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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 48 14 FEBRUARY 2013 PAGES 5225 TO 5340

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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



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1 [PROCEEDINGS ON 14 FEBRUARY 2013]
 2 [09:47] CHAIRPERSON: The Commission resumes. Mr
 3 Zokwana, you're still under oath. Mr Tip, you were going
 4 to re-examine but before you re-examine, my colleague Adv
 5 Tokota wishes to ask your, ask the witness some questions.
 6 SENZENI ZOKWANA (CONTD):
 7 COMMISSIONER TOKOTA: Good morning, sir.
 8 Subject to your answers, I only have two questions. I
 9 don't know if you have the transcript of the video clip of
 10 the 13th of August 2012, it's QQ3?
 11 MR ZOKWANA: No, I don't have.
 12 CHAIRPERSON: Perhaps someone can have a
 13 copy to show the witness.
 14 MR MABUYAKHULU: QQ2 I do have, QQ3 I
 15 don't.
 16 COMMISSIONER TOKOTA: Do you have that
 17 thing which says "Video," which says "Footage of Lonmin
 18 workers singing" – have you got that?
 19 MS PILLAY: Chair, for the purposes of
 20 the record, I think the exhibit is QQ2 and not QQ3.
 21 MR ZOKWANA: I've got QQ2.
 22 COMMISSIONER TOKOTA: Alright, is it
 23 "Footage of Lonmin workers singing?"
 24 MR ZOKWANA: Yes, yes, I have got that.
 25 COMMISSIONER TOKOTA: Where it says

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1 [African language], have you got that?
 2 MR ZOKWANA: The one I'm having gives you
 3 two [inaudible] I mean [African language].
 4 CHAIRPERSON: Ms Pillay, the document
 5 we've got is QQ3 and it starts –
 6 MR ZOKWANA: It's not the same one then.
 7 CHAIRPERSON: "Footage of Lonmin workers
 8 singing."
 9 MR ZOKWANA: QQ2.
 10 CHAIRPERSON: And then there's a passage
 11 in isiXhosa which Adv Tokota read out and then it says,
 12 "They do know us, they do know that will kill the boers."
 13 Then second song and – is that the one?
 14 COMMISSIONER TOKOTA: [African language]
 15 CHAIRPERSON: And then that's translated,
 16 "Our rights, we are fighting for our rights" and then
 17 there's a third song which I won't read. Then a Lonmin
 18 worker says, "What we are asking from you is to go to a
 19 place where we live." And then at the foot of the page
 20 it's clear that General Mpmembe is speaking to Lonmin
 21 workers and at the foot of the page it says, "Transcript
 22 Karee 13/08/2012 01." That's the document that we're
 23 referring to.
 24 MS PILLAY: Chair, in terms of my exhibit
 25 list we don't have an exhibit QQ3 and if memory serves, I

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1 think it was Mr Ntsebeza tried to enter it as an exhibit
 2 and then later withdrew it as an exhibit. So it's not
 3 officially an exhibit. What we do have is QQ2 which is the
 4 transcript of ZZ1.
 5 CHAIRPERSON: No, Mr Tokota wants to
 6 question the witness specifically about something on this
 7 document. If it's not an exhibit yet, then it will have to
 8 be one. Have you got copies of that on your computer which
 9 you can show the witness? I was looking at Adv Pillay, let
 10 me ask the witness. Have you now got a copy of that
 11 document, Mr Zokwana? Mr Zokwana, you have got a copy of
 12 the document, have you?
 13 MR ZOKWANA: A copy, yes –
 14 CHAIRPERSON: Right, okay. Then we can
 15 carry on. Mr Zokwana can start answering his questions and
 16 we have to hand, we have to mark it QQ which – QQ3, which
 17 it has originally been marked and then been withdrawn.
 18 We've now remedied that omission and Mr Tokota can now ask
 19 his question.
 20 COMMISSIONER TOKOTA: The only part I
 21 want to ask you is that one concerning the Xhosa words and
 22 then I want to take an advantage of you being a Xhosa, I'm
 23 also a Xhosa – you are a Xhosa-speaking person, not so?
 24 MR ZOKWANA: Yes, yes I am.
 25 COMMISSIONER TOKOTA: You were asked by

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1 Mr Semenya about the clapping together of the weapons.
 2 MR ZOKWANA: Yes.
 3 COMMISSIONER TOKOTA: Whether that is a
 4 traditional thing and you said no, that's not a traditional
 5 way of singing. Now what I want to – this is a song which
 6 was sung by these people and it says, [Xhosa words].
 7 MR MAHLANGU: That is how you are
 8 hardening your balls, my boy, you will never come right.
 9 COMMISSIONER TOKOTA: According to the
 10 translation, that's where I want you to assist me now. It
 11 says, "You are hardening your balls," testes, I think it
 12 should be testicles perhaps.
 13 MR ZOKWANA: Yes.
 14 COMMISSIONER TOKOTA: You will never come
 15 right. Are you in a position perhaps to assist us in
 16 interpreting that, those words, the Xhosa words – [repeats
 17 Xhosa words].
 18 MR ZOKWANA: Yes, I will try although in
 19 the trade union movement we don't sing such songs. In our
 20 culture there will be cultural events that people attend –
 21 [Xhosa words] – maybe such a language would be used in
 22 those forums for those particular audiences. Even to
 23 mention those words is not an easy thing to do in Xhosa
 24 because those are kind of words you don't normally use but
 25 it would seem to me to be meaning, as an instruction, that

1 harden yourself for the coming occasion if [inaudible]
 2 you're not going to be able to withstand what you are
 3 dealing with.
 4 COMMISSIONER TOKOTA: From what you are
 5 saying would I be then correct to say that what you are
 6 actually saying is, you say be strong, otherwise you're not
 7 going to succeed?
 8 MR ZOKWANA: Yes, of course. It means
 9 that there is a belief in people that you must have balls –
 10 and I want to appeal to women not to take this as my way of
 11 speaking, I'm just trying to explain the particular context
 12 – therefore meaning that you are man enough to withstand
 13 any environment, so be strong and be prepared.
 14 COMMISSIONER TOKOTA: Thank you very
 15 much. The next question I want to check with you, in your
 16 experience as a unionist, taking into account that Lonmin
 17 had obtained an interdict on the 10th of August 2012, regard
 18 being had to the incidents that had taken place on the 11th,
 19 13th, could Lonmin have dismissed those illegal strikers
 20 before the 15th or even the 16th for that matter, as a
 21 result of this?
 22 MR ZOKWANA: Yes, the company could have
 23 dismissed them if there were no opposing argument by a
 24 particular law firm to show reasons why that interdict
 25 should not be effected.

1 CHAIRPERSON: Though they had the legal
 2 right to dismiss the people who were engaging in an
 3 unprotected strike, we know they didn't do so at that stage
 4 certainly. Do you have any opinion that you wish to share
 5 with us as to the wisdom or otherwise of their decision
 6 not, at that stage at least, to exercise the right of
 7 dismissal?
 8 MR ZOKWANA: I will be just putting my
 9 views and that's to say that maybe the company understood
 10 the magnitude of what they have to do if they were to re-
 11 look for machine operators to come on board. Remember that
 12 machine operators are not just any other person you will
 13 just get along – or maybe they hoped that they may be able
 14 to persuade some of the drillers to come back to work.
 15 CHAIRPERSON: That's a really a question
 16 we should ask them rather than you. It's a question we
 17 should ask Lonmin rather than you.
 18 MR MPOFU: Chairperson, could I just ask
 19 one or two questions arising from Mr Tokota's questions?
 20 CHAIRPERSON: Do you want to ask one
 21 question or two?
 22 MR MPOFU: Two –
 23 CHAIRPERSON: Alright.
 24 MR MPOFU: Thank you, Chairperson.
 25 CHAIRPERSON: I take it they'll be

1 relevant.
 2 MR MPOFU: Yes.
 3 FURTHER CROSS-EXAMINATION BY MR MPOFU:
 4 Mr Zokwana, arising from what Commissioner Tokota was
 5 asking you about the translation, would you agree,
 6 generally speaking, that the songs that get sung in those
 7 kinds of occasions are not always to be translated
 8 literally? In other words, sometimes the meaning is not
 9 what it purports to be.
 10 MR ZOKWANA: Yes, but you have to take
 11 into account that African songs, I mean generally, are sung
 12 in different events. For instance, if young men are going
 13 to the mountain you will sing Sonagwaza and you know its
 14 meaning. Once, if you were to sing another song than
 15 Sonagwaza, people will look at you and wonder if you are up
 16 in your head. So songs have got meanings and as I am
 17 saying, the song I have referred to, I have said many
 18 people believe that the size of your body determines your
 19 strength and I won't mention the part but I'm saying that
 20 in my view that song was not sung in the NUM meetings. It
 21 is a song that would be like taking a vow that this is a
 22 stand we take and in taking this stand we are prepared, as
 23 we have, to make sure that we are strong.
 24 MR MPOFU: And – yes, and similarly if
 25 you remember the clip that was played regarding the march

1 of the time which you and I agreed was relatively harmless
 2 and peaceful, the song that was sung there was "Dubula,
 3 dubula, dubula," which literally means shoot, shoot, shoot
 4 and would you agree with me that the literal – if someone
 5 were to translate it literally, it would not go accord with
 6 the mood of the people that you and I saw on that video.
 7 In other words, the song was just a song, it didn't mean
 8 anyone intended to shoot anybody on that day.
 9 MR ZOKWANA: On this one song, it is a
 10 song that is sung by workers generally and it has no
 11 meaning to the intention as opposed to the first one we are
 12 asking about.
 13 MR MPOFU: Thank you, Chairperson.
 14 CHAIRPERSON: Thank you, Mr Tip?
 15 MR BRUINDERS SC: Commissioners, before –
 16 good morning, commissioners.
 17 CHAIRPERSON: Good morning, Mr Bruinders.
 18 MR BRUINDERS SC: Before Mr Tip re-
 19 examines could I, on behalf of AMCU, place something on
 20 record?
 21 CHAIRPERSON: Yes.
 22 MR BRUINDERS SC: During the course of
 23 the cross-examination of Mr Zokwana by Mr Mpofo, he made a
 24 number – we counted some eight – very broad general
 25 allegations about unlawful and violent conduct on the part

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1 of AMCU elsewhere, in other words not at Lonmin. Now those
 2 allegations –

3 CHAIRPERSON: He being the witness or Mr
 4 Mpfu?

5 MR BRUINDERS SC: The witness. Those
 6 allegations were made for the first time during the cross-
 7 examination of Mr Zokwana by Mr Mpfu. In other words,
 8 that was after my colleague Ms Barnes had already cross-
 9 examined Mr Zokwana. They were also allegations that had
 10 never been made before in any affidavits or when he was led
 11 by Mr Tip and so on. AMCU simply wants to place on record
 12 that in relation to those allegations, they may fall in
 13 phase 2, we don't – we haven't decided that yet, but in
 14 relation to those allegations it reserves its rights fully
 15 as to what to do later on about them.

16 CHAIRPERSON: Mr Bruinders, I don't quite
 17 understand what you're doing. Your clients have got
 18 rights. The mere fact that they sit here silently and
 19 don't ask the witness any questions wouldn't amount to an
 20 abandonment of their rights, so they don't have to stand up
 21 and wave their arms in the air and say we reserve our
 22 rights. Their rights would, in any event, not fall away -
 23 but what exactly do you want to do? I mean do you want to
 24 cross-examine on these points? Do you want to say in
 25 argument perhaps at the end of phase 1 that they're

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1 irrelevant for the purposes of phase 1? Do you want to say
 2 they're collateral matters on which you don't propose to
 3 cross-examine because strictly speaking it wouldn't be
 4 appropriate? I don't quite understand what you're doing.

5 MR BRUINDERS SC: All those courses
 6 remain open to us and we simply say that they remain open
 7 to us and we reserve our right to take those courses. We
 8 might well argue that they're all irrelevant anyway but I'm
 9 not placing on record now which of those – we haven't made
 10 the election as to which of those –

11 [10:07] CHAIRPERSON: Well, I'm saying to you,
 12 you haven't – by remaining silent, in any event, you
 13 haven't abandoned any, the rights to any of those things so
 14 you've said what you've said, I've said what I've said,
 15 it's on record, shall we move on? Mr Tip, in the light of
 16 that exchange, I don't know whether that's going to alter
 17 your re-examination in any way. What you've been told is
 18 those statements may conceivably be challenged at some
 19 future date in some, in this or some other forum but –

20 MR TIP SC: In the event of that
 21 happening, I'm sure that we'll get notice and we'll deal
 22 with it appropriately at that stage. Mr Chairperson,
 23 commissioners, I had indicated in the course of the
 24 concluding minutes yesterday that I would be re-examining
 25 on one topic only and I will, I will be doing so but I

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1 should just make the observation in the hope that it will
 2 assist the Commission - Mr Zokwana has, as we all know,
 3 been giving evidence for some time and a range of matters
 4 have been traversed in the course of certain of the
 5 questions that were put. We wish to develop some of those
 6 topics in a proper focused way and in a manner that will
 7 assist the Commission –

8 CHAIRPERSON: You have the fullest right
 9 to deal, in re-examination, with any matter that arose in
 10 cross-examination for the useful purposes for which re-
 11 examination may appropriately be used, which Mr Tokota
 12 explained to Mr Mpfu on an earlier occasion.

13 MR TIP SC: Yes. Mr Chair, I appreciate
 14 that and perhaps let me just make it more clear that some
 15 of those topics do not lend themselves to re-examination
 16 because they will be fragmented and I will identify them.
 17 The one particularly is the question of aspects of NUM's
 18 policy in relation to collective bargaining positions and
 19 the Commission will recall, for instance, that the topic
 20 arose as to NUM's attitude to differentials between the
 21 work force as a whole and particular segments of the work
 22 force and how that might affect its approach to
 23 negotiation. That sort of aspect, we will be preparing
 24 something that will be focused and to the extent
 25 appropriate, documented and we will, at an opportune

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1 moment, seek the leave of the Commission to place that
 2 before you.

3 CHAIRPERSON: That may be fairly material
 4 because the suggestion is made that that caused the rock
 5 drill operators to adopt a certain approach to NUM, so
 6 obviously material of that, dealing with that matter will
 7 be helpful but you'll give it to us at a later stage.

8 MR TIP SC: We will develop that in the
 9 proper way rather than in fragments here. And Mr Chair,
 10 there are one or two other aspects that perhaps won't be as
 11 helpful as that particular topic. We'll evaluate them
 12 properly with regard to the record and where we think it
 13 will assist, we will do so. Then if I may, Mr Zokwana,
 14 turn to you with the topic that I do want to re-examine you
 15 on and to just place that in context, you will recall that
 16 you've been asked a number of questions that, to one or
 17 other extent, were based on paragraph 4 of Mr Sitelele's
 18 statement. Do you recall that paragraph?

19 MR ZOKWANA: Yes.

20 MR TIP SC: And some of the questions
 21 that were put to you, in fact several of the questions that
 22 were put to you went along the line of seeking to raise the
 23 contention that the possibility was that NUM had indicated
 24 to RDOs that it could not assist them with their demand for
 25 R12 500 and that that may have given rise to the decision

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1 on their part to go on strike. Do you recall –

2 MR ZOKWANA: Yes, I remember that.

3 MR TIP SC: In the course of your answers

4 from time to time you made reference to the preceding

5 interaction between RDOs and their representatives and

6 Lonmin and, in particular, you referred more than once to

7 Mr Da Costa.

8 MR ZOKWANA: Yes.

9 MR TIP SC: He, I think it's already on

10 record, is the vice-president in respect of Karee mining

11 operations, do you know that?

12 MR ZOKWANA: Yes.

13 MR TIP SC: And as far as I'm aware, the

14 statement that has been filed in this Commission by Mr Da

15 Costa, it's exhibit OO17 Mr Chair, is probably the most

16 comprehensive account that has thus far been provided to

17 the Commission of that interaction between the RDOs and

18 Lonmin.

19 MR ZOKWANA: Yes, I agree it's where the

20 whole matter of these matters raised was started as far as

21 June.

22 MR TIP SC: Yes. And what I want to do

23 by way of re-examination is to add some extra content to

24 the answers that you've already given in relation to that

25 interaction and I'm going to do so by reference to the

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1 statement of Mr Da Costa.

2 CHAIRPERSON: It's more accurately

3 described as part of OO17, it begins at page 66 –

4 MR TIP SC: Yes.

5 CHAIRPERSON: Of OO17.

6 MR TIP SC: Yes. With respect, correct,

7 Mr Chair. It will be only portions of that statement and,

8 Mr Zokwana, what I just want to make clear at the outset is

9 that the – as I've already said, it is an exhibit. Mr

10 Chair, certain of the paragraphs have already been read

11 onto the record, all the material is there and as far as

12 possible, when I go through it I will avoid reading entire

13 paragraphs onto the record again and just try to give a

14 précis. Mr Zokwana, you'll be happy with that approach,

15 will you?

16 MR ZOKWANA: Yes, I'm fine.

17 MR TIP SC: Now before I come to OO17,

18 which is the initial witness statement of Mr Da Costa,

19 there's just one small detail in that supplementary

20 statement. Mr Chair, that's not yet an exhibit, I'm going

21 to refer to one sentence in it, I'll just read it out.

22 It's not necessary at this stage to make it an exhibit.

23 And Mr Zokwana, again just background, you're aware, are

24 you, of the strike at Karee Mine in May 2011, the

25 dismissals that resulted?

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1 MR ZOKWANA: Yes.

2 MR TIP SC: And the need that arose for

3 people to reapply to unions.

4 MR ZOKWANA: Yes.

5 MR TIP SC: And in paragraph 12 of Mr Da

6 Costa's supplementary affidavit he recites those events and

7 he says that, "NUM's demise at Karee was, to the best of my

8 knowledge" – I beg your pardon, I'm reading paragraph 13,

9 forgive me – "At the time of the unprotected strike on 10

10 August 2012, less than 20% of the employees at Karee were

11 members of NUM whereas 50.57% of the employees were members

12 of AMCU. By then AMCU was by far the majority trade union

13 at Karee." Would that accord with your understanding of

14 the factual position in respect of membership at that time,

15 early in August 2012?

16 MR ZOKWANA: Yes, it is. It was the

17 situation .

18 MR TIP SC: Then I wish to turn to the

19 principal statement of Mr Da Costa, OO17, and I will touch

20 firstly on paragraphs 3.1, 3.2 and 3.4 and I will tell you

21 what the effect is of those. Mr Da Costa there gives an

22 account of how he first became aware that there was some

23 activity underway by RDOs and he refers to him seeing an

24 A4, a handwritten A4 poster which called on RDOs to attend

25 a meeting and I just want to ask you this, would NUM, the

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1 NUM, ever put up posters that did not identify it as being

2 a NUM poster if it were calling for a meeting?

3 MR ZOKWANA: No, no, NUM would always

4 make sure that if a poster is issued it bears the NUM's

5 emblem.

6 MR TIP SC: That was on 21 June 2012 and

7 in paragraph 3.11 of that statement Mr Da Costa explains

8 that two representatives of a number of the RDOs, some 300

9 who had come to the office, came in and spoke to him –

10 Magqabine and Mofokeng – and he says that they were both

11 members of AMCU.

12 MR ZOKWANA: Yes, I could see that, Mr

13 Magqabine and Mofokeng.

14 MR TIP SC: And if you turn to paragraph

15 3.15 of that statement, you'll see that Mr Da Costa there

16 says – do you have it?

17 MR ZOKWANA: Yes, I have it, yes.

18 MR TIP SC: He says, "I went on to

19 explain to Magqabine and Mofokeng that there were different

20 ways of raising their concerns. By way of example I

21 indicated to them that the concerns they had" and then it

22 says in brackets, "(which they had not yet discussed with

23 me) could have been raised with their line management and

24 their respective unions." And in paragraph 3.16, the

25 second sentence, he says "They then went on to state that

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1 the matter only concerned RDOs at Karee and it was
2 therefore not appropriate for them to raise it with their
3 trade unions or with line management."

4 MR ZOKWANA: Yes, I see that.

5 MR TIP SC: In paragraph 3.18 and 3.19 at
6 the same meeting the two representatives then identify that
7 they are really after an increase in their remuneration to
8 a basic of 12 500 per month. Mr Da Costa says that he
9 advised them that there was a procedure for negotiating
10 salaries and that the issue should be dealt with through
11 the established central bargaining structures, do you see
12 that?

13 MR ZOKWANA: Yes, I see that.

14 CHAIRPERSON: I think, Mr Tip, it should
15 be pointed out that in 3.16 he says that they said that
16 because it only concerned the RDOs, it wasn't appropriate
17 for them to raise it with their trade unions or with line
18 management and that they, that's why they wanted the matter
19 dealt with outside the ordinary wage negotiation
20 structures, which is what is said in 3.22 which you're now
21 putting to him but the point is though they were members of
22 AMCU, he says he only discovered that later, they didn't
23 mention that. They said they wanted to deal with the
24 matter outside the union structures but I think it's a
25 point that should be put to the witness at this stage.

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1 MR TIP SC: Yes, certainly, Mr Chair. Mr
2 Zokwana, you've seen that portion in paragraph 3.16?

3 MR ZOKWANA: Yes.

4 MR TIP SC: And as the Chairperson has
5 correctly pointed out, the two representatives did not at
6 the time announce themselves as AMCU members, that is
7 something that he established after the meeting had come to
8 an end.

9 MR ZOKWANA: Yes, yes, they didn't
10 explain that to him, they didn't say that.

11 MR TIP SC: And you've taken note of the
12 sentence that the Chairperson has read out?

13 MR ZOKWANA: Yes, yes, I've done.

14 MR TIP SC: Yes. Then if I may just go
15 back to paragraph 3.18 after the portion that I'd indicated
16 where Mr Da Costa said to them that they should take this
17 up with the central bargaining structure and he then says,
18 and I quote, "They objected to dealing with the matter in
19 this way because, so they told me, they did not want any
20 union involvement in the matter."

21 MR ZOKWANA: Yes, I see that.

22 MR TIP SC: And in paragraph 3.19 the two
23 gentlemen, the two representatives went on, he says, to
24 express the view that trade union involvement would only be
25 appropriate if the issue raised was one which affected the

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1 entire work force. "They stated that the issue they came
2 to see me about affected only RDOs at Karee and for that
3 reason the unions should not be involved."

4 MR ZOKWANA: Yes, I see that.

5 MR TIP SC: And then still at the same
6 meeting in paragraph 3.22, the second sentence – well, I'll
7 read the first couple of sentences – "The conversation was
8 an engaging one which went on for approximately one hour.
9 I kept referring back to the structures in place which
10 dealt with wage negotiations, whereas they kept stating
11 that they wished to deal with the matter outside of those
12 structures." Now of course, Mr Zokwana, you were not at
13 that meeting, you're not in a position to say anything
14 about it but in terms of your understanding of the events
15 as they unfolded, would this description of that first
16 encounter by Mr Da Costa appear to you to accord with what
17 followed?

18 MR ZOKWANA: Yes, I can only come to a
19 view that says this was the beginning of the whole demand.
20 It began when that area, Impala – sorry, at – sorry, sorry,
21 at Lonmin but at Karee raised on that time but it was to
22 carry on to come to what it came to be later. It was the
23 beginning of the demand, in my view.

24 [10:27] MR TIP SC: Then I want to turn to
25 paragraph 3.26 which is where Mr Da Costa deals with the

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1 next meeting between himself and the RDOs and their
2 representatives. That meeting was on 2 July 2012 and I'll
3 just summarise. He says that on that occasion five
4 representatives came to him. There was Magqabane and
5 Mofokeng, there were two others, Mtshake and Motobe. He
6 established that later, that they were AMCU members and we
7 now also know from the questions put to you by Mr Mpofu
8 that the fifth person who was there was Mr Simphiwe Boye.

9 MR ZOKWANA: Yes.

10 MR TIP SC: And it will go on record soon
11 enough that he also was a member of AMCU. Then I want to
12 just place on record a portion of paragraph 3.27, if you
13 would – which captures, it appears to me, the essence of
14 the nature of the interaction that took place on that day.
15 The third sentence, and I'll read it, I quote, "I further
16 expressed my view that the issue could not be dealt with in
17 the manner in which the RDOs had dealt with it and that it
18 should take place through the proper wage negotiation
19 process. I then pointed out to them that there was a two
20 year wage deal which was still in place and that the next
21 wage negotiations would be held towards the end of 20:13.
22 I also indicated to them that in the light of all of this,
23 Lonmin was highly unlikely to increase their salaries as
24 requested. Lonmin was concerned that if it had started
25 separate negotiations with RDOs, Lonmin would have been

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1 required to be consistent and thereafter negotiate with
 2 other individual groupings as well. Their response was
 3 that if other groupings had similar issues, they could deal
 4 with me directly.”

5 MR ZOKWANA: Yes.

6 MR TIP SC: And as is apparent from the
 7 passage that I've put to you, Mr Zokwana, certainly by no
 8 later than 2 July 2012, the entire question of the
 9 relationship between the RDOs' demands and the role of
 10 central bargaining had been clearly identified and they had
 11 set out their response to it.

12 MR ZOKWANA: Yes, I agree with you
 13 because by that stand – by that stage, as early as that
 14 time the RDOs were against any processes of negotiations on
 15 their issue. They wanted it to be done as a separate
 16 matter.

17 MR TIP SC: Then just for the purposes of
 18 narrative, in paragraphs 3.29 and 3.30 Mr Da Costa
 19 describes that after this meeting had concluded with the
 20 five representatives, they gave feedback to a meeting of
 21 RDOs. Later in the afternoon there was a march of RDOs to
 22 his office. He wasn't there, they dispersed. Then the
 23 next meeting of consequence is on 23 July 2012, some three
 24 weeks later and if you turn to paragraph 4.1 –

25 MR ZOKWANA: Yes?

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1 MR TIP SC: He says that the five
 2 representatives again came to his office. In the third
 3 sentence he says, “The mood at the meeting from the RDO
 4 representatives was more aggressive. I advised them that
 5 Lonmin would not agree to an increase in the basic salary
 6 of RDOs to 12 500. During the course of our discussion I
 7 could sense the potential for strike action.”

8 MR ZOKWANA: Yes, I see that.

9 MR TIP SC: And just to put that in a bit
 10 of context – I didn't read the passages from the earlier
 11 meeting but he does say, Mr Da Costa, that at the meeting
 12 of 21 June 2012 the attitude of the representatives who
 13 came to him on that day was respectful and that the meeting
 14 was cordial, so he is noting a shift.

15 MR ZOKWANA: Yes, in such meeting he
 16 noted that.

17 MR TIP SC: Then in paragraph 4.2 and
 18 4.3, again I'm just going to summarise, there he discusses
 19 the event of him speaking to the crowd of the RDOs, the
 20 group that had been outside the office in the course of the
 21 meeting of 23 July and that he again said to them as a
 22 whole, that this was a matter that should be dealt with
 23 through the recognised bargaining structures and in
 24 paragraph 4.3 he notes the following, “After I spoke,
 25 various questions were posed to me from individuals within

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1 the crowd. I was asked, ‘What do we do tomorrow?’ I
 2 replied that the RDOs should return to work. I was then
 3 asked, ‘How do we return to work when you have not given us
 4 what we want?’” And, says Mr Da Costa, “I stated that if
 5 the RDOs did not return to work this would amount to an
 6 illegal strike.” All of that on 23 July 2012.

7 MR ZOKWANA: Yes, I see that.

8 MR TIP SC: On 30 July 2012 the
 9 announcement was conveyed to the RDOs of the EXCO decision
 10 of Lonmin to approve certain allowances to different
 11 categories of RDOs, their deputies and assistants. You're
 12 familiar with that, Mr Zokwana?

13 MR ZOKWANA: Yes, yes, I am.

14 MR TIP SC: And in paragraph 4.12 Mr Da
 15 Costa says, “Magqabane and Mofokeng advised me that they
 16 were unhappy with the offer because it did not meet the R12
 17 500 demand. However, they advised me that they would
 18 communicate the offer to the other RDOs. They did not
 19 undertake to revert to me, nor would there have been any
 20 purpose in doing so because I had no mandate to negotiate
 21 the allowances with the RDO delegation.” You will see from
 22 that, that Mr Da Costa is alive to the importance of a
 23 mandate for the purposes of negotiations. Does that in a
 24 sense run parallel to the concern which you've expressed
 25 more than once for the need of a mandate by NUM –

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1 MR ZOKWANA: Yes.

2 MR TIP SC: - that it could negotiate on
 3 behalf of RDOs.

4 MR ZOKWANA: Yes, it does because you can
 5 only negotiate for people who give you a mandate and you
 6 are able to feed back.

7 MR TIP SC: Now as part of the
 8 chronology, I want to depart for a moment from Mr Da
 9 Costa's statement and touch briefly on the statement of Mr
 10 Setelele which you may or may not have in front of you, do
 11 you?

12 MR ZOKWANA: I do have.

13 MR TIP SC: Exhibit YY1, if you could
 14 turn to paragraph 6.

15 MR ZOKWANA: Yes, I do have it.

16 MR TIP SC: He deals there with the NUM
 17 report back meeting which was held at four o'clock in the
 18 afternoon on 8 August 2012, do you see that?

19 MR ZOKWANA: Ja, I see that, yes.

20 MR TIP SC: And he speaks about the
 21 report back to the members concerning the allowances that
 22 had been decided upon by Lonmin and then he says, and I
 23 quote, “At that meeting some of the RDOs indicated that
 24 they would approach management directly concerning their 12
 25 500 wage demand and that they did not want to talk to NUM

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1 about it."

2 MR ZOKWANA: Yes, I see that.

3 MR TIP SC: The words speak for

4 themselves but it's clear from that, Mr Zokwana, that at

5 that meeting it was still the position of those of the RDOs

6 who were present that they did not want to talk to NUM.

7 They had decided that they would pursue this with

8 management directly.

9 MR ZOKWANA: Yes, it's clear in this

10 paragraph that RDOs decided that they will not talk to NUM,

11 conforming to what was said at Karee by the RDOs from early

12 as June, I mean that it has been a build up in my view.

13 MR TIP SC: Then again I'm just going to

14 summarise to complete the chronology, as we know on the

15 following day on the 9th of August the RDOs held a meeting,

16 they decided that they would proceed the next day to

17 Lonmin. That happened on the 10th August 2012 and

18 thereafter the strike and the ensuing events followed. I'm

19 not going to take up any of those matters with you, they've

20 been exhaustively dealt with.

21 MR ZOKWANA: Yes.

22 MR TIP SC: Mr Chair, those are the

23 questions in re-examination.

24 CHAIRPERSON: Thank you. Thank you, Mr

25 Zokwana, you'll be relieved to hear that that's the end of

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1 your evidence and you're excused. You may leave if you

2 wish.

3 MR ZOKWANA: Thanks, Chairperson, I'm

4 going to prepare, I'm going to prepare, I'm going to Cape

5 Town.

6 [NO FURTHER QUESTIONS – WITNESS EXCUSED]

7 MS PILLAY: Chair, if I may just mention

8 one – I've now had a look at the document which

9 Commissioner Tokota referred the witness to, which we

10 marked as QQ3. That document has been marked as an exhibit

11 already and it's document RR2, exhibit RR2. So I would ask

12 that exhibit QQ3 be removed from the exhibit list as it is

13 already RR2.

14 CHAIRPERSON: Thank you very much, yes.

15 Mr Mpofo, you are scheduled now to call your first witness,

16 is that correct?

17 MR MPOFU: That is correct, Chairperson.

18 CHAIRPERSON: But I think it appropriate,

19 in view of the fact that we've reached that stage in the

20 proceedings, perhaps we could take the tea adjournment now.

21 MR MPOFU: Yes.

22 CHAIRPERSON: So that you don't have to

23 start briefly and then have an interruption.

24 MR MPOFU: Correct.

25 CHAIRPERSON: We will now take the tea

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1 adjournment.

2 MR MPOFU: I'll appreciate that, thanks

3 Chair.

4 CHAIRPERSON: Sorry, I omitted to say, it

5 would also help if [inaudible] chambers with you and with

6 Mr Madlanga and I think Mr Semenya.

7 [COMMISSION ADJOURNS COMMISSION RESUMES]

8 [11:23] CHAIRPERSON: The Commission resumes. Mr

9 Mpofo? Oh sorry, I beg your pardon, I didn't see.

10 MR MPOFU: Are you talking?

11 MR TIP SC: No, Mr Chair, I was merely

12 looking eager as to what was going to be said next.

13 CHAIRPERSON: I thought eagerness, eager

14 looks were reserved for Mr Semenya. Mr Mpofo?

15 MR MPOFU: Thank you, yes, Chairperson.

16 Chairperson –

17 CHAIRPERSON: Mr Tip, I'm sorry.

18 MR MPOFU: Thank you, Chairperson.

19 Chairperson, after Bishop Seoka we're calling our second

20 witness and the first of the victims and his name is

21 Vusimuzi Mandla Mabuyakhulu.

22 CHAIRPERSON: Mr Mabuyakhulu, will you

23 stand up please? I'm going to swear you in, in a moment,

24 unless you prefer to make an affirmation rather than to

25 swear. Are you prepared to swear or do you wish to make an

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1 affirmation?

2 MR MPOFU: The witness is testifying in

3 isiZulu.

4 MR MABUYAKHULU: No objection against

5 taking the oath.

6 CHAIRPERSON: No objection to taking the

7 oath. Will you swear that the evidence that you will give

8 before this Commission will be the truth, the whole truth

9 and nothing but the truth. Please raise your right hand

10 and say, I swear, so help me God.

11 VUSIMUZI MANDLA MABUYAKHULU: d.s.s.

12 CHAIRPERSON: Thank you, you may be

13 seated. Mr Mpofo?

14 EXAMINATION BY MR MPOFU: Thank you very

15 much. Good morning, Mr Mabuyakhulu.

16 MR MABUYAKHULU: Good morning.

17 CHAIRPERSON: Perhaps I should state that

18 his police statement in handwritten form is already before

19 the Commission as exhibit XX6.

20 MR MPOFU: 6, that's correct.

21 CHAIRPERSON: And we were given a typed

22 copy, which I don't think has been handed in, I don't know.

23 MR MPOFU: Yes, that was kindly –

24 CHAIRPERSON: Call it XX6(1), is that

25 correct??

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1 MR MPOFU: Yes.

2 CHAIRPERSON: You also filed an exhibit

3 statement from him – call that XX, what do you want to call

4 that?

5 MR MPOFU: No, it was called BBB8, Chair.

6 CHAIRPERSON: BBB8?

7 MR MPOFU: Yes.

8 CHAIRPERSON: Thank you. Yes, please

9 proceed, Mr Mpofo.

10 MR MPOFU: Thank you, Chairperson. Mr

11 Mabuyakhulu, as you have just heard, the Commission is in

12 possession of two separate statements which were made by

13 you. We are firstly, we are going to deal with the

14 statement that you made to your lawyers which is dated the

15 1st February 2013 and labelled BBB8. Have you got that in

16 front of you?

17 MR MABUYAKHULU: I do have it.

18 CHAIRPERSON: Before he starts giving

19 evidence, there was a matter that was raised with me and my

20 colleagues in chambers. Have you had an opportunity to

21 discuss it with Mr Tip?

22 MR MPOFU: Yes, Chairperson, I raised it

23 with Mr Tip in the morning, not since I raised it with you

24 but it was raised with Mr Tip and what I did not say to Mr

25 Tip was that I did not intend to raise it specially but

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1 through the witness at the end, which I'm now raising with

2 everybody – unless if it's felt that it should be raised up

3 front, which might be –

4 CHAIRPERSON: I think it should be raised

5 up front because, as my colleague Commissioner Hemraj

6 points out, it may affect his state of mind, as it were,

7 and feeling of comfort or otherwise in the witness box if

8 that matter is only dealt with at the end rather than at

9 the beginning. I suggest you raise it up front.

10 MR MPOFU: Thank you, Chairperson. Mr

11 Mabuyakhulu, I think before I raise the matter that the

12 Chairperson wants to raise I just wanted to round off the

13 point, is the signature at the end of BBB8 here, your

14 signature?

15 MR MABUYAKHULU: Yes, it is.

16 MR MPOFU: Thank you. Now, so for the

17 past two days is it correct that you have been staying with

18 your lawyers in a place, in a certain place?

19 MR MABUYAKHULU: Yes.

20 CHAIRPERSON: Mr Mpofo, I'm sorry to

21 raise a housekeeping matter at the beginning -

22 MR MPOFU: Okay, Chair.

23 CHAIRPERSON: We don't have a signed

24 copy, a copy signed by the witness.

25 MR MPOFU: We'll arrange that,

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1 Chairperson.

2 CHAIRPERSON: Please. Thank you. Carry

3 on in the meanwhile. You're going to give it to us now?

4 MR MPOFU: We might as well, Chair.

5 CHAIRPERSON: Nothing like seizing the

6 moment.

7 MR MPOFU: Yes. We have – thank you,

8 Chairperson. Now Mr Mabuyakhulu, the reason why you are

9 staying in that place is because you had expressed certain

10 fears, is that correct, and if it is then can you tell the

11 Commission the issues that brought about those fears,

12 starting from the events of the weekend when you came back

13 from a consultation in Johannesburg?

14 MR MABUYAKHULU: Yes, I can give an

15 explanation to the Commission.

16 MR MPOFU: Thank you, please do so.

17 MR MABUYAKHULU: We had the meeting on

18 Saturday with the lawyers. When I arrived at the place

19 where I reside I was told that there was a private – oh,

20 people were driving in a private vehicle who were looking

21 for me. Later another person came to me and advised me not

22 to put up in the house because there were people looking

23 for me. I did so, Mr Chairperson, I didn't sleep in my

24 residence on that night, I put up somewhere else. On

25 Tuesday at the Commission here, I was approached by another

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1 person who said to me I have to be careful, he has been

2 told that there are people looking for me and he said he's

3 a gang or members of the NUM. This became difficult for

4 me. I reported this to the lawyers and said I am being

5 looked for, I don't know what I have done wrong. The

6 person who told me in the Commission here, said he knows

7 two of those people, it's the third person that he does not

8 know, who were driving in this private vehicle. This is

9 what made me so uncomfortable, Mr Chairperson. I ended up

10 being accommodated by lawyers because I'm feeling not very

11 safe. I am happy that I have been given the chance to

12 raise this with the Commission and I believe the Commission

13 could make some decision as to how I should live as now

14 under the circumstances. Thank you.

15 CHAIRPERSON: Mr Tip, the allegations

16 made so far relate, at least indirectly, to your client

17 NUM. I understand that, Mr Mpofo told us that he raised

18 with you before we started. Is there any comment you wish

19 to make or is there any assurance you can give from the

20 side of NUM that steps will be taken to ensure that this

21 witness is not interfered with in any way?

22 MR TIP SC: Yes, Mr Chair, it is so that

23 Mr Mpofo gave me an indication in very summary terms of a

24 complaint that would be made this morning just before we

25 began. It's unfortunate that that wasn't brought to my

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1 attention at an earlier stage of the week but, Mr Chair,
 2 let me just say this, this is now being stated under oath,
 3 I certainly don't intend to embark on a cross-examination
 4 of Mr Mabuyakhulu in respect of these events and aspects of
 5 what he has said and who told him things and who can
 6 identify persons. We, as the NUM, have had occasion to
 7 deal with similar complaints at a very early stage in the
 8 proceedings where allegations were made about AMCU people
 9 having been subjected to some or other form of harassment.
 10 We've discussed those situations fully with the NUM
 11 leadership here and at the regional level and I can assure
 12 the Commission that no event of this kind could have been
 13 sponsored or would have been sponsored by any structure of
 14 the NUM in or around Lonmin.

15 That having been said, I will of course take it
 16 up now that we have some details in relation to the event
 17 and in whatever way that we can ensure that the concerns
 18 that Mr Mabuyakhulu has expressed will be addressed – but
 19 nothing that I have said should be understood as implying
 20 any kind of admission in respect of the truth of what he
 21 has said or the reliability of what are essentially hearsay
 22 allegations that there were people of NUM involved in these
 23 events. We [indistinct] that but I can give the assurance
 24 to the Commission that NUM's ongoing position is one of
 25 absolutely clear and articulated opposition to any sort of

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1 unlawful conduct, intimidatory conduct and I have no reason
 2 to believe that there has been a departure. We will
 3 refresh our discussions in that regard, sir.
 4 CHAIRPERSON: Mr Mabuyakhulu, you heard
 5 what the representative of NUM has said.
 6 MR MABUYAKHULU: I heard.
 7 [11:43] CHAIRPERSON: What he's – and he has
 8 impressed upon the local leadership of NUM that any conduct
 9 of the kind that you fear will be frowned on and is not to
 10 be – not to happen, and that instruction has apparently
 11 been passed down to other members of NUM. Inasmuch as you
 12 say that the suggestion that people who were looking for
 13 you who were members of NUM were here at the Commission, I
 14 want to say to all those present in the auditorium that up
 15 to now this Commission has proceeded in a very harmonious
 16 fashion. It's important for this Commission to be able to
 17 do its work properly and to ascertain the truth of these
 18 events that we're investigating, that all witnesses who
 19 come to give evidence before us should be able to do so
 20 without fear of any repercussions or violence of any kind
 21 and if anything happens which constitutes inference with a
 22 witness - any witness, not just this witness but any
 23 witness – we in the Commission will do our best to ensure
 24 that the full weight of the law is brought to bear against
 25 persons who are found to be guilty of such conduct.

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1 This Commission has embarked upon a task which is
 2 very important for the future of this country. It is
 3 important for all of us that the Commission be allowed to
 4 do its work without anyone who comes to give evidence
 5 before it, being interfered with in any way. And therefore
 6 I trust that all of you who are here present will not only
 7 take seriously what I've said but convey it to those of
 8 your friends and associates who are not here in the
 9 auditorium today.

10 Mr Mabuyakhulu, if anything happens which causes
 11 you to fear that what I've said has not been taken
 12 seriously by everyone concerned, do not hesitate to
 13 communicate it to the evidence leaders and of course to
 14 your own lawyers who will then see to it that the machinery
 15 of the law is put into operation so that you receive the
 16 protection to which you're entitled. Understand?

17 MR MABUYAKHULU: I'll be grateful.

18 CHAIRPERSON: Please proceed, Mr Mpofo.

19 MR MPOFU: Thank you very much,
 20 Chairperson. Without pressing, Chairperson, I just wish to
 21 place on record that we, as well as the legal team, will be
 22 seeking the guidance of the Commission because we are
 23 obviously not equipped to provide witness protection. We
 24 have just stepped in because it was an emergency but
 25 obviously that's not a matter that can be discussed in open

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1 session. We'll approach the evidence leaders to see what,
 2 how –

3 CHAIRPERSON: The machinery of the
 4 Witness Protection Act is available to protect persons who
 5 give evidence before commissions and, if necessary, we will
 6 see to it that that machinery is in fact put into operation
 7 to protect this witness [inaudible] protection if
 8 necessary.

9 MR MPOFU: Thank you, Chairperson, I
 10 appreciate that swift action. Mr Mabuyakhulu, the last
 11 question I had asked you or rather I pointed you to BBB8.
 12 I will read out certain parts of that statement to save
 13 time, sometimes word for word, sometimes paraphrasing them,
 14 depending on the importance of the section but I would like
 15 us now to go through that statement. According to the
 16 statement, you are a 31 year old RDO who comes from the
 17 Ingwavuma area of KwaZulu Natal and you have been in the
 18 employ of Lonmin since January 2008, can you confirm that?

19 MR MABUYAKHULU: That is correct.

20 MR MPOFU: And according to the second
 21 paragraph of your statement, on the 9th August 2012 there
 22 was a meeting called for all RDOs from C shaft, which was
 23 held outside the Wonderkop Stadium to discuss RDOs'
 24 salaries, can you confirm that?

25 MR MABUYAKHULU: That is so.

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1 CHAIRPERSON: Forgive my interrupting but
 2 which shaft were you – at which shaft were you employed as
 3 a rock drill operator?
 4 MR MABUYAKHULU: Karee.
 5 MR MPOFU: Thank you. You also state
 6 there that at the meeting it was confirmed that no trade
 7 union should be engaged in respect of that wage demand and
 8 the Commission knows the wage demand in question was for
 9 R12 500, can you confirm that?
 10 MR MABUYAKHULU: That is so.
 11 MR MPOFU: And now the next point, there
 12 might be a contention on it so I'd like you to put it in
 13 your own words. You stated that there were three reasons
 14 why no unions should be discussed – rather, should be
 15 involved in this matter. Can you tell the Commission those
 16 three reasons?
 17 MR MABUYAKHULU: We met as three, Karee,
 18 Rowland and Eastern Companies RDOs and it was decided there
 19 that since we belong to different unions, that we should
 20 exclude them from this discussion. There is another reason
 21 for excluding the unions, Mr Chairperson, is that it became
 22 clear during the discussions that the NUM had already
 23 indicated that it would not be able to discuss wages for
 24 RDOs only and as a result we decided to exclude the unions.
 25 Some of the RDOs who had been working there for more years

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1 than myself, mentioned that during the year 2006/2007 this
 2 kind of request was made to NUM about the increase in
 3 salaries but that no report back had been made since then
 4 and as a result, we decided that we exclude them.
 5 MR MPOFU: Thank you. Now, in that same
 6 paragraph you state that according to your understanding
 7 the NUM was the only union recognised by Lonmin to speak
 8 for everybody and there has been some discussion about
 9 that, so can you explain to the Commission how you
 10 understand the situation?
 11 MR MABUYAKHULU: The only union
 12 responsible for representing members from category 3 to 8
 13 is NUM, according to my knowledge.
 14 MR MPOFU: Now, while you are on that
 15 point, can you – is it true that you have in the past been
 16 a member of the NUM yourself?
 17 MR MABUYAKHULU: Yes.
 18 MR MPOFU: And which union do you now
 19 belong to?
 20 MR MABUYAKHULU: I am presently with
 21 AMCU.
 22 MR MPOFU: When did you change unions?
 23 MR MABUYAKHULU: Somewhere between July
 24 and August of 2011.
 25 MR MPOFU: Right. Now, going on in your

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1 statement, the next paragraph 3 you make the point that at
 2 the stage that you were discussing, there was no decision
 3 to go on strike and that it was only agreed that you would
 4 approach the employer with a demand for a salary increase
 5 of the R12 500.
 6 MR MABUYAKHULU: Yes.
 7 MR MPOFU: And that was on the 9th and
 8 then on the 10th indeed you proceeded to the Wonderkop
 9 Stadium and can you tell the Commission what then happened
 10 from the stadium to the employer?
 11 MR MABUYAKHULU: Mr Chairperson, I'll
 12 start on the 9th. The 9th was a public holiday and we took
 13 advantage of meeting on that day and on that day after a
 14 lengthy discussion it was decided that we're not going to
 15 go on a strike but that we're going to clock for the one
 16 day and those who are working – this was not to be a
 17 strike, it was not intended as a strike. The decision was
 18 that we would go and talk to the employer and after meeting
 19 the employer the people working at Karee, since it was a
 20 Saturday, they would go back to work and those others who
 21 would be wanting to go to work would be allowed to do so.
 22 MR MPOFU: Sorry, and then we accept that
 23 and then –
 24 CHAIRPERSON: I'm sorry, the 10th was the
 25 Friday?

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1 MR MPOFU: The 10th was the Friday, that's
 2 correct.
 3 CHAIRPERSON: The 11th was the Saturday.
 4 MR MPOFU: Yes. Mr Mabuyakhulu, the
 5 public holiday was on the Thursday.
 6 MR MABUYAKHULU: Yes, the holiday.
 7 MR MPOFU: Right, so do you – can we
 8 therefore accept that the 10th, which was the following day,
 9 was the Friday?
 10 MR MABUYAKHULU: That is correct.
 11 MR MPOFU: Right, now can you just then
 12 tell the Commission what happened on the 10th?
 13 MR MABUYAKHULU: We met at the stadium
 14 outside the gate on the 10th. The decision was made by all
 15 of us that we were now going to meet the employer. We
 16 walked, going to the LPD. Just before reaching the LPD,
 17 not far away from there we were stopped by two white people
 18 and the security officers. We sat down where they had
 19 stopped us and they asked us what our complaint was. We at
 20 this stage, Mr Chairperson, selected members that were
 21 going to represent us in taking to the employer and they
 22 were the people to do the talking. The five – I'm not sure
 23 if it was five or six – went forward to the white people
 24 who were there and the security officers and had a
 25 discussion with them. Whilst we were seated they came back

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1 to us and said those people are gone, they have gone to
2 talk to the employer, that we should wait there. After
3 some time the white people came back to us but they didn't
4 have anything to report back to us and a decision was then
5 made that we proceed further to the employer. On arrival
6 there, we had a tape –

7 MR MAHLANGU: He refers to this as a
8 danger tape.

9 MR MABUYAKHULU: – and next to the danger
10 tape were security officers who were armed. We had not
11 gone there to fight. We stood on the one side and allowed
12 the people that were selected to proceed further. The five
13 that were selected went in and after some time returned
14 back to us and made the following report, that the employer
15 had said to them that the NUM had said they should, the
16 employer should not talk to us. We asked them to return
17 back to the employer to go and ask what should be done
18 next. They came back to us and reported that the employer
19 says we can do what we want, then let's make the decision
20 what to do. This is where the problem started, Mr
21 Chairperson. We decided that let's go and sit down and
22 talk and allow the employer to come back to us and this is
23 where the trouble started.

24 MR MPOFU: Sorry, Mr Mabuyakhulu, before
25 you made that decision did you disperse from the LPD and

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1 employer to talk to us, because the person who employs us
2 is the employer and they, the NUM, are in those offices
3 because of us. A report was also received by others who
4 made a report that some people had been shot by members of
5 the NUM who were driving around in a Quantum that is owned
6 by the mine. There were also reports, Mr Chairperson, that
7 some of the people that had gathered there with us later
8 went to the buses to go and find out what is happening and
9 when they arrived at the buses they were pointed, guns were
10 pointed at them and they were told to get to work,
11 forcefully so. The decision that was then arrived at there
12 was that we go to the NUM to go and enquire from them as to
13 why they do not want us, the employer, to talk to us.

14 MR MPOFU: Okay, alright. It's common
15 cause that the gathering at that point then marched towards
16 the NUM offices where –

17 MR MABUYAKHULU: That is correct.

18 MR MPOFU: But what is in contention is
19 that the – while you state in your statement that you did
20 not have any violent intentions and none were discussed,
21 there have been suggestions, I wouldn't call it evidence as
22 such but there have been suggestions that the reason to go
23 there was indeed or rather did entail violent intentions,
24 including burning up of offices, a vehicle and maybe even
25 harming the people. Are you aware of that?

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1 did you meet somewhere else or –

2 MR MABUYAKHULU: From the LPD we
3 proceeded together to the place where we had originally
4 been and it was from there that we dispersed.

5 MR MPOFU: Yes and then at the Wonderkop
6 Stadium, which is the original place where you had met,
7 what decisions did you then make about the way forward?

8 MR MABUYAKHULU: We came there, said the
9 report that was made and then the decision was made that we
10 sit there and we meet there again the following day and
11 wait for the employer there, unless he has changed his
12 mind.

13 MR MPOFU: So was the decision then to
14 meet on the 11th and congregate outside the stadium until
15 the employer would speak to you?

16 MR MABUYAKHULU: Yes.

17 MR MPOFU: Okay and then what happened on
18 the 11th?

19 [12:03] MR MABUYAKHULU: We met again the
20 following day at about 9 o'clock. I arrived there at about
21 nine in the morning. We discussed, people came with
22 different views, seeing things differently about what
23 transpired on the 10th. As a result of these discussions
24 some people came out with ideas that why don't we go to the
25 NUM and ask them why is it that they don't want the

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1 MR MABUYAKHULU: No.

2 MR MPOFU: And when you, as you say in
3 your statement that there was an exchange of views which
4 preceded the march, were any of those views including a
5 call to go and cause some of the violence that I've
6 described?

7 MR MABUYAKHULU: No, nobody mentioned
8 that.

9 MR MPOFU: Right. Now, it's also common
10 cause that the march proceeded through the street that has
11 a taxi rank, would you agree with that?

12 MR MABUYAKHULU: That is so.

13 MR MPOFU: In other words, you proceeded
14 from the stadium and then turned at right angles into the
15 street that has the taxi rank. No, it's the left hand.

16 MR MABUYAKHULU: Yes.

17 MR MPOFU: Okay, now once again as I've
18 said, when we get to contentious material I would prefer it
19 that you give it yourself. What then happened as you were
20 proceeding towards, in the street in the direction of the
21 satellite police station?

22 MR MABUYAKHULU: Whilst we were walking
23 there, there is a street that joins this one in which we
24 were walking and it is there that we came across members of
25 the NUM who were singing a song. When we met these people

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1 they were singing this. The first thing I heard was "AMCU
2 Karee," then there was a gunshot and then they said, then
3 it was said "Eastern Bop" and another gunshot. We turned
4 away and ran away. As we were running along, I saw one
5 person dropping, I thought he had been hit. I turned
6 around and went to the opening at the precast wall – which
7 he refers to as a stop nonsense. As we were proceeding
8 after going through the opening into the stop nonsense
9 there is a row and as we were running around there, I felt
10 some cold substance on my back as I was running. I told
11 the other people with whom I was running because I'd become
12 aware of the fact that I'd been shot, I drew their
13 attention to the fact that I was shot but I tried to run
14 away. There was no-one who was prepared to help another
15 man there, it was difficult, we were all running away. I
16 tried to run away, turning towards the buses, the bus rank,
17 and as I was going up, when I entered the main road my
18 right hand side just became dizzy and I collapsed. It was
19 difficult for me to come up after I'd fallen. The NUM
20 members were following from behind. They found me lying
21 down there. They asked me where do you work. I lied to
22 them, Mr Chairperson, and said at the Rowland Shaft. They
23 asked my station, I said to them stage 25. One of them
24 spoke in Xhosa and said, "He's lying, he's working at
25 Karee, he's an AMCU person." One of them appeared from the

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1 side and said, "Let's finish him up." One of them that I
2 could see was standing on my left hand side – as he points
3 out – had a spear but he hit me on the back with the handle
4 of the spear until it broke. There was one who was
5 standing right in front of me wearing white overalls and
6 with an NUM T-shirt. He had a butcher's knife. I felt a
7 blow on the back of my head, whether it was with his
8 butcher's knife or anything – I then, from there I lost
9 consciousness. Later at hospital, when I felt the stitches
10 on my head I noticed I had several other injuries.
11 MR MPOFU: Mr Mabuyakhulu, before going
12 to hospital – we will come to that – after your, the
13 assault that you have just described and after losing
14 consciousness, after some time – obviously you won't know
15 after how long – you did regain your consciousness and you
16 were still at the scene where you had fallen, is that
17 correct?
18 MR MABUYAKHULU: It was after they had
19 left me, yes, that I came by. I tried to crawl, to crawl
20 away from there in order to – so that when they come back
21 they shouldn't find me there. There is an opening, a
22 fence's opening, I went through there in an endeavour to
23 get away from where I was. One person arrived there and
24 said to me, hey man, we are together with you but I just
25 tried to run away because things were bad here. Mr

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1 Chairperson, at that time he asked me how he could help me,
2 if I had a number that he could dial or anything. I had
3 the number which I'd been trying to dial on my phone but I
4 had the difficulty of bringing it to my ear. I then showed
5 him the number. He said to me thereafter, please relax,
6 don't be scared, I have phoned this person, I have also
7 phoned the police. He helped me by undressing me, removed
8 my jacket and also removed my shoes. I lost consciousness.
9 I am told later that some of my people arrived there. I
10 later became conscious at the hospital, I came by at the
11 hospital where certain pipes had been put in my body, there
12 were instruments with which I could breathe, I had stitches
13 and they were just trying to keep me alive.
14 MR MPOFU: Yes. Mr Mabuyakhulu, I don't
15 think it will be disputed that from the scene while you
16 were unconscious you were taken to Andrew Saffi Hospital
17 but as I understand your evidence, when you came to you
18 were at Ferncrest Hospital. So are you telling the
19 Commission that you did not know that you had been
20 transferred from one hospital to another, at least you were
21 not aware of your first day at Andrew Saffi?
22 MR MABUYAKHULU: I only came by after the
23 stitches had been made, the operations had been made. When
24 this was made and where, I am not aware.
25 MR MPOFU: Now, we know that – rather,

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1 you say that you are unable to say on which day you
2 regained consciousness, is that correct?
3 MR MABUYAKHULU: I don't remember.
4 MR MPOFU: Alright, okay, one thing we
5 know objectively is that on the 17th of August you, by then
6 you must have regained your consciousness because that is
7 when the statement which has now been marked XX6(1) was
8 made. Would you accept that?
9 MR MABUYAKHULU: That is so.
10 MR MPOFU: Now can you – well, firstly,
11 do you agree with everything that is reflected in that
12 statement?
13 MR MABUYAKHULU: No, there are certain
14 things that are incorrect.
15 MR MPOFU: Now before we go through those
16 things, can you just explain to the Commission the
17 conditions under which the statement was taken, what
18 happened?
19 MR MABUYAKHULU: Yes.
20 MR MPOFU: Please do.
21 MR MABUYAKHULU: When the police arrived
22 on the 17th it was, I still had difficulties. One thing I
23 still remember is that they indicated to me that they were
24 in a hurry, though I'm not quite sure about – there was an
25 argument between them. One was saying, "No, don't take a

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1 statement from this one, the people who are making
 2 statements are those who were injured on the 16th." And
 3 whilst that – one other problem I had was that they were
 4 addressing me in Setswana and my Tswana is not up to date.
 5 I put in English and a word there and then.
 6 MR MPOFU: Now that statement, I will
 7 just take you through some of the things that are contained
 8 in that statement and you can confirm to the Commission
 9 whether those are what you said or not. Well, okay, I'm
 10 addressing the Commission now. Chairperson, insofar as we
 11 can decipher, it's very badly written, even the language,
 12 but I'll try and –
 13 CHAIRPERSON: - typed version, I haven't
 14 checked the typed version against the original. Is that
 15 the original?
 16 MR MPOFU: Yes, I can confirm,
 17 Chairperson, that the typed version that Mr Tip kindly
 18 prepared is a true reflection of the written statement but
 19 when I say badly written, I mean the language rather than
 20 the graphic, the actual writing. In the second paragraph
 21 there's something that says, "On that meeting my
 22 representation member was Boye, name of the mine, and he
 23 was the people among the group telling us what to do."
 24 What do you think that was about?
 25 [12:23] MR MABUYAKHULU: How Boye's name features

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1 here, Mr Chairperson, is that the police were asking me who
 2 are the people that we used there to represent us and I
 3 said to them, I don't remember everybody but the one I
 4 remember, his name is Boye. I remember him because he
 5 works together with me.
 6 MR MPOFU: Okay, so can we accept then
 7 that the Boye was not the name of a mine but the name of a
 8 person?
 9 MR MABUYAKHULU: Yes, Boye is a person's
 10 name and these are some of the mistakes that happened.
 11 MR MPOFU: And is the person now known to
 12 you as Mr Simphiwe Boye?
 13 MR MABUYAKHULU: Yes.
 14 MR MPOFU: Right. And then there's
 15 reference – well, first of all the statement, what can you
 16 say about the sequence of the dates in the statement?
 17 MR MABUYAKHULU: The question is again,
 18 sir?
 19 MR MPOFU: I'm saying the fact that the
 20 statement starts on Saturday the 11th and then goes back to
 21 the 10th, is that how you were telling the story or did you
 22 tell the story in the sequence you have told the
 23 Commission?
 24 MR MABUYAKHULU: Mr Chairperson, the
 25 difficulty we had here was the language. We had a

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1 difficulty in communicating, even the telephone number that
 2 appears here as mine, this is not mine. Actually my
 3 statement, the way I explained it actually commenced on the
 4 9th.
 5 MR MPOFU: Okay. Now there's also
 6 reference in your statement that the people at the NUM
 7 offices started throwing stones and hit others with the
 8 knobkerries.
 9 MR MABUYAKHULU: That I don't know
 10 anything about.
 11 MR MPOFU: And then somewhere, I think at
 12 the end of the statement, it says that you want – you
 13 requested the police to investigate, as you are a member of
 14 AMCU. In other words, you wanted them to investigate
 15 because you are a member of AMCU. Did you say anything
 16 like that?
 17 MR MABUYAKHULU: That I don't know
 18 anything about.
 19 MR MPOFU: And can you tell the
 20 Commission what was your physical condition at the time?
 21 MR MABUYAKHULU: I still had a serious
 22 difficulty pertaining to my health. I had a difficulty at
 23 that stage of even turning around, I could not wake up, I
 24 could not feel my head, my head was dizzy- as it is right
 25 now, even if when my hair is being cut, I lack that feeling

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1 on my skin.
 2 MR MPOFU: Do you still have some
 3 numbness on your head, your scalp?
 4 MR MABUYAKHULU: That is the position,
 5 yes, up to now.
 6 MR MPOFU: And if you turn to XX6, the
 7 original XX6, Chairperson and commissioners, the
 8 handwritten version, the seventh page is an annexure
 9 written A2 at the top, which is a report by authorised
 10 medical practitioner. Are you there?
 11 MR MAHLANGU: Paragraph? Paragraph 7?
 12 MR MPOFU: Page 7, sorry. Page 7. In
 13 other words, if you take the one that says "Crime docket"
 14 at page 1, just page through until you get to A2 which at
 15 the top says, "Report by authorised medical practitioner."
 16 XX6, interpreter.
 17 MR MAHLANGU: We are still looking for
 18 it.
 19 MR MPOFU: Okay.
 20 MR MAHLANGU: This is the J88?
 21 MR MPOFU: Yes.
 22 MR MAHLANGU: The medical report?
 23 MR MPOFU: The medical report, correct.
 24 MR MAHLANGU: We have got it.
 25 COMMISSIONER HEMRAJ: Mr Mpofo, before

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1 you get there, are you going to deal with the last
2 paragraph on page 1 of the statement of the witness written
3 in manuscript?
4 MR MPOFU: Page 1 of which version,
5 Commissioner?
6 COMMISSIONER HEMRAJ: XX6.
7 MR MPOFU: Of the typed or written
8 version?
9 CHAIRPERSON: The written version.
10 COMMISSIONER HEMRAJ: The manuscript.
11 MR MPOFU: The manuscript, yes okay.
12 Last paragraph of the first page, if I can just have a
13 look. Yes. If I may just finish the point that I was
14 making, then we'll come back to that. The only point I
15 really wanted to make, Mr Mabuyakhulu, is that that A2
16 reports your mental health and emotional status as
17 depressive, depressive demeanour.
18 MR MABUYAKHULU: I agree with hit.
19 MR MPOFU: And for the record,
20 Chairperson, it looks like the stamp on that is the 13th. I
21 don't know what that means but the stamp is stamped the
22 13th. Okay now – I suppose what I'm really getting at is,
23 that state which is recorded there which you have
24 confirmed, was that your state for some time after the
25 incident?

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1 MR MABUYAKHULU: It took some time,
2 Chairperson. As you can see, the police statement, this
3 was done on the 17th and this was – this has also proved to
4 me that when this statement was taken I wasn't in the right
5 state of mind.
6 MR MPOFU: Okay, now let's go back to the
7 statement itself. Can you – there's a part, okay, you can
8 use the typed version just for convenience, XX6(1) and I'm
9 going to ask you to comment, firstly, whether you said this
10 and if you said it, what was the context. The statement
11 says, and I'm quoting now, "Someone come to the meeting
12 saying that on Friday 20/12 08:10 the members of AMCU were
13 shoot by the members of NUM. After getting those news a
14 person whom I can point if I see said we call go to NUM
15 office to hear why they are shooting people of AMCU we
16 walked through the hostel." I suppose that's a new
17 sentence. Okay, putting aside the grammatical issues do
18 you – what comment can you make on that portion of the
19 statement? It says, "After getting the news from a person
20 whom I can point."
21 MR MAHLANGU: Whom I can point. What's
22 the next sentence?
23 MR MPOFU: I sympathise with you, Mr
24 Interpreter. I'm trying to make some sense – I think from
25 "We walked through the hostel" is supposed to be a new

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1 sentence so just, I suppose let's do the best you can. I
2 don't want to be accused of editing it myself.
3 MR MABUYAKHULU: The report was in fact
4 made on the 11th whilst we were meeting there –
5 MR MPOFU: No –
6 MR MABUYAKHULU: - about the shooting –
7 MR MPOFU: Sorry, I think the witness
8 started by saying, commenting on the issues of how it's put
9 in the statement but then said, it is indeed so that on the
10 11th.
11 MR MAHLANGU: It is correct, Mr
12 Chairperson, I was definitely going to come to that. Court
13 interpreting is actually not a word for word translation.
14 I was going to come to that. The witness says the talk of
15 the shooting was mentioned in the meeting of the 11th but
16 how it came about to be written here bugs my mind, it's
17 totally confused as it is.
18 MR MPOFU: I'm sorry, I think it's my
19 fault, I disturbed you. And then he said something about
20 the fact that on the 11th indeed there was talk of some
21 event related to that.
22 MR MAHLANGU: Yes.
23 MR MPOFU: Maybe we should just ask the
24 witness to repeat.
25 MR MABUYAKHULU: As I said, on the 11th

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1 various reports were made. There was mention of people
2 being shot by NUM. Late in the evening we met there and
3 then a decision was made that we would go to them to go and
4 talk to them as to why they do not want the employer to
5 meet us or to – and whether they would not be prepared to
6 go and fetch the employer and bring him to us to talk to
7 him.
8 MR MPOFU: Okay, so to clarify this, this
9 whatever is sought to be conveyed in that paragraph that we
10 read to you, do you read it to relate to your earlier
11 evidence that on the 11th one of the issues that was raised
12 was, pertained to things that had happened on the 10th?
13 MR MABUYAKHULU: Mr Chairperson, because
14 of the condition in which I was at the time I didn't even
15 know that there was a police statement but after reading
16 through it, I started seeing that at one or the other time
17 there were policemen there but the statement is so confused
18 that it confuses me.
19 MR MPOFU: Okay. Now, just to be sure,
20 you are aware that the statement has some writing, the
21 manuscript statement, each page has a handwriting of
22 Vusumuzi. So were you, did you know that you signed the
23 statement or what is the position?
24 MR MABUYAKHULU: No – no, not at all.
25 This is definitely not my handwriting, nor is it my

1 signature.

2 MR MPOFU: Alright. Alright, so anyway

3 the issue is that whatever happened on that day, you had by

4 then regained your consciousness to some degree?

5 MR MABUYAKHULU: I was conscious at the

6 time, though I was still not in a right state of mind. I

7 do remember the police coming there. They enquired about

8 the bullet, which bullet was only removed at the hospital.

9 The police took the bullet and I was told that on my

10 discharge from hospital I will be given the results.

11 MR MPOFU: The results of what?

12 MR MABUYAKHULU: As to the bullet that

13 was removed from me, as to who shot me.

14 MR MPOFU: Yes. Well –

15 MR MABUYAKHULU: I haven't [inaudible] up

16 to today and no explanation was given as to the shooting,

17 my shooting.

18 [12:43] MR MPOFU: Right. The promise to follow

19 up and identify your shooter or shooters, has it been

20 carried through?

21 MR MABUYAKHULU: I last saw them on the

22 17th, I have not met the police thereafter.

23 MR MPOFU: Okay, well, while we are on

24 that topic, just to make double sure because from your last

25 answer that the last time any policeman spoke to you was

1 the 17th, then the answers to the following questions would

2 be self-evident but I'll ask them anyway. If you go to

3 XX5, XX5 is the statement of one of the people who was also

4 shot at that scene, also shot at the back. Chairperson,

5 these – okay, let's rather do it from the back. It's the

6 second page from the back of that statement. At the top it

7 says "Investigation Diary" C5. You'll see there paragraph

8 6 says that, "The suspect here is Mr Brown," whom we now

9 know to be Mr Setelele – if I can just read it out – "and

10 his other seven NUM members who started shooting at the

11 marchers before they could enter the gate." Do you see

12 that part?

13 MR MABUYAKHULU: I understand that, yes.

14 MR MPOFU: And then number 8, it says "Mr

15 Julius as well as Brown should be thoroughly interrogated

16 to clear as to who was part of the people who" – I don't

17 know what that word is, I suppose "who were," something

18 like that – "defending their property." Properties, thank

19 you. Yes, and then on the next page dated the 21st August

20 it says, "Docket received from inspection and instructions

21 are noted and shall be complied with." Now, since that

22 decision to follow up and interrogate people and all that,

23 to deal with the suspects, have you ever been contacted by

24 members of SAPS and, as I said, the answer I think is

25 contained in your previous answer but for the sake of

1 completion?

2 MR MABUYAKHULU: The last time I saw the

3 police was the 17th and never thereafter.

4 MR MPOFU: And I take it that you also

5 have not been to any ID parade of those seven people or

6 been shown footage of the NUM people who were involved so

7 that you could identify your assailants.

8 MR MABUYAKHULU: No, that has not

9 happened. The only time I saw this was during the

10 consultation with my lawyers when we saw this on video, not

11 at the police.

12 MR MPOFU: And when you saw it on video,

13 from your lawyers, were you able to identify some of your

14 assailants and what else were you able to identify?

15 MR MABUYAKHULU: The one I could point

16 out very clearly is a person I know, it's the one who said

17 to the others, "I know this man, he's from Karee," as I was

18 lying down. On the day, also appearing on the photos, on

19 the day of my shooting I had a kierie. I saw my kierie

20 there, it was being carried by the person who said I should

21 be finished up there because I come from Karee.

22 MR MPOFU: Before we get there, firstly

23 that footage, did you see it in the past two days?

24 MR MABUYAKHULU: It was during this week,

25 I think it was Tuesday or Thursday.

1 MR MPOFU: Now just for clarification,

2 you spoke about somebody – you spoke about, maybe because I

3 saw the thing with you but I'm not a witness – did you just

4 describe two separate people in your previous statement to

5 the Commission, in your description of what you observed?

6 MR MABUYAKHULU: The one person I could

7 identify is the one that I saw on the day as I was lying

8 there. He was wearing a white overall with an NUM skipper

9 and a butcher knife, which also appears on the video. It's

10 only the NUM T-shirt that is not visible on the video that

11 I saw.

12 MR MPOFU: The other one?

13 MR MABUYAKHULU: He is the same person, a

14 person that I also know, he's the one who said there I am

15 lying, I'm from Karee, who appears on the video carrying my

16 stick.

17 MR MPOFU: Chairperson, could we play the

18 footage? Or could we do that maybe when we – rather if we

19 could play the footage –

20 CHAIRPERSON: Are they ready to show it

21 now?

22 MR MPOFU: Not long, Chairperson.

23 CHAIRPERSON: No.

24 MS PILLAY: Chairperson, they are ready

25 and they're very short clips.

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1 CHAIRPERSON: I think let's have the
2 videos now and perhaps if we can take the adjournment –
3 MR MPOFU: After lunch.
4 CHAIRPERSON: - and you can continue
5 questioning after lunch.
6 MS PILLAY: If I could just indicate,
7 Chair, for the benefit of the parties, that the videos are
8 SAPS hard drive\video\2012-08-11\AMCU2012-08-3 089090 and
9 091. Chair, if we could mark these videos CCC1.1 to 1.4.
10 MR MPOFU: Thank you, Chairperson, if I
11 may just indicate to the operators just to be on the alert,
12 I might ask you to pause at particular points, thank you.
13 Mr Mabuyakhulu, if you – you can use that screen. If you
14 want to get closer to it, with the permission of the
15 Chairperson, you can get closer.
16 MR MABUYAKHULU: I think it will be clear
17 from here.
18 [VIDEO IS SHOWN]
19 MR MPOFU: Chairperson – can you just
20 pause? This is a different footage but for the sake of
21 saving time we might as well play all the footages and I'll
22 ask questions on what I was dealing with, but just so that
23 we don't have another pause, we'll play all of them.
24 They're all short, Chairperson.
25 MR TIP SC: Before this footage is

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1 played, if it can just be stopped. I just need the
2 guidance of the Commission because this now is evidently
3 directly towards establishing people who are said to have
4 committed assaults and in this forum, in the situation
5 where none of this has been put to the witnesses who
6 testified and it may well be that – I don't know quite
7 where this is going – that there are persons who may be
8 pointed out by Mr Mabuyakhulu on the basis of a video who
9 have given evidence and who are really going to be greatly
10 prejudiced in circumstances where none of that has been
11 raised and it is now being dealt with in open forum.
12 CHAIRPERSON: Mr Tip, as I understand the
13 evidence so far, the witness is able to point out two
14 people whom he sees on the video. Mr Mpofu, are you able
15 to deal with Mr Tip's point –
16 MR MPOFU: Yes.
17 CHAIRPERSON: - that it may be that one
18 or other of those persons has already testified and none of
19 this has been put to him?
20 MR MPOFU: Thanks, Chairperson, yes I am.
21 Well, firstly Chairperson, none of the people who have
22 testified are featured on the video. Secondly, the
23 identities of the people are not known, neither to me nor
24 even to the witness, except that he can point them out and
25 thirdly, I did raise the exact, this point with Mr Setelele

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1 about the – or rather, I might not have raised it with him,
2 I think I raised it with another witness because I wasn't
3 here for Mr Setelele but the point about there being seven
4 witnesses and all that was raised with the NUM witnesses
5 and the point there, which is the same point that is being
6 made here, was simply that there had not been a follow up,
7 rather than to pinpoint specific people.
8 MR TIP SC: Well, in the light of that my
9 objection, with respect, becomes a firmer one. We've had
10 the assurance that none of the persons who has testified is
11 featured in the event. The event itself of course was – or
12 at least the presence of Mr Mabuyakhulu was dealt with by
13 one of the witnesses in passing and none of the present
14 contentions have been raised but if the link of, the
15 purpose of showing this is to the paragraph in a different
16 docket which is XX5, relating to a different person, not Mr
17 Mabuyakhulu, to in some sense underline the existence of an
18 instruction from an investigating officer that Mr Brown, as
19 he's called, and seven other persons from the office must
20 be interrogated by the police, then that is something for
21 the police to do. This is, with respect, not a forum where
22 some step in what might otherwise be a police
23 investigation, is to be dealt with in this way and in a
24 public forum of this kind.
25 CHAIRPERSON: Mr Mpofu, I have a slightly

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1 different concern which I put to you, which I will put to
2 you now and that was, you will remember when one of the
3 witnesses from NUM gave evidence he said he knew who'd
4 fired the shot but he asked not to be asked, not to be
5 requested to mention it in the auditorium, in fear that
6 that person might end up the way the late Mr Bongo did.
7 Now I'm afraid that if you persist with this line of
8 questioning, it's no good saying I don't know the name, the
9 witness doesn't know the name. If a picture is going to be
10 shown and the witness is going to say, that man there in
11 the white overall or whatever it was, is the person, it may
12 well be that a number of persons present will know who the
13 person is and the very unfortunate consequences,
14 unacceptable consequences which gave – which we wished to
15 avoid by the procedure followed earlier, would then come
16 about. So I think that – I see it's now one o'clock.
17 Perhaps, I know it's undesirable to proceed with the video
18 now but -it's undesirable to interrupt it but I think in
19 the circumstances, in the light of the point I have made to
20 you, perhaps you and Mr Tip could discuss this over the
21 lunch adjournment –
22 MR MPOFU: Yes, yes.
23 CHAIRPERSON: - which I will now take and
24 we will resume at half past one.
25 MR MPOFU: Thank you, Chairperson. I'm

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1 sorry to – I'm very sorry, sorry, Chairperson, just to try
2 and save time – thank you, Chairperson, for the guidance.
3 What I wanted to point out now is that, depending on my
4 discussion with Mr Tip, of course, one of the suggestions
5 that I will put to him, because it is a –

6 CHAIRPERSON: You don't have to mention
7 it now. That's why I – you could –

8 MR MPOFU: So that, because when we come
9 back, is that if we come back and play this without the
10 gallery being filled, then we will come and let you know in
11 chambers, Chairperson, if we agree that we do –

12 CHAIRPERSON: Thank you. Mr Semenya put
13 his microphone on, I think he wants to say something before
14 we take the adjournment I've already announced.

15 MR SEMENYA SC: Chair, this is critical
16 to the terms of reference and the agreement between Mr
17 Mpofo and Mr Tip should not circumvent what is critical.
18 Unless Mr Tip is of the view that they will admit on record
19 that the individuals are indeed who they are, secondly that
20 they are NUM officials and we can then see the possibility
21 of the footage not being done, but we cannot lose the
22 opportunity of direct evidence implicating NUM.

23 CHAIRPERSON: We've already had evidence
24 from a witness saying that [inaudible] – he asked not to be
25 requested to mention the name, so we already have on record

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1 that the shots were fired by a NUM official. That's not
2 challenged, that's common cause. I think that may have
3 happened while you were away. So the concern you raise now
4 I think already falls away but perhaps, if you want to be
5 part of the discussion between Mr Tip and Mr Mpofo, I'm
6 sure they'll allow you to do so. Mr Budlender, are you
7 also wanting to contribute to this point before we take the
8 adjournment?

9 MR BUDLENDER SC: No, Chair, I've nothing
10 to contribute.

11 CHAIRPERSON: I think we had better
12 resume at 25 to two.

13 [COMMISSION ADJOURNS COMMISSION RESUMES]
14 [13:45] CHAIRPERSON: The commission resumes. Mr
15 Mabuyakhulu, you're still under oath.

16 MR MPOFU: Yes, I am.

17 CHAIRPERSON: Mr Mpofo, what is the
18 position in relation to the matter that was under
19 discussion when we adjourned?

20 MR MPOFU: Thank you, Chairperson, after
21 discussions with my learned colleagues, Mr Tip and Mr
22 Semenya as suggested by the chairperson, we have come to
23 the conclusion that due to the danger or potential dangers
24 rightfully identified by Mr Tip, that we will deal with the
25 issue in the following manner, that I will put some of the

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1 observations that the witness made when he saw the footage,
2 and he will answer to that, but without necessarily showing
3 the footage. I must add, Chairperson, that at a later
4 stage I might show the footage. In fact let me, because
5 now I was going to show it for a different purpose but
6 after this consultation I'll try and avoid showing it at
7 all, and particularly the one with the people but I'll put
8 the observations to the witness, thank you, Chairperson.

9 Mr Mabuyakhulu, you've already testified that
10 when you saw the footage in the presence of your lawyers
11 you were able to identify two of the people that you claim
12 were involved in the assault that occurred after you had
13 fallen down, is that correct?

14 MR MABUYAKHULU: Yes.

15 MR MPOFU: One of them you were able to
16 identify because of his clothing which was a white overall
17 and then an NUM T-shirt, although you said the NUM T-shirt
18 was not rather visible on the footage.

19 MR MABUYAKHULU: Yes.

20 MR MPOFU: And the other one you were
21 able to identify as the person who said you must be
22 finished off, but on the video you were able to identify
23 him among other things because he was carrying your stick?

24 MR MABUYAKHULU: That is correct.

25 MR MPOFU: The other purpose for which I

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1 was going to play the video was that in that footage one
2 can see various weapons, including pangas and spears, did
3 you observe that in the footage, and many sticks, more
4 sticks than those things, ja?

5 MR MABUYAKHULU: Yes.

6 MR MPOFU: Thank you, Chairperson, I
7 think those would be the issues covered by the footage.

8 CHAIRPERSON: Thank you, so you can now
9 continue with the examination in chief?

10 MR MPOFU: Thank you, Chairperson. You
11 testified that, or rather when you regained your
12 consciousness at Suncrest Hospital you discovered also that
13 you had some stitches on your head, is that correct?

14 MR MABUYAKHULU: Yes.

15 MR MPOFU: The police in XX6, there is an
16 annexure to XX6, Chairperson, which is A1.

17 CHAIRPERSON: No, the annexure is
18 actually part of the docket A1 being, the A series being
19 the statements filed in the docket –

20 MR MPOFU: Correct –

21 CHAIRPERSON: - and A1 is in fact the
22 first statement filed in the docket. It is by –

23 MR MPOFU: Richard somebody, Richard
24 Thom.

25 CHAIRPERSON: It looks like an African

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1 name which I can't read –

2 MR MPOFU: Yes, the first name –

3 CHAIRPERSON: - followed by Richard, it

4 looks like Thom?

5 MR MPOFU: The surname, that's the one,

6 thank you, Chairperson.

7 CHAIRPERSON: It is his statement which

8 was the first statement in the docket?

9 MR MPOFU: Yes, so just at the bottom of

10 that statement it says the following, we found an African

11 male laying on the floor behind the wall on his stomach,

12 facing the eastern side, bleeding on his head. There was

13 an injury on his head and on the right side at the back.

14 On top of his waste, next to the spinal cord there was a

15 gun shot wound, and then it continues by giving your name,

16 a kind of a Setswana version of your name and the address

17 and date of birth and then it says that you were wearing a

18 white T-shirt and a grey, I supposed a grey trouser overall

19 with reflectors on both legs. Would that be a fair

20 description of what you were wearing?

21 MR MABUYAKHULU: Yes.

22 MR MPOFU: Thanks. Now –

23 CHAIRPERSON: I think we can also lead -

24 but I take it, it appears from the docket, we don't have to

25 waste more time on it, so he was found at the workshop?

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1 MR MPOFU: Yes.

2 CHAIRPERSON: He is the person who was

3 found in the yard of the workshop?

4 MR MPOFU: Yes.

5 CHAIRPERSON: I think he is called

6 Scargin?

7 MR MPOFU: Scargin, yes.

8 CHAIRPERSON: It looks from the

9 description as if that –

10 MR MPOFU: That's correct –

11 CHAIRPERSON: - if that he is the person

12 who was found there?

13 MR MPOFU: He is that person. You might

14 not know the name of the workshop, Mr Mabuyakhulu, but you

15 testified that you crawled into a particular fence, was

16 that the fence to a workshop nearby?

17 MR MABUYAKHULU: That is so, yes.

18 MR MPOFU: Thank you, Chairperson. Apart

19 from the stitches on your head and the entrance wound on

20 your back, what else did you notice when you regained your

21 consciousness?

22 MR MABUYAKHULU: I did, yes, identify

23 other injuries.

24 MR MPOFU: Well, firstly you said

25 something about pipes, what pipes are these?

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1 MR MABUYAKHULU: Yes, I spoke of the

2 pipes.

3 MR MPOFU: Ja, what pipes?

4 MR MABUYAKHULU: There was something,

5 several pipes were inserted into my body, Chairperson. One

6 other instrument was helping me to breath, he indicated

7 over the nose, and then there was one, he indicated on the

8 side, which was used for feeding him. There was also a

9 pipe with which they were pumping out the gun poison.

10 MR MPOFU: Alright, and you've already

11 testified as well that you were told that the bullet had

12 been removed from your body and that it would be used to

13 identify your assailant, correct?

14 MR MABUYAKHULU: Yes.

15 CHAIRPERSON: The gun can be found?

16 MR MPOFU: Yes, let me put it this way,

17 yes, what did the police say to you, or promise you in

18 relation to the bullet which you say was placed in an arms

19 lock?

20 MR MABUYAKHULU: They promised me,

21 Chairperson, that this bullet would be used to trace what

22 he calls the fingerprints as to whom is it that used it and

23 that I would be given a report on my discharge from

24 hospital.

25 MR MPOFU: Did you also find that an

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1 operation has been performed on you in the process of

2 removing the bullet?

3 MR MABUYAKHULU: Yes.

4 MR MPOFU: Going back to your statement,

5 in paragraph 14 –

6 CHAIRPERSON: Does he have to read it

7 out? I mean, you can get him to confirm the whole

8 statement.

9 MR MPOFU: Yes.

10 CHAIRPERSON: If you consider it

11 necessary I won't stop you but I'm not, – okay.

12 MR MPOFU: Yes, it is a short one, ja.

13 You said that since then you were never completely healed

14 and I now have a bloated bubble of skin on my stomach which

15 is expanding inside over the malt, the soft skin covered in

16 the wound keeps on expanding to the extent that my

17 intestines are visible from the outside. When I lie down

18 on my back the bubble deflates. This big bubble that is

19 now part of your stomach, can you show the commissioner

20 what it looks like?

21 CHAIRPERSON: I don't think that is

22 necessary, Mr Mpofo, it adds an element, we accept what he

23 says and if it is relevant at any subsequent criminal

24 prosecution I'm sure it will be seen then by the judicial

25 officers.

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1 MR MPOFU: Yes.

2 MR MABUYAKHULU: It is so, yes.

3 MR MPOFU: Thank you, thank you,

4 Chairperson. The reason why this is important is because

5 of what you say in paragraph 15, namely that despite that

6 the mining company has recently declared you fit to resume

7 your underground work as an RDO and that you are anxious

8 and terrified of facing the tough underground conditions

9 whilst this medical problem remains unresolved. Can you

10 describe the type of work that you would be required to do

11 if you went back to your normal work as an RDO and how it

12 would affect the condition that the commission accepts?

13 MR MABUYAKHULU: I can explain, yes.

14 MR MPOFU: Thank you.

15 MR MABUYAKHULU: I want to start by

16 saying, Mr Chairperson, working with those machines is a

17 very difficult job. I must state that we die for money

18 because we have to work, but the job that we are doing is

19 exceptionally difficult. I would have liked the commission

20 to say how I look like and that is why, the reason why I

21 refuse to go underground. I do not know why the commission

22 does not want to see it. Mr Chairperson, I was hoping that

23 the commission would possibly be of assistance to me in my

24 condition. The kind of job I do is one which is called a

25 square, square is one works at a very low kind of an

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1 opening. Working there, Mr Chairperson, one works in a

2 position where you are always bending, one might be forced

3 to work in that bending condition for up to eight hours.

4 The machine that one uses has got to be balanced on the

5 stomach. The reason I wanted the commission to see my

6 wound is to determine whether I still have the ability to

7 balance this machine as I'm supposed to. That is all.

8 CHAIRPERSON: Mr Mabuyakhulu, I want to

9 explain to you, we haven't got any power as commission to

10 order Lonmin not to force you to go back to your work as an

11 RDO. Lonmin representatives are present here today and

12 represented by senior counsel and I suggest that you get

13 your legal representatives to speak to the representatives

14 at Lonmin at the end of the hearing today to ask Lonmin to

15 reconsider the matter, and possibly have you examined by a

16 specialist doctor to advise as to whether what you say

17 about your ability to do the work is correct. It is not

18 that we don't want to see your wound, it doesn't mean that

19 we don't believe you, on the contrary we accept that you

20 have the injury that you described. Please proceed, Mr

21 Mpofo?

22 MR MABUYAKHULU: Yes, I understand, Mr

23 Chairperson.

24 MR MPOFU: It was put in your statement

25 that, - okay, I'm on two minds, Chairperson, about the -

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1 but okay, I'll let it go. You also testified that you

2 yourself made some effort to try and avoid having to go

3 underground, including taking classes of adult based

4 education and training.

5 [14:05] MR MABUYAKHULU: Yes.

6 MR MPOFU: Chairperson, I know how the

7 witness feels about this issue of showing his wounds to the

8 Commission but I'll take instructions during the tea break.

9 CHAIRPERSON: You can explain to him, it

10 isn't that we don't believe him -

11 MR MPOFU: Yes.

12 CHAIRPERSON: - we haven't got any power

13 to do what he wants us to do but I've done the best I can

14 in putting it as nicely as I could, and I see the senior

15 counsel for Lonmin is here, and I have no doubt that - Mr

16 Bham, and I've no doubt that the suggestion I made, that

17 the company reconsider the matter, having been examined by

18 a specialist, will be acceded to. I will be very

19 surprised, Mr Bham is actually nodding his head. So you

20 can assure the witness that the best that could be done for

21 him in that regard has been done. Do you have any more

22 questions?

23 MR MPOFU: Yes. Mr Mabuyakhulu, are you

24 aware that there are people who are in a similar position

25 as you who might have been injured during these events that

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1 we are discussing, who have been ordered back to work when

2 they feel that they shouldn't - that their conditions

3 haven't allowed?

4 MR MABUYAKHULU: Yes, I am.

5 MR MPOFU: And we will take the

6 Chairperson's suggestion that this matter be raised

7 directly with Lonmin, but for what it's worth, we will

8 submit, Chairperson, a three page exhibit which is the

9 certificate that declares a person like Mr Mabuyakhulu fit

10 to go back to work. Hopefully when other examples come, we

11 will then use this as the base, thank you. And it should

12 be exhibit -

13 CHAIRPERSON: CCC1 to 4 is not being

14 persisted in, is that right? So we can use CCC1 as the

15 exhibit number for this document you are handing in. Ms

16 Pillay, am I right, CCC1 to 4 is not being persisted in at

17 this stage anyway.

18 MS PILLAY: Not at this stage, no, Chair.

19 CHAIRPERSON: Right.

20 MS PILLAY: So it will be CCC1.

21 CHAIRPERSON: So, the certificate of

22 fitness to perform risk work, which I see is signed by an

23 occupational health nurse or doctor, this will be CCC1.

24 Yes, this is also an important document in another respect,

25 because it indicates the head wounds that he described with

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1 - in the medical report is a foreign docket.
 2 MR MPOFU: Yes, Chair, I was going to
 3 lead him on that.
 4 CHAIRPERSON: Oh, sorry, forgive me, I am
 5 stealing your thunder, please do what you wish with your
 6 own thunder.
 7 MR MPOFU: No, Chairperson, my time is
 8 for free. Mr Mabuyakhulu, apart from the front page of
 9 CCC1 which –
 10 MR MAHLANGU: We unfortunately don't have
 11 it.
 12 MR MPOFU: Oh, you don't have it here?
 13 Thank you, sorry about that. Apart from CCC1 which
 14 declares you fit to perform the risk work that you have
 15 described, on page 3, there are some diagrams, can you see
 16 that?
 17 MR MABUYAKHULU: I see them.
 18 MR MPOFU: The bottom one depicts the
 19 position of the entrance wound, is that more or less where
 20 it is on your body, the bullet?
 21 MR MABUYAKHULU: Yes, Sir.
 22 MR MPOFU: And the top diagram shows
 23 three stitched scars on your head, on your scalp.
 24 MR MABUYAKHULU: That is so.
 25 MR MPOFU: Okay, now obviously the

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1 sketches cannot show the numbness that you also described,
 2 and Chairperson, if I may just point out that this
 3 particular report seems to be from Andrew Saffy Hospital,
 4 which is the first hospital he went to, and it is dated
 5 11TH, 08.
 6 CHAIRPERSON: No, is that right? It
 7 seems to be dated the 18th - that one, yes. You mean the
 8 third page?
 9 MR MPOFU: No, Chairperson, you are quite
 10 correct, the 11th is only the admission date.
 11 CHAIRPERSON: Yes, this document, the
 12 first page is dated the 18th of January this year.
 13 MR MPOFU: Correct, ja. And then the
 14 medical information which is attached, is dated the 11th of
 15 08, on the first page at 09:45 which is presumably the
 16 admission time.
 17 CHAIRPERSON: What I also see has been
 18 pointed out to me by Mr Tokota is that at the foot of the
 19 first page, it says, "an employee may appeal against the
 20 medical finding of the medical practitioner to the Medical
 21 Inspector of Mines." So your client, I don't if he's done
 22 that, but if he hasn't done that he would have the right to
 23 appear to the Medical Inspector of Mines against this
 24 declaration that he's fit to work.
 25 MR MPOFU: Correct. That's another

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1 route.
 2 CHAIRPERSON: Another route, and again
 3 it's an area with which we can't really interfere, but I
 4 understand the point that he wishes to have made on his
 5 behalf, and you've made it -
 6 MR MPOFU: Thank you.
 7 CHAIRPERSON: - as forcibly as you can.
 8 MR MPOFU: Thank you, Chairperson. Mr
 9 Mabuyakhulu, the last question I want to ask you is,
 10 whether on the, or rather, let me put it like this, are you
 11 aware now that there was a rumour or at least there was
 12 information that the people who had been shot there, had
 13 died, and did that information come to your attention at
 14 some stage?
 15 MR MABUYAKHULU: I heard about it, yes.
 16 MR MPOFU: Well, how did it come –
 17 obviously the, as they say the rumours were exaggerated but
 18 how did the information come to you?
 19 MR MABUYAKHULU: There's one worker, Mr
 20 Chairperson, who comes from the area, the rural area where
 21 I stay, he said he had overheard NUM people saying there
 22 was one man who was killed there by the NUM people and a
 23 Zulu speaking person, and when he asked, "which one of the
 24 Zulus is it?" they then said it's the one with a beard. So
 25 he came to see me.

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1 MR MPOFU: Did anyone else suggest that
 2 they had been told that you had died?
 3 MR MABUYAKHULU: Mr Chairperson, what
 4 happened is whilst I was lying there unconscious some of
 5 the people coming from my area, came there and saw me, and
 6 they are the people who believed that I had died, because I
 7 was left there for dead. After my recovery, I met them and
 8 they said to me, "man, how did you survive, because we had
 9 really been counting you off, we thought you were dead." I
 10 said to them, "I also do not know. It was only the help of
 11 the Almighty that I survived." Apparently the time had not
 12 come as yet.
 13 MR MPOFU: And yes, Chairperson, I think
 14 I will leave it there. Thank you, I have no further
 15 questions.
 16 CHAIRPERSON: Mr Budlender, do you have
 17 any questions?
 18 MR BUDLENDER: We wish to reserve our
 19 position and it has been with the other parties that
 20 they'll cross-examine first, subject to the consent of the
 21 Commission.
 22 CHAIRPERSON: Yes.
 23 MR BUDLENDER: We will tidy up
 24 afterwards, if necessary.
 25 CHAIRPERSON: Does the agreement indicate

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1 who is going to cross-examine first?

2 MR BUDLENDER: Mr Semanya I think is to

3 go first, and then Mr Tip.

4 CHAIRPERSON: The agreement meets with

5 the approval of the Commission.

6 MR SEMENYA SC: Thank you, Chair,

7 Commissioners. Mr Mabuyakhulu, when you got bludgeoned on

8 your head, it was immediately after you were shot, is that

9 right?

10 MR MABUYAKHULU: Yes.

11 MR SEMENYA SC: You were already

12 immobilised.

13 MR MABUYAKHULU: That is correct.

14 MR SEMENYA SC: Some of your co-workers

15 had fled away.

16 MR MABUYAKHULU: That is correct.

17 MR SEMENYA SC: And you still were a

18 threat to the office of NUM.

19 MR MABUYAKHULU: I am lost.

20 MR SEMENYA SC: You could not have been

21 any threat to the office of the NUM.

22 MR MABUYAKHULU: I agree with you.

23 MR SEMENYA SC: When you are being

24 bludgeoned it is not in protection of an NUM office, is it?

25 MR MABUYAKHULU: I agree with you.

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1 MR SEMENYA SC: So you can give us an

2 estimate, how far from the office are you, where the

3 workshop is?

4 MR MABUYAKHULU: Nearer the police

5 station, I must even mention today that I have no idea

6 where the NUM office is, I don't know exactly where it is.

7 There is a police station in the vicinity, we were just

8 about to reach the police station.

9 MR SEMENYA SC: When you hear somebody

10 saying you must be finished off, were you still a threat of

11 any kind to anyone?

12 MR MABUYAKHULU: Not at all.

13 MR SEMENYA SC: Now, let's talk about the

14 group you were with. You know what unions do, correct?

15 MR MABUYAKHULU: Yes.

16 MR SEMENYA SC: Amongst others they take

17 demands from members who are workers, correct?

18 MR MABUYAKHULU: Yes.

19 MR SEMENYA SC: And they are the ones who

20 would present the case of the workers to the employer.

21 MR MABUYAKHULU: Yes.

22 MR SEMENYA SC: That normally gets done

23 in offices, correct?

24 MR MABUYAKHULU: Yes.

25 MR SEMENYA SC: Without weapons.

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1 MR MABUYAKHULU: Yes.

2 MR SEMENYA SC: And you were a union

3 member, weren't you?

4 MR MABUYAKHULU: Yes.

5 MR SEMENYA SC: To which you pay dues.

6 MR MABUYAKHULU: That is so.

7 MR SEMENYA SC: So that your concerns as

8 a worker are carried over by this union to the employer?

9 MR MABUYAKHULU: Yes.

10 MR SEMENYA SC: So you actually don't

11 need to be a group of 3 000 to go to the NUM office, am I

12 right?

13 MR MABUYAKHULU: There was.

14 MR SEMENYA SC: Okay, we'll examine that

15 shortly. But it was possible for you people to go to your

16 respective unions and say as RDOs you have this pressing

17 demand.

18 MR MABUYAKHULU: That had already been

19 done in the past.

20 MR SEMENYA SC: In the year 2012.

21 MR MABUYAKHULU: No.

22 MR SEMENYA SC: So in the year 2012, you

23 still could go to the union and say, this is a pressing

24 demand we have as RDOs, it was physically possible, right?

25 MR MABUYAKHULU: On my side, it was

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1 difficult, as I said earlier that we have different unions.

2 MR SEMENYA SC: No, no, no, what I am

3 saying is you could still in 2012 approach a shop steward.

4 MR MABUYAKHULU: I understand the way you

5 put it, but the union to which I now belong AMCU, is still

6 not part of the recognised unions to represent us to the

7 employer.

8 MR SEMENYA SC: So you couldn't go to

9 anybody and say, "I have this request as an RDO?"

10 MR MABUYAKHULU: On our side, yes, we

11 decided to get to the employer directly for him to help us.

12 [14:25] MR SEMENYA SC: Okay. You did not, did

13 you not that if you engage in an unprotected strike you

14 stand risk of dismissal?

15 MR MABUYAKHULU: I had already explained

16 earlier, Mr Chairperson, that our original plan was not to

17 go on any strike. I can't explain what later happened,

18 because I was then in hospital.

19 MR SEMENYA SC: No, that can't be

20 correct, Mr Mabuyakhulu. When you were marching to the NUM

21 office, there was already a decision to go on strike, am I

22 right?

23 MR MABUYAKHULU: Yes.

24 MR SEMENYA SC: So you did know that you

25 are engaged in an unprotected strike?

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1 MR MABUYAKHULU: Yes.

2 MR SEMENYA SC: Now if your true

3 intentions were to go to NUM to tell the Union, to ask the

4 Union why this that they don't allow the employer to talk

5 to you, why do you need 3 000 of you?

6 MR MABUYAKHULU: Yes, it was necessary.

7 MR SEMENYA SC: It's a request that can't

8 be articulated by the group of five leaders you had?

9 MR MABUYAKHULU: They could, yes.

10 MR SEMENYA SC: Let us step back. Mr Da

11 Costa, in one of his statement is saying that NUM had very

12 little presence at the Karee Mine?

13 MR MABUYAKHULU: Was it during the strike

14 or at the Karee Mine?

15 MR SEMENYA SC: During the strike?

16 MR MABUYAKHULU: I don't know.

17 MR SEMENYA SC: So why don't you go to

18 your shop steward?

19 MR MABUYAKHULU: I have explained

20 earlier, Sir, that the shop stewards had been approached

21 quite several times in the past, but no feedback was made

22 and the decision was then made that the best is to go to

23 the employer.

24 MR SEMENYA SC: But 2006, 2007 when that

25 happens, there is no AMCU?

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1 MR MABUYAKHULU: I wasn't employed at

2 Lonmin yet.

3 MR SEMENYA SC: Precisely my point, so

4 why don't you go to your Union, which is AMCU now, which

5 has never refused to take that type of request, why don't

6 you engage them?

7 MR MABUYAKHULU: There was no way in

8 which we could talk to them, because it became clear that

9 the NUM had signed a two year wage agreement.

10 MR SEMENYA SC: To use your language

11 there was every way to speak to AMCU?

12 MR MABUYAKHULU: No, no.

13 MR SEMENYA SC: And the reason is?

14 MR MABUYAKHULU: As I said earlier,

15 anything that had to do with wages, was, the NUM was the

16 Union. AMCU wasn't involved, it did not know anything

17 pertaining to wages.

18 MR SEMENYA SC: Yes, because you're not

19 raising it with them. So I'm asking you, why don't you, as

20 AMCU members, raise these demands with your Union?

21 MR MABUYAKHULU: The decision that was

22 made during the discussions, was that AMCU was not yet

23 involved in negotiations pertaining to wages. That it will

24 only be able to do so after two years at the expiry of the

25 existing agreement.

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1 MR SEMENYA SC: Okay. Mr Mabuyakhulu,

2 there was nothing preventing you from presenting a request

3 to your Union, AMCU, am I right?

4 MR MABUYAKHULU: Yes.

5 MR SEMENYA SC: You just elected to act

6 outside the legal framework?

7 MR MABUYAKHULU: What made us not be able

8 to come together, is there were RDOs which belongs to AMCU

9 at Karee. There were RDOs that belongs to NUM at AMCU.

10 There were those that were non-unionised at Karee.

11 MR SEMENYA SC: I am talking about you,

12 Mr Mabuyakhulu, you elected not to use plea bargaining

13 structures to press for your demand?

14 MR MABUYAKHULU: Yes.

15 MR SEMENYA SC: Now let's examine what

16 you do next. You elect five members to represent you?

17 MR MABUYAKHULU: Yes.

18 MR SEMENYA SC: And these representatives

19 went and met with what you say is the white man, to present

20 the request, correct?

21 MR MABUYAKHULU: Yes.

22 MR SEMENYA SC: And you're confident that

23 they are able to present your request?

24 MR MABUYAKHULU: We decided to elect

25 them, not that we knew they would be able to present our

Page 5312

1 case very well, but it's only that we could not all go at

2 the same time.

3 MR SEMENYA SC: That's the point I'm

4 making. So you confided in them that they would present

5 whatever demands that you have?

6 MR MABUYAKHULU: Yes.

7 MR MPOFU SC: Chairperson, I'm sorry, I'm

8 really sorry, Mr Semenya, there is a problem with the

9 interpretation. The witness said, "[African language]" and

10 the interpretation – which means, "they couldn't all talk

11 at the same time". And the interpretation was that they

12 could not go at the same time. In the context of this, I

13 think that would give a completely different picture.

14 CHAIRPERSON: Mr Mahlangu, there's been

15 an appeal against your interpretation. What do you say

16 about that?

17 MR MAHLANGU: Unfortunately this is not

18 recorded, I can't remember, but I tried my best to

19 interpret exactly what he's saying that they could not all

20 present their case at the same time.

21 CHAIRPERSON: So that covers the point.

22 MR MPOFU SC: That's the correct one,

23 yes.

24 MR MAHLANGU: I did not mean going in the

25 sense of moving forward.

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1 MR SEMENYA SC: In fact it would be much
2 more difficult to present it as a group of 3 000?
3 MR MABUYAKHULU: Yes.
4 MR SEMENYA SC: All the better there were
5 just five?
6 MR MABUYAKHULU: Yes.
7 MR SEMENYA SC: And the five of them
8 could very well able go to the NUM office?
9 MR MABUYAKHULU: Yes.
10 MR SEMENYA SC: And they can do it
11 without any display of arms?
12 MR MABUYAKHULU: Yes.
13 MR SEMENYA SC: As gentlemen as they
14 were, it was in fact inappropriate to go with dangerous
15 weapons as well?
16 MR MABUYAKHULU: I don't remember any
17 arms that were there. It was just like on the 10th when we
18 went to see the employer, kieres and some were carrying
19 tree branches.
20 MR SEMENYA SC: You seriously want to
21 convey that to the Commission, Mr Mabuyakhulu?
22 MR MABUYAKHULU: Yes.
23 MR SEMENYA SC: And saying that under
24 oath?
25 MR MABUYAKHULU: Yes.

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1 MR SEMENYA SC: Might I request to replay
2 that earlier clip that I indicated to Ms Pillay?
3 MS PILLAY SC: Chair, if I could ask that
4 clip 89 be shown? Clip 89 and that it be marked CCC2. I
5 think, Mr Semenya intends showing further clips to you. So
6 it might be better if you mark it CCC2.1.
7 [VIDEO PLAYED]
8 MR SEMENYA SC: Sorry, just hold the
9 video there. Sorry, take it back a little bit.
10 [VIDEO PLAYED]
11 MR SEMENYA SC: Just stop. Again. Yes,
12 I'm sorry. I just want the frame indicating the pangas and
13 sharp weapons that are pointed there. It's at the
14 beginning of the video clip.
15 MR MAHLANGU: The witness is saying, what
16 appears on the clip there is these are members of the NUM.
17 MR SEMENYA SC: Or even still, the 10
18 that are protecting the office.
19 MR MABUYAKHULU: The people that injured
20 me on the back of my head, those are the people appearing
21 there.
22 MR SEMENYA SC: Yes. Those are the ones
23 they are protecting the NUM office?
24 MR MABUYAKHULU: Yes.
25 CHAIRPERSON: When you – last week when

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1 you were away, there was a clip shown to which we had
2 initial – it wasn't this one, but it was another one, which
3 we had thought was the strikers approaching the NUM office.
4 It turned out that it was actually the NUM people who
5 chased the strikers away and were returning when they
6 chased them away. So since then we've requested that the
7 evidence leaders to try and trace a clip of the strikers
8 approaching, if there is such a clip and my understanding
9 is that no such clips have been found as yet. This one I
10 haven't seen before, but it sounds – it looks like close to
11 the one we did see last week, which is the NUM people
12 returning to the office, having chased away the strikers
13 after the shots were fired. So you weren't here when that
14 happened, so I'm just telling you.
15 MR SEMENYA SC: I'm indebted to the
16 Chair.
17 CHAIRPERSON: Let's have a look at this
18 while - you can examine, Mr Semenya, I won't interfere
19 with you, unless I have to.
20 [VIDEO PLAYED]
21 MR MAHLANGU: Witness also indicates that
22 on that picture is -
23 MR SEMENYA SC: I don't think you need to
24 say anything beyond, beyond just looking at the weapons.
25 Okay, Chair, I can proceed from here.

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1 CHAIRPERSON: As I've said to you, it's
2 your cross-examination.
3 MR SEMENYA SC: Thanks, Chair.
4 CHAIRPERSON: So unless you ask questions
5 which objection is correctly taken, either by me or by some
6 of the parties, you must carry on.
7 MR SEMENYA SC: Thank you, Chair, I
8 intend to put no objectionable questions to the witness.
9 Mr Mabuyakhulu, XX6 is your – is the statement you say
10 doesn't bear your signature, am I right?
11 MR MABUYAKHULU: It is correct, yes, it
12 is the statement where I deny the signature.
13 MR SEMENYA SC: And it is the one that
14 you reject as correct what is some sections written on it?
15 MR MABUYAKHULU: Yes.
16 MR SEMENYA SC: And you say particularly
17 that signature is not yours?
18 MR MABUYAKHULU: Definitely not.
19 MR SEMENYA SC: Just help me here. You
20 see XX6 has the following ID number, 8109095713088. Were
21 you born in 1981?
22 MR MABUYAKHULU: Yes.
23 MR SEMENYA SC: 9th of September?
24 MR MABUYAKHULU: Yes.
25 MR SEMENYA SC: So the ID number is dead

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1 correctly yours?

2 MR MABUYAKHULU: Yes.

3 MR SEMENYA SC: When you were confused?

4 [14:45] MR MABUYAKHULU: When one is admitted in
5 the hospital there is a form that is being printed there
6 with all the particulars of one's employment, IDs and all
7 these, this is where they got these particulars from.

8 MR SEMENYA SC: Now I know you had
9 unconscious when you got there, but why are you telling me
10 this?

11 MR MABUYAKHULU: What I know, even in the
12 clinic when one goes in there, the first thing they do is
13 take the paper, complete your particulars and they remain
14 there.

15 MR SEMENYA SC: Ja, but why are you
16 telling us that?

17 MR MABUYAKHULU: To explain how I got my
18 ID number right.

19 MR SEMENYA SC: Are you suggesting the
20 police officer took this number from your bed letter?

21 MR MABUYAKHULU: Because when the police
22 arrived there I wasn't in the right state of mind, he says
23 he was floated, whether they got it from my clock card or
24 anything, because the clock card also contains all these
25 particulars.

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1 MR SEMENYA SC: Mr Mabuyakhulu, that
2 statement also says you can identify somebody who said to
3 you, you must go to the NUM office, am I right?

4 MR MABUYAKHULU: No, no, no.

5 MR SEMENYA SC: You weren't able to point
6 out anybody who told you that?

7 MR MABUYAKHULU: No, I did not.

8 MR SEMENYA SC: You know there is
9 something eerily troubling about that assertion. You see
10 the commission will hear, as it has already been pointed
11 out in the presentation, the night of the 10th there is a
12 recording of shots being fired and the police were unable
13 to track where those shots were fired from. You can't
14 dispute that, can you?

15 MR MABUYAKHULU: Yes, I can't.

16 MR SEMENYA SC: And I'm looking
17 specifically at Exhibit L, slide number 16. I find it as a
18 disturbing happenstance that in this statement the reasons
19 for going to the NUM office is because AMCU thinks that
20 they were shot at the night before.

21 MR MABUYAKHULU: What I know is that the
22 people going to the NUM office were the RDOs and not AMCU
23 people.

24 MR SEMENYA SC: No, but the emphasis of
25 my question is, the purpose for going to the NUM office was

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1 not to ask them why they're preventing the employer from
2 discussing with you.

3 MR MABUYAKHULU: I know that to have been
4 the reason for going to his office.

5 MR SEMENYA SC: The reason instead, we
6 will argue, is as documented on XX6, that is, you wanted to
7 know why they were shooting people of AMCU.

8 MR MABUYAKHULU: I don't understand the
9 question?

10 MR SEMENYA SC: The reason why you and
11 the crowds that were marching to NUM offices were doing
12 that to establish why the AMCU people were being shot at.

13 MR MABUYAKHULU: I don't agree with that.

14 MR SEMENYA SC: Mr Boye was one of those
15 people who were pointed as part of the leadership of the
16 RDO protestors, am I right?

17 MR MABUYAKHULU: Yes.

18 MR SEMENYA SC: And he was part of the
19 leadership of the protesting RDOs?

20 MR MABUYAKHULU: No.

21 MR SEMENYA SC: Do you want to reflect on
22 your answer?

23 MR MABUYAKHULU: Boye was elected by us
24 to be part of the people that were going to talk on our
25 behalf, not that he was a leader, but if I may explain

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1 further, we started using him as back as the Karee.

2 MR SEMENYA SC: That's why I'm saying he
3 was having a commanding role in relation to the RDO
4 protestors.

5 MR MABUYAKHULU: I understand now the way
6 in which you put it, yes.

7 MR SEMENYA SC: And with the benefit of
8 your understanding what's the answer to my question?

9 MR MABUYAKHULU: I would say, yes, we
10 used Boye.

11 MR SEMENYA SC: As part of the
12 leadership?

13 MR MABUYAKHULU: What is the collision,
14 it makes it difficult for me to agree. It would now look
15 as though Boye was the front runner, he was leading the
16 strike saying, we should go this way and this way and this
17 way. We only elected him there, he was part of the whole
18 group of RDOs.

19 MR SEMENYA SC: He went with you to the
20 NUM offices?

21 MR MABUYAKHULU: I don't remember that,
22 it was a very big crowd, 3,000 and something. The people
23 who were in front there, five or six, I don't really
24 remember who all of them were there, whether he was there
25 or not, I cannot say.

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1 MR SEMENYA SC: Those are the questions
 2 we have for the witness, Chair.
 3 ARBITRATOR: Mr Tip, do you want us to
 4 take the tea adjournment before you cross-examine or do you
 5 want to ask a couple of questions before that?
 6 MR TIP SC: It would be convenient to
 7 take tea now, Mr Chair.
 8 ARBITRATOR: We'll take the tea
 9 adjournment.
 10 [COMMISSION ADJOURNS COMMISSION RESUMES]
 11 [15:19] CHAIRPERSON: The Commission resumes. Mr
 12 Mpofo, during the tea adjournment my fellow Commissioners
 13 and I discussed the question of the injuries which the
 14 witness wishes to show us, and if he still wishes us to see
 15 them, we don't think it would be appropriate for us to
 16 refuse to do so, and in which case we suggest you bring him
 17 to our chambers after we adjourn and in the privacy of
 18 chambers we will – if he wishes us to do so, we will
 19 examine this injury that he wanted us to see.
 20 MR MPOFU: Thanks, Chairperson. I think
 21 it will go a long way in the atonement of his feelings.
 22 Thank you very much, Chairperson.
 23 CHAIRPERSON: He will either come right
 24 through the representations you make to Lonmin or if the
 25 relevant official under the Act, he appeals to him or her.

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1 So I can understand where he's coming from. I must first
 2 remind him he's under oath. You're still under oath.
 3 MR MABUYAKHULU: Yes.
 4 CHAIRPERSON: Mr Mabuyakhulu. Mr Tip?
 5 MR TIP SC: Thank you, Mr Chair. Mr
 6 Mabuyakhulu, you begin your statement, which has been
 7 placed before the Commission, Exhibit BBB8, with a
 8 reference to what happened on the 9th of August 2012.
 9 MR MABUYAKHULU: Yes, Sir.
 10 MR TIP SC: Did you attend earlier
 11 meetings of the RDOs at Karee, that is before the 9th of
 12 August.
 13 MR MABUYAKHULU: Yes.
 14 MR TIP SC: And you've been at the
 15 Commission certainly this morning. Is that correct?
 16 MR MABUYAKHULU: Yes.
 17 MR TIP SC: And you will have heard the
 18 re-examination of Mr Zokwana in which a number of
 19 paragraphs from Mr Da Costa of Lonmin were placed on
 20 record.
 21 MR MABUYAKHULU: I did, yes.
 22 MR TIP SC: And one of things that was
 23 recorded in that statement is that it was the position of
 24 RDOs from the very start, as from at least 21 June 2012,
 25 that they did not wish any unions to be involved in their

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1 advancement of their demand for R12 500.
 2 MR MABUYAKHULU: Yes.
 3 MR TIP SC: And does that correspond with
 4 your own experience of the attitude of the RDOs throughout
 5 the events that we are discussing here?
 6 MR MABUYAKHULU: I do.
 7 MR TIP SC: Now, I want to take up one of
 8 the answers that you gave to my learned friend, Mr Semenya,
 9 who cross-examined you before tea concerning your access to
 10 AMCU shop stewards at Karee. Do you recall giving the
 11 evidence that it wasn't possible to talk to the shop
 12 stewards, because NUM had signed a two-year wage agreement?
 13 MR MABUYAKHULU: Yes.
 14 MR TIP SC: Now I want you to look at a
 15 document – I'll describe it, Chair, it's headed Memorandum,
 16 Lonmin Emergency and Disaster Management and Mining
 17 Security Division. It concern an AMCU meeting at Karee on
 18 19 July 2012, and just for the record, it comes from the
 19 Lonmin Marikana footage/Documentation/19/7/2012, Karee
 20 Hostel AMCU Meeting. I think, Chair, it doesn't as yet
 21 have an Exhibit number, but if I may hand that up.
 22 CHAIRPERSON: Exhibit, well Ms Pillay,
 23 with her customary promptitude will tell us what it should
 24 be.
 25 MS PILLAY: Chair, it will be CCC3.

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1 CHAIRPERSON: Can you describe it in two
 2 or three words?
 3 MR TIP SC: It's obviously a report from
 4 Lonmin security personnel setting out essentially what took
 5 place at an AMCU meeting at Karee on 19 July 2012.
 6 CHAIRPERSON: Thank you.
 7 MR TIP SC: And we have copies available
 8 for everybody, and it may be convenient, so that we don't
 9 have people walking up and down at the same time to put in
 10 a second document, which I'll refer to a little later in
 11 the cross-examination.
 12 CHAIRPERSON: Will that CCC4?
 13 MR TIP SC: CCC4, Mr Chair.
 14 CHAIRPERSON: How are you going to
 15 describe it?
 16 MR TIP SC: That is a Lonmin internal
 17 communiqué headed, "Instruction to stop the unprotected
 18 march and work stoppage." This was issued to the persons
 19 who were present at the LPD on 10 August 2012. And just to
 20 identify the source, that is from a Lonmin Bundle at page
 21 151.
 22 CHAIRPERSON: Thanks. Now the meeting
 23 one is CC3, right?
 24 MR TIP SC: CCC3.
 25 CHAIRPERSON: Sorry, CCC3.

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1 MR TIP SC: Yes, and the second one, the
2 communiqué is CCC4. Chair, I'll just pause a moment whilst
3 the remaining parties get copies of the documents.
4 CHAIRPERSON: Is it suggested the meeting
5 started at 5:30 in the morning and ended at 16:20 in the
6 afternoon? It would be quite a long meeting. Mr Steve's
7 address must have taken quite a long time.
8 MR TIP SC: One imagines, Mr Chair, that
9 it must have 15:30 as the start and that not even Steve
10 could speak for that length of time.
11 CHAIRPERSON: You'll be accused of
12 attacking AMCU is you do that.
13 MR TIP SC: Well, let me proceed. I
14 think mostly everybody has them. Mr Mabuyakhulu, the first
15 document that I want to take you to is Exhibit CCC3, and
16 that is a report on an AMCU meeting at Karee. Did you
17 attend AMCU meetings at Karee from time to time?
18 MR MABUYAKHULU: No.
19 MR TIP SC: You never attended one AMCU
20 meeting?
21 MR MABUYAKHULU: I attended the one
22 meeting at the mining store as a machine boy with Da Costa
23 – machine boy, also RDO.
24 MR TIP SC: Yes, alright. Well, perhaps
25 we will in due course have somebody who was present,

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1 perhaps it will be Steve, himself, but I'm going to place
2 on record what the essence is of the report that was made
3 concerning it. "Steve addressed the employees. He
4 informed them that Region won't be available for the
5 meeting, they have sent him to come and address the
6 employees. He encourages the members who are appointed as
7 stewards to do the respective job properly and help the
8 employees when they need help." Now I take it, even
9 although you personally were not at this meeting, you say
10 you would have been aware that AMCU shop stewards had been
11 elected or appointed. Do you agree?
12 MR MABUYAKHULU: Yes.
13 MR TIP SC: And this goes on. "He," –
14 that's Steve, "also mentions that the matter of increase
15 will be addressed at the coming meeting with Region." And
16 again, although you were not there, I'll ask your comment.
17 It appears that that would have been the matter of the
18 increase to R12 500, would you agree, or would there be
19 some other increase that you can tell us about?
20 MR MABUYAKHULU: There was no other – no
21 I don't agree with you.
22 MR TIP SC: Alright. Well, just tell us
23 what was the matter of the increase that you think might
24 have been referred to here?
25 MR MABUYAKHULU: On my side, Mr

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1 Chairperson, there's no AMCU meeting which I attended where
2 there was the question of wages discussed.
3 MR TIP SC: Yes. I'm asking your comment
4 on something a bit different, Mr Mabuyakhulu, if you don't
5 mind just listening with care. I know that you were not at
6 this meeting, according to you, but Steve evidently
7 reported there that the matter of the increase will be
8 addressed with the region, that is plainly the AMCU region.
9 MR MABUYAKHULU: I'm hearing this for the
10 first time today.
11 MR TIP SC: Yes, alright, well I'm won't
12 debate it at great length, but let me just ask you this,
13 Steve is well-known person at Karee, isn't he?
14 MR MABUYAKHULU: Yes.
15 MR TIP SC: And in fact he was previously
16 the NUM branch chairperson at Karee?
17 MR MABUYAKHULU: Yes.
18 MR TIP SC: And it was in the event after
19 he had been removed from office by the NUM that you and
20 many others decided to join AMCU, is that correct?
21 MR MABUYAKHULU: I have no problem with
22 that. I know the whole story, we can get – when it comes
23 to the joining of AMCU, there was a strike at Karee 2011 –
24 MR TIP SC: Mr Mabuyakhulu, forgive me
25 for cutting you short. The Commission already has a full

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1 account of what those events are. I was really trying to
2 assist you by putting it in context. If Mr Mpofu feels
3 that there should be particular detail from you, he can do
4 so in re-examination, but I would like to move on. I'm
5 going to leave the question of the matter of increase for
6 argument. I just want to go into the last sentence in that
7 paragraph where it is said –
8 CHAIRPERSON: Can I ask a question about
9 that? I take it that at that stage, we're talking about
10 July 2012, there was only one increase being talked about
11 at Karee among the rock drill operators, is that so? The
12 increase - the RDOs were seeking to increase their – to
13 raise their take home pay to R12 500 a month, is that
14 correct?
15 MR MABUYAKHULU: As RDOs, yes.
16 MR TIP SC: I'm indebted to you, Chair.
17 Then the last sentence in this account of the meeting,
18 reads, quote, "He told them," – that is Steve told the
19 persons present, "that whenever they have a problem, they
20 must first go to AMCU offices before they can go to HR."
21 That's the end of the quote.
22 MR MABUYAKHULU: I cannot agree to that,
23 because it's the first time that I've come across this at
24 this place.
25 MR TIP SC: I'm going to put to you on

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1 the basis of this pure common sense that you and the other
 2 RDOs and AMCU members at Karee during that time would have
 3 known that issues and disputes and grievances could be
 4 taken up through a union, in this case AMCU.
 5 MR MABUYAKHULU: But pertaining to wages,
 6 we knew that we had no say there. AMCU was not the
 7 authority until the expiry of the two-year existing
 8 agreement.
 9 [15:39] MR TIP SC: Alright, well, Mr
 10 Mabuyakhulu, I'm not going to argue that backwards and
 11 forwards. You've already said to my learned friend, Mr
 12 Semanya, that the RDOs – you and your group, had elected
 13 not to use collective bargaining structures, but I want to
 14 move on. I would like you, please, to give us some
 15 description of how the meetings that you have referred to,
 16 that were held by the RDOs at Wonderkop, took place and I
 17 will ask you specific questions about that. You've already
 18 indicated that in excess of 3 000 persons attended those
 19 meetings.
 20 MR MABUYAKHULU: Yes.
 21 MR TIP SC: And you've also referred to
 22 the fact that there were speakers who addressed the
 23 meetings.
 24 MR MABUYAKHULU: Yes.
 25 MR TIP SC: And were those speakers able

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1 to communicate properly? Did they have loud hailers or
 2 anything similar?
 3 MR MABUYAKHULU: They were quite audible,
 4 though there were no loud hailers.
 5 MR TIP SC: So everybody there could hear
 6 what was said?
 7 MR MABUYAKHULU: I cannot say this with
 8 certainty.
 9 MR TIP SC: You heard everything that was
 10 said?
 11 MR MABUYAKHULU: I heard some of the
 12 things that were being said, and this is what I am saying
 13 today. I would not be able to say I heard everything 100%.
 14 MR TIP SC: Was there an opportunity for
 15 people to respond to what was being said by the speakers?
 16 MR MABUYAKHULU: Yes, there were chances,
 17 we would debate things.
 18 MR TIP SC: Yes, you've already said
 19 that. So issues would be discussed by all the people
 20 present and a decision would be reached, which would be a
 21 decision of all those at the meeting, correct?
 22 MR MABUYAKHULU: Yes.
 23 MR TIP SC: And were the people who were
 24 at the Wonderkop stadium on the 10th – Friday, the 10th of
 25 August, more or less the same as those who had marched to

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1 the LPD on the 9th of August?
 2 MR MABUYAKHULU: We went to the LPD on
 3 the 10th.
 4 MR TIP SC: I beg your pardon, I used the
 5 wrong date. I meant to say that the persons who had
 6 marched to the LPD on the 10th, were those more or less the
 7 same people who had met on the 9th and the same people who
 8 met on the 11th at Wonderkop?
 9 MR MABUYAKHULU: The majority of the
 10 attendance was on the 10th. It was very, very high, because
 11 all the RDOs were present there.
 12 CHAIRPERSON: - answered the question,
 13 partly because it was a double question. So break it up
 14 into two halves. The first part of the question is, the
 15 people who were at the meeting on the 9th, were they by and
 16 large the same people who marched on the 10th?
 17 MR MABUYAKHULU: Same people?
 18 CHAIRPERSON: Yes, by and large, I
 19 understand you say there were lot of people on the 10th,
 20 because all the RDOs were there, but all the people who
 21 were there – or most of them, who were there on the 9th,
 22 were they also part of the march on the 10th? That's the
 23 first half of the question.
 24 MR MABUYAKHULU: Yes.
 25 CHAIRPERSON: The next half of the

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1 question was, the people who took part in the march towards
 2 the NUM offices on the 11th, were they by and large people
 3 who had been at the meeting on the 10th?
 4 MR MABUYAKHULU: Yes.
 5 MR TIP SC: Thank you. Now, on the 10th,
 6 it is clear from your statement that you went to the
 7 offices of the LPD and back to your meeting point at
 8 Wonderkop, without any incident, do you confirm that?
 9 MR MABUYAKHULU: That is so.
 10 MR TIP SC: You didn't anywhere near the
 11 NUM office and no shots were fired at any stage?
 12 MR MABUYAKHULU: That is so.
 13 MR TIP SC: Now, in paragraph 6 – or
 14 rather 5, firstly, of your statement, you make the
 15 assertion that the five members who you had elected as your
 16 representatives had gone into the offices, they came back
 17 and they told you that, according to the employer, that is
 18 according to Lonmin, the union said that the employer
 19 should not talk to you.
 20 MR MABUYAKHULU: That is so.
 21 MR TIP SC: Alright, well I heard the
 22 interpreter say NUM for union, but I assume that we can
 23 take it as read that that was not AMCU you were planning to
 24 refer to?
 25 MR MAHLANGU: What was the question?

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1 MR TIP SC: Mr Interpreter, you're not
 2 really on the spot. The sentence says the union said that
 3 the employer should not talk to us, and I think that you
 4 interpreted that as the NUM -
 5 MR MAHLANGU: The union, just instead of
 6 -
 7 MR TIP SC: Instead of the union.
 8 MR MABUYAKHULU: It is so that he said
 9 the union said so.
 10 MR TIP SC: Did you understand that that
 11 was the NUM, or did you think it was AMCU or some other
 12 union?
 13 MR MABUYAKHULU: The NUM.
 14 MR TIP SC: Do you remember who made that
 15 report to you?
 16 MR MABUYAKHULU: The members that we had
 17 elected.
 18 MR TIP SC: Yes. There were five of
 19 them. I'm sure they didn't all speak at the same time. Do
 20 you remember which one? Can you give us a name of a person
 21 who -
 22 MR MABUYAKHULU: I would be lying if I
 23 had to say so.
 24 MR TIP SC: Alright. Again, I'm not
 25 going to dwell on it, or to probe for great detail. I just

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1 want to put to you and see if you have any comment on this,
 2 that the NUM denies that it was in a position to give
 3 instructions to Lonmin about what it could do or what it
 4 should not do.
 5 CHAIRPERSON: Mr Tip, I've got two
 6 problems with the way you formulated the question.
 7 Firstly, he wasn't there when it - he is maintaining that
 8 he was told, he wasn't there at the time when the employer
 9 said something about its refusal or inability to negotiate.
 10 That's the first point. And secondly, to say they weren't
 11 in a position to give instructions, doesn't mean they
 12 didn't try to give instructions, despite the fact that they
 13 weren't legally entitled to do so. So I think that
 14 question is unhelpful in two respects. You might like to
 15 revisit it.
 16 MR TIP SC: Yes. Chair, I was going to
 17 add the leg that it did not do so, but I will take the
 18 point in respect of the first aspect, he was not there, and
 19 I will -
 20 MR MABUYAKHULU: I'm unable to give you
 21 an answer, yes, Sir, from some of the witnesses that would
 22 be called there will be somebody who will be able to
 23 identify which member of the NUM was present at the LPD.
 24 MR TIP SC: Yes, well then that happens,
 25 we'll deal with it in the appropriate detail. Let me move

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1 on. At the LPD on that day, you were present from the
 2 beginning of the interaction there to the very end, is that
 3 correct?
 4 MR MABUYAKHULU: That is so.
 5 MR TIP SC: And you will recall at some
 6 stage officials of Lonmin handed out certain notices, and
 7 I'd like you to look at CCC4.
 8 MR MABUYAKHULU: Yes.
 9 MR TIP SC: Do you recall notices of this
 10 kind being issued by Lonmin to the persons present on 10
 11 August?
 12 MR MABUYAKHULU: Yes, I do.
 13 MR TIP SC: And were you informed about
 14 the essential content of this notice?
 15 MR MABUYAKHULU: That document wasn't
 16 read there. We explained to them that, as RDOs, we are
 17 illiterate, we do not want letters, we want to talk to the
 18 employer.
 19 MR TIP SC: Mr Mabuyakhulu, there were
 20 two things. The one was that Lonmin had said to everybody
 21 present that they were being instructed to stop the
 22 unprotected march and the unprotected work stoppage. You
 23 must have heard some discussion about that while you were
 24 there.
 25 MR MABUYAKHULU: I don't remember that

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1 being -
 2 MR TIP SC: You don't remember. And did
 3 you at any time hear anything to the effect that Lonmin had
 4 gone to the Labour Court and had obtained an interdict
 5 which declared that the work stoppage that you had embarked
 6 on was not lawful?
 7 MR MABUYAKHULU: I'm hearing it for the
 8 first time today.
 9 MR TIP SC: I will leave that for those
 10 who were more closely involved, Mr Chair. Now, the meeting
 11 at the Wonderkop stadium - near the Wonderkop stadium on
 12 the 11th of August, that is the Saturday, the very day after
 13 the march to LPD, I want to ask you some questions about
 14 that, and those questions will relate both to the statement
 15 that you have submitted to this Commission, Exhibit BBB8,
 16 as well as the affidavit that you deposed to, being Exhibit
 17 XX6. And I want to ask you a few questions about XX6.
 18 First, the statement was taken by a detective constable and
 19 today you have sought to indicate that it was not properly
 20 taken, that you didn't sign it, that you hadn't said
 21 everything that it contains, and you drew attention to
 22 particular paragraphs that you said had not emanated from
 23 you.
 24 MR MABUYAKHULU: That is so.
 25 MR TIP SC: I must just tell you that my

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1 attorney had taken the trouble to speak last week to
 2 Detective Constable Ramatlare, who is the police officer
 3 who took your statement, and we were advised by him that
 4 this statement was taken in a perfectly regular way, that
 5 you were quite clear that everything that is recorded here
 6 came from you and that you signed it.
 7 MR MPOFU: Chairperson, I just wanted to
 8 get an indication whether this evidence now that is going
 9 to be led, is it suggested that this person is going to be
 10 called?
 11 CHAIRPERSON: - because normally if one
 12 wants to prove an inconsistent statement or prove the
 13 statements which was allegedly made by him and correctly
 14 recorded, then if he denies it, because you're entitled
 15 under the ordinary rules of evidence, to lead rebutting
 16 evidence on that. The question being asked, do you propose
 17 doing that?
 18 MR TIP SC: Chair, if it becomes
 19 absolutely necessary, but what – let me get your response
 20 to what I've told you that we heard from the police officer
 21 in question.
 22 MR MABUYAKHULU: Chairperson, I could not
 23 even at that stage turn around. I could not wake up on my
 24 own. The situation was I was in a very bad position at the
 25 time.

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1 MR TIP SC: Well, let me just take you to
 2 paragraph – the paragraph at the foot of page – the first
 3 page of that written statement. You see there that it is
 4 recorded as being part of the statement by you, that
 5 someone came to the meeting saying that on Friday, 10
 6 August 2012, members of AMCU were shot by the members of
 7 NUM.
 8 MR MABUYAKHULU: On what date was that?
 9 MR TIP SC: Well, we're talking – Mr
 10 Mabuyakhulu, we're talking about the meeting on the 11th of
 11 August 2012 and you are here, in your statement, describing
 12 what somebody had to say about what had happened on the 10th
 13 of August.
 14 MR MABUYAKHULU: Yes.
 15 MR TIP SC: That is correct?
 16 MR MABUYAKHULU: That is correct.
 17 MR TIP SC: Then the next sentence reads:
 18 "After getting this news, a person whom I can point if I
 19 see, said we should all go to the NUM office to hear why
 20 they are shooting people of AMCU."
 21 [15:59] MR MABUYAKHULU: This was based on
 22 reports that were made during the meetings of the RDOs and
 23 when I made the statement I was in a very good state of
 24 health. Some of the things that I said here, some of the
 25 things that are said were being said by me here I can't

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1 remember.
 2 CHAIRPERSON: Ja, I think, Mr
 3 Interpreter, you might have interpreted that he was in a
 4 very good state of health, I may have misheard, but I think
 5 that the witness probably said, not in a very good state of
 6 health.
 7 MR MAHLANGU: Not in.
 8 CHAIRPERSON: Not in, yes.
 9 MR MAHLANGU: He was not in a good state,
 10 not a good state, I'm sorry if I said that, Mr Chairperson,
 11 he was not in a good state of health.
 12 CHAIRPERSON: Alright, it is quite right.
 13 MR TIP SC: Mr Chair, I'm going to pursue
 14 with this particular aspect, it would be convenient for me
 15 if it would be convenient for the commission to adjourn at
 16 this point?
 17 CHAIRPERSON: But before we adjourn
 18 Commissioner Hemraj wants to ask Mr Mpofu something.
 19 COMMISSIONER HEMRAJ: Mr Mpofu, I think
 20 those medical records are hospital records of the condition
 21 of this witness on the 17th and perhaps what medication he
 22 was on and the details of his condition, is that perhaps
 23 available?
 24 MR MPOFU: Commissioner, yes, we do have
 25 medical records, we just thought because of the nature of

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1 these proceedings we didn't want to burden the record, but
 2 we didn't look at that particular aspect, we will do so and
 3 if it is covered then we will present the portion, thank
 4 you.
 5 CHAIRPERSON: Thank you.
 6 MR MPOFU: And as it happens he went to
 7 two hospitals, the Fern Crest records are in a much better
 8 condition, which is where he was by on the 17th.
 9 CHAIRPERSON: Do you think he was in Fern
 10 Crest when he made the affidavit, made the statement, well
 11 it is an affidavit technically, but when he made it he was
 12 there.
 13 MR MPOFU: Yes.
 14 CHAIRPERSON: The commission will adjourn
 15 and resume at 09:30 tomorrow morning.
 16 [COMMISSION ADJOURNSED]
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