

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 274

14 AUGUST 2014

PAGES 34980 TO 35112



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| <p style="text-align: right;">Page 34980</p> <p>1 [PROCEEDINGS ON 14 AUGUST 2014] 2 [09:26] CHAIRPERSON: The Commission resumes. 3 We're continuing with the presentation from the families of 4 the deceased. I have been given a list here of five 5 families on whose behalf counsel instructed by SERI are 6 going to make presentations. Are we going to have any 7 presentations from, in respect of some of the other 8 deceased whose families have not yet made presentations? 9 Do you know the answer to that? 10 MR BUDLENDER SC: Not as far as I'm 11 aware, Chair. There are a couple outstanding and I think 12 we'll have to do it some other time. Mr Mojapelo has 13 better information than I have, Chair. 14 CHAIRPERSON: Mr Mojapelo? 15 MR MOJAPELO: Yes, we've asked Adv Masebe 16 to do a presentation on behalf of the family of Mabebe and 17 Mabelane as soon as the SERI team has finished. And then 18 for Mrs Langa, because she is not here, we have decided to 19 ask at a later stage for a slot when she is around. 20 CHAIRPERSON: I think it's only right 21 that she should be here, and what about the Twala family? 22 MR MOJAPELO: I don't have, we don't have 23 any information on the Twala family. 24 CHAIRPERSON: Well, I think we should – 25 perhaps Lonmin can help us in that regard, or NUM, but we</p> | <p style="text-align: right;">Page 34981</p> <p>1 must also give the Twala family an opportunity as well. 2 MR NTSONKOTA: Chair, concerning the 3 Twala family we had a chat to Mr Budlender yesterday and we 4 agreed that the presentation will also have to be deferred 5 to a later date which will be agreed. 6 CHAIRPERSON: Possibly we can do the 7 Langa and Twala presentations on the same day. 8 ADV NTSONKOTA: If it's convenient, yes, 9 we can have them done at the same time, Chair. 10 CHAIRPERSON: Alright. 11 ADV NTSONKOTA: Thank you. 12 CHAIRPERSON: But before we proceed with 13 the presentations that we're going to hear this morning, I 14 ask you all to rise and take a minute's silence, to 15 consider the late Mr Twala who died two years ago today and 16 we pray that his soul also may rest in peace - 17 [A MINUTE'S SILENCE IS OBSERVED] 18 CHAIRPERSON: And we pray that strength 19 and consolation be given to his family and all those who 20 mourn his death. Thank you, you may be seated. I think 21 we're going to have a presentation this morning firstly on 22 behalf of the Tukuza family, is that correct? 23 MS MOTLOENYA: That is correct, Chair. 24 CHAIRPERSON: Their statement will be 25 KKKK28.</p> |
| <p style="text-align: right;">Page 34982</p> <p>1 MS MOTLOENYA: Chair, before we start 2 with the presentations, just to give you an update 3 regarding the medical status of the people who were 4 admitted yesterday. They have all been – 5 CHAIRPERSON: I'm sorry, I should have 6 asked you for that. Thank you for bringing it up at this 7 stage. 8 MS MOTLOENYA: They have all been 9 discharged from hospital, Chair, and they are all attending 10 the Commission today. Ms Ngxande has just left the room, 11 though, because she is not feeling well but they are all 12 discharged from hospital and they are back at the 13 Commission. 14 CHAIRPERSON: Thank you for that 15 information. I am pleased they have been discharged from 16 hospital and I hope that they will suffer no further ill- 17 effects from the emotional stress of what happened 18 yesterday. 19 MS MOTLOENYA: Yes, Chair. 20 CHAIRPERSON: Thank you. 21 MS MOTLOENYA: Then the first 22 presentation, Chair, will be for the family of Mr Mpangeli 23 Tukuza. On behalf of the Tukuza family is his widow, 24 Nolundi Tukuza. 25 CHAIRPERSON: I think I said the</p> | <p style="text-align: right;">Page 34983</p> <p>1 statement in respect of the late Mr Tukuza will be KKKK28. 2 MS MOTLOENYA: And he was killed at scene 3 1, recorded as body D. 4 CHAIRPERSON: Yes, thank you. 5 MS MOTLOENYA: Can we go to slide 382, 6 please? Mpangeli Tukuza is from Ngqeleni in the Eastern 7 Cape. The statement was made by Jamela Tukuza who is the 8 brother of Mpangeli Tukuza. 9 "Mpangeli was a peaceful man. He was very kind. 10 He loved all his children and his parents. He was a quiet 11 person. He did not like politics. He never participated 12 in any strikes before. He was not a union member before, 13 until he joined AMCU. His dependants, he has two wives, 14 Nokwandisa Tukuza and Nolundi Tukuza, seven children – 15 Nomiselo Nopiki, Phumeza Nopiki, Figile Tukuza, Phumzile 16 Tukuza, Inaminkosi Tukuza, Alometu Tukuza, Lamla Tukuza, 17 his mother Majikana and his father Tyotyoty Tukuza. 18 I still working at Phula when he came to 19 Rustenburg looking for a job. He found a job at New Mine 20 and in 2000 he moved to Karee where he started as a general 21 worker. Later on he was promoted as an RDO. He then got 22 injured while working. His toes were cut off by the 23 machine. As a result he was transferred to a default 24 position where he was hired as a driver. Mpangeli was 25 supporting his entire family, including his parents.</p> |

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| <p style="text-align: right;">Page 34984</p> <p>1 He did not join the strike in the beginning, he 2 only joined the strike on the 11th of August 2012 where he 3 was told the main reason why they embarked on a strike 4 action. He told me he supported the strike because he also 5 complained about the salary they were earning. Since then 6 he had been attending all those meetings and gatherings on 7 the koppie. Since I was not working at that time I did not 8 pay too much attention to what was happening there and I 9 never asked any questions about it.</p> <p>10 On the 13th of August 2012 he left home to stay in 11 Wonderkop. I don't know who he stayed with but he told me 12 he was fine and that he would call me every day, maybe 13 twice a day. The last time he contacted me was on the 15th 14 of August 2012. The following day when I tried to call him 15 his cell phone was switched off. I tried him again during 16 the day, but had no luck. I then heard from other people 17 that there had been a shooting at the koppie.</p> <p>18 It was around 18H00 and a bit dark. I became 19 worried. I called one of my sons, Nkosikona, to find out 20 the whereabouts of my brother. He told me he was with him 21 during the day at around 10AM. He promised that he would 22 have some lunch at their place with them. They never saw 23 him again. I heard that there were many people who died 24 that day.</p> <p>25 The following morning I therefore started to look</p> | <p style="text-align: right;">Page 34985</p> <p>1 for him. I went to Phokeng Mortuary, that is where I found 2 his body. I recognised him by his clothes because his head 3 was badly damaged. I was devastated and hurt. I didn't 4 know how to tell my parents as they are elderly and not 5 well. When I tried to call my father, I got hold of my 6 other brother Mketeni Tukuza. He was very hurt but when I 7 told him that our brother died, he could not believe it. 8 He then told my father and my father was the one who told 9 everyone. Mpangeli's second wife, Nolundi, was at home. 10 Nokwandisa was at her work. I had to call to tell her the 11 sad news.</p> <p>12 My parents also told me that there was a person 13 from TEBA who also came and told them about my brother's 14 passing. I made all the arrangements with the assistance 15 of his first wife, Nokwandisa. We both attended the 16 memorial service and we transported his body back home. My 17 parents at home are still suffering, they have not 18 recovered yet and there was no counselling provided. My 19 father made it very clear that he wants nothing to do with 20 the Commission, that is not going to bring his son back, he 21 is not going to bring back his son. He has been affected 22 mentally. Whenever he sees a police officer he would start 23 talking to himself or ask anyone around whether these are 24 the people who killed his son. He would go on about how 25 lucky they are to still be alive while his son is dead.</p> |
| <p style="text-align: right;">Page 34986</p> <p>1 I would like to attend this Commission but since 2 I am the only person working in the family, I won't be able 3 to attend. Government and Lonmin should take over my 4 brother's responsibilities. I am hoping for justice once 5 the Commission is over." And that's the end of the 6 presentation on behalf of the Tukuza family.</p> <p>7 MRS NOLUNDI TUKUZA: I have a complaint, 8 Chairman, about Lonmin because they are the people that 9 called the police who killed our husbands. Our children 10 will grow up not knowing their fathers. At our young age, 11 Mr Chairperson, we are known today as widows. Lonmin 12 doesn't care for us, they don't know what it is that we are 13 eating. Mr Magadla came down and promised that he would 14 help us. As it is right now we don't know what to do, we 15 are all over the place, into cases, people who want to win 16 certain things using our names. There are people who are 17 planting, who are ploughing our gardens, promising that 18 they would support us and whilst not doing so. I will 19 always respect the police, I will always respect the 20 police, I have nothing against them.</p> <p>21 CHAIRPERSON: Thank you. That's the 22 presentation for the Tukuza family, is it? We now move on 23 to the presentation presented on behalf of the Mabiya 24 family.</p> <p>25 MS MOTLOENYA: Yes, Chair.</p> | <p style="text-align: right;">Page 34987</p> <p>1 CHAIRPERSON: The statement for the 2 Mabiya family in respect of the late Mr Mafolisi Mabiya 3 will be KKKK29.</p> <p>4 MS MOTLOENYA: Chair and Commissioners, 5 on behalf of the Mabiya family we have got Phumeza 6 Zwelindawo who is Mr Mabiya's widow.</p> <p>7 "Mafolisi Mabiya was born in Idutywa. My name is 8 Phumeza Nxolise Mabiya. I live in Idutywa in the Eastern 9 Cape. I am the wife of Mafolisi Mabiya who was killed in 10 the Marikana tragedy. His father died a long time ago and 11 he was the only one in his family relied on. His community 12 knew him as a hard worker, well-behaved son and a huge 13 soccer fan. He had two minor children, Buthle Zwelindawo 14 and Siwake Precious, his mother, Nosajini Mabiya and his 15 niece Nthandazo Mabiya."</p> <p>16 MS LEWIS: "He came to work for Lonmin in 17 2007 and lived in the informal settlement. He visited home 18 four times a year and honed us regularly. My husband 19 supported all of us, he was the only breadwinner. In July 20 I visited my husband and I was with him when the strike 21 started. He was not a talkative person. When I asked him 22 about the strike, he never told me much about it. He was 23 not happy that they were on strike because of the no work 24 no pay method. He was hoping that it would end soon. 25 Their grievance against the employer was about the wage</p> |

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1 increase of R12 500. He used to complain to me about how
2 hard they worked as rock drill operators and how little
3 their salaries are. He wanted to build a house for his
4 family but because of the cost of living, he never
5 fulfilled his dream.

6 On the 10th of August 2012 my husband attended the
7 march and came back in the afternoon. He didn't say
8 anything about it. The following day, the 11th of August
9 2012, he said they were shot at by NUM people before they
10 met with the employer. He told me that they would go again
11 the following day. He woke up the following day, prepared
12 himself and went to the koppie to meet with the other
13 miners. After that, he came home late at night and he
14 didn't tell me anything.

15 On the 15th of August 2012 our son Buthle got very
16 sick. When my husband came back from the strike it was
17 around 9 o'clock. He called an ambulance which came at
18 around 10 o'clock and rushed him to hospital. I had to go
19 with my son and he had to be hospitalised. While at
20 hospital, I heard on the news that things had gone horribly
21 wrong at the koppie. The police shot at the miners. It
22 was like a movie. Everybody at the hospital was watching
23 and my husband didn't have his phone. I didn't call anyone
24 to confirm the news. My son was discharged on the 17th of
25 August 2012. I called my neighbour to tell my husband that

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1 we have been discharged, he must come and fetch us at the
2 bus station.

3 I was picked up by my neighbours and they told me
4 they couldn't find my husband. When I got home they told
5 me about what happened the day before on the 16th of August
6 2012 and that my husband did not come home. They told me
7 many people had been taken to hospitals, some were arrested
8 and some were killed. I was shocked. I knew my husband
9 was there at the koppie that day but to think that he could
10 be dead or injured was frightening. I did not know what to
11 think, I just lost hope but my neighbours and my husband's
12 cousins" – Chair, I'm going to ask Ms Motloenya to read the
13 names for me.

14 MS MOTLOENYA: Mputhumi Mabiya and Mchubi
15 Phumsikati.

16 MS BARNES: - "who also came from
17 Idutywa, gave me strength. They told me he could be alive
18 and that they are going to keep searching until they find
19 him. On the 18th of August 2012 they came back and told me
20 they found my husband in Phokeng Mortuary. They told me he
21 was also shot and killed on the 16th of August 2012 by
22 police. I cried. I was very hurt and devastated. So many
23 things came to my mind, so many questions, but I had no
24 answers.

25 His family in the Eastern Cape was contacted by

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1 people from TEBA and they came to identify his body. I did
2 not know what to do. All the things were taken care of by
3 his family. I don't know if we were given any post-mortem
4 report or how my husband was killed. The funeral
5 arrangements were made by his family members. I was not
6 included in the decisions the family took. He played a big
7 role in the family. His father passed away and his mum
8 does not get a pension. He was the only one in the family
9 who was employed and he therefore supported all of us. It
10 is not easy to survive without him.

11 I want the Commission to uncover the truth of why
12 my husband was killed so terribly, like a wild animal.
13 Government and Lonmin should take responsibility for what
14 happened that day and support our family. My husband was a
15 peaceful man, he did not deserve to die like that."

16 MS PHUMEZA MABIYA: My complaint is much
17 against Lonmin, Chairperson. What happened to us during
18 2012 was very hurting, to find myself at the age of 18 as a
19 widow and I was at that time a month pregnant. What hurts
20 me much is that whilst the child is growing and becoming
21 older, he will ask me where his father is. I blame Lonmin
22 and the police.

23 [09:46] As a person of my age at the moment. I have to
24 be looking after his family, the mother is not being given
25 any pension, only live on the grant that my children get.

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1 Thank you, Sir.

2 CHAIRPERSON: Thank you. Yes, we should
3 have said that Mr Mabiya was killed at scene 2. He was
4 described as, days before the dignity of the people were
5 properly recognised, as body H.

6 MS MOTLOENYA: Yes, Chair. Chair, the
7 next presentation is on behalf of the Pato family.

8 CHAIRPERSON: Thank you. The statement
9 in respect of the Pato family will be KKKK30. I see he was
10 also killed at scene 2 and his body was initially described
11 before his name was attached to it as body M.

12 MS MOTLOENYA: Chair, on behalf of the
13 Pato family we have Luvo Pato, who is Mr Pato's brother.
14 The statement was deposed to by Mr Pato's father. Henry
15 Mvuyisi Pato is from Mbizana in the Eastern Cape.

16 "My name is Mongese Pato. I'm an adult male
17 pensioner. I live in Mbizana, Eastern Cape province. I am
18 the father of Henry Mvuyisi Pato who was killed at
19 Marikana.

20 My son was not married. He is survived by his
21 two minor children, who he loved very much. My son loved
22 football, along with his brothers. He played for a team
23 based in Mbizana.

24 He had two minor children, Cwebo Tlake and Senao
25 Tlake, his mother, Mangopasa Nomanzi Pato, his father

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| <p style="text-align: right;">Page 34992</p> <p>1 Mongese Pato, the mother of the children, Nonboncwele 2 Tlake, and his three siblings, Thubo, Mfana and Fundiswa. 3 He left home in June 2011 to seek employment in 4 Marikana on the recommendation of his brother Vuyile Pato. 5 He subsequently visited home once since June 2011. He 6 would phone about twice a month to enquire how we were. 7 My son played a pivotal role in supporting our 8 family by buying food and providing school fees for the 9 children of the family, which included fees for his sister 10 at Fort Hare University. 11 My son complained about the conditions at work. 12 He said he worked very hard but was paid very little. 13 During the strike he called to inform us that he was not 14 working since they were on strike. He did not say much 15 more except that he wanted a better salary. He also told 16 us that he could be dismissed as a result of the strike and 17 could thus return home any day. 18 What we heard about the strike was mainly from 19 the television. He did not tell us about the police. His 20 brother, also a worker at Lonmin, had come back home at the 21 commencement of the strike. 22 After the strike we were told by one of his 23 colleagues that he could not be found. We only heard of 24 his death the following Tuesday, the 21st of August 2012. 25 His colleague, Mr Msongelwa, told us the sad news of my</p> | <p style="text-align: right;">Page 34993</p> <p>1 son's death. We were told that he was shot by the police. 2 We were shocked. We did not think that he would be killed. 3 My worst fear was that he would be dismissed. 4 We were extremely sad and shocked when we heard 5 that my son was killed. We never thought that he may be 6 killed. The worst we feared was that he would be 7 dismissed. In addition we have lost our only breadwinner. 8 I don't know what is going to become of us. 9 Some of his colleagues from Marikana attended the 10 funeral. They told us what happened on the day at the 11 koppie, but not in detail. They said the workers were on 12 strike and the police shot them. We want to know the 13 truth. The government must support the family as my son 14 had been doing, including providing for the education of 15 the children and completing the house he had started to 16 build. 17 Lonmin could have paid the increment the miners 18 asked for and then the deaths would not have happened. 19 Lonmin has not contacted us." 20 That is the presentation. 21 CHAIRPERSON: Thank you. 22 MR PATO: I am a bit scared, a bit 23 frightened of talking, but I have no option but to talk. 24 Let me start with Lonmin. It's my brother, but let me 25 start with Lonmin.</p> |
| <p style="text-align: right;">Page 34994</p> <p>1 It was a week long that we are looking for my 2 brother and could not find him. It was other workers who 3 then found him eventually and told us. Secondly, Lonmin 4 said to us we should go on with the funeral arrangements 5 but there was no financial assistance from Lonmin. 6 Let me come to the Commission. I do not know how 7 to refer to the Chairman as a judge or what. According to 8 the workers there is what he calls scene 1 and scene 2. It 9 is alleged that at scene 1 it is the workers that were 10 attacking. What I want to know is whether at scene 2 it 11 was the workers who attacked or whether they were being 12 attacked. People were killed, Mr Chairman, some with 13 bullets that numbered up to 17 per person. I wanted to say 14 more but I'd better not. I want to sit down. Thank you. 15 CHAIRPERSON: Thank you. I can assure 16 you we are doing our best to discover what happened at 17 scene 2 where Mr Pato was killed. And that's the 18 presentation on behalf of the Pato family. 19 MS MOTLOENYA: That is, Chair. 20 CHAIRPERSON: I take it we're now going 21 to have the presentation on behalf of the Ntenetya family. 22 Mr Ntenetya was killed at scene 1. 23 MS MOTLOENYA: At scene 1. 24 CHAIRPERSON: And in the days before 25 people were referred to by their names he was called body</p> | <p style="text-align: right;">Page 34995</p> <p>1 F. The statement in respect of Mr Ntenetya is KKKK31. 2 MS MOTLOENYA: Chair, attending the 3 Commission on behalf of the Ntenetya family is Mosipo 4 Ntenetya, who is the widow. Mongezeleli Ntenetya was from 5 Idutjwa. 6 CHAIRPERSON: Would you like us to take 7 an adjournment? Would you like perhaps if she could be 8 given some water and some other – 9 MS MOTLOENYA: Yes, Chair, just for five 10 minutes. 11 CHAIRPERSON: - some other consolation 12 and comfort, because I understand it's a very stressful 13 experience for her and we don't want to increase the pain 14 that she's had to endure for the last two years. Shall we 15 take a short adjournment? 16 MS MOTLOENYA: Yes, Chair. 17 CHAIRPERSON: We take a short 18 adjournment. When you're ready to continue just tell us 19 and it's not necessary for her to be here if she feels that 20 the pain and stress will be unbearable. 21 [COMMISSION ADJOURNS COMMISSION RESUMES] 22 [10:02] CHAIRPERSON: The Commission resumes. 23 MS MOTLOENYA: Chair, the widow of Mr 24 Ntenetya says she's going to be able to sit here and we can 25 present while she's sitting here.</p> |

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| <p style="text-align: right;">Page 34996</p> <p>1 CHAIRPERSON: I'm sure she'd like to be 2 present to hear what has to be said in respect of the late 3 Mr Ntenetya. 4 MS MOTLOENYA: Yes, Chair, just for the 5 context, Chair and Commissioners, Mr Ntenetya is the man 6 who was shot at scene 1 and who was in the orange jersey 7 with the stripes and can be seen sitting up and then 8 falling over. The one who didn't get the medical 9 attention. Mongezeleli Ntenetya was married to Mosipo 10 Ntenetya. They had three children, he was the first born 11 child. His dependents are his wife, Mosipo Ntenetya, his 12 three children, Njanalo Umtanda, Inganati Umtanda, Umtanda, 13 Tulega Fundagubi and his nephews Molekwa Fundagubi and 14 Orlando Fundagubi. He lived in the hostel in Marikana. He 15 visited three times a year, he phoned his wife and mother 16 regularly. He supported his mother, three children, his 17 wife, his sister and nephews. His wife and mother saw him 18 on TV participating in the strike. He was seen walking. I 19 did not talk to him about the strike. But other people 20 came to tell us he had died at Marikana. Golosa Engondova, 21 a family member of ours came to view the body in Marikana. 22 They saw a bullet wound in his forehead. I did not see the 23 post mortem. His colleagues attended the funeral and told 24 us he was killed by the police and injected during a 25 protest over a wage dispute.</p> | <p style="text-align: right;">Page 34997</p> <p>1 CHAIRPERSON: Injected, I think, is the 2 wrong word. I presume he'd been shot. 3 MS MOTLOENYA: Well shot. We were 4 weakened when we heard the news of his death. You would 5 think that the family was going crazy. We all thought of 6 the support that he gave to the family. His younger 7 brother works in the mines. There is no one supporting the 8 family because even his brother supports his own family. 9 TEBA gave the family R15 000, government gave food 10 vouchers, a tent and chairs. We did not slaughter a cow 11 for the funeral. I was not told about the Commission of 12 Inquiry. It was important for us to attend the Commission 13 of Inquiry. I want the Commission to make findings on the 14 support or maintenance of the family since the sole 15 breadwinners were killed. That is the presentation on 16 behalf of the Ntenetya family, Chair. 17 CHAIRPERSON: Thank you. So we now move 18 onto the last presentation for this morning, from the 19 family of the late Mr Jackson Lehupa who was also killed at 20 scene 1 and the statement in respect of Mr Lehupa will 21 KKKK32. 22 MS MOTLOENYA: Mr Lehupa was also one of 23 those that were killed at scene 1 and previously known as 24 body E. On behalf of the Lehupa family we've got the 25 widow, Zameka Nungu. Jackson Lehupa died at the age of 48.</p> |
| <p style="text-align: right;">Page 34998</p> <p>1 He was from Mount Fletcher in the Eastern Cape. I am 2 Zameka Nungu. I live in Mount Fletcher, Eastern Cape with 3 my six children. I was married to Jackson Lehupa in terms 4 of customary law. My husband was killed at Marikana. 5 MS LEWIS: I want the Commission of 6 Inquiry to know that Jackson will be remembered and missed. 7 He was loved by his community and everyone cared for him. 8 He was a very helpful man in the community, always giving 9 help to anyone in need. My husband would come home during 10 his leave days for about 30 days and also when he was off 11 for three days he would come. We also used to speak 12 telephonically every day and he would call before going to 13 work and when he knocked off from work as well. 14 MS MOTLOENYA: His dependents, his wife 15 Zameka Nungu, his six children, Oliete, Tebiso, Nowele, 16 Siswe, Olele and Notholo. 17 MS LEWIS: Jackson is originally from the 18 Orange Free State province and he started working at Karee 19 mine in 2007. I am, however, not certain how he found a 20 job at Karee. He was drilling rocks for eight hours a day. 21 Jackson alone was the first to be employed in the mining 22 industry in our family. My husband lived in the Nkaneng 23 informal settlement. We used to live together, but then I 24 moved back home to Mount Fletcher because we were building 25 our home there. My husband was the breadwinner of our</p> | <p style="text-align: right;">Page 34999</p> <p>1 family. He supported our six children and me. He also 2 supported extended family members, in particular he 3 supported three of his brother's children and three of his 4 sister's children although they did not stay with him. We 5 relied on him for everything including school fees, 6 clothes, groceries and many other household needs. I spoke 7 to Jackson daily during the strike. He used to phone every 8 day during the strike at about 4am when he would return to 9 the informal settlement to sleep. He would return to the 10 koppie each day at around 8am. He never mentioned why the 11 workers were gathering at the koppie nor did he say 12 anything about the police. He would just call me to say 13 that he was now going to the mountain and they were waiting 14 for Lonmin management to come and talk to them regarding 15 the wage increase. I did not press him for details because 16 he sounded tired. Before the strike Jackson used to tell 17 me that they worked very hard yet they earned very little. 18 I always thought that this strike would end like they 19 normally do. I never thought that it would end with the 20 deaths of so many people. When I spoke to him Jackson did 21 not say anything to me regarding the fact that people had 22 been killed. I only became aware of how serious the strike 23 was when I heard that people had died on the 16th of August 24 2012. I first heard of the shootings on the radio while my 25 children and I were eating dinner. Before then I was</p> |

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1 worried, but I did not fear for his life. After hearing
 2 about the killings on the 16th of August 2012 I became
 3 frantic with worry. I tried calling him and his phone was
 4 off. I did not know what to do, I could not eat. I walked
 5 out of the house and just kept walking, not knowing where I
 6 was going. One of his colleagues, Tebogo Labita said that
 7 they looked for Jackson at the Phokeng Mortuary and at the
 8 hospital on the 19th of August 2012, but they did not find
 9 him. I had planned to travel to Marikana to try and find
 10 out what had happened to my husband, however, we then
 11 received a call on the 21st of August 2012 from Mabokelo, a
 12 family member who told me that Jackson had been killed as a
 13 result of the strike. She had received the news from TEBA
 14 who told her that Jackson was amongst the people who had
 15 been killed, but they did not furnish any details of when
 16 he was killed. On the 27th of August 2012 Tebogo and other
 17 colleagues arrived in Rustenburg. They wanted to see
 18 Jackson's body, but the people at the mortuary would not
 19 allow them to do so. Instead they told them to choose a
 20 coffin for his body. They were told to return on the
 21 following day, the 28th of August 2012 which they did.
 22 After they returned to the mortuary they were only shown
 23 the body from the neck up. They were not shown the rest of
 24 his body nor were they provided with a post mortem report.
 25 No one from the mortuary or the mine told me the cause of

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1 his death. To this day I have not received an official
 2 explanation. They eventually released his body on the 31st
 3 of August 2012 and it was driven down to the Eastern Cape
 4 on the very same day. We had a funeral for him on the 1st
 5 of September 2012, however, the workers from Marikana who
 6 came for the funeral left the day afterwards. They could
 7 not tell me anything in much detail because I was in
 8 distress. I just couldn't understand much of what anyone
 9 was saying to me because I was in shock. In our tradition,
 10 when someone dies we have to perform certain rituals. We
 11 performed the rituals. I still have to slaughter a cow
 12 when I remove the mourning clothes. My husband's body also
 13 needs to be clothed, [African language]. The children also
 14 need to be cleansed with the sheep. My ceremony and my
 15 husband's will be conducted in June 2013. According to our
 16 tradition and culture I have to conduct these ceremonies
 17 personally. If I do not have any money for this I cannot
 18 remove my mourning clothes. I was very hurt by my
 19 husband's death and what I have heard about the manner in
 20 which he was killed. Even now I am not well.

21 My children have also been very badly affected.
 22 The three year old keeps asking where his father is. I've
 23 received counselling from social workers who have been to
 24 my home several times, but I'm still very hurt. I still
 25 don't believe that it's true, even now that I'm attending

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1 the Commission. Each day it seems as if I'll wake up
 2 tomorrow and they will tell me that it was just a dream.
 3 Our house is incomplete and it was my plan to complete the
 4 house. The house has three rooms and is therefore too
 5 small for us. In addition after the funeral the kitchen
 6 burnt down. I'm still suffering financial loss as a result
 7 and without my husband's support I'm struggling to find the
 8 means to fix the kitchen. This in itself is causing my
 9 children and me untold hardship. It makes me realise how
 10 hard it is going to be for us to survive without my
 11 husband's support. I heard that it's a practise on the
 12 part of the mine to agree to take family members in place
 13 in place of an employee. Usually a child or partner
 14 replaces the deceased. If any such offer were made I would
 15 definitely take it up. I want to work so that I can
 16 support my children. So I will have to get someone to look
 17 after my children while I am away. According to the law
 18 when someone kills another they must be arrested. I want
 19 those responsible for my husband's death to be arrested. I
 20 want to know what the police's job is. Is it not to
 21 arrest people? Why did they kill people like my husband?
 22 Is it the law in this country that when policemen kill
 23 people they shouldn't be brought before the courts of law
 24 because if these people had killed any other people or the
 25 police themselves they would have been arrested or is the

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1 law partial?

2 I have no money, I cannot even provide a
 3 tombstone for my husband. I do not know how we are going
 4 to survive. My husband provided all the necessary funding.
 5 The fact that he died at work and that he has children who
 6 must go to school must be considered. I also think that
 7 the mine failed its workers. The mine did not do anything
 8 to stop the strike. All they did was call the police, at
 9 most they should have fired them. The government and the
 10 mine must help me because they killed my husband. They
 11 give me assistance with raising my children, educating them
 12 and building them a home just as my husband was doing.
 13 When I last saw my husband it was at the bus stop where he
 14 said he would see me when he comes from work. Little did I
 15 know that the next time I would see him was when I had bury
 16 him in a box.

17 ZAMEKA NUNGU: I am hurting, Mr Chair and
 18 the Commission. My heart is bleeding, crying, complaining
 19 about Lonmin. If Lonmin could not afford to pay them they
 20 could have simply dismissed them and sent them back home.
 21 They should not have called the police to kill our
 22 husbands. The police are now sitting with their wives and
 23 children, their life goes on, our life does not go on.
 24 Instead of seeing light, we're seeing darkness. You wake
 25 up in the middle of the night and cry not knowing who is

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1 going to stop you from crying because you're sleeping
 2 alone. I have a six year old child, the last child. This
 3 child keeps on asking me mummy when is daddy coming back.
 4 One day in December I was at home doing laundry outside
 5 this child was playing next to me he said but mummy when is
 6 daddy coming back. I could not answer the child, instead I
 7 cried. - came, my children came out of the house, the
 8 police have done us bad. I trusted the police officers now
 9 when I see the police officer I see an enemy, our husbands
 10 are referred to as criminals. According to me a criminal
 11 is someone who breaks into people's houses. Whilst they
 12 were sitting on the mountain whose place did they break
 13 into? God says a man shall live by his sweat, that is what
 14 they were doing and that is what they died for. They asked
 15 for an increment because they were working hard. My
 16 husband had some marks on his back as if he was hit with a
 17 sjambok. He would say wife we are working hard as you see
 18 me. We work hard, but we earn little and when they asked
 19 the employer to increase their salaries they responded by
 20 firearms. We're struggling today. Lonmin has made this
 21 bed now it's difficult for them to lie on it. Let Lonmin
 22 lie on the bed that they made. It must not end on Lonmin
 23 just saying it's going to educate the children what about
 24 us, what are we going to eat? Our husbands are not working
 25 for the education of the children only, they have to build

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1 houses for us, to feed us, to educate our children. Now
 2 Lonmin is only taking the responsibility of educating the
 3 children. What about our food what are we going to eat at
 4 home? When my husband died the height of the house that
 5 was being built was only three rows up. We do not have
 6 houses. We ask Lonmin to take the responsibility that my
 7 husband was doing in building that house and take care of
 8 us as well as the government because the police belong to
 9 the government. We are appealing, we are appealing so much
 10 so. I will now refer to the workers, I ask you people to
 11 be strong, my brothers and sisters be strong and don't turn
 12 back. If you want something steadfast on it because our
 13 husbands died for the truth. People don't want to hear the
 14 truth. The truth is bitter, people don't want the truth.
 15 Be strong, stand together and do not forget us because who
 16 stand on that mountain are looking at you. They're looking
 17 at you, we appeal to you as well as the union AMCU. We
 18 trust that union, we appeal to you to be strong and go
 19 forward and to my fellow widows, ladies let us pray. Let
 20 us have hope.
 21 [10:22] That one day God will answer. Even if the
 22 Commission goes on, but it is not above God, God is
 23 everything. It is not above God. One day God will
 24 respond. Even if these are covered, whatever is covered
 25 God will reveal. Whatever is covered, God will reveal

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1 because He is, He does not [inaudible] eternal. Even on
 2 that day God was present. God is still there, let us not
 3 lose hope. Let us not lose hope. Again I appeal, let us
 4 forgive the police so that God can help us because - not to
 5 respond evil but let us forgive the police. When I see a
 6 police officer, I feel humiliated but I try to give space
 7 in my heart to forgive a police officer and not take the
 8 sin that the officer committed and bring it to me. Let God
 9 be my answer. Thank you.
 10 CHAIRPERSON: Those are the presentations
 11 that we've been receiving yesterday and today. As far as I
 12 can see there are still 10 deceased persons in respect of
 13 whom presentations have not been made. There are six
 14 families who are represented by SERI and I don't know
 15 whether at some future date - it's clear that we're going
 16 to have to have one further session dealing with the
 17 presentations. As far as the persons who died before the
 18 16th are concerned, there are still presentations
 19 outstanding from four of the families of those who were not
 20 strikers. That's the Mabelane family Mabebe, Langa and
 21 Twala. Are we going to have one of those presentations
 22 now?
 23 MS MASEVHE: Chairperson -
 24 CHAIRPERSON: Are we going to have one of
 25 those presentations now?

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1 MS MASEVHE: Yes, Chairperson. I have
 2 been requested to read the presentation on behalf of the
 3 Mabebe family.
 4 CHAIRPERSON: The Mabebe family.
 5 MS MASEVHE: As far as Mabelane's family
 6 is concerned, Ms Mabelane is not here today so I've been
 7 requested to request the Commission to stand it down until
 8 the day that she's available.
 9 CHAIRPERSON: Yes. I have also received
 10 a request in respect, on behalf of the Langa family, same
 11 reason. Mrs Langa can't be here today either.
 12 MS MASEVHE: That is correct,
 13 Chairperson.
 14 CHAIRPERSON: And I don't know what -
 15 yes, so at some future date before the end of the
 16 Commission we will have presentations or certainly create
 17 space for presentations from the people to whom I have
 18 referred. Can you please tell us, are we likely to get
 19 presentations from the remaining six families on behalf of
 20 whom SERI have instructed counsel?
 21 MS LEWIS: Yes, Chair. The presentations
 22 have been prepared, they are part of this PowerPoint
 23 presentation. The only problem is that for various reasons
 24 those family members haven't been here this week, which is
 25 why we've asked for them to be presented at a later stage.

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| <p style="text-align: right;">Page 35008</p> <p>1 CHAIRPERSON: Well, may I suggest that 2 those representing those families, what I call the SERI 3 families and the others, please liaise with the evidence 4 leaders so we can make a space in the programme before we 5 wind up our proceedings, for these presentations to be 6 made. Thank you.</p> <p>7 MS LEWIS: Thank you, Chair, we'll do 8 that.</p> <p>9 CHAIRPERSON: And I understand, Mr Bham, 10 that you wish at some stage to make comments on behalf of 11 Lonmin in respect of some of the things that have been 12 said, indicate some of the things that Lonmin is doing but 13 perhaps that can also be deferred until the space that I, 14 the occasion to which I've referred, later on when we're 15 going to have final presentations.</p> <p>16 MR BHAM: Yes, Mr Chairman, I am awaiting 17 a statement and as soon as it comes to hand I will advise 18 you and read it out.</p> <p>19 CHAIRPERSON: I suggest you also liaise 20 then with the evidence leaders so we can do it all at the 21 same time, the outstanding presentations plus whatever 22 response Lonmin wishes to make.</p> <p>23 MR BHAM: I will do that.</p> <p>24 CHAIRPERSON: And I hope we will also at 25 that stage receive updates in respect of what social grants</p> | <p style="text-align: right;">Page 35009</p> <p>1 and so forth have been received, because a lot of the 2 statements that we've received were obviously made in 2012 3 and I would like to think that at least some of those 4 people concerned have in fact received grants since then 5 and it's obviously material, for the sake of completeness, 6 that it must be put before us.</p> <p>7 MS LEWIS: Yes, Chair, we are in the 8 process of doing that investigation.</p> <p>9 CHAIRPERSON: Alright, so that concludes 10 for the moment the family presentations except for the 11 presentation that we're going to receive in respect of the 12 Mabebe family.</p> <p>13 MS MASEVHE: Yes, Chairperson. I will 14 request Ms Hester Mabebe to take her seat at the witness 15 stand before –</p> <p>16 CHAIRPERSON: Will you then also go down 17 there as well or would you prefer to speak from where you 18 are?</p> <p>19 MS MASEVHE: If it's preferable, 20 Chairperson, I will do that.</p> <p>21 CHAIRPERSON: Well, you must do what you 22 prefer to do.</p> <p>23 MS MASEVHE: Chairperson, this is the 24 presentation of the family of Mr Eric Thapelo Mabebe who 25 was brutally killed on the evening of the 12th of August</p> |
| <p style="text-align: right;">Page 35010</p> <p>1 2012 at K4 shaft. This presentation, Chairperson, is made 2 by Mrs Hester Mabebe who states that, "I am an adult 3 female, sister of the late Mr Thapelo Eric Mabebe who 4 worked for Lonmin as a loco operator. I make this 5 submission on behalf of my family as well as the three 6 children of the deceased. I first would like to thank the 7 Commission for the opportunity to permit us to make this 8 submission."</p> <p>9 She says that the objective of this submission 10 shall address the life of the deceased.</p> <p>11 "Our life with the deceased, our individual and 12 collective feelings of loss as a family, impact financially 13 and morally as a result of the loss of my brother in the 14 family as well as the questions we would like the 15 Commission to address in its work.</p> <p>16 The life of Thapelo Eric Mabebe. Thapelo was 17 born in Seging, Pampierstad in the Northern Cape Province 18 from a poor family in 1975. He is one of the six children 19 and was raised by a single parent, our mother. Our mother 20 passed on at an early stage of our lives and as a result of 21 poverty and lack of financial support, he attended school 22 up to grade 6 and had to look for work from an early age. 23 The deceased had three children aged 20, 15 and 2 years 24 old. He was a hard worker and a pillar of strength to all 25 close and extended family members.</p> | <p style="text-align: right;">Page 35011</p> <p>1 Impact of his death on the family. Thapelo was a 2 breadwinner to his children and also to his extended 3 family, as most of his sisters and brothers are not in 4 formal employment and support their families by temporary 5 employment positions they find themselves in, what is 6 commonly known as contract employment. Thapelo took 7 advantage of the job opportunities in the South African 8 mining sector to give his children and his siblings support 9 in their formal workplace and thus most of the extended 10 family relied on his support. In our family he paid for 11 most of the household needs and now we are left with a huge 12 gap to fill. He used to buy clothes for his children as 13 well as us, the extended family. As a family we have to, 14 but thank Lonmin for assistance they gave us but we will 15 address the Lonmin issue later in this statement.</p> <p>16 The death of Thapelo means that the support that 17 most of us received went with him and the cycle of poverty 18 that gripped the family and extended family will rear its 19 head again, with no-one to mitigate it. Thapelo was 20 working hard to break this cycle but his death is a great 21 disruption of his intent. His death in these difficult 22 times renders us vulnerable. He worked hard to make sure 23 that his children get better education than what he went 24 through. He wanted his children to experience a better 25 life than the life that he had experienced.</p> |

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| <p style="text-align: right;">Page 35012</p> <p>1 Our feelings as family. Though we accept that 2 death can come to any person, but Thapelo's death was very 3 cruel, very untimely and we believe very avoidable. As a 4 family, together with his children, are still unable to 5 cope with the humiliation of the manner in which he died. 6 We submit that he died trying to improve the lives of his 7 children as well as that of his extended family but his 8 death carries some stigma, as though he was doing wrong. 9 He lived in abject poverty for the better part of his life. 10 We feel that Lonmin has taken away Thapelo and have a 11 responsibility to assist us and replace his deeds to his 12 children and to us as a family. We just have questions and 13 more questions. Our situation is very precarious though we 14 request those who we blame for support. 15 The questions we ask – who killed our brother? 16 What did the employer do? Why the employer did not call 17 the police because it was clear that the situation was not 18 peaceful? At what stage were the police called for 19 assistance and what was their response? Whether his death 20 is classified as a mining incident or murder? What type of 21 assistance shall Lonmin provide to the family?" 22 Chairperson, I am informed Ms Mabebe would like 23 to say something to the Commission. 24 CHAIRPERSON: Yes, Ms Mabebe, what would 25 you like to tell us?</p> | <p style="text-align: right;">Page 35013</p> <p>1 MS MABEBE: I am scared of the people 2 that worked with him. When they came to the funeral in a 3 bus we were scared of them, scared of the workers that 4 worked together with Mabebe, I'm scared of them. The 5 Mabebe family is also scared of them. The manner in which 6 they killed a fellow worker with such brutality. They 7 chopped him and chopped him, these are the people that 8 worked together with him, Chairperson. We, as Mabebe 9 family, felt very hurt. We are asking the law that those 10 that are responsible for chopping him, for killing him, the 11 law should take its course, should be sent to prison. It 12 is only then that [indistinct]. It's now been two years 13 living with [inaudible], murderers who killed this person. 14 I don't know that if a person goes to work in South Africa 15 looking for money, wages, he should - because everyone has 16 a right to strike for his own – he did not have money, this 17 was the only job. That is why he was going to work, but 18 what I am - for is God the Father, just like Jesus Christ 19 who said "Father, send me," I am referring to X, Mr X in 20 this case who sacrificed himself and said, "I am one of the 21 killers." I thank Mr X but the killers of Thapelo who are 22 still walking on [inaudible] whilst our brother is dead. I 23 want to ask, I want to talk that the killers, if only they 24 would be sent to jail, only then will we get some rest. I 25 want them to be imprisoned because they committed murder,</p> |
| <p style="text-align: right;">Page 35014</p> <p>1 killing a person who is going to work who is not on strike, 2 because he did not have money, for him to be outside for 3 months on end, I want the law to take its course. We leave 4 everything in the hands of the Almighty, He will make the 5 final decision. I am scared of the people who – the 6 workers, his co-workers, I am scared of them. Thank you, 7 Mr Chairperson. 8 MS MASEVHE: Thank you, Mr Chairperson. 9 CHAIRPERSON: Thank you. That then 10 concludes the presentations we're going to have today. Mr 11 Wesley, I believe you're going to call Captain – I see he's 12 now Major, is he? He's been promoted since he made his 13 statement? 14 MR WESLEY: That's correct, Chair. 15 CHAIRPERSON: Major Govender. Are you 16 going to call him now or shall we take the – shall we take 17 the adjournment now or – 18 MR WESLEY: If it pleases you. 19 CHAIRPERSON: I'm in your hands. 20 MR WESLEY: We can take it now, Chair. 21 CHAIRPERSON: We'll take the comfort 22 break now and we will resume then in about a quarter of an 23 hour's time. 24 MR WESLEY: Thank you. 25 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> | <p style="text-align: right;">Page 35015</p> <p>1 [11:03] CHAIRPERSON: The Commission resumes. I 2 understand, Mr Wesley, that you are going to lead the 3 evidence of the witness. He was captain at the time. I 4 understand he's now Major Govender. Is that correct? 5 MR WESLEY: It's Major Govender, that's 6 correct, Chair. 7 CHAIRPERSON: Yes. Major Govender, would 8 you please stand? Are you prepared to swear that your 9 evidence will be correct, or do you wish to make an 10 affirmation? 11 MAJOR GOVENDER: I swear. 12 CHAIRPERSON: You swear. Alright, will 13 you swear the evidence that you will give before this 14 Commission will be the truth, the whole truth, and nothing 15 but the truth? Would you please raise your right hand and 16 say, "I swear, so help me God." 17 VEERASAMY VELAYUDAM GOVENDER: I swear. 18 CHAIRPERSON: You may be seated. 19 MAJOR GOVENDER: [Microphone off, 20 inaudible] Chairperson. 21 CHAIRPERSON: Yes, thank you. 22 MR WESLEY: Thank you, Chair. The 23 exhibit number that applies to this witness, the exhibit 24 number will be quadruple L. 25 CHAIRPERSON: And your full names, Major</p> |

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| <p style="text-align: right;">Page 35016</p> <p>1 Govender, are?</p> <p>2 MAJOR GOVENDER: It's – can I spell it to</p> <p>3 you, Chair, it's V-E-E-R-A-S-A-M-Y, second name is V-E-L-A-</p> <p>4 Y-U-D-A-M, and the surname is Govender, Chair.</p> <p>5 CHAIRPERSON: Thank you. Yes, Mr Wesley.</p> <p>6 MR WESLEY: Yes, Chair, if we can do the</p> <p>7 homework before I start my questioning with the witness –</p> <p>8 CHAIRPERSON: What we call housework.</p> <p>9 MR WESLEY: Yes.</p> <p>10 CHAIRPERSON: The homework is what we did</p> <p>11 last night when we read the papers.</p> <p>12 MR WESLEY: Housework.</p> <p>13 CHAIRPERSON: So it's LLLL1 is the</p> <p>14 statement, it's look like dated the 18th of September –</p> <p>15 MR WESLEY: No, Chair. That's already in</p> <p>16 as FFFF7.</p> <p>17 CHAIRPERSON: Oh, I beg your pardon.</p> <p>18 That's FFFF7, yes, you're correct, I'm sure.</p> <p>19 MR WESLEY: Yes. Chair, you'll see on my</p> <p>20 index of the bundle which I've prepared for you –</p> <p>21 CHAIRPERSON: Yes.</p> <p>22 MR WESLEY: That's FFFF7. The first one</p> <p>23 should be the email by Captain Govender dated 10 August</p> <p>24 2012. That will be LLLL1. Then –</p> <p>25 CHAIRPERSON: It's dated 10, is it?</p> | <p style="text-align: right;">Page 35017</p> <p>1 MR WESLEY: 10 August.</p> <p>2 CHAIRPERSON: 10 August.</p> <p>3 MR WESLEY: 2012.</p> <p>4 CHAIRPERSON: Yes, thank you.</p> <p>5 MR WESLEY: Then there's a, this next</p> <p>6 document will be a statement of Captain Govender dated 3</p> <p>7 September 2012. That will be LLLL2. Then there is, the</p> <p>8 next document will be an email by Captain Govender dated 11</p> <p>9 August 2013. That will be LLLL3. The next document will</p> <p>10 be an email by Captain Govender dated 12 August 2012,</p> <p>11 LLLL4, and finally, Chair, there is a fifth document, it's</p> <p>12 a statement of Captain Govender dated 28 August 2012, which</p> <p>13 will then be LLLL5.</p> <p>14 CHAIRPERSON: Yes, thank you. The</p> <p>15 documents will be so marked.</p> <p>16 EXAMINATION BY MR WESLEY: Major, if we</p> <p>17 could begin with something which is slightly formal. You</p> <p>18 have a bundle which I prepared for you of the documents</p> <p>19 that I've referred to, which I will be referring to in</p> <p>20 leading your evidence. If we could please just formally</p> <p>21 confirm from you that they are in fact what they purport to</p> <p>22 be. If you could go to the first page of the bundle you'll</p> <p>23 see on the top right-hand corner they should be numbered</p> <p>24 consecutively. The number appears in a circle. That's the</p> <p>25 page number to which I'll be referring to. Do you see</p> |
| <p style="text-align: right;">Page 35018</p> <p>1 that?</p> <p>2 MAJOR GOVENDER: [Microphone off,</p> <p>3 inaudible]</p> <p>4 MR WESLEY: Now the first document, do</p> <p>5 you see that? It's FFFF7.</p> <p>6 MAJOR GOVENDER: [Microphone off,</p> <p>7 inaudible]</p> <p>8 MR WESLEY: That's a statement of yours</p> <p>9 dated 18 September 2012. Is that correct?</p> <p>10 MAJOR GOVENDER: That is correct, Chair.</p> <p>11 MR WESLEY: And you confirm the content</p> <p>12 of that statement as being correct?</p> <p>13 MAJOR GOVENDER: I do, Chair.</p> <p>14 MR WESLEY: The next document, you'll</p> <p>15 find that at page 4 of the bundle, that is an email that</p> <p>16 you drafted and sent to the recipients as indicated on the</p> <p>17 email itself on the 10th of August 2012 at 02:50PM, in other</p> <p>18 words 14:50, 10 to 3 in the afternoon of the 10th of August.</p> <p>19 That's your email?</p> <p>20 MAJOR GOVENDER: That is correct, Chair.</p> <p>21 MR WESLEY: You drafted it?</p> <p>22 MAJOR GOVENDER: That's right, Chair.</p> <p>23 MR WESLEY: The next document you'll find</p> <p>24 at page 6 then, which is another statement. Do you confirm</p> <p>25 this is your statement and it's dated 3rd of September 2012</p> | <p style="text-align: right;">Page 35019</p> <p>1 and the contents are correct?</p> <p>2 MAJOR GOVENDER: Yes, I confirm, Chair.</p> <p>3 MR WESLEY: The next document you'll find</p> <p>4 at page 8. It's an email dated the 11th of August 2012</p> <p>5 which was sent at 14:12, which is 02:12PM, in other words</p> <p>6 in the afternoon, to the recipients as indicated in the</p> <p>7 document. Do you confirm that?</p> <p>8 MAJOR GOVENDER: I confirm, Chair.</p> <p>9 MR WESLEY: The next document you'll find</p> <p>10 at page 10 then of your bundle. That's an email dated 12</p> <p>11 August 2012 which was sent at 18:02 on the 12th of August to</p> <p>12 those recipients and it's your email.</p> <p>13 MAJOR GOVENDER: Confirmed, Chair.</p> <p>14 MR WESLEY: And finally the last</p> <p>15 statement which we have of yours is at page 12 of that</p> <p>16 bundle and it's a statement that you made on the 28th of</p> <p>17 August 2012. Is that correct?</p> <p>18 MAJOR GOVENDER: That is correct, Chair.</p> <p>19 MR WESLEY: And do you confirm the</p> <p>20 contents of that statement?</p> <p>21 MAJOR GOVENDER: I also confirm it,</p> <p>22 Chair.</p> <p>23 MR WESLEY: Major, in 2012 you were a</p> <p>24 captain. You've now been promoted in the meantime to</p> <p>25 major.</p> |

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| <p style="text-align: right;">Page 35020</p> <p>1 MAJOR GOVENDER: That is correct, Chair.</p> <p>2 MR WESLEY: Would you tell the Commission</p> <p>3 in 2012 where you were posted and what your job was?</p> <p>4 MAJOR GOVENDER: Yes, Mr Chair, on the</p> <p>5 10th of August 2012 I was on duty, crime prevention duties.</p> <p>6 At about 18:20 I received a call from Mr Hendrik Blaauw –</p> <p>7 MR WESLEY: We'll get to that in a</p> <p>8 moment. I just want to know where were you posted? Were</p> <p>9 you at Marikana Police Station?</p> <p>10 MAJOR GOVENDER: Yes, I presently am</p> <p>11 posted at Marikana Police Station.</p> <p>12 MR WESLEY: What was your job there?</p> <p>13 MAJOR GOVENDER: I'm a VISPOL commander.</p> <p>14 MR WESLEY: VISPOL?</p> <p>15 MAJOR GOVENDER: Yes.</p> <p>16 MR WESLEY: VISPOL stands for visible</p> <p>17 policing?</p> <p>18 MAJOR GOVENDER: Visible policing</p> <p>19 commander doing crime prevention duties.</p> <p>20 MR WESLEY: And could you just expand</p> <p>21 crime prevention duties, what does that entail?</p> <p>22 MAJOR GOVENDER: That's basically visible</p> <p>23 policing in terms of high visibility of patrols, crime</p> <p>24 prevention, it's roadblocks, stop and searches, all other</p> <p>25 crime prevention activities relating to those duties.</p> | <p style="text-align: right;">Page 35021</p> <p>1 MR WESLEY: And visible policing, you do</p> <p>2 those, you perform those duties usually in uniform?</p> <p>3 MAJOR GOVENDER: That is correct,</p> <p>4 Chairperson.</p> <p>5 MR WESLEY: And part of those duties,</p> <p>6 would that include monitoring and policing the area around</p> <p>7 Marikana?</p> <p>8 MAJOR GOVENDER: Yes, I confirm that.</p> <p>9 MR WESLEY: How many years, in 2012 then</p> <p>10 how many years had you been stationed at the Marikana</p> <p>11 Police Station?</p> <p>12 MAJOR GOVENDER: Approximately 10 years</p> <p>13 now. I started there in 2005, Chair.</p> <p>14 MR WESLEY: So in 2012 you had</p> <p>15 approximately seven years experience at the Marikana Police</p> <p>16 Station?</p> <p>17 MAJOR GOVENDER: That is so, Mr</p> <p>18 Chairperson.</p> <p>19 MR WESLEY: And did you, would you say</p> <p>20 you knew the area and the populace and the local dynamics</p> <p>21 fairly well?</p> <p>22 MAJOR GOVENDER: I can confirm that.</p> <p>23 I've been very actively involved in that area.</p> <p>24 MR WESLEY: Could you please go then,</p> <p>25 let's start at the document which is at page 4 of the</p> |
| <p style="text-align: right;">Page 35022</p> <p>1 bundle. We're not going to – do you have it? It's LLLL1.</p> <p>2 You remember the page numbering; it's page 4, top right-</p> <p>3 hand corner, the number in a circle.</p> <p>4 MAJOR GOVENDER: I do have it, Chair.</p> <p>5 MR WESLEY: We're not going to read the</p> <p>6 entire document in. You've confirmed that it is your</p> <p>7 email, but one part of it I want to direct your attention</p> <p>8 at. It concerns happenings on the 10th of August, you</p> <p>9 monitored a march by employees, Lonmin employees to the LPD</p> <p>10 offices and back. You observed the march. When you</p> <p>11 observed the march, can you explain to the Commission how</p> <p>12 did you observe the march and from where did you observe</p> <p>13 the march?</p> <p>14 MAJOR GOVENDER: Okay, Mr Chair, from the</p> <p>15 10th of August at about 7 o'clock there was a gathering at</p> <p>16 Wonderkop and there was a procession of a march that took</p> <p>17 place from that particular point of assembly through to the</p> <p>18 LPD offices onto Lonmin premises, and I was present. I was</p> <p>19 in a vehicle. I escorted the procession to the destination</p> <p>20 of the march.</p> <p>21 I was amidst of several of the protesters that</p> <p>22 were marching towards the LPD offices and we came to a</p> <p>23 certain point at the LPD offices, just before the entrance</p> <p>24 the march was stopped due to certain issues that had to be</p> <p>25 addressed. It was indicated that they need to speak to a</p> | <p style="text-align: right;">Page 35023</p> <p>1 few of, or a delegation instead of the entire mass marching</p> <p>2 up to the LPD offices and that they should single out a few</p> <p>3 of their delegation to go up to the offices of the LPD, and</p> <p>4 we were there for some time, up and until there were</p> <p>5 certain discussions that evolved around certain issues. I</p> <p>6 cannot confirm what these issues were.</p> <p>7 Later on the march then proceeded to the LPD</p> <p>8 offices where the masses gathered in front of the offices.</p> <p>9 I was also not present at that particular gathering, but I</p> <p>10 stood at a distance and several minutes later I was</p> <p>11 informed by security personnel that they were addressed by</p> <p>12 some senior official, or senior management of management of</p> <p>13 Lonmin, and subsequently the protesters then left the LPD</p> <p>14 offices and moved back to the assembly point at Wonderkop.</p> <p>15 At about 13:30 I think it was that they dispersed</p> <p>16 from the point of assembly. It was peaceful. There were</p> <p>17 no incidents that were reported. The march was monitored</p> <p>18 also by the Public Order members of Rustenburg.</p> <p>19 MR WESLEY: During this time, this</p> <p>20 monitoring, you were in close proximity to the crowd?</p> <p>21 MAJOR GOVENDER: I was amidst, or amongst</p> <p>22 the protesters whilst the procession was taking place.</p> <p>23 MR WESLEY: And you used the word in</p> <p>24 relation to the crowd, you said the gathering was, or the</p> <p>25 march was peaceful. The mood of the crowd, was that</p> |

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| <p style="text-align: right;">Page 35024</p> <p>1 peaceful then?</p> <p>2 MAJOR GOVENDER: Yes, it was peaceful.</p> <p>3 MR WESLEY: During the time that you had</p> <p>4 to observe the crowd did you see anybody, any parts of the</p> <p>5 crowd carrying any weapons?</p> <p>6 MAJOR GOVENDER: If I recall yes, they</p> <p>7 had sticks. I don't know if you can call that a weapon,</p> <p>8 but they were, they had sticks in their hands and nothing</p> <p>9 dangerous that I take note of.</p> <p>10 MR WESLEY: Was there, while you were</p> <p>11 monitoring this crowd did you observe or perceive any</p> <p>12 indications that the crowd could become violent, any</p> <p>13 indications they might be prone to violence at that day?</p> <p>14 MAJOR GOVENDER: To my knowledge, like I</p> <p>15 said I was amongst those people and I didn't see any threat</p> <p>16 that they had against us at that particular moment.</p> <p>17 MR WESLEY: Now you state in the email</p> <p>18 that I've referred to that on that day in relation to this</p> <p>19 march no police action was taken. Had police action been</p> <p>20 necessary on that day, would it have been taken?</p> <p>21 MAJOR GOVENDER: The availability of</p> <p>22 police at that particular time to monitor and control was</p> <p>23 not possible, if you look at the capacity of protesters.</p> <p>24 In a situation like this it would rather be safer to let</p> <p>25 the protesters go on to their destination.</p> | <p style="text-align: right;">Page 35025</p> <p>1 MR WESLEY: During the march to and from</p> <p>2 the LPD offices, at any time were you requested by anybody</p> <p>3 to take any action in relation to this crowd?</p> <p>4 MAJOR GOVENDER: Not that I can recall</p> <p>5 of. Look, my role as a VISPOL commander, not trained to do</p> <p>6 crowd control and management, so no one approached me in</p> <p>7 regard to having this crowd dispersed.</p> <p>8 MR WESLEY: Thank you. Could you then</p> <p>9 please turn to the document which is the first, go to the</p> <p>10 first page of the bundle, it's exhibit FFFF7, it's your</p> <p>11 statement dated 18 September 2012. You have it?</p> <p>12 MAJOR GOVENDER: Yes.</p> <p>13 MR WESLEY: I'll read paragraph 2. "On</p> <p>14 Friday 2012-08-10 I at about 18:20 whilst on duty I</p> <p>15 received a report from Mr Henry Blaauw, the security</p> <p>16 manager at Lonmin Platinum, that employees of Lonmin are</p> <p>17 being threatened and intimidated by other employees as a</p> <p>18 result of industrial action. The threat was concentrated</p> <p>19 at Rowland Shaft and at Karee 3 Shaft. I immediately</p> <p>20 proceeded to Rowland Shaft Wonderkop, accompanied by</p> <p>21 Warrant Officer Van Rooyen, Warrant Officer Bauer, and</p> <p>22 Constable Njomo."</p> <p>23 Now what I want to ask you is this; firstly in</p> <p>24 relation to Mr Blaauw, was it common for you to receive</p> <p>25 reports from Mr Blaauw?</p> |
| <p style="text-align: right;">Page 35026</p> <p>1 MAJOR GOVENDER: Yes, we share a</p> <p>2 relationship in terms of partnership and if there's</p> <p>3 anything that does happen there then I'm the first person</p> <p>4 that gets informed of any situation at Marikana.</p> <p>5 MR WESLEY: Okay, so Mr Blaauw then</p> <p>6 reports to you that Lonmin employees are being threatened</p> <p>7 and intimidated at Rowland Crossing and K3 Shaft and you</p> <p>8 then go straight to Rowland Crossing.</p> <p>9 MAJOR GOVENDER: That is correct,</p> <p>10 Chairperson.</p> <p>11 MR WESLEY: Now if we can go to paragraph</p> <p>12 3, I'll read it again and then pose some questions to you.</p> <p>13 "Upon arrival at Wonderkop I noticed a group of African</p> <p>14 males standing on the side of the road opposite Rowland</p> <p>15 Shaft. The group consisted of approximately 15 African</p> <p>16 males. Some of the males were in possession of</p> <p>17 knobkieries. As we drove closer the group immediately</p> <p>18 started to move towards the Wonderkop Hostel. We then</p> <p>19 proceeded to the group of Lonmin security officials parked</p> <p>20 at the four-way crossing. We sat in the vehicle and I was</p> <p>21 approached by the chief of Lonmin, Mr Graeme Sinclair, and</p> <p>22 Mr Derek Botes, who said that I must disperse the group of</p> <p>23 males standing on the opposite side. I said to Mr Botes</p> <p>24 that these people are presently just standing there, not</p> <p>25 presenting a problem to anybody." That's what you wrote.</p> | <p style="text-align: right;">Page 35027</p> <p>1 MAJOR GOVENDER: That is correct, Mr</p> <p>2 Chair.</p> <p>3 MR WESLEY: So when you arrived at</p> <p>4 Rowland Crossing you saw this crowd of men that were</p> <p>5 purportedly perpetrating acts of intimidation. You saw the</p> <p>6 crowd?</p> <p>7 MAJOR GOVENDER: Yes, I did see the crowd</p> <p>8 there, but I cannot confirm that this is the same people</p> <p>9 that were intimidating the employees.</p> <p>10 MR WESLEY: Okay, I understand that. Now</p> <p>11 apart from knobkieries were members of this group armed</p> <p>12 with any sharp-bladed weapons or firearms that you could</p> <p>13 see?</p> <p>14 MAJOR GOVENDER: No, no other weapons</p> <p>15 except the knobkieries that were in their possession.</p> <p>16 MR WESLEY: Now if you could go to page</p> <p>17 23 of that bundle, I want to refer you to a document that</p> <p>18 appears there. It's EEEE32A, page 23 of the bundle. Do</p> <p>19 you have it?</p> <p>20 MAJOR GOVENDER: Yes, Chair.</p> <p>21 MR WESLEY: Okay, on page 23, this is a</p> <p>22 shooting incident report by Mr Kellerman in relation to</p> <p>23 events on the 10th between 18:35 and 20:10. He mentions,</p> <p>24 and I will read it, it's written in manuscript on the first</p> <p>25 page, "The persons had knobkieries, pangas and spears with</p> |

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1 them." You didn't see that though?

2 MAJOR GOVENDER: No, I didn't see those

3 sharpened objects you speak of.

4 [11:23] MR WESLEY: And just for record purposes,

5 Chair, there were two incident, shooting reports –

6 CHAIRPERSON: Then the next line is

7 important surely, I take it, it reads and intimidated, is

8 that the –

9 MR WESLEY: The workers at the area.

10 CHAIRPERSON: The workers at the area.

11 The crowd refused to withdraw from there, what's the last

12 word?

13 MR WESLEY: From the area, Chair. Shall

14 I read it? I think it says area.

15 CHAIRPERSON: Thank you.

16 MR WESLEY: So you didn't see, apart from

17 knopkieries, you didn't see pangas and spears and you

18 didn't see a crowd, this crowd perpetrating any acts of

19 intimidation.

20 MAJOR GOVENDER: Chair, like I made

21 mention of is on my arrival there I just saw a group of

22 people that were standing there. There was no weapons

23 except for the knobkerries that I saw in their possession.

24 MR WESLEY: Chair, just for record

25 purposes this is a shooting report filed by Mr Kellerman

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1 and so. But it's actually completed I see by Mr Beukes.

2 MR WESLEY: Beukes, that's correct,

3 Chair. We've referred to it previously as Kellerman's

4 shooting reports, but directly, Chair, as you pointed out

5 they are in fact completed by a security officer, R Beukes.

6 You are quite correct, Chair.

7 CHAIRPERSON: Do you know Mr Beukes, Mr

8 Govender, Major Govender. Have you come across him in the

9 course of your work as Vispol commander at Marikana?

10 MAJOR GOVENDER: Chair, I meet a lot of

11 these people, by names I may not know them, but appearance

12 I may.

13 MR WESLEY: I would like to refer you to

14 some testimony of Mr Sinclair, it's on day 268, day 268

15 page 34115, day 268 page 34115.

16 MAJOR GOVENDER: There we have it.

17 MR WESLEY: Now this is part of the

18 testimony by Mr Sinclair in relation to what was happening

19 on the evening of the 10th of August. Mr Sinclair testifies

20 from page 3 on – from line 3 at page 34115. Mr Sinclair

21 "Mr Chairman, when I was present I recall that Botes, we

22 approached, I wasn't right next to him, but we approached

23 Govender that he spoke to Govender. I recall very

24 definitely that there were shots, there was one or two in a

25 distance, there was no crowd. There were people standing

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1 for that time. There were in fact two shooting reports.

2 The other one is also in the bundle at page 28, it's

3 EEEE32B. The first one is in relation to the firing of 37

4 millimetre stoppers, the one which is EEEE32B is in

5 relation to the firing of rubber rounds, they both contain

6 the same reference which he says the persons had

7 knobkerries, pangas and spears with them and intimidated

8 the workers at the area. Now you were asked, if you return

9 to your statement, at page 1, you were asked by Mr – you

10 say Derek Botes, we know him in the Commission as Dirk

11 Botes, you were asked by him to disperse the crowd.

12 MAJOR GOVENDER: That's is correct,

13 Chair.

14 MR WESLEY: The crowd or group, if you

15 don't mind I'll use the words interchangeably, did Mr Botes

16 tell you why it was required by him that SAPS disperse the

17 crowd.

18 MAJOR GOVENDER: I don't recall why he

19 asked me, but he just said to me that I must go there and

20 ensure that they leave the place. No, no reason was said

21 to me why I should move those people from there.

22 CHAIRPERSON: I'm sorry to interrupt you,

23 Mr Wesley, I notice that the document to which you're

24 referring is not actually compiled by Mr Kellerman, it

25 relates to shooting by, discharged by him certain stoppers

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1 around, but there was no crowd that I saw in the vicinity

2 opposite the road that was threatening or whatever." And

3 he carries on. "And during my visit no rubber bullets or

4 things by the security had been fired at all although they

5 informed me that they had already done that." Chairperson,

6 "Now tell me, you've said that Mr Botes asked Captain

7 Govender to disperse these people who were standing there

8 and he apparently declined." Mr Sinclair "Yes."

9 Chairperson, "Because he said you were present when it

10 happened." Mr Sinclair "I was." Chairperson "Do you agree

11 with the request that the police should take it upon

12 themselves to disperse these people?" "Mr Chairman, Dirk

13 was in a state, he was not in a quiet state, he was vocal

14 and he said that when he came back to me I recall very

15 clearly saying to him Dirk calm down and address these

16 situations correctly. So I cautioned him as the way

17 because he was dealing with the police at the scene." Do

18 you see that?

19 MAJOR GOVENDER: Yes, Chair, I see that.

20 MR WESLEY: Now he, Mr Sinclair's

21 description of Mr Botes' state of mind at that stage was he

22 was not in a quiet state, he was vocal and he says he had

23 to tell him to calm down. Did that accord with what you

24 recall of Mr Botes' state of mind at that moment?

25 MAJOR GOVENDER: I wouldn't know what his

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| <p style="text-align: right;">Page 35032</p> <p>1 state of mind was, but he was very vocal.</p> <p>2 MR WESLEY: The way he was behaving.</p> <p>3 MAJOR GOVENDER: Yes he was like giving</p> <p>4 an instruction that I should disperse those people.</p> <p>5 MR WESLEY: Let me ask you this then.</p> <p>6 Was he calm or would you say he was agitated or excited?</p> <p>7 MAJOR GOVENDER: I would say he was more</p> <p>8 excited than anything else.</p> <p>9 MR WESLEY: Now after you received this</p> <p>10 request from Mr Botes that SAPS must disperse this group</p> <p>11 what did you do?</p> <p>12 MAJOR GOVENDER: I was in the company of</p> <p>13 – like I earlier mentioned in my statement with three other</p> <p>14 members, I asked one constable to approach this crowd and</p> <p>15 to enquire from them what were they doing at that</p> <p>16 particular point. And after a few minutes my member did</p> <p>17 return to me, it's Constable Njomo and he informed me that</p> <p>18 they were waiting for transportation, a taxi. And</p> <p>19 subsequently thereafter observed that this group had</p> <p>20 started to move towards the hostels and there was no taxi</p> <p>21 that came along. Then that's it and then everybody had</p> <p>22 dispersed from that particular point.</p> <p>23 MR WESLEY: So Constable Njomo went to</p> <p>24 the crowd, spoke to them and they spoke back to him and</p> <p>25 then he returned.</p> | <p style="text-align: right;">Page 35033</p> <p>1 MAJOR GOVENDER: That is correct, Chair.</p> <p>2 MR WESLEY: You then told Mr Botes,</p> <p>3 according to your statement, that you were not going to</p> <p>4 disperse the group. The reason being they were not</p> <p>5 presenting a problem to anyone.</p> <p>6 MAJOR GOVENDER: That is so, I did</p> <p>7 mention that.</p> <p>8 MR WESLEY: Now from observing this group</p> <p>9 of people, I think you've already covered it, but let's</p> <p>10 just confirm it, were they threatening?</p> <p>11 MAJOR GOVENDER: Not to my knowledge at</p> <p>12 that particular point in time.</p> <p>13 MR WESLEY: Did you see this group that</p> <p>14 you observed, did you see them intimidating anybody?</p> <p>15 MAJOR GOVENDER: No I did not see or</p> <p>16 observe any of that.</p> <p>17 MR WESLEY: Now after you told Mr Botes</p> <p>18 that you were not going disperse this grouping or crowd</p> <p>19 what did Mr Botes and Mr Sinclair do?</p> <p>20 MAJOR GOVENDER: They just went back</p> <p>21 towards the point they were standing, next to the vehicle</p> <p>22 and I had no further conversation with them.</p> <p>23 MR WESLEY: And what did you do after</p> <p>24 that?</p> <p>25 MAJOR GOVENDER: Well I just stood around</p> |
| <p style="text-align: right;">Page 35034</p> <p>1 there and waited up until I heard two shots, gunshots</p> <p>2 coming from the direction of the stadium, closer towards</p> <p>3 the informal settlement of Nkaneng and at that particular</p> <p>4 point I was also joined by other members of my station.</p> <p>5 And I asked them to go out and to just patrol around there</p> <p>6 to see if anybody had been injured, if someone has been</p> <p>7 shot and I did the same. I jumped in my vehicle and drove</p> <p>8 towards the shopping centre at Wonderkop or shopping</p> <p>9 complex at Wonderkop, the taxi rank, along the hostels for</p> <p>10 about 15, 20 minutes. I came across nothing and the report</p> <p>11 I also received from my crime prevention members that they</p> <p>12 did not come across anything or no report was made of any</p> <p>13 person that had been injured or shot.</p> <p>14 MR WESLEY: If I can refer you back to</p> <p>15 the document, the two shooting reports. If you can go to</p> <p>16 page 24, your bundle. That's the first shooting EEEE32A,</p> <p>17 go to page 24. Do you have it?</p> <p>18 MAJOR GOVENDER: Yes, Chair.</p> <p>19 MR WESLEY: Okay if you can just keep</p> <p>20 your finger there. Also page then over to page 29, that's</p> <p>21 the equivalent page of the other shooting incident report</p> <p>22 EEEE32B.</p> <p>23 MAJOR GOVENDER: I have it, Chair.</p> <p>24 MR WESLEY: In both –</p> <p>25 CHAIRPERSON: Sorry in each case it's the</p> | <p style="text-align: right;">Page 35035</p> <p>1 second page of the exhibit.</p> <p>2 MR WESLEY: That's correct, Chair. Each</p> <p>3 page it's the second, it's in fact paragraph 2.7 of the</p> <p>4 exhibit. Under the heading Particulars of Witnesses on</p> <p>5 both documents are listed firstly Superintendent PW Botha</p> <p>6 and then Captain Govender and then what reads SAPS</p> <p>7 Marikana. Do you see that?</p> <p>8 MAJOR GOVENDER: I do, Chair.</p> <p>9 MR WESLEY: Now did you witness Mr</p> <p>10 Kellerman or any other member of Lonmin security discharge</p> <p>11 any of their weapons on that evening while you were at the</p> <p>12 scene at Rowland Crossing?</p> <p>13 MAJOR GOVENDER: Not in my presence,</p> <p>14 Chair.</p> <p>15 MR WESLEY: If we could then go back to</p> <p>16 exhibit FFFF7, I want to take you to the page which is in</p> <p>17 the second page of your bundle, it's the second page of the</p> <p>18 document, paragraph 4 of your statement. You describe in</p> <p>19 that paragraph what you've testified now about what you did</p> <p>20 after you told Mr Botes you would not be dispersing the</p> <p>21 crowd, but the very last line reads as follows. "I do</p> <p>22 recall seeing a few security personnel and one of them I</p> <p>23 know as PW Botha."</p> <p>24 MAJOR GOVENDER: That is correct.</p> <p>25 MR WESLEY: And do you know Mr PW Botha?</p> |

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| <p style="text-align: right;">Page 35036</p> <p>1 MAJOR GOVENDER: I know him well. I've 2 had several interactions with him during the course of our 3 duties. 4 MR WESLEY: Now when you saw him at this 5 time was he armed? 6 MAJOR GOVENDER: Yes, I do recall. 7 MR WESLEY: What was he armed with? 8 MAJOR GOVENDER: With a shotgun and a 9 side arm, a pistol. 10 MR WESLEY: A pistol? 11 MAJOR GOVENDER: A side arm, a small arm. 12 MR WESLEY: A small arm, would that be 13 something like a 9 millimetre pistol? 14 MAJOR GOVENDER: I'm not sure what 15 calibre it was, but it was a small arm. 16 MR WESLEY: All right, Sir. The other 17 Lonmin security personnel that you saw there, that area, 18 can you recall whether they were carrying any weapons? 19 MAJOR GOVENDER: I didn't take note of 20 what other weapons were in their possession. I didn't 21 think it was important for me to do that at that stage. 22 MR WESLEY: Thank you. If you could then 23 go to page 6 of bundle, it's LLLL2. That's your statement 24 dated 3 September 2012. You're now dealing with events on 25 Saturday 11 August 2012. I'll read the paragraph to you,</p> | <p style="text-align: right;">Page 35037</p> <p>1 paragraph 2. "On Saturday 2012-08-11 I reported for duty 2 at 10h30 dressed in civilian and accompanied by Warrant 3 Officer Kruger to Wonderkop after receiving information 4 that the striking Lonmin mine employees were gathered at a 5 mountain in an open veld and were busy with some sort of 6 traditional rituals. Earlier the same evening it was 7 suspected that the same employees were alleged to be 8 involved in a shooting incident vide which is V-I-D-E 9 Marikana CAS67082012 and 68082012 Attempted Murder. Do you 10 see that? 11 MAJOR GOVENDER: Yes, Chair, I see that. 12 MR WESLEY: Now I can tell you because 13 these documents are already exhibits CAS67 that is a 14 docket, it is before this Commission, we don't need to call 15 it up, it's exhibit XX2.20 as well as ZZ4. That's a docket 16 in relation to the attempted murder of Mr Bongani Ngema and 17 CAS68 is a docket, it's exhibit XX6 also BBB8 which is in 18 relation to the attempted murder of Mr Vusumuzi Mandla 19 Mabuyakhulu both on 11 August 2012 and the testimony, the 20 evidence before this Commission is that that was in 21 relation to a clash that occurred between the group of 22 protestors and some NUM official near the NUM office which 23 is on the eastern side of the Wonderkop hostel. Do you 24 accept that? 25 MAJOR GOVENDER: Yes I do.</p> |
| <p style="text-align: right;">Page 35038</p> <p>1 MR WESLEY: Right. Now you mentioned 2 here in the last line which I read to you "Earlier the same 3 morning it was suspected that the same employees were 4 alleged to be involved in a shooting incident vide Marikana 5 CAS67 and 68 Attempted Murder." What was the suspected 6 involvement of the crowd in those incidents that you're 7 talking about here? 8 MAJOR GOVENDER: Sorry if you can repeat 9 that now. Are you speaking of the one at the mountain 10 itself? 11 MR WESLEY: Yes let me take you back. In 12 paragraph 2 you talk about going on duty on the 11th of 13 August during the morning at 10:30. You dressed in 14 civilian wear, Warrant Officer Kruger is with you. You go 15 to Wonderkop. "After receiving information that striking 16 Lonmin mine employees were gathered at the mountain in an 17 open veld and were busy with some sort of traditional 18 rituals." So the employees that you are talking about are 19 the ones that are gathered at the mountain. 20 MAJOR GOVENDER: That is correct. 21 MR WESLEY: You then to on to say that 22 they were alleged to be involved in the shooting which is 23 CAS67 and 68 which I've explained to you. 24 CHAIRPERSON: That allegedly took place 25 earlier, in other words before you went and saw them at the</p> | <p style="text-align: right;">Page 35039</p> <p>1 mountain. 2 MAJOR GOVENDER: Yes, Chairperson. 3 CHAIRPERSON: And the evidence that we 4 have is that there was an incident in the vicinity of the 5 NUM office where shots were fired and people were injured. 6 And I presume that that's what you're talking about. 7 MAJOR GOVENDER: Yes, Chairperson 8 MR WESLEY: Is that the suspected 9 involvement of the crowd? 10 MAJOR GOVENDER: I'm speaking of the 11 earlier incident, yes that is so, Chairperson. 12 MR WESLEY: If I could then ask you to 13 turn to a document which appears from page 14 of the 14 bundle. It's exhibit U. Are you at page 14? 15 MAJOR GOVENDER: Yes I'm there. 16 MR WESLEY: All right, now turn over. Go 17 past page 14, past page 15, the document I want to refer 18 you to specifically begins at page 16 of the bundle, it's 19 exhibit U. It's an contingency plan for 10 August 2012. 20 Now you can accept this. Lieutenant-Colonel Merafe who 21 signed this document and he testified that it was prepared 22 on the 10th of August and it was signed by him and Brigadier 23 Seboloke on that day. Now I would like to refer you to – 24 before I ask these questions, further questions, to what he 25 testified about what the nature of this document is. If we</p> |

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| <p style="text-align: right;">Page 35040</p> <p>1 could go to day 216, page 26620, 26620. What they're 2 talking about here, you'll see at the start, line 1. 3 Chairperson it's the contingency plan 10 August 2012, it is 4 exhibit SS3, don't worry about the SS3, this document was 5 also handed in as exhibit U. Now Lieutenant-Colonel Merafe 6 was being led by the SAPS counsel, Ms Baloyi in relation to 7 this document that I've referred you to and she says from 8 line 8 "Now you see on the first page the document is 9 headed South African Police Rustenburg POP, Contingency 10 Plan, Strike By Employees of Lonmin Eastern and Western 11 Platinum [Karee Mine] on 2012/08/10. Do you see that?" 12 Colonel Merafe, "I see, Chairperson." Ms Baloyi "And in 13 the line immediately below to the right it says Enquiries 14 Lieutenant-Colonel Merafe and it gives details, telephone 15 numbers and a fax number. Do you see that?" Colonel 16 Merafe "It is so." Ms Baloyi "What is this document, 17 Colonel?" 18 Colonel Merafe "The document is a plan. The 19 operational plan which we draw to prepare ourselves for 20 anything, to prepare ourselves for any action that might 21 happen. This is not a proper plan, it is something that is 22 being done to take care of the situation as at the time to 23 intervene. Ms Baloyi, now Colonel Merafe it is a plan to 24 can – an intervention plan. Do you see that?" 25 [11:42] MAJOR GOVENDER: Ja, I do see that,</p> | <p style="text-align: right;">Page 35041</p> <p>1 Chair. 2 MR WESLEY: Now that's how he describes 3 this plan. If you can then open the document there on page 4 16. I just want to take you through some of the, point out 5 some of the parts to you. On the first, if I could call it 6 the first page, you'll see they're also numbered at the 7 bottom, page 1 paragraph 1.2 the venue, it reads, "The area 8 where the operation is to take place, namely Western 9 Platinum Mine (Karee Mine) and Eastern Platinum Mine which 10 falls within the policing precinct of Marikana SAPS." Do 11 you see that? 12 MAJOR GOVENDER: Yes, Chair, I see that. 13 MR WESLEY: That's the area of operations 14 that you cover. 15 MAJOR GOVENDER: That is correct. 16 MR WESLEY: You covered it actually at 17 that time, is that correct? 18 MAJOR GOVENDER: That is correct, Chair. 19 MR WESLEY: It was your usual area of 20 operation or part of your usual area of operation, is that 21 correct? 22 MAJOR GOVENDER: Again, it's basically 23 Western Plats and Karee, that is correct. 24 MR WESLEY: Okay. If you go over to the 25 next page, paragraph 2, if I can just read that to you.</p> |
| <p style="text-align: right;">Page 35042</p> <p>1 It's headed "Mission." "The Deputy Provincial Commissioner 2 of North-West Province has instructed that public order and 3 crime prevention be maintained in the area of Marikana 4 along the route to Eastern Platinum Mine and Western 5 Platinum Mine before, during and after the strike. 6 Marikana crime prevention and Rustenburg POP will be 7 deployed." Do you see that? 8 MAJOR GOVENDER: I see that, Chairperson. 9 MR WESLEY: Now mention here is made of 10 an instruction given by the Deputy Provincial Commissioner. 11 Was that, an instruction like that brought to your 12 attention on the 10th of August or shortly thereafter? 13 MAJOR GOVENDER: I didn't see this 14 document prior to that and we didn't have any discussions 15 revolving around this plan as such. 16 CHAIRPERSON: You didn't see this 17 document prior to that. 18 MAJOR GOVENDER: Prior to this. 19 CHAIRPERSON: When did you see this 20 document? 21 MAJOR GOVENDER: The document was never 22 given to me, Chairperson, I don't know about the document. 23 CHAIRPERSON: I see, thank you. 24 MR WESLEY: Were you consulted during – 25 you've never seen the document. I imagine what the answers</p> | <p style="text-align: right;">Page 35043</p> <p>1 to the next questions are but let's get them on the record. 2 Were you consulted by Colonel Merafi or anybody under his 3 charge in the drafting of this document? 4 MAJOR GOVENDER: Not that I can recall of 5 because there's been so many other issues relating – not 6 this particular one. 7 MR WESLEY: Did you attend a meeting with 8 Colonel, where Colonel Merafi was present where the drawing 9 up of this document, this plan was discussed? 10 MAJOR GOVENDER: Not, I didn't attend any 11 meeting as such. 12 MR WESLEY: And you weren't given a copy 13 of this document? 14 MAJOR GOVENDER: I don't have it. I was 15 never given a copy of it. 16 MR WESLEY: Can you maybe tell us a 17 little bit more specifically, when was the first time you 18 ever saw this document? 19 MAJOR GOVENDER: The first time that I 20 see this document is that, when I was called here to lead 21 evidence. 22 MR WESLEY: That's recently, this year, 23 2014? 24 MAJOR GOVENDER: Yes. 25 MR WESLEY: If we can just go back to it,</p> |

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| <p style="text-align: right;">Page 35044</p> <p>1 your mention – I want to draw your attention, if you can go 2 to page 18 you'll see paragraph 5.2. – let's start. Page 3 17 rather, let's just do it, completely it properly 4 paragraph 4.1.1. The heading is "Marikana SAPS." It says, 5 "Marikana crime prevention, one officer six members." Go 6 over the page to paragraph 5.2.3, "Marikana SAPS" is the 7 heading again. It says, "One officer and six members of 8 crime prevention will be responsible for patrolling and 9 visible at Eastern and Western Platinum Mine." That 10 records then what the duties would have been of that 11 contingent of Marikana SAPS people. If you can then – 12 CHAIRPERSON: There's also 5.2.1 of 13 course. 14 MR WESLEY: Indeed, Chair. 5.2.1, 15 operational focus areas. Oh, 5.2.1, I see it's under 16 5.1.2. "Visible policing at the mines where the strike 17 is." If we could go over to paragraph 10.2, I just want to 18 point this out to you. Under 10.2 the heading is "Command 19 and control." Then there's a subheading "South African 20 Police Service," then there's a number, three columns 21 headed "Commander," "Name" and "Contact number." The third 22 person under "Commander," the third line reads "VISPOL" 23 under the name is Captain Govender and then there's a cell 24 phone number. So you're actually specifically mentioned in 25 this document, do you see that?</p> | <p style="text-align: right;">Page 35045</p> <p>1 MAJOR GOVENDER: I see it, Chairperson. 2 MR WESLEY: Should this document not have 3 been brought to your attention? 4 MAJOR GOVENDER: It should have actually 5 been brought to my attention and there should have been 6 prior discussions made about it. 7 MR WESLEY: Now we know that you haven't 8 seen this before and it is an unfair question to an extent 9 but I need to – 10 CHAIRPERSON: You're speaking to your own 11 question, Mr Wesley. 12 MR WESLEY: Yes, I am indeed, Chair, 13 because it struck me that – 14 CHAIRPERSON: I want to ask a question, I 15 hope – 16 MR WESLEY: Please, Chair. 17 CHAIRPERSON: - it won't be regarded as 18 being unfair. What is talked about in the section of this 19 document you're looking at is the setting up of a joint 20 operational centre, a JOC, and with a JOC committee and 21 inasmuch as you are listed in 10.2 as one of the commanders 22 involved, in fact the commander of VISPOL, would you have 23 been a member of the JOCCOM? 24 MAJOR GOVENDER: Yes, I would have been 25 part of –</p> |
| <p style="text-align: right;">Page 35046</p> <p>1 CHAIRPERSON: Were you informed that a 2 JOCCOM had been set up and that you were a member? 3 MAJOR GOVENDER: Well, on the particular 4 day – look, this is actually relating to the 10th and if I 5 recall, this was a spontaneous issue so there wasn't time 6 to even go and discuss this issue therefore at that 7 particular time, Chair. 8 MR WESLEY: My question to you, which is 9 perhaps unfair and it's unfair and I do understand this in 10 the sense that you don't, you never saw the document and 11 you didn't know of its existence, you weren't shown it but 12 can you – 13 CHAIRPERSON: I'm sorry, Mr Wesley, 14 forgive me interrupting you but would you look at paragraph 15 3.2.2 which is on the second page of the document? "The 16 JOC will be activated at 7 o'clock" - it says 7AM - "on 17 2012.08.10." So I understand it arose quite suddenly and 18 obviously what should have been done at 7 o'clock in the 19 morning on the 10th wasn't done but then it goes on, the JOC 20 will be activated at 7AM on the 10th of August and, quote, 21 "remain optional for the duration of the strike." 22 COMMISSIONER HEMRAJ: Operational. 23 CHAIRPERSON: Sorry, did I say something 24 else? "Remain operational for the duration of the strike." 25 In other words, the JOC was to be set up on the morning of</p> | <p style="text-align: right;">Page 35047</p> <p>1 the 10th of August and would only cease to exist after the 2 strike was over. The strike, of course, had started on the 3 morning of the 10th and we know the strike went on for quite 4 a long time and I think it finally ended in September but, 5 so the question I want to know is, did you know that a JOC 6 had been set up on the 7th, on the 10th and that you were a 7 member and that the JOC – I know other people took over 8 later. 9 MAJOR GOVENDER: Yes. 10 CHAIRPERSON: Other people came in and 11 became members of the JOCCOM but as from the morning of the 12 10th you were a member of the JOCCOM and the other people 13 came in later on, I think, not on the 10th but the question 14 I'm asking you is, were you aware of the fact that you were 15 a member of the JOCCOM? Did you ever attend a meeting of 16 the JOCCOM? 17 MAJOR GOVENDER: On that particular day, 18 no, Chairperson, I was not there for that JOC and – 19 CHAIRPERSON: Adv Hemraj wants to know, 20 this document is in the future tense, "The JOC will be 21 activated at 7 o'clock" – 22 MAJOR GOVENDER: Correct. 23 CHAIRPERSON: - on the 10th. Was it 24 actually activated, to your knowledge, on the 10th? 25 MAJOR GOVENDER: Not to my knowledge, I</p> |

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| <p style="text-align: right;">Page 35048</p> <p>1 don't know.</p> <p>2 CHAIRPERSON: Was it activated on the</p> <p>3 11th?</p> <p>4 MAJOR GOVENDER: Chairperson, I have no</p> <p>5 knowledge of any JOC being activated.</p> <p>6 CHAIRPERSON: So you never functioned as</p> <p>7 a member of the JOCCOM?</p> <p>8 MAJOR GOVENDER: I was not present at any</p> <p>9 of those, in the JOC.</p> <p>10 CHAIRPERSON: Thank you.</p> <p>11 MR WESLEY: Major, my question actually</p> <p>12 follows on from the Chairperson's –</p> <p>13 CHAIRPERSON: Mr Wesley, I'm looking at</p> <p>14 Mr Semenya, he has turned his light on.</p> <p>15 MR SEMENYA SC: Chair, I wanted to make</p> <p>16 the observation as well that he is not indicated as being</p> <p>17 one of the JOC members either.</p> <p>18 CHAIRPERSON: Well, I asked him whether,</p> <p>19 as one of the commanders, he would have been a member of</p> <p>20 the JOCCOM and I understood him to answer in the</p> <p>21 affirmative but perhaps I misunderstood or perhaps you</p> <p>22 misunderstood.</p> <p>23 MR SEMENYA SC: In terms of the document</p> <p>24 itself it does not purport to make him a member of the JOC.</p> <p>25 CHAIRPERSON: Normally if the JOCCOM is</p> | <p style="text-align: right;">Page 35049</p> <p>1 set up, are the commanders members of the JOCCOM?</p> <p>2 MAJOR GOVENDER: Chairperson, that is so</p> <p>3 because you need to be briefed.</p> <p>4 CHAIRPERSON: Ja, and you were one of the</p> <p>5 commanders listed in the document.</p> <p>6 MAJOR GOVENDER: According to the</p> <p>7 document, yes, Chairperson.</p> <p>8 CHAIRPERSON: Thank you.</p> <p>9 MR MPOFU: Chairperson, I'm sorry, I</p> <p>10 don't have the right to cross-examine but insofar as this</p> <p>11 might be relevant to my section, maybe through you</p> <p>12 Chairperson, it's simply to establish – because we're</p> <p>13 talking of the JOC which may or may not be the same one</p> <p>14 that was inherited from Lonmin and I just want –</p> <p>15 CHAIRPERSON: The JOC isn't a place, as</p> <p>16 far as I understand, the JOC is a –</p> <p>17 MR MPOFU: Is a concept.</p> <p>18 CHAIRPERSON: Is a body.</p> <p>19 MR MPOFU: Correct.</p> <p>20 CHAIRPERSON: But anyway, if you have a</p> <p>21 question that you want me to ask, perhaps you can convey it</p> <p>22 to me later on.</p> <p>23 MR MPOFU: Thank you, Chairperson.</p> <p>24 CHAIRPERSON: I think I've interrupted</p> <p>25 poor Mr Wesley enough.</p> |
| <p style="text-align: right;">Page 35050</p> <p>1 MR MPOFU: Thank you, Chairperson.</p> <p>2 MR WESLEY: Major, my question which I</p> <p>3 said was perhaps unfair and it's unfair in the light that</p> <p>4 you didn't know about the content of this document but it</p> <p>5 follows on from what the Chair was – and it's simply this,</p> <p>6 do you know whether any, or whether this plan or part of</p> <p>7 this plan was implemented or activated?</p> <p>8 MAJOR GOVENDER: Look, it refers to a</p> <p>9 contingency plan, it's not the actual implementation of the</p> <p>10 plan. It's just making you aware that there might be a</p> <p>11 possible event in terms of the strike, so it could have</p> <p>12 been activated at a later stage.</p> <p>13 MR WESLEY: Now following on from that on</p> <p>14 10 August, the document also refers to it, you'll see</p> <p>15 paragraph 5.2.3 of this operational plan says, "One officer</p> <p>16 and six members of crime prevention" under the heading</p> <p>17 "Marikana MAS," "will be responsible for patrolling and</p> <p>18 visible at Eastern and Western Platinum Mine and Karee</p> <p>19 Mine." I gather after "visible" there should actually be</p> <p>20 the word "policing." The word "policing" would be missing</p> <p>21 there, is that – would you agree with me?</p> <p>22 MAJOR GOVENDER: Yes, Chair, I would</p> <p>23 agree with you, visible policing.</p> <p>24 MR WESLEY: Responsible for patrolling</p> <p>25 and visible policing then.</p> | <p style="text-align: right;">Page 35051</p> <p>1 MAJOR GOVENDER: That is correct.</p> <p>2 MR WESLEY: Now on – we don't need to go</p> <p>3 there but I can tell you that Colonel Merafi did testify on</p> <p>4 day 216, one finds it at page 26622 to 26623. What he does</p> <p>5 say is that, "On 10 and 11 August the Marikana police</p> <p>6 station was responsible for monitoring and policing as part</p> <p>7 of its crime prevention functions in the Marikana area."</p> <p>8 Now you did do monitoring and policing on the 10th and 11th</p> <p>9 August in the Marikana area?</p> <p>10 MAJOR GOVENDER: That is correct,</p> <p>11 Chairperson.</p> <p>12 MR WESLEY: But you've also, that was</p> <p>13 part of your normal policing functions.</p> <p>14 MAJOR GOVENDER: That is so, Chair.</p> <p>15 MR WESLEY: You didn't do that</p> <p>16 specifically because this plan, which we've now gone</p> <p>17 through, dictates that you should do it.</p> <p>18 MAJOR GOVENDER: No, it was not dictated</p> <p>19 by any plans. It's my normal duties, Chair.</p> <p>20 MR WESLEY: The last document which I</p> <p>21 would just like to refer you to just to clarify one very,</p> <p>22 very small point – it might even be so insignificant that</p> <p>23 it shouldn't be mentioned but just to clarify it, I had a</p> <p>24 consultation with you and in it you did tell me that on the</p> <p>25 11th of August, and you state it in fact in your e-mail</p> |

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| <p style="text-align: right;">Page 35052</p> <p>1 which would start there, your e-mail which appears at pages 2 8 to 9 of your bundle, it's exhibit LLL3, in paragraph 3 3 you say that, "At about 11:30 whilst the victims were 4 visited at Andrew Saffy Hospital, Lieutenant Sepeng, the 5 duty officer, were informed that there were two other 6 victims with gunshot wounds admitted at hospital the 7 previous night." Now Lieutenant-Colonel Merafi in exhibit 8 QQQ2 on the second page, the fourth paragraph, he says that 9 you attended the hospital, that's the Andrew Saffy 10 Hospital, on that evening. Did you go to the hospital? 11 MAJOR GOVENDER: No, Chairperson. 12 MR WESLEY: Who went to the hospital? 13 MAJOR GOVENDER: Lieutenant Sepeng, the 14 duty officer of Marikana at that particular point in time. 15 MR WESLEY: Now think back to the 10th and 16 11th of August, could you tell the Commission what was, what 17 interactions did you have with Lieutenant-Colonel Merafi on 18 the 10th, the 11th and 12th of August that you can remember? 19 MAJOR GOVENDER: None. I did not deal 20 with him or speak with him on any of those dates. 21 MR WESLEY: Thank you, Chair. 22 CHAIRPERSON: A document has been put 23 before us which is exhibit QQQ2. It's a statement by 24 Colonel Merafi. 25 MR WESLEY: It's the very last bundle,</p> | <p style="text-align: right;">Page 35053</p> <p>1 document in your bundle, Mr – 2 CHAIRPERSON: Not in the bundle I've got 3 but in any event, it's in front of us and it's already an 4 exhibit and on the second page this document – there it is 5 on the screen now – the third paragraph reads as follows, 6 "On the morning of the 10th of August 2012 the station 7 commissioner of Marikana, Lieutenant-Colonel Msiza, called 8 me" – that's Colonel Merafi – "and said there's an illegal 9 march at Wonderkop by Lonmin mineworkers to Lonmin offices. 10 He also said he couldn't handle the situation with his own 11 members because they are plus-minus 3 000 people on the 12 march. I did send members under the command of Lieutenant 13 Mologe and requested" – now this is the passage I want to 14 put to you – "and requested the station commander to 15 immediately open a JOC at the Marikana police station." 16 This is on the 10th. Now do you know whether that was done? 17 MAJOR GOVENDER: Chair, I was out there 18 amongst those people when the march started, so I don't 19 have any knowledge of what has taken place at the station 20 that particular day. 21 CHAIRPERSON: And did you go back to the 22 station at any stage on the 10th or were you at the station 23 at any stage on the 11th? 24 MAJOR GOVENDER: Only after the march had 25 dispersed and everything was peaceful around there, I think</p> |
| <p style="text-align: right;">Page 35054</p> <p>1 I then made a return back to the station. 2 CHAIRPERSON: Thank you. 3 MR MPOFU: Chairperson, before you call 4 on the cross-examiner, two things. Firstly, your question 5 has covered my concern and secondly, just to clarify the 6 statement I made just in case it's misunderstood, when I 7 said I don't have the right to cross-examine I didn't mean 8 that it was denied by anybody, I did not apply. 9 CHAIRPERSON: You hadn't applied. 10 MR MPOFU: Yes, just in case it's 11 misunderstood. 12 CHAIRPERSON: No, no, I understood it 13 that way but of course others may not have, so – 14 MR MPOFU: Thank you, Chair. 15 CHAIRPERSON: It's now been clarified. 16 MR MPOFU: Thank you. 17 CHAIRPERSON: Who is cross-examining 18 first, Mr Wesley? 19 MR WESLEY: Chair, we've got two 20 requests. The South African Human Rights Commission have 21 requested the opportunity to cross-examine the witness for 22 30 minutes and then Lonmin for 60 minutes. The Human 23 Rights Commission have requested they go first. 24 CHAIRPERSON: Alright, I see Ms Le Roux 25 is here. Are you ready to start cross-examining?</p> | <p style="text-align: right;">Page 35055</p> <p>1 MS LE ROUX: Yes, thank you, Chair. 2 CHAIRPERSON: It's now 12 o'clock. 3 Should we take the adjournment first? 4 MS LE ROUX: That probably is best, 5 Chair. 6 CHAIRPERSON: I think so. Quarter of an 7 hour adjournment for tea. 8 [COMMISSION ADJOURNS COMMISSION RESUMES] 9 [12:27] CHAIRPERSON: The Commission resumes. 10 You're still under oath, Major Govender. 11 VEERASAMY VELAYUDAF GOVENDER: [s.u.o.] 12 CHAIRPERSON: Ms Le Roux. 13 CROSS-EXAMINATION BY MS LE ROUX: Thank 14 you, Chair. Good afternoon, Major Govender. I'm acting 15 for the South African Human Rights Commission. There were 16 three documents that should have been provided to you, WW7, 17 which is the shooting incident report dated 17 August 2012, 18 and then two identified sections of two statements by Mr 19 Gary White. You've been provided with those and had an 20 opportunity to review them, correct? 21 MAJOR GOVENDER: Yes, Chairperson, I do 22 have them. 23 MS LE ROUX: If we can start then with 24 WW7, and if I can ask you to confirm that it is your 25 signature on the last page of this document. Is that your</p> |

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| <p style="text-align: right;">Page 35056</p> <p>1 signature?</p> <p>2 MAJOR GOVENDER: That is correct,</p> <p>3 Chairperson.</p> <p>4 MS LE ROUX: And did you complete this</p> <p>5 document?</p> <p>6 MAJOR GOVENDER: I did, Chairperson.</p> <p>7 MS LE ROUX: Right, if I could start at a</p> <p>8 general level and ask you what the purpose of this form is,</p> <p>9 when is this form filled out?</p> <p>10 MAJOR GOVENDER: Firstly the purpose of</p> <p>11 the form is a notification to the national head office via</p> <p>12 the Provincial Commissioner of any shooting incident that</p> <p>13 takes place where a police official is involved, especially</p> <p>14 with the use of sharp ammunition.</p> <p>15 MS LE ROUX: And is that a shooting</p> <p>16 incident where the police do the shooting, or any shooting</p> <p>17 incident, even if they are shot at?</p> <p>18 MAJOR GOVENDER: Basically it is for the</p> <p>19 police that use the firearms.</p> <p>20 MS LE ROUX: Right, and what does the –</p> <p>21 so you say that it goes up to national command. What do</p> <p>22 they do with it, if you know?</p> <p>23 MAJOR GOVENDER: It goes via the</p> <p>24 provincial office and up to the national level.</p> <p>25 MS LE ROUX: And do you know what they do</p> | <p style="text-align: right;">Page 35057</p> <p>1 with it, what function it serves?</p> <p>2 MAJOR GOVENDER: Yes, it is for the</p> <p>3 information of the National Commissioner and it does not</p> <p>4 stop there, if they look into further investigation as to</p> <p>5 whether someone should be held liable for whatever had</p> <p>6 taken place.</p> <p>7 MS LE ROUX: And what is the nature of</p> <p>8 that further investigation? Is that different to anything</p> <p>9 IPID would do?</p> <p>10 MAJOR GOVENDER: Normally what happens is</p> <p>11 every shooting is now investigated by IPID, so they also</p> <p>12 take a copy of the shooting report as well.</p> <p>13 MS LE ROUX: But the further</p> <p>14 investigation that is possible would be conducted by whom?</p> <p>15 MAJOR GOVENDER: By IPID.</p> <p>16 MS LE ROUX: By IPID, okay. This</p> <p>17 particular shooting report, am I correct that you completed</p> <p>18 it on the 17th of August 2012?</p> <p>19 MAJOR GOVENDER: That is correct.</p> <p>20 MS LE ROUX: And we see that it's</p> <p>21 addressed to the Provincial Commissioner and the cluster</p> <p>22 commander. Am I correct that the cluster commander in</p> <p>23 August 2012 was Major-General Patrick Asaneng?</p> <p>24 MAJOR GOVENDER: That would be correct.</p> <p>25 MS LE ROUX: And so this is addressed to</p> |
| <p style="text-align: right;">Page 35058</p> <p>1 Major-General Mbombo and Major-General Asaneng?</p> <p>2 MAJOR GOVENDER: That is so.</p> <p>3 MS LE ROUX: Right, did either one of</p> <p>4 them come back to you following receipt of the shooting</p> <p>5 incident report?</p> <p>6 MAJOR GOVENDER: What happens is it's</p> <p>7 forwarded to their offices and the necessary is done from</p> <p>8 there. It does not necessarily mean that they must</p> <p>9 acknowledge that they'll come back to me.</p> <p>10 MS LE ROUX: And in this particular case</p> <p>11 neither the Provincial Commissioner's office nor the</p> <p>12 cluster commander in his office, neither of them came back</p> <p>13 to you for any follow-up or response to what you submitted</p> <p>14 to them, correct?</p> <p>15 MAJOR GOVENDER: Like I said, it is</p> <p>16 forwarded to IPID. IPID does the investigation in terms of</p> <p>17 this issue.</p> <p>18 MS LE ROUX: Right, did IPID follow up</p> <p>19 with you at all in response to the shooting incident</p> <p>20 report?</p> <p>21 MAJOR GOVENDER: Not that I know of.</p> <p>22 MS LE ROUX: Okay, now we'll go through</p> <p>23 the form, but if I could ask you to start at a general</p> <p>24 level; were you asked to fill out the form, the shooting</p> <p>25 incident report, or do you just do it as a matter of course</p> | <p style="text-align: right;">Page 35059</p> <p>1 because there was a shooting incident?</p> <p>2 MAJOR GOVENDER: Look, how it works at</p> <p>3 any particular police station where an incident happens is</p> <p>4 there a duty officer and incidents like this is attended by</p> <p>5 a duty officer and during that week I was the standby duty</p> <p>6 officer to attend to any serious events that take place</p> <p>7 there and I performed my role on that particular day.</p> <p>8 MS LE ROUX: Right, so no one asked you</p> <p>9 to fill out this report; you understood it to be part of</p> <p>10 your duties?</p> <p>11 MAJOR GOVENDER: It is my duties.</p> <p>12 MS LE ROUX: Okay, now in the form, if we</p> <p>13 go to page, the bottom of page 6, there it sets out the</p> <p>14 particulars of your investigation. Firstly am I correct</p> <p>15 that this refers to the investigation conducted by the duty</p> <p>16 officer who completes the form, because it states the time</p> <p>17 and date on which the officer arrived at the scene, as well</p> <p>18 as his or her name, and if an officer did not visit the</p> <p>19 scene a reason for that must be given. So am I correct</p> <p>20 that this portion of the form is where the person</p> <p>21 completing it details what they did in order to complete</p> <p>22 the form?</p> <p>23 MAJOR GOVENDER: That is correct, yes.</p> <p>24 MS LE ROUX: Right, it states here that</p> <p>25 the scene was not visited due to the volatile situation.</p> |

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| <p style="text-align: right;">Page 35060</p> <p>1 What volatile situation were you referring to?</p> <p>2 MAJOR GOVENDER: Alright, if you go back</p> <p>3 to that incident you would know that the incident is</p> <p>4 actually relating to the koppie and it was dark, it</p> <p>5 happened – okay, it happened earlier on but the thing is</p> <p>6 that place had to be cordoned off, the necessary evidence</p> <p>7 had to be gathered and firstly it is to secure and to</p> <p>8 prevent lives and things of that sort. So I took it upon</p> <p>9 myself to ensure that I do not become a target to go to</p> <p>10 that particular area. That is why I said it is a volatile</p> <p>11 situation.</p> <p>12 MS LE ROUX: And I'm correct that you</p> <p>13 weren't on the scene of the shootings on the 16th? You</p> <p>14 weren't present at Marikana on that day, were you?</p> <p>15 MAJOR GOVENDER: Not at the shooting</p> <p>16 incidents, but I was at Marikana.</p> <p>17 MS LE ROUX: So who advised you that</p> <p>18 there was a volatile situation that meant you couldn't go</p> <p>19 to the scene of the shooting on the 16th?</p> <p>20 MAJOR GOVENDER: The operational</p> <p>21 commander, Brigadier Calitz.</p> <p>22 MS LE ROUX: And what did he advise you?</p> <p>23 MAJOR GOVENDER: That the scene is being</p> <p>24 preserved and that I should come to them at a later stage.</p> <p>25 MS LE ROUX: And when did he advise you</p> | <p style="text-align: right;">Page 35061</p> <p>1 of that?</p> <p>2 MAJOR GOVENDER: I got hold of them and I</p> <p>3 – okay, the incident was reported to me round about 4</p> <p>4 o'clock that afternoon, or after 4, and that's when I was</p> <p>5 anxious to go and find out what was going on at that</p> <p>6 particular point.</p> <p>7 MS LE ROUX: Who reported the incident to</p> <p>8 you?</p> <p>9 MAJOR GOVENDER: I was called by the JOC</p> <p>10 that was in operation who informed me that I should go and</p> <p>11 attend to the scene.</p> <p>12 MS LE ROUX: And do you recall who at the</p> <p>13 JOC contacted you?</p> <p>14 MAJOR GOVENDER: No, not in particular at</p> <p>15 this stage. Like I said, it is the duty of a duty officer</p> <p>16 also on receiving this information that must arrive at the</p> <p>17 scene and establish what has taken place.</p> <p>18 MS LE ROUX: Do you recall if it was a</p> <p>19 male or a female officer who called you from the JOC?</p> <p>20 MAJOR GOVENDER: Jeez, I think it was a</p> <p>21 female officer.</p> <p>22 MS LE ROUX: And do you recall that you</p> <p>23 were called at approximately 4 o'clock? Or you said after</p> <p>24 4.</p> <p>25 MAJOR GOVENDER: Ja, between 4 and after</p> |
| <p style="text-align: right;">Page 35062</p> <p>1 4 or so.</p> <p>2 MS LE ROUX: But would you put it between</p> <p>3 4 and 5? Could it have been later?</p> <p>4 MAJOR GOVENDER: Ja, I could say between</p> <p>5 4 and 5.</p> <p>6 MS LE ROUX: Okay, and what exactly was</p> <p>7 reported to you by the officer that contacted you?</p> <p>8 MAJOR GOVENDER: That there was a</p> <p>9 shooting incident and that a number of people had been</p> <p>10 shot.</p> <p>11 MS LE ROUX: Did she tell you who had</p> <p>12 done the shooting?</p> <p>13 MAJOR GOVENDER: Not really. It was not</p> <p>14 given to me, any details of any particular person that was</p> <p>15 involved in the shooting.</p> <p>16 MS LE ROUX: What information were you</p> <p>17 given in that phone call?</p> <p>18 MAJOR GOVENDER: I was just told that</p> <p>19 there was a police shooting there and that I must attend to</p> <p>20 the scene. As I've explained earlier on, any incident of</p> <p>21 this nature must be attended by the duty officer.</p> <p>22 MS LE ROUX: And how long after you</p> <p>23 received the call from the JOC did you speak to Brigadier</p> <p>24 Calitz where he told you not to come through that day?</p> <p>25 MAJOR GOVENDER: Probably later on. I</p> | <p style="text-align: right;">Page 35063</p> <p>1 would say round about maybe between, I said it was between</p> <p>2 4 and 5, round about half past 5 or so. I'm estimating</p> <p>3 between half past 5.</p> <p>4 MS LE ROUX: Right, and did Brigadier</p> <p>5 Calitz tell you any details about the shooting incident?</p> <p>6 MAJOR GOVENDER: I approached him the</p> <p>7 next day and I obtained all the information. You will see</p> <p>8 that the report was completed on the 17th.</p> <p>9 MS LE ROUX: Yes.</p> <p>10 MAJOR GOVENDER: And the information that</p> <p>11 he gave me on the 17th was information that I furnished on</p> <p>12 this particular shooting report.</p> <p>13 MS LE ROUX: Right, so when you spoke to</p> <p>14 him at approximately 5:30 on the 16th when he said to you</p> <p>15 that you shouldn't come through then, did he give you any</p> <p>16 details at that stage about what had happened?</p> <p>17 MAJOR GOVENDER: No, I didn't get into</p> <p>18 any further –</p> <p>19 CHAIRPERSON: Sorry, before you continue</p> <p>20 with your answer, Mr Semenya, you turned your light on.</p> <p>21 MR SEMENYA SC: Chair, I see for the</p> <p>22 second time my learned colleague says Brigadier Calitz said</p> <p>23 you mustn't go there. What the report says is that the</p> <p>24 place is volatile and it's cordoned off. I don't know</p> <p>25 where the assertion comes from that he precluded the duty</p> |

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1 officer from going there.

2 MS LE ROUX: Chair, Major Govender

3 testified a moment ago that Brigadier Calitz said to him

4 that he need not come through at that point and could come

5 through at a later stage because the scene was being

6 processed and – Major Govender, it was Brigadier Calitz

7 that advised you not to come through at that point,

8 correct?

9 MAJOR GOVENDER: They said it was a

10 volatile situation there and the scene has been cordoned

11 off.

12 MS LE ROUX: So Brigadier Calitz told you

13 it was volatile and not to come through then?

14 MAJOR GOVENDER: Exactly. That was the

15 message that I got.

16 CHAIRPERSON: Is that correct? Did he

17 say you mustn't come or did he say you don't have to come?

18 MAJOR GOVENDER: No, no, no, he didn't

19 say I must not come there. He said I must come at a later

20 stage.

21 CHAIRPERSON: Come at a later stage.

22 MAJOR GOVENDER: Ja.

23 CHAIRPERSON: And the reason he gave was

24 the one you've mentioned; it was cordoned off and was

25 volatile. Is that –

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1 MS LE ROUX: Right, so on the 17th you

2 went to the scene.

3 MAJOR GOVENDER: That is correct.

4 MS LE ROUX: And what time did you get to

5 the scene?

6 MAJOR GOVENDER: I think it was just

7 after 7, probably about between 7 and 8.

8 MS LE ROUX: In the morning?

9 MAJOR GOVENDER: In the morning, that is

10 correct.

11 MS LE ROUX: And who did you talk to at

12 the scene?

13 MAJOR GOVENDER: I met a few officers

14 there. I don't know the full details of those people, and

15 I also met Brigadier Calitz and I received the necessary

16 information from him.

17 MS LE ROUX: The information that is set

18 out in the report you said came from Brigadier Calitz

19 alone, correct?

20 MAJOR GOVENDER: He was the operational

21 commander and he was present and I thought that would be

22 the most reliable information that I would receive to have

23 completed the necessary documentation.

24 MS LE ROUX: Right, so the other officers

25 that you just testified you met at the scene on the morning

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1 MAJOR GOVENDER: And that they need to

2 gather the necessary information before we move in there.

3 CHAIRPERSON: Yes, thank you.

4 MS LE ROUX: So Major Govender, on the

5 16th you had the call from the JOC between 4 and 5, you had

6 the call with Brigadier Calitz at approximate 5:30. Did

7 you have any further contact with any SAPS members or

8 anyone else who was at the scene of the shooting incident

9 on the 16th?

10 MAJOR GOVENDER: Not. I did, like I said

11 I just stayed away from there and I waited till I be

12 contacted again and to get the information to complete my

13 report.

14 MS LE ROUX: Right, so then turning then

15 to the 17th of August 2012, the form indicates at the top of

16 page 7 that – it is cut off but it seems to be that that's

17 when you visited, it says "Date and time of completion of

18 this report" and it says 10AM on the 17th of August.

19 MAJOR GOVENDER: That is correct.

20 MS LE ROUX: Right, so turning to your

21 investigation that you did on the 17th of August, what did

22 that entail?

23 MAJOR GOVENDER: Look, I went to the

24 scene earlier than that, but this report was only compiled

25 at that particular time, at 10 o'clock.

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1 of the 17th, they didn't provide you with any detail about

2 what had happened the day before?

3 MAJOR GOVENDER: What I can tell you is

4 that there were a number of members involved. There was

5 nobody in particular that was, could pinpoint which of the

6 officers had fired at those targets, or the victims. So it

7 led, it would mean to a situation making it difficult for

8 me to acknowledge who was involved in this incident.

9 MS LE ROUX: Approximately how many other

10 officers, other than Brigadier Calitz did you speak to that

11 morning? If you had to estimate how many you spoke to?

12 MAJOR GOVENDER: Probably between four

13 and five I think.

14 MS LE ROUX: Four or five, and they'd

15 been present the day before?

16 MAJOR GOVENDER: I don't know. I was not

17 at the scene there, but to me they just indicated this is

18 what happened and that is sufficient enough for me to say

19 that they are witnesses in this matter.

20 MS LE ROUX: And what did they indicate

21 to you had happened?

22 MAJOR GOVENDER: Like I've mentioned in,

23 if you'd look at the one paragraph where I gave a brief

24 description of what took place there on that particular

25 day.

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| <p style="text-align: right;">Page 35068</p> <p>1 MS LE ROUX: We'll get to that shortly, 2 but so that description came from those four or five 3 officers, as well as Brigadier Calitz? 4 MAJOR GOVENDER: Like I said earlier on 5 that the most reliable person to have taken the information 6 was from Brigadier Calitz. He was the operational 7 commander and he was on ground, at the ground on that 8 particular time. 9 MS LE ROUX: How long did you spend with 10 Brigadier Calitz at the koppie where he was providing you 11 with the information you used to complete the report? 12 MAJOR GOVENDER: Look, I don't recall 13 time, the duration of it, but probably about an hour 14 because I walked the entire scenes to go and have a look 15 exactly what was taking, what had taken place there, and I 16 found all role-players busy at the scene there, especially 17 with the investigation that was taking place. 18 MS LE ROUX: And when you say you walked 19 the scenes, what specifically did you look at? What 20 specific aspects of the scene did you look at? 21 MAJOR GOVENDER: I found the members of 22 LCRC busy with photographic equipment, picking up weapons, 23 looking at empty shells, which I didn't really make real 24 note of what was going on there. 25 MS LE ROUX: Major Govender, you're</p> | <p style="text-align: right;">Page 35069</p> <p>1 familiar, I assume, as you sit here today that there was 2 scene 1 and scene 2. So koppies 1, 2 and 3 were all 3 involved and you're familiar as well with the reference to 4 the kraal, I assume. Are you familiar with that layout, 5 koppie 1, koppie 2, the kraal, koppie 3? 6 MAJOR GOVENDER: Ja, that is my policing 7 area and I know the area. 8 MS LE ROUX: Okay, when you said you 9 walked the scene, was that with Brigadier Calitz? 10 MAJOR GOVENDER: No, not with Brigadier 11 Calitz. Brigadier Calitz was busy with other issues there. 12 MS LE ROUX: So the approximately one- 13 hour period that you spent with Brigadier Calitz, where 14 were you physically with him? 15 MAJOR GOVENDER: At the very – I don't 16 know whether it would be scene 1, but the main scene. That 17 would be scene 1. 18 MS LE ROUX: So you were standing with 19 him in the location of scene 1 next to the kraal? 20 MAJOR GOVENDER: Getting the information. 21 MS LE ROUX: For approximately one hour 22 and then did you also walk over to koppie 3, which we now 23 know is scene 2? 24 MAJOR GOVENDER: Chairperson, I said an 25 hour at that scenes. So it does not necessarily mean that</p> |
| <p style="text-align: right;">Page 35070</p> <p>1 I spent an hour with Brigadier Calitz. 2 MS LE ROUX: Okay, so just so I'm clear, 3 you were at the koppies for approximately one hour. Within 4 that time is the time you spent with Brigadier Calitz, 5 which was only at the kraal? He didn't come with you to 6 what we know as scene 2? 7 MAJOR GOVENDER: No, no, no, he was not 8 at that particular – 9 MS LE ROUX: Okay, did you record in any 10 way what either the members or Brigadier Calitz told you at 11 the scene? Did you note any of your own observations, 12 whether you were keeping an audio recording or making 13 notes? How did you record what you observed and what you 14 were told? 15 MAJOR GOVENDER: What happened is that I 16 just noted it on – normally I carry a file and I just noted 17 it on a normal foolscap and I went and sat down and I put 18 this into the prospective according, or perspective 19 according to the document. 20 MS LE ROUX: And what happened to the 21 foolscap pages that you'd written on? 22 MAJOR GOVENDER: No, I do not have it. I 23 didn't, I don't have it presently, because it's the same 24 information that I transferred onto this document and I 25 didn't see it necessary that I should keep that script.</p> | <p style="text-align: right;">Page 35071</p> <p>1 MS LE ROUX: If we can now start at the 2 top of page 1 in WW7, so this just records yourself as the 3 person who should be contacted for any inquiries, and then 4 if we proceed through the first page it records a shooting 5 incident on the 16th at 3:45 at Middelkraal open veld near 6 Nkaneng Village, Wonderkop. Is there any reason why you 7 didn't note there the presence of the koppies and the 8 kraal, the fact that there were two shooting scenes? 9 MAJOR GOVENDER: Look, this became only 10 known to you as scene 1 and scene 2 and things of that 11 sort. I took it as an entire area there, that's why I said 12 near Nkaneng Village, Wonderkop. 13 MS LE ROUX: And then you record, 14 "Unknown members of SAPS being involved" and in response to 15 the questions asked in 1.1 and 1.2 you note that the 16 identity of the members is still to be determined and 17 therefore no statements have yet been made by them, and 18 then in response to 1.2, which is about whether anybody 19 making statements have been advised of their right to legal 20 representation you say, "Once identified will be informed." 21 Did you plan to take any steps to determine the identity of 22 the members that had been involved in the shooting incident 23 so that you could update the shooting incident report? 24 MAJOR GOVENDER: No, I didn't go into any 25 further investigation because it is not part, in the line</p> |

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1 of my duties. Like I said, the investigation is solely in
 2 the hands of IPID and if they needed for me to complete
 3 further information then I would, and the reporting
 4 procedure is that when I said unknown members of the force,
 5 service, it is not known, it was not known at that
 6 particular stage. It was merely information for reporting
 7 to the higher authorities at SAPS.
 8 [12:47] MS LE ROUX: And you didn't have any
 9 intention to update your shooting incident report and file
 10 one that had more detail in it once you'd established that?
 11 MAJOR GOVENDER: No, I didn't have any
 12 further intention, like I'm saying, IPID is the one that's
 13 involved in the investigation of this whole matter.
 14 MS LE ROUX: Right. If we turn then to
 15 page 2, here you are asked to provide a short description
 16 of the incident without unnecessary repetition of other
 17 facts and there are a few aspects of this that I would like
 18 to understand. Firstly, this description is your summary
 19 of what you were told by the four to five members you met
 20 with, as well as Brigadier Calitz, correct?
 21 MAJOR GOVENDER: Yes, that is correct.
 22 MS LE ROUX: So you record there that "On
 23 Thursday, the 16th August from approximately 7 o'clock there
 24 was a mass gathering of striking Lonmin employees at a
 25 koppie at Middelkraal near Nkaneng Village, Wonderkop. The

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1 MAJOR GOVENDER: I didn't go into details
 2 on that one as well.
 3 MS LE ROUX: But it's Brigadier Calitz
 4 who told you firearms, plural?
 5 MAJOR GOVENDER: Exactly.
 6 MS LE ROUX: The next sentence says, "The
 7 group was identified to be violent." Identified by
 8 Brigadier Calitz to you?
 9 MAJOR GOVENDER: Ja, like I said, it's a
 10 compilation from the information that I got from Brigadier
 11 Calitz, the operational commander.
 12 MS LE ROUX: It then goes on to say, "In
 13 the past few days the group have murdered, assaulted and
 14 brutally attacked several other persons." I'm correct,
 15 though, that at the time on the morning of the 17th you
 16 hadn't, you were not aware of any evidence that showed that
 17 the group at the koppie included the same individuals who
 18 had, in the preceding days, committed any acts of violence.
 19 You didn't know that there was definitely an identity of
 20 individuals there, did you?
 21 MAJOR GOVENDER: This was the
 22 information, like I'm saying to you that is here, was
 23 received from the operational commander.
 24 MS LE ROUX: So Brigadier Calitz told you
 25 it was the same people?

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1 group was armed with dangerous weapons and firearms." If
 2 we can pause there, do you recall who was the source of
 3 that piece of information that they had dangerous, that the
 4 group had dangerous weapons and firearms? Was that only
 5 Brigadier Calitz or was it the other members as well?
 6 MAJOR GOVENDER: That information, like I
 7 said, was received from Brigadier Calitz, the operational
 8 commander, and that was also informed to me and I did
 9 endorse it in that.
 10 MS LE ROUX: And what detail were you
 11 told about what dangerous weapons the group were alleged to
 12 have?
 13 MAJOR GOVENDER: No, if you look at that
 14 section it says a short description, so I didn't get into
 15 details as to what type of weapons that were utilised
 16 there.
 17 MS LE ROUX: Right, but when you were
 18 talking to Brigadier Calitz that morning did he tell you
 19 any more detail about what weapons they had?
 20 MAJOR GOVENDER: I don't recall exactly.
 21 MS LE ROUX: And with respect to
 22 firearms, did you get any detail about how many firearms,
 23 what type of firearms?
 24 MAJOR GOVENDER: No, I didn't –
 25 MS LE ROUX: Anything like that.

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1 MAJOR GOVENDER: That was a suspicion
 2 that we had.
 3 MS LE ROUX: You then record, "They were
 4 given a warning to hand over all weapons and disperse from
 5 the area." That warning was to have been provided by whom,
 6 who gave that warning? What did Brigadier Calitz tell you?
 7 MAJOR GOVENDER: Well, he just said that
 8 a warning was given, so my assumption there would be him.
 9 MS LE ROUX: Did he give you any details
 10 about when they were warned?
 11 MAJOR GOVENDER: No, no, it was brief –
 12 MS LE ROUX: No details.
 13 MAJOR GOVENDER: - and according to the
 14 point of what I've endorsed onto this document.
 15 MS LE ROUX: Right. It then goes on to
 16 say, "At 3:45 the police officials took action to disperse
 17 the mob." What action were you told was taken?
 18 MAJOR GOVENDER: Look, I didn't get into
 19 details of this as well, but I was told that firstly there
 20 was a water canon that was available at the scene and maybe
 21 baton rounds were also used. Like I'm saying, I cannot get
 22 into details what action was taken, I was not there.
 23 MS LE ROUX: But Major Govender, I'm
 24 interested in the detail of what Brigadier Calitz and the
 25 other members told you. You've mentioned water cannon, do

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| <p style="text-align: right;">Page 35076</p> <p>1 you remember them telling you any other –</p> <p>2 MAJOR GOVENDER: No.</p> <p>3 MS LE ROUX: - aspects of the plan?</p> <p>4 MAJOR GOVENDER: No, Chairman, I don't.</p> <p>5 MS LE ROUX: Were you aware of barbed</p> <p>6 wire playing any part in the plan?</p> <p>7 MAJOR GOVENDER: That is when I went to</p> <p>8 the scene the next day, I did see there was a barbed wire</p> <p>9 display there.</p> <p>10 MS LE ROUX: But when you were getting</p> <p>11 information from the members and Brigadier Calitz, no-one</p> <p>12 mentioned what the actual plan was to disperse?</p> <p>13 MAJOR GOVENDER: The plan was not</p> <p>14 discussed with me, Chair.</p> <p>15 MS LE ROUX: Okay. It then states, "The</p> <p>16 mob charged." Were you told where this alleged charge took</p> <p>17 place?</p> <p>18 MAJOR GOVENDER: No, the information that</p> <p>19 I received is basically what you see that's appearing on</p> <p>20 this report.</p> <p>21 MS LE ROUX: So you weren't told that it</p> <p>22 had happened near the kraal or in the open veld or at</p> <p>23 another koppie?</p> <p>24 MAJOR GOVENDER: No, I was –</p> <p>25 MS LE ROUX: No information was given to</p> | <p style="text-align: right;">Page 35077</p> <p>1 you?</p> <p>2 MAJOR GOVENDER: No information.</p> <p>3 MS LE ROUX: You were just told there was</p> <p>4 a charge.</p> <p>5 MAJOR GOVENDER: That's it.</p> <p>6 MS LE ROUX: And then I assume your</p> <p>7 answer will be the same that for the next sentence you were</p> <p>8 told by Brigadier Calitz that the police officials acted in</p> <p>9 self-defence.</p> <p>10 MAJOR GOVENDER: That was also something</p> <p>11 that I also assumed on my, or I assumed myself because the</p> <p>12 issue is that if you are attacked, obviously in possession</p> <p>13 of dangerous weapons, then one's life is presumably going</p> <p>14 to be in immediate danger. So the assumption comes from</p> <p>15 myself as well, to say that they acted in self-defence, and</p> <p>16 that of Brigadier Calitz.</p> <p>17 MS LE ROUX: So Brigadier Calitz did tell</p> <p>18 you it was self-defence?</p> <p>19 MAJOR GOVENDER: He said that the mob</p> <p>20 charged and that was the reason for that action to be</p> <p>21 taken.</p> <p>22 MS LE ROUX: Did Brigadier Calitz use the</p> <p>23 words "self-defence?"</p> <p>24 MAJOR GOVENDER: No, he didn't –</p> <p>25 MS LE ROUX: Or defend themselves or</p> |
| <p style="text-align: right;">Page 35078</p> <p>1 anything like that?</p> <p>2 MAJOR GOVENDER: He said to defend</p> <p>3 themselves was the reason why they had to use the</p> <p>4 ammunition.</p> <p>5 MS LE ROUX: It then states, "In the</p> <p>6 process several persons were killed and injured." You</p> <p>7 didn't yet know the details, did you?</p> <p>8 MAJOR GOVENDER: No, I didn't get into</p> <p>9 details as to how many were shot, how many were injured and</p> <p>10 how many killed.</p> <p>11 MS LE ROUX: Moving on then it says, "The</p> <p>12 date and time of the incident was at 3:45 in the afternoon.</p> <p>13 Did you, did anyone give you a time period for when the</p> <p>14 shooting incident concluded?</p> <p>15 MAJOR GOVENDER: Not really.</p> <p>16 MS LE ROUX: Okay. Turning to the bottom</p> <p>17 of page 2, there, in addition to what you've set out above</p> <p>18 in response to 2.1.1 you also state there that, "The</p> <p>19 members responded in self-defence with rubber bullets, stun</p> <p>20 grenades and sharp ammunition." That detail, rubber</p> <p>21 bullets, stun grenades and sharp ammunition, where did you</p> <p>22 get that from?</p> <p>23 MAJOR GOVENDER: This thing was compiled</p> <p>24 a day later and if you look at the scene itself of the</p> <p>25 incident, you will see there were several victims that had</p> | <p style="text-align: right;">Page 35079</p> <p>1 succumbed as a result of the action there.</p> <p>2 MS LE ROUX: If we turn then to page 3,</p> <p>3 obviously at the top of that page you filled out that you</p> <p>4 still needed to determine the details of the members that</p> <p>5 were involved and that you still needed to determine later</p> <p>6 whether any member used their own initiative or acted on</p> <p>7 command. 2.2.4 you say that an oral warning was given</p> <p>8 beforehand. Did – that's again based on what Brigadier</p> <p>9 Calitz told you, that there had been a warning to disperse?</p> <p>10 MAJOR GOVENDER: That is correct,</p> <p>11 Chairperson.</p> <p>12 MS LE ROUX: So you weren't told there</p> <p>13 was any warning before shooting, a warning shot or a</p> <p>14 warning that sharp point ammunition would be used?</p> <p>15 MAJOR GOVENDER: I don't know what was</p> <p>16 the form of warning but I was informed that there was a</p> <p>17 warning given.</p> <p>18 MS LE ROUX: But am I correct that when</p> <p>19 you typed in "yes" here to the question "Did the member</p> <p>20 give an oral warning," that was the same warning that was</p> <p>21 referred to and set out on the previous page about, to</p> <p>22 disperse?</p> <p>23 MAJOR GOVENDER: That is correct.</p> <p>24 CHAIRPERSON: Talking about warnings,</p> <p>25 you've got a warning that you've got five minutes left.</p> |

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| <p style="text-align: right;">Page 35080</p> <p>1 MS LE ROUX: Yes, Chair. 2.2.5 you noted 2 that members fired warning shots but you didn't know how 3 many. Again that comes from Brigadier Calitz. 4 MAJOR GOVENDER: Yes. 5 MS LE ROUX: He told you specifically 6 that there were warning shots? 7 MAJOR GOVENDER: Yes, correct, what I'm 8 saying there, Chairperson, is that this entire report is 9 based on the version given to me or the information given 10 to me by Brigadier Calitz. 11 MS LE ROUX: Now at the bottom of page 3 12 the question is, "Did he or she, the member, attempt to hit 13 the target with minimum force, for example did he or she 14 fired at the victim's legs or at the vehicle's tyres or 15 whatever the case may be?" And you answered, yes. What 16 were you told about the use of minimum force against the 17 strikers? 18 MAJOR GOVENDER: When you refer to 19 minimum force, the first thing that I did make mention of 20 there was that they had to utilise rubber bullets and the 21 water cannon. 22 MS LE ROUX: But the question is, did he 23 or she attempt to hit the target with minimum force such as 24 firing at legs or tyres or whatever the case may be? So it 25 relates to the sharp point ammunition that was used. Did</p> | <p style="text-align: right;">Page 35081</p> <p>1 you get any information from Brigadier Calitz or the 2 members you – 3 CHAIRPERSON: No, it doesn't, it doesn't 4 specify that. It obviously relates to all the ammunition 5 that was used, soft and hard, blunt and sharp. 6 MS LE ROUX: So Major Govender, when you 7 said yes here, you were referring to the use of the less 8 than lethal, the stun grenades, the water canon? 9 MAJOR GOVENDER: No, I was actually 10 making mention of the ammunition that was utilised there. 11 It doesn't – 12 MS LE ROUX: The live ammunition? 13 MAJOR GOVENDER: It does not specifically 14 – one must understand that this report is based on what 15 information was given to me, whether it was the use of 16 lethal ammunition or not. 17 MS LE ROUX: Yes, but my question is, the 18 information you got, what did it say about when they were 19 using live ammunition that they were doing so with minimum 20 force, so shooting at legs or not at vital organs of a 21 person? Were you told anything about how the shooting was 22 done? 23 MAJOR GOVENDER: No, I was not given any 24 further details, because you will see that paragraph 25 relates to that the members had to protect themselves.</p> |
| <p style="text-align: right;">Page 35082</p> <p>1 MS LE ROUX: If we turn then to page 4, 2 again 2.2.8.1 you state that, "The members' actions were 3 justified because they acted in the interest to protect 4 themselves. If they didn't act in s their lives would have 5 been in immediate danger." Again the basis of that is what 6 you were told by Brigadier Calitz and the members at the 7 scene the next day, the four or five members. 8 MAJOR GOVENDER: It is correct and then 9 that is also based on my assumption as well. 10 MS LE ROUX: The next question was, "Was 11 the member trained to handle a firearm" and you note that 12 "All members received basic training." At that stage you 13 obviously weren't aware of whether any members who had been 14 involved in the shooting incident, what the state of their 15 firearms training was, in particular, you only note basic 16 training. 17 MAJOR GOVENDER: Yes. 18 MS LE ROUX: Yes, you were not aware? 19 MAJOR GOVENDER: I was not aware of what 20 training those members have received but I know at basic 21 training you are trained to handle the firearms that are 22 used by the South African Police Services. 23 MS LE ROUX: Second last on the page you 24 set out the types of firearms involved. Did you get that 25 detail from Brigadier Calitz or did you make some</p> | <p style="text-align: right;">Page 35083</p> <p>1 assumptions here? 2 MAJOR GOVENDER: I got this from 3 Brigadier Calitz as well, that there were people or there 4 were members that were equipped with these firearms. 5 MS LE ROUX: If we turn then to page 5, 6 the second last question there, the question was, "Did the 7 member shoot at the original target or victim? If not, 8 what was the involvement of the target or victim at the 9 incident?" This question seems to want to understand 10 whether people were shot as bystanders or in crossfire or 11 something like that and you filled in there, "At the 12 original target." Again that comes from what you were told 13 that morning? 14 MAJOR GOVENDER: That is correct. 15 MS LE ROUX: If we turn to the top of 16 page 6, you record there "34 African males deceased and 32 17 African males injured." Where did you get that detail 18 from? 19 MAJOR GOVENDER: Also from Brigadier 20 Calitz as well. 21 MS LE ROUX: And if we turn to the middle 22 of that page, 2.4.7 where the question is, "Were the 23 suspects in possession of any firearms?" You record, 24 "Firearms and dangerous weapons." Were you told that every 25 single victim was in possession of firearms or dangerous</p> |

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1 weapons?

2 MAJOR GOVENDER: Look, it's not every

3 single person who would be in possession of a firearm, say,

4 so the information that I got is what I put in there and it

5 said clearly, firearms and dangerous weapons, Chairperson.

6 MS LE ROUX: Alright. If we go to page 7

7 then, 3.1 asks whether the suspension of the members

8 involved in the incident is recommended and you state, "Not

9 at this stage." At what stage would you have recommended

10 that a member be suspended?

11 MAJOR GOVENDER: If you go back and refer

12 to this document you'll see there's justification and an

13 assumption that has been made by myself in compilation of

14 this report and then if there's investigation that can

15 sustain, that can reflect, can say that this is the people

16 that are involved, then it's up to them to make the

17 decision.

18 MS LE ROUX: Alright. 3.4 you record

19 that, "The report was compiled from witnesses." Is there

20 any reason why you didn't note that it was predominantly

21 Brigadier Calitz?

22 MAJOR GOVENDER: Ja, I didn't need to put

23 his details in there because like I said, this information

24 was based, from the operational commander and the

25 Commission is aware that Brigadier Calitz was the

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1 office.

2 MS LE ROUX: Chair, the last question

3 would be just to round up because we did give the Major the

4 two passages in Gary White's statement that record how he

5 deals with Captain, then Captain Govender's report. For

6 the record, in JJJ178 Mr White's final statement, it's page

7 31 paragraph 4.2.12A and in WW2, his provisional statement,

8 it's page 23 paragraph 4.3.2 and 4.3.3 as well as footnote

9 23 and 24 that relate there. To summarise, Chair, Mr White

10 points to this shooting incident report as an example of

11 how, in his opinion, the SAPS adopted a self-defence

12 justification for the shooting incident when they didn't

13 yet have an investigation and a sufficient level of detail

14 available to them, to summarise what he says –

15 CHAIRPERSON: That was the criticism.

16 You've read the criticism, your attention was drawn to it,

17 is that right?

18 MAJOR GOVENDER: Yes, Chair, it was

19 brought to my attention.

20 CHAIRPERSON: Now the last point to be

21 dealt with now is, do you wish to answer that criticism and

22 if so, what do you want to say in relation to it?

23 MAJOR GOVENDER: No, I don't wish to

24 answer. That is his opinion, thank you.

25 MS LE ROUX: Thank you, Chair. Thank

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1 operational commander now. I had to – further information,

2 other names of those members I don't know.

3 MS LE ROUX: Right, but you didn't think

4 it was necessary to record that you'd spoken to the

5 operational commander?

6 MAJOR GOVENDER: I don't think it was

7 necessary here because if I said witnesses then it had to

8 be investigated from there.

9 MS LE ROUX: 3.7 asks whether –

10 CHAIRPERSON: Ms Le Roux, you've got –

11 your time is up.

12 MS LE ROUX: Yes, Chair. I've got one

13 last question.

14 CHAIRPERSON: Alright.

15 MS LE ROUX: 3.7, it asks there whether

16 there were any independent witnesses present and you state

17 "Not at this stage." Of course you're aware that members

18 of the media had been there. Were you told that there were

19 members of the media, people who weren't involved either on

20 the police side or the strikers' side that you could have

21 spoken to?

22 MAJOR GOVENDER: No, I didn't, I didn't

23 see it necessary to go and approach members of the media.

24 That is the function of the investigation itself. This is

25 basically my report to inform my provincial and national

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1 you, Major.

2 CHAIRPERSON: We will now take the

3 adjournment. We'll reassemble at – well, it's now nearly

4 five past, we'll reassemble at 10 to two.

5 [COMMISSION ADJOURNS COMMISSION RESUMES]

6 [13:56] CHAIRPERSON: The Commission resumes. I

7 want to announce before we carry on with the evidence that

8 owing to unforeseen circumstances over which we have no

9 control we will not be sitting tomorrow and so the end of

10 the evidence of the present witness we'll adjourn until

11 Monday morning at 9:30. You're still under oath, Major

12 Govender.

13 VEERASAMY VELAYUDAF GOVENDER: [s.u.o.]

14 CHAIRPERSON: Mr Van As, I believe you're

15 cross-examining.

16 MR VAN AS: Thank you, Mr Chairperson.

17 Good afternoon –

18 CHAIRPERSON: Before you do so can I just

19 ask the witness a question? The account that you give of

20 what happened, what you describe as the shooting incident

21 is contained, as I read it, in paragraphs 2.1.1 and 2.1.4

22 of exhibit WW7. Is that correct? Page 2 of the exhibit.

23 Is that right?

24 MAJOR GOVENDER: Chairperson?

25 CHAIRPERSON: The answer is yes?

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| <p style="text-align: right;">Page 35088</p> <p>1 MAJOR GOVENDER: Yes, Chairperson.</p> <p>2 CHAIRPERSON: And you describe the</p> <p>3 location where it happened as being in the open veld at</p> <p>4 Middelkraal.</p> <p>5 MAJOR GOVENDER: At Wonderkop.</p> <p>6 CHAIRPERSON: Yes, yes, sorry, the open</p> <p>7 veld at Middelkraal near Nkaneng Village, Wonderkop,</p> <p>8 Marikana.</p> <p>9 MAJOR GOVENDER: Ja, the various –</p> <p>10 CHAIRPERSON: That's 2.1.3.</p> <p>11 MAJOR GOVENDER: It is so, Chairperson.</p> <p>12 CHAIRPERSON: Thank you. So what I</p> <p>13 notice from the description of the incident in 2.1.1 and</p> <p>14 2.1.4 is you appear only to be describing what happened at</p> <p>15 scene 1. What happened at scene 1 according to the police</p> <p>16 evidence we've got is – well, there may be disputes about</p> <p>17 some of the things, which I don't have to worry you with,</p> <p>18 but what you say in the last sentence of 2.1.1 is "The mob</p> <p>19 charged the police officials with firearms and dangerous</p> <p>20 weapons" – I beg your pardon, penultimate paragraph, 2.1.1,</p> <p>21 "The mob charged the police officials with firearms and</p> <p>22 dangerous weapons. The police officials acted in self-</p> <p>23 defence. In the process several persons were killed and</p> <p>24 injured." It's actually the, to be pedantic, it's the</p> <p>25 anti-penultimate paragraph, penultimate paragraph, anti-</p> | <p style="text-align: right;">Page 35089</p> <p>1 penultimate sentence, penultimate sentence and the last</p> <p>2 sentence, 2.1.1.</p> <p>3 That's an account according to the police version</p> <p>4 of what happened at scene 1 where the police saw these</p> <p>5 people approaching, they understood them to be charging at</p> <p>6 them to attack them and they fired in circumstances which</p> <p>7 according to the evidence they believed were justified by</p> <p>8 rules of self-defence.</p> <p>9 But that's not what happened at scene 2. So</p> <p>10 would you agree with me that the description of the</p> <p>11 incident that you give in the report is a description of</p> <p>12 what happened at scene 1?</p> <p>13 MAJOR GOVENDER: Yes, I'll agree with</p> <p>14 you, Chairperson.</p> <p>15 CHAIRPERSON: Yes.</p> <p>16 MAJOR GOVENDER: Because that is the</p> <p>17 actual report that I did receive.</p> <p>18 CHAIRPERSON: Is that what Brigadier</p> <p>19 Calitz told you?</p> <p>20 MAJOR GOVENDER: That is so.</p> <p>21 CHAIRPERSON: He didn't tell you there</p> <p>22 were two scenes, two incidents?</p> <p>23 MAJOR GOVENDER: No, I – but I went to</p> <p>24 the other scene as well –</p> <p>25 CHAIRPERSON: No, no, I understand that,</p> |
| <p style="text-align: right;">Page 35090</p> <p>1 but he didn't tell you that?</p> <p>2 MAJOR GOVENDER: This is the information</p> <p>3 he gave to me, Chairperson.</p> <p>4 CHAIRPERSON: Thank you. Mr Van As.</p> <p>5 CROSS-EXAMINATION BY MR VAN AS: Thank</p> <p>6 you, Mr Chairperson. Good afternoon, Major Govender.</p> <p>7 MAJOR GOVENDER: Good afternoon.</p> <p>8 MR VAN AS: I'd firstly please like to</p> <p>9 take you to your emails which form part of the bundle of</p> <p>10 documents which were submitted this morning by the evidence</p> <p>11 leaders, and if we could perhaps go to the email that</p> <p>12 appears at page 8 of that bundle, the email dated 11 August</p> <p>13 2012 and the exhibit number is exhibit LLLL3. I think it's</p> <p>14 upside down on the screen. There we go. Can you just go</p> <p>15 to the top of the email, please? Firstly can you confirm,</p> <p>16 Major Govender, is this an email which you sent at 12</p> <p>17 minutes past 2 on Saturday the 11th of August 2012?</p> <p>18 MAJOR GOVENDER: I confirm, Chairperson.</p> <p>19 MR VAN AS: If you look at paragraph 1 of</p> <p>20 this email it says the following, "Emanating from the march</p> <p>21 that took place on Friday 2012, August the 10th, the</p> <p>22 situation has thus become violent in that employees of</p> <p>23 Lonmin who were from work at approximately 20:00 on Friday</p> <p>24 evening were attacked and assaulted by a group of employees</p> <p>25 suspected to be AMCU members." Do you see that?</p> | <p style="text-align: right;">Page 35091</p> <p>1 MAJOR GOVENDER: I see it.</p> <p>2 MR VAN AS: Where did you receive that</p> <p>3 information?</p> <p>4 MAJOR GOVENDER: This is information that</p> <p>5 I got from my CSC, my community service centre.</p> <p>6 MR VAN AS: And had you left Rowland</p> <p>7 Crossing by 8 o'clock on the Friday evening?</p> <p>8 MAJOR GOVENDER: Exact time I don't know.</p> <p>9 Probably I would have left by then.</p> <p>10 MR VAN AS: Because you said you arrived</p> <p>11 at about half past 6, if I understood your evidence</p> <p>12 correctly.</p> <p>13 MAJOR GOVENDER: Not half past 6, because</p> <p>14 if you will look I've got an AVL report that gives you the</p> <p>15 exact time of my arrival.</p> <p>16 MR VAN AS: You said you arrived at the</p> <p>17 scene at 20 past 6, you received a telephone call from Mr</p> <p>18 Blaauw and you then travelled to Lonmin. "I immediately</p> <p>19 proceeded to Rowland Shaft," it's in your statement.</p> <p>20 MAJOR GOVENDER: Chairperson, sorry, as I</p> <p>21 said in the statement is that I received a call at 20 past</p> <p>22 6 from Mr Henry Blaauw.</p> <p>23 MR VAN AS: Right, be that as it may; you</p> <p>24 didn't witness this incident of assault, these incidents of</p> <p>25 assault?</p> |

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| <p style="text-align: right;">Page 35092</p> <p>1 MAJOR GOVENDER: No, I didn't witness any 2 of those.</p> <p>3 MR VAN AS: But they were reported to 4 you?</p> <p>5 MAJOR GOVENDER: There were reports given 6 to me, yes, and then the email was for information to my 7 superiors.</p> <p>8 MR VAN AS: Alright. There's no reason 9 for you to doubt the content of this email, or the 10 information that you received?</p> <p>11 MAJOR GOVENDER: I cannot doubt that 12 because that is information that I put onto this email.</p> <p>13 MR VAN AS: Okay. You then go on in the 14 email to mention the incident that took place on Saturday 15 morning the 11th of August, the attack on the NUM office. 16 Was that also reported to you?</p> <p>17 MAJOR GOVENDER: Yes, the information was 18 given to me about that.</p> <p>19 MR VAN AS: Right, and you also in the 20 same paragraph make mention of the fact that some four 21 people have now been shot and hospitalised over the course 22 of the weekend.</p> <p>23 MAJOR GOVENDER: That is correct.</p> <p>24 MR VAN AS: Then I'd like to please take 25 you to your second statement which appears at page 6 of the</p> | <p style="text-align: right;">Page 35093</p> <p>1 same bundle of documents. It's a statement dated the 3rd of 2 September 2012 and the exhibit number is LLLL2, and in this 3 statement you make mention of the fact that at half past 10 4 on the Saturday morning you and Warrant Officer Kruger went 5 to the koppie.</p> <p>6 MAJOR GOVENDER: That is correct, Chair.</p> <p>7 MR VAN AS: And if I can read paragraph 3 8 of the statement, you say the following, "As we drove 9 closer to the mountain opposite Big Horn substation we 10 noticed people gathered on the mountain. All of them were 11 casually dressed. We proceeded along the mountain in an 12 easterly direction and found at the foot of the mountain 13 people were in a queue following one another. In front of 14 the queue I noticed that a person dressed in traditional 15 dress wearing animal skins, performing some sort of ritual. 16 The people, all males, were also wearing blankets. Warrant 17 Officer Kruger and I proceeded past these people along the 18 informal settlement towards Wonderkop Hostel where I showed 19 Warrant Officer Kruger the area that was used by these 20 employees to gather the previous day." And this is the 21 important bit, Major Govender; "I'm not fully acquainted 22 with the types of rituals that are performed. However, I 23 have knowledge that there are certain ethnic groups 24 performing certain rituals to either commit crimes or 25 engage in faction fighting, waging a war between</p> |
| <p style="text-align: right;">Page 35094</p> <p>1 individuals of a tribe or clan." Do you stand by that 2 statement?</p> <p>3 MAJOR GOVENDER: I stand by that, Chair.</p> <p>4 MR VAN AS: And when did you visit the 5 koppie on the Saturday?</p> <p>6 MAJOR GOVENDER: Like I mention in the 7 statement, at about half past 10.</p> <p>8 MR VAN AS: So it was before you sent the 9 email I've referred you to?</p> <p>10 MAJOR GOVENDER: That is correct.</p> <p>11 MR VAN AS: Now what I want to put to 12 you, Major Govender, that the view that you formed in the 13 statement which is recorded here is that these people on 14 the koppie were preparing for some sort of fight. Is that 15 correct? Is that fair?</p> <p>16 MAJOR GOVENDER: That is my view.</p> <p>17 MR VAN AS: Why didn't you mention it in 18 your email?</p> <p>19 MAJOR GOVENDER: Well, I didn't see it 20 necessary to have mentioned it at that particular time, and 21 from what I have stated there is that the statement was 22 subsequently requested from me at a later stage.</p> <p>23 MR VAN AS: With the greatest respect, 24 Major Govender, four people have been shot and 25 hospitalised. You've received reports of intimidation and</p> | <p style="text-align: right;">Page 35095</p> <p>1 assault of non-striking employees. There's been an attack 2 on the NUM office and you go to the koppie where you 3 observe a group of males performing rituals which you 4 subjectively believe are of the nature that one would 5 perform before going to war, and you choose not to put it 6 in an email?</p> <p>7 MAJOR GOVENDER: Yes, I chose not to.</p> <p>8 MR VAN AS: And again I'm going to afford 9 you an opportunity because with respect, I think it's 10 important. What was your reason for not including this in 11 the email?</p> <p>12 MAJOR GOVENDER: Look, at that particular 13 time you could not even say that they were going to be 14 engaged in that kind of – how can I say? - more often into 15 violent attacks. So I saw no reason to have stipulated 16 this in my email. The facts of those that had been injured 17 was reported to my superiors.</p> <p>18 MR VAN AS: You didn't foresee that these 19 people may be preparing for another attack on the NUM 20 office?</p> <p>21 MAJOR GOVENDER: No, I didn't.</p> <p>22 MR VAN AS: Or they may be preparing for 23 further acts of intimidation and assault of non-striking 24 employees?</p> <p>25 MAJOR GOVENDER: I also didn't foresee</p> |

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| <p style="text-align: right;">Page 35096</p> <p>1 that.</p> <p>2 MR VAN AS: And would it be fair for the</p> <p>3 Commission to accept that had you foreseen that you would</p> <p>4 have reported it to your superiors?</p> <p>5 MAJOR GOVENDER: I don't – like I'm</p> <p>6 saying to you that I don't foresee it being an important</p> <p>7 issue to have given this information. Remember I was also</p> <p>8 with a crime intelligence gathering officer, so he could</p> <p>9 have made mention of it if I –</p> <p>10 MR VAN AS: Let's go back to the Friday</p> <p>11 evening. On the same vein Mr Botes asked you to intervene</p> <p>12 because strikers were intimidating non-striking employees.</p> <p>13 MAJOR GOVENDER: That is correct.</p> <p>14 MR VAN AS: And you chose not to because</p> <p>15 you didn't think they posed a threat to non-striking</p> <p>16 employees?</p> <p>17 MAJOR GOVENDER: That is according to me</p> <p>18 they did not pose any threat.</p> <p>19 MR VAN AS: Individuals standing around</p> <p>20 on a Friday evening at half past 6 at the entrance to a</p> <p>21 shaft with knobkieries?</p> <p>22 MAJOR GOVENDER: Chairperson, we must</p> <p>23 just verify at the entrance to a shaft, it was a public</p> <p>24 road and it separates the shaft. So I cannot see how you</p> <p>25 can make mention of it as being an entrance to a shaft.</p> | <p style="text-align: right;">Page 35097</p> <p>1 MR VAN AS: People walking to and from</p> <p>2 work at Rowland Shaft would pass the point where these</p> <p>3 individuals were standing with their knobkieries, would</p> <p>4 they not?</p> <p>5 MAJOR GOVENDER: I observed, like I said</p> <p>6 15 persons there standing and they posed no threat.</p> <p>7 MR VAN AS: Please answer the question,</p> <p>8 Major Govender. People walking to and from Rowland Shaft</p> <p>9 would walk past where these individuals were assembled with</p> <p>10 knobkieries?</p> <p>11 MAJOR GOVENDER: I don't know how you see</p> <p>12 that would be a threat to these people.</p> <p>13 CHAIRPERSON: Is it correct though, they</p> <p>14 had knobkieries?</p> <p>15 MAJOR GOVENDER: That is so, Chairperson.</p> <p>16 CHAIRPERSON: And people had to walk past</p> <p>17 them?</p> <p>18 MAJOR GOVENDER: I didn't see any persons</p> <p>19 walk past this group. Like I said when –</p> <p>20 CHAIRPERSON: Were they on the route that</p> <p>21 the people would have walked on, on their way to the shaft?</p> <p>22 MAJOR GOVENDER: Say again, Chairman.</p> <p>23 CHAIRPERSON: Were they on the route,</p> <p>24 were these people standing with the knobkieries on the</p> <p>25 route which workers would have had to walk along –</p> |
| <p style="text-align: right;">Page 35098</p> <p>1 MAJOR GOVENDER: It's quite –</p> <p>2 CHAIRPERSON: - on the way to the shaft?</p> <p>3 MAJOR GOVENDER: Chair, it's quite an</p> <p>4 open area. It's quite wide. There are many ways of going</p> <p>5 to and from the hostels and at that particular point</p> <p>6 there's like a taxi pick-up point for transportation. So</p> <p>7 they were standing at that particular point.</p> <p>8 CHAIRPERSON: I see.</p> <p>9 MR VAN AS: And the security manager</p> <p>10 asked you to disperse them because non-striking employees</p> <p>11 had been intimidated from going to work earlier that</p> <p>12 evening?</p> <p>13 MAJOR GOVENDER: That was not made</p> <p>14 mention of. He just said go and disperse that group of</p> <p>15 people, and like I made mention of it, they posed no threat</p> <p>16 and I even sent one of my constables to approach them and</p> <p>17 to find out from them what they were exactly doing at that</p> <p>18 point.</p> <p>19 MR VAN AS: And they told this constable</p> <p>20 that they are waiting for a taxi?</p> <p>21 MAJOR GOVENDER: That is so.</p> <p>22 MR VAN AS: And then they just happened</p> <p>23 to move off in the direction of Wonderkop Hostel with their</p> <p>24 knobkieries.</p> <p>25 MAJOR GOVENDER: That is so.</p> | <p style="text-align: right;">Page 35099</p> <p>1 MR VAN AS: A couple of minutes later.</p> <p>2 MAJOR GOVENDER: Yes.</p> <p>3 MR VAN AS: And you don't find that</p> <p>4 incredibly suspicious that a group of individuals with</p> <p>5 knobkieries who told the constable that they're waiting for</p> <p>6 a taxi, just happen to move off a couple of minutes later?</p> <p>7 MAJOR GOVENDER: No, what's suspicious</p> <p>8 there? There was nothing yet for them, for me to suspect</p> <p>9 them. They were not even attacking any persons or anything</p> <p>10 of that sort, so what suspicion must I have?</p> <p>11 CHAIRPERSON: Doesn't it throw doubt upon</p> <p>12 the explanation they'd given you that they're waiting for a</p> <p>13 taxi, why didn't they wait for the taxi? Why did they walk</p> <p>14 away before the taxi had a chance to come?</p> <p>15 MAJOR GOVENDER: Chair, I don't –</p> <p>16 CHAIRPERSON: I'm not suggesting that it</p> <p>17 indicated you should have done anything. I'm just asking</p> <p>18 you, and I don't know why Mr Van As is asking the question.</p> <p>19 He may have the same point that I'm putting to you as I</p> <p>20 have, but does it not throw suspicion on the truth of the</p> <p>21 explanation they gave you that they were waiting for a</p> <p>22 taxi? They didn't wait very much longer for the taxi and</p> <p>23 then they walked off. That's fair, isn't it?</p> <p>24 MAJOR GOVENDER: Look, but they leaving</p> <p>25 there, Chairperson, it didn't pose a threat to anybody. So</p> |

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| <p style="text-align: right;">Page 35100</p> <p>1 what type of actions – I said let them go. 2 CHAIRPERSON: No, no, no, I understand 3 that. I think Mr Van As had moved on to another point. 4 The explanation they gave you that they're waiting for a 5 taxi doesn't stand up so well in the light of the fact that 6 they didn't wait for the taxi, they walked off. That's his 7 point. Would you agree with that? 8 MAJOR GOVENDER: I agree with that, 9 Chairperson. 10 MR VAN AS: And as you've already 11 conceded, we know that non-striking employees were 12 assaulted later that evening. 13 MAJOR GOVENDER: That is the information 14 that I received as well. 15 MR VAN AS: So you clearly underestimated 16 the situation. 17 MAJOR GOVENDER: I just want to inform 18 you as well that I do not have any training to manage a 19 crowd or control a crowd. I had, if there came a situation 20 then I would have to have brought in my Public Order 21 Policing members to come and assist because it – 22 CHAIRPERSON: Yes, I understand that. I 23 don't think that's Mr Van As's point. He's not pointing a 24 finger of blame at you at the moment. He's just suggesting 25 to you that with the benefit of hindsight it appears that</p> | <p style="text-align: right;">Page 35101</p> <p>1 you in fact underestimated the situation, but if in fact - 2 I take it he'll go on to say that if in fact you had 3 realised at the time what was going to happen later, or 4 according to the reports you received was going to happen 5 later, you might then have called in the Public Order 6 Policing because as you said, it wasn't a matter which was 7 in your area of competence to deal with. Is that fair? 8 MAJOR GOVENDER: That is fair, Chair. 9 MR VAN AS: Thank you, Mr Chairperson. 10 And more seriously on the Saturday, had you properly 11 assessed the risk, you would also have called in Public 12 Order Policing or reported to someone that there are a 13 group of individuals performing what appeared to be war 14 rituals to you and there's a need for a more visible and 15 heavier police presence on the mine. 16 MAJOR GOVENDER: Chairperson, I'd like to 17 take you back to that contingency plan. You would have 18 noted there was a contingency plan that was presented 19 earlier on and it's stipulated in that plan what is the 20 role of Public Order Policing. 21 MR VAN AS: But with respect, Major 22 Naidoo, you weren't even aware – 23 CHAIRPERSON: No, no, he's not Naidoo. 24 MR VAN AS: I beg your pardon, Major 25 Govender.</p> |
| <p style="text-align: right;">Page 35102</p> <p>1 CHAIRPERSON: Naidoo was the Major- 2 General. 3 MR VAN AS: Major-General. 4 CHAIRPERSON: He's Major Govender. 5 MR VAN AS: Thank you, Mr Chairperson. 6 Major Govender, you weren't even aware of the contingency 7 plan over that weekend, were you? 8 MAJOR GOVENDER: I was not and I just 9 said to you that it was presented earlier on today during 10 the evidence. 11 MR VAN AS: But let's deal with your 12 subjective assessment of the situation. What I want to put 13 to you is had you properly communicated the facts in the 14 email which you sent at 12 minutes past 2 on the Saturday, 15 you would also have communicated that there's a significant 16 group of people who've assembled at the koppie and who 17 appear to be preparing for some sort of fight. 18 MAJOR GOVENDER: Chair, if you go back to 19 the referral of my statement you'd see that I'd been there 20 with the intelligence officer and I think it was his role 21 to do the necessary in terms of gathering information. 22 [14:15] MR VAN AS: Are you referring to Warrant 23 Officer Kruger? 24 MAJOR GOVENDER: That is so. 25 MR VAN AS: And you were a Captain at</p> | <p style="text-align: right;">Page 35103</p> <p>1 that stage? 2 MAJOR GOVENDER: That is correct. 3 MR VAN AS: What I'm really driving at, 4 Major Govender, is the following, that the deaths on the 5 Sunday could easily have been avoided had you properly have 6 assessed the risk on the Saturday. 7 MAJOR GOVENDER: I cannot answer that 8 question, Chair. 9 MR VAN AS: Is that a reasonable 10 proposition to put to you? 11 MAJOR GOVENDER: Well, there was no 12 information on hand, so how would I have known that this 13 would be, this is what would happen the very next day? 14 MR VAN AS: There was information on 15 hand, there was a lot of information on hand. Would you 16 like me to go through it again? 17 MAJOR GOVENDER: You can go through it. 18 MR VAN AS: People had been intimidated 19 and assaulted on their way to work, four people had been 20 shot, there had been an attack on the NUM office and a 21 large group of individuals were, in your mind, preparing 22 for war at the large koppie. 23 MAJOR GOVENDER: Chair – 24 MR VAN AS: What reasonable inference 25 should be drawn from that information?</p> |

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| <p style="text-align: right;">Page 35104</p> <p>1 MAJOR GOVENDER: Chair, according to my 2 information I did the necessary by sending out those e- 3 mails. 4 CHAIRPERSON: I think you told us that 5 Warrant Officer Kruger was from the criminal intelligence 6 section, is that correct? 7 MAJOR GOVENDER: That is correct, Chair. 8 CHAIRPERSON: And you actually took him 9 to show him, according to your statement, where incidents 10 had happened the previous day? 11 MAJOR GOVENDER: That is correct, Chair. 12 CHAIRPERSON: With a view, I take it, to 13 enabling him to make the necessary reports to Colonel 14 Engelbrecht or whoever he had to report to, is that 15 correct? 16 MAJOR GOVENDER: That is so, Chair. 17 CHAIRPERSON: So it wasn't necessary for 18 you to make a separate report to the criminal intelligence 19 people if one of their own representatives had been present 20 and had seen what you had seen. 21 MAJOR GOVENDER: That is so, Chair. 22 MR VAN AS: If we look at exhibit LLLL3, 23 there's a whole list of individuals, the address list on 24 the e-mail. Can we perhaps go through them? The first one 25 is Rustenburg cluster JOC, could you please explain who is</p> | <p style="text-align: right;">Page 35105</p> <p>1 that? 2 MAJOR GOVENDER: The Rustenburg cluster 3 JOC is situation at Phokeng and it is a centre where all 4 information that all happenings, that is forwarded to this 5 JOC. 6 MR VAN AS: And Mr Jameson Patrick 7 Asemeng? 8 MAJOR GOVENDER: He was the cluster 9 commander at that particular time, he is one of my senior 10 officers and he is responsible for the cluster of 11 Rustenburg. 12 MR VAN AS: And Rustenburg cluster VISPOL 13 co-ordinator, is that the same person or is that someone 14 else? 15 MAJOR GOVENDER: That is another person. 16 MR VAN AS: And who is that person? 17 MAJOR GOVENDER: It's Colonel Diole. 18 MR VAN AS: And Rustenburg CI cluster 19 station, it appears to be M-A-A-S-S. 20 MAJOR GOVENDER: That is Captain Maass, 21 he is one also from the intelligence office. 22 MR VAN AS: And North-West Nodal Point, 23 who is that? 24 MAJOR GOVENDER: That is actually at the 25 provincial level for the information of the provincial</p> |
| <p style="text-align: right;">Page 35106</p> <p>1 office. 2 MR VAN AS: And again, with respect, I 3 want to come back to the point. Had you included 4 information about the koppie in this e-mail, it would have 5 arrived at the attention of all these senior officers. 6 MAJOR GOVENDER: Chair, I still indicate 7 that there's a role for the crime intelligence official and 8 I am of the opinion he did what was necessary. 9 CHAIRPERSON: Did you assume that Warrant 10 Officer Kruger, who was a CI person as I understand it – 11 MAJOR GOVENDER: No – 12 CHAIRPERSON: - would report what he had 13 seen, you and he had seen at the koppie, would report that 14 to his senior officers? 15 MAJOR GOVENDER: I will not say an 16 assumption but I had faith that he would have done so. 17 MR VAN AS: And did you follow up as to 18 whether this information had come into the hands of police 19 intelligence? 20 MAJOR GOVENDER: I did not follow that 21 up. 22 MR VAN AS: And can the Commission, with 23 respect, assume that the reason you didn't follow up on any 24 of this is you didn't think the situation was sufficiently 25 serious?</p> | <p style="text-align: right;">Page 35107</p> <p>1 MAJOR GOVENDER: I cannot assume that and 2 I think the Commission shouldnt assume that, they should 3 rely on facts. 4 MR VAN AS: Your assumption, Major 5 Govender, was that the situation wasn't sufficiently 6 serious. 7 MAJOR GOVENDER: Chair, I think I did 8 what was necessary by sending in the reports, it should be 9 analysed by the higher level, the necessary should be done 10 from there. 11 MR VAN AS: Let's view it from the other 12 side of the coin. Had you been aware of the fact that 13 1 000 heavily armed strikers would march to NUM's office on 14 the Saturday morning and that two Lonmin security officers 15 would be killed, attempting to stop them from reaching 16 NUM's office, would you have taken steps to prevent that? 17 MAJOR GOVENDER: If there was 18 information, yes, it would have been filtered down to the 19 necessary units and the necessary would have been done. 20 MR VAN AS: So the real question before 21 the Commission is the following. Having regard to the 22 information at your disposal as at 12 minutes past two on 23 the Saturday, the 11th August, should you have reasonably 24 formed the impression that there's a reasonable possibility 25 of an imminent attack on the NUM office?</p> |

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| <p style="text-align: right;">Page 35108</p> <p>1 MAJOR GOVENDER: I think it's quite clear 2 in my e-mail, what I said there, this is what had happened 3 on that particular day. 4 MR VAN AS: You see the reason for this 5 line of cross-examination, Major Govender, is the 6 following. Lonmin security has been severely criticised 7 for not arriving at the very conclusion I've asked you to 8 arrive at. 9 MAJOR GOVENDER: I don't know what 10 evidence was led by Lonmin. 11 MR VAN AS: And it would appear as if 12 they had a whole lot less evidence at their disposal or 13 information at their disposal than what you had at your 14 disposal. 15 CHAIRPERSON: Well, he can't comment on 16 that. 17 MR VAN AS: He can't comment on that. 18 Let's move on to the Sunday, because you sent a further e- 19 mail and this is exhibit LLLL4 and it appears at page 10 of 20 your bundle. This is an e-mail that you send at two 21 minutes past six on the 12th of August, that's the Sunday, 22 in which you report the attack on the NUM office and the 23 murder of the two security officers. Can you confirm that? 24 MAJOR GOVENDER: Ja, I confirm that. 25 MR VAN AS: I'd like to take you to</p> | <p style="text-align: right;">Page 35109</p> <p>1 paragraph 4. You say the following, "A case of murder, 2 malicious damage to property and theft were registered, 3 vide Marikana CAS107/08/2012. No suspects have been 4 arrested at this stage. Investigations are continuing." 5 And this is the important part, please, Major Govender. 6 "At this stage the area is being extensively patrolled by 7 Rustenburg POP and Gauteng." Do you see that? 8 MAJOR GOVENDER: I see it. 9 MR VAN AS: Where did you get that 10 information from? 11 MAJOR GOVENDER: Chairperson, after that 12 incident had happened there where those two security 13 officials were slain, I went to that scene much later when 14 it was cleared up and then I found members of public order 15 policing present at that hostel itself. 16 MR VAN AS: And was the area being 17 extensively patrolled? 18 MAJOR GOVENDER: Well, according to my 19 information there was sufficient people to patrol the area. 20 MR VAN AS: And what information was 21 this? 22 MAJOR GOVENDER: I met the public order 23 policing official at the hostel. 24 MR VAN AS: Because again it's something 25 that Lonmin security have been criticised about. You're</p> |
| <p style="text-align: right;">Page 35110</p> <p>1 aware of the fact that there was an attack on K4 shaft that 2 evening? 3 MAJOR GOVENDER: I'm aware of it. It was 4 made mention of the very next day. 5 MR VAN AS: And a group of strikers 6 appeared to have moved, we must assume from somewhere 7 around either the informal settlement or the Wonderkop 8 Hostel to K4 shaft. It's quite a distance, isn't it? 9 MAJOR GOVENDER: Well, I cannot comment 10 on that because I don't know where they came from. 11 MR VAN AS: And if there'd been extensive 12 police patrolling, surely they would have intercepted this 13 group of strikers. 14 MAJOR GOVENDER: I also cannot answer on 15 that one. 16 MR VAN AS: Just bear with me a minute 17 please, Mr Chair. And finally, Major Govender - in 18 hindsight which, as we all know, is a perfect science - 19 having regard to what happened on the Saturday and having 20 regard to the tragic events of the Sunday and the 21 subsequent tragic events of the following week, would you 22 have acted on Mr Botes's advice and maybe nipped this whole 23 matter in the bud by dispersing the first violent or 24 intimidatory strikers at Rowland crossing? 25 MAJOR GOVENDER: Chairperson, like I</p> | <p style="text-align: right;">Page 35111</p> <p>1 said, when I arrived there and the instruction I was given 2 to disperse these people, I did not see any violence taken 3 place there, I did not even witness any violence take place 4 there and I cannot see why I should take a decision from 5 someone to say that I should disperse people. Firstly, I 6 do not have sufficient training or I do not have any 7 training in crowd management control, Chair. 8 MR VAN AS: Thank you, Mr Chairperson, 9 those are my questions. 10 CHAIRPERSON: Thank you. Mr Wesley, do 11 you have re-examination? 12 MR WESLEY: Nothing, Chair. 13 CHAIRPERSON: Thank you, Major, you are 14 excused on the usual basis, if it's necessary for you to 15 come back, you'll come back without our having to subpoena 16 you. I take it you accept that condition and therefore you 17 are excused from further attendance. 18 MAJOR GOVENDER: Yes, Chairperson, noted. 19 [NO FURTHER QUESTIONS - WITNESS EXCUSED] 20 CHAIRPERSON: At this point we will then 21 adjourn. Sorry, unless there's anything you want to say, 22 Mr Budlender. You look as if you have something to say? 23 MR BUDLENDER SC: No, Chair, nothing 24 further. 25 CHAIRPERSON: Well, we'll adjourn now, as</p> |

1 I indicated previously, until 9:30 on Monday morning.

2 [COMMISSION ADJOURNED]

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