TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 35   23 JANUARY 2013   PAGES 3741 TO 3860

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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23rd January 2013

Marikana Commission of Inquiry

Rustenburg

[PROCEEDINGS ON 23 JANUARY 2013]

1 [09:34] CHAIRPERSON: The Commission resumes.

2 Brigadier, you're still under oath.

3 BRIG MKHWANAZI: Thanks.

4 CHAIRPERSON: This is the ninth day, I believe, in which you're giving evidence. When you started
5 you never thought you'd be a nine-day wonder. Mr Semenya, are you going to re-examine the nine-day wonder?
6 MR SEMENYA SC: Chair, perhaps that's even the appropriate stage to start. Brigadier, let's deal
7 with your statement, exhibit SS1.

8 BRIG MKHWANAZI: Got it.

9 MR SEMENYA SC: You deal in paragraph 3 with the work you do, and can I just refresh your memory
10 and read it out to you.

11 BRIG MKHWANAZI: Correct.

12 MR SEMENYA SC: You say, "I was initially based in division Visible Policing from December 2004 until
13 January 2011. The split between divisions Visible Policing to form Operational Response Services in 2011 resulted that
14 the office specialist skills development be transferred with all its functions to division Operational Response
15 Services." Then I'd like to invite your focus here. "My responsibility under ORS was skills development facilitator
16 to all specialised units." Do you see that?

17 Chair, perhaps that's even the appropriate stage to start. Brigadier, let's deal with your statement, exhibit SS1.
18 BRIG MKHWANAZI: Got it.

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21 BRIG MKHWANAZI: Correct.

22 MR SEMENYA SC: You say, "I was initially based in division Visible Policing from December 2004 until
23 January 2011. The split between divisions Visible Policing to form Operational Response Services in 2011 resulted that
24 the office specialist skills development be transferred with all its functions to division Operational Response
25 Services." Then I'd like to invite your focus here. "My responsibility under ORS was skills development facilitator
26 to all specialised units." Do you see that?

27 [PROCEEDINGS ON 23 JANUARY 2013]

1 BRIG MKHWANAZI: That's correct.

2 MR SEMENYA SC: Then you say your responsibility under ORS includes identifying training needs as identified through operational shortcomings.

3 BRIG MKHWANAZI: It's correct.

4 MR SEMENYA SC: Can you please break it down for us? When you go to the office in the morning, what do you do in relation to that area? What do you actually do?

5 BRIG MKHWANAZI: Normally what happens is that it will depend on what is happening in the country. Under Visible Policing or Operational Response Services there will be maybe some incidents that are taking place in the country, like I made an example about GP shooting to the police official walking to one of the buildings, and I will receive maybe instruction to do some research to check how the incident took place, and we will be in a position to sit down and say how are we going to rectify that if there are training gaps that emanate with how members actually intervene in those circumstances.

6 MR SEMENYA SC: Brigadier, please break it down for us still. What do you as Brigadier Mkwanazi do when you get to your office in relation to identification of training needs which are identified through operational shortcomings? What do you do?
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1 Policing as a unit.
2 BRIG MKHWANAZI: Correct.
3 MR SEMENYA SC: Or any of the other units.
4 BRIG MKHWANAZI: Any of the other units.
5 MR SEMENYA SC: What specialised knowledge do you have on Special Task Force as a unit?
6 What specialised knowledge do you as a person have?
7 BRIG MKHWANAZI: All training
8 intervention of Special Task Force, my job was to coordinate them, meaning they will identify their training needs, it will be given to me, and I will be the person who consolidates and submits to division HRD. In other words, I will know all of their training intervention, when they start, when they finish, and it will be my job to check if everything is followed properly into that.
9 MR SEMENYA SC: Please help us unpack this intervention. You have used it quite several times earlier. What coordination do you do?
10 BRIG MKHWANAZI: If we talk, if I'm talking about training intervention, I'm talking about the programmes in different phases in, under, maybe it can be under Special Task Force, those are the training interventions, the programmes they undergo, because they are within certain periods. That's what I'm talking about.

1 Policing as a unit.
2 BRIG MKHWANAZI: Most of the time if we have to develop a new programme, obviously I would be part of it if I'm invited into it. I would say yes, most of the time I actually form part of the team that actually puts the programme together.
3 MR SEMENYA SC: No, Brigadier, it is your experience I'm interested in, not we. Don't use the "we." In relation to subject formulation say of the training of STF, what do you do there?
4 BRIG MKHWANAZI: In the Special Task Force training, or in actual, the true sense is each unit has got its own trainers. We develop facilitator it's my task to make sure each and every unit has got its own trainers. We develop trainers.
5 So my job within this part is to make sure that these trainers are available to present training, but what role do I play in that position? My job is to make sure the trainers are presenting and they are following the programmes as they are outlined on the book.
6 MR SEMENYA SC: Do you teach?
7 BRIG MKHWANAZI: Special Task Force no, I don't teach.
8 MR SEMENYA SC: Do you participate in compiling the syllabus for that training?
9 BRIG MKHWANAZI: Yes, I do.
10 MR SEMENYA SC: Do you do any research in relation to the subject content of that training?
11 BRIG MKHWANAZI: Yes, I got involved, yes.
12 MR SEMENYA SC: You see, I'm trying to help establish for the Commission what expertise you hold, if any. Do you do research?
13 BRIG MKHWANAZI: Yes.
14 MR SEMENYA SC: You have written on training of STF?
15 BRIG MKHWANAZI: Ja, I'm getting confused, but I said in compiling of programmes, yes, but in presentation they've got their own trainers that present.
16 MR SEMENYA SC: So the trainers themselves would do the research and they would know the subject on which they train, correct?
17 BRIG MKHWANAZI: Yes, they will definitely, because – okay, after a programme has been developed, of which we don't do it every time, Counsellor, it's done in a certain period. It can take three years before we do reviewal. If it comes to that position, because of the circumstances that require that, we will definitely develop. After developing, we'll be, train the trainer to make sure trainers know what to do.
18 MR SEMENYA SC: You remember Mr Budlender went with you through various academic writings in relation to Public Order Policing?
19 BRIG MKHWANAZI: Correct.
20 MR SEMENYA SC: And I recall that you could not identify any of the material that he referred to you, right?
21 BRIG MKHWANAZI: Correct.
22 MR SEMENYA SC: And your evidence was that you don't recall any of the books that you yourself have read in relation to Public Order Policing. Remember that?
23 BRIG MKHWANAZI: Yes.
24 MR SEMENYA SC: Now I'm trying to understand the depth of your expertise then. In Public Order Policing, as you go to the office day-to-day, do you do any research in that area?
25 BRIG MKHWANAZI: We have done it, or I have done it many a times, yes – but it depends, it's not to say every day. It depends which programme that needs to be developed. If it's day-to-day it means I, and I do research. It's not like that, Counsellor. It depends what needs to be looked at, looking to the situation in the
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1 country, then if we have to go outside the country, we'll
go outside the country. That we can do; it's not a
problem.
2 MR SEMENYA SC: Have you published
3 anything on Public Order Policing?
4 BRIG MKHWANAZI: No.
5 MR SEMENYA SC: Have you testified before
6 as an expert on Public Order Policing?
7 BRIG MKHWANAZI: You mean before?
8 MR SEMENYA SC: Before you were called an
9 expert in this Commission -
10 BRIG MKHWANAZI: No.
11 MR SEMENYA SC: - have you ever testified
12 as an expert in -
13 BRIG MKHWANAZI: No.
14 MR SEMENYA SC: - Public Order Policing?
15 BRIG MKHWANAZI: No.
16 MR SEMENYA SC: You see, your evidence
17 was introduced on a very limited -
18 CHAIRPERSON: I don't think he's answered
19 that question yet, before you explain. I must say, it
20 sounds to me as if you're bordering on cross-examining your
own witness, but we won't take that any further at this
stage; we will have to later. But let him answer your
question first before you put the next point.

1 MR SEMENYA SC: Have you ever given
evidence as an expert?
2 [09:54] BRIG MKHWANAZI: As an expert, this is my
first time, however with the Commission it is the second
time.
3 MR SEMENYA SC: Have you ever been
referred to as an expert in Public Order Policing,
Brigadier?
4 BRIG MKHWANAZI: No.
5 MR SEMENYA SC: Okay. When your evidence
was introduced, it was common cause between us and the
evidence leaders that you're only going to be telling us
what training gets given to various units of the police
service, remember that?
6 BRIG MKHWANAZI: That's correct.
7 MR SEMENYA SC: And it was the Chair who
said maybe you shouldn't be too modest, you should tell us
more beyond to that and that explains your Monday
evidence, right?
8 BRIG MKHWANAZI: That's correct.
9 MR SEMENYA SC: Now, onto a different
matter, Mr Ntshebeza dealt with the video footage where you
said somebody told you about it, do you recall that?
10 BRIG MKHWANAZI: It's correct.
11 MR SEMENYA SC: Do you recall the name of
the individual who told you?
12 BRIG MKHWANAZI: Ja, it's Warrant Officer
Maphefo, surname is Masenya, and he's well-known as Big
Show, he is a Public Order video operator.
13 MR SEMENYA SC: You also testified about
the negotiation course that gets done under Public Order
Policing, recall that?
14 BRIG MKHWANAZI: That's correct.
15 MR SEMENYA SC: Can you please explain a
little further what negotiation course is offered?
16 BRIG MKHWANAZI: The course was provided
to Public Order Policing for negotiation and it was
outsourced, it was not presented within, as police. It was
outsourced by a private sector. The course was taking five
days and it was presented by Spoelstra, S-P - Professor,
actually it's Professor Spoelstra, S-P-O-E-L-S-T-R-A, and
it has been stopped now and we rely to the presentation
that is normally being presented to the members under the
Regulation of Gathering Act.
17 MR SEMENYA SC: Is that all you wanted to
say on that subject?
18 BRIG MKHWANAZI: That's correct. Maybe I
can just go back a little bit on the video footage itself,
that I met Masenya at AD Building, where he indicated that
he submitted all video footage which actually he managed to
capture during the incident in Marikana. That's all.
19 MR SEMENYA SC: Those are all the
questions we have in re-examination, Chair.
20 CHAIRPERSON: Any questions you want to
ask.
21 COMMISSIONER HEMRAJ: Can I just ask
something? Brigadier, this outsourced negotiation course,
when did it stop being offered to the member of Public
Order Policing?
22 BRIG MKHWANAZI: It's quite a long time,
Commissioner. If I can remember it can be around 2004,
2005, it's quite a long time.
23 COMMISSIONER HEMRAJ: The current
negotiations in the Public Order Policing unit would have
been trained by the professor or in-house training?
24 BRIG MKHWANAZI: Yes, as I've said, it
was outsourced. It was actually given by the professor, we
only have to arrange and make sure members are available
and they will be trained by them on the other side.
25 Everything was done by them, not within the police, itself.
26 COMMISSIONER HEMRAJ: What I wanted to
know, Brigadier, was that the current negotiators in Public
Order Policing, are they trained by the professor or have
they had in-house training?
27 CHAIRPERSON: What happened to the people
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MR TIP SC: Mr Chair, I can do that immediately, and indeed if I may take a few moments before the witness is sworn in just to deal with a few matters relating to housekeeping and documentation and the like in the hope that that will facilitate the smooth presentation of the evidence?

CHAIRPERSON: In the first place, we have here a signed original of the statement, together with two copies, which we've prepared for the Commission, and if I may hand those up?

CHAIRPERSON: Thank you. Do you want the statement to be given an exhibit number?

MR TIP SC: Yes, indeed, Mr Chair.

CHAIRPERSON: Yes. So it looks as if no one can think of any information that you haven't given us already.

Thank you very much for participating in the Commission and giving us your evidence. You are excused.

BRIG MKHWANAZI: Thank you, Brigadier.

CHAIRPERSON: Thank you, Brigadier.

Unless there's someone else who wishes to ask any further supplementary questions, in which case you have to apply to me for permission to do so. It looks as if no one can think of any information that you haven't given us already.

Thank you very much for participating in the Commission and giving us your evidence. You are excused.

Chairperson, due to promotions, transfers and everything, some people have left, but I think there are a few that are still around that are still assisting, but some have definitely moved out.

CHAIRPERSON: And those who were trained by Professor Spoelstra, are they still in the service?

BRIG MKHWANAZI: Yes, indeed, Mr Chair.

CHAIRPERSON: Mr Semenya, I understand that the next witness will be lead by Mr Tip. You will come back later to lead other witnesses. This was one of your witnesses, but we're now going to have some evidence being led by Mr Tip on behalf of NUM, is that correct?

MR SEMENYA SC: That's correct, Chair.

CHAIRPERSON: Mr Tip, you told us yesterday you had your batsman in the pavilion with his pads on and everything, is he still here.

MR TIP SC: He's still here, Mr Chair –

CHAIRPERSON: I think it's best to see to it that he's not run out earlier on.

MR TIP SC: I was about to say that I'm pleased that he didn't come in as night watchman. I call Mr Erick Gcilitshana. I will spell that for the benefit of the transcribers. Erick is E-R-I-C-K, Gcilitshana is G-C-I-L-I-T-S-H-A-N-A.

CHAIRPERSON: Mr Tip, my colleague, Advocate Hemraj says the gremlins have eaten up her copy of the statement and my copy is in Cape Town, is it possible to give us two extra copies? You may not be able to do it immediately, but if you can do it at some stage, I'd appreciate it.

CHAIRPERSON: There are associations that are still assisting, but some have definitely moved out.

CHAIRPERSON: Thank you, Brigadier.

Unless there's someone else who wishes to ask any further supplementary questions, in which case you have to apply to me for permission to do so. It looks as if no one can think of any information that you haven't given us already.

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1 that as well. There they are.
2 CHAIRPERSON: Thank you. I must say I’m
3 very grateful to Ms Pillay for her efforts, but I’m not
4 sure that she is paid a special fee to act as usher and I
5 think that possibly parties should – whatever the correct
6 verb is – usher their own documents, if you want have to be
7 handed up.
8 MR TIP SC: We will certainly make
9 available an usher –
10 CHAIRPERSON: Sorry, so XX2 then is the
11 bundle which is preceded by an index, because they’re all
12 stapled together as one?
13 MR TIP SC: All bound together as one.
14 I’m afraid that we will organise a bound copy in this way,
15 because it’s more – it’s easier for the Commission to use.
16 So we will replace that in the course of the day, Sir.
17 Then in respect of the remaining documents, our usher went
18 so far as Ms Pillay, if we could ask her to be gracious
19 enough just to transmit them? There are essentially five
20 documents. The first two are communiqués from Lonmin. The
21 one is dated 20 June 2012. There are two dockets also as
22 well as – I’m sorry, it’s the first communiqué is 20 July,
23 I think I said June, it’s July.
24 CHAIRPERSON: The first document is an
25 internal communiqué marked – of Lonmin marked 147?

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1 MR TIP SC: Yes, is that exhibit 20 JJuly?
2 CHAIRPERSON: Yes, whatever it is. Is
3 that Exhibit XX3?
4 MR TIP SC: XX3, Mr Chair.
5 CHAIRPERSON: Hang on, internal
6 communiqué –
7 COMMISSIONER HEMRAJ: And for the benefit
8 of the parties, do these documents appear somewhere or are
9 they entirely new and copies are to be made available?
10 CHAIRPERSON: They look as if they come
11 from some Lonmin bundle of some sort, because they’re
12 Lonmin documents. I don’t know whether either Mr Tip or Mr
13 Burger can help us on that?
14 MR BURGER SC: It will be very helpful if
15 those documents are simply distributed to us also in hard
16 copy.
17 MR TIP SC: Yes, Mr Chair, hardcopies
18 have been provided to Ms Pillay, so those are available,
19 all of them.
20 CHAIRPERSON: Ja, internal communiqué
21 dated what?
22 MR TIP SC: The second one is –
23 CHAIRPERSON: No wait, I’ll just put page
24 147, I think that’s – it obviously comes from some
25 collection of documents that Lonmin provided, I would

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1 suspect.
2 MR TIP SC: It does.
3 CHAIRPERSON: Oh okay, that is Exhibit
4 XX3, right?
5 MR TIP SC: Yes. Then the one with the
6 page number 149, will be XX4.
7 CHAIRPERSON: Ja.
8 MR TIP SC: There are then two crime
9 dockets, SAPS crime dockets –
10 CHAIRPERSON: XX5 will be a crime docket.
11 MR TIP SC: Crime dockets, perhaps it
12 could be case number 6708-2012.
13 CHAIRPERSON: Sorry, Case?
14 MR TIP SC: Case 67.
15 CHAIRPERSON: 67?
16 MR TIP SC: 08-2012.
17 CHAIRPERSON: Yes.
18 MR TIP SC: And the second crime docket –
19 CHAIRPERSON: Which is the XX6?
20 MR TIP SC: XX6, and that is CAS number
21 6808-2012. Mr Chair, the Commission –
22 CHAIRPERSON: I haven’t got those yet, so
23 let me get them first. They’re being sorted out to be
24 handed to me.
25 MR BUDLENDER: Chair, while that’s being

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1 done, could we just have the numbers of the XX’s again,
2 because we have –
3 CHAIRPERSON: I’ll read them out. XX1 is
4 the statement of the witness. XX2 is the bundle of
5 documents, consolidated as it were. XX3 is an internal
6 Lonmin communiqué which is headed 147. It’s headed – the
7 heading is Management Condemns Illegal Work Stoppages, and
8 it’s dated 20 July. The XX4 is another internal
9 communiqué, this time dated 31 July, heading “Demands for
10 separate wage negotiations.” XX5 is crime docket
11 CAS67/08/2012, and XX6 is crime docket CAS68/08/2012. Is
12 there any other document? Because we’ve been handed one
13 document which is –
14 [10:14] MR TIP SC: It’s a three-page document,
15 Mr Chair. What that is, is an enlarged copy of certain
16 pages in the bundle because those pages are so small that
17 it makes it very difficult to read.
18 CHAIRPERSON: No, we don’t have to give
19 that a separate exhibit number. It looks like pages 22, 23
20 and 24 of XX2. Is that correct?
21 MR TIP SC: That is correct, Mr Chair,
22 and those are then just the —
23 CHAIRPERSON: I must confess, during the,
24 what for want of a better term one can call a recess, I
25 battled with that particular document.
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<td><strong>MR TIP SC:</strong> Yes.</td>
<td><strong>report on certain investigations that NUM have undertaken</strong></td>
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<td><strong>CHAIRPERSON:</strong> And I’m grateful to have an enlarged one, enlargement. Is that your housekeeping –</td>
<td><strong>in regard to the allegations that there were two persons</strong></td>
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<td><strong>MR TIP SC:</strong> Those are all the additional documents. Then perhaps if I may also just say one or two things by way of introduction –</td>
<td><strong>who were killed there.</strong></td>
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<td><strong>CHAIRPERSON:</strong> Before you start saying one or two things, Mr Burger indicated that though some of these documents originally emanate from Lonmin, he would appreciate hard copies, it would be obviously easier for him to follow.</td>
<td><strong>CHAIRPERSON:</strong> One point that arises in respect of the events of the 11th was, you will recall that we were shown certain marks on the windows of the NUM offices at the inspection in loco and the person who was going to give evidence before the Commission, who was subsequently murdered, gave a narrative which he was going to presumably confirm under oath later, which was recorded, and certain other persons present who were either AMCU members, or alternatively were non-unionised protesters, if one can call them that, they also pointed out spots and also made statements which were going to be confirmed. Presumably they will confirm them, but the main NUM narrative can’t be confirmed by the person who gave it for the reasons I’ve mentioned. Now I haven’t seen a transcript of that. I don’t know whether one has been prepared, but I think that’s something that if it hasn’t been done, should be taken in hand immediately, and if it has been transcribed then copies of it must be made available to us, because that’s obviously very important in relation to the allegations as to what happened or didn’t happen on the 11th of August. <strong>Mr Tip, it may also be necessary in order to</strong></td>
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<td><strong>MR BURGER SC:</strong> Thank you, Chair. We were handed hard copies by Ms Pillay, so thank you so much.</td>
<td><strong>refresh our memories for video clips to be shown of that part of the inspection in loco because a mere transcript of what was said won’t adequately, or may not – I don’t want to make a definite statement at this stage, it’s something to be considered – may not adequately convey what exactly was pointed out to us, which presumably would have some, would be evidential material which might well be important.</strong></td>
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<td><strong>MR TIP SC:</strong> Then Mr Chair, just by way of introduction and then Mr Gcilitshana will take the floor, the statement that we’ve prepared is in part, it takes the form of a presentation in that it does contain certain matters that are hearsay in respect of Mr Gcilitshana’s knowledge. They are there in order to give a full picture of the relevant history. We believe that, or our submission is that aspects of that hearsay material are very unlikely to be placed in dispute. They are sourced to court documents, to affidavits. If there are disputes about them, then we’ll assess the nature of the dispute.</td>
<td><strong>Mr Chair, we are, with respect, in full agreement with that observation. We have indeed taken the first steps towards that, to locate where the video that was made at the time is and we will see to it that those portions are played, that a transcript is prepared. It won’t be necessary to do that for the purpose of Mr Gcilitshana’s evidence, but certainly for those two witnesses who will testify on the events. The final preliminary observation, Mr Chair, is that the statement of Mr Gcilitshana will have a few supplementary observations which have flowed from further and fuller consultations. In respect of each of those I will identify the paragraph so that there can be a coupling of the further material.</strong></td>
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<td><strong>CHAIRPERSON:</strong> Well, you will remember that Mr Madlanga drew our attention to a case which was held in a commission of this kind; the ordinary rules of evidence don’t strictly apply.</td>
<td><strong>CHAIRPERSON:</strong> Thank you. <strong>MR TIP SC:</strong> That then, if he could be called. <strong>CHAIRPERSON:</strong> Mr Gcilitshana, would you please stand up? Are you prepared to take the oath or do</td>
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1 you wish to affirm?
2     MR GCILITSHANA: I’m prepared.
3     CHAIRPERSON: You’re prepared to take the
4 oath. Will you swear that the evidence you will give
5 before this Commission will be the truth, the whole truth,
6 and nothing but the truth? Would you raise you right hand
7 and say, “I swear, so help me God?”
8     ERICK GCILITSHANA: I swear, help me God.
9     CHAIRPERSON: Yes, thank you, you may be
10 seated. Mr Tip.
11     MR TIP SC: Mr Gcilitshana, you have
12 before you the statement that you have made, that has been
13 presented to the Commission.
14     MR GCILITSHANA: Yes.
15     MR TIP SC: And you have carefully read
16 and considered that statement?
17     MR GCILITSHANA: Yes, Commissioner.
18     MR TIP SC: Now that you are under oath,
19 do you confirm the correctness of it?
20     MR GCILITSHANA: I do confirm.
21     MR TIP SC: Thank you. Then let us begin
22 at paragraph 1. Would you just read that onto the record?
23     MR GCILITSHANA: “I am the national
24 secretary of the National Union of Mineworkers, NUM, and an
25 employee of Lonmin Platinum Limited. I am currently the
26 union national secretary for Health and Safety. I’m also
27 its chief negotiator in Lonmin.”
28     MR TIP SC: Yes. As an addition to
29 paragraph 1, I would like you to place before the
30 Commission just a few short details about your experience
31 within the mining industry. When did you first become
32 involved in the mines?
33     MR GCILITSHANA: On the 23rd December
34 1985.
35     MR TIP SC: Is it correct that you began
36 work at Western Platinum as an underground drain cleaner?
37     MR GCILITSHANA: Yes, it’s correct.
38     CHAIRPERSON: Western Platinum, I
39 understand was the then name of either the whole of the
40 Lonmin operation or part of it. Is that correct?
41     MR GCILITSHANA: Yes, it’s correct.
42     MR TIP SC: And in the following year,
43 after a year of service you were promoted. Is that
44 correct?
45     MR GCILITSHANA: It’s correct.
46     MR TIP SC: To what post?
47     MR GCILITSHANA: I was promoted to a loco
48 driver.
49     MR TIP SC: Also underground?
50     MR GCILITSHANA: Correct.
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2011, Impala unilaterally granted an additional wage increase effective from January 2012 to one category of its workers, being the miners. No similar increase was afforded to any other categories of workers in respect of then the wage agreement applied. ‘Now as an addition to what is recorded in your statement, Mr Gcilithsha, I’d like to place before the Commission a little more detail about the place of miners. We’ve given the miners here a capital M to distinguish them from other general mineworkers. Is that correct?

MR GCILITHSHA: Yes.

MR TIP SC: How important a person in the mining production process is a Miner, the category Miner?

MR GCILITHSHA: It is very much important, because the Miner is the person who have to do the early examination to ensure that the area is safe before other workers can get in, one. Secondly, the Miner is a person who should be pointing the holes, where the hole drillers have to drill and after the shift, have to blast and clear the shift.

MR TIP SC: Would the Miner be the competent person – the competent official as defined in the relevant Act?

MR GCILITHSHA: That’s correct.

MR TIP SC: And would it also be so that he would be the person who holds the blasting certificate?

MR GCILITHSHA: That’s correct.

MR TIP SC: Put shortly, can a mining team operate underground without a Miner being in charge?

MR GCILITHSHA: It is not allowed, unless there’s a competent person that is appointed at that point in time to be a supervisor.

MR TIP SC: Now in your experience, are Miners, competent Miners sought after by the mining houses?

MR GCILITHSHA: Can you repeat your question?

MR TIP SC: From the point of view of the mining companies, would competent, able, skilled Miners be a valuable resource as an employee? Would they want to have competent Miners on their staff?

MR GCILITHSHA: It’s very much important.

MR TIP SC: And to your knowledge, does poaching amongst different mining companies ever take place?

MR GCILITHSHA: That’s correct.

MR TIP SC: It would be important, would it not, for a company like Impala not to run the risk of losing its miners?

MR GCILITHSHA: Yes.
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MR TIP SC: Do you recall what the increase was that Impala granted its Miners? And by that I mean the increase over and above the one that had been recorded in the collective agreement that was concluded in October 2011?

MR GCILITSHANA: Yes, I recall, it was 18%.

MR TIP SC: And that was over and above the increase, do you recall, what NUM had agreed as the increase for Miners in that collective agreement?

MR GCILITSHANA: - says well, Miners were at around 9% and the lower categories were at 10%. MR TIP SC: Was NUM concerned about this unilateral increase?

CHAIRPERSON: The agreement which was concluded in October 2011, to expire on the 30th of June 2013, provided apparently for increase of between 9 and 10% for different categories of Miners, is that right? Then the subsequent increase you say was 18%. Is that 18% over and above the already increased amount or is it 18 instead of the nine and the 10?

MR TIP SC: Over and above.

CHAIRPERSON: Thank you.

MR TIP SC: Nothing turns on this, but perhaps just for the record, might the increase in that collective agreement have been 8.5% specifically for the Miners, do you recall?

MR GCILITSHANA: Yes, that could be correct.

MR TIP SC: Now going back to the question of whether NUM was concerned about this unilateral increase, Mr Gcilitshana, can you tell the Commission about that?

MR GCILITSHANA: Yes, it was concerned.

MR TIP SC: Can you give us some of the reasons that gave rise to its concern?

MR GCILITSHANA: One, it was outside the collective bargaining agreement. And that was undermining the collective agreement that have been signed on the 7th of October. The third point, it was putting the Union at spot that have been negotiating the agreement, the collective agreement. Why I say so, because the company indicated that their coffers have been exhausted. MR TIP SC: If I can just interrupt you there, just to be clear, was that indication given in the course of the negotiations that led to the conclusion of the collective agreement in October?

MR GCILITSHANA: Can you repeat the question again?

MR TIP SC: Yes, certainly. You’ve just said to the Commission that there was a concern because Impala had indicated that its coffers were exhausted?

MR GCILITSHANA: Yes.

MR TIP SC: Now I just want to establish when that indication was and I was asking whether that indication had been given by Impala during the negotiations that it had with NUM, leading up to the collective agreement of October 2011?

MR GCILITSHANA: That’s correct.

MR TIP SC: Why NUM was prepared to agree to the increase of between nine and 10% if they thought that the company couldn’t afford more?

MR GCILITSHANA: That’s correct, Commissioner.

MR TIP SC: When it turned out they could afford more, because they were prepared to pay more to the Miners a matter of two months later. I take it NUM felt outraged?

MR GCILITSHANA: Can you repeat your question again?

MR TIP SC: When it turned out the company could afford to pay more, because about two months later they agreed to pay this extra increase to the Miners, I take it NUM was outraged - outraged, very angry?

MR GCILITSHANA: Correct.
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| 26 | CHAIRPERSON: | - about the fact that page 3, which is a news release, is dated the 20th of February. It appears not to be incomplete, because it says “more” at the bottom, and then the next one, page 4, is actually from almost three weeks earlier. It's dated the 2nd of February and from that it appears that the, initially something like 4 200 employees were dismissed - we don't know in what circumstances - and then a further 13 000 were dismissed on the 1st of February. It may not be necessary for us to go...
Mr Gcilitshana, you are still under oath. Mr Tip, have you sorted out that problem we were discussing before the adjournment?

Mr Chair, perhaps I might just point out that at page 4 the communiqué does towards the end of the principal paragraph say, “This brings the total number of employees dismissed to in the region of 17 000 –

Mr GCILITSHANA: The first batch of dismissals were the RDOs as who were the leaders of the strike, who initiated the strike. I think that might be why you have got two different figures, and the second batch was the total workforce. That’s how I understand it.

Mr GCILITSHANA: The first batch of people to be dismissed were RDOs. After the dismissal of RDOs, RDOs started to stop, intimidate and stop everybody from going to work. The company had by then issued a memo that if people didn’t return to work, they will be dismissed. Then the miners could not go to work because of being intimidated and stopped by RDOs.

Therefore they were part of those who were dismissed. As I indicated that the first batch of people to be dismissed were RDOs. After the dismissal of RDOs, RDOs started to stop, intimidate and stop everybody from going to work. The company had by then issued a memo that if people didn’t return to work, they will be dismissed. Then the miners could not go to work because of being intimidated and stopped by RDOs.

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

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

23 April 2012, and the accommodation increase was also

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

21 was a further market adjustment. The wage increase date

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

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

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

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

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

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

14 CHAIRPERSON: The thing I was interested

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

12 I follow the point. Let me just canvass one

11 point I would think, for what follows.

10 INCIDENTAL to the point that the company was not negotiating in good

9 faith.

8 it indicates that the company was not negotiating in good

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

6 MR TIP SC: Now those related to matters

5 that had been included in the collective agreement that was

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

3 2011.

2 MR GCILITSHANA: Can you repeat the

1 question?

25 CHAIRPERSON: Mr Tip, sorry to interrupt

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

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

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

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

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

21 operators covered by the illustration was R9 991, the 6 540

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

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

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

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

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

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

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

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

12 that led to this unilateral increase?

11 MR GCILITSHANA: As far as I know NUM did

10 not.

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

8 labour relations environment where collective bargaining is

7 critical, how did that event affect the attitude of

6 employees and NUM members to the union?

5 MR GCILITSHANA: That put, had to put

4 the collective agreement. Is that correct?

3 MR GCILITSHANA: That's correct.

2 MR TIP SC: Therefore am I correct in

1 concluding in essence the following, that after the

2 unilateral increase to the miners, there was an unprotected

1 strike led by RDOs in support of a demand for R 000 basic?

0 MR GCILITSHANA: Yes.

-1 MR TIP SC: After the unprotected strike,

0 and after the dismissals and the reinstatements that had

9 occurred, then the RDOs in fact received very substantial

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

7 the collective agreement. Is that correct?

6 MR GCILITSHANA: That's correct.

5 MR TIP SC: NUM was not part of the

4 negotiations that led to this unilateral increase?

3 MR GCILITSHANA: As far as I know NUM did

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-1 the collective agreement. Is that correct?

0 MR GCILITSHANA: That's correct.
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25 to go on to the background of events at Karee Mine, and
24 position at Impala for the time being, Mr Gcilitshana, and
23           MR TIP SC:          I'm going to leave the
22           MR GCILITSHANA:          That's correct.
21 Impala in the light of this unilateral increase?
20 present itself in respect of all the other employees at
19           MR TIP SC:          Did the same thing now
18           MR GCILITSHANA:          That's correct.
17 about NUM's approach to negotiations?
16 dissatisfaction, and if I understood, implicitly suspicion
15 unilateral increase, there was a good deal of
14 particular category of miners that when they got their
13 already said in respect of what happened with the
12 MR GCILITSHANA:          That's correct.
11 MR TIP SC:          And Mr Gcilitshana, you've
10 that it can afford in respect of their demands?
9 MR GCILITSHANA:          That's correct.
8 MR TIP SC:          And is that an important part
7 approach to negotiations, but I just want to highlight one
6 of the mandate obtaining process that NUM has when it seeks
5 constitution relating to branch elections. The Karee
4 arising out of their non-compliance with the NUM
3 its branch chairperson and secretary at the Karee Mine,
2 onto the record. “On or about 12 May 2011 NUM suspended
1 that is at paragraph 12 of your statement, and I'll read it

15 in footnote 13 and at page 7 of the bundle, there is a
14 Chairperson. Mr Gcilitshana, let me just take you to the
13 MR TIP SC:          I'm indebted to you, Mr
12 Chairperson. Mr Gcilitshana, let me just take you to the
11 
10 Khululekile and Daniel Mongwaketsi.
9 and the secretary who were suspended, were Steve
8 auditorium might like to know that the branch chairperson
7           CHAIRPERSON:          I think those in the
6 branch committee was also dissolved.”
5 annexures in the bundle, and you will see those referred to
4 out to all Impala employees. Would I be correct to
3 company can afford at the time of the conclusion of
2 because the NUM leadership has said this is all that the
1 distrusting NUM leadership in circumstances such as this

13 member wish to interact with the union, at what level do
12 members wish to interact with the union, at what level do
11 Chairperson. Mr Hanabe, - and other name, Commission?
10 Khululekile and Daniel Mongwaketsi.
9 and the company said this is all they can afford. Would you
8 based on what the company can afford at this stage. It is
7 imperative that we return to full production to ensure
6 sustainability of the organisation.” Now perhaps I can
5 important to it?
4 proper conduct of elections within NUM is a matter of great
3           MR TIP SC:          Now, is it correct that
2           MR GCILITSHANA:          Yes, I could see.
1 suspended from all union activities.

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6 branch committee was also dissolved.”
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2           MR GCILITSHANA:          Yes, I could see.
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<td>1 going to ask you to detail the particular difficulties</td>
<td>1 MR GCILITSHANA: That's correct. They</td>
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<td>2 relating to those elections, or generally how elections</td>
<td>2 said they are not going to reinstate, but re-employ those</td>
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<td>3 take place. If necessary, is it correct that you could</td>
<td>3 workers.</td>
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<td>4 provide those details?</td>
<td>4 MR TIP SC: Thank you, yes. And in</td>
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<td>5 MR GCILITSHANA: That's correct.</td>
<td>5 respect of union membership, did Lonmin take up a position?</td>
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<td>6 MR TIP SC: And is it correct also that</td>
<td>6 MR GCILITSHANA: Lonmin refused to</td>
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<td>7 when problems do surface in respect of the functioning of a</td>
<td>7 reinstate the membership of those workers who were re-</td>
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<td>8 branch committee, then it is for the regional structure to</td>
<td>8 employed.</td>
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<td>9 take action?</td>
<td>9 MR TIP SC: The result of that was that</td>
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<td>10 MR GCILITSHANA: Yes, as I indicated, it</td>
<td>10 there had to be fresh recruitment efforts, is that correct.</td>
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<td>11 is the line of protocol.</td>
<td>11 by the various unions in order to obtain members from</td>
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<td>12 MR TIP SC: What happened at Lonmin on</td>
<td>12 scratch?</td>
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<td>13 the dissolution of that branch committee and the suspension</td>
<td>13 MR GCILITSHANA: That's correct.</td>
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<td>14 of the two gentlemen, Steve Khululekile and Daniel</td>
<td>14 MR TIP SC: You will see in paragraph 16</td>
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<td>15 Mongwaketsi?</td>
<td>15 of your statement that this process resulted in a very</td>
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<td>16 MR GCILITSHANA: That resulted to an un-</td>
<td>16 different position at Karee, is that correct, in terms of</td>
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<td>17 protested strike on the 18th of May.</td>
<td>17 NUM membership?</td>
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<td>18 MR TIP SC: What was the demand? Why did</td>
<td>18 MR GCILITSHANA: Yes, correct.</td>
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<td>19 that strike take place?</td>
<td>19 MR TIP SC: And by December 2011, AMCU</td>
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<td>20 MR GCILITSHANA: The demand was</td>
<td>20 had recruited sufficient employees to persuade Lonmin to</td>
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<td>21 reinstatement of the suspended leadership, in particular</td>
<td>21 enter into a Limited Organisational Rights Agreement at</td>
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<td>22 Steven Khululekile.</td>
<td>22 Karee?</td>
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<td>23 MR TIP SC: Again the details of that are</td>
<td>23 MR GCILITSHANA: That's the information</td>
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<td>24 something that you can speak about, but they're not</td>
<td>24 we got, yes.</td>
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<td>25 immediately sufficiently relevant for – to take the time of</td>
<td>25 MR TIP SC: And AMCU also obtained access</td>
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<td>1 Commission. How widespread was the participation in the</td>
<td>1 and stop order facilities?</td>
</tr>
<tr>
<td>2 strike?</td>
<td>2 MR GCILITSHANA: Yes.</td>
</tr>
<tr>
<td>3 MR GCILITSHANA: The strike was only in</td>
<td>3 MR TIP SC: And further agreements were</td>
</tr>
<tr>
<td>4 the Karee operation. Lonmin have got about four</td>
<td>4 entered into with AMCU. Those are detailed in paragraph</td>
</tr>
<tr>
<td>5 operations. You've got your Karee, Eastern Platinum,</td>
<td>5 18. By May 2012, AMCU's membership had risen sufficiently</td>
</tr>
<tr>
<td>6 Western Platinum and your LPD, which is your LPD division.</td>
<td>6 for it to establish a branch at Karee mine, is that</td>
</tr>
<tr>
<td>7 Therefore the strike was only at Karee where Steven and his</td>
<td>7 correct?</td>
</tr>
<tr>
<td>8 team was working.</td>
<td>8 MR GCILITSHANA: That's what I was</td>
</tr>
<tr>
<td>9 MR TIP SC: And in paragraph 14, you deal</td>
<td>9 informed, yes.</td>
</tr>
<tr>
<td>10 with one of the consequences of the strike, namely that</td>
<td>10 CHAIRPERSON: I don't want to interrupt</td>
</tr>
<tr>
<td>11 approximately 11 000 Karee employees were dismissed by</td>
<td>11 you, but the document to which you refer – or the witness</td>
</tr>
<tr>
<td>12 Lonmin.</td>
<td>12 refers in para 13 of the statement – sorry, footnote 13,</td>
</tr>
<tr>
<td>13 MR GCILITSHANA: That's correct.</td>
<td>13 which is a footnote to paragraph 18 of the statement, is I</td>
</tr>
<tr>
<td>14 MR TIP SC: NUM and Lonmin negotiated?</td>
<td>14 think an exhibit which was handed in when Mr Mathunjwa was</td>
</tr>
<tr>
<td>15 MR GCILITSHANA: We did engage Lonmin on</td>
<td>15 giving evidence, and I’m not sure, but I think the one</td>
</tr>
<tr>
<td>16 a re-engagement of those workers.</td>
<td>16 referred to in footnote 12 maybe as well. I don't expect</td>
</tr>
<tr>
<td>17 MR TIP SC: You've recorded the details</td>
<td>17 you to give me the answer now, but it will be convenient if</td>
</tr>
<tr>
<td>18 in paragraph 14 of your statement from where it appears</td>
<td>18 at some stage we can be told whether these documents are</td>
</tr>
<tr>
<td>19 that almost all of the employees were reinstated,</td>
<td>19 already before us as exhibits and what the exhibit numbers</td>
</tr>
<tr>
<td>20 approximately 2 000 were not reinstated, and those included</td>
<td>20 are, so as to make reference thereto easier later on.</td>
</tr>
<tr>
<td>21 the former NUM branch leadership members.</td>
<td>21 MR TIP SC: We'll see to that cross-</td>
</tr>
<tr>
<td>22 MR GCILITSHANA: That's correct.</td>
<td>22 referencing. Mr Chair, it is indeed so that they were put</td>
</tr>
<tr>
<td>23 MR TIP SC: If you turn to paragraph 15,</td>
<td>23 in, and we didn't want to duplicate. Mr Gcilitshana, I</td>
</tr>
<tr>
<td>24 you set out there that Lonmin attached a condition to the</td>
<td>24 just want to move on to paragraph 19 where you note that</td>
</tr>
<tr>
<td>25 reinstatement process.</td>
<td>25 AMCU had achieved majority membership at Karee, but that</td>
</tr>
</tbody>
</table>
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NUM remained the majority union at Lonmin’s Marikana operations as a whole.

MR GCILITSHANA: That’s correct.

MR TIP SC: And that NUM also, as a result, remained the sole collective bargaining agent in respect of the employees at the relevant bargaining unit, being Lonmin as whole, is that correct?

MR GCILITSHANA: That’s correct, in Marikana operations.

MR TIP SC: In paragraph 20, Mr Gcilithshana, you deal with the fact that were numerous incidents of violence at Karee mine over this period.

MR GCILITSHANA: That’s correct.

MR TIP SC: There were assaults and one person died of severe head injuries and we know that, from other statements before the Commission, that that was a person who was reporting for work.

MR GCILITSHANA: That’s correct.

MR TIP SC: And in May 2012, the keys to the NUM offices at Karee mine were forcibly confiscated by some persons from the position of NUM’s branch leadership.

MR GCILITSHANA: That’s correct, same attempt on the 7th of January 2013.

MR TIP SC: I want to turn now to a matter that deals with NUM’s approach to negotiations, and all of that is described in respect of the 2011 negotiations that were conducted between NUM and Lonmin.

And I want you to begin at paragraph 21 of your statement.

Are you at that place?

MR GCILITSHANA: Correct.

MR TIP SC: Again, if you don’t mind, I’ll just read the particularly relevant aspects on to the record and then ask you for any additional comment. NUM’s approach to wage negotiations generally is one that has as its priority an inclusive process in terms of which mandates are sourced from its membership before the commencement of the negotiation process?

MR GCILITSHANA: That’s correct.

MR TIP SC: And perhaps I should just underline the word before - before you even begin negotiations, you obtain mandates?

MR GCILITSHANA: That’s correct.

MR TIP SC: And you go on to say that where appropriate, report back meetings are also held with the membership.

MR GCILITSHANA: That’s correct, also for new mandate.

MR TIP SC: And before any final decision is taken, a mass meeting of workers is arranged in order to obtain final mandates?

MR GCILITSHANA: That’s correct.
MR GCILITSHANA: That's correct. 
MR TIP SC: As the chief negotiator, were you in attendance at these events and steps?
MR GCILITSHANA: This process was led by the branches of Lonmin. I was not practically involved.
MR TIP SC: Is that because certain preliminary demands have to be processed and debate have to take place before they reach your level?
MR GCILITSHANA: That's correct.
MR TIP SC: Now the meeting, the central mass meeting you describe in paragraph 24 also as one that was being held at Wonderkop Stadium and attended by several thousand employees, including employees from Karee Mine?
MR GCILITSHANA: That's correct, Karee have been included, simply because NUM had members in Karee, regardless of that they were in minority in Karee, but members, there was interaction with the members and we would request the company to send buses and they would do so.
MR TIP SC: And of course at that stage NUM was still the central bargaining agent?
MR GCILITSHANA: That's correct.
MR TIP SC: Now Mr Gcilitshana, I just want to take a step sideways as an annotation, Mr Chair, to paragraph 25. We want to deal with this aspect of negotiations quite fully, so that there is a proper appreciation of what collective bargaining entails and how it should be done. In paragraph 25 you deal with the entry into the picture of a person called NUM's Mining House Coordinator, but before we deal with that, I want to take you to an annual event in March of every year, where, is it correct that NUM holds a bargaining conference?
MR GCILITSHANA: It's correct, in particular on the year of the negotiation.
MR TIP SC: That is a NUM internal conference, is it?
MR GCILITSHANA: That's correct.
MR TIP SC: What is its principal purpose?
MR GCILITSHANA: The purpose is to look on the agreements that have been signed in the previous agreements, one. Two, look on the market in terms of inflation, what is the inflation. And then compare the achievement that we have made with other sectors of economy. Then it also looks at what could be the possible percentage that could be looked at in terms of the demands.
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MR TIP SC: Just going back to your statement at paragraph 25, and I’ll try to abbreviate.
you’ve introduced the NUM’s Mining House Coordinator. He submits worker demands to the head office and are those demands then again subjected to a process of examination within NUM’s head office?

MR GCILITSHANA: Yes, that’s correct, the demands will be researched and the senior researcher would look on the demands, also the general secretary would look on the demands. And only if the demands satisfy those criteria can NUM in fact clear them for submission to the employer as a demand, as a demand?

MR TIP SC: In this case, the demands were approved and on 17 October 2011 they were submitted to Lonmin?

MR GCILITSHANA: That’s correct.

MR TIP SC: I’m looking now at paragraph 26 of your statement. And is it so that RDOs received particular attention in these demands?

MR GCILITSHANA: Yes, correct, they have been looked after.

MR TIP SC: What was the demand?

MR GCILITSHANA: The demand was to move them from category 4 to category 7.

MR TIP SC: Would a shift of that kind have significant remuneration implications?

MR GCILITSHANA: Yes, the intention you ask to improve their salaries, taking into account the kind of work that they are doing.

MR TIP SC: And that shift would be –

CHAIRPERSON: Sorry, can I ask quickly.

You described the process that preceded the formulation of these demands. This particular demand in relation of the RDOs, was it in accordance with what they had asked for?

MR GCILITSHANA: It was a mandate obtained from the mass meeting.

MR TIP SC: Mr Chair, we’ll return to that aspect in a moment with a subsequent meeting. Now you say – you’ve detailed in paragraph 27 and 28 of your statement certainly preliminary matters you’ve identified the teams. I would like to move on to paragraph 30 of your statement. And you will see there that what you have done, Mr Gcilitshana, is to set out a number of the meetings that took place between NUM negotiators, including yourself, and Lonmin?

MR GCILITSHANA: That’s correct.

MR TIP SC: The dates of those meetings are set out and they span the period 18 October 2011 through to 22 November 2011?

MR GCILITSHANA: Yes.

MR TIP SC: And minutes are kept of these negotiations, they’re in the bundle, correct?

MR GCILITSHANA: Correct.

MR TIP SC: I don’t want to take the time of the Commission by working through each set of discussions at each meeting, but would it be so that there would be a process of gave and take in respect of demands and offers as these meetings took place?

MR GCILITSHANA: That’s correct.

MR TIP SC: What I do want to ask you is particularly in relation to the position of RDOs. Did their position enjoy attention in the course of these negotiation meetings?

MR GCILITSHANA: Yes, we did as NUM to put our case on the importance of the role of the RDOs. That’s why we had a demand of category 7.

MR TIP SC: Were you able to succeed with that particular demand?

MR GCILITSHANA: We could not succeed. Did you, however, succeed in obtaining a percentage increase at least in respect of the wages of RDOs?

MR GCILITSHANA: That’s correct.

MR TIP SC: Now after this process of – well, in the course of the process of these meetings, did you from time to time have report-back meetings at which the state of the negotiations were conveyed to the membership of NUM?

MR GCILITSHANA: Yes, we did have. If one can also go to the, back to the RDOs issue, on the reason not, for the reason not being, for the reason not for the RDOs be upgraded to category 7, company indicated that they are busy with the programme of developing youth in the surrounding communities who can be able to be prepared to take the job of the RDOs, because we have been taking RDO role as a scarce skill, as a -

MR TIP SC: These negotiations were conducted with a facilitator being present. Is that
MR TIP SC: The final mandate from the company on the scarce skills of the demand by the RDOs, taking into account that - if I can take you back - in 2009 when the company was restructuring or retrenching, some of the RDOs wanted to take voluntarily separation packages. They were not allowed. The reason was that they're doing the scarce skills, therefore they can't take a separation package, therefore that remained with the RDOs as we collected that month. That remained on the minds of the RDOs that their job is a scarce skill.

MR GCILITSHANA: That was a meeting that was held at Wonderkop in late November 2011 with approximately 5 000 workers in attendance, you say, many of them being RDOs.

MR TIP SC: And generally were you in the position of the category 4 employees, namely the RDOs, when the company was restructuring or retrenching, some of the RDOs did because if I'm not available comrades will select a spokesperson who'll do the report-back.

MR GCILITSHANA: Leadership of the branch. I was not involved on that day, but the leadership of the branch, of branches did because if I'm not available to accept them?

MR TIP SC: And was such a mandate in fact given by the employees, the workers, the members, at that mass meeting?

MR GCILITSHANA: That what was agreed that the leadership can sign the agreement.

MR TIP SC: And in accordance with that then the wage agreement was in fact signed on 2 December 2011, valid for two years?

MR GCILITSHANA: Yes.

MR TIP SC: Details are given in that paragraph, and the agreement itself is part of the bundle. It's not necessary to go into that detail.

CHAIRPERSON: May I just interpose at this stage just to get clarity on what they achieved for the RDOs in comparison with what they sought to get. You say in paragraph 30.6 that, you pointed out the position of the RDOs could become a time-bomb if not addressed, and you agreed, and that their grades be rolled up to category 7. Now what you in fact achieved was an increase of 10% for both years and that their grade should be rolled up to category 7, as previously demanded.”

MR TIP SC: Is what takes place at such a meeting that the current, the status of the demands and the offers from the company are discussed and workers decide whether or not they should give the union a mandate to

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

enlarge on that a little. What sort of expectation did it
give rise to?
3  [12:44] MR GCLITSHANA: One expectation would be
4  workers, RDOs who are working in Lonmin maybe cross and go
5  and look for employment at Impala where there's better
6  salary. Secondly, also at Lonmin itself, because the
7  workers do communicate, the thought that there is this
8  achievement at Impala, therefore that might have raised
9  expectation from them, from the workers in Lonmin, that
10  they would also go that route to get this – to get their
11  demand addressed, I mean their expectations resolved.
12  MR TIP SC: I just want to ask you to
13  pause and to clarify for us the phrase which you have just
14  used, which is to go that route. Are you referring there
to the route that was followed by the RDOs at Impala,
15  namely the unprotected action or are you referring to
16  something else?
17  MR GCLITSHANA: Yes, that's correct.
18  MR TIP SC: Did you – did any of this
19  come to your ears personally at that time in the period
20  after April, May and June of 2012?
21  MR GCLITSHANA: No.
22  MR TIP SC: Let us then go on with your
23  statement at paragraph 33 and Mr Gcilitshana, I'm going to
24  ask you to just bear in mind as we go along, that if
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25 MR GCILITSHANA: That will be correct.
24 strike. Is that – would that be correct reading of it?
23 considering embarking upon an unprotected industrial
22 employees who were dissatisfied and who were presumably
21 intimidation.” So that was clearly directed to the
20 attempt to embark on unprotected industrial action and
19 paragraph says, “We therefore caution employees against any
18 the communiqué dated 31 July 2012, Lonmin somewhat
17 there is in existence a two year wage agreement. And in
16 the attention of employees pertinently to the fact that
15 are difficult, the environment is competitive and it draws
14 to all its employees that the market is difficult, finances
13 XX3, the first of those being 20 July 2012, Lonmin conveys
12 Exhibit XX3 and XX4 available to you?
11 normally addressed, these internal communiqués?
10 communicates, Exhibits XX3 and XX4. To whom were they
9 me ask you firstly, have you had an opportunity to read
8 MR GCILITSHANA: Yes, I got.
7 MR TIP SC: You will see that – well, let me ask you firstly, have you had an opportunity to read
6 and XX4 available to you?
5 MR GCILITSHANA: Okay, thank you.
4 MR TIP SC: Have you’ve got Exhibit XX3
3 you know?
2 the impact of Impala on the position at Lonmin, you’ll let
1 anything occurs to you that is relevant to the question of

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

1 MR GCILITSHANA: I was not involved.
2 MR TIP SC: At what stage did you become aware of the subject matter dealt with in paragraph 34, that RDOs had marched to the Karee Main Office with demands, which was submitted to Mr De Costa?
3 MR GCILITSHANA: It was a few days after the march from our structures.
4 CHAIRPERSON: Before we move onto that, I just want to ask a question if I may, about these internal communicates, Exhibits XX3 and XX4. To whom were they normally addressed, these internal communiqués?
5 MR GCILITSHANA: To Lonmin employees.
6 CHAIRPERSON: Who?
7 MR GCILITSHANA: To Lonmin employees.
8 CHAIRPERSON: That would include, not only management, but also ordinary employees, would it?
9 MR GCILITSHANA: Yes, correct.
10 CHAIRPERSON: I see XX4 in the third paragraph says, “We therefore caution employees against any attempt to embark on unprotected industrial action and intimidation.” So that was clearly directed to the employees who were dissatisfied and who were presumably considering embarking upon an unprotected industrial strike. Is that – would that be correct reading of it?
11 MR GCILITSHANA: That will be correct.
MR GCILITSHANA: I was informed that NUM was not informed and was not involved.
MR TIP SC: Then perhaps I can move on to paragraph 35. The announcements on 23 July by Lonmin on the various increases for RDOs, when did that come to your attention?
MR GCILITSHANA: It was after the decision was taken by EXCO.
MR TIP SC: Mr Chair, would this be a convenient time to take the lunch adjournment. I see it’s just run past 1 o’clock.
CHAIRPERSON: I’m waiting for you to finish at paragraph 36, which you haven’t done yet.
MR TIP SC: Yes, well, let me do that.
It’s – yes, paragraph 36, Mr Gcilitshana, it’s related to that point. You say there, “These allowances were decided upon unilaterally by Lonmin, without any negotiations with NUM.”
MR GCILITSHANA: That’s correct.
MR TIP SC: Those increases were decided upon by Lonmin during the currency of a binding two year agreement?
MR GCILITSHANA: That’s correct.
MR TIP SC: And as the chief negotiator of NUM, how did you respond to the fact that this action
had been taken? What was your feelings about that?
MR GCILITSHANA: As NUM we were not happy the way the company did it, because we believe that we should have been involved as Union with collective bargaining rights in Lonmin. I must also indicate that we are not against any money that goes to the workers, it’s more of the processes.
CHAIRPERSON: The Commission will adjourn until 2 o’clock.
[COMMISSION ADJOURNS COMMISSION RESUMES]
[14:02] CHAIRPERSON: The Commission resumes. You’re still under oath, Sir, and you’re still leading the witness in chief, Mr Tip.
MR TIP SC: Indeed, Mr Chairperson. Mr Gcilithana, we were on the point just before the lunch adjournment of moving to a different topic, which is the fact of the unprotected strike and the role of NUM in relation to it, and if you go to paragraph 37 of your statement you will see that we begin to deal with that subject there. You say there that although you don’t know the details, it is clear that the RDOs resolved not to accept Lonmin’s offer of the additional allowances and that they would persist with their demand for R12 500 as their basic rate.
MR GCILITSHANA: That’s correct.
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1 not be at work tomorrow. Hope your influence is effective.
2 The visit from the DMR was tough, but good work was done by
3 the NUM guys that joined the various groups. Any info
4 please let me know. Thanks for your friendship.”
5 MR GCILITSHANA: Yes, I could see.
6 MR TIP SC: And perhaps I may just add,
7 although you had to negotiate with Lonmin about things like
8 wages and working conditions, does the tone of these emails
9 reflect the cordial nature of the relationship that Lonmin
10 and NUM had generally?
11 MR GCILITSHANA: Yes.
12 MR TIP SC: Then moving on to paragraph
13 39 of your statement, you note there what we already know,
14 that “The strike began in earnest on 10 August 2012 when
15 strikers marched to the Lonmin LPD office.”
16 MR GCILITSHANA: Yes.
17 MR TIP SC: Now I just want to interpose
18 here. As you know, the question has previously arisen of
19 the relationship between the location of Lonmin’s LPD
20 office and the NUM office and we had undertaken at that
21 stage to deal with that before the Commission by somebody
22 who really understands the layout, and Mr Gcilitshana, you
23 do understand the layout of the various components of
24 Lonmin and the offices and so forth?
25 MR GCILITSHANA: Yes.

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

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

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1 MR TIP SC: And towards the top of the
2 page you will see against the time of 6 o’clock that RDOs
3 begin to gather at Wonderkop opposite the stadium.
4 MR GCILITSHANA: Yes, I could see.
5 MR TIP SC: And if you go down that long
6 entry you will see the time of 8 o’clock in the morning
7 where the group is noted as having started to march to LPD.
8 MR GCILITSHANA: Yes, I could see.
9 MR TIP SC: And if you go further down
10 you will see that it is recorded by Lonmin Security at
11 12:20, 20 minutes past noon, do you have the time?
12 MR GCILITSHANA: Yes, I see.
13 MR TIP SC: And there it’s noted, “The
14 mass dispersed. Management will not entertain their
15 demands. Their view is to engage in work stoppage
16 effective immediately.” You see that?
17 MR GCILITSHANA: Yes, I could see.
18 MR TIP SC: And at 12:25 it’s recorded
19 that the mass is marching towards Wonderkop.
20 MR GCILITSHANA: Yes, I could see.
21 MR TIP SC: At 13:30 the security notes
22 that the first group arrives at Wonderkop opposite the
23 stadium.
24 MR GCILITSHANA: Yes, I could see.
25 MR TIP SC: 13:45, the mass and the
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I am going to ask you to go to page 76. And so again I am at that page, because of the funny sequence of emails, but what I am interested in at this stage is the suggestion that's been made here that the whole of the 10th of August and the night of the 10th of August was entirely peaceful in the location of Lonmin.

And the email that we see in the lower part of that page is from Mr Frank Russo-Bello, one of the senior managers –

COMMISSIONER HEMRAJ: Isn't that page 74 and 75, instead of 76?

CHAIRPERSON: No, I think it's actually 75 and 76. I think - they're going backwards as it were, but the first one of the sequence, I think is an original message from Frank Russo-Bello to Ian Farmer, 7:59 pm on the 10th of August, which starts halfway on our page 75 and concludes, as I see it, on page 76.

MR TIP SC: Yes.

CHAIRPERSON: And then the reply from Mr Farmer is near the top of that page, "My back is still bad. If you need me," he gives the telephone number in England, "as I have no cell phone signal." That seems to be the reply the following morning actually sent 9h19 am to Mr Russo-Bello by Mr Farmer. But the first email appears to be the one from Frank Russo-Bello to Mr Farmer at 7:59 pm on the 10th of August, is that correct?

MR TIP SC: That's correct, Mr Chair.

CHAIRPERSON: Now, what's the passage in it that you wish to refer us to specifically?

MR TIP SC: I'm going to deal only with certain aspects of it.

CHAIRPERSON: I assume that you're referring to the third paragraph of that email which begins - we haven't got the first few words, but I take it, "I assume you are aware of the sequence of events today. Pretty much all RDOs did not go underground, they got together at Wonderkop, then starting making their way to LPD, some 3 500 strong." Is that the passage you're referring to?

MR TIP SC: That's correct. Mr Chair –

CHAIRPERSON: "Security and SAPS eventually managed to," - I don't know what that word is, it's something "them at four way stop, but they pushed their way through eventually and made the LPD all very agitated," and so on. Is that it?"
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MR GCILITSHANA: Which page again?
MR TIP SC: 75

MR GCILITSHANA: Okay, yes.
MR TIP SC: And it is clear also from the same paragraph that it is recorded by Mr Russo-Bello that management had evidently continuously advised the strikers that this was an illegal strike and that they had prepared and issued them with a brief indicating the same. In other words, a notice warning them and warning them that they were in contravention of numerous issues and that they were already liable for severe disciplinary action and dismissal. Do you see all that? For completeness sake, dismissal would ensue if they did not report for work the next day.

MR GCILITSHANA: Yes, I could see.
MR TIP SC: And it is recorded also that Lomlin had applied for an urgent court interdict, which we got, he says, and served them with notification of this.

MR GCILITSHANA: Yes, I could see.
MR TIP SC: And, Mr Gcilitshana, it would - am I correct that you would have been aware of these developments at the time, because the application for that interdict was served on NUM also, is that correct?

MR GCILITSHANA: Yes, we did receive.

MR TIP SC: Then Mr Russo-Bello goes on to say, “They eventually dispersed and were escorted back to Wonderkop. Security was kept on full alert and we started receiving numerous reports from the ground that they were planning to disrupt the entire business tonight,” that is the night of the 10th of August, “and tomorrow, until we agreed to their demands.”

MR GCILITSHANA: Yes, I could see.
MR TIP SC: As far as I can recall, yes, but it was rumours.

MR GCILITSHANA: When did NUM officials addressed the report back - the mass meeting on the 8th of August, did it set itself against this kind of conduct?

MR GCILITSHANA: NUM indicated its position against the unprotected strike and any other action that may be against the law.

MR TIP SC: Would acts that NUM is opposed to include acts of violence in and around the workplace and acts of intimidation?

MR GCILITSHANA: That's correct.
MR TIP SC: Then Mr Russo-Bello in the same email goes on to say, and this is evidently more or less at the time of the email, just before 8 o’clock in the evening of the 10th of August, he says, “We are now receiving reports of intimidation throughout the business and are attempting to deal with them swiftly and decisively before they escalate in numbers and violence.”

MR GCILITSHANA: Yes, I could see.
MR TIP SC: He then notes in his report to Mr Farmer that, “It is contained to RDOs,” - perhaps it’s missing a word, “If it is contained to RDOs and they are not at work tomorrow, we will then pursue the appropriate process to give them an ultimatum and dismiss them if they don’t return. A re-recruitment strategy, including criteria, is being prepared. If it escalates we have a bigger problem.” Do you see that?

CHAIRPERSON: I think the word contained is probably a mistake for confined.
MR TIP SC: Yes, I’m sure it must have been intended to be confined. Do you see that, Mr Gcilitsana?

MR GCILITSHANA: Yes, I could see, that’s why we were against the unprotected strike. Those are the reasons.
MR TIP SC: Then we go over the page to page 76, and I’m going to confine my question to you just in respect of the first paragraph, because that is what you know about, where it says, “The unions have been engaged, including at national level and NUM has been generally supportive indicating,” - I think there must be a missing word here, “that they want to assist in resolving the issue.”

MR GCILITSHANA: Yes, I could see.
MR TIP SC: And again I want to ask you whether that statement by Mr Russo-Bello about NUM’s attitude correctly reflects what was indeed the approach of NUM at that time –

MR GCILITSHANA: That’s correct.
MR TIP SC: Then I’m going to take you back a page to a second email, also from Mr Frank Russo-Bello also to Mr Ian Farmer, and that is the next morning, the morning of the 11th of August at 9:43.

MR GCILITSHANA: Which page exactly?
MR TIP SC: Page 74 of the bundle.
MR GCILITSHANA: Okay.
MR TIP SC: There are two emails there, the one is at 9:25 where he gives an update to Mr Farmer and basically says that they’re still monitoring the situation and they will remain on full alert.

MR GCILITSHANA: Yes, I could see.
MR TIP SC: Then the email below that is at 9:43, and I’m going to just deal with the second paragraph, again because this records the understanding of
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 Lonmin in respect of what took place at the NUM office.

And he says there, "We are currently dealing with a

confrontation at Wonderkop between two large contingents,

NUM and what appears to be a large contingent of possibly

AMCU supporters which came out of the informal settlement.

There were shots fired and two people injured. One of them

our employee. Both stable and being taken to hospital."

MR Gcilithshana: Yes, I could see.

MR TIP SC: Now, I’m aware that you were

not in the vicinity of the NUM office on the 11th of August

at all.

MR Gcilithshana: Yes, I was not.

MR TIP SC: Is it correct that you have

participated in the investigations that have been conducted

by, amongst others, the legal team of NUM in relation to

what took place there?

MR Gcilithshana: Yes, that's correct.

MR TIP SC: And on the strength of the

result of those investigations, are you able to confirm to

the Commission that they reflect that two persons were in

fact injured there, but that there were no fatalities?

MR Gcilithshana: That's correct.

MR TIP SC: I'm going to come back to

that a little more fully later, but I just wanted to couple

that item of evidence to the email of Mr Russo-Bello, where

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precisely the same thing is reflected. Now, I’d like you

to go on to paragraph 40, if you would, Mr Gcilithshana, of

your statement. On the 10th of August, is it correct that

NUM convened a mass meeting at the Wonderkop Hostel?

MR Gcilithshana: That's what the

leadership have reported to us, correct.

[14:42] MR TIP SC: Yes. And again direct

evidence will be presented, Mr Chair, that it’s part of the

narrative, and did you also learn that the same message had

been conveyed by NUM membership to those who attended the

meeting, namely that NUM did not support the unprotected

strike, that workers should report for duty, and in the

event that they experienced any difficulties doing so, they

should report to the NUM office at WPL for assistance.

MR Gcilithshana: Yes, that’s what had

been reported to us.

MR TIP SC: Did you hear also that NUM

had in addition visited the nearby village and hostels and

conveyed the same message to persons?

MR Gcilithshana: Yes, correct. That’s

what had been reported.

MR TIP SC: In paragraph 41, you deal

there with the events during the 9th and the 10th and 11th

of August. Again you were not present in Lonmin during

that night. Is that correct?

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despite widespread intimidation to those employees who

wished to report for duty.” Now the portion that I’ve just

dealt with, with you, is part of that, and you will see in

your statement a number of other entries are noted in

footnote 29. They’re all Lonmin Security log entries for

the 10th of August.

MR Gcilithshana: Yes, I could see.

MR TIP SC: I don’t propose to look at

each of those five, but there are two additional entries,

Mr Chair, that I’ll take Mr Gcilithshana through just by way

of illustration. That is in the early hours of the 11th of

August, the first one on page 23 at 2:19, that is part of

the enlarged copy, fortunately. Do you see that? I’ll

just read it, Sir. You have it there, Mr Gcilithshana?

MR Gcilithshana: Yes.

MR TIP SC: And what is noted there is

that R Beukes reported that NUM members informed him that

they will go through the village and ask the workers to go

to work and he, Beukes, must do the same thing inside the

hostel.

MR Gcilithshana: Yes.

MR TIP SC: And then just on the other

close of the picture, at 4:37 it’s noted there that PW and

GK, who we assume are Lonmin security officers, that they

proceed to Wonderkop to check on the situation as they
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1 heard that some people are intimidating the workers. Now bearing in mind that you were not there, I'm not going to pursue that further with you, Mr Gcilitshana, and I'm going to ask you to go on with paragraph 42 of your statement, which concerns NUM members particularly, and it's recorded there that “During the evening of 10 August two NUM members were assaulted near the NUM Western Platinum branch office.” That's the NUM office.

2 MR GCLITSHANA: Yes, I could see.

3 MR TIP SC: That's also on page 23, if you go to 8 o'clock that evening, 20:00.

4 MR GCLITSHANA: Yes, I could see.

5 MR TIP SC: And it's noted there that two workers were assaulted near the NUM office at Wonderkop on their way to work.

6 MR GCLITSHANA: Yes, I could see.

7 MR TIP SC: And if you go to the entry on page 24, 16:30 on the same day, 10th of August, also on page 23, you will see - do you have that?

8 MR GCLITSHANA: Yes, I could see.

9 MR TIP SC: You'll see the entry made by security there, “Intimidation at Wonderkop NUM offices, complainant T Masilo of number 4 shaft,” the company number is given, case book number is given. You see that?

10 MR GCLITSHANA: Yes, I could see.

11 MR TIP SC: And go on with paragraph 42 of your statement, Mr Gcilitshana, and I'm going to pursue that further with you, Mr Gcilitshana, and I'm going to bear in mind that you were not there, I'm not going to hear that some people are intimidating the workers. Now I'm not going to pursue that further with you, Mr Gcilitshana, and I'm going to ask you to go on with paragraph 42 of your statement, which concerns NUM members particularly, and it's recorded there that “During the evening of 10 August two NUM members were assaulted near the NUM Western Platinum branch office.” That's the NUM office.

12 MR GCLITSHANA: Yes, I could see.

13 MR TIP SC: And you go to 8 o'clock that evening, 20:00.

14 MR GCLITSHANA: Yes, I could see.

15 MR TIP SC: And it's noted there that two workers were assaulted near the NUM office at Wonderkop on their way to work.

16 MR GCLITSHANA: Yes, I could see.

17 MR TIP SC: And if you go to the entry on page 24, 16:30 on the same day, 10th of August, also on page 23, you will see - do you have that?

18 MR GCLITSHANA: Yes, I could see.

19 MR TIP SC: You'll see the entry made by security there, “Intimidation at Wonderkop NUM offices, complainant T Masilo of number 4 shaft,” the company number is given, case book number is given. You see that?

20 MR GCLITSHANA: Yes, I could see.

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1 MR TIP SC: There were also reports, whether correctly or not, that some strikers had been fired at and shot by Lonmin security personnel. I'm not going to take you into the detail, but the reference there is again a document in the bundle at footnote 32, page 80 to 82. Mr Gcilitshana, on the same basis I'm going to again use the opportunity of you being here to draw attention to certain other Lonmin entries on the 11th of August, concerning the NUM office, and we do not lose sight of the fact that you were not there, and that is that several hundred of the unprotected strikers that gathered near the Wonderkop stadium, and that they intended marching to the NUM offices at WPL.

2 MR GCLITSHANA: Yes, I could see.

3 MR TIP SC: And in that regard, if you would look at page 24 of the bundle, it's again if you've got the enlarged version that would be the simplest, or easiest to read. Have you got it, Mr Gcilitshana?

4 MR GCLITSHANA: What is the entry again?


6 MR GCLITSHANA: Yes?

7 MR TIP SC: And the entry is against 8:39 in the morning.

8 MR GCLITSHANA: Yes, I could see.

9 MR TIP SC: And what is recorded there

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1 is, “A mob of at least 300 gather around Wonderkop, threaten to burn down the NUM office.”

2 MR GCLITSHANA: Yes.

3 MR TIP SC: And at 14:00, at 2PM that day, if you just go down the page a bit, you'll see the entry there about six or seven lines down at that time, “This morning, Saturday, 2012-08-11, a mob was noted and information was that they want to torch NUM offices and Lonmin Kombi that NUM uses. There was somewhat a faction,” it says, but I suppose some friction or whatever that means, “between two groups. Gunshot and two people were injured.”

4 MS BARNES: Chair, I don't want to interrupt unnecessarily. I know that there was an indication that there would be some hearsay led, but this appears to be double hearsay, that this particular witness was of course not present, is now commenting in relation to somebody else who heard somebody else say something, and Chair, I just state for the record that we have a difficulty with the sort of double hearsay evidence as it’s being led.

5 CHAIRPERSON: I take it the purpose of this is to put the whole narrative before us as a single narrative and then there will presumably be evidence backing up some of these statements, and it's conceded that a good deal of what this witness is saying, is hearsay, and from the nature of things it may as you say be double hearsay, we may even if we're patient get some triple hearsay, but I'll allow it for the moment. We'll evaluate it later, but your objection is noted.

6 MS BARNES: Thank you, Chair.

7 MR TIP SC: Mr Chair, I may just confirm that this is certainly the incident about which direct evidence will be led. Why I'm taking the opportunity with Mr Gcilitshana to refer to some security log entries is simply that they are there, they are contemporaneous, they are made not by NUM but by Lonmin Security, and they have a value in that sense. If there is going to be a dispute about the reliability or authenticity of those entries, that can be dealt with.

8 CHAIRPERSON: We'll deal with that when we get there, but while we're on these entries I just want to refer you to one entry that you referred to. That's the entry at 14:00 on the 11th of August, page 24, 11th of August, there's a series of entries under the time 14:00.

9 In fact there are two 14:00 groups of entries but I'm referring to the first group. The last line of the first group says there was somewhat a faction between two groups, gunshots and two people were injured. You suggested the gunshot and injury of two people probably was, the word was...
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1 couldn't instead finish a bit earlier instead of taking the
2 break because there is a matter –
3 [15:02] CHAIRPERSON: The difficulty I have is I
4 fear that most people are finding it rather – in the
5 absence of air-conditioning, in reference to a number of
6 entries, finding it very difficult to stay awake and
7 concentrate at the same time.
8 MR MPOFU: Yes, Sir.
9 CHAIRPERSON: Some people may be able to
10 do that, maybe you can, but I can't. So, we will take the
11 adjournment, I am mindful however of a certain historic
12 event that is taking place later today. We will adjourn at
13 4 o'clock strictly.
14 MR MPOFU: Thank you, Chair.
15 CHAIRPERSON: Which by my calculation
16 gets us back to Pretoria about 5.
17 MR MPOFU: Yes, as long as the event is
18 taken into account.
[COMMISSION ADJOURNS COMMISSION RESUMES]
20 [15:20] CHAIRPERSON: Mr Mpofu, I have an
21 important job for you. Would you be the timekeeper?
22 MR MPOFU SC: Yes, I will.
23 CHAIRPERSON: If I'm not aware it's 4
24 o'clock, would you draw it my attention?
25 MR MPOFU SC: Yes Sir, I will remind you

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1 at five minutes to 4.
2 CHAIRPERSON: There will be no injury
3 time sorry, can I rely on you?
4 MR MPOFU SC: Yes, Chair.
5 CHAIRPERSON: On this point at least.
6 MR MPOFU SC: 100 %, today I will be
7 totally -
8 CHAIRPERSON: And every day. You are
9 still under oath. Mr Tip, I believe you have some more
10 questions.
11 MR TIP SC: Thank you, Mr Chair. Mr
12 Gcilitshana, we are going to accelerate a little, not dwell
13 on entries in the occurrence books unless we particularly
14 need to. I want to take you on to paragraph 43 and
15 paragraph 44, now you deal there with the events at the NUM
16 office on 11 August 2012, correct?
17 MR GCLIITSHANA: That's correct.
18 MR TIP SC: I'm going to give effect to
19 that fact that you were not there and that the commission
20 has already heard a fair amount of evidence and will hear
21 further evidence on what took place there. I'm going to go
22 directly to a particular aspect of that, some minutes, some
23 while before we adjourned for tea, I dealt with a topic of
24 the investigations that had been made on behalf of NUM and
25 I want to deal particularly with the subject of the

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1 dockets. Those, Mr Chair, were placed before the
2 commission as XX5 and XX6. Do you have those there?
3 MR GCLIITSHANA: Got it.
4 MR TIP SC: Now again, Mr Gcilithsana,
5 I'm not going to take you into the content of these
6 dockets, save to ask whether you have had the opportunity
7 to look at them and to establish that these are dockets
8 that have been opened by the SAPS in respect of attempted
9 murder charges by the two persons who were evidently
10 injured by gunshot in the vicinity of the NUM office on
11 the 11th of August 2012. Can you confirm that?
12 MR GCLIITSHANA: Correct.
13 MR TIP SC: And also that within the
14 docket it is apparent that both of these complainants were
15 taken to the Andrew Saffy Hospital for treatment, can you
16 confirm that?
17 MR GCLIITSHANA: Yes.
18 MR TIP SC: Now so much for those dockets
19 for the time being, is it also so that the NUM legal team
20 has made every effort to establish whether there are any
21 other dockets or any other indications that persons were
22 killed in the vicinity of NUM office?
23 MR GCLIITSHANA: Yes, I know.
24 MR TIP SC: And that nothing whatsoever
25 has been located to indicate that such took place?
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2012, another NUM member and shop steward Isiaah Twala was found brutally murdered near the koppie where the strikers had gathered. The bleached skull of an animal had been placed on his torso."

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1 MR TIP SC: "On the next day 14 August.
2 2012, another NUM member and shop steward Isiaah Twala was found brutally murdered near the koppie where the strikers had gathered. The bleached skull of an animal had been placed on his torso."

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1 MR TIP SC: "On the next day 14 August.
2 2012, another NUM member and shop steward Isiaah Twala was found brutally murdered near the koppie where the strikers had gathered. The bleached skull of an animal had been placed on his torso."

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2 2012, another NUM member and shop steward Isiaah Twala was found brutally murdered near the koppie where the strikers had gathered. The bleached skull of an animal had been placed on his torso."

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1 MR TIP SC: "On the next day 14 August.
2 2012, another NUM member and shop steward Isiaah Twala was found brutally murdered near the koppie where the strikers had gathered. The bleached skull of an animal had been placed on his torso."
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1 MR GCILITSHANA: We had a meeting in the morning, a briefing session at LPD then we left.
2 MR TIP SC: Yes, thank you for that detail. But once, subsequent to your leaving the events that we have heard about in this commission and which are still being explored at the koppie took place?
3 MR GCILITSHANA: Yes, we got the reports that there were incidents in the koppie.
4 MR TIP SC: Just to be clear, you were no longer in the vicinity of Lonmin when those events unfolded?
5 MR GCILITSHANA: No, we left LPD. I was in Middle Crown. When I said we left, we left LPD we went for Middle Kraal.
6 MR TIP SC: Now what time did you leave Middle Kraal and leave Lonmin all together?
7 MR GCILITSHANA: I think it was after 5 o'clock.
8 MR TIP SC: That's the afternoon of the 16th of August?
9 MR GCILITSHANA: Yes.
10 MR TIP SC: And where, where at Middle Kraal were you?
11 MR GCILITSHANA: We had a meeting with our shop steward at Solidarity offices.
12 MR TIP SC: On that day you say the resolution to the problem be found, and in this regard the
13 MR GCILITSHANA: That is correct.
14 MR TIP SC: We had a meeting in the afternoon, a briefing session at LPD then we left.
15 MR GCILITSHANA: Yes.
16 MR TIP SC: And where, where at Middle Kraal were you?
17 MR GCILITSHANA: We had a meeting with our shop steward at Solidarity offices.

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

MR TIP SC: “On 5 September 2012, the peace accord was signed by all the parties with the exception of AMCU and the strikers’ delegation who refused to sign it. The parties who signed the peace accord committed themselves unconditionnally to engage to eliminate violence and the violation of rights of all stakeholders. They endorsed a shared vision of peace and stability and committed their respective organisations to actively work towards a condition of sustainable peace. In addition, Lonmin committed itself to negotiating the wage demand of 12 500 as soon as the workers terminated the unprotected strike and returned to work.”

MR GCILITSHANA: That’s correct.

MR TIP SC: Paragraph 55. “Although NUM’s position throughout the strike was that workers should return to work and channel their grievances and demands through normal collective bargaining structures and processes, we actively participated in the negotiations that led to the signing of the peace accord, and I and other NUM representatives engaged with the strikers’ delegation and provided whatever other assistance was required by them.”

MR GCILITSHANA: That’s correct.

MR TIP SC: And paragraph 56. “In the meantime the strike and the associated violence and intimidation continued unabated however. On 11 September 2011 (that should be 2012) “the body of another NUM member, Dumisane Ntinti was found near the kopjie where the strikers had gathered. He had multiple stab wounds.” Did you hear about that?

MR GCILITSHANA: Yes, that’s correct, that’s what we got from the security briefing.

MR TIP SC: And finally the topic of the wage negotiations, paragraph 57. “On 13 September 2012 the parties commenced negotiations concerning the strikers’ wage demands. Again the process was facilitated by the CCMA and a delegation led by Chief Babikile Holomisa joined the negotiations together with the SACC as observers.”

MR GCILITSHANA: That’s correct.

MR TIP SC: In paragraph, “On 18 September 2012, the parties signed the wage agreement as an addendum to the two year wage agreement signed in December 2011 between NUM and Lonmin. The addendum was signed by Lonmin, AMCU, NUM, Solidarity, USA and the delegation representing the strikers.”

MR GCILITSHANA: That’s correct.

MR TIP SC: Paragraph 59. “As with the negotiations concerning the peace accord, NUM had actively participated in the negotiations concerning the strikers’ demands, in order to ensure that a solution to the protracted violent unprotected strike was found. I had also provided some assistance to the strikers’ delegation with certain issues that they did not attend, particularly with regard to the figures relating to the actual wage proposals made during the negotiations.”

MR GCILITSHANA: That’s correct. I must also indicate that when, at times when the Reverend, who used to be interpreter for the delegation, when he is not able or I will relieve him as an interpreter.

MR TIP SC: I may not have heard, the Reverend, you are talking to Bishop Seoka, are you?

MR GCILITSHANA: No there’s another one, I’ve just forgot the name, who used to be the interpreter.

MR TIP SC: And finally, in paragraph 60, you say, the following, Mr Gcilitshana. “I conclude this statement on a note of sadness. Mr Dolovoyo Bongo, to whom I have referred above, was murdered on 5 October 2012. He would have made a material contribution as a witness in these proceedings.”

MR GCILITSHANA: That’s correct.

MR TIP SC: Mr Chair, thank you, that completes the evidence-in-chief.

CHAIRPERSON: Mr Budlender, I understood you were going to cross-examine first. Are you in a position to commence, or would you wish to begin tomorrow morning?

MR BUDLENDER: I am in a position to commence, Chairperson, I am in your hands. I shan’t be long, but I shan’t finish by four o’clock.

CHAIRPERSON: Well, in the circumstances, I think I would incur the grave displeasure of Mr Mpofu if I didn’t adjourn now. The Commission will adjourn until 09:30 tomorrow morning.

[COMMISSION ADJOURNED]
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unilateral

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