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Dear Sirs

**EXPERTS' MEETING: MATTERS OF CLARITY IN GARY WHITE MBE
PROVISIONAL STATEMENT**

1. Following your letter dated 23 May 2013 in which you required "*clarification and/or more information*" on various aspects of Mr de Rover's statements with a view to your expert preparing a schedule indicating those matters on which he (1) agrees with Mr de Rover, or (2) disagrees with Mr de Rover, or (3) offers no comment on what Mr de Rover says, the South African Police Service ("SAPS") responds separately.
2. Having consulted in-depth with Mr de Rover, SAPS requires clarity on the following issues arising from Mr White's provisional statement which we consider important for purposes of identifying with greater precision and, having identified

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these, narrowing points of disagreement between Mr White and Mr de Rover on their respective evidence:

2.1 In setting out his experience, Mr White says he has on many occasions been in operational control of public disorder situations in which police were faced with crowds of “*several hundred*”, and in which police were “*subjected to live ammunition fire, blast bombs, pipe bombs, Molotov cocktails and the like*” (para 1.1.2).

2.1.1 Is the experience of his operation control to which he refers confined to Northern Ireland or does it extend to South Africa as well?

2.1.2 Has he ever been in operational control in public disorder situations in which the crowds numbered at least three thousand?

2.1.3 Has he been in operational control in public disorder situations where the crowds were armed with, and the police were subjected to, sharp-edged weapons including hunting knives, pangas, spears, sharpened iron rods, assegais, nculas and other home-made sharpened weapons?

2.2 Mr White says he has never ordered the use of sharp ammunition by his forces against protesters despite the very serious threats under which they operated (para 1.1.3):

2.2.1 Is it his evidence that none of his “forces” has ever discharged sharp ammunition without his order?

2.3 If Mr White has never as a policeman faced protesting crowds numbering at least three thousand and wielding sharp-edged weapons including hunting



knives, pangas, spears, sharpened iron rods, assegais, nculas and other home-made sharpened weapons, who had already killed and maimed both civilians and police members alike in the week preceding, does he not consider his limited experience in this regard a handicap for him? If not, why not?

2.4 Mr White concedes that for purposes of preparing his provisional statement he *“was not provided with all the evidence that has been submitted to the Commission in relation to Phase One of the Inquiry”* (para 1.2.4).

2.4.1 Does he concede that he had by that time not yet heard and/or read the evidence of any member who had been involved in the conception, preparation, and implementation of the SAPS Plan?

2.4.2 If he does not so concede, whose evidence of these members had he heard and/or read at the time of preparing his provisional statement?

2.4.3 Having now heard and/or read more evidence, does he concede that his provisional statement contains numerous factual inaccuracies?

2.4.4 If so, he is required to identify those inaccuracies.

2.5 Mr White is required to explain what it is that he means precisely when he describes a positive attraction point as that area to which *“participants would most likely be willing to move”* (top of page 12). Does he mean:

2.5.1 the area to which protesters must be channelled only if the protesters themselves are happy to be so channelled; or

2.5.2 the area to which protesters must be channelled where SAPS believe the protesters would be willing to go; or



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- 2.5.3 the area to which protesters must channelled where it is in the judgment of SAPS most propitious as regards the maintenance of law and order or safe for them to be channelled?
- 2.6 Mr White describes what he terms *“the approach of the group”* to a TRT line which he says in response *“opened fire, killing 16 miners”* (para 3.1.9).
- 2.6.1 In describing this scene, had Mr White seen video evidence that was later to be submitted as exhibit UU3 at the time of making this observation?
- 2.6.2 If so, when had he seen it and from whom had he obtained it?
- 2.7 Mr White says he understands that *“there was no debrief in the aftermath of the operation of 9 – 16 August 2012”* (para 3.1.11).
- 2.7.1 What exactly does he mean by *“debrief”*?
- 2.7.2 From whom did he understand that there was no *“debrief”*?
- 2.8 Mr White criticises the lack of accountability and accepting responsibility for what occurred by officers in command. He draws this conclusion from what he terms *“general absence of specific detail in respect of evidence presented by officers in command positions”* (para 4.1.2).
- 2.8.1 Whose evidence among those officers in command did Mr White consider in order to arrive at this conclusion?
- 2.8.2 Mr White is required to provide copies of that evidence.
- 2.9 Mr White says two miners and two police members were killed on 13 August 2012 *“as a consequence of the policing operation”* (para 4.2.1). by this claim, is it his view that
- 2.9.1 the police were the sole cause of the deaths on that day, or
- 2.9.2 the police contributed to the deaths on that day?



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- 2.10 In what manner does Mr White contend that the two police members killed on 13 August 2012 were killed “*as a consequence of the policing operation*”?
- 2.11 To what “*policing operation*” does Mr White attribute the deaths on 13 August 2012? Please identify precisely.
- 2.12 Mr White says the deaths on 13 August 2012 on the one hand, and those on 16 August 2012 on the other, represent “*on any assessment*” a failure of public order policing (para 4.2.1).
- 2.12.1 Is it his view that deaths resulting from private and/or self defence represent a failure of public order policing? If so, why?
- 2.12.2 Is it his view that Standing Order 262 clause 11 to which he adverts for this proposition applies to instances where the police act in private and/or self-defence?
- 2.13 Mr White criticises SAPS evidence to the Commission as “*lacking in detail*” and “*almost entirely defensive*” (para 4.2.2). When he reached this conclusion, had he considered the evidence and statements of:
- 2.13.1 Col. Scott,
- 2.13.2 Maj. Gen. Annandale,
- 2.13.3 Maj. Gen. Mpembe,
- 2.13.4 Maj. Gen. Naidoo,
- 2.13.5 Brig. Calitz, and
- 2.13.6 Unit commanders that were on the scene on 13 August 2012 and 16 August 2012?
- 2.14 Mr White says “*there does not appear*” to have been any attempt by SAPS to identify mistakes made and lessons learnt in the events of 9 to 16 August 2012, that he “*understands*” there was no debriefing after the events, and



that he “*understands*” the meeting at Potchefstroom was “*aimed at producing*” exhibit L (para 4.2.4). Are these intended as

2.14.1 statements of fact, or

2.14.2 suppositions not based on fact?

2.15 Mr White says SAPS can “*quite rightly be criticised for possible collusion*” for holding the meeting at Potchefstroom (para 4.2.5). Is it his categorical conclusion that SAPS colluded to present a consistent case at the Commission even if that case does not accord with what actually happened?

2.16 Mr White says he “*understands*” that Lt Col Scott “*led*” the Potchefstroom event (para 4.2.5).

2.16.1 What does he mean by Lt Col Scott “*led*” the event?

2.16.2 What is his evidential basis for this understanding?

2.16.3 Is this a statement of fact or a supposition not based on fact?

2.17 When Mr White lists documents that he says “*appear [not] to have been provided to the Commission*” (para 4.2.6),

2.17.1 did he have the Call-Up Instructions relating to the Potchefstroom meeting;

2.17.2 had he heard and/or read the evidence of senior officers and members who had been called up to Potchefstroom and those who had attended? If so, whose evidence had he heard and/or read?

2.18 Is it Mr White’s view that SAPS kept the meeting at Potchefstroom a secret from IPID (para 4.2.7)?

2.19 Is it Mr White’s view (at para 4.2.7) that SAPS holding of the Potchefstroom meeting without first obtaining IPID opinion on the matter was

2.19.1 improper, or



2.19.2 unlawful, or

2.19.3 inappropriate?

2.20 If so, on what SAPS prescript or statute does he rely?

2.21 Mr White criticises the paucity of *“detail on the shooting incidents”* in the statements of *“high ranking officers who were involved in the operations of 9 – 16 August”* and says this reveals an unwillingness on their part to *“acknowledge errors or accept responsibility for the deaths”* (para 4.2.11).

2.21.1 What does he mean by *“officers who were involved in the operations”*?

2.21.2 Does this include members and officers who were not at the scene of the shooting incidents?

2.21.3 If so, kindly specify the *“detail on the shooting incidents”* that Mr White expects those officers who were not at the scene to provide in their statements.

2.22 Mr White says *“it does not appear”* that the officers’ contemporaneous notes have been provided to the Commission (para 4.2.12). Is it his view, based on fact,

2.22.1 that these officers had contemporaneous notes made during the events of 9 – 16 August 2012,

2.22.2 which they deliberately withheld from the Commission?

2.22.3 If so, what is the basis for this allegation?

2.23 Mr White says SAPS *“appear to have provided no statements from video camera operators about what they were doing during the briefing for, and execution of, the operational plans on 13 and 16 August 2012”* (para 4.2.13).

2.23.1 Is this a statement of fact, or



2.23.2 a supposition not founded on fact?

2.24 Mr White criticises SAPS planning for (1) inadequate intelligence, being (2) high risk, (3) inadequate risk analysis, and (4) lack of a clear plan (paras 4.4.2 to 4.4.15).

2.24.1 When he made these criticisms, had he heard the evidence of Maj. Gen. Mpembe and Maj. Gen. Annandale, under oath, on these matters?

2.24.2 If not, does he concede that his criticism in these respects may have been premature? If not, why not?

2.25 Mr White cites “*evidence*” that he says shows Maj. Gen. Mpembe “*changing*” his instructions and intention during the event of 13 August 2012 as the Maj. Gen. “*received advice from more junior officers including Baloyi*” (para 4.4.12).

2.25.1 Mr White is requested to identify the specific paragraph or excerpt in Lt Baloyi’s statement or evidence to this effect.

2.25.2 Mr White is requested to identify any other piece of evidence on which he relied for this criticism.

2.26 Mr White criticises the interception of the strikers near the railway line on 13 August 2012 in numerous respects. Two of those criticisms are that (1) Maj. Gen. Mpembe gave the strikers an ultimatum thereby placing two heavily armed groups in a standoff situation, and (2) because the interception was unplanned it was more likely that SAPS would act inappropriately than if it had been properly planned (para 4.4.13 – 4.4.14).

2.26.1 In relation to the first criticism (ultimatum), is Mr White of the view that SAPS should not demand that people who are gathering



illegally, marching illegally, and illegally bearing dangerous weapons, in circumstances where people have been maimed and killed with similar dangerous weapons in the weekend immediately preceding, should disarm and disperse?

2.26.2 As regards the second criticism (lack of plan), is Mr White of the view that, for lack of a detailed plan, SAPS should not seek to stop a spontaneous illegal action which has claimed at least four lives in the two days immediately preceding?

2.27 Mr White says there was *“little or no contribution”* by POP Commanders to the plan that Lt Col Scott *“developed and presented ... on his own”*, that there appears to have been *“little or no challenge by senior colleagues”* to the plan produced by Lt Col Scott, and that the plan *“was accepted without condition or amendment”* (paras 4.4.15, 4.4.16, 4.4.18).

2.27.1 There has now been oral evidence under oath from Maj. Gen Annandale and Maj. Gen. Mpembe disputing this criticism. In the result, does Mr White concede that his criticism may have been premature?

2.28 Mr White criticises the plan for, among other things, (1) contemplating the arrest of *“a crowd numbering in the thousands”*, (2) lack of evidence of other less risky options, and (3) blocking the main pathway to the informal settlement (Nkaneng) from which many of the protesters had approached the koppie (paras 4.4.21, 4.4.22, 4.4.23).

2.28.1 Mr White is required to point to a specific part in the plan that says SAPS aimed to arrest thousands of people during the operation.



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- 2.28.2 Because Mr White had not heard the sworn evidence of Maj. Gens. Mpembe and Annandale in this regard, does he now concede that this criticism, and the criticism relating to absence of evidence on other less risky options, was premature? If not, why not.
- 2.28.3 Is the criticism regarding the alleged blocking of the main pathway to the informal settlement based on Mr White's understanding of what a positive attraction point is (which he described at page 12 top of page)?
- 2.28.4 Does Mr White accept when the barbed wire was deployed, the armed group of strikers (numbering around 200 to 300) approach the barbed wire which was at the time not blocking the main pathway? If not, he is requested to point to evidence which shows that armed group approaching the main pathway to the informal settlement when the SAPS first deployed the barbed wire.
- 2.29 Mr White criticises the lack of video evidence of briefing given to SAPS units (para 4.5.4) and lack of video evidence of the events at scenes 1 and 2 (para 4.6.2).
- 2.29.1 Had he read the statements of Const. Masinya and Ndhlovu when he made this criticism?
- 2.29.2 If not, does he now concede that this criticism may have been premature? If not, why not?
- 2.30 Mr White says the operation on 16 August 2012 required the police to use lethal force (para 4.5.6).
- 2.30.1 Is it his view that SAPS plan contemplated the use of lethal force in a dispersal action?



2.30.2 If so, where precisely in the plan did he pick this up?

2.30.3 If not in the plan, he is requested to point to the precise evidence of this.

2.31 Mr White says Lieut. Gen. Mbombo “*was in overall command of the operation*” (para 4.6.6.a).

2.31.1 Does he dispute that Maj. Gen Mpembe was the Overall Commander of the Operation as at 13h30 on 16 August 2012?

2.31.2 If not, is he saying there were two Overall Commanders of the Operation, the other being Lieut. Gen Mbombo?

2.32 Mr White says he may “*add*” further criticisms of the SAPS operation in relation to scene 1 after SAPS have given oral evidence or further documentary evidence or video evidence (para 4.7.1).

2.32.1 What is Mr White’s reason for believing that SAPS further evidence will provide further grounds for criticism rather than fewer grounds?

2.32.2 Despite this pessimistic view of the evidence he has not yet heard or seen, is Mr White open to the real probability that SAPS may present compelling evidence that may persuade him rather to “*reduce*” the number of criticisms than “*add*” to them?

2.33 Mr White criticises the decision to implement stage 3 and says there was not rationale for it (paras 4.7.2 to 4.7.5).

2.33.1 Maj. Gen. Mpembe has now provided the rationale for the decision. Does Mr White now accept that there was a rationale for the decision, even if he may not agree with it?

2.33.2 Does he accept that the rationale is sound? If not, why not?



2.34 Mr White lists a number of alternatives that he says SAPS could have pursued with lower risk of confrontation (para 4.7.6, 4.7.7, 4.7.8).

2.34.1 Is it his view that SAPS did not consider any of these (and other) alternatives?

2.35 Mr White criticises the SAPS for not giving a warning to the protesters before deploying barbed wire (para 4.7.9).

2.35.1 Is it his view that this is a requirement in terms of any SAPS prescript?

2.35.2 If so, he is required to identify the applicable provision in any such prescript.

2.36 As regards scene 2, Mr White says it would have been better to surround the protestors in that small koppie and negotiate with them (para 4.8.8).

2.36.1 When he made this criticism, was Mr White aware that negotiations with the protestors had been going on continuously since 13 August 2012 and SAPS had received information that the protestors would refuse to lay down their dangerous weapons and would fight to hold on to them?

2.37 Mr White says SAPS created a dangerous environment when they surrounded the small koppie (scene 2) and fired live ammunition from different sides (para 4.8.11).

2.37.1 Is Mr White saying SAPS deliberately surrounded the small koppie and fired live ammunition from various sides?

3 We await your responses so that this experts' process can be finalised without delay.

Yours faithfully



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