4 security notes that the group dismissed from Wonderkop
 5 stadium. You see that as well?
 6 MR GCILITSHANA: Yes.
 7 MR TIP SC: And as is apparent from these
 8 entries by Lonmin Security, at no stage does this group go
 9 anywhere near NUM office.
 10 MR GCILITSHANA: That's correct.
 11 MR TIP SC: Now I want to go back, I'm
 12 still with your paragraph 39. We've noted what was
 13 recorded about NUM's attitude on the 8th of August. Was
 14 that opposition to the strike a consistent position on the
 15 part of NUM?
 16 MR GCILITSHANA: It was showing its
 17 opposition to unprotected strike.
 18 MR TIP SC: And did it also take the
 19 position that employees should in fact report for duty and
 20 that any demand should be channelled through the usual
 21 structures and processes?
 22 MR GCILITSHANA: That's correct.
 23 [14:22] MR TIP SC: Now I want to take the
 24 opportunity again, Mr Gcilitshana, whilst you're in the
 25 witness box, to take you to certain other aspects of the

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1 communications between the relevant persons at the time and
 2 I'm going to ask you to go to page 76. And so again I'm at
 3 that page, because of the funny sequence of emails, but
 4 what I'm interested in at this stage is the suggestion
 5 that's been made here that the whole of the 10th of August
 6 and the night of the 10th of August was entirely peaceful
 7 in the location of Lonmin.
 8 And the email that we see in the lower part of
 9 that page is from Mr Frank Russo-Bello, one of the senior
 10 managers –
 11 COMMISSIONER HEMRAJ: Isn't that page 74
 12 and 75, instead of 76?
 13 CHAIRPERSON: No, I think it's actually
 14 75 and 76. I think – they're going backwards as it were,
 15 but the first one of the sequence, I think is an original
 16 message from Frank Russo-Bello to Ian Farmer, 7:59 pm on
 17 the 10th of August, which starts halfway on our page 75 and
 18 concludes, as I see it, on page 76.
 19 MR TIP SC: Yes.
 20 CHAIRPERSON: And then the reply from Mr
 21 Farmer is near the top of that page, "My back is still bad.
 22 If you need me," he gives the telephone number in England,
 23 "as I have no cell phone signal." That seems to be the
 24 reply the following morning actually sent 9h19 am to Mr
 25 Russo-Bello by Mr Farmer. But the first email appears to

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1 be the one from Frank Russo-Bello to Mr Farmer at 7:59 pm
 2 on the 10th of August, is that correct?
 3 MR TIP SC: That's correct, Mr Chair,
 4 yes. It's always a problem to sequence them correctly, but
 5 that's the one that –
 6 CHAIRPERSON: The point it start on 75,
 7 it ends on 76 –
 8 MR TIP SC: It starts on 75.
 9 CHAIRPERSON: Now, what's the passage in
 10 it that you wish to refer us to specifically?
 11 MR TIP SC: I'm going to deal only with
 12 certain aspects of it.
 13 CHAIRPERSON: I assume that you're
 14 referring to the third paragraph of that email which begins
 15 – we haven't got the first few words, but I take it, "I
 16 assume you are aware of the sequence of events today.
 17 Pretty much all RDOs did not go underground, they got
 18 together at Wonderkop, then starting making their way to
 19 LPD, some 3 500 strong." Is that the passage you're
 20 referring to?
 21 MR TIP SC: That's correct. Mr Chair –
 22 CHAIRPERSON: "Security and SAPS
 23 eventually managed to," – I don't know what that word is,
 24 it's something "them at four way stop, but they pushed
 25 their way through eventually and made the LPD all very

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1 agitated," and so on. Is that it?"
 2 MR TIP SC: Yes, that's essentially the
 3 email, and I believe that I should just clarify that when I
 4 said that there had been a suggestion that the day and the
 5 evening of 10th of August 2012 had proceeded entirely
 6 peacefully, that certainly doesn't come from Lonmin
 7 management. That was the suggestion that was made right in
 8 the opening submissions on the part of AMCU and I think
 9 some of the families. So we're really dealing with that
 10 suggestion and the purpose of placing – drawing the
 11 Commission's attention to these emails is to show that it
 12 was certainly the understanding of Lonmin management, as
 13 well as that of NUM, that in fact there were a great number
 14 of events of intimidation during that period. That's the
 15 importance of it. Mr Gcilitshana, you're aware of that
 16 context? I take it that Mr Frank Russo-Bello is a person
 17 well known to you?
 18 MR GCILITSHANA: Yes, I know him.
 19 MR TIP SC: And the chairperson has
 20 referred already to the portion of the email that I've
 21 placed before you, which records that security and SAPS had
 22 managed to – well, to apparently to intervene at the four
 23 way stop, but that the marchers who were on their way to
 24 the LPD – had pushed their way through, and made it through
 25 to LPD. Do you see that in the second paragraph? The

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1 third paragraph rather of that email?
 2 MR GCILITSHANA: Which page again?
 3 MR TIP SC: 75
 4 MR GCILITSHANA: Okay, yes.
 5 MR TIP SC: And it is clear also from the
 6 same paragraph that it is recorded by Mr Russo-Bello that
 7 management had evidently continuously advised the strikers
 8 that this was an illegal strike and that they had prepared
 9 and issued them with a brief indicating the same. In other
 10 words, a notice warning them and warning them that they
 11 were in contravention of numerous issues and that they were
 12 already liable for severe disciplinary action and
 13 dismissal. Do you see all that? For completeness sake,
 14 dismissal would ensue if they did not report for work the
 15 next day.
 16 MR GCILITSHANA: Yes, I could see.
 17 MR TIP SC: And it is recorded also that
 18 Lonmin had applied for an urgent court interdict, which we
 19 got, he says, and served them with notification of this.
 20 MR GCILITSHANA: Yes, I could see.
 21 MR TIP SC: And, Mr Gcilitshana, it would
 22 – am I correct that you would have been aware of these
 23 developments at the time, because the application for that
 24 interdict was served on NUM also, is that correct?
 25 MR GCILITSHANA: Yes, we did receive.

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1 MR TIP SC: Then Mr Russo-Bello goes on
 2 to say, "They eventually dispersed and were escorted back
 3 to Wonderkop. Security was kept on full alert and we
 4 started receiving numerous reports from the ground that
 5 they were planning to disrupt the entire business tonight,"
 6 that is the night of the 10th of August, "and tomorrow,
 7 until we agreed to their demands."
 8 MR GCILITSHANA: Yes, I could see.
 9 MR TIP SC: And did NUM also receive
 10 indications and some reports of this nature at the time?
 11 MR GCILITSHANA: As far as I can recall,
 12 yes, but it was rumours.
 13 MR TIP SC: When NUM officials addressed
 14 the report back – the mass meeting on the 8th of August,
 15 did it set itself against this kind of conduct?
 16 MR GCILITSHANA: NUM indicated its
 17 position against the unprotected strike and any other
 18 action that may be against the law.
 19 MR TIP SC: Would acts that NUM is
 20 opposed to include acts of violence in and around the
 21 workplace and acts of intimidation?
 22 MR GCILITSHANA: That's correct.
 23 MR TIP SC: Then Mr Russo-Bello in the
 24 same email goes on to say, and this is evidently more or
 25 less at the time of the email, just before 8 o'clock in the

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1 evening of the 10th of August, he says, "We are now
 2 receiving reports of intimidation throughout the business
 3 and are attempting to deal with them swiftly and decisively
 4 before they escalate in numbers and violence."
 5 MR GCILITSHANA: Yes, I could see.
 6 MR TIP SC: He then notes in his report
 7 to Mr Farmer that, "It is contained to RDOs," – perhaps
 8 it's missing a word, "If it is contained to RDOs and they
 9 are not at work tomorrow, we will then pursue the
 10 appropriate process to give them an ultimatum and dismiss
 11 them if they don't return. A re-recruitment strategy,
 12 including criteria, is being prepared. If it escalates we
 13 have a bigger problem." Do you see that?
 14 CHAIRPERSON: I think the word contained
 15 is probably a mistake for confined.
 16 MR TIP SC: Yes, I'm sure it must have
 17 been intended to be confined. Do you see that, Mr
 18 Gcilitshana?
 19 MR GCILITSHANA: Yes, I could see, that's
 20 why we were against the unprotected strike. Those are the
 21 reasons.
 22 MR TIP SC: Then we go over the page to
 23 page 76, and I'm going to confine my question to you just
 24 in respect of the first paragraph, because that is what you
 25 know about, where it says, "The unions have been engaged,

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1 including at national level and NUM has been generally
 2 supportive indicating," – I think there must be a missing
 3 word here, "that they want to assist in resolving the
 4 issue."
 5 MR GCILITSHANA: Yes, I could see.
 6 MR TIP SC: And again I want to ask you
 7 whether that statement by Mr Russo-Bello about NUM's
 8 attitude correctly reflects what was indeed the approach of
 9 NUM at that time –
 10 MR GCILITSHANA: That's correct.
 11 MR TIP SC: Then I'm going to take you
 12 back a page to a second email, also from Mr Frank Russo-
 13 Bello also to Mr Ian Farmer, and that is the next morning,
 14 the morning of the 11th of August at 9:43.
 15 MR GCILITSHANA: Which page exactly?
 16 MR TIP SC: Page 74 of the bundle.
 17 MR GCILITSHANA: Okay.
 18 MR TIP SC: There are two emails there,
 19 the one is at 9:25 where he gives an update to Mr Farmer
 20 and basically says that they're still monitoring the
 21 situation and they will remain on full alert.
 22 MR GCILITSHANA: Yes, I could see.
 23 MR TIP SC: Then the email below that is
 24 at 9:43, and I'm going to just deal with the second
 25 paragraph, again because this records the understanding of

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1 Lonmin in respect of what took place at the NUM office.
 2 And he says there, "We are currently dealing with a
 3 confrontation at Wonderkop between two large contingents,
 4 NUM and what appears to be large contingent of possibly
 5 AMCU supporters which came out of the informal settlement.
 6 There were shots fired and two people injured. One of them
 7 our employee. Both stable and being taken to hospital."
 8 MR GCILITSHANA: Yes, I could see.
 9 MR TIP SC: Now, I'm aware that you were
 10 not in the vicinity of the NUM office on the 11th of August
 11 at all.
 12 MR GCILITSHANA: Yes, I was not.
 13 MR TIP SC: Is it correct that you have
 14 participated in the investigations that have been conducted
 15 by, amongst others, the legal team of NUM in relation to
 16 what took place there?
 17 MR GCILITSHANA: Yes, that's correct.
 18 MR TIP SC: And on the strength of the
 19 result of those investigations, are you able to confirm to
 20 the Commission that they reflect that two persons were in
 21 fact injured there, but that there were no fatalities?
 22 MR GCILITSHANA: That's correct.
 23 MR TIP SC: I'm going to come back to
 24 that a little more fully later, but I just wanted to couple
 25 that item of evidence to the email of Mr Russo-Bello, where

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1 precisely the same thing is reflected. Now, I'd like you
 2 to go on to paragraph 40, if you would, Mr Gcilitshana, of
 3 your statement. On the 10th of August, is it correct that
 4 NUM convened a mass meeting at the Wonderkop Hostel?
 5 MR GCILITSHANA: That's what the
 6 leadership have reported to us, correct.
 7 [14:42] MR TIP SC: Yes. And again direct
 8 evidence will be presented, Mr Chair, that it's part of the
 9 narrative, and did you also learn that the same message had
 10 been conveyed by NUM membership to those who attended the
 11 meeting, namely that NUM did not support the unprotected
 12 strike, that workers should report for duty, and in the
 13 event that they experienced any difficulties doing so, they
 14 should report to the NUM office at WPL for assistance.
 15 MR GCILITSHANA: Yes, that's what had
 16 been reported to us.
 17 MR TIP SC: Did you hear also that NUM
 18 had in addition visited the nearby village and hostels and
 19 conveyed the same message to persons?
 20 MR GCILITSHANA: Yes, correct. That's
 21 what had been reported.
 22 MR TIP SC: In paragraph 41, you deal
 23 there with the events during the 9th and the 10th and 11th
 24 of August. Again you were not present in Lonmin during
 25 that night. Is that correct?

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1 MR GCILITSHANA: That's correct.
 2 MR TIP SC: Now I want to take you to a
 3 few portions again of the bundle and to records made by
 4 Lonmin Security. These are the observations that they made
 5 in respect of what was taking place in the course of the
 6 evening and what NUM officials in the vicinity were doing,
 7 and please, if you would look firstly at page 79, and
 8 that's the transcript of a brief video at, I think it's
 9 shortly after 5 o'clock in the morning of the 11th of
 10 August and the Lonmin security officer records, "A group of
 11 people waiting for buses," that's with NUM, "apparently NUM
 12 persons having discussions with security about people
 13 escorting employees to shaft via foot."
 14 MR GCILITSHANA: Yes, I could see.
 15 MR TIP SC: And does that accord also
 16 with the reports you received that that is indeed what NUM
 17 officials and members were doing, was namely to escort
 18 people to work in that period?
 19 MR GCILITSHANA: Yes, they have confirmed
 20 it.
 21 MR TIP SC: If you go on with your
 22 statement in paragraph 41, you say there that, "During the
 23 evening of 10 August 2012 and the early hours of 11 August
 24 2012, NUM assisted numerous employees with transport so
 25 that they could report to their respective workplaces,

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1 despite widespread intimidation to those employees who
 2 wished to report for duty." Now the portion that I've just
 3 dealt with, with you, is part of that, and you will see in
 4 your statement a number of other entries are noted in
 5 footnote 29. They're all Lonmin Security log entries for
 6 the 10th of August.
 7 MR GCILITSHANA: Yes, I could see.
 8 MR TIP SC: I don't propose to look at
 9 each of those five, but there are two additional entries,
 10 Mr Chair, that I'll take Mr Gcilitshana through just by way
 11 of illustration. That is in the early hours of the 11th of
 12 August, the first one on page 23 at 2:19, that is part of
 13 the enlarged copy, fortunately. Do you see that? I'll
 14 just read it, Sir. You have it there, Mr Gcilitshana?
 15 MR GCILITSHANA: Yes.
 16 MR TIP SC: And what is noted there is
 17 that R Beukes reported that NUM members informed him that
 18 they will go through the village and ask the workers to go
 19 to work and he, Beukes, must do the same thing inside the
 20 hostel.
 21 MR GCILITSHANA: Yes.
 22 MR TIP SC: And then just on the other
 23 side of the picture, at 4:37 it's noted there that PW and
 24 GK, who we assume are Lonmin security officers, that they
 25 proceed to Wonderkop to check on the situation as they

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1 heard that some people are intimidating the workers. Now
 2 bearing in mind that you were not there, I'm not going to
 3 pursue that further with you, Mr Gcilitshana, and I'm going
 4 to ask you to go on with paragraph 42 of your statement,
 5 which concerns NUM members particularly, and it's recorded
 6 there that "During the evening of 10 August two NUM members
 7 were assaulted near the NUM Western Platinum branch
 8 office." That's the NUM office.
 9 MR GCILITSHANA: Yes, I could see.
 10 MR TIP SC: That's also on page 23, if
 11 you go to 8 o'clock that evening, 20:00.
 12 MR GCILITSHANA: Yes, I could see.
 13 MR TIP SC: And it's noted there that two
 14 workers were assaulted near the NUM office at Wonderkop on
 15 their way to work.
 16 MR GCILITSHANA: Yes, I could see.
 17 MR TIP SC: And if you go to the entry on
 18 16:30 on the same day, 10th of August, also on page 23, you
 19 will see – do you have that?
 20 MR GCILITSHANA: Yes, I could see.
 21 MR TIP SC: You'll see the entry made by
 22 security there, "Intimidation at Wonderkop NUM offices,
 23 complainant T Masilo of number 4 shaft," the company number
 24 is given, case book number is given. You see that?
 25 MR GCILITSHANA: Yes, I could see.

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1 MR TIP SC: There were also reports,
 2 whether correctly or not, that some strikers had been fired
 3 at and shot by Lonmin security personnel. I'm not going to
 4 take you into the detail, but the reference there is again
 5 a document in the bundle at footnote 32, page 80 to 82. Mr
 6 Gcilitshana, on the same basis I'm going to again use the
 7 opportunity of you being here to draw attention to certain
 8 other Lonmin entries on the 11th of August, concerning the
 9 NUM office, and we do not lose sight of the fact that you
 10 were not there, and that is that several hundred of the
 11 unprotected strikers that gathered near the Wonderkop
 12 stadium, and that they intended marching to the NUM offices
 13 at WPL.
 14 MR GCILITSHANA: Yes, I could see.
 15 MR TIP SC: And in that regard, if you
 16 would look at page 24 of the bundle, it's again if you've
 17 got the enlarged version that would be the simplest, or
 18 easiest to read. Have you got it, Mr Gcilitshana?
 19 MR GCILITSHANA: What is the entry again?
 20 MR TIP SC: It's page 24.
 21 MR GCILITSHANA: Yes?
 22 MR TIP SC: And the entry is against 8:39
 23 in the morning.
 24 MR GCILITSHANA: Yes, I could see.
 25 MR TIP SC: And what is recorded there

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1 is, "A mob of at least 300 gather around Wonderkop,
 2 threaten to burn down the NUM office."
 3 MR GCILITSHANA: Yes.
 4 MR TIP SC: And at 14:00, at 2PM that
 5 day, if you just go down the page a bit, you'll see the
 6 entry there about six or seven lines down at that time,
 7 "This morning, Saturday, 2012-08-11, a mob was noted and
 8 information was that they want to torch NUM offices and
 9 Lonmin Kombi that NUM uses. There was somewhat a faction,"
 10 it says, but I suppose some friction or whatever that
 11 means, "between two groups. Gunshot and two people were
 12 injured."
 13 MS BARNES: Chair, I don't want to
 14 interrupt unnecessarily. I know that there was an
 15 indication that there would be some hearsay led, but this
 16 appears to be double hearsay, that this particular witness
 17 was of course not present, is now commenting in relation to
 18 somebody else who heard somebody else say something, and
 19 Chair, I just state for the record that we have a
 20 difficulty with the sort of double hearsay evidence as it's
 21 being led.
 22 CHAIRPERSON: I take it the purpose of
 23 this is to put the whole narrative before us as a single
 24 narrative and then there will presumably be evidence
 25 backing up some of these statements, and it's conceded that

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1 a good deal of what this witness is saying, is hearsay, and
 2 from the nature of things it may as you say be double
 3 hearsay, we may even if we're patient get some triple
 4 hearsay, but I'll allow it for the moment. We'll evaluate
 5 it later, but your objection is noted.
 6 MS BARNES: Thank you, Chair.
 7 MR TIP SC: Mr Chair, I may just confirm
 8 that this is certainly the incident about which direct
 9 evidence will be led. Why I'm taking the opportunity with
 10 Mr Gcilitshana to refer to some security log entries is
 11 simply that they are there, they are contemporaneous, they
 12 are made not by NUM but by Lonmin Security, and they have a
 13 value in that sense. If there is going to be a dispute
 14 about the reliability or authenticity of those entries,
 15 that can be dealt with.
 16 CHAIRPERSON: We'll deal with that when
 17 we get there, but while we're on these entries I just want
 18 to refer you to one entry that you referred to. That's the
 19 entry at 14:00 on the 11th of August, page 24, 11th of
 20 August, there's a series of entries under the time 14:00.
 21 In fact there are two 14:00 groups of entries but I'm
 22 referring to the first group. The last line of the first
 23 group says there was somewhat a faction between two groups,
 24 gunshots and two people were injured. You suggested the
 25 gunshot and injury of two people probably was, the word was

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1 "friction," a rather strong form of friction I would have
 2 thought. If you refer back, however, to the previous page,
 3 you will see an entry on page 23, also the 11th of August,
 4 08:00, the third line of that where there's a reference to
 5 – this is Joe Mokwadi, presumably a report he made, "Fear
 6 of NUM trying to assist and protect its members will lead
 7 to NUM taking law into own hands and faction fight between
 8 rival unions," and I would suggest that that word "faction"
 9 that we were looking at on page 24 is really reference to
 10 faction fight. That seems to be governed, would be
 11 confirmed by what appears later, gunshot, two people
 12 injured. To describe that as friction would be a
 13 masterpiece of understatement.

14 MR TIP SC: Yes. Mr Chair, in the light
 15 of the previous use of the same word, I entirely accept
 16 that that's intended to be faction.

17 CHAIRPERSON: Yes, and on that note of
 18 acceptance, is it appropriate for us to take the tea
 19 adjournment?

20 MR TIP SC: Certainly.

21 CHAIRPERSON: We will adjourn for tea.
 22 Before we take the tea adjournment, Mr Mpofo wants to say
 23 something.

24 MR MPOFU: Yes, Chairperson, I wanted to
 25 make an unconventional request about the break, whether we

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1 couldn't instead finish a bit earlier instead of taking the
 2 break because there is a matter –

3 [15:02] CHAIRPERSON: The difficulty I have is I
 4 fear that most people are finding it rather – in the
 5 absence of air-conditioning, in reference to a number of
 6 entries, finding it very difficult to stay awake and
 7 concentrate at the same time.

8 MR MPOFU: Yes, Sir.

9 CHAIRPERSON: Some people may be able to
 10 do that, maybe you can, but I can't. So, we will take the
 11 adjournment, I am mindful however of a certain historic
 12 event that is taking place later today. We will adjourn at
 13 4 o'clock strictly.

14 MR MPOFU: Thank you, Chair.

15 CHAIRPERSON: Which by my calculation
 16 gets us back to Pretoria about 5.

17 MR MPOFU: Yes, as long as the event is
 18 taken into account.

19 [COMMISSION ADJOURNS COMMISSION RESUMES]

20 [15:20] CHAIRPERSON: Mr Mpofo, I have an
 21 important job for you. Would you be the timekeeper?

22 MR MPOFU SC: Yes, I will.

23 CHAIRPERSON: If I'm not aware it's 4
 24 o'clock, would you draw it my attention?

25 MR MPOFU SC: Yes Sir, I will remind you

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1 at five minutes to 4.

2 CHAIRPERSON: There will be no injury
 3 time sorry, can I rely on you?

4 MR MPOFU SC: Yes, Chair.

5 CHAIRPERSON: On this point at least.

6 MR MPOFU SC: 100 %, today I will be
 7 totally -

8 CHAIRPERSON: And every day. You are
 9 still under oath. Mr Tip, I believe you have some more
 10 questions.

11 MR TIP SC: Thank you, Mr Chair. Mr
 12 Gcilitshana, we are going to accelerate a little, not dwell
 13 on entries in the occurrence books unless we particularly
 14 need to. I want to take you on to paragraph 43 and
 15 paragraph 44, now you deal there with the events at the NUM
 16 office on 11 August 2012, correct?

17 MR GCILITSHANA: That's correct.

18 MR TIP SC: I'm going to give effect to
 19 that fact that you were not there and that the commission
 20 has already heard a fair amount of evidence and will hear
 21 further evidence on what took place there. I'm going to go
 22 directly to a particular aspect of that, some minutes, some
 23 while before we adjourned for tea, I dealt with a topic of
 24 the investigations that had been made on behalf of NUM and
 25 I want to deal particularly with the subject of the

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1 dockets. Those, Mr Chair, were placed before the
 2 commission as XX5 and XX6. Do you have those there?

3 MR GCILITSHANA: Got it.

4 MR TIP SC: Now again, Mr Gcilitshana,
 5 I'm not going to take you into the content of these
 6 dockets, save to ask whether you have had the opportunity
 7 to look at them and to establish that these are dockets
 8 that have been opened by the SAPS in respect of attempted
 9 murder charges by the two persons who were evidently
 10 injured by gunshots in the vicinity of the NUM office on
 11 the 11th of August 2012. Can you confirm that?

12 MR GCILITSHANA: Correct.

13 MR TIP SC: And also that within the
 14 docket it is apparent that both of these complainants were
 15 taken to the Andrew Saffy Hospital for treatment, can you
 16 confirm that?

17 MR GCILITSHANA: Yes.

18 MR TIP SC: Now so much for those dockets
 19 for the time being, is it also so that the NUM legal team
 20 has made every effort to establish whether there are any
 21 other dockets or any other indications that persons were
 22 killed in the vicinity of NUM office?

23 MR GCILITSHANA: Yes, I know.

24 MR TIP SC: And that nothing whatsoever
 25 has been located to indicate that such took place?

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1 MR GCILITSHANA: Yes.

2 MR TIP SC: Now you deal also briefly

3 with the 12th of August and again that is a matter about

4 which you have no direct knowledge and I'm not going to

5 dwell on that, is that correct?

6 MR GCILITSHANA: Yes.

7 MR TIP SC: What I am going to do is to

8 take you through to paragraph 45 of your statement, because

9 this is where you personally became involved in the

10 developments at Lonmin. This deals with the period

11 subsequent to 12 August 2012 and you say that Lonmin had

12 then established a central security operation centre. "I

13 regularly attended security briefings at the centre at

14 which we consistently urged Lonmin and the SAPS to increase

15 law enforcement measures to prevent acts of intimidation

16 and violence directed against non-strikers."

17 MR GCILITSHANA: That is correct.

18 MR TIP SC: Okay.

19 MR GCILITSHANA: Although I was not

20 present in all the meetings.

21 MR TIP SC: That's correct, Mr

22 Gcilitshana, but at the ones that you were and in respect

23 of the discussions with your colleagues that you were

24 involved in, this position set out in your statement was

25 indeed the attitude of NUM at that time?

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1 MR GCILITSHANA: Correct.

2 MR TIP SC: Then in the next paragraph

3 you record that violence and intimidation continued in the

4 ensuing days. Again there are some Lonmin security log

5 entries, I'm not going to turn to them, merely to record

6 that they are present in your statement. But I want to go

7 onto the remainder of your paragraph 47 where you deal with

8 the deaths of certain NUM members. I will read in respect

9 of the first, on 12 August 2012 a NUM member, "Tupelo

10 Mabebe, was assaulted and stabbed near the K4 shaft at

11 Karee mine. He later died in hospital."

12 MR GCILITSHANA: That's what we got from

13 the briefing.

14 MR TIP SC: Now the briefing is at the

15 Lonmin security centre?

16 MR GCILITSHANA: At the Lonmin security

17 centre.

18 MR TIP SC: Yes, and similarly I think,

19 "on 13 August 2012 the body of another NUM member,

20 Thembelakhe Mati was found near the railway line in the

21 vicinity of the EPO hostel. He had five gunshot wounds."

22 MR GCILITSHANA: That's correct.

23 MR TIP SC: And did that also present

24 itself at the sc briefings?

25 MR GCILITSHANA: That's correct.

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1 MR TIP SC: "On the next day 14 August

2 2012, another NUM member and shop steward Isaiah Twala was

3 found brutally murdered near the koppie where the strikers

4 had gathered. The bleached skull of an animal had been

5 placed on his torso."

6 MR GCILITSHANA: Yes, that is briefing

7 from the security.

8 MR TIP SC: Now as an addition to your

9 statement on that day, on 14 August 2012, did you attend a

10 meeting convened by NUM at Eastern Platinum?

11 MR GCILITSHANA: The mass meeting yes,

12 correct.

13 MR TIP SC: And what was conveyed by NUM

14 to the persons, the workers present there?

15 MR GCILITSHANA: It was again cautioning

16 the workers for participating in unprotected strike, also

17 cautioning the workers on the issue of violence that was

18 prevailing and intimidation at that point in time and also

19 giving an update, especially with the ultimatum because in

20 serving this ultimatum that workers will be dismissed, at

21 that time management agreed to extend the ultimatum, also

22 giving that update.

23 MR TIP SC: Did you speak at that

24 meeting?

25 MR GCILITSHANA: Yes, I did.

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1 MR TIP SC: And were the matters that you

2 have just identified conveyed by you personally?

3 MR GCILITSHANA: I conveyed them, also

4 the regional office bearer because I was with the deputy

5 Chairperson of the region Elliot Maloyi and the regional

6 coordinator Mahlatso Chetty and the branch leadership.

7 MR TIP SC: How well attended was that

8 meeting?

9 MR GCILITSHANA: There were many, I can't

10 tell the figure but there were many.

11 MR TIP SC: Then I'm going to move on to

12 paragraph 48. You mentioned the fact that Mr Senzeni

13 Zokwana, the President of NUM attended the mine on 12

14 August and again 15 August. There is a statement from him

15 and he will give evidence in this commission, correct?

16 MR GCILITSHANA: That's correct.

17 MR TIP SC: Mr Gcilitshana, that

18 concludes the events up to the 16th of August 2012. You

19 were not anywhere in the vicinity of Lonmin on that fateful

20 day, were you?

21 MR GCILITSHANA: I was in Lonmin at that

22 day, yes I was.

23 MR TIP SC: On which day?

24 MR GCILITSHANA: On the 16th.

25 MR TIP SC: Yes, and where were you?

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1 MR GCILITSHANA: We had a meeting in the
 2 morning, a briefing session at LPD then we left.
 3 MR TIP SC: Yes, thank you for that
 4 detail. But once, subsequent to your leaving the events
 5 that we have heard about in this commission and which are
 6 still being explored at the koppie took place?
 7 MR GCILITSHANA: Yes, we got the reports
 8 that there were incidents in the koppie.
 9 MR TIP SC: Just to be clear, you were no
 10 longer in the vicinity of Lonmin when those events
 11 unfolded?
 12 MR GCILITSHANA: No, we left LPD. I was
 13 in Middle Crown. When I said we left, we left LPD we went
 14 for Middle Kraal.
 15 MR TIP SC: Now what time did you leave
 16 Middle Kraal and leave Lonmin all together?
 17 MR GCILITSHANA: I think it was after 5
 18 o'clock.
 19 MR TIP SC: That's the afternoon of the
 20 16th of August?
 21 MR GCILITSHANA: Yes.
 22 MR TIP SC: And where, where at Middle
 23 Kraal were you?
 24 MR GCILITSHANA: We had a meeting with
 25 our shop steward at Solidarity offices.

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1 MR TIP SC: And were you aware at all of
 2 the events that were unfolding in relation to the shootings
 3 that took place later that day at the koppie?
 4 MR GCILITSHANA: We heard about that,
 5 that there were people that were killed.
 6 MR TIP SC: Was that after the shootings?
 7 MR GCILITSHANA: That is correct.
 8 MR TIP SC: Now I want to deal finally
 9 with certain of the events after the 16th -
 10 COMMISSIONER HEMRAJ: Sorry, Mr Tip?
 11 MR TIP SC: Yes?
 12 COMMISSIONER HEMRAJ: Can the witness
 13 perhaps tell us where Middle Kraal is in relation to
 14 Wonderkop?
 15 MR TIP SC: Yes, Mr Gcilitshana, perhaps
 16 can you describe what Middle Kraal is and where it is?
 17 Would it be on PP1?
 18 MR GCILITSHANA: It does not but it's
 19 very close, it's before you reach LPD.
 20 MR TIP SC: Is it, do I understand that
 21 it's not -
 22 MR GCILITSHANA: Down the next -
 23 MR TIP SC: On the photographs, but lower
 24 than the bottom edge of the photograph, some distance away?
 25 MR GCILITSHANA: Yes, some distance away,

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1 yes.
 2 MR TIP SC: Middle Kraal is that, is that
 3 part of Western Platinum or is that a different division?
 4 MR GCILITSHANA: It's in Western
 5 Platinum.
 6 MR TIP SC: Right, now after the 16th of
 7 August you have dealt with certain events that took place
 8 in relation to attempts to restore peace in the Marikana
 9 area?
 10 MR GCILITSHANA: That's correct.
 11 MR TIP SC: Now I want to deal firstly
 12 with the subheading negotiations around the peace accord
 13 and settlement and you deal with that from paragraph 50 of
 14 your statement. I will read these paragraphs and you can
 15 confirm them if they are correct. "On 24 August 2012, the
 16 Minister of Labour facilitated a stakeholder meeting at the
 17 Rustenburg civic centre in order to seek measures to
 18 resolve the protracted unprotected strike and violence.
 19 The meeting was attended by representatives from the
 20 Department of Labour, the CCMA Lonmin management, NUM
 21 including yourself and Solidarity, UASA and NACTU, correct?
 22 [15:40] MR GCILITSHANA: That's correct.
 23 MR TIP SC: "And it was agreed by
 24 everybody at this meeting that it was imperative that a
 25 resolution to the problem be found, and in this regard the

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1 parties agreed amongst others, that a peace accord should
 2 be signed by all stakeholders."
 3 MR GCILITSHANA: That's correct.
 4 MR TIP SC: "And at a further meeting
 5 held on 29 August 2012, Lonmin management presented a draft
 6 peace accord for discussions. The discussions concerning
 7 the peace accord were facilitated by the Department of
 8 Labour and the CCMA, with representatives from the South
 9 African Council of Churches leading the process. Lonmin
 10 management had also offered to pay the strikers the
 11 equivalent of one week's salary if they returned to work by
 12 Monday, 10 September 2012. A delegation representing the
 13 strikers was also present in this meeting and they agreed
 14 to take the proposal back to the strikers for discussion."
 15 MR GCILITSHANA: That's correct.
 16 MR TIP SC: Were you present at that
 17 meeting also?
 18 MR GCILITSHANA: Yes.
 19 MR TIP SC: And were you present at the
 20 meeting on the next day, on 30 August 2012?
 21 MR GCILITSHANA: Yes.
 22 MR TIP SC: On that day you say the
 23 delegation from the strikers stated that the offer from
 24 Lonmin management was rejected. The parties continued
 25 their discussions on the wording of the police accord.

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1 MR GCILITSHANA: Correct.

2 MR TIP SC: "On 5 September 2012, the

3 peace accord was signed by all the parties with the

4 exception of AMCU and the strikers' delegation who refused

5 to sign it. The parties who signed the peace accord

6 committed themselves unconditionally to engage to eliminate

7 violence and the violation of rights of all stakeholders.

8 They endorsed a shared vision of peace and stability and

9 committed their respective organisations to actively work

10 towards a condition of sustainable peace. In addition,

11 Lonmin committed itself to negotiating the wage demand of

12 12 500 as soon as the workers terminated the unprotected

13 strike and returned to work."

14 MR GCILITSHANA: That's correct.

15 MR TIP SC: Paragraph 55. "Although

16 NUM's position throughout the strike was that workers

17 should return to work and channel their grievances and

18 demands through normal collective bargaining structures and

19 processes, we actively participated in the negotiations

20 that led to the signing of the peace accord, and I and

21 other NUM representatives engaged with the strikers'

22 delegation and provided whatever other assistance was

23 required by them."

24 MR GCILITSHANA: That's correct.

25 MR TIP SC: And paragraph 56. "In the

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1 meantime the strike and the associated violence and

2 intimidation continued unabated however. On 11 September

3 2011" (that should be 2012) "the body of another NUM

4 members, Dumisane Ntinti was found near the koppie where

5 the strikers had gathered. He had multiple stab wounds."

6 Did you hear about that?

7 MR GCILITSHANA: Yes, that's correct,

8 that's what we got from the security briefing.

9 MR TIP SC: And finally the topic of the

10 wage negotiations, paragraph 57. "On 13 September 2012 the

11 parties commenced negotiations concerning the strikers'

12 wage demands. Again the process was facilitated by the

13 CCMA and a delegation led by Chief Babikile Holomisa joined

14 the negotiations together with the SACC as observers."

15 MR GCILITSHANA: That's correct.

16 MR TIP SC: In paragraph, "On 18

17 September 2012, the parties signed the wage agreement as an

18 addendum to the two year wage agreement signed in December

19 2011 between NUM and Lonmin. The addendum was signed by

20 Lonmin, AMCU, NUM, Solidarity, UASA and the delegation

21 representing the strikers."

22 MR GCILITSHANA: That's correct.

23 MR TIP SC: Paragraph 59. "As with the

24 negotiations concerning the peace accord, NUM had actively

25 participated in the negotiations concerning the strikers'

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1 demands, in order to ensure that a solution to the

2 protracted violent unprotected strike was found. I had

3 also provided some assistance to the strikers' delegation

4 with certain issues that they did not attend, particularly

5 with regard to the figures relating to the actual wage

6 proposals made during the negotiations."

7 MR GCILITSHANA: That's correct. I must

8 also indicate that when, at times when the Reverend, who

9 used to be interpreter for the delegation, when he is not

10 able or I will relieve him as an interpreter.

11 MR TIP SC: I may not have heard, the

12 Reverend, you are talking to Bishop Seoka, are you?

13 MR GCILITSHANA: No there's another one,

14 I've just forgot the name, who used to be the interpreter.

15 MR TIP SC: And finally, in paragraph 60,

16 you say, the following, Mr Gcilitshana. "I conclude this

17 statement on a note of sadness. Mr Dolovoyo Bongo, to whom

18 I have referred above, was murdered on 5 October 2012. He

19 would have made a material contribution as a witness in

20 these proceedings."

21 MR GCILITSHANA: That's correct.

22 MR TIP SC: Mr Chair, thank you, that

23 completes the evidence-in-chief.

24 CHAIRPERSON: Mr Budlender, I understood

25 you were going to cross-examine first. Are you in a

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1 position to commence, or would you wish to begin tomorrow

2 morning?

3 MR BUDLENDER: I am in a position to

4 commence, Chairperson, I am in your hands. I shan't be

5 long, but I shan't finish by four o'clock.

6 CHAIRPERSON: Well, in the circumstances,

7 I think I would incur the grave displeasure of Mr Mpofu if

8 I didn't adjourn now. The Commission will adjourn until

9 09:30 tomorrow morning.

10 [COMMISSION ADJOURNED]

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<p style="text-align: center;">A</p> <p>abbreviate 3805:6 able 3754:23 3770:4 3772:13 3782:8 3800:6 3808:4,21 3820:23 3837:19 3846:9 3859:10 absence 3846:5 academic 3748:4 accelerate 3847:12 accept 3812:1 3822:22 3845:15 acceptance 3845:18 access 3795:25 accommodation 3785:23 accord 3839:15 3855:12 3856:1,6,7 3856:25 3857:3,5,20 3858:24 account 3806:15 3810:6 3814:3 3846:18 achievable 3804:17 achieved 3796:25 3812:16,22,24 3813:23 3823:25 achievement 3802:23 3816:8 act 3751:19 3757:4 3770:12 3771:23 action 3779:11 3783:3 3793:9 3816:16 3818:20 3821:25 3833:12 3834:18 active 3756:23 actively 3857:9,19 3858:24 activities 3792:1 acts 3834:19,20,21 3849:15 actual 3746:13 3859:5 AD 3751:24 add 3825:6 added 3800:7 addendum 3858:18,19 adding 3824:25 addition 3766:3 3771:5 3788:13 3838:18 3851:8 3857:10 additional 3756:16 3761:4 3771:1 3776:5 3789:19 3798:8 3822:22 3840:9 address 3744:1 addressed 3809:20 3812:19 3816:11 3818:11 3823:19 3834:13 addresses 3817:19 adequately 3764:3,5 adjourn 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