# 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 294        5 NOVEMBER 2014        PAGES 38490 TO 38701

© **REALTIME TRANSCRIPTIONS**

NCRA
Guardians of the Record

Page 38490

1 [PROCEEDINGS ON 5 NOVEMBER 2014]

2 [09:00] CHAIRPERSON: The Commission resumes. In

3 order to avoid misunderstanding I want to make it clear

4 that it was conveyed to the parties that the arguments,

5 that they present are essentially the written arguments,

6 but they be given the opportunity to address, make oral

7 addresses to the Commission to highlight points that they

8 think important, stress points they think may be

9 misunderstood and to respond to questions asked by the

10 Commissioners. Before we start the argument, the first

11 argument will be presented, the first oral address, really,

12 will be presented by the evidence leaders. There are three

13 matters we must deal with.

14 The first is, we understand from Mr Semenya that

15 a senior attorney instructing him was killed in a motor

16 accident. I'd like him to say something about that and I

17 think that that's something that we must deal with first as

18 a matter of first priority. Mr Semenya?

19 MR SEMENYA SC: Chairperson, thank you.

20 It is indeed with great regret and sadness that we lost Mr

21 Julius Maselane in a car accident and the twist of irony

22 really is, he was due to be married next Saturday, a day on

23 which he will then get buried and we thought to announce it

24 to the Commission.

25 CHAIRPERSON: I would ask you all please

Page 38491

1 to stand. We will observe a minute's silence in his honour

2 and we will ask the Bishop to pronounce the blessing.

3 [MINUTE SILENCE AND BLESSING]

4 There are also two happy items that we have to

5 consider. The first is, Advocate Mpofu who, since our

6 Commission started, has been elevated to the ranks of

7 senior counsel, has also been elected the Chairman of the

8 Johannesburg Bar Council and I'm sure you will all wish to

9 join me and my colleagues in wishing him heartiest

10 congratulations on a singular honour. He stands as the

11 latest in a long line of distinguished advocates who have

12 been leaders of the Johannesburg Bar Council and we hope

13 that he will maintain the high standard that has been set

14 by his predecessors but we give him our warmest and

15 heartiest congratulations and good wishes.

16 And the second item of good news is that our

17 colleague Adv Kameshni Pillay has also become a senior

18 counsel. She received her letters patent not, I

19 understand, in a tube but in a more dignified fashion at

20 the end of September and so I was pleased to see on the

21 heads of argument we were given by the evidence leaders

22 that her name is given as an SC. It's a well-deserved and

23 overdue honour. Congratulations. And may I also say we

24 are proud of both of them for their achievements and we

25 like to think in some way it's shed some kind of reflected

Page 38492

1 glory on the Commission.

2 MR MPOFU SC: Thank you very much,

3 Chairperson, and everyone. Thank you.

4 MS PILLAY SC: Thank you, Chairperson.

5 CHAIRPERSON: Well, Mr Budlender, are you

6 going to commence with the address on behalf of the

7 evidence leaders? How exactly is the work going to be

8 divided up between yourself and your colleagues?

9 MR BUDLENDER SC: Chair, the way we're

10 going to deal with this is that I'm going to make some

11 introductory remarks about what we submit is the proper

12 approach to the task the Commission has and to the

13 evidence, then Ms Pillay will address certain aspects, then

14 Mr Chaskalson will address certain aspects and then I will

15 conclude and we hope to – we'll do so within the four and a

16 half hours we have. Perhaps we'll be able to make up some

17 time. Chair -

18 CHAIRPERSON: We've lost a bit because of

19 the delay this morning caused by the fact that Adv Hemraj's

20 plane couldn't leave Durban last night but that's something

21 we will bear in mind.

22 MR BUDLENDER SC: Chair, we submit that

23 the purpose of this Commission is really fourfold.

24 Firstly, there is a truth telling purpose. The people of

25 South Africa –

Page 38493

1 MR NTSEBEZA SC: Mr Chair, I'm sorry, I

2 should have approached my learned friend before. It has

3 just been brought to my attention that there is a problem

4 of translation, that the DOJ has not made available the

5 simultaneous translation that we have been wont to and as a

6 consequence there may not be an ability by those who have

7 been translated to, to follow the proceedings.

8 CHAIRPERSON: Yes. Yes, thank you for

9 reminding me about that. There is a problem that was only

10 drawn to my attention this morning that the equipment for

11 the simultaneous translation is no longer here. I

12 understand, however, that Mr Mahlangu is available in a

13 room across the passage and those who wish to receive a

14 simultaneous translation of what is being said here will be

15 able to get it if they go there. I understand that people

16 prefer to be in the chamber but they will also understand

17 there's nothing I can do about that. That at least is a

18 second best solution to the problem but thank you for –

19 MR NTSEBEZA SC: May I just establish, Mr

20 Chair, whether that is a temporary arrangement or whether

21 that is what is going to obtain until the end of the

22 Commission?

23 CHAIRPERSON: I can't answer –

24 MR NTSEBEZA SC: Because most of the

25 families are here and they have always been here and they

Page 38494

1　have always been able to follow the proceedings –
2　　　　CHAIRPERSON:　　　I can't answer that
3　question myself at the moment but I will take instructions,
4　as counsel say –
5　　　　MR NTSEBEZA SC:　　　Except that you are the
6　head of the Commission, Mr Chair, that's why I can only
7　make the appeal and/or submissions to you and in the
8　presence of my learned friends, those who facilitate.
9　　　　CHAIRPERSON:　　　Yes, yes, I understand.
10　　　　MR NTSEBEZA SC:　　　Ja.
11　　　　CHAIRPERSON:　　　No, I will raise it with
12　the officials of the Commission during the tea adjournment.
13　As soon as I have an answer I will convey it to you and
14　everybody else.
15　　　　MR NTSEBEZA SC:　　　As the Commission
16　pleases.
17　　　　CHAIRPERSON:　　　Mr Budlender?
18　　　　MR BUDLENDER SC:　　　Chair, we submit the
19　first purpose of the Commission is a truth telling purpose,
20　that South Africans and not only South Africans, want to
21　know what happened in the terrible week, that terrible week
22　in August 2012 culminating in the killing of 34 people by
23　members of the SAPS.  They want to know what happened and
24　they want to know why.
25　　　　The second purpose is an accountability purpose.

Page 38495

1　Those who are responsible for what happened must be
2　identified and they must be held to account.
3　　　　The third purpose is a healing purpose.  Steps
4　have to be taken to heal the terrible wounds which were
5　caused by the events of that week.  Truth telling and
6　accountability will be part of the process of healing but
7　it will take more than that to achieve the healing.
8　　　　And fourthly, there is a purpose of looking
9　forward.  Having identified what went wrong we need to take
10　effective steps to make sure that this never happens again.
11　　　　When we thought and argued in this Commission
12　about accountability, perhaps because the people arguing
13　are lawyers and because the Commissioners are lawyers,
14　we've all tended to lapse by lawyer's habit into legal
15　liability, particularly criminal liability, but we submit
16　that that would be a mistake because accountability is not
17　only about criminal liability or even civil liability, it's
18　also holding people accountable for what they did wrong.
19　Not all wrongdoing in that sense is unlawful.  Let me give
20　an example.
21　　　　The Provincial Commissioner made a decision on
22　the 15th of August to remove the strikers from the koppie
23　the following day if they didn't lay down their weapons and
24　leave.  The SAPS in their submissions lay much emphasis on
25　the proposition that what the Provincial Commissioner –

Page 38496

1　that the Provincial Commissioner's decision was lawful, but
2　even assuming that that is so, that is not the end of her
3　accountability for that decision and its consequences.  We
4　contend, as the Commissioners will have seen from our heads
5　of argument, that the decision was reckless and that it was
6　driven by improper political motives.  If that is so, then
7　she should be held accountable for that decision, whether
8　or not it was lawful.  If there was a decision actuated by
9　improper motives and a decision which was reckless, that's
10　a matter for which she is accountable.
11　　　　The lawyers' default to legal liability has an
12　unfortunate consequence, I submit, of diverting the focus
13　from what should be really the key question, the first
14　question:　　　did the role players act as they should
15　have under the circumstances, to a second question which
16　is:　　　did they act criminally in what they did.  And
17　the result is that there proposals are made as to criminal
18　liability as if that were the first issue - of course it's
19　a very fundamental issue, but as if it's the only issue –
20　and in some instances reliance, proposals are made for
21　criminal liability which have, we think, no prospect at all
22　of resulting in a successful prosecution.
23　　　　If the inquiry ends there then the Commission has
24　ended its, hasn't done its job.  If the Commission says X
25　is alleged to have done this which was criminally unlawful,

Page 38497

1　we can find that it was so or that there's a prima facie
2　case it was so, if the Commission stops there the
3　Commission has only got halfway down the road.  The
4　Commission hasn't then dealt with the question of, well, it
5　may have been lawful but what was the right thing to do?
6　Was it the proper thing to do?  Was it the appropriate
7　thing to do and were the consequences, were the terrible
8　things that happened the consequence of a wrong decision?
9　　　　And if the decision is, if the decision was a
10　wrong decision which was made by a decision maker then that
11　accountability must also be brought into the picture.
12　　　　And so we start with the proposition that
13　accountability of course deals with legality and perhaps
14　legality is the first question, but it doesn't end with
15　legality.  And because we're entitled to say, if we're
16　talking only of the police service for the moment we're
17　entitled to say to our police service as a nation, we
18　expect and require you to act in a manner that does not led
19　to unnecessary loss of life.  If your conduct leads to
20　unnecessary loss of life then you have to be held
21　accountable from the top down.  For example, whatever the
22　reason why the shooters fired and killed 34 strikers and
23　others on the 16th of August, let's assume for the moment
24　that this was a lawful shooting – it's a hotly dispute
25　question but assume it was a lawful shooting, that doesn't

Page 38498

1 end the inquiry because if the operation was the result of
2 a reckless decision or if it was the result of poor
3 planning or if it was the result of poor implementation of
4 the plan then the SAPS are accountable for the consequences
5 which followed, even if the shooters themselves were
6 lawfully firing.
7       And so there must be accountability on the part
8 of those responsible for the decision making, for the
9 planning and for the implementation, regardless of whether
10 what they did constituted a crime.
11       The same, of course, applies to the strikers.
12 Leaving aside what happened in the confrontation between
13 the members of the SA – confrontation with members of the
14 SAPS on the 13th, they committed five murders during that
15 week and that much is now common cause. Each of the
16 strikers who gave evidence said that he didn't participate
17 in the murders. If that evidence cannot be rejected then
18 they are not legally liable for the murders but that
19 doesn't dispose of the accountability of the leaders of the
20 strike. Even if they are not legally liable for the
21 murders they must be, we will submit, be held , we will
22 submit, be held accountable for what their followers did
23 which they did nothing to prevent. And so again legal
24 liability is only part of the question, there's also a
25 question of accountability of the people with whom you are

Page 38499

1 working. And so it's in that context we submit that the
2 Commission needs to evaluate the evidence which has been
3 placed before it.
4       There's been very interesting material placed
5 before the Commission, particularly by the South African
6 Human Rights Commission on what the test is for assessing
7 evidence. We submit that there are really two tests which
8 the Commission ought to apply. The first is, and bearing
9 in mind that this is not a court and it may be that
10 formulating it as a legal test may be inappropriate, but
11 the Commission's first task is to find out what probably
12 happened and what the probable reasons are for it, if you
13 like, the balance of probabilities. What is the most
14 probable explanation of what happened and what the reasons
15 are?
16       Then there will be some instances in which the
17 Commission will be unable to make a finding on probability
18 because there just isn't sufficient evidence before the
19 Commission but the Commission may have suspicions as to
20 what happened, and so the Commission may wish to say, well,
21 we can't make a finding as to what probably happened but
22 there's a reasonable suspicion as to what happened and the
23 reasonable suspicion is the following. That's not a
24 finding of probability, it's a finding that it may have
25 happened and it's a finding of reasonable suspicion.

Page 38500

1       So we submit that there are really two main
2 standards of proof. In legal terms, the balance of
3 probabilities that something happened, firstly, and
4 secondly, a reasonable suspicion that something has
5 happened but not enough evidence to form a view on the
6 balance of probabilities.
7       CHAIRPERSON:       You say there are two tests
8 to apply –
9       MR BUDLENDER SC:       Two tests.
10       CHAIRPERSON:       The first test is what
11 probably happened. The second test is in respect of
12 certain issues is there a reasonable suspicion that
13 something happened.
14       MR BUDLENDER SC:       That's right. The
15 Commission's task, and if we are engaging in an exercise of
16 truth telling there should be some truth telling in the
17 argument, the Commission's task is hampered by the fact
18 that it has to be said, frankly, in that spirit, that there
19 is good reason to doubt the truthfulness of a large number
20 of the witnesses who gave evidence to the Commission. It
21 has been, for me, one of the most dispiriting aspects of
22 this Commission. In an attempt to avoid accountability
23 many witnesses have avoided truth telling.
24       CHAIRPERSON:       Just to go back to your
25 second test, I want to be sure I understand it correctly,

Page 38501

1 the first test you say is find out what happened on the
2 probabilities. The second is where there are suspicions,
3 there are reasonable suspicions of improper conduct, if we
4 are unable to make a finding in favour of the person in
5 respect of whom those suspicions arise, you say we should
6 say that we can't give them a clean bill of health, as it
7 were, we can't find in their favour that they weren't
8 guilty of misconduct. Now that's a difficult concept to
9 deal with and there may be all sorts of implications for
10 the persons concerned but I just wanted to understand that
11 that's essentially what you're arguing for.
12       MR BUDLENDER SC:       Yes. The argument is
13 really this, Chair, that again this is not a court, there
14 are matters which have – there's evidence which has been
15 placed before you which gives rise to a suspicion as to
16 what happened and a reasonable suspicion in the sense that
17 we are familiar with it but you don't have enough evidence
18 to make a finding. We say that you can't just close your
19 eyes to that and say, well, we're not going to say anything
20 about that because we can't find on the probabilities. We
21 say that the proper function of a Commission, given the
22 proper function of a Commission, you will say this is what
23 some of the evidence suggests, we can't find positively
24 that it is so but this is a matter for concern, there are
25 grounds for concern, there are grounds for reasonable

Page 38502

1   suspicion.  You may suggest that somebody else investigate
2   it further, you may suggest that steps be taken to test it
3   but if you stop and say all we find is what is probable,
4   then you'll be acting as if you were a court.  You're not a
5   court, you're a Commission which has to advise the
6   government and the public about what should be done to
7   prevent this ever happening again.  And for example if
8   there's a reasonable suspicion that something happened and
9   something could be done to prevent it happening again, then
10  that should be addressed, whether or not there's a finding
11  on the probabilities.  We really have to get out of the
12  mould, I submit, of behaving as if this were a court making
13  findings of criminal and civil liability, it's doing
14  neither.  The purpose is, as I have said, to try to
15  establish the truth and inter alia to make sure this
16  doesn't happen again.
17          The Commission is entitled, we submit, also to –
18  there should be no debate about the proposition that the
19  Commission is entitled to draw inferences and to draw
20  adverse inferences and it should do so, firstly when a
21  false version has been produced by a witness, if a witness
22  is shown to have produced a false witness, a false version
23  or, secondly, when evidence has been concealed or, thirdly,
24  when a witness has been evasive.  In those circumstances
25  the Commission is entitled to say, well, we draw an

Page 38503

1   inference from that which is adverse to the witness or the
2   party and we look to try to find out what the reason is or
3   why would a false version have been produced, why would
4   evidence have been concealed, why would a witness have been
5   evasive.
6          So the Commission is going to have to rely to
7   some extent on inference, partly because the quality of the
8   evidence is, to put it politely, not uniformly good, the
9   oral evidence and it's entitled and in fact bound to do so,
10  we say, in order to make its findings.
11          CHAIRPERSON:          Well, it's not just the
12  oral evidence that is not uniformly good.  Some of the
13  written evidence isn't uniformly good either, is it?
14          MR BUDLENDER SC:          No, that's true.
15  That's true, Chair.  The Commission we know has a wide
16  range of sources of evidence available to it and we also
17  know that the Commission is not bound by the hearsay rule.
18  It can, in appropriate cases, have regard to hearsay
19  evidence but we do say this, that doesn't mean that
20  anything goes.  It doesn't mean that a party can simply
21  cherry pick untested statements and then use them to
22  construct a narrative when there's properly tested evidence
23  which is before the Commission or where's there is external
24  evidence or objective evidence which contradicts those
25  statements.  That, we say, is what the – we say what the

Page 38504

1   Commission may not do is what the SAPS suggests for example
2   in relation to scene 2, which is to take, to say well, Mr
3   De Rover went out onto the scene, he spoke to a number of
4   people.  He hasn't told us who they are and he hasn't told
5   us what they say but on the basis of what they told him he
6   thinks what happened is the following.  That would be
7   stretching the hearsay evidence beyond, the flexibility as
8   to hearsay evidence beyond what is tolerable.  You can't
9   have, you can't make findings on a hearsay basis of what
10  unidentified people said when it's not even clarified as to
11  what each of them said.  In fact we say that's not evidence
12  on which the Commission can safely rely.
13          Then while I'm dealing with evidence, I need to
14  deal at the outset with the evidence of Mr X and we deal
15  with him at the outset because his evidence is a foundation
16  stone for much of the SAPS case and it arises again and
17  again in respect of each of the days, the events concerned.
18  We've dealt with that in our heads of argument at
19  paragraphs 134 to paragraph 139, 159 and I'm not going to
20  repeat what we said there but in summary and attempting to
21  be fair to Mr X we say, we submit that the position is the
22  following.
23          Firstly, as a matter of virtual certainty, he
24  invented the alleged visit of Mr Mathunjwa to the koppie on
25  the evening of the 14th of August and he invented that

Page 38505

1   incident because - the entire incident, because he has an
2   unshakeable hostility towards AMCU.  He blames AMCU for the
3   deaths which took place so he invented evidence in order to
4   give rein to his views and prejudices.  Secondly - and
5   that's a matter of virtual certainty.
6          Secondly, as a matter of high probability, he
7   invented his membership of the 15 man committee.  He
8   invented it in order to give credibility to his account of
9   what happened and the falseness we say is demonstrated by
10  his false pointing out of a person in the group as him and
11  in sticking to it when it was shown that it couldn't
12  possibly be him.  As I say, as a matter of high probability
13  he invented his membership of that committee.
14          Thirdly, as a matter of high probability he was
15  not actually present at the confrontation on the 13th of
16  August in the field, the confrontation between the SAPS and
17  the strikers, because he wasn't the person he pointed out
18  on the video as him and because he actually didn't know
19  what happened.  He gave an account of the events which was
20  patently wrong on the most basic question which anyone
21  present would know, namely, when did the shooting take
22  place, the shooting of teargas and the shooting of stun
23  grenades.  So that's as a matter of high probability we say
24  he wasn't, he invented his presence at that confrontation.
25          And then fourthly as a matter of probability, in

Page 38506

1  his second statement he tailored his evidence to remedy
2  difficulties which had arisen in the SAPS case, for example
3  the plan to kill the police, the plan to kill the men in
4  the informal settlement on the 13th of August and the plan
5  to kill Lonmin management.  But the obvious difficulty with
6  a witness who repeatedly invents evidence is that you don't
7  know when he's inventing and when he's telling the truth.
8  You can't know.  When is he saying what he actually saw,
9  when is he saying what he has invented and when is he
10 saying what someone else wants him to say?  We don't say
11 that all of the evidence of Mr X is a lie.  You can't infer
12 from the fact that a man sometimes lies that he always
13 lies.  The problem is that you don't know which part, if
14 any, is the truth.
15        The SAPS response to this is not entirely clear
16 to us.  On the one hand the heads of argument say in
17 paragraph 349 that his evidence can, "also be accepted,"
18 "insofar as it is corroborated by other independent
19 evidence."  So you can't accept his evidence which is
20 corroborated, but then the heads also say that, quote –
21 this is paragraph 350 – "the Commission should find that
22 there is a whole body of independent evidence that
23 materially corroborates the evidence of Mr X."
24        I am not altogether sure what is intended but it
25 does seem to go further and to suggest that his evidence

Page 38507

1  can be accepted generally because much of it is
2  corroborated in other respects.  That seems to be the
3  proposition.
4        As to the first, that you should accept that
5  where there is independent corroborative evidence, well, if
6  there is other evidence on which the Commission can rely
7  then the Commission can rely on that evidence.  The
8  Commission then doesn't need the evidence of Mr X as a
9  make-weight to make it stronger.  It really takes the
10 matter no further.
11        And as to the second, this comes down to the
12 proposition that because what he says is sometimes true,
13 then one can accept that what he says is generally true and
14 we say if that is the SAPS case then it cannot be accepted
15 for two reasons.  Firstly, it rests on a logical fallacy.
16 If someone sometimes tells the truth it doesn't follow that
17 he always does so and it certainly doesn't follow when we
18 know as a matter of fact that he doesn't always tell the
19 truth.  So the proposition that because he sometimes has
20 told the truth we must accept that he generally does so,
21 must fall.  Secondly, if he is a witness who - if, as we
22 contend in our heads of argument, he is a witness who
23 appears to have been encouraged and assisted to say what
24 fits the SAPS case, then of course he will have been given
25 a narrative which fits in with the known facts.  So the

Page 38508

1  fact that it fits in with the known facts takes us nowhere.
2  The very point of the exercise is to fit him into the known
3  facts.
4        So the reality, we submit, is that Mr X was not
5  an honest witness.  He invented events in order to suit his
6  purpose and presumably to suit the purpose of the party for
7  which he gave evidence.  It's simply impossible to know
8  which parts, if any, of his evidence are the truth.
9        CHAIRPERSON:          Is there not possibly – I'm
10 not putting this to you because I think this is how I'm
11 putting it to you because I want to get your answer to the
12 point – is there not another aspect to it, that he was
13 cross-examined on matters about which he claimed to have
14 knowledge, where the strikers would know whether he was
15 telling the truth or not?  In some cases the cross-
16 examination amounted to a specific denial that what he said
17 was true.  There were other cases where the cross-
18 examination was not as direct as that and there were
19 certain passages in his evidence which weren't directly
20 contradicted at all, or even indirectly contradicted.  Now
21 would it be an appropriate approach to attach more weight
22 possibly to those portions of his evidence than to the
23 others, for the reasons that you give?
24        MR BUDLENDER SC:          Yes, I submit, Chair,
25 that that would be appropriate but one would have to do it

Page 38509

1  with caution because he gave evidence on a very large range
2  of events and the permissible cross-examination was limited
3  and so one has to be cautious in saying, well, if something
4  wasn't tested, wasn't challenged, why wasn't it challenged.
5  Now there may be some which are important questions.  One
6  would expect any material question to have been challenged
7  but on more limited and less important issues one might
8  say, well, this is not a trial, the time was limited, you
9  can't be expected to challenge every word that he says.
10 But if it is on something material and it wasn't challenged
11 then one can attach some weight to it.
12        CHAIRPERSON:          Yes, no, I accept, I
13 understand that.  I was concerned more with passages in his
14 evidence where he was tested but rather gingerly and there
15 wasn't direct contradiction.  The matter was traversed.  I
16 understand your point, if an arguably peripheral point
17 wasn't dealt with, well, no cross-examination can be
18 perfect and all-embracing, particularly where the cross-
19 examiner labours under the difficulty that there are time
20 limits.  I understand that and I don't have a problem with
21 that at all but where there was what I can describe as
22 rather, cross-examination done rather gingerly on certain
23 topics, it may well be that that evidence might be in a
24 slightly stronger category than the other points which you
25 dealt with.  I take it you -

Page 38510

1      MR BUDLENDER SC:      Chairperson, with

2 respect, I agree with that. If the evidence is tested but

3 an alternative version is not put, one has to ask why, is

4 there an alternative version which could have been put and

5 why wasn't it?

6      COMMISSIONER HEMRAJ:      Mr Budlender, what

7 do you say about the evidence that is in some of the

8 dockets, for example about Mr Twala's, the circumstances

9 surrounding Mr Twala's murder and the apparent

10 corroboration that might exist between that and Mr X's

11 version? How do you say we approach that?

12      MR BUDLENDER SC:      Well, Commissioner, I'd

13 really revert to the first point I make that if the

14 evidence, if this so-called corroborative evidence standing

15 on its own appears reliable, well then one can place some

16 reliance on it but the fact that Mr X's is consistent with

17 it is a very weak reed on which to rely because his

18 evidence may have been tailored for the purpose and because

19 one just doesn't know what he was told and what he was

20 trying to do and so, aware of it, and once a witness – once

21 you find that a witness is tailoring his evidence, then the

22 fact that it's consistent with another piece of evidence on

23 a particular issue I submit doesn't really take the matter

24 any further. You've got to look at what is the

25 corroborative evidence, can that stand any, can that carry

Page 38511

1 any weight.

2      So the unfortunate result, the unfortunate result

3 of this and I say it is an unfortunate result and I don't

4 want to be misunderstood in that regard but the unfortunate

5 result is that the whole of Mr X's evidence falls to be

6 disregarded, save for the qualification which the Chair has

7 just raised. And that is an unfortunate result because if

8 the core of his evidence is true then it's extremely

9 important but the Commission will never know –

10      COMMISSIONER TOKOTA:      Sorry, Mr

11 Budlender, if he – if the whole of his evidence is to be

12 rejected, which other evidence do we have in regard to the

13 muti use by strikers?

14      MR BUDLENDER SC:      Well, there's a range

15 of other pieces of evidence, Commissioner. There is

16 photographic evidence, there's video evidence, there's

17 evidence of police officials, there's the evidence of what

18 was found on the koppie thereafter, after the events and

19 there's also, yes, there's Mr Nzuza's evidence. So there

20 is evidence. I don't think one can, the rejection of this

21 or not a rejection, failure to rely on Mr X's evidence

22 doesn't lead to the conclusion that muti, there's no

23 evidence that muti was used. I think there's overwhelming

24 evidence that muti was used and in fact although there was

25 a sort of a denial initially, in the end it wasn't really

Page 38512

1 denied. The question really is for what purpose was it

2 used?

3      CHAIRPERSON:      Well, the other point of

4 course is that I understand water had been, and

5 [indistinct] water had been sprayed and (indistinct) had

6 been used but where you have evidence of bodily mutilation

7 of one of the deceased, the absence of evidence explaining

8 that, that might – well, I'm putting this up as a prima

9 facie aspect of the matter to be dealt with in respect of

10 which we'd like assistance from counsel, but that leads

11 prima facie to the inference that the body was mutilated,

12 body parts were taken for a particular sinister reason.

13 Anyway that's –

14      MR BUDLENDER SC:      Yes.

15      CHAIRPERSON:      You didn't mention that.

16 You didn't mention other aspects of that. That, I would

17 have thought prima facie, is an important factor on that

18 part of the case.

19      MR BUDLENDER SC:      With respect, yes

20 because it is an odd piece of conduct which is unexplained

21 by – it's a very, there's objective evidence of damage to

22 the body and it's an odd circumstance and no explanation is

23 offered but the – as I say the difficulty, the problem is

24 that if Mr X was telling the truth it would have been very

25 important evidence but the Commission will never know

Page 38513

1 whether it was true if he was, when he was - if he was a

2 truthful witness his witness, his reliability has been

3 destroyed by him in the way in which he gave evidence and

4 unfortunately one has to say it's been destroyed by whoever

5 it was who assisted him to put together his story in such a

6 manner as to favour the SAPS case and I have to say that

7 and say that bluntly. And I'm not accusing – let me say

8 immediately, not accusing our colleagues of that. I want

9 to be quite clear on that.

10      COMMISSIONER HEMRAJ:      Mr Budlender, is it

11 the evidence leaders' heads that say there was in fact no

12 removal of body parts?

13      MR BUDLENDER SC:      There was –

14      COMMISSIONER HEMRAJ:      Did I read this in

15 your –

16      MR BUDLENDER SC:      There was no removal of

17 the tongue.

18      COMMISSIONER HEMRAJ:      Yes.

19      MR BUDLENDER SC:      There was other

20 mutilation of the body.

21      COMMISSIONER HEMRAJ:      Yes, thank you.

22      MR BUDLENDER SC:      Those are our opening

23 submissions, Chair, and Ms Pillay will now take over and

24 deal with some specific aspects.

25      CHAIRPERSON:      Yes, thank you Mr

Page 38514

1  Budlender. Ms Pillay?

2        MS PILLAY SC:        Thank you, Chair. Chair,

3  the sequence in which I intend to deal with the topics

4  which have been allocated to me will be essentially the

5  sequence we adopt in our heads of argument. I'll begin by

6  setting out some brief comments on the background and I

7  emphasise brief comments. We will not be repeating what we

8  deal with in our heads of argument.

9        Secondly, I'll deal with the incidents of the 9th

10  and 10th and the only particular incidents which we'll pay

11  attention to will be the shooting by Lonmin security on the

12  10th of August.

13        The next topic will be the 11th of August and the

14  march to the NUM office.

15        The fourth topic will be the 12th of August and

16  the attacks on the Lonmin security and the events of the

17  evening of the 12th of August and the killing of Mr Mabebe.

18        I'll next turn to the question of the 13th of

19  August, dealing first with the early morning killing of Mr

20  Langa and then with the failed SAPS operation in the

21  afternoon of the 13th. And we'll then look at the 14th of

22  August and specifically at the killing of Mr Twala on the

23  14th of August and finally deal very briefly with the

24  recommendations that we make which are relevant to these

25  incidents.

Page 38515

1        If we can then begin by looking at the background

2  and I really intend to highlight three specific issues

3  which we believe are central features of the background to

4  the events of 9 to 16 August and they fall under three

5  headings and the first is labour relations at Lonmin. The

6  second is the Impala experience and the third is the

7  Tlhabane experience.

8        In respect of the labour relations at Lonmin we

9  just want to highlight that in our assessment the issues

10  really begin in May 2011 and the decision by NUM in May

11  2011 to dissolve the Karee branch and to suspend the late

12  Mr Steve Kulalukele and Daniel Mongwaketsi. That we deal

13  with in paragraphs 35 to 36 of our heads of argument. And

14  of significance is the ensuing unprotected strike and the

15  decision, importantly, by Lonmin to dismiss 11 000

16  employees as a result of that strike.

17        Crucially, Chair, and we want to emphasise this,

18  there was a decision by Lonmin subsequently to re-employ,

19  not to reinstate but to re-employ 9 000 workers, 9 000 of

20  the dismissed workers. The implication of the decision to

21  re-employ was that the workers had to decide afresh which

22  union they chose to belong to and the result of that was a

23  hotly contested turf war between the two unions which – at

24  that stage AMCU had taken root at Lonmin. And so you see

25  the events of May 2011 as being the start of this hotly

Page 38516

1  contested rivalry between NUM and AMCU which featured

2  prominently in subsequent events of August 2012.

3        The second factual feature which we wanted to

4  highlight, Chair, is the internal process Lonmin was

5  undergoing at the time which they referred to as their

6  scenario planning process. The process is dealt with in

7  presentations made to Lonmin's EXCO at a few of its EXCO

8  meetings and seem to have focused on changing trade union

9  dynamics at Lonmin and its implications for Lonmin in terms

10  of its interactions with its work force.

11        Now the key factors to emerge from Lonmin's

12  internal scenario planning process, we submit, are relevant

13  and the first is Lonmin's recognition that NUM seemed to

14  have lost touch with its members and seems to have lost the

15  confidence of its members. The second is that the current

16  thresholds, the collective bargaining system that Lonmin

17  had in place and the legal relationships it had built based

18  on these thresholds seemed to no longer be valid. The

19  third is that the organisational systems which they

20  employed may be outdated and Lonmin was engaging with the

21  question of whether a total overhaul was necessary.

22        Now we say, Chair, that the importance of the

23  scenario planning process is the following. The first is

24  that it was happening exactly at the relevant time which

25  led to the issues which this Commission is looking at in

Page 38517

1  August 2012. We know that the scenario planning process

2  took root in April 2012 and carried on over a period of

3  time at least until August 2012 and clearly, Chair, the

4  second crucial importance of the scenario planning process

5  was that the RDO demand which we know became very central

6  to the events that this Commission is dealing with, the RDO

7  demand was discussed within the context of scenario

8  planning. In other words, it formed very much part of

9  Lonmin's internal debate on what the appropriate response

10  was to the RDO demand.

11        And within that background, Chair, the next

12  feature, factual feature which we seek to highlight in

13  relation to the background issues is the RDO demand itself.

14  We know that the RDO, the first well-attended meeting,

15  there was evidence by Mr Da Costa that there had been

16  previous murmurs amongst RDOs about dissatisfaction with

17  their wages but that the first well-attended meeting was on

18  21 June 2012 and that seems to be the date on which things

19  really begin to gain momentum.

20        Importantly, at that stage on 21 June 2012 there

21  was no apparent trade union involvement in the calling of

22  that first meeting. After the RDO meeting of 21 June 2012

23  the workers marched to Mr Da Costa's office and we know

24  that he met with two delegates of the workers. They

25  presented their demand to him of 12 500 and Mr Da Costa's

Page 38518

1 response was to tell them that there were organised
2 collective bargaining structures and that wage increases
3 were negotiated centrally through fixed structures and
4 through fixed intervals. Now that position we describe as
5 the default position. I think Lonmin itself during the
6 evidence has accepted that as the default position.
7      The workers' immediate response to Mr Da Costa
8 was that they did not want trade unions involved and that
9 they were clear about. And Mr Da Costa then undertook to
10 take the workers' demands to the executive and to revert
11 with a response.
12      Now we know, Chair, that subsequent to that
13 meeting Mr Da Costa addressed a letter, a memorandum to the
14 executive and we deal with this in paragraphs 67 and 68 of
15 the our heads of argument. The memorandum is important
16 because Mr Da Costa not only articulates the RDO demand but
17 also draws to EXCO's attention that the default position
18 may not resolve the issue. He is well aware that Lonmin
19 would elect to opt for the default position but he
20 specifically informs EXCO that it is unlikely to resolve
21 the issue, those were his words. He instead, Chair,
22 proposes that Lonmin negotiates nationally and that's the
23 important part, nationally, with both AMCU and NUM in order
24 to try and find a resolution to the issue. Now we know
25 that the evidence is, Chair, that that was never done, that

Page 38519

1 that proposal by Mr Da Costa was not taken up by EXCO.
2      Instead, Chair, what we see in the next few
3 executive committee meetings, Lonmin executive committee
4 meetings during June and July 2012 is that EXCO seemed to
5 be grappling on what was the appropriate response to the
6 RDO demand. Importantly, we see no reflection in any of
7 the minutes that this Commission has been furnished with
8 that EXCO took a firm decision that it was not going to
9 engage with the RDO demand and that it insisted that any
10 demand for wage increase be channelled through the
11 organised bargaining structures.
12      Now what we do see is that EXCO in fact seems to
13 be considering the RDO demand, it seems to be considering
14 opting out of the established bargaining structures and it
15 seems to want advice on what the correct response is and in
16 fact asked Mr Barnard Mokwena to prepare a memorandum to
17 advise EXCO on whether it was permissible or even
18 appropriate to deal with RDO demand outside of the
19 organisational structures.
20      What we do ultimately know is that on the 30th of
21 July 2012 EXCO decides to grant what they call an RDO
22 allowance. In other words, not an increase as we would
23 ordinarily understand it but an allowance that would be
24 given to RDOs of R750,00 per month and the reasoning seems
25 to be, Chairperson, based on an appreciation that the RDOs

Page 38520

1 at Lonmin were being underpaid when compared to their
2 competitors, specifically Impala and Amplats and for that
3 reason EXCO grants the RDO allowance – not increase but
4 allowance – and that decision is then communicated back to
5 the workers, to the RDOs on the 30th of July.
6      Now we make the argument, Chair, at page 649 and
7 650 of our heads of argument, paragraphs 1206 to 1209, that
8 we urge the Commission to find that in all material
9 respects the system which I've just described, the process
10 which I've just described resembled a negotiation process
11 notwithstanding Lonmin's decision to label the ultimate
12 remuneration increase or the ultimate allowance that they'd
13 granted as an allowance and not an increase. And the
14 argument is based, Chair, on what we say is the reasonable
15 perception of the workers. They came to Mr Da Costa with a
16 demand, he took the demand, explicitly told them that he
17 would take it to EXCO and come back with a decision. He
18 comes back with a decision that ultimately results in more
19 money in the hands of the RDOs. We submit that the only
20 reasonable inference or perception that could have been
21 held by the workers in those situations is that they were
22 engaged in a negotiation –
23      CHAIRPERSON:      It seems their perception
24 seems to have been shared by other people in Lonmin as well
25 from the documentary –

Page 38521

1      MS PILLAY SC:      The Karee –
2      CHAIRPERSON:      - occurrence book and so
3 on.
4      MS PILLAY SC:      That's correct, Chair.
5 And in fact Lonmin's position at the Commission was that
6 firstly there was no evidence to support a finding that
7 such a perception exists. Now we draw attention, Chair, to
8 the Karee OB entries which the Chairperson has indicated
9 and we deal with that in paragraph 1209 of our heads of
10 argument but we also draw attention to the statement of Mr
11 Simphiwe Booi and we've referenced that in our heads of
12 argument and Mr Booi expressly says that in their view what
13 was happening was a negotiation and we submit that the
14 collective impact of the RDO, the Karee RDO OB and Mr
15 Booi's statement must be sufficient to sustain a finding
16 that there was a perception amongst the workers that what
17 was transpiring was in fact a negotiation.
18      COMMISSIONER TOKOTA:      Sorry, Ms Pillay,
19 are you saying that there was in fact a negotiation or it
20 was just a perception on the part of the strikers?
21      MS PILLAY SC:      Chair, we're saying a
22 finding –
23      COMMISSIONER TOKOTA:      So on what basis
24 can we find that there was in fact a negotiation?
25      MS PILLAY SC:      No, Chair, we're saying

Page 38522

1  that that, we ask for a finding that there was a reasonable
2  perception amongst the workers that the process they were
3  engaging in was a negotiation.
4      CHAIRPERSON:        You want us to find, not
5  that it was negotiation properly so called but that it was
6  something which the workers and not only the workers but
7  the person responsible for that entry in the OB which we're
8  going to have to go further, discuss further, perceived it
9  as being a form of negotiation and we can't say that they
10 were unreasonable in so seeing it. That's your submission.
11      MS PILLAY SC:        That's the submission –
12      CHAIRPERSON:        And whether it was
13 negotiation properly so called is a matter of interest to
14 labour lawyers but not to the Commission. That's your
15 point.
16      MS PILLAY SC:        That is our submission,
17 Chair. The next background issue, Chair, which we just
18 want to very briefly deal with is the experience of Impala.
19 Now we highlight the Impala experience, Chair, for three
20 reasons and the first is to emphasise the handling of the
21 RDO demand at Impala, which is described in the scenario
22 planning process as the Impala contagion and what the
23 implication of the way in which Impala granted or dealt
24 with its RDO demand, meant that the RDOs at Karee may take
25 it upon themselves to demand an increase from Lonmin and

Page 38523

1  that's, I think a useful way of describing it is the Impala
2  contagion.
3      The second implication of the Impala experience,
4  Chair, is that the increase meant that Lonmin, the RDOs at
5  Lonmin operations were being paid significantly less than
6  what we say is the market rate at that stage because of the
7  experience of Impala and Amplats.
8      The third significance of the Impala experience,
9  Chair, is the violence and unrest that accompanied the
10 strike at Impala closely resembled what was happening at
11 Lonmin at the time. Now we've dealt with this point in our
12 heads of argument and the only reason we highlight it,
13 Chair, is in response to one of the key contentions
14 advanced by SAPS, namely, and that's that the events at
15 Marikana, the unrest at Marikana was unprecedented and
16 therefore called for an unprecedented response. Now we
17 highlight the Impala experience purely to show that the
18 experiences were substantially similar and therefore SAPS
19 cannot claim before this Commission that it was dealing
20 with an unprecedented event. Along –
21      COMMISSIONER HEMRAJ:        And you rely for
22 that on the evidence that there were six deaths and A
23 number of attacks on people going to work and intimidation.
24      MS PILLAY SC:        That's correct,
25 Commissioner Hemraj.

Page 38524

1      CHAIRPERSON:        Remind me, was there an
2  unprotected strike at Impala at the time?
3      MS PILLAY SC:        There was, Chair.
4      CHAIRPERSON:        And so what we saw at
5  Lonmin was an unprotected strike, an attempt made to
6  enforce it by violence and intimidation. So anyone who
7  looked at the Impala experience would have been able to
8  predict with a fair degree of accuracy that what was going
9  to happen at Lonmin was the same. Is that your submission?
10      MS PILLAY SC:        It is, Chair, bearing in
11 mind specifically the nature of the public protests that
12 accompanied the Impala strike. We say that there's a
13 substantial similarity between that and what ultimately
14 transpired at Lonmin. We make the same point, Chair, and
15 this is on the question of whether or not the events at
16 Marikana were unprecedented, we make the same point in
17 relation to the Tlhabane incident which we deal with at
18 paragraph 89 of our heads of argument. You had for example
19 in that case a protest of 15 000 people armed with sticks
20 and pangas and who were clearly showing a propensity for
21 violence and in fact attacked the police and again the
22 Tlhabane incident demonstrates that the events at Marikana
23 were not unprecedented.
24      We also highlight the Tlhabane experience, Chair,
25 to show the involvement of the TRT and the use of the R5s

Page 38525

1  in Tlhabane and specifically Chair, you will recall that
2  this led to Colonel Vermaak addressing a letter to the
3  National Commissioner, which is exhibit JJJ137,
4  highlighting the difficulties with using sharp point
5  ammunition in the course of public order operations. So
6  that, in a very brief –
7      CHAIRPERSON:        [Microphone off, inaudible]
8  – the lack of precedent or the alleged lack of precedent is
9  answered on two levels. Firstly, the nature of the
10 trouble, if one can call it that, at Lonmin, an attempt to
11 enforce an unprotected strike by murder and mayhem, that
12 was something that had happened before at Impala so there's
13 precedent for that and secondly, a very serious public
14 order incident where the police had to use – well, first
15 had to involve the TRT and had to use sharp point
16 ammunition. There was also precedent for that, that was
17 the Tlhabane incident. So it's on those two levels you say
18 that the allegation that this was unprecedented is not
19 well-founded, is that – do I understand you correctly?
20      MS PILLAY SC:        That is our submission.
21 That is our submission, Chair.
22      COMMISSIONER HEMRAJ:        Where do we find
23 the evidence about the details of the violence at Impala
24 apart from the occurrence book entries?
25      MS PILLAY SC:        I think, Chair,

Page 38526

1 Commissioner Hemraj, it's reflected in exhibit L and we've
2 referenced that.
3 　　　COMMISSIONER HEMRAJ:　　　Oh I see, yes,
4 thank you.
5 　　　MS PILLAY SC:　　　Sorry, the narrative as
6 well as the narrative to exhibit L. I think it's HHH,
7 exhibit HHH, I think it's 38.
8 　　　COMMISSIONER HEMRAJ:　　　There's no
9 statement or –
10 　　　MS PILLAY SC:　　　No, there are no
11 statements.
12 　　　COMMISSIONER HEMRAJ:　　　No other evidence
13 besides that. Yes, thank you.
14 　　　CHAIRPERSON:　　　It does seem, though, to be
15 common cause. It was mentioned in evidence and as the
16 authorities say, a Commission is entitled to have regard to
17 evidential material of a much wider nature than a court
18 hearing a civil or criminal dispute would be entitled to.
19 　　　MS PILLAY SC:　　　And it does come from one
20 of SAPS's own documents which is the Marikana narrative.
21 　　　COMMISSIONER TOKOTA:　　　Sorry, was there
22 muti involved in that incident at Impala?
23 　　　MS PILLAY SC:　　　Commissioner Tokota, I am
24 actually unable to answer the question. May I look into it
25 and revert to you with an answer on that? So in summary,

Page 38527

1 Chair, those are the facts which we sought to draw your
2 attention to just to set the scene, the background scene to
3 what eventually transpired at Marikana.
4 　　　If I can then turn to the events themselves and
5 beginning with the events of the 9th to 10th of August,
6 we've dealt with the demand which emanated on the 9th of
7 August in our heads of argument and on the 10th of August we
8 all know that there was a march to Lonmin's LPD. And we
9 say that the objective evidence showed that the march
10 eventually was dispersed peacefully and this is consistent
11 with the testimony of Captain Govender. We've referred in
12 our heads of argument to the objective evidence as the
13 videos taken by Warrant Officer Masinya, Mr Callie Miles
14 and Mr PW Botha.
15 　　　What we do want to deal with very briefly, Chair,
16 is the shooting incidents by Lonmin security on the evening
17 of the 10th of August. Now in paragraph 194 of our heads of
18 argument we identify the three incidents, the three
19 shooting incidents by Lonmin security on the 10th August.
20 They occurred at 18:35, 18:59 and 20:10 and we have
21 shooting incident reports for these three incidents and all
22 of the shooting incident reports indicate that these, the
23 shooting was done – and I must emphasise shooting by rubber
24 bullets – this shooting was done in the presence of SAPS.
25 Now we know that Captain Govender who was on the scene at

Page 38528

1 least from shortly before 18:30, he says that he left
2 before the 20:10 shooting and his testimony before the
3 Commission was that he saw no reason for SAPS to take
4 action and we submit, Chair, that in the absence of
5 concrete evidence from Lonmin of the nature of what they
6 claim was intimidatory conduct by the people gathered on
7 the 10th and in view of Captain Govender's testimony that in
8 fact there was no basis for SAPS to take action, we submit
9 that this Commission should make a finding that in fact the
10 shooting incidents of 18:35, 18:59 and 20:10 on the 11th was
11 unjustified.
12 　　　CHAIRPERSON:　　　[Microphone off, inaudible]
13 note of the entries about it in the Lonmin occurrence book
14 is evidential material from which inferences may also be
15 drawn.
16 　　　MS PILLAY SC:　　　That's correct, Chair,
17 together with the shooting incident reports. If I can just
18 deal quickly with the insertions in the OB book, the Lonmin
19 Karee OB book, this is one of those instances where you
20 will recall, Chairperson, that Mr Sinclair testified that
21 these insertions were deleted in the version of the Karee
22 OB book that was eventually submitted to the Commission.
23 And we submit, Chair, and we've made the point in our heads
24 of argument that the Commission can draw an inference from
25 this fact. If the shooting was fully justified, the

Page 38529

1 question that arises is why Lonmin would feel the need to
2 delete these insertions from the OB book.
3 　　　COMMISSIONER HEMRAJ:　　　Ms Pillay, it might
4 be that while Captain Govender was there that the strikers
5 desisted from their, any threatening behaviour, because
6 otherwise it's just a shooting by Lonmin security for
7 absolutely no reason if everyone is standing there
8 peacefully, doing nothing.
9 　　　MS PILLAY SC:　　　Well, the evidence of
10 Captain Govender is that that's exactly what happened,
11 Commissioner Hemraj. The question mark relates to the
12 third of the three shootings and that's the shooting at
13 20:10 where Captain Govender was not present at the 20:10
14 shooting and we know that there's other reports which
15 Captain Govender refers to in one of his earlier e-mails
16 which say that there was intimidatory action at 20:10, at
17 around 20:00. So the submissions that we make, at best for
18 Lonmin, means that there is absolutely no basis for a
19 finding that there was a justifiable basis for Lonmin to
20 shoot at 18:35 and 18:59. If there are allegations of
21 assaults by people it only relates to 20:00 when Captain
22 Govender was not there and where there is a third report
23 made to Captain Govender that there were assaults taking
24 place at 20:00. And you'll see that in Lonmin's replying
25 affidavit they take issue with Captain Govender's testimony

Page 38530

1　and they contend he was unable to explain why people were
2　just standing around with knobkerries in their possession
3　but we do know that those they had earlier when they
4　marched to LPD office in any event.  And so we say that
5　there's nothing that, there's no inference to be drawn that
6　they had these in their possession at 18:00.  And they also
7　say that his account of events is inconsistent with the
8　reports made to him but I've already made the point that
9　the reports made to him only relate to the 20:00 shooting
10　and not to the two earlier reported shootings.
11　　　　COMMISSIONER TOKOTA:　　　　Sorry, other than
12　the evidence of Govender and Lonmin, do we have any other
13　evidence to the effect that people were just standing there
14　and doing nothing wrong and so on and then Lonmin security
15　just shot at them with rubber bullets?
16　　　　MS PILLAY SC:　　　　We don't have any evidence
17　from people who were actually gathered there, Commissioner
18　Tokota, and that's part of the difficulty that we have but
19　in the same token we don't have evidence that in fact there
20　were assaults at 18:35 and 18:59, absolutely no evidence.
21　　　　COMMISSIONER TOKOTA:　　　　And also that there
22　were no assaults from the people who were there.
23　　　　MS PILLAY SC:　　　　That is what I'm saying,
24　yes.
25　　　　COMMISSIONER HEMRAJ:　　　　There are

Page 38531

1　statements from those two persons who were in fact shot by
2　Lonmin security.
3　　　　MS PILLAY SC:　　　　That's right, Commissioner
4　Hemraj, there are statements by Mr Mtwengwane and Mr Dlomo
5　and we've got their medical records that show that they
6　were ultimately shot by Lonmin but again no evidence from
7　Lonmin that would justify their need to use rubber bullets
8　at that time.
9　　　　If I can then briefly deal with the contingency
10　plan of the 10th of August.  We have dealt with our, with
11　the fact that the contingency plan was in place on the 10th
12　of August, that's according to the evidence of Colonel
13　Merafi and we've set out, Chair, in paragraph 214 of our
14　heads of argument we've set out our criticism of the
15　contingency plan and just to sum it all up, there are
16　essentially three criticisms against the 10th of August
17　contingency plan.  The first is that the plan was vague and
18　lacked detail.  The second is that the plan was in fact
19　never implemented.  Captain Govender didn't even know of
20　the existence of the plan.  And the third is that the
21　contingency plan was never adapted in light of the
22　intelligence reports which we'll deal with shortly, in
23　light of the intelligence reports of pending threats,
24　violence and intimidation.  There was absolutely no attempt
25　to adapt the contingency plan so it could be a proper

Page 38532

1　response to the situation.
2　　　　CHAIRPERSON:　　　　The main problem was it
3　wasn't implemented.  One wonders if it wasn't just a paper
4　exercise, to have a piece of paper to show that something
5　was being looked at or considered.  If you have a
6　contingency plan dealing with the kind of problems that
7　were being experienced, you'd expect some attempt to be
8　made to implement it.  Even Captain Govender says that he
9　was listed in the plan as being, playing an important role
10　and he wasn't even told about it.  That's something I find
11　difficult to understand.
12　　　　MS PILLAY SC:　　　　that is –
13　　　　CHAIRPERSON:　　　　Unless the contingency plan
14　was just a piece of paper to put in a file, if anyone asks
15　a question, well, we had a plan.
16　　　　MS PILLAY SC:　　　　That is one of our
17　criticisms of the plan, Chair.
18　　　　COMMISSIONER HEMRAJ:　　　　And one of the main
19　aspects of the plan was the visible policing and that's why
20　it's even more odd that Captain Govender didn't know about
21　it.
22　　　　MS PILLAY SC:　　　　That is so, Commissioner,
23　and in fact we'll highlight as we go through each of the
24　events that there seemed to be a complete lack of visible
25　policing during this key period before the 16th of August.

Page 38533

1　Chair, the one overarching theme which we deal with in our
2　heads of argument in relation to the events of the 10th, 11,
3　12th and 13th of August is Lonmin's failure to apply its own
4　procedures for dealing with industrial action.  We know
5　that the document in question is exhibit XXX8 which is
6　Lonmin's counter-industrial action response procedure which
7　essentially, Chair, if you look at the content of that
8　document, for all intents and purposes it mirrors our
9　understanding of public order prescripts.  In other words,
10　that there has to be proper intelligence gathering, there
11　has to be effective and detailed planning, there has to be
12　proper briefing and there has to be proper debriefing and
13　proper records kept of all meetings involving these
14　prescripts which I've just set out.  Now both Mr Sinclair
15　and Mr Blou testified that they consider that the document
16　bound Lonmin security and they both testified that the
17　operational procedures, Lonmin security operational
18　procedures were based on this document.
19　　　　Now we see very belatedly in the evidence of Mr
20　Mokwena and in the heads of argument as well as the
21　replying heads of argument by Lonmin, a contention that
22　that document was never formally accepted by EXCO and
23　therefore doesn't bind Lonmin.  Now we submit, Chair, that
24　the question of whether or not the document was formally
25　accepted, formally adopted by EXCO is not really a relevant

Page 38534

1 one. Ultimately the question was, in terms of what
2 document was Lonmin security arranging the operations and
3 on the evidence of both Mr Sinclair and Mr Blou it was
4 exhibit XXX8. So we would submit –
5      CHAIRPERSON:      Remind me, who drew it up?
6 Was it Blou or Botes?
7      MS PILLAY SC:      It was Mr Blou that
8 actually drew it up.
9      CHAIRPERSON:      Blou drew it up, so – and
10 Blou presumably didn't think it was not binding, certainly
11 not binding on him and his colleagues. So the question is
12 why didn't he apply it? It may be correct that EXCO never
13 gave its neo obstat imprimatur and so forth but as far as
14 they were concerned, Blou and his colleagues, it was the
15 procedure that was applied or to be applied.
16      MS PILLAY SC:      That is our submission,
17 Chair, and in fact the document does reflect in a footer to
18 the document that there is a signed version of it available
19 and that it's being stored in archives. So we would submit
20 that within that evidence, against that totality of
21 evidence the Commission should find that in fact the
22 document does bind Lonmin security and that they do arrange
23 their operations –
24      CHAIRPERSON:      Well, whether it binds them
25 or not is possibly a technical point but the question is it

Page 38535

1 was accepted by them as being the appropriate procedure to
2 follow. Whether it was technically binding may be an
3 interesting question that I don't propose wasting time on
4 but if they regarded it as the appropriate to follow, why
5 didn't they follow it? Linked to that is a problem I've
6 put to Mr Sinclair and I said when you come back, when you
7 resume your evidence you can deal with this and that is the
8 suggestion that there was a concealment of what happened on
9 the 10th. One of the witnesses actually transferred the
10 events of the 10th to the 11th in a way which, there was a
11 fair degree of circumstantial evidence indicating it did
12 happen on the 11th, in fact it was conceded it hadn't, was a
13 lapse of memory. He was singularly unconvincing. I put to
14 him it was prima facie evidence that incorrect information
15 was being put before us and he said he would, I said you
16 will have an opportunity to deal with it when you come back
17 and he didn't. So is there any value that one must attach
18 to that evidence?
19      MS PILLAY SC:      Chair, we submit that
20 there is and we will make submissions later on, Chair, on –
21 there was another crucial aspect on which Mr Sinclair was
22 given an opportunity to go away and to come back with
23 documents and that is around his risk assessment, the
24 double red risk assessment and whether in fact he informed
25 his contractors about this increased risk and he was

Page 38536

1 invited, even though he was cross-examined, under cross-
2 examination, he was invited to go back and to produce
3 documents which showed that in fact that was conveyed to
4 the contractors and in fact he didn't. So we would submit
5 that on both scores this Commission should draw an
6 inference against Lonmin.
7      Against the backdrop of XXX8, Chair, we make
8 submissions on the 11th of August and the march to the NUM
9 offices which we deal with in paragraph 221 and onwards of
10 our heads of argument. What is not in dispute in relation
11 to the march, Chair, is that the strikers had taken a
12 decision to march to the NUM offices and we know that day
13 early on there was evidence that in fact they were planning
14 to march past the NUM offices but I think that was put to
15 bed by the evidence of Mr Mabuyakhulu, we can now accept
16 that they were marching to the NUM offices.
17      The second fact is that the NUM offices were
18 warned by Lonmin security that the strikers intended to
19 march to their offices and intended to burn it down. A
20 third fact is that the strikers, there were about 3 000 of
21 them that marched to the NUM offices and fourthly, that –
22      CHAIRPERSON:      Yes, give me your number,
23 your factors and then I want to ask you a question. Carry
24 on.
25      MS PILLAY SC:      Fourthly, that the NUM

Page 38537

1 members having heard the warning by Lonmin security went
2 outside their offices and lined up outside the offices and
3 we know that they then chased the strikers and that's the
4 finding which we ask the Commission to make, that the first
5 action was actually by the NUM members, and shot at them.
6 And we know that two strikers, Mr Mabuyakhulu and Mr Ngema,
7 were shot as a result of that.
8      CHAIRPERSON:      Now I'll ask you my
9 question. Do we have clear evidence as to the time when
10 that incident took place? One of the heads that I read, I
11 think it was the Human Rights Commission but I may be wrong
12 so I don't want to make the allegation against them if it's
13 not correct, one of the heads I read said it happened at 11
14 o'clock. Is there any evidence from which we can determine
15 with more accuracy than that, when precisely that incident
16 happened?
17      MS PILLAY SC:      Chair, can I revert to you
18 on the question of – I think it's an interesting issue that
19 we need to address, can I revert to you on the exact time
20 according to the evidence?
21      CHAIRPERSON:      There's a further factor
22 that I want to put to you at this stage which may have a
23 bearing on the motives of the strikers in going to the NUM
24 office and that was that the evidence seems to indicate
25 that NUM were not only opposed to the strike but they were

Page 38538

1 actually taking positive steps to undermine the strike by
2 conveying some of the workers to the shafts. I'm not sure
3 whether they actually gave them protection but they
4 certainly took positive steps to undermine the strike on
5 the night of the 10th, 11th, and the point is made in the
6 argument somewhere that this is something that the strikers
7 didn't like and there would be relevance as to a reason why
8 they went to the NUM offices and what they were about. But
9 the reason I asked you the time is, I think the arms
10 merchant in Marikana started selling his machetes and other
11 implements of war round about nine o'clock in the morning.
12 It's important to know when the incident happened because a
13 number of things follow from that but I don't know whether
14 you're able to deal with that now. I was proposing to take
15 the adjournment round about now, in fact I was going to ask
16 you when you reach a suitable stage for the adjournment
17 would you let me know.
18       MS PILLAY SC:       Chair, I think it is a
19 suitable stage.
20       CHAIRPERSON:       Before we do that, Adv
21 Hemraj wants to ask you a question.
22       COMMISSIONER HEMRAJ:       Have we been told,
23 Ms Pillay, from where the information emanated that the
24 strikers intended to burn the NUM office? Where did –
25       MS PILLAY SC:       Commissioner Hemraj, the

Page 38539

1 informant, the Lonmin informant told Mr Debukwane and Mr –
2 about the, that he was present at the meeting and that a
3 decision had been taken to burn the NUM offices. We also
4 know that one of the NUM members had received a telephone
5 call from, I forget – sorry, Mr Kolkata who had received a
6 telephone call from an unknown person. He declined to
7 indicate who that person was, who says that he was present
8 in the RDO meeting and that a decision had been taken to
9 burn the NUM offices.
10       COMMISSIONER HEMRAJ:       Both anonymous
11 sources.
12       MS PILLAY SC:       Well, I think there is
13 evidence before the Commission to indicate who the Lonmin
14 undercover agent was but in relation to the latter one
15 there isn't.
16       COMMISSIONER HEMRAJ:       Yes, thank you.
17 Thank you, Ms Pillay.
18       CHAIRPERSON:       I think we must try and
19 make a resolution and keep to it, that the whole of this
20 oral address sect5ion of the Commission sitting, we take
21 quarter of an hour tea and we take quarter of an hour for
22 tea and no time longer otherwise we're going to have all
23 sorts of complaints from people whose arguments or
24 highlighting time is being eaten into or drunk into by tea
25 drinkers. So 15 minutes strictly.

Page 38540

1 [COMMISSION ADJOURNS       COMMISSION RESUMES]
2       CHAIRPERSON:       The Commission resumes. I
3 don't know whether we quite made it within 15 minutes but I
4 think it's – I am told it's 14. Well, I'll thank you for
5 the extra minute, I hope you'll use it with profit, Ms
6 Pillay.
7       MS PILLAY SC:       I will try to, Chair.
8 Chair, just to answer the question around the timing, at
9 paragraph 224 of our heads we indicated that Mr Mabuyakhulu
10 says the crowd met at Wonderkop and exchanged views at nine
11 o'clock in the morning. So the meeting started at nine.
12 We know that, and we deal with this at paragraph 235, Mr
13 Cassim says that at nine o'clock he had a rush of people
14 buying pangas at his shop and at paragraph 226 we indicate
15 that Mr Mpogaloa, [indistinct] the Lonmin security guard
16 says that at about 11 o'clock the group started marching.
17 He says they started marching at 11. That's the best
18 evidence that we have at the moment.
19       CHAIRPERSON:       Thank you, that's the
20 answer to my question, thank you.
21       MS PILLAY SC:       Essentially, Chair, the
22 two issues which we submit need to be decided in relation
23 to the events of the 11th is whether the strikers had
24 violent intent and whether –
25       CHAIRPERSON:       I beg your pardon, before

Page 38541

1 you carry on, I've been asked by Mr Budlender to announce,
2 which I'm prepared to do, that we're going to take a half-
3 hour lunch break today because we lost time in starting
4 because of the problem with the aeroplanes yesterday from
5 Durban Airport. So we'll adjourn at one and we'll resume
6 at half past one. Sorry, Ms Pillay, I should have
7 mentioned that before you started.
8       MS PILLAY SC:       Thank you, Chair. The two
9 issues, very briefly Chair, is whether the strikers had
10 violent intent and whether NUM was justified in shooting at
11 the strikers. In relation to the former question, Chair,
12 we submit that the evidence is not conclusive but there are
13 a number of factors that suggest that the strikers had
14 violent intent and we refer briefly to these as follows.
15 Firstly, the evidence of Mr Mpogaloa and Mr Debukwane. Mr
16 Mpogaloa testified but in relation to Mr Debukwane we rely
17 on his statement, that they were informed by the informant
18 who was present at the meeting of the RDOs that they
19 indicated that they were going to the NUM offices to burn
20 the offices down.
21       We also refer to Mr Setelele's statement which is
22 exhibit YY1, paragraph 7, 17 I'm sorry, where he indicates
23 that the strikers were armed with knobkerries and spears.
24 We refer to the evidence of Mr Gegeleza who indicates that
25 Mr Kolkati told him that he was informed that, by someone

Page 38542

1  other than the Lonmin informant we suppose, who was in the
2  meeting, who indicated that the RDOs intended to march to
3  the NUM offices to burn it down.
4      We refer to Mr Cassim's testimony about the rush
5  to buy pangas and finally we refer, Chair, to Mr
6  Mabuyakhulu's explanation that the strikers wanted to talk
7  to NUM and that was the purpose of the strike.  Now we
8  submit that this –
9      CHAIRPERSON:          [Microphone off, inaudible]
10     MS PILLAY SC:          Sorry, of the purposes of
11 the march, not the strike, the march and we submit that his
12 explanation is wholly implausible.  The strikers were
13 openly antagonistic to NUM.  By that time we had already
14 seen reports of intimidation against people wanting to go
15 to work.  They were well aware that NUM was opposed to the
16 strike and was actively taking steps to ensure people get
17 to work and in those circumstances we submit the strikers
18 would have had no reason to talk to NUM, as Mr Mabuyakhulu
19 suggests that they intended to.  In any case, Chair –
20     CHAIRPERSON:          They might have been
21 prepared to talk to them at the point of an assegai or a
22 panga.
23     MS PILLAY SC:          That is so, Chair.  In any
24 event, Chair, the objective evidence is that 3 000 strikers
25 marched to NUM and we submit the only inference, you cannot

Page 38543

1  draw an inference that 3 000 people march to the NUM
2  offices with spears and knobkerries to talk to the people
3  at NUM.  So given that the strikers were armed, given that
4  they were marching en masse to the NUM offices, we submit
5  that it can reasonably be found that they posed a
6  significant threat to the people at the NUM offices and we
7  submit that in those circumstances it was reasonable for
8  the people in the NUM office to perceive that they were
9  under attack by the strikers.  Firstly, they were firstly
10 informed of that by Lonmin security, secondly they had
11 information from the RDO meeting that that is the intention
12 of the RDOs.  Thirdly, the sheer number of the strikers and
13 fourthly, by then there were already reports of widespread
14 intimidation by the strikers.  And so we conclude, Chair,
15 that on the probabilities what ultimately happened is that
16 it was a pre-emptive strike by the NUM members in order to
17 defend themselves and to defend their office.
18     CHAIRPERSON:          Shouldn't they have fired
19 warning shots before shooting at people?
20     MS PILLAY SC:          Well, we know that they
21 did not fire warning shots.
22     CHAIRPERSON:          Yes.  So, and if – we also
23 know that when shots were fired and certain of the people
24 were hit, the brave strikers turned around and ran in the
25 other direction.  Now if warning shots had been fired and

Page 38544

1  it was clear to them that their opponents were armed and
2  were prepared to use firearms, then the injuries to the two
3  people who were injured might not have taken place.  That's
4  correct, isn't it?
5      MS PILLAY SC:          Chair, at this stage I
6  think it's speculative that the warning shots would have
7  yielded those results –
8      CHAIRPERSON:          Well –
9      MS PILLAY SC:          - because we know that
10 actually –
11     CHAIRPERSON:          It would be speculative if
12 we don't know, but they might have, but the people who
13 fired shots and injured people without giving a warning in
14 circumstances where I think they were some distance away
15 when the shots were fired, warning shots could have been
16 fired.  Isn't there a prima facie case of attempted murder
17 against the people who fired those shots?
18     MS PILLAY SC:          Purely on the basis that
19 they didn't fire warning shots?
20     CHAIRPERSON:          Yes, well, if they fired
21 the shots, they fired it in defence, self-defence or
22 perhaps putative defence or whatever one wants to say.
23 There was, apart from the fact that there wasn't an
24 imminent threat at that stage because it's not suggested
25 that any of the strikers had firearms and they were quite a

Page 38545

1  distance away, apart from that, one of the principles
2  applicable in a case of self-defence is that if you can,
3  you should give the person you think is going to attack you
4  a warning that if he continues, he or she continues – let's
5  not be sexist – he or she is going to continue with this
6  conduct, that you will have to take serious action to ward
7  off what he's doing.  So prima facie again, I think
8  everyone is agreed that as far as recommending prosecutions
9  are concerned, rather not recommending prosecutions,
10 recommending to the DPP that consideration be given to the
11 institution of prosecution, possibly to further
12 investigation, there should be as it were a prima facie
13 case.  Now is there not a prima facie case against the two
14 people who, I don't know if it was two or one but two shots
15 were fired, is there not a prima facie case of attempted
16 murder in respect of those two shots that were fired by one
17 or more NUM members on the morning of the 11th of
18 August?
19     MS PILLAY SC:          Chair, we won't be averse
20 to a recommendation that that be investigated.  I think the
21 whole notion of whether warning shots would have had the
22 same result that the actual shots did, was not canvassed on
23 the evidence.  We wouldn't be averse to that
24 recommendation.
25     CHAIRPERSON:          In a case where a self-

Page 38546

1   defence defence is being interrogated, it's not normally a
2   relevant factor as to whether a warning would necessarily
3   have been effective. It's one of the things that someone
4   invoking the doctrine of self-defence is obliged to comply
5   with, that is so isn't it?
6       MS PILLAY SC:         That firstly the threat
7   was imminent and secondly, that there was proportionality,
8   yes Chair.
9       COMMISSIONER HEMRAJ:         They did have the
10  opportunity to leave, to leave the premises. They didn't
11  have to stay there, they didn't have to arm themselves with
12  firearms and they didn't have to wait for the crowd to
13  arrive. So that must go towards that intention as well,
14  mustn't it?
15      MS PILLAY SC:         It should, Commissioner
16  Hemraj, but the other side of the coin is whether they are
17  obliged to do that. In instances –
18      CHAIRPERSON:         The fact, sorry to
19  interrupt you, the fact that's relevant there is whether
20  they were entitled to defend the office and I'm not sure if
21  there's evidence on it but there may be, but that the
22  probabilities are in any event that all their records would
23  be in the office, a significant number of their records
24  anyway and it would have been quite a serious problem for
25  NUM if the offices were burned down and their records were

Page 38547

1   destroyed. So one of the factors one has got to consider
2   is whether they would have been entitled to have stayed
3   there, not – normally if you can run away you must run away
4   but if you're staying to defend your records and your
5   office, that may be something which is relevant. Anyway,
6   we don't have to go there. If we were to send the case to
7   the DPP, that's a matter which would presumably be the
8   subject of the investigation.
9       MS PILLAY SC:         That is so, Chair, and the
10  reasonableness of the judgment call because the evidence is
11  that the NUM members exercised a judgment call about what
12  was the best way to defend themselves and this was what
13  they ultimately decided to do. Apart from the conduct of
14  the NUM members, Chair, the two issues which we seek to
15  highlight is the conduct of Lonmin security, firstly, and
16  the conduct of SAPS which we believe also needs to be
17  investigated. Lonmin security on the day was wholly
18  inadequate –
19      CHAIRPERSON:         [Microphone off, inaudible]
20  that, there's some evidence is a bit equivocal on the
21  matter, I thought suspiciously so, there's some evidential
22  material to indicate that not only did the NUM people fire
23  shots. There's a suggestion on the papers that the Lonmin
24  security did so as well. That may or may not be true but
25  there's certainly a strong indication that that is so and

Page 38548

1   if that's so of course then there was another curtain that
2   was drawn across that. So we do know, because they
3   admitted, that NUM shot, what one can call NUM shots were
4   fired and there was a docket opened and there was cross-
5   examination by Mr Mpofu, I think it was, about how not much
6   progress was made in investigating the case docket but that
7   we'd have to send off to the DPP for consideration and so
8   forth and further investigation but there's also, is there
9   not, an aspect of possible shots fired by the Lonmin
10  security people before we get to the point you were dealing
11  with of the inadequacy of the Lonmin security –
12      MS PILLAY SC:         Yes.
13      CHAIRPERSON:         Tut that is a point also,
14  is it not?
15      MS PILLAY SC:         That is reflected in
16  EEE19.1, Chair, that's the OB book, that it does have
17  reports of shooting by Lonmin security on the date and it's
18  one of those entries that was deleted by Mr Sinclair
19  subsequently, but apart from that entry there's absolutely
20  no evidence of exactly what transpired. So it's a factor
21  which the Commission should take into account. The –
22      COMMISSIONER TOKOTA:         Sorry, Ms Pillay, I
23  suppose the property belongs to Lonmin. There was
24  information that it was going to be burned. Wouldn't you
25  think that it would be the duty of the Lonmin security to

Page 38549

1   protect the property of Lonmin?
2       MS PILLAY SC:         Again Commissioner Tokota,
3   it's a difficult –
4       COMMISSIONER TOKOTA:         As it was with the
5   NUM officials to protect their property inside –
6       MS PILLAY SC:         The difficulty,
7   Commissioner Tokota, is we've got absolutely no evidence
8   around the circumstances in which those shots were fired.
9   So we're unable to say if it was before the march, during
10  the march, in the chaos that ensued afterwards, we just
11  don't know.
12      COMMISSIONER TOKOTA:         So where would you
13  take us then to consider that evidence then?
14      MS PILLAY SC:         Well, the evidence is
15  there. It's objective evidence in the Karee OB book and
16  I'm not sure how you take that forward.
17      CHAIRPERSON:         I'm thinking aloud now,
18  it's a prima facie view obviously, but if everything had
19  been above board and the Lonmin security officials had
20  fired as the OB book says they did and had fired in
21  circumstances that were perfectly justifiable, one would
22  have expected the entry to have remained in the occurrence
23  book. The very fact that it was removed is already an
24  indication that something unsatisfactory happened which
25  caused an over-vigilant Lonmin official to cause that entry

Page 38550

1  to be deleted.

2  MS PILLAY SC:      Chair, we submit that that

3  inference is open to the Commission to draw. And then to

4  highlight the last aspect, Chair, in relation to the events

5  of the 11th and that's the conduct of SAPS because what you

6  see is a complete absence of visible policing on the 11th.

7  Now we'll deal shortly, Chair, in relation to the events of

8  the 13th, about the crime intelligence reports available at

9  the time according to the version of Brigadier Engelbrecht

10  and the fact that he conveyed that to Major-General Mpembe

11  and notwithstanding that, that there was inadequate visible

12  policing in place during this critical period and we submit

13  that the absence of SAPS presence on the 11th is again a

14  demonstration of a complete absence of visible policing.

15  It might also be one of the factors which unfortunately led

16  to NUM taking the stance that it did because there was,

17  firstly, inadequate Lonmin security and secondly, an

18  absence of SAPS presence on the day.

19  COMMISSIONER HEMRAJ:      Are you saying, do

20  you submit that visible policing would have been able to

21  deal with the threat that the strikers were, seemed to be

22  posing to the NUM office?

23  MS PILLAY SC:      Well, we submit,

24  Commissioner Hemraj, that that would have been their role

25  one way or the other. That's exactly the policing role

Page 38551

1  which they're meant to play.

2  COMMISSIONER HEMRAJ:      Didn't Captain

3  Govender say that his was not the role of public order

4  policing as VISPOL? I think that was his evidence, wasn't

5  it?

6  MS PILLAY SC:      It was, but if we look at

7  the crime intelligence report and we look at what Brigadier

8  Engelbrecht expected when he forwarded that to Major-

9  General Mpembe at that stage, it was only that there be

10  heightened visible policing and not necessarily –

11  COMMISSIONER HEMRAJ:      At least if they

12  were there they might have then arranged for further

13  resources to be available, isn't it?

14  MS PILLAY SC:      That is so, Commissioner.

15  CHAIRPERSON:      There's another factor, I

16  take it, that Mpembe was also cross apparently that the

17  visible policing he thought was going to be put in place,

18  wasn't. And that is visible policing may deter people from

19  misbehaving. It's one thing to say that visible policing

20  would have been able to drive back a group of strikers who

21  were going to the NUM to burn it down, but the very fact

22  that there was visible policing there might have made the

23  leaders of the strikers, for all one knows, made them think

24  again and decide it may not be a smart idea to go to the

25  NUM offices because the full force of the law will be

Page 38552

1  brought to bear against them. So the purpose of visible

2  policing, as I understand it, is not to necessarily deter,

3  not necessarily arrest criminals and so on but to deter

4  them from becoming criminals or engaging in criminal

5  activity. Isn't that so?

6  MS PILLAY SC:      That is our submission,

7  Chair. If I may turn, Chair, to the events of the 12th of

8  August, we deal in our heads of argument with the attacks

9  on Mr Louw and Mr Vorster at paragraphs 270 and 271 and if

10  we can then turn to the killing of Mr Fundi and Mabelane,

11  we know Chair that the strikers have accepted

12  responsibility for the killing of Mr Fundi and Mabelane.

13  They have put forward no basis of justification and we

14  submit that in the circumstances the Commission must find

15  that the killings were unlawful.

16  The controversial issue in relation to the deaths

17  of Mr Mabelane and Mr Fundi is the extent to which Lonmin

18  should be held responsible for failing to take adequate

19  steps to properly protect and/or secure its employees. Now

20  you will know, Chairperson, that the ICAM report identified

21  certain shortcomings in Lonmin's approach and this we deal

22  with in paragraph 285 of our heads of argument. I just

23  want to highlight two of the issues that have been raised

24  in the ICAM report and the first is on the question of

25  intelligence gathering. Now we show in fact, Chair, in our

Page 38553

1  heads of argument in paragraph 287 that Lonmin actually had

2  intelligence available to it. It had an informant that

3  conveyed to Lonmin that the strikers had undergone rituals

4  and were, in the words of the informant, preparing for war.

5  So Lonmin was aware, in our submission Chair, based on the

6  intelligence available, of the risk posed by the strikers

7  and notwithstanding this, what we fail to see Chair, in the

8  evidence before the Commission is any concrete steps taken

9  by Lonmin to protect against the risk posed by the

10  strikers.

11  Importantly, we don't see in its planning of its

12  security operations that it considered this risk and

13  factored this into what XXX8 expected of it. In other

14  words, proper risk assessment, proper planning and proper

15  briefing. Now we deal in our heads of argument with the

16  evidence of Mr – firstly, Chair, we know that there was no

17  planning involved. There was no evidence from Lonmin that

18  there was either a contingency or some sort of operational

19  plan in place. We know Mr Motlogeloa's evidence that there

20  was absolutely no briefing of the security guards for them

21  to understand what it is they were faced with and what they

22  were expected to do.

23  We deal in our heads of argument with the

24  question of the armoured vehicles, Chair, and the point

25  which seems to be lost and which Lonmin doesn't really

Page 38554

1   respond to is that in the correspondence which we referred
2   to during evidence and which is set out in our heads of
3   argument, it's clear that Lonmin security identified a real
4   risk to its security members and it prescribed a solution
5   and the solution that Lonmin security themselves prescribed
6   is the need for armoured vehicles.  They indicate the
7   heightened risks faced by security members, that crowds are
8   becoming more violent and more prone to attack and
9   therefore one of the best ways to protect their members is
10  by means of armoured vehicles.  And notwithstanding this
11  clearly foreseen risk, we see a policy decision by Lonmin
12  simply to demilitarise and secondly, not to acquire or
13  procure armoured vehicles.  Instead Lonmin prefer to rely
14  on the vehicles of contractors and we know, Chair, that on
15  the evidence the contractors' vehicles were themselves in
16  questionable condition.  We know that Protea Coin Security
17  had two armoured vehicles at its disposal, the one caught
18  fire en route to Mooinooi and the second one, on the
19  evidence of Mr Botes, it struggled to start or to move on
20  the 11th.
21       So clearly we submit, Chair, that in relation to
22  the question of armoured vehicles, Lonmin has to accept
23  responsibility for firstly its decision not to acquire
24  armoured vehicles of its own when it was clear that there
25  was a very real risk posed to its employees and secondly,

Page 38555

1   where it depended on contractors' armoured vehicles for
2   failing to ensure that those armoured vehicles were in
3   proper working condition.
4       CHAIRPERSON:        Apart from that there's the
5   question of delay.  If you haven't got armoured vehicles on
6   the premises and you have to contact the contractors and
7   say please, bring your armoured vehicles, you contact them
8   at the first sign of trouble I presume, by the time the
9   armoured vehicles get there the trouble may have happened.
10  So it's not a very satisfactory thing to say, well, never
11  mind, we've got contractors who will bring the armoured
12  vehicles onto the premises as and when they're needed.  The
13  question of importance would be, even if they all had been
14  adequately maintained and were all able to get there as
15  soon as they're sent for, it's still the distinct risk that
16  they get there too late, isn't that so?
17       MS PILLAY SC:        We submit that that is the
18  case, Chair.
19       COMMISSIONER HEMRAJ:        [Microphone off,
20  inaudible] whether Lonmin was aware that there were defects
21  with the two armoured vehicles that Protea Coin Security
22  provided and whether they in fact had any control over
23  that?
24       MS PILLAY SC:        Commissioner Hemraj,
25  there's no evidence that they were aware beforehand and in

Page 38556

1   fact the fact that Mr Botes jumped into the armoured
2   behaviour on the 11th seems to indicate that they didn't
3   know that there were problems with the armoured vehicle.
4   That doesn't detract, we submit, from the principle that
5   they ought to know, aware, if they're relying on these
6   armoured vehicles to protect their employees.  So in other
7   words they have to have some sort of mechanism in place to
8   ensure that these armoured vehicles are in proper working
9   condition when they need them.
10      CHAIRPERSON:        Isn't that possibly being a
11  little bit harsh?  You've got a contractor whose job it is
12  to have armoured vehicles available.  There's a problem
13  with a particular armoured vehicle on a particular day.
14  You then say to them look here, there's a problem, it could
15  have been very serious, fortunately it wasn't but please
16  you must ensure that in future that doesn't happen.  Can
17  they be expected – once you accept, which you may not
18  accept but once you accept that the decision to rely on
19  outsources armoured vehicles provided by a contractor as
20  and when needed, if you accept that that's a permissible
21  approach, then the fact that one or other of them may have
22  broken down occasionally doesn't necessarily mean that you
23  must then abandon the idea of having a contractor and
24  purchase your own armoured vehicles.  Surely the first
25  thing to do will be to contact the contractor and say look

Page 38557

1   here, this kind of thing mustn't happen again otherwise
2   we'll have to cancel your contract and do something else,
3   but can one go beyond that?
4       MS PILLAY SC:        Chairperson, the issue
5   really is that we did not see any form of protocol where
6   Lonmin holds its contractors accountable for the vehicles
7   that it relies on and that's really the heart of the
8   complaint.  If we can then turn to the killing of Mr Mabebe
9   on the evening of the 12th of August, again Chairperson the
10  strikers have accepted responsibility for the killing of Mr
11  Mabebe.  They have not put forward any grounds for
12  justification and in the circumstances we submit that the
13  Commission must find that the killing was unlawful.
14      The secondary question that arises is Lonmin's
15  responsibility for failing to adequately protect both K4
16  shaft and Mr Mabebe.  We have set out in our heads of
17  argument at paragraph 320 that there was intelligence
18  available of direct threats made to K4 shaft and to the
19  workers who were based at K4 shaft.  We've put forward
20  argument that at the time Lonmin was actively encouraging
21  workers to come to work, notwithstanding these clear
22  threats that were made and that clearly Lonmin failed to
23  take adequate steps to protect K4, notwithstanding the
24  clear risk that they faced.
25      We know that at the time, on Mr Sinclair's

Page 38558

1  evidence, the risk assessment conducted by Lonmin security
2  was a double red which was probably of the highest level
3  and notwithstanding this excessive or this extreme risk
4  assessment, there was no evidence that it was conveyed to
5  the contractors together with an instruction to contractors
6  that security should be heightened in view of the
7  heightened risk and I've already mentioned, Chairperson,
8  that Mr Sinclair was given an opportunity, notwithstanding
9  the fact that he was under cross-examination, to try and
10 get the information to show that in fact there was this
11 instruction given to contractors of the need for heightened
12 security at K4.  He failed to take the invitation up and we
13 submit that in the circumstances this Commission should
14 draw a negative inference from that fact.
15       And indeed, Chair, there is no evidence of
16 increased security at K4, quite the contrary.  The evidence
17 is that the security at K4 was wholly lacking and in the
18 circumstances we submit that Lonmin should be held
19 responsible for the attack on Mr Mabebe and the attack on
20 Mr Van Vuuren which we've dealt with already.  In relation
21 to the 13th of August –
22       CHAIRPERSON:          Held responsible for
23 failing to take precautions to prevent –
24       MS PILLAY SC:          To protect –
25       CHAIRPERSON:           - the attacks.

Page 38559

1       MS PILLAY SC:          To protect its employees
2  and that of contractors on site.  In relation to the events
3  of the 13th, Chair, there are two incidents which we need to
4  briefly deal with.  The first is the killing of Mr Langa in
5  the early hours of the 13th and the second is the SAPS
6  operation on the 13th.  In relation to the killing of Mr
7  Langa, we know that the evidence is that Mr Langa was
8  killed on a popular route for workers who went, walked from
9  their hostels to EPL where they caught a bus to Saffy
10 shaft.  The strikers have taken responsibility for Mr
11 Langa's death.  Again they've put up no basis for
12 justification.  We submit it's open for the Commission to
13 make a finding that the killing was unlawful.
14       The secondary question again, Chair, is around
15 Lonmin's responsibility for Mr Langa's death.  We draw
16 attention in our heads of argument at paragraph 334 to Mr
17 Jameson's e-mail to the DG of the DMR where he says that
18 the situation is neither stable nor under control and where
19 he says to the DG that Lonmin did not have the capacity to
20 protect life and limb.
21       We also draw attention, Chair, to the evidence of
22 Mr Sinclair who testified, who conceded in cross-
23 examination that there were serious capacity constraints
24 that faced Lonmin security and that they simply did not
25 have the capacity to protect all of the workers who were

Page 38560

1  coming to work.  Mr Mokwena testified and the reference is
2  in our heads of argument, that it was irresponsible for
3  Lonmin to ask someone like Mr Langa to come to work when
4  they were aware that they were not able to adequately
5  protect him.
6       Now in those circumstances, Chair, we submit that
7  it's open for the Commission to make a finding that it was
8  irresponsible for Lonmin to call on people like Mr Langa to
9  come to work and then fail to adequately protect them and
10 it was a dereliction of their duty to protect their
11 workers.
12       We have dealt in our heads of argument with the
13 question of Lonmin, of the evidence that Lonmin considered,
14 closing the mine Chair, and that it seemed to have taken a
15 business decision not to do so.  I will deal more fully
16 with this issue when I deal with recommendations at the end
17 of my address.
18       Again just to highlight, Chair, on the 13th of
19 August, particularly around the time when Mr Langa was
20 killed we again see an absence of visible policing
21 notwithstanding intelligence reports of violence and
22 intimidation and also the brutal killing of Mr Fundi and
23 Mabelane the day before.  Notwithstanding the serious
24 violence that plagued Marikana at the time, there was an
25 absolute absence of visible policing in place.  Then to

Page 38561

1  turn very briefly to the SAPS –
2       CHAIRPERSON:          The contingency plan of the
3  10th was still in place and that called for visible policing
4  and absolutely nothing was done to implement it.
5       MS PILLAY SC:          That is so, Chair,
6  absolutely nothing was done.  And then to turn to the big
7  event of the 13th and that's the SAPS operation.  We deal in
8  paragraph 59, Chair, with the prelude to the operation and
9  the whole issue turns on the nature of crime intelligence
10 available and what was done on the basis of that crime
11 intelligence and we've set out what Brigadier Engelbrecht's
12 version of events is, which is at odds with Major-General
13 Mpembe's version.  And we say that Brigadier Engelbrecht's
14 version should be favoured and it should be found that he
15 indeed conveyed the extent of the crime intelligence
16 reports that he received, he did convey to Major-General
17 Mpembe who ought to have been aware at the time he received
18 those reports of the serious nature of the violence that
19 was plaguing Marikana at the time.  And we show in our
20 heads of argument, Chair, that Major-General Mpembe's
21 evidence is, in itself, inconsistent.  There seems to be on
22 his part a deliberate attempt to downplay the extent of his
23 knowledge prior to him arriving at Marikana on the 13th and
24 we say that this, we draw two inferences from this, from
25 his deliberate attempt to do that and we've shown in our

Page 38562

1   heads of argument the difficulties we have with his
2   testimony.  And it seems to be because, firstly, it would
3   mean he is responsible for the lack of visible policing in
4   the area because the question needs to be asked, if he was
5   aware of these crime intelligence reports in the full
6   extent that Brigadier Engelbrecht seems to have conveyed
7   them, why didn't he act concretely to ensure that visible
8   policing was in place?
9          CHAIRPERSON:          He was on leave of course,
10  wasn't he, but the evidence is that on the Sunday when he
11  received the report he then contacted – who did he contact,
12  was it Naidoo?
13         MS PILLAY SC:          That's correct, Chair, but
14  we submit that his obligation goes beyond that.  Even
15  though he's on leave, when he receives a report –
16         CHAIRPERSON:          I'm sorry but if he's on
17  leave and if, and I think the Provincial Commissioner was
18  on leave as well and the acting Provincial Commissioner was
19  General Naidoo.  Now is it obligatory for a senior officer
20  who is on leave to do any more than to convey the
21  information he has received to the person who is performing
22  the function of Provincial Commissioner at that time?  I
23  mean is that not enough?
24         MS PILLAY SC:          It goes beyond that,
25  Chair, because he seems to have given Brigadier Engelbrecht

Page 38563

1   some sort of assurance that visible policing will be put in
2   place but we don't see any concrete steps taken by him,
3   either an instruction to Brigadier Calitz or to whoever
4   else was in charge at the time.
5          CHAIRPERSON:          No, but if he's on leave,
6   he gets this information that visible policing is needed,
7   he says to Engelbrecht, I agree with you, visible policing
8   is needed, it will be provided.  He then phones the person
9   who is not on leave, who is actually operationally
10  responsible at the time and says this is the information,
11  clearly we need some visible policing, presumably the
12  person to whom he speaks agrees and that's it.  Is he
13  obliged to do any more than that?
14         MS PILLAY SC:          We submit –
15         CHAIRPERSON:          Unless he has reason to
16  believe perhaps that nothing was happening and then he must
17  follow up but what the follow up procedures would involve
18  is of course another matter, but is one not putting too
19  heavy a burden on him in the light of the fact that he was
20  on leave, in the light of the fact he did see to it that
21  the information was conveyed to the person who was
22  responsible for carrying it out at the time?
23         COMMISSIONER TOKOTA:          Furthermore, was it
24  really put to him that he had done that, notwithstanding
25  that he was on leave, to do more than that so that he could

Page 38564

1   get the advantage of his explanation?
2          MS PILLAY SC:          Commissioner Tokota, he
3   was cross-examined to a limited extent on this issue.  I
4   think the difficulties that we face is that the fuller
5   statement from Brigadier Engelbrecht only became available
6   much later, so that we understood much later the extent of
7   the information which he had passed on to General Mpembe at
8   the time and the question –
9          COMMISSIONER TOKOTA:          What I want to know
10  is whether he was cross-examined as to why he didn't do
11  anything further than contacting the, for example the
12  supply of the visible policing notwithstanding that he is
13  on leave and things like that.
14         MS PILLAY SC:          My recollection,
15  Commissioner Tokota, is that he was cross-examined on this
16  question of what he did when he received the information
17  and short of saying that he just informed, passed the
18  information on to General Naidoo, he couldn't give an
19  explanation of any further concrete steps that he did in
20  light of the seriousness of the intelligence that –
21         CHAIRPERSON:          The question is, did he
22  have to do any more?  If he's on leave, he gets serious
23  information, he passes it on to the responsible senior
24  officer, acting Provincial Commissioner at the time I
25  think, no – Provincial Commissioner, acting Provincial

Page 38565

1   Commissioner - isn't he entitled to say, well, I must
2   assume that my colleague who is acting Provincial
3   Commissioner will do the necessary?  It's not for me to sit
4   on his shoulder and make sure that he's doing his job.
5   Unless of course there's possibly reason to think that
6   something untoward was happening or something that should
7   have been happening, wasn't happening.  Isn't that fair?
8          MS PILLAY SC:          Chair, there's a question
9   mark about whether he conveyed the full extent of the
10  criminal, of the crime intelligence reports on and that's
11  the first issue, is the extent of the information that he
12  conveyed which Brigadier Engelbrecht had conveyed to him
13  because you will recall that he actually initially denied
14  having received those full reports from Brigadier
15  Engelbrecht and that was part of the problem.  And
16  specifically around the incidents of the 12th and the
17  serious violence that had taken place on the 12th, Brigadier
18  Engelbrecht's version is that after those incidents he
19  again informed General Mpembe of the seriousness of the
20  violence that had taken place and General Mpembe's version,
21  General Mpembe's initial version before the Commission was
22  that he hadn't received those reports.
23         CHAIRPERSON:          What does General Naidoo
24  who was the acting Provincial Commissioner on that day,
25  what does he say about it?

Page 38566

1      MS PILLAY SC:      I think that General

2 Naidoo's evidence, Chair, was that he hadn't received the

3 reports around the 12th from General Mpembe and that's the

4 issue.

5      COMMISSIONER HEMRAJ:      Why would

6 intelligence be communicated to a deputy Provincial

7 Commissioner who is on leave and then not communicated to

8 the acting Provincial Commissioner? Surely that would have

9 gone the route of being communicated officially to the

10 person holding the position and on duty at the time.

11      MS PILLAY SC:      Commissioner Hemraj, I

12 think it stems from the fact that General Mpembe gave

13 Brigadier Engelbrecht the assurance that they would act on

14 the information that he gave. So it was – because

15 Brigadier Engelbrecht never testified, it's never been,

16 we've never gone into why he kept on sending the reports to

17 General Mpembe instead of the operational commander at

18 Marikana at the time but it would seem from the evidence

19 that that's based on the feedback given by General Mpembe

20 who almost seemed to have given assurance that visible

21 policing would be put in place.

22      COMMISSIONER HEMRAJ:      Was it explored

23 with General Naidoo whether those reports ever came to his

24 attention from Brigadier Engelbrecht because I don't recall

25 that?

Page 38567

1      CHAIRPERSON:      If you can't answer it

2 we'll obviously have to investigate.

3      MS PILLAY SC:      We can revert on that

4 particular question.

5      CHAIRPERSON:      Yes –

6      MS PILLAY SC:      The role of the – General

7 Naidoo claims that he didn't get the SMS from General

8 Mpembe.

9      COMMISSIONER HEMRAJ:      My question was

10 whether General Naidoo was privy to the information that

11 emanated from Brigadier Engelbrecht directly from the

12 intelligence –

13      MS PILLAY SC:      My understanding is there

14 is no evidence that –

15      COMMISSIONER HEMRAJ:      Was that raised

16 with General Naidoo whether he got that information at all

17 from intelligence?

18      CHAIRPERSON:      Ms Pillay, we've asked the

19 question, you don't have to give us the answer now. You

20 can give us this later –

21      MS PILLAY SC:      Chair, we'll revert on

22 that –

23      CHAIRPERSON:      The question is on the

24 table, as it were.

25      MS PILLAY SC:      Yes.

Page 38568

1      CHAIRPERSON:      And I hope it will be

2 answered before the end of the 14 –

3      MS PILLAY SC:      We'll revert on that

4 question, Chair. The other important aspect, Chair, of the

5 extent of the crime intelligence reports available to

6 General Mpembe revolves around his decision on the 13th when

7 he gets to Marikana, to deal with the breakaway march as a

8 simul – sorry, a spontaneous gathering. And we've made

9 that point in our heads of argument and I'll turn to it

10 now. So we know that when the Provincial Commissioner, she

11 issues an instruction that the crowd should be, the

12 breakaway group that they see on the CCTV monitor should be

13 attended to, she makes an entry in the OB book.

14 Importantly, Chair, is Major-General Mpembe's testimony

15 that it was his duty to operationalise that instruction and

16 it is how he goes about doing that, how he operationalises

17 the PC's instruction that we take issue with.

18      Now we say that in view of the crime intelligence

19 reports that he had available to him, he was well aware

20 that the breakaway group was part of the big group that had

21 assembled on the koppie, we know that Brigadier Calitz told

22 him that because that was the information that the Lonmin

23 JOC was facing at the time. We therefore say, Chair, that

24 his explanation that this was a spontaneous event is not

25 convincing. Even if it was a spontaneous event, we say

Page 38569

1 that that doesn't exclude the application of ordinary

2 public order policing prescripts. So in other words the

3 fact that it's a spontaneous event doesn't mean that there

4 is no obligation to conduct some sort of threat assessment,

5 some sort of plan, put some sort of plan in place,

6 particularly having regard to what it is that you plan to

7 do at the spontaneous event.

8      Now we know that General Mpembe went with the

9 intention of disarming and dispersing the strikers. Now we

10 submit, with that intention in mind, he ought to have

11 conducted a proper threat assessment, put in place a proper

12 plan and briefed his members accordingly and his failure to

13 do that, we submit, is highly questionable.

14      COMMISSIONER TOKOTA:      Did he really have

15 time for that? There's a spontaneous protest and there

16 were a series of killings prior to that, did he really have

17 time to do proper planning for that?

18      MS PILLAY SC:      Commissioner Tokota –

19      COMMISSIONER TOKOTA:      Yes, well, was he –

20 would you fault the manner in which he dealt with the group

21 at the time when he confronted them, applying as they said,

22 the situational appropriateness or whatever?

23      MS PILLAY SC:      Commissioner Tokota, two

24 issues and the first is, I think we must be clear on when

25 General Mpembe relies on the doctrine of situational

Page 38570

1  appropriateness and he only invokes that doctrine at the
2  point where he allows, he takes the decision to allow the
3  strikers to proceed to the koppie and to accompany them.
4  So it is at that point that he invokes the doctrine of
5  situational appropriateness.  At a much earlier stage his
6  explanation is that he adopts the approach that he does
7  because he sees it as a spontaneous gathering.  Now we've
8  already said that in view of the crime intelligence reports
9  available to him, it was not open for him to view this as a
10  spontaneous gathering, firstly.  Secondly, that SAPS has
11  not put forward any facts to justify their decision to act
12  there and then and that's an answer to your question
13  because what we do know, Commissioner Tokota, is that these
14  strikers, the breakaway group at that stage were on their
15  way to march to K3 shaft.  We know that they were stopped
16  en route by Lonmin security who actually told them that
17  they should not proceed to K3 shaft and that they should go
18  back to where they came from.  And we know that the
19  strikers then peacefully turn around and we've got the
20  evidence of that, and then march back to the koppie.  And
21  that's the point at which they were intercepted by General
22  Mpembe.  So we submit, bearing in mind those facts, that
23  there was absolutely no compelling reason for SAPS to take
24  action there and then.
25          COMMISSIONER TOKOTA:          Was he aware of all

Page 38571

1  of that?
2          MS PILLAY SC:          This was –
3          COMMISSIONER TOKOTA:          That is now, there
4  the security people are preventing them and was he aware of
5  that?
6          MS PILLAY SC:          Well the point,
7  Commissioner Tokota, is all of this gets monitored by
8  Lonmin security and this is exactly the point at which SAPS
9  see the group on the CCTV monitor.  So if, at the very
10  least he ought to have tried to understand exactly where
11  this group is coming from and where they were going to
12  before then going to this railway line to try and intercept
13  them.  That is our submission.  In the event we submit that
14  that information must have been freely available because
15  Lonmin security was closely monitoring this group and they
16  were then in the Lonmin JOC when this gro9up was seen on
17  the Lonmin CCTV.
18          COMMISSIONER HEMRAJ:          Then Ms Pillay, I'm
19  not entirely clear about the suggestion that it's not
20  spontaneous.  How much notice would they have had?  When
21  would they have seen the group, the breakaway group
22  marching?  How much time would he have had to know that
23  they had broken away and they were going in a particular
24  direction?
25          MS PILLAY SC:          What we know, Commissioner

Page 38572

1  Hemraj, is that Lonmin security is closely monitoring the
2  group.  They know the group breaks away, they know the
3  group is en route to K3.  They intercept the group and they
4  make them turn around and march back.  That much we know.
5          COMMISSIONER HEMRAJ:          And what is that
6  time frame -
7          MS PILLAY SC:          I'm not sure –
8          COMMISSIONER HEMRAJ:          - the question
9  because when do they know, how do they determine
10  spontaneity?  When does the group start marching?  Is it
11  one hour, is it two hours, is it half an hour?  It's not
12  very clear to me and that's why I don't understand the
13  criticism around spontaneous.
14          MS PILLAY SC:          The criticism,
15  Commissioner Hemraj, goes beyond attaching an hour or a
16  minute time frame to what exactly transpired.  The
17  criticism is that the breakaway group was part of a bigger
18  issue which SAPS was well aware of, firstly because they
19  knew that the people had been gathering on the koppie and
20  secondly, that's exactly what the crime intelligence
21  reports were saying to them and they were aware of the
22  strikers' propensity for violence because that's exactly
23  what had transpired immediately before the breakaway group
24  had left the koppie, so that's the first point.
25          The second point is that Lonmin security was

Page 38573

1  closely monitoring the situation, that much we know and
2  that at that stage SAPS see the breakaway group on the
3  monitor in Lonmin JOC.  So at the very least they had the
4  information readily available as to exactly where the group
5  was coming from and where the group was going to.
6          COMMISSIONER HEMRAJ:          I understand your
7  submission as regards the gathering at the koppie, I do
8  follow that.  I'm just not sure whether General Mpembe
9  would have had sufficient notice about the march, the
10  breakaway group leaving the koppie and marching, I'm not
11  sure about the time frame there so – or whether they would
12  have anticipated that in fact the breakaway group from the
13  koppie would then march or when it is that Lonmin
14  communicated it to them and how much time they had to then
15  deal with it.  That's not clear to me.
16          MS PILLAY SC:          We know that from the time
17  that the OB entry is made there's not a big lapse of time
18  to when General Mpembe actually finds himself out on the
19  railway line.  I think there's, we've dealt with that time
20  on the evidence, I think it's about 45 minutes.
21          CHAIRPERSON:          I don't understand the
22  significance of the distinction between the breakaway group
23  and a spontaneous group.  It seems to me that whether or
24  not they were a breakaway group doesn't help us very much.
25  It clearly was some kind of spontaneous move, march by a

Page 38574

1 portion of those on the koppie. So there was an element of
2 spontaneity there. They knew they were a dangerous lot
3 because presumably they knew about the weapons. They
4 could, I take it, see those on the screen and so on. So
5 what he knew was that here was a group of dangerous people.
6 Whether he actually focused on the fact that they'd come
7 from the koppie doesn't seem to be terribly relevant.
8 Whether they had or they hadn't, it was a spontaneous march
9 or relatively spontaneous march without any warning at all,
10 to K3, turned around by the security people on their way
11 back now to the lace from which they came. They were a
12 dangerous lot because they were marching around with
13 dangerous weapons. You're not allowed to do that, that's
14 illegal, so that had to be stopped. So I don't understand
15 where this argument is getting us. I can understand the
16 argument that maybe he should have done a bit more to
17 prepare his troops, if one can call them that, to deal with
18 the situation but then there's the factor which my
19 colleague Adv Tokota has mentioned, how much time did he
20 have? You know one has got to answer those questions
21 before one can start criticising him. He's got a
22 potentially dangerous situation, over 200 people marching
23 around with dangerous weapons. Alright, they'd been turned
24 back from their initial destination. What exactly they're
25 going to do on their way back home is an unknown. What

Page 38575

1 must he do? He can't say, send them a message and say,
2 would you please postpone your march for two hours to give
3 me a chance to have a conference with my people and work
4 out a plan. He's got to deal with it pretty smartly,
5 hasn't he? So how much time did he have? One mustn't set
6 impossible standards for people because apart from the fact
7 that they're not going to comply with them, they're going
8 to have a contempt for any attempt at any stage.
9 So the question one has got to ask oneself is,
10 how much time did he have? And once you've answered that
11 one, then you've got to ask the next question, what was
12 reasonable to expect him to do in the time that he had?
13 And if the answer is he had three minutes, he didn't have
14 time to do anything, well, then you can't criticise him for
15 not doing anything. Isn't that so?
16 MS PILLAY SC: The issue, Chair, is
17 really around what did he do? What did he decide to do,
18 given those facts that you've just outlined and that is the
19 nub of the criticism because what he decided to do was
20 actually a very drastic measure. He decided to go out and
21 to disperse and to disarm those strikers and that is really
22 the point of criticism, because even assuming it was a
23 spontaneous event there were other avenues open to him to
24 dealing with that spontaneous gathering rather than take
25 the drastic decision to disarm and disperse the strikers

Page 38576

1 forcibly.
2 CHAIRPERSON: No, Ms Pillay, I'm not
3 sure, with respect, that you're putting it entirely
4 correctly. The order that he disarm and disperse came from
5 the Provincial Commissioner. One may wish to criticise her
6 for giving an order like that at that time. That was the
7 order he had to comply with. He doesn't appear actually to
8 have set about doing it. What he did was, as far as I can
9 read the evidence, what he did was he went to them and he
10 tried by the power of persuasion to get them to lay down
11 their arms and if he could do it by persuasion, well, then
12 there wouldn't be a problem. If he wasn't able to persuade
13 them, he then made a decision which was, I think an
14 appropriate decision, a situationally appropriate decision
15 not to try to disarm them because he realised the
16 consequences, but rather to escort them home to the koppie
17 and take it further from there.
18 We know that things went wrong thereafter and one
19 of the points we'll have to debate in a moment is why, but
20 can one really fault him? He's got an instruction which
21 prima facie was an ill-advised, hasty instruction at the
22 time which he's supposed to comply with. He goes there, he
23 tries to implement it by oratory. He doesn't succeed. He
24 decides right, well I can't now disperse them and disarm
25 them because there's going to be bloodshed. The best, the

Page 38577

1 sensible thing to do is to escort them home. Now if that's
2 all that he did, can one really criticise him?
3 MS PILLAY SC: Chair, with respect, the
4 difficulty is that that's not all that he did because what
5 the Chairperson has left out is the crucial conduct where
6 he issues an ultimatum and he starts counting and that, we
7 submit, is consistent with his predetermined approach that
8 he wanted to, either through persuasion or other means, get
9 the strikers to disperse and disarm.
10 CHAIRPERSON: When that was clearly not
11 going to work, when they got up at the count of three he
12 then did not do – he allowed them to go, he made no attempt
13 to disarm them, no attempt to disperse them. He actually
14 had a brief discussion with the 2IC Colonel Merafi, they
15 had a debate which he gave, made a decision which I think
16 you would contend was an appropriate decision in the
17 circumstances and if it had stopped there, there wouldn't
18 have been any trouble. Isn't that right, as far as we
19 know?
20 COMMISSIONER TOKOTA: In fact he had
21 already decided that he was going to allow them because
22 there was no time for him after the count to go and discuss
23 with anybody, not so? He had phoned the Provincial
24 Commissioner, I can't do it, I've got to allow them.
25 MS PILLAY SC: And then he started

Page 38578

1 counting, which is the inexplicable part of all of this,
2 but the difficulty Chair that I –
3       COMMISSIONER TOKOTA:       That was the last
4 attempt for him. He had already made up his mind.
5       CHAIRPERSON:       That was part of the
6 oratory.
7       COMMISSIONER TOKOTA:       Yes. Why should
8 you fault him for that?
9       MS PILLAY SC:       We don't, we don't fault
10 General Mpembe on his decision to apply the doctrine of
11 situational appropriateness at that point. The problem we
12 have is twofold, firstly that the members were not properly
13 briefed on exactly what was expected of them once the
14 strikers were allowed to move through and the second then
15 relates to his whole notion that the strikers pose a danger
16 to the informal settlements and that, we submit, is a
17 factor he took into account without any evidence to warrant
18 such an approach. And it goes back to the notion of
19 exactly how much he knew about the strikers before he
20 decided to do what he did.
21       CHAIRPERSON:       According to him, he told
22 Merafi what his decision was, Merafi accepted it and
23 according to the evidence as far as he was concerned that
24 instruction was sent down the line to the ordinary foot
25 soldiers. That's surely all he had to do, isn't it? You

Page 38579

1 know the instructions to do nothing, just escort them. You
2 don't have to have a briefing lasting half an hour to tell
3 people to do that and he gave that instruction. He says,
4 and it's not disputed I think, that that was conveyed. At
5 least as far as he was concerned he had reason to believe
6 it was conveyed and if it had stayed there and they'd done
7 that, there wouldn't have been a problem. What he also did
8 was, there was a fear that they might go into the informal
9 settlement and they might attack people who weren't taking
10 part in the strike because there's a history of that as
11 well, Langa died for example. So what he did was also
12 sensible, he sent the Nyalas along the road to guard the
13 informal settlement to stop them from going there,
14 deviating. I know we've got other problems of what
15 happened thereafter and that's the trickier part of the
16 argument but up to the point we're busy with now, I must
17 tell you that prima facie I don't see that he has a problem
18 in his answer but we have heard your arguments and I don't
19 want to stop you unduly but I think we've probably debated
20 the matter as appropriately as we can in the situation in
21 which we find ourselves.
22       MS PILLAY SC:       In a final attempt to
23 persuade you, Chair, if I may just point to the testimony
24 of Colonel Merafi which we submit is crucial because this
25 is an experienced POP commander. He says that had he known

Page 38580

1 what was conveyed to General Mpembe, in other words the
2 crime intelligence reports, he would have ensured that they
3 had a proper operational plan in place in order to deal
4 with the strikers.
5       CHAIRPERSON:       And did he explain how many
6 minutes he would have had to put that proper operational
7 plan in place, regard being had to the instructions which
8 Mpembe got from the Provincial Commissioner?
9       MS PILLAY SC:       If you look at the
10 instruction -
11       CHAIRPERSON:       You know lex non cogit ad
12 impossibilia presumably applies even in the field of police
13 operations.
14       MS PILLAY SC:       But Chair, if you look at
15 the instruction, General Mbombo says that the planning has
16 been adjusted in order to operationalise that instruction
17 and we know that's never happened and that that was
18 incumbent on the operational commander to make sure that
19 that happens. There's a second problem which is
20 highlighted by Colonel Merafi and that is in a POP
21 operation of that nature when you do take action, you need
22 to inform the strikers of what you intend doing so that
23 they understand the ambits of acceptable conduct for them,
24 and that wasn't done by General Mpembe. So we would submit
25 therefore on those two legs that his conduct is highly

Page 38581

1 questionable.
2       CHAIRPERSON:       Adv Hemraj asked me a
3 question which I'm afraid I'm going to have to ask you
4 because I don't know the answer. She says is it clear what
5 aspect of Mpembe's conduct you are criticising, precisely
6 what action? If we were going to draw a charge sheet
7 against him for some disciplinary hearing or – what exactly
8 would we say in the charge sheet?
9       MS PILLAY SC:       That he failed to ensure
10 that a proper plan was in place to deal with the strikers,
11 particularly in light of the crime intelligence reports
12 available, that he didn't adequately brief his members on
13 what to expect – that's the important part because they
14 were dealing with a group of people that had a propensity
15 for violence, that they didn't know what was expected of
16 them when they went out to the railway line and that in
17 fact when he did decide to adopt the principle of
18 situational appropriateness, which we don't take issue
19 with, at that stage there was not a proper briefing to
20 members because if you look at the statements of members,
21 there's clearly confusion around what was expected.
22       CHAIRPERSON:       His answer to that is that
23 he told Merafi, Merafi understood, Merafi then sent the
24 message down the line. He had no reason to believe that it
25 hadn't been sent down the line or hadn't been understood.

Page 38582

1   If it was a complicated thing, and now we could be talking
2   about what happened on the 16th, then you could understand
3   it but it's simple. Escort them, don't interfere with
4   them, escort them back to the koppie, that's it. How long
5   do you have to instruct people on that?
6         MS PILLAY SC:        Except, Chair, that it was
7   more complicated than that because included in that
8   instruction was that they shouldn't be allowed to go near
9   the informal settlements. Now –
10         CHAIRPERSON:        There are two points.
11   Firstly, he'd arranged, he dealt with that by sending the
12   Nyalas along the road to shield the informal settlement,
13   that's the first point. And secondly, you argue that
14   there's no evidence to suggest that they did go off towards
15   the informal settlement. So they, after all, had come from
16   the koppie, they were going back to the koppie. Just in
17   case they decided to go into the informal settlement and
18   get up to mischief, he put the Nyalas there. So I suppose
19   he theoretically could have said make sure they don't go
20   into the informal settlement but in fact there's no causal
21   connection between his failure to say that and what
22   happened because, according to your argument, they didn't
23   go to the informal settlement and the trouble didn't arise
24   because of the fact that they were going to the informal
25   settlement and his members weren't instructed as to what to

Page 38583

1   do in that situation. So it's an argument in the air,
2   isn't it, not connected to the actual facts.
3         MS PILLAY SC:        The fact, Chairperson, is
4   that Warrant Officer Kuhn discharged the teargas on the
5   strength –
6         CHAIRPERSON:        Well, that's the next point
7   you've got to get to.
8         MS PILLAY SC:        Ja.
9         CHAIRPERSON:        If you are correct in
10   say8ing that he changed his mind and he gave the
11   instruction to discharge the teargas and whether he gave
12   the instruction to fire the stun grenades or not but
13   assuming he did that as well, then obviously there's
14   serious grounds for criticising him. The factual question
15   we have to wrestle with is whether he gave that
16   instruction. You submit that he did.
17         MS PILLAY SC:        We do. Can I try and pull
18   together the evidence just very briefly because I really am
19   running out of time and this –
20         COMMISSIONER TOKOTA:        Before you get
21   there, I still don't understand why you criticise him for
22   having failed to brief the members in view of the fact that
23   immediately after they refused then they were escorted.
24   Where would they have got that information from if they
25   were not briefed? They then lined up the Nyalas against

Page 38584

1   the settlement, where would they have got that information
2   if they were not briefed?
3         MS PILLAY SC:        Well, they say that they
4   weren't adequately briefed and that's the problem,
5   Commissioner Tokota.
6         COMMISSIONER TOKOTA:        How would they have
7   done that because if he said I'm disarming you, he
8   explained to them the purpose of the police presence, they
9   refused, he had already told them you must escort them,
10   then they did that. It's there, going, they lined up the
11   Nyalas. Now how would they have got that information if
12   they were not briefed?
13         MS PILLAY SC:        It's exactly the nature of
14   the information that was given to members which is what
15   we're taking issue with because they immediately lined up
16   behind the strikers, whether they were able to do that or
17   whether they should have done that in view of the crime
18   intelligence reports of how violent these people were,
19   that's one of the issues that we're dealing with –
20         COMMISSIONER HEMRAJ:        Sorry to interrupt
21   you but isn't the confusion among the members about whether
22   they were to disarm and disperse, isn't that what the
23   confusion is in the statements from the policemen, not
24   whether they were just to escort them initially? Isn't
25   that where the difficulty arises?

Page 38585

1         MS PILLAY SC:        Indeed, Commissioner
2   Hemraj, it's that level of briefing, the initial decision
3   to disarm and disperse but also in relation to monitoring
4   and following the strikers. The issue around briefing is
5   that they ought to have been informed how dangerous the
6   strikers really are and that we don't see evidence of. So
7   what we do see General Mpembe is doing is getting a line of
8   policemen immediately behind the strikers in situations
9   where they actually are known to be a very violent bunch of
10   people.
11       The factors, Chairperson, that we say support the
12   finding that there was an instruction are the following –
13         COMMISSIONER HEMRAJ:        I'm so sorry, I've
14   just –
15         CHAIRPERSON:        Whose finding is that?
16         MS PILLAY SC:        Finding by the Commission,
17   that support a finding by the Commission that there was an
18   instruction.
19         CHAIRPERSON:        We should make that –
20         MS PILLAY SC:        That's correct, yes. The
21   factors are the following. The first is the version of
22   Warrant Officer Kuhn which we've dealt with in our heads of
23   argument. We point out that Warrant Officer Kuhn's version
24   that he received an instruction and then –
25         CHAIRPERSON:        [Microphone off, inaudible]

Page 38586

1  he doesn't know.

2        MS PILLAY SC:        - and then asked, just to

3  clarify, and then asked if he should fire the teargas and

4  then gets the answer that he should –

5        CHAIRPERSON:        From someone else, he

6  doesn't know.

7        MS PILLAY SC:        It's consistent, Chair,

8  with Captain Thupe's version that General Mpembe issued the

9  instruction, that Warrant Officer Kuhn asked for clarity on

10  whether he should and that General Mpembe confirmed.

11        CHAIRPERSON:        But Kuhn didn't know who

12  confirmed.

13        MS PILLAY SC:        He says that –

14        CHAIRPERSON:        Obviously Thupe, Mpembe had

15  given the order.  The other one is, did he give it over the

16  radio, was it an order to fire teargas or use stun grenades

17  as well?  We've got statements of people who say, allegedly

18  relatively contemporaneous statements, that he said fire

19  teargas and stun grenades.  That's not what Kuhn said.  Was

20  it over the radio?  Remember the evidence was that Kuhn was

21  the farthest left, Mpembe was the right.  The most unlikely

22  person to be told to do that, I would have thought, would

23  have been Kuhn.  How would he have heard it unless the

24  radio was used and if the radio was, if the radio order had

25  been, "Kuhn, fire teargas" I can understand it but if the

Page 38587

1  order was just "fire teargas," how come Kuhn was the only

2  one who fired teargas?  The whole thing doesn't stand

3  together.

4        MS PILLAY SC:        Because he was one of the

5  few that had the teargas canisters on him.

6        CHAIRPERSON:        Oh, how many people had

7  teargas canisters, do we know?  Baloyi had decided on his

8  own that he was going to get some stun grenades and he

9  actually got them from someone else who took them off.  One

10  wonders why that was but –

11        MS PILLAY SC:        The second factor, Chair,

12  is the failure to institute disciplinary proceedings

13  against Warrant Officer Kuhn, notwithstanding General

14  Mpembe's version that he fired teargas without an

15  instruction from his operational commander.  The third

16  factor is the version of Captain Thupe which we have

17  already dealt with.  The fourth factor is what transpired

18  at Roots and we submit that there's evidence of what

19  transpired at Roots firstly in the Marikana narrative which

20  is HHH28, which reflects that an instruction was given by

21  General Mpembe.  There's further evidence in Captain Thupe,

22  Thupe's evidence before the Commission that General Mpembe

23  said at Roots that he could not remember firing, giving the

24  instruction but that it was possible that he did so.  And

25  then there's the independent evidence of Colonel Vermaak to

Page 38588

1  the same effect that General Mpembe said at Roots that he

2  couldn't remember firing the teargas but that it was

3  possible that he did.  Now we submit that on that

4  collection of facts it can sustain a finding that in fact

5  General Mpembe did issue the instruction.

6        COMMISSIONER TOKOTA:        But in view of the

7  fact that the other one was on the far left and the other

8  one the far right, what finding must we make as to by what

9  means would he have done that and that information would

10  only go to Warrant Officer Kuhn?

11        MS PILLAY SC:        Well, we know,

12  Commissioner Tokota, that it wasn't over the radio because

13  –

14        COMMISSIONER TOKOTA:        In the light of the

15  denial by General Mpembe and in the light of the fact that

16  it's not clear from the members who were there as to who

17  actually gave that –

18        MS PILLAY SC:        Except Captain Thupe and

19  we have yet to hear an explanation for why he would

20  fabricate that evidence.

21        CHAIRPERSON:        The main problem I've got,

22  I must tell you frankly, is I can't understand why Mpembe

23  would have given that instruction.  Mpembe had arranged

24  Nyalas to stop people going into the informal settlement.

25  They weren't going to the informal settlement, we know

Page 38589

1  that.  At least – you (indistinct).  Things are going

2  according to the plan that he had, it's called a dynamic

3  plan by Mr White but it's a plan anyway.  Things are going

4  according to plan.  They're walking quietly, they're not

5  misbehaving, they're being escorted, there's no danger to

6  the informal settlement.  Why suddenly would he take it

7  upon himself to give this mad order to say somehow to Kuhn

8  who is at the far left, how he got it to Kuhn at the far

9  left if he didn't use his radio is something I also don't

10  understand, please Kuhn, situated as you are at the far

11  left, will you fire a teargas canister in that direction to

12  stop them veering off to the right to the informal

13  settlement.  And Kuhn then says, "Who, me?" and he asks

14  someone, he doesn't know who gave the order.  He asks

15  someone else, he doesn't know who that is either and then

16  he does it.  And then Baloyi takes it upon himself to use

17  one of the stun grenades that he'd taken from somebody

18  else, not because of any order he'd got from Mpembe by that

19  time.  The evidence seems to indicate that there was

20  something in the nature of a mutiny, there was something

21  of, a significant disagreement by some of the members there

22  who didn't agree with what Mpembe did.  They felt the

23  strong armed militaristic approach was the answer to the

24  situation and the result was a catastrophe - but why one

25  must, in the face of all that conflicting evidence and

Page 38590

1  those probabilities moving in the opposite direction, blame
2  Mpembe for that.  There are other things one can blame
3  Mpembe for, I don't quarrel with that but this particular
4  one doesn't make sense.  I just say that, it's my prima
5  facie view.  If I'm wrong I'm happy to be persuaded that
6  that is so.
7       MS PILLAY SC:          Chairperson, this could
8  take the whole day.  I've got limited time, I think we'll
9  come back in reply and deal with some of your, some of the
10  issues that you raise.  If I can then turn very quickly to
11  the deaths on the 13th and the evidence is that the strikers
12  killed Warrant Officer Monene, Warrant Officer Lepaaku and
13  attacked Lieutenant Baloyi.  There's been no evidence of
14  justification for that conduct and we submit that the
15  finding should be made –
16       CHAIRPERSON:          You'd like us to make a
17  finding on –
18       MS PILLAY SC:          - that it was unlawful.
19  In relation to Mr Mati, we deal with his killing in
20  paragraph 46 of our heads.  We submit that Mr Mati was shot
21  by SAPS members.  We take note of Mr Nzuza's testimony that
22  he assisted one of the strikers from the main scene,
23  assisted him out and left him at the door of one of the
24  shacks.  We submit that we don't know whether that's Mr
25  Mati or not but if it is then it shows that Mr Mati was

Page 38591

1  shot at the main scene.  If it's not, Chairperson, then the
2  probabilities are that Mr Mati was shot by Captain Thupe
3  and Sergeant Sekgweleya who both, well, Captain Thupe
4  testified to having shot in that vicinity of the shacks
5  where Mr Mati was eventually found and both of them –
6       CHAIRPERSON:          [Microphone off, inaudible]
7  prima facie evidence which justifies referring to the DPP,
8  to the provincial DPP investigation of circumstances in
9  which Mati died.
10       MS PILLAY SC:          That's right.
11       CHAIRPERSON:          Indications are he died
12  because of a shot fired by a policeman.
13       MS PILLAY SC:          That's correct.
14       CHAIRPERSON:          And further than that one
15  doesn't have to take it, isn't that so?
16       MS PILLAY SC:          That's correct, Chair, and
17  the same applies to Mr Jokanisi.  I should indicate that
18  until yesterday, in relation to Mr Jokanisi we have been
19  working on the report of Dr Nkosi and then yesterday the
20  family's team produced a report of Dr Naidoo and I'm not
21  sure if the Commissioners have copies of the report which
22  the families argue indicate that Mr Jokanisi was
23  incapacitated to the point where we can draw the conclusion
24  that he was shot where he was eventually found.
25       CHAIRPERSON:          I'd like to take a five

Page 38592

1  minute comfort break, only a five minute comfort break at
2  this stage and then you can tell us more about Mr Jokanisi
3  after that.
4       [COMMISSION ADJOURNS          COMMISSION RESUMES]
5       CHAIRPERSON:          The Commission resumes.  I
6  did notice that there was a certain degree of approval of
7  the fact that we took a five minute break.  I didn't
8  understand it to be unwelcome to many of the people here
9  but anyway, let's carry on now.  Yes, Ms Pillay?
10       MS PILLAY SC:          Chair, in relation to Mr
11  Jokanisi and I'm actually very reluctant to do it but we've
12  made copies of the report that was made available yesterday
13  but unfortunately it came out quite – let me hand up these
14  copies.  Just to contextualise –
15       CHAIRPERSON:          One of the things we've got
16  to do with this, presumably we've got to make it an
17  exhibit, it's got to be part of the record, right?  And
18  presumably it's got to be sent to the original pathologist
19  as well for his comment but in the meanwhile if you've got
20  to hand it in it's got to be an exhibit.  So you
21  fortunately were the clerk of the papers and the mistress
22  of the exhibits, am I right?  So can you please give us the
23  next exhibit number?
24       MS PILLAY SC:          Chair, the next exhibit
25  number is triple, sorry, ZZZZ33.

Page 38593

1       CHAIRPERSON:          ZZZZ33?
2       MS PILLAY SC:          Yes.
3       CHAIRPERSON:          33.
4       MS PILLAY SC:          I should add that there
5  are two reports.  This is the one in relation to Mr
6  Jokanisi.  There is also an additional report in relation
7  to Mr Sokanyile, so I'm not sure if –
8       CHAIRPERSON:          Alright, I'll tell you what
9  we'll do.  Let's not worry about it for the moment, it's a
10  housekeeping matter we can deal with in due course.  There
11  are also, I understand, some affidavits that have come to
12  hand from some of the generals who were at the National
13  Management Forum meeting who were asked by, on my
14  instructions, to indicate what they remember of what was
15  said at that meeting and those statements will also have to
16  be handed in as exhibits.  So that's a matter that we can
17  deal with at an appropriate stage.  I don't know whether
18  the parties have yet got those affidavits, they're not all
19  in yet but if they haven't got them I trust that
20  arrangements will be made for them to see them in due
21  course, but let's carry on with the argument for the
22  moment.
23       MS PILLAY SC:          We've made the submission,
24  Chair, that the evidence seems to indicate that Mr Jokanisi
25  was killed in the vicinity of Warrant Officer Lepaaku and

Page 38594

1 we base this on the statement of Warrant Officer Kuhn who
2 indicates in his statement that he saw one of the strikers,
3 part of the group that was attacking Warrant Officer
4 Lepaaku, that he rushed to assist Warrant Officer Lepaaku
5 but by the time he got there found that the striker had
6 been shot in the shoulder and he then handcuffed the
7 striker and there is then the last sentence that, "in the
8 meantime the striker had died." He later found out that
9 the striker had died. So this is the only evidence we have
10 of facts around the death of the striker at the first
11 scene. When I say the first scene I mean the main scene of
12 the 13th.
13       CHAIRPERSON:       It's the only evidence
14 we've got at the moment but I mean surely as a matter of
15 common courtesy Dr Nkosi should be asked to respond to
16 this. I notice that Dr Naidoo says on the second page,
17 paragraph 4 dealing with the problem as to whether Mr
18 Jokanisi was able to walk after the injury. He says, "On
19 the assumption that the lumbar spinal cord was damaged
20 significantly and bearing in mind this was a high velocity
21 injury, I would expect that he was not able to walk
22 around." Now obviously if the assumption is correct,
23 obviously what he says is correct also but inasmuch as he
24 complains about the description of the lumbar spinal
25 injury, I must say it would have been more helpful to us to

Page 38595

1 hear first what Dr Nkosi has to say. So I would request
2 that attempts be made as soon as possible to, (a) give this
3 document to Dr Nkosi if he hasn't got it yet and (b) to ask
4 him to comment because clearly if this fact which is set
5 out here is correct, that he wasn't capable of walking,
6 that would be a very material factor in regard to the
7 submissions that you're going to present to us.
8       COMMISSIONER HEMRAJ:       Would it not be
9 proper for all the new post-mortem reports or reports that
10 have emanated from Dr Naidoo to be at least sent to Dr
11 Nkosi or the other pathologists who did the post-mortems
12 just for comment?
13       MS PILLAY SC:       Commissioner Hemraj, we
14 will attend to that. Chair, I think in those circumstances
15 it's more appropriate to make complete submissions on the
16 death of Mr, on Mr Jokanisi at that time. In relation to
17 Mr Sokanyile, Chair, we submit that the evidence before the
18 Commission supports a finding that Mr Sokanyile was shot by
19 SAPS. There's no basis for justification put up by SAPS
20 for killing Mr Sokanyile, even on the statements of
21 Sergeant Sekgweleya and Constable Ngweyi.
22       CHAIRPERSON:       There are two points, the
23 one is based on the general approach to the issues that
24 arise in this case relating to the deaths. The Human
25 Rights Commission have referred to Mabaso v Felix which

Page 38596

1 certainly is authority that in a delictual claim the person
2 responsible for a death bears an onus to justify the
3 killing and the general submissions made in relation to the
4 duty of commissions in dealing with cases of killings is in
5 line with Mabaso's case. So the first point is, can it be
6 said that police are liable, as it were, for the death
7 unless they can prove justification and establish facts
8 which – the answer to that appears to be yes.
9       The narrower question and in some ways the more
10 significant one is, are we able to say who was responsible
11 for firing the shots and if so, then can we say there was
12 prima facie criminal conduct which would cause us to send
13 the case off to the provincial DPP for further
14 investigation.
15       One of the problems we've got is because R5s were
16 used, bullets disintegrated, there's no meaningful
17 ballistic evidence which in itself I would have thought is,
18 apart from all the other reasons, is a good reason not to
19 use R5s in future. But is the evidence sufficiently
20 detailed to enable us to identify, I think the correct word
21 is shooter, we were using shottist which I think is more of
22 an expression used for Bisley competitions than activities
23 of the kind we've been busy with in this Commission. So I
24 think shooter is the right word that I think Mr Budlender
25 used earlier. Can we identify, on the balance of

Page 38597

1 probabilities perhaps, the shooter who was responsible for
2 Mr Jokanisi's death? Your point is it's unexplained so
3 therefore Mabaso and Felix would kick in and in any civil
4 case the police would have difficulties in showing
5 justification for the killing, but of course if it were a
6 criminal case the onus would be the other way round and we
7 would have to, or those responsible for the prosecution
8 would have to show who shot and in what circumstances. Now
9 that's the point you're dealing with now, I take it.
10       MS PILLAY SC:       That's correct, Chair, and
11 we say in our heads of argument that we've identified the
12 potential shooters/killers but that this merits further
13 investigation. And finally, Chair, just to deal with the
14 death of Mr Twala on the 14th which we deal with in
15 paragraph 553 to 558 of our heads of argument and we say
16 that the strikers have accepted responsibility for the
17 death of Mr Twala, notwithstanding the evidence of Mr X and
18 we've dealt already with the veracity of his evidence.
19 There's no evidence to tie the killing of Mr Twala to a
20 particular individual striker and that that similarly is a
21 death that warrants further investigation.
22       CHAIRPERSON:       If you can remember the
23 details of what was in the docket, you will remember that
24 in some of the dockets relating to the killings there were
25 statements and we were told that there would be vigorous

Page 38598

1  contentions that they were inadmissible because they'd been
2  obtained by, involuntarily from the witness. Of course
3  that's – and we have kept away from that for reasons which
4  I take it everyone understands but of course if there is
5  that evidence in dockets, that is something which the DPP
6  will consider and he will consider whether the statements,
7  whether he'd be able to show if he's minded to prosecute
8  somebody, that these statements are admissible but that's a
9  matter, that's something we mercifully are not obliged to
10  consider. Is that, that's right?
11        MS PILLAY SC:          That's our submission,
12  Chair. In relation to the question of recommendations,
13  Chair, we've dealt with it in our heads of argument and in
14  the interests of time it's something which we can deal with
15  in reply, with your leave.
16        CHAIRPERSON:          Thank you. Who is next?
17  Mr Chaskalson.
18        MR CHASKALSON SC:          I am, Chair.
19  Chairperson, Commissioners, I am responsible for five broad
20  topics in my section of the oral submissions. That is the
21  phase 2 submissions, the events of 16 August, Roots and the
22  evidence leaders' general criticism of SAPS's response to
23  the shootings in the Commission, the miscellaneous issues
24  that you find at pages 597 to 624 of our heads and the
25  responsibility of SAPS for the events of the 16th and the

Page 38599

1  punitive recommendations relating to the 16th.
2        Now it's not remotely possible to address all of
3  these topics in the 90 minutes that I have, so for the most
4  part I will merely stand by the written submissions of the
5  evidence leaders.
6        CHAIRPERSON:          Well, that was the idea
7  that I explained in the beginning, the argument is the
8  written argument. The oral hearing is for points to be
9  highlighted, points, questions asked by the Commissioners
10  to be answered and so presumably any extra responses to
11  points made by –
12        MR CHASKALSON SC:          I'll obviously be –
13        CHAIRPERSON:          Your heads are, have
14  clearly been written on the assumption that that is to be
15  the approach, that's why the heads are as full and as
16  comprehensive as they are.
17        MR CHASKALSON SC:          Thank you, Chair. So
18  I'm going to be focusing on issues where the heads need
19  amplification or clarification and in some cases
20  reconsideration and topics which we consider particularly
21  important, but there is always a risk that that selection
22  of topics might miss topics which you, Chair and
23  Commissioners, regard as important and which you would like
24  to canvass and so I would invite you, if I gloss past a
25  topic where you have particular concerns, to put the

Page 38600

1  question to me. If I can answer it on my feet, I will do
2  so. If I can't we will get you –
3        CHAIRPERSON:          On your feet, you seem to
4  be on something else at the moment but we won't go there
5  either.
6        MR CHASKALSON SC:          Indeed, Chair, but
7  before I get to the heads there is an issue that I need to
8  address up front because it's an issue that's particularly
9  important in relation to the 16th and that is the effect of
10  these two years of Commission hearings on our capacity to
11  be numbed to events that were truly horrifying. For two
12  years we've been staring minutely at what is the single
13  most disturbing episode in the history of our democracy and
14  we've been looking day in and day out at images of bodies
15  being shot to pieces by military assault rifles. It's only
16  natural that we've developed coping mechanisms to deal with
17  this process but part of what those coping mechanisms do is
18  that they normalise the horrific and they dull our outrage
19  at what should be and what is truly unacceptable.
20        In a constitutional democracy it is never
21  acceptable for a line of police members armed with military
22  assault rifles to fire 300 shots into a crowd of striking
23  miners. That is never acceptable in a constitutional
24  democracy. In a constitutional democracy it is never
25  acceptable for the police to fire blindly into a koppie so

Page 38601

1  that they kill 15 people in circumstances where they can't
2  even describe the circumstances of the deaths, never mind
3  justify them.
4        Now our learned friends from SAPS have done an
5  excellent job in trying to normalise this conduct on the
6  part of their clients and they've been helped by the
7  numbness that we've all developed by being forced to focus
8  on this unimaginable horror day in and day out, but when it
9  comes to making your findings and writing your report, Mr
10  Chairperson, you and your Commissioners need at some level
11  to think yourselves back to that night of Thursday the 16th
12  of August when you switched on television and you saw the
13  Reuters footage which was broadcast, the Reuters footage
14  that we now know so well and that we've analysed frame by
15  frame. You need to remember the horror that you
16  experienced when you saw it for the first time, when you
17  saw miners being gunned down by the TRT line because that
18  horror reflects the reality of the situation and that's a
19  reality that's at real risk of being diluted through these
20  proceedings because one cannot stare at horror every day
21  for two years without normalising it. And I would urge you
22  to do that because if you cannot rediscover the horror that
23  you experienced before your responses to the killings were
24  numbed by daily exposure, there will be two unfortunate
25  consequences for this Commission. The first is your report

Page 38602

1  will be compromised because it will be shaped by the
2  numbing effect of over-exposure to horror.  And the second
3  is that your report will lack legitimacy because the South
4  African public which has not been numbed to the horror of
5  what took place, that hasn't been here day in and day out,
6  will not accept a report that fails to regard the killings
7  at Marikana with the horror that they merit.
8        So I would strongly emphasise that you try to
9  take yourselves back to the first time that you saw what we
10  now have seen day in and day out on the Reuters footage, on
11  the ETV footage.  And the way to try to rediscover some of
12  that horror is to stop thinking of the striking miners as
13  an undifferentiated, faceless mob.  Start thinking of
14  individuals.  Start thinking of Mr Gwelani who was walking
15  back to Nkaneng more than 250 metres away from the TRT
16  line, was shot through the head by an R5 bullet.  Mr
17  Gwelani whose death SAPS still had the gall to attempt to
18  justify in paragraph 178 of their heads of argument where
19  they say he was, quote, "Clearly amongst the group of
20  strikers who were attacking the police or those the police
21  could reasonably have believed were meaning to attack
22  them."  250 metres away.
23        Think of Mr Machamba, unarmed and terrified,
24  huddling in the killing zone at scene 2 while SAPS bullets
25  ricocheted around him and he was waiting to be killed.

Page 38603

1  Think of the people who weren't as lucky as him, the 10
2  victims who also sought shelter in the killing zone but
3  were shot dead by SAPS members in circumstances where
4  there's no evidence before this Commission to suggest that
5  they posed an imminent threat to anyone.  Give them names.
6  Mr Mangcotywa victim D, Mr Liau victim E, Mr Mosebetsane
7  victim G, Mr Mabiya victim H, Mr Nokamba victim I, Mr
8  Samphendu victim J, Mr Ngxande victim K, Mr Gadlela victim
9  L, Mr Pato victim M and Mr Mohai who was wounded in the
10  killing zone and died in hospital.  And think of Mr Mdze,
11  bleeding slowly to death for an hour at scene 1 while SAPS
12  members mill around the scene offering no assistance and
13  Major General Naidoo doesn't bring medical assistance to
14  scene 1 because he prefers to join in the action at scene
15  2.  Think of individuals and try at all times to remember
16  that every victim who died at Marikana, not just the seven
17  victims of the strikers leading up to the 16th of August,
18  every victim who died at Marikana was an individual human
19  being with a family and a life, an individual, and resist
20  the attempt by SAPS to characterise the people they killed
21  as undifferentiated members of the faceless mob.  That has
22  to be the starting point.
23        So with that rhetorical opening let me start with
24  the more specific submissions and on phase 2 issues I'm not
25  going to add anything to what's in the heads.

Page 38604

1        On the issues relating to the 16th of August
2  before the operation, that's the heading in our heads, I'm
3  not – I'm going to stand by the heads.  What I would
4  emphasise is the submissions at pages 301 to 306 that the
5  change from encirclement to the new tactical plan in all
6  likelihood took place only between the 6AM JOCCOM and the
7  1:30 JOCCOM.  I have set out all the references there, I
8  don't want to repeat them.
9        I'd also emphasise the three major weaknesses in
10  the plan that Colonel Scott was forced to cobble together
11  at short notice.  They're dealt with at pages 326 to 330.
12  Just to summarise, the first was the plan's dependence on a
13  simultaneous rollout of barbed wire, something which
14  according to Brigadier Calitz was operationally impossible
15  or at least extremely undesirable.  The second was the
16  quantum leap in the plan from POPS methods to a line of 60
17  TRT members with military assault rifles who would
18  effectively function as a firing squad.  The third was the
19  fact that the plan was likely to result in strikers fleeing
20  to koppie 3 but provided no details of how to dislodge them
21  from koppie 3 once they got there.  And as we argue in the
22  heads, the first two flaws in the plan led directly to the
23  deaths at scene 1, the third flaw led directly to the
24  deaths at scene 2.
25        I'd also emphasise the inadequacies of the

Page 38605

1  briefing of the new plan, pages 345 to 347.  And finally I
2  would urge you to look at the video footage of Mr
3  Mathunjwa's second speech at the koppie, his second speech,
4  not his first, just before the SAPS operation began because
5  if one looks at that speech, at that video and listens to
6  the audio – it's important to listen to the audio – what we
7  see and what we hear is a mood at the koppie that has
8  changed dramatically from lunchtime.  There is none of the
9  bravado that you see at 1:30, at 1 o'clock, none at all.
10  What you see is people, or what you hear is people singing
11  a lament and you see a lot of concerned faces.
12        COMMISSIONER TOKOTA:          Sorry, Mr
13  Chaskalson, the second speech, what is the exhibit?
14        MR CHASKALSON SC:          KKK55 but it starts,
15  KKK55 is a consolidated collection of ETV footage.  The
16  speech starts at eight minutes and 28 seconds into that
17  video.  8:28, 8:28.
18        COMMISSIONER TOKOTA:          [Microphone off,
19  inaudible]
20        MR CHASKALSON SC:          55, 55.  But I would
21  urge you to start at 8:28 because otherwise you will, you
22  know, see a lot of aimless footage about movement of SAPS
23  vehicles on the morning of the 16th for eight and a half
24  minutes before you get to the speech.  If I can then move
25  to our heads in relation to what happened at scene 1 and

Page 38606

1  the first passage that I want to give particular attention
2  to is the passage we address at page 363 under the heading,
3  "The movement of the strikers from the western edge of the
4  kraal and the failure of SAPS to block the channel down the
5  eastern edge of the kraal." And by starting there I must
6  emphasise that what I have done is I have glossed over the
7  parts of our heads where I deal with the start of the
8  rollout and also the heads that engage with incident 1 and
9  incident 2 but why I've glossed over that is, subject to
10 correction from my learned friend from SAPS, I understand
11 from the SAPS heads that there is not much weight being put
12 on incident 1 or incident 2 in the way that they were
13 advanced in exhibit L and I don't see that much of a
14 difference between our position and SAPS's position in that
15 regard.
16       If we go to page 363 it's necessary to get into
17 some fairly minute detail at this point because the
18 argument has to address whether it was possible for
19 Brigadier Calitz and SAPS in the field to have acted
20 differently in the moment and that requires focus on
21 detail. And the starting point is where Nyala 4 reaches
22 the edge of the kraal because at that point the strikers'
23 attempt to get past the kraal on the western side has been
24 stopped. That's 15:52:03, 15:52:03. It's one minute and
25 47 seconds before the shootings. Now once that happened,

Page 38607

1  there was only one route that the strikers could take if
2  they intended to get into the SAPS zone and that was the
3  route down the channel on the eastern side of the kraal.
4  And on page 363 we have a diagram which is a photograph of
5  the kraal which has passage A and passage B –
6       CHAIRPERSON:        Mr Chaskalson, it's not
7  absolutely right. If their passage, movement forward was
8  blocked by Nyala 4 at the western wall of the kraal, then
9  there were two things they could have done. One was what
10 they did, go around the kraal, proceed down the channel.
11 The other was to go back and go towards the, further, it
12 would be to the east would it not?
13       MR CHASKALSON SC:        Yes, yes.
14 Chairperson, I am not saying that through the passage was
15 the only place they could go. What I'm saying is if they
16 wanted to get into the SAPS zone, which is what Brigadier
17 Calitz was guarding against, that was the only place they
18 could get into the SAPS zone. Of course they could have
19 dispersed north, west, they didn't have to get into the
20 SAPS zone but Brigadier Calitz had to work on the
21 assumption that there was a risk that they would try to get
22 into the SAPS zone and had to deal with that risk.
23       Now the only place that you get into the SAPS
24 zone is down that channel and there are two places where
25 the channel can be blocked relatively simply. It's passage

Page 38608

1  A and passage B which are marked on this photograph of
2  Colonel Vermaak. Now we submit in the heads, we discuss in
3  the heads whether Brigadier Calitz did order, the evidence
4  in relation to whether he did order a block at passage A or
5  passage B. It isn't conclusive either way but our
6  submission is that's not the real issue. The real issue
7  is, could a reasonable commander in the position of
8  Brigadier Calitz have taken steps to block the strikers at
9  passage A or passage B in time to stop the tragedy? And
10 what we see is that whether Brigadier Calitz did issue the
11 order that at sometimes he says he did and sometimes he
12 says he didn't, the police vehicles didn't block passage A.
13 Instead what they did is they arranged themselves in the
14 crescent formation that we see on page 367, if we can just
15 go down to figure 5 on page 367 where we see instead of
16 blocking passage A or passage B, what they did is they
17 formed a concentric semi-circle around passage A or from
18 passage A to passage B, leaving both passages open. And
19 the first question that arises is the question that has
20 been raised by the families of the deceased and the injured
21 and arrested, whether was this a deliberate attempt to
22 channel strikers down to the TRT line that we see in red?
23 It plainly had that effect because it created a channel
24 that opened out at a line of TRT strikers but we conclude
25 in our heads that this was not a deliberate plan and we've

Page 38609

1  set out why at paragraph 708. The first is just a deep
2  aversion to thinking that the operation involved what would
3  be a deliberate co-ordinated plan to murder large numbers
4  of strikers, we'd have to see quite conclusive evidence to
5  get past that aversion.
6       CHAIRPERSON:        Sorry, my machine is on?
7  You said was there an attempt to murder them, effectively,
8  to that has to be added, was there an attempt? Was there a
9  plan to kill them in front of TV cameras –
10      MR CHASKALSON SC:        Indeed.
11      CHAIRPERSON:        - media eyes and going to
12 go all over the world.
13      MR CHASKALSON SC:        Indeed, indeed.
14      CHAIRPERSON:        That's a further –
15      MR CHASKALSON SC:        That is an important,
16 it is an important factor that we overlooked and obviously
17 has weight. The second point we make is it would have
18 required such a wide degree of co-operation and
19 implementation that we would have expected to find some
20 evidence in its, from a range of SAPS officers who would
21 have to have been involved and whose bona fides we can't
22 question. So we would have expected, if it was there, that
23 it would have come out that way. We also, at the risk of
24 not being humble enough, think that we've done a fairly
25 exhaustive investigation into all of the documentary and

Page 38610

1 electronic evidence that we could find and the fact that we
2 found no trace of such a deliberate plan in all of our
3 investigations suggests that it wasn't there.
4 And finally, we just think that the planning and
5 execution of a plan like that would have had to be so
6 precise and so slick that we don't think that SAPS was up
7 to it. If we look at the conduct of the SAPS operation
8 through 13th and 16th or the SAPS operations through 13th and
9 16th, if this was a deliberate plan it would have required a
10 level of organisation and efficiency that they just didn't
11 show at any other stage over the week. But that doesn't
12 mean that we regard SAPS and its commanders as free from
13 culpability in relation to what happened because as we say
14 in paragraphs 709 and 710, it's our submission that a
15 reasonable operational commander in the position of
16 Brigadier Calitz, upon witnessing what he calls incident 2,
17 would have anticipated the possible need to seal off the
18 safe zone by closing the access routes through passages A
19 or B and it would have been reasonable possible to do so.
20 CHAIRPERSON: The problem with that
21 argument is that you say incident 2 didn't happen. The –
22 MR CHASKALSON SC: No, no. Chair, let me
23 –
24 CHAIRPERSON: One has to reformulate it.
25 I'm not saying it's necessarily fatal to the argument but

Page 38611

1 it's got to be reformulated. You can't say well, if he saw
2 incident 2 you'd expect him to act as follows if you say in
3 the same breath or almost the same breath that incident 2
4 didn't happen. What you've got to do if you're going to
5 put up the argument, you've got to say what happened in
6 place of incident 2 and you must base the argument then on
7 that.
8 MR CHASKALSON SC: Well, what we say he
9 did witness or what he may have witnessed and what
10 certainly did happen is that the strikers tried to enter
11 the police safe zone along the path to Nkaneng on the
12 western side of the kraal. That has always been our
13 submission. Where we take an issue with SAPS is we have
14 contested the version in exhibit L that there was a
15 showdown between SAPS and the strikers where POPS members
16 were deployed against the strikers at that point. We never
17 suggested the strikers weren't trying to get onto the road,
18 the path to Nkaneng at that point. But at the point at
19 which Brigadier Calitz saw the strikers trying to enter the
20 SAPS zone to the west of the kraal and Nyala 4 cut them
21 off, he should have anticipated and in fact he says he did
22 anticipate that there was a risk that they would then go
23 round the kraal and try to enter on the eastern side of the
24 zone, eastern side of the kraal.
25 CHAIRPERSON: Sorry to interrupt you,

Page 38612

1 just to elaborate the previous submission, it may be quite
2 important. If one accepts, as you do in your argument,
3 that the police believed that there was an attack – whether
4 there was an attack, attempt to attack them is a different
5 question – but you concede that there was putative self-
6 defence and you also say and you give the evidence that
7 there were threats. So the notional reasonable commander
8 in the place of Brigadier Calitz would have, (a) had a
9 history of threats, would have seen the strikers enter the
10 police zone, as you say, and would presumably in the
11 circumstances have been entitled to accept that there was a
12 distinct possibility that they were minded to attack the
13 police, in other words implement the threats that had been
14 made earlier. So you don't have to go to the extent of
15 saying there was some kind of incident 2. The factors I've
16 mentioned would be enough to make a person in Brigadier
17 Calitz's position accept that what might happen would be an
18 attack, an attempt to implement the threats and precautions
19 must be taken to ensure that doesn't happen. Would that be
20 a formulation that you would go along with or have I –
21 MR CHASKALSON SC: Yes. Well, one
22 doesn't even need to go that far, Chairperson. The whole
23 SAPS plan was predicated on a need to keep the strikers out
24 of the SAPS zone. That was the whole purpose of the barbed
25 wire deployment. Now once the strikers had shown an

Page 38613

1 inclination to get into the SAPS zone and you cut them off
2 on the west side, a commander implementing that plan would
3 anticipate a risk that they would try and go around the
4 kraal and enter on the east side and would need to cut them
5 off there. The plan, the logic of the plan was that
6 strikers must be kept out of the SAPS zone because there is
7 a risk that if they are into, get into the SAPS zone, media
8 and SAPS might be attacked by the strikers. That was there
9 from the very beginning.
10 Now if we start looking at passage A and what
11 could have been done to close passage A, the starting point
12 is always the point at which Nyala 4 reaches the western
13 side of the kraal because at that point the only remaining
14 opening is passage A. Nyala 4 reaches the kraal at
15 15:52:03 and the reference is in footnote 1106. By the
16 time that Lieutenant-Colonel Vermaak's aerial photograph at
17 slide 206 of exhibit L is taken, the famous aerial
18 photograph of the strikers approaching the channel, that's
19 15:53:26 and the strikers are still a few seconds away from
20 reaching passage A so it's one minute 23 seconds after
21 Nyala 4 closed. What's happened in the one minute 23
22 seconds is that eight armoured vehicles have driven around
23 the kraal and have taken themselves to a position which is
24 actually further in the channel than they would have had to
25 go if they were going to block the channel.

Page 38614

1        So if we look at the position of Papa 7, Papa 18,
2   Nyala 6, Brigadier Calitz's own Papa 1, Papa 9 and the two
3   Casspirs, they've all driven from the west side of the
4   kraal to the east side of the kraal, a further distance
5   than they would have to drive if they were forming a block
6   at passage A.
7        CHAIRPERSON:        Mr Chaskalson, is Nyala 6
8   the one, if one looks at the bottom left-hand corner of the
9   photograph, is Nyala 6 the third vehicle up there?  It
10  looks like it is, I think –
11       MR CHASKALSON SC:        Yes, it has a little
12  trailer behind it.
13       CHAIRPERSON:        Now in the presentation by
14  Lieutenant-Colonel Scott he said something that wasn't
15  dealt with in the evidence but of course people didn't come
16  from Nyala 6 to give evidence, to say the original idea was
17  that Nyala 6 was supposed to uncoil the wire to block the
18  passage.  That's what Lieutenant-Colonel Scott says in his
19  presentation.  The point was taken no further but I was
20  reading it the other day and I was wondering why it didn't
21  happen but I don't know whether we're able on the evidence
22  to answer that question.
23       MR CHASKALSON SC:        Well, on the evidence
24  we can't answer why it didn't happen.  What we can say is
25  that, and I was going to get to it in relation to passage

Page 38615

1   B, if one looks at whether Nyala 5 or Nyala 6 – because
2   remember there were two barbed wire Nyalas on that slide
3   whose position we can see in the slide in exhibit L,
4   Lieutenant-Colonel Vermaak's slide, is it 201?  Ja, sorry,
5   205.  No, not 205.  It's the earlier one.  The incident, if
6   one looks at the Blackberry photograph of Lieutenant-
7   Colonel Vermaak that shows Nyala 4 racing to get to the
8   kraal you can see that Nyala 5 and Nyala 6 are both in a
9   position where it would be relatively easy for them just to
10  drive straight forward if they could unfurl their barbed
11  wire and seal off the passage B, not passage A, passage B.
12  And the question then arises, was there enough time for
13  them to do it because Brigadier Calitz suggested it would
14  all have happened too quickly.  We, with respect, disagree
15  and what we use as our comparate in this regard and it's
16  not in the heads so I should just highlight that –
17       CHAIRPERSON:        What you're saying is being
18  recorded and will be transcribed, so I take it we don't
19  have to write it down.
20       MR CHASKALSON SC:        If we look at how long
21  it took Nyala 4 first to get its barbed wire ready for
22  deployment and then to travel what was almost 100 metres
23  from the mast to the kraal, we can assume that Nyalas 5 and
24  6 would have been able to perform the same exercise quicker
25  because they had to do the same job of getting that barbed

Page 38616

1   wire triangle out and the barbed wire ready to deploy but
2   then the distance that they had to travel from the position
3   where they were when they were passed by Nyala 4 was, in
4   the case of Nyala 5, approximately 75 metres and in the
5   case of Nyala 6 approximately 67 metres.  So it was a
6   shorter distance than that ultimately travelled by Nyala 4.
7        The deployment of the Nyala 4 barbed wire took no
8   more than 39 seconds to operationalise, as it were, because
9   we see Nyala 4 stopping at the mast away from Nyala 3 at
10  15:50:48 and my references for this will come from the raw
11  footage, sorry, will come from exhibit UUUU10.3 annexure
12  B2.  So at 15:50:48 which is 10:19 on that video, Nyala 4
13  has moved away from Nyala 3 and stopped at the mast.  It's
14  only going to, at that point, take its barbed wire triangle
15  off.  Nyala 5 will then come up to Nyala 4 and then it will
16  be wedged onto – sorry, Nyala 3 will then drive up to Nyala
17  4, it will then be wedged onto Nyala 3 and then Nyala 4
18  will drive away.  So it reaches the mast and stops at
19  15:50:48.  It's already deploying its barbed wire 39
20  seconds later at 15:51:27.  Sorry, 49 seconds later,
21  15:51:27.  That's at 12:01.  And then to travel the 100
22  metres it takes 35 seconds.  It starts at 15:51:27, it
23  finishes at 15:52:03.  So the whole process takes one
24  minute and 15 seconds from the point at which it takes its
25  triangle down to the point at which it reaches 100 metres

Page 38617

1   away.  One minute and 15 seconds from the point at which
2   Nyala 5, Nyala 4 reached the kraal would have allowed Nyala
3   5 or Nyala 6 to close passage B a full 30 seconds before
4   the shooting.
5        So if Nyala 4 could do what it did in one minute
6   and 15 seconds, Nyala 5 and Nyala 6 could have done the
7   less that they needed to do to close passage B in one
8   minute and 15 seconds and that would have protected the
9   safe zone more than 30 seconds before the shootings.  But
10  that was a bit of a digression because in truth the easier
11  way to stop the strikers would have been to block passage A
12  and that could have been done using the block method that
13  was effected first to the west of the kraal before Nyala 4
14  came which, and Brigadier Calitz described that method with
15  vehicles driving side by side with space for members to
16  debus between, possibly a metre apart.
17       If one looks at the distance of passage, the
18  width of passage A, it's measured at 19 metres at the
19  inspection.  If you assume a Casspir or a Nyala width of
20  2.5 metres and a distance of one metre between them, you
21  then need only five armoured vehicles to block passage A
22  according to the standard block method and as we've already
23  seen, there were eight armoured vehicles that had already
24  driven further than they would need to have driven to block
25  passage A by the time that, or before the time that the

Page 38618

1 strikers entered passage A.

2      So if an immediate instruction to block passage A

3 had been effectively communicated and implemented, it would

4 have been possible to block passage with those, with five

5 of those eight vehicles, one wouldn't have needed the last

6 three, before the strikers got there.

7      In relation to passage B a block would have been

8 simpler because there was more time for it. We've talked

9 about the barbed wire. One could also have blocked the 23

10 metre passage B using the standard block formation which

11 would have required no less than, well, no more than eight,

12 eight vehicles at a maximum, probably just seven and we had

13 all of those eight that could have been used. In addition

14 there would have been Papa 2, Papa 4, Papa 5 and Papa 10,

15 all of which had crossed passage B by the time of the

16 shootings.

17      And the other way that passage B could have been

18 blocked is, because of the geography it would have been

19 very easy to block passage B by driving the Nyala vehicles

20 head to toe as opposed to side by side. That was something

21 which Colonel Scott conceded in cross-examination. It

22 would have required only five Nyala vehicles to block

23 passage B.

24      So our submission is that it was possible to

25 prevent the shootings by blocking either passage A and

Page 38619

1 passage B and there hasn't been a satisfactory explanation

2 from SAPS for their failure to do so and in particular for

3 the failure to orchestrate the armoured vehicles in a way

4 that was designed to achieve what apparently they were

5 supposed to be doing, rather than this strange crescent

6 formation that channelled them down towards the TRT. The

7 second important submission in relation to –

8      CHAIRPERSON:      Mr Chaskalson, how long is

9 the second important submission going to take? I was

10 proposing to take the lunch adjournment now for half an

11 hour but if –

12      MR CHASKALSON SC:      It will take more than

13 two minutes, Chair.

14      CHAIRPERSON:      Well let's, shall we try to

15 resume at 28 minutes past one? We'll adjourn for lunch.

16      [COMMISSION ADJOURNS      COMMISSION RESUMES]

17 [13:30] CHAIRPERSON:      The Commission resumes.

18 Before Mr Chaskalson continues his argument I want to deal

19 with the question of the unavailability of simultaneous

20 translation services. I raised it with the office of the

21 secretary of the Commission and he – I said we'd start at

22 28 minutes past – and he has asked me to apologise for the

23 unavailability of the services this morning. He asked me

24 to put it on record that all processes were followed

25 through the Department of Justice and Correctional Services

Page 38620

1 to secure simultaneous translation services with effect

2 from this morning and that the service provider who was

3 contacted confirmed his availability, but for some reason

4 that is not yet known to the department and the office of

5 the secretary now these services were not provided today.

6 Attempts have been made to ascertain the reason for this,

7 but they haven't been able to contact him.

8      I'm also asked to draw to the attention of

9 everybody concerned that this situation is only temporary,

10 that all efforts are being made to get such services either

11 with effect from tomorrow or certainly with effect from

12 Monday, but the secretary of the Commission has again asked

13 me to repeat his apology for the inconvenience that this

14 caused. I trust that that is an explanation which will be

15 duly noted by all those concerned. Mr Chaskalson.

16      MR CHASKALSON SC:      Thank you, Chair. I'm

17 moving now to look at the use of POPS methods at scene 1.

18 It's addressed from page 370 –

19      CHAIRPERSON:      [Microphone off, inaudible]

20 we get there, I don't know if you're going to deal with

21 this later. You were saying what could have happened at

22 scene 1, what didn't happen. Are you going to deal in due

23 course with the evidence not only from Brigadier Calitz,

24 but also I think from Colonel Merafe that the order "block"

25 was given? You are going to deal with that? Because

Page 38621

1 that's quite important, isn't it?

2      MR CHASKALSON SC:      I'm not –

3      CHAIRPERSON:      That's not what happened,

4 but –

5      MR CHASKALSON SC:      I'm not proposing to

6 deal with in my oral submissions. We do address it in the

7 heads. There's contradictory evidence certainly from

8 Brigadier Calitz on that front. At certain points he says

9 he did give the order to block passage A. At other points

10 he says he didn't. Colonel Merafe says there was an order

11 to block. It's not clear whether the order was to block at

12 passage A. What does seem to have happened is if there was

13 an order to block, the block was formed up in a completely

14 inexplicably fashion because what it blocked was not either

15 the two passages into the safe zone, but rather a fence.

16      COMMISSIONER HEMRAJ:      Do we know which

17 commander gave the order to, for that formation, the

18 crescent formation? We haven't heard from the commander of

19 those Papa Nyalas?

20      MR CHASKALSON SC:      We haven't heard from,

21 we haven't heard any explanation for the crescent

22 formation. We haven't heard anyone take responsibility for

23 the crescent formation either in oral evidence or in

24 statements. The closest we get to it is Brigadier Calitz

25 saying it's a "perfekte blok." But –

Page 38622

1 COMMISSIONER HEMRAJ: Brigadier Calitz's
2 order to block would go to the commander of the Nyalas, the
3 Papa Nyalas?
4 MR CHASKALSON SC: Yes, that would be
5 Colonel Mere or Colonel Pitsi.
6 COMMISSIONER HEMRAJ: And they would in
7 turn then I expect instruct their members to, in whatever
8 formation they will expect them to block?
9 MR CHASKALSON SC: If one looks at the,
10 it looks more like a haphazard process that followed
11 Brigadier – well, followed somebody's instruction to do
12 something on the western side of the kraal because the
13 vehicles closest to the western side of the kraal seem to
14 just move out in that direction as they can.
15 COMMISSIONER HEMRAJ: Does it look like
16 there was a miscommunication about the order of block given
17 and the actual putting into effect of the formation? Or
18 misunderstanding or –
19 MR CHASKALSON SC: That's certainly one
20 possibility because if there was an order to block a
21 passage, as Brigadier Calitz testifies at certain points in
22 his evidence, then it looks like either that order wasn't
23 implemented or it wasn't understood, but one does – but
24 because Brigadier Calitz's evidence is so equivocal one
25 doesn't know whether that order was given or not. So a

Page 38623

1 possibility is that the order wasn't given and that Nyalas
2 were just moving without coordination.
3 COMMISSIONER HEMRAJ: But someone must
4 have given the order or the direction for it to have taken
5 the formation that it did. It's unlikely that they would
6 have each decided to go and place themselves in those
7 positions. There must have been some, I hope, rationale
8 behind it.
9 MR CHASKALSON SC: Well, we would also
10 have hoped so, but we have been given no evidence of it.
11 One possibility that struck us is that it may have been an
12 unplanned, uncoordinated – one Nyala goes out as far as
13 possible and then everybody else just stops behind because
14 nobody knows what they're expected to be doing. That is a
15 possibility, but we're really speculating because we have
16 no evidence as to what explains that arrangement.
17 CHAIRPERSON: What was the arrangement of
18 the vehicles at the time when Brigadier Calitz left the
19 scene according to his evidence?
20 MR CHASKALSON SC: Left scene 1?
21 CHAIRPERSON: Yes, left scene 1.
22 MR CHASKALSON SC: That's the arrangement
23 that we see on page 367 of the heads. That's just at the
24 point of the shootings and so you have the inner crescent
25 and you have Papa7, Nyala 6, Papa18 and Papa1 spread out

Page 38624

1 behind the crescent.
2 CHAIRPERSON: Thank you, they put it up.
3 I see it on the screen. I was looking for it in my copy of
4 the heads. If that's the - figure 5 of your heads at the
5 end of paragraph 704, if that reflects the position which
6 the vehicles were at the time when Brigadier Calitz left,
7 it indicates that the crescent formed while Brigadier
8 Calitz was on the scene. So inasmuch as he was the
9 operational commander, if that crescent formation came
10 about because of an order by somebody, he as the logical
11 person to have given the order because he was still there.
12 That seems to be correct, does it not?
13 MR CHASKALSON SC: The crescent had
14 definitely started to form when he arrived at the scene
15 because there's that footage that we went through in his
16 cross-examination of his vehicle arriving at the scene and
17 turning to go right outside Nyala 6, which at that stage
18 was a little further back, while the inner crescent is
19 starting to form up. There's the two Casspirs and Papa4
20 have formed up and Nyala 6 is next to Papa4 when Brigadier
21 Calitz arrives and he goes outside, or his driver goes
22 outside, but his evidence at the time was that the decision
23 on where to go to was his driver's, it wasn't his. It
24 wasn't –
25 CHAIRPERSON: So what you're saying is

Page 38625

1 that the crescent had already begun to form when he
2 arrived. So if it was formed because of a command by
3 somebody, it wasn't him, or it wasn't he who gave the
4 command, it was –
5 MR CHASKALSON SC: Not necessarily,
6 Chairperson, because he could have given that command on
7 the radio while he was moving from his original position.
8 CHAIRPERSON: There are three
9 possibilities. He either gave the command as he was on his
10 way there before he arrived there, or somebody else gave
11 the command, someone else who was presumably in charge as
12 it were, under him in that vicinity, or alternatively it
13 was something that just spontaneously arose, one vehicle
14 following another as it were. Are those the three
15 possibilities?
16 MR CHASKALSON SC: Those would seem to be
17 the three possibilities. The one submission that we would
18 make is that the positioning, or the crescent formation
19 was, should have been visible to Brigadier Calitz when he
20 arrived at the scene and he would have been in a position
21 to change it as operational commander if he didn't like the
22 crescent formation. He stayed on the south side of the
23 path to Nkaneng while that crescent formation, while the
24 back end of that crescent formation was being formed up
25 before he crossed over the path to join into a position to

Page 38626

1   the – well, to his right of the crescent formation.
2        CHAIRPERSON:        Yes, and the other point is
3   - I think you said it already, I just want to make sure I
4   understand – there's no explanation as to why the block
5   didn't occur.  An order may or may not have been given.  I
6   think the evidence, I think Merafe says an order was given
7   and Calitz – not Merafe, sorry, Mere, somebody says – let's
8   make sure I've got it right.  Somebody apart from Calitz
9   who was there says a block, an order to block was given.
10  Am I correct?
11       MR CHASKALSON SC:        I think there is a
12  statement from either Pitsi or Mere in which I've seen
13  that.  I can get the exact reference so –
14       CHAIRPERSON:        We can check that, thank
15  you.  And there's no explanation as to why the block didn't
16  happen.  I seem to remember I asked Brigadier Calitz, but I
17  don't remember that he gave me an answer that I understood.
18  But perhaps we can find that in the record.
19       MR CHASKALSON SC:        The problem with
20  Brigadier Calitz's evidence is it's quite difficult to
21  understand what he had in mind – well, (1), whether he, he
22  prevaricated on whether he gave the order to block or not,
23  and also what he wanted to block, because when we were
24  playing around with blocks on the map it was clear he
25  selected the passage A as the place he wanted to block, but

Page 38627

1   he later retreated from that proposition.  So there isn't a
2   single explanation, or consistent explanation from
3   Brigadier Calitz on this.
4        CHAIRPERSON:        Yes, thank you, Mr
5   Chaskalson.
6        MR CHASKALSON SC:        The next issue that I
7   want to emphasise is at 376 of the heads, which is how late
8   non-lethal POPS methods were actually used at scene 1 and
9   the references are all in the heads and they are references
10  to the raw footage of the UUUU videos, and I should place
11  on record that at points in our heads we've attributed the
12  UUUU videos to CALS.  They are actually a joint production
13  of CALS and SERI, so it's families as well as Human Rights
14  Commission who should be credited with UUUU.
15       The important points there is that the video
16  evidence we say almost conclusively, or we would say
17  conclusively shows that up until 20 seconds before the
18  shootings there had been no teargas, stun grenades or water
19  cannon used and when teargas, stun grenades and water
20  cannon finally get used in the last 20 seconds there are
21  two important points to be aware of.  The first is that
22  they do have the effect – or sorry, the first is that
23  they're being used too late because by that stage the lead
24  group of the strikers is already in the channel.  So if
25  they are designed to prevent the strikers from getting into

Page 38628

1   the channel it's too late to use them.  But the second is
2   they do have the effect that they are supposed to have;
3   they disperse that group.  They break it up.  The problem
4   is because the group's already in the channel and the
5   teargas and the stun grenades are deployed not between the
6   TRT line and the front of the group but rather towards the
7   middle of the group, what they do is they break the group
8   into two different directions, and possibly three, and
9   that's the issue that we discuss in some detail at pages
10  377 through to 379, or 381 of the heads.  But it's possibly
11  best illustrated by the diagram at page 379, so if we could
12  go down to fig6 –
13       CHAIRPERSON:        But before you get there
14  can I just put a point to you?  Would it be fair to say
15  that the fact that teargas and stun grenades were used,
16  albeit too late, only 20 seconds before the shooting, the
17  fact that they were used tends to indicate that the police
18  didn't intend to massacre the strikers, that they in fact
19  intended to disperse them?  They did it inefficiently.
20  They did it too late.  They did it at a time when half the
21  – I don't know whether it's actually half, but certainly
22  the front section of the group were forced forward as
23  opposed to backwards, but the fact that they were used at
24  all is evidence which would tend to show that the police
25  didn't deliberately set out to kill the strikers.  They in

Page 38629

1   fact tried to disarm them – no, sorry, tried to disperse
2   them, but they did it too late, with the consequences we
3   know.  Would that be a fair statement?
4        MR CHASKALSON SC:        We would accept that,
5   Chairperson, and the use of POPS methods and their effects
6   we see in figure 6, and figure 6 is a still taken just at
7   the point of the shootings from the JJJ194 series, and the
8   points that I would emphasise are the two points that are
9   marked by the vertical red arrows, but if one looks between
10  the Nyalas, if one looks at the vertical arrow on the left-
11  hand side one sees that between Papa2 and Papa4 there are
12  no strikers.  In fact the lead, the sort of front group of
13  Mr Noki and 11 others has already moved to the left of that
14  red arrow.  If one were to see the video one would have
15  seen them passing through that gap earlier on, but there
16  are no strikers visible in the gap.  So there is at least
17  that gap between Mr Noki and his 11 co-leaders and what we
18  call the kraal group, and if one looks at the gap between
19  the POPS Casspir and Papa2 with the red arrow on the right,
20  one sees a single striker who is in a gap between what we
21  have called the kraal group, which is behind Papa2, and the
22  rest of the original group of a hundred more strikers that
23  came around the kraal.  So at the moment of the shootings -
24       CHAIRPERSON:        They would be behind the
25  POPS Casspir, would they?

Page 38630

1    MR CHASKALSON SC:            Well, they would be
2  behind the – yes, they'd be behind the POPS Casspir and
3  some of them would actually have been retreating north and
4  west.  So the use of these POPS methods has already broken
5  up what started out as a single group of more than a
6  hundred people into 11, 12 people at the front, a kraal
7  group of, I don't know how many people, maybe another 15,
8  16, who are now behind Papa2, and a rump that is behind,
9  and what that suggests to us is that if the POPS methods
10  had been used quicker and in particular before the strikers
11  had entered the channel it may well have been possible to
12  disperse this group and to effect the POPS operation that
13  SAPS wanted to effect, because the POPS methods did break
14  up the group.  The problem was it broke up the group at too
15  late a stage and part of the effect of stun grenades and
16  teargas behind the lead group was to push them forward into
17  the direction of where the TRT was.
18    COMMISSIONER HEMRAJ:         Though some of the
19  strikers are not deterred by the teargas.
20    MR CHASKALSON SC:           It's certainly an
21  argument that's been put forward by SAPS, but Commissioner
22  Hemraj, I'm not sure that that is so.  The strikers, if one
23  looks at the kraal group – and this is speculative, I must
24  concede, but the kraal group that one sees now behind Papa2
25  seems to have been, there is a teargas canister that has

Page 38631

1  just been fired behind Papa2.  One can see the tear smoke
2  rising up above Papa2.  The strikers in front of it are
3  moving away from it towards the police.  The strikers who
4  are not in front of it are moving away from it towards the
5  kraal edge.  That's how they end up on the kraal edge, we
6  speculate, and I must concede it is speculation, but it's
7  speculation that makes sense because if one scrolls this
8  video – well, this is a still, but if one were to scroll
9  the video back one would see 20 seconds earlier the first
10  stun grenade has been fired and the kraal group and the
11  lead group have not been separated yet, they have moved
12  away from the stun grenade behind them as one group,
13  whereas everybody else has backed off from the stun
14  grenade, and so there's a gap that's opening out between
15  the consolidated lead group and kraal group and the rest of
16  the strikers, and when the teargas starts to come in,
17  breaking up Mr Noki's – well, breaking up what was a
18  consolidated lead group, Mr Noki and 11 other people who
19  are in front of where the teargas is fired move further in
20  front of it.
21  [13:50]  The kraal group moves away from it towards the
22  kraal, sort of sideways away from it.  So, and if one looks
23  at that photograph that one sees in UUUU10.3 of that lead
24  group of Mr Noki and the other 11 just at the point of the
25  shootings, they're all huddled down - I mean they are bent

Page 38632

1  over forward and it's quite possible that that is in part a
2  reaction to the teargas.  There's certainly no evidence
3  that there are strikers who are immune to teargas that we
4  can see.  There's no clear evidence of people walking
5  through teargas with impunity.  It's not clear to us where
6  SAPS, where the evidence for that argument advanced from
7  SAPS comes from.  What does seem clear is that the use of
8  blankets, whether deliberate or otherwise, is a protective
9  device against rubber bullets, that a rubber bullet doesn't
10  penetrate a blanket, or a blanket insulates you against a
11  rubber bullet.  But teargas seems to us not to be something
12  that the strikers were resistant to.
13    CHAIRPERSON:        [Microphone off, inaudible]
14  wouldn't work out.  Anyway, you can't say that – I don't
15  think anyone can say that people are immune from teargas,
16  teargas doesn't affect them and the question of impunity
17  doesn't arise.  From a physiological point of view teargas
18  would cause extreme sensations of discomfort and so forth.
19  The only question is whether someone faced with teargas
20  would as it were close his eyes, put his hand over his nose
21  and put his head down and move forward despite the fact of
22  the teargas, or take some steps to try to avoid it, but
23  certainly I don't think it's physiologically acceptable to
24  say that teargas, there are some people who aren't affected
25  by teargas at all, and possibly if you've got a blanket to

Page 38633

1  protect you against rubber balls you would pull the blanket
2  up as well over your face to try to protect yourself from
3  any teargas, but you can't go beyond that surely?
4    MR CHASKALSON SC:          And the one submission
5  that we would emphasise is we haven't seen evidence of
6  strikers just advancing through teargas with impunity, or
7  moving towards teargas.
8    CHAIRPERSON:          Impunity is the wrong word.
9  I can understand people possibly closing their eyes,
10  putting something over their noses, putting their heads
11  down and moving forward despite the fact of the teargas,
12  but that's a different proposition from proceeding through
13  teargas with impunity.  I mean that's the only point I'm
14  making.
15    MR CHASKALSON SC:         The next topic that we
16  want to address is the question of intention and that's
17  addressed at 383 and the single most important submission
18  that we make in this regard is that it's tempting to impute
19  a single intention to every individual in this group that
20  set out from the koppie and eventually made its way around
21  the kraal, but there just isn't evidence on the basis of
22  which one can assume a common intention, still less a
23  common intention to attack the police, and we readily
24  concede that some members of what has been called the lead
25  group may have intended collectively to attack SAPS after

Page 38634

1  Mr Mathunjwa left the koppie. That may be a possibility,
2  we don't know, but there is not any convincing evidence in
3  our submission of a single common intention on the part of
4  all of the members of the group that left the koppie to
5  attack the police. Different members will have had
6  different intentions. Some may have been looking to attack
7  SAPS. Others may have been looking merely to get away from
8  SAPS to Nkaneng. Others may have been looking to, you
9  know, beat a dignified retreat in a collective fashion.
10 Others may have had intention somewhere between the two,
11 one to retreat collectively with dignity, and one to get to
12 Nkaneng; if the SAPS get in our way we will shoot or hack.
13 Certainly there are some, there is at least one member of
14 the group who was prepared to shoot at SAPS, we've seen it,
15 and we say it's very important for the purposes of this
16 submission to try to focus on individual members of the
17 group and see what individual members of the group do, and
18 it's quite a tricky exercise because one has to identify
19 the same person through various bits of footage, but the
20 example that we give in the heads is of Mr Ntsenyeho who
21 was a leader of the strikers, or was apparently a leader of
22 the strikers. He spoke both on the 13th and on the 16th and
23 he was one of the people who was killed on the 16th, and we
24 track his movements through paragraph 727, what he's doing,
25 and we reach a conclusion at 727.11 on page 387 where we

Page 38635

1  emphasise the fact that as he approached the kraal where he
2  was going to be killed Mr Ntsenyeho had no weapons in his
3  hands. That is absolutely clear, he wasn't carrying
4  weapons, and in the circumstances he personally couldn't
5  have been intending personally to attack the heavily armed
6  SAPS members around the kraal, that's just not conceivable,
7  and much more to the point, he himself could not have posed
8  an imminent threat to the SAPS of an order that would have
9  justified his killing. He had no arms, no weapons, and we
10 would caution at this point that it is very important not
11 to conflate individual or common intention, or even common
12 purpose with objective threat because they're two separate
13 categories.
14      Common purpose is a category of the criminal law
15 which determines whether you can be held criminally
16 responsible for acts that other people pursue or perform
17 pursuant to your common purpose. It's a category for
18 criminal liability. It's completely irrelevant to
19 questions of whether your killing can be a justifiable
20 homicide. For your killing to be a justifiable homicide it
21 has to be necessary to avert an imminent threat and there
22 is this conflation of common purpose with grounds for
23 justifiable homicide in the SAPS heads, in particular at
24 pages 41 to 42 of the SAPS heads, paragraph 102 where they
25 talk about why the killings at the kraal were justified,

Page 38636

1  and really it's an argument at its high point about why the
2  strikers at the kraal had a common purpose. That doesn't
3  justify the killing of Mr Ntsenyeho. Even if Mr Ntsenyeho
4  did have a common purpose with other strikers, and even if
5  that common purpose was for the other strikers to attack
6  the kraal, Mr Ntsenyeho himself - and we don't say that he
7  did have that common purpose, but even if that were to be
8  proved, he himself posed no threat to anybody. He had no
9  weapons. His killing just wasn't justified.
10      So when it comes to justifying a killing a case
11 has to be made out that there was an imminent threat from
12 the person who was killed, not that the person was part of
13 a group that may, or associated himself with a group that
14 may or may not have had some members who posed an imminent
15 threat. Justifiable homicide is an individualised enquiry
16 and that is a very, very, very important submission on our
17 account.
18      COMMISSIONER HEMRAJ:          Where would Mr
19 Ntsenyeho be in that group that approached –
20      MR CHASKALSON SC:          He was in the kraal
21 group, so –
22      COMMISSIONER HEMRAJ:          Behind Mr Noki's
23 group?
24      MR CHASKALSON SC:          So the front 11 were
25 Mr Noki and 11 others, then there were the people who ended

Page 38637

1  up being shot with their bodies up against the kraal. Mr
2  Ntsenyeho was at the back of that group. He's a very easy
3  person to follow through the video footage for two reasons;
4  the one is he's very tall, so he stands out, but the other
5  is he's wearing a spring yellow backpack, a Bafana-Bafana
6  yellow backpack right through his walk from the kraal, and
7  so there is this bright yellow backpack on his back and you
8  can see him when he's walking, whether he's facing you or
9  he's turned away, and you can see his body at the back of
10 the bodies against the kraal by the yellow backpack. The
11 next –
12      COMMISSIONER TOKOTA:          Would you say then
13 therefore that the killing of Mr Ntsenyeho was aimed at
14 killing him or it was just in the midst of bullets directed
15 at the group?
16      MR CHASKALSON SC:          Commissioner Tokota,
17 that's the topic I'm coming to right now, which is the case
18 of justifiable – well, the case of putative self-defence
19 and where it's justifiable and where it's not. So if I can
20 address that answer in that context, because it's important
21 for us to –
22      CHAIRPERSON:          Before you get there, could
23 I ask you this; the gentleman, I forgot, you mentioned his
24 name a minute ago but I can't remember it – Mr Ntsenyeho,
25 so he had no weapons in his hand. Would that have been

Page 38638

1 visible to anyone in the TRT line, or the POPS people for
2 that matter?
3     MR CHASKALSON SC:        Well, it certainly
4 would have been visible to the POPS people.  Maybe if we
5 can go, if I go back to one of the photographs where one
6 can see him, if one goes to figure 7, page 380, Mr
7 Ntsenyeho is the tall man to the right.  He has a, he's the
8 man in the brown jersey with a light diamond pattern
9 running down the front.  You can see his left arm at his
10 side.  He's not carrying a weapon.  This unfortunately is
11 not the shot that I was hoping for, but you can see in this
12 video clip that at the point at which rubber bullets are
13 fired in the direction of this group he turns and looks
14 straight at the SAPS people and both of his hands are
15 visible.  I think there's a reference to this specific,
16 somewhere in paragraph 727 – no, I haven't got the exact
17 reference but both of his hands at his side are quite often
18 visible in this video, without weapons.
19     CHAIRPERSON:        So the POPS people could
20 see he wasn't armed, POPS people on this side anyway could
21 see he wasn't armed.  The question related to the TRT
22 people also.
23     MR CHASKALSON SC:        Yes, well –
24     CHAIRPERSON:        They would have seen a
25 group of people approaching.  At the end they would have

Page 38639

1 seen about 12 people presumably, plus possibly the kraal
2 group as well behind, but the ones they would have seen
3 immediately in front of them would have been Noki and the
4 other 11.  They would have seen some of them with weapons,
5 I take it.  Would they have been able to see that he didn't
6 have a weapon?
7     MR CHASKALSON SC:        They may or may not
8 have been able to.  They probably would not have because
9 four seconds into the shooting there is so much dust kicked
10 up that you can't see anyone beyond the people right at the
11 front who are falling down and Mr Ntsenyeho may not even
12 have been, or not may not have been, would not have been
13 visible to the TRT before four seconds into the shooting.
14 After four seconds he wouldn't have been.  But that again
15 comes back to questions of proportionality, which I'd like
16 to address in –
17     CHAIRPERSON:        Yes, yes, I understand
18 that, you're going to get to that in a moment and once
19 there's a dust cloud, once people are falling, are seen to
20 be falling in the front, then you would argue that whatever
21 may have been justifiable up to that point, the firing
22 should have ceased.
23     MR CHASKALSON SC:        That's correct,
24 Chairperson.
25     CHAIRPERSON:        I understand that.

Page 38640

1     MR CHASKALSON SC:        And it, I'd like to
2 get to it first by qualifying what our case is in relation
3 to putative self-defence, and we set out why SAPS members
4 in the TRT line would have had a reasonable belief to
5 assume that they were facing an imminent attack at the
6 point at which suddenly the Nyala 10 I think it is goes out
7 of the way and they see themselves face to face with Mr
8 Noki and his group who are sort of running towards them, in
9 fact, or quite possibly running away from a teargas
10 canister behind them.  But the submission that we make is
11 that at paragraph 744 at 399, page 399 – and I would want
12 to emphasise what the submission is – the first members of
13 the TRT to fire at the approaching strikers would have had
14 reasonable grounds for believing that they were under
15 imminent threat of violent attack, and we've said why
16 that's the case in paragraph 733 on page 394.  They would
17 thus have had a case of putative self-defence if they fired
18 in a manner which was calculated to stop the putative
19 attack without creating an unnecessary risk of killing the
20 strikers, and that's where the proportionality comes into
21 putative self-defence.  And in this regard what our
22 submission is, is that the case of reasonable putative
23 self-defence would be confined to the lead group of 11, 12
24 strikers.  Those were the ones who would have been seen
25 immediately approaching the TRT line.  It wouldn't apply to

Page 38641

1 the kraal group, not to the rump of the strikers who'd been
2 separated from the kraal group already, and certainly not
3 to the strikers on the other side of the kraal, and then
4 the question becomes given the ambit of the legitimate
5 claim of putative self-defence, was the shooting that
6 followed proportional to allow a claim of putative self-
7 defence?
8     And that's the issue that we address at 748 on
9 page 402 where we say it is clear that there was
10 considerable shooting which exceeded the bounds of
11 reasonable self or private defence for the following
12 reasons.  The first is that inadequate care was taken to
13 shoot at lower limbs, and that's clear partly from the
14 number of victims who are shot in the upper body, and some
15 visual evidence; one can see for instance Warrant Officer
16 Kuhn as he stumbles backwards is shooting at head height
17 and continuing to shoot at head height after he gathers his
18 footing, and all of the victims who are killed a long way
19 away from the kraal are killed by bullets which are not
20 ricochets and which hit them above chest height, or at
21 chest height or at above.  So there are bullets being fired
22 with R5s at chest and head height in circumstances where
23 they can travel 250 metres and take out Mr Gwelani.  Now
24 that is disproportionate to the threat of self-defence –
25 sorry, to the claim of self-defence.

Page 38642

1    There's also evidence that shooting continued

2  beyond the point at which a reasonable police officer would

3  have stopped shooting, and here I must concede that – or I

4  must respond to the criticism in the replying heads of

5  argument of the Human Rights Commission which says "We

6  speak of the eight-second shooting." We readily concede

7  that there were shots that went, that continued beyond

8  eight seconds. The volley lasted eight seconds. The

9  sustained volley lasts eight seconds. There are isolated

10  shots that are after the eight-second volley. There's an

11  obvious one that one can see at 15:54:02, which is 12

12  seconds, on the SABC footage in UUUU10, in annexure V1 to

13  UUUU10, which has the raw footage from each of the

14  different streams. If one goes to 15:54:02 one sees a

15  member of the TRT line shooting an isolated shot 12 seconds

16  after the volley has started and four seconds after the

17  volley has ended.

18    CHAIRPERSON:        Is it possible to identify

19  him?

20    MR CHASKALSON SC:        Well, it may be, and

21  we'll certainly –

22    CHAIRPERSON:        Maybe we can't, but you

23  know –

24    MR CHASKALSON SC:        Ja.

25    CHAIRPERSON:        The reason I ask these

Page 38643

1  questions is that – and this is obviously the question of

2  criminal liability now, not civil – if it's reasonably

3  possible that the shots fired in the first couple of

4  seconds caused the deaths, then the people who continued to

5  fire after that would not be guilty of murder, although

6  presumably we can't say anyone was guilty of murder because

7  we can't link any bullet to any body, but after the first

8  few seconds, two or three seconds perhaps, the most you

9  could have would be attempted murder. But I suppose the

10  answer to that is that in any event even in respect of the

11  shots fired in the first couple of seconds, because we

12  can't link them to bodies no-one could be charged with

13  anything other than attempted murder, unless there's some

14  basis for imputing common purpose to all the shooters, but

15  I'm not sure that that can be sustained.

16  [14:10]   MR CHASKALSON SC:        Chairperson, if I can

17  respond to that, because it does get ahead to a point which

18  I did want to address in these submissions, which is to,

19  also to respond to a criticism of our heads from other

20  parties in relation to our recommendation that no

21  individual SAPS members, that no criminal sanctions be

22  taken against individual SAPS members arising from the

23  killings at scene 1. It's a topic that I would like to

24  address in some detail, but if I may do so now because I

25  think –

Page 38644

1    CHAIRPERSON:        It's one of the matters I

2  wanted to ask you about.

3    MR CHASKALSON SC:        We've looked at the

4  evidence in relation to individual SAPS members who shot on

5  the 16th and we cannot link any individual SAPS member to

6  the killing of strikers in circumstances where prosecution

7  of that individual SAPS member is likely to have any

8  prospects of success in relation to either murder or

9  culpable homicide.

10    CHAIRPERSON:        Leave out murder and

11  culpable homicide, because you can't link a body to a

12  bullet. There's got to be -

13    MR CHASKALSON SC:        Well, but Chair, I do

14  want to answer this fully because people have made this

15  criticism, because there are bodies that can be linked to

16  bullets.

17    CHAIRPERSON:        Oh ja, I see.

18    MR CHASKALSON SC:        At scene 1 there are

19  three bodies that can be linked to bullets, or there are

20  three bullets in bodies that can be linked to shooters at

21  scene 1. It's, there is a bullet in Mr Sompeta, who is

22  body G at scene 1, a bullet in Mr Lehupa and a bullet in Mr

23  Yawa, but in all three of these cases the bullets that are

24  retrieved from the bodies are 9mm bullets and the post

25  mortem reports reveal that the strikers were also shot by

Page 38645

1  R5 bullets which either were definitely the fatal shots or

2  possibly also the, or also the fatal shots with the 9mm. I

3  think in Mr Yawa's case there is a 9mm bullet that hit him

4  in the heart and an R5 bullet that hit him in the heart,

5  but the point is that one cannot show that the, one is not

6  going to be able to show in a criminal trial that the 9mm

7  bullet that was retrieved from the body in any of these

8  cases caused the death beyond reasonable doubt.

9    At scene 2 the only cases where shots from a

10  particular SAPS member can be linked to the death of a

11  striker is the case of Mr Mpumza, but there a case of

12  private defence or self-defence in our view is likely to

13  succeed. We don't see a prospect of a prosecution

14  succeeding in that case.

15    But having said all of that – and this gets back

16  to your point, Mr Chairperson – is that it struck us that

17  there is a double standard in our heads of argument between

18  the attitude that we take to strikers who can be identified

19  as unlawfully assembling with dangerous weapons and SAPS

20  members who can be identified as shooting recklessly at

21  scenes 1 or 2 or even on the 13th, because in relation to

22  the strikers who unlawfully assembled with dangerous

23  weapons our submission is that they should be charged

24  because it is important to stamp out armed assemblies. By

25  the same token we accept that we should be making a

Page 38646

1 submission that all SAPS members who shot recklessly should
2 also be prosecuted because there is a need to stamp out the
3 reckless use of firearms in SAPS operations, and so what we
4 would ask the Commission to recommend is that in all cases
5 where reckless SAPS shooters can be identified by IPID
6 either from the video footage at scene 1 or from their own
7 warning statements where they explain their shooting in
8 circumstances that prima facie amount to reckless
9 shooting –
10        CHAIRPERSON:        Or where they fired so many
11 shots that the only inference is – some of them admitted it
12 of course, but some of them don't, I think – that the only
13 inference is that the firearm was on automatic.
14        MR CHASKALSON SC:        Yes, well there are
15 three SAPS members who concede that their firearm was on
16 automatic.  What our submission is –
17        CHAIRPERSON:        Those would prima facie be
18 cases of attempted murder, I would have thought, but –
19        MR CHASKALSON SC:        Or at the very least,
20 Chairperson, a contravention of section 123(b) or 127 of
21 the Firearms Control Act that relates to reckless shooting
22 or reckless shooting in a public place.
23        CHAIRPERSON:        Yes, as I think you've
24 said, all you need is sufficient evidence to justify a
25 prosecution, which would be a prima facie case.  That's all

Page 38647

1 we need to make a recommendation to the Provincial DPP, who
2 will then obviously have the matters investigated more
3 fully and if he's satisfied that there's a prima facie case
4 then he will do what has to be done.
5        MR CHASKALSON SC:        So those are our
6 submissions relating to the shooting and in relation to
7 putative self-defence.  I have one last submission that I
8 want to make in this context, which is putative self-
9 defence is relevant only to the position of the individual
10 shooter and it's not dispositive of the responsibility and
11 liability of SAPS as a whole for other failings that led to
12 the shootings, for instance poor planning, failure to
13 execute at an operational level, and so on, and there is
14 something of a debate in relation to the McCann Principle
15 of the European Court in the heads of argument which we
16 haven't engaged with.  We would submit that the McCann
17 Principle is likely to be followed by South African courts.
18 It's a principle that is solid at the level of general
19 principle and what it says is one doesn't look just at the
20 conduct of the individual shooter, one looks also at
21 whether the planning and implementation of the operation
22 was done with reasonable care to minimise the risk of loss
23 of life.
24        CHAIRPERSON:        Let me put a practical
25 example which I would have thought again prima facie

Page 38648

1 indicates that that principle, or a variant of it should be
2 part of our domestic criminal law, if I can put it that
3 way.  Assume a dangerous homicidal criminal is running
4 loose in a building, let's assume police headquarters, and
5 he's running down a passage and he's coming to a T-
6 junction; he can either go left into a room which the door
7 could be closed behind him and he can then be overpowered
8 there without difficulty, or if he goes right he'll go
9 right into an office where there are five policemen, each
10 of whom is armed, each of whom may well be under attack
11 from this homicidal criminal and who will have to defend
12 themselves.  Now clearly if they defend themselves, if
13 those responsible for planning the situation don't see to
14 it that he goes left into the room where he can be
15 overpowered easily, but allow him to go into the right-hand
16 room, and if they foresee that it's reasonably possible,
17 even likely that he will be involved in an attack on one or
18 other or more of the people in the room and they foresee
19 that they will be obliged to defend themselves and he will
20 be in all probability killed, then the question that
21 arises, is the person who allowed the homicidal criminal to
22 go into the room on the right and didn't take steps to make
23 sure he went to the room on the left, is that person not
24 guilty of murder, or he wasn't subjective foresighted,
25 would then be guilty of culpable homicide?  What principle

Page 38649

1 can be invoked to avoid that conclusion, all the elements I
2 would imagine of the definition of murder or culpable
3 homicide as the case may be, would be present?
4        MR CHASKALSON SC:        That would be our
5 submission, Chair, and we would like to refer in this
6 regard to a judgment of Madlanga AJP, as he then was,
7 before he was Madlanga evidence leader and before he was
8 Madlanga J in the Constitutional Court.  It's the case of
9 Ntamo versus Minister of Safety & Security, N-T-A-M-O, 2001
10 (1) SA 830 –
11        CHAIRPERSON:        2001?
12        MR CHASKALSON SC:        2001 volume 1.
13        CHAIRPERSON:        Volume 1.
14        MR CHASKALSON SC:        830.
15        CHAIRPERSON:        TK, I take it.
16        MR CHASKALSON SC:        TK, and it was exactly
17 the situation which we [microphone off, inaudible].  The
18 police killed a – well, killed a wrongdoer in circumstances
19 where it was necessary to do so in the heat of the moment,
20 as it were, in self-defence and private defence, but that
21 situation where the wrongdoer had been allowed to get to a
22 situation where he had to be killed in self-defence or
23 private defence was because the police had completely
24 negligently approached the planning of how to arrest him,
25 and at paragraph 27 Justice Madlanga said, "From the

Page 38650

1  aforegoing it's quite plain that the shooting of the
2  deceased by the police was precipitated by their wrongful
3  conduct.  The police cannot seek to justify the shooting on
4  their own wrongful act.  In my view the fact that at the
5  exact moment when they shot the deceased he was unlawfully
6  firing at them and they and possibly members of the public
7  as well were therefore facing imminent peril is not reason
8  enough to ignore the hitherto wrongful conduct of the
9  police.  It may be argued with some force that the exact
10  stage when the deceased started shooting at the police they
11  could not reasonably be expected to shoot back and thus
12  sacrifice themselves.  The point of the matter is that if
13  the police had not acted wrongfully in the first place –
14  see for example paras 23 and 24 above – for all we know
15  there might not have been any life-threatening shooting at
16  all."  And on that basis the killing of the suspect was
17  held to be unlawful.
18        Chair, I'm rapidly running out of time, but there
19  are a number of discrete points that I would like to make
20  in relation to the rest of the heads on the 16th.
21        CHAIRPERSON:        Just before you do that,
22  just one short question which I hope will get a short
23  answer; you say that even if the police fired at scene 1,
24  and even scene 2, we won't go there, were able to invoke a
25  defence of putative self-defence or something similar,

Page 38651

1  those who planned the operation would still be liable on
2  the principle you've discussed.  Now who would they be?
3        MR CHASKALSON SC:        Well, Chair, that is
4  addressed in our section on, our two sections on
5  responsibility for the 16th and the punitive sanction
6  section and the attitude that we have taken is that Colonel
7  Scott can't be held responsible for a deficient plan that
8  he produced because he was put in an untenable situation.
9  He was put in a situation where an artificial time limit
10  was imposed on effectively planning an operation that was
11  an incredibly risky operation to plan, and on our
12  submissions on the evidence it was at some time in the
13  morning of the 16th that he was told, come up with a new
14  plan, and he had to do that between the morning and the
15  1:30 JOCCOM, and the flaws in the plan in those
16  circumstances are not flaws for which he should be held
17  responsible.
18        The real problem was the fact that this
19  artificial deadline had been imposed on the situation and
20  that once a flawed plan had been put forward the decision
21  to proceed with the operation was taken nonetheless, and
22  that was a decision of Lieutenant-General Mbombo and in
23  relation to scene 1 we say that Major-General Annandale and
24  Major-General Mpembe cannot be held responsible because
25  they were ordered to implement the operation by Lieutenant-

Page 38652

1  General Mbombo, and so liability would be confined to
2  Lieutenant-General Mbombo in relation to the decision to go
3  ahead and run with the plan in relation to scene 1.
4        CHAIRPERSON:        What about the members of
5  the NMF who endorsed the proposal?
6        MR CHASKALSON SC:        Well, we thought about
7  the members of the NMF who endorsed the plan.  Our
8  difficulty in relation to that was that we were of the
9  view, and it was an issue that Mr Budlender was going to
10  address in reply, but we were of the view that there were
11  too many potential sort of nova acta intervenietes, says Mr
12  Budlender –
13        CHAIRPERSON:        It's novus actus
14  interveniens.
15        MR CHASKALSON SC:        Because while at the
16  level of factual causation, as we have submitted in the
17  heads, that decision on the night of the 15th to go ahead,
18  to put an artificial time limit on this operation flowed
19  directly to what happened.  There were so many – one would
20  have to regard the failure of people to speak out against
21  the plan as a, not as a novus actus.  One would have to
22  regard the failures in implementation of the plan not as a
23  novus actus as well because the submissions that I've just
24  made in relation to what could have been done at scene 1 to
25  stop the tragedy if passage A had been blocked, if passage

Page 38653

1  A had been blocked there wouldn't have been people killed
2  at scene 1.  So it seems to us that there are a series of
3  intervening failures on top of the NMF failure that would
4  probably break a chain of legal causation.
5        CHAIRPERSON:        Wouldn't the Provincial
6  Commissioner be able to rely on that as well?
7        MR CHASKALSON SC:        The Provincial
8  Commissioner may well be able to rely on that as well.  We
9  do –
10        CHAIRPERSON:        Sorry, what concerns me is
11  you know there's also a concept of dolus indeterminatus,
12  which hasn't been the subject of a recent decision
13  elsewhere, and if you take a decision at the NMF and you
14  know that there's going to be bloodshed, assuming you know
15  what the criminal intelligence is, there's going to be
16  resistance, the people are going to fight to defend their
17  weapons and their position, you know there will be
18  bloodshed and you say never mind, let's carry on, let's
19  endorse the proposal, haven't you got dolus indeterminatus?
20        MR CHASKALSON SC:        We don't see an issue
21  of dolus as being the problem.  We see an issue of legal
22  causation because certainly at scene 1 our submission, and
23  it – sorry, our submission is that if the operational
24  commander had acted reasonably at scene 1, notwithstanding
25  the deficiencies of the plan, the deaths at scene 1 would

Page 38654

1 have been avoided because if that channel at passage A had
2 been blocked there wouldn't have been deaths at scene 1.
3 If the channel at passage B had been blocked there wouldn't
4 have been deaths at scene 1, and that being the case there
5 may be, or it seems to us that there is a break in the
6 chain of legal causation between the decision of the night
7 before and the deaths at scene 1.  That may well -
8        CHAIRPERSON:        What's the test for a break
9 in the chain of legal causation?  If the chain of factual
10 causation was there, and it must be I take it on the causa
11 sine qua non principle, and the break is the result of some
12 illegal doctrine operating, what is the test for that?  I
13 think one of the most difficult questions in criminal law.
14        MR CHASKALSON SC:        Ja.
15        CHAIRPERSON:        I'm hoping you can give me
16 a helpful short answer.
17        MR CHASKALSON SC:        Well, can I suggest
18 that this is an issue that we address in some detail in
19 writing to be submitted before our replying arguments where
20 we will consider it, because –
21        CHAIRPERSON:        Thank you.  I think that's
22 a sensible way forward.
23        MR CHASKALSON SC:        Because the flipside
24 of the break of legal causation, if there is one, would be
25 that it would then be the negligence of the operational

Page 38655

1 commander that was the proximate cause, as it were, of the
2 deaths at scene 1 and then it would be Brigadier Calitz who
3 would have to be held responsible for those deaths.
4        When it came to scene 2, and I'm jumping quite
5 far ahead of myself now, our submission is that the
6 position of Major-General Annandale and Major-General
7 Mpembe is not the same in relation to scene 2 because the
8 risks of what happened at scene 2 were inherent in the
9 plan.  That's the submission that we made in relation to
10 the plan's failure to deal with koppie 3, and while at the
11 start of the operation they were not in a position to say
12 we will not give a, you know, we're going to disobey the
13 order of Lieutenant-General Mbombo, the shootings at scene
14 1 changed that because once there was shootings at scene 1,
15 as operational commander and de facto operational commander
16 they were then in a position where they could take a
17 decision – sorry, not operational, overall commander and
18 JOCCOM commander, they could take a decision to stop the
19 operation and indeed should have taken a decision to stop
20 the operation.
21        CHAIRPERSON:        From a practical point of
22 view the Provincial Commissioner was present.  I mean
23 there's some suggestion that she was outside in the
24 passage, but I'm not sure how seriously one has to take
25 that, but she was certainly around.  So if they wanted to

Page 38656

1 stop the operation they could have either called her in
2 from the passage outside or spoken to her if she was still
3 in the passage and said look here, things have gone
4 seriously wrong, we've obviously got to stop, and I take it
5 one must say in all fairness the probability is regard
6 being had to her experience being financial and they being
7 the people with operational experience, she would have
8 accepted their advice and said certainly.
9        MR CHASKALSON SC:        Well, that would be
10 our submission.  I mean certainly on the Monday her
11 instruction to Major-General Mpembe was, once it was
12 reported to her that deaths had taken place she said well,
13 let's, we must now stop the operation.  It's not clear to
14 me why she didn't act in that way on the Thursday, but our
15 submission on scene 2 is that there would then be
16 culpability in relation to Major-General Annandale, Major-
17 General Mpembe, Lieutenant-General Mbombo, Brigadier
18 Calitz, who was the operational commander in the field and
19 who could have stopped the operation and should have, and
20 we submit Major-General Naidoo because he took himself into
21 a position of de facto command at scene 2.
22 [14:30]  There is a passage in our heads where we deal
23 with the ballistics evidence in relation to the victims in
24 the killing zone, the victims whose deaths SAPS cannot
25 explain, and without exception [microphone off, inaudible]

Page 38657

1 coming without invitation and without notice, but whether
2 one can say that absence, that if Brigadier Calitz had been
3 notified things would have turned out differently, I'm not
4 sure that the evidence suggests that it would.  One is
5 speculating.
6        But Chair, there is one last topic that I did
7 want to address, which is canvassed in our heads –
8        CHAIRPERSON:        Sorry, before you get to
9 the last topic could I just – I don't want to take much of
10 your time, but it seems to me it may well be an important
11 point, and that is Brigadier Calitz didn't give the people
12 on the koppie a warning and I'm inclined to the view that
13 he may well have been obliged to under section 9 of the
14 Regulation of Gatherings Act.  He was engaged in what
15 amounted to a dispersal operation and he should prima
16 facie, subject to argument we get from others, have given a
17 warning, but certainly if he'd given a warning it may well
18 be that the, and given those on the koppie an opportunity
19 to respond to the warning, the people might have all left
20 the koppie peacefully, been arrested I suppose, but there
21 wouldn't have been any deaths.  So his failure to give a
22 warning seems to me to be prima facie an important matter.
23 I don't think you address that in your argument.  Perhaps
24 you can deal with that in reply.
25        MR CHASKALSON SC:        At scene 1 or scene 2,

Page 38658

1 Chair?

2      CHAIRPERSON:      At scene 2.

3      MR CHASKALSON SC:      At scene 2, yes.

4 Well, it's part of a broader failure to exercise control as

5 a POPS commander at the scene because the other

6 extraordinary feature of scene 2 is that you have people

7 who are holed up inside rocks and bushes where it's very

8 difficult to engage them one to one and no teargas is used.

9 It does seem quite extraordinary that if the object is to

10 get people out of this entrenched position using non-lethal

11 methods and not having to resort to shooting at them from a

12 distance, that nobody uses teargas and no warning is given.

13 Things may well have turned out different if Brigadier

14 Calitz had taken control, given a warning, used teargas,

15 given a place for people to disperse so that there wasn't a

16 situation where one had three different groups of uninvited

17 units, all of whom were there without armoured protection,

18 and so found themselves in a situation where they couldn't

19 take refuge from the strikers and so the risk of having to

20 use lethal force was much, much higher. So there are many,

21 many failings in relation to the scene 2 operation, but we

22 see the primary failing in relation to scene 2 as the

23 failure to exercise control to stop the uncontrolled

24 shooting. 200 and I think it is 95 bullets shot into this

25 koppie over a period of, you know, five, six, seven

Page 38659

1 minutes, and nobody in a position of authority in SAPS

2 brings that under control. The only people who try are, as

3 far as we can work out are Colonel Gaffley and Warrant

4 Officer Mamabolo, and when they do try they are ignored.

5      Chair, the last topic that I would like to

6 address is a topic which has to be addressed and it's a

7 very, I mean this whole Commission has involved having to

8 deal with really awful topics, but this is not about

9 substance, this is about unacceptable conduct in the

10 process, or in relation to the process, and it's the topic

11 that we address from page 625 which is under the heading,

12 "The unacceptable nature of the SAPS response to the

13 shootings in the Commission," and it is a matter for

14 considerable concern because what we have seen on the part

15 of SAPS - and I must emphasise that this is a criticism of

16 SAPS, it's not a criticism of our colleagues who have

17 represented SAPS with extraordinary ability and dignity and

18 professional integrity, I really do want to emphasise that,

19 and to have, as I said at the outside of these submissions,

20 performed an extraordinary job in normalising what their

21 clients did, there is, what we've seen on the part of SAPS

22 itself as an institution has been a complete lack of any

23 self criticism, coupled with an absolute lack of candour,

24 and so it's canvassed in our heads but from the very top

25 down untruthful evidence on very material issues has been

Page 38660

1 given by all of the leading SAPS witnesses, all of the

2 senior SAPS witnesses, and that's a process that seems to

3 have begun almost immediately after the killings. So one

4 sees the press statement that's issued the next day as

5 having been tweaked so as – tweaked from the report to the

6 Minister so as to sort of fudge the issue of scene 2. In

7 the bail application –

8      CHAIRPERSON:      [Microphone off, inaudible]

9 to create the impression that what was seen on television,

10 the police firing at a group of people apparently charging

11 at them, that was, the impression created was that

12 explained all the killings and did not happen only at the

13 end of scene 1.

14      MR CHASKALSON SC:      Indeed. I must

15 emphasise there that while that was the case in relation to

16 the press conference, press statement, the presentation

17 that Colonel Scott gave on the 17th made absolutely clear

18 that there were two. So it wasn't a consistent position

19 within SAPS and Colonel Scott did make clear that there had

20 been a scene 2 and if the media had been a little bit more

21 alert the press statement wouldn't have got the currency

22 that it did get because those who were at Colonel Scott's

23 briefing ought to have picked up that there was a scene 2.

24      The bail application, one sees a statement under

25 oath from Brigadier Van Zyl, which is simply purporting to

Page 38661

1 have personal knowledge of that, that he didn't have. He

2 says, "We saw it all on CCTV. We saw the shootings, this

3 is how it happened." That's an exhibit that's ZZZ5 now.

4 There is some very important real evidence that was

5 originally withheld, or not disclosed by SAPS, the minute

6 of the extraordinary NMF session. The original –

7      CHAIRPERSON:      Never mind the minute, the

8 fact that it happened –

9      MR CHASKALSON SC:      Indeed. I –

10      CHAIRPERSON:      The fact that they'd made

11 the decision.

12      MR CHASKALSON SC:      Indeed. The original

13 notes taken in the JOC, the audio recording of the

14 Provincial Commissioner at a meeting with Lonmin, the early

15 versions of the reserve engineered plans for 13 to 16

16 August which threw better light on what the true plans

17 were, the video footage of the Provincial Commissioner's

18 press conference on the 16th. Other evidence that casts

19 SAPS in a bad light had to be discovered by the evidence

20 leaders, it wasn't disclosed by SAPS itself; the ordering

21 the mortuary vehicles on the 16th of August, the

22 requisitioning of 4 000 R5 rounds on the 16th of August, the

23 facts of the task team investigation, the various videos

24 that SAPS attempted to conceal from the Commission and

25 which are addressed in the heads of argument, the evidence

Page 38662

1  relating to the planting of weapons on bodies at scene 2,
2  and all of this points to a practice of not being candid
3  with the Commission and deliberately attempting to suppress
4  the disclosure of evidence that may be embarrassing to
5  SAPS, and that practice is well illustrated by an annotated
6  marginal note on the statement of Brigadier Van Graan that
7  suggests that a sentence pointing to the inability of SAPS
8  to account for deaths at scene 2 should be deleted because,
9  in the quotation of the SAPS member who put it there, "it
10  will raise questions."  And this suppression of evidence
11  appears to have been linked to a deliberate attempt to
12  advance false versions before this Commission, and in some
13  cases actually to fabricate real evidence to support those
14  versions.
15         We dealt with in the heads, but I do want to
16  repeat it in these submissions, and if one looks at the
17  SAPS case in relation to the 13th, the case is that its
18  actions in engaging the strikers in the field were
19  necessary because the strikers had suddenly changed
20  direction towards the informal settlement and SAPS needed
21  to protect that settlement.  It was a "sudden change," was
22  the version.  Now that version was manifestly false.  The
23  video evidence speaks for itself and it must have been
24  known by Major-General Mpembe to be false and to any, it
25  must be known to be false by any SAPS member who was there

Page 38663

1  on the 13th.
2         Then there was the version that the SAPS plan
3  that was ultimately implemented on the 16th with disastrous
4  effects was actually a tactical plan that had been
5  carefully worked out in consultation with POPS officers and
6  had been in place since Tuesday the 14th of August.  That
7  too was manifestly false and must have been known by
8  everyone to be false.
9         There was a version that the decision to move to
10  the tactical phase of the plan on 16th August was not
11  predetermined but was forced on SAPS because of the
12  escalation of the risk of violence in the morning.  That
13  was manifestly false.  It was known - the National
14  Commissioner, Provincial Commissioner, Major-General
15  Annandale, Major-General Mpembe, must all have known it was
16  false.  And then there were the later versions that came
17  out about the officers in the JOC and Brigadier Calitz all
18  being ignorant of the shootings in scene 1 that also turned
19  out to be manifestly false.  There was the version in
20  relation to incidents 1 and 2 which wasn't as transparently
21  false as everything else, but must have been known at least
22  by Brigadier Calitz not to be the truth.
23         And SAPS didn't content itself merely to advance
24  false versions, it actually fabricated evidence to support
25  them.  So we see minutes of the 6AM JOCCOM on 16 August

Page 38664

1  which were created at Roots in a form which avoided all
2  evidence in the original notes which spoke of D-day, and
3  that a decision had already been taken to move to the
4  tactical phase, and instead put forward a false version
5  that isn't there in the original notes, that there would be
6  a move to stage 3 if there was escalation.  That's what we
7  see in TT4.  We don't see that in the original notes.  We
8  couldn't see it in the original notes because the original
9  notes say it's D-day.  So from the original notes it was
10  clear that there was going to be a stage 3 whether or not
11  there was escalation.
12         There were reverse engineered copies of the plan
13  for the week produced at Roots and later to support the
14  version that the plan ultimately implemented on 16 August
15  had been in place since Tuesday, and to obscure the fact
16  that the tactical plan ultimately implemented was one that
17  was thought up by Colonel Scott alone under pressure on the
18  morning of the 16th of August.
19         There was bullet damage on the Nyala Papa5 that
20  was there when it arrived at Marikana on the 15th, that was
21  presented as proof of damage sustained as a result of
22  alleged shooting at incidents 1 and 2, which didn't happen.
23         There were weapons planted on bodies of dead
24  strikers, which we submit was nothing near as innocent as
25  the process described by Warrant Officer Breedt, but was

Page 38665

1  rather an attempt to justify the killing of those persons,
2  and I would in that context refer you, Chairperson and
3  Commissioners, to where we deal with the weapons planting
4  in the heads and in particular to appendix 1, because
5  appendix 1 shows that the version that Warrant Officer
6  Breedt gave is not true, and all of those processes are
7  related to a broader problem of closing ranks within SAPS
8  in the face of criticism, and we commented on this in the
9  heads in relation to the address by the National
10  Commissioner on the 17th of August.
11         It's also reflected in the otherwise inexplicable
12  failure of SAPS to investigate a range of actions of
13  members, or allegations against members which cry out for
14  investigation; the failure of SAPS to investigate
15  allegations of mutiny against Major-General Mpembe on the
16  13th; failure of SAPS to investigate the conflicting
17  allegations in relation to the order to fire teargas on the
18  13th; failure of the SAPS to investigate any of its members
19  in relation to reckless shooting on the 13th or the 16th;
20  the failure of SAPS properly to investigate the allegations
21  of Warrant Officer Myburgh or the allegations of planting
22  weapons on dead bodies on the 16th.  If we could pick up
23  that the version of Warrant Officer Breedt was, (1),
24  incapable of explaining everything on its own terms; and
25  (2), transparently wrong on others, so could SAPS, and a

Page 38666

1  corollary of this process of closing ranks has been a
2  process of turning on anybody who breaks ranks.  So when
3  Colonel Vermaak threatened not to toe the SAPS line in the
4  Commission, SAPS turned on him, and seems to have
5  encouraged the process by which allegations have been
6  fabricated, or appear to be fabricated against him.
7          All of this is completely unacceptable,
8  Chairperson, and all of this relates to the one punitive
9  recommendation which we haven't addressed in oral
10  submissions, which is a recommendation for proceedings to
11  inquire in terms of section 8(1) of the SAPS Act into the
12  fitness of the National Commissioner to hold office, and we
13  address that at page 1302 of our heads, and the basic
14  submission is that the SAPS response to this Commission of
15  Inquiry has been characterised by concerted attempts to
16  mislead the Commission on several central issues.
17          CHAIRPERSON:         I'm sorry to interrupt you,
18  Mr Chaskalson.  Am I correct in thinking that, I certainly
19  recall a newspaper report, there is an investigation on the
20  go at the moment, not I think in relation to Marikana, but
21  in relation to other allegations against the National
22  Commissioner?  Is that correct?
23          MR CHASKALSON SC:         Chair, I'm just not
24  aware of any such investigation, but that doesn't mean it
25  hasn't –

Page 38667

1          CHAIRPERSON:         It's been widely reported
2  in the newspapers.
3          MR CHASKALSON SC:         What's been conveyed
4  to me is that there are rumours, but nothing has been
5  confirmed yet.
6          CHAIRPERSON:         I see.  Anyway, that –
7          MR CHASKALSON SC:         If there is such an
8  investigation we would recommend that that investigation be
9  alerted to certain disquieting aspects of the SAPS –
10          CHAIRPERSON:         Yes, one of the questions
11  that occurs to me, whether that would be in our terms of
12  reference to make such a recommendation.  I'm not saying it
13  isn't; I'm just asking you would it be?
14          MR CHASKALSON SC:         There is a category of
15  the terms of reference that deals with SAPS's response to
16  the – Chair, let me find my note and argue this –
17  [14:50]  CHAIRPERSON:         Yes, I was going to suggest
18  we take the tea adjournment at this point.  Perhaps it will
19  be suitable to do it and then you can get your notes and I
20  also want to ask you a question, I'd like to ask you now
21  before we take the adjournment, and that is there are
22  statements on the SAPS hard drive which state "Attacks on
23  Nyalas and POP," I think this relates more to incidents 1
24  and 2, or the alleged incidents 1 and 2, dealing with such
25  things as trying to stab tyres and throwing stones, and so

Page 38668

1  forth, and also shooting.  There are a number of statements
2  in the SAPS hard drive which deal with these allegations,
3  made by five constables, two lieutenants, and a lieutenant-
4  colonel.  Now they've not testified.  Some of their names
5  were on the list of witnesses who SAPS wished to call but
6  were not called, perhaps due to the time constraints.  Now
7  the question I want to ask you and you can give me the
8  answer after the tea adjournment if you're able to do so,
9  is what are we to make of these allegations?  But can we
10  now take the tea adjournment and resume in 15 minutes
11  strictly?
12          [COMMISSION ADJOURNS         COMMISSION RESUMES]
13  [15:09]  CHAIRPERSON:         The Commission resumes.  Mr
14  Chaskalson.
15          MR CHASKALSON SC:         Chair, to answer first
16  in relation to the statements, I'm not sure which
17  particular statements you're referring to and I would like
18  to consider them specifically to be able to address
19  specific submissions on them, but the general approach that
20  I would submit is the appropriate approach is that one
21  cannot give any weight to a statement which says something
22  that is clearly at odds with what a video shows, so one
23  would have to see –
24          CHAIRPERSON:         Maybe I should put the
25  proposition more broadly.  If there's objective evidence

Page 38669

1  which clearly indicates that the facts, the correct
2  position is A, the fact there's a witness who comes along
3  and says B or Z, that is of no assistance.  If the
4  objective evidence is clear and unequivocal that's the end
5  of the matter, surely.
6          MR CHASKALSON SC:         So that would be the
7  first inquiry.  The second inquiry would have to be one to
8  establish whether what the witnesses are describing is in
9  truth that which happened in what SAPS called incidents 1
10  and 2, or that which happened on the east side of the kraal
11  and what SAPS calls incident 3, because it's quite clear
12  that there were attacks on some Nyalas on the east side of
13  the kraal.  We've referred in our heads to the statements
14  from the occupants of Papa11, which are consistent and
15  which appear to be corroborated by a range of other
16  statements and which come from individuals who have gone
17  out on a limb to make statements which are not toeing the
18  line, as it were.  So one does need to – the submission
19  from the evidence leaders is not that the strikers made no
20  attacks on SAPS, on SAPS vehicles.  It's just that what was
21  described as incident 1 and incident 2 did not take place,
22  that the attacks that did take place took place on the east
23  side of the kraal after the strikers had come around the
24  point at which, or come around from the west side of the
25  kraal, and it is an important distinction because where we

Page 38670

1 saw the version of incidents 1 and 2 emanating is it was
2 part of a version that SAPS had exhausted reasonable POPS
3 methods before it resorted to, to no avail, and then was
4 finally left with the TRT, and that we submit is a version
5 that is incorrect and that can be shown by the videos in
6 that water and stun grenades and teargas were not used
7 before the strikers came –
8      CHAIRPERSON:      These attacks on the
9 vehicles on the eastern side of the kraal, that would be in
10 the channel I take it, or near the channel, those took
11 place prior to the volley.
12      MR CHASKALSON SC:      Yes, that would appear
13 to be the case.
14      CHAIRPERSON:      So that would be consistent
15 then with the intention on the part at least of some of the
16 strikers to attack the police.
17      MR CHASKALSON SC:      At least to attack
18 police vehicles, yes.
19      CHAIRPERSON:      And of course part of the
20 plan had always been to have the TRT in place behind the
21 POP members if it became necessary for the POP members to
22 be protected by the TRT. If the POP members came under
23 attack then according to the plan they were going to take
24 refuge in the Nyalas, if they could, and in any event the
25 TRT would take over and do what was necessary.

Page 38671

1      MR CHASKALSON SC:      Yes, that was what the
2 plan had in mind.
3      CHAIRPERSON:      Which means of course that
4 having regard to what is said in that passage from the
5 Goldstone Commission book that accompanied the bill for the
6 Regulation of Gatherings Act, it was said that attempts
7 must be made to foresee the various things that could
8 happen and have a plan in place to deal with it, that would
9 indicate that that was in fact done, that Colonel Scott
10 considered what would happen if the POP people moved
11 forward and do what they had to do and they came under
12 attack, that was a possibility which he foresaw could
13 happen and he devised a remedy to deal with that, namely
14 the TRT behind with R5s who could deal with it in the only
15 way you can deal with a problem when you're armed with an
16 R5. That's correct, isn't it?
17      MR CHASKALSON SC:      That we identify as
18 one of the problems with the plan, that as soon as POPS
19 retreat one is left with what is effectively a firing
20 squad.
21      Chair, the last issue related to the terms of
22 reference, and we would submit that having regard to clause
23 1.2.3, read with the introductory passage of the terms of
24 reference, a recommendation under the SAPS Act would fall
25 within your terms of reference, and in this regard we start

Page 38672

1 with the introductory passage. "The Commission is
2 appointed to investigate matters of public, national and
3 international concern arising out of the events at the area
4 commonly known as Marikana Mine which led to the deaths,
5 and in particular report and make recommendations
6 concerning the following; the conduct of SAPS," and 1.2.3,
7 "To examine the role played by SAPS through its respective
8 units individually and collectively in dealing with this
9 incident." We would submit that that's broad enough to
10 encompass how SAPS as an institution responded to this
11 incident, which is really what our complaint is. Those are
12 my submissions, not our submissions.
13      CHAIRPERSON:      Thank you. Mr Budlender,
14 are you going to now conclude on behalf of the evidence
15 leaders?
16      MR BUDLENDER SC:      Yes, Chair, I was going
17 to be longer, but I'm going to try to do this in 15 minutes
18 because there are other people who are waiting their turn.
19 There are really, there are only two matters which I'm
20 going to address. The one is the question of political
21 interference and I'm going to say something, then I'm going
22 to say something very briefly about the National Management
23 Forum.
24      As far as political interference is concerned,
25 which is fully addressed in our heads of argument, it seems

Page 38673

1 to me that our written submissions on this issue may in
2 fact have been misunderstood by some and they were perhaps
3 not sufficiently clear in their analysis. So I want to say
4 what our position is.
5      I want to start with two propositions. The first
6 proposition is that the SAPS acted for improper political
7 reasons in deciding to remove the strikers from the koppie
8 on the 16th of August, and the second proposition is that
9 the SAPS decision makers felt under political pressure when
10 they made that decision.
11      The improper political purpose is most clearly
12 proved by the Provincial Commissioner's meeting with Lonmin
13 on the 14th of August. She herself identified the following
14 political motives for the position which she took. Firstly
15 she identified a desire to support the NUM against AMCU.
16 She urged management not to do anything which would lend
17 any strength to AMCU or which would undermine the NUM, and
18 I have to say it makes it very odd that the SAPS should now
19 criticise Lonmin for not negotiating with the strikers when
20 in fact the Provincial Commissioner said to them very
21 clearly that they shouldn't, that they should dismiss them
22 and that they shouldn't lend any succour to the strikers or
23 to AMCU, which was identified, which they identified with
24 the strikers.
25      But in any event, she had the political motive of

Page 38674

1 a desire to support the NUM against AMCU. She had the
2 political motive of a desire to avoid giving Mr Malema the
3 opportunity to gain political credibility if he defused the
4 situation. She had the political motive of a desire to
5 keep other opposition politicians out of the picture, and
6 perhaps most significantly, certainly for present purposes,
7 she had the political motive of a desire to respond to the
8 political pressure which she felt emanating in particular
9 from Mr Ramaphosa's phone call to the Minister. And it's
10 important to recognise that the Provincial Commissioner was
11 not alone in this. In what she says on the 14th she clearly
12 identifies that the National Commissioner has expressed
13 these views as well, at least in relation to Mr Ramaphosa
14 and the NUM and AMCU, and there was no attempt to suggest
15 that that wasn't the case.
16      We say that the fundamental flaw in the police
17 case is that they've really failed to explain to this day,
18 even in their heads of argument, why the decision was made
19 to move in on the koppie on the 16th of August. At first
20 the explanation was that it was because matters escalated
21 on the 16th, but that was abandoned in the face of the
22 evidence which emerged belatedly, which had initially been
23 concealed, that in fact the decision was taken on the 15th,
24 and so what remains is an explanation is that political
25 factors which I've listed carried a great deal of weight,

Page 38675

1 and it's reasonable to assume, given all of the evidence as
2 to what the motive was, that it was political factors which
3 triggered the decision on the 15th to move in on the 16th.
4 No other explanation is available. None has been offered,
5 literally none.
6      We know that the consequences of the decision was
7 that 34 people were killed the following day on the 16th of
8 August, and so the question which now arises is the
9 following; if one accepts that Mr Ramaphosa's call was one
10 of the material factors in that political consideration -
11 and we do accept that – the question is then is he legally
12 or morally responsible for the consequence of the decision
13 to move in on the 16th of August, and to answer that we say
14 you have to answer two questions. Firstly you have to ask
15 yourself is there evidence that the killing of strikers was
16 a result which he intended or desired, whether that was
17 actually his motive, and if there's no direct intention
18 then secondly, is there evidence that this is the result
19 which he should reasonably have anticipated, so that he's
20 in any event culpable on that basis.
21      Mr Ramaphosa's evidence was the following; it was
22 that Lonmin employees had been murdered by some of the
23 strikers. He had been approached by mine management to
24 intervene to attempt to get the police to take action. He
25 said that the action that he had in mind was that those

Page 38676

1 responsible for murders and violence should be arrested and
2 there's no evidence that shows that he actually wanted
3 strikers to be killed, and there's no evidence which leads
4 to the inference that that's actually what he wanted. His
5 evidence in that regard we submit can't be rejected. He
6 was a director of the company and the management of the
7 company was urging him to use his influence to attempt to
8 persuade the police to act, and he did that.
9      There's no evidence that what he actually wanted
10 was that the police should kill some of the strikers. The
11 only direct evidence actually negatives this conclusion.
12 The direct evidence shows that he intended to meet the NUM
13 leadership on the 17th of August, the day after the terrible
14 events, to talk about how the conflict could be resolved.
15 That contradicts a contention that he actually intended, or
16 for that matter foresaw what happened on the 16th.
17      So the question becomes then should he reasonably
18 have foreseen this outcome, and that was put to him in
19 cross-examination and he denied it. There were no facts
20 put to him which could reasonably lead one to the
21 conclusion that he actually foresaw this outcome, that he
22 foresaw that calling on the police to act to deal with the
23 situation would lead to the police killing strikers,
24 whether 34 or another number, or that he should have
25 foreseen it. His evidence can't be gainsaid that what he

Page 38677

1 had in mind was that they should arrest the people
2 responsible and contain the situation and that a
3 substantial police presence was necessary for that purpose,
4 and one can't conclude from that that he should have
5 foreseen that this was going to happen.
6      If we ask ourselves whether anyone else foresaw
7 it one may conclude that some of the police foresaw it
8 because mortuary vehicles were ordered, and we know what
9 Major-General Mpembe said about the consequences of
10 confronting the strikers on the koppie. So some of the
11 police may have anticipated it, but I don't recall seeing -
12 and there's no suggestion that there was any – any
13 statement by anyone in the media or anywhere else that this
14 is going to lead, the presence of the police is going to
15 lead to bloodshed, and what's more, massive bloodshed at
16 the hands of the police. I don't think anyone actually
17 could have foreseen that, except perhaps some insiders.
18      Mr Chaskalson rightly points out that in the
19 interview with the Provincial Commissioner on the morning
20 of the 16th when she says "Today is the day," the
21 interviewer actually says to her, "People are saying why
22 have you delayed so long for doing something about this,
23 why are you sitting on your hands." And so there's no
24 suggestion that public, there was a public awareness that
25 the police might kill people either in these numbers or in

Page 38678

1   smaller numbers.
2           So we say that what the conclusions one must draw
3   in respect of political interference are the following;
4   firstly, that the SAPS acted for improper political motives
5   in deciding to clear the koppie on the 16th; secondly, that
6   one of those motives was a desire to respond to the call
7   which Mr Ramaphosa had made to the Minister of Police;
8   thirdly, in that sense the call which Mr Ramaphosa made to
9   the police was a trigger for what followed on the 16th,
10  although it was a few days earlier; fourthly, there is no
11  evidence that Mr Ramaphosa intended that the police should
12  undertake an operation which resulted in the deaths of
13  strikers – the evidence is to the contrary; and fifthly,
14  that there's no evidence that Mr Ramaphosa should
15  reasonably have anticipated that the consequence of his
16  call to the Minister on the 12th of August would be that the
17  police would undertake an operation which would result in
18  the deaths of strikers.
19          That's to clarify what our position and
20  submissions are.  There's a question of facts and factual
21  causation and then there's a question of intention or what
22  should have been anticipated.  Then the only other matter I
23  want to address briefly is the question of what the NMF
24  knew at its meeting on the evening of the 15th of August.
25  As we know according to the minutes this was a meeting

Page 38679

1   which took place, a meeting of what the SAPS itself, not
2   the parties, not the evidence leaders, not anyone else,
3   what the SAPS itself called an extraordinary session of the
4   National Management Forum, and according to the minutes the
5   meeting endorsed what was said was the proposal of the
6   Provincial Commissioner that the strikers be disarmed, and
7   that minute was settled by the National Commissioner, and
8   we know that it was only because that, all of this only
9   come to light through a piece of good luck after it had
10  been concealed consistently, a piece of good luck that the
11  evidence leaders were informed by a third party of the
12  meeting which had taken place, and the message we received
13  was "Call for a copy of the minutes and have a look at item
14  7," and that's what we did and that's what produced the
15  minutes and that led to the evidence.
16          Now so the question is what was known to the
17  meeting.  We submit that it's clear from the evidence,
18  although it took some time for it to emerge, that the
19  assembled generals must have been told what the plan was.
20  They could hardly have endorsed a proposal without knowing
21  what it was, and after some evasion the National
22  Commissioner agreed that this was in fact the case.  Can I
23  just give the Commissioners the page references to where
24  she agrees that; it's page 37413, line 17, to page 37414,
25  line 5, and then again page 37417, line 19, to page 37418,

Page 38680

1   line 6.  That's where the National Commissioner says the
2   plan, the members were told what the plan was.  She said
3   she couldn't remember what the plan was, but she said they
4   were told.  She said to remember what would, that was a
5   fine point of detail, I can't remember the word she used –
6           CHAIRPERSON:          She talked about a pedantic
7   detail.
8           MR BUDLENDER SC:          About?
9           CHAIRPERSON:          Pedantic.
10          MR BUDLENDER SC:          Then she said it was,
11  yes, it was somewhat pedantic to worry, to be concerned
12  about what they were told.  The Chairperson then addressed
13  interrogatories to the people who had attended the meeting
14  and who had not given evidence to ask what they'd been told
15  and what happened at the meeting and I've handed up to the
16  Commissioners and the parties have a series of the emails
17  which passed, or which have passed so far in that regard.
18  There have been responses now from eight generals.  There
19  are two things to be said about those responses.  The first
20  to be said is that, to put it very politely, most of them
21  have refused to answer the questions which the Chairperson
22  asked.  The Chairperson asked nine very specific questions.
23  Most of them have not answered those questions.  That's a
24  matter for very grave concern that there's simply no answer
25  from most of them to the questions which are asked by the

Page 38681

1   Commission of Inquiry.
2   [15:29]   But there is one answer which is helpful.  One
3   person finds it in himself to give some information and it
4   is the – I think it's himself, I'm not sure whether it's
5   himself or herself, it's from Lieutenant-General Basson,
6   the Northern Cape Provincial Commissioner, and it's on page
7   10 of that bundle which I've handed up, ZZZZ35 that bundle
8   would be.  Page 10 of ZZZZ35 says, "Lieutenant-General
9   Mbombo informed the meeting that there had been a prolonged
10  strike action at Marikana during which people lost their
11  lives.  They had received information from Crime
12  Intelligence which indicated that striking employees
13  congregated at Marikana were armed.  In order to prevent
14  further loss of life she indicated that an operation was
15  planned to be executed on 16 August 2012.  General Phiyega
16  asked Major-General Ngcobo whether the intelligence
17  gathered had been confirmed.  Lieutenant-General Ngcobo
18  confirmed that intelligence was gathered that striking
19  mineworkers were armed."
20          Now we know in fact what the intelligence was.
21  The intelligence wasn't just that they were armed; it was
22  that they were armed and that they would resist with force
23  any attempt to disarm them, and that's common cause.  So we
24  know that in fact what has finally emerged is that, from
25  that document is that the NMF was told what the

Page 38682

1  intelligence was, and we know what the intelligence was,
2  and then we also have the statement of the National
3  Commissioner also finally extracted from her with some
4  difficulty, and the page reference is page 34718, line 20,
5  to page 34719, line 6 where she says they were told what
6  the intelligence was.
7       CHAIRPERSON:        I'm sorry, Mr Budlender,
8  just remind me, Major-General Ngcobo, what is – is that a
9  he or a she? – what rank does he or she hold?  Major-
10 General?
11      MR BUDLENDER SC:        Major-General.
12      CHAIRPERSON:        Major-General Ngcobo
13 answered the interrogatories, his own answer is at page 2.
14      MR BUDLENDER SC:        Page 2.
15      CHAIRPERSON:        But what is here on page
16 10, General Phiyega asked Major-General Ngcobo, so it's not
17 Lieutenant-General Mbombo, it's Major-General Ngcobo.  Now
18 what position did Major-General Ngcobo have?
19      MR BUDLENDER SC:        I understand he was the
20 head of Crime Intelligence, Chair.
21      CHAIRPERSON:        Yes, so the question was
22 asked by the National Commissioner of the head of Criminal
23 Intelligence.
24      MR BUDLENDER SC:        Yes.
25      CHAIRPERSON:        Who obviously would have

Page 38683

1  been aware of the information that had been gathered.
2       MR BUDLENDER SC:        Yes.
3       CHAIRPERSON:        And the answer given –
4  sorry, I was interrupting you – on page 10 is the one that
5  you've read.  Sorry, I just wanted to know who Major-
6  General Ngcobo was.
7       MR BUDLENDER SC:        He's the head of
8  Intelligence.  One assumes, one can safely assume that he
9  gave an accurate account of what the intelligence was, but
10 we have as I say also the reference to what the National
11 Commissioner has said, and so we have the situation that
12 the assembled generals, not all of the generals, but the
13 top, the Provincial Commissioners and the top leadership of
14 the SAPS endorsed the proposal that the operation be
15 undertaken the following day to remove the, confront the
16 strikers and remove them, disarm them, and they must have
17 known of the risk that was involved, that there was a high
18 risk of bloodshed.  Mr Chaskalson has dealt with the
19 question of legal liability or causation.  Clearly there
20 was factual causation.  If it hadn't been for that decision
21 the operation wouldn't have happened.  If the National
22 Management Forum extraordinary session had said [microphone
23 off, inaudible] wouldn't have happened, so there was
24 factual causation.  Whether there was legal causation
25 depends on whether the chain was broken by new acts

Page 38684

1  intervening, and we'll make submissions about that in
2  writing in due course as to what the test is.  Our current
3  view is that the new acts which intervened were such that
4  many of them could have followed a different course and
5  resulted in a different outcome and that therefore it's not
6  possible to find a prima facie case of murder or culpable
7  homicide on the part of the generals.  But we'll review
8  that in the light of the question asked by the Chair and
9  make further submissions in writing on that in due course.
10      CHAIRPERSON:        I must say one answer that
11 concerns me, one of the questions that was asked was in 7,
12 "Did you raise the question of risk of confrontation and
13 injury or death if an attempt was made to disperse and
14 disarm at the koppie approximately 3 000 strikers, some of
15 whom were armed with dangerous weapons?"  8, "Did any other
16 person raise a question of risk?  If so, who did so?  If
17 the question of risk was raised, what was the response by
18 General Mbombo?  On what basis did the meeting decide to
19 endorse it?"  Now the answer given by Lieutenant-General
20 Binta, the Provincial Commissioner of the Eastern Cape,
21 page 3, I must confess I find rather strange;  "7, I never
22 raised the question of risk."  "Did anybody else raise the
23 question of risk?"  "I can't recall."  "If the question of
24 risk was raised, what was the response by General Mbombo?"
25 "Can't recall."  Now it seems it stretches one's credulity

Page 38685

1  rather far.  I know we've had stretches of our credulity in
2  this Commission already, but it stretches our credulity
3  rather far to think that a Provincial Commissioner can
4  solemnly say "I was party to endorsing this proposal.  I
5  can't remember if the question of any risk of bloodshed and
6  so on was raised and I can't remember what the response
7  was."  That may be – anyway, that's the answer, but I just
8  thought I'd mention it.
9       MR BUDLENDER SC:        Chair, that is the
10 answer, and it's simply not credible.
11      CHAIRPERSON:        I find it –
12      MR BUDLENDER SC:        One has to recall what
13 they're talking about.  This is a meeting taking place on
14 the night of the 15th.  While it was still fresh in their
15 memories the following day 34 people were killed and there
16 was an international outcry.  It's impossible that that
17 didn't cement in the memory of those people who were
18 present at the meeting what had happened the night before,
19 what decision they would have made.  Any rational person
20 would have said, 'I wonder whether we should have
21 anticipated this.  Last night we decided this operation
22 should be undertaken.  I now see that 34 people have been
23 killed.  I wonder whether we made the right decision.'  Any
24 rational person, any responsible person would have thought
25 back on the events and thought did we anticipate the risk,

Page 38686

1  and the fact that now no-one – well, there's one person,
2  Lieutenant-General Basson says there was no, says no-one
3  raised the question of risk. All the others either ducked
4  the question or say they can't remember. It's simply not
5  credible.
6      CHAIRPERSON:      [Microphone off, inaudible]
7  The Lieutenant-General Mawela who is the Divisional
8  Commissioner for Operation Response Services, who I think
9  is Major-General Annandale's superior, his statement is at
10  page 4 and you saw the questionnaire that was sent, the
11  question is at page 1 deals with the question of whether
12  you recall if anyone raised the question of risks and so
13  forth, and his answer at the end, having not dealt with
14  that, is to say "That's all I can recall." So he's also
15  saying I can't recall whether anybody raised the question
16  of risk. He is the person who is responsible for
17  Operational Response Services. It's an extraordinary,
18  prima facie obviously, extraordinary –
19      MR BUDLENDER SC:      Chair, if one analysed
20  these statements one is left to be absolutely blunt, with a
21  feeling of absolute despair. These are the most senior
22  people in the South African Police Services. They're asked
23  some very important questions by a Commission which is
24  investigating, as Mr Chaskalson put it, the greatest
25  catastrophe since we achieve democracy, and the answers are

Page 38687

1  evasive and they are non-responsive.
2      Let me just read you one more. I don't want to
3  waste time on it. One of them says –
4      CHAIRPERSON:      What page?
5      MR BUDLENDER SC:      On page 8, you asked
6  these generals these specific questions, nine specific
7  questions with two sub-questions, and this is what the
8  Provincial Commissioner of KwaZulu-Natal, Lieutenant-
9  General Ngobeni says. He says that he's a general,
10  et cetera. He says, "I wish to state on the 15th of
11  September I was on duty attending an NMF meeting. During
12  the same meeting" –
13      CHAIRPERSON:      I believe Lieutenant-
14  General Ngobeni is a lady.
15      MR BUDLENDER SC:      A lady, she says,
16  "Lieutenant-General Mbombo was present." And then she says
17  the following, all she says about the meeting in response
18  to your nine questions is the following, "The National
19  Commissioner asked some of us to remain behind after the
20  meeting. The National Commissioner then asked the
21  Provincial Commissioner of North West Province, Lieutenant-
22  General Mbombo, to brief us on the prevailing protest and
23  the support she might need. The briefing by Lieutenant-
24  General Mbombo was more about issues of North West, which
25  has no bearing in KwaZulu-Natal." That is the answer to

Page 38688

1  nine questions asked by a Commission of Inquiry dealing
2  with this catastrophe. I say with – and I choose my words
3  not recklessly – it's a disgrace. I have no further
4  submissions, Chair.
5      COMMISSIONER TOKOTA:      Mr Budlender, I
6  agree prima facie with the criticism of the Provincial
7  Commissioners as to the failure to answer the questions. I
8  agree there, but I just want to check, regard being had to
9  the experience of the Provincial Commissioner with regard
10  to the operational aspects of the Public Order Policing, do
11  you think that she would have been in a position to have
12  briefed them as to what the plan is and –
13      MR BUDLENDER SC:      Well Commissioner, that
14  is a fair question. I'd say the following in response.
15  Firstly the National Commissioner says in her evidence,
16  finally says that she did tell them what the plan was.
17  Secondly, if she decided to implement, that an operation
18  was to be implemented the following day, the tactical stage
19  to remove the strikers from the koppie and disarm them, if
20  she made that decision without knowing what the plan was
21  then it's utterly reckless. Then it's truly utterly
22  reckless and I submit that one can accept readily that she
23  didn't have the skills and the experience to judge whether
24  the plan was a good one or a bad one. That's one of the
25  criticisms we make. Part of the problem is at the top of

Page 38689

1  the chain of command you have two people who have no
2  experience. So she no doubt would not have been in any
3  position to make an informed judgment on whether the plan
4  was a good one or a bad one, but to find that she made a
5  decision and issued an order that the tactical phase must
6  proceed without knowing what the tactical phase was would
7  really be to impute recklessness to her of a degree, which
8  I don't.
9      COMMISSIONER TOKOTA:      The next question
10  is the Provincial Commissioners, I take it they would know
11  that the people who are handling the situation were senior
12  people, most experienced people. Don't you think they
13  would have assumed that a proper plan would have been put
14  in place to execute whatever action they wanted to?
15      MR BUDLENDER SC:      I assume they would
16  have hoped that a proper plan, or maybe assumed that a
17  proper plan was in place, but you can't endorse a decision
18  without knowing what the consequences of the decision are,
19  or what the nature of the decision is. If you, they would
20  no doubt assume, perhaps somewhat optimistically in the
21  light of experience, that it was a plan which was properly
22  planned and would be implemented properly, but you can't –
23  given that they knew that the strikers on the koppie were
24  armed, given that they knew that the strikers on the koppie
25  would resist with force if an attempt was made to disarm

Page 38690

1  them, it would have been, the recklessness then extends to
2  the entire National Management Forum extraordinary session
3  if they didn't say but how are you going to do this without
4  lives being lost.  They're asked to endorse a proposal.  A
5  proposal is made and they say we endorse it.  If they
6  endorse it without saying but how are you going to do this
7  without lives being lost, then that is a criticism not of
8  the North West Provincial Commissioner, not of the National
9  Commissioner, of the entire top structure of the South
10  African Police Services that they endorsed a decision of
11  this kind which was inherently dangerous and risky, without
12  even bothering to find out what it was about.  That would
13  be a truly shocking conclusion, Chair.
14       CHAIRPERSON:       It goes further than that,
15  because the police version, which the evidence leaders
16  don't entirely agree with but the police version is that
17  this is an unprecedented situation, that by implication we
18  never had 3 000 people on a koppie with dangerous weapons
19  who have to be disarmed.  That being so, if it was an
20  unprecedented situation you would be particularly
21  interested, I would have thought, in the plan that's been
22  devised to deal with this unprecedented situation, and
23  particularly where you have someone like Major-General
24  Mpembe who thinks with his experience that there's no plan
25  that you can come up with that would involve disarming

Page 38691

1  these people on the koppie without the serious risk of
2  bloodshed.
3       MR BUDLENDER SC:       With respect, that is
4  so, Chair, and we have the evidence of the National
5  Commissioner.  She says they were told what the plan was
6  and they were told about the intelligence.  Then the first
7  thing you ask is well, how are you going to do this, if
8  you're a person of any responsibility at all.  I truly
9  don't want to intrude on other parties' time any further
10  than I have to, so unless there are questions, those are
11  our submissions at this stage.
12       CHAIRPERSON:       Thank you, Mr Budlender.
13  Ms Le Roux.
14       MS LE ROUX:       Thank you, Chair.  Chair,
15  the eyes of the communities that were devastated in August
16  2012, as well as the country at large and indeed the world
17  return to watch the Commission complete its work.  Mr
18  Chaskalson when he began his address echoed what is set out
19  in part 1 of the Human Rights Commission's heads of
20  argument, but it bears repeating what is set out there,
21  following a day where we've been immersed in complex legal
22  questions.  "After two years of Commission hearings the
23  shock of the catastrophe of 9 to 16 August 2012 may have
24  dulled.  40 000 pages of transcript may have normalised the
25  abnormal.  Tens of thousands of pages of written evidence

Page 38692

1  may have immunised against the horror of the killings, but
2  we must not forget that the level of violence at Marikana
3  and its tragic consequences were of a scale unprecedented
4  in democratic South Africa, and the South African Human
5  Rights Commission submits these were events that constitute
6  violations of the right to life, dignity, freedom and
7  security of the person.  34 fathers, sons and husbands were
8  shot dead by the police in a single day.  More than 50
9  others were seriously wounded by bullets fired by the same
10  police service, yet not a single police officer has yet
11  been disciplined or charged.  Marikana sits alongside
12  Sharpeville and Soweto, evoking domestic shame and
13  international condemnation.  The task of the Marikana
14  Commission is to ensure accountability for these horrors,
15  to make recommendations that prevents its recurrence and to
16  restore confidence in the State's ability to ensure
17  justice, and it's to assist the Commission in this
18  important task that the South African Human Rights
19  Commission has participated in these processes."
20       COMMISSIONER TOKOTA:       Sorry, let me
21  interrupt you.  Why was the Human Rights Commission not
22  involved during the incidents when people were dying there?
23  Was it not incumbent also on the Human Rights to
24  participate in trying to protect the lives of the people?
25       MS LE ROUX:       Commissioner Tokota –

Page 38693

1       COMMISSIONER TOKOTA:       You do a good job
2  here, but don't you think you would have done a good job
3  there as well?
4       MS LE ROUX:       Commissioner Tokota, all I
5  can do is return to the evidence of the expert who we have
6  provided to assist the Commission, Mr Gary White, who
7  stated that there are always third parties whose assistance
8  would be welcome to avoid violent protest, Public Order
9  Policing operations going wrong, and to assist the police
10  in their job.  But the reason why the Human Rights
11  Commission is here today is because it seeks to assist the
12  Commission through the provision of that expert evidence –
13       COMMISSIONER TOKOTA:       No, that's not my
14  question.  My question is why were you not involved there?
15  You must answer that question, that's all.  I'm not
16  questioning your participation here at all.  Don't get me
17  wrong.
18       MS LE ROUX:       I understand that,
19  Commissioner Tokota, and perhaps in hindsight my client
20  would need to look at whether in those types of situations
21  it could play a different role.  I don't have an answer for
22  you as to why it wasn't there at that time.
23       CHAIRPERSON:       Can I ask you a question?
24  Has the Human Rights Commission ever previously
25  participated in standoff kind of situation where it was

Page 38694

1  anticipated that there might be breaches of human right?
2  Has the commission ever intervened, endeavouring to
3  facilitate a settlement, endeavouring to prevent breaches
4  of the kind that had arisen, or if they had intervened here
5  before the 16th of August and endeavoured to provide some
6  kind of facilitation or mediation, would that have been a
7  first as far as they were concerned?
8       MS LE ROUX:        Chair, as far as I'm aware
9  it would have been a first. The Human Rights Commission's
10 mandate is obviously determined by legislation that governs
11 it, as well as its constitutional mandate, which generally
12 is responsive once it receives complaints, and that is
13 indeed why it participated in these processes; it received
14 a complaint about the conduct of the National Commissioner
15 with respect to the shootings at Marikana. So I would have
16 to take instructions on whether proactively it has
17 intervened in these type of situations. It generally would
18 follow the legislation that governs it and its
19 constitutional mandate, which is generally reactive and in
20 this instance was in response to a complaint about the
21 National Commissioner.
22      But Chair, that does mean that the parameters of
23 the Human Rights Commission's participation have focussed
24 primarily on the police operation and constituted primarily
25 the assistance of expert evidence, Mr Gary White, the

Page 38695

1  Public Order Policing expert from Northern Ireland, Mr
2  Dagan, who undertook the video compilation which was
3  provided by the Human Rights Commission together with the
4  families and Katherine Scott, who did the audio analysis of
5  the Reuters footage and others.
6  [15:49] But Chair, in summary the approach that we've
7  taken in our submissions as well as in the participation in
8  the two years of the Commission proceedings have been to
9  focus on the objective evidence, to be guided by the
10 experts. We've situated this all within a human rights
11 framework and seek to give effect to the State's
12 international and domestic law obligations which it seeks
13 to satisfy through the instrument of this Commission.
14      The constitutional scheme that we speak of has
15 accountability and transparency at its core and there are
16 two things in particular that inform this human rights
17 based approach, and I'll get to these in more detail
18 tomorrow, but to highlight, the first of these is what's
19 known as the principle of prevention and precaution. This
20 is that measures must be taken to prevent or minimise the
21 risk of the need to use lethal force in the planning and
22 command of a policing operation where the use of such force
23 is anticipated. And Chair, I must just make a preliminary
24 point with respect to the principle of
25 prevention/precaution, which is that we've been very

Page 38696

1  careful not to refer to it as the McCann Principle because
2  McCann is a case of the European Court which applies that
3  principle, but this is a principle that is applicable to
4  the events at Marikana because it is a principle of human
5  rights law, it is a principle of international law, and it
6  has been domesticated into South African law through the
7  constitutional obligations of the State to give effect to
8  its international law obligations, but more importantly to
9  give effect to its obligations to protect the right to
10 life. That is where the principle arises from.
11      So the SAPS can be held liable for its conduct at
12 Marikana by the application of the principle of prevention
13 and precaution on a standalone basis. This is separate and
14 distinct from whether any criminal or civil liability
15 should flow. The principle arises because there was a
16 breach of the right to life by the South African State
17 through its agents, the South African Police Services, and
18 therefore the principle of prevention/precaution does not
19 come into play when we're trying to determine questions of
20 criminal liability. It is a principle that holds the
21 organisation accountable because of the failures of the
22 operation. Those have been enunciated repeatedly
23 throughout our heads, but it's for those organisational
24 failures to plan and command, to implement this operation
25 in an effective and appropriate and professional way that

Page 38697

1  there was a breach of the right to life and therefore that
2  the principal of prevention and precaution provides the
3  basis for this Commission to hold the SAPS accountable as
4  an organisation.
5       The second duty that informs the human rights
6  based approach that has been pursued by the Human Rights
7  Commission here is the duty to investigate that arises when
8  the light to life has been breached by the State, and
9  Chair, I'll address you tomorrow with respect to what the
10 consequences of that duty are, but what it essentially
11 amounts to is ensuring accountability, and there are at
12 least five ways in which accountability is served through
13 this Commission discharging the duty to investigate.
14      The first is that this Commission will make an
15 accounting to the President and to the country at large as
16 to what happened. That accounting will also be obviously
17 most important to the victims most affected by those
18 events.
19      Secondly there's the accountability of the SAPS
20 to this Commission, and as we've set out in our submissions
21 as well as echoing the evidence leaders, the SAPS in this
22 process has unfortunately been characterised by a
23 deficient, deliberate and deplorable failure to engage with
24 this Commission process, and that therefore have
25 consequences of how evidence can be treated.

Page 38698

1      Thirdly there's the accountability of the SAPS to
2  the victims, and Chair, it's obviously for yourselves, for
3  the National Prosecuting Authority and for IPID to
4  determine what that would mean in terms of any potential
5  criminal liability, and my client certainly has not made
6  explicit recommendations for prosecution, deferring to your
7  own mandate as well as those of those other two
8  institutions who are charged with determining criminal
9  liability.  But we certainly in our recommendations have
10  urged that compensation be provided so that further
11  litigation is avoided.
12      Fourthly, there needs to be accountability within
13  the SAPS.  In that respect the recommendations by Mr White,
14  which are echoed by both of the other policing experts that
15  testified, seek to address training, seek to have a review
16  of policy and standing orders, seek to suggest various
17  mechanisms that are very practical, that if implemented
18  would ensure that future operations could avoid the
19  failures that we see here with respect to intelligence,
20  planning, briefing, command and control, and ultimately
21  accountability where there are such failures.
22      And finally, it is accountability that is at the
23  heart of all the recommendations that we have submitted,
24  both those arising and set out in annexure A, which are the
25  recommendations proposed by the commissioners of the South

Page 38699

1  African Human Rights Commission, and secondly in annexure
2  B, the recommendations by Mr White.
3      But Chair, what struck me this morning in much of
4  the engagement with the evidence leaders' submissions was
5  that there's possibly an understandable desire to make
6  findings against or about conduct, decisions and steps
7  taken by individual officers, and the evidence before the
8  Commission may or may not assist in being able to reach
9  those conclusions, but what the evidence does show is that
10  the SAPS as an organisation should and can be held
11  accountable for those failures.  It is its processes that
12  failed.  Mr White identified how they failed with respect
13  to intelligence, planning, briefing, command and control,
14  and accountability mechanisms, and it is those failures
15  that resulted in the deaths and injuries at the hands of
16  the State that constitute the breach of the right to life.
17      Chair, we've also obviously explained in our
18  heads of argument at part 15, section 4, that there is a
19  mechanism for the SAPS to be held accountable potentially
20  through the Occupational Health & Safety Act, but the key
21  here is that it's not necessary for the Commission to find
22  individuals liable.  There's sufficient evidence to hold
23  the SAPS liable for what happened in August.  And Chair,
24  the second component of that is that obviously because this
25  is not a criminal trial and it's not even a civil trial,

Page 38700

1  the same types of nuances and standards do not need to be
2  met, and I'll address you on that in more detail tomorrow
3  when I deal with the duty to investigate.
4      So Chair, in the three minutes I have remaining
5  today, because I'm assuming we finish at 4 o'clock, to
6  briefly explain the structure of my oral argument, it's to
7  focus primarily on parts 2, 4, 9 and 10 of the heads of
8  argument, as well as the two annexures I've mentioned that
9  deal with recommendations.  I do not intend to address the
10  detailed, fully referenced factual account that is set out
11  in the submissions, unless there are particular factual
12  questions that you and your fellow Commissioners would like
13  me to address you on, in which case I'd like to prepare for
14  that overnight.  So if I could be alerted to any particular
15  factual issues set out in our account that you would like
16  us to address?
17      Chair, I also don't intend to spend very much
18  time at all on our phase 2 submissions, save to state that
19  the South African Human Rights Commission is disappointed
20  that the underlying causes of the tragedy of August 2012
21  did not receive anything close to the same attention as
22  those that the immediate causes received, and we therefore
23  urge the Commission to adopt the proposed recommendations
24  to remedy that lamentable failure.
25      Briefly Chair, those were four recommendations

Page 38701

1  proposed by the Human Rights Commission that the important
2  work to understand these underlying socioeconomic causes
3  continue through a task team or a working group that would
4  involve government, communities, mining rights holders,
5  trade unions, traditional leaders, employees and local
6  business, that the Department of Mineral Resources would
7  undertake a review of the SLP system, that Lonmin's
8  compliance be specifically investigated with respect to the
9  SLP system, and finally that funds be allocated to develop
10  the infrastructure of the communities of Marikana, and we
11  note in this regard that Lonmin in its reply expressly
12  supported those recommendations.
13      Chair, I note it's 4 o'clock, so I'll continue in
14  the morning.
15      CHAIRPERSON:        Thank you.  Yes, there's
16  nothing specific that we want to put to you now.  We will
17  resume the sitting of the Commission at 9 o'clock tomorrow
18  morning.
19      [COMMISSION ADJOURNED]
20  .
21  .
22  .
23  .
24  .
25  .

38685:21 38694:1 38695:23
**anybody** 38577:23 38636:8 38666:2 38684:22 38686:15
**anyway** 38512:13 38546:24 38547:5 38589:3 38592:9 38632:14 38638:20 38667:6 38685:7
**apart** 38525:24 38544:23 38545:1 38547:13 38548:19 38555:4 38575:6 38596:18 38617:16 38626:8
**apologise** 38619:22
**apology** 38620:13
**apparent** 38510:9 38517:21
**apparently** 38551:16 38619:4 38634:21 38660:10
**appeal** 38494:7
**appear** 38576:7 38666:6 38669:15 38670:12
**appears** 38507:23 38510:15 38596:8 38662:11
**appendix** 38665:4,5
**applicable** 38545:2 38696:3
**application** 38569:1 38660:7,24 38696:12
**applied** 38534:15,15
**applies** 38498:11 38580:12 38591:17 38696:2
**apply** 38499:8 38500:8 38533:3 38534:12 38578:10 38640:25
**applying** 38569:21
**appointed** 38672:2
**appreciation** 38519:25
**approach** 38492:12 38508:21 38510:11 38552:21 38556:21 38570:6 38577:7 38578:18 38589:23 38595:23 38599:15 38668:19,20 38695:6 38695:17 38697:6
**approached** 38493:2 38635:1 38636:19 38649:24 38675:23
**approaching** 38613:18 38638:25 38640:13 38640:25
**appropriate** 38497:6 38503:18 38508:21 38508:25 38517:9 38519:5,18 38535:1,4 38576:14,14 38577:16 38593:17 38595:15 38668:20

38696:25
**appropriately** 38579:20
**appropriateness** 38569:22 38570:1,5 38578:11 38581:18
**approval** 38592:6
**approximately** 38616:4 38616:5 38684:14
**April** 38517:2
**archives** 38534:19
**area** 38562:4 38672:3
**aren't** 38632:24
**arguably** 38509:16
**argue** 38582:13 38591:22 38604:21 38639:20 38667:16
**argued** 38495:11 38650:9
**arguing** 38495:12 38501:11
**arguments** 38490:4,5 38539:23 38579:18 38654:19
**arisen** 38506:2 38694:4
**arises** 38504:16 38529:1 38557:14 38584:25 38608:19 38615:12 38648:21 38675:8 38696:10,15 38697:7
**arising** 38643:22 38672:3 38698:24
**arm** 38546:11 38638:9
**armed** 38524:19 38541:23 38543:3 38544:1 38589:23 38600:21 38635:5 38638:20,21 38645:24 38648:10 38671:15 38681:13 38681:19,21,22 38684:15 38689:24
**armoured** 38553:24 38554:6,10,13,17,22 38554:24 38555:1,2,5 38555:7,9,11,21 38556:1,3,6,8,12,13 38556:19,24 38613:22 38617:21 38617:23 38619:3 38658:17
**arms** 38538:9 38576:11 38635:9
**arose** 38625:13
**arrange** 38534:22
**arranged** 38551:12 38582:11 38588:23 38608:13
**arrangement** 38493:20 38623:16,17,22
**arrangements** 38593:20
**arranging** 38534:2
**arrest** 38552:3 38649:24 38677:1

**arrested** 38608:21 38657:20 38676:1
**arrive** 38546:13
**arrived** 38624:14 38625:2,10,20 38664:20
**arrives** 38624:21
**arriving** 38561:23 38624:16
**arrow** 38629:10,14,19
**arrows** 38629:9
**articulates** 38518:16
**artificial** 38651:9,19 38652:18
**ascertain** 38620:6
**aside** 38498:12
**asked** 38490:9 38519:16 38538:9 38541:1 38562:4 38567:18 38581:2 38586:2,3,9 38593:13 38594:15 38599:9 38619:22,23 38620:8 38620:12 38626:16 38680:22,22,25 38681:16 38682:16 38682:22 38684:8,11 38686:22 38687:5,19 38687:20 38688:1 38690:4
**asking** 38667:13
**asks** 38532:14 38589:13,14
**aspect** 38508:12 38512:9 38535:21 38548:9 38550:4 38568:4 38581:5
**aspects** 38492:13,14 38500:21 38512:16 38513:24 38532:19 38667:9 38688:10
**assault** 38600:15,22 38604:17
**assaults** 38529:21,23 38530:20,22
**assegai** 38542:21
**assembled** 38568:21 38645:22 38679:19 38683:12
**assemblies** 38645:24
**assembling** 38645:19
**assessing** 38499:6
**assessment** 38515:9 38535:23,24 38553:14 38558:1,4 38569:4,11
**assist** 38594:4 38692:17 38693:6,9 38693:11 38699:8
**assistance** 38512:10 38603:12,13 38669:3 38693:7 38694:25
**assisted** 38507:23 38513:5 38590:22,23
**associated** 38636:13
**assume** 38497:23,25

38565:2 38615:23 38617:19 38633:22 38640:5 38648:3,4 38675:1 38683:8 38689:15,20
**assumed** 38689:13,16
**assumes** 38683:8
**assuming** 38496:2 38575:22 38583:13 38653:14 38700:5
**assumption** 38594:19 38594:22 38599:14 38607:21
**assurance** 38563:1 38566:13,20
**attach** 38508:21 38509:11 38535:17
**attaching** 38572:15
**attack** 38543:9 38545:3 38554:8 38558:19,19 38579:9 38602:21 38612:3,4,4,12,18 38633:23,25 38634:5 38634:6 38635:5 38636:5 38640:5,15 38640:19 38648:10 38648:17 38670:16 38670:17,23 38671:12
**attacked** 38524:21 38590:13 38613:8
**attacking** 38594:3 38602:20
**attacks** 38514:16 38523:23 38552:8 38558:25 38667:22 38669:12,20,22 38670:8
**attempt** 38500:22 38524:5 38525:10 38531:24 38532:7 38561:22,25 38575:8 38577:12,13 38578:4 38579:22 38602:17 38603:20 38606:23 38608:21 38609:7,8 38612:4,18 38662:11 38665:1 38674:14 38675:24 38676:7 38681:23 38684:13 38689:25
**attempted** 38544:16 38545:15 38643:9,13 38646:18 38661:24
**attempting** 38504:20 38662:3
**attempts** 38595:2 38620:6 38666:15 38671:6
**attend** 38595:14
**attended** 38568:13 38680:13
**attending** 38687:11
**attention** 38493:3,10 38514:11 38518:17 38521:7,10 38527:2

38559:16,21
**attitude** 38645:18 38651:6
**attorney** 38490:15
**attributed** 38627:11
**audio** 38605:6,6 38661:13 38695:4
**August** 38494:22 38495:22 38497:23 38504:25 38505:16 38506:4 38514:12,13 38514:15,17,19,22,23 38515:4 38516:2 38517:1,3 38527:5,7 38527:7,17,19 38531:10,12,16 38532:25 38533:3 38536:8 38545:18 38552:8 38557:9 38558:21 38560:19 38598:21 38601:12 38603:17 38604:1 38661:16,21,22 38663:6,10,25 38664:14,18 38665:10 38673:8,13 38674:19 38675:8,13 38676:13 38678:16 38678:24 38681:15 38691:15,23 38694:5 38699:23 38700:20
**authorities** 38526:16
**authority** 38596:1 38659:1 38698:3
**automatic** 38646:13,16
**avail** 38670:3
**availability** 38620:3
**available** 38493:4,12 38503:16 38534:18 38550:8 38551:13 38553:2,6 38556:12 38557:18 38561:10 38564:5 38568:5,19 38570:9 38571:14 38573:4 38581:12 38592:12 38675:4
**avenues** 38575:23
**averse** 38545:19,23
**aversion** 38609:2,5
**avert** 38635:21
**avoid** 38490:3 38500:22 38632:22 38649:1 38674:2 38693:8 38698:18
**avoided** 38500:23 38654:1 38664:1 38698:11
**aware** 38510:20 38518:18 38542:15 38553:5 38555:20,25 38556:5 38560:4 38561:17 38562:5 38568:19 38570:25 38571:4 38572:18,21

38627:21 38666:24
38683:1 38694:8
**awareness** 38677:24
**awful** 38659:8

---

**B**

**b** 38595:3 38607:5
38608:1,5,9,16,18
38610:19 38615:1,11
38615:11 38617:3,7
38618:7,10,15,17,19
38618:23 38619:1
38654:3 38669:3
38699:2
**back** 38500:24 38520:4
38520:17,18 38535:6
38535:16,22 38536:2
38551:20 38570:18
38570:20 38572:4
38574:11,24,25
38578:18 38582:4,16
38590:9 38601:11
38602:9,15 38607:11
38624:18 38625:24
38631:9 38637:2,7,9
38638:5 38639:15
38645:15 38650:11
38685:25
**backdrop** 38536:7
**backed** 38631:13
**background** 38514:6
38515:1,3 38517:11
38517:13 38522:17
38527:2
**backpack** 38637:5,6,7
38637:10
**backwards** 38628:23
38641:16
**bad** 38661:19 38688:24
38689:4
**Bafana-Bafana**
38637:5
**bail** 38660:7,24
**balance** 38499:13
38500:2,6 38596:25
**ballistic** 38596:17
**ballistics** 38656:23
**balls** 38633:1
**Baloyi** 38587:7
38589:16 38590:13
**Bar** 38491:8,12
**barbed** 38604:13
38612:24 38615:2,10
38615:21,25 38616:1
38616:7,14,19
38618:9
**bargaining** 38516:16
38518:2 38519:11,14
**Barnard** 38519:16
**base** 38594:1 38611:6
**based** 38516:17
38519:25 38520:14
38533:18 38553:5
38557:19 38566:19
38595:23 38695:17
38697:6

**basic** 38505:20
38666:13
**basis** 38504:5,9
38521:23 38528:8
38529:18,19
38544:18 38552:13
38559:11 38561:10
38595:19 38633:21
38643:14 38650:16
38675:20 38684:18
38696:13 38697:3
**Basson** 38681:5
38686:2
**bear** 38492:21 38552:1
**bearing** 38499:8
38524:10 38537:23
38570:22 38594:20
38687:25
**bears** 38596:2
38691:20
**beat** 38634:9
**becoming** 38552:4
38554:8
**bed** 38536:15
**beg** 38540:25
**began** 38605:4
38691:18
**beginning** 38527:5
38599:7 38613:9
**begun** 38625:1 38660:3
**behalf** 38492:6
38672:14
**behaving** 38502:12
**behaviour** 38529:5
38556:2
**belatedly** 38533:19
38674:22
**belief** 38640:4
**believe** 38515:3
38547:16 38563:16
38579:5 38581:24
38687:13
**believed** 38602:21
38612:3
**believing** 38640:14
**belong** 38515:22
**belongs** 38548:23
**bent** 38631:25
**best** 38493:18 38529:17
38540:17 38547:12
38554:9 38576:25
38628:11
**better** 38661:16
**beyond** 38504:7,8
38557:3 38562:14,24
38572:15 38633:3
38639:10 38642:2,7
38645:8
**big** 38561:6 38568:20
38573:17
**bigger** 38572:17
**bill** 38501:6 38671:5
**bind** 38533:23
38534:22
**binding** 38534:10,11
38535:2

**binds** 38534:24
**Binta** 38684:20
**Bishop** 38491:2
**Bisley** 38596:22
**bit** 38492:18 38547:20
38556:11 38574:16
38617:10 38660:20
**bits** 38634:19
**Blackberry** 38615:6
**blame** 38590:1,2
**blames** 38505:2
**blanket** 38632:10,10,25
38633:1
**blankets** 38632:8
**bleeding** 38603:11
**blessing** 38491:2,3
**blindly** 38600:25
**block** 38606:4 38608:4
38608:8,12 38613:25
38614:5,17 38617:11
38617:12,21,22,24
38618:2,4,7,10,19,22
38620:24 38621:9,11
38621:11,13,13
38622:2,8,16,20
38626:4,9,9,15,22,23
38626:25
**blocked** 38607:8,25
38618:9,18 38621:14
38652:25 38653:1
38654:2,3
**blocking** 38608:16
38618:25
**blocks** 38626:24
**blok** 38621:25
**bloodshed** 38576:25
38653:14,18
38677:15,15
38683:18 38685:5
38691:2
**Blou** 38533:15 38534:3
38534:6,7,9,10,14
**blunt** 38686:20
**bluntly** 38513:7
**board** 38549:19
**bodies** 38600:14
38637:1,10 38643:12
38644:15,19,20,24
38662:1 38664:23
38665:22
**bodily** 38512:6
**body** 38506:22
38512:11,12,22
38513:12,20 38637:9
38641:14 38643:7
38644:11,22 38645:7
**bona** 38609:21
**Booi** 38521:11,12
**Booi's** 38521:15
**book** 38521:2 38525:24
38528:13,18,19,22
38529:2 38548:16
38549:15,20,23
38568:13 38671:5
**Botes** 38534:6
38554:19 38556:1

**Botha** 38527:14
**bothering** 38690:12
**bottom** 38614:8
**bound** 38503:9,17
38533:16
**bounds** 38641:10
**branch** 38515:11
**bravado** 38605:9
**brave** 38543:24
**breach** 38696:16
38697:1 38699:16
**breached** 38697:8
**breaches** 38694:1,3
**break** 38541:3 38592:1
38592:1,7 38628:3,7
38630:13 38653:4
38654:5,8,11,24
**breakaway** 38568:7,12
38568:20 38570:14
38571:21 38572:17
38572:23 38573:2,10
38573:12,22,24
**breaking** 38631:17,17
**breaks** 38572:2
38666:2
**breath** 38611:3,3
**Breedt** 38664:25
38665:6,23
**brief** 38514:6,7
38525:6 38577:14
38581:12 38583:22
38687:22
**briefed** 38569:12
38578:13 38583:25
38584:2,4,12
38688:12
**briefing** 38533:12
38553:15,20 38579:2
38581:19 38585:2,4
38605:1 38660:23
38687:23 38698:20
38699:13
**briefly** 38514:23
38522:18 38527:15
38531:9 38541:9,14
38559:4 38561:1
38583:18 38672:22
38678:23 38700:6,25
**Brigadier** 38550:9
38551:7 38561:11,13
38562:6,25 38563:3
38564:5 38565:12,14
38565:17 38566:13
38566:15,24
38567:11 38568:21
38604:14 38606:19
38607:16,20 38608:3
38608:8,10 38610:16
38611:19 38612:8,16
38614:2 38615:13
38617:14 38620:23
38621:8,24 38622:1
38622:11,21,24
38623:18 38624:6,7
38624:20 38625:19
38626:16,20 38627:3

38655:2 38656:17
38657:2,11 38658:13
38660:25 38662:6
38663:17,22
**bright** 38637:7
**bring** 38555:7,11
38603:13
**brings** 38659:2
**broad** 38598:19
38672:9
**broadcast** 38601:13
**broader** 38658:4
38665:7
**broadly** 38668:25
**broke** 38630:14
**broken** 38556:22
38571:23 38630:4
38683:25
**brought** 38493:3
38497:11 38552:1
**brown** 38638:8
**brutal** 38560:22
**Budlender** 38492:5,9
38492:22 38494:17
38494:18 38500:9,14
38501:12 38503:14
38508:24 38510:1,6
38510:12 38511:11
38511:14 38512:14
38512:19 38513:10
38513:13,16,19,22
38514:1 38541:1
38596:24 38652:9,12
38672:13,16 38680:8
38680:10 38682:7,11
38682:14,19,24
38683:2,7 38685:9,12
38686:19 38687:5,15
38688:5,13 38689:15
38691:3,12
**building** 38648:4
**built** 38516:17
**bullet** 38602:16
38632:9,11 38643:7
38644:12,21,22,22
38645:3,4,7 38664:19
**bullets** 38527:24
38530:15 38531:7
38596:16 38602:24
38632:9 38637:14
38638:12 38641:19
38641:21 38644:16
38644:19,20,23,24
38645:1 38658:24
38692:9
**bunch** 38585:9
**bundle** 38681:7,7
**burden** 38563:19
**buried** 38490:23
**burn** 38536:19
38538:24 38539:3,9
38541:19 38542:3
38551:21
**burned** 38546:25
38548:24
**bus** 38559:9

**bushes** 38658:7
**business** 38560:15
38701:6
**busy** 38579:16
38596:23
**buy** 38542:5
**buying** 38540:14
**B2** 38616:12

_____
**C**
_____

**calculated** 38640:18
**Calitz** 38563:3
38568:21 38604:14
38606:19 38607:17
38607:20 38608:3,8
38608:10 38610:16
38611:19 38612:8
38615:13 38617:14
38620:23 38621:8,24
38622:21 38623:18
38624:6,8,21
38625:19 38626:7,8
38626:16 38627:3
38655:2 38656:18
38657:2,11 38658:14
38663:17,22
**Calitz's** 38612:17
38614:2 38622:1,24
38626:20
**call** 38519:21 38525:10
38539:5,6 38547:10
38547:11 38548:3
38560:8 38574:17
38629:18 38668:5
38674:9 38675:9
38678:6,8,16
38679:13
**called** 38522:5,13
38523:16 38561:3
38589:2 38629:21
38633:24 38656:1
38668:6 38669:9
38679:3
**Callie** 38527:13
**calling** 38517:21
38676:22
**calls** 38610:16
38669:11
**CALS** 38627:12,13
**cameras** 38609:9
**cancel** 38557:2
**candid** 38662:2
**candour** 38659:23
**canister** 38589:11
38630:25 38640:10
**canisters** 38587:5,7
**cannon** 38627:19,20
**canvass** 38599:24
**canvassed** 38545:22
38657:7 38659:24
**can't** 38632:14 38633:3
38637:24 38639:10
38642:22 38643:6,7
38643:12 38644:11
38651:7 38676:5,25
38677:4 38680:5

38684:23,25 38685:5
38685:6 38686:4,15
38689:17,22
**capable** 38595:5
**capacity** 38559:19,23
38559:25 38600:10
**Cape** 38681:6 38684:20
**Captain** 38527:11,25
38528:7 38529:4,10
38529:13,15,21,23,25
38531:19 38532:8,20
38551:2 38586:8
38587:16,21
38588:18 38591:2,3
**car** 38490:21
**care** 38641:12
38647:22
**careful** 38696:1
**carefully** 38663:5
**carried** 38517:2
38674:25
**carry** 38510:25
38536:23 38541:1
38592:9 38593:21
38653:18
**carrying** 38563:22
38635:3 38638:10
**case** 38497:2 38504:16
38506:2 38507:14,24
38512:18 38513:6
38524:19 38542:19
38544:16 38545:2,13
38545:13,15,25
38547:6 38548:6
38555:18 38582:17
38595:24 38596:5,13
38597:4,6 38616:4,5
38636:10 38637:17
38637:18 38640:2,16
38640:17,22 38645:3
38645:11,11,14
38646:25 38647:3
38649:3,8 38654:4
38660:15 38662:17
38662:17 38670:13
38674:15,17
38679:22 38684:6
38696:2 38700:13
**cases** 38503:18
38508:15,17 38596:4
38599:19 38644:23
38645:8,9 38646:4,18
38662:13
**Cassim** 38540:13
**Cassim's** 38542:4
**Casspir** 38617:19
38629:19,25 38630:2
**Casspirs** 38614:3
38624:19
**casts** 38661:18
**catastrophe** 38589:24
38686:25 38688:2
38691:23
**categories** 38635:13
**category** 38509:24
38635:14,17

38667:14
**caught** 38554:17
38559:9
**causa** 38654:10
**causal** 38582:20
**causation** 38652:16
38653:4,22 38654:6,9
38654:10,24
38678:21 38683:19
38683:20,24,24
**cause** 38498:15
38526:15 38549:25
38596:12 38632:18
38655:1 38681:23
**caused** 38492:19
38495:5 38549:25
38620:14 38643:4
38645:8
**causes** 38700:20,22
38701:2
**caution** 38509:1
38635:10
**cautious** 38509:3
**CCTV** 38568:12
38571:9,17 38661:2
**ceased** 38639:22
**cement** 38685:17
**central** 38515:3
38517:5 38666:16
**centrally** 38518:3
**certain** 38492:13,14
38500:12 38508:19
38509:22 38543:23
38552:21 38592:6
38621:8 38622:21
38667:9
**certainly** 38507:17
38534:10 38538:4
38547:25 38596:1
38611:10 38620:11
38621:7 38622:19
38628:21 38630:20
38632:2,23 38634:13
38638:3 38641:2
38642:21 38653:22
38655:25 38656:8,10
38657:17 38666:18
38674:6 38698:5,9
**certainty** 38504:23
38505:5
**cetera** 38687:10
**chain** 38653:4 38654:6
38654:9,9 38683:25
38689:1
**Chairman** 38491:7
**challenge** 38509:9
**challenged** 38509:4,4,6
38509:10
**chamber** 38493:16
**chance** 38575:3
**change** 38604:5
38625:21 38662:21
**changed** 38583:10
38605:8 38655:14
38662:19
**changing** 38516:8

**channel** 38606:4
38607:3,10,24,25
38608:22,23
38613:18,24,25
38627:24 38628:1,4
38630:11 38654:1,3
38670:10,10
**channelled** 38519:10
38619:6
**chaos** 38549:10
**characterise** 38603:20
**characterised** 38666:15
38697:22
**charge** 38563:4
38581:6,8 38625:11
**charged** 38643:12
38645:23 38692:11
38698:8
**charging** 38660:10
**chased** 38537:3
**check** 38626:14
38688:8
**cherry** 38503:21
**chest** 38641:20,21,22
**choose** 38688:2
**chose** 38515:22
**circumstance** 38512:22
**circumstances**
38496:15 38502:24
38510:8 38542:17
38543:7 38544:14
38549:8,21 38552:14
38557:12 38558:13
38558:18 38560:6
38577:17 38591:8
38595:14 38597:8
38601:1,2 38603:3
38612:11 38635:4
38641:22 38644:6
38646:8 38649:18
38651:16
**circumstantial**
38535:11
**civil** 38495:17
38502:13 38526:18
38597:3 38643:2
38696:14 38699:25
**claim** 38523:19
38528:6 38596:1
38641:5,6,25
**claimed** 38508:13
**claims** 38567:7
**clarification** 38599:19
**clarified** 38504:10
**clarify** 38586:3
38678:19
**clarity** 38586:9
**clause** 38671:22
**clean** 38501:6
**clear** 38490:3 38506:15
38513:9 38518:9
38537:9 38544:1
38554:3,24 38557:21
38557:24 38569:24
38571:19 38572:12
38573:15 38581:4

38588:16 38621:11
38626:24 38632:4,5,7
38635:3 38641:9,13
38656:13 38660:17
38660:19 38664:10
38669:4,11 38673:3
38678:5 38679:17
**clearly** 38517:3
38524:20 38554:11
38554:21 38557:22
38563:11 38573:25
38577:10 38581:21
38595:4 38599:14
38602:19 38648:12
38668:22 38669:1
38673:11,21
38674:11 38683:19
**clerk** 38592:21
**client** 38693:19
38698:5
**clients** 38601:6
38659:21
**clip** 38638:12
**close** 38501:18
38613:11 38617:3,7
38632:20 38700:21
**closed** 38613:21
38648:7
**closely** 38523:10
38571:15 38572:1
38573:1
**closest** 38621:24
38622:13
**closing** 38560:14
38610:18 38633:9
38665:7 38666:1
**cloud** 38639:19
**cobble** 38604:10
**cogit** 38580:11
**coin** 38546:16
38554:16 38555:21
**colleague** 38491:17
38565:2 38574:19
**colleagues** 38491:9
38492:8 38513:8
38534:11,14
38659:16
**collection** 38588:4
38605:15
**collective** 38516:16
38518:2 38521:14
38634:9
**collectively** 38633:25
38634:11 38672:8
**colonel** 38525:2
38531:12 38577:14
38579:24 38580:20
38587:25 38604:10
38608:2 38615:7
38618:21 38620:24
38621:10 38622:5,5
38651:6 38659:3
38660:17,19,22
38664:17 38666:3
38668:4 38671:9
**come** 38520:17

38526:19 38535:6,16
38535:22 38557:21
38560:3,9 38574:6
38582:15 38587:1
38590:9 38593:11
38609:23 38614:15
38616:10,11,15
38631:16 38651:13
38669:16,23,24
38679:9 38690:25
38696:19
**comes** 38507:11
38520:18 38601:9
38632:7 38636:10
38639:15 38640:20
38669:2
**comfort** 38592:1,1
**coming** 38560:1
38571:11 38573:5
38637:17 38648:5
38657:1
**command** 38625:2,4,6
38625:9,11 38656:21
38689:1 38695:22
38696:24 38698:20
38699:13
**commander** 38566:17
38579:25 38580:18
38587:15 38608:7
38610:15 38612:7
38613:2 38621:17,18
38622:2 38624:9
38625:21 38653:24
38655:1,15,15,17,18
38656:18 38658:5
**commanders** 38610:12
**commence** 38492:6
**comment** 38592:19
38595:4,12
**commented** 38665:8
**comments** 38514:6,7
**commissioners**
38490:10 38495:13
38496:4 38591:21
38598:19 38599:9,23
38601:10 38665:3
38679:23 38680:16
38683:13 38688:7
38689:10 38698:25
38700:12
**Commissioner's**
38496:1 38661:17
38673:12
**commissions** 38596:4
**Commission's**
38499:11 38500:15
38500:17 38691:19
38694:9,23
**committed** 38498:14
**committee** 38505:7,13
38519:3,3
**common** 38498:15
38526:15 38594:15
38633:22,23 38634:3
38635:11,11,14,17,22
38636:2,4,5,7

38643:14 38681:23
**commonly** 38672:4
**communicated** 38520:4
38566:6,7,9 38573:14
38618:3
**communities** 38691:15
38701:4,10
**company** 38676:6,7
**comparate** 38615:15
**compared** 38520:1
**compelling** 38570:23
**compensation**
38698:10
**competitions** 38596:22
**competitors** 38520:2
**compilation** 38695:2
**complains** 38594:24
**complaint** 38557:8
38672:11 38694:14
38694:20
**complaints** 38539:23
38694:12
**complete** 38532:24
38550:6,14 38595:15
38659:22 38691:17
**completely** 38621:13
38635:18 38649:23
38666:7
**complex** 38691:21
**compliance** 38701:8
**complicated** 38582:1,7
**comply** 38546:4
38575:7 38576:7,22
**component** 38699:24
**comprehensive**
38599:16
**compromised** 38602:1
**conceal** 38661:24
**concealed** 38502:23
38503:4 38674:23
38679:10
**concealment** 38535:8
**concede** 38612:5
38630:24 38631:6
38633:24 38642:3,6
38646:15
**conceded** 38535:12
38559:22 38618:21
**conceivable** 38635:6
**concentric** 38608:17
**concept** 38501:8
38653:11
**concern** 38501:24,25
38659:14 38672:3
38680:24
**concerned** 38501:10
38504:17 38509:13
38534:14 38545:9
38578:23 38579:5
38605:11 38620:9,15
38672:24 38680:11
38694:7
**concerning** 38672:6
**concerns** 38599:25
38653:10 38684:11
**concerted** 38666:15

**conclude** 38492:15
38543:14 38608:24
38672:14 38677:4,7
**conclusion** 38511:22
38591:23 38634:25
38649:1 38676:11,21
38690:13
**conclusions** 38678:2
38699:9
**conclusive** 38541:12
38608:5 38609:4
**conclusively** 38627:16
38627:17
**concrete** 38528:5
38553:8 38563:2
38564:19
**concretely** 38562:7
**condemnation**
38692:13
**condition** 38554:16
38555:3 38556:9
**conduct** 38497:19
38501:3 38512:20
38528:6 38545:6
38547:13,15,16
38550:5 38569:4
38577:5 38580:23,25
38581:5 38590:14
38596:12 38601:5
38610:7 38647:20
38650:3,8 38659:9
38672:6 38694:14
38696:11 38699:6
**conducted** 38558:1
38569:11
**conference** 38575:3
38660:16 38661:18
**confess** 38684:21
**confidence** 38516:15
38692:16
**confined** 38640:23
38652:1
**confirmed** 38586:10,12
38620:3 38667:5
38681:17,18
**conflate** 38635:11
**conflation** 38635:22
**conflict** 38676:14
**conflicting** 38589:25
38665:16
**confront** 38683:15
**confrontation**
38498:12,13
38505:15,16,24
38684:12
**confronted** 38569:21
**confronting** 38677:10
**confusion** 38581:21
38584:21,23
**congratulations**
38491:10,15,23
**congregated** 38681:13
**connected** 38583:2
**connection** 38582:21
**consequence** 38493:6
38496:12 38497:8

38675:12 38678:15
**consequences** 38496:3
38497:7 38498:4
38576:16 38601:25
38629:2 38675:6
38677:9 38689:18
38692:3 38697:10,25
**consider** 38491:5
38533:15 38547:1
38549:13 38598:6,6
38598:10 38599:20
38654:20 38668:18
**considerable** 38641:10
38659:14
**consideration** 38545:10
38548:7 38675:10
**considered** 38532:5
38553:12 38560:13
38671:10
**considering** 38519:13
38519:13
**consistent** 38510:16,22
38527:10 38577:7
38586:7 38627:2
38660:18 38669:14
38670:14
**consistently** 38679:10
**consolidated** 38605:15
38631:15,18
**Constable** 38595:21
**constables** 38668:3
**constitute** 38692:5
38699:16
**constituted** 38498:10
38694:24
**constitutional**
38600:20,23,24
38649:8 38694:11,19
38695:14 38696:7
**constraints** 38559:23
38668:6
**construct** 38503:22
**consultation** 38663:5
**contact** 38555:6,7
38556:25 38562:11
38620:7
**contacted** 38562:11
38620:3
**contacting** 38564:11
**contagion** 38522:22
38523:2
**contain** 38677:2
**contemporaneous**
38586:18
**contempt** 38575:8
**contend** 38496:4
38507:22 38530:1
38577:16
**content** 38533:7
38663:23
**contention** 38533:21
38676:15
**contentions** 38523:13
38598:1
**contested** 38515:23
38516:1 38611:14

**context** 38499:1
38517:7 38637:20
38647:8 38665:2
**contextualise** 38592:14
**contingency** 38531:9
38531:11,15,17,21,25
38532:6,13 38553:18
38561:2
**continue** 38545:5
38701:3,13
**continued** 38642:1,7
38643:4
**continues** 38545:4,4
38619:18
**continuing** 38641:17
**contract** 38557:2
**contractor** 38556:11,19
38556:23,25
**contractors** 38535:25
38536:4 38554:14,15
38555:1,6,11 38557:6
38558:5,5,11 38559:2
**contradicted** 38508:20
38508:20
**contradiction** 38509:15
**contradictory** 38621:7
**contradicts** 38503:24
38676:15
**contrary** 38558:16
38678:13
**contravention**
38646:20
**control** 38555:22
38559:18 38646:21
38658:4,14,23
38659:2 38698:20
38699:13
**controversial** 38552:16
**convey** 38494:13
38561:16 38562:20
**conveyed** 38490:4
38536:3 38550:10
38553:3 38558:4
38561:15 38562:6
38563:21 38565:9,12
38565:12 38579:4,6
38580:1 38667:3
**conveying** 38538:2
**convincing** 38568:25
38634:2
**coordination** 38623:2
**copies** 38591:21
38592:12,14
38664:12
**coping** 38600:16,17
**copy** 38624:3 38679:13
**cord** 38594:19
**core** 38511:8 38695:15
**corner** 38614:8
**corollary** 38666:1
**correct** 38519:15
38521:4 38523:24
38528:16 38534:12
38537:13 38544:4
38562:13 38583:9
38585:20 38591:13

38591:16 38594:22
38594:23 38595:5
38596:20 38597:10
38624:12 38626:10
38639:23 38666:18
38666:22 38669:1
38671:16
**correction** 38606:10
**Correctional** 38619:25
**correctly** 38500:25
38525:19 38576:4
**correspondence**
38554:1
**corroborated** 38506:18
38506:20 38507:2
38669:15
**corroborates** 38506:23
**corroboration**
38510:10
**corroborative** 38507:5
38510:14,25
**Costa** 38517:15
38518:7,9,13,16
38519:1 38520:15
**Costa's** 38517:23,25
**couldn't** 38635:4
38658:18 38664:8
38680:3
**Council** 38491:8,12
**counsel** 38491:7,18
38494:4 38512:10
**count** 38577:11,22
**counter-industrial**
38533:6
**counting** 38577:6
38578:1
**country** 38691:16
38697:15
**couple** 38643:3,11
**coupled** 38659:23
**course** 38496:18
38497:13 38498:11
38507:24 38512:4
38525:5 38548:1
38562:9 38563:18
38565:5 38593:10,21
38597:5 38598:2,4
38607:18 38614:15
38620:23 38646:12
38670:19 38671:3
38684:2,4,9
**court** 38499:9
38501:13 38502:4,5
38502:12 38526:17
38647:15 38649:8
38696:2
**courtesy** 38594:15
**courts** 38647:17
**co-leaders** 38629:17
**co-operation** 38609:18
**co-ordinated** 38609:3
**create** 38660:9
**created** 38608:23
38660:11 38664:1
**creating** 38640:19
**credibility** 38505:8

38674:3
**credible** 38685:10
38686:5
**credited** 38627:14
**credulity** 38684:25
38685:1,2
**crescent** 38608:14
38619:5 38621:18,21
38621:23 38623:24
38624:1,7,9,13,18
38625:1,18,22,23,24
38626:1
**crime** 38498:10
38550:8 38551:7
38561:9,10,15
38562:5 38565:10
38568:5,18 38570:8
38572:20 38580:2
38581:11 38584:17
38681:11 38682:20
**criminal** 38495:15,17
38496:17,21
38502:13 38526:18
38552:4 38565:10
38596:12 38597:6
38635:14,18 38643:2
38643:21 38645:6
38648:2,3,11,21
38653:15 38654:13
38682:22 38696:14
38696:20 38698:5,8
38699:25
**criminally** 38496:16,25
38635:15
**criminals** 38552:3,4
**critical** 38550:12
**criticise** 38575:14
38576:5 38577:2
38583:21 38673:19
**criticising** 38574:21
38581:5 38583:14
**criticism** 38531:14
38572:13,14,17
38575:19,22
38598:22 38642:4
38643:19 38644:15
38659:15,16,23
38665:8 38688:6
38690:7
**criticisms** 38531:16
38532:17 38688:25
**cross** 38508:15,17
38509:18 38536:1
38548:4 38551:16
38559:22
**crossed** 38618:15
38625:25
**cross-examination**
38509:2,17,22
38558:9 38618:21
38624:16 38676:19
**cross-examined**
38508:13 38536:1
38564:3,10,15
**crowd** 38540:10
38546:12 38568:11

38600:22
**crowds** 38554:7
**crucial** 38517:4
38535:21 38577:5
38579:24
**Crucially** 38515:17
**cry** 38665:13
**culminating** 38494:22
**culpability** 38610:13
38656:16
**culpable** 38644:9,11
38648:25 38649:2
38675:20 38684:6
**currency** 38660:21
**current** 38516:15
38684:2
**curtain** 38548:1
**cut** 38611:20 38613:1,4

_____
**D**

**D** 38603:6
**Da** 38517:15,23,25
38518:7,9,13,16
38519:1 38520:15
**Dagan** 38695:2
**daily** 38601:24
**damage** 38512:21
38664:19,21
**damaged** 38594:19
**danger** 38578:15
38589:5
**dangerous** 38574:2,5
38574:12,13,22,23
38585:5 38645:19,22
38648:3 38684:15
38690:11,18
**Daniel** 38515:12
**date** 38517:18
38548:17
**day** 38490:22 38495:23
38536:12 38547:17
38550:18 38556:13
38560:23 38565:24
38590:8 38600:14,14
38601:8,8,20 38602:5
38602:5,10,10
38614:20 38660:4
38674:17 38675:7
38676:13 38677:20
38683:15 38685:15
38688:18 38691:21
38692:8
**days** 38504:17
38678:10
**de** 38504:3 38655:15
38656:21
**dead** 38603:3 38664:23
38665:22 38692:8
**deadline** 38651:19
**deal** 38490:13,17
38492:10 38501:9
38504:14,14
38513:24 38514:3,8,9
38514:23 38515:12
38518:14 38519:18
38521:9 38522:18

38524:17 38527:15
38528:18 38531:9,22
38533:1 38535:7,16
38536:9 38538:14
38540:12 38550:7,21
38552:8,21 38553:15
38553:23 38559:4
38560:15,16 38561:7
38568:7 38573:15
38574:17 38575:4
38580:3 38581:10
38590:9,19 38593:10
38593:17 38597:13
38597:14 38598:14
38600:16 38606:7
38607:22 38619:18
38620:20,22,25
38621:6 38655:10
38656:22 38657:24
38659:8 38665:3
38668:2 38671:8,13
38671:14,15
38674:25 38676:22
38690:22 38700:3,9
**dealing** 38504:13
38514:19 38517:6
38523:19 38532:6
38533:4 38548:10
38575:24 38581:14
38584:19 38594:17
38596:4 38597:9
38667:24 38672:8
38688:1
**deals** 38497:13
38667:15 38686:11
**dealt** 38497:4 38504:18
38509:17,25 38512:9
38516:6 38522:23
38523:11 38527:6
38531:10 38558:20
38560:12 38569:20
38573:19 38582:11
38585:22 38587:17
38597:18 38598:13
38604:11 38614:15
38662:15 38683:18
38686:13
**death** 38559:11,15
38594:10 38595:16
38596:2,6 38597:2,14
38597:17,21
38602:17 38603:11
38645:8,10 38684:13
**deaths** 38505:3
38523:22 38552:16
38590:11 38595:24
38601:2 38604:23,24
38643:4 38653:25
38654:2,4,7 38655:2
38655:3 38656:12,24
38657:21 38662:8
38672:4 38678:12,18
38699:15
**debate** 38502:18
38517:9 38576:19
38577:15 38647:14

**debated** 38579:19
**debriefing** 38533:12
**Debukwane** 38539:1
38541:15,16
**debus** 38617:16
**deceased** 38512:7
38608:20 38650:2,5
38650:10
**decide** 38515:21
38551:24 38575:17
38581:17 38684:18
**decided** 38540:22
38547:13 38575:19
38575:20 38577:21
38578:20 38582:17
38587:7 38623:6
38685:21 38688:17
**decides** 38519:21
38576:24
**deciding** 38673:7
38678:5
**decision** 38495:21
38496:1,3,5,7,8,9
38497:8,9,9,10,10
38498:2,8 38515:10
38515:15,18,20
38519:8 38520:4,11
38520:17,18
38536:12 38539:3,8
38554:11,23
38556:18 38560:15
38568:6 38570:2,11
38575:25 38576:13
38576:14,14
38577:15,16
38578:10,22 38585:2
38624:22 38651:20
38651:22 38652:2,17
38653:12,13 38654:6
38655:17,18,19
38661:11 38663:9
38664:3 38673:9,10
38674:18,23 38675:3
38675:6,12 38683:20
38685:19,23
38688:20 38689:5,17
38689:18,19
38690:10
**decisions** 38699:6
**declined** 38539:6
**deep** 38609:1
**default** 38496:11
38518:5,6,17,19
**defects** 38555:20
**defence** 38544:21,22
38546:1,1 38612:6
38641:7,11 38645:12
38647:9 38649:20,23
38650:25
**defend** 38543:17,17
38546:20 38547:4,12
38648:11,12,19
38653:16
**deferring** 38698:6
**deficiencies** 38653:25
**deficient** 38651:7

38697:23
**definitely** 38624:14
38645:1
**definition** 38649:2
**defused** 38674:3
**degree** 38524:8
38535:11 38592:6
38609:18 38689:7
**delay** 38492:19
38555:5
**delayed** 38677:22
**delegates** 38517:24
**delete** 38529:2
**deleted** 38528:21
38548:18 38550:1
38662:8
**deliberate** 38561:22,25
38608:21,25 38609:3
38610:2,9 38632:8
38662:11 38697:23
**deliberately** 38628:25
38662:3
**delictual** 38596:1
**demand** 38517:5,7,10
38517:13,25
38518:16 38519:6,9
38519:10,13,18
38520:16,16
38522:21,24,25
38527:6
**demands** 38518:10
**demilitarise** 38554:12
**democracy** 38600:13
38600:20,24,24
38686:25
**democratic** 38692:4
**demonstrated** 38505:9
**demonstrates** 38524:22
**demonstration**
38550:14
**denial** 38508:16
38511:25 38588:15
**denied** 38512:1
38565:13 38676:19
**department** 38619:25
38620:4 38701:6
**depended** 38555:1
**dependence** 38604:12
**depends** 38683:25
**deplorable** 38697:23
**deploy** 38616:1
**deployed** 38611:16
38628:5
**deploying** 38616:19
**deployment** 38612:25
38615:22 38616:7
**deputy** 38566:6
**dereliction** 38560:10
**describe** 38509:21
38518:4 38601:2
**described** 38520:9,10
38522:21 38617:14
38664:25 38669:21
**describing** 38523:1
38669:8
**description** 38594:24

**designed** 38619:4
38627:25
**desire** 38673:15
38674:1,2,4,7
38678:6 38699:5
**desired** 38675:16
**desisted** 38529:5
**despair** 38686:21
**despite** 38632:21
38633:11
**destination** 38574:24
**destroyed** 38513:3,4
38547:1
**detail** 38531:18
38606:17,21 38628:9
38643:24 38654:18
38680:5,7 38695:17
38700:2
**detailed** 38533:11
38596:20 38700:10
**details** 38525:23
38597:23 38604:20
**deter** 38551:18 38552:2
38552:3
**determine** 38537:14
38572:9 38696:19
38698:4
**determined** 38694:10
**determines** 38635:15
**determining** 38698:8
**deterred** 38630:19
**detract** 38556:4
**devastated** 38691:15
**develop** 38701:9
**developed** 38600:16
38601:7
**deviating** 38579:14
**device** 38632:9
**devised** 38671:13
38690:22
**DG** 38559:17,19
**diagram** 38607:4
38628:11
**diamond** 38638:8
**didn't** 38620:22
38621:10 38625:21
38626:5,15 38628:18
38628:25 38639:5
38648:22 38656:14
38657:11 38661:1
38663:23 38664:22
38685:17 38688:23
38690:3
**died** 38579:11 38591:9
38591:11 38594:8,9
38603:10,16,18
**difference** 38606:14
**different** 38612:4
38628:8 38633:12
38634:5,6 38642:14
38658:13,16 38684:4
38684:5 38693:21
**differently** 38606:20
38657:3
**difficult** 38501:8
38532:11 38549:3

38626:20 38654:13
38658:8
**difficulties** 38506:2
38525:4 38562:1
38564:4 38597:4
**difficulty** 38506:5
38509:19 38512:23
38530:18 38549:6
38577:4 38578:2
38584:25 38648:8
38652:8 38682:4
**dignified** 38491:19
38634:9
**dignity** 38634:11
38659:17 38692:6
**digression** 38617:10
**diluted** 38601:19
**direct** 38508:18
38509:15 38557:18
38675:17 38676:11
38676:12
**directed** 38637:14
**direction** 38543:25
38571:24 38589:11
38590:1 38622:14
38623:4 38630:17
38638:13 38662:20
**directions** 38628:8
**directly** 38508:19
38567:11 38604:22
38604:23 38652:19
**director** 38676:6
**disagree** 38615:14
**disagreement** 38589:21
**disappointed** 38700:19
**disarm** 38575:21,25
38576:4,15,24
38577:9,13 38584:22
38585:3 38629:1
38681:23 38683:16
38684:14 38688:19
38689:25
**disarmed** 38679:6
38690:19
**disarming** 38569:9
38584:7 38690:25
**disastrous** 38663:3
**discharge** 38583:11
**discharged** 38583:4
**discharging** 38697:13
**disciplinary** 38581:7
38587:12
**disciplined** 38692:11
**disclosed** 38661:5,20
**disclosure** 38662:4
**discomfort** 38632:18
**discovered** 38661:19
**discrete** 38650:19
**discuss** 38522:8
38577:22 38608:2
38628:9
**discussed** 38517:7
38651:2
**discussion** 38577:14
**disgrace** 38688:3
**disintegrated** 38596:16

**dislodge** 38604:20
**dismiss** 38515:15
38673:21
**dismissed** 38515:20
**disobey** 38655:12
**dispersal** 38657:15
**disperse** 38575:21,25
38576:4,24 38577:9
38577:13 38584:22
38585:3 38628:3,19
38629:1 38630:12
38658:15 38684:13
**dispersed** 38527:10
38607:19
**dispersing** 38569:9
**dispiriting** 38500:21
**disposal** 38554:17
**dispose** 38498:19
**dispositive** 38647:10
**disproportionate**
38641:24
**dispute** 38497:24
38526:18 38536:10
**disputed** 38579:4
**disquieting** 38667:9
**disregarded** 38511:6
**dissatisfaction**
38517:16
**dissolve** 38515:11
**distance** 38544:14
38545:1 38614:4
38616:2,6 38617:17
38617:20 38658:12
**distinct** 38555:15
38612:12 38696:14
**distinction** 38573:22
38669:25
**distinguished** 38491:11
**disturbing** 38600:13
**diverting** 38496:12
**divided** 38492:8
**Divisional** 38686:7
**Dlomo** 38531:4
**DMR** 38559:17
**docket** 38548:4,6
38597:23
**dockets** 38510:8
38597:24 38598:5
**doctrine** 38546:4
38569:25 38570:1,4
38578:10 38654:12
**document** 38533:5,8,15
38533:18,22,24
38534:2,17,18,22
38595:3 38681:25
**documentary** 38520:25
38609:25
**documents** 38526:20
38535:23 38536:3
**doesn't** 38622:25
38632:9,16,17
38636:2 38647:19
38666:24
**doing** 38502:13
38529:8 38530:14
38545:7 38565:4

38568:16 38575:15
38576:8 38580:22
38585:7 38619:5
38623:14 38634:24
38677:22
**DOJ** 38493:4
**dolus** 38653:11,19,21
**domestic** 38648:2
38692:12 38695:12
**domesticated** 38696:6
**don't** 38620:20
38626:17 38628:21
38630:7 38632:14,23
38634:2 38636:6
38645:13 38646:12
38648:13 38653:20
38657:9,23 38664:7
38677:11,16 38687:2
38689:8,12 38690:16
38691:9 38693:2,16
38693:21 38700:17
**door** 38590:23 38648:6
**double** 38535:24
38558:2 38645:17
**doubt** 38500:19
38645:8 38689:2,20
**downplay** 38561:22
**DPP** 38545:10 38547:7
38548:7 38591:7,8
38596:13 38598:5
38647:1
**Dr** 38591:19,20
38594:15,16 38595:1
38595:3,10,10
**dramatically** 38605:8
**drastic** 38575:20,25
**draw** 38502:19,19,25
38521:7,10 38527:1
38528:24 38536:5
38543:1 38550:3
38558:14 38559:15
38559:21 38561:24
38581:6 38591:23
38620:8 38678:2
**drawn** 38493:10
38528:15 38530:5
38548:2
**draws** 38518:17
**drew** 38534:5,8,9
**drinkers** 38539:25
**drive** 38551:20 38614:5
38615:10 38616:16
38616:18 38667:22
38668:2
**driven** 38496:6
38613:22 38614:3
38617:24,24
**driver** 38624:21
**driver's** 38624:23
**driving** 38617:15
38618:19
**drunk** 38539:24
**ducked** 38686:3
**due** 38490:22 38593:10
38593:20 38620:22
38668:6 38684:2,9

38524:24 38656:6,7
38688:9,23 38689:2
38689:21 38690:24
**experienced** 38532:7
38579:25 38601:16
38601:23 38689:12
**experiences** 38523:18
**expert** 38693:5,12
38694:25 38695:1
**experts** 38695:10
38698:14
**explain** 38530:1
38580:5 38646:7
38656:25 38674:17
38700:6
**explained** 38584:8
38599:7 38660:12
38699:17
**explaining** 38512:7
38665:24
**explains** 38623:16
**explanation** 38499:14
38512:22 38542:6,12
38564:1,19 38568:24
38570:6 38588:19
38619:1 38620:14
38621:21 38626:4,15
38627:2,2 38674:20
38674:24 38675:4
**explicit** 38698:6
**explicitly** 38520:16
**explored** 38566:22
**exposure** 38601:24
**expressed** 38674:12
**expression** 38596:22
**expressly** 38521:12
38701:11
**extends** 38690:1
**extent** 38503:7
38552:17 38561:15
38561:22 38562:6
38564:3,6 38565:9,11
38568:5 38612:14
**external** 38503:23
**extra** 38540:5 38599:10
**extracted** 38682:3
**extraordinary** 38658:6
38658:9 38659:17,20
38661:6 38679:3
38683:22 38686:17
38686:18 38690:2
**extreme** 38558:3
38632:18
**extremely** 38511:8
38604:15
**eyes** 38501:19
38609:11 38632:20
38633:9 38691:15
**e-mail** 38559:17
**e-mails** 38529:15

——————————
**F**
——————————
**fabricate** 38588:20
38662:13
**fabricated** 38663:24
38666:6,6

**face** 38564:4 38589:25
38633:2 38640:7,7
38665:8 38674:21
**faced** 38553:21
38554:7 38557:24
38559:24 38632:19
**faceless** 38602:13
38603:21
**faces** 38605:11
**facie** 38497:1 38512:9
38512:11,17
38535:14 38544:16
38545:7,12,13,15
38549:18 38576:21
38579:17 38590:5
38591:7 38596:12
38646:8,17,25
38647:3,25 38657:16
38657:22 38684:6
38686:18 38688:6
**facilitate** 38494:8
38694:3
**facilitation** 38694:6
**facing** 38568:23
38637:8 38640:5
38650:7
**facto** 38655:15
38656:21
**factor** 38512:17
38537:21 38546:2
38548:20 38551:15
38574:18 38578:17
38587:11,16,17
38595:6 38609:16
**factored** 38553:13
**factors** 38516:11
38536:23 38541:13
38547:1 38550:15
38585:11,21
38612:15 38674:25
38675:2,10
**facts** 38507:25 38508:1
38508:3 38527:1
38570:11,22
38575:18 38583:2
38588:4 38594:10
38596:7 38661:23
38669:1 38676:19
38678:20
**factual** 38516:3
38517:12 38583:14
38652:16 38654:9
38678:20 38683:20
38683:24 38700:10
38700:11,15
**fail** 38553:7 38560:9
**failed** 38514:20
38557:22 38558:12
38581:9 38583:22
38674:17 38699:12
38699:12
**failing** 38552:18
38555:2 38557:15
38558:23 38658:22
**failings** 38647:11
38658:21

**fails** 38602:6
**failure** 38511:21
38533:3 38569:12
38582:21 38587:12
38606:4 38619:2,3
38647:12 38652:20
38653:3 38655:10
38657:21 38658:4,23
38665:12,14,16,18,20
38688:7 38697:23
38700:24
**failures** 38652:22
38653:3 38696:21,24
38698:19,21
38699:11,14
**fair** 38504:21 38524:8
38535:11 38565:7
38628:14 38629:3
38688:14
**fairly** 38606:17
38609:24
**fairness** 38656:5
**fall** 38507:21 38515:4
38671:24
**fallacy** 38507:15
**falling** 38639:11,19,20
**falls** 38511:5
**false** 38502:21,22,22
38503:3 38505:10
38662:12,22,24,25
38663:7,8,13,16,19
38663:21,24 38664:4
**falseness** 38505:9
**familiar** 38501:17
**families** 38493:25
38591:22 38608:20
38627:13 38695:4
**family** 38603:19
**family's** 38591:20
**famous** 38613:17
**far** 38534:13 38545:8
38576:8 38577:18
38578:23 38579:5
38588:7,8 38589:8,8
38589:10 38612:22
38623:12 38655:5
38659:3 38672:24
38680:17 38685:1,3
38694:7,8
**farthest** 38586:21
**fashion** 38491:19
38621:14 38634:9
**fatal** 38610:25 38645:1
38645:2
**fathers** 38692:7
**fault** 38569:20
38576:20 38578:8,9
**favour** 38501:4,7
38513:6
**favoured** 38561:14
**fear** 38579:8
**feature** 38516:3
38517:12,12 38658:6
**featured** 38516:1
**features** 38515:3
**feedback** 38566:19

**feel** 38529:1
**feeling** 38686:21
**feet** 38600:1,3
**Felix** 38595:25 38597:3
**fellow** 38700:12
**felt** 38589:22 38673:9
38674:8
**fence** 38621:15
**fides** 38609:21
**field** 38505:16
38580:12 38606:19
38656:18 38662:18
**fifthly** 38678:13
**fight** 38653:16
**figure** 38608:15
38624:4 38629:6,6
38638:6
**fig6** 38628:12
**file** 38532:14
**final** 38579:22
**finally** 38514:23
38542:5 38597:13
38605:1 38610:4
38627:20 38670:4
38681:24 38682:3
38688:16 38698:22
38701:9
**financial** 38656:6
**find** 38497:1 38499:11
38501:1,7,20,23
38502:3 38503:2
38506:21 38510:21
38518:24 38520:8
38521:24 38522:4
38525:22 38532:10
38534:21 38552:14
38557:13 38579:21
38598:24 38609:19
38610:1 38626:18
38667:16 38684:6,21
38685:11 38689:4
38690:12 38699:21
**finding** 38499:17,21,24
38499:24,25 38501:4
38501:18 38502:10
38521:6,15,22
38522:1 38528:9
38529:19 38537:4
38559:13 38560:7
38585:12,15,16,17
38588:4,8 38590:15
38590:17 38595:18
**findings** 38502:13
38503:10 38504:9
38601:9 38699:6
**finds** 38573:18 38681:3
**fine** 38680:5
**finish** 38700:5
**finishes** 38616:23
**fire** 38543:21 38544:19
38547:22 38554:18
38583:12 38586:3,16
38586:18,25 38587:1
38589:11 38600:22
38600:25 38640:13
38643:5 38665:17

**firearm** 38646:13,15
**firearms** 38544:2,25
38546:12 38646:3,21
**fired** 38497:22
38543:18,23,25
38544:13,15,16,17,20
38544:21 38545:15
38545:16 38548:4,9
38549:8,20,20
38587:2,14 38591:12
38631:1,10,19
38638:13 38640:17
38641:21 38643:3,11
38646:10 38650:23
38692:9
**firing** 38498:6
38587:23 38588:2
38596:11 38604:18
38639:21 38650:6
38660:10 38671:19
**firm** 38519:8
**first** 38490:10,11,14,17
38490:18 38491:5
38494:19 38496:13
38496:18 38497:14
38499:8,11 38500:10
38501:1 38507:4
38510:13 38514:19
38515:5 38516:13,23
38517:14,17,22
38522:20 38525:14
38531:17 38537:4
38552:24 38555:8
38556:24 38559:4
38565:11 38569:24
38572:24 38582:13
38585:21 38594:10
38594:11 38595:1
38596:5 38601:16,25
38602:9 38604:12,22
38605:4 38606:1
38608:19 38609:1
38615:21 38617:13
38627:21,22 38631:9
38640:2,12 38641:12
38643:3,7,11
38650:13 38668:15
38669:7 38673:5
38674:19 38680:19
38691:6 38694:7,9
38695:18 38697:14
**firstly** 38492:24
38500:3 38502:20
38504:23 38507:15
38521:6 38525:9
38541:15 38543:9,9
38546:6 38547:15
38550:17 38553:16
38554:23 38562:2
38570:10 38572:18
38578:12 38582:11
38587:19 38673:14
38675:14 38678:4
38688:15
**fit** 38508:2
**fitness** 38666:12

**fits** 38507:24,25
   38508:1
**five** 38498:14 38591:25
   38592:1,7 38598:19
   38617:21 38618:4,22
   38648:9 38658:25
   38668:3 38697:12
**fixed** 38518:3,4
**flaw** 38604:23
   38674:16
**flawed** 38651:20
**flaws** 38604:22
   38651:15,16
**fleeing** 38604:19
**flexibility** 38504:7
**flipside** 38654:23
**flow** 38696:15
**flowed** 38652:18
**focus** 38496:12 38601:7
   38606:20 38634:16
   38695:9 38700:7
**focused** 38516:8
   38574:6
**focusing** 38599:18
**focussed** 38694:23
**follow** 38493:7 38494:1
   38507:16,17 38535:2
   38535:4,5 38538:13
   38563:17,17 38573:8
   38637:3 38694:18
**followed** 38498:5
   38619:24 38622:10
   38622:11 38641:6
   38647:17 38678:9
   38684:4
**followers** 38498:22
**following** 38495:23
   38499:23 38504:6,22
   38516:23 38585:4,12
   38585:21 38625:14
   38641:11 38672:6
   38673:13 38675:7,9
   38675:21 38678:3
   38683:15 38685:15
   38687:17,18
   38688:14,18
   38691:21
**follows** 38541:14
   38611:2
**foot** 38578:24
**footage** 38601:13,13
   38602:10,11 38605:2
   38605:15,22
   38616:11 38624:15
   38627:10 38634:19
   38637:3 38642:12,13
   38646:6 38661:17
   38695:5
**footer** 38534:17
**footing** 38641:18
**footnote** 38613:15
**force** 38516:10
   38551:25 38650:9
   38658:20 38681:22
   38689:25 38695:21
   38695:22

**forced** 38601:7
   38604:10 38628:22
   38663:11
**forcibly** 38576:1
**foresaw** 38671:12
   38676:16,21,22
   38677:6,7
**foresee** 38648:16,18
   38671:7
**foreseen** 38554:11
   38676:18,25 38677:5
   38677:17
**foresighted** 38648:24
**forget** 38539:5 38692:2
**forgot** 38637:23
**form** 38500:5 38522:9
   38557:5 38624:14,19
   38625:1 38664:1
**formally** 38533:22,24
   38533:25
**formation** 38608:14
   38618:10 38619:6
   38621:17,18,22,23
   38622:8,17 38623:5
   38624:9 38625:18,22
   38625:23,24 38626:1
**formed** 38517:8
   38608:17 38621:13
   38624:7,20 38625:2
   38625:24
**former** 38541:11
**forming** 38614:5
**formulating** 38499:10
**formulation** 38612:20
**forth** 38534:13 38548:8
   38632:18 38668:1
   38686:13
**fortunately** 38556:15
   38592:21
**Forum** 38593:13
   38672:23 38679:4
   38683:22 38690:2
**forward** 38495:9
   38549:16 38552:13
   38557:11,19
   38570:11 38607:7
   38615:10 38628:22
   38630:16,21 38632:1
   38632:21 38633:11
   38651:20 38654:22
   38664:4 38671:11
**forwarded** 38551:8
**found** 38511:18
   38543:5 38561:14
   38591:5,24 38594:5,8
   38610:2 38658:18
**foundation** 38504:15
**four** 38492:15 38639:9
   38639:13,14
   38642:16 38700:25
**fourfold** 38492:23
**fourth** 38514:15
   38587:17
**fourthly** 38495:8
   38505:25 38536:21
   38536:25 38543:13

   38678:10 38698:12
**frame** 38572:6,16
   38573:11 38601:14
   38601:15
**framework** 38695:11
**frankly** 38500:18
   38588:22
**free** 38610:12
**freedom** 38692:6
**freely** 38571:14
**fresh** 38685:14
**friend** 38493:2
   38606:10
**friends** 38494:8
   38601:4
**front** 38600:8 38609:9
   38621:8 38628:6,22
   38629:12 38630:6
   38631:2,4,19,20
   38636:24 38638:9
   38639:3,11,20
**fudge** 38660:6
**full** 38551:25 38562:5
   38565:9,14 38599:15
   38617:3
**fuller** 38564:4
**fully** 38528:25
   38560:15 38644:14
   38647:3 38672:25
   38700:10
**function** 38501:21,22
   38562:22 38604:18
**fundamental** 38496:19
   38674:16
**Fundi** 38552:10,12,17
   38560:22
**funds** 38701:9
**furnished** 38519:7
**further** 38502:2
   38506:25 38507:10
   38510:24 38522:8,8
   38537:21 38545:11
   38548:8 38551:12
   38564:11,19
   38576:17 38587:21
   38591:14 38596:13
   38597:12,21
   38607:11 38609:14
   38613:24 38614:4,19
   38617:24 38624:18
   38631:19 38681:14
   38684:9 38688:3
   38690:14 38691:9
   38698:10
**Furthermore** 38563:23
**future** 38556:16
   38596:19 38698:18

---
**G**
---

**G** 38603:7 38644:22
**Gadlela** 38603:8
**Gaffley** 38659:3
**gain** 38517:19 38674:3
**gainsaid** 38676:25
**gall** 38602:17
**gap** 38629:15,16,17,18

   38629:20 38631:14
**Gary** 38693:6 38694:25
**gathered** 38528:6
   38530:17 38681:17
   38681:18 38683:1
**gathering** 38533:10
   38552:25 38568:8
   38570:7,10 38572:19
   38573:7 38575:24
**Gatherings** 38657:14
   38671:6
**gathers** 38641:17
**Gegeleza** 38541:24
**general** 38551:9
   38562:19 38564:7,18
   38565:19,20,21,23
   38566:1,3,12,17,19
   38566:23 38567:6,7
   38567:10,16 38568:6
   38569:8,25 38570:21
   38573:8,18 38578:10
   38580:1,15,24
   38585:7 38586:8,10
   38587:13,21,22
   38588:1,5,15
   38595:23 38596:3
   38598:22 38603:13
   38647:18 38652:1
   38656:17 38668:19
   38681:15 38682:10
   38682:16 38683:6
   38684:18,24 38687:9
   38687:9,14,22,24
**generally** 38507:1,13
   38507:20 38694:11
   38694:17,19
**generals** 38593:12
   38679:19 38680:18
   38683:12,12 38684:7
   38687:6
**gentleman** 38637:23
**geography** 38618:18
**getting** 38574:15
   38585:7 38615:25
   38627:25
**gingerly** 38509:14,22
**give** 38491:14 38495:19
   38501:6 38505:4,8
   38508:23 38536:22
   38545:3 38564:18
   38567:19,20 38575:2
   38586:15 38589:7
   38592:22 38595:2
   38603:5 38606:1
   38612:6 38614:16
   38621:9 38634:20
   38654:15 38655:12
   38657:11,21 38668:7
   38668:21 38679:23
   38681:3 38695:11
   38696:7,9
**given** 38490:6
   38491:21,22
   38501:21 38507:24
   38519:24 38535:22
   38543:3,3 38545:10

   38558:8,11 38562:25
   38566:19,20
   38575:18 38584:14
   38586:15 38587:20
   38588:23 38620:25
   38622:16,25 38623:1
   38623:4,10 38624:11
   38625:6 38626:5,6,9
   38641:4 38657:16,17
   38657:18 38658:12
   38658:14,15 38660:1
   38675:1 38680:14
   38683:3 38684:19
   38689:23,24
**gives** 38501:15
**giving** 38544:13
   38576:6 38587:23
   38674:2
**glory** 38492:1
**gloss** 38599:24
**glossed** 38606:6,9
**go** 38493:15 38500:24
   38506:25 38522:8
   38532:23 38535:22
   38536:2 38542:14
   38546:13 38547:6
   38551:24 38557:3
   38570:17 38575:20
   38577:12,22 38579:8
   38582:8,14,17,19,23
   38588:10 38600:4
   38606:16 38607:10
   38607:11,11,15
   38608:15 38609:12
   38611:22 38612:14
   38612:20,22 38613:3
   38613:25 38622:2
   38623:6 38624:17,23
   38628:12 38633:3
   38638:5,5 38648:6,8
   38648:15,22
   38650:24 38652:2,17
   38666:20
**goes** 38503:20
   38562:14,24
   38568:16 38572:15
   38576:22 38578:18
   38623:12 38624:21
   38624:21 38638:6
   38640:6 38642:14
   38648:8,14 38690:14
**Goldstone** 38671:5
**good** 38491:15,16
   38500:19 38503:8,12
   38503:13 38596:18
   38679:9,10 38688:24
   38689:4 38693:1,2
**Govender** 38527:11,25
   38529:4,10,13,15,22
   38529:23 38530:12
   38531:19 38532:8,20
   38551:3
**Govender's** 38528:7
   38529:25
**government** 38502:6
   38701:4

governs 38694:10,18
Graan 38662:6
grant 38519:21
granted 38520:13
　38522:23
grants 38520:3
grappling 38519:5
grave 38680:24
great 38490:20
　38674:25
greatest 38686:24
grenade 38631:10,12
　38631:14
grenades 38505:23
　38583:12 38586:16
　38586:19 38587:8
　38589:17 38627:18
　38627:19 38628:5,15
　38630:15 38670:6
grounds 38501:25,25
　38557:11 38583:14
　38635:22 38640:14
groups 38658:16
group's 38628:4
gro9up 38571:16
guard 38540:15
　38579:12
guarding 38607:17
guards 38553:20
guided 38695:9
guilty 38501:8 38643:5
　38643:6 38648:24,25
gunned 38601:17
Gwelani 38602:14,17
　38641:23

**H**

H 38603:7
habit 38495:14
hack 38634:12
hadn't 38683:20
half 38492:16 38541:2
　38541:6 38572:11
　38579:2 38605:23
　38619:10 38628:20
　38628:21
halfway 38497:3
hampered 38500:17
hand 38506:16
　38592:13,20
　38593:12 38629:11
　38632:20 38637:25
handcuffed 38594:6
handed 38593:16
　38680:15 38681:7
handling 38522:20
　38689:11
hands 38520:19
　38635:3 38638:14,17
　38677:16,23
　38699:15
haphazard 38622:10
happen 38502:16
　38524:9 38535:12
　38556:16 38557:1
　38610:21 38611:4,10

38612:17,19
38614:21,24
38620:22 38626:16
38660:12 38664:22
38671:8,10,13
38677:5
happened 38494:21,23
　38495:1 38497:8
　38498:12 38499:12
　38499:14,20,21,22,25
　38500:3,5,11,13
　38501:1,16 38502:8
　38504:6 38505:9,19
　38525:12 38529:10
　38535:8 38537:13,16
　38538:12 38543:15
　38549:24 38555:9
　38579:15 38580:17
　38582:2,22 38605:25
　38606:25 38610:13
　38611:5 38613:21
　38615:14 38620:21
　38621:3,12 38652:19
　38655:8 38661:3,8
　38669:9,10 38676:16
　38680:15 38683:21
　38683:23 38685:18
　38697:16 38699:23
happening 38502:7,9
　38516:24 38521:13
　38523:10 38563:16
　38565:6,7,7
happens 38495:10
　38580:19
happy 38491:4 38590:5
hard 38667:22 38668:2
harsh 38556:11
hasn't 38653:12
　38666:25
hasty 38576:21
haven't 38620:7
　38621:18,20,21,22
　38633:5 38638:16
　38647:16 38653:19
　38666:9
head 38494:6 38602:16
　38618:20 38632:21
　38641:16,17,22
　38682:20,22 38683:7
heading 38604:2
　38606:2 38659:11
headings 38515:5
headquarters 38648:4
heal 38495:4
healing 38495:3,6,7
health 38501:6
　38699:20
hear 38588:19 38595:1
　38605:7,10
heard 38537:1
　38579:18 38586:23
　38621:18,20,21,22
hearing 38526:18
　38581:7 38599:8
hearings 38600:10
　38691:22

hearsay 38503:17,18
　38504:7,8,9
heart 38557:7 38645:4
　38645:4 38698:23
heartiest 38491:9,15
heat 38649:19
heavily 38635:5
heavy 38563:19
height 38641:16,17,20
　38641:21,22
heightened 38551:10
　38554:7 38558:6,7,11
held 38495:2 38496:7
　38497:20 38498:21
　38498:22 38520:21
　38552:18 38558:18
　38558:22 38635:15
　38650:17 38651:7,16
　38651:24 38655:3
　38696:11 38699:10
　38699:19
help 38573:24
helped 38601:6
helpful 38594:25
　38654:16 38681:2
Hemraj 38510:6
　38513:10,14,18,21
　38523:21,25
　38525:22 38526:1,3,8
　38526:12 38529:3,11
　38530:25 38531:4
　38532:18 38538:21
　38538:22,25
　38539:10,16 38546:9
　38546:16 38550:19
　38550:24 38551:2,11
　38555:19,24 38566:5
　38566:11,22 38567:9
　38567:15 38571:18
　38572:1,5,8,15
　38573:6 38581:2
　38584:20 38585:2,13
　38595:8,13 38621:16
　38622:1,6,15 38623:3
　38630:18,22
　38636:18,22
Hemraj's 38492:19
he'd 38582:11
　38589:17,18 38598:7
　38657:17
he'll 38648:8
he's 38506:7,7 38545:7
　38562:15,16 38563:5
　38564:22 38565:4
　38574:21 38575:4
　38576:20,22 38598:7
　38634:24 38637:2,4,5
　38637:8,8,9 38638:7
　38638:10 38647:3
　38648:5,5 38675:19
　38683:7 38686:14
　38687:9
HHH 38526:6,7
HHH28 38587:20
high 38491:13 38505:6
　38505:12,14,23

38594:20 38636:1
　38683:17
higher 38658:20
highest 38558:2
highlight 38490:7
　38515:2,9 38516:4
　38517:12 38522:19
　38523:12,17
　38524:24 38532:23
　38547:15 38550:4
　38552:23 38560:18
　38615:16 38695:18
highlighted 38580:20
　38599:9
highlighting 38525:4
　38539:24
highly 38569:13
　38580:25
hindsight 38693:19
history 38579:10
　38600:13 38612:9
hit 38543:24 38641:20
　38645:3,4
hitherto 38650:8
hold 38666:12 38682:9
　38697:3 38699:22
holders 38701:4
holding 38495:18
　38566:10
holds 38557:6
　38696:20
holed 38658:7
home 38574:25
　38576:16 38577:1
homicidal 38648:3,11
　38648:21
homicide 38635:20,20
　38635:23 38636:15
　38644:9,11 38648:25
　38649:3 38684:7
honest 38508:5
honour 38491:1,10,23
hope 38491:12
　38492:15 38540:5
　38568:1 38623:7
　38650:22
hoped 38623:10
　38689:16
hoping 38638:11
　38654:15
horrific 38600:18
horrifying 38600:11
horror 38601:8,15,18
　38601:20,22 38602:2
　38602:4,7,12 38692:1
horrors 38692:14
hospital 38603:10
hostels 38559:9
hostility 38505:2
hotly 38497:24
　38515:23,25
hour 38539:21,21
　38541:3 38572:11,11
　38572:15 38579:2
　38603:11 38619:11
hours 38492:16

38559:5 38572:11
　38575:2
housekeeping 38593:10
huddled 38631:25
huddling 38602:24
human 38499:6
　38537:11 38595:24
　38603:18 38627:13
　38642:5 38691:19
　38692:4,18,21,23
　38693:10,24 38694:1
　38694:9,23 38695:3
　38695:10,16 38696:4
　38697:5,6 38699:1
　38700:19 38701:1
humble 38609:24
hundred 38629:22
　38630:6
husbands 38692:7

**I**

ICAM 38552:20,24
idea 38551:24
　38556:23 38599:6
　38614:16
identified 38495:2,9
　38552:20 38554:3
　38597:11 38645:18
　38645:20 38646:5
　38673:13,15,23,23
　38699:12
identifies 38674:12
identify 38527:18
　38596:20,25
　38634:18 38642:18
　38671:17
ignorant 38663:18
ignore 38650:8
ignored 38659:4
illegal 38574:14
　38654:12
illustrated 38628:11
　38662:5
ill-advised 38576:21
images 38600:14
imagine 38649:2
immediate 38518:7
　38618:2 38700:22
immediately 38513:8
　38572:23 38583:23
　38584:15 38585:8
　38639:3 38640:25
　38660:3
immersed 38691:21
imminent 38544:24
　38546:7 38603:5
　38635:8,21 38636:11
　38636:14 38640:5,15
　38650:7
immune 38632:3,15
immunised 38692:1
impact 38521:14
Impala 38515:6
　38520:2 38522:18,19
　38522:21,22,23
　38523:1,3,7,8,10,17

38524:2,7,12
38525:12,23
38526:22
**implausible** 38542:12
**implement** 38532:8
38561:4 38576:23
38612:13,18
38651:25 38688:17
38696:24
**implementation**
38498:3,9 38609:19
38647:21 38652:22
**implemented** 38531:19
38532:3 38618:3
38622:23 38663:3
38664:14,16
38688:18 38689:22
38698:17
**implementing** 38613:2
**implements** 38538:11
**implication** 38515:20
38522:23 38523:3
38690:17
**implications** 38501:9
38516:9
**importance** 38516:22
38517:4 38555:13
**important** 38490:8
38509:5,7 38511:9
38512:17,25
38518:15,23 38532:9
38538:12 38568:4
38581:13 38599:21
38599:23 38600:9
38605:6 38609:15,16
38612:2 38619:7,9
38621:1 38627:15,21
38633:17 38634:15
38635:10 38636:16
38637:20 38645:24
38657:10,22 38661:4
38669:25 38674:10
38686:23 38692:18
38697:17 38701:1
**importantly** 38515:15
38517:20 38519:6
38553:11 38568:14
38696:8
**imposed** 38651:10,19
**impossibilia** 38580:12
**impossible** 38508:7
38575:6 38604:14
38685:16
**impression** 38660:9,11
**imprimatur** 38534:13
**improper** 38496:6,9
38501:3 38673:6,11
38678:4
**impunity** 38632:5,16
38633:6,8,13
**impute** 38633:18
38689:7
**imputing** 38643:14
**inability** 38662:7
**inadequacies** 38604:25
**inadequacy** 38548:11

**inadequate** 38547:18
38550:11,17
38641:12
**inadmissible** 38598:1
**inappropriate**
38499:10
**inasmuch** 38594:23
38624:8
**inaudible** 38525:7
38528:12 38542:9
38547:19 38555:20
38585:25 38591:6
38605:19 38620:19
38632:13 38649:17
38656:25 38660:8
38683:23 38686:6
**incapable** 38665:24
**incapacitated** 38591:23
**incident** 38505:1,1
38524:17,22
38525:14,17
38526:22 38527:21
38527:22 38528:17
38537:10,15
38538:12 38606:8,9
38606:12,12
38610:16,21 38611:2
38611:3,6 38612:15
38615:5 38669:11,21
38669:21 38672:9,11
**incidents** 38514:9,10
38514:25 38527:16
38527:18,19,21
38528:10 38559:3
38565:16,18
38663:20 38664:22
38667:23,24 38669:9
38670:1 38692:22
**inclination** 38613:1
**inclined** 38657:12
**included** 38582:7
**inconsistent** 38530:7
38561:21
**inconvenience**
38620:13
**incorrect** 38535:14
38670:5
**increase** 38519:10,22
38520:3,12,13
38522:25 38523:4
**increased** 38535:25
38558:16
**increases** 38518:2
**incredibly** 38651:11
**incumbent** 38580:18
38692:23
**independent** 38506:18
38506:22 38507:5
38587:25
**indeterminatus**
38653:11,19
**indicate** 38527:22
38537:24 38539:7,13
38540:14 38547:22
38554:6 38556:2
38589:19 38591:17

38591:22 38593:14
38593:24 38628:17
38671:9
**indicated** 38521:8
38540:9 38541:19
38542:2 38681:12,14
**indicates** 38541:22,24
38594:2 38624:7
38648:1 38669:1
**indicating** 38535:11
**indication** 38547:25
38549:24
**Indications** 38591:11
**indirectly** 38508:20
**indistinct** 38512:5,5
38540:15 38589:1
**individual** 38597:20
38603:18,19
38633:19 38634:16
38634:17 38635:11
38643:21,22 38644:4
38644:5,7 38647:9,20
38699:7
**individualised**
38636:15
**individually** 38672:8
**individuals** 38602:14
38603:15 38669:16
38699:22
**industrial** 38533:4
**inefficiently** 38628:19
**inexplicable** 38578:1
38665:11
**inexplicably** 38621:14
**infer** 38506:11
**inference** 38503:1,7
38512:11 38520:20
38528:24 38530:5
38536:6 38542:25
38543:1 38550:3
38558:14 38646:11
38646:13 38676:4
**inferences** 38502:19,20
38528:14 38561:24
**influence** 38676:7
**inform** 38580:22
38695:16
**informal** 38506:4
38578:16 38579:8,13
38582:9,12,15,17,20
38582:23,24
38588:24,25 38589:6
38589:12 38662:20
**informant** 38539:1,1
38541:17 38542:1
38553:2,4
**information** 38535:14
38538:23 38543:11
38548:24 38558:10
38562:21 38563:6,10
38563:21 38564:7,16
38564:18,23
38565:11 38566:14
38567:10,16
38568:22 38571:14
38573:4 38583:24

38584:1,11,14
38588:9 38681:3,11
38683:1
**informed** 38535:24
38541:17,25
38543:10 38564:17
38565:19 38585:5
38679:11 38681:9
38689:3
**informs** 38518:20
38697:5
**infrastructure**
38701:10
**inherent** 38655:8
**inherently** 38690:11
**initial** 38565:21
38574:24 38585:2
**initially** 38511:25
38565:13 38584:24
38674:22
**injured** 38544:3,13
38608:20
**injuries** 38544:2
38699:15
**injury** 38594:18,21,25
38684:13
**inner** 38623:24
38624:18
**innocent** 38664:24
**inquire** 38666:11
**inquiry** 38496:23
38498:1 38666:15
38669:7,7 38681:1
38688:1
**insertions** 38528:18,21
38529:2
**inside** 38549:5 38658:7
**insiders** 38677:17
**insisted** 38519:9
**insofar** 38506:18
**inspection** 38617:19
**instance** 38641:15
38647:12 38694:20
**instances** 38496:20
38499:16 38528:19
38546:17
**institute** 38587:12
**institution** 38545:11
38659:22 38672:10
**institutions** 38698:8
**instruct** 38582:5
38622:7
**instructed** 38582:25
**instructing** 38490:15
**instruction** 38558:5,11
38563:3 38568:11,15
38568:17 38576:20
38576:21 38578:24
38579:3 38580:10,15
38580:16 38582:8
38583:11,12,16
38585:12,18,24
38586:9 38587:15,20
38587:24 38588:5,23
38618:2 38622:11
38656:11

**instructions** 38494:3
38579:1 38580:7
38593:14 38694:16
**instrument** 38695:13
**insulates** 38632:10
**integrity** 38659:18
**intelligence** 38531:22
38531:23 38533:10
38550:8 38551:7
38552:25 38553:2,6
38557:17 38560:21
38561:9,11,15
38562:5 38564:20
38565:10 38566:6
38567:12,17 38568:5
38568:18 38570:8
38572:20 38580:2
38581:11 38584:18
38653:15 38681:12
38681:16,18,20,21
38682:1,1,6,20,23
38683:8,9 38691:6
38698:19 38699:13
**intend** 38514:3 38515:2
38580:22 38628:18
38700:9,17
**intended** 38506:24
38536:18,19
38538:24 38542:2,19
38607:2 38628:19
38633:25 38675:16
38676:12,15
38678:11
**intending** 38635:5
**intent** 38540:24
38541:10,14
**intention** 38543:11
38546:13 38569:9,10
38633:16,19,22,23
38634:3,10 38635:11
38670:15 38675:17
38678:21
**intentions** 38634:6
**intents** 38533:8
**inter** 38502:15
**interactions** 38516:10
**intercept** 38571:12
38572:3
**intercepted** 38570:21
**interest** 38522:13
**interested** 38690:21
**interesting** 38499:4
38535:3 38537:18
**interests** 38598:14
**interfere** 38582:3
**interference** 38672:21
38672:24 38678:3
**internal** 38516:4,12
38517:9
**international** 38672:3
38685:16 38692:13
38695:12 38696:5,8
**interrogated** 38546:1
**interrogatories**
38680:13 38682:13
**interrupt** 38546:19

38584:20 38611:25 38666:17 38692:21
**interrupting** 38683:4
**intervals** 38518:4
**intervene** 38675:24
**intervened** 38684:3 38694:2,4,17
**interveniens** 38652:14
**intervenietes** 38652:11
**intervening** 38653:3 38684:1
**interview** 38677:19
**interviewer** 38677:21
**intimidation** 38523:23 38524:6 38531:24 38542:14 38543:14 38560:22
**intimidatory** 38528:6 38529:16
**introductory** 38492:11 38671:23 38672:1
**intrude** 38691:9
**invented** 38504:24,25 38505:3,7,8,13,24 38506:9 38508:5
**inventing** 38506:7
**invents** 38506:6
**investigate** 38502:1 38567:2 38665:12,14 38665:16,18,20 38672:2 38697:7,13 38700:3
**investigated** 38545:20 38547:17 38647:2 38701:8
**investigating** 38548:6 38686:24
**investigation** 38545:12 38547:8 38548:8 38591:8 38596:14 38597:13,21 38609:25 38661:23 38665:14 38666:19 38666:24 38667:8,8
**investigations** 38610:3
**invitation** 38558:12 38657:1
**invite** 38599:24
**invited** 38536:1,2
**invoke** 38650:24
**invoked** 38649:1
**invokes** 38570:1,4
**invoking** 38546:4
**involuntarily** 38598:2
**involve** 38525:15 38563:17 38690:25 38701:4
**involved** 38518:8 38526:22 38553:17 38609:2,21 38648:17 38659:7 38683:17 38692:22 38693:14
**involvement** 38517:21 38524:25
**involving** 38533:13
**IPID** 38646:5 38698:3

**Ireland** 38695:1
**irony** 38490:21
**irrelevant** 38635:18
**irresponsible** 38560:2 38560:8
**isn't** 38546:5 38621:1 38627:1 38633:21 38664:5 38667:13 38671:16
**isolated** 38642:9,15
**issue** 38496:18,19,19 38510:23 38518:18 38518:21,24 38522:17 38529:25 38537:18 38552:16 38557:4 38560:16 38561:9 38564:3 38565:11 38566:4 38568:17 38572:18 38575:16 38581:18 38584:15 38585:4 38588:5 38600:7,8 38608:6,6,10 38611:13 38627:6 38628:9 38641:8 38652:9 38653:20,21 38654:18 38660:6 38671:21 38673:1
**issued** 38586:8 38660:4 38689:5
**issues** 38500:12 38509:7 38515:2,9 38516:25 38517:13 38540:22 38541:9 38547:14 38552:23 38568:11 38569:24 38577:6 38584:19 38590:10 38595:23 38598:23 38599:18 38603:24 38604:1 38659:25 38666:16 38687:24 38700:15
**item** 38491:16 38679:13
**items** 38491:4
**I'd** 38510:12 38639:15 38640:1 38667:20 38685:8 38688:14 38700:13
**I'll** 38514:5,9,18 38537:8 38540:4 38568:9 38593:8 38599:12 38695:17 38697:9 38700:2 38701:13
**I'm** 38620:8,16 38621:2,5 38630:22 38633:13 38637:17 38643:15 38650:18 38654:15 38655:4,24 38657:3,12 38666:17 38666:23 38667:12 38667:13 38668:16 38672:17,19,21,21 38681:4 38682:7 38693:15 38694:8

38700:5
**I've** 38585:13 38626:8 38626:12 38652:23 38674:25 38680:15 38681:7 38700:8

---

**J**

**J** 38603:8 38649:8
**ja** 38494:10 38583:8 38615:4 38642:24 38644:17 38654:14
**Jameson's** 38559:17
**jersey** 38638:8
**JJJ137** 38525:3
**JJJ194** 38629:7
**job** 38496:24 38556:11 38565:4 38601:5 38615:25 38659:20 38693:1,2,10
**JOC** 38568:23 38571:16 38573:3 38661:13 38663:17
**JOCCOM** 38604:6,7 38651:15 38655:18 38663:25
**Johannesburg** 38491:8 38491:12
**join** 38491:9 38603:14 38625:25
**joint** 38627:12
**Jokanisi** 38591:17,18 38591:22 38592:2,11 38593:6,24 38594:18 38595:16
**Jokanisi's** 38597:2
**judge** 38688:23
**judgment** 38547:10,11 38649:6 38689:3
**Julius** 38490:21
**July** 38519:4,21 38520:5
**jumped** 38556:1
**jumping** 38655:4
**junction** 38648:6
**June** 38517:18,20,22 38519:4
**justice** 38619:25 38649:25 38692:17
**justifiable** 38529:19 38549:21 38635:19 38635:20,23 38636:15 38637:18 38637:19 38639:21
**justification** 38552:13 38557:12 38559:12 38590:14 38595:19 38596:7 38597:5
**justified** 38528:25 38541:10 38635:9,25 38636:9
**justifies** 38591:7
**justify** 38531:7 38570:11 38596:2 38601:3 38602:18 38636:3 38646:24 38650:3 38665:1

**justifying** 38636:10

---

**K**

**K** 38603:8
**Kameshni** 38491:17
**Karee** 38515:11 38521:1,8,14 38522:24 38528:19 38528:21 38549:15
**Katherine** 38695:4
**keep** 38539:19 38612:23 38674:5
**kept** 38533:13 38566:16 38598:3 38613:6
**key** 38496:13 38516:11 38523:13 38532:25 38699:20
**kick** 38597:3
**kicked** 38639:9
**kill** 38506:3,3,5 38601:1 38609:9 38628:25 38676:10 38677:25
**killed** 38490:15 38497:22 38559:8 38560:20 38590:12 38593:25 38602:25 38603:20 38634:23 38635:2 38636:12 38641:18,19 38648:20 38649:18 38649:18,22 38653:1 38675:7 38676:3 38685:15,23
**killing** 38494:22 38514:17,19,22 38552:10,12 38557:8 38557:10,13 38559:4 38559:6,13 38560:22 38590:19 38595:20 38596:3 38597:5,19 38602:24 38603:2,10 38635:9,19,20 38636:3,9,10 38637:13,14 38640:19 38644:6 38650:16 38656:24 38665:1 38675:15 38676:23
**killings** 38552:15 38569:16 38596:4 38597:24 38601:23 38602:6 38635:25 38643:23 38660:3,12 38692:1
**kind** 38491:25 38532:6 38557:1 38573:25 38596:23 38612:15 38690:11 38693:25 38694:4,6
**KKK55** 38605:14,15
**knew** 38572:19 38574:2,3,5 38578:19 38678:24 38689:23 38689:24

**knobkerries** 38530:2 38541:23 38543:2
**knowing** 38679:20 38688:20 38689:6,18
**knowledge** 38508:14 38561:23 38661:1
**known** 38507:25 38508:1,2 38579:25 38585:9 38620:4 38662:24,25 38663:7 38663:13,15,21 38672:4 38679:16 38683:17 38695:19
**knows** 38551:23 38623:14
**Kolkata** 38539:5
**Kolkati** 38541:25
**koppie** 38495:22 38504:24 38511:18 38568:21 38570:3,20 38572:19,24 38573:7 38573:10,13 38574:1 38574:7 38576:16 38582:4,16,16 38600:25 38604:20 38604:21 38605:3,7 38633:20 38634:1,4 38655:10 38657:12 38657:18,20 38658:25 38673:7 38674:19 38677:10 38678:5 38684:14 38688:19 38689:23 38689:24 38690:18 38691:1
**kraal** 38606:4,5,22,23 38607:3,5,8,10 38611:12,20,23,24 38613:4,13,14,23 38614:4,4 38615:8,23 38617:2,13 38622:12 38622:13 38629:18 38629:21,23 38630:6 38630:23,24 38631:5 38631:5,10,15,21,22 38633:21 38635:1,6 38635:25 38636:2,6 38636:20 38637:1,6 38637:10 38639:1 38641:1,2,3,19 38669:10,13,23,25 38670:9
**Kuhn** 38583:4 38585:22 38586:9,11 38586:19,20,23,25 38587:1,13 38588:10 38589:7,8,10,13 38594:1 38641:16
**Kuhn's** 38585:23
**Kulalukele** 38515:12
**KwaZulu-Natal** 38687:8,25
**K3** 38570:15,17 38572:3 38574:10
**K4** 38557:15,18,19,23 38558:12,16,17

**Mamabolo** 38659:4
**man** 38505:7 38506:12
  38638:7,8
**management** 38506:5
  38593:13 38672:22
  38673:16 38675:23
  38676:6 38679:4
  38683:22 38690:2
**mandate** 38694:10,11
  38694:19 38698:7
**Mangcotywa** 38603:6
**manifestly** 38662:22
  38663:7,13,19
**manner** 38497:18
  38513:6 38569:20
  38640:18
**map** 38626:24
**march** 38514:14
  38527:8,9 38536:8,11
  38536:12,14,19
  38542:2,11,11
  38543:1 38549:9,10
  38568:7 38570:15,20
  38572:4 38573:9,13
  38573:25 38574:8,9
  38575:2
**marched** 38517:23
  38530:4 38536:21
  38542:25
**marching** 38536:16
  38540:16,17 38543:4
  38571:22 38572:10
  38573:10 38574:12
  38574:22
**marginal** 38662:6
**Marikana** 38523:15,15
  38524:16,22
  38526:20 38527:3
  38538:10 38560:24
  38561:19,23
  38566:18 38568:7
  38587:19 38602:7
  38603:16,18
  38664:20 38666:20
  38672:4 38681:10,13
  38692:2,11,13
  38694:15 38696:4,12
  38701:10
**mark** 38529:11
  38565:9
**marked** 38608:1
  38629:9
**market** 38523:6
**married** 38490:22
**Maselane** 38490:21
**Masinya** 38527:13
**massacre** 38628:18
**masse** 38543:4
**massive** 38677:15
**mast** 38615:23 38616:9
  38616:13,18
**material** 38499:4
  38509:6,10 38520:8
  38526:17 38528:14
  38547:22 38595:6
  38659:25 38675:10

**materially** 38506:23
**Mathunjwa** 38504:24
  38634:1
**Mathunjwa's** 38605:3
**Mati** 38590:19,20,25
  38590:25 38591:2,5,9
**matter** 38490:18
  38496:10 38501:24
  38504:23 38505:5,6
  38505:12,14,23,25
  38507:10,18
  38509:15 38510:23
  38512:9 38522:13
  38547:7,21 38563:18
  38579:20 38593:10
  38593:16 38594:14
  38598:9 38638:2
  38650:12 38657:22
  38659:13 38669:5
  38676:16 38678:22
  38680:24
**matters** 38490:13
  38501:14 38508:13
  38644:1 38647:2
  38672:2,19 38674:20
**Mawela** 38686:7
**maximum** 38618:12
**mayhem** 38525:11
**Mbombo** 38580:15
  38651:22 38652:1,2
  38655:13 38656:17
  38681:9 38682:17
  38684:18,24
  38687:16,22,24
**McCann** 38647:14,16
  38696:1,2
**Mdze** 38603:10
**mean** 38503:19,20
  38556:22 38562:3,23
  38569:3 38594:11,14
  38610:12 38631:25
  38633:13 38655:22
  38656:10 38659:7
  38666:24 38694:22
  38698:4
**meaning** 38602:21
**meaningful** 38596:16
**means** 38529:18
  38554:10 38577:8
  38588:9 38671:3
**meant** 38522:24
  38523:4 38551:1
**measure** 38575:20
**measured** 38617:18
**measures** 38695:20
**mechanism** 38556:7
  38699:19
**mechanisms** 38600:16
  38600:17 38698:17
  38699:14
**media** 38609:11
  38613:7 38660:20
  38677:13
**mediation** 38694:6
**medical** 38531:5
  38603:13

**meet** 38676:12
**meeting** 38517:14,17
  38517:22,22
  38518:13 38539:2,8
  38540:11 38541:18
  38542:2 38543:11
  38593:13,15
  38661:14 38673:12
  38678:24,25 38679:1
  38679:5,12,17
  38680:13,15 38681:9
  38684:18 38685:13
  38685:18 38687:11
  38687:12,17,20
**meetings** 38516:8
  38519:3,4 38533:13
**member** 38634:13
  38642:15 38644:5,7
  38645:10 38662:9,25
**members** 38494:23
  38498:13,13
  38516:14,15 38537:1
  38537:5 38539:4
  38543:16 38545:17
  38547:11,14 38554:4
  38554:7,9 38569:12
  38578:12 38581:12
  38581:20,20
  38582:25 38583:22
  38584:14,21
  38588:16 38589:21
  38590:21 38600:21
  38603:3,12,21
  38604:17 38611:15
  38617:15 38622:7
  38633:24 38634:4,5
  38634:16,17 38635:6
  38636:14 38640:3,12
  38643:21,22 38644:4
  38645:20 38646:1,15
  38650:6 38652:4,7
  38665:13,13,18
  38670:21,21,22
  38680:2
**membership** 38505:7
  38505:13
**memorandum**
  38518:13,15
  38519:16
**memories** 38685:15
**memory** 38535:13
  38685:17
**men** 38506:3
**mention** 38512:15,16
  38685:8
**mentioned** 38526:15
  38541:7 38558:7
  38574:19 38612:16
  38637:23 38700:8
**Merafe** 38620:24
  38621:10 38626:6,7
**Merafi** 38531:13
  38577:14 38578:22
  38578:22 38579:24
  38580:20 38581:23
  38581:23,23

**merchant** 38538:10
**mercifully** 38598:9
**Mere** 38622:5 38626:7
  38626:12
**merely** 38599:4
  38634:7 38663:23
**merit** 38602:7
**merits** 38597:12
**message** 38575:1
  38581:24 38679:12
**met** 38517:24 38540:10
  38700:2
**method** 38617:12,14,22
**methods** 38604:16
  38620:17 38627:8
  38629:5 38630:4,9,13
  38658:11 38670:3
**metre** 38617:16,20
  38618:10
**metres** 38602:15,22
  38615:22 38616:4,5
  38616:22,25
  38617:18,20
  38641:23
**microphone** 38525:7
  38528:12 38542:9
  38547:19 38555:19
  38585:25 38591:6
  38605:18 38620:19
  38632:13 38649:17
  38656:25 38660:8
  38683:22 38686:6
**middle** 38628:7
**midst** 38637:14
**Miles** 38527:13
**militaristic** 38589:23
**military** 38600:15,21
  38604:17
**mill** 38603:12
**mind** 38492:21 38499:9
  38524:11 38555:11
  38569:10 38570:22
  38578:4 38583:10
  38594:20 38601:2
  38626:21 38653:18
  38661:7 38671:2
  38675:25 38677:1
**minded** 38598:7
  38612:12
**mine** 38560:14 38672:4
  38675:23
**Mineral** 38701:6
**miners** 38600:23
  38601:17 38602:12
**mineworkers** 38681:19
**minimise** 38647:22
  38695:20
**mining** 38701:4
**Minister** 38649:9
  38660:6 38674:9
  38678:7,16
**minute** 38491:3
  38540:5 38572:16
  38592:1,1,7 38606:17
  38606:24 38613:20
  38613:21 38616:24

**38617:1,5,8 38637:24**
  38661:5,7 38679:7
**minutely** 38600:12
**minutes** 38519:7
  38539:25 38540:3
  38573:20 38575:13
  38580:6 38599:3
  38605:16,24
  38619:13,15,22
  38659:1 38663:25
  38668:10 38672:17
  38678:25 38679:4,13
  38679:15 38700:4
**minute's** 38491:1
**mirrors** 38533:8
**misbehaving** 38551:19
  38589:5
**miscellaneous**
  38598:23
**mischief** 38582:18
**miscommunication**
  38622:16
**misconduct** 38501:8
**mislead** 38666:16
**mistake** 38495:16
**mistress** 38592:21
**misunderstanding**
  38490:3 38622:18
**misunderstood**
  38490:9 38511:4
  38673:2
**mob** 38602:13
  38603:21
**Mohai** 38603:9
**Mokwena** 38519:16
  38533:20 38560:1
**moment** 38494:3
  38497:16,23
  38540:18 38576:19
  38593:9,22 38594:14
  38600:4 38606:20
  38629:23 38639:18
  38649:19 38650:5
  38666:20
**momentum** 38517:19
**Monday** 38620:12
  38656:10
**Monene** 38590:12
**money** 38520:19
**Mongwaketsi** 38515:12
**monitor** 38568:12
  38571:9 38573:3
**monitored** 38571:7
**monitoring** 38571:15
  38572:1 38573:1
  38585:3
**month** 38519:24
**mood** 38605:7
**Mooinooi** 38554:18
**morally** 38675:12
**morning** 38492:19
  38493:10 38514:19
  38538:11 38540:11
  38545:17 38605:23
  38619:23 38620:2
  38651:13,14

oath 38660:25
OB 38521:8,14 38522:7
　38528:18,19,22
　38529:2 38548:16
　38549:15,20
　38568:13 38573:17
object 38658:9
objective 38503:24
　38512:21 38527:9,12
　38542:24 38549:15
　38635:12 38668:25
　38669:4 38695:9
obligation 38562:14
　38569:4
obligations 38695:12
　38696:7,8,9
obligatory 38562:19
obliged 38546:4,17
　38563:13 38598:9
　38648:19 38657:13
obscure 38664:15
observe 38491:1
obstat 38534:13
obtain 38493:21
obtained 38598:2
obvious 38506:5
　38642:11
obviously 38549:18
　38567:2 38583:13
　38586:14 38594:22
　38594:23 38599:12
　38609:16 38643:1
　38647:2 38656:4
　38682:25 38686:18
　38694:10 38697:16
　38698:2 38699:17,24
occasionally 38556:22
occupants 38669:14
Occupational 38699:20
occur 38626:5
occurred 38527:20
occurrence 38521:2
　38525:24 38528:13
　38549:22
occurs 38667:11
odd 38512:20,22
　38532:20 38673:18
odds 38561:12
　38668:22
offered 38512:23
　38675:4
offering 38603:12
office 38514:14
　38517:23 38530:4
　38537:24 38538:24
　38543:8,17 38546:20
　38546:23 38547:5
　38550:22 38619:20
　38620:4 38648:9
　38666:12
officer 38527:13
　38562:19 38564:24
　38583:4 38585:22,23
　38586:9 38587:13
　38588:10 38590:12
　38590:12 38593:25

38594:1,3,4 38641:15
　38642:2 38659:4
　38664:25 38665:5,21
　38665:23 38692:10
officers 38609:20
　38663:5,17 38699:7
offices 38536:9,12,14
　38536:16,17,19,21
　38537:2,2 38538:8
　38539:3,9 38541:19
　38541:20 38542:3
　38543:2,4,6 38546:25
　38551:25
official 38549:25
officially 38566:9
officials 38494:12
　38511:17 38549:5,19
Oh 38526:3 38587:6
　38644:17
once 38510:20,20
　38556:17,18
　38575:10 38578:13
　38604:21 38606:25
　38612:25 38639:18
　38639:19 38651:20
　38655:14 38656:11
　38694:12
ones 38639:2 38640:24
oneself 38575:9
one's 38684:25
onus 38596:2 38597:6
onwards 38536:9
open 38550:3 38559:12
　38560:7 38570:9
　38575:23 38608:18
opened 38548:4
　38608:24
opening 38513:22
　38603:23 38613:14
　38631:14
openly 38542:13
operating 38654:12
operation 38498:1
　38514:20 38559:6
　38561:7,8 38580:21
　38604:2 38605:4
　38609:2 38610:7
　38630:12 38647:21
　38651:1,10,11,21,25
　38652:18 38655:11
　38655:19,20 38656:1
　38656:13,19
　38657:15 38658:21
　38678:12,17
　38681:14 38683:14
　38683:21 38685:21
　38686:8 38688:17
　38694:24 38695:22
　38696:22,24
operational 38533:17
　38533:17 38553:18
　38566:17 38580:3,6
　38580:18 38587:15
　38610:15 38624:9
　38625:21 38647:13
　38653:23 38654:25

38655:15,15,17
　38656:7,18 38686:17
　38688:10
operationalise
　38568:15 38580:16
　38616:8
operationalises
　38568:16
operationally 38563:9
　38604:14
operations 38523:5
　38525:5 38534:2,23
　38553:12 38580:13
　38610:8 38646:3
　38693:9 38698:18
opponents 38544:1
opportunity 38490:6
　38535:16,22
　38546:10 38558:8
　38657:18 38674:3
opposed 38537:25
　38542:15 38618:20
　38628:23
opposite 38590:1
opposition 38674:5
opt 38518:19
optimistically 38689:20
opting 38519:14
oral 38490:6,11
　38503:9,12 38539:20
　38598:20 38599:8
　38621:6,23 38666:9
　38700:6
oratory 38576:23
　38578:6
orchestrate 38619:3
order 38490:3
　38503:10 38505:3,8
　38508:5 38518:23
　38525:5,14 38533:9
　38543:16 38551:3
　38569:2 38576:4,6,7
　38580:3,16 38586:15
　38586:16,24 38587:1
　38589:7,14,18
　38608:3,4,11
　38620:24 38621:9,10
　38621:11,13,17
　38622:2,16,20,22,25
　38623:1,4 38624:10
　38624:11 38626:5,6,9
　38626:22 38635:8
　38655:13 38665:17
　38681:13 38688:10
　38689:5 38693:8
　38695:1
ordered 38651:25
　38677:8
ordering 38661:20
orders 38698:16
ordinarily 38519:23
ordinary 38569:1
　38578:24
organisation 38610:10
　38696:21 38697:4
　38699:10

organisational
　38516:19 38519:19
　38696:23
organised 38518:1
　38519:11
original 38592:18
　38614:16 38625:7
　38629:22 38661:6,12
　38664:2,5,7,8,8,9
originally 38661:5
ought 38499:8 38556:5
　38561:17 38569:10
　38571:10 38585:5
　38660:23
outcome 38676:18,21
　38684:5
outcry 38685:16
outdated 38516:20
outlined 38575:18
outrage 38600:18
outset 38504:14,15
outside 38519:18
　38537:2,2 38624:17
　38624:21,22
　38655:23 38656:2
　38659:19
outsources 38556:19
overall 38655:17
overarching 38533:1
overdue 38491:23
overhaul 38516:21
overlooked 38609:16
overnight 38700:14
overpowered 38648:7
　38648:15
overwhelming
　38511:23
over-exposure 38602:2
over-vigilant 38549:25
o'clock 38700:5
　38701:13,17
o'clock 38537:14
　38538:11 38540:11
　38540:13,16 38605:9

────── P ──────

page 38520:6 38594:16
　38606:2,16 38607:4
　38608:14,15
　38620:18 38623:23
　38628:11 38634:25
　38638:6 38640:11,16
　38641:9 38659:11
　38666:13 38679:23
　38679:24,24,25,25
　38681:6,8 38682:4,4
　38682:5,13,14,15
　38683:4 38684:21
　38686:10,11 38687:4
　38687:5
pages 38598:24
　38604:4,11 38605:1
　38628:9 38635:24
　38691:24,25
paid 38523:5
panga 38542:22

pangas 38524:20
　38540:14 38542:5
Papa 38614:1,1,2,2
　38618:14,14,14,14
　38621:19 38622:3
Papa1 38623:25
Papa11 38669:14
Papa18 38623:25
Papa2 38629:11,19,21
　38630:8,24 38631:1,2
Papa4 38624:19,20
　38629:11
Papa5 38664:19
Papa7 38623:25
paper 38532:3,4,14
papers 38547:23
　38592:21
paragraph 38504:19
　38506:17,21 38521:9
　38524:18 38527:17
　38531:13 38536:9
　38540:9,12,14
　38541:22 38552:22
　38553:1 38557:17
　38559:16 38561:8
　38590:20 38594:17
　38597:15 38602:18
　38609:1 38624:5
　38634:24 38635:24
　38638:16 38640:11
　38640:16 38649:25
paragraphs 38504:19
　38515:13 38518:14
　38520:7 38552:9
　38610:14
parameters 38694:22
paras 38650:14
pardon 38540:25
part 38495:6 38498:7
　38498:24 38506:13
　38512:18 38517:8
　38518:23 38521:20
　38530:18 38561:22
　38565:15 38568:20
　38572:17 38578:1,5
　38579:10,15
　38581:13 38592:17
　38594:3 38599:4
　38600:17 38601:6
　38630:15 38632:1
　38634:3 38636:12
　38648:2 38658:4
　38659:14,21 38670:2
　38670:15,19 38684:7
　38688:25 38691:19
　38699:18
participate 38498:16
　38692:24
participated 38692:19
　38693:25 38694:13
participation 38693:16
　38694:23 38695:7
particular 38510:23
　38512:12 38514:10
　38556:13,13 38567:4
　38571:23 38590:3

38597:20 38599:25
38606:1 38619:2
38630:10 38635:23
38645:10 38665:4
38668:17 38672:5
38674:8 38695:16
38700:11,14
**particularly** 38495:15
38499:5 38509:18
38560:19 38569:6
38581:11 38599:20
38600:8 38690:20,23
**parties** 38490:4
38593:18 38643:20
38679:2 38680:16
38691:9 38693:7
**partly** 38503:7
38641:13
**parts** 38508:8 38512:12
38513:12 38606:7
38700:7
**party** 38503:2,20
38508:6 38679:11
38685:4
**passage** 38493:13
38606:1,2 38607:5,5
38607:7,14,25
38608:1,4,5,9,9,12,16
38608:16,17,18,18
38613:10,11,14,20
38614:6,18,25
38615:11,11,11
38617:3,7,11,17,18
38617:21,25 38618:1
38618:2,4,7,10,15,17
38618:19,23,25
38619:1 38621:9,12
38622:21 38626:25
38648:5 38652:25,25
38654:1,3 38655:24
38656:2,3,22 38671:4
38671:23 38672:1
**passages** 38508:19
38509:13 38608:18
38610:18 38621:15
**passed** 38564:7,17
38616:3 38680:17,17
**passes** 38564:23
**passing** 38629:15
**patent** 38491:18
**patently** 38505:20
**path** 38611:11,18
38625:23,25
**pathologist** 38592:18
**pathologists** 38595:11
**Pato** 38603:9
**pattern** 38638:8
**pay** 38514:10
**PC's** 38568:17
**peacefully** 38527:10
38529:8 38570:19
38657:20
**pedantic** 38680:6,9,11
**pending** 38531:23
**penetrate** 38632:10
**perceive** 38543:8

**perceived** 38522:8
**perception** 38520:15
38520:20,23 38521:7
38521:16,20 38522:2
**perfect** 38509:18
**perfectly** 38549:21
**perfekte** 38621:25
**perform** 38615:24
38635:16
**performed** 38659:20
**performing** 38562:21
**peril** 38650:7
**period** 38517:2
38532:25 38550:12
38658:25
**peripheral** 38509:16
**permissible** 38509:2
38519:17 38556:20
**person** 38501:4
38505:10,17 38522:7
38539:6,7 38545:3
38562:21 38563:8,12
38563:21 38566:10
38586:22 38596:1
38612:16 38624:11
38634:19 38636:12
38636:12 38637:3
38648:21,23 38681:3
38684:16 38685:19
38685:24,24 38686:1
38686:16 38691:8
38692:7
**personal** 38661:1
**personally** 38635:4,5
**persons** 38501:10
38531:1 38665:1
**persuade** 38576:12
38579:23 38676:8
**persuaded** 38590:5
**persuasion** 38576:10
38576:11 38577:8
**phase** 38598:21
38603:24 38663:10
38664:4 38689:5,6
38700:18
**Phiyega** 38681:15
38682:16
**phone** 38674:9
**phoned** 38577:23
**phones** 38563:8
**photograph** 38607:4
38608:1 38613:16,18
38614:9 38615:6
38631:23
**photographic** 38511:16
**photographs** 38638:5
**physiological** 38632:17
**physiologically**
38632:23
**pick** 38503:21
38665:22
**picked** 38660:23
**picture** 38497:11
38674:5
**piece** 38510:22
38512:20 38532:4,14

38679:9,10
**pieces** 38511:15
38600:15
**Pitsi** 38622:5 38626:12
**place** 38505:3,22
38510:15 38516:17
38529:24 38531:11
38537:10 38544:3
38550:12 38551:17
38553:19 38556:7
38560:25 38561:3
38562:8 38563:2
38565:17,20
38566:21 38569:5,11
38580:3,7 38581:10
38602:5 38604:6
38607:15,17,23
38611:6 38612:8
38623:6 38626:25
38627:10 38646:22
38650:13 38656:12
38658:15 38663:6
38664:15 38669:21
38669:22,22
38670:11,20 38671:8
38679:1,12 38685:13
38689:14,17
**placed** 38499:3,4
38501:15
**places** 38607:24
**plagued** 38560:24
**plaguing** 38561:19
**plain** 38650:1
**plainly** 38608:23
**plane** 38492:20
**planned** 38651:1
38681:15 38689:22
**planning** 38498:3,9
38516:6,12,23
38517:1,4,8 38522:22
38533:11 38536:13
38553:11,14,17
38569:17 38580:15
38610:4 38647:12,21
38648:13 38649:24
38651:10 38695:21
38698:20 38699:13
**plans** 38661:15,16
**planted** 38664:23
**planting** 38662:1
38665:3,21
**plan's** 38604:12
38655:10
**play** 38551:1 38693:21
38696:19
**played** 38672:7
**players** 38496:14
**playing** 38532:9
38626:24
**please** 38490:25
38555:7 38556:15
38575:2 38589:10
38592:22
**pleased** 38491:20
**pleases** 38494:16
**plus** 38639:1

**pointed** 38505:17
**pointing** 38505:10
38662:7
**points** 38490:7,8
38509:24 38576:19
38582:10 38595:22
38599:8,9,11 38621:8
38621:9 38622:21
38627:11,15,21
38629:8,8 38650:19
38662:2 38677:18
**police** 38497:16,17
38506:3 38511:17
38524:21 38525:14
38580:12 38584:8
38596:6 38597:4
38600:21,25
38602:20,20
38608:12 38611:11
38612:3,10,13
38628:17,24 38631:3
38633:23 38634:5
38642:2 38648:4
38649:18,23 38650:2
38650:3,9,10,13,23
38660:10 38670:16
38670:18 38674:16
38675:24 38676:8,10
38676:22,23 38677:3
38677:7,11,14,16,25
38678:7,9,11,17
38686:22 38690:10
38690:15,16 38692:8
38692:10,10 38693:9
38694:24 38696:17
**policeman** 38591:12
**policemen** 38584:23
38585:8 38648:9
**policing** 38532:19,25
38550:6,12,14,20,25
38551:4,10,17,18,19
38551:22 38552:2
38560:20,25 38561:3
38562:3,8 38563:1,6
38563:7,11 38564:12
38566:21 38569:2
38688:10 38693:9
38695:1,22 38698:14
**policy** 38554:11
38698:16
**politely** 38503:8
38680:20
**political** 38496:6
38672:20,24 38673:6
38673:9,11,14,25
38674:2,3,4,7,8,24
38675:2,10 38678:3,4
**politicians** 38674:5
**poor** 38498:2,3
38647:12
**POP** 38579:25
38580:20 38667:23
38670:21,21,22
38671:10
**POPS** 38604:16
38611:15 38620:17

38627:8 38629:5,19
38629:25 38630:2,4,9
38630:12,13 38638:1
38638:4,19,20
38658:5 38663:5
38670:2 38671:18
**popular** 38559:8
**portion** 38574:1
**portions** 38508:22
**pose** 38578:15
**posed** 38543:5 38553:6
38553:9 38554:25
38603:5 38635:7
38636:8,14
**posing** 38550:22
**position** 38504:21
38518:4,5,6,17,19
38521:5 38566:10
38606:14,14 38608:7
38610:15 38612:17
38613:23 38614:1
38615:3,9 38616:2
38624:5 38625:7,20
38625:25 38647:9
38653:17 38655:6,11
38655:16 38656:21
38658:10 38659:1
38660:18 38669:2
38673:4,14 38678:19
38682:18 38688:11
38689:3
**positioning** 38625:18
**positions** 38623:7
**positive** 38538:1,4
**positively** 38501:23
**possession** 38530:2,6
**possibilities** 38625:9,15
38625:17
**possibility** 38612:12
38622:20 38623:1,11
38623:15 38634:1
38671:12
**possible** 38548:9
38587:24 38588:3
38595:2 38599:2
38606:18 38610:17
38610:19 38618:4,24
38623:13 38630:11
38632:1 38642:18
38643:3 38648:16
38684:6
**possibly** 38505:12
38508:9,22 38534:25
38545:11 38556:10
38565:5 38617:16
38628:8,10 38632:25
38633:9 38639:1
38640:9 38645:2
38650:6 38699:5
**post** 38644:24
**postpone** 38575:2
**post-mortem** 38595:9
**post-mortems**
38595:11
**potential** 38597:12
38652:11 38698:4

| | | | | |
|---|---|---|---|---|
| **potentially** 38574:22 38699:19 | **presume** 38555:8 | **problem** 38493:3,9,18 | 38580:3,6 38581:10 | **provide** 38694:5 |
| **power** 38576:10 | **pretty** 38575:4 | 38506:13 38509:20 | 38581:19 38595:9 | **provided** 38555:22 |
| **practical** 38647:24 | **prevailing** 38687:22 | 38512:23 38532:2 | 38689:13,16,17 | 38556:19 38563:8 |
| 38655:21 38698:17 | **prevaricated** 38626:22 | 38535:5 38541:4 | **properly** 38503:22 | 38604:20 38620:5 |
| **practice** 38662:2,5 | **prevent** 38498:23 | 38546:24 38556:12 | 38522:5,13 38552:19 | 38693:6 38695:3 |
| **precaution** 38695:19 | 38502:7,9 38558:23 | 38556:14 38565:15 | 38578:12 38665:20 | 38698:10 |
| 38696:13 38697:2 | 38618:25 38627:25 | 38576:12 38578:11 | 38689:21,22 | **provider** 38620:2 |
| **precautions** 38558:23 | 38681:13 38694:3 | 38579:7,17 38580:19 | **property** 38548:23 | **provides** 38697:2 |
| 38612:18 | 38695:20 | 38584:4 38588:21 | 38549:1,5 | **Province** 38687:21 |
| **precedent** 38525:8,8,13 | **preventing** 38571:4 | 38594:17 38610:20 | **proportional** 38641:6 | **provincial** 38495:21,25 |
| 38525:16 | **prevention** 38695:19 | 38626:19 38628:3 | **proportionality** | 38496:1 38562:17,18 |
| **precipitated** 38650:2 | 38696:12 38697:2 | 38630:14 38651:18 | 38546:7 38639:15 | 38562:22 38564:24 |
| **precise** 38610:6 | **prevention/precaution** | 38653:21 38665:7 | 38640:20 | 38564:25,25 38565:2 |
| **precisely** 38537:15 | 38695:25 38696:18 | 38671:15 38688:25 | **proposal** 38519:1 | 38565:24 38566:6,8 |
| 38581:5 | **prevents** 38692:15 | **problems** 38532:6 | 38652:5 38653:19 | 38568:10 38576:5 |
| **predecessors** 38491:14 | **previous** 38517:16 | 38556:3 38579:14 | 38679:5,20 38683:14 | 38577:23 38580:8 |
| **predetermined** | 38612:1 | 38596:15 38671:18 | 38685:4 38690:4,5 | 38591:8 38596:13 |
| 38577:7 38663:11 | **previously** 38693:24 | **procedure** 38533:6 | **proposals** 38496:17,20 | 38647:1 38653:5,7 |
| **predicated** 38612:23 | **pre-emptive** 38543:16 | 38534:15 38535:1 | **propose** 38535:3 | 38655:22 38661:14 |
| **predict** 38524:8 | **prima** 38497:1 38512:8 | **procedures** 38533:4,17 | **proposed** 38698:25 | 38661:17 38663:14 |
| **prefer** 38493:16 | 38512:11,17 | 38533:18 38563:17 | 38700:23 38701:1 | 38673:12,20 |
| 38554:13 | 38535:14 38544:16 | **proceed** 38570:3,17 | **proposes** 38518:22 | 38674:10 38677:19 |
| **prefers** 38603:14 | 38545:7,12,13,15 | 38607:10 38651:21 | **proposing** 38538:14 | 38679:6 38681:6 |
| **prejudices** 38505:4 | 38549:18 38576:21 | 38689:6 | 38619:10 38621:5 | 38683:13 38684:20 |
| **preliminary** 38695:23 | 38579:17 38590:4 | **proceeding** 38633:12 | **proposition** 38495:25 | 38685:3 38687:8,21 |
| **prelude** 38561:8 | 38591:7 38596:12 | **proceedings** 38490:1 | 38497:12 38502:18 | 38688:6,9 38689:10 |
| **premises** 38546:10 | 38646:8,17,25 | 38493:7 38494:1 | 38507:3,12,19 | 38690:8 |
| 38555:6,12 | 38647:3,25 38657:15 | 38587:12 38601:20 | 38627:1 38633:12 | **provision** 38693:12 |
| **prepare** 38519:16 | 38657:22 38684:6 | 38666:10 38695:8 | 38668:25 38673:6,8 | **proximate** 38655:1 |
| 38574:17 38700:13 | 38686:18 38688:6 | **process** 38495:6 | **propositions** 38673:5 | **public** 38502:6 |
| **prepared** 38541:2 | **primarily** 38694:24,24 | 38516:4,6,6,12,23 | **prosecute** 38598:7 | 38524:11 38525:5,13 |
| 38542:21 38544:2 | 38700:7 | 38517:1,4 38520:9,10 | **prosecuted** 38646:2 | 38533:9 38551:3 |
| 38634:14 | **primary** 38658:22 | 38522:2,22 38600:17 | **Prosecuting** 38698:3 | 38569:2 38602:4 |
| **preparing** 38553:4 | **principal** 38697:2 | 38616:23 38622:10 | **prosecution** 38496:22 | 38646:22 38650:6 |
| **prescribed** 38554:4,5 | **principle** 38556:4 | 38659:10,10 38660:2 | 38545:11 38597:7 | 38672:2 38677:24,24 |
| **prescripts** 38533:9,14 | 38581:17 38647:14 | 38664:25 38666:1,2,5 | 38644:6 38645:13 | 38688:10 38693:8 |
| 38569:2 | 38647:17,18,19 | 38697:22,24 | 38646:25 38698:6 | 38695:1 |
| **presence** 38494:8 | 38648:1,25 38651:2 | **processes** 38619:24 | **prosecutions** 38545:8,9 | **pull** 38583:17 38633:1 |
| 38505:24 38527:24 | 38654:11 38695:19 | 38665:6 38692:19 | **prospect** 38496:21 | **punitive** 38599:1 |
| 38550:13,18 38584:8 | 38695:24 38696:1,3,3 | 38694:13 38699:11 | 38645:13 | 38651:5 38666:8 |
| 38677:3,14 | 38696:4,5,10,12,15 | **procure** 38554:13 | **prospects** 38644:8 | **purchase** 38556:24 |
| **present** 38490:5 | 38696:18,20 | **produce** 38536:2 | **Protea** 38554:16 | **purely** 38523:17 |
| 38505:15,21 | **principles** 38545:1 | **produced** 38502:21,22 | 38555:21 | 38544:18 |
| 38529:13 38539:2,7 | **prior** 38561:23 | 38503:3 38591:20 | **protect** 38549:1,5 | **purporting** 38660:25 |
| 38541:18 38595:7 | 38569:16 38670:11 | 38651:8 38664:13 | 38552:19 38553:9 | **purpose** 38492:23,24 |
| 38649:3 38655:22 | **priority** 38490:18 | 38679:14 | 38554:9 38556:6 | 38494:19,19,25,25 |
| 38674:6 38685:18 | **private** 38641:11 | **production** 38627:12 | 38557:15,23 | 38495:3,3,8 38502:14 |
| 38687:16 | 38645:12 38649:20 | **professional** 38659:18 | 38558:24 38559:1,20 | 38508:6,6 38510:18 |
| **presentation** 38614:13 | 38649:23 | 38696:25 | 38559:25 38560:5,9 | 38512:1 38542:7 |
| 38614:19 38660:16 | **privy** 38567:10 | **profit** 38540:5 | 38560:10 38633:1,2 | 38552:1 38584:8 |
| **presentations** 38516:7 | **proactively** 38694:16 | **progress** 38548:6 | 38662:21 38692:24 | 38612:24 38635:12 |
| **presented** 38490:11,12 | **probabilities** 38499:13 | **prolonged** 38681:9 | 38696:9 | 38635:14,17,22 |
| 38517:25 38664:21 | 38500:3,6 38501:2,20 | **prominently** 38516:2 | **protected** 38617:8 | 38636:2,4,5,7 |
| **President** 38697:15 | 38502:11 38543:15 | **prone** 38554:8 | 38670:22 | 38643:14 38673:11 |
| **press** 38660:4,16,16,21 | 38546:22 38590:1 | **pronounce** 38491:2 | **protection** 38538:3 | 38677:3 |
| 38661:18 | 38591:2 38597:1 | **proof** 38500:2 | 38658:17 | **purposes** 38533:8 |
| **pressure** 38664:17 | **probability** 38499:17 | 38664:21 | **protective** 38632:8 | 38542:10 38634:15 |
| 38673:9 38674:8 | 38499:24 38505:6,12 | **propensity** 38524:20 | **protest** 38524:19 | 38674:6 |
| **presumably** 38508:6 | 38505:14,23,25 | 38572:22 38581:14 | 38569:15 38687:22 | **pursuant** 38635:17 |
| 38534:10 38547:7 | 38648:20 38656:5 | **proper** 38492:11 | 38693:8 | **pursue** 38635:16 |
| 38563:11 38574:3 | **probable** 38499:12,14 | 38497:6 38501:21,22 | **protests** 38524:11 | **pursued** 38697:6 |
| 38580:12 38592:16 | 38502:3 | 38531:25 38533:10 | **protocol** 38557:5 | **push** 38630:16 |
| 38592:18 38599:10 | **probably** 38499:11,21 | 38533:12,12,13 | **proud** 38491:24 | **put** 38503:8 38510:3,4 |
| 38612:10 38625:11 | 38500:11 38558:2 | 38553:14,14,14 | **prove** 38596:7 | 38513:5 38532:14 |
| 38639:1 38643:6 | 38579:19 38618:12 | 38555:3 38556:8 | **proved** 38636:8 | 38535:6,13,15 |
| | 38639:8 38653:4 | 38569:11,11,17 | 38673:12 | 38536:14 38537:22 |

38551:17 38552:13
38557:11,19
38559:11 38563:1,24
38566:21 38569:5,11
38570:11 38580:6
38582:18 38595:19
38599:25 38606:11
38611:5 38619:24
38624:2 38628:14
38630:21 38632:20
38632:21 38647:24
38648:2 38651:8,9,20
38652:18 38662:9
38664:4 38668:24
38676:18,20
38680:20 38686:24
38689:13 38701:16
**putative** 38544:22
38612:5 38637:18
38640:3,17,18,21,22
38641:5,6 38647:7,8
38650:25
**putting** 38508:10,11
38512:8 38563:18
38576:3 38622:17
38633:10,10
**PW** 38527:14

**Q**

**qua** 38654:11
**qualification** 38511:6
**qualifying** 38640:2
**quality** 38503:7
**quantum** 38604:16
**quarrel** 38590:3
**quarter** 38539:21,21
**questionable** 38554:16
38569:13 38581:1
**questioning** 38693:16
**questionnaire**
38686:10
**questions** 38490:9
38509:5 38574:20
38599:9 38635:19
38639:15 38643:1
38654:13 38662:10
38667:10 38675:14
38680:21,22,23,25
38684:11 38686:23
38687:6,7,18 38688:1
38688:7 38691:10,22
38696:19 38700:12
**quicker** 38615:24
38630:10
**quickly** 38528:18
38590:10 38615:14
**quietly** 38589:4
**quite** 38513:9 38540:3
38544:25 38546:24
38558:16 38592:13
38609:4 38612:1
38621:1 38626:20
38632:1 38634:18
38638:17 38640:9
38650:1 38655:4
38658:9 38669:11

**quotation** 38662:9
**quote** 38506:20
38602:19

**R**

**racing** 38615:7
**radio** 38586:16,20,24
38586:24,24
38588:12 38589:9
38625:7
**railway** 38571:12
38573:19 38581:16
**raise** 38494:11
38590:10 38662:10
38684:12,16,22
**raised** 38511:7
38552:23 38567:15
38608:20 38619:20
38684:17,22,24
38685:6 38686:3,12
38686:15
**Ramaphosa** 38674:13
38678:7,8,11,14
**Ramaphosa's** 38674:9
38675:9,21
**ran** 38543:24
**range** 38503:16
38509:1 38511:14
38609:20 38665:12
38669:15
**rank** 38682:9
**ranks** 38491:6 38665:7
38666:1,2
**rapidly** 38650:18
**rate** 38523:6
**rational** 38685:19,24
**rationale** 38623:7
**raw** 38616:10 38627:10
38642:13
**RDO** 38517:5,6,10,13
38517:14,22
38518:16 38519:6,9
38519:13,18,21
38520:3 38521:14,14
38522:21,24 38539:8
38543:11
**RDOs** 38517:16
38519:24,25 38520:5
38520:19 38522:24
38523:4 38541:18
38542:2 38543:12
**reach** 38538:16
38634:25 38699:8
**reached** 38617:2
**reaches** 38606:21
38613:12,14
38616:18,25
**reaching** 38613:20
**reaction** 38632:2
**reactive** 38694:19
**read** 38513:14
38537:10,13 38576:9
38671:23 38683:5
38687:2
**readily** 38573:4
38633:23 38642:6

38688:22
**reading** 38614:20
**ready** 38615:21
38616:1
**real** 38554:3,25
38601:19 38608:6,6
38651:18 38661:4
38662:13
**realised** 38576:15
**reality** 38508:4
38601:18,19
**really** 38490:11,22
38492:23 38496:13
38499:7 38500:1
38501:13 38502:11
38507:9 38510:13,23
38511:25 38512:1
38515:2,10 38517:19
38533:25 38553:25
38557:5,7 38563:24
38569:14,16
38575:17,21
38576:20 38577:2
38583:18 38585:6
38623:15 38636:1
38659:8,18 38672:11
38672:19 38674:17
38689:7
**reason** 38497:22
38500:19 38503:2
38512:12 38520:3
38523:12 38528:3
38529:7 38538:7,9
38542:18 38563:15
38565:5 38570:23
38579:5 38581:24
38596:18 38620:3,6
38642:25 38650:7
38693:10
**reasonable** 38499:22
38499:23,25 38500:4
38500:12 38501:3,16
38501:25 38502:8
38520:14,20 38522:1
38543:7 38575:12
38608:7 38610:15,19
38612:7 38640:4,14
38640:22 38641:11
38642:2 38645:8
38647:22 38670:2
38675:1
**reasonableness**
38547:10
**reasonably** 38543:5
38602:21 38643:2
38648:16 38650:11
38653:24 38675:19
38676:17,20
38678:15
**reasoning** 38519:24
**reasons** 38499:12,14
38507:15 38508:23
38522:20 38596:18
38598:3 38637:3
38641:12 38673:7
**recall** 38525:1

38528:20 38565:13
38566:24 38666:19
38677:11 38684:23
38684:25 38685:12
38686:12,14,15
**receive** 38493:13
38700:21
**received** 38491:18
38539:4,5 38561:16
38561:17 38562:11
38562:21 38564:16
38565:14,22 38566:2
38585:24 38679:12
38681:11 38694:13
38700:22
**receives** 38562:15
38694:12
**reckless** 38496:5,9
38498:2 38646:3,5,8
38646:21,22
38665:19 38688:21
38688:22
**recklessly** 38645:20
38646:1 38688:3
**recklessness** 38689:7
38690:1
**recognise** 38674:10
**recognition** 38516:13
**recollection** 38564:14
**recommend** 38646:4
38667:8
**recommendation**
38545:20,24
38643:20 38647:1
38666:9,10 38667:12
38671:24
**recommendations**
38514:24 38560:16
38598:12 38599:1
38672:5 38692:15
38698:6,9,13,23,25
38699:2 38700:9,23
38700:25 38701:12
**recommending**
38545:8,9,10
**reconsideration**
38599:20
**record** 38592:17
38619:24 38626:18
38627:11
**recorded** 38615:18
**recording** 38661:13
**records** 38531:5
38533:13 38546:22
38546:23,25 38547:4
**recurrence** 38692:15
**red** 38535:24 38558:2
38608:22 38629:9,14
38629:19
**rediscover** 38601:22
38602:11
**reed** 38510:17
**refer** 38541:14,21,24
38542:4,5 38649:5
38665:2 38696:1
**reference** 38560:1

38613:15 38626:13
38638:15,17
38667:12,15
38671:22,24,25
38682:4 38683:10
**referenced** 38521:11
38526:2 38700:10
**references** 38604:7
38616:10 38627:9,9
38679:23
**referred** 38516:5
38527:11 38554:1
38595:25 38669:13
**referring** 38591:7
38668:17
**refers** 38529:15
**reflect** 38534:17
**reflected** 38491:25
38526:1 38548:15
38665:11
**reflection** 38519:6
**reflects** 38587:20
38601:18 38624:5
**reformulate** 38610:24
**reformulated** 38611:1
**refuge** 38658:19
38670:24
**refused** 38583:23
38584:9 38680:21
**regard** 38503:18
38511:4,12 38526:16
38569:6 38580:7
38595:6 38599:23
38602:6 38606:15
38610:12 38615:15
38633:18 38640:21
38649:6 38652:20,22
38656:5 38671:4,22
38671:25 38676:5
38680:17 38688:8,9
38701:11
**regarded** 38535:4
**regardless** 38498:9
**regards** 38573:7
**regret** 38490:20
**Regulation** 38657:14
38671:6
**rein** 38505:4
**reinstate** 38515:19
**rejected** 38498:17
38511:12 38676:5
**rejection** 38511:20,21
**relate** 38530:9
**related** 38638:21
38665:7 38671:21
**relates** 38529:11,21
38578:15 38646:21
38666:8 38667:23
**relating** 38595:24
38597:24 38599:1
38604:1 38647:6
38662:1
**relation** 38504:2
38517:13 38524:17
38533:2 38536:10
38539:14 38540:22

38541:11,16 38550:4
38550:7 38552:16
38554:21 38558:20
38559:2,6 38585:3
38590:19 38591:18
38592:10 38593:5,6
38595:16 38596:3
38598:12 38600:9
38605:25 38608:4
38610:13 38614:25
38618:7 38619:7
38640:2 38643:20
38644:4,8 38645:21
38647:6,14 38650:20
38651:23 38652:2,3,8
38652:24 38655:7,9
38656:16,23
38658:21,22
38659:10 38660:15
38662:17 38663:20
38665:9,17,19
38666:20,21
38668:16 38674:13
**relations** 38515:5,8
**relationships** 38516:17
**relatively** 38574:9
38586:18 38607:25
38615:9
**relevance** 38538:7
**relevant** 38514:24
38516:12,24
38533:25 38546:2,19
38547:5 38574:7
38647:9
**reliability** 38513:2
**reliable** 38510:15
**reliance** 38496:20
38510:16
**relies** 38557:7
38569:25
**reluctant** 38592:11
**rely** 38503:6 38504:12
38507:6,7 38510:17
38511:21 38523:21
38541:16 38554:13
38556:18 38653:6,8
**relying** 38556:5
**remain** 38687:19
**remained** 38549:22
**remaining** 38613:13
38700:4
**remains** 38674:24
**remarks** 38492:11
**remedy** 38506:1
38671:13 38700:24
**remember** 38586:20
38587:23 38588:2
38593:14 38597:22
38597:23 38601:15
38603:15 38615:2
38626:16,17
38637:24 38680:3,4,5
38685:5,6 38686:4
**remind** 38524:1
38534:5 38682:8
**reminding** 38493:9

**remotely** 38599:2
**removal** 38513:12,16
**remove** 38495:22
38673:7 38683:15,16
38688:19
**removed** 38549:23
**remuneration**
38520:12
**repeat** 38504:20
38604:8 38620:13
38662:16
**repeatedly** 38506:6
38696:22
**repeating** 38514:7
38691:20
**reply** 38590:9 38598:15
38652:10 38657:24
38701:11
**replying** 38529:24
38533:21 38642:4
38654:19
**report** 38529:22
38551:7 38552:20,24
38562:11,15
38591:19,20,21
38592:12 38593:6
38601:9,25 38602:3,6
38660:5 38666:19
38672:5
**reported** 38530:10
38656:12 38667:1
**reports** 38527:21,22
38528:17 38529:14
38530:8,9 38531:22
38531:23 38542:14
38543:13 38548:17
38550:8 38560:21
38561:16,18 38562:5
38565:10,14,22
38566:3,16,23
38568:5,19 38570:8
38572:21 38580:2
38581:11 38584:18
38593:5 38595:9,9
38644:25
**represented** 38659:17
**request** 38595:1
**require** 38497:18
**required** 38609:18
38610:9 38618:11,22
**requires** 38606:20
**requisitioning**
38661:22
**resembled** 38520:10
38523:10
**reserve** 38661:15
**resist** 38603:19
38681:22 38689:25
**resistance** 38653:16
**resistant** 38632:12
**resolution** 38518:24
38539:19
**resolve** 38518:18,20
**resolved** 38676:14
**resort** 38658:11
**resorted** 38670:3

**resources** 38551:13
38701:6
**respect** 38500:11
38501:5 38504:17
38510:2 38512:9,19
38515:8 38545:16
38576:3 38577:3
38615:14 38643:10
38678:3 38691:3
38694:15 38695:24
38697:9 38698:13,19
38699:12 38701:8
**respective** 38672:7
**respects** 38507:2
38520:9
**respond** 38490:9
38554:1 38594:15
38642:4 38643:17,19
38657:19 38674:7
38678:6
**responded** 38672:10
**response** 38506:15
38517:9 38518:1,7,11
38519:5,15 38523:13
38523:16 38532:1
38533:6 38598:22
38659:12 38666:14
38667:15 38684:17
38684:24 38685:6
38686:8,17 38687:17
38688:14 38694:20
**responses** 38599:10
38601:23 38680:18
38680:19
**responsibility** 38552:12
38554:23 38557:10
38557:15 38559:10
38559:15 38597:16
38598:25 38621:22
38647:10 38651:5
38691:8
**responsible** 38495:1
38498:8 38522:7
38552:18 38558:19
38558:22 38562:3
38563:10,22
38564:23 38596:2,10
38597:1,7 38598:19
38635:16 38648:13
38651:7,17,24
38655:3 38675:12
38676:1 38677:2
38685:24 38686:16
**responsive** 38694:12
**rest** 38629:22 38631:15
38650:20
**restore** 38692:16
**rests** 38507:15
**result** 38496:17
38498:1,2,3 38511:2
38511:2,3,5,7
38515:16,22 38537:7
38545:22 38589:24
38604:19 38654:11
38664:21 38675:16
38675:18 38678:17

**resulted** 38678:12
38684:5 38699:15
**resulting** 38496:22
**results** 38520:18
38544:7
**resume** 38535:7
38541:5 38619:15
38668:10 38701:17
**resumes** 38490:2
38540:1,2 38592:4,5
38619:16,17
38668:12,13
**retreat** 38634:9,11
38671:19
**retreated** 38627:1
**retreating** 38630:3
**retrieved** 38644:24
38645:7
**return** 38691:17
38693:5
**Reuters** 38601:13,13
38602:10 38695:5
**reveal** 38644:25
**reverse** 38664:12
**revert** 38510:13
38518:10 38526:25
38537:17,19 38567:3
38567:21 38568:3
**review** 38684:7
38698:15 38701:7
**revolves** 38568:6
**re-employ** 38515:18,19
38515:21
**rhetorical** 38603:23
**ricocheted** 38602:25
**ricochets** 38641:20
**rifles** 38600:15,22
38604:17
**right** 38497:5 38500:14
38531:3 38576:24
38577:18 38586:21
38588:8 38589:12
38591:10 38592:17
38592:22 38596:24
38598:10 38607:7
38624:17 38626:1,8
38629:19 38637:6,17
38638:7 38639:10
38648:8,9,22
38685:23 38692:6
38694:1 38696:9,16
38697:1 38699:16
**rightly** 38677:18
**rights** 38499:6
38537:11 38595:25
38627:13 38642:5
38691:19 38692:5,18
38692:21,23
38693:10,24 38694:9
38694:23 38695:3,10
38695:16 38696:5
38697:5,6 38699:1
38700:19 38701:1,4
**right-hand** 38648:15
**rise** 38501:15
**rising** 38631:2

**risk** 38535:23,24,25
38553:6,9,12,14
38554:4,11,25
38555:15 38557:24
38558:1,3,7 38599:21
38601:19 38607:21
38607:22 38609:23
38611:22 38613:3,7
38640:19 38647:22
38658:19 38663:12
38683:17,18
38684:12,16,17,22,23
38684:24 38685:5,25
38686:3,16 38691:1
38695:21
**risks** 38554:7 38655:8
38686:12
**risky** 38651:11
38690:11
**rituals** 38553:3
**rivalry** 38516:1
**road** 38497:3 38579:12
38582:12 38611:17
**rocks** 38658:7
**role** 38496:14 38532:9
38550:24,25 38551:3
38567:6 38672:7
38693:21
**rollout** 38604:13
38606:8
**room** 38493:13
38648:6,14,16,18,22
38648:23
**root** 38515:24 38517:2
**Roots** 38587:18,19,23
38588:1 38598:21
38664:1,13
**round** 38538:11,15
38597:6 38611:23
**rounds** 38661:22
**route** 38554:18
38559:8 38566:9
38570:16 38572:3
38607:1,3
**routes** 38610:18
**Roux** 38691:13,14
38692:25 38693:4,18
38694:8
**Rover** 38504:3
**rubber** 38527:23
38530:15 38531:7
38632:9,9,11 38633:1
38638:12
**rule** 38503:17
**rumours** 38667:4
**rump** 38630:8 38641:1
**run** 38547:3,3 38652:3
**running** 38583:19
38638:9 38640:8,9
38648:3,5 38650:18
**rush** 38540:13 38542:4
**rushed** 38594:4
**R5** 38602:16 38645:1,4
38661:22 38671:16
**R5s** 38524:25 38596:15
38596:19 38641:22

shaped 38602:1
shared 38520:24
sharp 38525:4,15
Sharpeville 38692:12
shed 38491:25
sheer 38543:12
sheet 38581:6,8
shelter 38603:2
shield 38582:12
shock 38691:23
shocking 38690:13
shoot 38529:20
　38634:12,14
　38641:13,17
　38650:11
shooter 38596:21,24
　38597:1 38647:10,20
shooters 38497:22
　38498:5 38643:14
　38644:20 38646:5
shooters/killers
　38597:12
shooting 38497:24,25
　38505:21,22,22
　38514:11 38527:16
　38527:19,21,22,23,23
　38527:24 38528:2,10
　38528:17,25 38529:6
　38529:12,14 38530:9
　38541:10 38543:19
　38548:17 38617:4
　38628:16 38639:9,13
　38641:5,10,16
　38642:1,3,6,15
　38645:20 38646:7,9
　38646:21,22 38647:6
　38650:1,3,10,15
　38658:11,24
　38664:22 38665:19
　38668:1
shootings 38529:12
　38530:10 38598:23
　38606:25 38617:9
　38618:16,25
　38623:24 38627:18
　38629:7,23 38631:25
　38647:12 38655:13
　38655:14 38659:13
　38661:2 38663:18
　38694:15
shop 38540:14
short 38564:17
　38604:11 38650:22
　38650:22 38654:16
shortcomings 38552:21
shorter 38616:6
shortly 38528:1
　38531:22 38550:7
shot 38530:15 38531:1
　38531:6 38537:5,7
　38548:3 38590:20
　38591:1,2,4,12,24
　38594:6 38595:18
　38597:8 38600:15
　38602:16 38603:3
　38637:1 38638:11

38641:14 38642:15
　38644:4,25 38646:1
　38650:5 38658:24
　38692:8
shots 38543:19,21,23
　38543:25 38544:6,13
　38544:15,15,17,19,21
　38545:14,16,21,22
　38547:23 38548:3,9
　38549:8 38596:11
　38600:22 38642:7,10
　38643:3,11 38645:1,2
　38645:9 38646:11
shottist 38596:21
shoulder 38565:4
　38594:6
shouldn't 38673:21,22
show 38523:17
　38524:25 38531:5
　38532:4 38552:25
　38558:10 38561:19
　38597:8 38598:7
　38610:11 38628:24
　38645:5,6 38699:9
showdown 38611:15
showed 38527:9
　38536:3
showing 38524:20
　38597:4
shown 38502:22
　38505:11 38561:25
　38612:25 38670:5
shows 38590:25
　38615:7 38627:17
　38665:5 38668:22
　38676:2,12
side 38546:16 38606:23
　38607:3 38611:12,23
　38611:24 38613:2,4
　38613:13 38614:3,4
　38617:15,15
　38618:20,20
　38622:12,13
　38625:22 38629:11
　38638:10,17,20
　38641:3 38669:10,12
　38669:23,24 38670:9
sideways 38631:22
sign 38555:8
signed 38534:18
significance 38515:14
　38523:8 38573:22
significant 38543:6
　38546:23 38589:21
　38596:10
significantly 38523:5
　38594:20 38674:6
silence 38491:1,3
similar 38523:18
　38650:25
similarity 38524:13
similarly 38597:20
Simphiwe 38521:11
simple 38582:3
simpler 38618:8
simply 38503:20

38508:7 38554:12
　38559:24 38607:25
　38660:25 38680:24
　38685:10 38686:4
simul 38568:8
simultaneous 38493:5
　38493:11,14
　38604:13 38619:19
　38620:1
Sinclair 38528:20
　38533:14 38534:3
　38535:6,21 38548:18
　38558:8 38559:22
Sinclair's 38557:25
sine 38654:11
singing 38605:10
single 38600:12
　38627:2 38629:20
　38630:5 38633:17,19
　38634:3 38692:8,10
singular 38491:10
singularly 38535:13
sinister 38512:12
sit 38565:3
site 38559:2
sits 38692:11
sitting 38539:20
　38677:23 38701:17
situated 38589:10
　38695:10
situation 38532:1
　38559:18 38573:1
　38574:18,22
　38579:20 38583:1
　38589:24 38601:18
　38620:9 38648:13
　38649:17,21,22
　38651:8,9,19
　38658:16,18 38674:4
　38676:23 38677:2
　38683:11 38689:11
　38690:17,20,22
　38693:25
situational 38569:22,25
　38570:5 38578:11
　38581:18
situationally 38576:14
situations 38520:21
　38585:8 38693:20
　38694:17
six 38523:22 38658:25
skills 38688:23
slick 38610:6
slide 38613:17 38615:2
　38615:3,4
slightly 38509:24
slowly 38603:11
SLP 38701:7,9
smaller 38678:1
smart 38551:24
smartly 38575:4
smoke 38631:1
SMS 38567:7
socioeconomic 38701:2
Sokanyile 38593:7
　38595:17,18,20

soldiers 38578:25
solemnly 38685:4
solid 38647:18
solution 38493:18
　38554:4,5
somebody 38502:1
　38589:17 38598:8
　38624:10 38625:3,10
　38626:7,8
somebody's 38622:11
somewhat 38680:11
　38689:20
Sompeta 38644:21
sons 38692:7
soon 38494:13
　38555:15 38595:2
　38671:18
sorry 38493:1
　38511:10 38521:18
　38526:5,21 38530:11
　38539:5 38541:6,22
　38542:10 38546:18
　38548:22 38562:16
　38568:8 38584:20
　38585:13 38592:25
　38605:12 38609:6
　38611:25 38615:4
　38616:11,16,20
　38626:7 38627:22
　38629:1 38641:25
　38653:10,23
　38655:17 38657:8
　38666:17 38682:7
　38683:4,5 38692:20
sort 38511:25 38553:18
　38556:7 38563:1
　38569:4,5,5 38629:12
　38631:22 38640:8
　38652:11 38660:6
sorts 38501:9 38539:23
sought 38527:1
　38603:2
sources 38503:16
　38539:11
south 38492:25
　38494:20,20 38499:5
　38602:3 38625:22
　38647:17 38686:22
　38690:9 38692:4,4,18
　38696:6,16,17
　38698:25 38700:19
Soweto 38692:12
so-called 38510:14
space 38617:15
speak 38642:6
　38652:20 38695:14
speaks 38563:12
　38662:23
spears 38541:23
　38543:2
specific 38508:16
　38513:24 38515:2
　38603:24 38638:15
　38668:19 38680:22
　38687:6,6 38701:16
specifically 38514:22

38518:20 38520:2
　38524:11 38525:1
　38565:16 38668:18
　38701:8
speculate 38631:6
speculating 38623:15
　38657:5
speculation 38631:6,7
speculative 38544:6,11
　38630:23
speech 38605:3,3,5,13
　38605:16,24
spend 38700:17
spinal 38594:19,24
spirit 38500:18
spoke 38504:3
　38634:22 38664:2
spoken 38656:2
spontaneity 38572:10
　38574:2
spontaneous 38568:8
　38568:24,25 38569:3
　38569:7,15 38570:7
　38570:10 38571:20
　38572:13 38573:23
　38573:25 38574:8,9
　38575:23,24
spontaneously
　38625:13
sprayed 38512:5
spread 38623:25
spring 38637:5
squad 38604:18
　38671:20
stab 38667:25
stable 38559:18
stage 38515:24
　38517:20 38523:6
　38537:22 38538:16
　38538:19 38544:5,24
　38551:9 38570:5,14
　38573:2 38575:8
　38581:19 38592:2
　38593:17 38610:11
　38624:17 38627:23
　38630:15 38650:10
　38664:6,10 38688:18
　38691:11
stamp 38645:24
　38646:2
stance 38550:16
stand 38491:1
　38510:25 38587:2
　38599:4 38604:3
standalone 38696:13
standard 38491:13
　38617:22 38618:10
　38645:17
standards 38500:2
　38575:6 38700:1
standing 38510:14
　38529:7 38530:2,13
　38698:16
standoff 38693:25
stands 38491:10
　38637:4

| | | | | |
|---|---|---|---|---|
| **stare** 38601:20 | **stop** 38502:3 38579:13 | **subjective** 38648:24 | 38674:14 38698:16 | **switched** 38601:12 |
| **staring** 38600:12 | 38579:19 38588:24 | **submission** 38522:10 | **suggested** 38544:24 | **system** 38516:16 |
| **start** 38490:10 | 38589:12 38602:12 | 38522:11,16 38524:9 | 38611:17 38615:13 | 38520:9 38701:7,9 |
| 38497:12 38515:25 | 38608:9 38617:11 | 38525:20,21 | **suggestion** 38535:8 | **systems** 38516:19 |
| 38554:19 38572:10 | 38640:18 38652:25 | 38534:16 38552:6 | 38547:23 38571:19 | |
| 38574:21 38602:13 | 38655:18,19 38656:1 | 38553:5 38571:13 | 38655:23 38677:12 | **T** |
| 38602:14 38603:23 | 38656:4,13 38658:23 | 38573:7 38593:23 | 38677:24 | **T** 38648:5 |
| 38605:21 38606:7 | **stopped** 38570:15 | 38598:11 38608:6 | **suggests** 38501:23 | **table** 38567:24 |
| 38613:10 38619:21 | 38574:14 38577:17 | 38610:14 38611:13 | 38504:1 38542:19 | **tactical** 38604:5 |
| 38655:11 38671:25 | 38606:24 38616:13 | 38612:1 38618:24 | 38610:3 38630:9 | 38663:4,10 38664:4 |
| 38673:5 | 38642:3 38656:19 | 38619:7,9 38625:17 | 38657:4 38662:7 | 38664:16 38688:18 |
| **started** 38491:6 | **stopping** 38616:9 | 38633:4,17 38634:3 | **suit** 38508:5,6 | 38689:5,6 |
| 38538:10 38540:11 | **stops** 38497:2 38616:18 | 38634:16 38636:16 | **suitable** 38538:16,19 | **tailored** 38506:1 |
| 38540:16,17 38541:7 | 38623:13 | 38640:10,12,22 | 38667:19 | 38510:18 |
| 38577:25 38624:14 | **stored** 38534:19 | 38645:23 38646:1,16 | **sum** 38531:15 | **tailoring** 38510:21 |
| 38630:5 38642:16 | **story** 38513:5 | 38647:7 38649:5 | **summarise** 38604:12 | **take** 38494:3 38495:7,9 |
| 38650:10 | **straight** 38615:10 | 38653:22,23 38655:5 | **summary** 38504:20 | 38504:2 38505:21 |
| **starting** 38541:3 | 38638:14 | 38655:9 38656:10,15 | 38526:25 38695:6 | 38509:25 38510:23 |
| 38603:22 38606:5,21 | **strange** 38619:5 | 38666:14 38669:18 | **Sunday** 38562:10 | 38513:23 38518:10 |
| 38613:11 38624:19 | 38684:21 | **submissions** 38494:7 | **superior** 38686:9 | 38520:17 38522:24 |
| **starts** 38577:6 | **streams** 38642:14 | 38495:24 38513:23 | **supply** 38564:12 | 38528:3,8 38529:25 |
| 38605:14,16 | **strength** 38583:5 | 38529:17 38535:20 | **support** 38521:6 | 38538:14 38539:20 |
| 38616:22 38631:16 | 38673:17 | 38536:8 38595:7,15 | 38585:11,17 | 38539:21 38541:2 |
| **state** 38667:22 | **stress** 38490:8 | 38596:3 38598:20,21 | 38662:13 38663:24 | 38545:6 38548:21 |
| 38687:10 38696:7,16 | **stretches** 38684:25 | 38599:4 38603:24 | 38664:13 38673:15 | 38549:13,16 |
| 38697:8 38699:16 | 38685:1,2 | 38604:4 38621:6 | 38674:1 38687:23 | 38551:16 38552:18 |
| 38700:18 | **stretching** 38504:7 | 38643:18 38647:6 | **supported** 38701:12 | 38557:23 38558:12 |
| **stated** 38693:7 | **strictly** 38539:25 | 38651:12 38652:23 | **supports** 38595:18 | 38558:23 38568:17 |
| **statement** 38506:1 | 38668:11 | 38659:19 38662:16 | **suppose** 38542:1 | 38570:23 38574:4 |
| 38521:10,15 38526:9 | **strike** 38498:20 | 38666:10 38668:19 | 38548:23 38582:18 | 38575:24 38576:17 |
| 38541:17,21 38564:5 | 38515:14,16 | 38672:12,12 38673:1 | 38643:9 38657:20 | 38580:21 38581:18 |
| 38594:1,2 38626:12 | 38523:10 38524:2,5 | 38678:20 38684:1,9 | **supposed** 38576:22 | 38589:6 38590:8,21 |
| 38629:3 38660:4,16 | 38524:12 38525:11 | 38688:4 38691:11 | 38614:17 38619:5 | 38591:15,25 38597:9 |
| 38660:21,24 38662:6 | 38537:25 38538:1,4 | 38695:7 38697:20 | 38628:2 | 38598:4 38602:9 |
| 38668:21 38677:13 | 38542:7,11,16 | 38699:4 38700:11,18 | **suppress** 38662:3 | 38607:1 38611:13 |
| 38682:2 38686:9 | 38543:16 38579:10 | **submits** 38692:5 | **suppression** 38662:10 | 38615:18 38616:14 |
| **statements** 38503:21 | 38681:10 | **submitted** 38528:22 | **sure** 38491:8 38495:10 | 38619:9,10,12 |
| 38503:25 38526:11 | **striker** 38594:5,7,8,9 | 38652:16 38654:19 | 38500:25 38502:15 | 38621:22 38632:22 |
| 38531:1,4 38581:20 | 38594:10 38597:20 | 38698:23 | 38506:24 38538:2 | 38639:5 38641:23 |
| 38584:23 38586:17 | 38629:20 38645:11 | **subsequent** 38516:2 | 38546:20 38549:16 | 38645:18 38648:22 |
| 38586:18 38593:15 | **striking** 38600:22 | 38518:12 | 38565:4 38572:7 | 38649:15 38653:13 |
| 38595:20 38597:25 | 38602:12 38681:12 | **subsequently** 38515:18 | 38573:8,11 38576:3 | 38654:10 38655:16 |
| 38598:6,8 38621:24 | 38681:18 | 38548:19 | 38580:18 38582:19 | 38655:18,24 38656:4 |
| 38646:7 38667:22 | **strong** 38547:25 | **substance** 38659:9 | 38591:21 38593:7 | 38657:9 38658:19 |
| 38668:1,16,17 | 38589:23 | **substantial** 38524:13 | 38626:3,8 38630:22 | 38667:18,21 |
| 38669:13,16,17 | **stronger** 38507:9 | 38677:3 | 38643:15 38648:23 | 38668:10 38669:21 |
| 38686:20 | 38509:24 | **substantially** 38523:18 | 38655:24 38657:4 | 38669:22 38670:10 |
| **State's** 38692:16 | **strongly** 38602:8 | **sub-questions** 38687:7 | 38668:16 38681:4 | 38670:23,25 |
| 38695:11 | **struck** 38623:11 | **succeed** 38576:23 | **surely** 38556:24 | 38675:24 38689:10 |
| **stay** 38546:11 | 38645:16 38699:3 | 38645:13 | 38566:8 38578:25 | 38694:16 |
| **stayed** 38547:2 38579:6 | **structure** 38690:9 | **succeeding** 38645:14 | 38594:14 38633:3 | **taken** 38495:4 38502:2 |
| 38625:22 | 38700:6 | **success** 38644:8 | 38669:5 | 38512:12 38515:24 |
| **staying** 38547:4 | **structures** 38518:2,3 | **successful** 38496:22 | **surrounding** 38510:9 | 38519:1 38527:13 |
| **stems** 38566:12 | 38519:11,14,19 | **succour** 38673:22 | **suspect** 38650:16 | 38536:11 38539:3,8 |
| **steps** 38495:3,10 | **struggled** 38554:19 | **sudden** 38662:21 | **suspend** 38515:11 | 38544:3 38553:8 |
| 38502:2 38538:1,4 | **stumbles** 38641:16 | **suddenly** 38589:6 | **suspicion** 38499:22,23 | 38559:10 38560:14 |
| 38542:16 38552:19 | **stun** 38505:22 | 38640:6 38662:19 | 38499:25 38500:4,12 | 38563:2 38565:17,20 |
| 38553:8 38557:23 | 38583:12 38586:16 | **sufficient** 38499:18 | 38501:15,16 38502:1 | 38589:17 38608:8 |
| 38563:2 38564:19 | 38586:19 38587:8 | 38521:15 38573:9 | 38502:8 | 38612:19 38613:17 |
| 38608:8 38632:22 | 38589:17 38627:18 | 38646:24 38699:22 | **suspicions** 38499:19 | 38613:23 38614:19 |
| 38648:22 38699:6 | 38627:19 38628:5,15 | **sufficiently** 38596:19 | 38501:2,3,5 | 38623:4 38629:6 |
| **Steve** 38515:12 | 38630:15 38631:10 | 38673:3 | **suspiciously** 38547:21 | 38641:12 38643:22 |
| **sticking** 38505:11 | 38631:12,13 38670:6 | **suggest** 38502:1,2 | **sustain** 38521:15 | 38651:6,21 38655:19 |
| **sticks** 38524:19 | **subject** 38547:8 | 38506:25 38541:13 | 38588:4 | 38656:12 38658:14 |
| **stone** 38504:16 | 38606:9 38653:12 | 38582:14 38603:4 | **sustained** 38642:9 | 38661:13 38664:3 |
| **stones** 38667:25 | 38657:16 | 38654:17 38667:17 | 38643:15 38664:21 | 38674:23 38679:12 |

38695:7,20 38699:7
**takes** 38507:9 38508:1
38570:2 38589:16
38616:22,23,24
**talk** 38542:6,18,21
38543:2 38635:25
38676:14
**talked** 38618:8 38680:6
**talking** 38497:16
38582:1 38685:13
**tall** 38637:4 38638:7
**task** 38492:12
38499:11 38500:15
38500:17 38661:23
38692:13,18 38701:3
**tea** 38494:12 38539:21
38539:22,24
38667:18 38668:8,10
**team** 38591:20
38661:23 38701:3
**tear** 38631:1
**teargas** 38505:22
38583:4,11 38586:3
38586:16,19,25
38587:1,2,5,7,14
38588:2 38589:11
38627:18,19 38628:5
38628:15 38630:16
38630:19,25
38631:16,19 38632:2
38632:3,5,11,15,16
38632:17,19,22,24,25
38633:3,6,7,11,13
38640:9 38658:8,12
38658:14 38665:17
38670:6
**technical** 38534:25
**technically** 38535:2
**telephone** 38539:4,6
**television** 38601:12
38660:9
**tell** 38507:18 38518:1
38579:2,17 38588:22
38592:2 38593:8
38688:16
**telling** 38492:24
38494:19 38495:5
38500:16,16,23
38506:7 38508:15
38512:24
**tells** 38507:16
**temporary** 38493:20
38620:9
**tempting** 38633:18
**tend** 38628:24
**tended** 38495:14
**tends** 38628:17
**Tens** 38691:25
**terms** 38500:2 38516:9
38534:1 38665:24
38666:11 38667:11
38667:15 38671:21
38671:23,25 38698:4
**terrible** 38494:21,21
38495:4 38497:7
38676:13

**terribly** 38574:7
**terrified** 38602:23
**test** 38499:6,10
38500:10,11,25
38501:1 38502:2
38654:8,12 38684:2
**tested** 38503:22
38509:4,14 38510:2
**testified** 38528:20
38533:15,16
38541:16 38559:22
38560:1 38566:15
38591:4 38668:4
38698:15
**testifies** 38622:21
**testimony** 38527:11
38528:2,7 38529:25
38542:4 38562:2
38568:14 38579:23
38590:21
**tests** 38499:7 38500:7,9
**thank** 38490:19
38492:2,3,4 38493:8
38493:18 38513:21
38513:25 38514:2
38526:4,13 38539:16
38539:17 38540:4,19
38540:20 38541:8
38598:16 38599:17
38620:16 38624:2
38626:14 38627:4
38654:21 38672:13
38691:12,14
38701:15
**theme** 38533:1
**theoretically** 38582:19
**they'd** 38520:12
38574:6,23 38579:6
38598:1 38630:2
38661:10 38680:14
**they're** 38551:1
38555:12,15 38556:5
38574:24 38575:7,7
38589:4,4,5 38593:18
38604:11 38623:14
38627:23 38631:25
38635:12 38685:13
38686:22 38690:4
**they've** 38559:11
38601:6 38614:3
38668:4 38674:17
**thing** 38497:5,6,7
38551:19 38555:10
38556:25 38557:1
38577:1 38582:1
38587:2 38691:7
**things** 38497:8
38517:18 38538:13
38546:3 38564:13
38576:18 38589:1,3
38590:2 38592:15
38607:9 38656:3
38657:3 38658:13
38667:25 38671:7
38680:19 38695:16
**thinking** 38549:17

38602:12,13,14
38609:2 38666:18
**thinks** 38504:6
38690:24
**third** 38495:3 38515:6
38516:19 38523:8
38529:12,22
38531:20 38536:20
38587:15 38604:18
38604:23 38614:9
38679:11 38693:7
**thirdly** 38502:23
38505:14 38543:12
38678:8 38698:1
**thought** 38490:23
38495:11 38512:17
38547:21 38551:17
38586:22 38596:17
38646:18 38647:25
38652:6 38664:17
38685:8,24,25
38690:21
**thousands** 38691:25
**threat** 38543:6
38544:24 38546:6
38550:21 38569:4,11
38603:5 38635:8,12
38635:21 38636:8,11
38636:15 38640:15
38641:24
**threatened** 38666:3
**threatening** 38529:5
**threats** 38531:23
38557:18,22 38612:7
38612:9,13,18
**three** 38490:12 38515:2
38515:4 38522:19
38527:18,18,21
38529:12 38531:16
38575:13 38577:11
38604:9 38618:6
38625:8,14,17
38628:8 38643:8
38644:19,20,23
38646:15 38658:16
38700:4
**thresholds** 38516:16,18
**threw** 38661:16
**throwing** 38667:25
**Thupe** 38586:14
38587:16,21
38588:18 38591:2,3
**Thupe's** 38586:8
38587:22
**Thursday** 38601:11
38656:14
**tie** 38597:19
**times** 38603:15
**timing** 38540:8
**TK** 38649:15,16
**Tlhabane** 38515:7
38524:17,22,24
38525:1,17
**today** 38541:3 38620:5
38677:20 38693:11
38700:5

**toe** 38618:20 38666:3
**toeing** 38669:17
**token** 38530:19
38645:25
**Tokota** 38511:10
38521:18,23
38526:21,23
38530:11,18,21
38548:22 38549:2,4,7
38549:12 38563:23
38564:2,9,15
38569:14,18,19,23
38570:13,25 38571:3
38571:7 38574:19
38577:20 38578:3,7
38583:20 38584:5,6
38588:6,12,14
38605:12,18
38637:12,16 38688:5
38689:9 38692:20,25
38693:1,4,13,19
**told** 38504:4,4,5
38507:20 38510:19
38520:16 38532:10
38538:22 38539:1
38540:4 38541:25
38568:21 38570:16
38578:21 38581:23
38584:9 38586:22
38597:25 38651:13
38679:19 38680:2,4
38680:12,14
38681:25 38682:5
38691:5,6
**tolerable** 38504:8
**tomorrow** 38620:11
38695:18 38697:9
38700:2 38701:17
**tongue** 38513:17
**top** 38497:21 38653:3
38659:24 38683:13
38683:13 38688:25
38690:9
**topic** 38514:13,15
38599:25 38633:15
38637:17 38643:23
38657:6,9 38659:5,6
38659:10
**topics** 38509:23
38514:3 38598:20
38599:3,20,22,22
38659:8
**total** 38516:21
**totality** 38534:20
**touch** 38516:14
**trace** 38610:2
**track** 38634:24
**trade** 38516:8
38517:21 38518:8
38701:5
**traditional** 38701:5
**tragedy** 38608:9
38652:25 38700:20
**tragic** 38692:3
**trailer** 38614:12
**training** 38698:15

**transcribed** 38615:18
**transcript** 38691:24
**transferred** 38535:9
**translated** 38493:7
**translation** 38493:4,5
38493:11,14
38619:20 38620:1
**transparency** 38695:15
**transparently**
38663:20 38665:25
**transpired** 38524:14
38527:3 38548:20
38572:16,23
38587:17,19
**transpiring** 38521:17
**travel** 38615:22
38616:2,21 38641:23
**travelled** 38616:6
**traversed** 38509:15
**treated** 38697:25
**trial** 38509:8 38645:6
38699:25,25
**triangle** 38616:1,14,25
**trickier** 38579:15
**tricky** 38634:18
**tried** 38571:10
38576:10 38611:10
38629:1,1
**tries** 38576:23
**trigger** 38678:9
**triggered** 38675:3
**triple** 38592:25
**troops** 38574:17
**trouble** 38525:10
38555:8,9 38577:18
38582:23
**TRT** 38524:25
38525:15 38601:17
38602:15 38604:17
38608:22,24 38619:6
38628:6 38630:17
38638:1,21 38639:13
38640:4,13,25
38642:15 38670:4,20
38670:22,25
38671:14
**true** 38503:14,15
38507:12,13
38508:17 38511:8
38513:1 38547:24
38661:16 38665:6
**truly** 38600:11,19
38688:21 38690:13
38691:8
**trust** 38593:19
38620:14
**truth** 38492:24
38494:19 38495:5
38500:16,16,23
38502:15 38506:7,14
38507:16,19,20
38508:8,15 38512:24
38617:10 38663:22
38669:9
**truthful** 38513:2
**truthfulness** 38500:19

**try** 38502:14 38503:2
38518:24 38539:18
38540:7 38558:9
38571:12 38576:15
38583:17 38602:8,11
38603:15 38607:21
38611:23 38613:3
38619:14 38632:22
38633:2 38634:16
38659:2,4 38672:17
**trying** 38510:20
38601:5 38611:17,19
38667:25 38692:24
38696:19
**TT4** 38664:7
**tube** 38491:19
**Tuesday** 38663:6
38664:15
**turf** 38515:23
**turn** 38514:18 38527:4
38552:7,10 38557:8
38561:1,6 38568:9
38570:19 38572:4
38590:10 38622:7
38672:18
**turned** 38543:24
38574:10,23 38637:9
38657:3 38658:13
38663:18 38666:4
**turning** 38624:17
38666:2
**turns** 38561:9
38638:13
**Tut** 38548:13
**TV** 38609:9
**Twala** 38514:22
38597:14,17,19
**Twala's** 38510:8,9
**tweaked** 38660:5,5
**twist** 38490:21
**two** 38491:4 38499:7
38500:1,7,9 38507:15
38515:23 38517:24
38525:9,17 38530:10
38531:1 38537:6
38540:22 38541:8
38544:2 38545:13,14
38545:14,16
38547:14 38552:23
38554:17 38555:21
38559:3 38561:24
38569:23 38572:11
38575:2 38580:25
38582:10 38593:5
38595:22 38600:10
38600:11 38601:21
38601:24 38604:22
38607:9,24 38614:2
38615:2 38619:13
38621:15 38624:19
38627:21 38628:8
38629:8 38634:10
38635:12 38637:3
38643:8 38651:4
38660:18 38668:3
38672:19 38673:5

38675:14 38680:19
38687:7 38689:1
38691:22 38695:8,16
38698:7 38700:8
**twofold** 38578:12
**type** 38694:17
**types** 38693:20 38700:1
**tyres** 38667:25

_____
**U**
**ultimate** 38520:11,12
**ultimately** 38519:20
38520:18 38524:13
38531:6 38534:1
38543:15 38547:13
38616:6 38663:3
38664:14,16
38698:20
**ultimatum** 38577:6
**unable** 38499:17
38501:4 38526:24
38530:1 38549:9
**unacceptable** 38600:19
38659:9,12 38666:7
**unarmed** 38602:23
**unavailability**
38619:19,23
**uncoil** 38614:17
**uncontrolled** 38658:23
**unconvincing** 38535:13
**uncoordinated**
38623:12
**undercover** 38539:14
**undergoing** 38516:5
**undergone** 38553:3
**underlying** 38700:20
38701:2
**undermine** 38538:1,4
38673:17
**underpaid** 38520:1
**understand** 38490:14
38491:19 38493:12
38493:15,16 38494:9
38500:25 38501:10
38509:13,16,20
38512:4 38519:23
38525:19 38532:11
38552:2 38553:21
38571:10 38572:12
38573:6,21 38574:14
38574:15 38580:23
38582:2 38583:21
38586:25 38588:22
38589:10 38592:8
38593:11 38606:10
38626:4,21 38633:9
38639:17,25
38682:19 38693:18
38701:2
**understandable**
38699:5
**understanding** 38533:9
38567:13
**understands** 38598:4
**understood** 38564:6
38581:23,25

38622:23 38626:17
**undertake** 38678:12,17
38701:7
**undertaken** 38683:15
38685:22
**undertook** 38518:9
38695:2
**undesirable** 38604:15
**undifferentiated**
38602:13 38603:21
**unduly** 38579:19
**unequivocal** 38669:4
**unexplained** 38512:20
38597:2
**unfortunate** 38496:12
38511:2,2,3,4,7
38601:24
**unfortunately** 38513:4
38550:15 38592:13
38638:10 38697:22
**unfurl** 38615:10
**unidentified** 38504:10
**uniformly** 38503:8,12
38503:13
**unimaginable** 38601:8
**uninvited** 38658:16
**union** 38515:22
38516:8 38517:21
**unions** 38515:23
38518:8 38701:5
**units** 38658:17 38672:8
**unjustified** 38528:11
**unknown** 38539:6
38574:25
**unlawful** 38495:19
38496:25 38552:15
38557:13 38559:13
38590:18 38650:17
**unlawfully** 38645:19
38645:22 38650:5
**unnecessary** 38497:19
38497:20 38640:19
**unplanned** 38623:12
**unprecedented**
38523:15,16,20
38524:16,23
38525:18 38690:17
38690:20,22 38692:3
**unprotected** 38515:14
38524:2,5 38525:11
**unreasonable** 38522:10
**unrest** 38523:9,15
**unsatisfactory**
38549:24
**unshakeable** 38505:2
**untenable** 38651:8
**untested** 38503:21
**untoward** 38565:6
**untruthful** 38659:25
**unwelcome** 38592:8
**upper** 38641:14
**urge** 38520:8 38601:21
38605:2,21 38700:23
**urged** 38673:16
38698:10
**urging** 38676:7

**use** 38503:21 38511:13
38524:25 38525:14
38525:15 38531:7
38540:5 38544:2
38586:16 38589:9,16
38596:19 38615:15
38620:17 38628:1
38629:5 38630:4
38632:7 38646:3
38658:20 38676:7
38695:21,22
**useful** 38523:1
**uses** 38658:12
**utterly** 38688:21,21
**UUUU** 38627:10,12,14
**UUUU10** 38642:12,13
**UUUU10.3** 38616:11
38631:23

_____
**V**
**v** 38595:25
**vague** 38531:17
**valid** 38516:18
**value** 38535:17
**Van** 38558:20
38660:25 38662:6
**variant** 38648:1
**various** 38634:19
38661:23 38671:7
38698:16
**veering** 38589:12
**vehicle** 38556:3,13
38614:9 38624:16
38625:13
**vehicles** 38553:24
38554:6,10,13,14,15
38554:17,22,24
38555:1,2,5,7,9,12,21
38556:6,8,12,19,24
38557:6 38605:23
38608:12 38613:22
38617:15,21,23
38618:5,12,19,22
38619:3 38622:13
38623:18 38624:6
38661:21 38669:20
38670:9,18 38677:8
**velocity** 38594:20
**veracity** 38597:18
**Vermaak** 38525:2
38587:25 38608:2
38615:7 38666:3
**Vermaak's** 38613:16
38615:4
**version** 38502:21,22
38503:3 38510:3,4,11
38528:21 38534:18
38550:9 38561:12,13
38561:14 38565:18
38565:20,21
38585:21,23 38586:8
38587:14,16
38611:14 38662:22
38662:22 38663:2,9
38663:19 38664:4,14
38665:5,23 38670:1,2

38670:4 38690:15,16
**versions** 38661:15
38662:12,14
38663:16,24
**versus** 38649:9
**vertical** 38629:9,10
**vicinity** 38591:4
38593:25 38625:12
**victim** 38603:6,6,7,7,7
38603:8,8,8,9,16,18
**victims** 38603:2,17
38641:14,18
38656:23,24
38697:17 38698:2
**video** 38505:18
38511:16 38605:2,5
38605:17 38616:12
38627:15 38629:14
38631:8,9 38637:3
38638:12,18 38646:6
38661:17 38662:23
38668:22 38695:2
**videos** 38527:13
38627:10,12
38661:23 38670:5
**view** 38500:5 38521:12
38528:7 38549:18
38558:6 38568:18
38570:8,9 38583:22
38584:17 38588:6
38590:5 38632:17
38645:12 38650:4
38652:9,10 38655:22
38657:12 38684:3
**views** 38505:4
38540:10 38674:13
**vigorous** 38597:25
**violations** 38692:6
**violence** 38523:9
38524:6,21 38525:23
38531:24 38560:21
38560:24 38561:18
38565:17,20
38572:22 38581:15
38663:12 38676:1
38692:2
**violent** 38540:24
38541:10,14 38554:8
38584:18 38585:9
38640:15 38693:8
**virtual** 38504:23
38505:5
**visible** 38532:19,24
38550:6,11,14,20
38551:10,17,18,19,22
38552:1 38560:20,25
38561:3 38562:3,7
38563:1,6,7,11
38564:12 38566:20
38625:19 38629:16
38638:1,4,15,18
38639:13
**visit** 38504:24
**VISPOL** 38551:4
**visual** 38641:15
**volley** 38642:8,9,10,16

38642:17 38670:11
**volume** 38649:12,13
**Vorster** 38552:9
**Vuuren** 38558:20
**V1** 38642:12

---

**W**

**wage** 38518:2 38519:10
**wages** 38517:17
**wait** 38546:12
**waiting** 38602:25
38672:18
**walk** 38594:18,21
38637:6
**walked** 38559:8
**walking** 38589:4
38595:5 38602:14
38632:4 38637:8
**wall** 38607:8
**want** 38490:3 38494:20
38494:23,24
38500:25 38508:11
38511:4 38513:8
38515:9,17 38518:8
38519:15 38522:4,18
38527:15 38536:23
38537:12,22
38552:23 38564:9
38579:19 38604:8
38606:1 38619:18
38626:3 38627:7
38633:16 38640:11
38643:18 38644:14
38647:8 38657:7,9
38659:18 38662:15
38667:20 38668:7
38673:3,5 38678:23
38687:2 38688:8
38691:9 38701:16
**wanted** 38501:10
38516:3 38542:6
38577:8 38607:16
38626:23,25
38630:13 38644:2
38655:25 38676:2,4,9
38683:5 38689:14
**wanting** 38542:14
**wants** 38506:10
38538:21 38544:22
**war** 38515:23 38538:11
38553:4
**ward** 38545:6
**warmest** 38491:14
**warned** 38536:18
**warning** 38537:1
38543:19,21,25
38544:6,13,15,19
38545:4,21 38546:2
38574:9 38646:7
38657:12,17,17,19,22
38658:12,14
**warrant** 38527:13
38578:17 38583:4
38585:22,23 38586:9
38587:13 38588:10
38590:12,12

38593:25 38594:1,3,4
38641:15 38659:3
38664:25 38665:5,21
38665:23
**warrants** 38597:21
**wasn't** 38588:12
38622:22,23 38623:1
38624:23,24 38625:3
38625:3 38635:3
38636:9 38638:20,21
38648:24 38658:15
38660:18 38661:20
38663:20 38674:15
38681:21 38693:22
**wasn't** 38505:17,24
38509:4,4,4,10,15,17
38510:5 38511:25
38532:3,3,10
38544:23 38551:4,18
38556:15 38562:10
38565:7 38576:12
38580:24 38595:5
38610:3 38614:14
**waste** 38687:3
**wasting** 38535:3
**watch** 38691:17
**water** 38512:4,5
38627:18,19 38670:6
**way** 38491:25 38492:9
38513:3 38522:23
38523:1 38535:10
38547:12 38550:25
38570:15 38574:10
38574:25 38597:6
38602:11 38606:12
38608:5 38609:23
38617:11 38618:17
38619:3 38625:10
38633:20 38634:12
38640:7 38641:18
38648:3 38654:22
38656:14 38671:15
38696:25
**ways** 38554:9 38596:9
38697:12
**weak** 38510:17
**weaknesses** 38604:9
**weapon** 38638:10
38639:6
**weapons** 38495:23
38574:3,13,23
38635:2,4,9 38636:9
38637:25 38638:18
38639:4 38645:19,23
38653:17 38662:1
38664:23 38665:3,22
38684:15 38690:18
**wearing** 38637:5
**wedged** 38616:16,17
**week** 38494:21,21
38495:5 38498:15
38610:11 38664:13
**weight** 38508:21
38509:11 38511:1
38606:11 38609:17
38668:21 38674:25

**welcome** 38693:8
**well-attended** 38517:14
38517:17
**well-deserved**
38491:22
**well-founded** 38525:19
**went** 38495:9 38504:3
38537:1 38538:8
38559:8 38569:8
38576:9,18 38581:16
38624:15 38642:7
38648:23
**weren't** 38501:7
38508:19 38579:9
38582:25 38584:4
38588:25 38603:1
38611:17
**west** 38607:19
38611:20 38613:2
38614:3 38617:13
38630:4 38669:24
38687:21,24 38690:8
**western** 38606:3,23
38607:8 38611:12
38613:12 38622:12
38622:13
**we'd** 38512:10 38548:7
38619:21
**we'll** 38492:15,16
38514:10,21
38531:22 38532:23
38541:5,5 38550:7
38557:2 38567:2,21
38568:3 38576:19
38590:8 38593:9
38619:15 38642:21
38684:1,7
**we're** 38492:9
38497:15,15,16
38501:19 38521:21
38521:25 38522:7
38539:22 38541:2
38549:9 38579:16
38584:15,19
38614:21 38623:15
38655:12 38696:19
**we've** 38492:18
38495:14 38504:18
38521:11 38523:11
38526:1 38527:6,11
38528:23 38531:5,13
38531:14 38549:7
38555:11 38557:19
38558:20 38561:11
38561:25 38566:16
38567:18 38568:8
38570:7,19 38573:19
38579:14,19
38585:22 38586:17
38592:11,15,16
38593:23 38594:14
38596:15,23
38597:11,18
38598:13 38600:12
38600:14,16 38601:7
38601:14 38608:25

38609:24 38617:22
38618:8 38627:11
38634:14 38640:15
38644:3 38656:4
38659:21 38669:13
38685:1 38691:21
38695:6,10,25
38697:20 38699:17
**what's** 38603:25
38613:21 38654:8
38667:3 38677:15
38695:18
**where's** 38503:23
**White** 38589:3 38693:6
38694:25 38698:13
38699:2,12
**wholly** 38542:12
38547:17 38558:17
**who'd** 38641:1
**wide** 38503:15
38609:18
**widely** 38667:1
**wider** 38526:17
**widespread** 38543:13
**width** 38617:18,19
**wire** 38604:13
38612:25 38614:17
38615:2,11,21
38616:1,1,7,14,19
38618:9
**wish** 38491:8 38493:13
38499:20 38576:5
38687:10
**wished** 38668:5
**wishes** 38491:15
**wishing** 38491:9
**withheld** 38661:5
**witness** 38502:21,21,22
38502:24 38503:1,4
38506:6 38507:21,22
38508:5 38510:20,21
38513:2,2 38598:2
38611:9 38669:2
**witnessed** 38611:9
**witnesses** 38500:20,23
38535:9 38660:1,2
38668:5 38669:8
**witnessing** 38610:16
**wonder** 38685:20,23
**wondering** 38614:20
**Wonderkop** 38540:10
**wonders** 38532:3
38587:10
**wont** 38493:5
**won't** 38650:24
**word** 38509:9 38596:20
38596:24 38633:8
38680:5
**words** 38517:8
38518:21 38519:22
38533:9 38553:4,14
38556:7 38569:2
38580:1 38612:13
38688:2
**work** 38492:7 38516:10
38523:23 38542:15

38542:17 38557:21
38560:1,3,9 38575:3
38577:11 38607:20
38632:14 38659:3
38691:17 38701:2
**worked** 38663:5
**workers** 38515:19,20
38515:21 38517:23
38517:24 38518:7,10
38520:5,15,21
38521:16 38522:2,6,6
38538:2 38557:19,21
38559:8,25 38560:11
**working** 38499:1
38555:3 38556:8
38591:19 38701:3
**world** 38609:12
38691:16
**worry** 38593:9
38680:11
**wouldn't** 38632:14
38639:14 38640:25
38653:1,5 38654:2,3
38657:21 38660:21
38683:21,23
**wouldn't** 38545:23
38548:24 38576:12
38577:17 38579:7
38618:5
**wounded** 38603:9
38692:9
**wounds** 38495:4
**wrestle** 38583:15
**write** 38615:19
**writing** 38601:9
38654:19 38684:2,9
**written** 38490:5
38503:13 38599:4,8
38599:14 38673:1
38691:25
**wrong** 38495:9,18
38497:8,10 38505:20
38530:14 38537:11
38576:18 38590:5
38633:8 38656:4
38665:25 38693:9,17
**wrongdoer** 38649:18
38649:21
**wrongdoing** 38495:19
**wrongful** 38650:2,4,8
**wrongfully** 38650:13

---

**X**

**X** 38496:24 38504:14
38504:21 38506:11
38506:23 38507:8
38508:4 38512:24
38597:17
**XXX8** 38533:5 38534:4
38536:7 38553:13
**X's** 38510:10,16
38511:5,21

---

**Y**

**Yawa** 38644:23
**Yawa's** 38645:3

**5** 38490:1 38608:15
38615:1,8,23 38616:4
38616:15 38617:2,3,6
38618:14 38624:4
38679:25
**50** 38692:8
**500** 38517:25
**55** 38605:20,20
**553** 38597:15
**558** 38597:15
**59** 38561:8
**597** 38598:24

---
**6**
---

**6** 38614:2,7,9,16,17
38615:1,8,24 38616:5
38617:3,6 38623:25
38624:17,20 38629:6
38629:6 38680:1
38682:5
**6AM** 38604:6 38663:25
**60** 38604:16
**624** 38598:24
**625** 38659:11
**649** 38520:6
**650** 38520:7
**67** 38518:14 38616:5
**68** 38518:14

---
**7**
---

**7** 38541:22 38614:1
38638:6 38679:14
38684:11,21
**704** 38624:5
**708** 38609:1
**709** 38610:14
**710** 38610:14
**727** 38634:24 38638:16
**727.11** 38634:25
**733** 38640:16
**744** 38640:11
**748** 38641:8
**75** 38616:4

---
**8**
---

**8** 38684:15 38687:5
**8(1)** 38666:11
**8:28** 38605:17,17,21
**830** 38649:10,14
**89** 38524:18

---
**9**
---

**9** 38515:4,19,19
38614:2 38657:13
38691:23 38700:7
38701:17
**9mm** 38644:24 38645:2
38645:3,6
**9th** 38514:9 38527:5,6
**90** 38599:3
**95** 38658:24