

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 284

3 SEPTEMBER 2014

PAGES 36663 TO 36868



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<p style="text-align: right;">Page 36663</p> <p>1 [PROCEEDINGS ON 3 SEPTEMBER 2014] 2 [09:08] CHAIRPERSON: [Microphone off, inaudible] 3 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.): 4 Chairman, thank you. Mr White, good morning. Yesterday I 5 was trying to ascertain from you if the operation of the 6 16th was planned according to Standing Order 262 and it was 7 written. What did you say was missing which are critical 8 Public Order Policing measures that ought to have been 9 reflected if the plan was written? 10 MR WHITE: Chair, I don't know that there 11 are specific measures that were necessarily missing, but a 12 plan I think is something that has measures and it also has 13 an order to it. So I didn't have a look at this plan and 14 said they forgot to include this particular element. I 15 looked at the plan in the sense of what they were trying to 16 achieve and how they were trying to achieve it and I raised 17 concerns in relation to those aspects. 18 So it's not to say that, you know, I would point 19 to a particular issue that was missing. It's a combination 20 of things, like for example we were talking yesterday about 21 the rollout of the wire and how Mr Scott interpreted how 22 that should happen and what its purpose was compared to 23 other people, how they interpreted what its purpose was, 24 and in my direct evidence we talked about the original 25 configuration of the wire and what that seemed to be</p>	<p style="text-align: right;">Page 36665</p> <p>1 this in I think all of my statements, you know, no approach 2 to this would have been risk-free. This was an inherently 3 complex, difficult and dangerous operation. So yeah, it 4 goes without saying I think that it's, there's no approach 5 to this which is risk-free. 6 My criticism I suppose is that there are 7 variations in terms of the levels of risk and the way that 8 this was approached I think increased the level of risk 9 considerably, specifically with regard to the potential for 10 use of lethal force. 11 CHAIRPERSON: And Mr Semanya asked you 12 about disarming 3 000 people. If you reduce it to 300 or 13 400 on the basis that the evidence indicates that it may be 14 correct to say that there was a militant group of about 3 15 to 400 and the others were not as militant, or not militant 16 at all necessarily, if it was to be seen as a plan to 17 disarm the 3 to 400 would your comment still stand? 18 MR WHITE: If you could even 19 hypothetically imagine, Chairman, that we were dealing just 20 with 3 to 400 people, the group that's been described, and 21 they were sitting on the koppie in isolation, just on their 22 own, no one else was there, I still think that, you know, 23 this is a very difficult, complex and potentially dangerous 24 operation where you're sending police officers who by 25 necessity would be heavily armed in to deal with that</p>
<p style="text-align: right;">Page 36664</p> <p>1 intended to do. I think the word Mr Scott used was 2 channelize, and we had a discussion about the meaning of 3 that work. If you looked at the original configuration of 4 that wire it suggested that people couldn't come towards 5 the informal settlement, but yet within the workings of the 6 plan it would seem that there was provision to allow people 7 to come towards the informal settlement in between the time 8 that the wire was rolled out and Mr Calitz was the, he 9 would give the warning and he would wait for a while. 10 So my point basically in relation to the plan was 11 that there were a number of issues which I think were 12 confusing and to some extent contradictory, but in answer 13 to Mr Semanya's question is there a particular thing that, 14 you know, a magic pill if you like that was missing within 15 that plan, not necessarily so. It's about understanding 16 what it is that they were trying to achieve and having a 17 plan which will help you to achieve that, and I'm not so 18 sure that in this particular plan those two things are 19 included. 20 MR SEMENYA SC: And yesterday we agreed, 21 I thought, that your criticism is really aimed at saying 22 you cannot risk-free disarm, as you call the 3 000 people 23 on the koppie. That's the focus of your criticism. 24 MR WHITE: I think that's a statement of 25 fact. Well, in my opinion I suppose that no, and I said</p>	<p style="text-align: right;">Page 36666</p> <p>1 group, and therefore you have to ask yourself the question, 2 you know, what is it we're trying to achieve and why are we 3 trying to achieve it and then you're balancing up the risk. 4 However, that's not the circumstances that the 5 South African Police Service faced on the day because in 6 addition to what we've just described there were all of 7 these other people. So there's the potential even for 8 collateral damage in relation to people who potentially are 9 not going to be aggressive, because of course the 10 disadvantage that the South African Police have in trying 11 to delineate who's who is that, unlike the police service, 12 they don't wear uniforms. So it's very difficult in a 13 crowd like that to be able to absolutely identify, you 14 know, who they, the more concerning group are, and I 15 suppose that – to come back to Mr Semanya's slightly 16 earlier question with regards to what was missing, well one 17 of the things that would have been missing in the plan if 18 you like, was any mechanism for filtering with regards to 19 allowing people to come off the koppie, those people who 20 wanted to simply walk away, those people who perhaps were 21 never intending to engage in any sort of confrontation, if 22 indeed there were people who were. 23 As I said before that the plan was slightly 24 confusing because it seemed to try and do a number of 25 different things, but if the police service were happy to</p>

<p style="text-align: right;">Page 36667</p> <p>1 allow people to leave the koppie but had to differentiate 2 between those people who were armed and those people who 3 weren't, you know one of the things you would have expected 4 to see is some sort of filtering mechanism for people 5 leaving the koppie, and that wasn't present. 6 MR SEMENYA SC: Mr White, I have time 7 constraints. If there is a way in which you can answer my 8 questions without embellishment I would appreciate it, but 9 if you have to then that's what it is. 10 If you were in the JOCCOM meeting of 16 August 11 2012 at 13:30 and the Provincial Commissioner said I want 12 you to go and disarm those people on the koppie, do I 13 understand you to say you would have said no, it can't be 14 done? 15 MR WHITE: I'm absolutely satisfied that 16 given my experience with dealing with these issues I would 17 have raised an objection. You know I've spent 30 years in 18 a disciplined organisation and I understand the concept of 19 orders, but I would have raised an objection, and from my 20 very first statement, my provisional statement, I 21 highlighted the fact that I was surprised that no one did 22 so. 23 MR SEMENYA SC: Ja, but what would be the 24 objection if the conversation in the JOCCOM is we are going 25 to put up a barbed wire - and let's disabuse our minds of</p>	<p style="text-align: right;">Page 36669</p> <p>1 would have been as people approach the koppie later on in 2 the morning after we had done the encirclement, to have 3 some sort of filtering mechanism that if people wanted to 4 come and protest peacefully then that's entirely their 5 right to do so, but there would have been a mechanism to 6 ensure that people who were armed were deterred from 7 coming, or alternatively that the arms were able to be 8 taken from them. So that's the first thing. 9 MR SEMENYA SC: Let's test the first 10 thing as you point out. On your analysis there was 11 insufficient intelligence to tell us where these people 12 are, where they are sleeping, and we knew from Lonmin 13 records that only 10% of the workforce was staying in 14 hostels. Correct? 15 MR WHITE: I think I can agree with that. 16 MR SEMENYA SC: And what we also know is 17 that according to the reconnaissance that was done by 18 Brigadier Calitz there were only a few people in the 19 evening at koppie 1. 20 MR WHITE: That's correct. 21 MR SEMENYA SC: So we would have planned 22 to encircle koppie 1. 23 MR WHITE: That was Mr Scott's plan. 24 MR SEMENYA SC: Yes, and to our horror Mr 25 X tells us they were at koppie 3 all the time, hiding</p>
<p style="text-align: right;">Page 36668</p> <p>1 what we know now - we're going to put a barrier, i.e. a 2 measure that was not present on the 13th, to make sure that 3 we delineate the group of strikers from the police; we 4 expect after we announce that we wanted them to disperse 5 that the majority of those who were on the koppie will do 6 so, as it happened as a matter of fact, and we'd expect 7 that those who are belligerent and refuse to disarm would 8 be a minority in the 3 or 400. We will use standard 9 operation procedures of POP to use water cannon to split 10 them into smaller groups. We'll use the armoured vehicles 11 to split them into smaller groups. We'll encircle smaller 12 groups and arrest those. Where we fail to do so there 13 would be other tactically trained individuals to do it. 14 How would you meet that argument in the JOCCOM? 15 MR WHITE: I'll meet the argument by 16 basically saying first of all this is your - what is it 17 we're trying to achieve, and we have a responsibility to 18 try and achieve that, i.e. the disarming of people with 19 the minimum use of force. That's our responsibility, and 20 my first point then would have been all through the 21 planning process Lieutenant-Colonel Scott had talked about 22 an encirclement option early in the morning when there 23 weren't people, many people around, so why don't we do 24 that. 25 The second thing I would have been suggesting</p>	<p style="text-align: right;">Page 36670</p> <p>1 there. How would that have achieved the goals that we 2 sought to achieve? 3 MR WHITE: Well, what we would - 4 MS LE ROUX: Chair, sorry, Chair, 5 obviously that's a disputed fact. I'm assuming Mr Semenya 6 would like Mr White to assume that people were hiding in 7 koppie 3. 8 MR MPOFU: Ja, it's not even a disputed 9 fact. It doesn't, it's a non-existent fact. Mr X never 10 said such a thing. 11 CHAIRPERSON: Well, let's not get 12 involved in that. I think the simple point is Mr Semenya 13 asks Mr - or I take it implicitly - Mr White to accept it 14 as a fact for the moment and proceed to deal with it. 15 MR MPOFU: As an assumption? 16 CHAIRPERSON: Yes, I say assume it's 17 correct. Whether it is a fact, whether there's any 18 evidence to deal with it, whether if Mr X said it he can be 19 believed on that, all these other matters we don't have to 20 debate at the moment. 21 MR MPOFU: Okay. 22 MR WHITE: Chair, then if it's helpful 23 and if the planning that we are engaging with was in 24 relation to the issue at koppie 1, the police certainly, 25 well that's a disputed fact. What wouldn't be disputed is</p>

Page 36671

1 the police weren't aware of that at the time, so the police
2 were engaging in relation to koppie 1, so therefore my
3 understanding of the evidence is that the vast majority of
4 people left koppie 1 at some point during the previous
5 evenings, leaving a small number, and I think that may be a
6 disputed fact with regards to how many, but a small number
7 of people on the koppie over the evening. So therefore
8 there was the potential to carry through Mr Scott's plan
9 and to encircle the koppie, which I think had the intention
10 of being able to engage with that much smaller number of
11 people who were on the koppie, but also to prevent people
12 coming back to the koppie the following day, as I
13 understood it.

14 MR SEMENYA SC: And to use your expert
15 opinion, sometimes a particular police conduct can escalate
16 the response of the crowd?

17 MR WHITE: Yes, I've said that.

18 MR SEMENYA SC: So if we mistakenly went
19 to koppie 1 it may have agitated those who were in koppie
20 3, on the assumed facts that are intended to take into
21 account. Correct?

22 MR WHITE: I think so, but I think you
23 had to have the caveat in terms of not using the benefit of
24 hindsight in relation to those police officers and at that
25 stage, whether it's a disputed fact, if I'm assuming that

Page 36673

1 if I raised the objection, if I had been at the JOCCOM and
2 I raised the objection against Scott's plan and suggested
3 no, let's encircle the koppie early morning and make
4 arrests of the fewer people on it, given the assumed fact
5 that maybe there were other people at koppie 3, not 3 000
6 but you mentioned the word 3 000, so therefore my
7 assumption is what Mr Semanya is saying to me is that by
8 following through this encirclement plan we enrage, if you
9 like, the 3 000 who are now going to protest against the
10 arrests of a smaller number of people.

11 MR SEMENYA SC: I'm just asking whether
12 that would have been a possibility.

13 MR WHITE: Well, potentially it's a
14 possibility, but my point is that surely that's exactly the
15 same outcome than logically if you follow through Scott's
16 plan as actually was enacted on the 16th to arrest a
17 number of people. If potentially there's going to be
18 protest against those arrests, well then there's going to
19 be a protest against the arrests. It doesn't matter when
20 the arrest happened. So I think that those two facts
21 cancel each other out in terms of a consideration.

22 MR SEMENYA SC: Alright, and then you
23 postulate make a filtering line, and I give it to you that
24 when you wrote your provisional statement you hadn't been
25 to Marikana.

Page 36672

1 there were people on koppie 3 for the purposes of this
2 argument, but at the time the police didn't know that.

3 MR SEMENYA SC: Ja, but if we were having
4 this conversation at 13:30 JOCCOM on the day and I'm saying
5 if we arrest a few and don't arrest them all we are going
6 to have another problem now of 3 000 people demanding the
7 release of those that we arrested. Would that have been
8 one of the factors you must consider?

9 MR WHITE: I'm genuinely not sure that I
10 follow your argument because your argument seems to be
11 suggesting that if you arrest some people, well then you're
12 going to have a bigger problem because you're going to have
13 3 000 people protesting against those arrests. Well, if we
14 step back and we, and I haven't raised an objection at the
15 JOCCOM about the plan that Scott wants to go with, which is
16 around arresting people, well surely you would end up with
17 the same position anyway that if you arrest people you
18 potentially have 3 000 other people who are protesting. So
19 I don't really understand –

20 MR SEMENYA SC: You don't understand?

21 MR WHITE: - your argument.

22 MR SEMENYA SC: You don't understand?

23 MR WHITE: You're saying to me that the
24 actions of police often result in a reaction. I've made
25 that point, okay. What you've just asked me is that if we,

Page 36674

1 MR WHITE: That's correct.

2 MR SEMENYA SC: Have been there now you
3 saw it's a rugged, rural terrain, and given the fact that
4 the people who were coming to the koppie were coming from
5 all directions, exactly where would you have put the
6 filtering line?

7 MR WHITE: Given the fact that people
8 come from all directions, but there were certainly, if you
9 like, concentrated points, for example the small road that
10 comes from the informal settlement alongside of the kraal,
11 lots and lots of people approached that way and
12 subsequently actually left that way. So there are
13 strategic points that you could look at where you could put
14 a mechanism in, because what we're trying to achieve in
15 terms of putting in a filtering line, ideally you know, if
16 you can prevent anybody going in there with weapons then
17 that's ultimately what you would want to achieve. But in
18 putting a filtering mechanism in what you're trying to do
19 is make the situation much less worse. So you maybe don't
20 perhaps catch every single person, but you can make the
21 situation potentially less worse, and the fact that there's
22 a filtering mechanism in there might actually deter people
23 who want to come with weapons from actually approaching in
24 the first instance. So it's not a perfect solution. I
25 don't for one second suggest that, but there are a range of

<p style="text-align: right;">Page 36675</p> <p>1 measures, including that, that potentially help the 2 situation.</p> <p>3 MR SEMENYA SC: And if I was in the 4 JOCCOM meeting I would have said, Mr White, on Monday Mr 5 Mpembe had a line of police and asked them to disarm and 6 what they did is they just permeated that line, how would a 7 filtering line this time work?</p> <p>8 MR WHITE: Well, I think we're talking 9 about two very different set of circumstances and you know 10 what happened on Monday was that Mr Mpembe and a small 11 number of police officers, we saw that in the video, were 12 addressing a considerable number of people. I engaged with 13 the facts around the 13th on the last time that I gave 14 evidence, and the very fact that there was no substantial 15 planning for that, and we talked about that issue as to why 16 on a time factor they couldn't have sat down and worked out 17 a comprehensive written plan.</p> <p>18 [09:28] But also the evidence suggests that there was no 19 substantial briefing. Lots of police officers who were 20 there didn't know what it was that they were trying to do 21 and so basically the crowd -</p> <p>22 CHAIRPERSON: Mr Nichol, Mr Nichol, I'm 23 afraid you're disturbing us with your conversation. I'm 24 sure you didn't do it on purpose, but if you want to have a 25 conversation I suggest you have it outside. We find it</p>	<p style="text-align: right;">Page 36677</p> <p>1 you contemplate should have been a preferred process on the 2 16th.</p> <p>3 MR WHITE: I don't think that Mr Mpembe 4 having a number of police officers with him who had no 5 plan, who hadn't had any substantial briefing would 6 represent the type of filtering line that I will be talking 7 about were if at that JOC meeting at 13h30 on the 16th we 8 potentially had have said look this is not a good idea what 9 Mr Scott's suggesting at 3:30, there are alternatives. And 10 maybe to wait until the next morning and to do the 11 encirclement plan which he'd have suggested for pretty much 12 most of the week, supplemented by what I'm suggesting for 13 example some filtering lines. What that would have looked 14 like would have been different from a number of police 15 officers who, with all due respect, seemed to be acting on 16 their own initiative on the 13th because they hadn't been 17 properly briefed. I conceded before in my evidence that 18 there wasn't time to sit down and write a written plan. I 19 mean some of the correspondence that went between our legal 20 team and the SAPS legal team seem to be suggesting that I 21 thought they should stay in wherever they were for a few 22 hours and write off this time. I never said such a thing, 23 in fact when I read Mr Mpembe's statement before I 24 completed my provisional statement it implied that there 25 had been a plan, it implied that there had been a full</p>
<p style="text-align: right;">Page 36676</p> <p>1 distracting.</p> <p>2 MR WHITE: So basically what happened was 3 Mr Mpembe had given the ultimatum when he started the count 4 and then the crowd got up and walked away. Given that 5 there hadn't been any significant briefing, the number of 6 police officers who were there compared to the number of 7 people, I mean realistically the police would have been in 8 a difficult position and to be able to stop them. Having 9 said that there is evidence that Mr Mpembe's instructions 10 were actually, despite the fact that he'd given this 11 ultimate, that he was going to escort them. So actually 12 it's a very different set of circumstances that you know 13 the police were allowing them effectively to walk away and 14 the police walked along with them. And then it would seem 15 that the evidence is that obviously the confrontation 16 happened at a later stage, sparked perhaps by the issue of 17 the stun grenades and the teargas. It's a very different 18 set of circumstances.</p> <p>19 MR SEMENYA SC: Now, Mr White, with 20 respect, I'm not talking even the time when General Mpembe 21 had changed his mind that they be escorted instead, his 22 main purpose, he came in, they were in the centre, they 23 were surrounded by police, he said put your arms down. I 24 think maybe that's how it would work. They just stood and 25 walked. What would have changed it with the filtering that</p>	<p style="text-align: right;">Page 36678</p> <p>1 command structure in place before that operation on the 2 13th. It was I who actually pointed out that I suspected 3 that it was a spontaneous response. And it was and it 4 needed to be. The point is that those officers still 5 needed to be properly briefed and lots of the evidence 6 points to the fact that they weren't. So in terms of Mr 7 Semenya's point that this was a filtering line on the 13th 8 and I'm suggesting the filtering line may have been of help 9 on the morning of the 17th for example. We're talking about 10 two very different things, Chair.</p> <p>11 MR SEMENYA SC: If you put a filtering 12 line on the west people could have simply come from the 13 east given the terrain. No or am I wrong?</p> <p>14 MR WHITE: I fully understand the 15 terrain, we're talking about a wide, expansive area, but if 16 you think even about the plan as I rolled out some of those 17 police resources were in the west I think Kidd's team were 18 in the west. They were effectively supposed to be having a 19 filtering line working in the opposite direction. In other 20 words the plan was that they would protect the informal 21 settlement and as people approached them who were being 22 dispersed from the koppie they will react as a filtering 23 line to make sure that no people with arms went into the 24 informal koppie. So to an extent we'd be talking about 25 something similar happening the other way round.</p>

<p style="text-align: right;">Page 36679</p> <p>1 CHAIRPERSON: Captain Kidd's evidence is 2 they effectively did act as a filtering line because the 3 people who approached they told them to lay down their arms 4 and they did. So they did perform that function in fact as 5 far as I remember. 6 MR WHITE: That's correct, Chair and 7 that's the point that I'm making. What actually transpired 8 on the afternoon of the 16th was that Mr Kidd's teams as 9 part of the plan were supposed to be in front of the 10 informal settlement to the west to protect it. The idea 11 was as people moved away from the koppie if they were armed 12 they were going to effectively create this filtering line. 13 In other words so that armed people weren't allowed access 14 into the koppie. I'm basically saying if that was part of 15 his plan and he felt, you know that would have been 16 sufficient, well maybe on the next morning. I'm simply 17 suggesting that simply worked the other way round. So 18 instead of people being filtered this way they were being 19 filtered this way. 20 CHAIRPERSON: You move your hands 21 indicating firstly your hand's moving from the left of your 22 body to the middle and the other hand from the right of 23 your body to the centre. 24 MR SEMENYA SC: It seems to me, Mr White, 25 you agree with how the police had planned that if you get</p>	<p style="text-align: right;">Page 36681</p> <p>1 them. But I will abide with the better judgment of people 2 who have maybe been in that position before. 3 MR SEMENYA SC: Telling a POP member to 4 do a channelling would not require a written down 5 instruction don't know what that means right? 6 MR WHITE: Apologies, could you just that 7 again please, Mr Semenya? 8 MR SEMENYA SC: Telling a POP trained 9 police officer we're going to channel a crowd, they would 10 know what that entails, you don't have to put it in 11 writing. Am I right? 12 MR WHITE: I'm sure that's correct. 13 MR SEMENYA SC: And telling people that 14 we are going to disperse, telling POP people we are 15 dispersing, you don't have to write that down, it's 16 standard operating procedure, right? 17 MR WHITE: From the evidence I've read I 18 think that it's a phrase that you often use here and I'm 19 sure that POP officers probably understand that, yes. 20 MR SEMENYA SC: And they should effect an 21 arrest is that also standard operating procedure right? 22 MR WHITE: I'm sure they know how to 23 arrest people, yes. 24 MR SEMENYA SC: So those would not 25 require a written plan, given to each commander apart from</p>
<p style="text-align: right;">Page 36680</p> <p>1 smaller groups isolated, encircled it would be easier to 2 disarm them as the Chairman illustrates the evidence points 3 to. 4 MR WHITE: Well I think it's fair to say 5 that it would be easier to disarm a smaller group than it 6 would be a larger group. I do have some issues I would 7 have to say again with the plan with regards to, as Mr 8 Semenya himself points out, we're talking about a wide open 9 space. And the fact that how the plan was supposed to role 10 out was that the police resources with the POP officers 11 being at the front of the dispersal group were to come out 12 from behind the wire and then start moving towards the 13 crowd. I'm expecting at that point the crowd, 14 particularly those that don't want to be disarmed will run 15 away. How effective the POP coming forward and being able 16 to catch up with those groups and surrounding them as part 17 of plan, I don't know. And it may well be a point that I 18 need to concede insomuch as isolate, that's not how I would 19 normally have done that sort of thing, maybe it is slightly 20 different given the fact that we're talking about wide open 21 terrain as opposed to most of experience comes from an 22 urban environment and I'm happy to concede that. But I 23 just didn't really understand how that was likely to work, 24 literally with the police coming so far behind people that 25 they were going to be able to actually catch up, surround</p>	<p style="text-align: right;">Page 36682</p> <p>1 identifying what positive and negative attraction points. 2 Is that fair to say? 3 MR WHITE: My criticism in relation to 4 the plan, sorry perhaps that's not what you want me to 5 answer. 6 MR SEMENYA SC: No I want you to answer 7 the question I'm putting to you as opposed to giving me a 8 total spectrum of things that you think I may be going to, 9 Mr White, really. I'm saying and if I'm wrong say I'm 10 wrong. I'm saying if you say to POP trained people we are 11 going to channel this crowd all you need to tell them is 12 this direction or that direction and they would know what 13 to do. No? 14 MR WHITE: In answer to your previous 15 question, I agreed with you in relation to all of them. 16 I'm sure you don't to write down for police officers who 17 are experienced what it means to disperse, what it means to 18 arrest, what it means to – I'm forgetting all the terms 19 that you used, but just for absolute clarity, that's not 20 the criticism I make in relation to no plan. 21 MR SEMENYA SC: Well I thought the plan 22 go and disperse, disarm and arrest them. 23 MR WHITE: If you look at my 24 supplementary statement I went into some considerable 25 detail about this, about the fact that we're talking about</p>

<p style="text-align: right;">Page 36683</p> <p>1 a complex operation, a dangerous operation which involves a 2 lot of different resources. The numbers of officers 3 involved and also the number of different units and the 4 point is that a plan needs to show who's going where. You 5 need to understand, as the TRT, what your role is. 6 MR SEMENYA SC: But, Mr White, with 7 respect, I'm focusing now on what the POP was supposed to 8 do according to the plan. I can talk about what TRT would 9 do, what NIU would do, what STF would do according to that 10 plan and each one of them, you don't tell STF how to take 11 out somebody if there's a sniper in the STF for instance. 12 Am I right? 13 MR WHITE: I wouldn't disagree with you 14 and I haven't given that criticism. 15 MR SEMENYA SC: We have been given the 16 Special Repertoire Report by the Human Rights Commission. 17 Are you familiar with the report? I don't have to all have 18 us copies. I will read – 19 MR WHITE: I'm familiar with it. 20 MS LE ROUX: Chair, for the record is my 21 learned friend referring to the report we gave you 22 yesterday which is the UN Special Repertoire, the Report Of 23 The Special Repertoire On Extra Judicial Summary Or 24 Arbitrary Executions From April 2014. Is that the report? 25 MR SEMENYA SC: That's the report, Chair.</p>	<p style="text-align: right;">Page 36685</p> <p>1 any new documents to Mr White we are given notice of it? 2 CHAIRPERSON: I'm sure that point's been 3 noted. I take it to be fair, the police think that seeing 4 you produced the document it's likely that your side would 5 know about it. I understand there may be a false 6 assumption then because – 7 MS LE ROUX: Yes, but our side places the 8 witness – 9 CHAIRPERSON: No, no, no there may be 10 false assumption because legal representatives may have a 11 document and the witness hasn't seen it, but anyway let's 12 proceed. 13 MS PILLAY: Chair, it's BBBB8. 14 CHAIRPERSON: BBBB8 Special Repertoire 15 Report dated what? How do we describe it? 16 MR SEMENYA SC: 1 April 2014. 17 CHAIRPERSON: 1-04-2014. I think that's 18 all we need to say to describe it. That's BBBB8 and if the 19 witness is at a disadvantage, he's got a copy of it I see 20 on a laptop and if he finds himself unable to deal with 21 something because he hasn't had a chance to study the 22 document, I'm sure he'll let us know. 23 MR SEMENYA SC: Let me lead this by 24 saying that Mr Hendrickx opined that public order policing 25 has various segments to it one of which is what he calls</p>
<p style="text-align: right;">Page 36684</p> <p>1 CHAIRPERSON: I've seen it, does it have 2 to go in as an exhibit? If it's being referred I take it, 3 it has to be an exhibit. 4 MS LE ROUX: Chair, we have repeatedly 5 asked the SAPS if there are any new documents they intend 6 to put to Mr White. This is the first time we're hearing 7 their intent to put this to put which he has not an 8 opportunity to – 9 CHAIRPERSON: You said you gave it to him 10 yesterday. 11 MS LE ROUX: Because I intend to use it 12 for Mr De Rover. 13 CHAIRPERSON: It's going to go in anyway, 14 so let's give it an exhibit number. 15 MS LE ROUX: Yes but, Chair, the point is 16 Mr White has not had an opportunity to look at this report. 17 CHAIRPERSON: I would suspect that being 18 the expert he is he would be familiar with a good deal of 19 the material contained in it and I'm sure if it's anything 20 like the special reports he's seen before, it's very 21 largely, fairly trite material. So I wouldn't – if he has 22 a problem he'll let us know, but I wouldn't expect him to 23 have one really. So what's the next exhibit – 24 MS LE ROUX: Chair, can I also then 25 repeat my request to the police that they intend to produce</p>	<p style="text-align: right;">Page 36686</p> <p>1 province and you take a multitude of stakeholders and try 2 to anticipate difficult moments. Do you accord yourself 3 with that? 4 MR WHITE: Yes, I do. 5 MR SEMENYA SC: Now I want to read 6 paragraph 63 which would appear on page 11 of that report. 7 MS LE ROUX: Does my learned friend have 8 it available for display to the auditorium? 9 MR SEMENYA SC: Chair, can I just read 10 this? 11 CHAIRPERSON: The question is can you put 12 it up on the screen? The answer is obviously no, so let's 13 carry on without it being put on the screen. 14 MR SEMENYA SC: I'll try to read it 15 slowly, but at least you have before you. 16 CHAIRPERSON: The idea is for the benefit 17 of those of us who are up here at the table and the people 18 in the chamber, but we will listen carefully as you read it 19 and I'm sure we won't be at a disadvantage. 20 MR SEMENYA SC: Thank you, Chair. Under 21 the heading Prevention/Precaution paragraph 63 reads "To 22 this should be added the – often overlooked – requirement 23 of prevention or precaution. Once a situation arises where 24 the use of force is considered it is often too late to 25 rescue the situation. Instead in order to save lives all</p>

<p style="text-align: right;">Page 36687</p> <p>1 possible measures should be taken in "upstream" to avoid 2 situations where the decision on whether to pull the 3 trigger arises or to ensure that all the possible steps 4 have been taken to ensure that if that happens the damage 5 is contained as much as is possible." You'd accord 6 yourself with that quotation? 7 MR WHITE: Yes I would. So again I want 8 to rest on the strength of your opinion as an expert. 9 South Africa must move away from the often seen scenario 10 where in protest action they either arrive with the tyres 11 burning there or they arrive with cars having been torched 12 or they arrive after the buses have torched. We ought to 13 move, as a society, to where we can resolve these problems 14 before they get to the calling of police. Can I rest my 15 argument like that on the strength of your accord? 16 MR WHITE: I'm sure we will want to see 17 that, yes. 18 MR SEMENYA SC: And really as the report 19 points out often when the use of force is to be deployed it 20 is almost too late. 21 MR WHITE: It does make that comment, 22 yes. 23 MR SEMENYA SC: And it would be useful if 24 the Commission was to recommend for instance the following. 25 That in industrial disputes you don't as your first port of</p>	<p style="text-align: right;">Page 36689</p> <p>1 explore that. I just want to exclude that does not need to 2 be told people for now. 3 MR WHITE: The definition of how to 4 harass someone or how to disperse them, no. 5 MR SEMENYA SC: It's something that can 6 be done quickly? 7 MR WHITE: Yes. 8 MR SEMENYA SC: And telling the TRT this 9 is your sweeping role at a particular point, you'll be 100 10 metres, at another point, after the P-dispersal, you will 11 be closer to affect the arrests, that can't take long 12 either, can it? 13 MR WHITE: Dealing with one particular 14 unit to do one particular task, that I'm sure it can be 15 done quite quickly. 16 MR SEMENYA SC: And you accept this what 17 they were told, who will be at forward holding area 1, at 18 what point they would come to the operation? 19 MR WHITE: Well, this is part of my 20 criticism, because I don't know who was told what, insomuch 21 as there's a lot contradictory evidence about how people 22 understood the briefing. I just need clarity – 23 MR SEMENYA SC: That confusion doesn't 24 arise amongst the commanders, even on your analysis of the 25 evidence. General Naidoo knew exactly what his role was in</p>
<p style="text-align: right;">Page 36688</p> <p>1 call, call police and the Minister of Police etcetera 2 instead of containing that discord through industrial and 3 labour relations instruments. Right? 4 MR WHITE: Well I think that we had this 5 discussion before and I'm therefore on the record saying 6 that as a professional police officer I look to everyone to 7 exercise their responsibility with regards to avoiding 8 violent situations. 9 MR SEMENYA SC: Can I quickly go through 10 your statement, exhibit JJJ178 and just confirm, if we may 11 do this a little quicker, starting at page 50 you deal with 12 section 5.2 which is planning and briefing. And I think we 13 have gone past this one that the type of briefing that 14 requires POP to do a dispersal would not be one that takes 15 long for instance. 16 [09:48] If you have identified the positive attraction 17 points are, negative attraction points are, and what you 18 seek to - happening? 19 MR WHITE: Two really important points 20 for me, Chair, one is that I'd said earlier on, I don't 21 think you need in a plan, a written definition of dispersal 22 or arrest, that's the point I was making. But the plan 23 needs to tell people what it is that they need to do, where 24 they need to go, that's the issue. 25 MR SEMENYA SC: Obviously I want to</p>	<p style="text-align: right;">Page 36690</p> <p>1 relation to that operation and what he must do when what 2 happened. So did Captain Kidd. There was no confusion 3 around that, am I right? 4 MR WHITE: Well, with respect, Mr Kidd 5 makes a number of statements, and in those statements, he 6 actually gives a slightly different interpretation of what 7 his role was in the, I think, the three statements he makes 8 himself, but I thought that you've referred to look at this 9 statement to look at, the 13th. This relates to – 10 MR SEMENYA SC: No, that's alright. I 11 know – 12 CHAIRPERSON: The passage just now deals 13 with 13th. You've now moved on to the 16th. Do you want to 14 refer in his statement dealing with 16th, or are we going to 15 stay here? 16 MR SEMENYA SC: Well, about the 13th, we 17 are in agreement that you don't criticise the fact that 18 they are attended to a spontaneous, dynamic and mobile 19 people. That you don't criticise? 20 MR WHITE: Not at all. 21 MR SEMENYA SC: Okay. And you don't 22 criticise, as I see in paragraph 5.2.6 on page 53 of your 23 statement, that General Mpembe did not have a written plan? 24 MR WHITE: Because of the dynamic nature 25 of the circumstances, I don't think that it was reasonable</p>

<p style="text-align: right;">Page 36691</p> <p>1 to ask him to sit and write out a plan, no.</p> <p>2 MR SEMENYA SC: Yes. But you do say at</p> <p>3 the top of page 53 that if they had planned sufficiently to</p> <p>4 ensure that the tactical configuration of resources placed</p> <p>5 the police at a considerable advantage. When would this</p> <p>6 sufficient planning have occurred, you'd suggest?</p> <p>7 MR WHITE: Well, Mr Semenya, I think that</p> <p>8 you're taking bits of my statement and extrapolating the</p> <p>9 point. What I've said throughout my engagement with the</p> <p>10 13th, if you look, Chair, when I talk about planning, I use</p> <p>11 the word plan or briefed, and then the issue that Mr</p> <p>12 Semenya is referring to there is, all I'm saying is that if</p> <p>13 the police' intention had been, "We are going to disarm</p> <p>14 this group," then actually dealing with the group of around</p> <p>15 200 people who were heavily armed would have required some</p> <p>16 considered thought and plan, because that inherently</p> <p>17 dangerous operation. I say in my statement, if however,</p> <p>18 given the dynamic nature of the situation and it was a</p> <p>19 pragmatic approach, which I think was ultimately</p> <p>20 effectively happened on the day, Mr Mpmembe, and I've</p> <p>21 actually in my statement congratulated Mr Mpmembe for his</p> <p>22 approach to this, tried to negotiate with them and then</p> <p>23 said, look, to be pragmatic about this, we're going to</p> <p>24 escort them. Then I said a detailed plan wasn't necessary,</p> <p>25 but still people needed to be briefed with regards to what</p>	<p style="text-align: right;">Page 36693</p> <p>1 past that point, right?</p> <p>2 MR WHITE: Of course.</p> <p>3 MR SEMENYA SC: And by the 13th, even with</p> <p>4 General Mpmembe, there was no history where firing of</p> <p>5 teargas or stun grenade had provoked an assault on the</p> <p>6 police, or hacking of police.</p> <p>7 MR WHITE: Well, with respect, I</p> <p>8 genuinely don't know that. If you're asking me to assume</p> <p>9 that fact is true, but I don't know the history of policing</p> <p>10 in South Africa and can't say with certainty that this has</p> <p>11 never happened before.</p> <p>12 MR SEMENYA SC: Yes. And then you say</p> <p>13 though that they must – that's the last sentence of that</p> <p>14 paragraph – you say, if the stun grenade was fired without</p> <p>15 authority or the teargas was fired without command, then it</p> <p>16 appears that there unauthorised directly contributed to the</p> <p>17 confrontation. Now, two things about it, you do accept, as</p> <p>18 you correctly concede, that you don't know what historical</p> <p>19 and experience of police is in relation to use of tear</p> <p>20 smoke or stun grenade. That's the one thing, right. The</p> <p>21 second thing is, if it can be accepted as standard that the</p> <p>22 use of teargas or stun grenade would launch an attack on</p> <p>23 the police, doesn't that radically reduce the non-lethal</p> <p>24 force available to POP?</p> <p>25 MR WHITE: I don't think that – I'm</p>
<p style="text-align: right;">Page 36692</p> <p>1 was expected of them. There is lots of evidence which</p> <p>2 suggests that there was confusion from the officers who</p> <p>3 were involved in that escort as to what it was that they</p> <p>4 were expected to do. Some people were aware that Mpmembe</p> <p>5 didn't perhaps want them to go in the informal settlement,</p> <p>6 other people weren't aware of that. Some people talked</p> <p>7 about that they were supposed to disarm from the outside,</p> <p>8 other people talked about them escorting. The point is</p> <p>9 that clearly officers weren't properly briefed, and my</p> <p>10 point of criticism therefore is, even though it was a</p> <p>11 dynamic situation, even though they're under pressure,</p> <p>12 because you're going into this dangerous and difficult</p> <p>13 thing, people need to understand what it is that the</p> <p>14 commander wants, and how the commander wants them to do it.</p> <p>15 That's not about a written plan, which is going to take 30</p> <p>16 pages and three days to write down, that's about the</p> <p>17 commander to ensure himself about what it is wants to</p> <p>18 achieve and properly explaining that so that the officers</p> <p>19 who are involved in the escort fully understand it. That's</p> <p>20 my point.</p> <p>21 MR SEMENYA SC: Shall we now look at</p> <p>22 paragraph 5.2.13 on page 55? Before we deal with that</p> <p>23 though, I think we have agreed the last time we had this</p> <p>24 conversation that police doctrine is based on past</p> <p>25 experience, what works, what doesn't work. We have gone</p>	<p style="text-align: right;">Page 36694</p> <p>1 confused – are you suggesting? All I'm saying is that when</p> <p>2 police use teargas or stun grenades, that's likely to</p> <p>3 provoke an attack. I'm not saying that as a general point,</p> <p>4 I'm saying that having engaged with the evidence in</p> <p>5 relation to the 13th, it would seem that this group are</p> <p>6 being escorted in accordance with Mr Mpmembe's instructions,</p> <p>7 in accordance with agreements that he reached with them, I</p> <p>8 think. The transcript of the conversation is QQ2, if my</p> <p>9 memory serves me correct. So they are being escorted and</p> <p>10 then it would appear on the evidence that I've engaged with</p> <p>11 from the South African police that the stun grenades and</p> <p>12 potentially teargas fired by individual officers, without</p> <p>13 an express instruction or order to do so, although there</p> <p>14 does seem to be some dispute as to whether or not there was</p> <p>15 an order by some officers, however, in terms of them</p> <p>16 looking at the implications of that for the fracas that</p> <p>17 results in a number of people being killed, including two</p> <p>18 police officers, it's not just me, I mean, Mr Merafe –</p> <p>19 MR SEMENYA SC: May I interrupt you, Mr</p> <p>20 White, and I don't intend to do so, I'm really asking a</p> <p>21 simple question that if we get to a point where the use of</p> <p>22 teargas and the use of stun grenade provoked an attack on</p> <p>23 the police, that must seriously attenuate the non-lethal</p> <p>24 options available to them. What can be complicated to that</p> <p>25 statement?</p>

<p style="text-align: right;">Page 36695</p> <p>1 MR MPOFU: Chairperson, I'd like to 2 understand whether this question is intended to cover all 3 situations under the sun or the specific situation that 4 pertained on the 13th? Because Mr Semenya seems to be 5 suggesting that the use of teargas per se in any situation 6 would provoke an attack. 7 CHAIRPERSON: He is, I understand to be 8 an objection, that's how I understand the question, and I'd 9 like to hear what the witnesses answer is to it. What Mr 10 Semenya is saying to you is that if it's correct – he asked 11 you to make the assumption, I take it, that the teargas and 12 the stun grenades in this particular case provoked a 13 violent response from the strikers, and he's saying to you, 14 effectively, what do you say about the proposition that 15 would appear to flow from that, that if that is so, then 16 the use of stun grenades and teargas will effectively mean 17 that there will be lethal consequences, in any event, so 18 that the POP have got limited resources to use as it is. 19 If you're going to take stun grenades and teargas away, 20 because they're likely to provoke the kind of response we 21 got, then they've even less to handle, to deal with. Is 22 that your question, Mr Semenya? Then he'd like your answer 23 on that. 24 MR WHITE: Well, I've reminded him that 25 teargas or stun grenades are normally used in a situation</p>	<p style="text-align: right;">Page 36697</p> <p>1 is that on this particular day it would seem that having 2 been escorted and not at that point be involved in 3 attacking the police, then the police used force, and there 4 is a response to that. Does that mean that from now on 5 that you need to take stun grenades and teargas away from 6 the South African police in case it provokes that sort of 7 reaction, no, I don't think so. I think what that means is 8 that we should look at every set of circumstances in which 9 it's used to understand how it's used, if it's being used 10 properly, and to address those instances where it's not. 11 MR SEMENYA SC: In fact, Mr White, if an 12 officer fired teargas or a stun grenade without any 13 command, at worst that exposes him to disciplinary action, 14 it does not say the consequence of that is that there will 15 be an attack on the police line. Is it fair to say? 16 MR WHITE: I think it's an absolute 17 statement, ja, that is fair to say, the consequence will 18 not always be an attack on the police line. 19 MR SEMENYA SC: Well, up to that point, 20 there has never been a history of any attack on the police 21 purely because a stun grenade has been fired, and you said 22 you can't contest those facts, you don't know them. 23 MR WHITE: If you're reading that 24 statement, Mr Semenya, I'm not in a position to argue with 25 you.</p>
<p style="text-align: right;">Page 36696</p> <p>1 of violent confrontation with crowds. So my point, and I 2 pointed here consistently through this that one 3 consideration is that the police, in dealing with crowds, 4 have to consider is that their actions are likely to 5 provoke a reaction from the crowd. And that's not to say 6 that as a result of which police officers shouldn't take 7 any actions which appear to be offensive. On occasion, and 8 I said yesterday in answer to Mr Semenya's questions when 9 he questioned me on a particular point, it may be necessary 10 for police officers to fire live arms in a public order 11 situation, if the immanent threat is so high. That's 12 likely to create a response from the crowd, does that mean 13 to say that we then have to remove firearms. The issue 14 that we're dealing with here is that this crowd appeared to 15 be being escorted, and we're proceeding back to the koppie 16 - with Mr Mpembe, an officer, it would seem, fires teargas 17 or stun grenades in advance of any fracas breaking out, and 18 that fracas then perhaps came as a result of the use of 19 inappropriate force. And it's not just myself that says 20 that, I mean, police officers, including Mr Merafe has said 21 something to that effect in his oral evidence. So the 22 consequence potentially, maybe the crowd would have 23 attacked the police anyway. Maybe they were intending to 24 gather up 100 yards along the line and attack the police. 25 I don't know that. We can't possibly know that. The point</p>	<p style="text-align: right;">Page 36698</p> <p>1 MR SEMENYA SC: Correct. 2 MR LE ROUX: And, Chair, of course, there 3 is not evidence before the Commission that the history of 4 South Africa, the use of teargas or stun grenade has never 5 provoked an attack or assuming that fact. And that must 6 just be clear as well. 7 MR SEMENYA SC: Well, that was the 8 evidence – 9 CHAIRPERSON: That's not an objection, Ms 10 Le Roux, I'd suggest you keep out of the debate. Carry on, 11 Mr Semenya. 12 MR SEMENYA SC: Thank you, Chair. You 13 make the observation at page 56 of your statement, exhibit 14 JJJ178, at paragraph 6, I think the thrust of your 15 observation that is that with the allegation that General 16 Mpembe's life was threatened - 17 MR WHITE: Mr Semenya, could I interrupt 18 you, you said paragraph 6. 19 MR SEMENYA SC: C on page 56. 20 CHAIRPERSON: Paragraph 5.3.1C, at the 21 foot of page 56. 22 MR WHITE: Sorry, I though he'd said 6, 23 but – 24 CHAIRPERSON: I also got lost, but I 25 found the page more quickly than you.</p>

<p style="text-align: right;">Page 36699</p> <p>1 MR SEMENYA SC: Were you aware that there 2 were attempts at identifying who would at identifying who 3 would have uttered the threats and Colonel Vermaak said he 4 can't identify those? 5 MR WHITE: Yes, I became aware of that 6 subsequently. 7 MR SEMENYA SC: Subsequently, okay, 8 MR WHITE: Which I think I refer to in my 9 supplementary statement, which is made at some considerable 10 time later. 11 MR SEMENYA SC: Okay. And at page 58, I 12 think the thrust of what you say is that, given what you 13 write about before, you would have expected disciplinary 14 actions to have followed particular events. Is that right? 15 MR WHITE: Yes. 16 MR SEMENYA SC: And you're not critical 17 of the decision, or maybe you are, of the decision by top 18 hierarchy to say, given that the Commission has been 19 announced and given the fact that it will do it's work 20 within four months, we will commence with all of these 21 things after the Commission's work. You don't take issue 22 with that, if it is the evidence? 23 MR WHITE: I understand that as an 24 approach. My comment in relation to the page 58 that 25 you're talking about was that given the fact that two</p>	<p style="text-align: right;">Page 36701</p> <p>1 manifestly unlawful, do you agree with me? 2 MR WHITE: I absolutely agree with you. 3 MR SEMENYA SC: So what you're critical 4 about is the how that, I mean, disarmament was to occur? 5 MR WHITE: Absolutely correct. 6 MR SEMENYA SC: If we go to page 59 of 7 your statement, still JJJ178, and we look at section 6.2, 8 where you deal with inadequate intelligence. I take it, Mr 9 White, you accept that the – no, no, are you familiar with 10 the evidence that the people in the koppie were told not to 11 have any cell phones? 12 MR WHITE: I am aware of seeing evidence 13 to that effect. 14 MR SEMENYA SC: And allegedly, at least, 15 Mr Twala was killed for carrying one on the koppie that had 16 airtime on it. 17 MR WHITE: I've seen that evidence. 18 MR SEMENYA SC: And this group of people 19 were trying as best to contain the information within the 20 network, even if when the speaker was speaking in crowd 21 formation, a smaller circle by themselves. 22 [10:07] That was their modus operandi. You saw that on 23 some of the video footages. 24 MR WHITE: Okay, I'll accept that. 25 MR SEMENYA SC: And if Mr X is to be</p>
<p style="text-align: right;">Page 36700</p> <p>1 police officers, in addition to three other members of 2 public, had been killed in an operation, I would have 3 expected to see an immediate response to that. So the 4 Commission wasn't introduced and set up until obviously the 5 events of the 16th. My comment therefore is in order to 6 learn lessons, in order to try and establish what exactly 7 just happened and to ensure it wouldn't happen again 8 perhaps, I would have expected to see, if the allegations 9 are right with regards to the initial action of police 10 officers happening without specific instruction to do so, 11 i.e. the firing of the teargas and the stun grenades. If 12 that is what caused this to happen in the first instance, I 13 would have expected to see a debrief and investigation 14 start after the 13th to understand what happened. This was 15 before anyone would have realised what was going to happen 16 on the 16th. 17 MR SEMENYA SC: The law in this country 18 tells us that a police officer can disobey an instruction 19 that is patently unlawful. You accept that? 20 MR WHITE: Exactly the same in my 21 country. 22 MR SEMENYA SC: Yes. And I want to 23 suggest to you that a decision by General Mbombo that nine 24 deaths later, that armed protestors on the kop pie must be 25 disarmed is not one such instruction that is patently and</p>	<p style="text-align: right;">Page 36702</p> <p>1 believed they even chose koppie 3 as a rendezvous because 2 of its tactical advantages it would give them from 3 detection. Given that – 4 MR MPOFU: No, Chairperson, this is 5 coming up again. There's no such evidence – 6 CHAIRPERSON: No, he puts it on the basis 7 that if he is to be believed – 8 MR MPOFU: No, Chairperson – 9 CHAIRPERSON: It was in his statement – 10 MR MPOFU: Even if he's believed or 11 disbelieved, he didn't say it. 12 CHAIRPERSON: It was in his statement – 13 MR MPOFU: The evidence that Mr Semenya 14 is referring to was referring to koppie 1. You can go to 15 Mr X's statement. It never said that they went to koppie 3 16 for all these purposes. It's not there, believed or un- 17 believed. It's just fiction. 18 MR SEMENYA SC: Chair, it is there. I'll 19 show it to Mr Mpofu – 20 CHAIRPERSON: In my recollection it was 21 in the – 22 MR SEMENYA SC: - in the statement. 23 MR MPOFU: Well, then you must show us. 24 CHAIRPERSON: It is in the written – my 25 recollection it's in the written statement, but let's see -</p>

<p style="text-align: right;">Page 36703</p> <p>1 MR MPOFU: It's in the supplementary 2 statement. 3 CHAIRPERSON: Yes, the supplementary. 4 Yes, yes, it's one of the things that was not in the first 5 statement, in the supplementary. That's correct, but it is 6 there. Whether it's to be believed – 7 MR MPOFU: No, it's not there in the form 8 that it is being put – 9 CHAIRPERSON: Let's see whether your 10 recollection is better than my and Mr Semenya. 11 MR MPOFU: Yes, thank you. 12 CHAIRPERSON: Mr Semenya, can you show us 13 the passage you're referring to? 14 MR SEMENYA SC: Chair, can I obviate 15 this? Clearly if what I am putting as a proposition to you 16 is incorrect the answer is immaterial. Mr White, can we go 17 on that basis? 18 CHAIRPERSON: I think that's a sensible 19 way forward, Mr Mpofo. Mr Semenya has got limited time. I 20 think we must let him use it as economically as he can. 21 MR SEMENYA SC: Do you accept that 22 environment would have compromised intelligence gathering 23 capabilities for the police? 24 MR WHITE: Yes, I would, and we talked 25 about this at length when I last gave evidence. I</p>	<p style="text-align: right;">Page 36705</p> <p>1 exactly the sort of circumstances that Mr Semenya refers 2 to. However, I would absolutely still stand by my 3 criticism with regard to the lack of intelligence and also 4 even the limited intelligence that was, you know, how the 5 police acted in response to that in relation to this 6 operation. 7 MR SEMENYA SC: And if I understand your 8 evidence you do not disapprove the use of multiple units in 9 this operation if everybody knows what their role is and 10 given the dangerous circumstances that presented 11 themselves. 12 MR WHITE: I've specifically stated that 13 actually it was welcome to see that they were involving 14 different types of units with different types of 15 capabilities, given the complexity of the operation. 16 MR SEMENYA SC: So I'm correct? 17 MR WHITE: Yes. 18 MR SEMENYA SC: In that regard you differ 19 with Mr Hendrickx. 20 MR WHITE: That may be so. This is only 21 my opinion. 22 MR SEMENYA SC: That's right. And just 23 to tidy up with you, on paragraph 66, I mean page 66, 24 paragraph 6.4.3, we have agreed that concepts like 25 disperse, encircle, disarm, would be standard operating</p>
<p style="text-align: right;">Page 36704</p> <p>1 understand there were difficulties in gathering 2 intelligence. 3 MR SEMENYA SC: And where on page 60 of 4 your statement you talk about you'd have expected the 5 intelligence to have information in relation to the 6 intention of the protesters, how long they intended to 7 maintain their protest, details on individual key members 8 of the group, where the majority of the people who left the 9 koppie each evening went to, such type of detail you would 10 have ordinarily expected, but you accept it was compromised 11 in relation to this operation? 12 MR WHITE: I understand that gathering 13 evidence was difficult in this operation. However, as we 14 talked at length last time I gave evidence, my criticism 15 still stands with regard to TT5, which is the composite of 16 all of the intelligence available to the police for this 17 operation. There are 10 entries on that document, a number 18 of which relate back to February and May, a number of which 19 refer to the organisation of the JOC, and there are only 20 two or three pieces of actionable intelligence and 21 therefore I then went on to give examples of where there 22 were other evidential – sorry, intelligence opportunities 23 available which didn't seem to be grasped. So my point is 24 that I fully understand that intelligence gathering for 25 this operation may have been difficult and hampered by</p>	<p style="text-align: right;">Page 36706</p> <p>1 procedures for a unit like POP. 2 MR WHITE: Yes, I understand that, yes. 3 MR SEMENYA SC: Now page 70 of your 4 statement, paragraph 6.4.8, in the middle of that paragraph 5 you say what you say, and you say, "I say that primarily 6 because there was no urgent need to implement an offensive 7 tactical option on the afternoon of 16 August." That's 8 what you say there. 9 MR WHITE: Yes. 10 MR SEMENYA SC: Can I explore that with 11 you? 12 MR WHITE: Mr Semenya, could I make one 13 point in relation to this particular part of my statement? 14 Remember at the point that I'm writing this, what is 15 referred to as my final statement, I'm engaging with a set 16 of circumstances which turned out not to be accurate in 17 that I'm following through Mr Scott's lengthy statement, I 18 think it's HHH20 – forgive me if I'm wrong – about how the 19 planning process goes. But what I subsequently found out 20 and refer to in my supplementary statement is that of 21 course the approach to stage 3 wasn't in fact informed by 22 all of the things that I had been engaging with, but 23 actually it had been the decision taken by General Mbombo, 24 discussed with the National Management Forum on the 15th and 25 the decision had been made then. So to some extent some of</p>

<p style="text-align: right;">Page 36707</p> <p>1 the things that I say in relation to my final statement 2 might not be, might be something that I need to revise 3 simply because I was engaging with a set of facts which 4 perhaps were not strictly accurate. 5 MR SEMENYA SC: I gave Mr – 6 MS LE ROUX: And Chairperson, in Mr 7 White's supplementary statement that's section 2.2 8 commencing at page 3 where he deals with the decision to 9 move to the DDA operation. 10 MR SEMENYA SC: And I haven't even asked 11 the question. That's what you have written in the 12 paragraph 70, Mr White. 13 MR WHITE: Yes, that's what I've written 14 in the paragraph – 15 MR SEMENYA SC: Right. 16 MR WHITE: - at the time. 17 MR SEMENYA SC: Now let me explore that 18 with you. You can't tell us what would have been the 19 consequence had the police done nothing on the 17th, the 20 18th, the 19th and the 20th or going forward, can you? 21 MR WHITE: I can, but I've never 22 suggested that they would do nothing. 23 MR SEMENYA SC: Well, there is some 24 opinion that suggests maybe you do nothing because there is 25 no escalation, there's no point in doing anything. You can</p>	<p style="text-align: right;">Page 36709</p> <p>1 the koppie – 2 MR SEMENYA SC: On the evidence that you 3 have looked at and the evidence that you have analysed 4 there's nothing to indicate that position was going to 5 change on the part of Lonmin. Is that fair to say? 6 MR WHITE: Okay, I'll accept that. 7 MR SEMENYA SC: And on the evidence that 8 you have seen Mr Mathunjwa had made his plea and drove off 9 in exasperation that they're not listening to him. 10 MR WHITE: Well ja, I'm aware that he 11 drove off, yes. 12 MR SEMENYA SC: And if some of the 13 evidence is to be accepted, the group was intent on going 14 to attack the police. 15 MR WHITE: I think there's evidence to 16 that fact and there's also evidence to the contrary that 17 I've seen. 18 MR SEMENYA SC: So the police evidence is 19 then that there was nothing anymore to wait for but to 20 disarm the group. You say that still leaves you standing 21 to question how that was to happen. 22 MR WHITE: Yes, it does leave me to 23 question how it's going to happen. 24 MR SEMENYA SC: But of course you know 25 even beyond koppie 3 there were many vehicles of Lonmin</p>
<p style="text-align: right;">Page 36708</p> <p>1 observe it throughout. You don't share that opinion, do 2 you? 3 MR WHITE: I certainly wouldn't share the 4 opinion that the police do nothing. 5 MR SEMENYA SC: By way of disarming the 6 group? 7 MR WHITE: Again I wouldn't share the 8 opinion that the police do nothing. 9 MR SEMENYA SC: Okay. And by the time 10 the operation was launched on the 16th of August the 11 position, obtuse or otherwise, that was taken by Lonmin 12 that they were not going to go to the koppie was not going 13 to change. You can accept that premise, correct? 14 MR WHITE: I've seen evidence of that 15 fact. I don't know what would have happened in the future, 16 but yeah. 17 MR SEMENYA SC: So the primary demand on 18 the koppie was not going to be met insofar as they wanted 19 Lonmin to go to the koppie. 20 MR WHITE: Well, I don't know what 21 Lonmin's intention would be and whether it would have 22 changed, but if you want me to assume – 23 MR SEMENYA SC: On the evidence that you 24 have read – 25 MR WHITE: - that Lonmin wouldn't go to</p>	<p style="text-align: right;">Page 36710</p> <p>1 that were torched by some of these individuals? You're 2 aware of that evidence? 3 MR WHITE: Yes. 4 MR SEMENYA SC: So that risk was still 5 present to assets of Lonmin, even despite the intervention? 6 MR WHITE: Could I just ask for clarity, 7 Mr Semenya? The vehicles that you're referring to that had 8 been torched by Lonmin's – when specifically, just so that 9 I have it in my had, when are we talking about that 10 happened? 11 MR SEMENYA SC: Well, as I understand the 12 evidence it was the 12th and the 16th. 13 MR WHITE: But specifically on the 16th 14 would I be right in saying that that happened subsequent – 15 MR SEMENYA SC: Correct. 16 MR WHITE: - to the police operation? 17 MR SEMENYA SC: Correct, on the same day. 18 MR WHITE: But subsequent to the police – 19 MR SEMENYA SC: Yes. 20 MR CHASKALSON SC: Approximately an hour 21 after 36 people were killed. 22 CHAIRPERSON: 34. 23 MR CHASKALSON SC: 34. 24 MR CHASKALSON SC: Say approximately an 25 hour after 17 of the 34 had been killed.</p>

<p style="text-align: right;">Page 36711</p> <p>1 CHAIRPERSON: This was dealt with in 2 slide 259 on exhibit L where it's simply stated it was 3 after the police intervention at the koppies. 4 MR SEMENYA SC: Yes. 5 CHAIRPERSON: I'm not sure if it was 6 between the – Mr Chaskalson suggests it was after people 7 were killed at scene 1. I think it was after they were 8 killed – 9 MR CHASKALSON SC: There are entries in 10 the occurrence book and one picks up the call on the radio 11 as well. It's – 12 CHAIRPERSON: What time? Alright, okay, 13 it will take time to find it. Let us allow Mr Semenya to 14 continue. I think the essential point he's making is after 15 some of the shooting had taken place, or all of it, one of 16 the two, a number of vehicles of Lonmin were torched by 17 strikers. 18 MR MPOFU: Where does that come from now, 19 Chairperson? 20 CHAIRPERSON: It's from the slide – 21 there's evidence I think and there's a slide in exhibit L 22 that I've referred to. 23 MR MPOFU: The slide tells you who 24 torched the vehicles? 25 CHAIRPERSON: Well, that's an inference</p>	<p style="text-align: right;">Page 36713</p> <p>1 have had to happen. 2 MR WHITE: If it was operationally sound 3 to do it on that day then yes, it should happen on that 4 day. Of course my point all along has been maybe it wasn't 5 operationally sound to do it on that day and perhaps it 6 could have waited. 7 MR SEMENYA SC: Page 72, at the top of 8 that page you have a little Roman figure (iii) where you 9 say, "The JOCCOM meeting took only 30 minutes from the 10 beginning to end, which was hardly enough time." How much 11 more time did you think was required? 12 MR WHITE: Well, Mr Chairman, the JOCCOM 13 minutes that we have from a variety of meetings show a sort 14 of set procedure where they talk about things like 15 intelligence, they have a roll-call, etcetera, etcetera, 16 the sort of types of things that you would expect to see in 17 any meeting. The significant thing about this meeting is 18 that Colonel Scott, who's the chief planner, when he comes 19 to this meeting he's told we'll now move to stage 3, but at 20 that stage in Mr Scott's own evidence there was no stage 3 21 as transpired in terms of, you know, how he was going to do 22 this plan – 23 MR SEMENYA SC: Again, Mr White, what 24 would you have considered to be sufficient time, given 25 whatever else you have in mind about it?</p>
<p style="text-align: right;">Page 36712</p> <p>1 that one can draw. 2 MR MPOFU: Well, let's not make 3 assumptions about people that we can't prove, Chairperson. 4 We don't know who torched the vehicles after the shooting. 5 The strikers – 6 CHAIRPERSON: No, no, we know. We can 7 draw inferences, but there's no direct evidence. You're 8 correct. 9 MR MPOFU: Thank you. 10 CHAIRPERSON: Anyway Mr Semenya, I think 11 you carry on. 12 MR SEMENYA SC: Page 71, Mr White, 13 paragraph 6.4.10(a), just so that I can know there is no 14 confusion between you and I, you do make the distinction 15 between the decision to have the people disarmed and how 16 that disarmament must happen? 17 MR WHITE: And when. 18 MR SEMENYA SC: And when. The how and 19 the when. Well, I'm not too sure about the when because 20 the instruction was that if they did not disarm on that day 21 then they would have to be disarmed on that day. 22 MR WHITE: But that's my point. I would 23 question the how and the when. 24 MR SEMENYA SC: Yes, if it was 25 operationally sound to do it on that day it must, it would</p>	<p style="text-align: right;">Page 36714</p> <p>1 MR WHITE: I don't know what sufficient 2 time would be, but I'm surprised that a meeting which 3 lasted 30 minutes, including all of the issues that I 4 already talked about and the fact that Lieutenant-Colonel 5 Scott has not only to present the plan but is effectively 6 to make it up as he goes along, his evidence is that that 7 is what happened. He basically described to other people 8 how this would happen. Now I've raised issues with regards 9 to I was surprised that no one seemed to raise any 10 objections, no one seemed to challenge how he was going to 11 do this, not least this issue with regards to 60 TRT 12 officers being lined up behind the POPS. So the short 13 answer to the question is I don't know how much time it is, 14 but I do think that the fact that that meeting took place 15 30 minutes for the entire meeting, and this was a meeting 16 not during which Scott explained the plan as such but he 17 effectively had to make it up as he went along, it seems to 18 me to be evidence if you like, of a very cursory sort of 19 look at how they were going to engage with the situation 20 which was, as I said all along, inherently complex and 21 dangerous. 22 CHAIRPERSON: Mr White, what you've now 23 said isn't entirely correct. My understanding of Colonel 24 Scott's evidence is that he already had an idea of how it 25 could be done. It was sort of an embryonic idea in</p>

<p style="text-align: right;">Page 36715</p> <p>1 concept, but he did have a basic idea. He had been tasked 2 at the early meeting that morning to prepare it, or someone 3 – well, the evidence is from Brigadier Calitz is that it 4 was – and it's in the minutes, it's agreed an alternative 5 plan would be drawn up in case the weapons weren't handed 6 over voluntarily. Brigadier Calitz says Colonel Scott was 7 the person who should have done that. Colonel Scott 8 concedes he didn't do anything – well, he says he can't 9 remember what he did during the day, during the morning, if 10 that evidence can be believed, and he says that he did have 11 an idea of a concept in his mind and he says that when no 12 one else, when it was announced the tactical option was now 13 going to be implemented and nobody else put up a hand, 14 suggested how it should be done, and he then put up his 15 hand and suggested how he thought it should be done based 16 on the concept that he'd already had in mind. So he wasn't 17 exactly making up as he went along. The truth is as I 18 think I've summarised it. Your point of course is that for 19 a meeting that's 30 minutes in total, he obviously didn't 20 have the full 30 minutes to brief on the plan. We don't 21 know exactly how long he took. Your view as I understand 22 it is that that was inadequate, but I don't know that one 23 has to add the making up the plan as he went along so I 24 don't think that's factually correct. 25 MR WHITE: Well, I apologise, Chair, and</p>	<p style="text-align: right;">Page 36717</p> <p>1 plan would be because, of course, there wasn't any written 2 plan at that point. 3 MR SEMENYA SC: Page 73, paragraph 6.5.2 4 at the bottom of the page. You talk about it being unclear 5 whether the plan on that day was to encircle or to disperse 6 and disarm and arrest. Am I correct? 7 MR WHITE: That's correct. 8 MR SEMENYA SC: But you do accept, having 9 looked at the video footage, that the configuration of the 10 line-up of the Nyalas, barbed wire Nyalas which was stage 2 11 would not have been consistent with encircling the koppie. 12 MR WHITE: I accept that. 13 MR SEMENYA SC: Okay. The following 14 page, 6.5.3, in the middle of that paragraph you say "Where 15 arrests need to be made it is often better to make those 16 arrests after the event, having recorded evidence of 17 criminality by video during the event itself." Now the 18 police tell us that the problem was not only that the 19 people were having arms and you can therefore later arrest 20 them for possession of arms, but it was people had been 21 killed and dying, so the urgency was to stamp out possible 22 further killings that would be occasioned by these arms. 23 You're saying that was a bad call for them to make? 24 MR MPOFU: No, Chairperson, the evidence 25 is the exact opposite of that.</p>
<p style="text-align: right;">Page 36716</p> <p>1 I'll respectfully withdraw that remark, but I do, you know, 2 I'm absolutely familiar with all of the evidence that you 3 have referred to and Mr Scott may have given some thought 4 to, you know, an outline concept as to how he's going to do 5 this. But actually what he then was starting to explain to 6 people, if the evidence then is accurate with regards to 7 showing on the Google Earth map where the different 8 deployments would be, I would suggest that – I don't want 9 to be unfair to him and I don't mean this in a derogatory 10 sense that he was making it up as he went along, but the 11 fact that if he had this broad concept in mind when he 12 started to get into the detail of how this would operate, 13 he must have actually been making this up as he went along. 14 And as I say, I don't mean that in a derogatory sense to 15 him, but the point that I'm making is that other people who 16 were at that meeting are therefore hearing this for the 17 first time. 18 [10:27] And we're talking about an operation which will 19 ultimately involve hundreds of police officers from all 20 different types of units and who will engage, you know, a 21 large crowd in complex and difficult circumstances. So, 22 you know, how long should that meeting have taken? I don't 23 know how long sufficient is. My point is that I think that 24 for the whole meeting it lasted 30 minutes. It suggested 25 it was a very cursory engagement with what this outline</p>	<p style="text-align: right;">Page 36718</p> <p>1 CHAIRPERSON: Mr Mpofo, don't interrupt, 2 let the witness answer. I'm sure – 3 MR MPOFU: No but, Chairperson – 4 CHAIRPERSON: The witness doesn't need 5 your help. 6 MR MPOFU: Chairperson, how many times 7 have you said to me I cannot put hypothesis where there is 8 no evidence? Why does that only apply to me? The evidence 9 is the exact opposite, that they were prepared to do stage 10 6 at a later stage. I'm saying that you can find it in the 11 evidence. If he wants to go to his hypothesis, what, what 12 he can do that, but you can't say the evidence is the 13 opposite of what the evidence is. 14 CHAIRPERSON: I didn't understand the 15 thrust of the question to be that, the thrust of the 16 question was and whether it was correct or not is another 17 matter, the thrust of the question was killings were going 18 on, the police had to arrest sooner rather than later to 19 stop further killings. That's my understanding of the 20 question. I think Mr Semanya must allowed to continue. I 21 have so ruled. 22 MR MPOFU: No, Chairperson, with respect 23 – 24 CHAIRPERSON: Mr Mpofo, I have so ruled 25 let Mr Semanya continue.</p>

<p style="text-align: right;">Page 36719</p> <p>1 MR MPOFU: Chairperson, with respect –</p> <p>2 CHAIRPERSON: If you want to show me</p> <p>3 respect abide by my ruling. Mr Semenya, please continue.</p> <p>4 MR MPOFU: No, Chairperson, I have to</p> <p>5 make this point. I hear what you are saying. I'm just</p> <p>6 saying you're making a mistake. Mr Semenya said the</p> <p>7 evidence is, those are the words. I can't leave it like</p> <p>8 that just because you didn't hear those words. He says the</p> <p>9 evidence is and I'm putting to you that the evidence is</p> <p>10 something completely different. That's the proposition.</p> <p>11 CHAIRPERSON: You've made your point.</p> <p>12 May I suggest, it's now 10:30, we take the first comfort</p> <p>13 break? Mr Semenya will take on board what you've said and</p> <p>14 we will proceed.</p> <p>15 MR MPOFU: Thank you.</p> <p>16 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>17 [10:49] CHAIRPERSON: The Commission resumes. Mr</p> <p>18 White, you're still under oath.</p> <p>19 GARY WHITE: [s.u.o.]</p> <p>20 CHAIRPERSON: Mr Semenya.</p> <p>21 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):</p> <p>22 I was saying, Mr White, that on the one hand the desire to</p> <p>23 have those who are armed arrested existed, but you can</p> <p>24 accept as a legitimate concern of the police that it was</p> <p>25 also necessary to disarm them sooner to curb the potential</p>	<p style="text-align: right;">Page 36721</p> <p>1 working in terms of the negotiation and therefore there was</p> <p>2 an absence of violence for a period of 48 hours from the</p> <p>3 Tuesday afternoon up until the period when the operation</p> <p>4 went tactical.</p> <p>5 The violence that you refer to in terms of the</p> <p>6 burning of the vehicles then happened subsequent to that.</p> <p>7 I think it's only fair that I can give that full answer.</p> <p>8 MR SEMENYA SC: Page 75, at the top of</p> <p>9 the page you talk about one of the options being to</p> <p>10 maintain stage 2.</p> <p>11 MR WHITE: Indeed.</p> <p>12 MR SEMENYA SC: For how long?</p> <p>13 MR WHITE: Well again that's an open</p> <p>14 question. It depends upon what else is happening. So for</p> <p>15 example the issues that you referred to earlier on about is</p> <p>16 it possible to get Lonmin to step up to their</p> <p>17 responsibilities of potentially coming to the koppie or</p> <p>18 whatever other negotiation can take place, but the point is</p> <p>19 that stage 1 and stage 2 had effectively brought a</p> <p>20 temporary, potentially a halt to the violence. I think</p> <p>21 that's a success.</p> <p>22 MR SEMENYA SC: So you can't tell us how</p> <p>23 long stage 2 reasonably ought to have been maintained</p> <p>24 beyond the duration that it was maintained?</p> <p>25 MR WHITE: No. But I did give a</p>
<p style="text-align: right;">Page 36720</p> <p>1 of further killings.</p> <p>2 MR WHITE: That's always going to be a</p> <p>3 consideration. However, I think it's worthy of note the</p> <p>4 comment that Mr Scott makes with regards to the fact that</p> <p>5 since the plan that went into the operation, that you –</p> <p>6 MR SEMENYA SC: Mr White, if it is enough</p> <p>7 to say yes, please, I have time constraints. I haven't</p> <p>8 asked you about Mr Scott, but you're taking me there.</p> <p>9 MR WHITE: But you're asking me for my</p> <p>10 opinion in relation to whether or not it would be better to</p> <p>11 arrest people sooner rather than later. If I'm going to</p> <p>12 give you my opinion, Mr Semenya, then please, I need to</p> <p>13 give you my whole opinion. It's not sufficient for me to</p> <p>14 say yes or no without explanation. None of these things</p> <p>15 are absolute. All of these things happened in a context</p> <p>16 and the issue is around proportionality around actions. So</p> <p>17 I think it is only fair to say of course if the police</p> <p>18 could have got those weapons off people earlier rather than</p> <p>19 later, then the potential for those weapons to be used for</p> <p>20 further acts of violence stops of course. However, it's</p> <p>21 about the consequence of actually moving in to take those</p> <p>22 weapons. What that leads to is the issue and that needs to</p> <p>23 be factored in, in advance.</p> <p>24 My point is that Colonel Scott himself had</p> <p>25 actually made the comment that the plan appeared to be</p>	<p style="text-align: right;">Page 36722</p> <p>1 suggestion again based on Colonel Scott's own</p> <p>2 interpretation of the facts that potentially you could have</p> <p>3 then taken an alternative course of action, say for example</p> <p>4 on the morning of the 17th.</p> <p>5 MR SEMENYA SC: And you say that there</p> <p>6 was also an opportunity perhaps to re-engage negotiations.</p> <p>7 Do you have any evidence indicating a possibility that</p> <p>8 Lonmin was going to change its position?</p> <p>9 MR WHITE: No, I don't, nor do I have any</p> <p>10 evidence to suggest they wouldn't.</p> <p>11 MR SEMENYA SC: Sorry?</p> <p>12 MR WHITE: Nor do I have any evidence to</p> <p>13 suggest that they wouldn't. You know in negotiations</p> <p>14 things change. Sometimes people maintain a position for a</p> <p>15 long period of time, sometimes they change. I mean that's</p> <p>16 the nature of negotiation.</p> <p>17 MR SEMENYA SC: No, but we know the</p> <p>18 evidence, Mr White. We know there have been attempts at</p> <p>19 getting Lonmin from day 1 to go to the koppie and they</p> <p>20 steadfastly said they're not going there. Can't you accept</p> <p>21 that to have, to would have maintained?</p> <p>22 MR WHITE: Well, I will accept that they</p> <p>23 haven't gone there and if it helps you I'm prepared to</p> <p>24 accept that they won't go there, but I don't know how I</p> <p>25 would know that.</p>

<p style="text-align: right;">Page 36723</p> <p>1 MR SEMENYA SC: And you accept that Mr 2 Mathunjwa had resigned to the fact that the strikers were 3 not going to listen to him to disarm? 4 MR WHITE: Well, I understand he 5 addressed the strikers and then as you described he drove 6 off, but also my understanding of the evidence is that even 7 prior to him driving off a number of people, quite a 8 considerable number were seen to be leaving the koppie. 9 MR SEMENYA SC: Even the presence of 10 Bishop Seoka doesn't seem to have gotten them to disarm. 11 MR WHITE: That's correct. 12 MR SEMENYA SC: Okay. On page 76, in 13 6.5.6(a) you say, you criticise Major-General Mpenbe saying 14 that the negotiations had failed. You say, "It is probably 15 more accurate to say that the negotiations had stabilised 16 the situation but had not resolved it." What's the 17 distinction you're drawing there? 18 MR WHITE: The point that I'm making is 19 about the negotiations between the police, Mr McIntosh, Mr 20 Calitz and the crowd, the fact that, as has been already, 21 sort of evidence that's been given, there were a number of 22 murders in the preceding days. The negotiations, stage 1, 23 stage 2 if you like combined, go into effect on the Tuesday 24 afternoon and for a period of almost 48 hours before stage 25 3 go tactical there hasn't been any other notable violence.</p>	<p style="text-align: right;">Page 36725</p> <p>1 to, you know, the police, because do we move in now and 2 inflame that situation or can we stand back and see 3 basically what's going to happen to potentially allow the 4 situation to calm down again, based on these threats that 5 are allegedly being made. 6 MR SEMENYA SC: The number 50 appearing 7 on page 78, paragraph 6.5.9, "Approximately 50 people" – 8 that is koppie 1, am I right? 9 MR WHITE: That's correct, yes. 10 MR SEMENYA SC: Page 79, in paragraph 11 6.5.12 you say, "Fourthly, there is nothing in the 12 contemporaneous plans to indicate an appreciation of the 13 smaller militant group as a separate specific threat." The 14 evidence as I understand it is the police knew there were 15 distinct groups on the koppie, the one bigger group on the 16 top of the koppie and a smaller one that was there. Is 17 that the evidence that you also – 18 MR WHITE: And I've seen evidence – 19 MR SEMENYA SC: - come across? 20 MR WHITE: Mr Semenya, I agree with you 21 and I've seen evidence to that fact as well. However, when 22 I wrote this statement the evidence that I was engaging 23 with and principally around that paragraph the evidence of 24 the chief planner, Lieutenant-Colonel Scott, actually 25 doesn't make that separation, and that's why that paragraph</p>
<p style="text-align: right;">Page 36724</p> <p>1 So my point is that that's the negotiations that I'm 2 referring to where Mr McIntosh and Mr Calitz are engaged 3 with the crowd, and that seemed to stabilise the position. 4 MR SEMENYA SC: And in paragraph 6.5.6(c) 5 which appears on page 77 you say, "Because of threats made 6 to police at the time there would have had to be attempts 7 to redouble the attempts to avoid rather than to seek 8 conflict." Are you saying the decision to go tactical was 9 a decision seeking conflict? 10 MR WHITE: No. 11 MR SEMENYA SC: Okay. 12 MR WHITE: My point is, and I use the 13 word "circumspection," there has been evidence given of 14 threats being issued by I think Mr Noki and that group to 15 Mr McIntosh and Mr Calitz. I think those happened on 16 Thursday and I think if I'm correct, Chair, they also 17 happened on the Wednesday. My point is that, even I 18 referred to Mr Merafe's oral evidence yesterday where he 19 says where a crowd's looking, seeking confrontations, 20 perhaps not the best time to intervene. So the point in 21 that paragraph is basically just saying that as we look at 22 the situation in its entirety, if those threats were being 23 made that maybe sort of gives an indication of at least the 24 attitude within some part of the crowd. That is then a 25 further cause for some degree of circumspection in relation</p>	<p style="text-align: right;">Page 36726</p> <p>1 is in there. I've subsequently seen evidence, oral 2 evidence from police officers who will come and talk about 3 the difference around the smaller group, but again as I 4 made the point to you earlier on, you've got to look at my 5 statement in the context of when it was written and the 6 evidence that I'd been able to engage with at that time, 7 and largely that paragraph was around the statement of Mr 8 Scott who's compiling the plan. 9 CHAIRPERSON: That's really a factual 10 dispute that we have to resolve, isn't it? I mean we've 11 got to decide – that's one of the issues before us – as to 12 whether at all times they were intending essentially to 13 deal in the main with the, what I call the militant group, 14 whether their plans at all times involved dealing with all 15 3 000 as one, as it were. There is conflicting evidence on 16 the point, but we'll have to decide on that point what our 17 finding is. It's not really a matter for your expert 18 evidence, is it? 19 MR WHITE: No, Chair, and that's why 20 hopefully my clarification is helpful in the sense that 21 that paragraph dealt with the evidence that was in front of 22 me then in engaging with Mr Scott's statement. 23 MR SEMENYA SC: Page 80, in paragraph 24 6.5.14 you deal with the question of positive attraction. 25 You are now familiar with the fact that Mr Noki who was</p>

<p style="text-align: right;">Page 36727</p> <p>1 leading the group home, as they say, did not live in 2 Nkaneng. 3 MR WHITE: I'm not aware of where Mr Noki 4 lives. 5 MR SEMENYA SC: And as I understand the 6 question of positive and negative attraction is if for 7 whatever reason you find the need to protect a vital asset, 8 that would make it a negative attraction point by 9 definition. 10 MR WHITE: As I understand the definition 11 of positive attraction point relates to whether or not it's 12 an area that a crowd would ordinarily want to go to or not. 13 This was a matter of dispute between myself and the SAPS 14 legal team in some of the correspondence. The definition 15 that I rely on in relation to what positive attraction 16 means as I've just explained to you, Mr Chairman, isn't my 17 definition, it's the definition from the SAPS 18 documentation. It's a point where the crowd are likely to 19 move to. 20 The purpose in identifying positive and negative 21 attraction points is understanding what you think the crowd 22 might do. Now a positive attraction point for the crowd 23 might be somewhere you really, really don't want them to go 24 for a very good reason, and therefore then you need to put 25 measures in place to stop them from going there. But it's</p>	<p style="text-align: right;">Page 36729</p> <p>1 CHAIRPERSON: [Microphone off, inaudible] 2 MR WHITE: Sorry, Chair, just let me 3 finish. 4 CHAIRPERSON: I'm sorry. 5 MR WHITE: If you look at the original 6 configuration of the barbed wire as planned by Mr Scott, it 7 suggests to people we don't want you to come this way. 8 There's the arc right across. For I'm sure very good 9 reasons Nyala 6 got moved, so instead of it being an arc – 10 and I apologise for the transcript – instead of it being an 11 arch which almost sort of protected the informal settlement 12 and it seemed to me to be suggesting to people the police 13 don't want you to come this way, it then became more of an 14 L-shape which actually seemed to suggest I would have 15 thought to people that well, they could go there. Now I 16 don't think that's with the benefit of hindsight. I think 17 if you look at those three images, I think that's an 18 entirely logical conclusion. So no, it's not with the 19 benefit of hindsight. 20 MR SEMENYA SC: You're not critical of 21 the decision to move Nyala 6 because of a perceived threat 22 that it's isolated and could be subject of attack? 23 MR WHITE: If that was the case then to 24 be honest with you I would applaud the decision to move it. 25 MR SEMENYA SC: Page 86 –</p>
<p style="text-align: right;">Page 36728</p> <p>1 still a positive attraction point for the crowd insomuch as 2 that's where they want to go; you have to stop them. 3 That's the issue in relation to positive and negative 4 attraction points. Similarly if there's a particular 5 strategic issue that you want to defend, utility, plant or 6 something, again you need to protect that. That might be a 7 positive attraction point for the crowd or it might not be. 8 But that's the definition of positive and negative 9 attraction, again coming from SAPS documents, not my own 10 interpretation. But it's an interpretation I happily agree 11 with. 12 MR SEMENYA SC: I was very careful in 13 formulating my question, Mr White, that a negative 14 attraction point would be a point where you don't want 15 people to go because of some strategic reason. That would 16 make it a negative attraction point. Is that something you 17 cannot accord with? 18 MR WHITE: No, I can agree with that. 19 MR SEMENYA SC: Page 85, paragraph 20 6.5.20, that really is hindsight you're talking there, Mr 21 White, is it not? 22 MR WHITE: Chairman, I don't think it is 23 hindsight at all. In fact in the previous three pages of 24 my statement where I actually produce images in order to 25 help explain this point. If you look at the original –</p>	<p style="text-align: right;">Page 36730</p> <p>1 CHAIRPERSON: Sorry, can I just put a 2 point before you move on, I won't take too much of your 3 time, Mr Semenya. Once they moved Nyala 6 there was as it 4 were the gap which the strikers it could be said were 5 trying to take, namely the position at the other end, other 6 side of the kraal where there was an opening for them to 7 get through. As far as my recollection goes they hadn't in 8 fact used Nyala 5 because Nyala 4 went all the way to the 9 one side of the kraal. So if they wanted to continue the 10 idea of a block, a barrier is the right word, barrier 11 between the strikers and the informal settlement, they 12 would then have had to use, or they could have used 13 presumably Nyala 5 to close the gap that was left on the 14 other side of the kraal. Is that essentially what you're 15 saying? 16 MR WHITE: That would be my 17 interpretation, Chair, but of course the fact that that 18 didn't happen and of course the crowd were already, 19 considerable numbers of them moving even as Nyala 1 and 20 Nyala 2 were moving, so basically what we saw was lots of 21 the protesters who were moving down that road which 22 actually runs alongside of the kraal long before Nyala 4 23 had ever got there with the wire. So basically not only 24 did that effective L-shape of the way the police vehicles 25 potentially would have been set out, you know, that would</p>

<p style="text-align: right;">Page 36731</p> <p>1 have merely suggested to people they could go that way and 2 of course that's the way people, a lot of people went. 3 Forget about the, even the more militant group that we're 4 referring to, but lots of people left the koppie beforehand 5 and walked that exact route. 6 MR SEMENYA SC: But clearly if they had 7 done what the Chairman suggests was possible, there would 8 be no dispersal action because the police would be this 9 side of that enclosure, entirely closed by the barbed wire. 10 MR WHITE: Well of course this was one of 11 the issues I sort of was confused about in relation to the 12 plan because as you say, Chair, Nyala 5 could have been 13 used to extend on beyond Nyala 4. Well, the original plan 14 was that that is what was to happen and then Nyala 6 beyond 15 that. So in some respects when they created that wire in 16 order to create this sort of neutral zone, this area where 17 police officers and media or whatever would be safe, it was 18 somewhat confusing to me well, how actually would the 19 dispersal resources get out, because they're now behind the 20 wire because the sequencing of the plan was the wire goes 21 out, then at the time of Mr Calitz as the operational 22 commander choosing he gives this warning to the crowd, he 23 then allows people to leave and then the dispersal action 24 takes place, and it was always a matter of confusion to me, 25 well, surely the dispersal resources are now stuck behind</p>	<p style="text-align: right;">Page 36733</p> <p>1 MR WHITE: In order to give you a brief 2 answer, Mr Semenya, could you read first the question, 3 because I don't quite follow. 4 MR SEMENYA SC: You are not connoting in 5 reference to that utterance that he was foreseeing stage 3 6 culminating in bloodshed? 7 MR WHITE: If you're asking me, did I 8 think that he felt that he was planning for bloodshed, no, 9 however, I took that comment to be that he was trying to 10 negotiate, as we referred to earlier on, he was trying to 11 make Lonmin and the unions realise that, look, this is the 12 potential seriousness of this and therefore, but part of 13 his negotiation strategy, however the point that he makes 14 is he uses the word bloodshed, and basically it seems to me 15 that he's saying, given the number of people on that hill 16 and they're heavily armed, if I then have to send in lots 17 of heavily armed police, there's likely to be bloodshed. 18 MR SEMENYA SC: Now, you're building 19 those words into his mouth. I'm telling you what he said 20 in his evidence. 21 MR WHITE: Well, with respect, then, Mr 22 Semenya, if I'm incorrectly quoting him, if you want to put 23 the exact words up and I'll engage with those, but my only 24 point in relation to this is Mr Mpembe appeared to be alive 25 to the fact that this potentially could be a very</p>
<p style="text-align: right;">Page 36732</p> <p>1 the wire. 2 CHAIRPERSON: The original plan didn't 3 envisage a gap. It envisaged an uninterrupted barrier. 4 Presumably what, I don't think we asked Colonel Scott at 5 the time, but I take it what must, the answer would have 6 been once they were ready to go into the area where the 7 strikers were they could they effected some kind of 8 temporary gap in the barrier they'd created to go through. 9 I mean – 10 MR WHITE: That may well have been the 11 case. 12 [11:09] CHAIRPERSON: Advocate Hemraj says that 13 I'm wrong, but in fact they were going to go round the end 14 of the barrier, but anyway, I don't think anything turns on 15 the point. So let me not waste, Mr Semenya's time further. 16 MR SEMENYA SC: Somewhere in your report 17 you deal with the use of the words bloodshed by General 18 Mpembe in one of the meetings. The evidence by General 19 Mpembe is that he used that expression in attempts to 20 pressure Lonmin to appreciate the need to resolve the 21 industrial dispute. That's the context. 22 MR WHITE: I accept that. 23 MR SEMENYA SC: If your report is read to 24 read that it was because of some foreseeable loss of life 25 in stage 3, we should de-contextualise that, correct?</p>	<p style="text-align: right;">Page 36734</p> <p>1 difficult, dangerous situation involving firearms the 2 following day, where you have to put heavily armed police 3 officers into confrontation with the heavily armed group. 4 And he was trying to use that in order to influence people 5 to see if we can negotiate our way out of this, I get that, 6 but the point is I used that reference there to make the 7 point that Mr Mpembe is alive to high risk nature of this 8 operation and yet the following day they went ahead with 9 and did exactly that. That's my point, but if I misquoted 10 him, I'm more than happy to see it on the screen and to 11 engage with the specifics of what he said. 12 MR SEMENYA SC: Page 89, where you make 13 reference in paragraph 6.5.31a, you are not suggesting if 14 you accepted that the crowd that moved to the TRT line, if 15 the evidence is that they were acting in concept, that is a 16 situation that could have been resolved by appointment of 17 snipers. That's not what you're suggesting there? 18 MR WHITE: I make the reference to 19 snipers because snipers were placed, and as I understand, 20 snipers were placed on the basis of there is intelligence 21 to say that there may be firearms threat against the 22 police, and that the firearms had been stolen throughout 23 the course of the week and we know that it would have been 24 used. So I make that point that snipers are already 25 deployed in this. I then make the further point that when</p>

<p style="text-align: right;">Page 36735</p> <p>1 you're engaging with a firearms threat, in relation to 2 crowd, there are ways to do that respectfully, and ways to 3 do it in a way that doesn't involve lining up 60 people 4 armed with rifles, who are all going to potentially 5 perceive and engage the same threat. That's the point that 6 I'm making.</p> <p>7 MR SEMENYA SC: The question was a simple 8 one, you are not suggesting, and if you are, tell me you 9 are. You're not suggesting that that problem could have 10 been resolved by the use of snipers?</p> <p>11 MR WHITE: No, I'm not, but I would refer 12 to the last couple of lines of that. In my experience, it 13 is generally not sufficient when firearms can be 14 anticipated in a crowd situation to leave the response to 15 officer's discretion, acting in self or private defence. 16 It's also unfair to the officers to be placed in that 17 situation. That's the point that I'm making around this 18 issue of the line of TRT officers.</p> <p>19 CHAIRPERSON: It's a simple question 20 really. I can understand you don't like 60 members of the 21 police service, each of whom has got an R5, each of whom is 22 given the authority, if he considers it necessary to defend 23 himself or his colleagues to fire. So then you have 24 potentially 60 shotists all firing at once on the advancing 25 group. That obviously you don't like, and that you suggest</p>	<p style="text-align: right;">Page 36737</p> <p>1 MR WHITE: I am grateful, that is indeed 2 the reference.</p> <p>3 CHAIRPERSON: Just check. It just says 4 arises, the point you make in 7.5.11, maximum lethal force 5 be used only when necessary, avoid the of force at all 6 costs. Linked to that would be the necessity where force 7 has to be used, use as little force as possible. And 8 giving 60 people R5s and saying, all of you can shoot as 9 and when you consider it necessary to defend yourselves and 10 your colleagues, it might well be argued, I'm saying, what 11 the answer is, but it might well be argued that that would 12 not be using as little force as possible, question, would 13 you agree with that?</p> <p>14 MR WHITE: That's exactly my point, 15 Chair.</p> <p>16 CHAIRPERSON: Then the next question 17 arises, which I think, just let me quickly ask, is what 18 would be as little force as possible? And I take it your 19 answer is contained in this paragraph, am I understanding 20 you correctly?</p> <p>21 MR WHITE: Exactly, that the issue to the 22 use of force is that it's in proportion. So it's about 23 understanding what the threat actually is that you're 24 facing and then trying to work out a tactical option to 25 deal with that. And I have been consistent in all three of</p>
<p style="text-align: right;">Page 36736</p> <p>1 is undesirable, inappropriate. What would be an 2 appropriate way of dealing with the matter? What Mr 3 Semenya is suggesting to you, is just having two or three 4 snipers wouldn't be enough, and I take it you agree with 5 that? So what was the alternative?</p> <p>6 MR WHITE: Well, Chair, I actually have 7 given evidence in my statement, somebody to help me with 8 specific reference where I have talked about dealing with 9 that type of eventuality in a crowd situation. I've 10 experienced all of that. I think and I gave evidence in my 11 evidence-in-chief around it, where we would have used 12 specialist armed firearms, armed response officers, 13 specially trained firearms officers, if you like, and 14 imbedded within the public order units.</p> <p>15 CHAIRPERSON: I'm sorry to interrupt you. 16 I think you're referring to in your report 7.5.11 on page 17 115.</p> <p>18 COMMISSIONER HEMRAJ: Are you, Mr White, 19 suggesting dedicated officers who would be responsible for 20 dealing with that issue, rather than a line of 60?</p> <p>21 MR WHITE: Yes, Commissioner, that is my 22 point.</p> <p>23 COMMISSIONER HEMRAJ: I understand.</p> <p>24 CHAIRPERSON: That's effectively what you 25 say in 7.5.11.</p>	<p style="text-align: right;">Page 36738</p> <p>1 my statements, my main issues here is that the tactical 2 configuration of the operation was set up, was likely to 3 lead to higher uses of force, and that's not with the 4 benefit of hindsight. I couldn't understand why, during 5 the planning process, during the meeting that we were 6 talking about before the tea break, the 30 minute meeting, 7 that senior police officers were not objecting to this plan 8 on that basis.</p> <p>9 COMMISSIONER HEMRAJ: May I just 10 understand, given the circumstances as they were on the 16th 11 and the numbers involved, and if you were suggesting the 12 dedicated, you call them firearms officers, do you? How 13 many would you say would be given that order to deal with 14 this threat?</p> <p>15 MR WHITE: Well, again, this comes back 16 to careful planning. So it's about understanding what that 17 threat is. By way of an example, it may well be that you 18 have potentially three or four public order teams who are 19 going to engage a crowd, and it may well be that this end 20 of the crowd, for whatever reason based on intelligence, we 21 don't anticipate a firearms threat or a threat where 22 potentially there is a threat to life, not necessarily by 23 firearms, whereas over here there is. None of this stuff 24 is perfect science, it's about trying to interpret the 25 risks and responding to that. So it may well be that, as I</p>

Page 36739

1 say, we would have imbedded on either end of a public order
 2 line police officers who are specifically trained and carry
 3 out that function. And ordinarily it would be one person
 4 with a gun with their backup team, as in spotters, people
 5 to help them identify the threat.
 6 Also what you would figure into that would be
 7 about the protection that be afforded from various
 8 vehicles. If there is a specific firearms threat that
 9 police officers are facing, and that's based on very good,
 10 reliable intelligence. It may even be that in dealing with
 11 a crowd, a public order crowd, we confine police officers
 12 to their vehicles. We actually use vehicle tactics,
 13 because it's too dangerous for them to get out, so rather
 14 than to be exposed and to therefore have to shoot back, we
 15 might keep them in vehicles.
 16 So my answer to you, Ma'am Commissioner, is
 17 basically that it depends on the threat. You plan around
 18 the threat, but in a way that is likely to minimise the use
 19 of force.
 20 COMMISSIONER HEMRAJ: Yes, but given the
 21 circumstances, as you're fully aware of on the 16th, what
 22 would you suggest? How many dedicated firearms officers
 23 would you have to deal with the threat? That's really what
 24 I'm trying to understand, because you don't like the 60
 25 people, so what are you suggesting?

Page 36740

1 MR WHITE: Well, I'd suggest a number
 2 considerably lower than that. I mean, we could perhaps be
 3 here all day as to whether or not it's five, it's ten, or
 4 it's three or four, but the point that I think I made
 5 yesterday actually is that given the nature of the threat
 6 and understand there was firearms threat and then there was
 7 an actual firearms incident within this, that's what the
 8 evidence is, but I did talk about yesterday that I think
 9 that for the most part this crowd who were armed largely
 10 with what are referred to as traditional dangerous weapons
 11 could have been dealt with fairly adequately with the use
 12 of less lethal options, had they been properly used.
 13 CHAIRPERSON: Well, let's just go back to
 14 the firearm, what I call the shotists that you have - I'm
 15 not sure that shotists is the right word, but I don't know
 16 a more appropriate one. Am I understanding you to say what
 17 should perhaps have happened was there should have been
 18 perhaps an Nyala at either end, parked as it were, on
 19 either end of the line, and in which there were officers
 20 armed with R5s or with rifles anyway, and with spotters
 21 assisting them. They could then have fired through from
 22 the Nyala at the advancing group, who'd be relatively safe
 23 themselves, because they'd be in the Nyalas. Is that what
 24 you're saying? I don't quite understand what you're
 25 saying. You did say, - debate with my colleague, I

Page 36741

1 understood you to say initially you have effectively
 2 snipers at each side, one on each side of the line,
 3 assisted by spotters and so on. You also then spoke about
 4 the necessity for them possibly to be protected by being in
 5 a armoured vehicle which made me think that you were
 6 suggesting that perhaps they should be in an Nyala. I
 7 think we should get clarity on what you say that the police
 8 should have done, because you are saying there's defect in
 9 their plan. I know your first point is that they shouldn't
 10 have endeavoured to exercise the tactical option on the
 11 Thursday, they should have done it early morning on the
 12 Friday, but in the alternative, as it were, what was wrong
 13 with the actual plan that was implemented on the Thursday?
 14 You say that 60 people with firearms with discretion to
 15 fire is inappropriate. What is the alternative? If you
 16 can spell that out with precision, because I think that's
 17 important for us and I suspect for Mr Semenya too.
 18 MR WHITE: Chair, three points on what
 19 you said. First, reference to snipers, when I talk about
 20 use of firearms teams in a public order operation, I'm not
 21 necessarily talking about snipers - certainly the way that
 22 Mr Frits had described, I think, those were people who were
 23 nearly, I think, they're STF personnel and they were placed
 24 sort of almost independent of the dispersal to provide for
 25 protection against the specific firearms threat. So they

Page 36742

1 are deployed, and set them aside.
 2 Then looking at the circumstances of Marikana, we
 3 are talking about a dispersal operation, whereby public
 4 order police are going forward to disperse a crowd who are
 5 armed with dangerous traditional weapons, but also, our
 6 intelligence suggests, that there might be firearms threat
 7 within that, okay. So, don't forget, this is the planning,
 8 this is what we anticipated was going to happen, so
 9 therefore to engage that threat and there are potentially
 10 small numbers of firearms within that crowd, then how do
 11 you do that? And what I've given you is I've face that
 12 type of a situation before, and what we've done is as the
 13 public order, as the POPS line have gone forward, that they
 14 may be accompanied on either end, either extremity of that
 15 line, by armed response officers, specifically firearms
 16 trained officers, trained to do that particular job, who
 17 would practice with the public order teams in terms of
 18 training and whatever. So maybe one at either end of the
 19 public order team.
 20 CHAIRPERSON: They would be on foot, in
 21 other words, they wouldn't be in armoured vehicles?
 22 MR WHITE: Potentially on foot. And the
 23 third point that I was going to make was, then your
 24 reference clears up any confusion, I talked about people in
 25 the armoured vehicles. On occasion, I've faced

<p style="text-align: right;">Page 36743</p> <p>1 circumstances whereby the level of threat, the level of 2 intelligence, if you like, is such that we have to be in a 3 particular area, because quite often the difficulties that 4 we deal with is around two opposing communities. So it's 5 not an available option for the police not to be there, or 6 potentially like to be lost. So the police might have to 7 be between these two opposing communities, but if the 8 threat level is such there is intelligence suggesting that 9 actually there could be lots of firearms, there could be 10 AK47s, etcetera, then rather than putting the police 11 officers out on a sheet line to simply walk forward towards 12 that crowd, it may well be that we actually utilise 13 armoured vehicles. In other words, we manage the crowd by 14 vehicle tactics, by not getting the police officers out of 15 the vehicles, because it's too dangerous to do so.</p> <p>16 CHAIRPERSON: Thank you, I understand.</p> <p>17 MR SEMENYA SC: Mr White, I thought we 18 had agreed that the possibility of the crowd moving around 19 the corner, as they did, was not present at the 14:30 20 JOCCOM discussion.</p> <p>21 MR WHITE: And I thought I was careful in 22 my answer to the chairman when I actually said how this was 23 planned and the example I gave of how this was planned was 24 that the POP dispersal line would be moving forward. So I 25 was giving an illustrative example based on what the plan</p>	<p style="text-align: right;">Page 36745</p> <p>1 happened. So if I am overstepping my mark in that regard 2 with regards to what Mr Semenya said, I apologise to you. 3 I'm sure you'll comment on that.</p> <p>4 MR SEMENYA SC: What I also find 5 difficult and please help me, where standing order 262 says 6 in clause 11 that things like putting a barbed wire as 7 offensive action requires no prior announcement, you're 8 saying it does.</p> <p>9 MR WHITE: I'm saying that it is I think 10 fairly well accepted good public order policing dealing 11 with crowds principles that when the police are carrying 12 out actions, they provide warnings to the crowds. Now if 13 there is a specific direction in relation to 262, or 14 elsewhere, that says that you shouldn't do that, for 15 whatever reason, well that's fine. I am saying to you, 16 Chair, as someone who has considerable experience with 17 dealing with public order that and I'm looking at some of 18 the learning, if you like, coming out of public order 19 situations that actually it is generally accepted as good 20 practice in managing crowds that we use this concept of no 21 surprises, where we keep the crowd informed of what's going 22 to happen, so there can't be a misinterpretation of the 23 actions of police.</p> <p>24 [11:29] MR SEMENYA SC: But let's explore that, 25 if the tactic is for instance we are going to channel this</p>
<p style="text-align: right;">Page 36744</p> <p>1 was, not that people came round the kraal.</p> <p>2 MR SEMENYA SC: And that the TRT only 3 moved there once they saw the crowd moving around the 4 corner. That's what happened, and they realised they'll be 5 going into the - encroach the safe area, where there were 6 media and other people.</p> <p>7 MR WHITE: That might be so, but my 8 criticism is around the TRT in this line, and the plan was, 9 the plan from the outset was that the POP officers would go 10 forward and disperse and they would be supported by this 11 TRT line of 60 people. That was the plan, which you say 12 the TRT came forward when people came around the kraal. 13 Now, in terms of my criticism of the planning, the planning 14 was that the TRT, 60 people would be lined up to follow the 15 POP.</p> <p>16 MR SEMENYA SC: I think your line of 17 argument, Mr White, with respect, implicitly rejects that 18 the shooting was a function of self-defence as opposed to a 19 police operational plan to do something.</p> <p>20 MR WHITE: I'm not sure that's correct. 21 I've always been careful, Chair, to say, obviously I'm very 22 aware of my position here is – it is your position to 23 decide factually what happened. I'm just trying to give an 24 interpretation of the facts, based on my opinion, as to 25 potentially what might have happened or could have</p>	<p style="text-align: right;">Page 36746</p> <p>1 group. Using vehicles blocking that and blocking that, do 2 you announce that in advance?</p> <p>3 MR WHITE: Sorry.</p> <p>4 MR SEMENYA SC: If you're going to do a 5 channelling exercise, channelling crowds, you are going to 6 be using vehicles to block this entrance to open that 7 entrance and to block the other do you announce that to the 8 crowd in advance, that we are going to be channelling you 9 now?</p> <p>10 MR WHITE: As you said, Mr Semenya, there 11 was a responsibility for the police to engage with the 12 stakeholders, we talked about that at length and the 13 planning of these operations would often involve lots of 14 engagement with stakeholders including representatives of 15 communities where we make it very clear –</p> <p>16 MR SEMENYA SC: No I'm talking about 17 spontaneous events, obviously if it is planned everybody 18 agrees. I'm talking about spontaneous ones.</p> <p>19 MR WHITE: When the police -</p> <p>20 MR SEMENYA SC: Sorry.</p> <p>21 MR WHITE: And then in relation to 22 spontaneous events where the police are taking actions yes 23 it would be as a matter of course the police would explain. 24 We'd give warnings in relation any use of force whatsoever 25 because the idea behind a warning is that hopefully people</p>

<p style="text-align: right;">Page 36747</p> <p>1 will acknowledge, understand that warning and desist from 2 they're doing resulting in the police not having to use 3 force. That's exactly within the principle of the minimum 4 use of force to warnings repeated again and again and again 5 if necessary can often result in not actually to use the 6 force that you're warning for in the first place. 7 MR SEMENYA SC: In any event you're 8 familiar with the evidence that Brigadier Calitz explained 9 to Mr Noki through a loudhailer why there were barbed wires 10 there for everybody to hear. 11 MR WHITE: I know that Mr Calitz did do 12 that. I think I used the expression about explanation as 13 opposed to warning insomuch as an explanation sort of this 14 is why we've done what we have done or we're doing what 15 we're doing a warning sort to tend to come beforehand. And 16 specifically Mr Scott's plan was that there shouldn't be a 17 warning. 18 MR SEMENYA SC: And where you deal with 19 the question of lack of video evidence around what happened 20 are you also familiar with the evidence that video 21 operators, police video operators were withdrawn in the 22 face of what was said would be a danger to their lives. 23 MR WHITE: Yes I am aware of that, but I 24 couldn't understand why they didn't then carry out the 25 function from behind police lines. I mean one of the video</p>	<p style="text-align: right;">Page 36749</p> <p>1 MR SEMENYA SC: Where you make reference 2 to the ratios that are required in offensive and defensive 3 tactics, that formula is a military tactic is it not? 4 MR WHITE: Mr Chairman, I ask to pointed 5 to anywhere in any of my three statements that I've made 6 any reference whatsoever to any ratio because I haven't. 7 MR SEMENYA SC: Oh sorry, Sir, I'm 8 confusing you with Mr Hendrickx's formula, sorry. In 9 paragraph 106, I mean page 106. 10 CHAIRPERSON: What paragraph on page – 11 MR SEMENYA SC: 7.3.19. 12 CHAIRPERSON: Thank you. 13 MR SEMENYA SC: You talk about best 14 practise. By that I understand you to use the phrase in 15 reference to at least the minimum that you'd expect in 16 public order operations, no? 17 MR WHITE: I want to help you, Mr 18 Semenya, if you could rephrase your question on the basis 19 that I don't see anywhere that I've used the word minimum 20 here. I'm not sure what your question is. I apologise. 21 MR SEMENYA SC: In the middle of that 22 paragraph you say unless you're properly trained in what is 23 considered as best practise you can never be sure if your 24 experience is still relevant. Is that a reference to 25 minimum standards which you call best practise or not?</p>
<p style="text-align: right;">Page 36748</p> <p>1 operators in his statement then talks about after being 2 withdrawn on the basis of these threats he went back to the 3 JOC. 4 CHAIRPERSON: Yes, yes I know about that, 5 that's something we'll have to look at very carefully. But 6 getting back to the previous point, your distinction 7 between explanation and warning. My understanding of the 8 evidence was that when they came on the scene on Thursday 9 morning with the wire trailers there was a question from I 10 think it was Mr Noki, but anyway one of the leaders of the 11 strikers, what's all this about? And the explanation was 12 then given. I would thought an explanation given 13 beforehand is virtually the same as a warning. This is 14 what we're going to do, this is why we think why these 15 trailers are here. This is what we're going to use them 16 for, well that would be in effect a warning. Would you 17 accept that? 18 MR WHITE: I'll accept that. I suppose 19 my bigger point, Chair was just that Mr Scott at the time 20 specifically said there shouldn't be a warning. 21 MR SEMENYA SC: And you call a rule of 22 thumb about offensive and defensive numbers required, 23 that's a military formula is it not? 24 MR WHITE: Apologies. Could you expand 25 on that?</p>	<p style="text-align: right;">Page 36750</p> <p>1 MR WHITE: I think if you look at the 2 paragraph in its entirety I'm sort of making the point that 3 many of the senior leadership had no public order training 4 and the point is made that these are highly experienced 5 officers. Being experienced is very useful, very, very 6 important, but actually in a continuous profession 7 development is also very important as well. So experience 8 of itself I think is not sufficient in ongoing training. 9 Things change, you know, not least even the law changes. 10 The last time I was here and we were giving evidence we 11 looked at a number of reports by Her Majesty's Inspectorate 12 of Constabulary learning from different events. So you 13 only base your approach to these things on your own 14 personal experience then I think, you know, there's a flaw 15 in that and it should be complimented by ongoing training. 16 That's my point. 17 MR SEMENYA SC: In your report you are 18 critical about the use of Colonel Vermaak's radio language, 19 that it is – it was not helpful, it could have been better. 20 MR WHITE: Yes I did. 21 MR SEMENYA SC: Where you say on page 110 22 that failure to communicate the barbed wire would have 23 caused fear and confusion, is it based on any previous 24 occurrence? 25 MR WHITE: Well I think that point is</p>

<p style="text-align: right;">Page 36751</p> <p>1 just that we come back to this issue that I talked about 2 before, no surprises. When barbed wire is starting to be 3 rolled out then actually people may not understand what 4 that's for and they may misinterpret what it's for. I mean 5 there's actually evidence to suggest that police officers 6 misinterpreted what it was for, so I'm sure similarly the 7 crowd could be expected to do the same.</p> <p>8 MR SEMENYA SC: With the time constraints 9 you do accept don't you, Mr White, that the question 10 whether the response by the SAP in relation to what was the 11 attack or what they would have perceived to be an attack 12 was excessive or not is ultimately a question to be 13 answered by the Commission, right?</p> <p>14 MR WHITE: Absolutely.</p> <p>15 MR SEMENYA SC: And your opinion on the 16 matter would be inadmissible for that reason.</p> <p>17 MR WHITE: Well I think that's a matter 18 for the Chair.</p> <p>19 CHAIRPERSON: I don't know if you can ask 20 a witness for his opinion on whether his opinion is 21 relevant or not. If he's got expertise in the field and he 22 knows from his experience what would be excessive or non- 23 excessive response I take it he can give evidence on that. 24 If he is in a better, the test for expert evidence and 25 opinion is whether the witness is in a better position than</p>	<p style="text-align: right;">Page 36753</p> <p>1 to the issues around the use of firearms and obviously it's 2 entirely up to – a matter for yourself, Chair, as to 3 whether or not you wish to accept those.</p> <p>4 MR SEMENYA SC: We'll argue at the right 5 point whether or not you can answer the ultimate question 6 charged this Commission, but given the time constraints, 7 Chair, I must stop my cross-examination here.</p> <p>8 CHAIRPERSON: That's the end of your 9 cross-examination. Re-examination Ms Le Roux.</p> <p>10 MR SEMENYA SC: No we agreed there's not 11 re-examination, Chair. We agreed there's no re- 12 examination.</p> <p>13 MS LE ROUX: We put it's on – it's on 14 paper.</p> <p>15 CHAIRPERSON: It's on paper.</p> <p>16 MS LE ROUX: As we understand the expert 17 process.</p> <p>18 CHAIRPERSON: Yes, I see. This is the 19 end of Mr White's evidence. Well, Mr White, thank you for 20 coming back and giving us your evidence. I have to say the 21 usual thing that if it's necessary for us to get you back 22 which I don't think is likely, but anything is possible, 23 you will come back without our having to send a subpoena to 24 Dublin or wherever you will be.</p> <p>25 MR WHITE: Of course, Chair.</p>
<p style="text-align: right;">Page 36752</p> <p>1 the try as a fact, because of his experience or learning or 2 whatever then he can give an opinion. The question is 3 whether this witness is in such a position and I don't know 4 whether he's qualified to decide that or not. But perhaps 5 I can ask you have you got experience which enables you to 6 express an opinion, an informed opinion which would be of 7 assistance to what is excessive force as opposed to non- 8 excessive force? Or is it something that can safely be 9 left to the try as a fact?</p> <p>10 MR WHITE: Well, Chair, I have said in my 11 considerations and at some considerable length in my 12 statements and particularly the final statement and 13 therefore I think that's for you to decide. I've also been 14 open and honest with regards to my experience in relation 15 to the actual use of firearms and that I mean I am a Gold 16 firearms trained commander or was when I was a police 17 officer. So I have lots of experience of commanding what 18 we call firearms incidents. I have limited experience with 19 regards to actually commanding operations with the police 20 of hard weapons, fortunately so because we do that very 21 well. So as I say I've set out my considerations, I'm also 22 very – I'd like to say I've got a significant amount of 23 experience at engaging with the planning processes based on 24 principles of minimum use of force and proportionality. 25 And therefore I respectfully offer up my opinions in regard</p>	<p style="text-align: right;">Page 36754</p> <p>1 [NO FURTHER QUESTIONS – WITNESS EXCUSED]</p> <p>2 CHAIRPERSON: Thank you. On that basis 3 you're excused, thank you. It's appropriate for us now to 4 take the tea adjournment. I suppose we can take it a bit 5 later, but it's probably more convenient for us to take it 6 now. We must try to stick to quarter of an hour because I 7 know we try often and don't succeed, but this time we must 8 succeed because time is very precious.</p> <p>9 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>10 [12:05] CHAIRPERSON: The Commission resumes. Mr 11 Bizos, I understand you're going to call the next witness.</p> <p>12 MR BIZOS SC: Yes, we call Mr Eddie 13 Martinus Rosalia Hendrickx, Mr Chair.</p> <p>14 CHAIRPERSON: Will you please stand? Are 15 you prepared to take the oath [microphone off, inaudible]. 16 I asked, sorry, before when my microphone was turned off I 17 asked if you want to take the oath or do you wish to 18 affirm, and you said you wish to affirm. I'm going to ask 19 Mr Chaskalson and Mr Mpofu to deal with another matter in a 20 moment, but I may as well swear you in while you're 21 standing up. Do you affirm that the evidence that you will 22 give before this Commission will be the truth, the whole 23 truth, and nothing but the truth? Please –</p> <p>24 EDDIE MARTINUS ROSALIA HENDRICKX: I do 25 affirm.</p>

<p style="text-align: right;">Page 36755</p> <p>1 CHAIRPERSON: You do affirm, yes thank 2 you. You may be seated. Mr Chaskalson, I understand you 3 and Mr Mpofu have an announcement to make. 4 MR CHASKALSON SC: Yes, Chairperson. Mr 5 Mpofu is not available, and his team are not available for 6 the inspection in loco on Monday, so we've arranged that we 7 will go now so that he can point out to me with his clients 8 the places that he would like pointed out at the inspection 9 in loco on Monday, and I'll make careful notes of position 10 and description and then we'll make sure that those place 11 are pointed out at the inspection in loco even though Mr 12 Mpofu and his team are not going to be there. 13 CHAIRPERSON: Yes, Mr Mpofu, anything you 14 want to add? 15 MR MPOFU: No, thank you, Chairperson – 16 CHAIRPERSON: Do you confirm that that's 17 so? 18 MR MPOFU: I just wanted to say yes, it 19 looks like the best we can do. It's not ideal, but it 20 looks like the best that can be done under the 21 circumstances, yes, and simply to say, because we are in 22 the Appeal Court on Monday for the funding matter. 23 CHAIRPERSON: Yes, we understand you have 24 a matter in the Appeal Court related to this Commission. 25 MR MPOFU: Yes.</p>	<p style="text-align: right;">Page 36757</p> <p>1 MR BIZOS SC: Yes, those – 2 CHAIRPERSON: And do you want to hand 3 that in as exhibit as well? 4 MR BIZOS SC: There are three documents, 5 Mr Chairman, that I want to – 6 CHAIRPERSON: Ms Pillay will help us in 7 giving us the appropriate – 8 MR BIZOS SC: They will be given exhibit 9 numbers. The first is the Goldstone report, an extract on 10 command and control of the police. We have shown these to 11 our learned friends – 12 CHAIRPERSON: I think you'll find that 13 document is already, the document which is the extract from 14 the Goldstone report I think is already an exhibit. It was 15 handed in long ago by Mr Budlender, but – 16 MR BIZOS SC: Well, no harm done if the 17 particular quote that the witness would like to refer to, 18 which is a short document, perhaps should be a new exhibit, 19 Mr Chairman. 20 CHAIRPERSON: Alright, Ms Pillay, what 21 shall we call these exhibits? 22 MS PILLAY: Chair, the Human Rights 23 Commission has asked us to reserve quadruple S as an 24 exhibit number for the phase 2 documents which they want to 25 have exhibited for the Commission. So the next exhibit –</p>
<p style="text-align: right;">Page 36756</p> <p>1 CHAIRPERSON: So we will follow the 2 proceedings with interest. 3 MR MPOFU: Thank you, Chairperson. 4 CHAIRPERSON: Thank you. I understand 5 you and Mr Chaskalson wish now to be excused. 6 MR MPOFU: Yes, Chairperson, thank you. 7 CHAIRPERSON: So you won't have the 8 opportunity of hearing Mr Hendrickx's evidence. 9 MR MPOFU: Unfortunately, Chairperson, 10 yes. 11 CHAIRPERSON: You can read it on the 12 transcript. 13 MR MPOFU: Yes. 14 CHAIRPERSON: Yes, Mr Bizos. 15 EXAMINATION BY MR BIZOS SC: Thank you, 16 Mr Chairman. Mr Hendrickx, you have made two statements, 17 exhibit GGG2 and LLL12. You signed them and do you adhere 18 to the contents of those statements? 19 MR HENDRICKX: Chair, I fully adhere to 20 the statement that I signed. 21 CHAIRPERSON: Now we've been handed some 22 other documents. One is a document headed "Notes on 23 militarisation and demilitarisation of the police." I 24 understand that Mr Hendrickx is the author of that 25 document. Is that correct?</p>	<p style="text-align: right;">Page 36758</p> <p>1 CHAIRPERSON: Why must we reserve 2 quadruple S for that? Can't we use some other letters 3 later? 4 MS PILLAY: They've already started the 5 process of providing us with an index, Chair, which has got 6 the quadruple S number allocated – 7 CHAIRPERSON: Alright. Yes, we must be 8 grateful for small mercies. So you're saying quadruple T? 9 MS PILLAY: That's correct, Chair. 10 CHAIRPERSON: So it's quadruple T, I 11 think Mr Bizos said there were three documents. So it's 12 TTTT, shall we make them 1.1, 1.2, 1.3, or shall we make 13 them 1, 2, 3? Which do you prefer? 14 MR BIZOS SC: Your choice, Mr Chairman. 15 CHAIRPERSON: TTTT1 will be the notes on 16 demilitarisation. Is that right? 17 MR BIZOS SC: Yes. 18 CHAIRPERSON: Notes on militarisation, 19 etcetera. 20 MR BIZOS SC: The other document, Mr 21 Chairman – 22 CHAIRPERSON: Sorry, hang on. That will 23 be TTTT1. TTTT2, is that the extract from the Goldstone 24 Commission? 25 MR BIZOS SC: Yes, Mr Chairman, and the</p>

<p style="text-align: right;">Page 36759</p> <p>1 next document is headed "Notes on militarisation" –</p> <p>2 CHAIRPERSON: That's TTTT1.</p> <p>3 MR BIZOS SC: Thank you, Mr Chairman.</p> <p>4 And then there is –</p> <p>5 CHAIRPERSON: Then there's a document</p> <p>6 headed "Goldstone Commission 'Towards peaceful process in</p> <p>7 South Africa, pages 37, 38.'" Is that what you want to</p> <p>8 make TTTT2?</p> <p>9 MR BIZOS SC: Yes, and a third document –</p> <p>10 CHAIRPERSON: Let me write it down.</p> <p>11 MR BIZOS SC: Sorry.</p> <p>12 CHAIRPERSON: Goldstone, I think that's</p> <p>13 in already, but never mind, as you say if it's good enough</p> <p>14 it can go in again. Goldstone Commission, pages 37 to 38,</p> <p>15 that will be TTTT2. What's the third document?</p> <p>16 MR BIZOS SC: The third one is something</p> <p>17 that comes from the police, Mr Chairman, and it's headed –</p> <p>18 CHAIRPERSON: Is this the "Use of force</p> <p>19 directive"?</p> <p>20 MS PILLAY: Chair, if I may just</p> <p>21 interrupt, Chair, that pages 37 to 38 of "Towards peaceful</p> <p>22 protest" is an exhibit already.</p> <p>23 CHAIRPERSON: I know, I said so, but Mr</p> <p>24 Bizos wants it in again. So –</p> <p>25 MS PILLAY: It's TT1. It forms part of</p>	<p style="text-align: right;">Page 36761</p> <p>1 case and I regret being in that position.</p> <p>2 MR BIZOS SC: Yes, well I'm sure that you</p> <p>3 will be given an opportunity, Mr Hendrickx, when you are</p> <p>4 examined by –</p> <p>5 CHAIRPERSON: You've got 50 minutes. I</p> <p>6 suggest you use that time, give the witness an opportunity</p> <p>7 to explain the main thrust of the points he wants to make</p> <p>8 and we give you the undertaking we will, we have already</p> <p>9 read his statements, but we will read them again.</p> <p>10 MR BIZOS SC: Yes.</p> <p>11 CHAIRPERSON: And we'll also read the</p> <p>12 documents that he's handed in.</p> <p>13 MR BIZOS SC: Yes, thank you, Mr Chair.</p> <p>14 CHAIRPERSON: He may not know this but we</p> <p>15 are already to some extent acquainted with the points he's</p> <p>16 going to put because we've already made a close study of</p> <p>17 the documents he's given us.</p> <p>18 MR BIZOS SC: Good. What I want to ask</p> <p>19 you, Mr Hendrickx, is this; are you a stranger to police</p> <p>20 practices in South Africa?</p> <p>21 MR HENDRICKX: Chair, I don't consider</p> <p>22 myself to be a stranger to police practice in South Africa</p> <p>23 and this, or since 1993 I definitely am not a stranger to</p> <p>24 SAPS police practice in this lovely country.</p> <p>25 MR BIZOS SC: And could you give us</p>
<p style="text-align: right;">Page 36760</p> <p>1 an existing exhibit.</p> <p>2 CHAIRPERSON: Yes, I thought so. He</p> <p>3 wants it in again.</p> <p>4 MS PILLAY: And those particular pages</p> <p>5 form part of that exhibit.</p> <p>6 CHAIRPERSON: Alright. Let's be kind to</p> <p>7 him, and then we've already marked them, and then TTTT3 is</p> <p>8 SAPS Use of Force Directive. Is that what it is?</p> <p>9 MR BIZOS SC: Thank you, Mr Chairman.</p> <p>10 There are a few questions within the time permitted that I</p> <p>11 would like to ask the witness within a period of 50</p> <p>12 minutes, with your leave, Mr Chairman.</p> <p>13 CHAIRPERSON: Yes certainly, you may go</p> <p>14 ahead.</p> <p>15 MR BIZOS SC: Thank you.</p> <p>16 CHAIRPERSON: The copy of "Notes on the</p> <p>17 demilitarisation of the police," I see that is complete.</p> <p>18 Alright, please proceed.</p> <p>19 MR BIZOS SC: Now when you prepared</p> <p>20 statements LLL12 and GGG2, did you expect to be led in</p> <p>21 evidence?</p> <p>22 MR HENDRICKX: Chair, I was expecting to</p> <p>23 be led and had enough time available for me to be led to</p> <p>24 explain some and most of the points that I made in my</p> <p>25 statements. Unfortunately I learn now that this is not the</p>	<p style="text-align: right;">Page 36762</p> <p>1 briefly your experience of your South African involvement</p> <p>2 in relation to the management of police, by the police of</p> <p>3 gatherings?</p> <p>4 MR HENDRICKX: Thank you. Chair, whilst</p> <p>5 being the responsible for the running of the national</p> <p>6 operations room in Belgium, police operations, and being</p> <p>7 responsible for Public Order Policing, as Mr Gary White</p> <p>8 explained, as the chief of staff for the gold commander,</p> <p>9 for the commander of the gendarmerie for all operations I</p> <p>10 was responsible for preparing all public order operations</p> <p>11 for the Belgian gendarmerie still at that time, and as you</p> <p>12 might know, Sir, Brussels is the capital of Europe. The</p> <p>13 European Commission and European parliament are seated in</p> <p>14 Brussels and the whole of Europe comes and demonstrate in</p> <p>15 the streets of Brussels. It is a fact that on average</p> <p>16 there are four demonstrations a day and all these have to</p> <p>17 be managed and I was responsible for at least at gold level</p> <p>18 of preparing, conducting all these operations.</p> <p>19 Just, and then I will come to South Africa if I</p> <p>20 may. One of the last operations that I was responsible for</p> <p>21 was the Public Order Policing for the European Soccer</p> <p>22 Championships that was organised by two countries, Belgium</p> <p>23 and Holland. I was responsible, or co-responsible with a</p> <p>24 Dutch person to develop all approaches, to secure the</p> <p>25 operations, the police operations at the, at those events.</p>

<p style="text-align: right;">Page 36763</p> <p>1 I based – and the Dutch police agreed to that – I based the 2 approach on the model that I'm sure we're going to debate 3 over the next few hours, and that the Dutch police agreed 4 to base all approaches on that model. So far my 5 operational experience in Belgium.</p> <p>6 As far as South Africa is concerned, I was, or 7 the Belgium government was asked by the police –</p> <p>8 CHAIRPERSON: I'm sorry to interrupt you. 9 MR HENDRICKX: Sorry. 10 CHAIRPERSON: May I say to you that 11 paragraphs 10 to 17.10 of your statement you've dealt 12 extensively –</p> <p>13 MR HENDRICKX: Okay. 14 CHAIRPERSON: - with your South African 15 experience. We studied that, so you can assume we've read 16 that, but perhaps you just want to highlight some of the 17 points that you consider particularly important. 18 MR HENDRICKX: Yes, certainly that the 19 model was used together with the Dutch police to police the 20 events at the European Soccer Championships in 2000. 21 Coming now to South Africa, the interim 22 governmental structures to the Peace Accord, during the 23 Peace Accord in 1993 asked the Belgium government for some 24 support at organising the new democratic elections and the 25 Belgium government sent me in the end, by the end of 1993</p>	<p style="text-align: right;">Page 36765</p> <p>1 until the period of the election in April 1994, recruit 2 volunteers, to train them in monitoring all those, the 3 canvassing of the elections and during the elections 4 monitor the behaviour of the people at the moment of the 5 elections.</p> <p>6 On those occasions I've been in numerous 7 situations in stadiums in demonstrations, and I don't have 8 to remember you that at some point the IFP was not 9 participating at the elections and there was quite a lot of 10 tense situations. At that moment I stood with the 11 monitors, the IEC monitors, very close to demonstrators, 12 only protected by another bib.</p> <p>13 At the end through all the monitoring we could 14 luckily, or Judge Kriegler could declare the elections free 15 and fair, but during those very intense period in my life I 16 was present at the Shell House disaster. I've seen people 17 die in the streets. I was present when a lot of 18 demonstrations went on people carrying traditional weapons. 19 So even at that moment I was familiar with the levels of 20 possible violence and possibly being used by demonstrators 21 or by people demonstrating in the streets.</p> <p>22 I'm telling you this because after the elections 23 when the results were known and approved, the then new 24 government, and based on the experience I guess and based 25 on the impression that they had over our work at IEC level,</p>
<p style="text-align: right;">Page 36764</p> <p>1 to this country to see what would be possible and to what 2 extent we could contribute to the running of these 3 elections.</p> <p>4 At those occasions they sent me and at those 5 occasions I was asked to work together with the [inaudible] 6 Peace Secretariat with whom, or with the people from the 7 [inaudible] Peace Secretariat I went and stood at numerous 8 demonstrations between demonstrators and the police, only 9 having a bib to protect ourselves. During that time I was 10 taken hostage in Zulu Hostel in Orlando and I want to 11 explain to everybody, if explanation is needed, I know what 12 a panga is, I know what it feels and I know what it feels 13 to be under threat by a panga.</p> <p>14 Coming then to my work for the IEC; I was asked 15 to help the head of the Monitoring Department, Mr Peter 16 Harris, to develop the monitoring, the national monitoring 17 and the international monitoring of the events so that that 18 department could help Mr Kriegler by the end of the 19 election process to define whether the elections were run 20 free and fair.</p> <p>21 For that matter I developed and I implemented in 22 all of the provinces of this country IEC operational rooms 23 where the IEC could follow the events, the canvassing of 24 the elections. I trained, or not I but I mean with a team 25 we were responsible of recruiting from the end of 1993 up</p>	<p style="text-align: right;">Page 36766</p> <p>1 they asked the Belgian government for support to the reform 2 of the SAP into SAPS. I was sent there in the first 3 instance by the Belgian government and agreed for by the 4 new South Africa government to be responsible for one part 5 of the cooperation agreement and it a reform of public 6 order – of the, ja, from the Public Order Policing units in 7 South Africa at that moment.</p> <p>8 So afterwards when that first project was 9 finished, around 2000, 2001, the government, South African 10 government asked for a new cooperation agreement that was – 11 [12:25] In the meantime I had left the police and I then 12 had it the new the new the new cooperation agreement, which 13 was focussing on what has been called the Vispol project. 14 And that, since somebody showing me a five minute warning, 15 is what I would have liked to explain to you on my 16 experience with the South African police.</p> <p>17 MR BIZOS SC: Yes. When you consider 18 your situation, what are the criticisms which you have 19 outlined in your statement? Very briefly, just the 20 headings, what are the main criticisms? 21 MR HENDRICKX: The main criticism is that 22 and I am really summarising very, very hard, is that it's 23 my, after I have seen all the evidence, after I have 24 perused everything that has been shown to me and also not 25 being here, the opportunity that I had through the</p>

<p style="text-align: right;">Page 36767</p> <p>1 television on You Tube and things like that, the hearings 2 that I have been able to follow, is that the operation, as 3 it was implemented, was firstly, not enough based on the 4 principles of 262. Two, put together by responsible 5 officers who were not enough trained based on 262, was 6 implemented in a way that I got my doubts on the command 7 and control that happened before and during the operation. 8 I know there are lot of explanations for that, I'm more 9 than happy to discuss all those, but that basically is what 10 you could call my criticism of what happened during those 11 regretful days. 12 And if I'm allowed to make a bit of sidestep, my 13 motivation, Chair, to come here is to pay my respect to the 14 victims of that tragedy, and I consider, I not only 15 consider the people who were shot as victims, but I 16 consider as well the policemen, or a lot of the policemen 17 who were present at those tragic events as victims, and it 18 is my intention and my willing to make sure to help you to 19 make recommendations that events like this will not be seen 20 again in this country. 21 MR BIZOS SC: Thank you, Mr Hendrickx. 22 You have your statements, written statements, have you also 23 been fed by my colleagues sitting here with the record and 24 certain documents that have been produced to the 25 Commission?</p>	<p style="text-align: right;">Page 36769</p> <p>1 take you put it before us, because it's something with 2 which you agree, am I correct? 3 MR HENDRICKX: For that reason I wanted 4 to, if possible, bring everybody back to the cornerstone of 5 262 to, and everything, the Gatherings Act and everything 6 that happened also at a legal – at a level of legislation 7 and police practice since that report of Mr Goldstone was 8 reported. I do that for two reasons, to draw the attention 9 of the Commission to matters concerning command and 10 control, one. And two, to matters of the use of firearms 11 by police. 12 CHAIRPERSON: Yes. Thank you. Mr 13 Semenya? 14 MR SEMENYA SC: Thank you, Chair. Good 15 afternoon, Mr Hendrickx. 16 MR HENDRICKX: Good afternoon, Mr 17 Semenya. 18 MR SEMENYA SC: Can I take it from the 19 end of your commentary that we should hope to obtain from 20 the recommendations of this Commission those measures which 21 would make another Marikana not happen? 22 MR HENDRICKX: Chair, I totally agree 23 with that, and I said that was my motivation to do what I'm 24 doing here today. 25 MR SEMENYA SC: And based on your</p>
<p style="text-align: right;">Page 36768</p> <p>1 MR HENDRICKX: Yes, Chair, I have. 2 MR BIZOS SC: What is your attitude after 3 all the additional evidence that has been presented to you 4 in relation to the conclusions that you have expressed in 5 the two exhibits that were made previously? 6 MR HENDRICKX: After studying all that, I 7 keep my position and I don't – I am in a position that I 8 don't want to change anything that I've written down. 9 MR BIZOS SC: Yes. Thank you, I have no 10 further questions for the witness. 11 CHAIRPERSON: Before Mr Semenya starts 12 questioning you, just one thing I want to ask you about, 13 and that is you handed in as exhibit quadruple T2, an 14 extract from a book, which is already before us, but we 15 have used quadruple T2. It's the publication of Goldstone 16 Commission which accompanied the bill which they drafted 17 which ultimately became the Regulation of Gathering Act. 18 And in that passage that's been put before us, it's said 19 that the policing – I'm quoting the second line – the 20 policing of PO operations is characterised by thorough 21 planning and preparation, senior officers must consider and 22 make contingency plans for various scenarios, probable to 23 impossible, with these means the police should avoid being 24 surprised by unexpected events, thus retaining maximum 25 control over their own officers, and events themselves. I</p>	<p style="text-align: right;">Page 36770</p> <p>1 experience, one of the elements of public order policing 2 that's important is, as you call it, prevention, correct? 3 MR HENDRICKX: That is correct, Chair. 4 MR SEMENYA SC: Can we unbundle that a 5 little bit, because I think it's central to some of the 6 arguments we intend to make before this Commission? By 7 prevention you mean that there ought to participation by 8 all relevant stakeholders in ensuring that anticipate and 9 perhaps not anticipated public disorder events can be 10 managed? 11 MR HENDRICKX: I do agree with that, Sir, 12 and I even would complement that by saying it is prevention 13 is trying to attack the root causes of conflict, and I add 14 to that that it is apparent that is not only the police who 15 was responsible for that. 16 MR SEMENYA SC: Correct. So that South 17 Africa must move away from that scenario when there is 18 service protests around water, the first people, you send 19 your police there. When there is a labour unrest, the 20 first thing you send is police there. We should rather go 21 the other direction, if I understand the prevention, we 22 should go to the other direction and make those public 23 protests that are – that can be resolved politically to be 24 so resolved, before police intervention, for example? 25 MR HENDRICKX: Yes, I agree with that.</p>

<p style="text-align: right;">Page 36771</p> <p>1 MR SEMENYA SC: And typically when we 2 look at Marikana, where we know that the tension really 3 rotated around wage dispute, ideally preventive measures 4 would have included a discussion between those who are in 5 protest and the employer? 6 MR HENDRICKX: I agree with that, Sir. 7 MR SEMENYA SC: And that would have 8 helped, if I understand on the basis of your expert 9 opinion, averted perhaps what became tragic? 10 MR HENDRICKX: Possibly, yes, if it was 11 done properly and if it was done in time, like real 12 prevention should be done, but I want to draw the attention 13 of Commission as well that the police has to play a role in 14 that and they really have to prepare themselves at 15 different levels to prevent these things happening. 16 MR SEMENYA SC: No doubt. 17 MR HENDRICKX: No doubt. 18 MR SEMENYA SC: They, as public order 19 police, in particular, have that as their principal 20 responsibility to manage these protests, I accept that. 21 I'll get there. 22 MR HENDRICKX: If you'll allow to comment 23 on that? 24 MR SEMENYA SC: Yes. 25 MR HENDRICKX: Now, if you – let me</p>	<p style="text-align: right;">Page 36773</p> <p>1 certainly SAPS is not only responsible for that, if 2 government or decision making should not, and this could 3 already be recommendation, rethink about the numbers and 4 the training of public order policing officers in this 5 country. 6 MR SEMENYA SC: Yes, we'll get to that, 7 Mr Hendrickx. What I was asking is that with the knowledge 8 of previous incidents of public protests, and we'll discuss 9 their character later. With the benefit of knowledge by 10 the police about those unrest situations beginning of 2012, 11 what preventative or cautionary steps do you think the 12 police ought to have taken ahead of the events of 9 August 13 2012? 14 MR HENDRICKX: To start with, to improve 15 intelligence. Secondly, to rethink training. Thirdly, to 16 look at the number of public order policing officers and 17 units that were available and try, and lastly, and probably 18 it's not limited to that, but that's my provisional answer 19 to your question, think about strategies of how you're 20 going to deal, as operational police units with events as 21 they occur. 22 MR SEMENYA SC: At attempts of 23 specificity, what was to be rethought about training? I 24 just want the practical steps you say were absent and ought 25 to have been there prior to the 9th of August 2012 in</p>
<p style="text-align: right;">Page 36772</p> <p>1 explain it this way, the event at Marikana did not come as 2 a surprise. I mean, the strike did not come as a surprise, 3 as far as I know, and I think it's in the records of L, 4 that the strikes in the platinum belt were at least ongoing 5 since January that year, that many incidents happened since 6 the beginning of that year, that people were killed since 7 the beginning of that year in struggles between 8 protestors, unions, whatever. Now, and if you then come to 9 the police, and this I think is what expecting of me, what 10 is being expected of me, has the police knowing that at 11 least as from January 2012 things were starting to happen, 12 did the police start to take enough measures to prevent 13 flashpoints happened, did the police prepare themselves 14 enough on training for these possible events. Did the 15 police have enough means to deal with all these events? 16 For instance, when I started to work with the then, still 17 called I think internal stability units, there were 12 18 000. Due to our cooperation agreement and for many 19 reasons, we reduced the 12 000 members to 8,000. In the 20 meantime I understand that the number of public order 21 policing officers in South Africa has still drastically 22 being reduced, and if it's true what was in The Star 23 yesterday that there are only 4 000 trained public order 24 policemen in this country, I am asking the question whether 25 that was good enough preparation for the tragic events, and</p>	<p style="text-align: right;">Page 36774</p> <p>1 relation to training? 2 MR HENDRICKX: For instance, in knowing 3 that you only have – if it is true, 4 000 public order 4 policing members, shouldn't you think, shouldn't you know 5 first that based on the past, and based on the fact at one 6 moment there were 8 000, and when during that period, and 7 that are facts, and that covers the period between 1996 and 8 2000, in public demonstrations only two people died, 9 whereas afterwards, after 2000, in reducing the number of 10 POPs, and that is one the reasons why I would like to talk 11 about militarisation and demilitarisation, when 12 militarising or reintroducing the military ranks in the 13 police bit by bit, you think, I'm sure that's my expert 14 opinion, that you see problems, that you see more and more 15 problems in public order policing, and in answering your 16 question on what could have been done as from at least 17 January 2012, just think about that and make decisions on 18 how, as a police organisation, you were going to deal with 19 possible strikes, possible demonstrations and so on and so 20 forth, re-training, re-equipment, re-strategies. 21 MR SEMENYA SC: Ja, it is at a high level 22 that you say all that, Mr Hendrickx, I accept that. I 23 accept that you may be critical about the provision of the 24 South African police in reducing the number of POP. I can 25 understand that you are critical, we'll deal later with the</p>

<p style="text-align: right;">Page 36775</p> <p>1 military ranks. All I'm asking is come January 2012, and 2 there have now the benefit of unrest situations that obtain 3 there, in relation to POP training, what do you say they 4 ought to have done before the 9th of August 2012? 5 MR HENDRICKX: For instance, if you come 6 to the conclusion that you think, after an analysis, an 7 evaluation that you don't have enough available public 8 order POPs members, right, you can make two decisions. 9 One, to recruit and train new POP members, or two, units, 10 all the type of units that you got, retrain them, train 11 them in public order policing. That's two examples of what 12 you could do, what you could have done as from January. 13 CHAIRPERSON: How long would that 14 training take? 15 MR HENDRICKX: It depends. 16 CHAIRPERSON: No, assuming you're the 17 Minister of Police, and you're sitting there in January 18 2012, and you get a report that the people in North West, 19 just to concentrate on North West, complain that they are 20 understaffed in the public order policing section, and you 21 say right, there's trouble brewing there, there will be 22 strikes and so forth, we'll have to raise the numbers 23 dramatically to deal with the situations with the problems 24 we see coming, we'll have to train people. Now, how long 25 would that training period –</p>	<p style="text-align: right;">Page 36777</p> <p>1 MR SEMENYA SC: I can accept perhaps 2 there is that evidence, but is it your expert opinion that 3 POPS members – and I'm not talking SAPS members – POP 4 members who were in Marikana, are you holding the view 5 they're undertrained? 6 MR HENDRICKX: I left – I mean I left the 7 project in 2008, so I'm not in a position to answer that. 8 MR SEMENYA SC: Okay. 9 MR HENDRICKX: I haven't been working 10 with the police since then. 11 MR SEMENYA SC: Okay. By the way, even 12 talking about that, as I understand the training you 13 offered POP members did not include operations in rural 14 areas. Am I right? 15 MR HENDRICKX: It did, Sir. 16 MR SEMENYA SC: Where? Which part? 17 MR HENDRICKX: Sorry? 18 MR SEMENYA SC: Which part of rural 19 training? 20 MR HENDRICKX: You have to have a look at 21 the OCT course and the platoon commanders course and you 22 will see that's a course, I think about, if my memory is 23 right, the operational commanders training was about two 24 weeks and the training of platoon commanders was a few 25 weeks more. All these aspects were developed in training.</p>
<p style="text-align: right;">Page 36776</p> <p>1 MR HENDRICKX: What I did, and what I'm 2 doing now in the Congo, Sir, on the same issues is 3 retraining Congolese policemen in preparation for the 4 elections in the Congo, and only focussing on public order 5 policing, it's between four weeks and six weeks, you can do 6 a lot. 7 COMMISSIONER HEMRAJ: Do I understand 8 that's retraining existing POPs members? 9 MR HENDRICKX: Existing or other units. 10 Now I am perhaps going to open a can of worms, but 11 retraining perhaps the TRT or other units, available units. 12 [12:45] MR SEMENYA SC: Well, of course these are 13 matters not in your statement. But lets deal with them in 14 any event. Are you moving from a premise that those POP 15 members who were at Marikana during 9 to 16 of August 2012 16 were undertrained. 17 MR HENDRICKX: Is that what you – 18 MR SEMENYA SC: No, I'm asking you, is 19 that what your evidence is? 20 MR HENDRICKX: No. I can find some 21 evidence, or opinions of SAPS members in the evidence 22 before the Commission that some say that they were not 23 trained enough, 1, and 2, that they were used for other 24 operations, to fight crime for instance and to patrol in 25 areas where there's a lot of crime.</p>	<p style="text-align: right;">Page 36778</p> <p>1 MR SEMENYA SC: For rural protests? 2 MR HENDRICKX: As well, yes, and the 3 principles that were being taught there are applicable for 4 rural areas. I'm not going to, you're not going to hear me 5 say that running operations in rural area are easier than 6 running in an urban area. That's, you're not going to hear 7 me say that. But the training prepare them for both. 8 MR SEMENYA SC: So those you taught would 9 have known you don't use a water cannon in a rural terrain 10 like that? 11 MR HENDRICKX: That's not what I said. 12 The way it was used, the way it was used I don't agree 13 with. When you look at the video evidence and when you 14 look at certain pictures, certainly at koppie 3 they were 15 spraying, spraying like that, spraying the – 16 CHAIRPERSON: You're raising your hand 17 and indicating what looks like an arc – 18 MR HENDRICKX: Yes. 19 CHAIRPERSON: - going up and coming down. 20 MR HENDRICKX: Whereas in those 21 circumstances the proper use of water cannons is to use jet 22 streams, and I don't know whether there are – well, if you 23 use a jet stream and it hits your chest you'll be, you are 24 blown away for at least 10 metres. 25 MR SEMENYA SC: Again I don't seem to</p>

<p style="text-align: right;">Page 36779</p> <p>1 have read any of that which you now say in any of your 2 statements. But let's – 3 MR HENDRICKX: I agree with that, Sir, 4 and that's why I regret, I say in my statements that I'm 5 more than prepared in oral evidence before the Commission 6 to go in all that and I regret that we, well that I hope we 7 can cover the most of those points. I said in my statement 8 that I would, and that was the decision that I took to keep 9 my statements rather general and not go into all, each and 10 every detail, and you know, and that's the situation that 11 we are in now. 12 MR SEMENYA SC: So the POP members that 13 you left having obtained training from you were taught that 14 with water cannon you use jets in rural terrain? 15 MR HENDRICKX: First of all, I did not 16 train them. It was SAPS who trained themselves. Right, 17 the training that we developed together as far as water 18 cannons was concerned was also at using water cannons, who, 19 by the way, at that time were not bought yet by SAPS. The 20 ones you have today were not bought yet. It was, the ones 21 that they had at that, in 2000 were very, very – how shall 22 I put it? Very basic water cannons, right. The ones that 23 have been used in Marikana, they can, they were very modern 24 ones and they could use jet streams and I did not see any 25 evidence in, before the Commission that jet streams had</p>	<p style="text-align: right;">Page 36781</p> <p>1 the lunch adjournment, Mr Semenya, you can move on with 2 something else in the meanwhile. We've only got seven 3 minutes before lunch, so you can deal with something else 4 perhaps and then during the lunch adjournment you can find 5 that, deal with it quickly after lunch. 6 MR SEMENYA SC: Okay, thank you, Chair. 7 Let me give you this postulate and then invite your 8 opinion, Mr Hendrickx. You have a scenario of 3 to 400 9 strikers, 10 deaths after, some of whom have been killed 10 with pangas and spears, the group believing that muti would 11 render them invincible, Mr Noki having threatened that they 12 were going to kill each other with the police on the day 13 and they move around the kraal and just moments before the 14 shooting, are you able to tell us – and we know that there 15 has been stun grenade used, teargas used, water cannon used 16 – are there other POP measures you think were available to 17 the police to contain that threat? 18 MR HENDRICKX: Yes. Can I ask them, if 19 the Commission allows me to show that? It is part of the 20 CALS volume. 21 CHAIRPERSON: Yes, of course you can 22 refer to an exhibit which is before us to be showed. 23 MR HENDRICKX: It is JJJ992, page 45. 24 CHAIRPERSON: Perhaps the operator can 25 put that on the screen for us. Read it again so that the</p>
<p style="text-align: right;">Page 36780</p> <p>1 been used anywhere. 2 MR SEMENYA SC: No, we'll investigate 3 that, but you don't know what training they got in relation 4 to the water cannons that were used on the day? 5 MR HENDRICKX: Sorry, I missed the 6 question. 7 MR SEMENYA SC: I was saying that you 8 don't have any knowledge of the kind of training they got 9 in relation to the water cannons that were used in 10 Marikana? 11 MR HENDRICKX: Yes, but I know from 12 certain statements, and I'm sorry that I can't remember all 13 the names of all the statements that I've read, that even 14 the, some drivers of the water cannon say that they didn't 15 feel that they had, have enough training. That's evidence 16 before this Commission. 17 MR SEMENYA SC: If I understand the 18 statements you're referring to they plead that in relation 19 to the use of the cameras, not in the use of the water 20 cannons themselves, to spray water. 21 MR HENDRICKX: My, if we can show them, 22 if we can show on the screen those statements, then we can 23 discuss about it. I cannot – and if you can find them 24 quickly I'm more than happy to do that. 25 CHAIRPERSON: Perhaps you can go on after</p>	<p style="text-align: right;">Page 36782</p> <p>1 operator will know exactly what he must find. 2 MR HENDRICKX: JJJ992. I have to put my 3 glasses on, sorry. 992. 99.2, sorry. 4 CHAIRPERSON: We saw it a minute ago, but 5 it's sideways. Can it please be turned around so we – oh, 6 there we are, thank you. 7 MR HENDRICKX: I've been told that this 8 is the situation at the moment the strikers were in the 9 near vicinity of the small kraal, okay. 10 CHAIRPERSON: I think there's a debate 11 about the position of what is known as Papa1, which is P1 I 12 think. 13 MR HENDRICKX: Ja, no I'm not – 14 CHAIRPERSON: I'm not sure that that's 15 material to the point you want to make. 16 MR HENDRICKX: No, that I don't need, 17 Sir. What I do need is the position of Nyala 5 and the 18 position of the water cannons. 19 CHAIRPERSON: We can see the water cannon 20 on the – 21 MR HENDRICKX: Ja. 22 CHAIRPERSON: - on the diagram. 23 MR HENDRICKX: If an alternative to what 24 happened, if, and this is one of my criticism as well of 25 command and control, right, if Brigadier Calitz would not</p>

<p style="text-align: right;">Page 36783</p> <p>1 have gone, followed by some POP members, to the position 2 where he is there, P1, and – Papa1, right, if he would have 3 stayed behind like an operational commander should do, an 4 operational commander must keep the overview of an 5 operation, he must not let himself be put in a position 6 that he cannot overview a tactical situation and where all 7 his units are, right. So if first of all Mr Calitz was not 8 in the position of Papa1; 2, if he would have put himself 9 in a position for instance, as already mentioned in another 10 discussion by the Commission, on top of a Nyala who was 11 standing within the protected area and he could have 12 observed the path and the way the protesters under the lead 13 of Mr Noki then was, or that group were going around the 14 kraal, and assuming the fact – because that's what an 15 operational commander should do, look at issues, look at 16 problems and decide, and sometimes on the spot, what needs 17 to happen to prevent things happening – if he would assume 18 that Mr Noki was going to go to Nankeng – 19 CHAIRPERSON: Was going to? 20 MR HENDRICKX: Nankeng. 21 CHAIRPERSON: Nkaneng. 22 MR HENDRICKX: Okay, Nkaneng, ja, sorry - 23 then at the moment when Mr Noki and his demonstrators 24 walked - and I insist on the word "walked" because from the 25 evidence and the video evidence that I saw they were, at</p>	<p style="text-align: right;">Page 36785</p> <p>1 statement, but can we take that up after lunch? 2 MR HENDRICKX: I'm more than – 3 CHAIRPERSON: It sounds a sensible 4 suggestion, Mr Semenya. We'll take the lunch adjournment. 5 We must be back at half past 1 because time is very 6 precious today. 7 MR SEMENYA SC: I'm breaking up, Chair. 8 It's a tall order on me really. 9 CHAIRPERSON: It's for you. I was asked 10 to ensure that we took a half hour lunch adjournment to 11 enable you to get all the time you want. If you want me to 12 start at quarter to 2 I will obviously do what you say. 13 MR SEMENYA SC: May we – 14 CHAIRPERSON: I'm in your hands. 15 MR SEMENYA SC: May we? 16 CHAIRPERSON: No, the people here must 17 know what time they must come back. What time must I – 18 MR SEMENYA SC: May we do quarter to 2? 19 CHAIRPERSON: You want quarter to 2, 20 alright. At the special request of Mr Semenya we'll 21 adjourn now till quarter to 2. 22 [COMMISSION ADJOURNS COMMISSION RESUMES] 23 [13:51] CHAIRPERSON: The Commission resumes. Mr 24 Hendrickx, you're still bound by your affirmation. 25 EDDIE MARTINUS ROSALIA HENDRICKX:</p>
<p style="text-align: right;">Page 36784</p> <p>1 that moment they were not running, they were not attacking 2 the police, that's what I saw – if then, and based on the 3 position of Nyala 5 he would have ordered to deploy the 4 barbed wire, when you see Nyala 5 in the direction of 5 Nkaneng which in my professional opinion there was enough 6 time to do, the TRT line where they were, where you can see 7 them in red would have been no use to stop the protesters, 8 and what I'm saying is not all preventative measures had 9 been taken to prevent the protesters going into the kraal 10 in the direction of Nkaneng. That's 1. 11 2, If the two water cannons were not in the 12 position that you can see them there, but if they were 13 positioned, decision possibly to be made by Mr Calitz, at 14 the, this, you know where you see now the red basic TRT 15 line, and if the water cannon equipment was trained to use 16 their water cannons properly and using their jet stream, 17 jet, I am of the – I have got the professional opinion that 18 two water cannons using jet stream from that, even from 19 that position, could have at least stopped and pushed back 20 the beginning of the group, I mean led by Mr Noki, and from 21 that perspective I say, it is my professional opinion that 22 not all preventative measures, or not all Public Order 23 Policing measures had been taken. 24 MR SEMENYA SC: Well, that's profound 25 because I would have expected to see this in your</p>	<p style="text-align: right;">Page 36786</p> <p>1 [affirms further] 2 CHAIRPERSON: Mr Semenya. 3 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.): 4 Thank you, Chair. Mr Hendrickx, you sat through most of 5 the cross-examination of Mr White. Am I right? 6 MR HENDRICKX: Not yesterday, Sir. 7 MR SEMENYA SC: I say most. 8 MR HENDRICKX: Ja. 9 MR SEMENYA SC: Right? I see you're 10 nodding. 11 MR HENDRICKX: Sorry, I say yes. 12 MR SEMENYA SC: Okay. 13 MR HENDRICKX: Except for yesterday 14 afternoon. 15 CHAIRPERSON: [Microphone off, inaudible] 16 much yesterday afternoon, so you sat through the bulk of it 17 because you sat through the cross-examination this morning. 18 MR HENDRICKX: And in June. 19 CHAIRPERSON: And previously as well when 20 Mr White was here last time. 21 MR SEMENYA SC: And when you did your 22 provisional statement in February of 2013 one of the issues 23 you were to investigate was how the police could have 24 averted this tragedy. It must have been central in your 25 mandate, correct?</p>

<p style="text-align: right;">Page 36787</p> <p>1 MR HENDRICKX: Correct, Sir.</p> <p>2 MR SEMENYA SC: You see, I notice that Mr</p> <p>3 Bizos leading the Legal Resources Centre's team did not put</p> <p>4 this profound proposition to Brigadier Calitz. Had you</p> <p>5 disclosed already to them that there was this avenue that</p> <p>6 you discussed before lunch?</p> <p>7 CHAIRPERSON: Which avenue are you</p> <p>8 talking about? Are you talking about the water jets?</p> <p>9 MR SEMENYA SC: Yes.</p> <p>10 CHAIRPERSON: The water jets or the</p> <p>11 position of the Nyala?</p> <p>12 MR SEMENYA SC: All of that, as a</p> <p>13 plausible way in which the police could have averted this</p> <p>14 tragedy.</p> <p>15 MR HENDRICKX: The answer is no, Sir,</p> <p>16 because the photographic evidence was at that, and the</p> <p>17 photos that I used was not put together I think at that</p> <p>18 moment and were certainly not shown to me.</p> <p>19 MR SEMENYA SC: When you did the</p> <p>20 supplementary?</p> <p>21 MR HENDRICKX: Not even then.</p> <p>22 MR SEMENYA SC: So they too are hearing</p> <p>23 it for the first time today?</p> <p>24 MR HENDRICKX: Repeat the question of</p> <p>25 what you said.</p>	<p style="text-align: right;">Page 36789</p> <p>1 should take initiatives to prevent the use of force, and I</p> <p>2 think – I don't think, I am convinced that the people, the</p> <p>3 POPS people in Nyala 5 could have taken that initiative, 1;</p> <p>4 and 2, that the POPS people in the water cannon could have</p> <p>5 taken that initiative as well.</p> <p>6 MR SEMENYA SC: Yes, but surely to come</p> <p>7 to those conclusions we have to know where they are, where</p> <p>8 they're facing, what they are seeing, what they are not</p> <p>9 seeing, and such other factors, Mr Hendrickx, no?</p> <p>10 MR HENDRICKX: They could, they saw what</p> <p>11 they saw. I mean they were present.</p> <p>12 MR SEMENYA SC: No, it cannot be, and</p> <p>13 that's the point I'm making. When you are looking at the</p> <p>14 video material at home, desktop, you see more and can</p> <p>15 interpret more than the people on the scene. Isn't that</p> <p>16 common cause?</p> <p>17 MR HENDRICKX: Yes, that's possible, yes.</p> <p>18 MR SEMENYA SC: So that we have to know</p> <p>19 did they even try it, were they told not to do it, did they</p> <p>20 see it, all of those questions would be relevant to support</p> <p>21 the conclusion you make.</p> <p>22 MR HENDRICKX: Ja, in one of the</p> <p>23 statements, Chair, and I can't, I don't remember his name</p> <p>24 but he's a second-in-command of the unit responsible for</p> <p>25 the barbed wire and I forgot his name, I'm sorry, but in</p>
<p style="text-align: right;">Page 36788</p> <p>1 MR SEMENYA SC: The legal team for the</p> <p>2 LRC is hearing this for the first time, as I do?</p> <p>3 MR HENDRICKX: For, in total yes. I made</p> <p>4 a lot of observations on the operation since.</p> <p>5 MR SEMENYA SC: Can I suggest, Mr</p> <p>6 Hendrickx, that what you say is not a response to my</p> <p>7 question because you are factoring a whole number of things</p> <p>8 to come to that conclusion. Let me illustrate the point.</p> <p>9 You say if Calitz was not in Papa1, if Calitz could have</p> <p>10 observed this, if that and the other. That was not my</p> <p>11 question. My question was knowing that Calitz was in</p> <p>12 Papa1, knowing that he did not observe it, knowing that the</p> <p>13 group was as it was, knowing that the water cannon was</p> <p>14 where it was, given those facts and knowing, if the</p> <p>15 Commission accepts, that Noki's group was going to attack</p> <p>16 the police, the question was what other POP measure was</p> <p>17 available? I think it's not an answer to substitute other</p> <p>18 facts and then come to the conclusion. Operate on the</p> <p>19 basis of the premise as I present it to you.</p> <p>20 MR HENDRICKX: Thank you for that, Sir.</p> <p>21 I think that the person, the driver and the POP personnel</p> <p>22 in Nyala 5 could have done that on their own initiative as</p> <p>23 well. I think that, I'm of – it's my professional</p> <p>24 experience that in operations and under very stressful</p> <p>25 conditions police officer, well trained police officers</p>	<p style="text-align: right;">Page 36790</p> <p>1 that statement he says that he ordered Nyala 6 ahead and he</p> <p>2 ordered Nyala 6, which was on the other side, to deploy</p> <p>3 wire. So at least somebody in the unit of Mr Calitz and</p> <p>4 under his responsibility was trying to take the initiative</p> <p>5 to deploy wire of Nyala 6.</p> <p>6 MR SEMENYA SC: To where? I'm hearing</p> <p>7 this for the first time.</p> <p>8 MR HENDRICKX: Can we have the pictures</p> <p>9 again maybe?</p> <p>10 COMMISSIONER HEMRAJ: Mr Hendrickx, you</p> <p>11 say it's in the second-in-command's statement?</p> <p>12 MR HENDRICKX: No, in the person who was</p> <p>13 the second-in-command, the second-in-command to Mr, to</p> <p>14 Colonel Makhubela who was responsible for deploying the</p> <p>15 Nyala, the barbed wire Nyalas.</p> <p>16 COMMISSIONER HEMRAJ: You say that is in</p> <p>17 his statement or his evidence?</p> <p>18 MR HENDRICKX: I think it's his</p> <p>19 statement.</p> <p>20 COMMISSIONER HEMRAJ: His statement.</p> <p>21 MR NGCUKAITOBI: I wonder if we can be of</p> <p>22 some help, just in terms of identifying the person who said</p> <p>23 in his statement he was in second-in-command, that's Doctor</p> <p>24 Paulus Mthimkulu.</p> <p>25 MR HENDRICKX: Yes.</p>

<p style="text-align: right;">Page 36791</p> <p>1 MR NGCUKAITOBI: And it is one of the 2 videos given by the police, exhibit RRR18, RRR18. 3 MR HENDRICKX: And in the meantime, Sir, 4 I found it, and if you would like to I can read it out for 5 you. 6 CHAIRPERSON: Yes, please . 7 MR HENDRICKX: So that person said – 8 CHAIRPERSON: Please. 9 MR HENDRICKX: Sorry. That person on 10 page 7 says, “I then ordered barbed wire Nyala 6 to move to 11 the other side of the kraal where the strikers were headed, 12 with the instruction that the Nyala deploy barbed wire from 13 the corner of the kraal across to close the area so that 14 the strikers did not gain access into the police area.” So 15 this to me is evidence of the fact that at least one person 16 in the unit commanded by Mr Calitz thought of that 17 possibility. 18 MR SEMENYA SC: And maybe that 19 instruction was given and maybe it was too late. There are 20 a whole host of numbers why it was not effected. 21 MR HENDRICKX: But Mr Semenya, you’re 22 asking me what the other possibilities were. I’m giving 23 you an example of at least one initiative taken by a POP 24 member to do that. What I’m saying is that Nyala 5, who 25 was at least 50 metres behind Nyala 6, could have done that</p>	<p style="text-align: right;">Page 36793</p> <p>1 into account the fact that the deployment of Nyala 1 to 4, 2 the barbed wire of Nyala 1 to 4 took nine minutes, right, 3 and if you take into account – and that has been, there is 4 photographic evidence, or video evidence of that, that for 5 the protesters to move away from Nyala 4, where they were 6 going parallel, to reach the way around the small kraal at 7 least took between a minute and a half and two minutes, 8 what I’m saying is then there was a possibility of 9 deploying the barbed wire of Nyala 5 who was already in 10 possession and he was heading into the right direction to 11 be able to deploy there, with POPS members there who could 12 assist in deploying the barbed wire. That’s what I’m 13 saying. 14 MR SEMENYA SC: Can I invite us to look 15 at the statement of, that statement on the screen at 16 paragraph 17. It reads for the record, “From among the 17 advancing strikers I saw a striker with a red blanket draw 18 a firearm from under his blanket and pointing it in our 19 direction. I drew my pistol and shot at the person. I do 20 not know if I hit the person, but he kept coming in our 21 direction after I shot. Because the strikers continued 22 coming even as rubber, teargas, stun grenade and water was 23 being used on them, I shouted to the members to get back 24 into their vehicles. I also got into the barbed wire Nyala 25 6 and we moved forward with the strikers now behind the</p>
<p style="text-align: right;">Page 36792</p> <p>1 and could have done that on the initiative of the people in 2 the Nyala. 3 MR SEMENYA SC: In his supplementary 4 statement – 5 COMMISSIONER TOKOTA: But can you read 6 further in that statement – 7 MR SEMENYA SC: Yes. 8 COMMISSIONER TOKOTA: - that that Nyala 6 9 actually did as ordered, “When I gave the order to barbed 10 wire Nyala 6 I was still on foot. Barbed wire Nyala 6 11 moved from its position as I ordered and proceeded to the 12 other side of the kraal and started to unroll the barbed 13 wire.” 14 MR HENDRICKX: Yes. 15 COMMISSIONER TOKOTA: I thought you said 16 that they should have done so. 17 MR HENDRICKX: No, no, I – 18 COMMISSIONER TOKOTA: According to this – 19 MR HENDRICKX: Sorry, Sir. Ja. We’re 20 talking here about Nyala 6 who was already at least moving 21 towards the other side of the kraal. What I’m saying is, 22 what I’m proposing is, or what I think could and should 23 have happened is that Nyala 5 who was in position behind, 24 if you look from the protester’s perspective, behind the 25 kraal, had the opportunity to deploy the wire. If you take</p>	<p style="text-align: right;">Page 36794</p> <p>1 Nyala and we stopped about 100 metres further on. At the 2 stage when I got into the barbed wire Nyala 6 the strikers 3 were very close to the Nyalas and to the members on foot 4 and there was no longer the opportunity to roll out the 5 barbed wire.” Do you see that? 6 MR HENDRICKX: Yes, Nyala 6, yes, I 7 agree. 8 MR SEMENYA SC: But this is the Nyala 9 which observed the thing and which – no, no, no, this is 10 the Nyala that was given the instructions to act as you say 11 they should have on the basis of what was observed. I’m 12 saying you’re telling us about Nyala 5 without us knowing 13 where they were, what their instructions were, what they 14 were looking at and what they could observe. Am I right? 15 MR HENDRICKX: To certain extents, yes. 16 To a certain extent, yes. What I’m saying is that Nyala 5 17 was there, in position to be able to deploy the barbed wire 18 and could have done that. 19 CHAIRPERSON: Let’s go back and look at 20 the picture that you referred to earlier, the photograph 21 with the Nyalas marks. What one sees there is where Nyala 22 6 was. Obviously if they started deploying their – I don’t 23 like that word “deploying” – uncoiling their barbed wire, 24 they were much closer to the strikers. 25 MR HENDRICKX: That’s it.</p>

<p style="text-align: right;">Page 36795</p> <p>1 CHAIRPERSON: So obviously a very short 2 time would elapse before the strikers reach them, which in 3 fact they did. Your point, as I understand you, is N5 was 4 further down, it was on the other side of the kraal on that 5 road and if they'd done what Nyala 6 had done then they 6 would have succeeded in getting the barbed wire across the 7 gap before the strikers came because they were much further 8 away from the strikers. 9 MR HENDRICKX: That's correct, Sir. 10 CHAIRPERSON: Is that your point? 11 MR HENDRICKX: That's correct, and they 12 would have stopped the protesters and the available POPS 13 people that you can see having gone around the kraal, so 14 it's Papa1, Papa18, P7 and so on and so forth, could have 15 encircled those protesters and could have arrested them. 16 CHAIRPERSON: Yes, I understand that's 17 your point. Your point further – I just want to make sure 18 I understand your point and whether it's a good point or 19 not we'll have to decide later. Your point further as I 20 understood you before lunch was if Brigadier Calitz hadn't 21 scarpered off in some other – sorry, I mustn't use Cockney 22 slang – hadn't gone off in some other direction and stayed 23 at the scene, he would have been able to have given that 24 instruction. That's your evidence? 25 MR HENDRICKX: That's correct, Sir, and</p>	<p style="text-align: right;">Page 36797</p> <p>1 MR SEMENYA SC: You see, my difficulty is 2 this, and please help me go past this. We know amongst 3 other people who were in Nyala 5, which is what the 4 Chairperson is hypothesising – 5 CHAIRPERSON: No, I'm not. I'm just 6 stating what I understood the evidence to be – 7 MR SEMENYA SC: Or referring to. 8 CHAIRPERSON: It's not my point, it's his 9 point. I'm just trying to make sure I understand it 10 correctly, make sure we all understand it correctly so then 11 we can evaluate whether it's a good point or a bad point. 12 MR SEMENYA SC: Okay. With reference 13 thereto, as I must repeat, we don't know what they were 14 observing at the time the crowd was where you say it was. 15 We don't know what the instruction was, correct? 16 MR HENDRICKX: That's correct, Sir. 17 MR SEMENYA SC: And we know one of the 18 people in that Nyala was Sergeant Kuhn, who ran away. What 19 he was running away from we don't know. Correct? 20 MR HENDRICKX: That last, the last point 21 I don't know, Sir. 22 MR SEMENYA SC: Okay, and you say this is 23 on the assumption that these people are going happily to 24 Nkaneng. They're not going to attack anybody. 25 MR HENDRICKX: What I'm saying is, and</p>
<p style="text-align: right;">Page 36796</p> <p>1 that's the point I tried to make before lunch. 2 CHAIRPERSON: Yes, sorry, just to get 3 clarity what you say Nyala 5 should have done, if I'm wrong 4 you'll correct me. My understanding is you say that Nyala 5 5 should have uncoiled its barbed wire from, as we look at 6 the picture there, the top left-hand corner of the kraal 7 across the gap towards that barbed wire fence on the other 8 side. Am I understanding you correctly? 9 MR HENDRICKX: Yes, so effectively – 10 CHAIRPERSON: Parallel to the basic 11 line – 12 MR HENDRICKX: Sorry, ja. 13 CHAIRPERSON: - and that would, you say, 14 have prevented them from going towards the basic line. The 15 basic line people would no longer have been under imminent 16 threat – 17 MR HENDRICKX: Indeed, Sir. 18 CHAIRPERSON: - and wouldn't have been 19 required to fire. Is that, that's your evidence? 20 MR HENDRICKX: Indeed, Sir. 21 CHAIRPERSON: Okay. 22 MR HENDRICKX: And then they would have 23 been stopped and then all the POPS policemen from Nyala P19 24 upwards to P1, right, could have at least made an attempt 25 to arrest them because these people were stopped.</p>	<p style="text-align: right;">Page 36798</p> <p>1 what I said before lunch, right, that – 2 MR SEMENYA SC: They're happily walking. 3 MR HENDRICKX: Sorry? 4 MR SEMENYA SC: They were just walking 5 and not running. 6 MR HENDRICKX: From the evidence that 7 I've seen, photographic and video evidence, I haven't seen 8 the Mr Noki group passing, or going parallel number 4, 9 Nyala 4, running. I've seen them walking. 10 MR SEMENYA SC: I accept that. 11 MR HENDRICKX: That's what I said, 1. 2, 12 what I said is if, and that's my, one of the problems that 13 I have with command and control and I'm more than happy to 14 discuss with you command and control later on, whenever you 15 want, is that Mr Calitz in being where he was, right, could 16 not have a general view of the situation and what I'm 17 saying is that if he would have stayed behind, put himself 18 in an advantageous position to observe what really happened 19 instead of - and I'm not going to repeat the Chair's verb 20 for that - instead of going off with some Nyalas in a 21 certain direction, he would have had at least the 22 opportunity to think about the possibilities of what Mr 23 Noki and his group was going to do, and based on the 24 assumption that, and the proof that many, if not most of 25 the protesters were using for three, four days the road the</p>

<p style="text-align: right;">Page 36799</p> <p>1 Nkaneng to go back and forth, based on that he could have 2 made easily the decision to give the order to Nyala 5 to 3 deploy the barbed wire as I described. He could have 4 easily done that.</p> <p>5 MR SEMENYA SC: Yes, but Mr Hendrickx, as 6 an expert you would know if the protesters were not armed 7 then these things would not happen. That's not how we 8 operate. We operate on the basis of the known facts. We 9 know they were armed for instance. We know that is where 10 Brigadier Calitz was. Now I'm asking the question; knowing 11 what we know, or what will be established ultimately, an 12 individual decision as you same may have been possible by 13 driver of Nyala number 5 to do as you say he could do, 14 close off, would have had all the police on the other side 15 of that barbed wire.</p> <p>16 MR HENDRICKX: Not all the police.</p> <p>17 MR SEMENYA SC: Well, the bulk of the 18 police who were there supposed to go and do the dispersal 19 would have been on the wrong side of that barbed wire.</p> <p>20 MR HENDRICKX: I'm not talking about the 21 wrong or the right side, Sir. I am, what I'm saying –</p> <p>22 CHAIRPERSON: No, it's a turn of phrase 23 that Mr Semenya is using. What he's saying to you is this; 24 if that decision had been made, Brigadier Calitz had stayed 25 where he could exercise command and control over the</p>	<p style="text-align: right;">Page 36801</p> <p>1 what I just explained. Ja, one option. The second option, 2 and this is what happened in reality, Brigadier Calitz 3 drove off with all the people behind or whatever, arrived 4 up there, where we see the vehicles, okay, and I still say, 5 and that is under the second option him being there, the 6 uncoiling of the barbed wire in Nyala5 could have been used 7 in any case, to close that gap, and the advantage of the 8 policemen from Papa1 to Papa19 being there, where they 9 ended up, could, would have been that once the group was 10 stopped, and they were all armed vehicles, if I am 11 remembering right, or at least the large majority of those 12 vehicles were, they could have retreated what they did, to 13 their armed vehicles and could have encircled with their 14 armed vehicles the people who were stopped by the barbed 15 wire, and made an attempt to arrest.</p> <p>16 CHAIRPERSON: Well, that of course is if 17 they arrested them, they would have had to get out of the 18 armoured vehicles and inasmuch as they were POP people they 19 weren't – didn't have much lethal force available to them, 20 and the danger was, this is a point I am putting to you 21 because I want your reply to it, the danger is you might 22 then have had a repetition of what happened on the 13th. 23 The strikers might have turned on them and hacked a number 24 of them to death, as was done on the 13th. That I take it 25 is the point you –</p>
<p style="text-align: right;">Page 36800</p> <p>1 situation.</p> <p>2 [14:10] And given the order that you suggest he should 3 have given, what would then have happened, would have been 4 this, that Papa19, Papa5, Papa4, Papa2, Papa9, Papa7, 5 Nyala6, Papa1, Casspir A, Casspir B and P11 would all be on 6 the striker's side of the barbed wire. They would have 7 been. The barbed wire would have blocked off access to 8 that road, that's running parallel to the base line. The 9 strikers couldn't have gone onto that road, nor could the, 10 those vehicles that I've just mentioned. So the police 11 members who were in those vehicles, would have been trapped 12 as it were, I think that is his expression, on the 13 striker's side of the barbed wire with consequences that he 14 is now going to put to you.</p> <p>15 MR SEMENYA SC: Yes, that is correct.</p> <p>16 MR HENDRICKX: Can I respond to that? We 17 are mixing, and probably are mixing two things, and I would 18 like to explain, okay? If Brigadier Calitz as soon as the 19 protesters started marching next to Nyala4, right, would 20 not have taken the decision to start driving with all the 21 vehicles that we see there, around the kraal, in the 22 direction of the kraal, and if he would have stayed there, 23 in a position to observe what happened, at that moment, and 24 making an evaluation of the situation, he could already 25 there and then, have decided to close off with barbed wire</p>	<p style="text-align: right;">Page 36802</p> <p>1 MR HENDRICKX: No, no.</p> <p>2 CHAIRPERSON: I think that's the point Mr 3 Semenya is leading up to, but I am trying to deal with it 4 quickly.</p> <p>5 MR HENDRICKX: I don't think so, but I 6 would like to respond to that. The plan in any case, Mr 7 Scott's plan in any case, was to disburse and arrest them, 8 right? And arrests were not supposed to be made by POPs, I 9 think, but must have been made maybe TRTs, so if –</p> <p>10 CHAIRPERSON: No, no, I am sorry, Mr 11 Hendrickx, I don't think that's correct. My understanding 12 of Colonel Scott's plan was this, they were going to try 13 to, remember it wasn't going to happen here, this in fact 14 was as I understand it, more or less an unexpected event, 15 pre-emptive strikers, as it were, by the strikers which 16 wasn't foreseen. Whether it should have been foreseen in 17 the light of the passage in the Goldstone Commission 18 report, that you put to us, is another question. But 19 Lieutenant-Colonel Scott's plan was this, the – Brigadier 20 Calitz was going to give a warning in various official 21 languages, going to wait a while, give another warning, and 22 then if the warning wasn't complied with, the POP people 23 were going to advance to disperse, disarm and arrest. But 24 because he anticipated that there might be a vigorous 25 aggressive response from some of the strikers, what he had</p>

<p style="text-align: right;">Page 36803</p> <p>1 in reserve, was the TRT people behind. He anticipated it 2 was possible that the POP people would take refuge in the 3 armoured vehicles and the TRT people would then have to 4 take over. So, the main part of the plan was the arrest 5 they thought would be done by the POP people but if they 6 couldn't be, if the POP people had jumped into the Nyalas 7 and slammed down, and closed the doors then the TRT people 8 would have to do it. That's a correct summary, I believe, 9 of the plan.</p> <p>10 MR HENDRICKX: I agree with that, Chair. 11 And that's the point that I was trying to make in this, 12 because we are talking here about hypothesis, right? In 13 that case, in the case that the protesters would have been 14 stopped by the then deployed barbed wire, Nyala5, in the 15 case that all those POPs vehicles and POPs members were 16 there, with armoured cars, in the event, in the hypothesis, 17 that they were there, they could have stopped, they could 18 have, how do you call it? Encircled if you see what I 19 mean, with those armoured cars and then if the radios would 20 have worked, and that is another problem, that could be 21 another problem that we could debate, they could have 22 called in TRT, to arrest these people, that's the point 23 that I wanted to make. And another thing, Mr Semenya, that 24 was put to me before lunch, said that there were no other 25 alternatives for POP. I have just given you two.</p>	<p style="text-align: right;">Page 36805</p> <p>1 the original Scott plan which remember involved a barrier 2 all the way, but also involved the police getting onto the 3 other side of the barrier to do -</p> <p>4 MR SEMENYA SC: They would have used the 5 opening, Chair, that's -</p> <p>6 CHAIRPERSON: And the suggestion was that 7 they might have opened, created a gap as it were in the 8 barrier, I think that's what he's alluding to. Am I right? 9 The difficulty with that, I am told, is that the - I am not 10 sure that it's correct, but this is what he's put to me 11 during the lunch hour, that the, I misunderstood that the 12 TRT people, or rather, not the TRT people, Brigadier 13 Calitz's people would have gone into the area where the 14 strikers were, by going, moving further to the left on this 15 photograph and going around that section where we see that 16 corrugated iron house. So if I am correct in that, then it 17 wouldn't have been possible for the TRT people to have gone 18 through the wire barrier to make the arrests, but anyway, 19 perhaps you want to respond to that, and then Mr Semenya 20 can take over in the light of your -</p> <p>21 MR HENDRICKX: Can I respond? Okay. I 22 think that the TRT could go, if that hypothesis was 23 implemented or whatever you call it, the TRT then could go 24 up and could go around the shack, right, because the 25 deployed uncoiled barbed wire would not have reached that,</p>
<p style="text-align: right;">Page 36804</p> <p>1 CHAIRPERSON: The difficulty with that 2 suggestion, prima facie, I am sorry if I am taking over 3 somebody's time, but I am debating an issue that you seem 4 to think quite important, the difficulty with that one was 5 that if you had the barbed wire stretching across what I 6 called a gap, and the TRT people were on the other side, 7 they would have difficulty getting there to effect the 8 arrests. I put to that to you, obviously to get your 9 response.</p> <p>10 MR HENDRICKX: No, no, yes. That you 11 have already debated with, this morning, right, in the 12 sense that how are, how were the people, the policemen 13 standing behind the barbed wire, going to the other side to 14 do the original operation? Okay.</p> <p>15 MR SEMENYA SC: No, Mr Hendrickx, let's 16 take it step by step -</p> <p>17 MR HENDRICKX: But I am answering -</p> <p>18 MR SEMENYA SC: If we -</p> <p>19 CHAIRPERSON: - answer my question.</p> <p>20 MR SEMENYA SC: Yes.</p> <p>21 CHAIRPERSON: And what he is saying, is 22 you are alluding to a passage in the cross-examination of 23 Mr White.</p> <p>24 MR HENDRICKX: Yes.</p> <p>25 CHAIRPERSON: Where it was suggested that</p>	<p style="text-align: right;">Page 36806</p> <p>1 they could go around and when they would have arrested, 2 they would have had to arrest the people, I mean, the 3 protesters, there could have been made some openings in the 4 - or made some distance between the Nyalas so that the TRT 5 people could go through.</p> <p>6 MR SEMENYA SC: Ja, you see, that's my 7 difficulty, Mr Hendrickx, you keep adjusting, what if, 8 after the barbed wire closes there, then the strikers go 9 behind the, you know, no, no. I am saying what if those 10 strikers in the light of being closed there, they go behind 11 the shack, they will meet TRT with -</p> <p>12 MR HENDRICKX: It's not what I am saying.</p> <p>13 MR SEMENYA SC: No, no, that's what I am 14 saying.</p> <p>15 MR HENDRICKX: Okay.</p> <p>16 CHAIRPERSON: You have to hear what he 17 says first, before you ask him the next question.</p> <p>18 MR SEMENYA SC: I understand your 19 response to be, let me break it slowly, on the exhibit as 20 you see it in front of us, correct? If Nyala5 closes at 21 that gap between the kraal and the shack, with a barbed 22 wire, the TRT would be on the upper side of that portrait, 23 am I right?</p> <p>24 MR HENDRICKX: That is correct.</p> <p>25 MR SEMENYA SC: there would have been on</p>

<p style="text-align: right;">Page 36807</p> <p>1 the side, the other side of the strikers, correct?</p> <p>2 MR HENDRICKX: Yes, but they would be</p> <p>3 enclosed by the barbed wire on one side and the armoured</p> <p>4 vehicles from POP and they, you know, they were encircled.</p> <p>5 MR SEMENYA SC: No, they could go through</p> <p>6 the vehicles, no?</p> <p>7 MR HENDRICKX: The protesters? I don't</p> <p>8 think so, Sir.</p> <p>9 MR SEMENYA SC: Why not? Why couldn't</p> <p>10 they go through those gaps as you see them there?</p> <p>11 MR HENDRICKX: Part of this hypothesis,</p> <p>12 would have been then that the POPs members and they are</p> <p>13 trained in that, to block with vehicles, I mean encircle</p> <p>14 them and link vehicles, I mean, drive vehicles next to each</p> <p>15 other if you see what I mean, preventing the protesters</p> <p>16 from going anywhere.</p> <p>17 MR SEMENYA SC: Mr Chaskalson is not</p> <p>18 here, but as I understand the movement of things there, all</p> <p>19 of this happens in seconds, I mean under 15 seconds, and</p> <p>20 you are saying this is how it should have been organised</p> <p>21 within those 15 seconds, by the group of policemen that</p> <p>22 were there.</p> <p>23 MR HENDRICKX: What I am saying, I am</p> <p>24 responding to your question from before lunch, you said you</p> <p>25 put to me that there were no other options. What I have</p>	<p style="text-align: right;">Page 36809</p> <p>1 it should have been, the strikers would have been trapped</p> <p>2 behind the wire, as it were.</p> <p>3 MR HENDRICKX: Yes.</p> <p>4 CHAIRPERSON: And the vehicles wouldn't</p> <p>5 be there?</p> <p>6 MR HENDRICKX: Yes.</p> <p>7 CHAIRPERSON: So then, that's the one</p> <p>8 possibility you are suggesting. The other possibility is</p> <p>9 vehicles didn't go, didn't leave, they stayed, as the</p> <p>10 strikers came along, were unable to pass through the wire</p> <p>11 barrier, the vehicles were then as it were, formed a circle</p> <p>12 around and they could then be arrested. Are those the two</p> <p>13 possibilities you are putting up?</p> <p>14 MR HENDRICKX: Ja.</p> <p>15 MR SEMENYA SC: Let's explore the second</p> <p>16 one, they would be arrested by the people who have fled</p> <p>17 into the Nyalas?</p> <p>18 MR HENDRICKX: No, Sir, I said –</p> <p>19 MR SEMENYA SC: Okay, I just want to tidy</p> <p>20 it up. They would not be arrested in that second scenario,</p> <p>21 by the POP members who have fled into the Nyalas.</p> <p>22 MR HENDRICKX: Ja.</p> <p>23 MR SEMENYA SC: They would have had to be</p> <p>24 arrested in that scenario b the TRT that was on the other</p> <p>25 side.</p>
<p style="text-align: right;">Page 36808</p> <p>1 tried to do is explain that there were at least to my mind,</p> <p>2 and based on my professional experience, two options that</p> <p>3 could have been taken, that's the only thing that I am</p> <p>4 saying. I am not disputing the fact that it would have</p> <p>5 been a difficult thing to do, it needs to be co-ordinated</p> <p>6 and hence and so on and so forth, I am not disputing that</p> <p>7 side. I am just giving you two possibilities, to other</p> <p>8 options before lethal force must or should, could have been</p> <p>9 used in those circumstances.</p> <p>10 COMMISSIONER HEMRAJ: Mr Hendrickx, do</p> <p>11 you not see any danger to the POP policemen if in fact that</p> <p>12 barbed wire was deployed by Nyala5 as you say? Do you not</p> <p>13 foresee any danger to the POPs persons if a huge crowd,</p> <p>14 armed crowd came around that kraal and found themselves -</p> <p>15 as going through?</p> <p>16 MR HENDRICKX: Yes, I mean there is</p> <p>17 danger to that, what I am saying is that is a second</p> <p>18 possibility. The first possibility would have been to</p> <p>19 close off without those vehicles being there, I don't, am I</p> <p>20 getting, I am under the impression that I am not, that I</p> <p>21 don't explain as well. There were two –</p> <p>22 CHAIRPERSON: Two possibilities. The</p> <p>23 first is, vehicles could have gone off presumably in the</p> <p>24 direction that Brigadier Calitz went. Alternatively, in</p> <p>25 which case if the wire had been uncoiled, where you suggest</p>	<p style="text-align: right;">Page 36810</p> <p>1 MR HENDRICKX: Yes.</p> <p>2 MR SEMENYA SC: And you suggest that that</p> <p>3 TRT would have had to go around the shack as you see the</p> <p>4 exhibit?</p> <p>5 MR HENDRICKX: Yes.</p> <p>6 MR SEMENYA SC: And they can do it, and</p> <p>7 get to the strikers?</p> <p>8 MR HENDRICKX: Yes.</p> <p>9 MR SEMENYA SC: But the strikers can't go</p> <p>10 to the TRT?</p> <p>11 MR HENDRICKX: No. If they are being</p> <p>12 blocked by the armoured vehicles they cannot move from</p> <p>13 there.</p> <p>14 MR SEMENYA SC: But if they're blocked –</p> <p>15 CHAIRPERSON: Sorry, forgive me.</p> <p>16 MR SEMENYA SC: I am saying if they are</p> <p>17 blocked in a manner that they cannot get to the TRT, the</p> <p>18 TRT can't get to them either.</p> <p>19 MR HENDRICKX: Yes, but then you start,</p> <p>20 when the protesters are, how shall I put it? Located and</p> <p>21 in a certain spot, then the police is at an advantage</p> <p>22 situation to start discussing with the protesters to say,</p> <p>23 you are going to lay down your arms now, and we are going</p> <p>24 to arrest you, and then those people would have been</p> <p>25 confined to that space.</p>

<p style="text-align: right;">Page 36811</p> <p>1 MR SEMENYA SC: I am worried by the fact 2 that all of these hypotheses are only raised for the first 3 time in your cross-examination. 4 MR HENDRICKX: Thank you, Sir, but a lot 5 of hypotheses have been discussed in this Commission as 6 well. 7 MR SEMENYA SC: No, no, with me, Mr 8 Hendrickx, I am saying assume the facts are so found by the 9 Commission, I am not hypothesising. Assume the evidence 10 that has been tendered is accepted by the Commission to be 11 correct, then comes my question. Can I again, resting on 12 the strength of your expertise say this, that having 13 considered the totality of the evidence as you may have 14 done, you do exclude as a possibility even a probability, 15 you do exclude as a possibility that at the meeting of 16 14:30 JOCOM meeting on the 16th of August 2012, there was no 17 plan for the execution of the miners, am I right. 18 MR HENDRICKX: Am I right in believing 19 Sir, that there was no 14:30 JOCOM meeting that the JOCOM 20 meeting was before that time? Or am I wrong? 21 MR SEMENYA SC: No, at 14:30 everybody 22 gets – 23 MR HENDRICKX: 14:30 to my knowledge, the 24 people on the ground, the commanders on the ground, were 25 briefed by Mr Scott.</p>	<p style="text-align: right;">Page 36813</p> <p>1 authority for the proposition that whatever happened, could 2 not have been a pre-planned police operation to give the 3 results that we have. 4 MR HENDRICKX: As it was planned here? 5 Or, as it – I mean there were a lot of risks and a lot of 6 issues with that plan. 7 CHAIRPERSON: I think we have covered the 8 ground already. What happened was the barbed wire barrier 9 was to be put up. 10 MR HENDRICKX: Yes. 11 CHAIRPERSON: It wasn't thought, it 12 wasn't foreseen that the strikers would go for the gap on 13 the other side of the kraal. What was intended was that 14 Brigadier Calitz would go in, would give them a warning, 15 then comeback and give them another warning after about 16 half-an-hour and if they were still there, then the POP 17 people would have advanced, not to disarm them at the gap 18 there next to the kraal but the evidence is further up 19 somewhere closer to the koppie. That was the plan. 20 MR HENDRICKX: Ja. 21 CHAIRPERSON: And the POP people were 22 going to go forward, across the field as it were towards 23 the koppie and do the DDA plan. Disperse, disarm and 24 arrest plan. 25 [14:30] After the due warnings. That never happened</p>
<p style="text-align: right;">Page 36812</p> <p>1 CHAIRPERSON: He is right, Mr Semenya, 2 the JOCOM meeting at 13:30, thereafter, it ended at 14:00, 3 2 p.m. and Lieutenant Colonel Scott and Brigadier 4 Pretorius were then sent off to meet the commanders in the 5 field, at 14:30 where they gave the instructions, they all 6 clustered around the vehicle and Lieutenant Colonel Scott 7 showing them on his computer. 8 MR SEMENYA SC: Indeed, that's the 9 evidence, Chair. Let me go back to my question then, at 10 14:30 briefing that briefing did not include the execution 11 of miners, with R5s, as has happened? You accept that? 12 MR HENDRICKX: Yes. 13 MR SEMENYA SC: Neither did that type of 14 plan manifest in whatever form in the JOCOM meeting of 15 01:30. You accept that? 16 MR HENDRICKX: I accept that, yes. 17 MR SEMENYA SC: So the task that the 18 Commission has and the effort you are trying to assist it, 19 is to explain how we ended where we did with such a tragedy 20 in our hands. I want to use your evidence to say, one 21 thing that it was not, it was not a concerted planned 22 action on the part of the police, can I rest on the 23 strength of your expertise to say so? 24 MR HENDRICKX: Say that again please? 25 MR SEMENYA SC: Can I use you as my</p>	<p style="text-align: right;">Page 36814</p> <p>1 because what happened was something that wasn't planned, 2 whether it should've been foreseen and contingency plans 3 should've been put in place is another issue, but what 4 happened it was something that they didn't expect would 5 happen, happened. The strikers advanced towards the 6 police. Firstly they tried I think to do so on the other 7 side of the kraal and then when that was blocked they went 8 round and they advanced on the left-hand side of the kraal 9 as we look at the picture. That was something the police 10 plan didn't cater for. And so they then had to deal with 11 it almost on the spur of the moment. Whether they 12 should've had a plan in place is another question, but Mr 13 Semenya is correct, is he not, in saying that they 14 effectively had to improvise for a situation which they 15 hadn't foreseen. That's your point, Mr Semenya? 16 MR SEMENYA SC: Ja, but – 17 CHAIRPERSON: How do you deal with that? 18 MR HENDRICKX: That's my criticism then. 19 Police should not improvise. Police should analyse risks 20 and think of every possibility that could happen and make a 21 plan for that eventuality. Right, that's what I'm saying 22 and to my knowledge in everything that I read and consulted 23 and based then on my professional experience I think that 24 the police did not look at all the options and did not 25 prepare reaction to all the possible options.</p>

<p style="text-align: right;">Page 36815</p> <p>1 MR SEMENYA SC: Okay.</p> <p>2 CHAIRPERSON: That seems to be common</p> <p>3 cause. They certainly – they don't appear to have</p> <p>4 envisaged this would happen, they don't appear to have had</p> <p>5 a plan for it. The question we have to consider which is</p> <p>6 whether they should've. There are two questions to</p> <p>7 consider. Firstly, on this part of the case, firstly was</p> <p>8 it reasonably foreseeable and should they have foreseen it</p> <p>9 and secondly if it was, what plan would they or should they</p> <p>10 have devised to deal with this contingency?</p> <p>11 MR HENDRICKX: Am I allowed to comment –</p> <p>12 to start with some theory?</p> <p>13 CHAIRPERSON: It's your evidence.</p> <p>14 MR HENDRICKX: But, ja, but I was not – I</p> <p>15 was under the impression that I was not allowed to come</p> <p>16 back to the unrolling of the barbed wire.</p> <p>17 CHAIRPERSON: You're allowed to answer</p> <p>18 the questions. I'm using up so much of Mr Semenya's time</p> <p>19 but I think I'm dealing with the point –</p> <p>20 MR HENDRICKX: Ja.</p> <p>21 CHAIRPERSON: - that he's busy with. So</p> <p>22 I don't think he will mind too much and if he does it's</p> <p>23 unfortunate.</p> <p>24 MR HENDRICKX: Thank you. In making a</p> <p>25 plan, an operational plan, when your first step of that</p>	<p style="text-align: right;">Page 36817</p> <p>1 you go to page 17236 line 17 he says, and I'm translating –</p> <p>2 CHAIRPERSON: I'd like to hear you</p> <p>3 reading in Afrikaans.</p> <p>4 MR HENDRICKX: Okay. Here we go then.</p> <p>5 Mr Semenya ask him the question "but with each and every of</p> <p>6 those traps, was it foreseen that stun grenade would not" –</p> <p>7 sorry, I'm giving you the wrong reference. I have to find</p> <p>8 it back. And I found it back, sorry. It is page 17236,</p> <p>9 line 14, sorry. Mr Semenya asks or puts to Brigadier</p> <p>10 Calitz "as is a standard operating procedure do you have to</p> <p>11 announce what defensive measure you are taking and why you</p> <p>12 are taking it?" Mr Calitz says and here I go in Afrikaans,</p> <p>13 mnr Voorsitter, nee, dit sal egter sinneloos gewees het</p> <p>14 indien ons in die geval aangekondig het dat ons gaan nou</p> <p>15 die draad uitgooi en daarna uitbeweeg. En daarna blah,</p> <p>16 blah.</p> <p>17 CHAIRPERSON: I must use my microphone.</p> <p>18 Mr Chairman, no, this is Brigadier Calitz. "It would</p> <p>19 however be senseless if we were in the case, the event, if</p> <p>20 we announced in the case that we were going to throw out</p> <p>21 the wire and thereafter we were going to move out and then</p> <p>22 I was going to launch an operation against those who were</p> <p>23 sitting on the koppie or the protestors. At that stage I</p> <p>24 would've given the warning, it's –</p> <p>25 MR HENDRICKX: If he would've given the</p>
<p style="text-align: right;">Page 36816</p> <p>1 operational plan or your first action, if you see what I</p> <p>2 mean, is the uncoiling of barbed wire, right. Experienced</p> <p>3 policemen, 1, 2, the theories that we used to base on the</p> <p>4 SAPS model of public order policing and based on the</p> <p>5 realities of gatherings must assume that once the police</p> <p>6 start doing something, moving, uncoiling barbed wire, the</p> <p>7 protestors are going to ask themselves at least questions.</p> <p>8 What is going to happen here and some of them might get</p> <p>9 agitated and start to react anyway. So the plan, as it was</p> <p>10 conceptualised did not take into account the fact that the</p> <p>11 simple uncoiling of the barbed wire was going to have a</p> <p>12 reaction by the protestors, even fear or aggression or</p> <p>13 whatever. Now from the evidence put before this</p> <p>14 commission, from Mr Calitz, right, to me, my reading and</p> <p>15 I'm sorry I can read Afrikaans but some people have said if</p> <p>16 I read Afrikaans it's, the accent is very strange but when</p> <p>17 you go to page 17258 of Mr Calitz's hearing before the</p> <p>18 commission –</p> <p>19 CHAIRPERSON: His evidence.</p> <p>20 MR HENDRICKX: Sorry?</p> <p>21 CHAIRPERSON: His evidence, Mr Calitz –</p> <p>22 Brigadier Calitz's evidence.</p> <p>23 MR HENDRICKX: He said that he only</p> <p>24 started to speak to, I presume, Mr – the man with the green</p> <p>25 blanket after 1 and 2 started to uncoil the wire. And if</p>	<p style="text-align: right;">Page 36818</p> <p>1 warning, that's what he says, if he –</p> <p>2 CHAIRPERSON: Yes.</p> <p>3 MR HENDRICKX: - would've given the</p> <p>4 warning at that moment –</p> <p>5 CHAIRPERSON: It would –</p> <p>6 MR HENDRICKX: - the protestors would</p> <p>7 have seen it as an attack and I am not going to announce an</p> <p>8 attack." That's what he says, at least that's what I</p> <p>9 understand of what's being written there.</p> <p>10 CHAIRPERSON: - if I had given the</p> <p>11 warning it was then useless because then the group would</p> <p>12 immediately have begun moving before we had the defence</p> <p>13 line in place. That's what he says.</p> <p>14 MR HENDRICKX: Ja. But that's the point</p> <p>15 that everybody – I mean that's the point that I want to</p> <p>16 make. If the police starts to deploy and when you make a</p> <p>17 plan you've got to take into account that the protestors</p> <p>18 are going to react somehow to what the police is doing.</p> <p>19 That's the point that I want to make. One and two, the</p> <p>20 point that I want to make is that perhaps it's the SAPS</p> <p>21 case, I don't know, that the deployment that they say that</p> <p>22 the deployment was announced in time. What I'm saying is</p> <p>23 Mr Calitz only started to talk to Mr Noki when the</p> <p>24 deployment of one and two was underway. That's the only</p> <p>25 point that I want to make.</p>

<p style="text-align: right;">Page 36819</p> <p>1 CHAIRPERSON: You know, it seems to me 2 with respect, you're actually making another point as well, 3 that if the warning would've made them start moving then 4 once you start uncoiling the wire they would also start 5 moving. 6 MR HENDRICKX: Of course. 7 CHAIRPERSON: They would – obviously they 8 wouldn't have as much time to move as they would've had if 9 you had given the warning beforehand. But regarding the 10 fact that the whole exercise took 9 minutes, once you were 11 a couple of minutes into the exercise they would at least 12 have had 7 minutes to move. I think that's the point 13 you're making if I may. 14 MR HENDRICKX: Yes. 15 CHAIRPERSON: Say. 16 MR HENDRICKX: Yes, and if you'll allow 17 me to make another point, Sir. If it really was the 18 intention to use the barbed wire it could've been unrolled 19 early in the morning so that arriving protestors could've 20 seen there and then and then there was – they would've had 21 – there would've been enough time to explain to everybody 22 what it was all about. Now everything was done under 23 pressure. 24 CHAIRPERSON: I think there's an answer 25 to that. Maybe if it had been done early in the morning it</p>	<p style="text-align: right;">Page 36821</p> <p>1 MR HENDRICKX: No, that's correct. 2 MR SEMENYA SC: Am I right? 3 MR HENDRICKX: Ja. 4 MR SEMENYA SC: And secondly I can tell 5 you that the evidence of Brigadier Calitz was that he did 6 explain earlier around 11 o'clock to Mr Noki what the 7 purpose of that barbed wire was. Do you accept that 8 evidence? 9 MR HENDRICKX: As the barbed wire was 10 uncoiling, yes. 11 CHAIRPERSON: No. The barbed wire was 12 uncoiled at about 3:30 or just after 3:30 if I remember. 13 MR HENDRICKX: Yes. 14 CHAIRPERSON: About 3:40 I think. The 15 warning to which Mr Semenya is referring was about half 16 past 11 in the morning. 17 MR SEMENYA SC: So I'm saying the 18 surprise element argument can't work in the light of that 19 evidence. Am I right? 20 MR HENDRICKX: What I'm saying is, and 21 I'm reading it out for me to understand then, it's on page 22 17236 line 17 and following that, he says that, Mr Calitz 23 says that he started talking, at least that's my 24 interpretation, that he started talking, announcing or 25 talking to at least one of the protestors that he started</p>
<p style="text-align: right;">Page 36820</p> <p>1 might've provoked an adverse reaction at that stage. 2 Remember they were hoping all along that the strikers would 3 lay down their arms voluntary and they only finally 4 realised that wasn't going to happen around about noon for 5 various reasons. But the point was to be fair to them if 6 they feared some kind of adverse aggressive reaction from 7 the uncoiling of the wire and if the strikers arrived there 8 and seen it already they might then have got aggressive 9 reaction which would've frustrated or prevented the 10 possible voluntary laying down of the arms which obviously 11 they desired and it would've been the most desirable 12 outcome. Isn't that so? 13 MR HENDRICKX: That's a fair point, Sir. 14 CHAIRPERSON: Ja. 15 MR SEMENYA SC: Mr Hendrickx, again, what 16 you have read is not Mr Brigadier Calitz saying they would 17 move towards the police. He's not making that point. He's 18 saying they will start moving and they did. 3 000 of them 19 left. Am I correct to read that – 20 MR HENDRICKX: Yes and I'm sorry I can't 21 find it for the moment but there is another – 22 MR SEMENYA SC: Let's focus on this one. 23 MR HENDRICKX: Okay. 24 MR SEMENYA SC: Here he's not saying 25 that.</p>	<p style="text-align: right;">Page 36822</p> <p>1 doing that when one and two were unrolling. That's what 2 I'm trying to say. 3 COMMISSIONER HEMRAJ: Mr Hendrickx, you 4 are aware of the evidence of Brigadier Calitz that he 5 explained to Mr Noki and the other strikers the purpose for 6 the barbed wire. Now you are making these comments 7 against, fully aware of that having been conveyed to the 8 strikers. Do I understand that you're aware of that 9 evidence? 10 MR HENDRICKX: Yes, I am. 11 COMMISSIONER HEMRAJ: Yes. 12 CHAIRPERSON: Did you say 17236 or 17226? 13 MR HENDRICKX: 1 – 14 CHAIRPERSON: I thought you said 17236. 15 MR HENDRICKX: Ja, no, where he says – 16 CHAIRPERSON: Well never mind what he 17 said, just what the page number is. 18 MR HENDRICKX: Ja. 19 CHAIRPERSON: Is it 172 – 20 MR HENDRICKX: I've been talking about 2 21 pages, page 17258 – 22 CHAIRPERSON: Yes. 23 MR HENDRICKX: - that's from line – 24 CHAIRPERSON: Yes and the other one? 25 MR HENDRICKX: And the other one page</p>

Page 36823

1 17236.

2 CHAIRPERSON: That's right, 1723 – on the

3 screen we've got 17226, we need 36. It's the next day.

4 There we are, now we've got it, thank you, Mr Operator.

5 MR HENDRICKX: Which part?

6 CHAIRPERSON: Which line on page 17236 do

7 you refer to? This is the one we're looking at –

8 MR SEMENYA SC: Now we do know, Mr

9 Hendrickx, with respect that in terms of standing order 262

10 clause 11 it says in express terms if you're taking any

11 defensive measure you don't have to announce it.

12 MR HENDRICKX: That's not my reading of

13 it, Mr Semenya. My reading of it is once it's deployed,

14 the deploying of or uncoiling of wire is or can be seen by

15 the protestors or by anybody who is watching it as an

16 offensive action. I do agree with you that once they're

17 deployed then it's seen as a defensive action move.

18 MR SEMENYA SC: Okay, can I ask Exhibit

19 SS2 which is the standing order and to look at clause 11

20 there. Please help us understand it.

21 MR HENDRICKX: Yes.

22 MR SEMENYA SC: It says under clause 11.2

23 "if negotiations fail and life or property is in danger the

24 following procedure must be followed. Step 1, put

25 defensive measure in place as a priority". Do you see

Page 36824

1 that?

2 MR HENDRICKX: Yes.

3 MR SEMENYA SC: And then it says "after

4 that you warn the parties [inaudible]". Am I right?

5 MR HENDRICKX: Yes. In reading that you

6 are right. What I'm trying to explain is the

7 interpretation, certain interpretation and the effect

8 uncoiling of barbed wire has on protestors. That's what

9 I'm trying to explain. The fact of uncoiling them,

10 unannounced will provoke a certain reaction of protestors.

11 MR SEMENYA SC: And that standing order

12 says defensive measure includes setting up barricades.

13 MR HENDRICKX: Yes.

14 MR SEMENYA SC: Which would included a

15 barbed wire.

16 MR HENDRICKX: Sorry?

17 MR SEMENYA SC: So –

18 MR HENDRICKX: Yes.

19 MR SEMENYA SC: Which would include a

20 barbed wire.

21 MR HENDRICKX: I agree.

22 MR SEMENYA SC: But this doesn't matter

23 because as we say on the evidence the strikers were in fact

24 told to what the purpose is, do you accept that?

25 MR HENDRICKX: After the deployment, or

Page 36825

1 the decoiling began, yes.

2 MR SEMENYA SC: No, they were told at 11

3 o'clock already, in the morning. When Mr Noki came to

4 enquire why are you having barbed wires here and he was

5 told the reason is to protect the police. You are not

6 aware of that evidence? It's fine if you're not aware.

7 You're not?

8 CHAIRPERSON: Mr Hendrickx, the question

9 is you obviously weren't aware of that. I'm not

10 criticising you. There's a mass of material that you had

11 to take on board. You obviously weren't aware of that fact

12 that Mr Semenya's just put to you. Now the question that

13 arises is now that you know that fact does that cause you

14 to alter your evidence in any way on this point?

15 MR HENDRICKX: The fact remains that the

16 uncoiling of the barbed wire is based on the realities of

17 gathering is going to create or possibly is going to create

18 a certain reaction from the demonstrators. That for me is

19 a certainty.

20 MR SEMENYA SC: Okay. I'll come back to

21 that –

22 COMMISSIONER TOKOTA: If it wasn't for

23 that defensive measures do you think should've been put in

24 place instead of the barbed wire then?

25 MR HENDRICKX: I'm sorry, Sir, I –

Page 36826

1 COMMISSIONER TOKOTA: In those

2 circumstances then what sort of other defensive measures do

3 you think should've been put in place instead of the barbed

4 wire as you say it would've provoked the protestors?

5 MR HENDRICKX: That is starting from the

6 assumption that you would have needed a defensive action or

7 a defensive measure there. We can discuss about that

8 whether it was necessary to do that.

9 COMMISSIONER TOKOTA: You think it was

10 not necessary in this case?

11 MR HENDRICKX: We can discuss about that.

12 I think –

13 COMMISSIONER TOKOTA: No, you answer now.

14 MR HENDRICKX: I think there are –

15 COMMISSIONER TOKOTA: Let's discuss it

16 now.

17 MR HENDRICKX: - other – there are other

18 possibilities on the condition and that is one of the

19 criticisms that I make that would have been present a lot

20 more policemen.

21 COMMISSIONER TOKOTA: In that aspect even

22 those that you'll tell us are not in your statement, am I

23 right.

24 MR HENDRICKX: That is correct.

25 COMMISSIONER HEMRAJ: Do I understand

<p style="text-align: right;">Page 36827</p> <p>1 correctly, that you take issue with the use of barbed wire 2 in the first place? Do I understand that correctly? 3 MR HENDRICKX: Yes. No, I'm not having 4 an issue with the use of barbed wire. What I'm saying is 5 the uncoiling of in presence of the protestors is seen as 6 an activity by the police to which the protestors react. 7 That's what I'm saying. I'm not against the use of barbed 8 wire. 9 CHAIRPERSON: Did I understand you to say 10 there should've been more policemen there? Now there was 11 some evidence put to some of the police witnesses earlier 12 that there's an internationally recognised ratio of police 13 to protestors or strikers or demonstrators, I think is the 14 right word, and that had been, had not been complied with. 15 Is that the point you're making? 16 MR HENDRICKX: That's one of the points 17 that I'm trying to make, yes. If there would've been more 18 POP members, I think the operation would've gone, either 19 gone a lot more smoother or that it could have been 20 implemented otherwise. 21 MR SEMENYA SC: If this commission 22 accepts the evidence that the protestors were in fact 23 intent on attacking the police, if that evidence is 24 accepted, do you think your theory would've worked in any 25 event, that notwithstanding?</p>	<p style="text-align: right;">Page 36829</p> <p>1 a question of a descending line or ascending line, 2 depending on what direction you come, in terms of 3 contingency planning. The more probable, the more you plan 4 for it. The less probable, less you plan for it. 5 MR HENDRICKX: Yes, yes, yes. 6 MR SEMENYA SC: Okay. You know, one of 7 the themes that inform your opinion and your critique as I 8 read it is the definition of the crowd we're talking about. 9 Am I right? You say the SAPS was mistaken in describing 10 this crowd as a single monolithic group. That you found to 11 be a big problem. 12 MR HENDRICKX: That's part of what I 13 said, yes. 14 MR SEMENYA SC: Now of course you were 15 there when I was cross-examining Mr White and we dealt in 16 broad terms what the visuals tell us. Firstly you do 17 accept that they were an organised group? 18 MR HENDRICKX: I do, Sir. 19 MR SEMENYA SC: That they were on the 20 command of Mr Noki. 21 MR HENDRICKX: That there was leadership, 22 yes. 23 MR SEMENYA SC: That's the evidence, and 24 now we know the second-in-command was a Mr Nzuza. Correct? 25 MR HENDRICKX: If that's the evidence,</p>
<p style="text-align: right;">Page 36828</p> <p>1 MR HENDRICKX: I'm sorry, I only 2 understood half of the question. 3 MR SEMENYA SC: If we accept there's 4 evidence that the strikers were intent on attacking the 5 police, if we accept that evidence, your theory that you 6 put forward that it would've – would it work in this kind 7 of situation? 8 MR HENDRICKX: I don't think so. If 9 there would've been enough policemen, if the terrain need 10 not, did not have to be occupied by barbed wire, for 11 instance and if there would've been enough policemen or 12 armed Nyalas or other equipment then the plan or the 13 operation could've been planned otherwise. 14 MR SEMENYA SC: Okay, we have dealt with 15 this earlier, Mr Hendrickx. Can I just deal quickly with 16 TTTT2. 17 [14:50] Which is the document you gave us dealing with 18 command and control of police, and the Chair earlier read 19 that third sentence saying "Senior officers must consider 20 and make contingency plans for various scenarios (probable 21 to impossible)." Let me stop there. I understand police 22 planning, or I understand that phrase to mean you look at 23 the most likely scenario and you cater for it and you look 24 at, on the other extreme, the least scenario and you cater 25 less for it than you would for the more probable. So it is</p>	<p style="text-align: right;">Page 36830</p> <p>1 yes. 2 MR SEMENYA SC: And that they were acting 3 in unison in chanting and clapping and singing. Do you 4 still maintain – I can go on and on in the character 5 definition of this group, but do you still persist that the 6 police were wrong to hold this as a distinct group that was 7 acting in unison, as was the evidence of Brigadier Calitz? 8 MR HENDRICKX: The group of the 9 hundreds – 10 MR SEMENYA SC: No, the group of the 3 to 11 400. 12 MR HENDRICKX: Yes. 13 MR SEMENYA SC: You accept that? 14 MR HENDRICKX: I accept that, yes, they 15 were behaving as a group, yes. 16 MR SEMENYA SC: I thought in your 17 provisional statement you were saying that that's the 18 mistake the police – 19 MR HENDRICKX: It's not the context of 20 what I said, and if I'm answering your question now, they 21 were seen as a group who behaved like one group, yes. 22 MR SEMENYA SC: Yes, they were seen like 23 that, but what I'm asking is you say that the judgment call 24 was wrong to see them as a single group. 25 MR HENDRICKX: To see them as a single</p>

Page 36831

1 group with the 3 000 other protesters.

2 MR SEMENYA SC: No, no, not with the

3 3 000. The 3 to 400, was it wrong judgment call that the

4 police looked at that group as a single group acting in

5 concert?

6 MR HENDRICKX: I don't think so, no.

7 MR SEMENYA SC: Okay.

8 MR HENDRICKX: But from my evidence, from

9 the evidence of the versions of L that were produced to the

10 Commission that I'd been able to scrutinise, in the

11 beginning, in the first version of L the police talked

12 about 3 000 armed protesters and not about this group.

13 MR SEMENYA SC: That's okay. The police

14 who testified tell – well, let me start here. The Lonmin

15 Security says despite, even in Lonmin unrest situations it

16 was the first time that security themselves get attacked by

17 the miners who are on an unprotected strike like this. You

18 accept that evidence to be correct?

19 MR HENDRICKX: If it was the evidence,

20 yes.

21 MR SEMENYA SC: Ja, and they say they

22 have never seen a crowd of unprotected strikers behave as

23 has happened in the strike in Marikana between 9 to 16 of

24 August 2012. You accept that as well?

25 MR HENDRICKX: I've got my doubts about

Page 36832

1 that, but I mean there have been since, since January, at

2 least in January –

3 MR SEMENYA SC: No, I'm talking about

4 Marikana security now. I was careful to say that's the

5 evidence of the security personnel in Marikana –

6 MR HENDRICKX: I agree –

7 MR SEMENYA SC: - to the Commission.

8 MR HENDRICKX: I agree, ja. Okay, that's

9 fine.

10 MR SEMENYA SC: Alright.

11 MR HENDRICKX: But there have been

12 incidents before, no? At Marikana, or in the region of

13 Marikana.

14 MR SEMENYA SC: No, I'm even saying

15 specifically in Lonmin.

16 MR HENDRICKX: Okay, I accept that.

17 MR SEMENYA SC: The police evidence

18 though is never in the history of their operations has an

19 unfurling of a barbed wire caused the strikers to attack

20 them. Do you have any evidence to gainsay that?

21 MR HENDRICKX: I haven't got any, me

22 confirming that the police – sorry, that the, a protester

23 or protesters have attacked the police. Is that what you –

24 MR SEMENYA SC: In the past on the basis

25 purely of unfurling barbed wire –

Page 36833

1 MR HENDRICKX: I've got no evidence, no.

2 I've got no evidence.

3 MR SEMENYA SC: Okay, and really as we

4 agreed with Mr White, doctrine in police operations is

5 dictated by past experience.

6 MR HENDRICKX: That could be, yes. It

7 is, it must be inspired by past experience, yes.

8 MR SEMENYA SC: Correct, and if no

9 previous history exists, as has happened on the 16th that a

10 barbed wire could trigger this response, they would have

11 operated under that belief, though it proves mistaken?

12 MR HENDRICKX: Yes Sir, but what you are

13 saying is – and I don't agree with that – is the fact that

14 that group attacked the police on the 16th. I haven't seen

15 any evidence that that group attacked the police when the

16 barbed wire was being uncoiled. From what I've seen the

17 photographic evidence and the video evidence is I cannot

18 conclude that they had attacked the police at that moment.

19 MR SEMENYA SC: No, I accept what you say

20 you're accepting, but that does not factor in the evidence

21 of Mr X, does it? That that was their intention all the

22 time.

23 MR HENDRICKX: I can only confirm what I

24 see and I have seen and I've scrutinised the pictures and

25 the videos and I haven't seen any –

Page 36834

1 MR SEMENYA SC: No, Mr Hendrickx, you

2 can't reject the evidence. Your expert opinion must be

3 based on the facts as are told by the witnesses and

4 ultimately found by the Commission. But would this be a

5 convenient stage –

6 CHAIRPERSON: It might be a convenient

7 time, we're going to take the tea adjournment in a moment,

8 but let me put this to you; there is evidence that threats

9 were made against the police. There's evidence that the

10 police intelligence was that the strikers didn't want to

11 give up their position on the koppie, didn't want to give

12 up their arms and they would fight to protect their

13 position and their arms, and as I've said there was

14 evidence that threats were given. One of the controversial

15 questions we have to decide in this Commission, which

16 ultimately we have to decide on the evidence, is whether

17 the strikers in advancing as they were towards the police

18 were doing so to attack them, to drive them away so that

19 they could stay in undisturbed possession of the koppie and

20 of their weapons, or whether they were on their way to

21 Nkaneng. One side say they were on their way to Nkaneng,

22 not intending to attack the police. The police ask us to

23 find the opposite.

24 There is a further alternative which we have to

25 consider and that is that even if the strikers were

<p style="text-align: right;">Page 36835</p> <p>1 intending to go to Nkaneng and not to attack the police, 2 whether the police did not reasonably believe in the light 3 of the circumstances which I've outlined that they were 4 going to be attacked either to drive them away from the 5 scene or possibly if the strikers were not perhaps 6 intending to hack their way through past the police to 7 Nkaneng. So these are questions that we have to decide, 8 you see.</p> <p>9 MR HENDRICKX: Indeed.</p> <p>10 CHAIRPERSON: We have the evidence of Mr 11 X who says they were intending to attack the police. Mr 12 X's evidence has been criticised. One of the things we'd 13 have to decide at the end of the day is whether we can 14 believe him, but it's not for – if I may say so, it's not 15 for an expert witness to say which of the versions he 16 believes. An expert witness has got to say fact finding is 17 for the Commission.</p> <p>18 MR HENDRICKX: Okay.</p> <p>19 CHAIRPERSON: I will comment on the 20 various scenarios that are put to me. I'm prepared to make 21 assumption A, B, or C, and in the event of assumption A 22 this is my opinion. My opinion may be different in the 23 case of some of the other assumptions. So that's basically 24 the point. So Mr Semenya is putting to you at the moment, 25 he asks you to assume, because that will be his contention</p>	<p style="text-align: right;">Page 36837</p> <p>1 hour, because Mr Semenya's time is very – 2 [COMMISSION ADJOURNS COMMISSION RESUMES] 3 CHAIRPERSON: The Commission resumes. 4 Before I remind the witness that he's still bound by his 5 affirmation, I've been asked by the attorney for the 6 families to explain something to some of the clients who 7 are present in the chamber. Questions are being put on the 8 basis that the strikers were attacking the police. I 9 thought I made it clear, but I obviously didn't make it 10 clear enough so I want to have another attempt to ensure 11 there's clarity on the point, that this question is being 12 put because that's the police case. I made it clear to the 13 witness and to everybody that one of the questions we have 14 to decide at the end of the evidence, one of the matters on 15 which we'd have to make findings is whether that allegation 16 is correct. We are well aware of the fact that it's the 17 case of the injured and arrested persons, and I believe the 18 case of the families also, that that was not so, that the 19 police are incorrect in that respect.</p> <p>20 I emphasise that there are actually three issues. 21 The first issue on this part of the case, the first is 22 whether the strikers were seeking to attack the police. 23 The second issue is whether the strikers weren't intending 24 to attack the police but the police reasonably believed 25 they were. The third issue is simply whether the strikers</p>
<p style="text-align: right;">Page 36836</p> <p>1 at the end, that the strikers were advancing on the police. 2 Whether they were running or walking is neither here nor 3 there. They were advancing on the police intending to 4 attack them. That's his case. Now he asks you questions 5 based upon that. Is that right, Mr Semenya?</p> <p>6 MR SEMENYA SC: Indeed, Chair. Indeed.</p> <p>7 CHAIRPERSON: So put the point that you 8 want to put on the basis of that assumption and then at a 9 convenient stage you'll tell me and we'll take the tea 10 adjournment.</p> <p>11 MR SEMENYA SC: Chair, we may take the 12 tea adjournment now and I'll collate my thoughts and 13 sequence of questions.</p> <p>14 CHAIRPERSON: Adv Hemraj wants to ask a 15 question before we have tea.</p> <p>16 COMMISSIONER HEMRAJ: Mr Hendrickx, have 17 you had an opportunity to familiarise yourself with the 18 evidence of the most recent witnesses from Lonmin and Mr 19 Nzuzza and Mr X? I get the impression you haven't.</p> <p>20 MR HENDRICKX: No.</p> <p>21 COMMISSIONER HEMRAJ: Am I right?</p> <p>22 MR HENDRICKX: That's right.</p> <p>23 COMMISSIONER HEMRAJ: Yes.</p> <p>24 CHAIRPERSON: Alright, well on that basis 25 we'll take tea, quarter of an hour. Please, quarter of an</p>	<p style="text-align: right;">Page 36838</p> <p>1 weren't attacking the police at all, but simply walking to 2 Nkaneng.</p> <p>3 These are very much issues that we have to 4 decide. We haven't made up our minds on the matter. We 5 will have full argument on the matter at the end. We'll 6 weigh up the evidence very carefully and then make a 7 finding as to which of those points we accept as being 8 correct, but no one must get the impression that we've 9 already made up our minds on that issue. No one must think 10 that the fact that I'm allowing these questions to be asked 11 indicate that we accept this is so. This is the way courts 12 work, the way commissions work. Conflicting accounts are 13 weighed up and put by the representatives of the various 14 parties. That's the way we work. Do not fear that there's 15 any question of prejudging any issues or making findings in 16 advance on these issues. I'm aware of the case, as I've 17 said already, advanced by the injured and arrested persons 18 and advanced by the families and that case will be very 19 carefully considered, together with the case put up by the 20 police. At the end of the day we hope to be able to make a 21 finding and whatever the finding is will be contained in 22 our report.</p> <p>23 Mr De Rover, you – Mr Hendrickx, sorry. These 24 people from the Netherlands, from the Lowlands, I get 25 confused. Mr Hendrickx, you're still bound by your</p>

<p style="text-align: right;">Page 36839</p> <p>1 affirmation.</p> <p>2 EDDIE MARTINUS ROSALIA HENDRICKX:</p> <p>3 [affirms further]</p> <p>4 CHAIRPERSON: Mr Bizos.</p> <p>5 MR BIZOS SC: Mr Chairman, I thank you</p> <p>6 very much for the assurance. One of the difficulties, Mr</p> <p>7 Chairman, is that some cross-examiners put to witnesses</p> <p>8 what is an allegation, like my witness, like Mr X, as if it</p> <p>9 were a fact, and they expect the witness to answer on the</p> <p>10 basis that it is a fact. That creates the wrong</p> <p>11 impression.</p> <p>12 CHAIRPERSON: Yes. No, I understand. I</p> <p>13 also, perhaps I should say, also remind those present that</p> <p>14 I also said on several occasions this is Mr X's evidence;</p> <p>15 whether we believe Mr X is a matter that's by no means</p> <p>16 clear. We'll have to decide at the end of the matter,</p> <p>17 having considered his evidence carefully and the points of</p> <p>18 criticism that are raised against it, whether we can</p> <p>19 believe him at all, or whether we can believe some parts of</p> <p>20 his evidence and not other parts, or whether we must accept</p> <p>21 his evidence in totality, but again we haven't made up our</p> <p>22 minds. We will consider that matter also at the</p> <p>23 appropriate time.</p> <p>24 MR BIZOS SC: Provided, Mr Chairman, the</p> <p>25 cross-examiner makes clear that this is an allegation made</p>	<p style="text-align: right;">Page 36841</p> <p>1 that Brigadier Calitz did tell Noki in the early morning</p> <p>2 what the purpose of the barbed wire was, then your</p> <p>3 observation that it would have caught them by surprise</p> <p>4 would be incorrect. Is that right, Mr Hendrickx?</p> <p>5 MR HENDRICKX: In the sense that you</p> <p>6 would assume that Mr Noki would be able to communicate with</p> <p>7 the 3 000 other people on the koppie that this was going to</p> <p>8 be the case, then it could not have been that much of a</p> <p>9 surprise to the protesters.</p> <p>10 MR SEMENYA SC: Well, the evidence is,</p> <p>11 whether it's accepted later or not is a different issue,</p> <p>12 but the evidence is that it was done through a Fanagalo-</p> <p>13 speaking individual and through the loudhailer. So the</p> <p>14 probabilities of anybody being surprised there is miniscule</p> <p>15 really, right?</p> <p>16 MR HENDRICKX: The fact, the factor for</p> <p>17 me, as I see the reality in my interpretation of looking at</p> <p>18 all the evidence is that the protesters started to move the</p> <p>19 moment the barbed wire was uncoiled. That's what I'm,</p> <p>20 that's the point. On the fact of uncoiling the wire,</p> <p>21 that's the point that I want to make and that the police</p> <p>22 organisation doing that should be aware of the possible</p> <p>23 effects of starting to uncoil the wire. That's the point</p> <p>24 that I want to make.</p> <p>25 MR SEMENYA SC: Yes, I'm bringing the</p>
<p style="text-align: right;">Page 36840</p> <p>1 by a witness and not to ask witnesses to say what do you</p> <p>2 say to this –</p> <p>3 CHAIRPERSON: Yes, yes.</p> <p>4 MR BIZOS SC: - on the assumption that</p> <p>5 the allegation has been proved.</p> <p>6 CHAIRPERSON: Yes. No, no, I understand</p> <p>7 that. I take it the cross-examiners in the house will bear</p> <p>8 that in mind. Mr Semenya.</p> <p>9 MR SEMENYA SC: No, but Chair, for the</p> <p>10 record - and I know Mr Bizos is not referring to me – I</p> <p>11 have always said this is the evidence should the Commission</p> <p>12 find that evidence to be correct. I've never done it the</p> <p>13 other way around.</p> <p>14 CHAIRPERSON: Mr Semenya, what I</p> <p>15 understand from the attorney for the families is that his</p> <p>16 clients, he actually said to me it may be that some of the</p> <p>17 points were lost in translation but, and that is why he</p> <p>18 asked me to stress what I've stressed. He accepted I'd</p> <p>19 said it already and he didn't suggest at all that you had</p> <p>20 done anything incorrect. The point made was something may</p> <p>21 well have been lost in translation and the clients were</p> <p>22 agitated because of that, and that was why I said what I</p> <p>23 did. But I think we can now move on.</p> <p>24 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):</p> <p>25 Thank you, Chair. Let me go at it again. If the evidence</p>	<p style="text-align: right;">Page 36842</p> <p>1 additional fact that you may not be aware of, I was just</p> <p>2 bringing more additional facts you may not have been aware</p> <p>3 of, Mr Hendrickx.</p> <p>4 MR HENDRICKX: Thank you, Sir.</p> <p>5 MR SEMENYA SC: And of course you would</p> <p>6 have heard that Mr White says he does not criticise per se</p> <p>7 the use of different disciplines in this operation. It's</p> <p>8 an opinion you don't share with him, clearly.</p> <p>9 MR HENDRICKX: I partially am agreeing</p> <p>10 with that and I would like to specify that – I mean and I</p> <p>11 would like to clarify that from my side. I've said in my</p> <p>12 statement that it is my opinion, based on my experience,</p> <p>13 that the number of specialised units like TRT, NIU and so</p> <p>14 on and so forth, who were, there were more policemen of</p> <p>15 that training, those units, of that type of units than</p> <p>16 Public Order Policing. What I tried to say is that you</p> <p>17 need, for an operation like this you need a lot more</p> <p>18 trained Public Order Policing members. That's what I said,</p> <p>19 and equipment.</p> <p>20 MR SEMENYA SC: Ja, that's a different</p> <p>21 point. The point I'm trying to chase with you is Mr White</p> <p>22 does not find wrong the use of various disciplines in this</p> <p>23 operation, but you do. Am I right?</p> <p>24 MR HENDRICKX: To be, for them to be used</p> <p>25 in the first line as they were being used, certainly when</p>

<p style="text-align: right;">Page 36843</p> <p>1 walking to koppie 3 by General Naidoo and by Captain Kidd 2 there were, in the line walking up to koppie 3 there were 3 members of TRT, there were NIU members. Now these units, 4 and to me that is the, that's a fact that they were being 5 used in the first line, whereas the brief was that first of 6 all these units were there to support POP members going, 7 advancing towards a different koppie. 8 MR SEMENYA SC: I think the objective 9 evidence will reveal that the water cannon was there before 10 those units arrived with Naidoo. But anyway, it's okay, 11 let's test another proposition that arises out of your 12 statements. Let me get rid of this one. This ratio of 3 13 to 1 and 1 to 3 is actually a military ratio, is it not? 14 MR HENDRICKX: It probably has been in 15 the past. 16 MR SEMENYA SC: But there is no 17 international instrument on policing that we could find 18 making this proposition. Are you able to refer us to one? 19 MR HENDRICKX: No, it's a rule of thumb. 20 It's not a written regulation. It's a rule of thumb to 21 which, and Colonel Merafe was agreeing with that in his 22 statement. 23 MR SEMENYA SC: Maybe you have another 24 witness, but it's alright. You say it's a rule of thumb 25 known by all police forces, I mean services?</p>	<p style="text-align: right;">Page 36845</p> <p>1 SAPS of this operation, in particular stage 3. Correct? 2 MR HENDRICKX: That's correct, Sir. 3 MR SEMENYA SC: And I must ask the 4 question again; if a plan was reduced in writing within the 5 contemplation of Standing Order 262, are there elements 6 that would be there which the Scott's plan, as it is 7 described, is missing? 8 MR HENDRICKX: There is a lot information 9 for the operational units missing. For instance, I think 10 it's chapter 4 when they start to talk – but I must check. 11 At one chapter he only mentions the different units that, 12 and the number of for instance POP members and the number 13 of TRT members that are present. I no way I can find in 14 that written operational order for instance for each and 15 every of that, of those units the detailed mission for that 16 unit. What I am sure of is that during the training that 17 we provided to the POPS members, the OCT course and the 18 platoon commanders course, they were trained in writing 19 operational orders, specifying for each and every 20 participating unit the specific mission that they were, 21 that each unit should do. Moreover to, as an annexure to 22 each operational plan you, they must, or they should have 23 joined a plan of the limitations, of the limits of in which 24 unit, in which each of the units should intervene. If you 25 don't do that, which is, and this is not the case as far as</p>
<p style="text-align: right;">Page 36844</p> <p>1 MR HENDRICKX: Colonel Merafe, who is 2 SAPS and who is trained, was a trained POPS officer, he 3 says that he agrees with it and that it has been explained 4 to him during POPS training. 5 CHAIRPERSON: Were you conducting POPS 6 training yourself when you were working in South Africa in 7 the 90s? 8 MR HENDRICKX: Myself, no. I was 9 organising the – 10 CHAIRPERSON: Alright, do you know 11 whether the trainers whom you were organising thought 12 that – 13 MR HENDRICKX: Sorry? 14 CHAIRPERSON: Do you know whether the 15 trainers whom you were organising when you were working in 16 South Africa in the 90s as part of the material that they 17 communicated to their students, communicated that rule of 18 thumb, as you call it? 19 MR HENDRICKX: Yes, because, and – well, 20 in the statement of Colonel Merafe you will find that he 21 was trained like that and that it was, you know, was part 22 of the training. If you want to we can look at the 23 reference. 24 MR SEMENYA SC: I'll do that in the 25 meantime. You're also critical about the planning by the</p>	<p style="text-align: right;">Page 36846</p> <p>1 I, from the evidence that I've seen, you ask for a non- 2 coordinated implementation of the plan, or one of the 3 consequences, the possible consequences of that is a non- 4 coordinated implementation of the plan. What Gary White 5 said as well, or at least what I heard is that the units, 6 POPS units, TRT and so on and so forth, did not get enough 7 information on the mission that they were supposed to do 8 within the implementation of the operational plan, and I 9 will stick to that. 10 COMMISSIONER HEMRAJ: Do I understand you 11 to say that the absence of a mission statement for each 12 unit in the plan makes a practical difference in the 13 execution of the plan? 14 MR HENDRICKX: Yes, so in part of the 15 operational plan you will see that there's X number of POP 16 members present, X numbers of TRT. There were no call 17 signs. The units did not get call signs for instance. The 18 specific units did not get a particular mission to 19 implement. That should appear in an operational plan. 20 COMMISSIONER HEMRAJ: And the mission 21 statement right at the outset encompassing the aim of the 22 operation – 23 MR HENDRICKX: Yes. 24 COMMISSIONER HEMRAJ: - you say that's 25 insufficient if there are multiple units?</p>

<p style="text-align: right;">Page 36847</p> <p>1 MR HENDRICKX: No, an overall mission 2 statement, it's number 2 of the operational plan and every 3 unit should adhere to that mission statement, 1; and 2, 4 should get a detailed mission to implement that mission 5 statement. 6 MR SEMENYA SC: I'm told by my attorney 7 as well as my junior that Colonel Merafe's statement does 8 not have the ratio allegation you make. 9 MR HENDRICKX: I can find it for you if 10 you'll give me the time. 11 MR SEMENYA SC: Okay, you may – 12 MR NGCUKAITOBI: Chairman, I could – I 13 mean I'm not answering on behalf of the witness, but I know 14 that the reference is in the transcript of the evidence. 15 CHAIRPERSON: Well, the witness is not 16 going to be finished by the time we adjourn today and Mr 17 Semenya will be continuing tomorrow morning for a while, he 18 still has some time left. So I suggest you find it 19 overnight and give it, if you can find it overnight and you 20 can give it to Mr Semenya before we start tomorrow morning. 21 MR NGCUKAITOBI: Indeed. 22 MR SEMENYA SC: Thank you. The evidence 23 again by the police is that there is no prior history of a 24 teargas provoking an attack on the police. Do you have 25 evidence to contradict that?</p>	<p style="text-align: right;">Page 36849</p> <p>1 this muti will protect them, but they must wait for the 2 attack on the part of the police to happen first. That's 3 the explanation for what you observe. 4 MR HENDRICKX: That's a possible 5 explanation. I can give you another explanation. They'd 6 perhaps thought that they were being shot at and that's 7 probably, that's another explanation of why they ran away. 8 MR SEMENYA SC: Have you consulted with 9 any of them? 10 MR HENDRICKX: Sorry? 11 MR SEMENYA SC: Have you consulted with 12 any of them? 13 MR HENDRICKX: Consulted with the 14 protesters you mean? 15 MR SEMENYA SC: Yes. 16 MR HENDRICKX: No. 17 MR SEMENYA SC: Now you are giving us a 18 reason which may be possibly the reason why they acted the 19 way they did. 20 MR HENDRICKX: Yes. 21 MR SEMENYA SC: Okay. The police 22 described the strikers on the koppie on the 16th to have 23 been a hybrid group. 24 [15:45] The larger group that they expected upon 25 announcement would go away and that the tactical operation</p>
<p style="text-align: right;">Page 36848</p> <p>1 MR HENDRICKX: No, but I haven't seen it 2 happen. I haven't seen it happen. 3 MR SEMENYA SC: And so the evidence goes 4 that there is no prior history that a trigger of a stun 5 grenade would provoke an attack on the police. Do you have 6 anything to contradict that? 7 MR HENDRICKX: I would like to ask you 8 the question for my information, whether you're referring 9 now to the 13th of August or not? 10 MR SEMENYA SC: I'm referring to the 11 Public Order Police operations on – 12 MR HENDRICKX: In the context of what I 13 put down in my statement was in the context of the 13th of 14 August and if you would allow me to, if we can go to a 15 certain video I can show that to you, what the reaction to, 16 of the crowd was to a stun grenade. 17 MR SEMENYA SC: Yes, because Mr X tells 18 us according to the – 19 MR HENDRICKX: [Inaudible] – 20 MR SEMENYA SC: I say what you observe on 21 the video is that the commotion arises after the stun is 22 fired, and I accept that. What I'm saying is the evidence 23 we have heard - whether it's correct or not and ultimately 24 found to be so is a different matter to happen later - 25 according to Mr X the instructions of the inyanga was that</p>	<p style="text-align: right;">Page 36850</p> <p>1 really would be targeted to the smaller group of 3, 400. 2 You have no issue with that assessment? 3 MR BIZOS SC: Mr Chair, with respect, 4 there are at least two or three statements by CBF policemen 5 that this was a large group and they talked about 3 000, 6 and one of them about 4 000 as being one group. 7 CHAIRPERSON: By statements to that 8 effect, there were statements also which were different 9 which said, only 300, 400 were the militant ones they were 10 worried about. They were extensively cross-examined on the 11 conflict between the passages you've put and what I've 12 said, when at the end of the day, we'd have to decide 13 whether the police plan was originally designed to deal 14 with the whole monolithical most group of 3 000 people or 15 whether it was something else. But I don't see a problem 16 with the question. 17 MR BIZOS SC: The question, with respect, 18 assumes that we will ignore the contradiction between CB 19 officers of the police. My learned friend cannot choose as 20 the police case. We are going to submit that the police 21 changed its case from one period to another. 22 CHAIRPERSON: I am aware of that. 23 Perhaps Mr Semenya can reformulate the question to deal 24 with your objection. 25 MR SEMENYA SC: And the visual material</p>

<p style="text-align: right;">Page 36851</p> <p>1 we see shows us there are two distinct groups on the 2 koppie, do you accept that? 3 MR HENDRICKX: I can see a lot of 4 protesters sitting on the big hill, and I can see a semi- 5 detached group sitting where it's on the flat part of a - 6 MR SEMENYA SC: The bigger one will be 7 those 3, 4 000 estimate and the smaller one was a 3, 400 8 one. 9 MR HENDRICKX: I agree on that. 10 MR SEMENYA SC: It's objective evidence. 11 MR HENDRICKX: Yes. 12 MR BIZOS SC: Was it objective to at 13 least two very senior officers who made affidavits to a 14 different effect, Mr Chair. 15 CHAIRPERSON: Yes, I think they changed 16 their tale a little bit in cross-examination which may be 17 the subject of adverse criticism in your argument, but I 18 think we can let Mr Semenya proceed on the basis that one 19 version of his case is put to the witness. 20 MR BIZOS SC: One version, I will accept 21 that. 22 MR SEMENYA SC: One of the points you 23 make is that the decision to disarm, disperse and arrest 24 conveys conflicting operations. 25 MR HENDRICKX: That is correct, Sir.</p>	<p style="text-align: right;">Page 36853</p> <p>1 at the time when there was still the, it was still assumed 2 that there were 3 000 people and that the operation was 3 going to have to split, to disperse the 3 000 people. 4 MR SEMENYA SC: No, work on the evidence 5 as I said also exists. The plan was that this operation 6 that is the breaking up of smaller groups, would be in 7 relation to that section of the group that was armed and 8 would not voluntarily disperse. Now we know that group 9 would be the 3,400. I am talking about those. And I am 10 suggesting to you they could have been split into smaller 11 groups through the use of a cannon as you describe it, or 12 no? 13 MR HENDRICKX: They could have been 14 dispersed, how? What did you say? 15 MR SEMENYA SC: They could have been 16 split into smaller groups through the method that you say 17 the water cannon used. 18 MR HENDRICKX: That would be, that would 19 have been a possibility, yes. 20 MR SEMENYA SC: And the other possibility 21 they could have been split, into smaller groups through the 22 use of tear gas amount of it. 23 MR HENDRICKX: That's one of the 24 possibilities, that's one of the means that is available to 25 the police to try and do that, yes.</p>
<p style="text-align: right;">Page 36852</p> <p>1 MR SEMENYA SC: Can I explain how the 2 SAPS explained the dispersal, disarming and the arrests, 3 the DDA? And invite you to explain what elements of it are 4 conflictual. The contemplation was after the barbed wire 5 is there, we would have an announcement and there will be a 6 time lapse and people would be given an opportunity to 7 disperse. Would that stand in conflict with anything? 8 MR HENDRICKX: Not as far as I can see, 9 Sir. 10 MR SEMENYA SC: Okay, and the plan is 11 that for those who for one or other reason are armed but 12 refused to disperse, they would be broken up into smaller 13 units through, I mean, by POP. Is that conflictual with 14 anything? 15 MR HENDRICKX: It's conflictual in that 16 sense that you just said that you are dealing with a group 17 of 300 armed protesters, and that you are expecting POP to 18 disperse them, whereas you just tell as well that there 19 were a cohesive group and they would stick together. So 20 you know, it's difficult. 21 MR SEMENYA SC: No, I can understand the 22 difficulty. I am looking at the contradictory message that 23 you are conveying. And if I understood you well, you used 24 that water cannon properly, you would split any group. 25 MR HENDRICKX: That was written in the,</p>	<p style="text-align: right;">Page 36854</p> <p>1 MR SEMENYA SC: And that is not 2 contradictory to anything? 3 MR HENDRICKX: No. 4 MR SEMENYA SC: Neither would those who 5 are proving very stubborn that you use a stun grenade to 6 disorientate them and put them into smaller circles of 7 groups. 8 MR HENDRICKX: I am fine with that. 9 MR SEMENYA SC: So I fail to follow in 10 what respect would the tactic, disperse, disarm, arrest 11 have been conflictual? 12 MR HENDRICKX: On the principle of it, 13 and now you are putting it in another context, but on the 14 principle of it, when you disperse a large group of 15 protesters, you need a lot of policeman, and you need a lot 16 of units to be able to first of all to split them, and 17 secondly when they are split into different groups, and 18 simultaneously arrest them, and to my opinion, there were 19 not enough policemen to do that. 20 MR SEMENYA SC: I am not mistaken that in 21 your statement Mr Hendrickx, you are the one that says a 22 water cannon is not suitable for a rural outfit like 23 Marikana. 24 MR HENDRICKX: It depends what you define 25 by rural operations. You asked me the question, could a</p>

<p style="text-align: right;">Page 36855</p> <p>1 water cannon, and I add to that now, used properly be used</p> <p>2 to split up the group of the 300, I say yes, because you</p> <p>3 can split up that group by using the jet and you can split</p> <p>4 them up. In that context, yes in rural areas.</p> <p>5 MR SEMENYA SC: In what context did you</p> <p>6 use it in your statement?</p> <p>7 MR HENDRICKX: Sorry?</p> <p>8 MR SEMENYA SC: In what context did you</p> <p>9 say the water cannon is not suitable for the outfit.</p> <p>10 MR HENDRICKX: To me, I meant to say a</p> <p>11 general statement on using water cannons in open veld, but</p> <p>12 to me, I stay to the point that that group of 300 could</p> <p>13 have been split up by a water cannon if used properly.</p> <p>14 CHAIRPERSON: There's one point I don't</p> <p>15 understand, I am not sure if I understand your evidence</p> <p>16 correctly, or what the position is. I can understand an</p> <p>17 argument that water cannon might be used with difficulty at</p> <p>18 koppie 3 –</p> <p>19 MR HENDRICKX: Yes.</p> <p>20 CHAIRPERSON: - scene 2. That was a</p> <p>21 hilly area, and there were rocks and trees and bushes and</p> <p>22 all that kind of thing, a water cannon was used but as we</p> <p>23 saw it was used with this arc up in the air, and going down</p> <p>24 again.</p> <p>25 MR HENDRICKX: Correct, Sir.</p>	<p style="text-align: right;">Page 36857</p> <p>1 protesters coming from the south?</p> <p>2 MR HENDRICKX: Can you repeat the</p> <p>3 question, please?</p> <p>4 MR SEMENYA SC: If a filtering line is</p> <p>5 put on the western side –</p> <p>6 MR HENDRICKX: Yes?</p> <p>7 MR SEMENYA SC: - what would stop the</p> <p>8 strikers coming from the east?</p> <p>9 MR HENDRICKX: Nothing, I mean.</p> <p>10 MR SEMENYA SC: South, north? Nothing?</p> <p>11 MR HENDRICKX: In what context are you</p> <p>12 asking me these questions?</p> <p>13 MR SEMENYA SC: I am trying to see a</p> <p>14 filtering line of police in the morning, so that these</p> <p>15 people don't go to the koppie.</p> <p>16 MR HENDRICKX: Ja, okay, no, no, that was</p> <p>17 in a different operation or approach. At one point it was</p> <p>18 envisaged and I think that the first operation, the first</p> <p>19 plan was indeed conceptualised like that that there would</p> <p>20 be a filtering line, first of all that there would be at</p> <p>21 some point an encirclement and that before each and every</p> <p>22 protester would go to the koppie, would be checked for arms</p> <p>23 and that, you can do that by organising or putting into</p> <p>24 place a filtering line all around the koppie.</p> <p>25 MR SEMENYA SC: All around the koppie.</p>
<p style="text-align: right;">Page 36856</p> <p>1 CHAIRPERSON: So there wouldn't have been</p> <p>2 a jet of water that would have pushed people back, but on</p> <p>3 the area behind the kraal, assuming the strikers hadn't</p> <p>4 advanced to the kraal and went beyond it, assuming they'd</p> <p>5 stayed at what one can call the plane behind the kraal</p> <p>6 behind the kraal, between the kraal and the koppie, and I</p> <p>7 take it the water cannon could have been used, in the way</p> <p>8 you described.</p> <p>9 MR HENDRICKX: To split up that</p> <p>10 particular group of 300, yes, but I would never do that if</p> <p>11 there were still another 1 000, 2 000 protesters on the</p> <p>12 koppie. You can only do that, I think you can only do</p> <p>13 that, when that group is one way or the other, isolated or</p> <p>14 left behind by the other protesters, otherwise you will</p> <p>15 create a reaction b the other protesters who are sitting on</p> <p>16 the hill, towards your ongoing operation in splitting them</p> <p>17 up.</p> <p>18 MR SEMENYA SC: The other theory you</p> <p>19 sponsor is that they could have formed a filtering line.</p> <p>20 Am I right? As a method of disarming them.</p> <p>21 MR HENDRICKX: If they would have decided</p> <p>22 to do that in the morning, yes.</p> <p>23 MR SEMENYA SC: Yes. Now this is where I</p> <p>24 invite you to clarify for me, if they formed a filtering</p> <p>25 line say on the western side, what will stop armed</p>	<p style="text-align: right;">Page 36858</p> <p>1 MR HENDRICKX: Sorry?</p> <p>2 MR SEMENYA SC: To do a filtering line</p> <p>3 all around the koppie.</p> <p>4 MR HENDRICKX: Yes.</p> <p>5 MR SEMENYA SC: Then they will assemble</p> <p>6 elsewhere.</p> <p>7 MR HENDRICKX: Maybe or maybe not.</p> <p>8 MR SEMENYA SC: So you say they come in</p> <p>9 the morning, they see the whole koppie is surrounded with</p> <p>10 police, and they would come to that filtering line?</p> <p>11 MR HENDRICKX: I did not say I was in</p> <p>12 favour of that, as an approach, I am trying to understand</p> <p>13 as well and to explain to you what at some point the police</p> <p>14 had in mind to do.</p> <p>15 MR SEMENYA SC: Would this be a</p> <p>16 convenient stage, Chair?</p> <p>17 CHAIRPERSON: I understood you, we were</p> <p>18 asked to carry on until quarter past four so that we could</p> <p>19 give you more time to cross-examine because we have special</p> <p>20 arrangements for tomorrow. Mr De Rover is going to be</p> <p>21 interposed. If you want me to adjourn now, I will but we</p> <p>22 did arrange, you know, we prepared to sit until quarter</p> <p>23 past four, but if that's not convenient for you, because</p> <p>24 you've got to take instructions and do, look up things and</p> <p>25 so on for carrying on with your cross-examination obviously</p>

<p style="text-align: right;">Page 36859</p> <p>1 I'll adjourn now but I am in your hands.</p> <p>2 MR SEMENYA SC: Maybe let me attend to</p> <p>3 the time, Chair. Did I read your statement correctly, to</p> <p>4 say the one way in addressing the problem is these armed</p> <p>5 strikers was to wait it out.</p> <p>6 MR HENDRICKX: That could have been a</p> <p>7 possibility, yes.</p> <p>8 MR SEMENYA SC: I know is a possibility,</p> <p>9 I am just trying to test its merits.</p> <p>10 MR HENDRICKX: Yes, I would have in any</p> <p>11 case, on that day, preferred to do that than to start an</p> <p>12 operation at 15:40 in the afternoon. I would have,</p> <p>13 personally I would have preferred to do that and wait it</p> <p>14 out and if the decision was made then to continue with an</p> <p>15 operation to do it the day after, or two days after,</p> <p>16 allowing me more time to better prepare, to better brief,</p> <p>17 and maybe the units that are already there, and maybe call</p> <p>18 in more reinforcements because I keep repeating that to me,</p> <p>19 there were not enough policemen present that day to do that</p> <p>20 operation successfully.</p> <p>21 MR SEMENYA SC: Wait it out three, four</p> <p>22 days?</p> <p>23 MR HENDRICKX: That could be a</p> <p>24 possibility, yes.</p> <p>25 MR SEMENYA SC: You see my difficulty is</p>	<p style="text-align: right;">Page 36861</p> <p>1 intelligence that people would not lay down their arms</p> <p>2 whereas you put a lot of faith in the saying by Mr</p> <p>3 Mathunjwa that they were going to lay down their arms, so I</p> <p>4 would have spent, and invested a lot more in intelligence</p> <p>5 gathering, for instance, now it appears that the people</p> <p>6 were staying on the koppie, right, it must be very easy for</p> <p>7 a professional police to observe during the night, what's</p> <p>8 going on at the koppies. And to continue, to get informed</p> <p>9 on the behaviour of the protesters and if you are really</p> <p>10 sure of what the behaviour was, make a plan to deal with</p> <p>11 that in another way than the way that it has been dealt</p> <p>12 with.</p> <p>13 MR SEMENYA SC: I am interrogating</p> <p>14 something different. You do accept on your analysis that</p> <p>15 the intelligence was inadequate, as you used the word?</p> <p>16 Correct?</p> <p>17 MR HENDRICKX: That is correct.</p> <p>18 MR SEMENYA SC: And on that I think we</p> <p>19 have traversed that path, that there were limiting factors</p> <p>20 for intelligence gathering given the nature of the group,</p> <p>21 and what they were doing.</p> <p>22 MR HENDRICKX: Yes.</p> <p>23 MR SEMENYA SC: Including the fact that</p> <p>24 somebody like the late Mr Thola gets killed allegedly</p> <p>25 because he's a spy the evidence carries. So given the</p>
<p style="text-align: right;">Page 36860</p> <p>1 this, that must assume that for the period of waiting the</p> <p>2 strikers having the demands they do, the strikers not</p> <p>3 being, the request not being acceded to by Lonmin, AMCU's</p> <p>4 president having left and said, I can't do anything.</p> <p>5 Bishop Seoka's effort not succeeding, how was this waiting</p> <p>6 out going to pan out?</p> <p>7 MR HENDRICKX: You have to see that in a</p> <p>8 combination with the possible operation and I did not see</p> <p>9 any thinking or evidence about that of arresting these</p> <p>10 people either when they were asleep, or staying the</p> <p>11 night at either of the koppies or try and arrest them in</p> <p>12 the hostels or in the community where they stayed.</p> <p>13 MR SEMENYA SC: You see Mr Hendrickx,</p> <p>14 that's exactly the point, even on your own assessment there</p> <p>15 was not adequate intelligence to be doing all what you are</p> <p>16 saying.</p> <p>17 MR HENDRICKX: And that's one of the</p> <p>18 reasons, why I would not, that's one of the reasons the</p> <p>19 more not to start that operation at 15:40 because there was</p> <p>20 intelligence from General Engelbrecht who said that in his</p> <p>21 opinion, the people were not, the protesters were not going</p> <p>22 to lay down their arms, and at a certain point in the</p> <p>23 briefing I think it was on the Wednesday, General Annandale</p> <p>24 at the JOCCOM did agree with that and I still cannot</p> <p>25 understand why an operation was launched based on your own</p>	<p style="text-align: right;">Page 36862</p> <p>1 limitation, I am testing with you, you suggest what ought</p> <p>2 to have happened was to go and disarm them in the hostels.</p> <p>3 MR HENDRICKX: That's not what I am</p> <p>4 saying, what I am saying that would have been one of the</p> <p>5 possibilities. The first thing to do, or one of the things</p> <p>6 to do, was to get more intelligence, to try and identify</p> <p>7 these people, try to identify where they stayed and so on</p> <p>8 and so forth. For then, if you get, if you've got all that</p> <p>9 information to, with your special units to arrest then when</p> <p>10 they were not expecting it, that's what I am trying to say.</p> <p>11 MR SEMENYA SC: The police also say that</p> <p>12 a stage, the later stages, be it 5 or 6, also contemplated</p> <p>13 that after the arrest they would collate better</p> <p>14 intelligence, they would know what the people are, they</p> <p>15 will do a cordon and search and go do the arrests there.</p> <p>16 You don't criticise that element of the planning.</p> <p>17 MR HENDRICKX: No, but I haven't seen any</p> <p>18 concrete planning for that. It was intentions but on the</p> <p>19 principle of taking into account that I agree with that</p> <p>20 operation, yes, afterwards those stages to go to the</p> <p>21 hostels and arrest the remaining people, yes, I agree with</p> <p>22 that.</p> <p>23 MR SEMENYA SC: It wasn't intentions, Mr</p> <p>24 Hendrickx, they even obtained a warrant for that.</p> <p>25 MR HENDRICKX: Mr Calitz, yes, did it in</p>

<p style="text-align: right;">Page 36863</p> <p>1 the morning.</p> <p>2 [16:04] MR SEMENYA SC: Now there is also the</p> <p>3 view that the group of these strikers presented less of a</p> <p>4 risk while on the koppie because there was no property to</p> <p>5 damage or no injury to inflict on anybody. You agree with</p> <p>6 that as a strategy?</p> <p>7 MR HENDRICKX: Yes, Sir.</p> <p>8 MR SEMENYA SC: And conversely you would</p> <p>9 have not been, you would have been averse to a strategy</p> <p>10 that closed the koppie so that they don't get there at all?</p> <p>11 MR HENDRICKX: That depends of when that</p> <p>12 possible operation was envisaged. If through intelligence</p> <p>13 you learn that a majority of those people stayed for</p> <p>14 instance the night at the koppie, then an operation like</p> <p>15 that would be possible, would be advisable early in the</p> <p>16 morning.</p> <p>17 MR SEMENYA SC: You do accept though with</p> <p>18 the departure of Mr Mathunjwa on the 16th the complaint of</p> <p>19 the strikers had not been resolved?</p> <p>20 MR HENDRICKX: Complaint in the sense</p> <p>21 that they would not be –</p> <p>22 MR SEMENYA SC: Their reason for being on</p> <p>23 the koppie had not been resolved.</p> <p>24 MR HENDRICKX: Yes, yes I agree with it.</p> <p>25 MR SEMENYA SC: I seem to read your</p>	<p style="text-align: right;">Page 36865</p> <p>1 Platinum Belt, right, there were incidents, people,</p> <p>2 citizens getting killed, citizens getting attacked, the</p> <p>3 number of which, and the history of that is in the latest</p> <p>4 version of L. What changed is the fact that on the 13th of</p> <p>5 August two policemen got killed and that was unprecedented</p> <p>6 in that, in the building up to Marikana. I haven't seen a</p> <p>7 National Commissioner coming to visit the units on the</p> <p>8 ground from January to July. I have seen a National</p> <p>9 Commissioner coming to visit the units as soon after two</p> <p>10 policemen got killed. So, and that visit and the killing</p> <p>11 of those two, the death of those two policemen, that</p> <p>12 changed a lot of the dynamics and the way the police and</p> <p>13 the authorities went about in trying to solve this problem.</p> <p>14 MR SEMENYA SC: Well, consistent with</p> <p>15 your theory of policing by consent, one of the people you</p> <p>16 would have expected come the five people who were killed is</p> <p>17 South African Human Rights Commission going there to</p> <p>18 investigate what is happening, no?</p> <p>19 MR HENDRICKX: Yes, and what, and can I</p> <p>20 ask you then what is the point that you want to make?</p> <p>21 MR SEMENYA SC: And also that there could</p> <p>22 be a combined effort at resolving what proves and shows now</p> <p>23 to be a public disorder getting awry.</p> <p>24 MR HENDRICKX: I agree with that, Sir.</p> <p>25 MR SEMENYA SC: Yes. Including the Legal</p>
<p style="text-align: right;">Page 36864</p> <p>1 statement to say the police have had previous experience of</p> <p>2 these violent clashes and you refer to the events of the</p> <p>3 22nd of May which Colonel Merafe refers to.</p> <p>4 MR HENDRICKX: Ja, it's just an example</p> <p>5 of an operation where there were 15 000 protesters and that</p> <p>6 SAPS had to deal with. So in that sense it cannot be seen</p> <p>7 as an unprecedented event.</p> <p>8 MR SEMENYA SC: Can I suggest to you</p> <p>9 that's chalk and cheese to what was happening in Marikana?</p> <p>10 MR HENDRICKX: Sorry?</p> <p>11 MR SEMENYA SC: Can I suggest to you that</p> <p>12 that operation is really chalk and cheese to what happened</p> <p>13 in Marikana?</p> <p>14 MR HENDRICKX: That's possible, Sir.</p> <p>15 MR SEMENYA SC: And I accept that you</p> <p>16 would have no qualms with the evidence of Mr De Rover who</p> <p>17 will say to the Commission that an event such as has</p> <p>18 happened on the 13th of August 2012 in Marikana with the</p> <p>19 result of multiple deaths, including the death of police</p> <p>20 officers, would have provoked public outrage generally?</p> <p>21 You would agree that would have been expected arising out</p> <p>22 of a tragedy of that kind?</p> <p>23 MR HENDRICKX: I agree with you</p> <p>24 partially, Sir, because as from, sorry, from January '12 to</p> <p>25 June and July '12 in many places, in many places in the</p>	<p style="text-align: right;">Page 36866</p> <p>1 Resources Centre as an interested body, as many other NGOs,</p> <p>2 to go there and see what is happening, right?</p> <p>3 MR HENDRICKX: That is not – if that is a</p> <p>4 question that is addressed to me?</p> <p>5 MR SEMENYA SC: Yes, that it would have</p> <p>6 been prudent for all those NGOs interested in human rights</p> <p>7 culture to see if they can help contain, just like Bishop</p> <p>8 Seoka did.</p> <p>9 MR HENDRICKX: On the principle I agree</p> <p>10 with that, Sir.</p> <p>11 MR SEMENYA SC: Thank you. Now I also</p> <p>12 want to have the benefit of your expertise in making the</p> <p>13 argument that ideally social ills that trigger public</p> <p>14 interest should not necessarily be throwing police at, they</p> <p>15 just find other alternative resolutions before it gets to</p> <p>16 that point.</p> <p>17 MR HENDRICKX: I fully agree with that,</p> <p>18 Sir. And if you'll allow me to add, the police should not</p> <p>19 be seen by whoever responsible person or people or</p> <p>20 institutions that have responsibility, the police should</p> <p>21 not be seen as the only instrument to solve a problem.</p> <p>22 There are other role-players who have a responsibility in</p> <p>23 solving the problem, but that doesn't mean that the actions</p> <p>24 of the police, and certainly in this case, are always, were</p> <p>25 always, you know, the right thing to do. That's –</p>

Page 36867

1 MR SEMENYA SC: No, I accept that, and
 2 because obviously as an expert you'll say that the
 3 neutrality which is necessary in policing gets compromised
 4 if they are now expected to do, as has happened in
 5 Marikana, convey messages of employer, employee, union,
 6 etcetera.

7 MR HENDRICKX: I agree with that, Sir.

8 MR SEMENYA SC: Chair, I'm almost about
 9 done with my cross-examination, but if you'll permit me,
 10 just allow myself to tidy up –

11 CHAIRPERSON: I understand what's
 12 happening tomorrow is that you're going to lead Mr De
 13 Rover, or I don't know whether there's going to be any
 14 examination-in-chief but if there is it will be very brief,
 15 and then he's going to be interposed. Mr Budlender is
 16 going to cross-examine for about an hour and a half and
 17 then Mr De Rover is going to stand down and this witness,
 18 you're going to finish your cross-examination with Mr
 19 Hendrickx. Is my understanding correct?

20 MR SEMENYA SC: It is not unlikely that I
 21 may not be having more than five minutes with the witness
 22 and –

23 CHAIRPERSON: Anyway I can understand you
 24 want to check your notes. Sorry Mr Semenya, do I
 25 understand you correctly, you would like to take stock

Page 36868

1 overnight? You may not ask any more questions tomorrow,
 2 you may be five minutes, but you can't tell me that now,
 3 but you'd just like to check and make sure you've missed
 4 nothing?

5 MR SEMENYA SC: Indeed, Chair.

6 CHAIRPERSON: Yes, Mr Hendrickx, you want
 7 to say something?

8 MR HENDRICKX: Yes, if the cross-exam
 9 would only last for another five minutes, can we please
 10 continue? I've got other responsibilities as well. I've
 11 got people awaiting me all over the place.

12 CHAIRPERSON: No, I understand that, but
 13 Mr Semenya's problem is he wants to check all his notes to
 14 make sure that he's –

15 MR HENDRICKX: Okay.

16 CHAIRPERSON: - he's not missed
 17 something, which is a fair request, I think.

18 MR HENDRICKX: Yes.

19 CHAIRPERSON: Very well, so we'll adjourn
 20 now until tomorrow morning 9 o'clock.

21 [COMMISSION ADJOURNED]

22 .
 23 .
 24 .
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<p>A</p> <p>aangekondig 36817:14</p> <p>abide 36681:1 36719:3</p> <p>able 36666:13 36669:7 36671:10 36676:8 36680:15,25 36726:6 36767:2 36781:14 36793:11 36794:17 36795:23 36831:10 36838:20 36841:6 36843:18 36854:16</p> <p>absence 36721:2 36846:11</p> <p>absent 36773:24</p> <p>absolute 36682:19 36697:16 36720:15</p> <p>absolutely 36666:13 36667:15 36701:2,5 36705:2 36716:2 36751:14</p> <p>acceded 36860:3</p> <p>accent 36816:16</p> <p>accept 36670:13 36689:16 36693:17 36700:19 36701:9,24 36703:21 36704:10 36708:13 36709:6 36717:8,12 36719:24 36722:20,22,24 36723:1 36732:22 36748:17,18 36751:9 36753:3 36771:20 36774:22,23 36777:1 36798:10 36812:11 36812:15,16 36821:7 36824:24 36828:3,5 36829:17 36830:13 36830:14 36831:18 36831:24 36832:16 36833:19 36838:7,11 36839:20 36848:22 36851:2,20 36861:14 36863:17 36864:15 36867:1</p> <p>accepted 36693:21 36709:13 36734:14 36745:10,19 36811:10 36827:24 36840:18 36841:11</p> <p>accepting 36833:20</p> <p>accepts 36788:15 36827:22</p> <p>access 36679:13 36791:14 36800:7</p> <p>accompanied 36742:14 36768:16</p> <p>accord 36686:2 36687:5,15 36728:17 36763:22,23</p> <p>account 36671:21 36793:1,3 36816:10 36818:17 36862:19</p> <p>accounts 36838:12</p> <p>accurate 36706:16 36707:4 36716:6</p>	<p>36723:15</p> <p>achieve 36663:16,16 36664:16,17 36666:2 36666:3 36668:17,18 36670:2 36674:14,17 36692:18</p> <p>achieved 36670:1</p> <p>acknowledge 36747:1</p> <p>acquainted 36761:15</p> <p>act 36679:2 36768:17 36769:5 36794:10</p> <p>acted 36705:5 36849:18</p> <p>acting 36677:15 36734:15 36735:15 36830:2,7 36831:4</p> <p>action 36687:10 36697:13 36700:9 36722:3 36731:8,23 36745:7 36812:22 36816:1 36823:16,17 36826:6</p> <p>actionable 36704:20</p> <p>actions 36672:24 36696:4,7 36699:14 36720:16 36745:12 36745:23 36746:22 36866:23</p> <p>activity 36827:6</p> <p>acts 36720:20</p> <p>actual 36740:7 36741:13 36752:15</p> <p>add 36715:23 36755:14 36770:13 36855:1 36866:18</p> <p>added 36686:22</p> <p>addition 36666:6 36700:1</p> <p>additional 36768:3 36842:1,2</p> <p>address 36697:10</p> <p>addressed 36723:5 36866:4</p> <p>addressing 36675:12 36859:4</p> <p>adequate 36860:15</p> <p>adequately 36740:11</p> <p>adhere 36756:17,19 36847:3</p> <p>adjourn 36785:21 36847:16 36858:21 36859:1 36868:19</p> <p>ADJOURNED 36868:21</p> <p>adjournment 36754:4 36781:1,4 36785:4,10 36834:7 36836:10,12</p> <p>ADJOURNS 36719:16 36754:9 36785:22 36837:2</p> <p>adjoining 36806:7</p> <p>Adv 36836:14</p> <p>advance 36696:17 36720:23 36746:2,8 36802:23 36838:16</p> <p>advanced 36813:17</p>	<p>36814:5,8 36838:17 36838:18 36856:4</p> <p>advancing 36735:24 36740:22 36793:17 36834:17 36836:1,3 36843:7</p> <p>advantage 36691:5 36801:7 36810:21</p> <p>advantageous 36798:18</p> <p>advantages 36702:2</p> <p>adverse 36820:1,6 36851:17</p> <p>advisable 36863:15</p> <p>Advocate 36732:12</p> <p>affect 36689:11</p> <p>affidavits 36851:13</p> <p>affirm 36754:18,18,21 36754:25 36755:1</p> <p>affirmation 36785:24 36837:5 36839:1</p> <p>affirms 36786:1 36839:3</p> <p>afforded 36739:7</p> <p>afraid 36675:23</p> <p>Africa 36687:9 36693:10 36698:4 36759:7 36761:20,22 36762:19 36763:6,21 36766:4,7 36770:17 36772:21 36844:6,16</p> <p>African 36666:5,10 36694:11 36697:6 36762:1 36763:14 36766:9,16 36774:24 36865:17</p> <p>Afrikaans 36816:15,16 36817:3,12</p> <p>afternoon 36679:8 36706:7 36721:3 36723:24 36769:15 36769:16 36786:14 36786:16 36859:12</p> <p>aggression 36816:12</p> <p>aggressive 36666:9 36802:25 36820:6,8</p> <p>agitated 36671:19 36816:9 36840:22</p> <p>ago 36757:15 36782:4</p> <p>agree 36669:15 36679:25 36701:1,2 36725:20 36728:10 36728:18 36736:4 36737:13 36769:2,22 36770:11,25 36771:6 36778:12 36779:3 36794:7 36803:10 36823:16 36824:21 36832:6,8 36833:13 36851:9 36860:24 36862:19,21 36863:5 36863:24 36864:21 36864:23 36865:24 36866:9,17 36867:7</p> <p>agreed 36664:20 36682:15 36692:23</p>	<p>36705:24 36715:4 36743:18 36753:10 36753:11 36763:1,3 36766:3 36833:4</p> <p>agreeing 36842:9 36843:21</p> <p>agreement 36690:17 36766:5,10,12 36772:18</p> <p>agreements 36694:7</p> <p>agrees 36746:18 36844:3</p> <p>ahead 36734:8 36760:14 36773:12 36790:1</p> <p>aim 36846:21</p> <p>aimed 36664:21</p> <p>air 36855:23</p> <p>airtime 36701:16</p> <p>AK47s 36743:10</p> <p>alive 36733:24 36734:7</p> <p>allegation 36698:15 36837:15 36839:8,25 36840:5 36847:8</p> <p>allegations 36700:8</p> <p>allegedly 36701:14 36725:5 36861:24</p> <p>allocated 36758:6</p> <p>allow 36664:6 36667:1 36711:13 36725:3 36771:22 36819:16 36848:14 36866:18 36867:10</p> <p>allowed 36679:13 36718:20 36767:12 36815:11,15,17</p> <p>allowing 36666:19 36676:13 36838:10 36859:16</p> <p>allows 36731:23 36781:19</p> <p>alluding 36804:22 36805:8</p> <p>alongside 36674:10 36730:22</p> <p>alright 36673:22 36690:10 36711:12 36757:20 36758:7 36760:6,18 36785:20 36832:10 36836:24 36843:24 36844:10</p> <p>alter 36825:14</p> <p>alternative 36715:4 36722:3 36736:5 36741:12,15 36782:23 36834:24 36866:15</p> <p>alternatively 36669:7 36808:24</p> <p>alternatives 36677:9 36803:25</p> <p>AMCU's 36860:3</p> <p>amount 36752:22 36853:22</p> <p>analyse 36814:19</p> <p>analysed 36709:3</p>	<p>analysis 36669:10 36689:24 36775:6 36861:14</p> <p>Annandale 36860:23</p> <p>annexure 36845:21</p> <p>announce 36668:4 36746:2,7 36817:11 36818:7 36823:11</p> <p>announced 36699:19 36715:12 36817:20 36818:22</p> <p>announcement 36745:7 36755:3 36849:25 36852:5</p> <p>announcing 36821:24</p> <p>answer 36664:12 36667:7 36682:5,6,14 36686:12 36695:9,22 36696:8 36703:16 36714:13 36718:2 36721:7 36732:5 36733:2 36737:11,19 36739:16 36743:22 36753:5 36773:18 36777:7 36787:15 36788:17 36804:19 36815:17 36819:24 36826:13 36839:9</p> <p>answered 36751:13</p> <p>answering 36774:15 36804:17 36830:20 36847:13</p> <p>anticipate 36686:2 36738:21 36770:8</p> <p>anticipated 36735:14 36742:8 36770:9 36802:24 36803:1</p> <p>anybody 36674:16 36797:24 36823:15 36841:14 36863:5</p> <p>anymore 36709:19</p> <p>anyway 36672:17 36684:13 36685:11 36696:23 36712:10 36732:14 36740:20 36748:10 36805:18 36816:9 36843:10 36867:23</p> <p>apart 36681:25</p> <p>Apologies 36681:6 36748:24</p> <p>apologise 36715:25 36729:10 36745:2 36749:20</p> <p>apparent 36770:14</p> <p>Appeal 36755:22,24</p> <p>appear 36686:6 36694:10 36695:15 36696:7 36815:3,4 36846:19</p> <p>appeared 36696:14 36720:25 36733:24</p> <p>appearing 36725:6</p> <p>appears 36693:16 36724:5 36861:5</p> <p>applaud 36729:24</p>
--	---	---	--	--

<p>applicable 36778:3 apply 36718:8 appointment 36734:16 appreciate 36667:8 36732:20 appreciation 36725:12 approach 36665:1,4 36669:1 36691:19,22 36699:24 36706:21 36750:13 36763:2 36857:17 36858:12 approached 36665:8 36674:11 36678:21 36679:3 approaches 36762:24 36763:4 approaching 36674:23 appropriate 36736:2 36740:16 36754:3 36757:7 36839:23 approved 36765:23 approximately 36710:20,24 36725:7 April 36683:24 36685:16 36765:1 Arbitrary 36683:24 arc 36729:8,9 36778:17 36855:23 arch 36729:11 area 36678:15 36689:17 36727:12 36731:16 36732:6 36743:3 36744:5 36778:5,6 36783:11 36791:13,14 36805:13 36855:21 36856:3 areas 36776:25 36777:14 36778:4 36855:4 argue 36697:24 36753:4 argued 36737:10,11 argument 36668:14,15 36672:2,10,10,21 36687:15 36744:17 36821:18 36838:5 36851:17 36855:17 36866:13 arguments 36770:6 arises 36686:23 36687:3 36737:4,17 36825:13 36843:11 36848:21 arising 36864:21 armed 36665:25 36667:2 36669:6 36679:11,13 36691:15 36700:24 36719:23 36733:16 36733:17 36734:2,3 36735:4 36736:12,12 36740:9,20 36742:5 36742:15 36799:6,9 36801:10,13,14 36808:14 36828:12</p>	<p>36831:12 36852:11 36852:17 36853:7 36856:25 36859:4 armoured 36668:10 36741:5 36742:21,25 36743:13 36801:18 36803:3,16,19 36807:3 36810:12 arms 36669:7 36676:23 36678:23 36679:3 36696:10 36717:19 36717:20,22 36810:23 36820:3,10 36834:12,13 36857:22 36860:22 36861:1,3 arrange 36858:22 arranged 36755:6 arrangements 36858:20 arrest 36668:12 36672:5,5,11,17 36673:16,20 36681:21,23 36682:18,22 36688:22 36717:6,19 36718:18 36720:11 36796:25 36801:15 36802:7,23 36803:4 36803:22 36806:2 36810:24 36813:24 36851:23 36854:10 36854:18 36860:11 36862:9,13,21 arrested 36672:7 36719:23 36795:15 36801:17 36806:1 36809:12,16,20,24 36837:17 36838:17 arresting 36672:16 36860:9 arrests 36672:13 36673:4,10,18,19 36689:11 36717:15 36717:16 36802:8 36804:8 36805:18 36852:2 36862:15 arrive 36687:10,11,12 arrived 36801:3 36820:7 36843:10 arriving 36819:19 ascending 36829:1 ascertain 36663:5 aside 36742:1 asked 36665:11 36672:25 36675:5 36684:5 36695:10 36707:10 36720:8 36732:4 36754:16,17 36757:23 36763:7,23 36764:5,14 36766:1 36766:10 36785:9 36837:5 36838:10 36840:18 36854:25 36858:18 asking 36673:11</p>	<p>36693:8 36694:20 36720:9 36733:7 36772:24 36773:7 36775:1 36776:18 36791:22 36799:10 36830:23 36857:12 asks 36670:13 36817:9 36835:25 36836:4 asleep 36860:10 aspect 36826:21 aspects 36663:17 36777:25 assault 36693:5 assemble 36858:5 assessment 36850:2 36860:14 asset 36727:7 assets 36710:5 assist 36793:12 36812:18 assistance 36752:7 assisted 36741:3 assisting 36740:21 assume 36670:6,16 36693:8 36708:22 36763:15 36783:17 36811:8,9 36816:5 36835:25 36841:6 36860:1 assumed 36671:20 36673:4 36853:1 assumes 36850:18 assuming 36670:5 36671:25 36698:5 36775:16 36783:14 36856:3,4 assumption 36670:15 36673:7 36685:6,10 36695:11 36797:23 36798:24 36826:6 36835:21,21 36836:8 36840:4 assumptions 36712:3 36835:23 assurance 36839:6 attack 36693:22 36694:3,22 36695:6 36696:24 36697:15 36697:18,20 36698:5 36709:14 36729:22 36751:11,11 36770:13 36788:15 36797:24 36818:7,8 36832:19 36834:18 36834:22 36835:1,11 36836:4 36837:22,24 36847:24 36848:5 36849:2 attacked 36696:23 36831:16 36832:23 36833:14,15,18 36835:4 36865:2 attacking 36697:3 36784:1 36827:23 36828:4 36837:8 36838:1</p>	<p>attempt 36796:24 36801:15 36837:10 attempts 36699:2 36722:18 36724:6,7 36732:19 36773:22 attend 36859:2 attended 36690:18 attention 36769:8 36771:12 attenuate 36694:23 attitude 36724:24 36768:2 attorney 36837:5 36840:15 36847:6 attraction 36682:1 36688:16,17 36726:24 36727:6,8 36727:11,15,21,22 36728:1,4,7,9,14,16 auditorium 36686:8 August 36667:10 36706:7 36708:10 36773:12,25 36775:4 36776:15 36811:16 36831:24 36848:9,14 36864:18 36865:5 author 36756:24 authorities 36865:13 authority 36693:15 36735:22 36813:1 available 36686:8 36693:24 36694:24 36704:16,23 36743:5 36755:5,5 36760:23 36773:17 36775:7 36776:11 36781:16 36788:17 36795:12 36801:19 36853:24 avenue 36787:5,7 average 36762:15 averse 36863:9 averted 36771:9 36786:24 36787:13 avoid 36687:1 36724:7 36737:5 36768:23 awaiting 36688:7 awaiting 36868:11 aware 36671:1 36692:4 36692:6 36699:1,5 36701:12 36709:10 36710:2 36727:3 36739:21 36744:22 36747:23 36822:4,7,8 36825:6,6,9,11 36837:16 36838:16 36841:22 36842:1,2 36850:22 awry 36865:23</p>	<p>36739:14 36740:13 36748:2,6 36751:1 36753:20,21,23 36769:4 36784:19 36785:5,17 36793:23 36794:19 36799:1 36812:9 36815:16 36817:8,8 36825:20 36856:2 backup 36739:4 bad 36717:23 36797:11 balancing 36666:3 barbed 36667:25 36717:10 36729:6 36731:9 36745:6 36747:9 36750:22 36751:2 36784:4 36789:25 36790:15 36791:10,12 36792:9 36792:10,12 36793:2 36793:9,12,24 36794:2,5,17,23 36795:6 36796:5,7 36799:3,15,19 36800:6,7,13,25 36801:6,14 36803:14 36804:5,13 36805:25 36806:8,21 36807:3 36808:12 36813:8 36815:16 36816:2,6 36816:11 36819:18 36821:7,9,11 36822:6 36824:8,15,20 36825:4,16,24 36826:3 36827:1,4,7 36828:10 36832:19 36832:25 36833:10 36833:16 36841:2,19 36852:4 barricades 36824:12 barrier 36668:1 36730:10,10 36732:3 36732:8,14 36805:1,3 36805:8,18 36809:11 36813:8 base 36750:13 36763:4 36800:8 36816:3 based 36692:24 36715:15 36722:1 36725:4 36738:20 36739:9 36743:25 36744:24 36750:23 36752:23 36763:1,1 36765:24,24 36767:3 36767:5 36769:25 36774:5,5 36784:2 36798:23 36799:1 36808:2 36814:23 36816:4 36825:16 36834:3 36836:5 36842:12 36860:25 basic 36715:1 36779:22 36784:14 36796:10 36796:14,15 basically 36664:10 36668:16 36675:21</p>
B				
<p>b 36800:5 36809:24 36835:21 36856:15 back 36666:15 36671:12 36672:14 36696:15 36704:18 36725:2 36738:15</p>				

36676:2 36679:14 36714:7 36724:21 36725:3 36730:20,23 36733:14 36739:17 36767:9 36835:23 basis 36665:13 36702:6 36703:17 36734:20 36738:8 36748:2 36749:18 36754:2 36771:8 36788:19 36794:11 36799:8 36832:24 36836:8,24 36837:8 36839:10 36851:18 BBBBB 36685:13,14,18 bear 36840:7 began 36825:1 beginning 36713:10 36772:6,7 36773:10 36784:20 36831:11 begun 36818:12 behalf 36847:13 behave 36831:22 behaved 36830:21 behaving 36830:15 behaviour 36765:4 36861:9,10 Belgian 36762:11 36766:1,3 Belgium 36762:6,22 36763:5,7,23,25 belief 36833:11 believe 36803:8 36835:2,14 36837:17 36839:15,19,19 believed 36670:19 36702:1,7,10,16,17 36703:6 36715:10 36837:24 believes 36835:16 believing 36781:10 36811:18 belligerent 36668:7 belt 36772:4 36865:1 benefit 36671:23 36686:16 36729:16 36729:19 36738:4 36773:9 36775:2 36866:12 best 36701:19 36724:20 36749:13,23,25 36755:19,20 better 36681:1 36703:10 36717:15 36720:10 36750:19 36751:24,25 36859:16,16 36862:13 beyond 36709:25 36721:24 36731:13 36731:14 36856:4 bib 36764:9 36765:12 big 36829:11 36851:4 bigger 36672:12 36725:15 36748:19 36851:6	bill 36768:16 Bishop 36723:10 36860:5 36866:7 bit 36754:4 36767:12 36770:5 36774:13,13 36851:16 bits 36691:8 Bizos 36754:11,12 36756:14,15 36757:1 36757:4,8,16 36758:11,14,17,20,25 36759:3,9,11,16,24 36760:9,15,19 36761:2,10,13,18,25 36766:17 36767:21 36768:2,9 36787:3 36839:4,5,24 36840:4 36840:10 36850:3,17 36851:12,20 blah 36817:15,16 blanket 36793:17,18 36816:25 block 36730:10 36746:6,7 36807:13 blocked 36800:7 36810:12,14,17 36814:7 blocking 36746:1,1 bloodshed 36732:17 36733:6,8,14,17 blown 36778:24 board 36719:13 36825:11 body 36679:22,23 36866:1 book 36711:10 36768:14 bottom 36717:4 bought 36779:19,20 bound 36785:24 36837:4 36838:25 break 36719:13 36738:6 36806:19 breaking 36696:17 36785:7 36853:6 brewing 36775:21 brief 36715:20 36733:1 36843:5 36859:16 36867:14 briefed 36677:17 36678:5 36691:11,25 36692:9 36811:25 briefing 36675:19 36676:5 36677:5 36688:12,13 36689:22 36812:10 36812:10 36860:23 briefly 36762:1 36766:19 Brigadier 36669:18 36715:3,6 36747:8 36782:25 36787:4 36795:20 36799:10 36799:24 36800:18 36801:2 36802:19 36805:12 36808:24	36812:3 36813:14 36816:22 36817:9,18 36820:16 36821:5 36822:4 36830:7 36841:1 bring 36769:4 bringing 36841:25 36842:2 broad 36716:11 36829:16 broken 36852:12 brought 36721:19 Brussels 36762:12,14 36762:15 Budlender 36757:15 36867:15 building 36733:18 36865:6 bulk 36786:16 36799:17 burning 36687:11 36721:6 buses 36687:12 bushes 36855:21 busy 36815:21 <hr/> C C 36698:19 36835:21 Calitz 36664:8 36669:18 36715:3,6 36723:20 36724:2,15 36731:21 36747:8,11 36782:25 36783:7 36784:13 36787:4 36788:9,9,11 36790:3 36791:16 36795:20 36798:15 36799:10 36799:24 36800:18 36801:2 36802:20 36808:24 36813:14 36816:14,21 36817:10,12,18 36818:23 36820:16 36821:5,22 36822:4 36830:7 36841:1 36862:25 Calitz's 36805:13 Calitz's 36816:17,22 call 36664:22 36688:1,1 36711:10 36717:23 36726:13 36738:12 36740:14 36748:21 36749:25 36752:18 36754:11,12 36757:21 36767:10 36770:2 36803:18 36805:23 36830:23 36831:3 36844:18 36846:16,17 36856:5 36859:17 called 36766:13 36772:17 36803:22 36804:6 calling 36687:14 calls 36685:25 calm 36725:4	CALS 36781:20 cameras 36780:19 cancel 36673:21 cannon 36668:9 36778:9 36779:14 36780:14 36781:15 36782:19 36784:15 36788:13 36789:4 36843:9 36852:24 36853:11,17 36854:22 36855:1,9 36855:13,17,22 36856:7 cannons 36778:21 36779:18,18,22 36780:4,9,20 36782:18 36784:11 36784:16,18 36855:11 canvassing 36764:23 36765:3 can't 36667:13 36689:11 36693:10 36696:25 36697:22 36699:4 36707:18 36712:3 36715:8 36718:12 36719:7 36721:22 36722:20 36745:22 36758:2 36780:12 36789:23 36810:9,18 36834:2 36860:4 36868:2 capabilities 36703:23 36705:15 capital 36762:12 Captain 36679:1 36690:2 36843:1 careful 36728:12 36738:16 36743:21 36744:21 36755:9 36832:4 carefully 36686:18 36748:5 36838:6,19 36839:17 carries 36861:25 carry 36671:8 36686:13 36698:10 36712:11 36739:2 36747:24 36858:18 carrying 36701:15 36745:11 36765:18 36858:25 cars 36687:11 36803:16,19 case 36695:12 36697:6 36715:5 36729:23 36732:11 36761:1 36801:7 36802:6,7 36803:13,13,15 36808:25 36815:7 36817:19,20 36818:21 36826:10 36835:23 36836:4 36837:12,17,18,21 36838:16,18,19 36841:8 36845:25	36850:20,21 36851:19 36859:11 36866:24 Casspir 36800:5,5 catch 36674:20 36680:16,25 cater 36814:10 36828:23,24 caught 36841:3 cause 36724:25 36789:16 36815:3 36825:13 caused 36700:12 36750:23 36832:19 causes 36770:13 cautionary 36773:11 caveat 36671:23 CB 36850:18 CBF 36850:4 cell 36701:11 central 36770:5 36786:24 centre 36676:22 36679:23 36866:1 Centre's 36787:3 certain 36767:24 36778:14 36780:12 36794:15,16 36798:21 36810:21 36824:7,10 36825:18 36848:15 36860:22 certainly 36670:24 36674:8 36708:3 36741:21 36760:13 36763:18 36773:1 36778:14 36787:18 36815:3 36842:25 36866:24 certainty 36693:10 36825:19 Chair 36663:10 36670:4,4,22 36678:10 36679:6 36683:20,25 36684:4 36684:15,24 36685:13 36686:9,20 36688:20 36691:10 36698:2,12 36702:18 36703:14 36715:25 36724:16 36726:19 36729:2 36730:17 36731:12 36736:6 36737:15 36741:18 36744:21 36745:16 36748:19 36751:18 36752:10 36753:2,7 36753:11,25 36754:13 36756:19 36757:22 36758:5,9 36759:20,21 36760:22 36761:13 36761:21 36762:4 36767:13 36768:1 36769:14,22 36770:3 36781:6 36785:7 36786:4 36789:23
--	---	--	--	--

<p>36803:10 36805:5 36812:9 36828:18 36836:6,11 36840:9 36840:25 36850:3 36851:14 36858:16 36859:3 36867:8 36868:5 chairman 36663:4 36665:19 36680:2 36713:12 36727:16 36728:22 36731:7 36743:22 36749:4 36756:16 36757:5,19 36758:14,21,25 36759:3,17 36760:9 36760:12 36817:18 36839:5,7,24 36847:12 Chair's 36798:19 chalk 36864:9,12 challenge 36714:10 chamber 36686:18 36837:7 Championships 36762:22 36763:20 chance 36685:21 change 36708:13 36709:5 36722:8,14 36722:15 36750:9 36768:8 changed 36676:21,25 36708:22 36850:21 36851:15 36865:4,12 changes 36750:9 channel 36681:9 36682:11 36745:25 channelize 36664:2 channelling 36681:4 36746:5,5,8 chanting 36830:3 chapter 36845:10,11 character 36773:9 36830:4 characterised 36768:20 charged 36753:6 chase 36842:21 Chaskalson 36710:20 36710:23,24 36711:6 36711:9 36754:19 36755:2,4 36756:5 36807:17 check 36737:3 36845:10 36867:24 36868:3,13 checked 36857:22 cheese 36864:9,12 chest 36778:23 chief 36713:18 36725:24 36762:8 choice 36758:14 choose 36850:19 choosing 36731:22 chose 36702:1 circle 36701:21 36809:11 circles 36854:6</p>	<p>circumspection 36724:13,25 circumstances 36666:4 36675:9 36676:12,18 36690:25 36697:8 36705:1,10 36706:16 36716:21 36738:10 36739:21 36742:2 36743:1 36755:21 36778:21 36808:9 36826:2 36835:3 citizens 36865:2,2 clapping 36830:3 clarification 36726:20 clarify 36842:11 36856:24 clarity 36682:19 36689:22 36710:6 36741:7 36796:3 36837:11 clashes 36864:2 clause 36745:6 36823:10,19,22 clear 36698:6 36746:15 36837:9,10,12 36839:16,25 clearly 36692:9 36703:15 36731:6 36842:8 clears 36742:24 clients 36755:7 36837:6 36840:16,21 close 36730:13 36761:16 36765:11 36791:13 36794:3 36799:14 36800:25 36801:7 36808:19 closed 36731:9 36803:7 36806:10 36863:10 closer 36689:11 36794:24 36813:19 closes 36806:8,20 clustered 36812:6 Cockney 36795:21 cohesive 36852:19 collate 36836:12 36862:13 collateral 36666:8 colleague 36740:25 colleagues 36735:23 36737:10 36767:23 Colonel 36699:3 36713:18 36714:23 36715:6,7 36720:24 36722:1 36732:4 36750:18 36790:14 36802:12 36812:3,6 36843:21 36844:1,20 36847:7 36864:3 combination 36663:19 36860:8 combined 36723:23 36865:22 come 36664:4,7 36666:15,19 36669:4 36674:8,23 36678:12</p>	<p>36680:11 36689:18 36711:18 36725:19 36726:2 36729:7,13 36747:15 36751:1 36753:23 36762:19 36767:13 36772:1,2,8 36775:1,5 36785:17 36788:8,18 36789:6 36815:15 36825:20 36829:2 36858:8,10 36865:16 comeback 36813:15 comes 36674:10 36680:21 36713:18 36738:15 36759:17 36762:14 36811:11 comfort 36719:12 coming 36669:7 36671:12 36674:4,4 36680:15,24 36702:5 36721:17 36728:9 36745:18 36753:20 36763:21 36764:14 36775:24 36778:19 36793:20,22 36857:1 36857:8 36865:7,9 command 36678:1 36693:15 36697:13 36757:10 36767:6 36769:9 36782:25 36798:13,14 36799:25 36828:18 36829:20 commanded 36791:16 commander 36681:25 36692:14,14,17 36731:22 36752:16 36762:8,9 36783:3,4 36783:15 commanders 36689:24 36777:21,23,24 36811:24 36812:4 36845:18 commanding 36752:17 36752:19 commence 36699:20 commencing 36707:8 comment 36665:17 36687:21 36699:24 36700:5 36720:4,25 36733:9 36745:3 36771:22 36815:11 36835:19 commentary 36769:19 comments 36822:6 commission 36683:16 36687:24 36698:3 36699:18 36700:4 36719:16,16,17 36751:13 36753:6 36754:9,9,10,22 36755:24 36757:23 36757:25 36758:24 36759:6,14 36762:13 36767:25 36768:16 36769:9,20 36770:6</p>	<p>36771:13 36776:22 36779:5,25 36780:16 36781:19 36783:10 36785:22,22,23 36788:15 36802:17 36811:5,9,10 36812:18 36816:14 36816:18 36827:21 36831:10 36832:7 36834:4,15 36835:17 36837:2,2,3 36840:11 36864:17 36865:17 36868:21 Commissioner 36667:11 36736:18 36736:21,23 36738:9 36739:16,20 36776:7 36790:10,16,20 36792:5,8,15,18 36808:10 36822:3,11 36825:22 36826:1,9 36826:13,15,21,25 36836:16,21,23 36846:10,20,24 36865:7,9 commissions 36838:12 Commission's 36699:21 common 36789:16 36815:2 commotion 36848:21 communicate 36750:22 36841:6 communicated 36844:17,17 communities 36743:4,7 36746:15 community 36860:12 compared 36663:22 36676:6 compiling 36726:8 complain 36775:19 complaint 36863:18,20 complement 36770:12 complete 36760:17 completed 36677:24 completely 36719:10 complex 36665:3,23 36683:1 36714:20 36716:21 complexity 36705:15 complicated 36694:24 complied 36802:22 36827:14 complimented 36750:15 composite 36704:15 comprehensive 36675:17 compromised 36703:22 36704:10 36867:3 computer 36812:7 concede 36680:18,22 36693:18 conceded 36677:17 concedes 36715:8</p>	<p>concentrate 36775:19 concentrated 36674:9 concept 36667:18 36715:1,11,16 36716:4,11 36734:15 36745:20 concepts 36705:24 conceptualised 36816:10 36857:19 concern 36719:24 concerned 36763:6 36779:18 concerning 36666:14 36769:9 concerns 36663:17 concert 36831:5 concerted 36812:21 conclude 36833:18 conclusion 36729:18 36775:6 36788:8,18 36789:21 conclusions 36768:4 36789:7 concrete 36862:18 condition 36826:18 conditions 36788:25 conduct 36671:15 conducting 36762:18 36844:5 configuration 36663:25 36664:3 36691:4 36717:9 36729:6 36738:2 confine 36739:11 confined 36810:25 confirm 36688:10 36755:16 36833:23 confirming 36832:22 conflict 36724:8,9 36770:13 36850:11 36852:7 conflicting 36726:15 36838:12 36851:24 conflictual 36852:4,13 36852:15 36854:11 confrontation 36666:21 36676:15 36693:17 36696:1 36734:3 confrontations 36724:19 confused 36694:1 36731:11 36838:25 confusing 36664:12 36666:24 36731:18 36749:8 confusion 36689:23 36690:2 36692:2 36712:14 36731:24 36742:24 36750:23 Congo 36776:2,4 Congolese 36776:3 congratulated 36691:21 connoting 36733:4 consent 36865:15</p>
---	---	--	--	---

<p>consequence 36696:22 36697:14,17 36707:19 36720:21 consequences 36695:17 36800:13 36846:3,3 consider 36672:8 36696:4 36737:9 36761:21 36763:17 36766:17 36767:14 36767:15,16 36768:21 36815:5,7 36828:19 36834:25 36839:22 considerable 36675:12 36682:24 36691:5 36699:9 36723:8 36730:19 36745:16 36752:11 considerably 36665:9 36740:2 consideration 36673:21 36696:3 36720:3 considerations 36752:11,21 considered 36686:24 36691:16 36713:24 36749:23 36811:13 36838:19 36839:17 considers 36735:22 consistent 36717:11 36737:25 36865:14 consistently 36696:2 Constabulary 36750:12 constraints 36667:7 36720:7 36751:8 36753:6 consulted 36814:22 36849:8,11,13 contain 36701:19 36781:17 36866:7 contained 36684:19 36687:5 36737:19 36838:21 containing 36688:2 CONTD 36663:3 36719:21 36786:3 36840:24 contemplate 36677:1 contemplated 36862:12 contemplation 36845:5 36852:4 contemporaneous 36725:12 contention 36835:25 contents 36756:18 contest 36697:22 context 36720:15 36726:5 36732:21 36830:19 36848:12 36848:13 36854:13 36855:4,5,8 36857:11 contingency 36768:22 36814:2 36815:10 36828:20 36829:3 continue 36711:14</p>	<p>36718:20,25 36719:3 36730:9 36859:14 36861:8 36868:10 continued 36793:21 continuing 36847:17 continuous 36750:6 contradict 36847:25 36848:6 contradiction 36850:18 contradictory 36664:12 36689:21 36852:22 36854:2 contrary 36709:16 contribute 36764:2 contributed 36693:16 control 36757:10 36767:7 36768:25 36769:10 36782:25 36798:13,14 36799:25 36828:18 controversial 36834:14 convenient 36754:5 36834:5,6 36836:9 36858:16,23 conversation 36667:24 36672:4 36675:23,25 36692:24 36694:8 conversely 36863:8 convey 36867:5 conveyed 36822:7 conveying 36852:23 conveys 36851:24 convinced 36789:2 cooperation 36766:5 36766:10,12 36772:18 coordinated 36846:2,4 copies 36683:18 copy 36685:19 36760:16 cordon 36862:15 corner 36743:19 36744:4 36791:13 36796:6 cornerstone 36769:4 correct 36665:14 36669:14,20 36670:17 36671:21 36674:1 36679:6 36681:12 36694:9 36695:10 36698:1 36701:5 36703:5 36705:16 36708:13 36710:15,17 36712:8 36714:23 36715:24 36717:6,7 36718:16 36723:11 36724:16 36725:9 36732:25 36744:20 36756:25 36758:9 36769:2 36770:2,3,16 36786:25 36787:1 36795:9,11,25 36796:4 36797:15,16 36797:19 36800:15 36802:11 36803:8</p>	<p>36805:10,16 36806:20,24 36807:1 36811:11 36814:13 36820:19 36821:1 36826:24 36829:24 36831:18 36833:8 36837:16 36838:8 36840:12 36845:1,2 36848:23 36851:25 36855:25 36861:16 36861:17 36867:19 correctly 36693:18 36737:20 36796:8 36797:10,10 36827:1 36827:2 36855:16 36859:3 36867:25 correspondence 36677:19 36727:14 corrugated 36805:16 costs 36737:6 couldn't 36664:4 36675:16 36738:4 36747:24 36800:9 36803:6 36807:9 could've 36819:18,19 36828:13 count 36676:3 countries 36762:22 country 36700:17,21 36761:24 36764:1,22 36767:20 36772:24 36773:5 couple 36735:12 36819:11 course 36666:9 36693:2 36698:2 36706:21 36709:24 36713:4 36715:18 36717:1 36720:17,20 36722:3 36730:17,18 36731:2,10 36734:23 36746:23 36753:25 36776:12 36777:21 36777:21,22 36781:21 36801:16 36819:6 36829:14 36842:5 36845:17,18 Court 36755:22,24 courts 36838:11 cover 36695:2 36779:7 covered 36813:7 covers 36774:7 co-ordinated 36808:5 co-responsible 36762:23 create 36679:12 36696:12 36731:16 36825:17,17 36856:15 created 36731:15 36732:8 36805:7 creates 36839:10 crime 36776:24,25 criminality 36717:17 critical 36663:7 36699:16 36701:3</p>	<p>36729:20 36750:18 36774:23,25 36844:25 criticise 36690:17,19 36690:22 36723:13 36842:6 36862:16 criticised 36835:12 criticising 36825:10 criticism 36664:21,23 36665:6 36682:3,20 36683:14 36689:20 36692:10 36704:14 36705:3 36744:8,13 36766:21 36767:10 36782:24 36814:18 36839:18 36851:17 criticisms 36766:18,20 36826:19 critique 36829:7 cross-exam 36868:8 cross-examination 36663:3 36719:21 36753:7,9 36786:3,5 36786:17 36804:22 36811:3 36840:24 36851:16 36858:25 36867:9,18 cross-examine 36858:19 36867:16 cross-examined 36850:10 cross-examiner 36839:25 cross-examiners 36839:7 36840:7 cross-examining 36829:15 crowd 36666:13 36671:16 36675:21 36676:4 36680:13,13 36681:9 36682:11 36696:5,12,14,22 36701:20 36716:21 36723:20 36724:3,24 36727:12,18,21,22 36728:1,7 36730:18 36731:22 36734:14 36735:2,14 36736:9 36738:19,20 36739:11,11 36740:9 36742:4,10 36743:12 36743:13,18 36744:3 36745:21 36746:8 36751:7 36797:14 36808:13,14 36829:8 36829:10 36831:22 36848:16 crowds 36696:1,3 36745:11,12,20 36746:5 crowd's 36724:19 culminating 36733:6 culture 36866:7 curb 36719:25 cursor 36714:18 36716:25</p>	<p style="text-align: center;">D</p> <p>daarna 36817:15,15 damage 36666:8 36687:4 36863:5 danger 36747:22 36801:20,21 36808:11,13,17 36823:23 dangerous 36665:3,23 36683:1 36691:17 36692:12 36705:10 36714:21 36734:1 36739:13 36740:10 36742:5 36743:15 dat 36817:14 dated 36685:15 day 36666:5 36671:12 36672:4 36691:20 36697:1 36710:17 36712:20,21,25 36713:3,4,5 36715:9 36717:5 36722:19 36734:2,8 36740:3 36762:16 36780:4 36781:12 36823:3 36835:13 36838:20 36850:12 36859:11 36859:15,19 days 36692:16 36723:22 36767:11 36798:25 36859:15 36859:22 DDA 36707:9 36813:23 36852:3 De 36684:12 36838:23 36858:20 36864:16 36867:12,17 deal 36665:25 36670:14,18 36684:18 36685:20 36688:11 36692:22 36695:21 36701:8 36726:13,24 36732:17 36737:25 36738:13 36739:23 36743:4 36747:18 36754:19 36772:15 36773:20 36774:18 36774:25 36775:23 36776:13 36781:3,5 36802:3 36814:10,17 36815:10 36828:15 36850:13,23 36861:10 36864:6 dealing 36665:19 36667:16 36689:13 36690:14 36691:14 36696:3,14 36726:14 36736:2,8,20 36739:10 36745:10 36745:17 36815:19 36828:17 36852:16 deals 36690:12 36707:8 dealt 36711:1 36726:21 36740:11 36763:11</p>
---	--	---	---	--

<p>36828:14 36829:15 36861:11 death 36801:24 36864:19 36865:11 deaths 36700:24 36781:9 36864:19 debate 36670:20 36698:10 36740:25 36763:2 36782:10 36803:21 debated 36804:11 debating 36804:3 debrief 36700:13 decide 36726:11,16 36744:23 36752:4,13 36783:16 36795:19 36834:15,16 36835:7 36835:13 36837:14 36838:4 36839:16 36850:12 decided 36800:25 36856:21 decision 36687:2 36699:17,17 36700:23 36706:23 36706:25 36707:8 36712:15 36724:8,9 36729:21,24 36773:2 36779:8 36784:13 36799:2,12,24 36800:20 36851:23 36859:14 decisions 36774:17 36775:8 declare 36765:14 decoiling 36825:1 dedicated 36736:19 36738:12 36739:22 defect 36741:8 defence 36735:15 36818:12 defend 36728:5 36735:22 36737:9 defensive 36748:22 36749:2 36817:11 36823:11,17,25 36824:12 36825:23 36826:2,6,7 define 36764:19 36854:24 definitely 36761:23 definition 36688:21 36689:3 36727:9,10 36727:14,17,17 36728:8 36829:8 36830:5 degree 36724:25 delineate 36666:11 36668:3 demand 36708:17 demanding 36672:6 demands 36860:2 demilitarisation 36756:23 36758:16 36760:17 36774:11 democratic 36763:24</p>	<p>demonstrate 36762:14 demonstrating 36765:21 demonstrations 36762:16 36764:8 36765:7,18 36774:8 36774:19 demonstrators 36764:8 36765:11,20 36783:23 36825:18 36827:13 department 36764:15 36764:18 departure 36863:18 depending 36829:2 depends 36721:14 36739:17 36775:15 36854:24 36863:11 deploy 36784:3 36790:2,5 36791:12 36792:25 36793:11 36794:17 36799:3 36818:16 deployed 36687:19 36734:25 36742:1 36803:14 36805:25 36808:12 36823:13 36823:17 deploying 36790:14 36793:9,12 36794:22 36794:23 36823:14 deployment 36793:1 36818:21,22,24 36824:25 deployments 36716:8 derogatory 36716:9,14 descending 36829:1 describe 36685:15,18 36853:11 described 36665:20 36666:6 36714:7 36723:5 36741:22 36799:3 36845:7 36849:22 36856:8 describing 36829:9 description 36755:10 designed 36850:13 desirable 36820:11 desire 36719:22 desired 36820:11 desist 36747:1 desktop 36789:14 despite 36676:10 36710:5 36831:15 detached 36851:5 detail 36682:25 36704:9 36716:12 36779:10 detailed 36691:24 36845:15 36847:4 details 36704:7 detection 36702:3 deter 36674:22 deterred 36669:6 develop 36762:24 36764:16</p>	<p>developed 36764:21 36777:25 36779:17 development 36750:7 devised 36815:10 de-contextualise 36732:25 diagram 36782:22 dictated 36833:5 didn't 36663:13 36672:2 36675:20,24 36680:23 36692:5 36702:11 36704:23 36715:8,19 36718:14 36719:8 36730:18 36732:2 36747:24 36780:14 36801:19 36809:9,9 36834:10 36834:11 36837:9 36840:19 die 36765:17 36817:14 36817:15 died 36774:8 differ 36705:18 difference 36726:3 36846:12 different 36666:25 36675:9 36676:12,17 36677:14 36678:10 36680:20 36683:2,3 36690:6 36705:14,14 36716:7,20 36719:10 36750:12 36771:15 36835:22 36841:11 36842:7,20 36843:7 36845:11 36848:24 36850:8 36851:14 36854:17 36857:17 36861:14 differentiate 36667:1 difficult 36665:3,23 36666:12 36676:8 36686:2 36692:12 36704:13,25 36716:21 36734:1 36745:5 36808:5 36852:20 difficulties 36704:1 36743:3 36839:6 difficulty 36797:1 36804:1,4,7 36805:9 36806:7 36852:22 36855:17 36859:25 direct 36663:24 36712:7 direction 36678:19 36682:12,12 36745:13 36770:21 36770:22 36784:4,10 36793:10,19,21 36795:22 36798:21 36800:22 36808:24 36829:2 directions 36674:5,8 directive 36759:19 36760:8 directly 36693:16</p>	<p>disabuse 36667:25 disadvantage 36666:10 36685:19 36686:19 disagree 36683:13 disapprove 36705:8 disarm 36664:22 36665:17 36667:12 36668:7 36675:5 36680:2,5 36682:22 36691:13 36692:7 36705:25 36709:20 36712:20 36717:6 36719:25 36723:3,10 36802:23 36813:17 36813:23 36851:23 36854:10 36862:2 disarmament 36701:4 36712:16 disarmed 36680:14 36700:25 36712:15 36712:21 disarming 36665:12 36668:18 36708:5 36852:2 36856:20 disaster 36765:16 disbelieved 36702:11 disburse 36802:7 disciplinary 36697:13 36699:13 disciplined 36667:18 disciplines 36842:7,22 disclosed 36787:5 discord 36688:2 discretion 36735:15 36741:14 discuss 36767:9 36773:8 36780:23 36798:14 36826:7,11 36826:15 discussed 36706:24 36787:6 36811:5 discussing 36810:22 discussion 36664:2 36688:5 36743:20 36771:4 36783:10 disobey 36700:18 disorder 36770:9 36865:23 disorientate 36854:6 dispersal 36680:11 36688:14,21 36731:8 36731:19,23,25 36741:24 36742:3 36743:24 36799:18 36852:2 disperse 36668:4 36681:14 36682:17 36682:22 36689:4 36705:25 36717:5 36742:4 36744:10 36802:23 36813:23 36851:23 36852:7,12 36852:18 36853:3,8 36854:10,14 dispersed 36678:22 36853:14</p>	<p>dispersing 36681:15 display 36686:8 dispute 36694:14 36726:10 36727:13 36732:21 36771:3 disputed 36670:5,8,25 36670:25 36671:6,25 disputes 36687:25 disputing 36808:4,6 distance 36806:4 distinct 36725:15 36830:6 36851:1 distinction 36712:14 36723:17 36748:6 distracting 36676:1 disturbing 36675:23 dit 36817:13 Doctor 36790:23 doctrine 36692:24 36833:4 document 36685:4,11 36685:22 36704:17 36756:22,25 36757:13,13,18 36758:20 36759:1,5,9 36759:15 36828:17 documentation 36727:18 documents 36684:5 36685:1 36728:9 36756:22 36757:4,24 36758:11 36761:12 36761:17 36767:24 doesn't 36670:9 36673:19 36689:23 36692:25 36693:23 36718:4 36723:10 36725:25 36735:3 36824:22 36866:23 doing 36707:25 36747:2,14,15 36769:24 36776:2 36816:6 36818:18 36822:1 36834:18 36841:22 36860:15 36861:21 doors 36803:7 doubt 36771:16,17 doubts 36767:6 36831:25 draad 36817:15 drafted 36768:16 dramatically 36775:23 drastically 36772:21 draw 36712:1,7 36769:8 36771:12 36793:17 drawing 36723:17 drawn 36715:5 drew 36793:19 drive 36807:14 36834:18 36835:4 driver 36788:21 36799:13 drivers 36780:14 driving 36723:7</p>
---	--	--	---	---

36800:20 drove 36709:8,11 36723:5 36801:3 Dublin 36753:24 due 36677:15 36772:18 36813:25 duration 36721:24 Dutch 36762:24 36763:1,3,19 dying 36717:21 dynamic 36690:18,24 36691:18 36692:11 dynamics 36865:12	36776:4 element 36663:14 36821:18 36862:16 elements 36770:1 36845:5 36852:3 embellishment 36667:8 embryonic 36714:25 emphasise 36837:20 employee 36867:5 employer 36771:5 36867:5 en 36817:15,15 enable 36785:11 enables 36752:5 enacted 36673:16 encircle 36668:11 36669:22 36671:9 36673:3 36705:25 36717:5 36807:13 encircled 36680:1 36795:15 36801:13 36803:18 36807:4 encirclement 36668:22 36669:2 36673:8 36677:11 36857:21 encircling 36717:11 enclosed 36807:3 enclosure 36731:9 encompassing 36846:21 encroach 36744:5 endeavoured 36741:10 ended 36801:9 36812:2 36812:19 engage 36666:21 36671:10 36714:19 36716:20 36726:6 36733:23 36734:11 36735:5 36738:19 36742:9 36746:11 engaged 36675:12 36694:4,10 36724:2 engagement 36691:9 36716:25 36746:14 engaging 36670:23 36671:2 36706:15,22 36707:3 36725:22 36726:22 36735:1 36752:23 Engelbrecht 36860:20 enquire 36825:4 enrage 36673:8 ensure 36669:6 36687:3,4 36691:4 36692:17 36700:7 36785:10 36837:10 ensuring 36770:8 entails 36681:10 entire 36714:15 entirely 36669:4 36714:23 36729:18 36731:9 36753:2 entirety 36724:22 36750:2 entrance 36746:6,7 entries 36704:17	36711:9 environment 36680:22 36703:22 envisage 36732:3 envisaged 36732:3 36815:4 36857:18 36863:12 equipment 36784:15 36828:12 36842:19 escalate 36671:15 escalation 36707:25 escort 36676:11 36691:24 36692:3,19 escorted 36676:21 36694:6,9 36696:15 36697:2 escorting 36692:8 essential 36711:14 essentially 36726:12 36730:14 establish 36700:6 established 36799:11 estimate 36851:7 etcetera 36688:1 36713:15,15 36743:10 36758:19 36867:6 Europe 36762:12,14 European 36762:13,13 36762:21 36763:20 evaluate 36797:11 evaluation 36775:7 36800:24 evening 36669:19 36671:7 36704:9 evenings 36671:5 event 36695:17 36717:16,17 36747:7 36772:1 36776:14 36802:14 36803:16 36817:19 36827:25 36835:21 36864:7,17 events 36699:14 36700:5 36746:17,22 36750:12 36762:25 36763:20 36764:17 36764:23 36767:17 36767:19 36768:24 36768:25 36770:9 36772:14,15,25 36773:12,20 36864:2 eventuality 36736:9 36814:21 everybody 36705:9 36746:17 36747:10 36764:11 36769:4 36811:21 36818:15 36819:21 36837:13 evidence-in-chief 36736:11 evidential 36704:22 exact 36717:25 36718:9 36731:5 36733:23 exactly 36673:14 36674:5 36689:25 36700:6,20 36705:1	36715:17,21 36734:9 36737:14,21 36747:3 36782:1 36860:14 examination 36753:12 36756:15 examination-in-chief 36867:14 examined 36761:4 example 36663:20 36674:9 36677:13 36678:9 36721:15 36722:3 36738:17 36743:23,25 36770:24 36791:23 36864:4 examples 36704:21 36775:11 exasperation 36709:9 excessive 36751:12,22 36751:23 36752:7,8 exclude 36689:1 36811:14,15 excused 36754:1,3 36756:5 execution 36811:17 36812:10 36846:13 Executions 36683:24 exercise 36688:7 36741:10 36746:5 36799:25 36819:10 36819:11 exhibit 36684:2,3,14,23 36688:10 36698:13 36711:2,21 36756:17 36757:3,8,14,18,24 36757:25 36759:22 36760:1,5 36768:13 36781:22 36791:2 36806:19 36810:4 36823:18 exhibited 36757:25 exhibits 36757:21 36768:5 existed 36719:23 existing 36760:1 36776:8,9 exists 36833:9 36853:5 expand 36748:24 expansive 36678:15 expect 36668:4,6 36684:22 36713:16 36749:15 36760:20 36814:4 36839:9 expected 36667:3 36692:1,4 36699:13 36700:3,8,13 36704:4 36704:10 36751:7 36772:10 36784:25 36849:24 36864:21 36865:16 36867:4 expecting 36680:13 36760:22 36772:9 36852:17 36862:10 experience 36667:16 36680:21 36692:25 36693:19 36735:12	36745:16 36749:24 36750:7,14 36751:22 36752:1,5,14,17,18 36752:23 36762:1 36763:5,15 36765:24 36766:16 36770:1 36788:24 36808:2 36814:23 36833:5,7 36842:12 36864:1 experienced 36682:17 36736:10 36750:4,5 36816:2 expert 36671:14 36684:18 36687:8 36726:17 36751:24 36753:16 36771:8 36774:13 36777:2 36799:6 36834:2 36835:15,16 36867:2 expertise 36751:21 36811:12 36812:23 36866:12 explain 36716:5 36728:25 36746:23 36760:24 36761:7 36764:11 36766:15 36772:1 36800:18 36808:1,21 36812:19 36819:21 36821:6 36824:6,9 36837:6 36852:1,3 36858:13 explained 36714:16 36727:16 36747:8 36762:8 36801:1 36822:5 36844:3 36852:2 explaining 36692:18 explanation 36720:14 36747:12,13 36748:7 36748:11,12 36764:11 36849:3,5,5 36849:7 explanations 36767:8 explore 36689:1 36706:10 36707:17 36745:24 36809:15 exposed 36739:14 exposes 36697:13 express 36694:13 36752:6 36823:10 expressed 36768:4 expression 36732:19 36747:12 36800:12 extend 36731:13 extensively 36763:12 36850:10 extent 36664:12 36678:24 36706:25 36761:15 36764:2 36794:16 extents 36794:15 Extra 36683:23 extract 36757:9,13 36758:23 36768:14 extrapolating 36691:8 extreme 36828:24
---	--	--	---	--

<p>extremity 36742:14</p> <hr/> <p style="text-align: center;">F</p> <p>face 36742:11 36747:22 faced 36666:5 36742:25 facie 36804:2 facing 36737:24 36739:9 36789:8 factor 36675:16 36833:20 36841:16 factored 36720:23 factoring 36788:7 factors 36672:8 36789:9 36861:19 facts 36671:20 36673:20 36675:13 36697:22 36707:3 36722:2 36744:24 36774:7 36788:14,18 36799:8 36811:8 36834:3 36842:2 factual 36726:9 factually 36715:24 36744:23 fail 36668:12 36823:23 36854:9 failed 36723:14 failure 36750:22 fair 36680:4 36682:2 36685:3 36697:15,17 36709:5 36720:17 36721:7 36764:20 36765:15 36820:5,13 36868:17 fairly 36684:21 36740:11 36745:10 faith 36861:2 false 36685:5,10 familiar 36683:17,19 36684:18 36701:9 36716:2 36726:25 36747:8,20 36765:19 familiarise 36836:17 families 36837:6,18 36838:18 36840:15 Fanagalo 36841:12 far 36679:5 36680:24 36730:7 36763:4,6 36772:3 36779:17 36845:25 36852:8 favour 36858:12 fear 36750:23 36816:12 36838:14 feared 36820:6 February 36704:18 36786:22 fed 36767:23 feel 36780:15 feels 36764:12,12 felt 36679:15 36733:8 fence 36796:7 fewer 36673:4 fiction 36702:17 field 36751:21 36812:5 36813:22</p>	<p>fight 36776:24 36834:12 figure 36713:8 36739:6 filtered 36679:18,19 filtering 36666:18 36667:4 36669:3 36673:23 36674:6,15 36674:18,22 36675:7 36676:25 36677:6,13 36678:7,8,11,19,22 36679:2,12 36856:19 36856:24 36857:4,14 36857:20,24 36858:2 36858:10 final 36706:15 36707:1 36752:12 finally 36820:3 find 36675:25 36711:13 36718:10 36727:7 36745:4 36757:12 36776:20 36780:23 36781:4 36782:1 36817:7 36820:21 36834:23 36840:12 36842:22 36843:17 36844:20 36845:13 36847:9,18,19 36866:15 finding 36726:17 36835:16 36838:7,21 36838:21 findings 36837:15 36838:15 finds 36685:20 fine 36745:15 36825:6 36832:9 36854:8 finish 36729:3 36867:18 finished 36766:9 36847:16 fire 36696:10 36735:23 36741:15 36796:19 firearm 36740:14 36793:18 firearms 36696:13 36734:1,21,22 36735:1,13 36736:12 36736:13 36738:12 36738:21,23 36739:8 36739:22 36740:6,7 36741:14,20,25 36742:6,10,15 36743:9 36752:15,16 36752:18 36753:1 36769:10 fired 36693:14,15 36694:12 36697:12 36697:21 36740:21 36848:22 fires 36696:16 firing 36693:4 36700:11 36735:24 first 36667:20 36668:16,20 36669:8 36669:9 36674:24 36684:6 36687:25</p>	<p>36700:12 36703:4 36716:17 36719:12 36733:2 36741:9,19 36747:6 36757:9 36766:2,8 36770:18 36770:20 36774:5 36779:15 36783:7 36787:23 36788:2 36790:7 36806:17 36808:18,23 36811:2 36815:25 36816:1 36827:2 36831:11,16 36837:21,21 36842:25 36843:5,5 36849:2 36854:16 36857:18,18,20 36862:5 firstly 36679:21 36767:3 36814:6 36815:7,7 36829:16 five 36740:3 36766:14 36865:16 36867:21 36868:2,9 flashpoints 36772:13 flat 36851:5 flaw 36750:14 fled 36809:16,21 flow 36695:15 focus 36664:23 36820:22 focusing 36683:7 focussing 36766:13 36776:4 follow 36672:10 36673:15 36733:3 36744:14 36756:1 36764:23 36767:2 36854:9 followed 36699:14 36783:1 36823:24 following 36671:12 36673:8 36687:24 36706:17 36717:13 36734:2,8 36821:22 36823:24 foot 36698:21 36742:20 36742:22 36792:10 36794:3 footage 36717:9 footages 36701:23 force 36665:10 36668:19 36686:24 36687:19 36693:24 36696:19 36697:3 36737:4,5,6,7,12,18 36737:22 36738:3 36739:19 36746:24 36747:3,4,6 36752:7 36752:8,24 36759:18 36760:8 36789:1 36801:19 36808:8 forces 36843:25 foresee 36808:13 foreseeable 36732:24 36815:8 foreseeing 36733:5</p>	<p>foreseen 36802:16,16 36813:12 36814:2,15 36815:8 36817:6 forget 36731:3 36742:7 forgetting 36682:18 forgive 36706:18 36810:15 forgot 36663:14 36789:25 form 36703:7 36760:5 36812:14 formation 36701:21 formed 36809:11 36856:19,24 forms 36759:25 formula 36748:23 36749:3,8 formulating 36728:13 forth 36774:20 36775:22 36795:14 36799:1 36808:6 36842:14 36846:6 36862:8 fortunately 36752:20 Forum 36706:24 forward 36680:15 36689:17 36703:19 36707:20 36742:4,13 36743:11,24 36744:10,12 36793:25 36813:22 36828:6 found 36698:25 36706:19 36791:4 36808:14 36811:8 36817:8 36829:10 36834:4 36848:24 four 36699:20 36738:18 36740:4 36762:16 36776:5 36798:25 36858:18 36858:23 36859:21 Fourthly 36725:11 fracas 36694:16 36696:17,18 free 36764:20 36765:14 Friday 36741:12 friend 36683:21 36686:7 36850:19 friends 36757:11 Frits 36741:22 front 36679:9 36680:11 36726:21 36806:20 frustrated 36820:9 full 36677:25 36715:20 36721:7 36838:5 fully 36678:14 36692:19 36704:24 36739:21 36756:19 36822:7 36866:17 function 36679:4 36739:3 36744:18 36747:25 funding 36755:22 further 36717:22 36718:19 36720:1,20</p>	<p>36724:25 36732:15 36734:25 36754:1 36768:10 36786:1 36792:6 36794:1 36795:4,7,17,19 36805:14 36813:18 36834:24 36839:3 future 36708:15</p> <hr/> <p style="text-align: center;">G</p> <p>gaan 36817:14 gain 36791:14 gainsay 36832:20 gap 36730:4,13 36732:3,8 36795:7 36796:7 36801:7 36804:6 36805:7 36806:21 36813:12 36813:17 gaps 36807:10 Gary 36719:19 36762:7 36846:4 gas 36853:22 gather 36696:24 gathering 36703:22 36704:1,12,24 36768:17 36825:17 36861:5,20 gatherings 36762:3 36769:5 36816:5 gendarmierie 36762:9 36762:11 general 36676:20 36689:25 36690:23 36693:4 36694:3 36698:15 36700:23 36706:23 36732:17 36732:18 36779:9 36798:16 36843:1 36855:11 36860:20 36860:23 generally 36735:13 36745:19 36864:20 genuinely 36672:9 36693:8 getting 36722:19 36743:14 36748:6 36795:6 36804:7 36805:2 36808:20 36865:2,2,23 geval 36817:14 gewees 36817:13 GGG2 36756:17 36760:20 give 36664:9 36673:23 36684:14 36702:2 36704:21 36720:12 36720:13 36721:7,25 36733:1 36744:23 36746:24 36751:23 36752:2 36754:22 36761:6,8,25 36781:7 36799:2 36802:20,21 36813:2,14,15 36834:11,11 36847:10,19,20</p>
--	--	--	---	---

<p>36849:5 36858:19 given 36667:16 36673:4 36674:3,7 36676:3,4,10 36678:13 36680:20 36681:25 36683:14 36683:15 36685:1 36691:18 36699:12 36699:18,19,25 36702:3 36705:10,15 36713:24 36716:3 36723:21 36724:13 36733:15 36735:22 36736:7 36738:10,13 36739:20 36740:5 36742:11 36748:12 36748:12 36753:6 36757:8 36761:3,17 36788:14 36791:2,19 36794:10 36795:23 36800:2,3 36803:25 36817:24,25 36818:3 36818:10 36819:9 36834:14 36852:6 36861:20,25 gives 36690:6 36724:23 36731:22 giving 36682:7 36737:8 36743:25 36750:10 36753:20 36757:7 36791:22 36808:7 36817:7 36849:17 glasses 36782:3 go 36667:12 36672:15 36682:22 36684:2,13 36688:9,24 36692:5 36701:6 36702:14 36703:16 36708:12 36708:19,25 36718:11 36722:19 36722:24 36723:23 36723:25 36724:8 36727:12,23 36728:2 36728:15 36729:15 36731:1 36732:6,8,13 36740:13 36744:9 36755:7 36759:14 36760:13 36770:20 36770:22 36779:6,9 36780:25 36783:18 36794:19 36797:2 36799:1,18 36805:22 36805:23,24 36806:1 36806:5,8,10 36807:5 36807:10 36809:9 36810:3,9 36812:9 36813:12,14,22 36816:17 36817:1,4 36817:12 36830:4 36835:1 36840:25 36848:14 36849:25 36857:15,22 36862:2 36862:15,20 36866:2 goals 36670:1 goes 36665:4 36706:19 36714:6 36730:7</p>	<p>36731:20 36848:3 gold 36752:15 36762:8 36762:17 Goldstone 36757:9,14 36758:23 36759:6,12 36759:14 36768:15 36769:7 36802:17 good 36663:4 36677:8 36684:18 36727:24 36729:8 36739:9 36745:10,19 36759:13 36761:18 36769:14,16 36772:25 36795:18 36797:11 Google 36716:7 gotten 36723:10 government 36763:7 36763:23,25 36765:24 36766:1,3,4 36766:9,10 36773:2 governmental 36763:22 grasped 36704:23 grateful 36737:1 36758:8 green 36816:24 grenade 36693:5,14,20 36693:22 36694:22 36697:12,21 36698:4 36781:15 36793:22 36817:6 36848:5,16 36854:5 grenades 36676:17 36694:2,11 36695:12 36695:16,19,25 36696:17 36697:5 36700:11 ground 36811:24,24 36813:8 36865:8 group 36665:14,20 36666:1,14 36668:3 36680:5,6,11 36691:14,14 36694:5 36701:18 36704:8 36708:6 36709:13,20 36724:14 36725:13 36725:15 36726:3,13 36727:1 36731:3 36734:3 36735:25 36740:22 36746:1 36781:10 36783:13 36784:20 36788:13 36788:15 36798:8,23 36801:9 36807:21 36818:11 36829:10 36829:17 36830:5,6,8 36830:10,15,21,21,24 36831:1,4,4,12 36833:14,15 36849:23,24 36850:1 36850:5,6,14 36851:5 36852:16,19,24 36853:7,8 36854:14 36855:2,3,12 36856:10,13</p>	<p>36861:20 36863:3 groups 36668:10,11,12 36680:1,16 36725:15 36851:1 36853:6,11 36853:16,21 36854:7 36854:17 guess 36765:24 gun 36739:4</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hack 36835:6 hacked 36801:23 hacking 36693:6 hadn't 36673:24 36676:5 36677:5,16 36730:7 36795:20,22 36814:15 36856:3 half 36785:5,10 36793:7 36821:15 36828:2 36867:16 half-an-hour 36813:16 halt 36721:20 hampered 36704:25 hand 36679:22 36715:13,15 36719:22 36757:2 36778:16 handed 36715:5 36756:21 36757:15 36761:12 36768:13 handle 36695:21 hands 36679:20 36785:14 36812:20 36859:1 hand's 36679:21 hang 36758:22 happen 36663:22 36700:7,12,15 36709:21,23 36712:16 36713:1,3 36714:8 36725:3 36730:18 36731:14 36742:8 36745:22 36769:21 36772:11 36783:17 36799:7 36802:13 36814:5,20 36815:4 36816:8 36820:4 36848:2,2,24 36849:2 happened 36668:6 36673:20 36675:10 36676:2,16 36690:2 36691:20 36693:11 36700:7,14 36708:15 36710:10,14 36714:7 36720:15 36721:6 36724:15,17 36740:17 36744:4,23 36744:25 36745:1 36747:19 36767:7,10 36769:6 36772:5,13 36782:24 36792:23 36798:18 36800:3,23 36801:2,22 36812:11 36813:1,8,25 36814:1 36814:4,5 36831:23</p>	<p>36833:9 36862:2 36864:12,18 36867:4 happening 36678:25 36688:18 36700:10 36721:14 36771:15 36783:17 36864:9 36865:18 36866:2 36867:12 happens 36687:4 36807:19 happily 36728:10 36797:23 36798:2 happy 36666:25 36680:22 36734:10 36767:9 36780:24 36798:13 harass 36689:4 hard 36752:20 36766:22 harm 36757:16 Harris 36764:16 hasn't 36685:11,21 36723:25 haven't 36672:14 36683:14 36707:10 36720:7 36722:23 36749:6 36777:9 36798:7 36832:21 36833:14,25 36836:19 36838:4 36839:21 36848:1,2 36862:17 36865:6 head 36764:15 headed 36756:22 36759:1,6,17 36791:11 heading 36686:21 36793:10 headings 36766:20 hear 36695:9 36719:5,8 36747:10 36778:4,6 36806:16 36817:2 heard 36842:6 36846:5 36848:23 hearing 36684:6 36716:16 36756:8 36787:22 36788:2 36790:6 36816:17 hearings 36767:1 heavily 36665:25 36691:15 36733:16 36733:17 36734:2,3 help 36664:17 36675:1 36678:8 36718:5 36728:25 36736:7 36739:5 36745:5 36749:17 36757:6 36764:15,18 36767:18 36790:22 36797:2 36823:20 36866:7 helped 36771:8 helpful 36670:22 36726:20 36750:19 helps 36722:23 Hemraj 36732:12</p>	<p>36736:18,23 36738:9 36739:20 36776:7 36790:10,16,20 36808:10 36822:3,11 36826:25 36836:14 36836:16,21,23 36846:10,20,24 Hendrickx's 36749:8 36756:8 het 36817:13,14 he'd 36676:10 36677:11 36695:22 36698:22 36715:16 he'll 36684:22 36685:22 he's 36684:20 36685:19 36695:13 36702:10 36711:14 36713:19 36716:4 36733:15 36751:21 36752:4 36761:12,15,17 36789:24 36799:23 36805:8,10 36837:4 36861:25 36867:15 36868:14,16 HHH20 36706:18 hiding 36669:25 36670:6 hierarchy 36699:18 high 36696:11 36734:7 36774:21 higher 36738:3 highlight 36763:16 highlighted 36667:21 highly 36750:4 hill 36733:15 36851:4 36856:16 hilly 36855:21 hindsight 36671:24 36728:20,23 36729:16,19 36738:4 historical 36693:18 history 36693:4,9 36697:20 36698:3 36832:18 36833:9 36847:23 36848:4 36865:3 hit 36793:20 hits 36778:23 hold 36830:6 holding 36689:17 36777:4 Holland 36762:23 home 36727:1 36789:14 honest 36729:24 36752:14 hope 36769:19 36779:6 36838:20 hopefully 36726:20 36746:25 hoping 36820:2 horror 36669:24 host 36791:20 hostage 36764:10 Hostel 36764:10</p>
---	--	--	---	---

<p>hostels 36669:14 36860:12 36862:2,21 hour 36710:20,25 36754:6 36785:10 36805:11 36836:25 36837:1 36867:16 hours 36677:22 36721:2 36723:24 36763:3 house 36765:16 36805:16 36840:7 huge 36808:13 human 36683:16 36757:22 36865:17 36866:6 hundreds 36716:19 36830:9 hybrid 36849:23 hypotheses 36811:2,5 hypothesis 36718:7,11 36803:12,16 36805:22 36807:11 hypothesising 36797:4 36811:9 hypothetically 36665:19</p> <hr/> <p style="text-align: center;">I</p> <p>idea 36677:8 36679:10 36686:16 36714:24 36714:25 36715:1,11 36730:10 36746:25 ideal 36755:19 ideally 36674:15 36771:3 36866:13 identified 36688:16 identify 36666:13 36699:4 36739:5 36862:6,7 identifying 36682:1 36699:2,2 36727:20 36790:22 IEC 36764:14,22,23 36765:11,25 IFP 36765:8 ignore 36850:18 iii 36713:8 ills 36866:13 illustrate 36788:8 illustrates 36680:2 illustrative 36743:25 images 36728:24 36729:17 imagine 36665:19 imbedded 36736:14 36739:1 immanent 36696:11 immaterial 36703:16 immediate 36700:3 immediately 36818:12 imminent 36796:15 implement 36706:6 36846:19 36847:4 implementation 36846:2,4,8 implemented 36715:13</p>	<p>36741:13 36764:21 36767:3,6 36805:23 36827:20 implications 36694:16 implicitly 36670:13 36744:17 implied 36677:24,25 important 36688:19 36741:17 36750:6,7 36763:17 36770:2 36804:4 impossible 36768:23 36828:21 impression 36765:25 36808:20 36815:15 36836:19 36838:8 36839:11 improve 36773:14 improvise 36814:14,19 inadequate 36701:8 36715:22 36861:15 inadmissible 36751:16 inappropriate 36696:19 36736:1 36741:15 inasmuch 36801:18 inaudible 36663:2 36729:1 36754:15 36764:5,7 36786:15 36824:4 36848:19 incident 36740:7 incidents 36752:18 36772:5 36773:8 36832:12 36865:1 include 36663:14 36777:13 36812:10 36824:19 included 36664:19 36771:4 36824:14 includes 36824:12 including 36675:1 36694:17 36696:20 36714:3 36746:14 36861:23 36864:19 36865:25 incorrect 36703:16 36837:19 36840:20 36841:4 incorrectly 36733:22 increased 36665:8 independent 36741:24 index 36758:5 indicate 36709:4 36725:12 36838:11 indicates 36665:13 indicating 36679:21 36722:7 36778:17 indication 36724:23 indien 36817:14 individual 36694:12 36704:7 36799:12 36841:13 individuals 36668:13 36710:1 industrial 36687:25 36688:2 36732:21</p>	<p>inference 36711:25 inferences 36712:7 inflamm 36725:2 infect 36863:5 influence 36734:4 inform 36829:7 informal 36664:5,7 36674:10 36678:20 36678:24 36679:10 36692:5 36729:11 36730:11 information 36701:19 36704:5 36845:8 36846:7 36848:8 36862:9 informed 36706:21 36745:21 36752:6 36861:8 inherently 36665:2 36691:16 36714:20 initial 36700:9 initially 36741:1 initiative 36677:16 36788:22 36789:3,5 36790:4 36791:23 36792:1 initiatives 36789:1 injured 36837:17 36838:17 injury 36863:5 insist 36783:24 insofar 36708:18 insomuch 36680:18 36689:20 36728:1 36747:13 inspection 36755:6,8 36755:11 Inspectorate 36750:11 inspired 36833:7 instance 36674:24 36683:11 36687:24 36688:15 36700:12 36745:25 36766:3 36772:16 36774:2 36775:5 36776:24 36783:9 36799:9 36828:11 36845:9,12 36845:14 36846:17 36861:5 36863:14 instances 36697:10 institutions 36866:20 instruction 36681:5 36694:13 36700:10 36700:18,25 36712:20 36791:12 36791:19 36795:24 36797:15 instructions 36676:9 36694:6 36794:10,13 36812:5 36848:25 36858:24 instrument 36843:17 36866:21 instruments 36688:3 insufficient 36669:11 36846:25</p>	<p>intelligence 36669:11 36701:8 36703:22 36704:2,5,16,20,22 36704:24 36705:3,4 36713:15 36734:20 36738:20 36739:10 36742:6 36743:2,8 36773:15 36834:10 36860:15,20 36861:1 36861:4,15,20 36862:6,14 36863:12 intend 36684:5,11,25 36694:20 36770:6 intended 36664:1 36671:20 36695:2 36704:6 36813:13 intending 36666:21 36696:23 36726:12 36834:22 36835:1,6 36835:11 36836:3 36837:23 intense 36765:15 intent 36684:7 36709:13 36827:23 36828:4 intention 36671:9 36691:13 36704:6 36708:21 36767:18 36819:18 36833:21 intentions 36862:18,23 interest 36756:2 36866:14 interested 36866:1,6 interim 36763:21 internal 36772:17 international 36764:17 36843:17 internationally 36827:12 interposed 36858:21 36867:15 interpret 36738:24 36789:15 interpretation 36690:6 36722:2 36728:10,10 36730:17 36744:24 36821:24 36824:7,7 36841:17 interpreted 36663:21 36663:23 interrogating 36861:13 interrupt 36694:19 36698:17 36718:1 36736:15 36759:21 36763:8 intervene 36724:20 36845:24 intervention 36710:5 36711:3 36770:24 introduced 36700:4 invested 36861:4 investigate 36780:2 36786:23 36865:18 investigation 36700:13 invincible 36781:11 invite 36781:7</p>	<p>36793:14 36852:3 36856:24 involve 36716:19 36735:3 36746:13 involved 36670:12 36683:3 36692:3,19 36697:2 36726:14 36738:11 36805:1,2 involvement 36762:1 involves 36683:1 involving 36705:13 36734:1 inyanga 36848:25 iron 36805:16 isn't 36714:23 36726:10 36727:16 36789:15 isolate 36680:18 isolated 36680:1 36729:22 36856:13 isolation 36665:21 issue 36663:19 36670:24 36675:15 36676:16 36688:24 36691:11 36696:13 36699:21 36714:11 36720:16,22 36728:3 36728:5 36735:18 36736:20 36737:21 36751:1 36804:3 36814:3 36827:1,4 36837:21,23,25 36838:9 36841:11 36850:2 issued 36724:14 issues 36664:11 36667:16 36680:6 36714:3,8 36721:15 36726:11 36731:11 36738:1 36753:1 36776:2 36783:15 36786:22 36813:6 36837:20 36838:3,15 36838:16 I'd 36688:20 36695:1,8 36698:10 36726:6 36740:1 36752:22 36831:10 36840:18 I'll 36668:15 36686:14 36701:24 36702:18 36709:6 36716:1 36733:23 36748:18 36755:9 36771:21 36836:12 36844:24 36859:1 I've 36667:17 36671:17 36672:24 36681:17 36684:1 36691:9,20 36694:10 36695:24 36701:17 36705:12 36707:13,21 36708:14 36709:17 36711:22 36714:8 36715:18 36725:18 36725:21 36726:1 36727:16 36736:9</p>
---	--	--	--	---

<p>36742:11,11,25 36744:21 36749:5,19 36752:13,21,22 36765:6,16 36768:8 36780:13 36782:7 36798:7,9 36800:10 36831:25 36833:1,2 36833:16,24 36834:13 36835:3 36837:5 36838:16 36840:12,18 36842:11 36846:1 36850:11 36868:10 36868:10 i.e 36668:1,18 36700:11</p> <hr/> <p style="text-align: center;">J</p> <p>ja 36667:23 36670:8 36672:3 36697:17 36709:10 36766:6 36774:21 36782:13 36782:21 36783:22 36786:8 36789:22 36792:19 36796:12 36801:1 36806:6 36809:14,22 36813:20 36814:16 36815:14,20 36818:14 36820:14 36821:3 36822:15,18 36831:21 36832:8 36842:20 36857:16 36864:4 January 36772:5,11 36774:17 36775:1,12 36775:17 36832:1,2 36864:24 36865:8 jet 36778:21,23 36779:24,25 36784:16,17,18 36855:3 36856:2 jets 36779:14 36787:8 36787:10 JJJ178 36688:10 36698:14 36701:7 JJJ92 36781:23 36782:2 job 36742:16 JOC 36677:7 36704:19 36748:3 JOCCOM 36667:10,24 36668:14 36672:4,15 36673:1 36675:4 36713:9,12 36743:20 36860:24 JOCOM 36811:16,19 36811:19 36812:2,14 joined 36845:23 Judge 36765:14 judgment 36681:1 36830:23 36831:3 Judicial 36683:23 July 36864:25 36865:8 jumped 36803:6 June 36786:18 36864:25</p>	<p>junior 36847:7</p> <hr/> <p style="text-align: center;">K</p> <p>keep 36698:10 36739:15 36745:21 36768:7 36779:8 36783:4 36806:7 36859:18 kept 36793:20 key 36704:7 Kidd 36690:2,4 36843:1 Kidd's 36678:17 36679:1,8 kill 36781:12 killed 36694:17 36700:2 36701:15 36710:21,25 36711:7 36711:8 36717:21 36772:6 36781:9 36861:24 36865:2,5 36865:10,16 killing 36865:10 killings 36717:22 36718:17,19 36720:1 kind 36695:20 36732:7 36760:6 36780:8 36820:6 36828:6 36855:22 36864:22 knew 36669:12 36689:25 36725:14 knowing 36772:10 36774:2 36788:11,12 36788:12,13,14 36794:12 36799:10 knowledge 36773:7,9 36780:8 36811:23 36814:22 known 36765:23 36778:9 36782:11 36799:8 36843:25 knows 36705:9 36751:22 kop 36700:24 koppie 36664:23 36665:21 36666:19 36667:1,5,12 36668:5 36669:1,19,22,25 36670:7,24 36671:2,4 36671:7,9,11,12,19 36671:19 36672:1 36673:3,5 36674:4 36678:22,24 36679:11,14 36696:15 36701:10 36701:15 36702:1,14 36702:15 36704:9 36708:12,18,19 36709:1,25 36717:11 36721:17 36722:19 36723:8 36725:8,15 36725:16 36731:4 36778:14 36813:19 36813:23 36817:23 36834:11,19 36841:7 36843:1,2,7 36849:22</p>	<p>36851:2 36855:18 36856:6,12 36857:15 36857:22,24,25 36858:3,9 36861:6 36863:4,10,14,23 koppies 36711:3 36860:11 36861:8 kraal 36674:10 36730:6,9,14,22 36744:1,12 36781:13 36782:9 36783:14 36784:9 36791:11,13 36792:12,21,25 36793:6 36795:4,13 36796:6 36800:21,22 36806:21 36808:14 36813:13,18 36814:7 36814:8 36856:3,4,5 36856:6,6 Kriegler 36764:18 36765:14 Kuhn 36797:18</p> <hr/> <p style="text-align: center;">L</p> <p>L 36711:2,21 36772:3 36831:9,11 36865:4 labour 36688:3 36770:19 lack 36705:3 36747:19 language 36750:18 languages 36802:21 lapse 36852:6 laptop 36685:20 large 36716:21 36801:11 36850:5 36854:14 largely 36684:21 36726:7 36740:9 larger 36680:6 36849:24 lasted 36714:3 36716:24 lastly 36773:17 late 36686:24 36687:20 36791:19 36861:24 latest 36685:3 launch 36693:22 36817:22 launched 36708:10 36860:25 law 36700:17 36750:9 lay 36679:3 36810:23 36820:3 36860:22 36861:1,3 laying 36820:10 Le 36670:4 36683:20 36684:4,11,15,24 36685:7 36686:7 36698:2,10 36707:6 36753:9,13,16 lead 36685:23 36738:3 36783:12 36867:12 leaders 36748:10 leadership 36750:3 36829:21 leading 36727:1</p>	<p>36787:3 36802:3 leads 36720:22 learn 36700:6 36760:25 36863:13 learned 36683:21 36686:7 36757:11 36850:19 learning 36745:18 36750:12 36752:1 leave 36667:1 36709:22 36719:7 36731:23 36735:14 36760:12 36809:9 leaves 36709:20 leaving 36667:5 36671:5 36723:8 led 36760:20,23,23 36784:20 left 36671:4 36674:12 36679:21 36704:8 36730:13 36731:4 36752:9 36766:11 36777:6,6 36779:13 36805:14 36820:19 36847:18 36856:14 36860:4 left-hand 36796:6 36814:8 legal 36677:19,20 36685:10 36727:14 36769:6 36787:3 36788:1 36865:25 legislation 36769:6 legitimate 36719:24 length 36703:25 36704:14 36746:12 36752:11 lengthy 36706:17 lessons 36700:6 lethal 36665:10 36695:17 36737:4 36740:12 36801:19 36808:8 letters 36758:2 let's 36667:25 36669:9 36670:11 36673:3 36684:14 36685:11 36686:12 36702:25 36703:9 36712:2 36740:13 36745:24 36760:6 36779:2 36794:19 36804:15 36809:15 36843:11 Let's 36820:22 36826:15 level 36665:8 36743:1,1 36743:8 36762:17 36765:25 36769:6 36774:21 levels 36665:7 36765:19 36771:15 Lieutenant 36812:3,6 Lieutenant-Colonel 36668:21 36714:4 36725:24 36802:19 life 36698:16 36732:24</p>	<p>36738:22 36765:15 36823:23 light 36802:17 36805:20 36806:10 36821:18 36835:2 liked 36766:15 limitation 36862:1 limitations 36845:23 limited 36695:18 36703:19 36705:4 36752:18 36773:18 limiting 36861:19 limits 36845:23 line 36673:23 36674:6 36674:15 36675:5,6,7 36677:6 36678:7,8,12 36678:19,23 36679:2 36679:12 36696:24 36697:15,18 36734:14 36735:18 36736:20 36739:2 36740:19 36741:2 36742:13,15 36743:11,24 36744:8 36744:11,16 36768:19 36784:6,15 36796:11,14,15 36800:8 36817:1,9 36818:13 36821:22 36822:23 36823:6 36829:1,1 36842:25 36843:2,5 36856:19 36856:25 36857:4,14 36857:20,24 36858:2 36858:10 lined 36714:12 36744:14 lines 36677:13 36735:12 36747:25 line-up 36717:10 lining 36735:3 link 36807:14 Linked 36737:6 listen 36686:18 36723:3 listening 36709:9 literally 36680:24 little 36688:11 36713:8 36737:7,12,18 36770:5 36851:16 live 36696:10 36727:1 lives 36686:25 36727:4 36747:22 LLL12 36756:17 36760:20 Located 36810:20 loco 36755:6,9,11 logical 36729:18 logically 36673:15 long 36688:15 36689:11 36704:6 36715:21 36716:22 36716:23 36721:12 36721:23 36722:15 36730:22 36757:15 36775:13,24</p>
---	---	---	---	---

<p>longer 36794:4 36796:15</p> <p>Lonmin 36669:12 36708:11,19,25 36709:5,25 36710:5 36711:16 36721:16 36722:8,19 36732:20 36733:11 36831:14 36831:15 36832:15 36836:18 36860:3</p> <p>Lonmin's 36708:21 36710:8</p> <p>look 36663:13 36674:13 36677:8 36682:23 36684:16 36688:6 36690:8,9 36691:10,23 36692:21 36697:8 36701:7 36714:19 36724:21 36726:4 36728:25 36729:5,17 36733:11 36748:5 36750:1 36771:2 36773:16 36777:20 36778:13,14 36783:15,15 36792:24 36793:14 36794:19 36796:5 36814:9,24 36823:19 36828:22,23 36844:22 36858:24</p> <p>looked 36663:15 36664:3 36677:13 36709:3 36717:9 36750:11 36831:4</p> <p>looking 36694:16 36724:19 36742:2 36745:17 36789:13 36794:14 36823:7 36841:17 36852:22</p> <p>looks 36755:19,20 36778:17</p> <p>loss 36732:24</p> <p>lost 36698:24 36743:6 36840:17,21</p> <p>lot 36683:2 36689:21 36731:2 36765:9,17 36767:8,16 36776:6 36776:25 36788:4 36811:4 36813:5,5 36826:19 36827:19 36842:17 36845:8 36851:3 36854:15,15 36861:2,4 36865:12</p> <p>lots 36674:11,11 36675:19 36678:5 36692:1 36730:20 36731:4 36733:16 36743:9 36746:13 36752:17</p> <p>loudhailer 36747:9 36841:13</p> <p>lovely 36761:24</p> <p>lower 36740:2</p> <p>Lowlands 36838:24</p> <p>LRC 36788:2</p>	<p>luckily 36765:14</p> <p>lunch 36781:1,3,4,5 36785:1,4,10 36787:6 36795:20 36796:1 36798:1 36803:24 36805:11 36807:24</p> <p>L-shape 36729:14 36730:24</p> <hr/> <p style="text-align: center;">M</p> <hr/> <p>magic 36664:14</p> <p>main 36676:22 36726:13 36738:1 36761:7 36766:20,21 36803:4</p> <p>maintain 36704:7 36721:10 36722:14 36830:4</p> <p>maintained 36721:23 36721:24 36722:21</p> <p>Majesty's 36750:11</p> <p>majority 36668:5 36671:3 36704:8 36801:11 36863:13</p> <p>Major-General 36723:13</p> <p>Makhubela 36790:14</p> <p>making 36679:7 36688:22 36711:14 36715:17,23 36716:10,13,15 36719:6 36723:18 36735:6,17 36750:2 36773:2 36789:13 36800:24 36815:24 36819:2,13 36820:17 36822:6 36827:15 36838:15 36843:18 36866:12</p> <p>man 36816:24</p> <p>manage 36743:13 36771:20</p> <p>managed 36762:17 36770:10</p> <p>management 36706:24 36762:2</p> <p>managing 36745:20</p> <p>mandate 36786:25</p> <p>manifest 36812:14</p> <p>manifestly 36701:1</p> <p>manner 36810:17</p> <p>map 36716:7</p> <p>marching 36800:19</p> <p>Marikana 36673:25 36742:2 36769:21 36771:2 36772:1 36776:15 36777:4 36779:23 36780:10 36831:23 36832:4,5 36832:12,13 36854:23 36864:9,13 36864:18 36865:6 36867:5</p> <p>mark 36745:1</p> <p>marked 36760:7</p> <p>marks 36794:21</p>	<p>Martinus 36754:13,24 36785:25 36839:2</p> <p>mass 36825:10</p> <p>material 36684:19,21 36782:15 36789:14 36825:10 36844:16 36850:25</p> <p>Mathunjwa 36709:8 36723:2 36861:3 36863:18</p> <p>matter 36668:6 36673:19 36718:17 36726:17 36727:13 36731:24 36736:2 36746:23 36751:16 36751:17 36753:2 36754:19 36755:22 36755:24 36764:21 36824:22 36838:4,5 36839:15,16,22 36848:24</p> <p>matters 36670:19 36769:9,10 36776:13 36837:14</p> <p>maximum 36737:4 36768:24</p> <p>Ma'am 36739:16</p> <p>Mbombo 36700:23 36706:23</p> <p>McIntosh 36723:19 36724:2,15</p> <p>mean 36676:7 36677:19 36694:18 36695:16 36696:12 36696:20 36697:4 36701:4 36705:23 36716:9,14 36722:15 36726:10 36732:9 36740:2 36747:25 36749:9 36751:4 36752:15 36764:24 36770:7 36772:2 36777:6 36784:20 36789:11 36803:19 36806:2 36807:13,14 36807:15,19 36808:16 36813:5 36816:2 36818:15 36828:22 36832:1 36842:10 36843:25 36847:13 36849:14 36852:13 36857:9 36866:23</p> <p>meaning 36664:2</p> <p>means 36681:5 36682:17,17,18 36697:7 36727:16 36768:23 36772:15 36839:15 36853:24</p> <p>meant 36855:10</p> <p>measure 36668:2 36788:16 36817:11 36823:11,25 36824:12 36826:7</p> <p>measures 36663:8,11 36663:12 36675:1</p>	<p>36687:1 36727:25 36769:20 36771:3 36772:12 36781:16 36784:8,22,23 36825:23 36826:2</p> <p>mechanism 36666:18 36667:4 36669:3,5 36674:14,18,22</p> <p>media 36731:17 36744:6</p> <p>meet 36668:14,15 36806:11 36812:4</p> <p>meeting 36667:10 36675:4 36677:7 36713:9,17,17,19 36714:2,14,15,15 36715:2,19 36716:16 36716:22,24 36738:5 36738:6 36811:15,16 36811:19,20 36812:2 36812:14</p> <p>meetings 36713:13 36732:18</p> <p>member 36681:3 36791:24</p> <p>members 36700:1 36704:7 36735:20 36772:19 36774:4 36775:8,9 36776:8,15 36776:21 36777:3,3,4 36777:13 36779:12 36783:1 36793:11,23 36794:3 36800:11 36803:15 36807:12 36809:21 36827:18 36842:18 36843:3,3,6 36845:12,13,17 36846:16</p> <p>memory 36694:9 36777:22</p> <p>mentioned 36673:6 36783:9 36800:10</p> <p>mentions 36845:11</p> <p>Merafe 36694:18 36696:20 36843:21 36844:1,20 36864:3 36847:7</p> <p>mercies 36758:8</p> <p>merely 36731:1</p> <p>merits 36859:9</p> <p>message 36852:22</p> <p>messages 36867:5</p> <p>met 36708:18</p> <p>method 36853:16 36856:20</p> <p>metres 36689:10 36778:24 36791:25 36794:1</p> <p>microphone 36663:2 36729:1 36754:15,16 36786:15 36817:17</p> <p>middle 36679:22 36706:4 36717:14 36749:21</p> <p>might've 36820:1</p>	<p>militant 36665:14,15 36665:15 36725:13 36726:13 36731:3 36850:9</p> <p>militarisation 36756:23 36758:18 36759:1 36774:11</p> <p>militarising 36774:12</p> <p>military 36748:23 36749:3 36774:12 36775:1 36843:13</p> <p>mind 36676:21 36713:25 36715:11 36715:16 36716:11 36759:13 36808:1 36815:22 36822:16 36840:8 36858:14</p> <p>minds 36667:25 36838:4,9 36839:22</p> <p>miners 36811:17 36812:11 36831:17</p> <p>minimise 36739:18</p> <p>minimum 36668:19 36747:3 36749:15,19 36749:25 36752:24</p> <p>miniscule 36841:14</p> <p>Minister 36688:1 36775:17</p> <p>minority 36668:8</p> <p>minute 36738:6 36766:14 36782:4 36793:7</p> <p>minutes 36713:9,13 36714:3,15 36715:4 36715:19,20 36716:24 36760:12 36761:5 36781:3 36793:2,7 36819:10 36819:11,12 36867:21 36868:2,9</p> <p>misinterpret 36751:4</p> <p>misinterpretation 36745:22</p> <p>misinterpreted 36751:6</p> <p>misquoted 36734:9</p> <p>missed 36780:5 36868:3,16</p> <p>missing 36663:7,11,19 36664:14 36666:16 36666:17 36845:7,9</p> <p>mission 36845:15,20 36846:7,11,18,20 36847:1,3,4,4</p> <p>mistake 36719:6 36830:18</p> <p>mistaken 36829:9 36833:11 36854:20</p> <p>mistakenly 36671:18</p> <p>misunderstood 36805:11</p> <p>mixing 36800:17,17</p> <p>mnr 36817:13</p> <p>mobile 36690:18</p> <p>model 36763:2,4,19 36816:4</p>
--	--	--	---	---

<p>modern 36779:23 modus 36701:22 moment 36670:14,20 36754:20 36765:4,10 36765:19 36766:7 36774:6 36782:8 36783:23 36784:1 36787:18 36800:23 36814:11 36818:4 36820:21 36833:18 36834:7 36835:24 36841:19 moments 36686:2 36781:13 Monday 36675:4,10 36755:6,9,22 monitor 36765:4 monitoring 36764:15 36764:16,16,17 36765:2,13 monitors 36765:11,11 monolithic 36829:10 monolithical 36850:14 months 36699:20 morning 36663:4 36668:22 36669:2 36673:3 36677:10 36678:9 36679:16 36715:2,9 36722:4 36741:11 36748:9 36786:17 36804:11 36819:19,25 36821:16 36825:3 36841:1 36847:17,20 36856:22 36857:14 36858:9 36863:1,16 36868:20 motivation 36767:13 36769:23 mouth 36733:19 move 36679:20 36687:9,13 36707:9 36713:19 36725:1 36727:19 36729:21 36729:24 36730:2 36770:17 36781:1,13 36791:10 36793:5 36810:12 36817:21 36819:8,12 36820:17 36823:17 36840:23 36841:18 moved 36679:11 36690:13 36729:9 36730:3 36734:14 36744:3 36792:11 36793:25 movement 36807:18 moving 36679:21 36680:12 36720:21 36730:19,20,21 36743:18,24 36744:3 36776:14 36792:20 36805:14 36816:6 36818:12 36819:3,5 36820:18 Mpembe 36675:5,10</p>	<p>36676:3,20 36677:3 36690:23 36691:20 36691:21 36692:4 36693:4 36696:16 36723:13 36732:18 36732:19 36733:24 36734:7 Mpembe's 36676:9 36677:23 36694:6 36698:16 Mpofu 36670:8,15,21 36695:1 36702:4,8,10 36702:13,19,23 36703:1,7,11,19 36711:18,23 36712:2 36712:9 36717:24 36718:1,3,6,22,24 36719:1,4,15 36754:19 36755:3,5 36755:12,13,15,18,25 36756:3,6,9,13 Mthinkulu 36790:24 multiple 36705:8 36846:25 36864:19 multitude 36686:1 murders 36723:22 mustn't 36795:21 muti 36781:10 36849:1</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>Naidoo 36689:25 36843:1,10 name 36789:23,25 names 36780:13 Nankeng 36783:18,20 national 36706:24 36762:5 36764:16 36865:7,8 nature 36690:24 36691:18 36722:16 36734:7 36740:5 36861:20 near 36782:9 nearly 36741:23 necessarily 36663:11 36664:15 36665:16 36738:22 36741:21 36866:14 necessary 36691:24 36696:9 36719:25 36735:22 36737:5,9 36747:5 36753:21 36826:8,10 36867:3 necessity 36665:25 36737:6 36741:4 nee 36817:13 need 36680:18 36682:11 36683:5 36685:18 36688:21 36688:23,24 36689:1 36689:22 36692:13 36697:5 36706:6 36707:2 36717:15 36718:4 36720:12 36727:7,24 36728:6 36732:20 36782:16</p>	<p>36782:17 36823:3 36828:9 36842:17,17 36854:15,15 needed 36678:4,5 36691:25 36764:11 36826:6 needs 36683:4 36688:23 36720:22 36783:16 36808:5 negative 36682:1 36688:17 36727:6,8 36727:20 36728:3,8 36728:13,16 negotiate 36691:22 36733:10 36734:5 negotiation 36721:1,18 36722:16 36733:13 negotiations 36722:6 36722:13 36723:14 36723:15,19,22 36724:1 36823:23 neither 36812:13 36836:2 36854:4 Netherlands 36838:24 network 36701:20 neutral 36731:16 neutrality 36867:3 never 36666:21 36670:9 36677:22 36693:11 36697:20 36698:4 36702:15 36707:21 36749:23 36759:13 36813:25 36822:16 36831:22 36832:18 36840:12 36856:10 new 36684:5 36685:1 36757:18 36763:24 36765:23 36766:4,10 36766:12,12,12 36775:9 NGCUKAITOBI 36790:21 36791:1 36847:12,21 NGOs 36866:1,6 Nichol 36675:22,22 night 36860:11 36861:7 36863:14 nine 36700:23 36793:2 NIU 36683:9 36842:13 36843:3 Nkaneng 36727:2 36783:21,22 36784:5 36784:10 36797:24 36799:1 36834:21,21 36835:1,7 36838:2 nodding 36786:10 Noki 36724:14 36726:25 36727:3 36747:9 36748:10 36781:11 36783:13 36783:18,23 36784:20 36798:8,23 36818:23 36821:6 36822:5 36825:3 36829:20 36841:1,6</p>	<p>Noki's 36788:15 non 36751:22 36752:7 36846:1,3 non-existent 36670:9 non-lethal 36693:23 36694:23 noon 36820:4 normally 36680:19 36695:25 north 36775:18,19 36857:10 notable 36723:25 note 36720:3 noted 36685:3 notes 36755:9 36756:22 36758:15,18 36759:1 36760:16 36867:24 36868:13 notice 36685:1 36787:2 notwithstanding 36827:25 nou 36817:14 number 36664:11 36666:24 36671:5,6 36671:10 36673:10 36673:17 36675:11 36675:12 36676:5,6 36677:4,14 36683:3 36684:14 36690:5 36694:17 36704:17 36704:18 36711:16 36723:7,8,21 36725:6 36733:15 36740:1 36750:11 36757:24 36758:6 36772:20 36773:16 36774:9,24 36788:7 36798:8 36799:13 36801:23 36822:17 36842:13 36845:12,12 36846:15 36847:2 36865:3 numbers 36683:2 36730:19 36738:11 36742:10 36748:22 36757:9 36773:3 36775:22 36791:20 36846:16 numerous 36764:7 36765:6 Nyala 36729:9,21 36730:3,8,8,13,19,20 36730:22 36731:12 36731:13,14 36740:18,22 36741:6 36782:17 36783:10 36784:3,4 36787:11 36788:22 36789:3 36790:1,2,5,15 36791:10,12,24,25 36792:2,8,10,10,20 36792:23 36793:1,2,5 36793:9,24 36794:1,2 36794:6,8,10,12,16 36794:21 36795:5 36796:3,4,23 36797:3</p>	<p>36797:18 36798:9 36799:2,13 Nyalas 36717:10,10 36740:23 36790:15 36794:3,21 36798:20 36803:6 36806:4 36809:17,21 36828:12 Nyala4 36800:19 Nyala5 36801:6 36803:14 36806:20 36808:12 Nyala6 36800:5 Nzuza 36829:24 36836:19 N5 36795:3</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 36719:18 36754:15,17 objecting 36738:7 objection 36667:17,19 36667:24 36672:14 36673:1,2 36695:8 36698:9 36850:24 objections 36714:10 objective 36843:8 36851:10,12 observation 36698:13 36698:15 36841:3 observations 36788:4 observe 36708:1 36788:12 36794:14 36798:18 36800:23 36848:20 36849:3 36861:7 observed 36783:12 36788:10 36794:9,11 observing 36797:14 obtain 36769:19 36775:2 obtained 36779:13 36862:24 obtuse 36708:11 obviate 36703:14 obviously 36670:5 36676:15 36686:12 36688:25 36700:4 36715:19 36735:25 36744:21 36746:17 36753:1 36785:12 36794:22 36795:1 36804:8 36819:7 36820:10 36825:9,11 36837:9 36858:25 36867:2 occasion 36696:7 36742:25 occasioned 36717:22 occasions 36764:4,5 36765:6 36839:14 occupied 36828:10 occur 36701:4 36773:21 occurred 36691:6 occurrence 36711:10</p>
---	--	--	---	--

<p>36750:24 OCT 36777:21 36845:17 offensive 36696:7 36706:6 36745:7 36748:22 36749:2 36823:16 offer 36752:25 offered 36777:13 officer 36681:9 36688:6 36696:16 36697:12 36700:18 36752:17 36788:25 36844:2 officers 36665:24 36671:24 36675:11 36675:19 36676:6 36677:4,15 36678:4 36680:10 36681:19 36682:16 36683:2 36692:2,9,18 36694:12,15,18 36696:6,10,20 36700:1,10 36714:12 36716:19 36726:2 36731:17 36734:3 36735:16,18 36736:12,13,19 36738:7,12 36739:2,9 36739:11,22 36740:19 36742:15 36742:16 36743:11 36743:14 36744:9 36750:5 36751:5 36767:5 36768:21,25 36772:21 36773:4,16 36788:25 36828:19 36850:19 36851:13 36864:20 officer's 36735:15 official 36802:20 oh 36749:7 36782:5 okay 36670:21 36672:25 36690:21 36699:7,11 36701:24 36708:9 36709:6 36711:12 36717:13 36723:12 36724:11 36742:7 36763:13 36777:8,11 36781:6 36782:9 36783:22 36786:12 36796:21 36797:12,22 36800:18 36801:4 36804:14 36805:21 36806:15 36809:19 36815:1 36817:4 36820:23 36823:18 36825:20 36828:14 36829:6 36831:7,13 36832:8,16 36833:3 36835:18 36843:10 36847:11 36849:21 36852:10 36857:16 36868:15 once 36686:23 36730:3</p>	<p>36732:6 36735:24 36744:3 36801:9 36816:5 36819:4,10 36823:13,16 ones 36746:18 36779:20,20,22,24 36850:9 ongoing 36750:8,15 36772:4 36856:16 ons 36817:14,14 open 36680:8,20 36721:13 36746:6 36752:14 36776:10 36855:11 opened 36805:7 opening 36730:6 36805:5 openings 36806:3 operandi 36701:22 operate 36716:12 36788:18 36799:8,8 operated 36833:11 operating 36681:16,21 36705:25 36817:10 operation 36663:5 36665:3,24 36668:9 36678:1 36683:1,1 36689:18 36690:1 36691:17 36700:2 36704:11,13,17,25 36705:6,9,15 36707:9 36708:10 36710:16 36716:18 36720:5 36721:3 36734:8 36738:2 36741:20 36742:3 36767:2,7 36783:5 36788:4 36804:14 36813:2 36817:22 36827:18 36828:13 36842:7,17 36842:23 36845:1 36846:22 36849:25 36853:2,5 36856:16 36857:17,18 36859:12,15,20 36860:8,19,25 36862:20 36863:12 36863:14 36864:5,12 operational 36731:21 36744:19 36763:5 36764:22 36773:20 36777:23 36783:3,4 36783:15 36815:25 36816:1 36845:9,14 36845:19,22 36846:8 36846:15,19 36847:2 operationally 36712:25 36713:2,5 operations 36746:13 36749:16 36752:19 36762:6,6,9,10,18,20 36762:25,25 36768:20 36776:24 36777:13 36778:5 36788:24 36832:18 36833:4 36848:11</p>	<p>36851:24 36854:25 operator 36781:24 36782:1 36823:4 operators 36747:21,21 36748:1 opined 36685:24 opinion 36664:25 36671:15 36687:8 36705:21 36707:24 36708:1,4,8 36720:10 36720:12,13 36744:24 36751:15 36751:20,20,25 36752:2,6,6 36771:9 36774:14 36777:2 36781:8 36784:5,17 36784:21 36829:7 36834:2 36835:22,22 36842:8,12 36854:18 36860:21 opinions 36752:25 36776:21 opportunities 36704:22 opportunity 36684:8 36684:16 36722:6 36756:8 36761:3,6 36766:25 36792:25 36794:4 36798:22 36836:17 36852:6 opposed 36680:21 36682:7 36744:18 36747:13 36752:7 opposing 36743:4,7 opposite 36678:19 36717:25 36718:9,13 36834:23 option 36668:22 36706:7 36715:12 36737:24 36741:10 36743:5 36801:1,1,5 options 36694:24 36721:9 36740:12 36807:25 36808:2,8 36814:24,25 oral 36696:21 36724:18 36726:1 36779:5 order 36663:6,8,13 36685:24 36686:25 36694:13,15 36696:10 36700:5,6 36728:24 36731:16 36733:1 36734:4 36736:14 36738:13 36738:18 36739:1,11 36741:20 36742:4,13 36742:17,19 36745:5 36745:10,17,18 36749:16 36750:3 36762:7,10,21 36766:6,6 36770:1 36771:18 36772:20 36772:23 36773:4,16 36774:3,15 36775:8 36775:11,20 36776:4 36784:22 36785:8 36792:9 36799:2</p>	<p>36800:2 36816:4 36823:9,19 36824:11 36842:16,18 36845:5 36845:14 36848:11 ordered 36784:3 36790:1,2 36791:10 36792:9,11 orders 36667:19 36845:19 ordinarily 36704:10 36727:12 36739:3 organisation 36667:18 36704:19 36774:18 36841:22 organised 36762:22 36807:20 36829:17 organising 36763:24 36844:9,11,15 36857:23 original 36663:24 36664:3 36728:25 36729:5 36731:13 36732:2 36804:14 36805:1 originally 36850:13 Orlando 36764:10 ought 36663:8 36687:12 36721:23 36770:7 36773:12,24 36775:4 36862:1 outcome 36673:15 36820:12 outfit 36854:22 36855:9 outline 36716:4,25 outlined 36766:19 36835:3 outrage 36864:20 outset 36744:9 36846:21 outside 36675:25 36692:7 overall 36847:1 overlooked 36686:22 overnight 36847:19,19 36868:1 overstepping 36745:1 overview 36783:4,6 o'clock 36868:20 o'clock 36821:6 36825:3</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>page 36686:6 36688:11 36690:22 36691:3 36692:22 36698:13 36698:19,21,25 36699:11,24 36701:6 36704:3 36705:23 36706:3 36707:8 36712:12 36713:7,8 36717:3,4,14 36721:8 36721:9 36723:12 36724:5 36725:7,10 36726:23 36728:19 36729:25 36734:12</p>	<p>36736:16 36749:9,10 36750:21 36781:23 36791:10 36816:17 36817:1,8 36821:21 36822:17,21,25 36823:6 pages 36692:16 36728:23 36759:7,14 36759:21 36760:4 36822:21 pan 36860:6 panga 36764:12,13 pangas 36781:10 Papa1 36782:11 36783:2,8 36788:9,12 36795:14 36800:5 36801:8 Papa18 36795:14 Papa19 36800:4 36801:8 Papa2 36800:4 Papa4 36800:4 Papa5 36800:4 Papa7 36800:4 Papa9 36800:4 paper 36753:14,15 paragraph 36686:6,21 36690:22 36692:22 36693:14 36698:14 36698:18,20 36705:23,24 36706:4 36706:4 36707:12,14 36712:13 36717:3,14 36724:4,21 36725:7 36725:10,23,25 36726:7,21,23 36728:19 36734:13 36737:19 36749:9,10 36749:22 36750:2 36793:16 paragraphs 36763:11 parallel 36793:6 36796:10 36798:8 36800:8 parked 36740:18 parliament 36762:13 part 36679:9,14 36680:16 36689:19 36706:13 36709:5 36724:24 36733:12 36740:9 36759:25 36760:5 36766:4 36777:16,18 36781:19 36803:4 36807:11 36812:22 36815:7 36823:5 36829:12 36837:21 36844:16,21 36846:14 36849:2 36851:5 partially 36842:9 36864:24 participating 36765:9 36845:20 participation 36770:7 particular 36663:14,19</p>
--	--	--	--	---

<p>36664:13,18 36671:15 36689:9,13 36689:14 36695:12 36696:9 36697:1 36699:14 36706:13 36728:4 36742:16 36743:3 36757:17 36760:4 36771:19 36845:1 36846:18 36856:10 particularly 36680:14 36752:12 36763:17 parties 36824:4 36838:14 parts 36839:19,20 pass 36809:10 passage 36690:12 36703:13 36768:18 36802:17 36804:22 passages 36850:11 passing 36798:8 patently 36700:19,25 path 36783:12 36861:19 patrol 36776:24 Paulus 36790:24 pay 36767:13 Peace 36763:22,23 36764:6,7 peaceful 36759:6,21 peacefully 36669:4 perceive 36735:5 perceived 36729:21 36751:11 perfect 36674:24 36738:24 perform 36679:4 period 36721:2,3 36722:15 36723:24 36760:11 36765:1,15 36774:6,7 36775:25 36850:21 36860:1 permeated 36675:6 permit 36867:9 permitted 36760:10 persist 36830:5 person 36674:20 36715:7 36739:3 36762:24 36788:21 36790:12,22 36791:7 36791:9,15 36793:19 36793:20 36866:19 personal 36750:14 personally 36859:13 personnel 36741:23 36788:21 36832:5 persons 36808:13 36837:17 36838:17 perspective 36784:21 36792:24 pertained 36695:4 perused 36766:24 Peter 36764:15 phase 36757:24 phones 36701:11 photograph 36794:20</p>	<p>36805:15 photographic 36787:16 36793:4 36798:7 36833:17 photos 36787:17 phrase 36681:18 36749:14 36799:22 36828:22 picks 36711:10 picture 36794:20 36796:6 36814:9 pictures 36778:14 36790:8 36833:24 pie 36700:24 pieces 36704:20 pill 36664:14 Pillay 36685:13 36757:6,20,22 36758:4,9 36759:20 36759:25 36760:4 pistol 36793:19 place 36678:1 36711:15 36714:14 36721:18 36727:25 36731:24 36747:6 36755:10 36814:3,12 36818:13 36823:25 36825:24 36826:3 36827:2 36857:24 36868:11 placed 36691:4 36734:19,20 36735:16 36741:23 places 36685:7 36755:8 36864:25,25 plane 36856:5 planned 36663:6 36669:21 36679:25 36691:3 36729:6 36743:23,23 36746:17 36812:21 36813:4 36814:1 36828:13 planner 36713:18 36725:24 planning 36668:21 36670:23 36675:15 36688:12 36691:6,10 36706:19 36733:8 36738:5,16 36742:7 36744:13,13 36746:13 36752:23 36768:21 36828:22 36829:3 36844:25 36862:16,18 plans 36725:12 36726:14 36768:22 36814:2 36828:20 plant 36728:5 platinum 36772:4 36865:1 platoon 36777:21,24 36845:18 plausible 36787:13 play 36771:13 plea 36709:8 plead 36780:18</p>	<p>please 36681:7 36719:3 36720:7,12 36745:5 36754:14,23 36760:18 36782:5 36791:6,8 36797:2 36812:24 36823:20 36836:25 36868:9 please4 36857:3 PO 36768:20 pointed 36678:2 36696:2 36749:4 36755:8,11 pointing 36793:18 points 36674:9,13 36678:6 36680:2,8 36682:1 36687:19 36688:17,17,19 36727:21 36728:4 36741:18 36760:24 36761:7,15 36763:17 36779:7 36827:16 36838:7 36839:17 36840:17 36851:22 point's 36685:2 policeman 36854:15 policemen 36767:16,16 36772:24 36776:3 36796:23 36801:8 36804:12 36807:21 36808:11 36816:3 36826:20 36827:10 36828:9,11 36842:14 36850:4 36854:19 36859:19 36865:5,10 36865:11 policing 36663:8 36685:24 36693:9 36745:10 36762:7,21 36766:6 36768:19,20 36770:1 36772:21 36773:4,16 36774:4 36774:15 36775:11 36775:20 36776:5 36784:23 36816:4 36842:16,18 36843:17 36865:15 36867:3 politically 36770:23 POP 36668:9 36680:10 36680:15 36681:3,8 36681:14,19 36682:10 36683:7 36688:14 36693:24 36695:18 36706:1 36743:24 36744:9,15 36774:24 36775:3,9 36776:14 36777:3,13 36779:12 36781:16 36783:1 36788:16,21 36791:23 36801:18 36802:22 36803:2,5,6 36803:25 36807:4 36808:11 36809:21 36813:16,21 36827:18 36843:6 36845:12 36846:15</p>	<p>36852:13,17 POPs 36714:12 36742:13 36774:10 36775:8 36776:8 36777:3 36789:3,4 36793:11 36795:12 36796:23 36802:8 36803:15,15 36807:12 36808:13 36844:2,4,5 36845:17 36846:6 port 36687:25 portrait 36806:22 position 36672:17 36676:8 36681:2 36697:24 36708:11 36709:4 36722:8,14 36724:3 36730:5 36744:22,22 36751:25 36752:3 36755:9 36761:1 36768:7,7 36777:7 36782:11,17,18 36783:1,5,8,9 36784:3,12,19 36787:11 36792:11 36792:23 36794:17 36798:18 36800:23 36834:11,13 36855:16 positioned 36784:13 positive 36682:1 36688:16 36726:24 36727:6,11,15,20,22 36728:1,3,7,8 possession 36717:20 36793:10 36834:19 possibilities 36791:22 36798:22 36808:7,22 36809:13 36826:18 36853:24 36862:5 possibility 36673:12,14 36722:7 36743:18 36791:17 36793:8 36808:18,18 36809:8 36809:8 36811:14,15 36814:20 36853:19 36853:20 36859:7,8 36859:24 possible 36687:1,3,5 36717:21 36721:16 36731:7 36737:7,12 36737:18 36753:22 36764:1 36765:20 36769:4 36772:14 36774:19,19 36789:17 36799:12 36803:2 36805:17 36814:25 36820:10 36841:22 36846:3 36849:4 36860:8 36863:12,15 36864:14 possibly 36696:25 36741:4 36765:20 36771:10 36784:13</p>	<p>36825:17 36835:5 36849:18 postulate 36673:23 36781:7 potential 36665:9 36666:7 36671:8 36719:25 36720:19 36733:12 potentially 36665:23 36666:8 36672:18 36673:13,17 36674:21 36675:1 36677:8 36694:12 36696:22 36721:17 36721:20 36722:2 36725:3 36730:25 36733:25 36735:4,24 36738:18,22 36742:9 36742:22 36743:6 36744:25 practical 36773:24 36846:12 practice 36742:17 36745:20 36761:22 36761:24 36769:7 practices 36761:20 practise 36749:14,23 36749:25 pragmatic 36691:19,23 precaution 36686:23 preceding 36723:22 precious 36754:8 36785:6 precision 36741:16 prefer 36758:13 preferred 36677:1 36859:11,13 prejudging 36838:15 premise 36708:13 36776:14 36788:19 preparation 36768:21 36772:25 36776:3 prepare 36715:2 36771:14 36772:13 36778:7 36814:25 36859:16 prepared 36718:9 36722:23 36754:15 36760:19 36779:5 36835:20 36858:22 preparing 36762:10,18 presence 36723:9 36827:5 present 36667:5 36668:2 36710:5 36714:5 36743:19 36765:16,17 36767:17 36788:19 36789:11 36826:19 36837:7 36839:13 36845:13 36846:16 36859:19 presented 36705:10 36768:3 36863:3 president 36860:4 pressure 36692:11</p>
---	--	---	--	--

<p>36732:20 36819:23 presumably 36730:13 36732:4 36808:23 presume 36816:24 Pretorius 36812:4 pretty 36677:11 prevent 36671:11 36674:16 36771:15 36772:12 36783:17 36784:9 36789:1 preventative 36773:11 36784:8,22 prevented 36796:14 36820:9 preventing 36807:15 prevention 36686:23 36770:2,7,12,21 36771:12 Prevention/Precaution 36686:21 preventive 36771:3 previous 36671:4 36682:14 36728:23 36748:6 36750:23 36773:8 36833:9 36864:1 previously 36768:5 36786:19 pre-emptive 36802:15 pre-planned 36813:2 prima 36804:2 primarily 36706:5 primary 36708:17 principal 36771:19 principally 36725:23 principle 36747:3 36854:12,14 36862:19 36866:9 principles 36745:11 36752:24 36767:4 36778:3 prior 36723:7 36745:7 36773:25 36847:23 36848:4 priority 36823:25 private 36735:15 probabilities 36841:14 probability 36811:14 probable 36768:22 36828:20,25 36829:3 36829:4 probably 36681:19 36723:14 36754:5 36773:17 36800:17 36843:14 36849:7 problem 36672:6,12 36684:22 36717:18 36735:9 36803:20,21 36829:11 36850:15 36859:4 36865:13 36866:21,23 36868:13 problems 36687:13 36774:14,15 36775:23 36783:16 36798:12</p>	<p>procedure 36681:16,21 36713:14 36817:10 36823:24 procedures 36668:9 36706:1 proceed 36670:14 36685:12 36719:14 36760:18 36851:18 proceeded 36792:11 proceeding 36696:15 proceedings 36663:1 36756:2 process 36668:21 36677:1 36706:19 36738:5 36753:17 36758:5 36759:6 36764:19 processes 36752:23 produce 36684:25 36728:24 produced 36685:4 36767:24 36831:9 profession 36750:6 professional 36688:6 36784:5,17,21 36788:23 36808:2 36814:23 36861:7 profound 36784:24 36787:4 project 36766:8,13 36777:7 proof 36798:24 proper 36778:21 properly 36677:17 36678:5 36692:9,18 36697:10 36740:12 36749:22 36771:11 36784:16 36852:24 36855:1,13 property 36823:23 36863:4 proportion 36737:22 proportionality 36720:16 36752:24 proposing 36792:22 proposition 36695:14 36703:15 36719:10 36787:4 36813:1 36843:11,18 protect 36678:20 36679:10 36727:7 36728:6 36764:9 36825:5 36834:12 36849:1 protected 36729:11 36741:4 36765:12 36783:11 protection 36739:7 36741:25 protest 36669:4 36673:9,18,19 36687:10 36704:7 36759:22 36771:5 protester 36832:22 36857:22 protesters 36704:6</p>	<p>36730:21 36783:12 36784:7,9 36793:5 36795:12,15 36798:25 36799:6 36800:19 36803:13 36806:3 36807:7,15 36810:20,22 36831:1 36831:12 36832:23 36841:9,18 36849:14 36851:4 36852:17 36854:15 36856:11 36856:14,15 36857:1 36860:21 36861:9 36864:5 protester's 36792:24 protesting 36672:13,18 protestors 36700:24 36772:8 36816:7,12 36817:23 36818:6,17 36819:19 36821:25 36823:15 36824:8,10 36826:4 36827:5,6,13 36827:22 protests 36770:18,23 36771:20 36773:8 36778:1 prove 36712:3 proved 36840:5 proves 36833:11 36865:22 provide 36741:24 36745:12 provided 36839:24 36845:17 providing 36758:5 province 36686:1 provinces 36764:22 Provincial 36667:11 proving 36854:5 provision 36664:6 36774:23 provisional 36667:20 36673:24 36677:24 36773:18 36786:22 36830:17 provoke 36694:3 36695:6,20 36696:5 36824:10 36848:5 provoked 36693:5 36694:22 36695:12 36698:5 36820:1 36826:4 36864:20 provokes 36697:6 provoking 36847:24 prudent 36866:6 public 36663:8 36685:24 36696:10 36700:2 36736:14 36738:18 36739:1,11 36741:20 36742:3,13 36742:17,19 36745:10,17,18 36749:16 36750:3 36762:7,10,21 36766:5,6 36770:1,9 36770:22 36771:18</p>	<p>36772:20,23 36773:4 36773:8,16 36774:3,8 36774:15 36775:7,11 36775:20 36776:4 36784:22 36816:4 36842:16,18 36848:11 36864:20 36865:23 36866:13 publication 36768:15 pull 36687:2 purely 36697:21 36832:25 purpose 36663:22,23 36675:24 36676:22 36727:20 36821:7 36822:5 36824:24 36841:2 purposes 36672:1 36702:16 pushed 36784:19 36856:2 put 36667:25 36668:1 36674:5,13 36676:23 36678:11 36681:10 36684:6,7,7 36686:11 36686:13 36703:8 36715:13,14 36718:7 36727:24 36730:1 36733:22 36734:2 36753:13 36761:16 36767:4 36768:18 36769:1 36779:22 36781:25 36782:2 36783:5,8 36787:3,17 36798:17 36800:14 36802:18 36803:24 36804:8 36805:10 36807:25 36810:20 36813:9 36814:3 36816:13 36823:24 36825:12,23 36826:3 36827:11 36828:6 36834:8 36835:20 36836:7,8 36837:7,12 36838:13,19 36839:7 36848:13 36850:11 36851:19 36854:6 36857:5 36861:2 puts 36702:6 36817:9 putting 36674:15,18 36682:7 36703:15 36719:9 36743:10 36745:6 36801:20 36809:13 36835:24 36854:13 36857:23 P-dispersal 36689:10 p.m 36812:3 P1 36782:11 36783:2 36796:24 P11 36800:5 P19 36796:23 P7 36795:14</p>	<p>36758:2,6,8,10 36768:13,15 qualified 36752:4 qualms 36864:16 quarter 36754:6 36785:12,18,19,21 36836:25,25 36858:18,22 question 36664:13 36666:1,16 36682:7 36682:15 36686:11 36694:21 36695:2,8 36695:22 36707:11 36709:21,23 36712:23 36714:13 36718:15,16,17,20 36721:14 36726:24 36727:6 36728:13 36733:2 36735:7,19 36737:12,16 36747:19 36748:9 36749:18,20 36751:9 36751:12 36752:2 36753:5 36772:24 36773:19 36774:16 36780:6 36787:24 36788:7,11,11,16 36799:10 36802:18 36804:19 36806:17 36807:24 36811:11 36812:9 36814:12 36815:5 36817:5 36825:8,12 36828:2 36829:1 36830:20 36836:15 36837:11 36838:15 36845:4 36848:8 36850:16,17 36850:23 36854:25 36857:3 36866:4 questioned 36696:9 questioning 36768:12 questions 36667:8 36696:8 36754:1 36760:10 36768:10 36789:20 36815:6,18 36816:7 36834:15 36835:7 36836:4,13 36837:7,13 36838:10 36857:12 36868:1 quicker 36688:11 quickly 36688:9 36689:6,15 36698:25 36737:17 36780:24 36781:5 36802:4 36828:15 quite 36689:15 36723:7 36733:3 36740:24 36743:3 36765:9 36804:4 quotation 36687:6 quote 36757:17 quoting 36733:22 36768:19</p>
			Q	
			QQ2 36694:8 quadruple 36757:23	R
				radically 36693:23

<p>radio 36711:10 36750:18 radios 36803:19 raise 36714:9 36775:22 raised 36663:16 36667:17,19 36672:14 36673:1,2 36714:8 36811:2 36839:18 raising 36778:16 ran 36797:18 36849:7 range 36674:25 ranks 36774:12 36775:1 ratio 36749:6 36827:12 36843:12,13 36847:8 ratios 36749:2 reach 36793:6 36795:2 reached 36694:7 36805:25 react 36678:22 36816:9 36818:18 36827:6 reaction 36672:24 36696:5 36697:7 36814:25 36816:12 36820:1,6,9 36824:10 36825:18 36848:15 36856:15 read 36677:23 36681:17 36683:18 36686:5,9,14,18 36708:24 36732:23 36732:24 36733:2 36756:11 36761:9,9 36761:11 36763:15 36779:1 36780:13 36781:25 36791:4 36792:5 36814:22 36816:15,16 36820:16,19 36828:18 36829:8 36859:3 36863:25 reading 36697:23 36816:14 36817:3 36821:21 36823:12 36823:13 36824:5 reads 36686:21 36793:16 ready 36732:6 real 36771:11 realise 36733:11 realised 36700:15 36744:4 36820:4 realistically 36676:7 realities 36816:5 36825:16 reality 36801:2 36841:17 really 36664:21 36672:19 36680:23 36682:9 36684:23 36687:18 36688:19 36694:20 36726:9,17 36727:23,23 36728:20 36735:20 36739:23 36766:22</p>	<p>36771:2,14 36785:8 36798:18 36819:17 36833:3 36841:15 36850:1 36861:9 36864:12 reason 36727:7,24 36728:15 36738:20 36745:15 36751:16 36769:3 36825:5 36849:18,18 36852:11 36863:22 reasonable 36690:25 reasonably 36721:23 36815:8 36835:2 36837:24 reasons 36729:9 36769:8 36772:19 36774:10 36820:5 36860:18,18 recognised 36827:12 recollection 36702:20 36702:25 36703:10 36730:7 recommend 36687:24 recommendation 36773:3 recommendations 36767:19 36769:20 reconnaissance 36669:17 record 36683:20 36688:5 36767:23 36793:16 36840:10 recorded 36717:16 records 36669:13 36772:3 recruit 36765:1 36775:9 recruiting 36764:25 red 36784:7,14 36793:17 redouble 36724:7 reduce 36665:12 36693:23 reduced 36772:19,22 36845:4 reducing 36774:9,24 refer 36690:14 36699:8 36704:19 36706:20 36721:5 36735:11 36757:17 36781:22 36823:7 36843:18 36864:2 reference 36733:5 36734:6,13,18 36736:8 36737:2 36741:19 36742:24 36749:1,6,15,24 36797:12 36817:7 36844:23 36847:14 referred 36684:2 36690:8 36706:15 36711:22 36716:3 36721:15 36724:18 36733:10 36740:10 36794:20</p>	<p>referring 36683:21 36691:12 36702:14 36702:14 36703:13 36710:7 36724:2 36731:4 36736:16 36780:18 36797:7 36821:15 36840:10 36848:8,10 refers 36705:1 36864:3 reflected 36663:9 reform 36766:1,5 reformulate 36850:23 refuge 36803:2 refuse 36668:7 refused 36852:12 regard 36665:9 36704:15 36705:3,18 36745:1 36752:25 regarding 36819:9 regards 36666:16,18 36671:6 36680:7 36688:7 36691:25 36700:9 36714:8,11 36716:6 36720:4 36745:2 36752:14,19 region 36832:12 regret 36761:1 36779:4 36779:6 regretful 36767:11 regulation 36768:17 36843:20 reinforcements 36859:18 reintroducing 36774:12 reject 36834:2 rejects 36744:17 relate 36704:18 related 36755:24 relates 36690:9 36727:11 relation 36663:17 36664:10 36666:8 36670:24 36671:2,24 36682:3,15,20 36690:1 36693:19 36694:5 36699:24 36704:5,11 36705:5 36706:13 36707:1 36720:10 36724:25 36727:15 36728:3 36731:11 36733:24 36735:1 36745:13 36746:21,24 36751:10 36752:14 36762:2 36768:4 36774:1 36775:3 36780:3,9,18 36853:7 relations 36688:3 relatively 36740:22 release 36672:7 relevant 36749:24 36751:21 36770:8 36789:20 reliable 36739:10 rely 36727:15</p>	<p>remaining 36862:21 remains 36825:15 remark 36716:1 remember 36679:5 36706:14 36715:9 36765:8 36780:12 36789:23 36802:13 36805:1 36820:2 36821:12 remembering 36801:11 remind 36837:4 36839:13 reminded 36695:24 remove 36696:13 render 36781:11 rendezvous 36702:1 repeat 36684:25 36787:24 36797:13 36798:19 36857:2 repeated 36747:4 repeatedly 36684:4 repeating 36859:18 Repertoire 36683:16 36683:22,23 36685:14 repetition 36801:22 rephrase 36749:18 reply 36801:21 report 36683:16,17,21 36683:22,24,25 36684:16 36685:15 36686:6 36687:18 36732:16,23 36736:16 36750:17 36757:9,14 36769:7 36775:18 36802:18 36838:22 reported 36769:8 reports 36684:20 36750:11 represent 36677:6 representatives 36685:10 36746:14 36838:13 request 36684:25 36785:20 36860:3 36868:17 require 36681:4,25 required 36691:15 36713:11 36748:22 36749:2 36796:19 requirement 36686:22 requires 36688:14 36745:7 rescue 36686:25 reserve 36757:23 36758:1 36803:1 resigned 36723:2 resolutions 36866:15 resolve 36687:13 36726:10 36732:20 resolved 36723:16 36734:16 36735:10 36770:23,24 36863:19,23 resolving 36865:22</p>	<p>resources 36678:17 36680:10 36683:2 36691:4 36695:18 36731:19,25 36787:3 36866:1 respect 36676:20 36677:15 36683:7 36690:4 36693:7 36718:22 36719:1,3 36733:21 36744:17 36767:13 36819:2 36823:9 36837:19 36850:3,17 36854:10 respectfully 36716:1 36735:2 36752:25 respects 36731:15 respond 36800:16 36802:6 36805:19,21 responding 36738:25 36807:24 response 36671:16 36678:3 36695:13,20 36696:12 36697:4 36700:3 36705:5 36735:14 36736:12 36742:15 36751:10 36751:23 36788:6 36802:25 36804:9 36806:19 36833:10 responsibilities 36721:17 36868:10 responsibility 36668:17 36668:19 36688:7 36746:11 36771:20 36790:4 36866:20,22 responsible 36736:19 36762:5,7,10,17,20 36762:23 36764:25 36766:4 36767:4 36770:15 36773:1 36789:24 36790:14 36866:19 rest 36687:8,14 36812:22 resting 36811:11 result 36672:24 36696:6,18 36747:5 36864:19 resulting 36747:2 results 36694:17 36765:23 36813:3 resumes 36719:16,17 36754:9,10 36785:22 36785:23 36837:2,3 retaining 36768:24 rethink 36773:3,15 rethought 36773:23 retrain 36775:10 retraining 36776:3,8 36776:11 retreated 36801:12 reveal 36843:9 revise 36707:2 re-engage 36722:6 re-equipment 36774:20 re-examination</p>
---	---	---	---	---

<p>36753:9,11 re-strategies 36774:20 re-training 36774:20 rid 36843:12 rifles 36735:4 36740:20 right 36669:5 36679:22 36681:5,11,16,21 36683:12 36688:3 36690:3 36693:1,20 36699:14 36700:9 36705:22 36707:15 36710:14 36725:8 36729:8 36730:10 36740:15 36751:13 36753:4 36758:16 36775:8,21 36777:14 36777:23 36779:16 36779:22 36782:25 36783:2,7 36786:5,9 36793:2,10 36794:14 36796:24 36798:1,15 36799:21 36800:19 36801:11 36802:8 36803:12 36804:11 36805:8,24 36806:23 36811:17,18 36812:1 36814:21 36816:2,14 36821:2,19 36823:2 36824:4,6 36826:23 36827:14 36829:9 36836:5,21,22 36841:4,15 36842:23 36846:21 36856:20 36861:6 36865:1 36866:2,25 rights 36683:16 36757:22 36865:17 36866:6 risk 36665:7,8 36666:3 36710:4 36734:7 36863:4 risks 36738:25 36813:5 36814:19 risk-free 36664:22 36665:2,5 road 36674:9 36730:21 36795:5 36798:25 36800:8,9 rocks 36855:21 role 36680:9 36683:5 36689:9,25 36690:7 36705:9 36771:13 role-players 36866:22 roll 36794:4 rolled 36664:8 36678:16 36751:3 rollout 36663:21 roll-call 36713:15 Roman 36713:8 room 36762:6 rooms 36764:22 root 36770:13 Rosalia 36754:13,24 36785:25 36839:2 rotated 36771:3 round 36678:25</p>	<p>36679:17 36732:13 36744:1 36814:8 route 36731:5 Roux 36670:4 36683:20 36684:4,11 36684:15,24 36685:7 36686:7 36698:2,10 36707:6 36753:9,13 36753:16 Rover 36684:12 36838:23 36858:20 36864:16 36867:13 36867:17 RRR18 36791:2,2 rubber 36793:22 rugged 36674:3 rule 36748:21 36843:19 36843:20,24 36844:17 ruled 36718:21,24 ruling 36719:3 run 36680:14 36764:19 running 36762:5 36764:2 36778:5,6 36784:1 36797:19 36798:5,9 36800:8 36836:2 runs 36730:22 rural 36674:3 36777:13 36777:18 36778:1,4,5 36778:9 36779:14 36854:22,25 36855:4 R5 36735:21 R5s 36737:8 36740:20 36812:11</p> <hr/> <p style="text-align: center;">S</p> <p>S 36757:23 36758:2,6 safe 36731:17 36740:22 36744:5 safely 36752:8 sal 36817:13 SAP 36751:10 36766:2 SAPS 36677:20 36684:5 36727:13,17 36728:9 36760:8 36761:24 36766:2 36773:1 36776:21 36777:3 36779:16,19 36816:4 36818:20 36829:9 36844:2 36845:1 36852:2 36864:6 sat 36675:16 36786:4 36786:16,17 satisfied 36667:15 save 36686:25 saw 36674:3 36675:11 36701:22 36730:20 36744:3 36782:4 36783:25 36784:2 36789:10,11 36793:17 36855:23 says 36696:19 36715:6 36715:8,10,11 36719:8 36724:19</p>	<p>36732:12 36737:3 36745:5,14 36790:1 36791:10 36806:17 36817:1,12 36818:1,8 36818:13 36821:22 36821:23 36822:15 36823:10,22 36824:3 36824:12 36831:15 36835:11 36842:6 36844:3 36854:21 scarpered 36795:21 scenario 36687:9 36770:17 36781:8 36809:20,24 36828:23,24 scenarios 36768:22 36828:20 36835:20 scene 36711:7 36748:8 36789:15 36795:23 36835:5 36855:20 science 36738:24 Scott 36663:21 36664:1 36668:21 36672:15 36713:18 36714:5,16 36715:6,7 36716:3 36720:4,8,24 36725:24 36726:8 36729:6 36732:4 36748:19 36805:1 36811:25 36812:3,6 Scott's 36669:23 36671:8 36673:2,15 36677:9 36706:17 36713:20 36714:24 36722:1 36726:22 36747:16 36802:7,12 36802:19 36845:6 screen 36686:12,13 36734:10 36780:22 36781:25 36793:15 36823:3 scrutinise 36831:10 scrutinised 36833:24 se 36695:5 36842:6 search 36862:15 seated 36755:2 36762:13 second 36668:25 36674:25 36693:21 36768:19 36801:1,5 36808:17 36809:15 36809:20 36837:23 secondly 36773:15 36815:9 36821:4 36854:17 seconds 36807:19,19 36807:21 second-in-command 36789:24 36790:13 36790:13,23 36829:24 second-in-command's 36790:11 Secretariat 36764:6,7 section 36688:12 36701:7 36707:7</p>	<p>36775:20 36805:15 36853:7 secure 36762:24 security 36831:15,16 36832:4,5 see 36667:4 36685:19 36687:16 36690:22 36700:3,8,13 36702:25 36703:9 36705:13 36713:16 36725:2 36734:5,10 36749:19 36753:18 36760:17 36764:1 36774:14,14 36775:24 36777:22 36779:24 36782:19 36784:4,6,12,14,25 36786:9 36787:2 36789:14,20 36794:5 36795:13 36797:1 36800:21 36801:4 36803:18 36805:15 36806:6,20 36807:10 36807:15 36808:11 36810:3 36816:1 36823:25 36830:24 36830:25 36833:24 36835:8 36841:17 36846:15 36850:15 36851:1,3,4 36852:8 36857:13 36858:9 36859:25 36860:7,8 36860:13 36866:2,7 seeing 36685:3 36701:12 36789:8,9 seek 36688:18 36724:7 seeking 36724:9,19 36837:22 seen 36665:16 36684:1 36684:20 36685:11 36687:9 36701:17 36708:14 36709:8,17 36723:8 36725:18,21 36726:1 36765:16 36766:23 36767:19 36798:7,7,9 36818:7 36819:20 36820:8 36823:14,17 36827:5 36830:21,22 36831:22 36833:14 36833:16,24,25 36846:1 36848:1,2 36862:17 36864:6 36865:6,8 36866:19 36866:21 sees 36794:21 segments 36685:25 self 36735:15 self-defence 36744:18 Semenya's 36664:13 36666:15 36678:7 36696:8 36732:15 36837:1 36868:13 Semenya's 36815:18 36825:12 semi 36851:4</p>	<p>send 36733:16 36753:23 36770:18 36770:20 sending 36665:24 senior 36738:7 36750:3 36768:21 36828:19 36851:13 sense 36663:15 36716:10,14 36726:20 36804:12 36841:5 36852:16 36863:20 36864:6 senseless 36817:19 sensible 36703:18 36785:3 sent 36763:25 36764:4 36766:2 36812:4 sentence 36693:13 36828:19 Seoka 36723:10 36866:8 Seoka's 36860:5 separate 36725:13 separation 36725:25 SEPTEMBER 36663:1 sequence 36836:13 sequencing 36731:20 Sergeant 36797:18 seriously 36694:23 seriousness 36733:12 serves 36694:9 service 36666:5,11,25 36735:21 36770:18 services 36843:25 set 36675:9 36676:12 36676:18 36697:8 36700:4 36706:15 36707:3 36713:14 36730:25 36738:2 36742:1 36752:21 setting 36824:12 settlement 36664:5,7 36674:10 36678:21 36679:10 36692:5 36729:11 36730:11 seven 36781:2 shack 36805:24 36806:11,21 36810:3 share 36708:1,3,7 36842:8 sheet 36743:11 Shell 36765:16 shoot 36737:8 36739:14 shooting 36711:15 36712:4 36744:18 36781:14 short 36714:12 36757:18 36795:1 shot 36767:15 36793:19,21 36849:6 shotists 36735:24 36740:14,15 shouldn't 36696:6 36741:9 36745:14 36747:16 36748:20</p>
--	--	---	--	---

<p>36774:4,4 should've 36814:2,3,12 36815:6 36825:23 36826:3 36827:10 shouted 36793:23 show 36683:4 36702:19 36702:23 36703:12 36713:13 36719:2 36780:21,22 36781:19 36848:15 showed 36781:22 showing 36716:7 36766:14 36812:7 shown 36757:10 36766:24 36787:18 shows 36851:1 36865:22 side 36685:4,7 36730:6 36730:9,14 36731:9 36741:2,2 36790:2 36791:11 36792:12 36792:21 36795:4 36796:8 36799:14,19 36799:21 36800:6,13 36804:6,13 36805:3 36806:22 36807:1,1,3 36808:7 36809:25 36813:13 36814:7,8 36834:21 36842:11 36856:25 36857:5 sidestep 36767:12 sideways 36782:5 signed 36756:17,20 significant 36676:5 36713:17 36752:22 signs 36846:17,17 similar 36678:25 similarly 36728:4 36751:6 simple 36670:12 36694:21 36735:7,19 36816:11 simply 36666:20 36678:12 36679:16 36679:17 36707:3 36711:2 36743:11 36755:21 36837:25 36838:1 simultaneously 36854:18 singing 36830:3 single 36674:20 36829:10 36830:24 36830:25 36831:4 sinneloos 36817:13 Sir 36749:7 36762:12 36770:11 36771:6 36776:2 36777:15 36779:3 36782:17 36786:6 36787:1,15 36788:20 36791:3 36792:19 36795:9,25 36796:17,20 36797:16,21 36799:21 36807:8 36809:18 36811:4,19</p>	<p>36819:17 36820:13 36825:25 36829:18 36833:12 36842:4 36845:2 36851:25 36852:9 36855:25 36863:7 36864:14,24 36865:24 36866:10 36866:18 36867:7 sit 36677:18 36691:1 36858:22 sitting 36665:21 36767:23 36775:17 36817:23 36851:4,5 36856:15 situation 36674:19,21 36675:2 36686:23,25 36691:18 36692:11 36695:3,5,25 36696:11 36714:19 36723:16 36724:22 36725:2,4 36734:1,16 36735:14,17 36736:9 36742:12 36766:18 36779:10 36782:8 36783:6 36798:16 36800:1,24 36810:22 36814:14 36828:7 situations 36687:2 36688:8 36695:3 36745:19 36765:7,10 36773:10 36775:2,23 36831:15 six 36776:5 slammed 36803:7 slang 36795:22 sleeping 36669:12 slide 36711:2,20,21,23 slightly 36666:15,23 36680:19 36690:6 slowly 36686:15 36806:19 small 36671:5,6 36674:9 36675:10 36742:10 36758:8 36782:9 36793:6 smaller 36668:10,11,11 36671:10 36673:10 36680:1,5 36701:21 36725:13,16 36726:3 36850:1 36851:7 36852:12 36853:6,10 36853:16,21 36854:6 smoke 36693:20 smoother 36827:19 sniper 36683:11 snipers 36734:17,19,19 36734:20,24 36735:10 36736:4 36741:2,19,21 Soccer 36762:21 36763:20 social 36866:13 society 36687:13 solution 36674:24 solve 36865:13 36866:21</p>	<p>solving 36866:23 somebody 36683:11 36736:7 36766:14 36790:3 36861:24 somebody's 36804:3 something 36731:18 soon 36800:18 36865:9 sooner 36718:18 36719:25 36720:11 sorry 36670:4 36682:4 36698:22 36704:22 36722:11 36729:2,4 36730:1 36736:15 36746:3,20 36749:7,8 36754:16 36758:22 36759:11 36763:8,9 36777:17 36780:5,12 36782:3,3 36783:22 36786:11 36789:25 36791:9 36792:19 36795:21 36796:2,12 36798:3 36802:10 36804:2 36810:15 36816:15,20 36817:7 36817:8,9 36820:20 36824:16 36825:25 36828:1 36832:22 36838:23 36844:13 36849:10 36855:7 36858:1 36864:10,24 36867:24 sort 36666:21 36667:4 36669:3 36680:19 36697:6 36705:1 36713:13,16 36714:18,25 36723:21 36724:23 36729:11 36731:11 36731:16 36741:24 36747:13,15 36750:2 36826:2 sought 36670:2 sound 36712:25 36713:2,5 sounds 36785:3 south 36666:5,10 36687:9 36693:10 36694:11 36697:6 36698:4 36759:7 36761:20,22 36762:1 36762:19 36763:6,14 36763:21 36766:4,7,9 36766:16 36770:16 36772:21 36774:24 36844:6,16 36857:1 36857:10 36865:17 space 36680:9 36810:25 sparked 36676:16 speak 36816:24 speaker 36701:20 speaking 36701:20 36841:13 spears 36781:10 special 36683:16,22,23 36684:20 36685:14</p>	<p>36785:20 36858:19 36862:9 specialised 36842:13 specialist 36736:12 specifically 36736:13 specific 36663:11 36695:3 36700:10 36725:13 36736:8 36739:8 36741:25 36745:13 36845:20 36846:18 specifically 36665:9 36705:12 36710:8,13 36739:2 36742:15 36747:16 36748:20 36832:15 specificity 36773:23 specifics 36734:11 specify 36842:10 specifying 36845:19 spectrum 36682:8 spell 36741:16 spent 36667:17 36861:4 split 36668:9,11 36852:24 36853:3,10 36853:16,21 36854:16,17 36855:2 36855:3,3,13 36856:9 splitting 36856:16 spoke 36741:3 sponsor 36856:19 spontaneous 36678:3 36690:18 36746:17 36746:18,22 spot 36783:16 36810:21 spotters 36739:4 36740:20 36741:3 spray 36780:20 spraying 36778:15,15 36778:15 spur 36814:11 spy 36861:25 SS2 36823:19 stabilise 36724:3 stabilised 36723:15 stability 36772:17 stadiums 36765:7 staff 36762:8 stage 36671:25 36676:16 36706:21 36713:19,20,20 36717:10 36718:9,10 36721:10,19,19,23 36723:22,23,24 36732:25 36733:5 36794:2 36817:23 36820:1 36834:5 36836:9 36845:1 36858:16 36862:12 stages 36862:12,20 stakeholders 36686:1 36746:12,14 36770:8 stamp 36717:21 stand 36665:17</p>	<p>36705:2 36725:2 36754:14 36852:7 36867:17 standard 36668:8 36681:16,21 36693:21 36705:25 36817:10 standards 36749:25 standing 36663:6 36709:20 36745:5 36754:21 36783:11 36804:13 36823:9,19 36824:11 36845:5 stands 36704:15 Star 36772:22 start 36680:12 36700:14 36772:12 36773:14 36785:12 36800:20 36810:19 36810:22 36815:12 36816:6,9 36819:3,4 36819:4 36820:18 36831:14 36845:10 36847:20 36859:11 36860:19 started 36676:3 36716:12 36758:4 36772:16 36792:12 36794:22 36800:19 36816:24,25 36818:23 36821:23 36821:24,25 36841:18 starting 36688:11 36716:5 36751:2 36772:11 36826:5 36841:23 starts 36768:11 36818:16 stated 36705:12 36711:2 statements 36665:1 36690:5,5,7 36738:1 36749:5 36752:12 36756:16,18 36760:20,25 36761:9 36767:22,22 36779:2 36779:4,9 36780:12 36780:13,18,22 36789:23 36843:12 36850:4,7,8 stating 36797:6 stay 36677:21 36690:15 36834:19 36855:12 stayed 36783:3 36795:22 36798:17 36799:24 36800:22 36809:9 36856:5 36860:12 36862:7 36863:13 staying 36669:13 36860:10 36861:6 steadfastly 36722:20 step 36672:14 36721:16 36804:16,16 36815:25 36823:24</p>
--	---	--	--	--

<p>steps 36687:3 36773:11 36773:24 STF 36683:9,10,11 36741:23 stick 36754:6 36846:9 36852:19 stock 36867:25 stolen 36734:22 stood 36676:24 36764:7 36765:10 stop 36676:8 36718:19 36727:25 36728:2 36753:7 36784:7 36828:21 36856:25 36857:7 stopped 36784:19 36794:1 36795:12 36796:23,25 36801:10,14 36803:14,17 stops 36720:20 strange 36816:16 stranger 36761:19,22 36761:23 strategic 36674:13 36728:5,15 strategies 36773:19 strategy 36733:13 36863:6,9 stream 36778:23 36784:16,18 streams 36778:22 36779:24,25 streets 36762:15 36765:17,21 strength 36687:8,15 36811:12 36812:23 stress 36840:18 stressed 36840:18 stressful 36788:24 stretching 36804:5 strictly 36707:4 strike 36772:2 36831:17,23 striker 36793:17 strikers 36668:3 36695:13 36711:17 36712:5 36723:2,5 36730:4,11 36732:7 36748:11 36781:9 36782:8 36791:11,14 36793:17,21,25 36794:2,24 36795:2,7 36795:8 36800:9 36801:23 36802:15 36802:15,25 36805:14 36806:8,10 36807:1 36809:1,10 36810:7,9 36813:12 36814:5 36820:2,7 36822:5,8 36824:23 36827:13 36828:4 36831:22 36832:19 36834:10,17,25 36835:5 36836:1 36837:8,22,23,25</p>	<p>36849:22 36856:3 36857:8 36859:5 36860:2,2 36863:3,19 striker's 36800:6,13 strikes 36772:4 36774:19 36775:22 structure 36678:1 structures 36763:22 struggles 36772:7 stubborn 36854:5 stuck 36731:25 students 36844:17 studied 36763:15 study 36685:21 36761:16 studying 36768:6 stuff 36738:23 stun 36676:17 36693:5 36693:14,20,22 36694:2,11,22 36695:12,16,19,25 36696:17 36697:5,12 36697:21 36698:4 36700:11 36781:15 36793:22 36817:6 36848:4,16,21 36854:5 subject 36729:22 36851:17 submit 36850:20 subpoena 36753:23 subsequent 36710:14 36710:18 36721:6 subsequently 36674:12 36699:6,7 36706:19 36726:1 substantial 36675:14 36675:19 36677:5 substitute 36788:17 succeed 36754:7,8 succeeded 36795:6 succeeding 36860:5 success 36721:21 successfully 36859:20 sufficient 36679:16 36691:6 36713:24 36714:1 36716:23 36720:13 36735:13 36750:8 sufficiently 36691:3 suggest 36674:25 36675:25 36691:6 36698:10 36700:23 36716:8 36719:12 36722:10,13 36729:14 36735:25 36739:22 36740:1 36751:5 36761:6 36788:5 36800:2 36808:25 36810:2 36840:19 36847:18 36862:1 36864:8,11 suggested 36664:4 36673:2 36677:11 36707:22 36715:14 36715:15 36716:24</p>	<p>36731:1 36804:25 suggesting 36668:25 36672:11 36677:9,12 36677:20 36678:8 36679:17 36694:1 36695:5 36729:12 36734:13,17 36735:8 36735:9 36736:3,19 36738:11 36739:25 36741:6 36743:8 36809:8 36853:10 suggestion 36722:1 36785:4 36804:2 36805:6 suggests 36675:18 36692:2 36707:24 36711:6 36729:7 36731:7 36742:6 suitable 36854:22 36855:9 summarised 36715:18 summarising 36766:22 summary 36683:23 36803:8 sun 36695:3 supplementary 36682:24 36699:9 36703:1,3,5 36706:20 36707:7 36787:20 36792:3 supplemented 36677:12 support 36763:24 36766:1 36789:20 36843:6 supported 36744:10 suppose 36664:25 36665:6 36666:15 36748:18 36754:4 supposed 36678:18 36679:9 36680:9 36683:7 36692:7 36799:18 36802:8 36846:7 sure 36664:18 36668:2 36672:9 36675:24 36678:23 36681:12 36681:19,22 36682:16 36684:19 36685:2,22 36686:19 36687:16 36689:14 36711:5 36712:19 36718:2 36729:8 36740:15 36744:20 36745:3 36749:20,23 36751:6 36755:10 36761:2 36763:2 36767:18 36774:13 36782:14 36795:17 36797:9,10 36805:10 36845:16 36855:15 36861:10 36868:3,14 surely 36672:16 36673:14 36731:25 36789:6 surprise 36772:2,2</p>	<p>36821:18 36841:3,9 surprised 36667:21 36714:2,9 36768:24 36841:14 surprises 36745:21 36751:2 surround 36680:25 surrounded 36676:23 36858:9 surrounding 36680:16 suspect 36684:17 36741:17 suspected 36678:2 swear 36754:20 sweeping 36689:9 s.u.o 36719:19</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 36758:8,10 table 36686:17 tactic 36745:25 36749:3 36854:10 tactical 36691:4 36702:2 36706:7 36715:12 36721:4 36723:25 36724:8 36737:24 36738:1 36741:10 36783:6 36849:25 tactically 36668:13 tactics 36739:12 36743:14 36749:3 take 36670:13 36671:20 36683:10 36684:2 36685:3 36686:1 36689:11 36692:15 36695:11 36695:19 36696:6 36697:5 36699:21 36701:8 36711:13 36719:12,13 36720:21 36721:18 36730:2,5 36732:5 36736:4 36737:18 36751:23 36754:4,4,5 36754:15,17 36769:1 36769:18 36772:12 36775:14 36785:1,4 36789:1 36790:4 36792:25 36793:3 36801:24 36803:2,4 36804:16 36805:20 36816:10 36818:17 36825:11 36827:1 36834:7 36836:9,11 36836:25 36840:7 36856:7 36858:24 36867:25 taken 36669:8 36687:1 36687:4 36706:23 36708:11 36711:15 36716:22 36722:3 36764:10 36773:12 36784:9,23 36789:3,5 36791:23 36800:20 36808:3</p>	<p>takes 36688:14 36731:24 tale 36851:16 talk 36683:8 36691:10 36704:4 36713:14 36717:4 36721:9 36726:2 36740:8 36741:19 36749:13 36774:10 36818:23 36845:10 talked 36663:24 36668:21 36675:15 36692:6,8 36703:24 36704:14 36714:4 36736:8 36742:24 36746:12 36751:1 36831:11 36850:5 talking 36663:20 36675:8 36676:20 36677:6 36678:9,15 36678:24 36680:8,20 36682:25 36699:25 36710:9 36716:18 36728:20 36738:6 36741:21 36742:3 36746:16,18 36777:3 36777:12 36787:8,8 36792:20 36799:20 36803:12 36821:23 36821:24,25 36822:20 36829:8 36832:3 36853:9 talks 36748:1 tall 36785:8 targeted 36850:1 task 36689:14 36812:17 tasked 36715:1 taught 36778:3,8 36779:13 tea 36738:6 36754:4 36834:7 36836:9,12 36836:15,25 team 36677:20,20 36678:17 36727:14 36739:4 36742:19 36755:5,12 36764:24 36787:3 36788:1 teams 36679:8 36738:18 36741:20 36742:17 tear 36693:19 36853:22 teargas 36676:17 36693:5,15,22 36694:2,12,22 36695:5,11,16,19,25 36696:16 36697:5,12 36698:4 36700:11 36781:15 36793:22 36847:24 television 36767:1 tell 36669:11 36682:11 36683:10 36688:23 36707:18 36717:18 36721:22 36735:8 36781:14 36821:4</p>
--	--	---	--	---

<p>36826:22 36829:16 36831:14 36836:9 36841:1 36852:18 36868:2 telling 36681:3,8,13,14 36689:8 36733:19 36765:22 36794:12 tells 36669:25 36700:18 36711:23 36848:17 temporary 36721:20 36732:8 ten 36740:3 tend 36747:15 tendered 36811:10 tense 36765:10 tension 36771:2 terms 36665:7 36671:23 36673:21 36674:15 36678:6 36682:18 36694:15 36713:21 36721:1,5 36742:17 36744:13 36790:22 36823:9,10 36829:2,16 terrain 36674:3 36678:13,15 36680:21 36778:9 36779:14 36828:9 test 36669:9 36751:24 36843:11 36859:9 testified 36831:14 testing 36862:1 thank 36663:4 36686:20 36698:12 36703:11 36712:9 36719:15 36743:16 36749:12 36753:19 36754:2,3 36755:1,15 36756:3,4,6,15 36759:3 36760:9,15 36761:13 36762:4 36767:21 36768:9 36769:12,14 36781:6 36782:6 36786:4 36788:20 36811:4 36815:24 36823:4 36839:5 36840:25 36842:4 36847:22 36866:11 themes 36829:7 theories 36816:3 theory 36815:12 36827:24 36828:5 36856:18 36865:15 thereto 36797:13 there's 36665:4 36666:7 36670:17 36673:17,18 36674:21 36683:11 36689:21 36702:5 36707:25 36709:4,15 36709:16 36711:21 36711:21 36712:7 36728:4 36729:8 36733:17 36741:8 36750:14 36751:5</p>	<p>36753:10,11 36759:5 36775:21 36776:25 36782:10 36834:9 36837:11 36838:14 36846:15 36855:14 36867:13 they'd 36732:8 36740:23 36795:5 36849:5 36856:4 they'll 36744:4 they're 36692:11 36695:20 36709:9 36722:20 36731:19 36733:16 36741:23 36747:2 36777:5 36789:8 36797:24 36798:2 36810:14 they've 36695:21 36758:4 thing 36664:13 36668:25 36669:8,10 36670:10 36677:22 36680:19 36692:13 36693:20,21 36713:17 36741:5 36753:21 36768:12 36770:20 36794:9 36803:23 36808:3,5 36812:21 36855:22 36862:5 36866:25 things 36663:20 36664:18 36666:17 36666:25 36667:3 36678:10 36682:8 36693:17 36699:21 36703:4 36706:22 36707:1 36713:14,16 36720:14,15 36722:14 36745:6 36750:9,13 36767:1 36771:15 36772:11 36783:17 36788:7 36799:7 36800:17 36807:18 36835:12 36858:24 36862:5 thinking 36860:9 third 36742:23 36759:9 36759:15,16 36828:19 36837:25 Thirdly 36773:15 Thola 36861:24 thorough 36768:20 thought 36664:21 36677:21 36682:21 36690:8 36691:16 36715:15 36716:3 36729:15 36743:17 36743:21 36748:12 36760:2 36791:16 36792:15 36803:5 36813:11 36822:14 36830:16 36837:9 36844:11 36849:6 thoughts 36836:12 threat 36696:11 36725:13 36729:21</p>	<p>36734:21 36735:1,5 36737:23 36738:14 36738:17,21,21,22 36739:5,8,17,18,23 36740:5,6 36741:25 36742:6,9 36743:1,8 36764:13 36781:17 36796:16 threatened 36698:16 36781:11 threats 36699:3 36724:5,14,22 36725:4 36748:2 36834:8,14 three 36690:7 36692:16 36700:1 36704:20 36728:23 36729:17 36736:3 36737:25 36738:18 36740:4 36741:18 36749:5 36757:4 36758:11 36798:25 36837:20 36850:4 36859:21 throw 36817:20 throwing 36866:14 thrust 36698:14 36699:12 36718:15 36718:15,17 36761:7 thumb 36748:22 36843:19,20,24 36844:18 Thursday 36724:16 36741:11,13 36748:8 tidy 36705:23 36809:19 36867:10 till 36785:21 times 36718:6 36726:12,14 today 36769:24 36779:20 36785:6 36787:23 36847:16 TOKOTA 36792:5,8 36792:15,18 36825:22 36826:1,9 36826:13,15,21 told 36679:3 36689:2 36689:17,20 36701:10 36713:19 36782:7 36789:19 36805:9 36824:24 36825:2,5 36834:3 36847:6 tomorrow 36847:17,20 36858:20 36867:12 36868:1,20 top 36691:3 36699:17 36713:7 36721:8 36725:16 36783:10 36796:6 torched 36687:11,12 36710:1,8 36711:16 36711:24 36712:4 total 36682:8 36715:19 36788:3 totality 36811:13 36839:21</p>	<p>totally 36769:22 traditional 36740:10 36742:5 36765:18 tragedy 36767:14 36786:24 36787:14 36812:19 36864:22 tragic 36767:17 36771:9 36772:25 trailers 36748:9,15 train 36765:2 36775:9 36775:10,24 36779:16 trained 36668:13 36681:8 36682:10 36736:13 36739:2 36742:16,16 36749:22 36752:16 36764:24 36767:5 36772:23 36776:23 36779:16 36784:15 36788:25 36807:13 36842:18 36844:2,2 36844:21 36845:18 trainers 36844:11,15 training 36742:18 36750:3,8,15 36772:14 36773:4,15 36773:23 36774:1 36775:3,14,25 36777:12,19,23,24,25 36778:7 36779:13,17 36780:3,8,15 36842:15 36844:4,6 36844:22 36845:16 transcript 36694:8 36729:10 36756:12 36847:14 translating 36817:1 translation 36840:17 36840:21 transpired 36679:7 36713:21 trapped 36800:11 36809:1 traps 36817:6 traversed 36861:19 trees 36855:21 tried 36691:22 36796:1 36808:1 36814:6 36842:16 trigger 36687:3 36833:10 36848:4 36866:13 trite 36684:21 trouble 36775:21 TRT 36683:5,8 36689:8 36714:11 36734:14 36735:18 36744:2,8,11,12,14 36776:11 36784:6,14 36803:1,3,7,22 36804:6 36805:12,12 36805:17,22,23 36806:4,11,22 36809:24 36810:3,10 36810:17,18</p>	<p>36842:13 36843:3 36845:13 36846:6,16 TRTs 36802:9 true 36693:9 36772:22 36774:3 truth 36715:17 36754:22,23,23 try 36666:24 36668:18 36686:1,14 36700:6 36752:1,9 36754:6,7 36773:17 36789:19 36802:12 36853:25 36860:11 36862:6,7 trying 36663:5,15,16 36664:16 36666:2,3 36666:10 36668:17 36674:14,18 36675:20 36701:19 36730:5 36733:9,10 36734:4 36737:24 36738:24 36739:24 36744:23 36770:13 36790:4 36797:9 36802:3 36803:11 36812:18 36822:2 36824:6,9 36827:17 36842:21 36857:13 36858:12 36859:9 36862:10 36865:13 TTTT 36758:12 TTTTT 36758:15,23 36759:2 TTTTT 36758:23 36759:8,15 36828:16 TTTTT3 36760:7 TT1 36759:25 TT5 36704:15 Tube 36767:1 Tuesday 36721:3 36723:23 turn 36799:22 turned 36706:16 36754:16 36782:5 36801:23 turns 36732:14 Twala 36701:15 two 36664:18 36673:20 36675:9 36678:10 36688:19 36693:17 36694:17 36699:25 36704:20 36711:16 36736:3 36743:4,7 36756:16 36762:22 36767:4 36768:5 36769:8,10 36774:8 36775:8,9,11 36777:23 36784:11 36784:18 36793:7 36800:17 36803:25 36808:2,7,21,22 36809:12 36815:6 36818:19,24 36822:1 36850:4 36851:1,13 36859:15 36865:5,9 36865:11,11 type 36677:6 36688:13</p>
---	---	---	--	--

36704:9 36736:9 36742:12 36775:10 36812:13 36842:15 types 36705:14,14 36713:16 36716:20 typically 36771:1 tyres 36687:10 T2 36768:13,15	unfurling 36832:19,25 uniforms 36666:12 uninterrupted 36732:3 union 36867:5 unions 36733:11 36772:8 unison 36830:3,7 unit 36689:14 36706:1 36789:24 36790:3 36791:16 36845:16 36845:20,21,24 36846:12 36847:3 units 36683:3 36705:8 36705:14 36716:20 36736:14 36766:6 36772:17 36773:17 36773:20 36775:9,10 36776:9,11,11 36783:7 36842:13,15 36842:15 36843:3,6 36843:10 36845:9,11 36845:15,24 36846:5 36846:6,17,18,25 36852:13 36854:16 36859:17 36862:9 36865:7,9 unlawful 36700:19 36701:1 unprecedented 36864:7 36865:5 unprotected 36831:17 36831:22 unrest 36770:19 36773:10 36775:2 36831:15 unroll 36792:12 unrolled 36819:18 unrolling 36815:16 36822:1 upper 36806:22 upstream 36687:1 upwards 36796:24 urban 36680:22 36778:6 urgency 36717:21 urgent 36706:6 use 36665:10 36668:8,9 36668:10,19 36671:14 36681:18 36684:11 36686:24 36687:19 36691:10 36693:19,22 36694:2 36694:21,22 36695:5 36695:16,18 36696:18 36698:4 36703:20 36705:8 36724:12 36730:12 36732:17 36734:4 36735:10 36737:7,22 36739:12,18 36740:11 36741:20 36745:20 36746:24 36747:2,4,5 36748:15 36749:14 36750:18 36752:15,24 36753:1 36758:2 36759:18	36760:8 36761:6 36769:10 36778:9,21 36778:21,23 36779:14,24 36780:19,19 36784:7 36784:15 36789:1 36795:21 36812:20 36812:25 36817:17 36819:18 36827:1,4,7 36842:7,22 36853:11 36853:22 36854:5 36855:6 useful 36687:23 36750:5 useless 36818:11 uses 36733:14 36738:3 usual 36753:21 utilise 36743:12 utility 36728:5 utterance 36733:5 uttered 36699:3	36833:25 view 36715:21 36777:4 36798:16 36863:3 vigorous 36802:24 violence 36720:20 36721:2,5,20 36723:25 36765:20 violent 36688:8 36695:13 36696:1 36864:2 virtually 36748:13 visit 36865:7,9,10 Vispol 36766:13 visual 36850:25 visuals 36829:16 vital 36727:7 volume 36781:20 voluntarily 36715:6 36853:8 voluntary 36820:3,10 volunteers 36765:2 Voorsitter 36817:13	36868:6 wanted 36666:20 36668:4 36669:3 36708:18 36730:9 36755:18 36769:3 36803:23 wants 36672:15 36692:14,14,17 36718:11 36759:24 36760:3 36761:7 36836:14 36868:13 warn 36824:4 warning 36664:9 36731:22 36746:25 36747:1,6,13,15,17 36748:7,13,16,20 36766:14 36802:20 36802:21,22 36813:14,15 36817:24 36818:1,4 36818:11 36819:3,9 36821:15 warnings 36745:12 36746:24 36747:4 36813:25 warrant 36862:24 wasn't 36667:5 36677:18 36691:24 36700:4 36706:21 36713:4 36715:16 36717:1 36802:13,16 36802:22 36813:11 36813:12 36814:1 36820:4 36825:22 36862:23 waste 36732:15 watching 36823:15 water 36668:9 36770:18 36778:9,21 36779:14,17,18,22 36780:4,9,14,19,20 36781:15 36782:18 36782:19 36784:11 36784:15,16,18 36787:8,10 36788:13 36789:4 36793:22 36843:9 36852:24 36853:17 36854:22 36855:1,9,11,13,17 36855:22 36856:2,7 way 36665:7 36667:7 36674:11,12 36678:25 36679:17 36679:18,19 36703:19 36708:5 36729:7,13 36730:8 36730:24 36731:1,2 36734:5 36735:3 36736:2 36738:17 36739:18 36741:21 36767:6 36772:1 36777:11 36778:12 36778:12 36779:19 36783:12 36787:13 36793:6 36805:2 36825:14 36834:20
U		V	W	
uitbeweeg 36817:15 uitgooi 36817:15 ultimate 36676:11 36753:5 ultimately 36674:17 36691:19 36716:19 36751:12 36768:17 36799:11 36834:4,16 36848:23 ultimatum 36676:3 un 36683:22 36702:16 unable 36685:20 36809:10 unannounced 36824:10 unauthorised 36693:16 unbundle 36770:4 unclear 36717:4 uncoil 36816:25 36841:23 uncoiled 36796:5 36805:25 36808:25 36821:12 36833:16 36841:19 uncoiling 36794:23 36801:6 36816:2,6,11 36819:4 36820:7 36821:10 36823:14 36824:8,9 36825:16 36827:5 36841:20 understaffed 36775:20 understanding 36664:15 36671:3 36714:23 36718:19 36723:6 36727:21 36737:19,23 36738:16 36740:16 36748:7 36796:4,8 36802:11 36867:19 understood 36671:13 36689:22 36741:1 36795:20 36797:6 36828:2 36852:23 36858:17 undertaking 36761:8 undertrained 36776:16 36777:5 underway 36818:24 undesirable 36736:1 undisturbed 36834:19 unexpected 36768:24 36802:14 unfair 36716:9 36735:16 unfortunate 36815:23 Unfortunately 36756:9 36760:25	variations 36665:7 variety 36713:13 various 36685:25 36739:7 36768:22 36802:20 36820:5 36828:20 36835:20 36838:13 36842:22 vast 36671:3 vehicle 36739:12 36741:5 36743:14 36812:6 vehicles 36668:10 36709:25 36710:7 36711:16,24 36712:4 36721:6 36730:24 36739:8,12,15 36742:21,25 36743:13,15 36746:1 36746:6 36793:24 36800:10,11,21 36801:4,10,12,13,14 36801:18 36803:3,15 36807:4,6,13,14,14 36808:19,23 36809:4 36809:9,11 36810:12 veld 36855:11 verb 36798:19 Vermaak 36699:3 Vermaak's 36750:18 version 36831:11 36851:19,20 36865:4 versions 36831:9 36835:15 vicinity 36782:9 victims 36767:14,15,17 video 36675:11 36701:23 36717:9,17 36747:19,20,21,25 36778:13 36783:25 36789:14 36793:4 36798:7 36833:17 36848:15,21 videos 36791:2	wage 36771:3 wait 36664:9 36677:10 36709:19 36802:21 36849:1 36859:5,13 36859:21 waited 36713:6 waiting 36860:1,5 walk 36666:20 36676:13 36743:11 walked 36676:4,14,25 36731:5 36783:24,24 walking 36798:2,4,9 36836:2 36838:1 36843:1,2 want 36667:11 36674:17,23 36675:24 36680:14 36682:4,6 36686:5 36687:7,16 36688:25 36689:1 36690:13 36692:5 36700:22 36708:22 36716:8 36719:2 36727:12,23 36728:2,5,14 36729:7 36729:13 36733:22 36749:17 36754:17 36755:14 36757:2,5 36757:24 36759:7 36761:18 36763:16 36764:10 36768:8,12 36771:12 36773:24 36782:15 36785:11 36785:11,19 36795:17 36798:15 36801:21 36805:19 36809:19 36812:20 36818:15,19,20,25 36834:10,11 36836:8 36837:10 36841:21 36841:24 36844:22 36858:21 36865:20 36866:12 36867:24		

36834:21 36835:6 36838:11,12,14 36840:13 36845:13 36849:19 36856:7,13 36859:4 36861:11,11 36865:12 ways 36735:2,2 weapons 36674:16,23 36715:5 36720:18,19 36720:22 36740:10 36742:5 36752:20 36765:18 36834:20 wear 36666:12 Wednesday 36724:17 36860:23 week 36677:12 36734:23 weeks 36776:5,5 36777:24,25 weigh 36838:6 weighed 36838:13 welcome 36705:13 went 36671:18 36677:19 36678:23 36682:24 36702:15 36704:9,21 36714:17 36715:17,23 36716:10,13 36720:5 36721:4 36730:8 36731:2 36734:8 36748:2 36764:7 36765:18 36808:24 36814:7 36856:4 36865:13 weren't 36667:3 36668:23 36671:1 36678:6 36679:13 36692:6,9 36715:5 36801:19 36825:9,11 36837:23 36838:1 west 36678:12,17,18 36679:10 36775:18 36775:19 western 36856:25 36857:5 we'd 36668:6 36678:24 36746:24 36835:12 36837:15 36850:12 we'll 36668:10,11 36713:19 36726:16 36748:5 36753:4 36755:10 36761:11 36773:6,8 36774:25 36775:22,24 36780:2 36785:4,20 36795:19 36836:9,25 36838:5 36839:16 36868:19 we're 36666:2 36668:1 36668:17 36674:14 36675:8 36678:9,15 36680:8,20 36681:9 36682:25 36684:6 36691:23 36696:14 36696:15 36716:18 36731:3 36747:14,15 36748:14,15 36763:2	36792:19 36829:8 36834:7 we've 36666:6 36726:10 36742:12 36747:14 36755:6 36756:21 36760:7 36761:16 36763:15 36781:2 36838:8 we're 36823:7 we've 36823:3,4 whatsoever 36746:24 36749:6 what's 36684:23 36723:16 36725:3 36745:21 36748:11 36759:15 36861:7 36867:11 whilst 36762:4 White's 36707:7 36753:19 who'd 36740:22 who's 36666:11 36683:4 36713:18 36726:8 wide 36678:15 36680:8 36680:20 willing 36767:18 wires 36747:9 36825:4 wish 36753:3 36754:17 36754:18 36756:5 withdraw 36716:1 withdrawn 36747:21 36748:2 witness 36685:8,11,19 36718:2,4 36751:20 36751:25 36752:3 36754:1,11 36757:17 36760:11 36761:6 36768:10 36835:15 36835:16 36837:4,13 36839:8,9 36840:1 36843:24 36847:13 36847:15 36851:19 36867:17,21 witnesses 36695:9 36827:11 36834:3 36836:18 36839:7 36840:1 wonder 36790:21 won't 36686:19 36722:24 36730:2 36756:7 word 36664:1 36673:6 36691:11 36724:13 36730:10 36733:14 36740:15 36749:19 36783:24 36794:23 36827:14 36861:15 words 36678:20 36679:13 36719:7,8 36732:17 36733:19 36733:23 36742:21 36743:13 work 36664:3 36675:7 36676:24 36680:23 36692:25 36699:19	36699:21 36737:24 36764:5,14 36765:25 36772:16 36821:18 36828:6 36838:12,12 36838:14 36853:4 worked 36675:16 36679:17 36803:20 36827:24 workforce 36669:13 working 36678:19 36721:1 36777:9 36844:6,15 workings 36664:5 works 36692:25 worms 36776:10 worried 36811:1 36850:10 worse 36674:19,21 worst 36697:13 worthy 36720:3 wouldn't 36670:25 36683:13 36684:21 36684:22 36700:7 36708:3,7,25 36722:10,13 36736:4 36742:21 36796:18 36805:17 36809:4 36819:8 36856:1 would've 36817:24,25 36818:3 36819:3,8,20 36819:21 36820:9,11 36826:4 36827:17,18 36827:24 36828:6,9 36828:11 write 36677:18,22 36681:15 36682:16 36691:1 36692:16 36699:13 36759:10 writing 36681:11 36706:14 36845:4,18 written 36663:7,9 36675:17 36677:18 36681:4,25 36688:21 36690:23 36692:15 36702:24,25 36707:11,13 36717:1 36726:5 36767:22 36768:8 36818:9 36843:20 36845:14 36852:25 wrong 36678:13 36682:9,10 36706:18 36732:13 36741:12 36796:3 36799:19,21 36811:20 36817:7 36830:6,24 36831:3 36839:10 36842:22 wrote 36673:24 36725:22	36848:25 X's 36702:15 36835:12 36839:14 <hr/> Y <hr/> yards 36696:24 yeah 36665:3 36708:16 year 36772:5,6,7 years 36667:17 yesterday 36663:4,20 36664:20 36683:22 36684:10 36696:8 36724:18 36740:5,8 36772:23 36786:6,13 36786:16 you'd 36687:5 36691:6 36704:4 36749:15 36868:3 you'll 36689:9 36745:3 36757:12 36771:22 36778:23 36796:4 36836:9 36847:10 36866:18 36867:2,9 you're 36665:24 36666:3 36672:11,12 36672:23 36674:18 36675:23 36691:8 36692:12 36693:8 36695:19 36697:23 36699:16,25 36701:3 36703:13 36710:1,7 36712:7 36717:23 36719:6,18 36720:8,9 36723:17 36728:20 36729:20 36730:14 36733:7,18 36734:17 36735:1,9 36736:16 36737:23 36739:21 36740:24,24 36745:7 36746:4 36747:6,7 36749:22 36754:3,11 36754:20 36758:8 36773:19 36775:16 36775:17 36778:4,6 36778:16 36780:18 36785:24 36786:9 36791:21 36794:12 36833:20 36838:25 36844:25 36848:8 36867:12,18 you've 36672:25 36690:8,13 36714:22 36719:11,13 36726:4 36761:5 36763:11 36818:17 36850:11 36858:24 36862:8 36868:3	36772:18,19,23 36774:3,6 36820:18 36831:1,3,12 36841:7 36850:5,6,14 36851:7 36853:2,3 36856:11 36856:11 36864:5 01:30 36812:15 09:08 36663:2 09:28 36675:18 09:48 36688:16 <hr/> I <hr/> I 36669:19,22 36670:24 36671:2,4,19 36685:16 36689:17 36702:14 36711:7 36721:19 36722:19 36723:22 36725:8 36730:19 36758:13 36776:23 36784:10 36785:5 36789:3 36793:1,2 36798:11 36816:3,25 36822:13 36823:24 36843:13 36843:13 36847:3 36856:11 1-04-2014 36685:17 1.1 36758:12 1.2 36758:12 1.3 36758:12 10 36704:17 36763:11 36778:24 36781:9 10% 36669:13 10:07 36701:22 10:27 36716:18 10:30 36719:12 10:49 36719:17 100 36689:9 36696:24 36794:1 106 36749:9,9 11 36686:6 36745:6 36821:6,16 36823:10 36823:19 36825:2 11.2 36823:22 11:09 36732:12 11:29 36745:24 110 36750:21 115 36736:17 12 36772:17,19 36864:24,25 12th 36710:12 12:05 36754:10 12:25 36766:11 12:45 36776:12 13h30 36677:7 13th 36668:2 36675:13 36677:16 36678:2,7 36690:9,13,16 36691:10 36693:3 36694:5 36695:4 36700:14 36801:22 36801:24 36848:9,13 36864:18 36865:4 13:30 36667:11 36672:4 36812:2 13:51 36785:23
---	--	---	--	--

<p>14 36817:9 14:00 36812:2 14:10 36800:2 14:30 36743:19 36811:16,19,21,23 36812:5,10 36813:25 14:50 36828:17 15 36807:19,21 36864:5 15th 36706:24 15:40 36859:12 36860:19 15:45 36849:24 16 36667:10 36706:7 36776:15 36831:23 16th 36663:6 36673:16 36677:2,7 36679:8 36690:13,14 36700:5 36700:16 36708:10 36710:12,13 36738:10 36739:21 36811:16 36833:9,14 36849:22 36863:18 16:04 36863:2 17 36710:25 36793:16 36817:1 36821:22 17th 36678:9 36707:19 36722:4 17.10 36763:11 172 36822:19 17226 36822:12 36823:3 1723 36823:2 17236 36817:1,8 36821:22 36822:12 36822:14 36823:1,6 17258 36816:17 36822:21 18th 36707:20 19th 36707:20 1993 36761:23 36763:23,25 36764:25 1994 36765:1 1996 36774:7</p> <hr/> <p style="text-align: center;">2</p> <p>2 36717:10 36721:10,19 36721:23 36723:23 36730:20 36757:24 36758:13 36776:23 36783:8 36784:11 36785:12,18,19,21 36789:4 36798:11 36812:3 36816:3,25 36822:20 36847:2,3 36855:20 36856:11 2.2 36707:7 20th 36707:20 200 36691:15 2000 36763:20 36766:9 36774:8,9 36779:21 2001 36766:9 2008 36777:7 2012 36667:11 36772:11 36773:10 36773:13,25</p>	<p>36774:17 36775:1,4 36775:18 36776:15 36811:16 36831:24 36864:18 2013 36786:22 2014 36663:1 36683:24 36685:16 22nd 36864:3 259 36711:2 262 36663:6 36745:5,13 36767:4,5 36769:5 36823:9 36845:5</p> <hr/> <p style="text-align: center;">3</p> <p>3 36663:1 36664:22 36665:12,14,17,20 36668:8 36669:25 36670:7 36671:20 36672:1,6,13,18 36673:5,5,6,9 36702:1,15 36706:21 36707:8 36709:25 36713:19,20 36723:25 36726:15 36732:25 36733:5 36758:13 36778:14 36781:8 36820:18 36830:10 36831:1,3,3 36831:12 36841:7 36843:1,2,12,13 36845:1 36850:1,5,14 36851:7,7 36853:2,3 36855:18 3,400 36853:9 3:30 36677:9 36821:12 36821:12 3:40 36821:14 30 36667:17 36692:15 36713:9 36714:3,15 36715:19,20 36716:24 36738:6 300 36665:12 36850:9 36852:17 36855:2,12 36856:10 34 36710:22,23,25 36 36710:21 36823:3 37 36759:7,14,21 38 36759:7,14,21</p> <hr/> <p style="text-align: center;">4</p> <p>4 36730:8,22 36731:13 36772:23 36774:3 36793:1,2,5 36798:8 36798:9 36845:10 36850:6 36851:7 400 36665:13,15,17,20 36668:8 36781:8 36830:11 36831:3 36850:1,9 36851:7 45 36781:23 48 36721:2 36723:24</p> <hr/> <p style="text-align: center;">5</p> <p>5 36730:8,13 36731:12 36782:17 36784:3,4 36788:22 36789:3</p>	<p>36791:24 36792:23 36793:9 36794:12,16 36796:3,5 36797:3 36799:2,13 36862:12 5.2 36688:12 5.2.13 36692:22 5.2.6 36690:22 5.3.1C 36698:20 50 36688:11 36725:6,7 36760:11 36761:5 36791:25 53 36690:22 36691:3 55 36692:22 56 36698:13,19,21 58 36699:11,24 59 36701:6</p> <hr/> <p style="text-align: center;">6</p> <p>6 36698:14,18,22 36718:10 36729:9,21 36730:3 36731:14 36790:1,2,5 36791:10 36791:25 36792:8,10 36792:10,20 36793:25 36794:2,6 36794:22 36795:5 36862:12 6.2 36701:7 6.4.10(a) 36712:13 6.4.3 36705:24 6.4.8 36706:4 6.5.12 36725:11 6.5.14 36726:24 6.5.2 36717:3 6.5.20 36728:20 6.5.3 36717:14 6.5.31a 36734:13 6.5.6(a) 36723:13 6.5.6(c) 36724:4 6.5.9 36725:7 60 36704:3 36714:11 36735:3,20,24 36736:20 36737:8 36739:24 36741:14 36744:11,14 63 36686:6,21 66 36705:23,23</p> <hr/> <p style="text-align: center;">7</p> <p>7 36791:10 36819:12 7.3.19 36749:11 7.5.11 36736:16,25 36737:4 70 36706:3 36707:12 71 36712:12 72 36713:7 73 36717:3 75 36721:8 76 36723:12 77 36724:5 78 36725:7 79 36725:10</p> <hr/> <p style="text-align: center;">8</p> <p>8 36774:6 8,000 36772:19</p>	<p>80 36726:23 85 36728:19 86 36729:25 89 36734:12</p> <hr/> <p style="text-align: center;">9</p> <p>9 36773:12 36776:15 36819:10 36831:23 36868:20 9th 36773:25 36775:4 90s 36844:7,16 99.2 36782:3 992 36782:3</p>
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