

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 280

28 AUGUST 2014

PAGES 35935 TO 36103



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Page 35935

1 [PROCEEDINGS ON 28 AUGUST 2014]
 2 [09:10] CHAIRPERSON: The Commission resumes.
 3 Please remind the witness that he's still under oath.
 4 XOLANI NZUZA: [s.u.o. through
 5 interpreter]
 6 MR MAHLANGU: Confirmed, Chairperson.
 7 CHAIRPERSON: Mr Gumbi, Mr Wesley will
 8 tell you how much time you've got left.
 9 MR WESLEY: Chair, there's seven minutes
 10 left.
 11 CHAIRPERSON: We'll give him 10. Mr
 12 Gumbi.
 13 MR GUMBI: With your permission,
 14 Chairperson, can I make an application maybe at least to
 15 have 15 minutes?
 16 CHAIRPERSON: You asked for 20 minutes
 17 initially. That's what you asked for, which we gave you.
 18 I've now given you 23 minutes. I don't understand your
 19 objection. Please carry on with your cross-examination.
 20 MR GUMBI: Thank you very much,
 21 Chairperson.
 22 CHAIRPERSON: If you knew the trouble we
 23 had yesterday afternoon trying to work out the programme
 24 for the next few days to ensure that the experts can start
 25 first thing on Tuesday morning, you wouldn't bring an

Page 35936

1 application, you'd just extend sympathy to Mr Wesley and
 2 myself. Carry on with your cross-examination.
 3 CROSS-EXAMINATION BY MR GUMBI (CONTD.):
 4 Thank you very much, Chairperson. Good morning, Mr Nzuza.
 5 MR NZUZA: Good morning, Sir.
 6 MR GUMBI: When we adjourned yesterday,
 7 Mr Nzuza, you testified that you observed the police
 8 officer in uniform alighting from the police Nyala. Still
 9 remember that?
 10 MR NZUZA: Yes.
 11 MR GUMBI: And you were not far away from
 12 that police officer that alighted from the Nyala?
 13 MR NZUZA: I was on the other side.
 14 MR GUMBI: But you were not far away?
 15 MR NZUZA: The police were not very far
 16 away from us. They were on the other side as we were
 17 standing.
 18 MR GUMBI: Will I be correct that
 19 immediately after he alighted from the Nyala stun grenades
 20 and teargas were fired from the police?
 21 MR NZUZA: Yes.
 22 MR GUMBI: Did you observe the strikers
 23 who were in possession of dangerous weapons charging at
 24 that police officer?
 25 MR NZUZA: No, I did not.

Page 35937

1 MR GUMBI: Did you observe stabbing and
 2 attack of any of the police officers?
 3 MR NZUZA: I did not.
 4 MR GUMBI: Did you observe any police
 5 officer firing a stun grenade?
 6 MR NZUZA: That was on the other side,
 7 yes, the top side.
 8 MR GUMBI: Is it the one that alighted
 9 from police Nyala?
 10 MR NZUZA: No, that one was walking on
 11 foot. He did not come out of a van.
 12 MR GUMBI: That's the only police officer
 13 you observed firing stun grenade and teargas?
 14 MR NZUZA: Yes.
 15 MR GUMBI: And can I take you a little
 16 bit back when you were intercepted by General Mpembe near
 17 the railway line. When General Mpembe intercepted you he
 18 informed you that you were not supposed to carry dangerous
 19 weapons. Is it not so?
 20 MR NZUZA: Yes.
 21 MR GUMBI: And you, Mr Nzuza, you were
 22 not in possession of any dangerous weapon?
 23 MR NZUZA: That's right.
 24 MR GUMBI: And General Mpembe informed
 25 you that he would allow you to go to koppie provided that

Page 35938

1 you hand over those dangerous weapons?
 2 MR NZUZA: He said that, yes.
 3 MR GUMBI: And we don't see you, Mr
 4 Nzuza, as one of the leaders near the railway line trying
 5 to convince the strikers to hand over their dangerous
 6 weapons to the police.
 7 MR NZUZA: That wasn't my duty, Sir.
 8 MR GUMBI: Despite the fact that you were
 9 not armed?
 10 MR NZUZA: What is the question again?
 11 MR GUMBI: I'm saying that we don't see
 12 you convincing the strikers, or telling the strikers to
 13 hand over their dangerous weapons to the police, despite
 14 the fact that you, you were not armed.
 15 MR NZUZA: It wasn't my duty, as I said.
 16 MR GUMBI: Will you agree with me if I
 17 put to you the following proposition, that there was no
 18 need for you to carry, you as the strikers to carry
 19 dangerous weapons on your way from koppie to the mountain?
 20 And the reason why I'm putting you this proposition,
 21 because the police officers they were there, they were
 22 going to monitor you on your way to the koppie.
 23 MR NZUZA: I would not be able to answer
 24 that question.
 25 MR GUMBI: The killing of the police

Page 35939

1 officer near the railway line, especially my client, the
 2 late Warrant Officer Lepaaku, do you blame Lonmin?
 3 MR NZUZA: That I don't know, Sir.
 4 MR GUMBI: Do you blame NUM or AMCU?
 5 MR NZUZA: I wouldn't know, Sir.
 6 MR GUMBI: Your fellow strikers who were
 7 in possession of dangerous weapons, do you blame them? I
 8 know you were not in possession of dangerous weapon.
 9 MR NZUZA: I wouldn't be able to answer
 10 this question, Sir.
 11 MR GUMBI: Is your testimony further, Mr
 12 Nzuzza, that after that incident you fled to the koppie?
 13 MR NZUZA: Yes, I did, went to the
 14 koppie.
 15 MR GUMBI: And you addressed your fellow
 16 strikers there?
 17 MR NZUZA: Like what, Sir?
 18 MR GUMBI: I'm saying did you address the
 19 strikers when you arrived at the koppie about what happened
 20 near the railway line?
 21 MR NZUZA: That's what I'm asking,
 22 addressing them about what?
 23 MR GUMBI: Let's deal with that. When
 24 you arrived at the koppie did you inform your fellow
 25 strikers that near the railway line you met police

Page 35940

1 officers?
 2 MR NZUZA: No, I did not say that.
 3 MR GUMBI: Did you inform your fellow
 4 strikers that the police officers they were against
 5 carrying of dangerous weapons?
 6 MR NZUZA: I don't know that.
 7 MR GUMBI: Did you inform your fellow
 8 strikers that two police officers were killed and three
 9 strikers were killed by the police?
 10 MR NZUZA: What is the question again?
 11 MR GUMBI: Did you inform your fellow
 12 strikers that two police officers were killed and three
 13 strikers were killed when you met the police, when you
 14 confronted the police near the railway line?
 15 MR NZUZA: No, I don't know that. I
 16 didn't say that.
 17 MR GUMBI: Can you tell us what did you
 18 inform the strikers?
 19 MR NZUZA: Like what, Sir?
 20 MR GUMBI: About what happened near the
 21 railway line.
 22 MR NZUZA: I do not know exactly what you
 23 mean what is it that happened that I was supposed to tell
 24 them.
 25 CHAIRPERSON: When you got back to the

Page 35941

1 koppie did you speak to the strikers, tell the strikers
 2 anything about what had happened near the railway line?
 3 MR NZUZA: Mr Chair, if it is said
 4 anything, I wouldn't know exactly if, unless it could be
 5 pinpointed what it is that I said.
 6 CHAIRPERSON: I've asked you a different
 7 question. I said did you say anything at all to the
 8 strikers on the koppie, telling them about anything that
 9 had happened near the railway line?
 10 MR NZUZA: Mr Chairman, if it's something
 11 that does not have a heading then I would not be able to
 12 respond to it, what is it that is wanted from me.
 13 CHAIRPERSON: No, we don't need a
 14 heading. Did you address the strikers when you got back to
 15 the koppie after the incident near the railway line?
 16 MR NZUZA: I said no, I don't know that.
 17 CHAIRPERSON: Does that mean that you
 18 didn't address them?
 19 MR NZUZA: That's why I'm asking, Sir,
 20 what is it that I'm supposed to have said.
 21 CHAIRPERSON: I don't know what you said.
 22 I wasn't there. All I want to know from you is did you say
 23 anything to them when you got back? Did you address them
 24 and say anything?
 25 MR NZUZA: The question is not clear,

Page 35942

1 Sir.
 2 CHAIRPERSON: Did you address the
 3 strikers when you got back to the koppie after the incident
 4 near the railway line about anything at all?
 5 MR NZUZA: I said, Chairperson, I
 6 remained behind. I arrived later at the mountain, after
 7 the others.
 8 CHAIRPERSON: Does that mean that when
 9 you arrived later on the mountain you didn't address the
 10 strikers about what had happened, about anything that
 11 happened near the railway line?
 12 MR NZUZA: I wouldn't know what it is,
 13 Sir, that I'm alleged to have said unless I'm told this is
 14 what you said.
 15 CHAIRPERSON: I'm not saying whether
 16 you're supposed to have said anything. I want to know
 17 whether you said anything. That's all. I'm not suggesting
 18 to you, you said anything and all I'm asking from you is
 19 whether you made any address at all, gave any address at
 20 all to the strikers when you got to the koppie after the
 21 incident at the railway line.
 22 MR NZUZA: I said, Chair, that there was
 23 one injured worker that we'd left in the shack settlement.
 24 COMMISSIONER HEMRAJ: When you arrived
 25 later on – sorry, Mr Gumbi.

Page 35943

1 MR GUMBI: That's fine.
 2 COMMISSIONER HEMRAJ: When you arrived
 3 later on did you find Mr Noki making a report back to the
 4 strikers at the koppie?
 5 MR NZUZA: He was saying something, yes,
 6 but I wouldn't be able to say exactly what it is that he
 7 was saying.
 8 COMMISSIONER HEMRAJ: And did you also
 9 after he finished give a further report to the strikers?
 10 MR NZUZA: That's when I said to them
 11 there's an injured worker.
 12 COMMISSIONER HEMRAJ: Yes, thank you.
 13 MR GUMBI: Okay, Mr Nzuzza, because of the
 14 time limit I will try to –
 15 CHAIRPERSON: I'll give you an extra
 16 couple of minutes for that. That wasn't fair to debit you
 17 with that time spent.
 18 MR GUMBI: Thank you very much.
 19 CHAIRPERSON: The time lapse wasn't due
 20 to anything you did.
 21 MR GUMBI: Thank you very much,
 22 Chairperson. That's the only thing you said at the koppie?
 23 MR NZUZA: Yes.
 24 MR GUMBI: Mr X who testified before this
 25 Commission, he testified that Mambush, Bhele, Bhayi and

Page 35944

1 Anele, they were present on the 13th of August 2012. Still
 2 remember that evidence?
 3 CHAIRPERSON: You said Mr X said they
 4 were present. I think in fairness to the witness you
 5 should say where they were present so that he can answer
 6 the question succinctly.
 7 MR NZUZA: Yes, Chairperson. At the
 8 railway line, Mr X testified that Mambush, Bhele, Anele and
 9 Bhayi, they were there.
 10 MR NZUZA: That is a lie. That question
 11 is a lie.
 12 MR GUMBI: Do you know Bhele?
 13 MR NZUZA: Yes.
 14 MR GUMBI: He was not present near the
 15 railway line?
 16 MR NZUZA: No, he wasn't there.
 17 MR GUMBI: Bhayi?
 18 MR NZUZA: Wasn't there.
 19 MR GUMBI: And Anele?
 20 MR NZUZA: Wasn't there.
 21 MR GUMBI: He testified that they were in
 22 possession of a firearm that they were taken from the
 23 securities on the 12th of August 2012, the securities.
 24 MR NZUZA: What Mr X is saying about the
 25 13th is a lie.

Page 35945

1 MR GUMBI: In conclusion, Mr Nzuzza, I see
 2 in your supplementary statement you testified that on the
 3 11th of August you were part of the delegation that was sent
 4 to fetch inyanga, that was charged to go and fetch inyanga.
 5 MR NZUZA: Yes.
 6 MR GUMBI: Let us explore the role of
 7 inyanga, if the Commission in fact finds that indeed on the
 8 13th of August the strikers were under the influence of muti
 9 or intezezi, according to Mr X. My question is will you
 10 agree with me if I put to you the following proposition;
 11 inyanga has nothing to do with any labour dispute. In fact
 12 he's not an expert when it comes to labour dispute. Do you
 13 agree with me?
 14 MR NZUZA: I would not be able, I don't
 15 know. I wouldn't be able to answer that question.
 16 MR GUMBI: Fair enough. When you were
 17 sent to go and fetch inyanga, can you tell this Commission
 18 the instruction that was given to you, or the instruction
 19 that you gave to inyanga?
 20 MR NZUZA: I don't know what instructions
 21 you're talking about.
 22 MR GUMBI: Did you talk to inyanga on the
 23 11th of August 2012?
 24 MR NZUZA: I went to him, yes.
 25 MR GUMBI: You're not answering my

Page 35946

1 question, Mr Nzuzza. My question is did you talk to inyanga
 2 on the 11th of August 2012?
 3 MR NZUZA: I can't hear you, Sir.
 4 MR GUMBI: Did you talk to inyanga on the
 5 11th August 2012?
 6 MR NZUZA: Yes.
 7 MR GUMBI: What did you say to inyanga on
 8 that day?
 9 MR NZUZA: I came there, the first thing
 10 I greeted him.
 11 MR GUMBI: What you said thereafter?
 12 MR NZUZA: Nothing further.
 13 MR GUMBI: The other fellow strikers who
 14 were there, you were present when they talked to inyanga?
 15 MR NZUZA: Your question is what, Sir?
 16 MR GUMBI: The other strikers who were
 17 there, they talked to inyanga. Is it not so?
 18 MR NZUZA: I don't know them.
 19 MR GUMBI: You just greeted the inyanga,
 20 then you disappeared?
 21 MR NZUZA: I said I greeted him.
 22 MR GUMBI: What did you hear after that?
 23 You greeted inyanga, the other fellow strikers they were
 24 there, is it not so?
 25 MR NZUZA: They would know what they

Page 35947

1 said.

2 MR GUMBI: You did not hear them talking

3 to inyanga?

4 MR NZUZA: I don't know what it is that

5 they said. They would know better what they said.

6 MR GUMBI: Mr Nzuzza, I'm trying to

7 understand your evidence, you know, and I am here because I

8 represent the police officer who was killed on the 13th of

9 August 2012, and there's evidence that was adduced in this

10 Commission that the inyanga played an important role on

11 that day.

12 [09:29] And there's evidence that was adduced in this

13 Commission that near the railway line strikers they were

14 under influence of muti Ntelezi.

15 MR NZUZA: That I don't know.

16 MR GUMBI: That's why I'm probing this

17 aspect with you because I do believe that as you are

18 standing there you are approaching this Commission with

19 clean hands.

20 MR MAHLANGU: With?

21 MR GUMBI: Clean hands. Do you agree

22 with me?

23 MR NZUZA: Yes.

24 MR GUMBI: So that's why I'm asking you

25 that you met Inyanga I want to know the instruction that

Page 35948

1 was given to Inyanga by your fellow strikers.

2 MR NZUZA: The people who said those

3 things would be better, in a better position to know.

4 MR GUMBI: Right, I'm not going to pursue

5 that question anymore.

6 CHAIRPERSON: Were you with them when

7 they spoke to the Inyanga?

8 MR NZUZA: They spoke, Chairperson, I did

9 not.

10 CHAIRPERSON: That isn't an answer to the

11 question. Were you with them when they spoke –

12 MR NZUZA: When they spoke?

13 CHAIRPERSON: Yes when they spoke.

14 MR NZUZA: I am saying I do not know what

15 it is that they said when they spoke, Chairperson.

16 CHAIRPERSON: Were you with them when

17 they spoke to the Inyanga?

18 MR NZUZA: What I'm saying is I don't

19 remember exactly where I was at that time they spoke.

20 MR GUMBI: But at the end of the day, Mr

21 Nzuzza did you manage to come back with that Inyanga?

22 MR NZUZA: I am not clear on the

23 question, Sir.

24 MR GUMBI: Okay did you manage to come

25 back with –

Page 35949

1 MR NZUZA: We came back alone.

2 MR GUMBI: Then you left the Inyanga

3 behind.

4 MR NZUZA: Yes.

5 MR GUMBI: Did you see Inyanga again?

6 MR NZUZA: Yes.

7 MR GUMBI: Where? At any place between

8 the – from the 11th until the 16th?

9 MR NZUZA: The question is not clear.

10 MR GUMBI: Between the 11th and the 16th.

11 Did you see Inyanga again between those two periods?

12 MR NZUZA: See him where, Sir.

13 MR GUMBI: At any place at Nkaneng.

14 MR NZUZA: The question is not really

15 clear what's intended to be conveyed here.

16 MR GUMBI: That's fine. Let's take it

17 step by step. You met Inyanga. On the 11th you met

18 Inyanga.

19 MR NZUZA: Yes.

20 MR GUMBI: Then you left Inyanga behind,

21 not so?

22 MR NZUZA: That's right.

23 MR GUMBI: And you did not see Inyanga

24 after that day, on the 11th?

25 MR NZUZA: If you say where, when and

Page 35950

1 where did I see him –

2 MR GUMBI: At any place.

3 MR NZUZA: I saw him present on the

4 mountain, yes.

5 MR GUMBI: When did you see the Inyanga

6 at the mountain?

7 MR NZUZA: I don't remember.

8 MR GUMBI: Is it the 12th?

9 MR NZUZA: I say I don't remember.

10 MR GUMBI: Tell me, you are an

11 experienced mineworker, whenever there is a dispute between

12 the employer and the employee, is it a normal practise to

13 engage the services of Inyanga?

14 MR NZUZA: I don't know that.

15 MR GUMBI: When you addressed the

16 strikers on the 16th we saw Mr Mathunjwa was present there

17 and he's a union leader, do you still remember that?

18 MR NZUZA: I was there, yes.

19 MR GUMBI: Did you inform Mr Mathunjwa

20 that you've engaged the services of Inyanga?

21 MR NZUZA: That was not the purpose of

22 him being there.

23 MR GUMBI: But you are not answering my

24 question. I'm saying to you did you inform Mr Mathunjwa

25 that you had engaged the services of Inyanga?

<p style="text-align: right;">Page 35951</p> <p>1 MR NZUZA: No the purpose of Mathunjwa 2 being there wasn't that. 3 MR GUMBI: As a leader did you inform 4 your fellow strikers that look guys I had engaged the 5 services of Inyanga to assist us in our - 6 MR MPOFU: Chairperson, I just wanted to 7 object to that question because I don't know what the basis 8 of it is that he would have told his fellow strikers that 9 they've employed the services of Inyanga to help them in 10 their labour dispute. There's no evidence that the Inyanga 11 was ever called to assist in a labour dispute. 12 CHAIRPERSON: Mr Gumbi, I suggest you 13 rephrase the question. 14 MR GUMBI: Yes, Chairperson, I can 15 rephrase it. Mr Nzuzza, do you agree with me - 16 MS BALOYI: Chairperson, if I might just 17 assist. In cross-examination yesterday by Mr Semenya the 18 witness said that there were two reasons why they had the 19 Inyanga. One was to protect themselves against witchcraft, 20 two in their dealings with the employer so that the 21 employer can listen to them on their demand. 22 MR GUMBI: Yes I am indebted, 23 Chairperson, to my colleagues for assisting - 24 MR MPOFU: Sorry before you are indebted 25 then the question, Chairperson, must be asked on that</p>	<p style="text-align: right;">Page 35953</p> <p>1 the employer. In fact Inyanga is not an expert when it 2 comes to labour disputes. 3 MR NZUZA: I don't know that. 4 MR GUMBI: Right. When you engaged the 5 services of Inyanga in that labour dispute, we know very 6 well that there was a labour dispute between you and the 7 employer, Lonmin, about the salary of 12 500. Do you agree 8 with me on that? 9 MR NZUZA: Yes, we wanted money. 10 MR GUMBI: So what was the purpose of 11 engaging Inyanga if your demand was R12 500? 12 MR NZUZA: What is your question? 13 MR GUMBI: Why did you engage Inyanga 14 because your demand was 12 500? 15 MR NZUZA: You were just saying it, we 16 were demanding money, we wanted money. 17 MR GUMBI: Then you decided to engage the 18 services of Inyanga. 19 MR NZUZA: To come and do what? 20 MR GUMBI: Going to assist you in your 21 labour demand of 12 500. 22 MR NZUZA: That I don't know. 23 MR GUMBI: So that Inyanga, if I can go 24 back again, you said you saw it again, do you still 25 remember that?</p>
<p style="text-align: right;">Page 35952</p> <p>1 narrow basis about lack in talking to the employer, not in 2 the labour dispute, Chairperson - 3 CHAIRPERSON: I understood that Mr Gumbi 4 was going to reformulate the question and I assumed he was 5 going to reformulate it in the light - 6 MR MPOFU: Well I hope your assumption is 7 correct. 8 CHAIRPERSON: Well we'll see. Mr Gumbi. 9 MR GUMBI: Thank you very much, 10 Chairperson. Mr Nzuzza, earlier on I asked you that 11 Inyanga, the Inyanga has nothing to do with labour dispute, 12 in fact he's not a mediator when it comes to a dispute 13 between you, the employee and the employer. Do you still 14 remember that? 15 MR NZUZA: The question is not clear 16 again. 17 MR GUMBI: I said I asked you earlier on 18 that Inyanga has nothing to do with labour disputes between 19 you, the employee and the employer. He's not an expert 20 when it comes to labour disputes. Do you still remember 21 that? 22 MR NZUZA: If you could clarify your 23 question again, Sir. 24 MR GUMBI: I said Inyanga has nothing to 25 do with any labour dispute between you, the employees and</p>	<p style="text-align: right;">Page 35954</p> <p>1 MR NZUZA: Yes. 2 MR GUMBI: Was it on the 16th? 3 MR NZUZA: No. 4 MR GUMBI: Do you know what was the role 5 of Inyanga? 6 MR NZUZA: I said to you we engaged his 7 services in order that we be right, that he protects us 8 against things such as witchcraft and so on. 9 MR GUMBI: All the other employers that 10 were there that were on strike, the were quite aware that 11 the Inyanga was engaged in order to protect you? 12 MR NZUZA: Anybody believed in whatever 13 it is that they believed in, some believed in prayers and 14 some believed in others. 15 MR GUMBI: But you are not answering my 16 question, Mr Nzuzza. I'm saying your fellow strikers were 17 there, they were on strike, my question is were they aware 18 that you'd engaged the services of Inyanga? 19 MR NZUZA: Anyone who was there had his 20 own beliefs, he believed in whatever he believed in. 21 MR GUMBI: So can I draw the conclusion 22 that you are not prepared to answer my question? 23 MR MPOFU: No, Chairperson, I think 24 that's a very unfair question and aspersion. Mr Gumbi 25 asked the witness, as he's entitled to do, whether</p>

Page 35955

1 everybody there believed in Inyanga and the witness said
 2 everyone who was there had their own beliefs. Some
 3 believed in prayer, some believed in whatever. Now he says
 4 the witness doesn't want to answer the question.
 5 CHAIRPERSON: Mr Gumbi, what's your reply
 6 to the objection?
 7 MR GUMBI: I think Mr Mpofo didn't
 8 understand my question. I didn't ask the witness whether
 9 they believed –
 10 MR MPOFU: Well then you can imagine
 11 about the witness –
 12 MR GUMBI: I didn't ask the witness
 13 whether he believed -
 14 CHAIRPERSON: My understanding of the
 15 question is different from Mr Mpofo's, perhaps you can
 16 repeat and see whether my understanding is correct.
 17 MR GUMBI: Yes. Mr Nzuzza, my question is
 18 other employees who were there, who were on strike, were
 19 they aware that you had engaged the services of Inyanga? I
 20 didn't ask whether they believed in muti or whatever –
 21 CHAIRPERSON: You don't have to go there,
 22 you said you asked were they aware that you'd engaged the
 23 services of the Inyanga. What's your answer to that?
 24 MR NZUZA: There was nothing secret
 25 there, you could also see what was happening.

Page 35956

1 CHAIRPERSON: So you were engaged,
 2 according to your statement, to fetch the Inyanga, did the
 3 Inyanga come back with you to the koppie?
 4 MR NZUZA: No he didn't come together
 5 with us back to the koppie.
 6 CHAIRPERSON: Did he eventually come to
 7 the koppie?
 8 MR NZUZA: I have said so, yes.
 9 CHAIRPERSON: Sorry, one Inyanga or two?
 10 MR NZUZA: There were many, Chairperson,
 11 not one, two. I think about 10.
 12 CHAIRPERSON: 10 Inyangas came, is that
 13 what you're saying?
 14 MR NZUZA: There were about 10 people, I
 15 don't know if all of them were Inyangas.
 16 CHAIRPERSON: I see and what did they do
 17 when they got to the koppie?
 18 MR NZUZA: The question is not clear,
 19 Chairperson. The question is not clear, Chairperson.
 20 CHAIRPERSON: What did the 10 people do,
 21 approximately 10 ten people do when they came to the
 22 koppie?
 23 MR NZUZA: The question is not very clear
 24 to me.
 25 CHAIRPERSON: What is unclear about the

Page 35957

1 question. You've told us that about 10 people came, we
 2 don't know if they're all Inyangas, but presumably some of
 3 them were, they came to the koppie. You told us all the
 4 people at the koppie could see them, now I'm asking you
 5 what were they doing, what did you see them doing?
 6 MR NZUZA: People were washing there,
 7 Sir.
 8 CHAIRPERSON: Is that all they did?
 9 MR NZUZA: Yes.
 10 MR GUMBI: In conclusion, Mr Nzuzza, as
 11 I'm representing the family of the late Warrant Officer
 12 Lepaaku and Lieutenant Baloyi who was injured [inaudible],
 13 is there anything that you want to say to the family of the
 14 late Warrant Officer Lepaaku and you were with your fellow
 15 strikers when he was killed?
 16 MR NZUZA: Like all other people, I
 17 sympathise with the families.
 18 MR GUMBI: Are you prepared to give
 19 information to the police about any facts surrounding the
 20 killing of the police near the railway line?
 21 MR NZUZA: That is not my duty.
 22 MR GUMBI: If a police officer were to
 23 approach you will you give them that information?
 24 MR NZUZA: Sir, that is not my duty.
 25 MR GUMBI: Thank you very much,

Page 35958

1 Chairperson, I don't have further questions.
 2 CHAIRPERSON: Thank you, Mr Gumbi. Mr
 3 Ramphele, you're next. You've got 45 minutes according to
 4 my notes. I don't know whether you will need the full 45
 5 minutes, but that's your allotment. But don't just fill up
 6 the time just to fill it up.
 7 MR RAMPHELE: Probably not, Chair,
 8 because it's in relation to my client, there's only one
 9 paragraph of the witness's evidence. But let me start.
 10 CHAIRPERSON: I would think that some of
 11 the things you were proposing to cover may well have been
 12 covered already. But please proceed.
 13 CROSS-EXAMINATION BY MR RAMPHELE: Let's
 14 see how I go, Chair. Mr Nzuzza, thank you very much. My
 15 name is Tshepiso Ramphele and I'm representing the families
 16 of Mr Mabebe and also the security guard, Mr Mabelane.
 17 MR NZUZA: Yes.
 18 MR RAMPHELE: And I have been instructed
 19 by the families to try and persuade you to actually
 20 acknowledge that these deaths were caused by the fellow
 21 strikers and that these families will much appreciate if as
 22 one of the strikers you can acknowledge and just apologise.
 23 That's, you know, the sum total of what these families are
 24 requesting.
 25 MR NZUZA: I have no knowledge of all

<p style="text-align: right;">Page 35959</p> <p>1 that you are saying now.</p> <p>2 [09:49] MR GUMBI: But in order to give you</p> <p>3 context of why we believe that at least you must give this</p> <p>4 apology. I want to set the setting of this incident,</p> <p>5 because without setting the setting of the incident, you'll</p> <p>6 sometimes have a dispute on how you characterise what has</p> <p>7 happened. And do you agree with me that there was a lot of</p> <p>8 debate around whether this was a criminal act, or whether</p> <p>9 it was a labour dispute.</p> <p>10 MR NZUZA: I don't understand the</p> <p>11 question.</p> <p>12 MR GUMBI: I say there was a lot of</p> <p>13 debate and in your evidence you also said management said</p> <p>14 that they did not know those murderers on the mountains,</p> <p>15 and all that we wanted was money.</p> <p>16 MR NZUZA: Yes, we only wanted money.</p> <p>17 MR GUMBI: The context that I would like</p> <p>18 to set is that we agree with you that you are a child of a</p> <p>19 person who was an RDO.</p> <p>20 MR NZUZA: I did not understand the</p> <p>21 question.</p> <p>22 MR GUMBI: I say, your evidence is that</p> <p>23 your father was an RDO employee at Lonmin.</p> <p>24 MR NZUZA: At Lonmin my father worked.</p> <p>25 MR GUMBI: If that's not your evidence,</p>	<p style="text-align: right;">Page 35961</p> <p>1 raised, instead to next to the boardroom of Lonmin, you are</p> <p>2 far in the mountains to talk about your wages having to be</p> <p>3 raised.</p> <p>4 MR NZUZA: I don't understand the</p> <p>5 question.</p> <p>6 MR GUMBI: No, I say you are so removed</p> <p>7 from where decisions are made, as a stakeholder in the</p> <p>8 mine, that instead of being at least closer to where these</p> <p>9 decisions are made, you have to go up the mountain to talk</p> <p>10 about your own wages. And as you say, for your own safety,</p> <p>11 in your evidence, you had to go to the mountain for your</p> <p>12 own safety.</p> <p>13 MR MPOFU: Chairperson, I don't want to</p> <p>14 disturb my learned colleague, particularly because I can</p> <p>15 sympathise with him, he wasn't here for many months, so</p> <p>16 maybe he's not aware that the workers on the 10th actually</p> <p>17 went to the bottom, to LPD.</p> <p>18 CHAIRPERSON: I think that's the point</p> <p>19 he's leading up to. That they tried to go and speak to</p> <p>20 them at the boardroom, or near the boardroom, and they told</p> <p>21 that you can't, and then they had to go to mountain, they</p> <p>22 say, for their own safety. He's leading up – I think</p> <p>23 everything he has put so far is actually in accordance with</p> <p>24 your statement. And so I don't see a problem.</p> <p>25 MR GUMBI: Yes, thank you. Do you agree?</p>
<p style="text-align: right;">Page 35960</p> <p>1 you just say no, it's not true.</p> <p>2 MR NZUZA: Yes, my father worked for</p> <p>3 Lonmin.</p> <p>4 MR GUMBI: And I'm sure, as a young</p> <p>5 person, you would have wanted to achieve more in your life,</p> <p>6 but because of the circumstances at home, you also end up</p> <p>7 in Lonmin as a mineworker.</p> <p>8 MR NZUZA: I do not understand where</p> <p>9 you're leading with that question.</p> <p>10 MR GUMBI: I'll continue asking. Maybe</p> <p>11 as I am asking you, you will understand. And that what Mr</p> <p>12 Mathunjwa said was that, and this was under cross-</p> <p>13 examination by myself, that the purpose of this was to</p> <p>14 ensure that there was dignity of the workers.</p> <p>15 MR NZUZA: He's the one who said that,</p> <p>16 not me.</p> <p>17 MR GUMBI: Do you agree that the issue of</p> <p>18 being given the money that you complained about resulted in</p> <p>19 the indignity, and the conditions that maybe you lived</p> <p>20 under, resulted in the indignity of workers?</p> <p>21 MR NZUZA: Yes.</p> <p>22 MR GUMBI: And that this indignity was so</p> <p>23 severe that, as workers, you had to go to a place so far</p> <p>24 away from where decisions are made about money, and going</p> <p>25 there to talk about and how you want your wages to be</p>	<p style="text-align: right;">Page 35962</p> <p>1 MR NZUZA: Can you please repeat the</p> <p>2 question.</p> <p>3 MR GUMBI: Okay, let me carry on, because</p> <p>4 I don't have much time, I will carry on. In your evidence</p> <p>5 you say that on the 11th you were on your way to work, or is</p> <p>6 the 10th? You will correct me there.</p> <p>7 MR NZUZA: It was on the night of the</p> <p>8 10th.</p> <p>9 MR GUMBI: And that on your way to work,</p> <p>10 you meet five co-workers, and you know one of them, and he</p> <p>11 asked you where are going.</p> <p>12 MR NZUZA: Yes.</p> <p>13 MR GUMBI: And that you informed them</p> <p>14 that you're on your way to work and after you have left</p> <p>15 them stones are hurled from their direction.</p> <p>16 MR NZUZA: No, I don't know about that, I</p> <p>17 never said so.</p> <p>18 MR GUMBI: May I call up the transcript,</p> <p>19 I think it's page 35459.</p> <p>20 CHAIRPERSON: Please can you give the day</p> <p>21 for the operator to find it.</p> <p>22 MR GUMBI: I think it's – oh there it</p> <p>23 comes.</p> <p>24 CHAIRPERSON: He didn't need the</p> <p>25 assistance today, he's found it.</p>

Page 35963

1 MR GUMBI: Okay.

2 CHAIRPERSON: What is the page you want?

3 MR GUMBI: 35459.

4 CHAIRPERSON: So that's the page on the

5 screen at the moment.

6 MR GUMBI: Line 10, and I will read it to

7 you and the interpreter may interpret. "Along the way I

8 met, came across four people. They asked me where I was

9 going to. I said to them I'm going to work. One of them

10 happened to know me, and he said I know this person. They

11 were not standing very close to me. A distance of about

12 five metres they stood and spoke to me. They made me pass.

13 I was not very far away from them after stones were thrown

14 at me from them. I turned around and ran to the house.

15 That's where I further heard in the house that there's

16 nobody going to work. There would be a meeting in the

17 stadium in the following morning, result of which I woke up

18 and then went to the meeting." Do you remember that part

19 of your evidence?

20 MR NZUZA: My evidence was that I passed

21 them, walked past them, then I heard the stones being

22 hurled, I never said the stones were coming from their

23 direction, that might have been incorrectly interpreted.

24 MR GUMBI: Okay. I accept that, but in

25 any event, I think, there's an agreement that after this

Page 35964

1 incident the following day – actually after the stone

2 throwing, you turned back and you did not go to work.

3 There is that agreement?

4 MR NZUZA: Yes, because that was in the

5 veld, I did not know what would happen if I proceeded.

6 MR MPOFU: Chairperson, again as the

7 witness just said, I think there's something wrong with the

8 interpretation. He said [African language] and it was

9 interpreted as it was in the veld.

10 MR NZUZA: Yes, because there are trees

11 it can be said it is in the forest, or in the bushes.

12 MR GUMBI: Yes, and then when you get

13 back home, you are informed that nobody is going to work,

14 and as a result of that the following day you go to the

15 stadium.

16 MR NZUZA: Yes.

17 MR GUMBI: Now, I want to draw a parallel

18 between this evidence and what might have happened to my

19 clients, let's say Mabebe. Let's say Mabebe never heard

20 anyone saying nobody's going to work and then was at shaft

21 4, at shaft K4, and then he was attacked.

22 MR NZUZA: I wouldn't answer on his

23 behalf, I don't know what he did.

24 MR GUMBI: But I'm just trying to draw a

25 parallel, I know you don't know. I'm saying, assuming that

Page 35965

1 he was in the same situation that you were in at the time

2 he was at K4, and he had not known that nobody should go to

3 work, and he was killed in the manner he was killed.

4 MR NZUZA: That's a presumption, I cannot

5 answer on that.

6 MR GUMBI: Yes. So you see, in that kind

7 of situation, and I know you won't, I'm trying to persuade

8 you to see my point, but I know I can say it, so it's not a

9 problem. I'm saying that he was in the selfsame situation

10 as you were, it's just that maybe in your case you were

11 lucky to be able to run away and go back home, he couldn't.

12 MR NZUZA: Me, yes.

13 MR GUMBI: And that is the reason why I

14 say then it means that you could have been Mabebe.

15 MR NZUZA: No you can't compare me to

16 someone, as I am Xolani, I'm alone.

17 MR GUMBI: And that in that kind of

18 situation, if you are attacked on your way to work and you

19 had died, you could have died in a situation where you were

20 actually not wrong of anything, you just thought you were

21 going to work.

22 MR NZUZA: I wouldn't know about that.

23 MR GUMBI: And that I'm sure, if you were

24 in that circumstance, your family could at least have

25 expected that those that were associated with that incident

Page 35966

1 would say we are sorry. Well, you don't have to comment.

2 I will then go to Mabelane. You saw on –

3 MR MPOFU: Chairperson, I just want to

4 understand that question. Is counsel suggesting that the -

5 because he said he's drawing parallels -that the people who

6 stopped Mr Nzuzza in some forest were people that he should

7 apologise for? I don't understand.

8 CHAIRPERSON: Mr Ramphele, what do you

9 say about that point that Mr Gumbi's has raised.

10 MR RAMPHELE: Well, all I'm saying is I

11 have not heard evidence that the strikers or protestors

12 were not involved in the Mabebe case. We are not saying

13 any specific person, but the strikers or protestors, as a

14 group, were because of the anger and trying to address the

15 issue, committed certain acts, and those strikers are the

16 same strikers that were on the koppie, and as there were

17 more than one group of strikers, which evidence has not

18 been presented. And I'm saying, and especially I'm saying

19 that, unless, because my understanding of the cause of the

20 strikers was that we want to correct the situation. In

21 that process, if wrongs happen, it is for this nobility,

22 this noble group to say we committed a wrong.

23 [10:09] And let's agree that you know, it was never our

24 intention to hurt these families but wrongs are committed

25 during our cause and we apologise, I'm not saying that you

<p style="text-align: right;">Page 35967</p> <p>1 did it, Mr Nzuzza. I'm not saying, I'm not pointing a 2 finger at anyone. I'm saying this happened during a cause. 3 MR MPOFU: Sorry, Chairperson, I'm not 4 quite sure what's happening now. I made an objection and 5 my learned friend replied, or rather responded to it. Can 6 I reply to what he has just said? 7 CHAIRPERSON: Yes, sure. 8 MR MPOFU: Thank you. Yes, the issue, 9 Chairperson – 10 CHAIRPERSON: What had happened was the 11 interpreter was interpreting what Mr Ramphele – 12 MR MPOFU: Oh, yes. Yes, thank you. No, 13 it sounded as if he was putting the question to him, but 14 yes, I understand. Thank you. The issue, I don't question 15 what my learned colleague has said about strikers in the 16 koppie and all that. The only issue I'm saying is that if, 17 because what seems to be implied in the question he put is 18 that this witness must apologise for something or another. 19 Now all I was saying is that insofar as he has 20 taken us through a journey where he draws a parallel 21 between this witness and Mr Mabebe, and he called up a 22 transcript and so on and so on, is the implication that 23 he's seeking to draw that if he says Mr Mabebe could have 24 been in the situation that he was in on the 10th where he 25 met those five people and he was stoned and so on and so</p>	<p style="text-align: right;">Page 35969</p> <p>1 MR RAMPHELE: And the impression at least 2 from that video was that the security officers of Lonmin 3 and the strikers were, they could be very close together 4 with security officers trying to do their job, trying to 5 stop them or whatever, but in most instances there was 6 never violence between the strikers and the security 7 officers. 8 MR NZUZA: I don't understand the 9 question. 10 MR RAMPHELE: I'm saying that ordinarily 11 there was no violent interaction between protesters in 12 Lonmin and – well, let me just say as a comment, the last 13 comment, you see if you don't describe your cause someone 14 will describe it for you, and my understanding of this 15 cause is that it is a justified cause where you actually 16 say our conditions are bad and they have to be improved, 17 and my clients were going to benefit and even their 18 children, because actually what happened in Marikana gave a 19 clear indication that there's a problem, the problem for 20 which you also in your own family say you're trapped. But 21 now depending on how you're going to treat these families 22 of your co-workers, they can describe you as someone who is 23 against them or who was trying to assist them. 24 MR NZUZA: You say so, Sir. 25 MR RAMPHELE: So you won't apologise?</p>
<p style="text-align: right;">Page 35968</p> <p>1 on, is he now saying that this witness must apologise for 2 his own assailants, the people that – because those people 3 on the 10th, there was no koppie and none of that by then. 4 Is that the implication of the question? 5 CHAIRPERSON: I didn't understand that to 6 be an objection. It's really a question addressed to Mr 7 Ramphele which he may wish to answer. 8 MR RAMPHELE: No, if – 9 MR MPOFU: Or let me put it this way 10 then, because he has already answered it in the form of a 11 question. I'm objecting to the question on that basis. 12 CHAIRPERSON: I don't think the basis of 13 objection taken is justified. I allow the question. 14 MR MPOFU: Thank you, Chairperson. 15 MR RAMPHELE: Thank you, Chair. I only 16 have two minutes now. I want to go to the issue of Mr 17 Mabelane. You see, if you remember – I don't know whether 18 you were here all the time – there was a time when the 19 protesters that wanted money, 12 500, and the security 20 officers were so close and there was no danger to the 21 security officers. Actually the security officer was 22 reversing with the strikers almost two metres away from 23 them. That is the relationship that we saw on one of the 24 videos, I think on the 10th. 25 MR NZUZA: I do not know about that.</p>	<p style="text-align: right;">Page 35970</p> <p>1 MR NZUZA: For doing what? 2 MR RAMPHELE: Not for you, but for what 3 happened to these families and with clear evidence that it 4 is the protesters that were wanting money that caused the 5 deaths of my clients. 6 MR NZUZA: One would apologise for what 7 they've done. 8 MR RAMPHELE: So you did not agree with 9 the cause of the strikers? Is that what you're saying? 10 MR MPOFU: Chairperson, I wish to object 11 to that question. 12 CHAIRPERSON: [Microphone off, inaudible] 13 MR MPOFU: Yes. 14 CHAIRPERSON: Yes, what's wrong with the 15 question? 16 MR MPOFU: Yes, I'm just about to tell 17 you. The question is framed like this; "So you don't agree 18 with the cause of the strikers?" In other words it 19 pretends to emanate from the answer that the witness gave. 20 CHAIRPERSON: Mr Ramphele, do you modify 21 the question – 22 MR MPOFU: No, no – 23 CHAIRPERSON: - in the light of the 24 objection taken by – 25 MR MPOFU: I'm not –</p>

Page 35971

1 CHAIRPERSON: I'm upholding your
 2 objection. Mr Ramphele, do you modify your question in the
 3 light of Mr Mpfu's objection –
 4 MR MPOFU: No, Chairperson, I've not –
 5 that's not the only thing I'm objecting to, if I can finish
 6 my objection.
 7 CHAIRPERSON: Alright.
 8 MR MPOFU: Ja, thank you. So this line
 9 of questioning, Chairperson, is being pursued for the
 10 second time and I think it's important that you allow me to
 11 put into context why I'm objecting to it because it's very,
 12 very, very, very important for the work of this Commission,
 13 particularly on the issue of reconciliation which I think
 14 is being undermined by this line of questioning.
 15 This witness, Chairperson, has said more than
 16 once in this Commission that he sympathises with the
 17 families, that he's hurt for their loss and that the people
 18 who killed their loved ones should be arrested and put to
 19 jail, and an opportunity, a very golden opportunity of that
 20 kind of statement, reaching out to the other families, is
 21 being lost by this avarice for an apology. The witness has
 22 said many times he has nothing to apologise for because he
 23 himself did not do anything and he has explained it time
 24 and again, but because of that the fact that he has reached
 25 out to these families is being lost and he has said that

Page 35972

1 anyone, whether it's a striker or a moonwalker who is found
 2 to have killed their loved ones deserves to go to jail, and
 3 that he sympathises with them and he – this is the first
 4 time that that kind of statement is being made by someone
 5 who was, as it were, on the other side of the divide that
 6 we are talking about.
 7 This Commission is not just about apology and
 8 blame and finding who's guilty; it's about reconciling
 9 these people and this is despicable that we are saying
 10 someone who has said for two days that while I have nothing
 11 to apologise for, and it has now even been suggested that
 12 he must apologise for the people who threw stones at him,
 13 which I cannot fathom to understand, or the people that
 14 I've said might have killed him, he must come here and say
 15 I apologise for them. What is that? We are losing the
 16 essence of this Commission, Chairperson, and that's the
 17 basis of my objection.
 18 CHAIRPERSON: Yes, thank you. Mr Mpfu
 19 may not like the question, he may not think – and he may
 20 well have good reasons for so thinking – that the question
 21 is unfortunate, but I don't think it's a reason for me to
 22 disallow the question. You may proceed, Mr Ramphele.
 23 MR MPOFU: Well Chairperson, I thought
 24 you had said you had already upheld the objection. Are you
 25 reversing that decision?

Page 35973

1 CHAIRPERSON: I upheld the objection on
 2 the way it was framed. You had two points. The one was
 3 that the frame of the question implied that something that
 4 the witness had said, and I think you complained about the
 5 word "So" and I upheld that objection, suggested the
 6 question to be reformulated. You then –
 7 MR MPOFU: But you just allowed it.
 8 CHAIRPERSON: - and then as I understood
 9 it went on to say that in any event even as reformulated
 10 you objected to the question.
 11 MR MPOFU: Yes.
 12 CHAIRPERSON: And you gave reasons why
 13 you considered it unfortunate – you used stronger language
 14 than that – unfortunate that the question was asked, and
 15 I've given my ruling and that's the end of the matter.
 16 I've given my ruling. You may well have good reasons for
 17 thinking that the question is unfortunate, but I don't
 18 think it's a basis for me to disallow Mr Ramphele asking
 19 the question. It's his last question in any event. Mr
 20 Ramphele, please proceed.
 21 MR RAMPHELE: In your statement – maybe I
 22 should try and give some sort of background of why I say –
 23 CHAIRPERSON: No, no, you haven't got
 24 time for that.
 25 MR RAMPHELE: Yes, I –

Page 35974

1 CHAIRPERSON: Your time is up. I'm
 2 actually being –
 3 MR RAMPHELE: Thank you, Chairperson.
 4 CHAIRPERSON: I'm trying to help you –
 5 MR RAMPHELE: It was going to be one –
 6 CHAIRPERSON: I'm applying the rules –
 7 MR RAMPHELE: - question and then go back
 8 to that question.
 9 CHAIRPERSON: I'm applying the rules and
 10 the time limits flexibly because you've had a number of
 11 interruptions which had eaten into your time. So that's
 12 why I'm allowing you to ask the question, reformulate it to
 13 take out the first ground of objection which I've upheld,
 14 and then I'm afraid that's the end of your time. But
 15 please ask the question in a reformulated way.
 16 MR RAMPHELE: Thank you. Mr Nzuzza, I'm
 17 not saying that you are guilty of anything, but in your
 18 statement you gave an indication that you heard, and the
 19 report which you did not oppose, that there was a skirmish
 20 between the protesters and security, and we know that out
 21 of that skirmish there was death. It is an unfortunate
 22 incident of what resulted out of the skirmish, and I'm
 23 saying these same protesters are the same protesters you
 24 were part of, even though you were not there, it is clear
 25 that you were not there when this happened. Are we agreed?

Page 35975

1 MR NZUZA: I really don't understand your
 2 question. It seems that there's 10 questions in that one
 3 statement.
 4 CHAIRPERSON: Mr Ramphele –
 5 MR RAMPHELE: Let me leave it, Chair.
 6 CHAIRPERSON: I did give you leave to ask
 7 one question and not 10 questions, so please ask the one
 8 question and then we, if we get an answer or even if we
 9 don't get an answer, I'm afraid we must then stop you.
 10 MR RAMPHELE: Okay.
 11 CHAIRPERSON: Please put the question.
 12 MR RAMPHELE: The question is if you
 13 agreed with the cause of the strikers, you would agree that
 14 there would be mistakes by the strikers and if those
 15 mistakes happened then as one of them you should apologise.
 16 MR MPOFU: Chairperson –
 17 CHAIRPERSON: Yes, Mr Mpofu.
 18 MR MPOFU: I wish to object to the
 19 question –
 20 CHAIRPERSON: What's the objection?
 21 MR MPOFU: - on the following basis –
 22 CHAIRPERSON: I've already given a ruling
 23 on the matter. Do you want to give it another try?
 24 MR MPOFU: No, it's a different question.
 25 CHAIRPERSON: Sorry?

Page 35976

1 MR MPOFU: This is a different question.
 2 CHAIRPERSON: Alright, let's hear your
 3 objection.
 4 MR MPOFU: You gave a ruling to my
 5 objection –
 6 CHAIRPERSON: I said let's –
 7 MR MPOFU: - before I made it?
 8 CHAIRPERSON: Mr Mpofu, do me a favour,
 9 listen to what I say. I said let's hear your objection.
 10 MR MPOFU: Oh, okay. The basis for the
 11 objection is that –
 12 CHAIRPERSON: Let's hear what the
 13 objection is first then you can give me the basis.
 14 MR MPOFU: Yes, thank you. The basis for
 15 the objection is that what now the witness is being asked
 16 to do is that on the basis of his having been one of the
 17 strikers he must apologise for some undefined mistakes, or
 18 all mistakes that all the 3 000 strikers might have
 19 committed I suppose between the 10th and the 16th of August
 20 – the 9th even, ja, or maybe even longer, and there is no
 21 basis to suggest whatsoever that this witness would have
 22 been answerable for all or any of mistakes of those 3 000
 23 people, some of whom he never even knew, and therefore it
 24 is illogical to without creating that link, as it were, or
 25 the basis for that duty, to then ask him to apologise for

Page 35977

1 all those people, for all the mistakes that they may or may
 2 not have committed.
 3 But what is more, Mr Ramphele's clients, he has
 4 not laid the basis – or at least the one that he's talking
 5 about now – to suggest that this witness, or anybody for
 6 that matter, sponsored or instructed or allowed or whatever
 7 word of association one can use, the said calamity that
 8 they faced.
 9 CHAIRPERSON: I didn't understand the
 10 question to suggest that the witness is directly
 11 answerable, nor is it necessary for him to lay a basis. He
 12 just asked a question. The objection is disallowed. You
 13 may ask the question and then we'll get the answer and that
 14 will be the end of your cross-examination, Mr Ramphele.
 15 MR RAMPHELE: Mr Nzuzza, you identified
 16 with a cause; it was not an easy cause. Do you agree?
 17 MR NZUZA: I don't understand the
 18 question.
 19 CHAIRPERSON: You know, Mr Ramphele,
 20 you're getting nowhere putting the question this way.
 21 MR RAMPHELE: Yes, thank you, Chair.
 22 That will be –
 23 CHAIRPERSON: Let me put the question
 24 that you appear to be asking. Even though Mr Ramphele does
 25 not suggest that you are answerable for what the people did

Page 35978

1 who were responsible for the death of his client's
 2 breadwinner, he wants to know whether because broadly
 3 speaking you supported the cause of the strike and these
 4 acts were done in the course of the strike, whether you are
 5 prepared to apologise. Is that a fair summary of your
 6 question?
 7 [10:29] MR RAMPHELE: That's a fair -
 8 CHAIRPERSON: What's the answer to that?
 9 MR NZUZA: I really don't understand
 10 where this question is leading to. To what must I
 11 apologise?
 12 CHAIRPERSON: I think we can assume that
 13 the answer to the question is no. That's the end of your
 14 cross-examination, Mr Ramphele. We'll now take the first
 15 comfort break for 15 minutes.
 16 MR RAMPHELE: Thank you, that concludes –
 17 [COMMISSION ADJOURNS COMMISSION RESUMES]
 18 [10:53] CHAIRPERSON: The Commission resumes.
 19 Please tell the witness he's still under oath. Ms Masevhe.
 20 MR MAHLANGU: Witness still under oath.
 21 CROSS-EXAMINATION BY MS MASEVHE:
 22 Chairperson, I represent the family of Warrant Officer
 23 Monene in these proceedings. My name is Masevhe. Good
 24 afternoon, Mr Nzuzza.
 25 CHAIRPERSON: It's still the morning, Ms

Page 35979

1 Masevhe. You've got 25 minutes, you had 40 but you gave 15
 2 away which I gratefully receive, thank you. You've got 25.
 3 MS MASEVHE: Thank you, Chairperson. Mr
 4 Nzuzza, I would like to deal with the issues of the 13th and
 5 I've already explained that I represent the family of
 6 Warrant Officer Monene who was killed on the 13th near the
 7 railway line. Mr Nzuzza, I would like to make a quick
 8 reference, I suppose there's no need to really go to the
 9 post-mortem, but I would like to make a quick reference to
 10 it, that is the post-mortem of Warrant Officer Monene. It
 11 states that he had injuries at the back of his head and he
 12 also had gunshot wounds. And then, Mr Nzuzza, I would like
 13 to refer you to paragraph 10 of your statement. That is on
 14 page 3, your statement which is HHH21. I would to quickly
 15 refer you to line number 2, that is the end of line number
 16 2 there. You say there was a pandemonium with strikers
 17 running away, mainly in the direction of the koppie and
 18 then you further state that some of the policemen were
 19 among the fleeing crowd and there was violent encounters
 20 with the strikers. Now what did you mean that there was
 21 violent encounters with the strikers?
 22 MR NZUZA: What I saw is the police
 23 shooting, someone was shot, that's a person I picked up or
 24 took away.
 25 MS MASEVHE: What happened to the

Page 35980

1 policemen that were among these strikers?
 2 MR NZUZA: I do not know.
 3 MS MASEVHE: Because you say that you saw
 4 it, now why did you only see the striker was shot and did
 5 not see the police?
 6 MR NZUZA: I was running.
 7 MS MASEVHE: But then you said that you
 8 saw.
 9 MR NZUZA: Yes I've seen this person
 10 because he was shot behind me and he fell just behind me.
 11 MS MASEVHE: And you didn't see the
 12 police that were amongst the strikers.
 13 MR NZUZA: No I did not see them. I
 14 don't know what became of them.
 15 COMMISSIONER HEMRAJ: Mr Nzuzza, did you
 16 see any of the strikers do anything at all to any of the
 17 policemen?
 18 MR NZUZA: No I did not.
 19 MS MASEVHE: Now you further state on the
 20 very same paragraph actually, just two lines down from
 21 where I was reading, you say that some of the workers were
 22 fighting back.
 23 MR NZUZA: I'm not literally referring to
 24 fight, fight takes many forms, they were trying to break
 25 loose because they were being grabbed. People were being

Page 35981

1 arrested or apprehended there.
 2 MS MASEVHE: Now why didn't you mention
 3 it like that, exactly like that in your statement instead
 4 of saying that there was fighting back if they were not?
 5 MR MPOFU: I'm sorry to interrupt, I just
 6 didn't want it to be lost, in the previous answer there's a
 7 part that was not interpreted, the last part where he says
 8 [African language]. The part that you did was correct
 9 which was people were being apprehended and they were
 10 breaking loose. And then he said [African language].
 11 MR MAHLANGU: I did not hear that, Mr
 12 Chair, I don't know if –
 13 MR NZUZA: Yes they were trying to
 14 apprehend the people, but no one was apprehended, people
 15 got away.
 16 MS MASEVHE: Now my question to you is
 17 that why didn't you mention it like that in your statement?
 18 MR NZUZA: How, how was I supposed to –
 19 MS MASEVHE: The very same thing that
 20 you've mentioned before this Commission.
 21 MR NZUZA: I don't understand the
 22 question.
 23 MS MASEVHE: You're saying that you
 24 didn't mean that the strikers were fighting back, they were
 25 actually trying to run away. Now why didn't you mention it

Page 35982

1 like that in your statement? That is my question, Mr
 2 Nzuzza.
 3 MR NZUZA: This is the statement, someone
 4 else wrote the statement, not me. It is written in
 5 English. I don't know how to write in English.
 6 MS MASEVHE: Wasn't it read back to you?
 7 MR NZUZA: After the statement was
 8 written yes it was read back to me, but I'm explaining it
 9 now.
 10 MS MASEVHE: It's not the same.
 11 MR NZUZA: Now I don't understand.
 12 MS MASEVHE: I'm sure you understand me,
 13 Sir, then I'll move on. Now if you look at exhibit RRR19,
 14 that is the statement of Sergeant Cebekhulu. At page 2,
 15 paragraph 5 he states that he saw police being attacked
 16 instead of a fight. He said he saw police, "I noticed
 17 mineworkers attacking police with spears and police trying
 18 to run away screaming for help." Can you see that?
 19 MR NZUZA: The officer says so, I can
 20 just see words there, I don't know what is written.
 21 MS MASEVHE: Now this police officer did
 22 not see the fight, instead he saw the miners attacking.
 23 MR NZUZA: That's what the police officer
 24 says. I don't know.
 25 MS MASEVHE: You see, Mr Nzuzza, it's not

Page 35983

1 only Sergeant Cebekhulu it's also Vermaak, Lieutenant
 2 Vermaak on HHH4.
 3 MR NZUZA: I have nothing to say with
 4 what Vermaak says about it. I'm responding to what I've
 5 seen. Vermaak saw what he saw.
 6 MS MASEVHE: The reason why I'm referring
 7 you to accounts of these people is that it's contrary to
 8 what you told this Commission in your statement.
 9 MR NZUZA: Those are their versions.
 10 MS MASEVHE: And you have nothing to say
 11 against that.
 12 MR NZUZA: That is what they say, I
 13 cannot respond to what they are saying.
 14 MS MASEVHE: You see I am going to make a
 15 submission at the end of this Commission, Mr Nzuzza, that
 16 there was actually no fight, but an attack on the police
 17 officers and I'm talking about Warrant Officer Monene,
 18 Warrant Officer Lepaaku and Lieutenant Baloyi.
 19 MR NZUZA: I do not know about that.
 20 MS MASEVHE: And I will further make a
 21 submission before this Commission that the perpetrators of
 22 this violence must face the full might of the law.
 23 MR NZUZA: That's what I've also said.
 24 MS MASEVHE: Well thank you very much,
 25 Chairperson, we have no further questions for this witness.

Page 35984

1 CHAIRPERSON: Thank you. Mr Bham, you're
 2 going to cross-examine on behalf of Lonmin. You've been
 3 allocated 90 minutes.
 4 CROSS-EXAMINATION BY MR BHAM SC: Thank
 5 you, Mr Chairman. Mr Chairman, may I ask for the
 6 transcript day 277, page 35458 to be put on the screen
 7 please?
 8 CHAIRPERSON: Which line do you want to
 9 look at, 35?
 10 MR BHAM SC: 458.
 11 CHAIRPERSON: 458?
 12 MR BHAM SC: Yes.
 13 CHAIRPERSON: We've got that on the
 14 screen. What line do you want?
 15 MR BHAM SC: I'm going to go through
 16 aspects and the next page, so if we just read it at the top
 17 there.
 18 CHAIRPERSON: So you'll start at the top.
 19 MR BHAM SC: Yes.
 20 CHAIRPERSON: Thank you.
 21 MR BHAM SC: Mr Nzuzza, you were a winch
 22 operator employed by Lonmin.
 23 MR NZUZA: Yes.
 24 MR BHAM SC: Thank you and –
 25 CHAIRPERSON: I'm sorry, Mr Bham, is that

Page 35985

1 correct? Was he a winch operator employed by Lonmin or was
 2 he employed by a sub-contractor of Lonmin. I'm just asking
 3 in the interest of accuracy.
 4 MR BHAM SC: His statement says I am a 27
 5 year old employee of Lonmin.
 6 CHAIRPERSON: I know, but there was some
 7 other evidence to the effect that – as far as I can
 8 remember which indicated that that statement might have
 9 been not strictly accurate. So I'm just asking you what –
 10 as you appear –
 11 MR BHAM SC: As I understand it he was a
 12 winch operator employed by Lonmin, but if that is not
 13 correct I'll sort it out.
 14 CHAIRPERSON: Well it may not be relevant
 15 to your question anyway, but I thought in the interest of
 16 accuracy we should –
 17 MR BHAM SC: Yes I understand, Mr
 18 Chairman.
 19 MR MPOFU: Chairperson, if I may assist
 20 because I led that evidence. What the witness said was
 21 that before being employed as a winch operator by Lonmin in
 22 2007 he had worked, I think, from 2006 with a contractor.
 23 But what Mr Bham is dealing with is when he was working at
 24 Lonmin.
 25 CHAIRPERSON: So I misunderstood. So it

Page 35986

1 is correct that he was employed by Lonmin at the time and
 2 not a sub-contractor. Okay thank you.
 3 MR BHAM SC: Thank you. Mr Nzuzza, if I
 4 understood your evidence correctly, for the nightshift of
 5 the 10th you were on your way to work.
 6 MR NZUZA: Yes.
 7 MR BHAM SC: And at that point in time
 8 you had no idea that there was a strike.
 9 MR NZUZA: Yes.
 10 MR BHAM SC: So up until that point in
 11 time, when the strike had already started, from your
 12 perspective you had no idea there was a strike and you had
 13 no intention to go on strike.
 14 MR NZUZA: I don't understand the
 15 question.
 16 MR BHAM SC: On your way to work on the
 17 10th you had no intention of going on strike.
 18 MR NZUZA: I don't understand that
 19 question.
 20 MR BHAM SC: You were on your way to work
 21 on the 10th, on the evening of the 10th for the nightshift.
 22 MR NZUZA: Yes.
 23 MR BHAM SC: And the only reason you were
 24 on your way to work is because you had no intention to go
 25 on strike, you didn't believe that you needed to go on

Page 35987

1 strike at that time.
 2 MR NZUZA: That's the part I don't
 3 understand.
 4 MR BHAM SC: What about it don't you
 5 understand? Did you go to work on the night of the 10th?
 6 MR NZUZA: Yes that's what I'm saying, I
 7 was on my way to work.
 8 MR BHAM SC: And if you were on your way
 9 to work you had no intention of going on strike at that
 10 point in time.
 11 MR NZUZA: I did not know about the
 12 strike.
 13 MR BHAM SC: Absolutely and in fact prior
 14 to the 10th did you know about any demands made on
 15 management, of Lonmin's management for an increase in wages
 16 to R12 500?
 17 MR NZUZA: No I did not know anything.
 18 MR BHAM SC: You went to the koppie for
 19 the first time on the morning of the 11th of August, the
 20 Saturday.
 21 MR NZUZA: I went to Wonderkop, not to
 22 the koppie.
 23 MR BHAM SC: To Wonderkop, you're
 24 absolutely right. You went there at that point in time
 25 because you were told that there was a strike and people

Page 35988

1 were not going to work.
 2 MR NZUZA: Yes.
 3 MR BHAM SC: Your evidence at page 35460,
 4 go to 35460. At line 18 you say people were seated there
 5 waiting to get a report as to when the employer would be
 6 able to give us money. And they were seated at the koppie
 7 at that point in time if you look at the question that was
 8 asked of you by Mr Mpofu.
 9 MR NZUZA: So what asking is when.
 10 MR BHAM SC: On the 11th.
 11 MR NZUZA: I did not say at the koppie, I
 12 said near the koppie at the grass.
 13 MR BHAM SC: Now when you said people
 14 were seated there waiting to get a report as to when the
 15 employer would be able to give us the money, at that point
 16 in time you had already joined the strike on the 11th.
 17 MR NZUZA: Yes.
 18 MR BHAM SC: When you joined the strike
 19 did you know what the strike was about, why people had gone
 20 on strike?
 21 MR NZUZA: I don't understand the
 22 question.
 23 MR BHAM SC: People were on strike.
 24 MR NZUZA: Yes.
 25 MR BHAM SC: And you joined the strike.

Page 35989

1 MR NZUZA: Yes.
 2 MR BHAM SC: Did you know the reason for
 3 people having gone on strike?
 4 MR NZUZA: I said I did not know.
 5 MR BHAM SC: You did not know. So you
 6 went on strike without knowing why they'd gone on strike.
 7 MR NZUZA: I went there to hear what was
 8 the gathering about at Wonderkop.
 9 MR BHAM SC: And when you went to
 10 Wonderkop what did you hear about the reason for the
 11 gathering?
 12 MR NZUZA: I didn't hear the question.
 13 MR BHAM SC: When you went to Wonderkop
 14 were you told why people were gathering and why they were
 15 on strike?
 16 [11:13] MR NZUZA: Yes, I got there and I said
 17 that the people wanted R12,500.
 18 MR BHAM SC: Which people? Was it all of
 19 the workers, or just certain category of workers?
 20 MR NZUZA: Certain categories, as you
 21 said, as you put it.
 22 MR BHAM SC: And amongst those categories
 23 were winch operators in the category of people who wanted
 24 R12,500.
 25 MR NZUZA: As you said, yes.

Page 35990

1 MR BHAM SC: I'm asking you were winch
 2 operators part of the category of people who wanted
 3 R12,500?
 4 MR NZUZA: I know the workers who wanted
 5 that money.
 6 MR BHAM SC: I'm going to ask you one
 7 more time. Mr Nzuzza, when you were told about the demand
 8 for R12,500, were you told which category of workers wanted
 9 that amount?
 10 MR NZUZA: I was told the workers.
 11 MR BHAM SC: You weren't told which
 12 categories of workers?
 13 MR NZUZA: The workers.
 14 MR BHAM SC: Was there any explanation
 15 given to you about where the amount of R12,500 had come
 16 from?
 17 MR NZUZA: Can you repeat the question?
 18 MR BHAM SC: Was there any explanation
 19 furnished to you about where the amount of R12,500 had come
 20 from? The demand for R12,500.
 21 MR NZUZA: Yes.
 22 MR BHAM SC: And what was told to you and
 23 by whom?
 24 MR NZUZA: The workers were speaking.
 25 MR BHAM SC: Did they explain to you on

Page 35991

1 what basis they had arrived at the amount of R12,500?
 2 MR NZUZA: I don't know about that.
 3 MR BHAM SC: You say in the sentence I
 4 just read to you at line 18, "People were seated there,
 5 waiting to get a report as to when they employer would be
 6 able to give us the money."
 7 MR NZUZA: Yes.
 8 MR BHAM SC: So if I understand you
 9 correct, what the workers were waiting for a response to
 10 when they would get the money they were demanding?
 11 MR NZUZA: Yes, that's what I'm saying.
 12 MR BHAM SC: And that is what they
 13 wanted, a report-back on when they would get the money.
 14 MR NZUZA: Yes, that's what we wanted.
 15 MR BHAM SC: And if Lonmin did not agree
 16 to give the amount that was demanded, the strike would
 17 continue?
 18 MR NZUZA: I don't understand the
 19 question.
 20 MR BHAM SC: The demand was a salary of
 21 R12,500.
 22 MR NZUZA: Yes.
 23 MR BHAM SC: And you said that the
 24 workers were waiting for a report on when the employer
 25 would be able to give us the money, that must be the

Page 35992

1 R12,500.
 2 MR NZUZA: Yes, that's we were waiting
 3 for to hear when are we getting that money.
 4 MR BHAM SC: And if you were told that
 5 Lonmin would not agree to give you the R12,500, the strike
 6 would have continued?
 7 MR NZUZA: That's the part I don't
 8 understand.
 9 MR BHAM SC: I'm not sure why you don't
 10 understand it. Would the strike have come to an end if
 11 Lonmin management had come and said to you, we are here to
 12 talk to you, but we're not going to give in to your demand
 13 of R12,500?
 14 MR NZUZA: But Lonmin did not come, so
 15 I'm not going to respond to an example.
 16 MR BHAM SC: I'm asking again, for one
 17 last time, and, Mr Nzuzza, I'm going to suggest to the
 18 commission if you don't answer the question openly, that
 19 you're deliberately evading the question. So I'm going to
 20 give you the opportunity one more time to answer the
 21 question. If at the time Lonmin did not agree to the
 22 demand for R12,500, would the strike have continued?
 23 MR NZUZA: Yes, the strike would
 24 continue.
 25 MR BHAM SC: Thank you. I want to come

Page 35993

1 back to that topic a little later. I'd like to go back to
 2 the events of the 13th of August. Now, you talk about that
 3 at page 35480 of your transcript. If you could go there,
 4 please? And if you can go to line 11? You'll see, Mr
 5 Nzuzza, there Mr Mpofu asks you about going to Karee on the
 6 13th, and he asks what was the aim of the trip to Karee.
 7 And you say, "We had gone to see if there were workers at
 8 the shaft." Now, can you explain again, Mr Nzuzza, what the
 9 purpose was of you going to see whether there were workers
 10 at the K3 shaft on the 13th?
 11 MR NZUZA: I've already answered that
 12 question.
 13 CHAIRPERSON: Sorry, let me interpose, Mr
 14 Bham. What would you have done if there had been workers
 15 at the shaft?
 16 MR NZUZA: We would have done nothing, Mr
 17 Chairman.
 18 MR BHAM SC: Can I ask you go to page
 19 35487, please, line 9? Now, Mr Nzuzza, if I understood
 20 correctly, and if my understanding was incorrect, please
 21 correct me, Mr Noki was one of the leaders of the strike,
 22 was he?
 23 MR NZUZA: Yes.
 24 MR BHAM SC: And he had asked you to go
 25 to K3 on the 13th?

Page 35994

1 MR NZUZA: Yes, I'm listening.
 2 MR BHAM SC: Now, you testified at line 9
 3 on that page, you said what Noki said to them, and this was
 4 to the security people from Lonmin, you say, "What Noki
 5 said to them was that we have come here to stop the workers
 6 from working, because we want them all on the mountain."
 7 MR NZUZA: But your question –
 8 MR BHAM SC: I'm going to get to my
 9 question. I just want to confirm that that is what Noki
 10 had said to the security?
 11 MR NZUZA: Yes, that's what Noki said,
 12 not me.
 13 MR BHAM SC: And what Noki said to the
 14 security people, was that a fair reflection of the
 15 intention of going to K3 on the day?
 16 MR NZUZA: I don't understand.
 17 MR BHAM SC: What Mr Noki had told the
 18 security people, did he communicate what you all had
 19 intended in going towards K3?
 20 MR NZUZA: He said what were saying, he
 21 told the security what we said.
 22 MR BHAM SC: Thank you very much. If you were told
 23 that there were people who were working at K3, what would
 24 your attitude have been towards those people who were
 25 working at K3 at the time?

Page 35995

1 MR NZUZA: We would have done nothing.
 2 MR BHAM SC: Why then did you want to go
 3 to K3, if you have done nothing if people were working
 4 there. What was the purpose of the trip?
 5 MR NZUZA: Now, I don't understand you.
 6 MR BHAM SC: You say you would have done
 7 nothing, and I'm going to suggest to you that you're saying
 8 is completely inconsistent with what you say Mr Noki had
 9 told the security officers.
 10 MR NZUZA: We said, when we go there, we
 11 came to tell them that we want R12,500, they must go to the
 12 mountain, because we want R12,500.
 13 MR BHAM SC: You see, Mr Nzuzza, when you
 14 were asked questions in your evidence by Mr Mpofo, what you
 15 had said was that Mr Noki had said to the security
 16 officers, we have come here to stop the workers from
 17 working.
 18 MR NZUZA: That's what I was listening,
 19 when he was talking on the video, I was responding to that.
 20 MR BHAM SC: No, he wasn't talking on the
 21 video at that point in time, this is when he was talking to
 22 the security officers and not to the police.
 23 MR NZUZA: Yes, he was talking to the
 24 security telling them we've come to ask the workers to stop
 25 working. They should go to the mountain, we want R12,500.

Page 35996

1 MR BHAM SC: And the real intention of
 2 going to K3 was to stop workers from working?
 3 MR NZUZA: Yes.
 4 MR BHAM SC: Mr Nzuzza, you recall, you
 5 were shown a series of video clips about different speeches
 6 that were made on the mountain, or at the koppie, on the
 7 16th of August. Do you remember that?
 8 MR NZUZA: Yes.
 9 MR BHAM SC: And there were different
 10 videos shown. One of the videos, there was a person, video
 11 14, there was a person called Andries who was speaking.
 12 MR NZUZA: Yes.
 13 MR BHAM SC: And amongst the things that
 14 Andries had said was we want him – and he was talking about
 15 the employer – we want him to speak to us at the mountain.
 16 We told him how much we wanted.
 17 MR NZUZA: I don't understand?
 18 MR BHAM SC: Andries said quite a few
 19 things, but two of the things he said was that we want him
 20 to speak to us at the mountain.
 21 MR NZUZA: Yes.
 22 MR BHAM SC: And he also said we told him
 23 how much we wanted.
 24 MR NZUZA: That's what Andries said, not
 25 me.

Page 35997

1 MR BHAM SC: And one of the other
 2 speakers, the gentleman who spoke in Shangaan, amongst the
 3 things he said was, "We are going to stay here until they
 4 put in money we are demanding."
 5 MR NZUZA: That's the Shangaan speaker
 6 who said that.
 7 MR BHAM SC: And you then said, Mr Nzuzza,
 8 I think it was you, if I'm wrong, then Mr Mpofo will
 9 correct me. You said, "We are not going anywhere until
 10 management comes here," – here, with reference to the
 11 mountain.
 12 MR NZUZA: Yes, I said so.
 13 MR BHAM SC: You also said, "We are going
 14 to remain as we are until management comes here."
 15 MR NZUZA: Yes.
 16 MR BHAM SC: One of the other people who
 17 spoke was somebody referred to as Kayesa. That was video
 18 20. And he said, "We are not moving from here until we get
 19 what we want."
 20 MR NZUZA: That's what Kayesa said, not
 21 me.
 22 MR BHAM SC: Is it fair to conclude from
 23 what we were shown from all those video clips that there
 24 were two non-negotiables for those of you who were on the
 25 koppie at the time, the strikers? The first was that you

Page 35998

1 wanted Lonmin management to come to the koppie. And the
 2 second was that you wanted your demand for payment of
 3 12,500 to be met.
 4 MR NZUZA: Yes, that's what we wanted.
 5 MR BHAM SC: And if you didn't get what
 6 you wanted, the strike would have continued?
 7 MR NZUZA: Yes, I've already said so.
 8 MR BHAM SC: Thank you. I want to go on
 9 to a different topic now, Mr Nzuzza. Mr Nzuzza, you were
 10 referred to, and I want to be fairly precise, because us to
 11 get into level of confusion, you'll recall we referred to
 12 the deaths of Mr Fundi and Mr Mabelane on the 12th of
 13 August?
 14 MR NZUZA: Yes.
 15 MR BHAM SC: And you were also referred
 16 to the death of Mr Mabebe on the night of the 12th of
 17 August?
 18 MR NZUZA: Yes.
 19 MR BHAM SC: And the death of Mr Langa on
 20 the morning of the 13th of August?
 21 MR NZUZA: Yes.
 22 MR BHAM SC: If I understand your
 23 evidence correctly, you don't know by whom they were
 24 killed, nor do you know the circumstances in which they
 25 were killed?

<p style="text-align: right;">Page 35999</p> <p>1 MR NZUZA: Yes, I do not know. 2 MR BHAM SC: But if I understand what you 3 also said, you believe that those who were responsible for 4 killing those four gentlemen, should be charged criminally. 5 MR NZUZA: Yes. 6 MR BHAM SC: You would then have no 7 difficulty in characterising their killings, their death as 8 acts of criminality? 9 MR MPOFU: Chairperson, I want to object 10 to that question on the same basis as yesterday. To put 11 those fine distinction to a witness, he has already said 12 people should be arrested, as to whether they become 13 criminals at that stage, or after the conviction and all 14 that is really unfair for a witness, a lay witness of this 15 kind. 16 CHAIRPERSON: What do you say to that, Mr 17 Bham. 18 MR BHAM SC: I think the objection is 19 ill-founded. The witness has already said he believes that 20 those who were responsible for those killings should be 21 charged criminally. I'm asking him for his 22 characterisation of the conduct which led to their 23 killings, whether somebody's convicted or not later, is a 24 different issue. 25 MR MPOFU: No.</p>	<p style="text-align: right;">Page 36001</p> <p>1 that I would like him to be aware of in formulating the 2 question. 3 MR BHAM SC: Mr Chairman, again the real 4 difficulty with the objection is I'm not identifying a 5 particular person as being called a criminal or not. I'm 6 identifying the conduct, whoever may have been responsible 7 for the conduct – 8 MR MPOFU: It's the same thing. 9 MR BHAM SC: It's the conduct whose 10 characterisation I'm seeking to elicit from the witness. 11 MR MPOFU: No – 12 CHAIRPERSON: Yes, Mr Mpofo, what's your 13 reply? 14 MR MPOFU: No, Chairperson, I mean that's 15 a non-distinction. If the conduct is criminal it's 16 criminal, it's declared criminal at the point at which a 17 conviction is made. For example if you something and at 18 the point of conviction it's found that you should be 19 acquitted then it means your conduct was not criminal. I 20 mean I don't know what the difference is between a person 21 and the conduct. What is that? 22 CHAIRPERSON: You may be acquitted on the 23 ground that it's not proved that you were responsible for 24 the conduct, it wasn't your conduct, it was the conduct of 25 somebody else.</p>
<p style="text-align: right;">Page 36000</p> <p>1 MR BHAM SC: But I'm asking for his own 2 characterisation. He'll give his characterisation as he 3 sees fit, but it's for him to deal with that, Chairperson. 4 MR MPOFU: Chairperson – 5 CHAIRPERSON: I think the question as 6 framed didn't quite convey that. The distinction drawn by 7 Mr Mpofo relates to not what they were charged with 8 necessarily, but whether they were, as it were, criminals, 9 without more. I understand that to be basis of your 10 objection. 11 MR MPOFU: Yes, Chairperson. 12 CHAIRPERSON: I think the question should 13 be reformulated to avoid that problem. 14 MR BHAM SC: The question wasn't along 15 the lines of the objection, but I'm going to repeat the 16 question. Mr Nzuzza, would you agree that the conduct which 17 led to the death of Mr Fundi, Mr Mabelane, Mr Mabebe, and 18 Mr Langa, that conduct was conduct which you would regard 19 as criminal conduct. 20 [11:33] MR MPOFU: No Chairperson, I'm sorry, I 21 can see where Mr Bham is going and I honestly don't want to 22 disturb him. All I'm saying is this; let me put it 23 simplistically. A person who is charged with a criminal 24 offence is not a criminal, but a person who is convicted of 25 a criminal offence is a criminal. That's the distinction</p>	<p style="text-align: right;">Page 36002</p> <p>1 MR MPOFU: That's true, but it may – it 2 doesn't mean the converse is not true. You may also be 3 acquitted on the basis that your conduct was not criminal. 4 CHAIRPERSON: I think the question as 5 framed is sufficiently clear to indicate the distinction to 6 which Mr Bham refers and I allow the question, disallow the 7 objection. 8 MR BHAM SC: Is the question allowed? 9 CHAIRPERSON: I said I allow the question 10 and disallow the objection. 11 MR BHAM SC: Thank you, Mr Chairman. Mr 12 Nzuzza, I'm going to ask you again, would you agree that the 13 conduct which led to the deaths of Mr Fundi, Mr Mabelane, 14 Mr Mabebe and Mr Langa can properly be characterised as 15 conduct which is criminal, or is an act of criminality? 16 MR NZUZA: That's the last part that I 17 don't understand. 18 MR BHAM SC: Why do you think those who 19 were responsible for the deaths of Mr Fundi, Mr Mabelane, 20 Mr Mabebe and Mr Langa should be charged? 21 MR NZUZA: I say they should be charged. 22 MR BHAM SC: Why? 23 MR NZUZA: If they killed, committed 24 murder, if they killed they should. 25 MR BHAM SC: And you would then agree</p>

<p style="text-align: right;">Page 36003</p> <p>1 that if anybody participated in that type of conduct, the 2 conduct is wrong and criminal in nature? 3 MR NZUZA: I'm saying they'd killed. 4 MR BHAM SC: And killing is wrong? 5 MR NZUZA: I don't understand where is 6 the question leading to. 7 MR BHAM SC: I'm asking you on the basis 8 of what you said – 9 MR MPOFU: No, Chairperson, I'm sorry – 10 MR BHAM SC: - they were killed – 11 MR MPOFU: Chairperson, with the greatest 12 respect, this is exactly what I've said before. These fine 13 distinctions between killing and killing that is right and 14 that is wrong and so on, those are matters of law which 15 will be determined one day if those people are charged. It 16 can't be expected of this witness to be a judge now, or a 17 magistrate, to say whether those particular killings were 18 right or justified or unjustified or whatever. That's just 19 unfair to put a legal, pose a legal question, as it were, 20 to a witness. It's just – 21 CHAIRPERSON: Yes, Mr Bham, what do you 22 say about that objection? 23 MR BHAM SC: Mr Chairman, my learned 24 friend Mr Mpofo can't approbate and reprobate. Just a 25 little earlier on in response to one of the questions that</p>	<p style="text-align: right;">Page 36005</p> <p>1 came also from the witness. 2 CHAIRPERSON: Yes, are you finished, Mr 3 Mpofo? 4 MR MPOFU: Yes, Chairperson, I'm sorry, 5 just one [microphone off, inaudible]. Yes, if we go to 6 PPPP1, which is the witness's statement, paragraph 18, 7 that's where this idea is put and I think maybe Mr Bham 8 will be assisted by this. He says at paragraph 18 and 19, 9 18, "Those strikers who are properly identified on the 10 basis of credible evidence must be charged, tried and if 11 convicted in a court of law of any serious crimes, such as 12 murder or arson, just be punished appropriately. 13 Similarly, those in the government and the company who are 14 seemingly liable and responsible for the murder of human 15 beings must be similarly charged, tried, and if convicted, 16 punished in local and international courts." 17 CHAIRPERSON: I think you can put the 18 question, Mr Bham – 19 MR BHAM SC: Thank you. 20 CHAIRPERSON: - provided you make the 21 distinction clear between a charge and conduct which forms 22 the basis of the charge, or alleged conduct which is the 23 basis of the charge and the subsequent conviction. 24 MR BHAM SC: We're having the same debate 25 again, Mr Chairman, and I –</p>
<p style="text-align: right;">Page 36004</p> <p>1 was put to this witness he took objection on the basis – 2 and he said it in very strong terms – that the witness has 3 already said that those responsible for the deaths of some 4 of the people are now referring to should be criminally 5 charged. What I'm asking the witness now is why he would 6 have the view that those responsible for the deaths of the 7 four people I've referred to should be criminally charged. 8 CHAIRPERSON: Mr Mpofo, do you wish to 9 reply? 10 MR MPOFU: Yes, Chair, if Mr Bham had 11 been listening to me, I said those, the witness had said 12 those who are identified should be criminally charged and 13 if convicted should go to jail. That is the whole point. 14 I'm saying that you can't now then ask a question that kind 15 of blurs that distinction and expect a lay witness to make 16 distinctions, define distinctions of lawyers between 17 killing which may be justified and unjustified killings, 18 because those people, the fact that people are charged or, 19 (a), properly identified, which is what the witness said; 20 (b), charged, does not mean that, does not necessarily – 21 maybe to cover the point that you made validly, Chairperson 22 – does not necessarily mean that either those persons nor 23 their conduct is criminal. It's only after the point of 24 conviction that we can talk about that, and that's why I 25 made that if convicted both yesterday and today, and it</p>	<p style="text-align: right;">Page 36006</p> <p>1 CHAIRPERSON: No, no, no, provided you 2 make that clear you can ask the – 3 MR BHAM SC: I'm going to put the 4 question, but I just want to make it clear that each of the 5 questions in this line that I've put related to why this 6 witness believed people should be charged with those acts. 7 CHAIRPERSON: Yes, yes – 8 MR BHAM SC: I said nothing about a 9 conviction. 10 CHAIRPERSON: Yes, no, no, I – 11 MR BHAM SC: And we're going through the 12 same debate time and time again. I thought you had ruled 13 on that already and I'm now putting the same question 14 again. 15 CHAIRPERSON: I was allowing you to ask 16 the question. I simply said you must make the distinction 17 – remember this is a relatively unsophisticated witness, 18 not educated. He may not understand as readily as lawyers 19 would do the concepts that have been discussed and provided 20 you make the distinction clear you can ask the question. 21 MR BHAM SC: I'll repeat the question I'd 22 previously asked. Mr Nzuzza, in relation to the deaths of 23 Mr Fundi, Mr Mabelane, Mr Langa and Mr Mabebe, if I 24 understood you correctly you said that those people who are 25 identified for their deaths should be charged.</p>

Page 36007

1 MR NZUZA: Yes.

2 MR BHAM SC: Now I'm asking you the

3 question; why in your view should they be charged?

4 MR NZUZA: As I'm saying, if they are the

5 ones who killed them.

6 MR BHAM SC: Thank you. Because the

7 killing of those people, when they were killed, on the face

8 of it would be wrong, would have been wrong.

9 MR NZUZA: I wouldn't know about that.

10 MR BHAM SC: May I ask you to go - Mr

11 Chairman, one of the documents in the bundle was the Peace

12 Accord of September the 5th. I want to refer the witness to

13 that. I'm not sure if it's got an exhibit number. It's at

14 page 118 of -

15 CHAIRPERSON: It was handed in long ago.

16 I can't remember the exhibit number, but it is -

17 MR BHAM SC: In the bundle that we've

18 given you it's at page 118.

19 CHAIRPERSON: The document that I think

20 you're referring to is definitely an exhibit. It doesn't

21 appear to be 118 in the bundle I've got, which is the

22 supplementary statement of Mr Kgotle, but we definitely

23 received a document which was the agreement which was

24 concluded in the latter part of September 2012 which

25 brought the strike to an end. I take it that's the

Page 36008

1 document you're referring to?

2 MR BHAM SC: What I'm looking at is a

3 document which was signed by certain parties on the 5th of

4 September 2012. It has the heading on the first page

5 "Lonmin Marikana Peace Accord."

6 CHAIRPERSON: Yes, no that document is

7 definitely an exhibit. It's not at page 116 or whatever

8 the page number is you gave us -

9 MR BHAM SC: 118.

10 CHAIRPERSON: 118, it's not 118 of the

11 bundle we have, but it certainly is before us. I suggest

12 you carry on. It's certainly an exhibit and hopefully Mr

13 Wesley will be able to give us the exhibit number.

14 MR WESLEY: Chair, it appears in XX2.

15 It's XX2.23.

16 MR BHAM SC: If I may ask for the

17 document to be put onto the screen, Mr Chairman?

18 MR WESLEY: Apparently it's page 89.

19 MR BHAM SC: No, that's not it.

20 CHAIRPERSON: That's 88. The page after

21 that is the one we want. That's the document.

22 MR BHAM SC: That's what it is.

23 CHAIRPERSON: That's described in the

24 heading on the screen as page 91 of exhibit XX2.

25 MR BHAM SC: I think it starts off at 89,

Page 36009

1 if I'm not mistaken, Mr Chair.

2 CHAIRPERSON: I'm just reading what's at

3 the top of the screen. Anyway, those who have occasion to

4 take in hand exhibit XX2 will be able to find the document

5 very easily at either page 89 or page 91.

6 MR BHAM SC: If you could flip over onto

7 the next page, I'll come back to the first page of that

8 document. Carry on a little more. Okay, you can stop.

9 Sorry, go back a little. Stop just there. Now Mr Nzuzza,

10 this document was dealt with on the 5th of September, which

11 is about three weeks after the tragic events of the 16th of

12 August and at the time there were attempts to conclude a

13 peace accord agreement. Did you have any knowledge of this

14 at the time, Mr Nzuzza?

15 MR NZUZA: No, I do not know anything

16 about it.

17 MR BHAM SC: Were there any discussions

18 that you were party to or any report-backs that you were

19 present at where this peace accord was dealt with, spoken

20 about or reported back on?

21 MR NZUZA: Who shall have made the

22 presentation or reports, given the reports?

23 MR MPOFU: Chairperson, ja, I'm not

24 objecting, I'm trying to assist. I think maybe what Mr

25 Bham should do is to explain to the witness the background

Page 36010

1 of the agreement and so on, because simply to show

2 signatures, that's why he says he doesn't know what he's

3 talking about, to show signatures I don't think is going to

4 help him to identify, and other people's signatures at

5 that.

6 MR BHAM SC: That's a fair point.

7 CHAIRPERSON: [Microphone off, inaudible]

8 MR BHAM SC: That's a fair point.

9 CHAIRPERSON: I think that's a practical

10 suggestion.

11 MR BHAM SC: If you can go to the first

12 page of that document. No, no, no, sorry -

13 CHAIRPERSON: I referred to an agreement

14 later on in September.

15 MR BHAM SC: Ja-no, this is pre-dating

16 that -

17 CHAIRPERSON: Originally they couldn't

18 get everybody onboard as I remember.

19 MR BHAM SC: Pardon?

20 CHAIRPERSON: As far as I can remember

21 the evidence was they couldn't get everybody onboard. They

22 had a peace accord but all the role-players weren't

23 involved and later on when they succeeded in getting them

24 onboard the strike was finally settled. That's my

25 recollection -

<p style="text-align: right;">Page 36011</p> <p>1 MR BHAM SC: I'm looking at this 2 particular document, Mr Chairman. 3 CHAIRPERSON: Yes, this document is the 4 early attempt – 5 MR BHAM SC: I know. 6 CHAIRPERSON: - which didn't succeed. 7 MR BHAM SC: I know, yes, and that was on 8 the 5th of September. Mr Nzuzza, the document – 9 CHAIRPERSON: The document does refer – 10 I'm sorry to interrupt you. This document does refer to a 11 delegation of the striking employees. 12 MR BHAM SC: I know. 13 CHAIRPERSON: And I take it that's where 14 you're going. Am I right? 15 MR BHAM SC: Mr Nzuzza, the document 16 that's on the screen which says "Lonmin Marikana Peace 17 Accord," have you ever seen this document previously? 18 MR NZUZA: I said I do not know it. 19 MR BHAM SC: Was there any occasion on 20 which you were either part of a discussion or present at a 21 report-back where this document was spoken of? 22 MR NZUZA: I said I do not know this 23 document. 24 MR BHAM SC: The document itself makes 25 reference to the delegation of the striking employees. Do</p>	<p style="text-align: right;">Page 36013</p> <p>1 AMCU, NUM, such people would know, not me. 2 CHAIRPERSON: You see, what is suggested 3 is that there was a delegation of strikers at this meeting 4 and what Mr Bham I think is trying to ascertain is whether 5 you know anything about that delegation and I take it he 6 may even ask you whether you were one of them. Am I 7 correct, Mr Bham? 8 MR BHAM SC: If he knew nothing about the 9 delegation I can't ask the second question. 10 CHAIRPERSON: Yes. 11 [11:53] MR NZUZA: Mr Chair, I said I know 12 nothing about a peace accord. 13 CHAIRPERSON: Alright, okay. 14 COMMISSIONER HEMRAJ: Would it help 15 perhaps if you could inform the witness where this meeting 16 was held? That might jog his memory. 17 MR BHAM SC: I was going to ask him about 18 the document itself and whether he knew of the delegation. 19 I can't take it further where he says he knew nothing about 20 the delegation. I'm going to go on to another event on the 21 5th of September, but before I do so could we have a short 22 break, and I'll tell you why – 23 CHAIRPERSON: I was going to take the tea 24 adjournment in five minutes. If you want me to take it now 25 that would solve –</p>
<p style="text-align: right;">Page 36012</p> <p>1 you know whether on the 5th of September 2012 there was any 2 delegation from amongst the striking employees who were 3 involved in peace discussions? 4 MR NZUZA: I don't know anything about a 5 peace accord. 6 MR BHAM SC: Thank you. I'm not going to 7 then take you through – 8 CHAIRPERSON: I'm sorry, can I ask a 9 question? Do you know whether about three weeks after the 10 shootings on the 16th there was a meeting arranged by the 11 Department of Labour and the Commission for Conciliation, 12 Mediation and Arbitration, with the assistance of the South 13 African Council of Churches, together – this was this 14 meeting arranged by the people I'd mentioned where an 15 attempt was made to achieve peace in relation to the strike 16 and the troubles that arose at Lonmin, and the people 17 involved in this meeting were a delegation of the strikers, 18 representatives of NUM, representatives of Solidarity, 19 representatives of UASA, representatives of AMCU, and 20 Lonmin. Did you know there was such a meeting held just 21 under three weeks after the shootings on the 16th when an 22 attempt was made to bring about a state of peace? Do you 23 know anything about that meeting? 24 MR NZUZA: Mr Chair, only the people who 25 were invited whose names and organisations appear there,</p>	<p style="text-align: right;">Page 36014</p> <p>1 MR BHAM SC: It would be a good time – 2 CHAIRPERSON: - solve two problems at 3 once. 4 MR BHAM SC: Ja, can I just indicate to 5 you before we take the break, I'm going on to the last 6 aspect of my cross-examination. I would want a video clip 7 from the 5th of September to be played. Mr Mpfu has told 8 me that they're going to object to that being put into 9 evidence and we're going to make submissions to you about 10 that. So when we come back we'll deal with that. He 11 wanted to speak to his witness briefly about a little 12 point. I have no difficulty with him doing that and so 13 that's what we wanted the break for. 14 CHAIRPERSON: So do I understand that 15 this video clip which you wish to show was not previously 16 indicated to the witness before he gave evidence as being a 17 basis, as being something that was going to be used in 18 cross-examination? 19 MR BHAM SC: Oh no, we had given an 20 indication that it was going to be used in cross- 21 examination. 22 CHAIRPERSON: I see. 23 MR BHAM SC: What Mr Mpfu wants to talk 24 to the witness is not based on the fact that it wasn't 25 previously alluded to and he knows that it's going to be</p>

Page 36015

1 utilised. There's another point he wants to briefly talk
 2 to the witness about. He's told me about it. I need not
 3 state it in open hearing and I have no difficulty with him
 4 doing that and I think he wants to talk to me about that
 5 video clip –
 6 CHAIRPERSON: Alright, so during the tea
 7 adjournment all these matters can be addressed. 15
 8 minutes.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [12:16] CHAIRPERSON: The Commission resumes. I
 11 understand, yes, you don't have to tell the witness he's
 12 under oath yet, because he's not actually going to be in
 13 the chamber for the next few minutes, as I understand,
 14 because we're going to have an argument. Now, I
 15 understand, Mr Mpofu, from Mr Bham that, as he told us when
 16 we were sitting previously, that he wants to show a video
 17 clip, and you object to that, is that correct? So perhaps
 18 he should indicate – I don't know what the video clip is
 19 about – but perhaps he should indicate briefly to us what
 20 it's about. How long does the video clip take?
 21 MR BHAM SC: The video clip itself is a
 22 few minutes.
 23 CHAIRPERSON: Yes, and I suppose if –
 24 it's probably desirable that we shouldn't look at it, until
 25 I have given a ruling.

Page 36016

1 MR BHAM SC: Absolutely.
 2 CHAIRPERSON: Because if I exclude it,
 3 then one wouldn't want a suggestion that we're prejudiced
 4 in any way by seeing it, even though we would try, in the
 5 best judicial fashion, to exclude it from our minds. So if
 6 you can indicate just shortly what the substance of the
 7 video clip is, and then Mr Mpofu will then tell us why he
 8 objects, and you will then reply and tell us, unless you
 9 are persuaded by his argument, you would tell us why I
 10 should allow it. Is that going to be the procedure?
 11 MR BHAM SC: That's precisely how we
 12 envisaged it would go.
 13 MR MPOFU: Yes, thanks, Chairperson.
 14 That's correct, we agreed on that procedure, but before
 15 that I just wanted to indicate that we also agreed with Mr
 16 Bham that it might not be appropriate while we're having
 17 that debate, because we are obviously going to refer to
 18 some of the contents, for the witness to be here, and so
 19 I've asked him to sit outside.
 20 CHAIRPERSON: Thank you, that's happened.
 21 I think while you're talking about it, it seems to one
 22 hesitates to do this, but it may be necessary. Maybe it's
 23 desirable we should ask the media not to report on what is
 24 said during the argument, unless of course I find that the
 25 video is permissible, because otherwise things that you

Page 36017

1 would object to really, which might well be prejudicial to
 2 your case, would then somehow get into the public domain.
 3 So I think I will rule provisionally that what is said from
 4 now on cannot be reported, but that will be subject to
 5 revision, and just to make it clear, obviously if I admit
 6 the video, then the embargo would be lifted, and what was
 7 said can be reported. Also even if I don't admit it, the
 8 press may wish to make representations to me as to why,
 9 despite the fact that I haven't admitted it, I should allow
 10 some kind of reporting, but we'll deal with all those
 11 matters when the time arises.
 12 MR BHAM SC: Thank you very much, Mr
 13 Chairperson and Commissioners. The recording is a video
 14 clip taken on the 5th of September 2012. It reflects an
 15 encounter between a number of the strikers, who still at
 16 the time were on strike. Included amongst them is Mr
 17 Nzuzza, together with one of the Lonmin personnel, a Mr Jan
 18 Thirion. Mr Thirion's voice is by and large heard in a
 19 conversation between the strikers on the one hand and Mr
 20 Thirion on the other hand. They are separated by a fence.
 21 It's an encounter at one of the shafts, where Mr Thirion is
 22 approached, and it illustrates, we say, and I don't want to
 23 go into exactly what was said, because I think that would
 24 be improper, but it illustrates, we say, a state of mind on
 25 the part of the strikers, which would assist the Commission

Page 36018

1 in gauging evidence of their state of mind prior to the 16th
 2 of August. You will know, Mr Commissioner, that amongst
 3 the matters which have been canvassed before you, and Mr Da
 4 Costa was cross-examined on, was the question of whether
 5 Lonmin should have spoken to the miners or the strikers or
 6 not, and amongst the things that flow from there is even if
 7 Lonmin would have spoken, or did speak, what would have
 8 occurred? Whether the course of events which led to the
 9 tragedy of the 16th of August would still have occurred, or
 10 whether there would have been a different course of events.
 11 We want to introduce this clip in order to
 12 illustrate, on a similar fact-basis, a state of mind, which
 13 we say existed on the 5th of September, which would give you
 14 insight into the state of mind prior to and up until the
 15 16th of August. And that's the reason for us wishing to
 16 admit evidence.
 17 CHAIRPERSON: You mention the date, 5th of
 18 September, is it significant in any way that that's the
 19 date when the peace accord was signed? My understanding is
 20 it wasn't signed on behalf of the strikers, that was one of
 21 the problems. That aspect was only dealt with later,
 22 subsequent, but is it significant any way that the peace
 23 accord or the attempted peace accord was signed on the same
 24 day as the incident which is reflected on the video took
 25 place?

Page 36019

1 MR BHAM SC: There are two aspects to
 2 that. The first is that on the date that some of the
 3 parties signed the peace accord, this would give you an
 4 indication of the state of mind of at least some of the
 5 strikers, and Mr Nzuzza was part of that. The second is it
 6 may be in closing argument of assistance to you in
 7 understanding how events would have unfolded and state of
 8 the mind of the strikers. So in other words, I can't say
 9 to you now that it is or is not, what I can say to you when
 10 we finally assess the events of that period and try to make
 11 sense of it, that may become an important factor.

12 CHAIRPERSON: Anything further you wish
 13 to say?

14 MR MPOFU: No.

15 CHAIRPERSON: Mr Mpofu.

16 MR MPOFU: Thank you very much,
 17 Chairperson. Chairperson, our objection against this clip
 18 is based really on broad principle, but also on some
 19 principles of law, which I will touch on very quickly. The
 20 first one is a practicality, which is the issues of time
 21 and so on, and that's why I'm going to be brief, because we
 22 don't want to waste more time in order to save time, as it
 23 were. Our view is that, at this stage of the Commission,
 24 to introduce extraneous material, whose relevance is at
 25 best questionable, would just not add any value to the work

Page 36020

1 of the Commission. So that's just a broad statement, based
 2 on where we are in the Commission and the fact that time
 3 has become of the essence. But real legal objections to
 4 this are –

5 CHAIRPERSON: I think you mean the main
 6 objections.

7 MR MPOFU: Yes. The main legal objection
 8 would be that it is irrelevant or it falls foul of the
 9 exclusionary rules of evidence. Firstly, self-evidently,
 10 the date falls outside of the terms of reference, and I
 11 think that's common cause. And that raises the question of
 12 whether some conduct or utterances of strikers, which would
 13 have happened subsequently could be relevant to the issues
 14 that your Commission is investigating, and if so, where
 15 would you draw the line? I mean, it could be what they
 16 said in this strike that just happened now, or you know.
 17 So our view is that, and the witness actually raised this
 18 with me during the break when I was trying to convince him
 19 that maybe we should, as usual, reach some agreement with
 20 Mr Bham, and he raised the point which I couldn't gainsay,
 21 namely that he, in particular, and others were of the view
 22 that the person we refer to as 45th victim, the councillor,
 23 was excluded from this Commission, despite the fact that it
 24 was clear that she was killed in what is phase 6 of the
 25 operation, simply on the basis that she had died in

Page 36021

1 September, which falls outside the dates that appear in
 2 terms of reference. And that is a much more serious
 3 calamity for them, as a group, and for that family, than
 4 making a compromise about evidence which falls almost
 5 around the time of the death of that councillor. And so
 6 you can call that point constancy. In other words, if
 7 issues which are even clearly related to the operation can
 8 be excluded, of such significance and weight, then how much
 9 more about something like this where what we have here,
 10 Chairperson, is a situation where Mr Bham refers to the
 11 strikers, but there's no indication whatsoever that any of
 12 the other people who appear there, except Mr Nzuzza, have
 13 been identified by Lonmin as having been strikers before
 14 the 16th of August. There may well be, there may well not
 15 be, but the mere fact that Mr Nzuzza is among the people
 16 there, cannot automatically label those people as the
 17 strikers.

18 Secondly, or rather, let's assume they were
 19 strikers on the 5th of September, doesn't automatically make
 20 them strikers before then, for the relevant period. The
 21 last point chairperson is this falls directly foul of the
 22 exclusionary rule against similar such evidence, and that
 23 is why I was waiting for Mr –

24 CHAIRPERSON: What is that exclusionary
 25 rule? Can you give it to me?

Page 36022

1 MR MPOFU: Similar fact.

2 CHAIRPERSON: No, I know –

3 MR MPOFU: Oh, you mean generally?

4 CHAIRPERSON: State what the rule is.

5 MR MPOFU: Well, I'll paraphrase,
 6 Chairperson. Unusually, I didn't bring my Zeffert today,
 7 but the rule in principle says that if evidence is tendered
 8 solely for the purposes of proving facts similar to the
 9 facts that are relevant, then it should be excluded, in
 10 general. Obviously, like all the exclusionary rules, there
 11 are a number of exceptions, but that's the general rule.
 12 Now, and what Mr Bham himself said now exactly falls foul
 13 of the rule, because he says that what they seek to
 14 establish with this evidence is, in fact, I think he even
 15 used the words similar fact. He said the state of mind of
 16 – that's the state of the mind of the strikers as of
 17 September, 5th of September was the same as the state of the
 18 mind prior to 16th of August. There can't be a better
 19 example of the similar fact rule than that. In other
 20 words, the purpose for which the evidence is being – let's
 21 say, for example, if the issue was, Chairperson, let's say
 22 Mr Nzuzza was saying part of the evidence was that he says,
 23 they say you were wearing a red jacket. And he says I
 24 don't own such a thing, I never had it until today, as I'm
 25 sitting here. And then they have a video that shows him on

Page 36023

1 the 5th of September wearing a red jacket, then that's a
 2 different thing. That's obviously admissible, because that
 3 goes to prove that fact, but if the purpose of adducing the
 4 evidence is to establish similar fact evidence about the
 5 state of mind, then it, without exception, having been
 6 argued, then it should be excluded on that basis alone.
 7 Thank you, Chairperson.
 8 MR BUDLENDER SC: Chairperson, may I make
 9 submissions.
 10 CHAIRPERSON: Mr Budlender, I was going
 11 to ask you if you can assist the Commission.
 12 MR BUDLENDER SC: Chair, just to deal
 13 with the similar fact principle, I understand Mr Bham to be
 14 on a somewhat different angle, he's not arguing similar
 15 fact, as I understand, but I do want to say something about
 16 similar fact which I submit is relevant. Firstly, we know
 17 that in general, in criminal files, courts are very slow to
 18 admit similar fact evidence for obvious reasons, but in
 19 civil trials the courts take a less stringent approach.
 20 And the approach is summarised by Mr Justice Nicholas, who
 21 as we know was a great authority on the law of evidence, in
 22 a case called Omega, O-M-E-G-A, Louis Brandt, B-R-A-N-D-T
 23 et frere, I believe that's French, versus African Textile
 24 Distributors, 1982(1)SA951-T, and the passage is towards
 25 the foot of page 955, where the court sets out what is the

Page 36024

1 approach in civil cases, and what his lordship says is, he
 2 says, "in civil cases the courts will admit so-called
 3 similar fact evidence if it is logically prohibitive, that
 4 is if it is logically relevant in determining the matter
 5 which is in issue, provided that it is not oppressive or
 6 unfair to the other side, and that the other side had fair
 7 notice of it, and is able to deal with it."
 8 CHAIRPERSON: - those qualifications
 9 again, it's got to be logically prohibitive.
 10 MR BUDLENDER SC: Logically probative,
 11 that is if it is logically relevant, or logically relevant
 12 in determining the matter which is in issue, provided that
 13 is not oppressive or unfair to the other side –
 14 CHAIRPERSON: Provided not oppressive –
 15 MR BUDLENDER SC: Not oppressive or
 16 unfair to the other side, and that the other side had fair
 17 notice of it and is able to deal with it. As you'll note,
 18 Chair, in determining whether it is legally prohibitive,
 19 that is logically relevant, the courts usually ask this,
 20 they ask is it related in time to the events which are in
 21 issue, not necessarily at the same time, but about the same
 22 time. Not three years later or three years earlier. Is it
 23 related in circumstances, in other words, is it also about
 24 a strike or is it about arson and murder. And is it
 25 related in persons, in relation to the persons who are

Page 36025

1 involved. And it seems to me that this falls classically
 2 within those tests. It's related in time, it's two or
 3 three weeks after the events. It's related in
 4 circumstances, it's the circumstances of labour dispute and
 5 strike at Lonmin, and it's related in persons, namely that
 6 there was a group of strikers.
 7 So my submission is that if this were a civil
 8 trial, then a court would admit the evidence, at the very
 9 least would admit it provisionally, consider it, and decide
 10 in due course what weight to attach to it. This of course
 11 is not a trial, it's a commission in which a much broader
 12 approach is taken to the admissibility of evidence, as
 13 we've discussed previously, earlier in these proceedings,
 14 and if it would be admissible in a civil trial, as I submit
 15 it would be a priori, it's admissible in a commission.
 16 Finally, can I just say something about the
 17 problem of events outside the terms of reference of the
 18 Commission? The Commission has decided that it will not
 19 hear evidence in respect of matters which took place
 20 outside the period which is covered by the terms of
 21 reference. It's not going to hear evidence about a death
 22 of somebody after the event, because that death is not
 23 within the terms of reference of the Commission. This
 24 evidence, if it's admitted, is evidence which bears on the
 25 events which are within the terms of reference of the

Page 36026

1 Commission. It is evidence which goes to show what
 2 happened in the period, which is within the terms of
 3 reference of the Commission. It's as if at a meeting three
 4 weeks later a witness said by the way, we did X, Y, and Z,
 5 during the Commission – I beg your pardon, if a witness
 6 said sometime after the – a person said at some time after
 7 the time covered by the Commission, by the way, we did this
 8 during the course of the strike, whether it was Lonmin or
 9 the government or the strikers, that would be admissible in
 10 deciding what happened during the course of the strike.
 11 The fact that the statement was made outside the period of
 12 the strike is not the issue, the question is whether it
 13 bears on the matters which are within –
 14 CHAIRPERSON: I think the phrase I used
 15 at one point – I can't remember that I actually did it in
 16 the Commission, but I certainly did it somewhere – was that
 17 if – I think I did in the Commission – if the evidence,
 18 albeit it relates to something either before or after the
 19 period, throws light either backwards or forwards on what
 20 happened then we will receive the evidence.
 21 [12:36] And I was of the view that the death of the 45th
 22 victim, the councillor who was killed in the crossfire, I
 23 think, during the combined police/military operation in
 24 September, did not fall into that class, which is why it
 25 was excluded. Yes, I understand that. One point that

Page 36027

1 occurs to me in relation to the test, is it may be
 2 something that can be considered at the end, and wouldn't
 3 stop the provisional admission, but it is a factor which I
 4 must say worries me, and that is, it may well be that
 5 attitudes hardened on the part of the strikers, hardened
 6 quite considerably after the events of the 16th, and that
 7 what they said later in a state of anger and indignation
 8 and so forth, in the light of what happened on the events
 9 leading up to 16th, mightn't be a true reflection of what
 10 their attitude would have been before that, but it may well
 11 be that that's a matter which in more sensible,
 12 appropriately be dealt with at a later stage. It is
 13 something that occurs to me is giving a kind of warning
 14 light for us to bear in mind. Is there anything further,
 15 you want to say, Mr Budlender?

16 MR BUDLENDER SC: No, just on the last
 17 point, Chair, of course that is a factor one would have to
 18 consider in determining what weight to attach to the
 19 evidence. One might say well, these were actually
 20 different times, and what somebody said three weeks,
 21 carries little weight in determining his state of mind three
 22 weeks earlier, but that's a question of weight, it's not a
 23 question of admissibility.

24 CHAIRPERSON: Mr Mpofo, before Mr Bham
 25 replies, do you want to say something further?

Page 36028

1 MR MPOFU: Yes, of course, Chairperson.
 2 I was not aware that Mr Budlender was going to support the
 3 application, otherwise I would have allowed both of them to
 4 speak, and then I would have said my piece. So now –

5 CHAIRPERSON: It seems appropriate that
 6 you should be able to speak now.

7 MR MPOFU: Thank you. Chairperson, with
 8 greatest respect, I think that maybe we are talking at
 9 cross-purposes here. The issue, the reason why the thing
 10 is called exclusionary rule, is exactly, there's a reason
 11 for that. It is because it is meant to exclude evidence,
 12 and the overall test, as you know, Chairperson, for these
 13 kinds of, all the various tests, whether it's opinion
 14 evidence or whatever, is one of the key issues is potential
 15 prejudice or what Mr Budlender calls is it oppressive or
 16 unfair to the witness or to the party as it were. Now, I
 17 have not heard anybody addressing that issue, which means
 18 that it must be assumed that the evidence might well be
 19 oppressive insofar as it wants to show and adverse so-
 20 called state of mind prior to the – as similar to that of
 21 prior to the 16th. But also, even on Mr Budlender's test,
 22 the only leg that has been satisfied is that, what you call
 23 the third leg, that the other side had fair notice and is
 24 able to deal with it. That, I must put up front, it
 25 arrived late and so on, but we are not raising that as a

Page 36029

1 point. We were given notice and Mr Bham's attorneys
 2 actually made a point of even bringing it directly to my
 3 chambers and so on, so there's no issue about that. But
 4 the other two points, of it being oppressive or unfair, and
 5 whether it's logically relevant or of probative value.
 6 That one begs exactly the same point. Mr Bham has candidly
 7 told us the purpose for which the evidence is being
 8 adduced, so these examples about if somebody says
 9 something, obviously if somebody says something after the
 10 16th of August, then it cannot be excluded, obviously. I
 11 mean Mr X said all the things he said five months after the
 12 16th of August. We never came here and said simply because
 13 he said them in 2013, they must be excluded. That would
 14 have been ridiculous. That's not what we are saying. What
 15 we are saying is, if the evidence is being adduced for the
 16 purpose that Mr Bham says it is being adduced for, which is
 17 to show similar state of mind.

18 Firstly, two things, even if you take literally
 19 those words "similar fact," as you've correctly pointed,
 20 Chairperson, is it really similar when such a cataclysmic
 21 event has occurred between the pre-16th August and post 16th
 22 August situation, can you really say if some worker said,
 23 well, you know, let's, I don't know, let's go and attack
 24 all Lonmin managers or whatever, exactly because of the
 25 cataclysmic event, can you then say well, that's exactly

Page 36030

1 what they would have said on the 14th, or even on the 10th of
 2 August before that event? So it's not even similar fact in
 3 the sense that would be intended by the rule. It's a
 4 completely different world, and that is the basis upon, so
 5 it can't even throw light, as the Chairperson summarises,
 6 throw any light really as to the actual state of mind of
 7 the strikers, even assuming they were all strikers. I have
 8 already said that there's not even evidence that they were
 9 strikers, but let's assume for the purposes -

10 CHAIRPERSON: We are told that one of the
 11 people on the video clip is Mr Nzuzza himself, and we know
 12 he was a striker.

13 MR MPOFU: Ja, he is a singular person,
 14 it can't be strikers, that's what I am saying, if the –

15 CHAIRPERSON: Well, it might be
 16 admissible of course, just see what Mr Nzuzza said, it might
 17 well be that the – I am putting a prima facie view to you,
 18 it doesn't mean I – that it's necessarily right, but I am
 19 exploring a point with you. It may be that if there are a
 20 number of people on the clip all saying things, various
 21 things, one is Mr Nzuzza. We don't know who the others are,
 22 and we don't know if they were on the koppie, if they were
 23 strikers at all. It might well be that one would say,
 24 well, what Mr Nzuzza said goes in, provisionally anyway, on
 25 the basis that's been suggested, but the other's are

1 excluded. But anyway, I am not saying that's necessarily
2 right but I am just putting it to you as something to
3 respond to.

4 MR MPOFU: Yes, thank you, Chairperson.
5 Yes, I don't even want to make a lot on that point, that's
6 not my biggest point, I was just bringing it, just as a
7 matter of fact, that it has not been established by Lonmin
8 that these were strikers except for Mr Nzuzza, but I accept
9 what you are saying that if you are inclined to allow it,
10 it might be restricted to what Mr Nzuzza has to say. Yes, I
11 think that's all, Chairperson, really the issue here is
12 that can one even say that it's similar, or that the weight
13 of the evidence were it to be allowed, could throw any
14 light to use your expression, to the state of mind of the
15 people before the massacre, bearing in mind that Mr Bham
16 says to you openly that that's the purpose for which it's
17 being adduced, is to compare the state of mind.

18 CHAIRPERSON: Thank you, Mr Mpofu. Mr
19 Bham, do you wish to reply to the submissions made?

20 MR BHAM SC: I do, I do. Before my
21 learned friend, Mr Mpofu, got into the principles on
22 admissibility of this evidence, he made a prior point and
23 it was before Mr Budlender had spoken, and he referred to
24 the practicalities where he said, given the limited time we
25 have available, the stage at which we are at, to allow

1 extraneous material would not add any value. Of course, to
2 allow any material at this stage, which would assist the
3 Commission, in the completion of its work, would certainly
4 add value. You, at a fairly late stage, made a fairly
5 important and substantive ruling for us to deal with new
6 evidence on a topic which was outside of a separation, and
7 we've got to deal with it in the limited time available.

8 So at this point in time, what you would consider in
9 dealing with, whether or not to permit this evidence, is
10 whether it would add value to the Commission, and whether
11 on the principles of law, it ought or ought not to be
12 admitted. You would certainly not exclude any evidence at
13 this stage, even at this stage, if you know it to be
14 potentially relevant and I don't think you need to even go
15 further than that, potentially relevant in assisting you to
16 come to conclusions when you write your report.

17 That then takes me to the main points which at
18 the end Mr Mpofu addressed. He says that the only leg that
19 is satisfied is that we had given them adequate notice and
20 they had the chance to prepare. There's no issue about
21 that. The principal contention is founded upon a
22 suggestion that it is evidence of a nature which may be
23 oppressive or unfair, and that you must assume that it is
24 oppressive because that issue wasn't addressed. But I
25 didn't address those principles up front because I just

1 gave an indication of the nature of the evidence and
2 allowed the objection to be taken before I dealt with the
3 nature of the objection.

4 Let's consider the question of whether the
5 evidence by its nature, is oppressive or unfair. The first
6 point we want to make is, that there has been adequate time
7 to prepare for it. It's evidence which relates to a
8 conversation which – between a group of people on the one
9 side, including Mr Nzuzza, who had marched on a shaft, and
10 engaged in conversation with Mr Jan Thirion from Lonmin on
11 the other side. The content of that evidence, I need not
12 go into. But that was a conversation which took place in
13 the context of a strike which was part and parcel of the
14 same strike which occurred during the period 9 to the 16th
15 of August. Consequently, there is a possibility, and I
16 don't put it higher than that, that what emerges from that
17 conversation and the state of mind illustrated by that,
18 would assist the Commission in throwing light on the state
19 of mind as between the 9th and the 16th, particularly
20 because you are going to be asked in part to speculate,
21 when I say "speculate," I mean speculate with reason, as to
22 what could have occurred had different people acted in a
23 different manner between the 9th and the 16th. So you are
24 going to be taken directly in the sphere of prophesising
25 different courses of action. When I say "courses," it's C-

1 O-U-R-S-E-S, that might have eventuated if one or other or
2 more than those parties had acted differently. In trying
3 to come to those conclusions which is very difficult in and
4 of itself, you would find great assistance on any material
5 which might guide you as to what might have occurred at the
6 particular point in time, in this particular instance, a
7 question which would arise and squarely faces you is even
8 if Lonmin had acted differently, would the course of events
9 which led to the tragedy have taken a different turn or
10 not? And one of those questions is whether or not, even if
11 Lonmin had gone to speak at the koppie, the strike would
12 have come to an end at that particular point in time or
13 not. And we say this, this video clip might assist you in
14 that regard.

15 CHAIRPERSON: I take it the principle of
16 prejudice can work both ways, because this isn't a dispute
17 between parties, this is not a lis, but there are people
18 who are parties mentioned in the terms of reference,
19 against whom the Commission may conceivably bring in
20 adverse findings, one of them is Lonmin, and if this
21 evidence indicates or may indicate, that there's in fact no
22 causal connection between the obduracy of Lonmin in
23 declining to go to the koppie and negotiate, and the
24 killings that took place, and we were to exclude it and
25 come to a finding that there was a causal connection, then

Page 36035

1 I take it Lonmin would be prejudiced?
 2 MR BHAM SC: I am going to deal with the
 3 question of prejudice now. You have pre-empted me on –
 4 CHAIRPERSON: Oh, I am sorry.
 5 MR BHAM SC: You've pre-empted me on one
 6 part but fortunately that saves me the time of going
 7 through it, the answer to what you put to me is,
 8 absolutely. Let's just go through the other side of
 9 prejudice and that prejudice is prejudice that may be
 10 contended by Mr Mpofu's client. I didn't make the point
 11 firstly that –
 12 CHAIRPERSON: I was really, I was
 13 thinking aloud, I am afraid, but the thing's just been
 14 thrown at me, I haven't had time to think of it before, it
 15 occurred to me that there may prejudice, as I've said, on
 16 either side, and then it's necessary to look at the
 17 prejudice which would be suffered by certain parties,
 18 particularly, I take it Mr Nzuzza, if the clip were
 19 admitted, and also necessary to look at the prejudice that
 20 would be suffered by Lonmin if it wasn't admitted. Now,
 21 obviously Mr Mpofu will deal with that in reply, but what
 22 do you say is the prejudice, if any, which would be
 23 suffered by Mr Nzuzza [indistinct] if I can use that
 24 expression, if it's put in, and what – and I take it the
 25 prejudice that Lonmin would suffer if it was excluded is

Page 36036

1 almost self-evident.
 2 MR BHAM SC: Let me deal with that
 3 question because the first point I want to make is
 4 something is not – in deciding on the admissibility of
 5 evidence, something is neither oppressive nor prejudicial,
 6 merely because it may be unfavourable for the party against
 7 whom it is led. That's not prejudicial or oppressive as
 8 contemplated by Roux. In this particular instance, there
 9 is absolutely no basis, I would submit to you, that one
 10 sitting in the position of Mr Nzuzza who is a party to the
 11 events on that video, can either be prejudiced or
 12 oppressed, because whatever comes out there, will be within
 13 his power to explain to the extent that questions are asked
 14 about that conversation. In other words, he has the full
 15 ability to deal with what was said, he has the full ability
 16 to deal with whether those were accompanied him on that
 17 occasion were on the koppie during the period 9 to the 16th
 18 – oh well, when he was there from the 11th to the 16th. He
 19 has the full opportunity to explain his own role on the
 20 day. He has the full opportunity to deal with whether that
 21 indicates a state of mind in relation to the period running
 22 up to the 16th, including the occasion on the 13th, when
 23 there was an attempted march on K3, and he was cross-
 24 examined about the purpose and intent behind that march,
 25 and why they wanted to go to K3.

Page 36037

1 So in other words, this witness can complain of
 2 no oppressive or prejudicial conduct in relation to that
 3 evidence, because it is within his power before this
 4 Commission to explain anything there which either is
 5 suggested to him is unfavourable to him, or might prima
 6 facie appear to be unfavourable to him. We are not dealing
 7 with evidence of the type which would be incredibly
 8 difficult for the party against whom it is being sought, to
 9 deal with to rebut, or the like. We are dealing with
 10 evidence which directly relates to the person to whom
 11 questions are going to be put, and in whose power it is to
 12 deal with that evidence. Insofar as the logical relevance
 13 of that evidence to the events between the 9th and the 16th
 14 the first point to make is something I said earlier, and
 15 that is, these weren't two different strikes, the strike
 16 post or the continuation of the strike post the 16th was not
 17 a separate strike from what happened prior to the 16th. Of
 18 course, and I don't underplay it, the events of the 16th
 19 were cataclysmic. The events of the 16th would have had an
 20 impact on attitudes and the like, but that would at the end
 21 of the day be a factor taken into account in weighing up
 22 whether a state of mind illustrated in the period post the
 23 16th, on questions regarding whether there would have been a
 24 different course of events if Lonmin had spoken, what
 25 weight to attach on that having regard to the events of the

Page 36038

1 16th. But don't confuse questions of weight to be attached
 2 to evidence, with whether that evidence should be admitted
 3 or at all, because the moment you start talking about a
 4 concept which goes to the weight to be attached to
 5 evidence, you are already in the sphere of accepting that
 6 that evidence should be admitted. The question that would
 7 arise is, at the end, is what weight should be attached to
 8 that evidence.
 9 CHAIRPERSON: A further point that Mr
 10 Budlender made, that apart from the distinction between
 11 admissibility and weight, one must put into the scale the
 12 consideration that it's possible to make a provisional
 13 finding about admissibility, which can be reversed if it's
 14 – one's satisfied at the end of the day that the weight is
 15 not sufficient to justify the admission of evidence which
 16 otherwise would be covered by the exclusionary rule?
 17 That's on the assumption that one applies the exclusionary
 18 rule, the ordinary rules of evidence to this Commission.
 19 The authorities are, one is not bound strictly by them but
 20 clearly one would use them as a guide in order to prevent
 21 prejudice and oppression and so forth.
 22 MR BHAM SC: There is one final point
 23 that I want to make flowing from that, when one is sitting
 24 in a criminal trial or a civil trial the role of the court
 25 is to adjudicate. Evidence placed before it and then to

Page 36039

1 make a finding on that.
 2 [12:55] Your mandate is stated by reference to two
 3 important notions. The first is to investigate and the
 4 other is to enquire. In other words it's slightly wider
 5 than you would have done in court and what you would not
 6 want to deprive yourself of is any material which is worthy
 7 of investigation or enquiry even if after having undertaken
 8 such enquiry or investigation you decide it doesn't assist
 9 you in making the findings you need to make, or dealing
 10 with the matter. But don't preclude yourself from
 11 excluding something which may well have relevance under
 12 your powers of investigation and enquiry.
 13 CHAIRPERSON: You say don't preclude
 14 yourself by excluding, that's what you meant.
 15 MR BHAM SC: By. We would submit that
 16 this falls squarely within that which you are enjoined to
 17 do, namely to enquire and investigate into events,
 18 including the causes of what occurred between the 9th and
 19 16th, and an investigative route, in an enquiring route
 20 would militate against excluding anything which has the
 21 potential of assisting you in coming to conclusions. Thank
 22 you.
 23 CHAIRPERSON: Thank you, Mr Bham. Do you
 24 wish to reply, Mr Mpofu?
 25 MR MPOFU: Yes, Chairperson, just two

Page 36040

1 quick points. One is of course Mr Bham is right when he
 2 says that your powers are wider; that in another language
 3 might be called a concurring judgment. It's the same thing
 4 as what you've just said, which is that you're not bound
 5 by, strictly speaking not bound by the rules of evidence.
 6 But that is not the point here. The point here
 7 is that the – and he's also right of course that we've had
 8 a chance to deal with it and so on, but exactly the reason
 9 why Mr Budlender read you the test, if that was the only
 10 leg of the test then we would be out, but Mr Budlender read
 11 to you a three-pronged test and there must be a reason why
 12 the other two conjunctive requirements are added, namely
 13 that it must be logically relevant and not oppressive or
 14 unfair, and so on and so on. So that test can't simply be
 15 satisfied by satisfying one of the legs. All those three
 16 legs must be satisfied.
 17 I start this by saying, Chairperson, I don't know
 18 if Mr – if I can ask for Mr Bham's permission to read,
 19 because it might be unfair to read it selectively and so on
 20 and, but to read a portion that makes the point I've made
 21 about the cataclysmic event.
 22 MR BHAM SC: I am anxious about going
 23 into the transcript, and I'll tell you why. It's not to
 24 stop Mr Mpofu from arguing a point, but you're then on the
 25 thin edge of a wedge because I might want to then read

Page 36041

1 other portions –
 2 MR MPOFU: No, fine.
 3 MR BHAM SC: - to put it into context and
 4 then we're going into a dangerous part.
 5 MR MPOFU: Fair enough. I'll make the
 6 point in broad terms, Chairperson, and I just want to
 7 emphasise this point. What comes out clearly in relation
 8 to the divide between the 16th, pre the 16th and post the
 9 16th is a matter that you have correctly alluded to,
 10 Chairperson, is the fact that the events of the 16th created
 11 a potential divide in the state of mind, which is the exact
 12 point that seeks to be adduced with this evidence. These
 13 people, Chairperson, one doesn't have to be a rocket
 14 scientist to realise that they were very, very, very angry
 15 after the 16th. In fact I hope those of us who are alive to
 16 this are able to see that Mr Nzuzza is still very, very,
 17 very angry. That is exactly my experience with him. He
 18 has not been able to articulate it here, but I should think
 19 that anyone who can read the body language can see that,
 20 and that's exactly the whole point, that if you saw his
 21 body language post the 16th and the body language that we've
 22 all seen on these videos of his pre the 16th where he's
 23 saying please allow the guy to talk, don't practice your
 24 apartheid, and so on, and he's walking around there unarmed
 25 and placid looking, if I may say so, that actually is

Page 36042

1 something which when it comes to state of mind is of great
 2 relevance because that brought this Commission about,
 3 although I've said this before, no one wants to
 4 underestimate the value of life of the people who lost
 5 their lives, any of the people, because a loss of life is
 6 the same. But we can't deny the fact that what brought us
 7 here is what we have called the cataclysmic event of the
 8 16th, without underestimating.
 9 So that then brings a kind of a bridge through
 10 which the state of mind cannot willy-nilly just be
 11 compared. So even – and I accept Mr Bham's point that
 12 merely because the evidence is going to be adduced by an
 13 adversary doesn't willy-nilly make it prejudicial
 14 automatically. But at the same time it must be accepted
 15 that Lonmin is not adducing the evidence so that it must be
 16 favourable to Mr Nzuzza. In that unlikely event I wouldn't
 17 even be objecting.
 18 So whatever slight prejudice or great prejudice
 19 or whatever it is, the point of the matter is that it is
 20 being adduced against his interest, as it were, or the
 21 interest of –
 22 CHAIRPERSON: Another thing that I'd like
 23 to hear you on, why do you say it's against his interest?
 24 Before you answer let me tell you my problem. As I
 25 understand Mr Bham what he wants to do is he wants to lead

Page 36043

1 the evidence to provide a basis for saying at the end that
 2 the, what some would describe as the obstinate obduracy,
 3 the unreasonable refusal of Lonmin to negotiate brought
 4 about the cataclysmic events that you speak about, that if
 5 they'd been more accommodating, if they'd been prepared to
 6 negotiate then that would never have happened. They want
 7 to argue that that's not so. They want to say that
 8 whatever, even if we'd done that the result would have been
 9 the same.

10 Now they say - and I obviously don't know whether
 11 it's correct - they say this video clip is going to help us
 12 to make that finding in their favour. So their prejudice
 13 if that's correct, and we could only know whether that's
 14 correct when we've seen the clip, their prejudice is quite
 15 clear if I exclude. If I include it, what is the
 16 prejudice? The prejudice, one obvious consequence would be
 17 that if this evidence proves the point that Lonmin want to
 18 argue about their obstinacy and obduracy and refusal and so
 19 forth didn't make a difference, then there'd be a finding
 20 in their favour on that point. But how would that be
 21 prejudicial to Mr Nzuzza and the others for whom you appear
 22 if there was that finding? I mean basically they obviously
 23 have got perhaps - I'm not sure - they may potentially have
 24 some kind of claim against Lonmin and I would imagine a
 25 major part of the thrust of the investigation as far as

Page 36044

1 they are concerned will lead, they would hope, to an
 2 adverse finding against the police, that the police
 3 shouldn't have done what they did, the police were directly
 4 responsible for killing and that's admitted; the only
 5 question which the police rely on by way of defence is that
 6 they acted in self-defence. That, and a lot of our time
 7 has been spent on investigating that issue.

8 There is another issue and I assume there'd be a
 9 lot of argument on it as to whether whatever the individual
 10 policemen on the scene did, particularly at scene 1, which
 11 may or may not have been self-defence, because the police
 12 plan was fundamentally flawed and it was reasonably
 13 foreseeable that it would place police in a position where
 14 they'd have to defend themselves, and another plan was
 15 available which wouldn't have created that situation, there
 16 is on another ground a basis for going against the police.
 17 So whether those points are right or wrong is neither here
 18 nor there, but they are issues we'll have to consider.

19 Now that being so, what is the real prejudice
 20 that Mr Nzuzza and his associates would suffer if I admitted
 21 the evidence, compared with the prejudice that Lonmin would
 22 suffer if I exclude it?

23 MR MPOFU: Yes.

24 CHAIRPERSON: That to me is one of the
 25 major factors I've got to consider, I've got to weigh up.

Page 36045

1 MR MPOFU: Yes, thank you, Chairperson.
 2 Chairperson, well firstly I think in fairness to Mr Bham,
 3 and I'm sure he'll speak for himself, I didn't hear him to
 4 say what you say he said, and I know for a fact this
 5 evidence has nothing -

6 CHAIRPERSON: No, I don't know that he
 7 said that. But that's -

8 MR MPOFU: Yes, no you did raise it with
 9 him. You did, in fairness.

10 MR BHAM SC: If I may just put it, when
 11 you raised it I said you pre-empted me.

12 MR MPOFU: Yes.

13 MR BHAM SC: And that I agree. So -

14 MR MPOFU: Okay, well in that case then,
 15 Chairperson, with the greatest respect, I would like to
 16 differ. This evidence, unless if I've read it differently,
 17 has got absolutely but absolutely nothing to do with the
 18 question of whether the obduracy of Lonmin and so on, the
 19 question that you have - it has nothing to do with that.
 20 What it has to do with is what Mr Bham candidly said at the
 21 beginning, which is simply to compare the two states of
 22 mind of the strikers before and after. That I'm prepared
 23 to put money on that it is unrelated in whatsoever nature
 24 to the obduracy point.
 25 But having said that, Chairperson, I hear what

Page 36046

1 you're saying. As you might have read between the lines,
 2 and the reason why I even wanted to consult with Mr Nzuzza
 3 during the break is because there are aspects of it which
 4 are indeed favourable which I would be able to use in
 5 favour of the strikers and so on. But the point, that's
 6 not the test. The test is not whether they are also
 7 favourable points. The test is that insofar as it is
 8 prejudicial that it should be -

9 CHAIRPERSON: My question is what's the
 10 prejudice? What's the prejudice that your clients would
 11 suffer if I allowed this evidence? Perhaps I should put it
 12 more precisely to you. What is the prejudice if I admit it
 13 provisionally? If I admit it provisionally that leaves the
 14 door open to an argument later that now you've seen it, now
 15 you see we were right, now you've seen it takes the case no
 16 further, exclude it, which would happen if I were satisfied
 17 having seen the material that it in fact is as you say it
 18 is and not as Mr Bham says it is.

19 So let me put the question again with all the
 20 precision that I can command. What is the prejudice which
 21 your clients would suffer if this evidence were admitted on
 22 a provisional basis?

23 MR MPOFU: Well, Chairperson, because of
 24 the nature of these proceedings, once something has been
 25 raised and he has been cross-examined on it, as you know

<p style="text-align: right;">Page 36047</p> <p>1 the point, the mere fact that later on it might be, or we 2 might even bring evidence that countermands it can never 3 erase whatever prejudice he would have suffered by its mere 4 – that's why as you said earlier it should not even be 5 reported on until the decision is made. That's exactly 6 because you were sensitive to the fact that whatever the 7 outcome, if the matter is canvassed here and put out there 8 in the world, that prejudice would be suffered 9 nevertheless, even if you had ruled against the admission 10 of the matter. So it's that prejudice that – 11 CHAIRPERSON: Yes, but what is the 12 prejudice? 13 MR MPOFU: Well, that's the – 14 CHAIRPERSON: How can I express the 15 prejudice in a sentence? 16 MR MPOFU: No well, you can – let me put 17 it this way. It's not me, I'm trying to articulate your 18 prejudice because the prejudice that you foresaw when you 19 excluded the media was simply this, and I'll try – 20 CHAIRPERSON: No, no, sorry, no, no, hang 21 on. I didn't know what the prejudice was. 22 MR MPOFU: Yes. 23 CHAIRPERSON: So I decided I would ex 24 abundanti cautela, to put it in one of the non-vernacular 25 languages –</p>	<p style="text-align: right;">Page 36049</p> <p>1 the person was, (a), either not a striker, or was talking 2 out of turn or whatever, by then – 3 CHAIRPERSON: Or was an agent 4 provocateur. 5 MR MPOFU: Or is an agent provocateur, 6 but a new one who just arrived on the 4th of September in 7 the vicinity, then how is that going to assist us to prove 8 that before the 16th when that person was in Lesotho or 9 wherever the state of mind of Mr Nzuzza or any of the people 10 who were there. So it's that kind of prejudice where the – 11 by then the damage – 12 CHAIRPERSON: How do I describe – forgive 13 me, I know I'm a bit slow and you must be patient with me. 14 MR MPOFU: Oh, sorry. 15 CHAIRPERSON: Would you please tell me 16 what the prejudice is so I can write it down? 17 MR MPOFU: No, I'm saying – 18 CHAIRPERSON: Just in a sentence. 19 Obviously – 20 MR MPOFU: Okay, I'm saying – 21 CHAIRPERSON: I take it the example you 22 give me isn't what we see in the video. There isn't 23 someone saying – 24 MR MPOFU: No. 25 CHAIRPERSON: - no, we weren't really</p>
<p style="text-align: right;">Page 36048</p> <p>1 MR MPOFU: Yes. 2 CHAIRPERSON: - to make sure that if there was 3 prejudice of a serious kind it would be prevented. So you 4 can't say that, but tell me what is the prejudice you rely 5 on? Because it's very important for me to know and I'd 6 like to write it down, so give it to me slowly, please. 7 MR MPOFU: Yes, well Chairperson, again 8 the difficulty with that is that one cannot do that without 9 getting into the contents of the evidence, which we are all 10 trying to avoid. 11 CHAIRPERSON: You can describe it in 12 general terms. 13 MR MPOFU: Well, because the purpose of 14 this – okay, let's assume the worst, that you admit it even 15 provisionally as it is and then the best would be if you 16 admit it provisionally with Mr Nzuzza's portion, but I'll 17 start with the worst case scenario. If you do that, 18 Chairperson, then – and again let me rather make a wild 19 example – let's assume one of these other people that we 20 don't even know whether it's a striker or not a striker 21 before the 16th, says that you know, this thing of R12 500 22 was just a smokescreen; what we really wanted to do was to 23 kill policemen, whatever, something very prejudicial, if 24 the evidence is admitted and Mr Nzuzza is then associated 25 with that person and so on and then later it's found that</p>	<p style="text-align: right;">Page 36050</p> <p>1 looking for 12 500, we were looking for a chance to kill 2 the police. That's not in the video. 3 MR MPOFU: No, no, that's not it, 4 Chairperson. I'm saying, okay – 5 CHAIRPERSON: What is the prejudice in 6 general terms? 7 MR MPOFU: If I can give you a preface 8 before I give you the articulation – 9 CHAIRPERSON: Alright. 10 MR MPOFU: The preface is that we're 11 talking about, as Mr Bham I think has already said, we're 12 talking about prejudice or potential prejudice, obviously. 13 As always when you talk about prejudice you automatically 14 include potential prejudice. The potential prejudice is 15 that the minds of the Commissioners, which is more 16 important, but also of the public out there, which is also 17 important, may unnecessarily be poisoned with evidence 18 which might later be found to be irrelevant. That's 19 prejudicial enough if you once poisoned the minds of the 20 public or of the decision-makers for free, as it were. 21 Thank you, Chairperson. 22 CHAIRPERSON: I take it Mr Bham, you 23 don't have the right to reply. So what we'll do now, I 24 must confess I hadn't realised how much time had elapsed, 25 but as my friend Hennie Viljoen said once when he was</p>

Page 36051

1 getting a hard time in the Appeal Court, it's wonderful how
 2 time passes when you're having fun. So I will consider
 3 carefully the submissions that have been made. We will
 4 reassemble at 2 o'clock and I will give my ruling.
 5 MR MPOFU: Thank you, Chairperson.
 6 [COMMISSION ADJOURNS COMMISSION RESUMES]
 7 [14:00] CHAIRPERSON: The Commission resumes.
 8 I've carefully considered the submissions that were
 9 addressed to me and applied the principles set out in the
 10 case to which I was referred. I've come to the conclusion
 11 that the evidence sought to be admitted should be admitted,
 12 but on a provisional basis.
 13 Amongst the factors I have considered was an
 14 attempt to weigh up the prejudice which will be suffered by
 15 Lonmin if the evidence were excluded, and the prejudice
 16 suffered by Mr Mpofu's clients if the evidence is – sorry,
 17 prejudice suffered by Lonmin if the evidence is excluded,
 18 weighed up against the prejudice suffered by Mr Mpofu's
 19 clients if it's admitted.
 20 I've come to the conclusion that in all the
 21 circumstances, as I say applying the principles to which
 22 I've been referred, it's appropriate for me to admit the
 23 evidence on a provisional basis.
 24 It may be that once we have seen the video clip
 25 and we've considered the matter in greater depth later I

Page 36052

1 may be satisfied that the weight of the evidence does not
 2 justify its admission, in which case I will reverse the
 3 ruling, but for the moment the evidence is admitted.
 4 MR BHAM SC: Thank you, Mr Chairman.
 5 We're going to have the video played now. What we also
 6 have, and I've spoken to Mr Mpofu about it, is a transcript
 7 which is a translation. They speak in Fanagalo on the
 8 video. Mr Mahlangu has that in front of him. He will as
 9 we go through the video translate to the extent that
 10 there's anything different in the transcript.
 11 CHAIRPERSON: The transcript is not
 12 available to everybody in the chamber and it will certainly
 13 not be available to the people, if there are any, who are
 14 watching this on television, who have got nothing better to
 15 do. So I think it's appropriate that the whole translation
 16 be given.
 17 MR BHAM SC: He's going to do that, thank
 18 you. I'm just sorting out the logistics. Sorry, Mr
 19 Chairman, it was made available to the evidence leaders.
 20 We're just making sure that it's made available now.
 21 CHAIRPERSON: Now it isn't an exhibit and
 22 we will give it a number and even if it's ultimately ruled
 23 inadmissible then I take it we will just abandon that
 24 exhibit number. What is the next exhibit? We're in the
 25 quadruple P-series. Is 7 the next one?

Page 36053

1 MR MPOFU: Yes, I think, Chairperson, it
 2 might be 7, but if we make it PPPP8 it will be safe because
 3 I'm not sure if it's 7 or not, then we won't have a 7.
 4 CHAIRPERSON: Alright, well it will cause
 5 confusion later and someone will spend half an hour looking
 6 for PPPP7. Alright, PPPP8, video clip, how do I describe
 7 it, Mr Bham?
 8 MR BHAM SC: Video clip 5 September 2012.
 9 CHAIRPERSON: Is it on a hard drive or
 10 where does it come from?
 11 MR BHAM SC: It comes from Lonmin –
 12 CHAIRPERSON: Sorry, you haven't got your
 13 microphone on apparently.
 14 MR BHAM SC: Yes, I understand that it
 15 comes from –
 16 CHAIRPERSON: So what I've written down
 17 so far is PPPP8, video clip 5/9/2012 –
 18 MR BHAM SC: From Lonmin's hard drive.
 19 CHAIRPERSON: Will that description be
 20 enough to identify it? From Lonmin's hard drive?
 21 MR BHAM SC: It should, because there's
 22 no other video clip for that date.
 23 CHAIRPERSON: The transcript will then
 24 have to be exhibit – well, let's make the video clip 8.1
 25 and the transcript 8.2, transcript of translation.

Page 36054

1 MR BHAM SC: Yes.
 2 CHAIRPERSON: Of 8.1.
 3 MR BHAM SC: The logistics are just being
 4 sorted out –
 5 CHAIRPERSON: Sorry, it's transcript of
 6 translation of sound track of PPPP8.1, that is PPPP8.2.
 7 MR BHAM SC: The logistical arrangements
 8 are just being made. I'm just waiting for that.
 9 CHAIRPERSON: You obviously hadn't set
 10 up, so you weren't too confident that the ruling will be
 11 given in your favour.
 12 MR BHAM SC: Actually I thought it had
 13 been. My mistake was in believing it was, not in the lack
 14 of confidence. Mr Chairman, would we adjourn for five
 15 minutes? They're just trying to sort it out. I'm terribly
 16 sorry about that.
 17 CHAIRPERSON: Very well, we'll adjourn
 18 for five minutes. Well, we'll adjourn; when you're ready,
 19 let us know.
 20 [COMMISSION ADJOURNS COMMISSION RESUMES]
 21 [14:10] CHAIRPERSON: The Commission resumes. We
 22 are now seeing the video. Mr Bham, do we have to remind
 23 the witness he is under oath? He doesn't have to see the
 24 video under oath, we will remind him afterwards.
 25 MR BHAM SC: Yes, thank you.

Page 36055

1 [VIDEO SHOWN]
 2 CHAIRPERSON: 2036.
 3 [VIDEO SHOWN]
 4 MR BHAM SC: And that's just to give Mr
 5 Mahlangu to translate what has gone thus far.
 6 CHAIRPERSON: When I said before it
 7 stopped earlier, it started up again immediately after
 8 that. It's now run through without significant
 9 interruption up until.27. Yes, Mr Mahlangu?
 10 MR MAHLANGU: Chairperson, I was reading
 11 the translated version, up to here, there is nothing wrong.
 12 CHAIRPERSON: Read it out for us please,
 13 and for the benefit of the rest of those in the chamber and
 14 who are watching on television.
 15 MR MAHLANGU: It's in English. The thing
 16 which has brought us here, first of all, he said, Good
 17 morning, and are you well? Mr Speaker number 1 was asking,
 18 we are going to speak English which – the mine English
 19 which is Fanagalo. The speaker then said, okay, Speaker
 20 number 1 said the thing which has brought us to our shaft
 21 which is Karee 3 shaft, you want blood on this shaft.
 22 Number 1, you are bringing the employees here, firstly you
 23 are bringing the employees here, yet the employees are
 24 sitting on – yet the other employees are sitting on the
 25 mountain. Number 2, we are asking before one o'clock

Page 36056

1 today, we do not want to see anybody on this shaft and
 2 tomorrow.
 3 MR BHAM SC: If we could just pause
 4 there, Mr Chairman. May I ask the witness if he is able to
 5 identify –
 6 CHAIRPERSON: Do that at the end.
 7 MR BHAM SC: That's fine.
 8 [VIDEO SHOWN]
 9 CHAIRPERSON: We are at 1.38, yes, Mr
 10 Mahlangu?
 11 MR MAHLANGU: "If this happens tomorrow,
 12 what will happen today I am sorry, we will fight. In the
 13 morning, if that has not happened, we will be unhappy
 14 because we are not earning enough money here at Lonmin. We
 15 want 12.5 from you."
 16 [VIDEO SHOWN]
 17 CHAIRPERSON: Stopping at 1.49.
 18 MR MAHLANGU: He says, "that you know for
 19 a long time that we have been speaking about this, but up
 20 to now, you guys don't care about us. The only thing you
 21 care about are the people who have shares in Lonmin." That
 22 was not correctly translated. He says, "you care about the
 23 people of Ramaphosa."
 24 [VIDEO SHOWN]
 25 CHAIRPERSON: What did he say? Never

Page 36057

1 mind the wrong translation. What's the correct
 2 translation?
 3 MR MAHLANGU: The correct translation is,
 4 that person says "you care about the people of Ramaphosa."
 5 CHAIRPERSON: Thank you. Let's carry on.
 6 [VIDEO SHOWN]
 7 MR MPOFU: I am sorry, Chairperson, it's
 8 not Mr Mahlangu's fault. I think the issue is that he
 9 said, it's not the one or the other, he said, "you care
 10 about the people who have shares here. You care about
 11 Ramaphosa," and so on. So he said both.
 12 CHAIRPERSON: Can we go back to that? If
 13 you have any difficulty -
 14 MR MAHLANGU: The word "Ramaphosa," does
 15 not appear on the transcript. But if it could be played
 16 back a bit.
 17 CHAIRPERSON: What I understand Mr Mpofo
 18 to be saying, is that both what's written down and the
 19 addition of the reference to Mr Ramaphosa, are both
 20 correct, is that right?
 21 MR MAHLANGU: Yes.
 22 CHAIRPERSON: Is that correct? So we
 23 don't have to –
 24 MR MAHLANGU: That's correct.
 25 CHAIRPERSON: Shall we go back to, where

Page 36058

1 were we, 1.57 was it?
 2 MR MAHLANGU: "The only thing you care
 3 about is people who have shares in Lonmin, people of
 4 Ramaphosa. We work with the machines." And then he said,
 5 "We are the generals underground, yet come up today."
 6 [VIDEO SHOWN]
 7 MR MAHLANGU: And from there, he says –
 8 CHAIRPERSON: Sorry, that's 2.06.
 9 MR MAHLANGU: - after he had said,
 10 "Ramaphosa," he said, "We work with the machines, we are
 11 the generals underground, we work for eight hours a day, by
 12 day, it is difficult to work there. You give us little
 13 money, you give us R4 000. We have told you this a long
 14 time ago, but you don't want to answer."
 15 CHAIRPERSON: Carry on with the video.
 16 [VIDEO SHOWN]
 17 CHAIRPERSON: 2.24.
 18 MR MAHLANGU: Yes, up to the end where –
 19 of the first speaker, he said, "Will you answer us the day
 20 when everybody is finished, when everybody is dead?" The
 21 English says, "Will you answer us the day when everybody if
 22 finished, and everybody is dead? That is my question. You
 23 will answer the day when everybody is dead," up to that far
 24 it is correct. And then came the second speaker, he said,
 25 "Number 1, you are lying. You did not come to me to cry

Page 36059

1 about the 12 500. The machine operator does not work eight
 2 hours," he says, "Here it is written 12." He said he does
 3 not work eight hours, but the translation says 12. He does
 4 not work eight hours underground. They work at least five
 5 hours on the square.
 6 CHAIRPERSON: Do we carry on? From 2.24.
 7 [VIDEO SHOWN]
 8 MR MAHLANGU: The speaker goes on to say,
 9 "the machine operator does not work eight hours
 10 underground. What happens, they work at least five hours
 11 on the square, they go underground. When they go
 12 underground, it takes them half-an-hour. And then they
 13 walk an hour, and then they work for five hours, then they
 14 come out. So you heard on the – what you heard on the
 15 news, I remember that is not the truth. So what you are
 16 saying is not truth, what you are saying number 1. Number
 17 2, I got instructions from my seniors," it ended there.
 18 You could continue.
 19 [VIDEO SHOWN]
 20 CHAIRPERSON: 3.02.
 21 MR MAHLANGU: "I did not get instructions
 22 from my seniors." Here it says, "I got instructions from
 23 my seniors," but what he says "I did not get instructions
 24 from my seniors, whether we will work or whether we will
 25 not work. Today, we will get out here by one o'clock, and

Page 36060

1 nobody will be here. What will happen tomorrow? I do not
 2 know." He says here, "The thing of tomorrow, I don't
 3 know."
 4 [VIDEO SHOWN]
 5 CHAIRPERSON: 3.17.
 6 MR MAHLANGU: The next speaker says,
 7 "Okay, the way you answer thus, you say what we said is
 8 lies, we are not going to talk about the time, because when
 9 we were hired, we were told it was going to be eight hours.
 10 Now you are saying you don't know."
 11 [VIDEO SHOWN]
 12 CHAIRPERSON: 3.30.
 13 MR MAHLANGU: He says, "There is no
 14 problem," sorry, Sir, he says, "There is no problem here,
 15 stop dividing the people. Go and tell Bernard Mokwena to
 16 stop telling lies that this side people are working and the
 17 other side, people are not working. This is the reason,
 18 you people are finishing the ANC."
 19 [VIDEO SHOWN]
 20 MR MAHLANGU: "That is the reason you are
 21 finishing the ANC," the last thing he said, and then he
 22 said, "You are killing the members of the ANC when you are
 23 killing us by dividing us. Your ANC is to get finished,
 24 that is why you go to the news and you talk a whole lot –
 25 you talk about a whole lot of any group – whole lot of

Page 36061

1 groups, and that is lies you are telling them.
 2 CHAIRPERSON: That is up to 3.48. Yes,
 3 let's continue.
 4 [VIDEO SHOWN]
 5 CHAIRPERSON: 4.03.
 6 MR MAHLANGU: "Our votes," she said, "Our
 7 groups", he said, "our votes are in our pockets because our
 8 vote is a secret. It doesn't need you. So now we are
 9 asking you, tell your seniors that the employees are
 10 crying, even though you can't see tears running down our
 11 faces."
 12 [VIDEO SHOWN]
 13 CHAIRPERSON: 4.34.
 14 MR MAHLANGU: "Look at this guy here,
 15 look at this man," and then he said, "Nthate, Sir, our
 16 hearts are sore. In the time of the sixties we were not
 17 there when Chris Hani was killed. Same as this guy, he
 18 grew up sharing that workers must be strong, they must be
 19 strong as we sat in the Hippos but now he is in the ice in
 20 Phokeng. He is dead because of you. You and your
 21 government caused this because you went and got the police
 22 from the Eastern Cape and everywhere to come and kill the
 23 people here, their brothers."
 24 CHAIRPERSON: 4.34.
 25 [VIDEO SHOWN]

Page 36062

1 MR MAHLANGU: Then he goes on to say,
 2 "Now you, because of your kind, you catch our kind, the
 3 black people for your money, we work and you get the money,
 4 but we are not angry with you, we want money, Baba. We are
 5 not going to talk again. I am not going to talk again."
 6 [VIDEO SHOWN]
 7 CHAIRPERSON: Apart from the gentleman
 8 who was speaking, I take it was a Lonmin official. We have
 9 now got a second speaker from the other side of the wire,
 10 as it were, and he's now speaking, he's standing behind the
 11 first speaker.
 12 MR MAHLANGU: He starts by saying, "Mr
 13 Jan Thirion, we know your supervisor is Mr Dakota. I want
 14 you, to tell you, number 1," if you could go on from there.
 15 CHAIRPERSON: Carry on.
 16 [VIDEO SHOWN]
 17 CHAIRPERSON: 5.04.
 18 MR MAHLANGU: "I want you to tell you,
 19 number 1, you Jan Thirion, tell Rodney Opperman and
 20 [inaudible] right now at number 4 belt."
 21 [VIDEO SHOWN]
 22 CHAIRPERSON: 5.19.
 23 MR MAHLANGU: He ended up by saying, "At
 24 4 belt, and phone Pay 4, and tell them to close the shaft
 25 because we know Dakota is not at those shaft. That is why

Page 36063

1 we have come here to you.”

2 [VIDEO SHOWN]

3 CHAIRPERSON: 5.38.

4 MR MAHLANGU: He goes on to say, “We know

5 you have been here at Lonmin for a long time, now we want

6 to tell you this, that you divided, you are making – the

7 divisions that you are causing with the police, after that,

8 you want us to get finished, and you will also struggle

9 like – and we will struggle like the families that are

10 struggling now. The thing we want to tell you now is that

11 this shaft here as from now, we don’t even want to see one

12 car, the blood that has been spilt is a lot, a lot of our

13 blood has been spilt.”

14 CHAIRPERSON: Carry on now, from 5 –

15 [VIDEO SHOWN]

16 CHAIRPERSON: 6.09.

17 MR MAHLANGU: “Like now, as you see us

18 here, now we have given ourselves over to the police, over

19 just like the police, we have given over just like the

20 police. If they want” –

21 MR MPOFU: I am sorry, Chairperson, in

22 fact I should have done this before Mr Mahlangu interprets

23 this part. The only part that I will dispute is exactly

24 that, the one where he stumbled, because he stumbled, where

25 it says “Just like the police,” it actually says “be given

Page 36064

1 ourselves up to the police.” So maybe we should -

2 MR MAHLANGU: It could be replayed again.

3 MR MPOFU: So that Mr Mahlangu can then

4 either agree with me or not agree with me.

5 CHAIRPERSON: At that point, one notices

6 on the screen there is at least one policeman standing

7 behind this group of people.

8 MR MPOFU: Yes.

9 MR MPOFU: Just rewind it to the “blood

10 has been spilt.” Because it’s just after that.

11 [VIDEO SHOWN]

12 [14:30] MR MAHLANGU: It says, “Like now as you

13 see us here now, we have given ourselves over to the

14 police.”

15 MR MPOFU: To finish off something, ja.

16 Thank you.

17 MR MAHLANGU: “If they want to come and

18 finish us off,” yes.

19 [VIDEO IS SHOWN]

20 CHAIRPERSON: It’s now 6:09.

21 MR MAHLANGU: Yes, it says there “If they

22 want,” after he had said “We had give ourselves over to the

23 police,” he says, “If they want to come and finish us off,

24 let them kill us, and even now we tread on difficult

25 ground, we do not trust the police. Don’t tell us

Page 36065

1 engineering has no whites, because whites are also people,”

2 he says. It’s not correctly, “Don’t tell us engineering

3 has no whites.” He also says that they are people as well.

4 MR MPOFU: Yes, sorry, Chairperson, again

5 Mr Mahlangu, my hearing was “Don’t tell us engineering has

6 no people, because whites are also people,” something –

7 MR MAHLANGU: That’s correct. That’s

8 correct. He says, “Don’t tell us engineering has no

9 people, because whites are also people.”

10 CHAIRPERSON: We’re now carrying on from

11 6:09, are we?

12 [VIDEO IS SHOWN]

13 6:48

14 MR MAHLANGU: The last speaker just

15 before the second one had ended up by saying “All places

16 where there is engineering or mining officials, there are

17 people and we don’t want them there. Just go and tell

18 Barnard Mokwena we shall burn if they don’t evacuate the

19 people. We are not playing.” That was the last speaker.

20 Then came the second speaker where it’s written Jan

21 Thirion, “I would like to ask you a question. Number 1, we

22 are sitting at Rustenburg, we are busy speaking to you

23 trying to make a peace accord and after that we will want

24 to sit down with you and speak about the issues of the

25 money, but you do not want to do that. So why don’t you

Page 36066

1 start this point and move forward? I want us to move

2 forward.” Then comes a speaker, says, “Now you are

3 playing.”

4 [VIDEO IS SHOWN]

5 CHAIRPERSON: 7:22.

6 MR MAHLANGU: Yes, speaker 1, “Okay, Jan,

7 you are playing now. You’d better go to your car and go to

8 your people, and to the people with the money. Nobody is

9 going to work before 12 500. No one is going to come back

10 to work. If somebody comes to work we are going to add to

11 the blood that was on the mountain. We will add your own

12 blood if need be. We will not come back until 12 500 is

13 made available.

14 Now we are finished with you, you’d better get

15 into your car, go to the people at Rustenburg and tell them

16 we want 12 500 and if you leave Da Costa behind we will

17 deal with him on another day. We are now going to Bob,

18 it’s late now, we are going to Bob Mine.”

19 [VIDEO IS SHOWN]

20 CHAIRPERSON: 7:49.

21 MR MAHLANGU: The second speaker then

22 said, “Right now I will answer you now.” Speaker, the

23 first speaker says, “Don’t answer.” Then he goes on to

24 say, “Did you get what I said? Because I want the news to

25 get it straight.” He wants to say “I want us to get

<p style="text-align: right;">Page 36067</p> <p>1 straight. I am telling you we want to speak about peace, 2 you want to talk about arguing and we do not want that. We 3 want to go forward with the peace accord. We would like to 4 sit down by the table and talk to one another.”</p> <p>5 MR MPOFU: Okay, Chairperson, there’s 6 also one part which seemed not to be covered in the 7 transcript. He said something like, in contrast, “We want 8 to talk about peace, you want to talk about arguing” and so 9 on, but he also said, “You want to talk about killings,” or 10 killing.</p> <p>11 MR MAHLANGU: If that could be played. I 12 understood it to be –</p> <p>13 CHAIRPERSON: Talking about killing or 14 fighting, Ms Hemraj tells me she thinks she heard, but 15 perhaps we can go back to that passage and you can listen 16 again, Mr Mahlangu.</p> <p>17 MR MAHLANGU: Yes, just that passage. 18 What he’s saying there is “I am telling you we want to 19 speak about peace. You want to talk about arguing 20 [hlabane] and you want to talk about killing. We don’t 21 want that. We don’t want that. We want to go forward with 22 the peace accord. We would like to sit down by the table 23 and talk to each other in peace.”</p> <p>24 [VIDEO IS SHOWN] 25 “I want to tell you this” –</p>	<p style="text-align: right;">Page 36069</p> <p>1 Whether we die or we do not, there is only one thing that 2 we want and that is R12 500. [Inaudible] talk about then, 3 you know we have not spoken about anything. We are not 4 fighting. I just want to say that we are not fighting. We 5 did not fight. That comes from our strength.”</p> <p>6 MR MPOFU: Just one, I must confess, the 7 transcript says “We were killed because of our money,” or 8 rather, “We did not fight, we were just killed because of 9 our money and because of our strength, but I didn’t catch 10 it properly myself, if you can just play that part –</p> <p>11 MR MAHLANGU: I think that is what I 12 read, but if it could be played back.</p> <p>13 MR MPOFU: No, I see you just read the 14 part about the money, not “we were killed.”</p> <p>15 [VIDEO IS SHOWN]</p> <p>16 MR MAHLANGU: If I may just correct this, 17 Mr Mpofo is right, it’s exactly what he’s saying. “I just 18 want to say we are not fighting. We did not fight. We 19 were just killed because of our money and for our 20 strength.”</p> <p>21 [VIDEO IS SHOWN]</p> <p>22 That is the next speaker, “I want to give you an 23 answer according to what I know. We are trying to go 24 forward. The only thing I heard was a whole lot of 25 argument and we want to move forward.”</p>
<p style="text-align: right;">Page 36068</p> <p>1 CHAIRPERSON: Sorry, now we have another 2 speaker –</p> <p>3 MR MAHLANGU: Yes, now speaker 3, “I want 4 to tell you this; don’t think you will fire us all here at 5 Lonmin. You are playing.”</p> <p>6 “I want to tell you this; don’t think you will 7 fire us all here at Lonmin. You are playing,” is what he 8 said. “Nobody else will come and work here and we are here 9 to, as long as we are here to and working, you think you 10 will fire us all. We will close the whole Lonmin. Go to 11 London and come back with R12 500. We are finished because 12 of you and your” – no, he hasn’t come there.</p> <p>13 [VIDEO IS SHOWN]</p> <p>14 “Go to London and come back with R12 500,” he 15 said, and then he finished, “We are finished because of you 16 and your brothers, you white men. I just want to tell you 17 nicely that you are playing. You think you are going to 18 hire other people. We employees who are here, we will come 19 back and work at Lonmin.”</p> <p>20 [VIDEO IS SHOWN]</p> <p>21 CHAIRPERSON: This is another speaker 22 now.</p> <p>23 MR MAHLANGU: Another speaker, speaker 4. 24 “I hear you speaking of the peace accord. There is only 25 one thing we want from the peace accord, that is R12 500.</p>	<p style="text-align: right;">Page 36070</p> <p>1 [VIDEO IS SHOWN]</p> <p>2 CHAIRPERSON: 9:35.</p> <p>3 MR MAHLANGU: “The only thing I heard 4 from you was a whole lot of arguing. We would better have 5 to move forward now.”</p> <p>6 [VIDEO IS SHOWN]</p> <p>7 He is saying, “I have been here at Karee Mine 20 8 years,” and he repeated, “20 years,” which is not on the 9 transcript. “I have never seen this before and not even 10 once. I am happy with my employees, I have been, I always 11 speak to each other and we work together well. I have 12 never seen this before. How are we going to move forward 13 from here? No, gentlemen, you have been here a long time. 14 I started here as a young person. What are you saying, 15 gentlemen?” and then there’s a sixth speaker who says, “We 16 agree with you.” The next speaker then says, “We agree 17 with you. You have been here 20 years. All that we want 18 is R12 000 only, please. Take these people out of the 19 shaft. We are asking you to take them out before 1 20 o’clock, they must come out of the shaft, get into their 21 cars and go home because we don’t want to be divided.”</p> <p>22 MR MPOFU: Sorry, again if Mr Mahlangu 23 will agree with me, the one short sentence which was not 24 translated in the transcript, that speaker number 6 also 25 said after the 12 500 that, “We are not fighting.”</p>

Page 36071

1 MR MAHLANGU: If that could be replayed,
 2 I might have missed it.
 3 MR MPOFU: Okay.
 4 [VIDEO IS SHOWN]
 5 CHAIRPERSON: [Microphone off, inaudible]
 6 MR MAHLANGU: That was before, that has
 7 been translated already.
 8 MR MPOFU: Ja, just the beginning of
 9 speaker 6.
 10 [VIDEO IS SHOWN]
 11 MR MAHLANGU: Speaker number 6 says, "We
 12 agree with you, white man, you have been here 20 years.
 13 All we want is 12 000 only," and then it is not translated
 14 there, "We are not fighting. Take the people out of the
 15 shaft as we are asking you to take them out before 1
 16 o'clock. They must come out of the shaft, get into their
 17 cars and go home. We don't want to be divided. Some
 18 people are at work and some are not. We are pleading with
 19 you" –
 20 MR MPOFU: Sorry, again sorry, a small
 21 part at the end. He said "Some people are at work and
 22 others are sitting on the mountain." You can just rewind
 23 that a little bit, just towards the – ja, that should be
 24 enough.
 25 [VIDEO IS SHOWN]

Page 36072

1 MR MAHLANGU: That's correct, Chair,
 2 instead of go home, the mountains, "We don't want to be
 3 divided, some people staying at home and some going to the
 4 mountain. We are please, pleading with you."
 5 [VIDEO IS SHOWN]
 6 The next speaker then says, "Look up here. Look
 7 up here. What is standing there? Is he not wearing an
 8 overall?" and then the next speaker says, "He is looking
 9 after our shaft." "I am telling you, you must watch your
 10 shaft. If you're watching your shaft like this you will
 11 end up like this guy," shows a, where it says shows a
 12 picture, "we don't want you to lose your job for a small
 13 thing, for such a small thing. Close your shaft and go
 14 back to London."
 15 CHAIRPERSON: The picture we see is a
 16 picture of Mr Noki.
 17 MR MPOFU: It doesn't make sense. Maybe
 18 they should play it again.
 19 MR MAHLANGU: If they could play it once
 20 more from –
 21 [VIDEO IS SHOWN]
 22 "We want you to close this shaft. We don't want
 23 you to lose your job and close your shaft and go back to
 24 London."
 25 MR BHAM SC: Mr Chairman, at that point

Page 36073

1 the encounter between those who had come to the shaft and
 2 Mr Thirion come to an end. I don't know if there's any
 3 purpose in anything further on the video.
 4 CHAIRPERSON: I didn't see the witness
 5 speaking, or is he one of the people who spoke –
 6 MR BHAM SC: Oh no, he spoke a few times.
 7 He was speaker 2.
 8 CHAIRPERSON: Speaker 2, I see.
 9 MR BHAM SC: And he was the speaker who
 10 spoke right at the end.
 11 [14:50] CHAIRPERSON: I see. Alright, thank you.
 12 Does he have a transcript of this, which will be corrected,
 13 I take it, in accordance with the points that have been
 14 made during the hearing.
 15 MR BHAM SC: Thank you. Mr Chairman, I –
 16 CHAIRPERSON: Alright, do you want to
 17 continue with your cross-examination now?
 18 MR BHAM SC: If I may.
 19 CHAIRPERSON: Would you please remind the
 20 witness he's still under oath?
 21 XOLANI NZUZA: [s.u.o. through
 22 interpreter]
 23 MR MAHLANGU: Confirmed, Chairperson.
 24 CHAIRPERSON: Yes, Mr Bham?
 25 CROSS-EXAMINATION BY MR BHAM SC (CONTD.):

Page 36074

1 Thank you. I don't have much time, so I'm going to try to
 2 finish within the time allocated to me. Mr Nzuzza, you
 3 watched the video as we watched it?
 4 MR NZUZA: Yes.
 5 MR BHAM SC: And can I confirm that you
 6 were one of the speakers on that video, identified as
 7 speaker 2?
 8 MR NZUZA: Yes.
 9 MR BHAM SC: Other than Mr Thirion, from
 10 your side of the fence there were five other speakers. Are
 11 you able to identify them?
 12 MR NZUZA: I don't know them.
 13 MR BHAM SC: You don't know them, but you
 14 heard what they had to say?
 15 MR NZUZA: Yes, I was listening.
 16 MR BHAM SC: And speaker 1 on a number of
 17 occasions made reference to the R12 500 and said something
 18 along the lines of nobody is going to work before R12 500.
 19 You heard that, Mr Nzuzza?
 20 MR NZUZA: If you'd just repeat the
 21 question?
 22 MR BHAM SC: Speaker 1, the first
 23 gentleman who spoke with the, I think he had a white jacket
 24 on, white or beige jacket, he made reference on a few
 25 occasions to the amount of R12 500 and on one occasion said

Page 36075

1 nobody is going to work before R12 500. Do you recall that
 2 having been said?
 3 MR NZUZA: I don't know where this
 4 question is leading to, what he's saying.
 5 MR BHAM SC: Let me ask you this; prior
 6 to the 16th and up until the 16th of August it was the
 7 stance of the strikers, whom you were part of, that they
 8 wanted payment of R12 500 and that was not negotiable?
 9 MR NZUZA: Yes.
 10 MR MPOFU: No, I'm sorry, the last part
 11 of the question was not translated. No, two things, only
 12 12 500 and it was not negotiable, in other words –
 13 MR MAHLANGU: Oh, I'm sorry.
 14 MR MPOFU: - they were not prepared to
 15 discuss.
 16 MR NZUZA: Yes.
 17 MR BHAM SC: Mr Nzuzza, in the transcript
 18 when you speak for the first time you stated the following:
 19 you said that "Don't tell us engineering has no people,
 20 because whites are people. All places, whether it is
 21 engineering or mining officials, they are people and we
 22 don't want them here. Just go and tell Barnard Mokwena the
 23 shaft will burn if they don't evacuate the people. We are
 24 not playing." Now I know this was said on the 5th of
 25 September. I want to understand what you meant by what you

Page 36076

1 said on that day.
 2 MR NZUZA: Sir, my –
 3 MR MAHLANGU: He's using the word "oath,"
 4 "isifungo," was from the 9th to the 16th, Sir.
 5 MR BHAM SC: Sorry, I don't understand
 6 that answer. I'm trying to understand when you said this
 7 on the 5th of September –
 8 MR NZUZA: Was to talk, talk from the 9th
 9 to the 16th.
 10 MR BHAM SC: I know that is what you had
 11 prepared yourself to talk on. I'm now asking you when you
 12 said this on the 5th of September –
 13 MR NZUZA: I will not be able to answer
 14 this one alone, unless you involve those of the period in
 15 September.
 16 MR BHAM SC: Unless I involve what in the
 17 period September? I'm sorry, I don't understand your
 18 answer, Mr Nzuzza.
 19 MR NZUZA: Everything that happened in
 20 September.
 21 MR BHAM SC: What about it? I'm giving
 22 you the chance to explain what you said on the 5th. If you
 23 want to explain it in the context of whatever else might
 24 have happened in September, please feel free to do so, but
 25 I'm giving you the chance now to explain.

Page 36077

1 MR NZUZA: There is nothing to say.
 2 MR BHAM SC: I'm going to give you once
 3 last chance because I'm going to suggest to the Commission
 4 that what you're stating here is quite reflective of the
 5 attitude that would have been taken when you marched on K3
 6 on the 13th of August. I'm giving you the opportunity to
 7 deal with it.
 8 MR NZUZA: I would not be able to answer
 9 that question.
 10 MR BHAM SC: Thank you. Mr Chairman, I
 11 have no further questions.
 12 CHAIRPERSON: Thank you.
 13 COMMISSIONER HEMRAJ: Mr Interpreter,
 14 what did the witness say about the 9th to the 16th? I
 15 didn't catch that.
 16 MR MAHLANGU: I'm sorry, Ma'am?
 17 COMMISSIONER HEMRAJ: What did the
 18 witness say about the 9th to the 16th?
 19 MR MAHLANGU: Okay, I now understand.
 20 Because he spoke of the oath, Sir, my colleague explains to
 21 me that "The oath under which I am bound by this oath that
 22 I took, Sir, is the evidence between the 9th and the 16th."
 23 COMMISSIONER HEMRAJ: I see, thank you so
 24 much.
 25 CHAIRPERSON: Now Mr Mpofu, you're going

Page 36078

1 to re-examine in a moment, but let me just ask a question
 2 before you do.
 3 MR MPOFU: Thank you, Chairperson.
 4 CHAIRPERSON: I'm doing it now so you can
 5 deal with it if you have to. Going back to the 13th and the
 6 group of people who were sent to K3 Shaft, now I'm not sure
 7 I understand your evidence. For what purpose was this
 8 group sent to the K3 Shaft on the Monday the 13th of August?
 9 MR NZUZA: The question is not very
 10 clear, Sir.
 11 CHAIRPERSON: You were part of a group
 12 who were sent to the K3 Shaft on the 13th of August. That's
 13 correct, isn't it?
 14 MR NZUZA: That's correct, Sir.
 15 CHAIRPERSON: What were you sent to do?
 16 MR NZUZA: To go and see if there are any
 17 people working.
 18 CHAIRPERSON: Yes, and if you had seen
 19 there were people working, what were you going to do? What
 20 were you supposed to do?
 21 MR NZUZA: We would not have done
 22 anything.
 23 CHAIRPERSON: Would you have done nothing
 24 at all?
 25 MR NZUZA: Yes.

Page 36079

1 CHAIRPERSON: Would you have just turned
 2 around and gone back to the koppie?
 3 MR NZUZA: Yes, Sir.
 4 CHAIRPERSON: Will you not have said
 5 anything to anybody?
 6 MR NZUZA: It's not clear, Sir.
 7 CHAIRPERSON: Before you turned around
 8 and went back to the koppie would you have said anything to
 9 anybody at the shaft?
 10 MR NZUZA: Yes.
 11 CHAIRPERSON: What would you have done?
 12 What would you have done? What would you have said?
 13 MR NZUZA: I have already said we would
 14 not have done anything to them.
 15 CHAIRPERSON: And would you have not said
 16 anything to anybody either?
 17 MR NZUZA: We would have told them we
 18 wanted money, amount of 12 500.
 19 CHAIRPERSON: Who would you have told
 20 that?
 21 MR NZUZA: The employer.
 22 CHAIRPERSON: And then what would you
 23 have done?
 24 MR NZUZA: Go back.
 25 CHAIRPERSON: I see. Well, the reason I

Page 36080

1 ask you that is I see you've got your statement in front of
 2 you, it might help if you looked at paragraph 6. You can
 3 read English, can you?
 4 MR NZUZA: I am not able to read that.
 5 CHAIRPERSON: So what are you looking at
 6 your statement for then?
 7 MR NZUZA: I'm just looking, just gazing.
 8 CHAIRPERSON: Oh, I see, because I see
 9 you've got a piece of paper, or a document in front of you.
 10 Is that your statement, HHH21?
 11 MR NZUZA: Yes, number of papers, Sir,
 12 that I look at.
 13 CHAIRPERSON: Alright, if you look at
 14 paragraph 6 of HHH21, it's now being put on the screen, you
 15 will see it says the following. "On 13 August 2012 I
 16 arrived early at the koppie, between 8 and 9. It was later
 17 discussed that some of the employees at K3 Shaft were
 18 working despite the call for a strike. The workers
 19 resolved that a small group be sent there to request the
 20 mine management to close the mine and to allow those
 21 workers to join the strike." So according to this
 22 statement what you were supposed to do was if you found
 23 workers working there you were supposed to speak to the
 24 mine management and request them to close the mine and to
 25 allow the workers to join the strike. But that's not what

Page 36081

1 you said earlier. Can you explain that?
 2 MR NZUZA: Yes, Chair, the question that
 3 was asked was what were we going to do to the workers.
 4 CHAIRPERSON: A number of doors were
 5 locked. There were a number of other questions asked about
 6 whether you were going to speak to anybody, what you were
 7 going to say. That's the point I'm putting to you. Can
 8 you explain the difference?
 9 MR NZUZA: I mentioned, Sir, that we
 10 would talk to the management.
 11 CHAIRPERSON: No, I asked you what you
 12 would say to them and you said you would say you wanted
 13 12 500 and that was all. That's not what you say in your
 14 statement. Can you explain that?
 15 MR NZUZA: The question that was put to
 16 me was what were we going to do to the people we found
 17 working.
 18 CHAIRPERSON: Well, I've asked you the
 19 question. The record will speak for itself. Mr Mpoфу?
 20 RE-EXAMINATION BY MR MPOFU: Thank you,
 21 Chairperson. Let's start with that, Mr Nzuzа.
 22 CHAIRPERSON: Sorry, Mr Mpoфу, I see it's
 23 teatime. Would you like to take – I'm in your hands.
 24 Would you like to take the tea adjournment now and then ask
 25 your questions, or would you like to start the re-

Page 36082

1 examination before we take the tea adjournment? It's for
 2 you to tell me.
 3 MR MPOFU: No, I'd like to start now,
 4 just to clear up something very quickly.
 5 CHAIRPERSON: Alright, no problem.
 6 MR MPOFU: Mr Nzuzа, you've just been
 7 asked about the 13th and your statement says that you would
 8 have requested the mine management to close the mine. Is
 9 that correct?
 10 MR NZUZA: Yes, we were going to talk to
 11 the management.
 12 MR MPOFU: And you also would ask them
 13 for – or rather you would have also told them that you
 14 want, tell them about your demand for 12 500, right?
 15 MR NZUZA: Yes, we were going to tell
 16 them that we want R12 500.
 17 MR MPOFU: And you say to allow the
 18 workers to join the strike?
 19 MR NZUZA: Yes, those who wanted to join.
 20 MR MPOFU: Yes, now can you maybe explain
 21 the connection between those workers who wanted to join in
 22 the strike and whether that would strengthen or weaken your
 23 demand for R12 500? Because that seems to be what is
 24 missing. What is the connection between the workers
 25 joining the strike and the R12 500?

Page 36083

1 MR NZUZA: Yes, I will explain.
 2 MR MPOFU: Sorry, I'm sure he didn't
 3 understand the question, or I didn't ask it properly. I'm
 4 saying can you explain to the Commission whether if those
 5 workers had joined the strike it would have weakened or
 6 strengthened your demand for R12 500?
 7 MR NZUZA: It would strengthen the
 8 strike.
 9 MR MPOFU: Thank you. Okay, Chairperson,
 10 we can take the break now.
 11 CHAIRPERSON: Take the tea adjournment?
 12 MR MPOFU: We can, yes.
 13 CHAIRPERSON: Yes, 15 minutes.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [15:24] CHAIRPERSON: [Microphone off, inaudible]
 16 XOLANI NZUZA: [s.u.o. through
 17 interpreter]
 18 MR MAHLANGU: Confirmed, Chairperson.
 19 RE-EXAMINATION BY MR MPOFU (CONTD.):
 20 Thank you, Chairperson. Mr Nzuzza, I want us to stay a
 21 little bit on the 13th, because I think it will help to
 22 eliminate some of the other points of clarification now I
 23 would have raised in re-examination.
 24 MR NZUZA: Yes, Sir.
 25 MR MPOFU: You know you've been asked, in

Page 36084

1 the past two days you've been asked many, many questions
 2 about if this, if that, if this, if you had gone to K3, if
 3 you had gone to K4, if you had found the workers working,
 4 and so on. So on that aspect I'm not going to ask you an
 5 "if" question. I'm going to ask you what we also hear on
 6 the video and what Mr Julius Motlogeloa, who was there,
 7 testified, and I'm sure I don't need to play the video
 8 again.
 9 After Mr Noki addressed the security personnel
 10 and according to your evidence-in-chief when the security
 11 personnel said there are no people working there, who did
 12 you as the strikers actually do?
 13 MR NZUZA: We said thank you, we turned
 14 around and went back.
 15 MR MPOFU: Thank you, and as the evidence
 16 of Mr Motlogeloa was that in your interactions with them
 17 you were respectful and submissive and so on. Was that
 18 your experience?
 19 MR NZUZA: That is how it was.
 20 MR MPOFU: Thank you. Then I want to
 21 deal with – yes, again still staying with the 13th, very
 22 important aspect; we've already covered, and you've said in
 23 your statement that you do not believe that Mr X was there
 24 and you said that even under cross-examination,
 25 particularly on the 13th.

Page 36085

1 MR NZUZA: I am still saying he wasn't
 2 there.
 3 MR MPOFU: Yes, there is evidence – okay,
 4 I assume corrective action has been taken, Chairperson.
 5 CHAIRPERSON: That's why I didn't say
 6 anything.
 7 MR MPOFU: Yes, thank you. There's
 8 evidence here that Mr X went to work, at worst or at best
 9 for him clocked in and out on the 13th in the morning.
 10 Would that be consistent with someone who would have been
 11 part of your group?
 12 MR NZUZA: No, it cannot be true.
 13 MR MPOFU: Right, and I'm asking you this
 14 question because we have alluded, without obviously we
 15 don't have concrete proof, that it's possible that some of
 16 the people who were implicated by Mr X were for that reason
 17 killed, or at least one of them. You are aware of the
 18 recent murder of Bhayi, correct?
 19 MR NZUZA: Yes.
 20 MR MPOFU: And you've testified that he
 21 was not part of the group on the 13th. Is that correct?
 22 MR NZUZA: That's right.
 23 MR MPOFU: Okay, now I know some of what
 24 he would have said if he was alive because I consulted with
 25 him two weeks before he was killed, but let's rather use a

Page 36086

1 person who is here who is able to answer for himself, whom
 2 I've also consulted with. Mr X suggests that Mr Dlunga,
 3 who's otherwise known as Bhele, was also present on the
 4 13th. You know Mr Dlunga?
 5 MR NZUZA: Yes, Sir.
 6 MR MPOFU: You've known him since those
 7 events, even if you didn't know him at the time, correct?
 8 MR NZUZA: Yes, Sir.
 9 MR MPOFU: Ja, now Mr X says – this is
 10 AAAA1.2, Chairperson.
 11 CHAIRPERSON: [Microphone off, inaudible]
 12 on the screen?
 13 MR MPOFU: Yes, I'll ask questions while
 14 it's being put up. AAAA1.2, thank you. Now was Mr Dlunga,
 15 or Bhele part of that group on the 13th that went off with
 16 you?
 17 MR NZUZA: No, he wasn't one of us.
 18 MR MPOFU: Okay, thank you. Because we
 19 don't have time in the Commission, I would have called him
 20 but I'm asking that question through you. Now if you go to
 21 paragraph 19 of that statement, another person who's
 22 implicated there who can't answer for himself is Mr Noki.
 23 MR NZUZA: Yes, Sir.
 24 MR MPOFU: So through you and Mr Dlunga
 25 maybe we can try and shed some light on what is alleged

Page 36087

1 about those deceased persons, Mr Mehlokomko and Mr Noki.
 2 Yes, I'll start, Chairperson, where it says, "The police
 3 then started counting."
 4 MR NZUZA: Yes?
 5 MR MPOFU: This is what Mr X says about
 6 the group that you were in. "The police then started
 7 counting from 1 and before he could finish counting I hear
 8 some gunshots being fired from the side of the police."
 9 Okay, don't worry about the accuracy or inaccuracy of that
 10 statement. There was sufficient cross-examination on it.
 11 Then he says, "I saw Mambush and Bhayi shooting at the
 12 police." In the light of your evidence can that be true?
 13 MS BALOYI: Chairperson, I don't see how
 14 this arises from cross-examination. Certainly this aspect
 15 was never covered.
 16 CHAIRPERSON: [Microphone off, inaudible]
 17 MR MPOFU: Yes, Chairperson, I think it
 18 was –
 19 CHAIRPERSON: By whom? Sorry, I didn't
 20 have my microphone on. Was this covered in cross-
 21 examination? Was it? By whom?
 22 MR MPOFU: Yes, Chairperson, I was just
 23 answering that. I think it was Mr Gumbi who put the
 24 specific about the presence or absence of Bhele. I think
 25 he didn't use the other –

Page 36088

1 CHAIRPERSON: Mr Gumbi has turned his
 2 light on. Yes, Mr Gumbi?
 3 MR GUMBI: Yes, but what I asked the
 4 witness, Chairperson, whether those people they were there
 5 and then the witness denied. I didn't ask what they do,
 6 the role they play –
 7 CHAIRPERSON: I think the witness of
 8 course said they weren't there and you don't have to take
 9 it any further in re-examination. His evidence is already
 10 on record that they weren't there, isn't it?
 11 MR MPOFU: Chairperson, if you'll allow
 12 me, now that we've clarified that it arose in cross-
 13 examination, if you'll allow me I'm going to read – I'm
 14 actually going to the part that deals with Mr Dlunga.
 15 Maybe I started too early, but the question really is in
 16 respect of Mr Dlunga that Mr Gumbi raised.
 17 CHAIRPERSON: Get to it as quickly as you
 18 can.
 19 MR MPOFU: Yes, thank you, Chairperson.
 20 I'll just read the whole passage. Okay, very quickly, then
 21 he says, "I was caught or affected by tear smoke and
 22 started running around looking for cover." We can ignore
 23 that. He says, "Then I saw Bhayi attacking the police
 24 officer who is light in complexion and Bhayi stabbed the
 25 said police officer and the police officer fell down.

Page 36089

1 Bhayi then disarmed the police officer of his pistol and
 2 throw it to Bhele," that's Mr Dlunga, and that's the point.
 3 The point is that according to this Bhayi would have thrown
 4 the so-called firearm to Mr Dlunga here and Bhayi also took
 5 a long firearm from the police, and so on and so on. The
 6 only question is if you are sure, as you have said, that Mr
 7 Dlunga was not there on the 13th, can that evidence be
 8 correct?
 9 CHAIRPERSON: That's self-evident,
 10 surely. The answer is it can't be correct.
 11 MR MPOFU: I'm sure the witness will
 12 agree with you, Chairperson.
 13 MR NZUZA: I am saying Bhele wasn't
 14 there.
 15 CHAIRPERSON: That's the point. The
 16 point is he wasn't there, he couldn't have done it.
 17 MR MPOFU: Thank you. Now the next
 18 issue, there's been a whole lot of cross-examination I
 19 think around this notion of you been second-in-command, and
 20 I think despite your best efforts to clarify it I need to
 21 just give you one last chance, and I'm doing this because
 22 as the Chairperson said and maybe to plead guilty to what
 23 he was saying that I assisted you in drafting this
 24 statement and therefore maybe you can explain to the
 25 Commission to the best of your ability, because you

Page 36090

1 wouldn't have chosen the punctuation marks and the
 2 quotation marks and all those things, just what drove that
 3 – you say in paragraph 2, it starts by saying "It is true
 4 that I was the de facto," and then it's put in quotes,
 5 "second-in-charge' with Mr Noki being the de facto overall
 6 and most visible leader of the striking group," and it
 7 says, "These 'positions,'" and it's also put in quotes,
 8 "were never formally declared but it is simply how things
 9 turned out." I'll come back to – I just want to go to the
 10 next paragraph 3, you say, "I wish to make it clear that my
 11 leadership role at the koppie happened purely by default
 12 and coincidence." And here you laid bare, "I have never
 13 held any leadership position in any union or workers'
 14 activities."
 15 Now when you were trying to clarify this and you
 16 said the context of that statement was made because of what
 17 was said here in the Commission, I think it just got lost.
 18 MR NZUZA: That's correct, yes.
 19 MR MPOFU: And maybe you can assist me.
 20 If you go to the – who was the first person who suggested
 21 that you were a top leader with Mr Noki?
 22 MR NZUZA: I heard it being mentioned in
 23 the Commission by Mr X.
 24 MR MPOFU: Right, and when you say - that
 25 sentence doesn't start like most sentences, it starts with

Page 36091

1 the words "It is true that" – what was it that you were
 2 confirming with which you had heard it? Or maybe let me
 3 ask it like this, Mr Nzuzza. If you go to the transcript
 4 31108, that would be, Chairperson, that would be day 248 –
 5 no, I'm sorry, I think it's 247. I think that should
 6 explain something about what you've just said and also the
 7 origins of this notion of a so-called overall leader. Mr
 8 Mathibedi says at line 4 of 31108, "Everything that was
 9 done in the mountain you couldn't do it without passing
 10 them first." He's referring to the committee, that's Mr X.
 11 Then Mr Mathibedi says, "In the committee of 15 was there
 12 an overall leader?" and then Mr X says, "Yes, there was
 13 Mambush and Xolani." Before that had anyone associated you
 14 with Mambush as the so-called overall leaders?
 15 MR NZUZA: No one did.
 16 MR MPOFU: Right, thank you. Then the
 17 other point that I'd like you to clarify is to do with –
 18 well, you've already, I think you've sufficiently explained
 19 the thing of the apology and so on, but another form of
 20 cross-examination directed at you was about the fact that
 21 you did not go to the police. It's sufficient to say that
 22 the police at least did come to you because they came to
 23 fetch you at work according to your evidence, correct?
 24 [15:43] MR NZUZA: Yes.
 25 MR MPOFU: And to cut a long story short,

Page 36092

1 on that occasion according to your statement to IPID the
 2 police tortured you by putting a plastic over your head and
 3 pouring water and tying you against a chair and beating you
 4 up. Is that correct?
 5 MR NZUZA: Yes, they did all that.
 6 MR MPOFU: Yes, and also although you've
 7 said that you were pained, or you shared the hurt of the
 8 people who were killed, such as Mr Fundi and others, would
 9 it be fair to say that the people who were closer to you
 10 would have been people like Mr Noki and Mr Bhayi and Mr
 11 Mehlokombe?
 12 MR NZUZA: That's correct, Sir.
 13 MR MPOFU: Now in respect of those people
 14 who died and who were closer to you in relationship did you
 15 ever go to the police to assist them to find their killers?
 16 MR NZUZA: I haven't been there. I
 17 didn't do that.
 18 MR MPOFU: Alright, then in relation to
 19 Lonmin's cross-examination – or no, before we go there I
 20 think here's another important issue that I want just to
 21 clarify. Whatever the causes, or whoever killed the 10
 22 people who died before the 16th, do you think that they
 23 deserved to die?
 24 MR NZUZA: No, they did not.
 25 MR MPOFU: And we are here in this

Page 36093

1 Commission because effectively the case of the police is
 2 that the 34 strikers who died on the 16th deserved to die.
 3 MS BALOYI: Objection, Chairperson.
 4 Objection.
 5 CHAIRPERSON: Yes, Ms Baloyi is
 6 objecting. That's not the case of the police. The police
 7 case as I understand it is those people died because the
 8 police were defending themselves and in the course of
 9 defending themselves they were killed. It doesn't mean
 10 they deserved they die. Whether the defence of self-
 11 defence will succeed, whether it will succeed in respect of
 12 all 34, these are matters that are very much on the table,
 13 but I don't see that it's fair to say that their case is
 14 that these people deserved to die. So I think you must
 15 reformulate that.
 16 MR MPOFU: I'll rephrase. Yes, thank
 17 you, Chairperson. Okay, let me put it this way. Their
 18 case is that they asked for it, it was their fault that
 19 they died. In other words they –
 20 MS BALOYI: Chairperson, I repeat my
 21 objection.
 22 MR MPOFU: Okay, if I can finish.
 23 CHAIRPERSON: I don't think that summary
 24 of their case – why not just say the police case is –
 25 MR MPOFU: Can I not be interrupted?

Page 36094

1 CHAIRPERSON: No, I understand, but
 2 let's –
 3 MR MPOFU: Can I finish the sentence?
 4 CHAIRPERSON: No, but what you said
 5 already was bad enough. Why not just put to the witness
 6 that the police case is that they were defending
 7 themselves –
 8 MR MPOFU: No –
 9 CHAIRPERSON: - and then you can go on
 10 from there, because that is their case.
 11 MR MPOFU: No, that's not what I'm
 12 putting. Chairperson, if I may be allowed, if I can also
 13 be the beneficiary of the rule against interruption. What
 14 I'm saying is this; that the case of the police is that
 15 those people, if they were defending themselves they were
 16 obviously defending themselves from an attack by them. You
 17 see? So what I'm saying is that the case of the police is
 18 that it is the fault of those people, because they attacked
 19 the police, that they died. In other words they deserved –
 20 or rather they asked for it. Had they not attacked the
 21 police they would be alive. Do you understand that? Now
 22 when you were, you said you were on top of the mountain and
 23 you had one of the best views of what was happening there.
 24 Did you observe those people, including Mr Noki, your
 25 friend, attacking the police?

<p style="text-align: right;">Page 36095</p> <p>1 MR NZUZA: They were not attacking, Sir.</p> <p>2 MR MPOFU: Right, then the last aspect I</p> <p>3 want to deal with is this, and it's quite important as</p> <p>4 well. You were asked many, many questions about the</p> <p>5 inyanga and the role of the inyanga, and in your statement</p> <p>6 at paragraph 4 –</p> <p>7 CHAIRPERSON: Are you referring to the</p> <p>8 supplementary –</p> <p>9 MR MPOFU: I'm sorry, yes, the</p> <p>10 supplementary. Yes, thanks, Chairperson. PPP1.</p> <p>11 CHAIRPERSON: Quadruple.</p> <p>12 MR MPOFU: PPPP1. You've said, and</p> <p>13 you've said already this, that the reason you did not</p> <p>14 mention the inyanga thing is that "It is in my view</p> <p>15 completely irrelevant to the issues being investigated by</p> <p>16 the Commission." You then say, "The various religious</p> <p>17 and/or cultural beliefs of such a heterogeneous group as</p> <p>18 3 000 or more strikers played no role whatsoever in</p> <p>19 relation to the massacre or its causes." And then you say,</p> <p>20 which is what I'm going to question you about, "No belief</p> <p>21 system is superior to another." Now to cut a long story</p> <p>22 short, it is so that you believe in traditional methods of</p> <p>23 healing, correct?</p> <p>24 MR NZUZA: Yes, I do.</p> <p>25 MR MPOFU: And just for clarity, did you</p>	<p style="text-align: right;">Page 36097</p> <p>1 MR MAHLANGU: The question was, Sir?</p> <p>2 MR MPOFU: Would he be entitled to look</p> <p>3 down upon that if he doesn't believe in it?</p> <p>4 MR NZUZA: No, that is the right to your</p> <p>5 belief. I have my own.</p> <p>6 MR MPOFU: Right, and you've said that</p> <p>7 the majority of the people on the koppie were people who</p> <p>8 did not believe in traditional healing methods and I think</p> <p>9 we see that on the video there about 30 or 40 people and</p> <p>10 then thousands who are just sitting at the koppie.</p> <p>11 MR NZUZA: That is true.</p> <p>12 MR MPOFU: And we've also seen, as you</p> <p>13 have said, that this was done in broad daylight and</p> <p>14 actually in front of the thousands who were not</p> <p>15 participating.</p> <p>16 MR NZUZA: There was no secret, Sir.</p> <p>17 This was done in the presence of everybody.</p> <p>18 MR MPOFU: And in front of the police.</p> <p>19 MR NZUZA: That's right. This is a</p> <p>20 public place. There is a road there where taxis go past</p> <p>21 and other people passing through.</p> <p>22 MR MPOFU: And in any of the statements</p> <p>23 that were made by anybody, whether it's the police, the</p> <p>24 generals or anybody, have you heard a statement in this</p> <p>25 Commission where somebody has said what they did in terms</p>
<p style="text-align: right;">Page 36096</p> <p>1 participate in any rituals at the mountain?</p> <p>2 MR NZUZA: No, I did not.</p> <p>3 MR MPOFU: Right, now the view, you</p> <p>4 believe in methods of traditional healing and then there's</p> <p>5 me, I'll use myself as a person who believes in</p> <p>6 Christianity, do you think that either you have a right to</p> <p>7 look down upon my belief system or me upon yours?</p> <p>8 MR NZUZA: No. No, that should not be</p> <p>9 done.</p> <p>10 MR MPOFU: And if I perform my rituals of</p> <p>11 my faith - such as I can tell you some of them; I was</p> <p>12 dipped into water when I was being baptised - would you be</p> <p>13 allowed to mock that and look down upon it?</p> <p>14 MR NZUZA: No, I would not. That would</p> <p>15 be your belief. I have my own.</p> <p>16 MR MPOFU: Yes, and also in my belief we</p> <p>17 close our eyes when we do our rituals. Would you be</p> <p>18 allowed to look down upon that as something illogical?</p> <p>19 MR NZUZA: I do not at all, Sir, because</p> <p>20 that is your belief. If I do my ritual I open my eyes wide</p> <p>21 in order to see everything.</p> <p>22 MR MPOFU: Yes, well I could go on. We</p> <p>23 don't have a lot of time. In my religion we eat bread,</p> <p>24 believing that it is human flesh or it is the body of our</p> <p>25 Saviour. Would you be allowed to look down on that?</p>	<p style="text-align: right;">Page 36098</p> <p>1 of their beliefs, whether they prayed before they got there</p> <p>2 or whether they did not pray or during the shooting or</p> <p>3 whatever? Was that seen as of any relevance to the</p> <p>4 massacre?</p> <p>5 MR NZUZA: No, nothing, Sir, because even</p> <p>6 people like Ma'am Mbombo said she prayed before going to</p> <p>7 Marikana.</p> <p>8 MR MPOFU: Yes, so if the Chairperson</p> <p>9 will allow me finally, I just want to broadly deal with Mr</p> <p>10 Bham's video. I don't have time, so I'll just make a broad</p> <p>11 stroke. If you look at the mood of the people, of the</p> <p>12 videos that I played for you yesterday, on the 16th, you</p> <p>13 remember all those speakers who spoke, including yourself?</p> <p>14 MR NZUZA: I do remember it.</p> <p>15 MR MPOFU: And if you compare it with the</p> <p>16 mood that we see in the video that Mr Bham played, what</p> <p>17 would you say were the differences, and why?</p> <p>18 MR NZUZA: If the question could be</p> <p>19 repeated, Sir?</p> <p>20 MR MPOFU: Yes, it's a little bit –</p> <p>21 because I'm trying to put too many things in one question.</p> <p>22 When I say I'm talking about the mood, I'm talking about</p> <p>23 the appearance of the, and the outward manifestation of</p> <p>24 feelings. Would you say that the mood of the people that</p> <p>25 we saw yesterday speaking on the 16th and the mood of</p>

<p style="text-align: right;">Page 36099</p> <p>1 today's video was the same, or was it different?</p> <p>2 MR NZUZA: The mood is the same. There</p> <p>3 was no fighting going on.</p> <p>4 MR MPOFU: Yes, I know that you said –</p> <p>5 CHAIRPERSON: Mr Mpofu, it's not quite</p> <p>6 right, is it, because one of these speakers, I don't</p> <p>7 remember who it was, was waving a photograph of Mr Noki.</p> <p>8 That's right, is it? Was it you? Were you the one who was</p> <p>9 waving a photograph of Mr Noki? Am I right?</p> <p>10 MR MPOFU: Yes.</p> <p>11 CHAIRPERSON: Is that correct? You</p> <p>12 haven't answered the question.</p> <p>13 MR NZUZA: What photo, Sir?</p> <p>14 CHAIRPERSON: There was a photograph we</p> <p>15 saw on the video of Mr Noki which was being waved, I'm told</p> <p>16 it was by you. Is that correct? And you appeared to be</p> <p>17 angry when you were waving Mr Noki's photograph. So that</p> <p>18 differed from what we saw on the videos of the people on</p> <p>19 the 16th.</p> <p>20 MR MPOFU: Thank you, Chairperson.</p> <p>21 MR NZUZA: If you look at that,</p> <p>22 Chairperson, this is after many of our friends had died.</p> <p>23 CHAIRPERSON: That's the point I'm</p> <p>24 making. You were waving the photograph – it was you, was</p> <p>25 it? - waving the photograph of Mr Noki, and you were</p>	<p style="text-align: right;">Page 36101</p> <p>1 put to you by my learned colleague Ms Masevhe that, she put</p> <p>2 it to you that, or she put a statement and said that,</p> <p>3 basically in a nutshell she put a situation that there was</p> <p>4 no fighting, all that was happening were the strikers who</p> <p>5 were attacking the police and the police were running away.</p> <p>6 You remember that?</p> <p>7 MR NZUZA: There was no attack on the</p> <p>8 police, Sir.</p> <p>9 MR MPOFU: Yes, that's fine. I'm asking</p> <p>10 that in relation to what we saw on the video. Again I just</p> <p>11 want to run away from these theoretical – in the video that</p> <p>12 we saw did you see the police attacking the strikers and</p> <p>13 the strikers running away, or did you see what she said,</p> <p>14 which was the strikers attacking the police and the police</p> <p>15 running away?</p> <p>16 [16:03] MR NZUZA: What I see there is the</p> <p>17 strikers running away.</p> <p>18 MR MPOFU: And you'll remember that there</p> <p>19 was evidence that you and I were talking about, about</p> <p>20 policemen who were seemingly shooting, to put it mildly?</p> <p>21 MR NZUZA: Yes, the police coming behind</p> <p>22 us as we were running away were shooting.</p> <p>23 MR MPOFU: Mr Nzuzza, I'm just going to</p> <p>24 ask you to do us a favour; insofar as the Chairperson</p> <p>25 demonstrated that after the events you were at least</p>
<p style="text-align: right;">Page 36100</p> <p>1 speaking angrily about it.</p> <p>2 MR NZUZA: That's correct.</p> <p>3 MR MPOFU: Yes, and in the previous</p> <p>4 picture we saw you talking about the employer coming to see</p> <p>5 us and then asking people not to disturb the gentleman who</p> <p>6 was talking.</p> <p>7 MR NZUZA: That's correct.</p> <p>8 MR MPOFU: Chairperson, I'm in your</p> <p>9 hands; if you allow me one or two questions I'll ask them,</p> <p>10 but if you don't then –</p> <p>11 CHAIRPERSON: Well, it's 4 o'clock, but</p> <p>12 look, as long as you don't go too far –</p> <p>13 MR MPOFU: Yes.</p> <p>14 CHAIRPERSON: - I'll allow you another</p> <p>15 five minutes.</p> <p>16 MR MPOFU: Thank you, Chairperson –</p> <p>17 CHAIRPERSON: If you can't ask your</p> <p>18 questions in five minutes –</p> <p>19 MR MPOFU: Thank you, Chairperson, I</p> <p>20 might not even use it all.</p> <p>21 CHAIRPERSON: Five minutes should be</p> <p>22 enough.</p> <p>23 MR MPOFU: That should be enough, thank</p> <p>24 you very much, Chairperson. Again – I'm sorry, I'm jumping</p> <p>25 around. I'm going back to the issue of the 13th. It was</p>	<p style="text-align: right;">Page 36102</p> <p>1 seemingly angrier than before, it might assist you to maybe</p> <p>2 tell the Commission insofar as you may still be angry why,</p> <p>3 what made you so angry post those events.</p> <p>4 MR NZUZA: If you listen to what is being</p> <p>5 said there we were hurt, Sir, after going to work, after</p> <p>6 the death of our colleagues. What would have happened, it</p> <p>7 would have hurt the families of the deceased that we were</p> <p>8 together with them on the mountain, immediately after their</p> <p>9 death we turn back and go back to work.</p> <p>10 MR MPOFU: Yes, and are you still angry</p> <p>11 now?</p> <p>12 MR NZUZA: Yes.</p> <p>13 MR MPOFU: And why are you still angry?</p> <p>14 MR NZUZA: We got arrested, Chairperson,</p> <p>15 and some of the people that died, nothing has been done to</p> <p>16 investigate their deaths and that does not go well with us.</p> <p>17 MR MPOFU: Thank you very much,</p> <p>18 Chairperson, I have nothing further.</p> <p>19 CHAIRPERSON: Thank you, Mr Mpofu. We'll</p> <p>20 adjourn until 9 o'clock tomorrow. Let me indicate what's</p> <p>21 going to happen. Tomorrow Mr Blaauw is going to be giving</p> <p>22 evidence and then on Monday we will start at 9 o'clock and</p> <p>23 we will take lunch until half past 1 and sit till quarter</p> <p>24 past 4 in a genuine endeavour to finish the evidence of Mr</p> <p>25 Blaauw and Mr Sinclair. If Mr Blaauw's evidence doesn't</p>

1 finish tomorrow he will then run over into Monday, but we
2 have to try and finish his evidence and that of Mr Sinclair
3 who is of course coming back, by quarter past 4 on Monday.
4 I hope everyone will cooperate as much as possible to
5 enable us to succeed. The experts will be starting to give
6 evidence on Tuesday. Mr White is coming back for
7 continuation of cross-examination by SAPS, then the other
8 experts are going to give evidence. So that's the plan
9 ahead. We're a little bit behind the schedule, that's why
10 I ask, appeal to everybody to assist so that we can catch
11 up with the schedule and we will effectively do that if we
12 can finish Mr Sinclair by quarter past 4 on Monday. We'll
13 now adjourn until 9 o'clock tomorrow.

14 [COMMISSION ADJOURNED]

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A	<p>addressed 35939:15 35950:15 35968:6 36015:7 36032:18,24 36051:9 36084:9</p> <p>addressing 35939:22 36028:17</p> <p>adduced 35947:9,12 36029:8,15,16 36031:17 36041:12 36042:12,20</p> <p>adducing 36023:3 36042:15</p> <p>adequate 36032:19 36033:6</p> <p>adjourn 36054:14,17 36054:18 36102:20 36103:13</p> <p>adjourned 35936:6 36103:14</p> <p>adjournment 36013:24 36015:7 36081:24 36082:1 36083:11</p> <p>ADJOURNS 35978:17 36015:9 36051:6 36054:20 36083:14</p> <p>adjudicate 36038:25</p> <p>admissibility 36025:12 36027:23 36031:22 36036:4 36038:11,13</p> <p>admissible 36023:2 36025:14,15 36026:9 36030:16</p> <p>admission 36027:3 36038:15 36047:9 36052:2</p> <p>admit 36017:5,7 36018:16 36023:18 36024:2 36025:8,9 36046:12,13 36048:14,16 36051:22</p> <p>admitted 36017:9 36025:24 36032:12 36035:19,20 36038:2 36038:6 36044:4,20 36046:21 36048:24 36051:11,11,19 36052:3</p> <p>adversary 36042:13</p> <p>adverse 36028:19 36034:20 36044:2</p> <p>afraid 35974:14 35975:9 36035:13</p> <p>African 35964:8 35981:8,10 36012:13 36023:23</p> <p>afternoon 35935:23 35978:24</p> <p>agent 36049:3,5</p> <p>ago 36007:15 36058:14</p> <p>agree 35938:16 35945:10,13 35947:21 35951:15 35953:7 35959:7,18 35960:17 35961:25 35966:23 35970:8,17</p>	<p>35975:13 35977:16 35991:15 35992:5,21 36000:16 36002:12 36002:25 36045:13 36064:4,4 36070:16 36070:16,23 36071:12 36089:12</p> <p>agreed 35974:25 35975:13 36016:14 36016:15</p> <p>agreement 35963:25 35964:3 36007:23 36009:13 36010:1,13 36020:19</p> <p>ahead 36103:9</p> <p>aim 35993:6</p> <p>albeit 36026:18</p> <p>alighted 35936:12,19 35937:8</p> <p>alighting 35936:8</p> <p>alive 36041:15 36085:24 36094:21</p> <p>alleged 35942:13 36005:22 36086:25</p> <p>allocated 35984:3 36074:2</p> <p>allotment 35958:5</p> <p>allow 35937:25 35968:13 35971:10 36002:6,9 36016:10 36017:9 36031:9,25 36032:2 36041:23 36080:20,25 36082:17 36088:11 36088:13 36098:9 36100:9,14</p> <p>allowed 35973:7 35977:6 36002:8 36028:3 36031:13 36033:2 36046:11 36094:12 36096:13 36096:18,25</p> <p>allowing 35974:12 36006:15</p> <p>alluded 36014:25 36041:9 36085:14</p> <p>aloud 36035:13</p> <p>Alright 35971:7 35976:2 36013:13 36015:6 36050:9 36053:4,6 36073:11 36073:16 36080:13 36082:5 36092:18</p> <p>AMCU 35939:4 36012:19 36013:1</p> <p>amount 35990:9,15,19 35991:1,16 36074:25 36079:18</p> <p>ANC 36060:18,21,22 36060:23</p> <p>Andries 35996:11,14 35996:18,24</p> <p>and/or 36095:17</p> <p>Anele 35944:1,8,19</p> <p>anger 35966:14 36027:7</p>	<p>angle 36023:14</p> <p>angrier 36102:1</p> <p>angrily 36100:1</p> <p>angry 36041:14,17 36062:4 36099:17 36102:2,3,10,13</p> <p>answer 35938:23 35939:9 35944:5 35945:15 35948:10 35954:22 35955:4,23 35964:22 35965:5 35968:7 35970:19 35975:8,9 35977:13 35978:8,13 35981:6 35992:18,20 36035:7 36042:24 36058:14 36058:19,21,23 36060:7 36066:22,23 36069:23 36076:6,13 36076:18 36077:8 36086:1,22 36089:10</p> <p>answerable 35976:22 35977:11,25</p> <p>answered 35968:10 35993:11 36099:12</p> <p>answering 35945:25 35950:23 35954:15 36087:23</p> <p>anxious 36040:22</p> <p>anybody 35954:12 35977:5 36003:1 36028:17 36056:1 36079:5,9,16 36081:6 36097:23,24</p> <p>anymore 35948:5</p> <p>anyway 35985:15 36009:3 36030:24 36031:1</p> <p>apart 36038:10 36062:7</p> <p>apartheid 36041:24</p> <p>apologise 35958:22 35966:7,25 35967:18 35968:1 35969:25 35970:6 35971:22 35972:11,12,15 35975:15 35976:17 35976:25 35978:5,11</p> <p>apology 35959:4 35971:21 35972:7 36091:19</p> <p>apparently 36008:18 36053:13</p> <p>appeal 36051:1 36103:10</p> <p>appear 35977:24 35985:10 36007:21 36012:25 36021:1,12 36037:6 36043:21 36057:15</p> <p>appearance 36098:23</p> <p>appeared 36099:16</p> <p>appears 36008:14</p> <p>application 35935:14 35936:1 36028:3</p> <p>applied 36051:9</p>	<p>applies 36038:17</p> <p>applying 35974:6,9 36051:21</p> <p>appreciate 35958:21</p> <p>apprehend 35981:14</p> <p>apprehended 35981:1 35981:9,14</p> <p>approach 35957:23 36023:19,20 36024:1 36025:12</p> <p>approached 36017:22</p> <p>approaching 35947:18</p> <p>approve 36003:24</p> <p>appropriate 36016:16 36028:5 36051:22 36052:15</p> <p>appropriately 36005:12 36027:12</p> <p>appropriately 35956:21</p> <p>Arbitration 36012:12</p> <p>argue 36043:7,18</p> <p>argued 36023:6</p> <p>arguing 36023:14 36040:24 36067:2,8 36067:19 36070:4</p> <p>argument 36015:14 36016:9,24 36019:6 36044:9 36046:14 36069:25</p> <p>arises 36017:11 36087:14</p> <p>armed 35938:9,14</p> <p>arose 36012:16 36088:12</p> <p>arranged 36012:10,14</p> <p>arrangements 36054:7</p> <p>arrested 35971:18 35981:1 35999:12 36102:14</p> <p>arrived 35939:19,24 35942:6,9,24 35943:2 35991:1 36028:25 36049:6 36080:16</p> <p>arson 36005:12 36024:24</p> <p>articulate 36041:18 36047:17</p> <p>articulation 36050:8</p> <p>ascertain 36013:4</p> <p>asked 35935:16,17 35941:6 35951:25 35952:10,17 35954:25 35955:22 35962:11 35963:8 35973:14 35976:15 35977:12 35988:8 35993:24 35995:14 36006:22 36016:19 36033:20 36036:13 36081:3,5,11,18 36082:7 36083:25 36084:1 36088:3 36093:18 36094:20 36095:4</p> <p>asking 35939:21</p>
----------	---	---	---	---

<p>35941:19 35942:18 35947:24 35957:4 35960:10,11 35973:18 35977:24 35985:2,9 35988:9 35990:1 35992:16 35999:21 36000:1 36003:7 36004:5 36007:2 36055:17,25 36061:9 36070:19 36071:15 36076:11 36085:13 36086:20 36100:5 36101:9 asks 35993:5,6 aspect 35947:17 36014:6 36018:21 36084:4,22 36087:14 36095:2 aspects 35984:16 36019:1 36046:3 aspersion 35954:24 assailants 35968:2 assess 36019:10 assist 35951:5,11,17 35953:20 35969:23 35985:19 36009:24 36017:25 36023:11 36032:2 36033:18 36034:13 36039:8 36049:7 36090:19 36092:15 36102:1 36103:10 assistance 35962:25 36012:12 36019:6 36034:4 assisted 36005:8 36089:23 assisting 35951:23 36032:15 36039:21 associated 35965:25 36048:24 36091:13 associates 36044:20 association 35977:7 assume 35978:12 36021:18 36030:9 36032:23 36044:8 36048:14,19 36085:4 assumed 35952:4 36028:18 assuming 35964:25 36030:7 assumption 35952:6 36038:17 attach 36025:10 36027:18 36037:25 attached 36038:1,4,7 attack 35937:2 35983:16 36029:23 36094:16 36101:7 attacked 35964:21 35965:18 35982:15 36094:18,20 attacking 35982:17,22 36088:23 36094:25 36095:1 36101:5,12 36101:14</p>	<p>attempt 36011:4 36012:15,22 36051:14 attempted 36018:23 36036:23 attempts 36009:12 attitude 35994:24 36027:10 36077:5 attitudes 36027:5 36037:20 attorneys 36029:1 August 35935:1 35944:1,23 35945:3,8 35945:23 35946:2,5 35947:9 35976:19 35987:19 35993:2 35996:7 35998:13,17 35998:20 36009:12 36018:2,9,15 36021:14 36022:18 36029:10,12,21,22 36030:2 36033:15 36075:6 36077:6 36078:8,12 36080:15 authorities 36038:19 authority 36023:21 automatically 36021:16,19 36042:14 36050:13 available 36031:25 36032:7 36044:15 36052:12,13,19,20 36066:13 avarice 35971:21 avoid 36000:13 36048:10 aware 35954:10,17 35955:19,22 35961:16 36001:1 36028:2 36085:17</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>b 36004:20 Baba 36062:4 back 35937:16 35940:25 35941:14 35941:23 35942:3 35943:3 35948:21,25 35949:1 35953:24 35956:3,5 35964:2,13 35965:11 35974:7 35979:11 35980:22 35981:4,24 35982:6,8 35993:1,1 36009:7,9 36009:20 36014:10 36057:12,16,25 36066:9,12 36067:15 36068:11,14,19 36069:12 36072:14 36072:23 36078:5 36079:2,8,24 36084:14 36090:9 36100:25 36102:9,9 36103:3,6 background 35973:22 36009:25</p>	<p>backwards 36026:19 bad 35969:16 36094:5 Baloyi 35951:16 35957:12 35983:18 36087:13 36093:3,5 36093:20 baptised 36096:12 bare 36090:12 Barnard 36065:18 36075:22 based 36014:24 36019:18 36020:1 basically 36043:22 36101:3 basis 35951:7 35952:1 35968:11,12 35972:17 35973:18 35975:21 35976:10 35976:13,14,16,21,25 35977:4,11 35991:1 35999:10 36000:9 36002:3 36003:7 36004:1 36005:10,22 36005:23 36014:17 36020:25 36023:6 36030:4,25 36036:9 36043:1 36044:16 36046:22 36051:12 36051:23 bear 36027:14 bearing 36031:15 bears 36025:24 36026:13 beating 36092:3 beg 36026:5 beginning 36045:21 36071:8 begs 36029:6 behalf 35964:23 35984:2 36018:20 beige 36074:24 beings 36005:15 belief 36095:20 36096:7,15,16,20 36097:5 beliefs 35954:20 35955:2 36095:17 36098:1 believe 35947:17 35959:3 35986:25 35999:3 36023:23 36084:23 36095:22 36096:4 36097:3,8 believed 35954:12,13 35954:13,14,20,20 35955:1,3,3,9,13,20 36006:6 believes 35999:19 36096:5 believing 36054:13 36096:24 belt 36062:20,24 beneficiary 36094:13 benefit 35969:17 36055:13 Bernard 36060:15</p>	<p>best 36016:5 36019:25 36048:15 36085:8 36089:20,25 36094:23 better 35947:5 35948:3 35948:3 36022:18 36052:14 36066:7,14 36070:4 Bham's 36029:1 36040:18 36042:11 36098:10 Bhayi 35943:25 35944:9,17 36085:18 36087:11 36088:23 36088:24 36089:1,3,4 36092:10 Bhele 35943:25 35944:8,12 36086:3 36086:15 36087:24 36089:2,13 biggest 36031:6 bit 35937:16 36049:13 36057:16 36071:23 36083:21 36098:20 36103:9 Blaauw 36102:21,25 Blaauw's 36102:25 black 36062:3 blame 35939:2,4,7 35972:8 blood 36055:21 36063:12,13 36064:9 36066:11,12 blurs 36004:15 boardroom 35961:1,20 35961:20 Bob 36066:17,18 body 36041:19,21,21 36096:24 bottom 35961:17 bound 36038:19 36040:4,5 36077:21 Brandt 36023:22 bread 36096:23 breadwinner 35978:2 break 35978:15 35980:24 36013:22 36014:5,13 36020:18 36046:3 36083:10 breaking 35981:10 bridge 36042:9 brief 36019:21 briefly 36014:11 36015:1,19 bring 35935:25 36012:22 36022:6 36034:19 36047:2 bringing 36029:2 36031:6 36055:22,23 brings 36042:9 broad 36019:18 36020:1 36041:6 36097:13 36098:10 broader 36025:11 broadly 35978:2 36098:9</p>	<p>brothers 36061:23 36068:16 brought 36007:25 36042:2,6 36043:3 36055:16,20 Budlender 36023:8,10 36023:12 36024:10 36024:15 36027:15 36027:16 36028:2,15 36031:23 36038:10 36040:9,10 Budlender's 36028:21 bundle 36007:11,17,21 36008:11 burn 36065:18 36075:23 bushes 35964:11 busy 36065:22 B-R-A-N-D-T 36023:22</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>C 36033:25 calamity 35977:7 36021:3 call 35962:18 36021:6 36028:22 36080:18 called 35951:11 35967:21 35996:11 36001:5 36023:22 36028:10,20 36040:3 36042:7 36086:19 calls 36028:15 candidly 36029:6 36045:20 canvassed 36018:3 36047:7 can't 35946:3 35961:21 35965:15 36003:16 36003:24 36004:14 36007:16 36013:9,19 36019:8 36022:18 36026:15 36030:5,14 36040:14 36042:6 36048:4 36061:10 36086:22 36089:10 36100:17 Cape 36061:22 car 36063:12 36066:7 36066:15 care 36056:20,21,22 36057:4,9,10 36058:2 carefully 36051:3,8 carries 36027:21 carry 35935:19 35936:2 35937:18 35938:18,18 35962:3 35962:4 36008:12 36009:8 36057:5 36058:15 36059:6 36062:15 36063:14 carrying 35940:5 36065:10 cars 36070:21 36071:17 case 35965:10</p>
---	---	--	--	--

<p>35966:12 36017:2 36023:22 36045:14 36046:15 36048:17 36051:10 36052:2 36093:1,6,7,13,18,24 36093:24 36094:6,10 36094:14,17 cases 36024:1,2 cataclysmic 36029:20 36029:25 36037:19 36040:21 36042:7 36043:4 catch 36062:2 36069:9 36077:15 36103:10 categories 35989:20,22 35990:12 category 35989:19,23 35990:2,8 caught 36088:21 causal 36034:22,25 cause 35966:19,25 35967:2 35969:13,15 35969:15 35970:9,18 35975:13 35977:16 35977:16 35978:3 36020:11 36053:4 caused 35958:20 35970:4 36061:21 causes 36039:18 36092:21 36095:19 causing 36063:7 cautela 36047:24 Cebekhulu 35982:14 35983:1 certain 35966:15 35989:19,20 36008:3 36035:17 certainly 36008:11,12 36026:16 36032:3,12 36052:12 36087:14 chair 35935:9 35941:3 35942:22 35958:7,14 35968:15 35975:5 35977:21 35981:12 36004:10 36008:14 36009:1 36012:24 36013:11 36023:12 36024:18 36027:17 36072:1 36081:2 36092:3 Chairman 35941:10 35984:5,5 35985:18 35993:17 36001:3 36002:11 36003:23 36005:25 36007:11 36008:17 36011:2 36052:4,19 36054:14 36056:4 36072:25 36073:15 36077:10 chamber 36015:13 36052:12 36055:13 chambers 36029:3 chance 36032:20 36040:8 36050:1 36076:22,25 36077:3 36089:21</p>	<p>characterisation 35999:22 36000:2,2 36001:10 characterised 35959:6 characterise 36002:14 characterising 35999:7 charge 36005:21,22,23 charged 35945:4 35999:4,21 36000:7 36000:23 36002:20 36002:21 36003:15 36004:5,7,12,18,20 36005:10,15 36006:6 36006:25 36007:3 charging 35936:23 child 35959:18 children 35969:18 chosen 36090:1 Chris 36061:17 Christianity 36096:6 Churches 36012:13 circumstance 35965:24 circumstances 35960:6 35998:24 36024:23 36025:4,4 36051:21 civil 36023:19 36024:1 36024:2 36025:7,14 36038:24 claim 36043:24 clarification 36083:22 clarified 36088:12 clarify 35952:22 36089:20 36090:15 36091:17 36092:21 clarity 36095:25 class 36026:24 classically 36025:1 clean 35947:19,21 clear 35941:25 35948:22 35949:9,15 35952:15 35956:18 35956:19,23 35969:19 35970:3 35974:24 36002:5 36005:21 36006:2,4 36006:20 36017:5 36020:24 36043:15 36078:10 36079:6 36082:4 36090:10 clearly 36021:7 36038:20 36041:7 client 35939:1 35958:8 36035:10 clients 35964:19 35969:17 35970:5 35977:3 36046:10,21 36051:16,19 client's 35978:1 clip 36014:6,15 36015:5,17,18,20,21 36016:7 36017:14 36018:11 36019:17 36030:11,20 36034:13 36035:18 36043:11,14 36051:24 36053:6,8</p>	<p>36053:17,22,24 clips 35996:5 35997:23 locked 36085:9 close 35963:11 35968:20 35969:3 36062:24 36068:10 36072:13,22,23 36080:20,24 36082:8 36096:17 closer 35961:8 36092:9 36092:14 closing 36019:6 coincidence 36090:12 colleague 35961:14 35967:15 36077:20 36101:1 colleagues 35951:23 36102:6 combined 36026:23 come 35937:11 35948:21,24 35953:19 35956:3,4,6 35972:14 35990:15 35990:19 35992:10 35992:11,14,25 35994:5 35995:16,24 35998:1 36009:7 36014:10 36032:16 36034:3,12,25 36051:10,20 36053:10 36058:5,25 36059:14 36061:22 36063:1 36064:17,23 36066:9,12 36068:8 36068:11,12,14,18 36070:20 36071:16 36073:1,2 36090:9 36091:22 comes 35945:12 35952:12,20 35953:2 35962:23 35997:10 35997:14 36036:12 36041:7 36042:1 36053:11,15 36066:2 36066:10 36069:5 comfort 35978:15 coming 35963:22 36039:21 36100:4 36101:21 36103:3,6 command 36046:20 comment 35966:1 35969:12,13 commission 35935:2 35943:25 35945:7,17 35947:10,13,18 35971:12,16 35972:7 35972:16 35978:17 35978:17,18 35981:20 35983:8,15 35983:21 35992:18 36012:11 36015:9,9 36015:10 36017:25 36019:23 36020:1,2 36020:14,23 36023:11 36025:11 36025:15,18,18,23</p>	<p>36026:1,3,5,7,16,17 36032:3,10 36033:18 36034:19 36037:4 36038:18 36042:2 36051:6,6,7 36054:20 36054:20,21 36077:3 36083:4,14,14 36086:19 36089:25 36090:17,23 36093:1 36095:16 36097:25 36102:2 36103:14 Commissioner 35942:24 35943:2,8 35943:12 35980:15 36013:14 36018:2 36077:13,17,23 Commissioners 36017:13 36050:15 committed 35966:15 35966:22,24 35976:19 35977:2 36002:23 committee 36091:10,11 common 36020:11 communicate 35994:18 company 36005:13 compare 35965:15 36031:17 36045:21 36098:15 compared 36042:11 36044:21 complain 36037:1 complained 35960:18 35973:4 completely 35995:8 36030:4 36095:15 completion 36032:3 complexion 36088:24 compromise 36021:4 conceivably 36034:19 concept 36038:4 concepts 36006:19 concerned 36044:1 Conciliation 36012:11 conclude 35997:22 36009:12 concluded 36007:24 concludes 35978:16 conclusion 35945:1 35954:21 35957:10 36051:10,20 conclusions 36032:16 36034:3 36039:21 concrete 36085:15 concurring 36040:3 conditions 35960:19 35969:16 conduct 35999:22 36000:16,18,18,19 36001:6,7,9,15,19,21 36001:24,24,24 36002:3,13,15 36003:1,2 36004:23 36005:21,22 36020:12 36037:2 confess 36050:24</p>	<p>36069:6 confidence 36054:14 confident 36054:10 confirm 35994:9 36074:5 Confirmed 35935:6 36073:23 36083:18 confirming 36091:2 confronted 35940:14 confuse 36038:1 confusion 35998:11 36053:5 conjunctive 36040:12 connection 36034:22 36034:25 36082:21 36082:24 consequence 36043:16 Consequently 36033:15 consider 36025:9 36027:18 36032:8 36033:4 36044:18,25 36051:2 considerably 36027:6 consideration 36038:12 considered 35973:13 36027:2 36051:8,13 36051:25 consistent 36085:10 constancy 36021:6 consult 36046:2 consulted 36085:24 36086:2 CONTD 35936:3 36073:25 36083:19 contemplated 36036:8 contended 36035:10 content 36033:11 contention 36032:21 contents 36016:18 36048:9 context 35959:3,17 35971:11 36033:13 36041:3 36076:23 36090:16 continuation 36037:16 36103:7 continue 35960:10 35991:17 35992:24 36059:18 36061:3 36073:17 continued 35992:6,22 35998:6 contractor 35985:22 contrary 35983:7 contrast 36067:7 conversation 36017:19 36033:8,10,12,17 36036:14 converse 36002:2 convey 36000:6 conveyed 35949:15 convicted 35999:23 36000:24 36004:13 36004:25 36005:11 36005:15</p>
---	--	---	--	--

<p>conviction 35999:13 36001:17,18 36004:24 36005:23 36006:9</p> <p>convince 35938:5 36020:18</p> <p>convincing 35938:12</p> <p>cooperate 36103:4</p> <p>correct 35936:18 35952:7 35955:16 35962:6 35966:20 35981:8 35985:1,13 35986:1 35991:9 35993:21 35997:9 36013:7 36015:17 36016:14 36043:11 36043:13,14 36057:1 36057:3,20,22,24 36058:24 36065:7,8 36069:16 36072:1 36078:13,14 36082:9 36085:18,21 36086:7 36089:8,10 36090:18 36091:23 36092:4,12 36095:23 36099:11 36099:16 36100:2,7</p> <p>corrected 36073:12</p> <p>corrective 36085:4</p> <p>correctly 35986:4 35993:20 35998:23 36006:24 36029:19 36041:9 36056:22 36065:2</p> <p>Costa 36018:4 36066:16</p> <p>couldn't 35965:11 36010:17,21 36020:20 36089:16 36091:9</p> <p>Council 36012:13</p> <p>councillor 36020:22 36021:5 36026:22</p> <p>counsel 35966:4</p> <p>countermands 36047:2</p> <p>counting 36087:3,7,7</p> <p>couple 35943:16</p> <p>course 35978:4 36016:24 36018:8,10 36025:10,10 36026:8 36026:10 36027:17 36028:1 36030:16 36032:1 36034:8 36037:18,24 36040:1 36040:7 36088:8 36093:8 36103:3</p> <p>courses 36033:25,25</p> <p>court 36005:11 36023:25 36025:8 36038:24 36039:5 36051:1</p> <p>courts 36005:16 36023:17,19 36024:2 36024:19</p> <p>cover 35958:11 36004:21 36088:22</p> <p>covered 35958:12</p>	<p>36025:20 36026:7 36038:16 36067:6 36084:22 36087:15 36087:20</p> <p>co-workers 35962:10 35969:22</p> <p>created 36041:10 36044:15</p> <p>creating 35976:24</p> <p>credible 36005:10</p> <p>crimes 36005:11</p> <p>criminal 35959:8 36000:19,23,24,25,25 36001:5,15,16,16,19 36002:3,15 36003:2 36004:23 36023:17 36038:24</p> <p>criminality 35999:8 36002:15</p> <p>criminally 35999:4,21 36004:4,7,12</p> <p>criminals 35999:13 36000:8</p> <p>cross 35960:12 36014:20 36036:23 36087:20 36088:12</p> <p>crossfire 36026:22</p> <p>cross-examination 35935:19 35936:2,3 35951:17 35958:13 35977:14 35978:14 35978:21 35984:4 36014:6,18 36073:17 36073:25 36084:24 36087:10,14 36089:18 36091:20 36092:19 36103:7</p> <p>cross-examine 35984:2</p> <p>cross-examined 36018:4 36046:25</p> <p>cross-purposes 36028:9</p> <p>crowd 35979:19</p> <p>cry 36058:25</p> <p>crying 36061:10</p> <p>cultural 36095:17</p> <p>cut 36091:25 36095:21</p>	<p>36003:15 36018:24 36036:20 36037:21 36038:14 36058:11 36058:12,19,21,23 36066:17 36076:1 36091:4</p> <p>daylight 36097:13</p> <p>days 35935:24 35972:10 36084:1</p> <p>de 36090:4,5</p> <p>dead 36058:20,22,23 36061:20</p> <p>deal 35939:23 35979:4 36000:3 36014:10 36017:10 36023:12 36024:7,17 36028:24 36032:5,7 36035:2,21 36036:2,15,16,20 36037:9,12 36040:8 36066:17 36077:7 36078:5 36084:21 36095:3 36098:9</p> <p>dealing 35985:23 36032:9 36037:6,9 36039:9</p> <p>dealings 35951:20</p> <p>deals 36088:14</p> <p>dealt 36009:10,19 36018:21 36027:12 36033:2</p> <p>death 35974:21 35978:1 35998:16,19 35999:7 36000:17 36021:5 36025:21,22 36026:21 36102:6,9</p> <p>deaths 35958:20 35970:5 35998:12 36002:13,19 36004:3 36004:6 36006:22,25 36102:16</p> <p>debate 35959:8,13 36005:24 36006:12 36016:17</p> <p>debit 35943:16</p> <p>deceased 36087:1 36102:7</p> <p>decide 36025:9 36039:8</p> <p>decided 35953:17 36025:18 36047:23</p> <p>deciding 36026:10 36036:4</p> <p>decision 35972:25 36047:5</p> <p>decisions 35960:24 35961:7,9</p> <p>decision-makers 36050:20</p> <p>declared 36001:16 36090:8</p> <p>declining 36034:23</p> <p>default 36090:11</p> <p>defence 36044:5 36093:10,11</p> <p>defend 36044:14</p> <p>defending 36093:8,9 36094:6,15,16</p>	<p>define 36004:16</p> <p>definitely 36007:20,22 36008:7</p> <p>delegation 35945:3 36011:11,25 36012:2 36012:17 36013:3,5,9 36013:18,20</p> <p>deliberately 35992:19</p> <p>demand 35951:21 35953:11,14,21 35990:7,20 35991:20 35992:12,22 35998:2 36082:14,23 36083:6</p> <p>demanded 35991:16</p> <p>demanding 35953:16 35991:10 35997:4</p> <p>demands 35987:14</p> <p>demonstrated 36101:25</p> <p>denied 36088:5</p> <p>deny 36042:6</p> <p>Department 36012:11</p> <p>depending 35969:21</p> <p>deprive 36039:6</p> <p>depth 36051:25</p> <p>describe 35969:13,14 35969:22 36043:2 36048:11 36049:12 36053:6</p> <p>described 36008:23</p> <p>description 36053:19</p> <p>deserved 36092:23 36093:2,10,14 36094:19</p> <p>deserves 35972:2</p> <p>desirable 36015:24 36016:23</p> <p>despicable 35972:9</p> <p>despite 35938:8,13 36017:9 36020:23 36080:18 36089:20</p> <p>determined 36003:15</p> <p>determining 36024:4 36024:12,18 36027:18,21</p> <p>didn't 35940:16 35941:18 35942:9 35955:7,8,12,20 35956:4 35962:24 35968:5 35977:9 35980:11 35981:2,6 35981:17,24,25 35986:25 35989:12 35998:5 36000:6 36011:6 36022:6 36032:25 36035:10 36043:19 36045:3 36047:21 36069:9 36073:4 36077:15 36083:2,3 36085:5 36086:7 36087:19,25 36088:5 36092:17</p> <p>die 36069:1 36092:23 36093:2,10,14</p> <p>died 35965:19,19 36020:25 36092:14</p>	<p>36092:22 36093:2,7 36093:19 36094:19 36099:22 36102:15</p> <p>differ 36045:16</p> <p>differed 36099:18</p> <p>difference 36001:20 36043:19 36081:8</p> <p>differences 36098:17</p> <p>different 35941:6 35955:15 35975:24 35976:1 35996:5,9 35998:9 35999:24 36018:10 36023:2,14 36027:20 36030:4 36033:22,23,25 36034:9 36037:15,24 36052:10 36099:1</p> <p>differently 36034:2,8 36045:16</p> <p>difficult 36034:3 36037:8 36058:12 36064:24</p> <p>difficulty 35999:7 36001:4 36014:12 36015:3 36048:8 36057:13</p> <p>dignity 35960:14</p> <p>dipped 36096:12</p> <p>directed 36091:20</p> <p>direction 35962:15 35963:23 35979:17</p> <p>directly 35977:10 36021:21 36029:2 36033:24 36037:10 36044:3</p> <p>disallow 35972:22 35973:18 36002:6,10</p> <p>disallowed 35977:12</p> <p>disappeared 35946:20</p> <p>disarmed 36089:1</p> <p>discuss 36075:15</p> <p>discussed 36006:19 36025:13 36080:17</p> <p>discussion 36011:20</p> <p>discussions 36009:17 36012:3</p> <p>dispute 35945:11,12 35950:11 35951:10 35951:11 35952:2,11 35952:12,25 35953:5 35953:6 35959:6,9 36025:4 36034:16 36063:23</p> <p>disputes 35952:18,20 35953:2</p> <p>distance 35963:11</p> <p>distinction 35999:11 36000:6,25 36002:5 36004:15 36005:21 36006:16,20 36038:10</p> <p>distinctions 36003:13 36004:16,16</p> <p>Distributors 36023:24</p> <p>disturb 35961:14 36000:22 36100:5</p>
	<p>D</p>			
	<p>Da 36018:3 36066:16</p> <p>Dakota 36062:13,25</p> <p>damage 36049:11</p> <p>danger 35968:20</p> <p>dangerous 35936:23 35937:18,22 35938:1 35938:5,13,19 35939:7,8 35940:5 36041:4</p> <p>date 36018:17,19 36019:2 36020:10 36053:22</p> <p>dates 36021:1</p> <p>day 35946:8 35947:11 35948:20 35949:24 35962:20 35964:1,14 35984:6 35994:15</p>			

<p>divide 35972:5 36041:8 36041:11</p> <p>divided 36063:6 36070:21 36071:17 36072:3</p> <p>dividing 36060:15,23</p> <p>divisions 36063:7</p> <p>Dlunga 36086:2,4,14 36086:24 36088:14 36088:16 36089:2,4,7</p> <p>document 36007:19,23 36008:1,3,6,17,21 36009:4,8,10 36010:12 36011:2,3,8 36011:9,10,15,17,21 36011:23,24 36013:18 36080:9</p> <p>documents 36007:11</p> <p>doesn't 35955:4 36002:2 36007:20 36010:2 36021:19 36030:18 36039:8 36041:13 36042:13 36054:23 36061:8 36072:17 36090:25 36093:9 36097:3 36102:25</p> <p>doing 35957:5,5 35970:1 36014:12 36015:4 36078:4 36089:21</p> <p>domain 36017:2</p> <p>door 36046:14</p> <p>doors 36081:4</p> <p>drafting 36089:23</p> <p>draw 35954:21 35964:17,24 35967:23 36020:15</p> <p>drawing 35966:5</p> <p>drawn 36000:6</p> <p>draws 35967:20</p> <p>drive 36053:9,18,20</p> <p>drove 36090:2</p> <p>due 35943:19 36025:10</p> <p>duty 35938:7,15 35957:21,24 35976:25</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>earlier 35952:10,17 36003:25 36024:22 36025:13 36027:22 36037:14 36047:4 36055:7 36081:1</p> <p>early 36011:4 36080:16 36088:15</p> <p>earning 36056:14</p> <p>easily 36009:5</p> <p>Eastern 36061:22</p> <p>easy 35977:16</p> <p>eat 36096:23</p> <p>eaten 35974:11</p> <p>edge 36040:25</p> <p>educated 36006:18</p> <p>effect 35985:7</p> <p>effectively 36093:1</p>	<p>36103:11</p> <p>efforts 36089:20</p> <p>eight 36027:21 36058:11 36059:1,3,4 36059:9 36060:9</p> <p>either 36004:22 36009:5 36011:20 36026:18,19 36035:16 36036:11 36037:4 36049:1 36064:4 36079:16 36096:6</p> <p>elapsed 36050:24</p> <p>elicit 36001:10</p> <p>eliminate 36083:22</p> <p>emanate 35970:19</p> <p>embargo 36017:6</p> <p>emerges 36033:16</p> <p>emphasise 36041:7</p> <p>employed 35951:9 35984:22 35985:1,2 35985:12,21 35986:1</p> <p>employee 35950:12 35952:13,19 35959:23 35985:5</p> <p>employees 35952:25 35955:18 36011:11 36011:25 36012:2 36055:22,23,23,24 36061:9 36068:18 36070:10 36080:17</p> <p>employer 35950:12 35951:20,21 35952:1 35952:13,19 35953:1 35953:7 35988:5,15 35991:5,24 35996:15 36079:21 36100:4</p> <p>employers 35954:9</p> <p>enable 36103:5</p> <p>encounter 36017:15,21 36073:1</p> <p>encounters 35979:19 35979:21</p> <p>endeavour 36102:24</p> <p>ended 36059:17 36062:23 36065:15</p> <p>engage 35950:13 35953:13,17</p> <p>engaged 35950:20,25 35951:4 35953:4 35954:6,11,18 35955:19,22 35956:1 36033:10</p> <p>engaging 35953:11</p> <p>engineering 36065:1,2 36065:5,8,16 36075:19,21</p> <p>English 35982:5,5 36055:15,18,18 36058:21 36080:3</p> <p>enjoined 36039:16</p> <p>enquire 36039:4,17</p> <p>enquiring 36039:19</p> <p>enquiry 36039:7,8,12</p> <p>ensure 35935:24 35960:14</p>	<p>entitled 35954:25 36097:2</p> <p>envisaged 36016:12</p> <p>erase 36047:3</p> <p>especially 35939:1 35966:18</p> <p>essence 35972:16 36020:3</p> <p>establish 36022:14 36023:4</p> <p>established 36031:7</p> <p>et 36023:23</p> <p>evacuate 36065:18 36075:23</p> <p>evading 35992:19</p> <p>evening 35986:21</p> <p>event 35963:25 35973:9,19 36013:20 36025:22 36029:21 36029:25 36030:2 36040:21 36042:7,16</p> <p>events 35993:2 36009:11 36018:8,10 36019:7,10 36024:20 36025:3,17,25 36027:6,8 36034:8 36036:11 36037:13 36037:18,19,24,25 36039:17 36041:10 36043:4 36086:7 36101:25 36102:3</p> <p>eventually 35956:6</p> <p>eventuated 36034:1</p> <p>everybody 35955:1 36010:18,21 36052:12 36058:20 36058:20,21,22,23 36097:17 36103:10</p> <p>evidence-in-chief 36084:10</p> <p>ex 36047:23</p> <p>exact 36041:11</p> <p>exactly 35940:22 35941:4 35943:6 35948:19 35981:3 36003:12 36017:23 36022:12 36028:10 36029:6,24,25 36040:8 36041:17,20 36047:5 36063:23 36069:17</p> <p>examination 35960:13 36014:21 36082:1 36087:21 36088:13</p> <p>examined 36036:24</p> <p>example 35992:15 36001:17 36022:19 36022:21 36048:19 36049:21</p> <p>examples 36029:8</p> <p>exception 36023:5</p> <p>exceptions 36022:11</p> <p>exclude 36016:2,5 36028:11 36032:12 36034:24 36043:15 36044:22 36046:16</p>	<p>excluded 36020:23 36021:8 36022:9 36023:6 36026:25 36029:10,13 36031:1 36035:25 36047:19 36051:15,17</p> <p>excluding 36039:11,14 36039:20</p> <p>exclusionary 36020:9 36021:22,24 36022:10 36028:10 36038:16,17</p> <p>exhibit 35982:13 36007:13,16,20 36008:7,12,13,24 36009:4 36052:21,24 36052:24 36053:24</p> <p>existed 36018:13</p> <p>expect 36004:15</p> <p>expected 35965:25 36003:16</p> <p>experience 36041:17 36084:18</p> <p>experienced 35950:11</p> <p>expert 35945:12 35952:19 35953:1</p> <p>experts 35935:24 36103:5,8</p> <p>explain 35990:25 35993:8 36009:25 36036:13,19 36037:4 36076:22,23,25 36081:1,8,14 36082:20 36083:1,4 36089:24 36091:6</p> <p>explained 35971:23 35979:5 36091:18</p> <p>explaining 35982:8</p> <p>explains 36077:20</p> <p>explanation 35990:14 35990:18</p> <p>explore 35945:6</p> <p>exploring 36030:19</p> <p>express 36047:14</p> <p>expression 36031:14 36035:24</p> <p>extend 35936:1</p> <p>extent 36036:13 36052:9</p> <p>extra 35943:15</p> <p>extraneous 36019:24 36032:1</p> <p>eyes 36096:17,20</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>face 35983:22 36007:7</p> <p>faced 35977:8</p> <p>faces 36034:7 36061:11</p> <p>facie 36030:17 36037:6</p> <p>fact 35938:8,14 35945:7,11 35952:12 35953:1 35971:24 35987:13 36004:18 36014:24 36017:9 36020:2,23 36021:15 36022:1,14,15,19</p>	<p>36023:3,4,13,15,16 36023:18 36024:3 36026:11 36029:19 36030:2 36031:7 36034:21 36041:10 36041:15 36042:6 36045:4 36046:17 36047:1,6 36063:22 36091:20</p> <p>facto 36090:4,5</p> <p>factor 36019:11 36027:3,17 36037:21</p> <p>factors 36044:25 36051:13</p> <p>facts 35957:19 36022:8 36022:9</p> <p>fact-basis 36018:12</p> <p>fair 35943:16 35945:16 35978:5,7 35994:14 35997:22 36010:6,8 36024:6,16 36028:23 36041:5 36092:9 36093:13</p> <p>fairly 35998:10 36032:4,4</p> <p>fairness 35944:4 36045:2,9</p> <p>faith 36096:11</p> <p>fall 36026:24</p> <p>falls 36020:8,10 36021:1,4,21 36022:12 36025:1 36039:16</p> <p>families 35957:17 35958:15,19,21,23 35966:24 35969:21 35970:3 35971:17,20 35971:25 36063:9 36102:7</p> <p>family 35957:11,13 35965:24 35969:20 35978:22 35979:5 36021:3</p> <p>Fanagalo 36052:7 36055:19</p> <p>far 35936:11,14,15 35960:23 35961:2,23 35963:13 35985:7 36010:20 36043:25 36053:17 36055:5 36058:23 36100:12</p> <p>fashion 36016:5</p> <p>father 35959:23,24 35960:2</p> <p>fathom 35972:13</p> <p>fault 36057:8 36093:18 36094:18</p> <p>favour 35976:8 36043:12,20 36046:5 36054:11 36101:24</p> <p>favourable 36042:16 36046:4,7</p> <p>feel 36076:24</p> <p>feelings 36098:24</p> <p>fell 35980:10 36088:25</p> <p>fellow 35939:6,15,24</p>
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35940:3,7,11 35946:13,23 35948:1 35951:4,8 35954:16 35957:14 35958:20 fence 36017:20 36074:10 fetch 35945:4,4,17 35956:2 36091:23 fight 35980:24,24 35982:16,22 35983:16 36056:12 36069:5,8,18 fighting 35980:22 35981:4,24 36067:14 36069:4,4,18 36070:25 36071:14 36099:3 36101:4 files 36023:17 fill 35958:5,6 final 36038:22 finally 36010:24 36019:10 36025:16 36098:9 find 35943:3 35962:21 36009:4 36016:24 36034:4 36092:15 finding 35972:8 36034:25 36038:13 36039:1 36043:12,19 36043:22 36044:2 findings 36034:20 36039:9 finds 35945:7 fine 35943:1 35949:16 35999:11 36003:12 36041:2 36056:7 36101:9 finger 35967:2 finish 35971:5 36064:15,18,23 36074:2 36087:7 36093:22 36094:3 36102:24 36103:1,2 36103:12 finished 35943:9 36005:2 36058:20,22 36060:23 36063:8 36066:14 36068:11 36068:15,15 finishing 36060:18,21 fire 36068:4,7,10 firearm 35944:22 36089:4,5 fired 35936:20 36087:8 firing 35937:5,13 first 35935:25 35946:9 35972:3 35974:13 35976:13 35978:14 35987:19 35997:25 36008:4 36009:7 36010:11 36019:2,20 36033:5 36036:3 36037:14 36039:3 36055:16 36058:19 36062:11 36066:23 36074:22 36075:18	36090:20 36091:10 firstly 36020:9 36023:16 36029:18 36035:11 36045:2 36055:22 fit 36000:3 five 35962:10 35963:12 35967:25 36013:24 36029:11 36054:14 36054:18 36059:4,10 36059:13 36074:10 36100:15,18,21 flawed 36044:12 fled 35939:12 fleeing 35979:19 flesh 36096:24 flexibly 35974:10 flip 36009:6 flow 36018:6 flowing 36038:23 following 35938:17 35945:10 35963:17 35964:1,14 35975:21 36075:18 36080:15 foot 35937:11 36023:25 foresaw 36047:18 foreseeable 36044:13 forest 35964:11 35966:6 forgive 36049:12 form 35968:10 36091:19 formally 36090:8 forms 35980:24 36005:21 formulating 36001:1 forth 36027:8 36038:21 36043:19 fortunately 36035:6 forward 36066:1,2 36067:3,21 36069:24 36069:25 36070:5,12 forwards 36026:19 foul 36020:8 36021:21 36022:12 found 35962:25 35972:1 36001:18 36048:25 36050:18 36080:22 36081:16 36084:3 founded 36032:21 four 35963:8 35999:4 36004:7 frame 35973:3 framed 35970:17 35973:2 36000:6 36002:5 free 36050:20 36076:24 French 36023:23 frere 36023:23 friend 35967:5 36003:24 36031:21 36050:25 36094:25 friends 36099:22 front 36028:24 36032:25 36052:8	36080:1,9 36097:14 36097:18 full 35958:4 35983:22 36036:14,15,19,20 fun 36051:2 fundamentally 36044:12 Fundi 35998:12 36000:17 36002:13 36002:19 36006:23 36092:8 furnished 35990:19 further 35939:11 35943:9 35946:12 35958:1 35963:15 35979:18 35980:19 35983:20,25 36013:19 36019:12 36027:14,25 36032:15 36038:9 36046:16 36073:3 36077:11 36088:9 36102:18	35973:16 35975:22 35990:15 36007:18 36009:22 36014:19 36015:25 36029:1 36031:24 36032:19 36052:16 36054:11 36063:18,19,25 36064:13 giving 36027:13 36076:21,25 36077:6 36102:21 goes 36023:3 36026:1 36030:24 36038:4 36059:8 36062:1 36063:4 36066:23 golden 35971:19 good 35936:4,5 35972:20 35973:16 35978:23 36014:1 36055:16 government 36005:13 36026:9 36061:21 grabbed 35980:25 grass 35988:12 gratefully 35979:2 great 36023:21 36034:4 36042:1,18 greater 36051:25 greatest 36003:11 36028:8 36045:15 greeted 35946:10,19,21 35946:23 grenade 35937:5,13 grenades 35936:19 grew 36061:18 ground 35974:13 36001:23 36044:16 36064:25 group 35966:14,17,22 36021:3 36025:6 36033:8 36060:25 36064:7 36078:6,8,11 36080:19 36085:11 36085:21 36086:15 36087:6 36090:6 36095:17 groups 36061:1,7 guard 35958:16 guide 36034:5 36038:20 guilty 35972:8 35974:17 36089:22 Gumbi's 35966:9 gunshot 35979:12 gunshots 36087:8 guy 36041:23 36061:14 36061:17 36072:11 guys 35951:4 36056:20	handed 36007:15 hands 35947:19,21 36081:23 36100:9 hang 36047:20 Hani 36061:17 happen 35964:5 35966:21 36046:16 36056:12 36060:1 36102:21 happened 35939:19 35940:20,23 35941:2 35941:9 35942:10,11 35959:7 35963:10 35964:18 35967:2,10 35969:18 35970:3 35974:25 35975:15 35979:25 36016:20 36020:13,16 36026:2 36026:10,20 36027:8 36037:17 36043:6 36056:13 36076:19 36076:24 36090:11 36102:6 happening 35955:25 35967:4 36094:23 36101:4 happens 36056:11 36059:10 happy 36070:10 hard 36051:1 36053:9 36053:18,20 hardened 36027:5,5 hasn't 36068:12 haven't 35973:23 36017:9 36035:14 36053:12 36092:16 36099:12 head 35979:11 36092:2 heading 35941:11,14 36008:4,24 healing 36095:23 36096:4 36097:8 hear 35946:3,22 35947:2 35976:2,9,12 35981:11 35989:7,10 35989:12 35992:3 36025:19,21 36042:23 36045:3,25 36068:24 36084:5 36087:7 heard 35963:15,21 35964:19 35966:11 35974:18 36017:18 36028:17 36059:14 36059:14 36067:14 36069:24 36070:3 36074:14,19 36090:22 36091:2 36097:24 hearing 36015:3 36065:5 36073:14 hearts 36061:16 held 36012:20 36013:16 36090:13 help 35951:9 35974:4 35982:18 36010:4
G				
<p>gainsay 36020:20 gathering 35989:8,11 35989:14 gauging 36018:1 gazing 36080:7 general 35937:16,17,24 36022:10,11 36023:17 36048:12 36050:6 generally 36022:3 generals 36058:5,11 36097:24 gentleman 35997:2 36062:7 36074:23 36100:5 gentlemen 35999:4 36070:13,15 genuine 36102:24 getting 35977:20 35992:3 36010:23 36048:9 36051:1 give 35935:11 35943:9 35943:15 35957:18 35957:23 35959:2,3 35962:20 35973:22 35975:6,23 35976:13 35988:6,15 35991:6 35991:16,25 35992:5 35992:12,20 36000:2 36008:13 36018:13 36019:3 36021:25 36048:6 36049:22 36050:7,8 36051:4 36052:22 36055:4 36058:12,13 36064:22 36069:22 36077:2 36089:21 36103:5,8 given 35935:18 35945:18 35948:1 35960:18 35973:15</p>				
H				
<p>hadn't 36050:24 36054:9 half 36053:5 36102:23 half-an-hour 36059:12 hand 35938:1,5,13 36009:4 36017:19,20</p>				

36013:14 36043:11 36080:2 36083:21 Hemraj 35942:24 35943:2,8,12 35980:15 36013:14 36067:14 36077:13 36077:17,23 Hennie 36050:25 here's 36092:20 hesitates 36016:22 heterogeneous 36095:17 he'll 36000:2 36045:3 he's 35935:3 35945:12 35950:17 35952:12 35952:19 35954:25 35960:15 35961:16 35961:19,22 35962:25 35966:5 35967:23 35971:17 35977:4 35978:19 36010:2 36015:2,11 36015:12 36023:14 36040:7 36041:22,24 36052:17 36062:10 36062:10 36067:18 36069:17 36073:20 36075:4 36076:3 36091:10 HHH21 35979:14 36080:10,14 HHH4 35983:2 higher 36033:16 Hippos 36061:19 hire 36068:18 hired 36060:9 hlabane 36067:20 home 35960:6 35964:13 35965:11 36070:21 36071:17 36072:2,3 honestly 36000:21 hope 35952:6 36041:15 36044:1 36103:4 hopefully 36008:12 hour 36053:5 36059:13 hours 36058:11 36059:2,3,4,5,9,10,13 36060:9 house 35963:14,15 human 36005:14 36096:24 hurled 35962:15 35963:22 hurt 35966:24 35971:17 36092:7 36102:5,7	identify 36010:4 36053:20 36056:5 36074:11 identifying 36001:4,6 ignore 36088:22 illogical 35976:24 36096:18 illustrate 36018:12 illustrated 36033:17 36037:22 illustrates 36017:22,24 ill-founded 35999:19 imagine 35955:10 36043:24 immediately 35936:19 36055:7 36102:8 impact 36037:20 implicated 36085:16 36086:22 implication 35967:22 35968:4 implied 35967:17 35973:3 important 35947:10 35971:10,12 36019:11 36032:5 36039:3 36048:5 36050:16,17 36084:22 36092:20 36095:3 impression 35969:1 improper 36017:24 improved 35969:16 inaccuracy 36087:9 inadmissible 36052:23 inaudible 35957:12 35970:12 36005:5 36010:7 36062:20 36069:2 36071:5 36083:15 36086:11 36087:16 incident 35939:12 35941:15 35942:3,21 35959:4,5 35964:1 35965:25 35974:22 36018:24 inclined 36031:9 include 36043:15 36050:14 Included 36017:16 including 36033:9 36036:22 36039:18 36094:24 36098:13 inconsistent 35995:8 incorrect 35993:20 incorrectly 35963:23 increase 35987:15 incredibly 36037:7 indebted 35951:22,24 indicate 36002:5 36014:4 36015:18,19 36016:6,15 36034:21 36102:20 indicated 35985:8 36014:16 indicates 36034:21	36036:21 indication 35969:19 35974:18 36014:20 36019:4 36021:11 36033:1 indignation 36027:7 indignity 35960:19,20 35960:22 indistinct 36035:23 individual 36044:9 influence 35945:8 35947:14 inform 35939:24 35940:3,7,11,18 35950:19,24 35951:3 36013:15 information 35957:19 35957:23 informed 35937:18,24 35962:13 35964:13 initially 35935:17 injured 35942:23 35943:11 35957:12 injuries 35979:11 insight 36018:14 insofar 35967:19 36028:19 36037:12 36046:7 36101:24 36102:2 instance 36034:6 36036:8 instances 35969:5 instructed 35958:18 35977:6 instruction 35945:18 35945:18 35947:25 instructions 35945:20 36059:17,21,22,23 intelezi 35945:9 intended 35949:15 35994:19 36030:3 intent 36036:24 intention 35966:24 35986:13,17,24 35987:9 35994:15 35996:1 interaction 35969:11 interactions 36084:16 intercepted 35937:16 35937:17 interest 35985:3,15 36042:20,21,23 international 36005:16 interpose 35993:13 interpret 35963:7 interpretation 35964:8 interpreted 35963:23 35964:9 35981:7 interpreter 35935:5 35963:7 35967:11 36073:22 36077:13 36083:17 interpreting 35967:11 interprets 36063:22 interrupt 35981:5 36011:10	interrupted 36093:25 interruption 36055:9 36094:13 interruptions 35974:11 introduce 36018:11 36019:24 investigate 36039:3,17 36102:16 investigated 36095:15 investigating 36020:14 36044:7 investigation 36039:7,8 36039:12 36043:25 investigative 36039:19 invited 36012:25 involve 36076:14,16 involved 35966:12 36010:23 36012:3,17 36025:1 inyanga 35945:4,4,7,11 35945:17,19,22 35946:1,4,7,14,17,19 35946:23 35947:3,10 35947:25 35948:1,7 35948:17,21 35949:2 35949:5,11,17,18,20 35949:23 35950:5,13 35950:20,25 35951:5 35951:9,10,19 35952:11,11,18,24 35953:1,5,11,13,18 35953:23 35954:5,11 35954:18 35955:1,19 35955:23 35956:2,3,9 36095:5,5,14 Inyangas 35956:12,15 35957:2 IPID 36092:1 irrelevant 36020:8 36050:18 36095:15 isifungo 36076:4 isn't 35948:10 36034:16 36049:22 36049:22 36052:21 36078:13 36088:10 issue 35960:17 35966:15 35967:8,14 35967:16 35968:16 35971:13 35999:24 36022:21 36024:5,12 36024:21 36026:12 36028:9,17 36029:3 36031:11 36032:20 36032:24 36044:7,8 36057:8 36089:18 36092:20 36100:25 issues 35979:4 36019:20 36020:13 36021:7 36028:14 36044:18 36065:24 36095:15 I'd 35993:1 36006:21 36012:14 36042:22 36048:5 36082:3 36091:17 I'll 35943:15 35960:10	35982:13 35985:13 36006:21 36009:7 36013:22 36022:5 36040:23 36041:5 36047:19 36048:16 36086:13 36087:2 36088:20 36090:9 36093:16 36096:5 36098:10 36100:9,14 I've 35935:18 35941:6 35971:4 35972:14 35973:15,16 35974:13 35975:22 35979:5 35980:9 35983:4,23 35993:11 35998:7 36003:12 36004:7 36006:5 36007:21 36016:19 36035:15 36040:20 36042:3 36044:25,25 36045:16 36051:8,10 36051:20,22 36052:6 36053:16 36081:18 36086:2
J				
ja 35971:8 35976:20 36009:23 36014:4 36030:13 36064:15 36071:8,23 36086:9 jacket 36022:23 36023:1 36074:23,24 jal 35971:19 35972:2 36004:13 Jan 36017:17 36033:10 36062:13,19 36065:20 36066:6 Ja-no 36010:15 job 35969:4 36072:12 36072:23 jog 36013:16 join 36080:21,25 36082:18,19,21 joined 35988:16,18,25 36083:5 joining 36082:25 journey 35967:20 judge 36003:16 judgment 36040:3 judicial 36016:5 Julius 36084:6 jumping 36100:24 Justice 36023:20 justified 35968:13 35969:15 36003:18 36004:17 justify 36038:15 36052:2				
K				
Karee 35993:5,6 36055:21 36070:7 Kayesa 35997:17,20 key 36028:14 Kgotle 36007:22 kill 36048:23 36050:1				

36061:22 36064:24 killed 35940:8,9,12,13 35947:8 35957:15 35965:3,3 35971:18 35972:2,14 35979:6 35998:24,25 36002:23,24 36003:3 36003:10 36007:5,7 36020:24 36026:22 36061:17 36069:7,8 36069:14,19 36085:17,25 36092:8 36092:21 36093:9 killers 36092:15 killing 35938:25 35957:20 35999:4 36003:4,13,13 36004:17 36007:7 36044:4 36060:22,23 36067:10,13,20 killings 35999:7,20,23 36003:17 36004:17 36034:24 36067:9 kind 35965:6,17 35971:20 35972:4 35999:15 36004:14 36017:10 36027:13 36042:9 36043:24 36048:3 36049:10 36062:2,2 kinds 36028:13 knew 35935:22 35976:23 36013:8,18 36013:19 knowing 35989:6 knowledge 35958:25 36009:13 known 35965:2 36086:3,6 knows 36014:25 koppie 35937:25 35938:19,22 35939:12,14,19,24 35941:1,8,15 35942:3 35942:20 35943:4,22 35956:3,5,7,17,22 35957:3,4 35966:16 35967:16 35968:3 35979:17 35987:18 35987:22 35988:6,11 35988:12 35996:6 35997:25 35998:1 36030:22 36034:11 36034:23 36036:17 36079:2,8 36080:16 36090:11 36097:7,10 K3 35993:10,25 35994:15,19,23,25 35995:3 35996:2 36036:23,25 36077:5 36078:6,8,12 36080:17 36084:2 K4 35964:21 35965:2 36084:3	label 36021:16 labour 35945:11,12 35951:10,11 35952:2 35952:11,18,20,25 35953:2,5,6,21 35959:9 36012:11 36025:4 lack 35952:1 36054:13 laid 35977:4 36090:12 Langa 35998:19 36000:18 36002:14 36002:20 36006:23 language 35964:8 35973:13 35981:8,10 36040:2 36041:19,21 36041:21 languages 36047:25 lapse 35943:19 large 36017:18 late 35939:2 35957:11 35957:14 36028:25 36032:4 36066:18 law 35983:22 36003:14 36005:11 36019:19 36023:21 36032:11 lawyers 36004:16 36006:18 lay 35977:11 35999:14 36004:15 lead 36042:25 36044:1 leader 35950:17 35951:3 36090:6,21 36091:7,12 leaders 35938:4 35993:21 36052:19 36091:14 leadership 36090:11,13 leading 35960:9 35961:19,22 35978:10 36003:6 36027:9 36075:4 learned 35961:14 35967:5,15 36003:23 36031:21 36101:1 leave 35975:5,6 36066:16 leaves 36046:13 led 35985:20 35999:22 36000:17 36002:13 36018:8 36034:9 36036:7 left 35935:8,10 35942:23 35949:2,20 35962:14 leg 36028:22,23 36032:18 36040:10 legal 36003:19,19 36020:3,7 legally 36024:18 legs 36040:15,16 Lepaaku 35939:2 35957:12,14 35983:18 Lesotho 36049:8 let's 35939:23 35949:16 35958:13	35964:19,19 35966:23 35976:2,6,9 35976:12 36021:18 36022:20,21 36029:23,23 36030:9 36033:4 36035:8 36048:14,19 36053:24 36057:5 36061:3 36081:21 36085:25 36094:2 level 35998:11 liable 36005:14 lie 35944:10,11,25 lies 36060:8,16 36061:1 Lieutenant 35957:12 35983:1,18 life 35960:5 36042:4,5 lifted 36017:6 light 35952:5 35970:23 35971:3 36026:19 36027:8,14 36030:5,6 36031:14 36033:18 36086:25 36087:12 36088:2,24 limit 35943:14 limited 36031:24 36032:7 limits 35974:10 line 35937:17 35938:4 35939:1,20,25 35940:14,21 35941:2 35941:9,15 35942:4 35942:11,21 35944:8 35944:15 35947:13 35957:20 35963:6 35971:8,14 35979:7 35979:15,15 35984:8 35984:14 35988:4 35991:4 35993:4,19 35994:2 36006:5 36020:15 36091:8 lines 35980:20 36000:15 36046:1 36074:18 link 35976:24 lis 36034:17 listen 35951:21 35976:9 36067:15 36102:4 listening 35994:1 35995:18 36004:11 36074:15 literally 35980:23 36029:18 little 35937:15 35993:1 36003:25 36009:8,9 36014:11 36027:21 36058:12 36071:23 36083:21 36098:20 36103:9 lived 35960:19 lives 36042:5 local 36005:16 locked 36081:5 logical 36037:12 logically 36024:3,4,9	36024:10,11,11,19 36029:5 36040:13 logistical 36054:7 logistics 36052:18 36054:3 London 36068:11,14 36072:14,24 long 36007:15 36015:20 36056:19 36058:13 36063:5 36068:9 36070:13 36089:5 36091:25 36095:21 36100:12 longer 35976:20 Lonmin 35939:2 35953:7 35959:23,24 35960:3,7 35961:1 35969:2,12 35984:2 35984:22 35985:1,2,5 35985:12,21,24 35986:1 35991:15 35992:5,11,14,21 35994:4 35998:1 36008:5 36011:16 36012:16,20 36017:17 36018:5,7 36021:13 36025:5 36026:8 36029:24 36031:7 36033:10 36034:8,11,20,22 36035:1,20,25 36037:24 36042:15 36043:3,17,24 36044:21 36045:18 36051:15,17 36053:11 36056:14 36056:21 36058:3 36062:8 36063:5 36068:5,7,10,19 Lonmin's 35987:15 36053:18,20 36092:19 look 35951:4 35982:13 35984:9 35988:7 36015:24 36035:16 36035:19 36061:14 36061:15 36072:6,6 36080:12,13 36096:7 36096:13,18,25 36097:2 36098:11 36099:21 36100:12 looked 36080:2 looking 36008:2 36011:1 36041:25 36050:1,1 36053:5 36072:8 36080:5,7 36088:22 loose 35980:25 35981:10 lordship 36024:1 lose 36072:12,23 losing 35972:15 loss 35971:17 36042:5 lost 35971:21,25 35981:6 36042:4 36090:17	lot 35959:7,12 36031:5 36044:6,9 36060:24 36060:25,25 36063:12,12 36069:24 36070:4 36089:18 36096:23 Louis 36023:22 loved 35971:18 35972:2 LPD 35961:17 lucky 35965:11 lunch 36102:23 lying 36058:25
L			M	
			Mabebe 35958:16 35964:19,19 35965:14 35966:12 35967:21,23 35998:16 36000:17 36002:14,20 36006:23 Mabelane 35958:16 35966:2 35968:17 35998:12 36000:17 36002:13,19 36006:23 machine 36059:1,9 machines 36058:4,10 magistrate 36003:17 Mahlangu 35935:6 35947:20 35978:20 35981:11 36052:8 36055:5,9,10,15 36056:10,11,18 36057:3,14,21,24 36058:2,7,9,18 36059:8,21 36060:6 36060:13,20 36061:6 36061:14 36062:1,12 36062:18,23 36063:4 36063:17,22 36064:2 36064:3,12,17,21 36065:5,7,14 36066:6 36066:21 36067:11 36067:16,17 36068:3 36068:23 36069:11 36069:16 36070:3,22 36071:1,6,11 36072:1 36072:19 36073:23 36075:13 36076:3 36077:16,19 36083:18 36097:1 Mahlangu's 36057:8 main 36020:5,7 36032:17 major 36043:25 36044:25 majority 36097:7 making 35943:3 36021:4 36039:9 36052:20 36063:6 36099:24 Mambush 35943:25 35944:8 36087:11 36091:13,14	

<p>man 36061:15 36071:12 manage 35948:21,24 management 35959:13 35987:15,15 35992:11 35997:10 35997:14 35998:1 36080:20,24 36081:10 36082:8,11 managers 36029:24 mandate 36039:2 manifestation 36098:23 manner 35965:3 36033:23 march 36036:23,24 marched 36033:9 36077:5 Marikana 35969:18 36008:5 36011:16 36098:7 marks 36090:1,2 Masevhe 35978:19,21 35978:23 35979:1,3 35979:25 35980:3,7 35980:11,19 35981:2 35981:16,19,23 35982:6,10,12,21,25 35983:6,10,14,20,24 36101:1 massacre 36031:15 36095:19 36098:4 material 36019:24 36032:1,2 36034:4 36039:6 36046:17 Mathibedi 36091:8,11 Mathunjwa 35950:16 35950:19,24 35951:1 35960:12 matter 35973:15 35975:23 35977:6 36024:4,12 36027:11 36031:7 36039:10 36041:9 36042:19 36047:7,10 36051:25 matters 36003:14 36015:7 36017:11 36018:3 36025:19 36026:13 36093:12 Ma'am 36077:16 36098:6 Mbombo 36098:6 mean 35940:23 35941:17 35942:8 35979:20 35981:24 36001:14,20 36002:2 36004:20,22 36020:5 36020:15 36022:3 36029:11 36030:18 36033:21 36043:22 36093:9 means 35965:14 36001:19 36028:17 meant 36028:11 36039:14 36075:25 media 36016:23</p>	<p>36047:19 Mediation 36012:12 mediator 35952:12 meet 35962:10 meeting 35963:16,18 36012:10,14,17,20,23 36013:3,15 36026:3 Mehlomkomo 36087:1 36092:11 members 36060:22 memory 36013:16 men 36068:16 mention 35981:2,17,25 36018:17 36095:14 mentioned 35981:20 36012:14 36034:18 36081:9 36090:22 mere 36021:15 36047:1 36047:3 merely 36036:6 36042:12 met 35939:25 35940:13 35947:25 35949:17 35949:17 35963:8 35967:25 35998:3 methods 36095:22 36096:4 36097:8 metres 35963:12 35968:22 microphone 35970:12 36005:5 36010:7 36053:13 36071:5 36083:15 36086:11 36087:16,20 mightn't 36027:9 mildly 36101:20 militate 36039:20 mind 36017:24 36018:1 36018:12,14 36019:4 36019:8 36022:15,16 36022:18 36023:5 36027:14,21 36028:20 36029:17 36030:6 36031:14,15 36031:17 36033:17 36033:19 36036:21 36037:22 36041:11 36042:1,10 36045:22 36049:9 36057:1 minds 36016:5 36050:15,19 mine 35961:8 36055:18 36066:18 36070:7 36080:20,20,24,24 36082:8,8 miners 35982:22 36018:5 mineworker 35950:11 35960:7 mineworkers 35982:17 mining 36065:16 36075:21 minutes 35935:9,15,16 35935:18 35943:16 35958:3,5 35968:16 35978:15 35979:1</p>	<p>35984:3 36013:24 36015:8,13,22 36054:15,18 36083:13 36100:15 36100:18,21 missed 36071:2 missing 36082:24 mistake 36054:13 mistaken 36009:1 mistakes 35975:14,15 35976:17,18,22 35977:1 misunderstood 35985:25 mock 36096:13 modify 35970:20 35971:2 Mokwena 36060:15 36065:18 36075:22 moment 35963:5 36038:3 36052:3 36078:1 Monday 36078:8 36102:22 36103:1,3 36103:12 Monene 35978:23 35979:6,10 35983:17 money 35953:9,16,16 35959:15,16 35960:18,24 35968:19 35970:4 35988:6,15 35990:5 35991:6,10,13,25 35992:3 35997:4 36045:23 36056:14 36058:13 36062:3,3,4 36065:25 36066:8 36069:7,9,14,19 36079:18 monitor 35938:22 months 35961:15 36029:11 mood 36098:11,16,22 36098:24,25 36099:2 moonwalker 35972:1 morning 35935:25 35936:4,5 35963:17 35978:25 35987:19 35998:20 36055:17 36056:13 36085:9 Motlogeloa 36084:6,16 mountain 35938:19 35942:6,9 35950:4,6 35961:9,11,21 35994:6 35995:12,25 35996:6,15,20 35997:11 36055:25 36066:11 36071:22 36072:4 36091:9 36094:22 36096:1 36102:8 mountains 35959:14 35961:2 36072:2 move 35982:13 36066:1,1 36069:25 36070:5,12</p>	<p>moving 35997:18 Mpembe 35937:16,17 35937:24 Mpofu's 35955:15 35971:3 36035:10 36051:16,18 murder 36002:24 36005:12,14 36024:24 36085:18 murderers 35959:14 muti 35945:8 35947:14 35955:20</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>name 35958:15 35978:23 names 36012:25 narrow 35952:1 nature 36003:2 36032:22 36033:1,3,5 36045:23 36046:24 near 35937:16 35938:4 35939:1,20,25 35940:14,20 35941:2 35941:9,15 35942:4 35942:11 35944:14 35947:13 35957:20 35961:20 35979:6 35988:12 necessarily 36000:8 36004:20,22 36024:21 36030:18 36031:1 necessary 35977:11 36016:22 36035:16 36035:19 need 35938:18 35941:13 35958:4 35962:24 35979:8 36015:2 36032:14 36033:11 36039:9 36061:8 36066:12 36084:7 36089:20 needed 35986:25 negotiable 36075:8,12 negotiate 36034:23 36043:3,6 neither 36036:5 36044:17 never 35962:17 35963:22 35964:19 35966:23 35969:6 35976:23 36022:24 36029:12 36043:6 36047:2 36056:25 36070:9,12 36087:15 36090:8,12 nevertheless 36047:9 new 36032:5 36049:6 news 36059:15 36060:24 36066:24 nicely 36068:17 Nicholas 36023:20 night 35962:7 35987:5 35998:16 nightshift 35986:4,21</p>	<p>Nkaneng 35949:13 nobility 35966:21 noble 35966:22 nobody's 35964:20 Noki 35943:3 35993:21 35994:3,4,9,11,13,17 35995:8,15 36072:16 36084:9 36086:22 36087:1 36090:5,21 36092:10 36094:24 36099:7,9,15,25 Noki's 36099:17 non-distinction 36001:15 non-negotiables 35997:24 non-vernacular 36047:24 normal 35950:12 note 36024:17 notes 35958:4 notice 36024:7,17 36028:23 36029:1 36032:19 noticed 35982:16 notices 36064:5 notion 36089:19 36091:7 notions 36039:3 Ntelezi 35947:14 Nthate 36061:15 NUM 35939:4 36012:18 36013:1 number 35974:10 35979:15,15 36007:13,16 36008:8 36008:13 36017:15 36022:11 36030:20 36052:22,24 36055:17,20,22,25 36058:25 36059:16 36059:16 36062:14 36062:19,20 36065:21 36070:24 36071:11 36074:16 36080:11 36081:4,5 nutshell 36101:3 Nyala 35936:8,12,19 35937:9 Nzuza's 36048:16</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 35935:3 35978:19 35978:20 36015:12 36054:23,24 36073:20 36076:3 36077:20,21,21 obduracy 36034:22 36043:2,18 36045:18 36045:24 object 35951:7 35970:10 35975:18 35999:9 36014:8 36015:17 36017:1 objected 35973:10 objecting 35968:11</p>
---	---	---	--	---

35971:5,11 36009:24 36042:17 36093:6 objection 35935:19 35955:6 35967:4 35968:6,13 35970:24 35971:2,3,6 35972:17 35972:24 35973:1,5 35974:13 35975:20 35976:3,5,9,11,13,15 35977:12 35999:18 36000:10,15 36001:4 36002:7,10 36003:22 36004:1 36019:17 36020:7 36033:2,3 36093:3,4,21 objections 36020:3,6 objects 36016:8 observe 35936:22 35937:1,4 36094:24 observed 35936:7 35937:13 obstinacy 36043:18 obstinate 36043:2 obvious 36023:18 36043:16 obviously 36016:17 36017:5 36022:10 36023:2 36029:9,10 36035:21 36043:10 36043:22 36049:19 36050:12 36054:9 36085:14 36094:16 occasion 36009:3 36011:19 36036:17 36036:22 36074:25 36092:1 occasions 36074:17,25 occurred 36018:8,9 36029:21 36033:14 36033:22 36034:5 36035:15 36039:18 occurs 36027:1,13 offence 36000:24,25 officer 35936:8,12,24 35937:5,12 35939:1,2 35947:8 35957:11,14 35957:22 35968:21 35978:22 35979:6,10 35982:19,21,23 35983:17,18 36088:24,25,25 36089:1 officers 35937:2 35938:21 35940:1,4,8 35940:12 35968:20 35968:21 35969:2,4,7 35983:17 35995:9,16 35995:22 official 36062:8 officials 36065:16 36075:21 oh 35962:22 35967:12 35976:10 36014:19 36022:3 36035:4 36036:18 36049:14 36073:6 36075:13	36080:8 okay 35943:13 35948:24 35962:3 35963:1,24 35975:10 35976:10 35986:2 36009:8 36013:13 36045:14 36048:14 36049:20 36050:4 36055:19 36060:7 36066:6 36067:5 36071:3 36077:19 36083:9 36085:3,23 36086:18 36087:9 36088:20 36093:17 36093:22 old 35985:5 Omega 36023:22 onboard 36010:18,21 36010:24 once 35971:16 36014:3 36046:24 36050:19 36050:25 36051:24 36070:10 36072:19 36077:2 ones 35971:18 35972:2 36007:5 one's 36038:14 open 36015:3 36046:14 36096:20 openly 35992:18 36031:16 operation 36020:25 36021:7 36026:23 operator 35962:21 35984:22 35985:1,12 35985:21 36059:1,9 operators 35989:23 35990:2 opinion 36028:13 Opperman 36062:19 opportunity 35971:19 35971:19 35992:20 36036:19,20 36077:6 oppose 35974:19 oppressed 36036:12 oppression 36038:21 oppressive 36024:5,13 36024:14,15 36028:15,19 36029:4 36032:23,24 36033:5 36036:5,7 36037:2 36040:13 order 35954:7,11 35959:2 36018:11 36019:22 36038:20 36096:21 ordinarily 35969:10 ordinary 36038:18 organisations 36012:25 Originally 36010:17 origins 36091:7 other's 36030:25 ought 36032:11,11 outcome 36047:7 outside 36016:19 36020:10 36021:1	36025:17,20 36026:11 36032:6 outward 36098:23 overall 36028:12 36072:8 36090:5 36091:7,12,14 o'clock 36051:4 36055:25 36059:25 36070:20 36071:16 36100:11 36102:20 36102:22 36103:13 O-M-E-G-A 36023:22 O-U-R-S-E-S 36034:1 <hr/> P <hr/> page 35962:19 35963:2 35963:4 35979:14 35982:14 35984:6,16 35988:3 35993:3,18 35994:3 36007:14,18 36008:4,7,8,18,20,24 36009:5,5,7,7 36010:12 36023:25 pained 36092:7 pandemonium 35979:16 paper 36080:9 papers 36080:11 paragraph 35958:9 35979:13 35980:20 35982:15 36005:6,8 36080:2,14 36086:21 36090:3,10 36095:6 parallel 35964:17,25 35967:20 parallels 35966:5 paraphrase 36022:5 parcel 36033:13 pardon 36010:19 36026:5 part 35945:3 35963:18 35974:24 35981:7,7,8 35987:2 35990:2 35992:7 36002:16 36007:24 36011:20 36017:25 36019:5 36022:22 36027:5 36033:13,20 36035:6 36041:4 36043:25 36063:23,23 36067:6 36069:10,14 36071:21 36075:7,10 36078:11 36085:11 36085:21 36086:15 36088:14 participate 36096:1 participated 36003:1 participating 36097:15 particular 36001:5 36003:17 36011:2 36020:21 36034:6,6 36034:12 36036:8 particularly 35961:14 35971:13 36033:19 36035:18 36044:10 36084:25	parties 36008:3 36019:3 36034:2,17 36034:18 36035:17 party 36009:18 36028:16 36036:6,10 36037:8 pass 35963:12 passage 36023:24 36067:15,17 36088:20 passed 35963:20 passes 36051:2 passing 36091:9 36097:21 patient 36049:13 pause 36056:3 Pay 36062:24 payment 35998:2 36075:8 peace 36007:11 36008:5 36009:13,19 36010:22 36011:16 36012:3,5,15,22 36013:12 36018:19 36018:22,23 36019:3 36065:23 36067:1,3,8 36067:19,22,23 36068:24,25 people's 36010:4 perform 36096:10 period 36019:10 36021:20 36025:20 36026:2,11,19 36033:14 36036:17 36036:21 36037:22 36076:14,17 periods 35949:11 permissible 36016:25 permission 35935:13 36040:18 permit 36032:9 perpetrators 35983:21 person 35959:19 35960:5 35963:10 35966:13 35979:23 35980:9 35996:10,11 36000:23,24 36001:5 36001:20 36020:22 36026:6 36030:13 36037:10 36048:25 36049:1,8 36057:4 36070:14 36086:1,21 36090:20 36096:5 personnel 36017:17 36084:9,11 persons 36004:22 36024:25,25 36025:5 36087:1 perspective 35986:12 persuade 35958:19 35965:7 persuaded 36016:9 phase 36020:24 Phokeng 36061:20 phone 36062:24 photo 36099:13	photograph 36099:7,9 36099:14,17,24,25 phrase 36026:14 picked 35979:23 picture 36072:12,15,16 36100:4 piece 36028:4 36080:9 pinpointed 35941:5 pistol 36089:1 place 35949:7,13 35950:2 35960:23 36018:25 36025:19 36033:12 36034:24 36044:13 36097:20 placed 36038:25 places 36065:15 36075:20 placid 36041:25 plan 36044:12,14 36103:8 plastic 36092:2 play 36069:10 36072:18,19 36084:7 36088:6 played 35947:10 36014:7 36052:5 36057:15 36067:11 36069:12 36095:18 36098:12,16 playing 36065:19 36066:3,7 36068:5,7 36068:17 36075:24 plead 36089:22 pleading 36071:18 36072:4 please 35935:3,19 35958:12 35962:1,20 35973:20 35974:15 35975:7,11 35978:19 35984:7 35993:4,19 35993:20 36041:23 36048:6 36049:15 36055:12 36070:18 36072:4 36073:19 36076:24 pockets 36061:7 point 35961:18 35965:8 35966:9 35986:7,10 35987:10,24 35988:7 35988:15 35995:21 36001:16,18 36004:13,21,23 36010:6,8 36014:12 36015:1 36020:20 36021:6,21 36026:15 36026:25 36027:17 36029:1,2,6 36030:19 36031:5,6,22 36032:8 36033:6 36034:6,12 36035:10 36036:3 36037:14 36038:9,22 36040:6,6,20,24 36041:6,7,12,20 36042:11,19 36043:17,20 36045:24 36046:5
---	--	--	--	---

<p>36047:1 36064:5 36066:1 36072:25 36081:7 36089:2,3,15 36089:16 36091:17 36099:23 pointed 36029:19 pointing 35967:1 points 35973:2 36029:4 36032:17 36040:1 36044:17 36046:7 36073:13 36083:22 poisoned 36050:17,19 policeman 36064:6 policemen 35979:18 35980:1,17 36044:10 36048:23 36101:20 police/military 36026:23 portion 36040:20 36048:16 portions 36041:1 pose 36003:19 position 35948:3 36036:10 36044:13 36090:13 positions 36090:7 possession 35936:23 35937:22 35939:7,8 35944:22 possibility 36033:15 possible 36038:12 36085:15 36103:4 post 36029:21 36037:16,16,22 36041:8,21 36102:3 post-mortem 35979:9 35979:10 potential 36028:14 36039:21 36041:11 36050:12,14,14 potentially 36032:14 36032:15 36043:23 pouring 36092:3 power 36036:13 36037:3,11 powers 36039:12 36040:2 PPPP1 36005:6 36095:12 PPPP7 36053:6 PPPP8 36053:2,6,17 PPPP8.1 36054:6 PPPP8.2 36054:6 PPP1 36095:10 practical 36010:9 practicalities 36031:24 practicality 36019:20 practice 36041:23 practise 35950:12 pray 36098:2 prayed 36098:1,6 prayer 35955:3 prayers 35954:13 pre 36041:8,22 precise 35998:10 precisely 36016:11</p>	<p>36046:12 precision 36046:20 preclude 36039:10,13 preface 36050:7,10 prejudice 36028:15 36034:16 36035:3,9,9 36035:9,15,17,19,22 36035:25 36038:21 36042:18,18 36043:12,14,16,16 36044:19,21 36046:10,10,12,20 36047:3,8,10,12,15 36047:18,18,21 36048:3,4 36049:10 36049:16 36050:5,12 36050:12,13,14,14 36051:14,15,17,18 prejudiced 36016:3 36035:1 36036:11 prejudicial 36017:1 36036:5,7 36037:2 36042:13 36043:21 36046:8 36048:23 36050:19 prepare 36032:20 36033:7 prepared 35954:22 35957:18 35978:5 36043:5 36045:22 36075:14 36076:11 presence 36087:24 36097:17 present 35944:1,4,5,14 35946:14 35950:3,16 36009:19 36011:20 36086:3 presentation 36009:22 presented 35966:18 press 36017:8 presumably 35957:2 presumption 35965:4 pretends 35970:19 prevent 36038:20 prevented 36048:3 previous 35981:6 36100:3 previously 36006:22 36011:17 36014:15 36014:25 36015:16 36025:13 pre-dating 36010:15 pre-empted 36035:3,5 36045:11 pre-16th 36029:21 prima 36030:17 36037:5 principal 36032:21 principle 36019:18 36022:7 36023:13 36034:15 principles 36019:19 36031:21 36032:11 36032:25 36051:9,21 prior 35987:13 36018:1 36018:14 36022:18</p>	<p>36028:20,21 36031:22 36037:17 36075:5 priori 36025:15 probably 35958:7 36015:24 probative 36024:10 36029:5 probing 35947:16 problem 35961:24 35965:9 35969:19,19 36000:13 36025:17 36042:24 36060:14 36060:14 36082:5 problems 36014:2 36018:21 procedure 36016:10,14 proceed 35958:12 35972:22 35973:20 proceeded 35964:5 proceedings 35935:1 35978:23 36025:13 36046:24 process 35966:21 programme 35935:23 prohibitive 36024:3,9 36024:18 proof 36085:15 properly 36002:14 36004:19 36005:9 36069:10 36083:3 prophesising 36033:24 proposing 35958:11 proposition 35938:17 35938:20 35945:10 protect 35951:19 35954:11 protects 35954:7 protesters 35968:19 35969:11 35970:4 35974:20,23,23 protestors 35966:11,13 prove 36023:3 36049:7 proved 36001:23 proves 36043:17 provide 36043:1 provided 35937:25 36005:20 36006:1,19 36024:5,12,14 proving 36022:8 provisional 36027:3 36038:12 36046:22 36051:12,23 provisionally 36017:3 36025:9 36030:24 36046:13,13 36048:15,16 provocateur 36049:4,5 public 36017:2 36050:16,20 36097:20 punctuation 36090:1 punished 36005:12,16 purely 36090:11 purpose 35950:21 35951:1 35953:10</p>	<p>35960:13 35993:9 35995:4 36022:20 36023:3 36029:7,16 36031:16 36036:24 36048:13 36073:3 36078:7 purposes 36022:8 36030:9 pursue 35948:4 pursued 35971:9 put 35938:17 35945:10 35961:23 35967:17 35968:9 35971:11,18 35975:11 35977:23 35984:6 35989:21 35997:4 35999:10 36000:22 36003:19 36004:1 36005:7,17 36006:3,5 36008:17 36014:8 36028:24 36033:16 36035:7,24 36037:11 36038:11 36041:3 36045:10,23 36046:11,19 36047:7 36047:16,24 36080:14 36081:15 36086:14 36087:23 36090:4,7 36093:17 36094:5 36098:21 36101:1,1,2,3,20 putting 35938:20 35967:13 35977:20 36006:13 36030:17 36031:2 36081:7 36092:2 36094:12 P-series 36052:25</p>	<p style="text-align: center;">R</p> <p>railway 35937:17 35938:4 35939:1,20 35939:25 35940:14 35940:21 35941:2,9 35941:15 35942:4,11 35942:21 35944:8,15 35947:13 35957:20 35979:7 raise 36045:8 raised 35961:1,3 35966:9 36020:17,20 36045:11 36046:25 36083:23 36088:16 raises 36020:11 raising 36028:25 Ramaphosa 36056:23 36057:4,11,14,19 36058:4,10 Ramphole 35958:3,7 35958:13,15,18 35966:8,10 35967:11 35968:7,8,15 35969:1 35969:10,25 35970:2 35970:8,20 35971:2 35972:22 35973:18 35973:20,21,25 35974:3,5,7,16 35975:4,5,10,12 35977:14,15,19,21,24 35978:7,14,16 Ramphole's 35977:3 ran 35963:14 RDO 35959:19,23 reach 36020:19 reached 35971:24 reaching 35971:20 read 35963:6 35982:6,8 35984:16 35991:4 36040:9,10,18,19,20 36040:25 36041:19 36045:16 36046:1 36055:12 36069:12 36069:13 36080:3,4 36088:13,20 readily 36006:18 reading 35980:21 36009:2 36055:10 ready 36054:18 real 35996:1 36001:3 36020:3 36044:19 realise 36041:14 realised 36050:24 really 35949:14 35968:6 35975:1 35978:9 35979:8 35999:14 36017:1 36019:18 36029:20 36029:22 36030:6 36031:11 36035:12 36048:22 36049:25 36088:15 reason 35938:20 35965:13 35972:21 35983:6 35986:23</p>
			<p style="text-align: center;">Q</p> <p>quadruple 36052:25 36095:11 qualifications 36024:8 quarter 36102:23 36103:3,12 questionable 36019:25 questioning 35971:9,14 questions 35958:1 35975:2,7 35983:25 35995:14 36003:25 36006:5 36034:10 36036:13 36037:11 36037:23 36038:1 36077:11 36081:5,25 36084:1 36086:13 36095:4 36100:9,18 quick 35979:7,9 36040:1 quickly 35979:14 36019:19 36082:4 36088:17,20 quite 35954:10 35967:4 35996:18 36000:6 36027:6 36043:14 36077:4 36095:3 36099:5 quotation 36090:2 quotes 36090:4,7</p>	

<p>35989:2,10 36018:15 36028:9,10 36033:21 36040:8,11 36046:2 36060:17,20 36079:25 36085:16 36095:13 reasonably 36044:12 reasons 35951:18 35972:20 35973:12 35973:16 36023:18 reassemble 36051:4 rebut 36037:9 recall 35996:4 35998:11 36075:1 receive 35979:2 36026:20 received 36007:23 recollection 36010:25 reconciliation 35971:13 reconciling 35972:8 record 36081:19 36088:10 recording 36017:13 red 36022:23 36023:1 refer 35979:13,15 36007:12 36011:9,10 36016:17 36020:22 reference 35979:8,9 35997:10 36011:25 36020:10 36021:2 36025:17,21,23,25 36026:3 36034:18 36039:2 36057:19 36074:17,24 referred 35997:17 35998:10,11,15 36004:7 36010:13 36031:23 36051:10 36051:22 referring 35980:23 35983:6 36004:4 36007:20 36008:1 36091:10 36095:7 refers 36002:6 36021:10 reflected 36018:24 reflection 35994:14 36027:9 reflective 36077:4 reflects 36017:14 reformulate 35952:4,5 35974:12 36093:15 reformulated 35973:6 35973:9 35974:15 36000:13 refusal 36043:3,18 regard 36000:18 36034:14 36037:25 regarding 36037:23 related 36006:5 36021:7 36024:20,23 36024:25 36025:2,3,5 relates 36000:7 36026:18 36033:7 36037:10</p>	<p>relation 35958:8 36006:22 36012:15 36024:25 36027:1 36036:21 36037:2 36041:7 36092:18 36095:19 36101:10 relationship 35968:23 36092:14 relatively 36006:17 relevance 36019:24 36037:12 36039:11 36042:2 36098:3 relevant 35985:14 36020:13 36021:20 36022:9 36023:16 36024:4,11,11,19 36029:5 36032:14,15 36040:13 religion 36096:23 religious 36095:16 rely 36044:5 36048:4 remain 35997:14 remained 35942:6 remember 35936:9 35944:2 35948:19 35950:7,9,17 35952:14,20 35953:25 35963:18 35968:17 35985:8 35996:7 36006:17 36007:16 36010:18 36010:20 36026:15 36059:15 36098:13 36098:14 36099:7 36101:6,18 remind 35935:3 36054:22,24 36073:19 removed 35961:6 repeat 35955:16 35962:1 35990:17 36000:15 36006:21 36074:20 36093:20 repeated 36070:8 36098:19 rephrase 35951:13,15 36093:16 replayed 36064:2 36071:1 replied 35967:5 replies 36027:25 reply 35955:5 35967:6 36001:13 36004:9 36016:8 36031:19 36035:21 36039:24 36050:23 report 35943:3,9 35974:19 35988:5,14 35991:5,24 36016:23 36032:16 reported 36009:20 36017:4,7 36047:5 reporting 36017:10 reports 36009:22,22 report-back 35991:13 36011:21</p>	<p>report-backs 36009:18 represent 35947:8 35978:22 35979:5 representations 36017:8 representatives 36012:18,18,19,19 representing 35957:11 35958:15 reprobate 36003:24 request 36080:19,24 requested 36082:8 requesting 35958:24 requirements 36040:12 resolved 36080:19 respect 36003:12 36025:19 36028:8 36045:15 36088:16 36092:13 36093:11 respectful 36084:17 respond 35941:12 35983:13 35992:15 36031:3 responded 35967:5 responding 35983:4 35995:19 response 35991:9 36003:25 responsible 35978:1 35999:3,20 36001:6 36001:23 36002:19 36004:3,6 36005:14 36044:4 rest 36055:13 restricted 36031:10 result 35963:17 35964:14 36043:8 resulted 35960:18,20 35974:22 resumes 35935:2 35978:17,18 36015:9 36015:10 36051:6,7 36054:20,21 36083:14 reverse 36052:2 reversed 36038:13 reversing 35968:22 35972:25 revision 36017:5 rewind 36064:9 36071:22 re-examination 36081:20 36083:19 36083:23 36088:9 re-examine 36078:1 ridiculous 36029:14 right 35937:23 35948:4 35949:22 35953:4 35954:7 35987:24 36003:13,18 36011:14 36030:18 36031:2 36040:1,7 36044:17 36046:15 36050:23 36057:20 36062:20 36066:22 36069:17 36073:10</p>	<p>36082:14 36085:13 36085:22 36090:24 36091:16 36095:2 36096:3,6 36097:4,6 36097:19 36099:6,8,9 ritual 36096:20 rituals 36096:1,10,17 road 36097:20 rocket 36041:13 Rodney 36062:19 role 35945:6 35947:10 35954:4 36036:19 36038:24 36088:6 36090:11 36095:5,18 role-players 36010:22 route 36039:19,19 Roux 36036:8 RRR19 35982:13 rule 36017:3 36021:22 36021:25 36022:4,7 36022:11,13,19 36028:10 36030:3 36038:16,18 36094:13 ruled 36006:12 36047:9 36052:22 rules 35974:6,9 36020:9 36022:10 36038:18 36040:5 ruling 35973:15,16 35975:22 35976:4 36015:25 36032:5 36051:4 36052:3 36054:10 run 35965:11 35981:25 35982:18 36055:8 36101:11 36103:1 running 35979:17 35980:6 36036:21 36061:10 36088:22 36101:5,13,15,17,22 Rustenburg 36065:22 36066:15 R12 35953:11 35987:16 36048:21 36068:11 36068:14,25 36069:2 36070:18 36074:17 36074:18,25 36075:1 36075:8 36082:16,23 36082:25 36083:6 R12,500 35989:17,24 35990:3,8,15,19,20 35991:1,21 35992:1,5 35992:13,22 35995:11,12,25 R4 36058:13</p>	<p>36040:15,16 36046:16 36052:1 satisfying 36040:15 Saturday 35987:20 save 36019:22 saves 36035:6 Saviour 36096:25 saw 35950:3,16 35953:24 35966:2 35968:23 35979:22 35980:3,8 35982:15 35982:16,22 35983:5 35983:5 36041:20 36087:11 36088:23 36098:25 36099:15 36099:18 36100:4 36101:10,12 says 35955:3 35967:23 35981:7 35982:19,24 35983:4 35985:4 36005:8 36010:2 36011:16 36013:19 36022:7,13,22,23 36024:1,2 36029:8,9 36029:16 36031:16 36032:18 36040:2 36046:18 36048:21 36056:18,22 36057:4 36058:7,21 36059:2,3 36059:22,23 36060:2 36060:6,13,14 36063:25,25 36064:12,21,23 36065:2,3,8 36066:2 36066:23 36069:7 36070:15,16 36071:11 36072:6,8 36072:11 36080:15 36082:7 36086:9 36087:2,5,11 36088:21,23 36090:7 36091:8,11,12 scale 36038:11 scenario 36048:17 scene 36044:10,10 schedule 36103:9,11 scientist 36041:14 screaming 35982:18 screen 35963:5 35984:6 35984:14 36008:17 36008:24 36009:3 36011:16 36064:6 36080:14 36086:12 seated 35988:4,6,14 35991:4 second 35971:10 35998:2 36013:9 36019:5 36058:24 36062:9 36065:15,20 36066:21 Secondly 36021:18 second-in-charge 36090:5 second-in-command 36089:19 secret 35955:24</p>
--	---	--	---	--

S

<p>36061:8 36097:16 securities 35944:23,23 security 35958:16 35968:19,21,21 35969:2,4,6 35974:20 35994:4,10,14,18,21 35995:9,15,22,24 36084:9,10 see 35938:3,11 35945:1 35949:5,11,12,23 35950:1,5 35952:8 35955:16,25 35956:16 35957:4,5 35958:14 35961:24 35965:6,8 35968:17 35969:13 35980:4,5 35980:11,13,16 35982:18,20,22,25 35983:14 35993:4,7,9 35995:13 36000:21 36013:2 36014:22 36030:16 36041:16 36041:19 36046:15 36049:22 36054:23 36056:1 36061:10 36063:11,17 36064:13 36069:13 36072:15 36073:4,8 36073:11 36077:23 36078:16 36079:25 36080:1,8,8,15 36081:22 36087:13 36093:13 36094:17 36096:21 36097:9 36098:16 36100:4 36101:12,13,16 seeing 36016:4 36054:22 seek 36022:13 seeking 35967:23 36001:10 seeks 36041:12 seemingly 36005:14 36101:20 36102:1 seen 35980:9 35983:5 36011:17 36041:22 36043:14 36046:14 36046:15,17 36051:24 36070:9,12 36078:18 36097:12 36098:3 sees 36000:3 selectively 36040:19 self 36093:10 selfsame 35965:9 self-defence 36044:6,11 self-evident 36036:1 36089:9 self-evidently 36020:9 Semenya 35951:17 seniors 36059:17,22,23 36059:24 36061:9 sense 36019:11 36030:3 36072:17 sensible 36027:11 sensitive 36047:6</p>	<p>sent 35945:3,17 36078:6,8,12,15 36080:19 sentence 35991:3 36047:15 36049:18 36070:23 36090:25 36094:3 sentences 36090:25 separate 36037:17 separated 36017:20 separation 36032:6 September 36007:12 36007:24 36008:4 36009:10 36010:14 36011:8 36012:1 36013:21 36014:7 36017:14 36018:13 36018:18 36021:1,19 36022:17,17 36023:1 36026:24 36049:6 36053:8 36075:25 36076:7,12,15,17,20 36076:24 Sergeant 35982:14 35983:1 series 35996:5 serious 36005:11 36021:2 36048:3 services 35950:13,20 35950:25 35951:5,9 35953:5,18 35954:7 35954:18 35955:19 35955:23 set 35959:4,18 36051:9 36054:9 sets 36023:25 setting 35959:4,5,5 settled 36010:24 settlement 35942:23 seven 35935:9 severe 35960:23 shack 35942:23 shaft 35964:20,21 35993:8,10,15 36033:9 36055:20,21 36055:21 36056:1 36062:24,25 36063:11 36070:19 36070:20 36071:15 36071:16 36072:9,10 36072:10,13,22,23 36073:1 36075:23 36078:6,8,12 36079:9 36080:17 shafts 36017:21 Shangaan 35997:2,5 shared 36092:7 shares 36056:21 36057:10 36058:3 sharing 36061:18 shed 36086:25 shooting 35979:23 36087:11 36098:2 36101:20,22 shootings 36012:10,21 short 36013:21</p>	<p>36070:23 36091:25 36095:22 shortly 36016:6 shot 35979:23 35980:4 35980:10 shouldn't 36015:24 36044:3 show 36010:1,3 36014:15 36015:16 36026:1 36028:19 36029:17 shown 35996:5,10 35997:23 36055:1,3 36056:8,16,24 36057:6 36058:6,16 36059:7,19 36060:4 36060:11,19 36061:4 36061:12,25 36062:6 36062:16,21 36063:2 36063:15 36064:11 36064:19 36065:12 36066:4,19 36067:24 36068:13,20 36069:15,21 36070:1 36070:6 36071:4,10 36071:25 36072:5,21 shows 36022:25 36072:11,11 side 35936:13,16 35937:6,7 35972:5 36024:6,6,13,16,16 36028:23 36033:9,11 36035:8,16 36060:16 36060:17 36062:9 36074:10 36087:8 signatures 36010:2,3,4 signed 36008:3 36018:19,20,23 36019:3 significance 36021:8 significant 36018:18,22 36055:8 similar 36018:12 36021:22 36022:1,8 36022:15,19 36023:4 36023:13,14,16,18 36024:3 36028:20 36029:17,19,20 36030:2 36031:12 similarly 36005:13,15 simplistically 36000:23 simply 36006:16 36010:1 36020:25 36029:12 36040:14 36045:21 36047:19 36090:8 Sinclair 36102:25 36103:2,12 singular 36030:13 Sir 35936:5 35938:7 35939:3,5,10,17 35940:19 35941:19 35942:1,13 35946:3 35946:15 35948:23 35949:12 35952:23 35957:7,24 35969:24</p>	<p>35982:13 36060:14 36061:15 36076:2,4 36077:20,22 36078:10,14 36079:3 36079:6 36080:11 36081:9 36083:24 36086:5,8,23 36092:12 36095:1 36096:19 36097:1,16 36098:5,19 36099:13 36101:8 36102:5 sit 36016:19 36065:24 36067:4,22 36102:23 sitting 36015:16 36022:25 36036:10 36038:23 36055:24 36055:24 36065:22 36071:22 36097:10 situation 35965:1,7,9 35965:18,19 35966:20 35967:24 36021:10 36029:22 36044:15 36101:3 sixth 36070:15 sixties 36061:16 skirmish 35974:19,21 35974:22 slight 36042:18 slightly 36039:4 slow 36023:17 36049:13 slowly 36048:6 small 36071:20 36072:12,13 36080:19 smoke 36088:21 smokescreen 36048:22 solely 36022:8 Solidarity 36012:18 solve 36013:25 36014:2 somebody 35997:17 36001:25 36025:22 36027:20 36029:8,9 36066:10 36097:25 somebody's 35999:23 somewhat 36023:14 sore 36061:16 sorry 35942:25 35951:24 35956:9 35966:1 35967:3 35975:25 35981:5 35984:25 35993:13 36000:20 36003:9 36005:4 36009:9 36010:12 36011:10 36012:8 36035:4 36047:20 36049:14 36051:16 36052:18 36053:12 36054:5,16 36056:12 36057:7 36058:8 36060:14 36063:21 36065:4 36068:1 36070:22 36071:20,20 36075:10,13 36076:5 36076:17 36077:16</p>	<p>36081:22 36083:2 36087:19 36091:5 36095:9 36100:24 sort 35973:22 35985:13 36054:15 sorted 36054:4 sorting 36052:18 sought 36037:8 36051:11 sound 36054:6 sounded 35967:13 South 36012:12 so-called 36024:2 36089:4 36091:7,14 speak 35941:1 35961:19 35996:15 35996:20 36014:11 36018:7 36028:4,6 36034:11 36043:4 36045:3 36052:7 36055:18 36065:24 36067:1,19 36070:11 36075:18 36080:23 36081:6,19 speaker 35997:5 36055:17,19,19 36058:19,24 36059:8 36060:6 36062:9,11 36065:14,19,20 36066:2,6,21,22,23 36068:2,3,21,23,23 36069:22 36070:15 36070:16,24 36071:9 36071:11 36072:6,8 36073:7,8,9 36074:7 36074:16,22 speakers 35997:2 36074:6,10 36098:13 36099:6 speaking 35978:3 35990:24 35996:11 36040:5 36056:19 36062:8,10 36065:22 36068:24 36073:5 36098:25 36100:1 spears 35982:17 specific 35966:13 36087:24 speculate 36033:20,21 36033:21 speeches 35996:5 spend 36053:5 spent 35943:17 36044:7 sphere 36033:24 36038:5 spilt 36063:12,13 36064:10 spoke 35948:7,8,11,12 35948:13,15,17,19 35963:12 35997:2,17 36073:5,6,10 36074:23 36077:20 36098:13 spoken 36009:19 36011:21 36018:5,7</p>
--	--	---	---	--

36031:23 36037:24 36052:6 36069:3 sponsored 35977:6 square 36059:5,11 squarely 36034:7 36039:16 stabbed 36088:24 stabbing 35937:1 stadium 35963:17 35964:15 stage 35999:13 36019:23 36027:12 36031:25 36032:2,4 36032:13,13 stakeholder 35961:7 stance 36075:7 standing 35936:17 35947:18 35963:11 36062:10 36064:6 36072:7 start 35935:24 35958:9 35984:18 36038:3 36040:17 36048:17 36066:1 36081:21,25 36082:3 36087:2 36090:25 36102:22 started 35986:11 36055:7 36070:14 36087:3,6 36088:15 36088:22 starting 36103:5 starts 36008:25 36062:12 36090:3,25 state 35979:18 35980:19 36012:22 36015:3 36017:24 36018:1,12,14 36019:4,7 36022:4,15 36022:16,17 36023:5 36027:7,21 36028:20 36029:17 36030:6 36031:14,17 36033:17,18 36036:21 36037:22 36041:11 36042:1,10 36049:9 stated 36039:2 36075:18 statement 35945:2 35956:2 35961:24 35971:20 35972:4 35973:21 35974:18 35975:3 35979:13,14 35981:3,17 35982:1,3 35982:4,7,14 35983:8 35985:4,8 36005:6 36007:22 36020:1 36026:11 36080:1,6 36080:10,22 36081:14 36082:7 36084:23 36086:21 36087:10 36089:24 36090:16 36092:1 36095:5 36097:24 36101:2 statements 36097:22	states 35979:11 35982:15 36045:21 stating 36077:4 stay 35997:3 36083:20 staying 36072:3 36084:21 step 35949:17,17 stone 35964:1 stoned 35967:25 stones 35962:15 35963:13,21,22 35972:12 stood 35963:12 stop 35969:5 35975:9 35994:5 35995:16,24 35996:2 36009:8,9 36027:3 36040:24 36060:15,16 stopped 35966:6 36055:7 Stopping 36056:17 story 36091:25 36095:21 straight 36066:25 36067:1 strength 36069:5,9,20 strengthen 36082:22 36083:7 strengthened 36083:6 strictly 35985:9 36038:19 36040:5 strike 35954:10,17 35955:18 35978:3,4 35986:8,11,12,13,17 35986:25 35987:1,9 35987:12,25 35988:16,18,19,20,23 35988:25 35989:3,6,6 35989:15 35991:16 35992:5,10,22,23 35993:21 35998:6 36007:25 36010:24 36012:15 36017:16 36020:16 36024:24 36025:5 36026:8,10 36026:12 36033:13 36033:14 36034:11 36037:15,16,17 36080:18,21,25 36082:18,22,25 36083:5,8 striker 35972:1 35980:4 36030:12 36048:20,20 36049:1 strikes 36037:15 striking 36011:11,25 36012:2 36090:6 stringent 36023:19 stroke 36098:11 strong 36004:2 36061:18,19 stronger 35973:13 struggle 36063:8,9 struggling 36063:10 stumbled 36063:24,24 stun 35936:19 35937:5	35937:13 subject 36017:4 submission 35983:15 35983:21 36025:7 submissions 36014:9 36023:9 36031:19 36051:3,8 submissive 36084:17 submit 36023:16 36025:14 36036:9 36039:15 subsequent 36005:23 36018:22 subsequently 36020:13 substance 36016:6 substantive 36032:5 sub-contractor 35985:2 35986:2 succeed 36011:6 36093:11,11 36103:5 succeeded 36010:23 succinctly 35944:6 suffer 36035:25 36044:20,22 36046:11,21 suffered 36035:17,20 36035:23 36047:3,8 36051:14,16,17,18 sufficient 36038:15 36087:10 36091:21 sufficiently 36002:5 36091:18 suggest 35951:12 35976:21 35977:5,10 35977:25 35992:17 35995:7 36008:11 36077:3 suggested 35972:11 35973:5 36013:2 36030:25 36037:5 36090:20 suggesting 35942:17 35966:4 suggestion 36010:10 36016:3 36032:22 suggests 36086:2 sum 35958:23 summarised 36023:20 summarises 36030:5 summary 35978:5 36093:23 superior 36095:21 supervisor 36062:13 supplementary 35945:2 36007:22 36095:8,10 support 36028:2 supported 35978:3 suppose 35976:19 35979:8 36015:23 supposed 35937:18 35940:23 35941:20 35942:16 35981:18 36078:20 36080:22 36080:23 sure 35960:4 35965:23	35967:4,7 35982:12 35992:9 36007:13 36043:23 36045:3 36048:2 36052:20 36053:3 36078:6 36083:2 36084:7 36089:6,11 surely 36089:10 surrounding 35957:19 sympathise 35957:17 35961:15 sympathises 35971:16 35972:3 sympathy 35936:1 system 36095:21 36096:7 s.u.o 35935:4 36073:21 36083:16 <hr/> T <hr/> table 36067:4,22 36093:12 take 35937:15 35949:16 35974:13 35978:14 36007:25 36009:4 36011:13 36012:7 36013:5,19 36013:23,24 36014:5 36015:20 36023:19 36029:18 36034:15 36035:1,18,24 36049:21 36050:22 36052:23 36062:8 36070:18,19 36071:14,15 36073:13 36081:23 36081:24 36082:1 36083:10,11 36088:8 36102:23 taken 35944:22 35967:20 35968:13 35970:24 36017:14 36025:12 36033:2,24 36034:9 36037:21 36077:5 36085:4 takes 35980:24 36032:17 36046:15 36059:12 talk 35945:22 35946:1 35946:4 35960:25 35961:2,9 35992:12 35993:2 36004:24 36014:23 36015:1,4 36041:23 36050:13 36060:8,24,25 36062:5,5 36067:2,4 36067:8,8,9,19,20,23 36069:2 36076:8,8,11 36081:10 36082:10 talked 35946:14,17 talking 35945:21 35947:2 35952:1 35972:6 35977:4 35983:17 35995:19 35995:20,21,23 35996:14 36010:3	36016:21 36028:8 36038:3 36049:1 36050:11,12 36067:13 36098:22 36098:22 36100:4,6 36101:19 taxis 36097:20 tea 36013:23 36015:6 36081:24 36082:1 36083:11 tear 36088:21 teargas 35936:20 35937:13 tears 36061:10 teatime 36081:23 television 36052:14 36055:14 tell 35935:8 35940:17 35940:23 35941:1 35945:17 35950:10 35970:16 35978:19 35995:11 36013:22 36015:11 36016:7,8,9 36040:23 36042:24 36048:4 36049:15 36060:15 36061:9 36062:14,18,19,24 36063:6,10 36064:25 36065:2,5,8,17 36066:15 36067:25 36068:4,6,16 36075:19,22 36082:2 36082:14,15 36096:11 36102:2 telling 35938:12 35941:8 35995:24 36060:16 36061:1 36067:1,18 36072:9 tells 36067:14 ten 35956:21 tendered 36022:7 terms 36004:2 36020:10 36021:2 36025:17,20,23,25 36026:2 36034:18 36041:6 36048:12 36050:6 36097:25 terribly 36054:15 test 36027:1 36028:12 36028:21 36040:9,10 36040:11,14 36046:6 36046:6,7 testified 35936:7 35943:24,25 35944:8 35944:21 35945:2 35994:2 36084:7 36085:20 testimony 35939:11 tests 36025:2 36028:13 Textile 36023:23 thanks 36016:13 36095:10 theoretical 36101:11 there'd 36043:19 36044:8 there's 35935:9
--	--	--	---	---

35943:11 35947:9,12 35951:10 35958:8 35963:15,25 35964:7 35969:19 35975:2 35979:8 35981:6 36015:1 36021:11 36028:10 36029:3 36030:8 36032:20 36034:21 36052:10 36053:21 36067:5 36070:15 36073:2 36085:7 36089:18 36096:4 they'd 35989:6 36003:3 36043:5,5 36044:14 they're 35957:2 36014:8 36054:15 they've 35951:9 35970:7 thin 36040:25 thing 35935:25 35943:22 35946:9 35971:5 35981:19 36001:8 36022:24 36023:2 36028:9 36040:3 36042:22 36048:21 36055:15 36055:20 36056:20 36058:2 36060:2,21 36063:10 36068:25 36069:1,24 36070:3 36072:13,13 36091:19 36095:14 things 35948:3 35954:8 35958:11 35996:13 35996:19,19 35997:3 36016:25 36018:6 36029:11,18 36030:20,21 36075:11 36090:2,8 36098:21 thing's 36035:13 thinking 35972:20 35973:17 36035:13 thinks 36067:14 third 36028:23 Thirion 36017:18,20,21 36033:10 36062:13 36062:19 36065:21 36073:2 36074:9 Thirion's 36017:18 thought 35965:20 35972:23 35985:15 36006:12 36054:12 thousands 36097:10,14 three 35940:8,12 36009:11 36012:9,21 36024:22,22 36025:3 36026:3 36027:20,21 36040:15 three-pronged 36040:11 threw 35972:12 throw 36030:5,6 36031:13 36089:2 throwing 35964:2	36033:18 thrown 35963:13 36035:14 36089:3 throws 36026:19 thrust 36043:25 till 36102:23 times 35971:22 36027:20 36073:6 today 35962:25 36004:25 36022:6,24 36056:1,12 36058:5 36059:25 today's 36099:1 told 35942:13 35951:8 35957:1,3 35961:20 35983:8 35987:25 35989:14 35990:7,8 35990:10,11,22 35992:4 35994:17,21 35994:22 35995:9 35996:16,22 36014:7 36015:2,15 36029:7 36030:10 36058:13 36060:9 36079:17,19 36082:13 36099:15 tomorrow 36056:2,11 36060:1,2 36102:20 36102:21 36103:1,13 top 35937:7 35984:16 35984:18 36009:3 36090:21 36094:22 topic 35993:1 35998:9 36032:6 tortured 36092:2 total 35958:23 touch 36019:19 track 36054:6 traditional 36095:22 36096:4 36097:8 tragedy 36018:9 36034:9 tragic 36009:11 transcript 35962:18 35967:22 35984:6 35993:3 36040:23 36052:6,10,11 36053:23,25,25 36054:5 36057:15 36067:7 36069:7 36070:9,24 36073:12 36075:17 36091:3 translate 36052:9 36055:5 translated 36055:11 36056:22 36070:24 36071:7,13 36075:11 translation 36052:7,15 36053:25 36054:6 36057:1,2,3 36059:3 trapped 35969:20 tread 36064:24 treat 35969:21 trees 35964:10 trial 36025:8,11,14 36038:24,24 trials 36023:19	tried 35961:19 36005:10,15 trip 35993:6 35995:4 trouble 35935:22 troubles 36012:16 true 35960:1 36002:1,2 36027:9 36085:12 36087:12 36090:3 36091:1 36097:11 trust 36064:25 truth 36059:15,16 try 35943:14 35958:19 35973:22 35975:23 36016:4 36019:10 36047:19 36074:1 36086:25 36103:2 trying 35935:23 35938:4 35947:6 35964:24 35965:7 35966:14 35969:4,4 35969:23 35974:4 35980:24 35981:13 35981:25 35982:17 36009:24 36013:4 36020:18 36034:2 36047:17 36048:10 36054:15 36065:23 36069:23 36076:6 36090:15 36098:21 Tshepiso 35958:15 Tuesday 35935:25 36103:6 turn 36034:9 36049:2 36102:9 turned 35963:14 35964:2 36079:1,7 36084:13 36088:1 36090:9 two 35940:8,12 35949:11 35951:18 35951:20 35956:9,11 35968:16,22 35972:10 35973:2 35980:20 35996:19 35997:24 36014:2 36019:1 36025:2 36029:4,18 36037:15 36039:2,25 36040:12 36045:21 36075:11 36084:1 36085:25 36100:9 tying 36092:3 type 36003:1 36037:7	undermined 35971:14 underplay 36037:18 understand 35935:18 35947:7 35955:8 35959:10,20 35960:8 35960:11 35961:4 35966:4,7 35967:14 35968:5 35969:8 35972:13 35975:1 35977:9,17 35978:9 35981:21 35982:11 35982:12 35985:11 35985:17 35986:14 35986:18 35987:3,5 35988:21 35991:8,18 35992:8,10 35994:16 35995:5 35996:17 35998:22 35999:2 36000:9 36002:17 36003:5 36006:18 36014:14 36015:11 36015:13,15 36023:13,15 36026:25 36042:25 36053:14 36057:17 36075:25 36076:5,6 36076:17 36077:19 36078:7 36083:3 36093:7 36094:1,21 understanding 35955:14,16 35966:19 35969:14 35993:20 36018:19 36019:7 understood 35952:3 35973:8 35986:4 35993:19 36006:24 36067:12 undertaken 36039:7 unfair 35954:24 35999:14 36003:19 36024:6,13,16 36028:16 36029:4 36032:23 36033:5 36040:14,19 unfavourable 36036:6 36037:5,6 unfolded 36019:7 unfortunate 35972:21 35973:13,14,17 35974:21 unhappy 36056:13 uniform 35936:8 union 35950:17 36090:13 unjustified 36003:18 36004:17 unnecessarily 36050:17 unreasonable 36043:3 unrelated 36045:23 unsophisticated 36006:17 until.27 36055:9 Unusually 36022:6 upheld 35972:24 35973:1,5 35974:13	upholding 35971:1 use 35977:7 36031:14 36035:23 36038:20 36046:4 36085:25 36087:25 36096:5 36100:20 usual 36020:19 usually 36024:19 utilised 36015:1 utterances 36020:12
V				
validly 36004:21 value 36019:25 36029:5 36032:1,4,10 36042:4 van 35937:11 various 36028:13 36030:20 36095:16 veld 35964:5,9 Vermaak 35983:1,2,4,5 version 36055:11 versions 35983:9 versus 36023:23 vicinity 36049:7 victim 36020:22 36026:22 videos 35968:24 35996:10,10 36041:22 36098:12 36099:18 view 36004:6 36007:3 36019:23 36020:17 36020:21 36026:21 36030:17 36095:14 36096:3 views 36094:23 Viljoen 36050:25 violence 35969:6 35983:22 violent 35969:11 35979:19,21 visible 36090:6 voice 36017:18 vote 36061:8 votes 36061:6,7				
W				
wages 35960:25 35961:2,10 35987:15 waiting 35988:5,14 35991:5,9,24 35992:2 36021:23 36054:8 walk 36059:13 walked 35963:21 walking 35937:10 36041:24 wanted 35941:12 35951:6 35953:9,16 35959:15,16 35960:5 35968:19 35989:17 35989:23 35990:2,4,8 35991:13,14 35996:16,23 35998:1 35998:2,4,6 36014:11 36014:13 36016:15				

<p>36036:25 36046:2 36048:22 36075:8 36079:18 36081:12 36082:19,21 wanting 35970:4 wants 35978:2 36014:23 36015:1,4 36015:16 36028:19 36042:3,25,25 36066:25 warning 36027:13 Warrant 35939:2 35957:11,14 35978:22 35979:6,10 35983:17,18 washing 35957:6 wasn't 35938:7,15 35941:22 35943:16 35943:19 35944:16 35944:18,20 35951:2 35961:15 35982:6 35995:20 36000:14 36001:24 36014:24 36018:20 36032:24 36035:20 36085:1 36086:17 36089:13 36089:16 waste 36019:22 watch 36072:9 watched 36074:3,3 watching 36052:14 36055:14 36072:10 water 36092:3 36096:12 waved 36099:15 waving 36099:7,9,17 36099:24,25 way 35938:19,22 35962:5,9,14 35963:7 35965:18 35968:9 35973:2 35974:15 35977:20 35986:5,16 35986:20,24 35987:7 35987:8 36016:4 36018:18,22 36026:4 36026:7 36044:5 36047:17 36060:7 36093:17 ways 36034:16 weaken 36082:22 weakened 36083:5 weapon 35937:22 35939:8 weapons 35936:23 35937:19 35938:1,6 35938:13,19 35939:7 35940:5 wearing 36022:23 36023:1 36072:7 wedge 36040:25 weeks 36009:11 36012:9,21 36025:3 36026:4 36027:20,22 36085:25 weigh 36044:25 36051:14</p>	<p>weighed 36051:18 weighing 36037:21 weight 36021:8 36025:10 36027:18 36027:22 36031:12 36037:25 36038:1,4,7 36038:11,14 36052:1 went 35939:13 35945:24 35961:17 35963:18 35973:9 35987:18,21,24 35989:6,7,9,13 36061:21 36079:8 36084:14 36085:8 36086:15 weren't 35990:11 36010:22 36037:15 36049:25 36054:10 36088:8,10 Wesley 35935:7,9 35936:1 36008:13,14 36008:18 we'd 35942:23 36043:8 we'll 35935:11 35952:8 35977:13 35978:14 36014:10 36017:10 36044:18 36050:23 36054:17,18 36102:19 36103:12 we're 35992:12 36005:24 36006:11 36014:9 36015:14 36016:3,16 36041:4 36050:10,11 36052:5 36052:20,24 36065:10 36103:9 we've 35984:13 35995:24 36007:17 36025:13 36032:7 36040:7 36041:21 36043:14 36051:25 36084:22 36088:12 36097:12 whatsoever 35976:21 36021:11 36045:23 36095:18 what's 35949:15 35955:5,23 35967:4 35970:14 35975:20 35978:8 36001:12 36009:2 36046:9,10 36057:1,18 36102:20 white 36068:16 36071:12 36074:23 36074:24 36103:6 whites 36065:1,1,3,6,9 36075:20 who's 35972:8 36086:3 36086:21 wide 36096:20 wider 36039:4 36040:2 wild 36048:18 willy-nilly 36042:10,13 winch 35984:21 35985:1,12,21 35989:23 35990:1</p>	<p>wire 36062:9 wish 35968:7 35970:10 35975:18 36004:8 36014:15 36017:8 36019:12 36031:19 36039:24 36090:10 wishing 36018:15 witchcraft 35951:19 35954:8 witness 35935:3 35944:4 35951:18 35954:25 35955:1,4,8 35955:11,12 35964:7 35967:18,21 35968:1 35970:19 35971:15 35971:21 35973:4 35976:15,21 35977:5 35977:10 35978:15 35978:20 35983:25 35985:20 35999:11 35999:14,14,19 36001:10 36003:16 36003:20 36004:1,2,5 36004:11,15,19 36005:1 36006:6,17 36007:12 36009:25 36013:15 36014:11 36014:16,24 36015:2 36015:11 36016:18 36020:17 36026:4,5 36028:16 36037:1 36054:23 36056:4 36073:4,20 36077:14 36077:18 36088:4,5,7 36089:11 36094:5 witness's 35958:9 36005:6 woke 35963:17 wonderful 36051:1 Wonderkop 35987:21 35987:23 35989:8,10 35989:13 won't 35965:7 35969:25 36053:3 word 35973:5 35977:7 36057:14 36076:3 words 35970:18 35982:20 36019:8 36021:6 36022:15,20 36024:23 36029:19 36036:14 36037:1 36039:4 36075:12 36091:1 36093:19 36094:19 work 35935:23 35962:5 35962:9,14 35963:9 35963:16 35964:2,13 35964:20 35965:3,18 35965:21 35971:12 35986:5,16,20,24 35987:5,7,9 35988:1 36019:25 36032:3 36034:16 36058:4,10 36058:11,12 36059:1 36059:3,4,4,9,10,13 36059:24,25 36062:3</p>	<p>36066:9,10,10 36068:8,19 36070:11 36071:18,21 36074:18 36075:1 36085:8 36091:23 36102:5,9 worked 35959:24 35960:2 35985:22 worker 35942:23 35943:11 36029:22 workers 35960:14,20 35960:23 35961:16 35980:21 35989:19 35989:19 35990:4,8 35990:10,12,13,24 35991:9,24 35993:7,9 35993:14 35994:5 35995:16,24 35996:2 36061:18 36080:18 36080:21,23,25 36081:3 36082:18,21 36082:24 36083:5 36084:3 36090:13 working 35985:23 35994:6,23,25 35995:3,17,25 35996:2 36060:16,17 36068:9 36078:17,19 36080:18,23 36081:17 36084:3,11 world 36030:4 36047:8 worries 36027:4 worry 36087:9 worst 36048:14,17 36085:8 worthy 36039:6 wouldn't 35935:25 35939:5,9 35941:4 35942:12 35943:6 35945:15 35964:22 35965:22 36007:9 36016:3 36027:2 36042:16 36044:15 36090:1 wounds 35979:12 write 35982:5 36032:16 36048:6 36049:16 written 35982:4,8,20 36053:16 36057:18 36059:2 36065:20 wrong 35964:7 35965:20 35966:22 35970:14 35997:8 36003:2,4,14 36007:8 36007:8 36044:17 36055:11 36057:1 wrongs 35966:21,24 wrote 35982:4</p>	<p>36091:12 Xolani 35935:4 35965:16 36073:21 36083:16 36091:13 XX2 36008:14,24 36009:4 XX2.23 36008:15</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Y 36026:4 year 35985:5 years 36024:22,22 36070:8,8,17 36071:12 yesterday 35935:23 35936:6 35951:17 35999:10 36004:25 36098:12,25 young 35960:4 36070:14 you'd 35936:1 35954:18 35955:22 36066:7,14 36074:20 you'll 35959:5 35984:18 35993:4 35998:11 36024:17 36088:11,13 36101:18 you're 35942:16 35945:21,25 35956:13 35958:3 35960:9 35962:14 35969:20,21 35970:9 35977:20 35981:23 35984:1 35987:23 35992:19 35995:7 36007:20 36008:1 36011:14 36016:21 36040:4,24 36046:1 36051:2 36054:18 36072:10 36077:4,25 you've 35935:8 35950:20 35957:1 35958:3 35974:10 35979:1,2 35981:20 35984:2 36029:19 36035:5 36040:4 36046:14,15 36080:1 36080:9 36082:6 36083:25 36084:1,22 36085:20 36086:6 36091:6,18,18 36092:6 36095:12,13 36097:6</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>Z 36026:4 Zeffert 36022:6</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>000 35976:18,22 36058:13 36070:18 36071:13 36095:18 09:10 35935:2 09:29 35947:12 09:49 35959:2</p>
---	---	---	--	--

<p style="text-align: center;">1</p> <p>1 36044:10 36055:17,20 36055:22 36058:25 36059:16 36062:14 36062:19 36065:21 36066:6 36070:19 36071:15 36074:16 36074:22 36087:7 36102:23 1.38 36056:9 1.49 36056:17 1.57 36058:1 10 35935:11 35956:11 35956:12,14,20,21 35957:1 35963:6 35975:2,7 35979:13 36092:21 10th 35961:16 35962:6 35962:8 35967:24 35968:3,24 35976:19 35986:5,17,21,21 35987:5,14 36030:1 10:09 35966:23 10:29 35978:7 10:53 35978:18 11 35993:4 11th 35945:3,23 35946:2,5 35949:8,10 35949:17,24 35962:5 35987:19 35988:10 35988:16 36036:18 11:13 35989:16 11:33 36000:20 11:53 36013:11 116 36008:7 118 36007:14,18,21 36008:9,10,10 12 35953:7,14,21 35968:19 36050:1 36059:1,2,3 36066:9 36066:12,16 36070:25 36071:13 36075:12 36079:18 36081:13 36082:14 12th 35944:23 35950:8 35998:12,16 12,500 35998:3 12.5 36056:15 12:16 36015:10 12:36 36026:21 12:55 36039:2 13 36080:15 13th 35944:1,25 35945:8 35947:8 35979:4,6 35993:2,6 35993:10,25 35998:20 36036:22 36077:6 36078:5,8,12 36082:7 36083:21 36084:21,25 36085:9 36085:21 36086:4,15 36089:7 36100:25 14 35996:11 14th 36030:1 14:00 36051:7</p>	<p>14:10 36054:21 14:30 36064:12 14:50 36073:11 15 35935:15 35978:15 35979:1 36015:7 36083:13 36091:11 15:24 36083:15 15:43 36091:24 16th 35949:8,10 35950:16 35954:2 35976:19 35996:7 36009:11 36012:10 36012:21 36018:1,9 36018:15 36021:14 36022:18 36027:6,9 36028:21 36029:10 36029:12,21 36033:14,19,23 36036:17,18,22 36037:13,16,17,18,19 36037:23 36038:1 36039:19 36041:8,8,9 36041:10,15,21,22 36042:8 36048:21 36049:8 36075:6,6 36076:4,9 36077:14 36077:18,22 36092:22 36093:2 36098:12,25 36099:19 16:03 36101:16 18 35988:4 35991:4 36005:6,8,9 19 36005:8 36086:21 1982(1)SA951-T 36023:24</p> <p style="text-align: center;">2</p> <p>2 35979:15,16 35982:14 36051:4 36055:25 36059:17 36073:7,8 36074:7 36090:3 2.06 36058:8 2.24 36058:17 36059:6 20 35935:16 35997:18 36070:7,8,17 36071:12 2006 35985:22 2007 35985:22 2012 35944:1,23 35945:23 35946:2,5 35947:9 36007:24 36008:4 36012:1 36017:14 36053:8 36080:15 2013 36029:13 2014 35935:1 2036 36055:2 23 35935:18 247 36091:5 248 36091:4 25 35979:1,2 27 35985:4 277 35984:6 28 35935:1</p>	<p style="text-align: center;">3</p> <p>3 35976:18,22 35979:14 36055:21 36068:3 36090:10 36095:18 3.02 36059:20 3.17 36060:5 3.30 36060:12 3.48 36061:2 30 36097:9 31108 36091:4,8 34 36093:2,12 35 35984:9 35458 35984:6 35459 35962:19 35963:3 35460 35988:3,4 35480 35993:3 35487 35993:19</p> <p style="text-align: center;">4</p> <p>4 35964:21 36062:20,24 36062:24 36068:23 36091:8 36095:6 36100:11 36102:24 36103:3,12 4th 36049:6 4.03 36061:5 4.34 36061:13,24 40 35979:1 36097:9 45 35958:3,4 45th 36020:22 36026:21 458 35984:10,11</p> <p style="text-align: center;">5</p> <p>5 35982:15 36053:8 36063:14 5th 36007:12 36008:3 36009:10 36011:8 36012:1 36013:21 36014:7 36017:14 36018:13,17 36021:19 36022:17 36023:1 36075:24 36076:7,12,22 5.04 36062:17 5.19 36062:22 5.38 36063:3 5/9/2012 36053:17 500 35953:7,11,14,21 35968:19 35987:16 36048:21 36050:1 36059:1 36066:9,12 36066:16 36068:11 36068:14,25 36069:2 36070:25 36074:17 36074:18,25 36075:1 36075:8,12 36079:18 36081:13 36082:14 36082:16,23,25 36083:6</p> <p style="text-align: center;">6</p> <p>6 36020:24 36070:24 36071:9,11 36080:2</p>	<p>36080:14 6.09 36063:16 6:09 36064:20 36065:11 6:48 36065:13</p> <p style="text-align: center;">7</p> <p>7 36052:25 36053:2,3,3 7:22 36066:5 7:49 36066:20</p> <p style="text-align: center;">8</p> <p>8 36080:16 8.1 36053:24 36054:2 8.2 36053:25 88 36008:20 89 36008:18,25 36009:5</p> <p style="text-align: center;">9</p> <p>9 35993:19 35994:2 36033:14 36036:17 36080:16 36102:20 36102:22 36103:13 9th 35976:20 36033:19 36033:23 36037:13 36039:18 36076:4,8 36077:14,18,22 9:35 36070:2 90 35984:3 91 36008:24 36009:5 955 36023:25</p>
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