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

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HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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[PROCEEDINGS ON 23 JANUARY 2013]
[09:34] CHAIRPERSON: The Commission resumes. Brigadier, you're still under oath.
BRIG MKHWANAZI: Thanks.
CHAIRPERSON: This is the ninth day, I believe, in which you're giving evidence. When you started you never thought you'd be a nine-day wonder. Mr Semenya, are you going to re-examine the nine-day wonder?
MR SEMENYA SC: Chair, perhaps that's even the appropriate stage to start. Brigadier, let's deal with your statement, exhibit SS1.
BRIG MKHWANAZI: Got it.
MR SEMENYA SC: You deal in paragraph 3 with the work you do, and can I just refresh your memory and read it out to you.
BRIG MKHWANAZI: Correct.
MR SEMENYA SC: You say, "I was initially based in division Visible Policing from December 2004 until January 2011. The split between divisions Visible Policing to form Operational Response Services in 2011 resulted that the office specialist skills development be transferred with all its functions to division Operational Response Services." Then I'd like to invite your focus here. "My responsibility under ORS was skills development facilitator to all specialised units." Do you see that?

BRIG MKHWANAZI: That's correct.
MR SEMENYA SC: Then you say your responsibility under ORS includes identifying training needs as identified through operational shortcomings.
BRIG MKHWANAZI: It's correct.
MR SEMENYA SC: Can you please break it down for us? When you go to the office in the morning, what do you do in relation to that area? What do you actually do?
BRIG MKHWANAZI: Normally what happens is that it will depend what is happening in the country. Under Visible Policing or Operational Response Services there will be maybe some incidents that are taking place in the country, like I made an example about GP shooting to the police official walking to one of the buildings, and I will receive maybe instruction to do some research to check how the incident took place, and we will be in a position to sit down and say how are we going to rectify that if there are training gaps that emanate with how members actually intervene in that circumstances.
MR SEMENYA SC: Brigadier, please break it down for us still. What do you as Brigadier Mkhwanazi do when you get to your office in relation to identification of training needs which are identified through operational shortcomings? What do you do?

BRIG MKHWANAZI: Firstly there will be a report on that issue after I've receive instruction and the research has been conducted to say what went wrong.
MR HANABE: You said what happened?
BRIG MKHWANAZI: After we have a research we have a report, then with the report then we will have to look at it then now.
MR SEMENYA SC: Who would be doing the research?
BRIG MKHWANAZI: Trainers working with me. In the office they will be actually instructed to conduct that research and the trainers in the area, or the cluster itself, there will be trainers who will do the same thing as well, get more information from them.
MR SEMENYA SC: Who would do the report that is placed on your desk?
BRIG MKHWANAZI: Normally it will be the person appointed by me if I was not involved. If I was involved, I will do the report myself.
MR SEMENYA SC: And what do you do on that report? I want to understand the depth of your experience, Brigadier.
BRIG MKHWANAZI: The report will consist of how the incident took place. The report will entail what are the gaps as far as training is concerned. Then

thereafter there will be a recommendation how to address it.
MR SEMENYA SC: And what do you do as Brigadier Mkhwanazi with regard to that recommendation, whatever it is?
BRIG MKHWANAZI: Once I got that recommendation and it's given to the divisional commissioner, and the divisional commissioner agrees with that recommendation, then I will actually now start talking with division Human Resource Development, if it needs their intervention.
MR SEMENYA SC: On the hypothesis that it requires human resources?
BRIG MKHWANAZI: If it requires Human Resource Development.
MR SEMENYA SC: Then what do you do?
BRIG MKHWANAZI: Then we will have to come up –
MR SEMENYA SC: Let's not use plurals.
BRIG MKHWANAZI: I will submit to division HRD.
MR SEMENYA SC: This may be a matter relating to Special Task Force as a unit.
BRIG MKHWANAZI: Correct.
MR SEMENYA SC: Or to Public Order

Policing as a unit.
BRIG MKHWANAZI: Correct.
MR SEMENYA SC: Or any of the other units.
BRIG MKHWANAZI: Any of the other units.
MR SEMENYA SC: What specialised knowledge do you have say on Special Task Force as a unit? What specialised knowledge do you as a person have?
BRIG MKHWANAZI: All training intervention of Special Task Force, my job was to coordinate them, meaning they will identify their training needs, it will be given to me, and I will be the person who consolidates and submits to division HRD. In other words, I will know all of their training intervention, when they start, when they finish, and it will be my job to check if everything is followed properly into that.
MR SEMENYA SC: Please help us unpack this intervention. You have used it quite several times earlier. What coordination do you do?
BRIG MKHWANAZI: If we talk, if I'm talking about training intervention, I'm talking about the programmes in different phases in, under, maybe it can be under Special Task Force, those are the training interventions, the programmes they undergo, because they are within certain periods. That's what I'm talking about.

MR SEMENYA SC: In regard to training, do you participate in formulating the content of the training?
BRIG MKHWANAZI: Most of the time if we have to develop a new programme, obviously I would be part of it if I'm invited into it. I would say yes, most of the time I actually form part of the team that actually puts the programme together.
MR SEMENYA SC: No, Brigadier, it is your experience I'm interested in, not we. Don't use the "we." In relation to subject formulation say of the training of STF, what do you do there?
BRIG MKHWANAZI: In the Special Task Force training, or in actual, the true sense is each unit has got its own trainers. As a specialised, or skills development facilitator it's my task to make sure each and every unit has got its own trainers. We develop trainers. So my job within this part is to make sure that these trainers are available to present training, but what role do I play in that position? My job is to make sure the trainers are presenting and they are following the programmes as they are outlined on the book.
MR SEMENYA SC: Do you teach?
BRIG MKHWANAZI: Special Task Force no, I don't teach.
MR SEMENYA SC: Do you participate in

compiling the syllabus for that training?
BRIG MKHWANAZI: Yes, I do.
MR SEMENYA SC: Do you do any research in relation to the subject content of that training?
BRIG MKHWANAZI: Yes, I got involved, yes.
MR SEMENYA SC: You see, I'm trying to help establish for the Commission what expertise you hold, if any. Do you do research?
BRIG MKHWANAZI: Yes.
MR SEMENYA SC: You have written on training of STF?
BRIG MKHWANAZI: Ja, I'm getting confused, but I said in compiling of programmes, yes, but in presentation they've got their own trainers that present.
MR SEMENYA SC: So the trainers themselves would do the research and they would know the subject on which they train, correct?
BRIG MKHWANAZI: Yes, they will definitely, because – okay, after a programme has been developed, of which we don't do it every time, Counsellor, it's done in a certain period. It can take three years before we do reviewal. If it comes to that position, because of the circumstances that require that, we will

definitely develop. After developing, we'll be, train the trainer to make sure trainers know what to do.
MR SEMENYA SC: You remember Mr Budlender went with you through various academic writings in relation to Public Order Policing?
BRIG MKHWANAZI: Correct.
MR SEMENYA SC: And I recall that you could not identify any of the material that he referred to you, right?
BRIG MKHWANAZI: Correct.
MR SEMENYA SC: And your evidence was that you don't recall any of the books that you yourself have read in relation to Public Order Policing. Remember that?
BRIG MKHWANAZI: Yes.
MR SEMENYA SC: Now I'm trying to understand the depth of your expertise then. In Public Order Policing, as you go to the office day-to-day, do you do any research in that area?
BRIG MKHWANAZI: We have done it, or I have done it many a times, yes – but it depends, it's not to say every day. It depends which programme that needs to be developed. If it's day-to-day it means I, and I do research. It's not like that, Counsellor. It depends what needs to be looked at, looking to the situation in the

country, then if we have to go outside the country, we'll go outside the country. That we can do; it's not a problem.

MR SEMENYA SC: Have you published anything on Public Order Policing?

BRIG MKHWANAZI: No.

MR SEMENYA SC: Have you testified before as an expert on Public Order Policing?

BRIG MKHWANAZI: You mean before?

MR SEMENYA SC: Before you were called an expert in this Commission –

BRIG MKHWANAZI: No.

MR SEMENYA SC: - have you ever testified as an expert in –

BRIG MKHWANAZI: No.

MR SEMENYA SC: - Public Order Policing?

BRIG MKHWANAZI: No.

MR SEMENYA SC: You see, your evidence was introduced on a very limited –

CHAIRPERSON: I don't think he's answered that question yet, before you explain. I must say, it sounds to me as if you're bordering on cross-examining your own witness, but we won't take that any further at this stage; we will have to later. But let him answer your question first before you put the next point.

MR SEMENYA SC: Have you ever given evidence as an expert?

[09:54] BRIG MKHWANAZI: As an expert, this is my first time, however with the Commission it is the second time.

MR SEMENYA SC: Have you ever been referred to as an expert in Public Order Policing, Brigadier?

BRIG MKHWANAZI: No.

MR SEMENYA SC: Okay. When your evidence was introduced, it was common cause between us and the evidence leaders that you're only going to be telling us what training gets given to various units of the police service, remember that?

BRIG MKHWANAZI: That's correct.

MR SEMENYA SC: And it was the Chair who said maybe you shouldn't be too modest, you should tell us more beyond to that and that's explains your Monday evidence, right?

BRIG MKHWANAZI: That's correct.

MR SEMENYA SC: Now, onto a different matter, Mr Ntsebeza dealt with the video footage where you said somebody told you about it, do you recall that?

BRIG MKHWANAZI: It's correct.

MR SEMENYA SC: Do you recall the name of

the individual who told you?

BRIG MKHWANAZI: Ja, it's Warrant Officer Maphefo, surname is Masenya, and he's well-known as Big Show, he is a Public Order video operator.

MR SEMENYA SC: You also testified about the negotiation course that gets done under Public Order Policing, recall that?

BRIG MKHWANAZI: That's correct.

MR SEMENYA SC: Can you please explain a little further what negotiation course is offered?

BRIG MKHWANAZI: The course was provided to Public Order Policing for negotiation and it was outsourced, it was not presented within, as police. It was outsourced by a private sector. The course was taking five days and it was presented by Spoelstra, S-P – Professor, actually it's Professor Spoelstra, S-P-O-E-L-S-T-R-A, and it has been stopped now and we rely to the presentation that is normally being presented to the members under the Regulation of Gathering Act.

MR SEMENYA SC: Is that all you wanted to say on that subject?

BRIG MKHWANAZI: That's correct. Maybe I can just go back a little bit on the video footage itself, that I met Masenya at AD Building, where he indicated that he submitted all video footage which actually he managed to

capture during the incident in Marikana. That's all.

MR SEMENYA SC: Those are all the questions we have in re-examination, Chair.

CHAIRPERSON: Any questions you want to ask.

COMMISSIONER HEMRAJ: Can I just ask something? Brigadier, this outsourced negotiation course, when did it stop being offered to the member of Public Order Policing?

BRIG MKHWANAZI: It's quite a long time, Commissioner. If I can remember it can be around 2004, 2005, it's quite a long time.

COMMISSIONER HEMRAJ: The current negotiations in the Public Order Policing unit would have been trained by the professor or in-house training?

BRIG MKHWANAZI: Yes, as I've said, it was outsourced. It was actually given by the professor, we only have to arrange and make sure members are available and they will be trained by them on the other side. Everything was done by them, not within the police, itself.

COMMISSIONER HEMRAJ: What I wanted to know, Brigadier, was that the current negotiators in Public Order Policing, are they trained by the professor or have they had in-house training?

CHAIRPERSON: What happened to the people

who were trained by Professor Spoelstra? Are they still in the service?

BRIG MKHWANAZI: Chairperson, due to promotions, transfers and everything, some people have left, but I think there are a few that are still around that are still assisting, but some have definitely moved out.

CHAIRPERSON: And those who were trained by Professor Spoelstra, do any of them presently participate in the in-house training which is given? It other words, do they pass on what they learnt from Professor Spoelstra to the present generation of trainees?

BRIG MKHWANAZI: I will be definitely wrong to say yes on that question. We haven't had them utilised as trainers, because normally it should be Train the Trainer before they can train others. Yes, to share the knowledge, it is done, but not as trainers to the others, because they must train the trainer, themselves.

CHAIRPERSON: Thank you, Brigadier. Unless there's someone else who wishes to ask any further supplementary questions, in which case you have to apply to me for permission to do so. It looks as if no one can think of any information that you haven't given us already. Thank you very much for participating in the Commission and giving us your evidence. You are excused.

BRIG MKHWANAZI: Thank you.

[NO FURTHER QUESTIONS – WITNESS EXCUSED]

CHAIRPERSON: Mr Semenya, I understand that the next witness will be lead by Mr Tip. You will come back later to lead other witnesses. This was one of your witnesses, but we're now going to have some evidence being led by Mr Tip on behalf of NUM, is that correct?

MR SEMENYA SC: That's correct, Chair.

CHAIRPERSON: Mr Tip, you told us yesterday you had your batsman in the pavilion with his pads on and everything, is he still here.

MR TIP SC: He's still here, Mr Chair –

CHAIRPERSON: I think it's best to see to it that he's not run out earlier on.

MR TIP SC: I was about to say that I'm pleased that he didn't come in as night watchman. I call Mr Erick Gcilitshana . I will spell that for the benefit of the transcribers. Erick is E-R-I-C-K, Gcilitshana is G-C-I-L-I-T-S-H-A-N-A.

CHAIRPERSON: Mr Tip, my colleague, Advocate Hemraj says the gremlins have eaten up her copy of the statement and my copy is in Cape Town, is it possible to give us two extra copies? You may not be able to do it immediately, but if you can do it at some stage, I'd appreciate it.

MR TIP SC: Mr Chair, I can do that immediately, and indeed if I may take a few moments before the witness is sworn in just to deal with a few matters relating to housekeeping and documentation and the like in the hope that that will facilitate the smooth presentation of the evidence?

In the first place, we have here a signed original of the statement, together with two copies, which we've prepared for the Commission, and if I may hand those up?

CHAIRPERSON: Thank you. Do you want the statement to be given an exhibit number?

MR TIP SC: Yes, indeed, Mr Chair.

CHAIRPERSON: And I take it we move on to the WW sequence. This is now X.

MS PILLAY: Chair, it will be XX1.

CHAIRPERSON: Thank you.

MR TIP SC: Then secondly, Mr Chair, Commissioners, at the time that we drew up the statement and lodged it towards the end of November last year, we thought that it would assist the Commission for us to compile a bundle of the documents that are referred to in the statement –

CHAIRPERSON: XX2?

MR TIP SC: XX2. I did discuss this with

Ms Pillay this morning and we thought that it might be most convenient simply to give the entire bundle that exhibit number and then individual items can be XX2.1 and .2 and so forth.

CHAIRPERSON: Yes, that seems a sensible way of proceeding.

MR TIP SC: I appreciate that, Mr Chair. Now I was reminded by Ms Pillay that there should also be on record a source for every document, because all of these are drawn from material that has already been distributed. We will prepare a comprehensive schedule of those cross-references, which we will provide first thing tomorrow morning.

In the course of the presentation of Mr Gcilitshana's evidence, there will be a small handful of additional documents and we would think that it might be helpful for those to be handed up at the same time and for them to be given separate exhibit numbers. May I firstly check that the commissioners all have that bundle, the bundle that was filed, which is now XX2.

CHAIRPERSON: The same gremlin that attacked Commissioner Hemraj's copy of the statement by Mr Gcilitshana was active here as well, so –

MR TIP SC: Then in anticipation of the possibility of gremlins, we prepared three extra copies of

Page 3757

that as well. There they are.
CHAIRPERSON: Thank you. I must say I'm very grateful to Ms Pillay for her efforts, but I'm not sure that she is paid a special fee to act as usher and I think that possibly parties should – whatever the correct verb is – usher their own documents, if you want have to be handed up.
MR TIP SC: We will certainly make available an usher –
CHAIRPERSON: Sorry, so XX2 then is the bundle which is preceded by an index, because they're all stapled together as one?
MR TIP SC: All bound together as one. I'm afraid that we will organise a bound copy in this way, because it's more – it's easier for the Commission to use. So we will replace that in the course of the day, Sir. Then in respect of the remaining documents, our usher went so far as Ms Pillay, if we could ask her to be gracious enough just to transmit them? There are essentially five documents. The first two are communiqués from Lonmin. The one is dated 20 June 2012. There are two dockets also as well as – I'm sorry, it's the first communiqué is 20 July, I think I said June, it's July.
CHAIRPERSON: The first document is an internal communiqué marked – of Lonmin marked 147?

Page 3758

MR TIP SC: Yes, is that exhibit 20 July?
CHAIRPERSON: Yes, whatever it is. Is that Exhibit XX3?
MR TIP SC: XX3, Mr Chair.
CHAIRPERSON: Hang on, internal communiqué –
COMMISSIONER HEMRAJ: And for the benefit of the parties, do these documents appear somewhere or are they entirely new and copies are to be made available?
CHAIRPERSON: They look as if they come from some Lonmin bundle of some sort, because they're Lonmin documents. I don't know whether either Mr Tip or Mr Burger can help us on that?
MR BURGER SC: It will be very helpful if those documents are simply distributed to us also in hard copy.
MR TIP SC: Yes, Mr Chair, hardcopies have been provided to Ms Pillay, so those are available, all of them.
CHAIRPERSON: Ja, internal communiqué dated what?
MR TIP SC: The second one is –
CHAIRPERSON: No wait, I'll just put page 147, I think that's – it obviously comes from some collection of documents that Lonmin provided, I would

Page 3759

suspect.
MR TIP SC: It does.
CHAIRPERSON: Oh okay, that is Exhibit XX3, right?
MR TIP SC: Yes. Then the one with the page number 149, will be XX4.
CHAIRPERSON: Ja.
MR TIP SC: There are then two crime dockets, SAPS crime dockets –
CHAIRPERSON: XX5 will be a crime docket.
MR TIP SC: Crime dockets, perhaps it could be case number 6708-2012.
CHAIRPERSON: Sorry, Case?
MR TIP SC: Case 67.
CHAIRPERSON: 67?
MR TIP SC: 08-2012.
CHAIRPERSON: Yes.
MR TIP SC: And the second crime docket –
CHAIRPERSON: Which is the XX6?
MR TIP SC: XX6, and that is CAS number 6808-2012. Mr Chair, the Commission –
CHAIRPERSON: I haven't got those yet, so let me get them first. They're being sorted out to be handed to me.
MR BUDLENDER: Chair, while that's being

Page 3760

done, could we just have the numbers of the XX's again, because we have –
CHAIRPERSON: I'll read them out. XX1 is the statement of the witness. XX2 is the bundle of documents, consolidated as it were. XX3 is an internal Lonmin communiqué which is headed 147. It's headed – the heading is Management Condemns Illegal Work Stoppages, and it's dated 20 July. The XX4 is another internal communiqué, this time dated 31 July, heading "Demands for separate wage negotiations." XX5 is crime docket CAS67/08/2012, and XX6 is crime docket CAS68/08/2012. Is there any other document? Because we've been handed one document which is –
[10:14] MR TIP SC: It's a three-page document, Mr Chair. What that is, is an enlarged copy of certain pages in the bundle because those pages are so small that it makes it very difficult to read.
CHAIRPERSON: No, we don't have to give that a separate exhibit number. It looks like pages 22, 23 and 24 of XX2. Is that correct?
MR TIP SC: That is correct, Mr Chair, and those are then just the –
CHAIRPERSON: I must confess, during the, what for want of a better term one can call a recess, I battled with that particular document.

MR TIP SC: Yes.
CHAIRPERSON: And I'm grateful to have an enlarged one, enlargement. Is that your housekeeping –
MR TIP SC: Those are all the additional documents. Then perhaps if I may also just say one or two things by way of introduction –
CHAIRPERSON: Before you start saying one or two things, Mr Burger indicated that though some of these documents originally emanate from Lonmin, he would appreciate hard copies, it would be obviously easier for him to follow.
MR BURGER SC: Thank you, Chair. We were handed hard copies by Ms Pillay, so thank you so much.
MR TIP SC: Then Mr Chair, just by way of introduction and then Mr Gcilitshana will take the floor, the statement that we've prepared is in part, it takes the form of a presentation in that it does contain certain matters that are hearsay in respect of Mr Gcilitshana's knowledge. They are there in order to give a full picture of the relevant history. We believe that, or our submission is that aspects of that hearsay material are very unlikely to be placed in dispute. They are sourced to court documents, to affidavits. If there are disputes about them, then we'll assess the nature of the dispute.
CHAIRPERSON: Well, you will remember

that Mr Madlanga drew our attention to a case which was held in a commission of this kind; the ordinary rules of evidence don't strictly apply.
MR TIP SC: Yes.
CHAIRPERSON: And it is possible in certain circumstances to have regard to hearsay. Obviously one must in doing so bear in mind the problems that relate to hearsay evidence because it can't be checked, and so forth, but generally speaking we proceed on the basis that rules of evidence apply, but it's not the end of the matter and there would be appropriate circumstances in which they could be relaxed. That what you're saying would apply here, particularly of course in the case of matters which aren't in dispute. You know, even the matters which are in dispute in which it might be appropriate to relax the rules, but we'll cross that bridge when we get there, if we have to.
MR TIP SC: Indeed, Mr Chair. The one aspect that is fairly briefly alluded to in the statement of Mr Gcilitshana concerns the events at the NUM office on the 11th of August 2012. Clearly that's a matter of controversy and we will present two witnesses who will deal directly with that. So again to the extent that it's traversed here, it's for the sake of completeness and also as a peg on which to hand in the crime documents and to

report on certain investigations that NUM have undertaken in regard to the allegations that there were two persons who were killed there.
CHAIRPERSON: One point that arises in respect of the events of the 11th was, you will recall that we were shown certain marks on the windows of the NUM offices at the inspection in loco and the person who was going to give evidence before the Commission, who was subsequently murdered, gave a narrative which he was going to presumably confirm under oath later, which was recorded, and certain other persons present who were either AMCU members, or alternatively were non-unionised protesters, if one can call them that, they also pointed out spots and also made statements which were going to be confirmed. Presumably they will confirm them, but the main NUM narrative can't be confirmed by the person who gave it for the reasons I've mentioned. Now I haven't seen a transcript of that. I don't know whether one has been prepared, but I think that's something that if it hasn't been done, should be taken in hand immediately, and if it has been transcribed then copies of it must be made available to us, because that's obviously very important in relation to the allegations as to what happened or didn't happen on the 11th of August.
Mr Tip, it may also be necessary in order to

refresh our memories for video clips to be shown of that part of the inspection in loco because a mere transcript of what was said won't adequately, or may not – I don't want to make a definite statement at this stage, it's something to be considered – may not adequately convey what exactly was pointed out to us, which presumably would have some, would be evidential material which might well be important.
MR TIP SC: Mr Chair, we are, with respect, in full agreement with that observation. We have indeed taken the first steps towards that, to locate where the video that was made at the time is and we will see to it that those portions are played, that a transcript is prepared. It won't be necessary to do that for the purpose of Mr Gcilitshana's evidence, but certainly for those two witnesses who will testify on the events. The final preliminary observation, Mr Chair, is that the statement of Mr Gcilitshana will have a few supplementary observations which have flowed from further and fuller consultations. In respect of each of those I will identify the paragraph so that there can be a coupling of the further material.
CHAIRPERSON: Thank you.
MR TIP SC: That then, if he could be called.
CHAIRPERSON: Mr Gcilitshana, would you please stand up? Are you prepared to take the oath or do

you wish to affirm?
MR GCILITSHANA: I'm prepared.
CHAIRPERSON: You're prepared to take the oath. Will you swear that the evidence you will give before this Commission will be the truth, the whole truth, and nothing but the truth? Would you raise you right hand and say, "I swear, so help me God?"
ERICK GCILITSHANA: I swear, help me God.
CHAIRPERSON: Yes, thank you, you may be seated. Mr Tip.
MR TIP SC: Mr Gcilitshana, you have before you the statement that you have made, that has been presented to the Commission.
MR GCILITSHANA: Yes.
MR TIP SC: And you have carefully read and considered that statement?
MR GCILITSHANA: Yes, Commissioner.
MR TIP SC: Now that you are under oath, do you confirm the correctness of it?
MR GCILITSHANA: I do confirm.
MR TIP SC: Thank you. Then let us begin at paragraph 1. Would you just read that onto the record?
MR GCILITSHANA: "I am the national secretary of the National Union of Mineworkers, NUM, and an employee of Lonmin Platinum Limited. I am currently the

union national secretary for Health and Safety. I'm also its chief negotiator in Lonmin."
MR TIP SC: Yes. As an addition to paragraph 1, I would like you to place before the Commission just a few short details about your experience within the mining industry. When did you first become involved in the mines?
MR GCILITSHANA: On the 23rd December 1985.
MR TIP SC: Is it correct that you began work at Western Platinum as an underground drain cleaner?
MR GCILITSHANA: Yes, it's correct.
CHAIRPERSON: Western Platinum, I understand was the then name of either the whole of the Lonmin operation or part of it. Is that correct?
MR GCILITSHANA: Yes, it's correct.
MR TIP SC: And in the following year, after a year of service you were promoted. Is that correct?
MR GCILITSHANA: It's correct.
MR TIP SC: To what post?
MR GCILITSHANA: I was promoted to a loco driver.
MR TIP SC: Also underground?
MR GCILITSHANA: Correct.

MR TIP SC: When did you first join NUM?
MR GCILITSHANA: If my memory serves me well, it was 1987.
MR TIP SC: Is it correct, Mr Gcilitshana, that you developed a particular interest in matters of health and safety?
MR GCILITSHANA: That's correct, Commissioner.
MR TIP SC: And you became the regional secretary for that portfolio in 1994?
MR GCILITSHANA: That's correct, Commissioner.
MR TIP SC: Subsequently you became the national secretary for the same portfolio?
MR GCILITSHANA: That's correct, Commissioner.
MR TIP SC: And when was that?
MR GCILITSHANA: It was in 2000.
MR TIP SC: Those were full-time posts within the union structure?
MR GCILITSHANA: I started to be based in head office in 2001. All other posts were part-time.
MR TIP SC: You nevertheless remained a paid employee of Lonmin and that, is it correct, is in accordance with an agreement between Lonmin and NUM?

MR GCILITSHANA: That's correct, Commissioner.
MR TIP SC: When did you become involved in negotiations at Lonmin?
MR GCILITSHANA: I started in 2005, but I was helped working with Jeffrey Magita, who was the chief negotiator by then.
MR TIP SC: You yourself became the chief negotiator?
MR GCILITSHANA: I started in 2007 to be the chief negotiator.
MR TIP SC: And that is a role that you continued to play?
MR GCILITSHANA: That's correct, Commissioner.
MR TIP SC: I want to move to paragraph 4 of your statement, and this is under the heading of the context of the Impala Platinum Mine events. Now before we deal with that narrative, it is correct, is it, that you yourself are not involved in negotiations at Impala?
MR GCILITSHANA: That's correct, Commissioner.
MR TIP SC: What is the name of the person who is the negotiator there on behalf of NUM?
MR GCILITSHANA: It's Eddie Majadibodu.

MR TIP SC: Perhaps we should just spell that. M-A-J-A-D-I-B-O-D-U. Is that correct?
MR GCILITSHANA: Yes, that's correct, Commissioner.
MR TIP SC: In the normal course of your work would you maintain regular contact with your colleague at Impala?
MR GCILITSHANA: At times we do share experiences.
MR TIP SC: In respect of the events at Impala during the period towards the latter part of 2011 and early in 2012, were you kept informed essentially of what took place there?
MR GCILITSHANA: Yes, I do have information. It may not be as full as I indicated that we used to just share. I'm not particularly involved.
MR TIP SC: Now I'm going to move to paragraph 5 and subject to your direction, Mr Chair, it may be the swiftest manner is if I read onto the record paragraphs of this kind, and Mr Gcilitshana, if you'll just follow in your statement and I'll ask you to confirm that these are correct.
CHAIRPERSON: Yes, I think that's the appropriate way to do it.
MR TIP SC: Yes.

CHAIRPERSON: Possibly it won't be necessary to read everything, but if you can read, because we have it before us, but you can read enough for those in the auditorium to be able to follow if they wish to do so.
MR TIP SC: Yes, I'll endeavour to be selective and that the relevant portions are highlighted. "In October 2006 NUM and the union UASA, United Association of South Africa, concluded a recognition agreement with Impala Platinum. NUM had as its members the majority of employees employed at Impala and NUM and Impala had also entered into a collective agreement in terms of the Labour Relations Act." Mr Chair, the Commission will have seen that from time to time there are footnotes in the narrative and those –
CHAIRPERSON: I don't think you need read the footnotes unless they're important. We can see them and I don't think people in the auditorium would be interested in them.
[10:34] MR TIP SC: We will highlight only those matters that are of particular value. Then of consequence is paragraph 6, Mr Gcilitshana, "On 7 October 2011 NUM and Impala entered into a collective agreement, regulating wages and other conditions of employment. That agreement was valid for two years and it's expiring on 30 June 2013. Notwithstanding this agreement, on or about 18 December

2011, Impala unilaterally granted an additional wage increase effective from January 2012 to one category of its workers, being the miners. No similar increase was afforded to any other categories of workers in respect of then the wage agreement applied." Now as an addition to what is recorded in your statement, Mr Gcilitshana, I'd like to place before the Commission a little more detail about the place of miners. We've given the miners here a capital M to distinguish them from other general mineworkers. Is that correct?
MR GCILITSHANA: Yes.
MR TIP SC: How important a person in the mining production process is a Miner, the category Miner?
MR GCILITSHANA: It is very much important, because the Miner is the person who have to do the early examination to ensure that the area is safe before other workers can get in, one. Secondly, the Miner is a person who should be pointing the holes, where the hole drillers have to drill and after the shift, have to blast and clear the shift.
MR TIP SC: Would the Miner be the competent person – the competent official as defined in the relevant Act?
MR GCILITSHANA: That's correct.
MR TIP SC: And would it also be so that

he would be the person who holds the blasting certificate?
MR GCILITSHANA: That's correct.
MR TIP SC: Put shortly, can a mining team operate underground without a Miner being in charge?
MR GCILITSHANA: It is not allowed, unless there's a competent person that is appointed at that point in time to be a supervisor.
MR TIP SC: Now in your experience, are Miners, competent Miners sought after by the mining houses?
MR GCILITSHANA: Can you repeat your question?
MR TIP SC: From the point of view of the mining companies, would competent, able, skilled Miners be a valuable resource as an employee? Would they want to have competent Miners on their staff?
MR GCILITSHANA: It's very much important.
MR TIP SC: And to your knowledge, does poaching amongst different mining companies ever take place?
MR GCILITSHANA: That's correct.
MR TIP SC: It would be important, would it not, for a company like Impala not to run the risk of losing its miners?
MR GCILITSHANA: Yes.

MR TIP SC: Do you recall what the increase was that Impala granted its Miners? And by that I mean the increase over and above the one that had been recorded in the collective agreement that was concluded in October 2011?

MR GCILITSHANA: Yes, I recall, it was 18%.

MR TIP SC: And that was over and above the increase, do you recall, what NUM had agreed as the increase for Miners in that collective agreement?

MR GCILITSHANA: - says well, Miners were at around 9% and the lower categories were at 10%.

MR TIP SC: Was NUM concerned about this unilateral increase?

CHAIRPERSON: The agreement which was concluded in October 2011, to expire on the 30th of June 2013, provided apparently for increase of between 9 and 10% for different categories of Miners, is that right? Then the subsequent increase you say was 18%. Is that 18% over and above the already increased amount or is it 18 instead of the nine and the 10?

MR TIP SC: Over and above.

CHAIRPERSON: Thank you.

MR TIP SC: Nothing turns on this, but perhaps just for the record, might the increase in that

collective agreement have been 8.5% specifically for the Miners, do you recall?

MR GCILITSHANA: Yes, that could be correct.

MR TIP SC: Now going back to the question of whether NUM was concerned about this unilateral increase, Mr Gcilitshana, can you tell the Commission about that?

MR GCILITSHANA: Yes, it was concerned.

MR TIP SC: Can you give us some of the reasons that gave rise to its concern?

MR GCILITSHANA: One, it was outside the collective bargaining agreement. And that was undermining the collective agreement that have been signed on the 7th of October. The third point, it was putting the Union at spot that have been negotiating the agreement, the collective agreement. Why I say so, because the company indicated that their coffers have been exhausted.

MR TIP SC: If I can just interrupt you there, just to be clear, was that indication given in the course of the negotiations that led to the conclusion of the collective agreement in October?

MR GCILITSHANA: Can you repeat the question again?

MR TIP SC: Yes, certainly. You've just

said to the Commission that there was a concern because Impala had indicated that its coffers were exhausted?

MR GCILITSHANA: Yes.

MR TIP SC: Now I just want to establish when that indication was and I was asking whether that indication had been given by Impala during the negotiations that it had with NUM, leading up to the collective agreement of October 2011?

MR GCILITSHANA: That's correct.

MR TIP SC: Why NUM was prepared to agree to the increase of between nine and 10% if they thought that the company couldn't afford more?

MR GCILITSHANA: That's correct, Commissioner.

MR TIP SC: When it turned out they could afford more, because they were prepared to pay more to the Miners a matter of two months later. I take it NUM felt outraged?

MR GCILITSHANA: Can you repeat your question again?

MR TIP SC: When it turned out the company could afford to pay more, because about two months later they agreed to pay this extra increase to the Miners, I take it NUM was outraged - outraged, very angry?

MR GCILITSHANA: Correct.

MR TIP SC: And Mr Gcilitshana, let us look at the other aspect of this. There is NUM as an organisation representing the employees at Impala. How did the employees feel about the fact that there was this additional increase after NUM had concluded the agreement for a certain percentage?

CHAIRPERSON: I take it you mean the employees other than the Miners?

MR TIP SC: Correct so, Mr Chair, thank you, yes, the employees other than the Miners?

MR GCILITSHANA: They were angry.

MR TIP SC: And how did that anger translate into their attitude to NUM as their representative?

MR GCILITSHANA: They felt that NUM didn't represent them well or the company is not honest with NUM, because a month and a half after having signed agreement and having reported to the workers that the company is saying that their coffers had been exhausted, then later they come back and give 18%, that really raised anger with the workers.

MR TIP SC: And as it happens, there may have been another factor, how many branches of NUM –

CHAIRPERSON: Before you get on to the other factors?

MR TIP SC: Yes, Chair.
CHAIRPERSON: You said the Miners were – I mean the non-miner workers, the workers who weren't Miners, didn't get the extra increase. So they were angry with the company and with NUM. I can understand why they were angry with the company. Why were they angry with NUM? You did shortly, but can you elaborate on that?
MR GCILITSHANA: Because NUM have been in majority and if the NUM that had been confidently giving feedbacks to the employees that the company is saying that they don't have money any more, later on the company is providing 18%, these workers also will be angry to NUM, because they thought that NUM was lying to them about the company.
MR TIP SC: How many branches of NUM were there at Impala?
MR GCILITSHANA: If I may recall, it's about three.
MR TIP SC: There were at least what is called the North branch and the South branch?
MR GCILITSHANA: That's correct and the third one will be services branch.
MR TIP SC: The main branches concerned with mining and Miners would have been the North and South branches?

MR GCILITSHANA: That's correct.
MR TIP SC: Now as it happened at the time, what positions were held by the NUM chairmen at those two branches?
MR GCILITSHANA: He was a Miner.
MR TIP SC: At both of them?
MR GCILITSHANA: Yes, both South and North the Chairpersons were Miners also.
MR TIP SC: Did that give rise to any reaction by the general employees, the general membership of NUM?
MR GCILITSHANA: Yes. The employees felt that certain individuals in NUM have benefited in the increase.
MR TIP SC: And what did – what was their feeling about it? Did it give rise to discontent about the NUM Chairmen and the structures?
MR GCILITSHANA: Correct.
MR TIP SC: Now I want to move passed the point of the Miners to paragraph 8 of your statement, Mr Gcilitshana. We've dealt with the position of the Miners. We're now turning to a different category and I'll just read this paragraph onto the record. "As at January 2012 the RDOs at Impala had become aggrieved by the company's decision", namely to give an increase only to the Miners,

correct?
MR GCILITSHANA: That's correct.
[10:54] MR TIP SC: "They too, that is the RDOs, fell within the bargaining unit and the two year wage agreement applied as much to the Miners as to them. They embarked on an unprotected strike in support of the demand for a R9 000 basic wage." Now is it correct, Mr Gcilitshana?
MR GCILITSHANA: Yes, that's correct.
MR TIP SC: Now was that demand and the decision to embark on an unprotected strike action in any way processed through NUM structures?
MR GCILITSHANA: No, it was not involved.
MR TIP SC: In paragraph 9, "The strike by the RDOs was characterised by high levels of violence and intimidation, much of which was directed at NUM and its members." Correct?
MR GCILITSHANA: That's correct.
MR TIP SC: We'll come to one of the communiqués shortly. The point was reached, to your knowledge, Mr Gcilitshana, that the NUM branch offices at Impala were forcibly closed. Did you hear of that?
MR GCILITSHANA: Yes, they were closed. We were told that the office had been closed.
MR TIP SC: And did the branch leadership

have to be removed from the office for fear of their safety?
MR GCILITSHANA: That's correct, Commissioner.
MR TIP SC: Is it also so that over 60 people sustained injuries during these incidents and that four people at Impala lost their lives?
MR GCILITSHANA: That's information that we got.
MR TIP SC: Paragraph 10, "In response to the unprotected strike Impala had by 2nd of February of last year, 2012, dismissed about 17 200 employees. The majority of those dismissed employees were, however, later reinstated." Mr Chair, these are instances where there are footnotes of communiqués; we're not going to spend time to turn to them.
CHAIRPERSON: - about the fact that page 3, which is a news release, is dated the 20th of February. It appears not to be incomplete, because it says "more" at the bottom, and then the next one, page 4, is actually from almost three weeks earlier. It's dated the 2nd of February and from that it appears that the, initially something like 4 200 employees were dismissed - we don't know in what circumstances – and then a further 13 000 were dismissed on the 1st of February. It may not be necessary for us to go

1 into the detail of that, but all I'm pointing out to you is
2 there is an element of incompleteness which may or may not
3 be relevant.
4 MR TIP SC: Mr Chair, perhaps I might
5 just point out that at page 4 the communiqué does towards
6 the end of the principal paragraph say, "This brings the
7 total number of employees dismissed to in the region of
8 17 000 –
9 CHAIRPERSON: No, no, that's correct.
10 That's where I got my figure of 4 200 from. There were 4
11 200 dismissed earlier apparently for, we don't know why, it
12 may not be relevant, and then a further 13 000 were
13 dismissed at the end of the 1st of February, bringing the
14 total to 17 200 by that date that you have mentioned, 2nd
15 of February. But anyway, it may be that the detail is
16 irrelevant, so, unless I'm unnecessarily raising it.
17 MR TIP SC: Let me establish from Mr
18 Gcilitshana, can you cast some light on the sequence of the
19 dismissals at Impala?
20 MR GCILITSHANA: The first batch of
21 dismissals were the RDOs as who were the leaders of the
22 strike, who initiated the strike. I think that might be
23 why you have got two different figures, and the second
24 batch was the total workforce. That's how I understand it.
25 MR TIP SC: Should we gather from that

1 that the entire workforce went out in due course in support
2 of the strike which had been led by the RDOs initially?
3 MR GCILITSHANA: That's correct.
4 CHAIRPERSON: Even the miners?
5 MR GCILITSHANA: Not the miners. That is
6 people who are from part 329 that we normally call people
7 who are unskilled labourers normally. That's language that
8 is used in the mine. But miners also won't be able to go
9 to work because of the level of intimidation and others.
10 CHAIRPERSON: The reason I asked the
11 question, because you said the whole workforce was
12 dismissed. Did that include the miners who got the
13 increase, who apparently weren't striking but were being
14 intimidated, or certainly unable to work because the people
15 who would go with them down into the mine hadn't turned up
16 to work, but what exactly happened? Perhaps you could sort
17 this out after the tea adjournment?
18 MR TIP SC: Yes.
19 CHAIRPERSON: We will take the tea
20 adjournment at this stage.
21 [COMMISSION ADJOURNS COMMISSION RESUMES]
22 [11:24] CHAIRPERSON: The Commission resumes. Mr
23 Gcilitshana, you are still under oath. Mr Tip, have you
24 sorted out that problem we were discussing before the
25 adjournment?

1 MR TIP SC: Yes, thank you, Mr Chair. Mr
2 Gcilitshana, the position concerning the miners in relation
3 to the strike action at Impala and the resultant
4 dismissals, have you clarified that?
5 MR GCILITSHANA: Correct, Commissioner.
6 MR TIP SC: And what is the position?
7 MR GCILITSHANA: Also the miners were
8 part of those who were dismissed. As I indicated that the
9 first batch of people to be dismissed were RDOs. After the
10 dismissal of RDOs, RDOs started to stop, intimidate and
11 stop everybody from going to work. The company had by then
12 issued a memo that if people didn't return to work, they
13 will be dismissed. Then the miners could not go to work
14 because of being intimidated and stopped by RDOs.
15 Therefore they were part of those who were dismissed.
16 MR TIP SC: Right, thank you, Mr
17 Gcilitshana. Then let us proceed with paragraph 11, and
18 I'll just highlight this. Is it so that in the course of
19 April 2012 Impala made a further unilateral decision to
20 adjust salaries and that this time it extended increases of
21 various kinds to the entire workforce that was subject to
22 the collective agreement?
23 MR GCILITSHANA: It's correct.
24 MR TIP SC: And if necessary, you could
25 give further details of that. Again there is some material

1 in the footnotes; we won't trouble the Commission at this
2 stage with further detail of that kind. Mr Gcilitshana –
3 CHAIRPERSON: Let me just make one point.
4 I think you do refer in one of the footnotes to the bundle,
5 communication from Impala Platinum Communications
6 Department, or rather two communications, 5 and 6,
7 management brief number 11.12, which sets out effectively
8 what they were now getting in terms of the adjustment to
9 which you've referred, and that might be helpful moving
10 forward. Perhaps you can deal with that shortly. That's
11 pages 5 and 6 I think, of the bundle.
12 MR TIP SC: Yes. Thank you, Mr Chair.
13 Perhaps I should just have highlighted that. That's in
14 footnote 9 of the statement.
15 CHAIRPERSON: Perhaps you could refer to
16 the document, because that's the figures they were getting,
17 or were going to get after the adjustments.
18 MR TIP SC: Yes. Perhaps we - Mr
19 Gcilitshana, you've got that document before you, page 5
20 and 6 of the bundle.
21 MR GCILITSHANA: That's correct,
22 Commissioner.
23 MR TIP SC: And looking at the general
24 increases for the various categories, can you say anything
25 about how those would have been received by the general

employees who were affected by them?

MR GCILITSHANA: Increase was going to be given to each employee by category, all the categories, and then the RDOs will be upgraded. That will be from category 4, number 4, if I'm not mistaken at, up to category 7.

MR TIP SC: Incidentally, Mr Gcilitshana, the grading of rock drill operators has been a matter of particular concern to them. Is that correct? At Impala and Lonmin as well.

MR GCILITSHANA: That's correct.

MR TIP SC: And we will deal with aspects of the position at Lonmin later when we come to your negotiations.

CHAIRPERSON: The thing I was interested in was on page 5 where the effective, the unilateral salary adjustments were set out, details in respect of rock drill operators at Rustenburg, category 3 to 8, the employees at Rustenburg, and miners, union men and officials, but as far as the rock drill operators, that's the point that interests me, they were all promoted from A4 to B1. There was a further market adjustment. The wage increase date was brought forward to the 1st of July 2012 to the 22nd of April 2012, and the accommodation increase was also effective from the 22nd of April as opposed to the 1st of July, and what it amounted to therefore by way of a

discussion was that the guaranteed pay for a rock drill operator covered by the illustration was R9 991, the 6 540 being the rate, the basic rate, I take it, 545 was the holiday leave allowance, 1 850 was now the living out allowance – that was increased from 1 500. There was also a retirement contribution, the 1 056. So the total guaranteed pay was 9 991, as it had previously been 7 643. So it's an increase of over R2 000, in fact over R2 300. This was at Impala in respect of rock drill operators, by way of illustration. I think that that's the important point I would think, for what follows.

MR TIP SC: Yes. Mr Chair, I'm indebted to you. I follow the point. Let me just canvass one aspect that flows from that. Mr Gcilitshana, if you turn to page 5 of the bundle, that is the management brief to which the chairman has just referred, you will see under the first heading that management there records, it says, "Management is pleased to announce the following unilateral salary adjustments," so it's clear that that was the basis of it. Correct?

MR GCILITSHANA: That's correct.

MR TIP SC: And the chairman has pointed to the substantial increase in the guaranteed pay of rock drill operators in particular, as in those figures that are set out in the first table.

MR GCILITSHANA: That's correct.

MR TIP SC: Now those related to matters that had been included in the collective agreement that was binding for two years and which had been signed in October 2011.

MR GCILITSHANA: Can you repeat the question?

MR TIP SC: Yes, the wages and other benefits payable to rock drill operators, is it correct that all of those payments would have been governed by the collective agreement that was signed up in October 2011 at Impala?

MR GCILITSHANA: That's correct.

MR TIP SC: Therefore am I correct in concluding in essence the following, that after the unilateral increase to the miners, there was an unprotected strike led by RDOs in support of a demand for 9 000 basic?

MR GCILITSHANA: Yes.

MR TIP SC: After the unprotected strike, and after the dismissals and the reinstatements that had occurred, then the RDOs in fact received very substantial increases, despite the fact that those had been governed by the collective agreement. Is that correct?

MR GCILITSHANA: That's correct.

MR TIP SC: NUM was not part of the

negotiations that led to this unilateral increase?

MR GCILITSHANA: As far as I know NUM did not.

MR TIP SC: Now that sort of event in a labour relations environment where collective bargaining is critical, how did that event affect the attitude of employees and NUM members to the union?

MR GCILITSHANA: That put, had to put union on a bad side in terms of workers having trust to the leaders because they felt that leaders were not honest as they were giving feedbacks.

MR TIP SC: Again what one has here in respect of a number of categories in addition to miners is that Impala finds a good deal of extra money to pay employees, which it had told NUM during negotiations it did not have.

MR GCILITSHANA: That's correct, because it indicates that the company was not negotiating in good faith.

CHAIRPERSON: Mr Tip, sorry to interrupt you. You might like to refer to the first sentence of the last paragraph on page 6, which is relevant in this regard.

MR TIP SC: Thank you, Mr Chair. Mr Gcilitshana, perhaps you could turn to page 6 of the bundle. You've just told the Commission that workers

distrust NUM leadership in circumstances such as this because the NUM leadership has said this is all that the company can afford at the time of the conclusion of agreements. Do you see the first sentence of the last paragraph on page 6?

MR GCILITSHANA: That's, yes.

MR TIP SC: I'm going to read that and the following sentence onto the record and then you can comment. Quote, "These adjustments are made in good faith, based on what the company can afford at this stage. It is imperative that we return to full production to ensure sustainability of the organisation." Now perhaps I can just, the sentences speak for themselves and they were sent out to all Impala employees. Would I be correct to understand that what the company was really saying from the perspective of NUM negotiators, is that it has now found more money in order to pay substantial increases, and clearly its objective is to keep its production running, and for that objective it now has additional money? Is that how it would have been understood?

MR GCILITSHANA: Yes, that's correct. Especially when you look on the second sentence, because it does talk direct to the production.

MR TIP SC: Now you're going to deal later, as I've already said, in some detail with NUM's

approach to negotiations, but I just want to highlight one aspect of it in the context of the developments at Impala, and you've just mentioned it a minute or so ago. When NUM negotiates, does it report regularly to its members on the progress of the negotiations and what the company is saying that it can afford in respect of their demands?

MR GCILITSHANA: That's correct.

MR TIP SC: And is that an important part of the mandate obtaining process that NUM has when it seeks the attitude of its members to propose settlements?

MR GCILITSHANA: That's correct.

MR TIP SC: And Mr Gcilitshana, you've already said in respect of what happened with the particular category of miners that when they got their unilateral increase, there was a good deal of dissatisfaction, and if I understood, implicitly suspicion about NUM's approach to negotiations?

MR GCILITSHANA: That's correct.

MR TIP SC: Did the same thing now present itself in respect of all the other employees at Impala in the light of this unilateral increase?

MR GCILITSHANA: That's correct.

MR TIP SC: I'm going to leave the position at Impala for the time being, Mr Gcilitshana, and to go on to the background of events at Karee Mine, and

that is at paragraph 12 of your statement, and I'll read it onto the record. "On or about 12 May 2011 NUM suspended its branch chairperson and secretary at the Karee Mine, arising out of their non-compliance with the NUM constitution relating to branch elections. The Karee branch committee was also dissolved."

CHAIRPERSON: I think those in the auditorium might like to know that the branch chairperson and the secretary who were suspended, were Steve Khululekile and Daniel Mongwaketsi.

[11:44] MR HANABE: - and other name, Commission?

CHAIRPERSON: That's Daniel Mongwaketsi.

MR TIP SC: I'm indebted to you, Mr Chairperson. Mr Gcilitshana, let me just take you to the annexures in the bundle, and you will see those referred to in footnote 13 and at page 7 of the bundle, there is a letter from NUM to Lonmin management and that was probably on the 12th of May 2011, because it proposes a meeting for the 13th of May 2011, but you will see that that is from NUM regional secretary, and in the second paragraph of that letter you will see that it records that the branch has been dissolved. Do you see that?

MR GCILITSHANA: Correct.

MR TIP SC: And in the same paragraph it says that Steve Khululekile and Daniel Mongwaketsi were

suspended from all union activities.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: Now, is it correct that proper conduct of elections within NUM is a matter of great importance to it?

MR GCILITSHANA: Yes, it's very much important.

MR TIP SC: And that the proper election and functioning of branch committees is likewise important?

MR GCILITSHANA: That's correct.

MR TIP SC: Generally speaking, when NUM members wish to interact with the union, at what level do they go for assistance?

MR GCILITSHANA: It depends on the problem where it comes from. If it's at the workplace, you have got your section steward that will attend to the problem. If it's at shaft level – if you have a problem at the workplace, you've got a shaft committee that attends. Then from this, if there are problems with the shaft committee, it goes up to the branch committee. Then if there are problems that could not be resolved at the shaft committee level it goes to the branch committee. From the branch committee, if that could not be resolved, that's when it goes to the regional level and so on.

MR TIP SC: Now, Mr Gcilitshana, I'm not

Page 3793

1 going to ask you to detail the particular difficulties
2 relating to those elections, or generally how elections
3 take place. If necessary, is it correct that you could
4 provide those details?
5 MR GCILITSHANA: That's correct.
6 MR TIP SC: And is it correct also that
7 when problems do surface in respect of the functioning of a
8 branch committee, then it is for the regional structure to
9 take action?
10 MR GCILITSHANA: Yes, as I indicated, it
11 is the line of protocol.
12 MR TIP SC: What happened at Lonmin on
13 the dissolution of that branch committee and the suspension
14 of the two gentlemen, Steve Khululekile and Daniel
15 Mongwaketsi?
16 MR GCILITSHANA: That resulted to an un-
17 protested strike on the 18th of May.
18 MR TIP SC: What was the demand? Why did
19 that strike take place?
20 MR GCILITSHANA: The demand was
21 reinstatement of the suspended leadership, in particular
22 Steven Khululekile.
23 MR TIP SC: Again the details of that are
24 something that you can speak about, but they're not
25 immediately sufficiently relevant for – to take the time of

Page 3794

1 Commission. How widespread was the participation in the
2 strike?
3 MR GCILITSHANA: The strike was only in
4 the Karee operation. Lonmin have got about four
5 operations. You've got your Karee, Eastern Platinum,
6 Western Platinum and your LPD, which is your LPD division.
7 Therefore the strike was only at Karee where Steven and his
8 team was working.
9 MR TIP SC: And in paragraph 14, you deal
10 with one of the consequences of the strike, namely that
11 approximately 11 000 Karee employees were dismissed by
12 Lonmin.
13 MR GCILITSHANA: That's correct.
14 MR TIP SC: NUM and Lonmin negotiated?
15 MR GCILITSHANA: We did engage Lonmin on
16 a re-engagement of those workers.
17 MR TIP SC: You've recorded the details
18 in paragraph 14 of your statement from where it appears
19 that almost all of the employees were reinstated,
20 approximately 2 000 were not reinstated, and those included
21 the former NUM branch leadership members.
22 MR GCILITSHANA: That's correct.
23 MR TIP SC: If you turn to paragraph 15,
24 you set out there that Lonmin attached a condition to the
25 reinstatement process.

Page 3795

1 MR GCILITSHANA: That's correct. They
2 said they are not going to reinstate, but re-employ those
3 workers.
4 MR TIP SC: Thank you, yes. And in
5 respect of union membership, did Lonmin take up a position?
6 MR GCILITSHANA: Lonmin refused to
7 reinstate the membership of those workers who were re-
8 employed.
9 MR TIP SC: The result of that was that
10 there had to be fresh recruitment efforts, is that correct,
11 by the various unions in order to obtain members from
12 scratch?
13 MR GCILITSHANA: That's correct.
14 MR TIP SC: You will see in paragraph 16
15 of your statement that this process resulted in a very
16 different position at Karee, is that correct, in terms of
17 NUM membership?
18 MR GCILITSHANA: Yes, correct.
19 MR TIP SC: And by December 2011, AMCU
20 had recruited sufficient employees to persuade Lonmin to
21 enter into a Limited Organisational Rights Agreement at
22 Karee?
23 MR GCILITSHANA: That's the information
24 we got, yes.
25 MR TIP SC: And AMCU also obtained access

Page 3796

1 and stop order facilities?
2 MR GCILITSHANA: Yes.
3 MR TIP SC: And further agreements were
4 entered into with AMCU. Those are detailed in paragraph
5 18. By May 2012, AMCU's membership had risen sufficiently
6 for it to establish a branch at Karee mine, is that
7 correct?
8 MR GCILITSHANA: That's what I was
9 informed, yes.
10 CHAIRPERSON: I don't want to interrupt
11 you, but the document to which you refer – or the witness
12 refers in para 13 of the statement – sorry, footnote 13,
13 which is a footnote to paragraph 18 of the statement, is I
14 think an exhibit which was handed in when Mr Mathunjwa was
15 giving evidence, and I'm not sure, but I think the one
16 referred to in footnote 12 maybe as well. I don't expect
17 you to give me the answer now, but it will be convenient if
18 at some stage we can be told whether these documents are
19 already before us as exhibits and what the exhibit numbers
20 are, so as to make reference thereto easier later on.
21 MR TIP SC: We'll see to that cross-
22 referencing. Mr Chair, it is indeed so that they were put
23 in, and we didn't want to duplicate. Mr Gcilitshana, I
24 just want to move on to paragraph 19 where you note that
25 AMCU had achieved majority membership at Karee, but that

NUM remained the majority union at Lonmin's Marikana operations as a whole.

MR GCILITSHANA: That's correct.

MR TIP SC: And that NUM also, as a result, remained the sole collective bargaining agent in respect of all the employees at the relevant bargaining unit, being Lonmin as whole, is that correct?

MR GCILITSHANA: That's correct, in Marikana operations.

MR TIP SC: In paragraph 20, Mr Gcilitshana, you deal with the fact that were numerous incidents of violence at Karee mine over this period.

MR GCILITSHANA: That's correct.

MR TIP SC: There were assaults and one person died of severe head injuries and we know that, from other statements before the Commission, that that was a person who was reporting for work.

MR GCILITSHANA: That's correct.

MR TIP SC: And in May 2012, the keys to the NUM offices at Karee mine were forcibly confiscated by some persons from the position of NUM's branch leadership.

MR GCILITSHANA: That's correct, same attempt on the 7th of January 2013.

MR TIP SC: I want to turn now to a matter that deals with NUM's approach to negotiations, and

all of that is described in respect of the 2011 negotiations that were conducted between NUM and Lonmin. And I want you to begin at paragraph 21 of your statement. Are you at that place?

MR GCILITSHANA: Correct.

MR TIP SC: Again, if you don't mind, I'll just read the particularly relevant aspects on to the record and then ask you for any additional comment. NUM's approach to wage negotiations generally is one that has as its priority an inclusive process in terms of which mandates are sourced from its membership before the commencement of the negotiation process?

MR GCILITSHANA: That's correct.

MR TIP SC: And perhaps I should just underline the word before – before you even begin negotiations, you obtain mandates?

MR GCILITSHANA: That's correct.

MR TIP SC: And you go on to say that where appropriate, report back meetings are also held with the membership.

MR GCILITSHANA: That's correct, also for new mandate.

MR TIP SC: And before any final decision is taken, a mass meeting of workers is arranged in order to obtain final mandates?

MR GCILITSHANA: That's correct.

MR TIP SC: In paragraph 22, you describe what took place at Lonmin's division during 2011, and you begin by pointing out that with the exception of Karee mine, Shop Stewards' Councils were convened at every branch.

MR GCILITSHANA: That's correct.

MR TIP SC: And those councils interacts with their constituencies and during that process branch representatives receive workers' demands?

MR GCILITSHANA: That's correct.

MR TIP SC: And we understand from that, and I want to just ensure that it's correct, that it is the workers who generate the demands and not the union that tells the workers what its demands should be.

MR GCILITSHANA: That's correct.

[12:04] MR TIP SC: Going on with the process, paragraph 23, after the convening of the Shop Stewards' Council each NUM branch then convenes separate mass meetings at their respective divisions, again with the exception of Karee mine during 2011, during which members and other employees who attended were informed of the demands presented to the branch leadership at Shop Stewards Council?

MR GCILITSHANA: That's correct.

MR TIP SC: What does a meeting like that, where demands that had been gathered in a preliminary way, are presented to all members?

MR GCILITSHANA: To refine - that you are in line with the workers of the – if there is anything that you have missed out, they can be able to [inaudible] or if there's something that have not been added, that it is not important, that could be taken out of the list.

MR TIP SC: In other words, is it correct that the demands that have been gathered at a preliminary stage by the Shop Stewards Council are presented at mass meetings for debate and amendment?

MR GCILITSHANA: That's correct.

MR TIP SC: Then the next phase is set out in paragraph 24 of your statement, and we're at the stage of October 2011 now. This involves firstly that the executives of each of NUM's branches meet to discuss the demands?

MR GCILITSHANA: That's correct.

MR TIP SC: That 12 o'clock on the same day a central Steward's Council is convened at which the full branch committee and the unions, shop stewards meet to discuss and go through the demands?

MR GCILITSHANA: That's correct.

MR TIP SC: And at 4 o'clock in the

afternoon of the same day, a central mass meeting of workers was called in order to present a final list of the demands received from workers before they go to the employer?

MR GCILITSHANA: That's correct.

MR TIP SC: As the chief negotiator, were you in attendance at these events and steps?

MR GCILITSHANA: This process was led by the branches of Lonmin. I was not practically involved.

MR TIP SC: Is that because certain preliminary demands have to be processed and debate have to take place before they reach your level?

MR GCILITSHANA: That's correct.

MR TIP SC: Now the meeting, the central mass meeting you describe in paragraph 24 also as one that was being held at Wonderkop Stadium and attended by several thousand employees, including employees from Karee Mine?

MR GCILITSHANA: That's correct, Karee have been included, simply because NUM had members in Karee, regardless of that they were in minority in Karee, but members, there was interaction with the members and we would request the company to send buses and they would do so.

MR TIP SC: And of course at that stage NUM was still the central bargaining agent?

MR GCILITSHANA: That's correct.

MR TIP SC: Now Mr Gcilitshana, I just want to take a step sideways as an annotation, Mr Chair, to paragraph 25. We want to deal with this aspect of negotiations quite fully, so that there is a proper appreciation of what collective bargaining entails and how it should be done. In paragraph 25 you deal with the entry into the picture of a person called NUM's Mining House Coordinator, but before we deal with that, I want to take you to an annual event in March of every year, where, is it correct that NUM holds a bargaining conference?

MR GCILITSHANA: It's correct, in particular on the year of the negotiation.

MR TIP SC: That is a NUM internal conference, is it?

MR GCILITSHANA: That's correct.

MR TIP SC: What is its principal purpose?

MR GCILITSHANA: The purpose is to look on the agreements that have been signed in the previous agreements, one. Two, look on the market in terms of inflation, what is the inflation. And then compare the achievement that we have made with other sectors of economy. Then it also looks at what could be the possible percentage that could be looked at in terms of the demands.

MR TIP SC: Has it obtained input from an organisation called Naledi?

MR GCILITSHANA: Yes, we normally call them to do presentation as people who are experts in research and they will do that.

MR TIP SC: Naledi is a research institute linked with COSATU, is that right?

MR GCILITSHANA: That's correct.

MR TIP SC: Is it also so that the annual bargaining conference is attended by all regional structures as well as a large number of branch committees?

MR GCILITSHANA: We normally arrange it for about 300 to 400 delegates that will constitute members from the region and from the branch committee.

MR TIP SC: And what I gather from what you've already said to the Commission, you look at matters like the situation of the market?

MR GCILITSHANA: Correct.

MR TIP SC: Generally how collective agreements have performed in the course of the previous year?

MR GCILITSHANA: That's correct.

MR TIP SC: You identify where negotiations and demands could have been better formulated?

MR GCILITSHANA: That's correct.

MR TIP SC: Do you also examine the annual reports of the relevant employers?

MR GCILITSHANA: Yes, as part of the presentation we normally get from Naledi.

MR TIP SC: In short, would it be fair to say that what NUM does at a conference of that kind, is to ensure that it doesn't make unreasonable demands of the employers?

MR GCILITSHANA: That's correct.

MR TIP SC: Why is it concerned not to make unreasonable demands?

MR GCILITSHANA: Because as indicated that we look at the market and its performance. Then the reason is that if you raise expectation that can also fire back to you, because if you haven't done your research properly of where – how inflation is performing, you may end up demanding something that may not be achievable, therefore hasn't raised the expectation of the workers that may fire back to you as a Union.

MR TIP SC: If there are unreasonable expectations, does that affect the credibility of the negotiation process that NUM is conducting?

MR GCILITSHANA: Can you repeat the question again?

MR TIP SC: There are such unreasonable

expectations that are created amongst workers. Does that have the potential of affecting the credibility of NUM's negotiation process?

MR GCILITSHANA: That's correct.

MR TIP SC: Just going back to your statement at paragraph 25, and I'll try to abbreviate, you've introduced the NUM's Mining House Coordinator. He submits worker demands to the head office and are those demands then again subjected to a process of examination within NUM's head office?

MR GCILITSHANA: Yes, that's correct, the demands will be researched and the senior researcher would look on the demands, also the general secretary would look on the demands.

MR TIP SC: And you've put it in these words in that paragraph that the purpose is primarily to establish consistency with the Union's policies and to evaluate the demands against industry and market norms and practices?

MR GCILITSHANA: Yes, that's correct.

MR TIP SC: And only if the demands satisfy those criteria can NUM in fact clear them for submission to the employer as a demand, as a demand?

MR GCILITSHANA: Yes, that's correct.

MR TIP SC: In this case, the demands

were approved and on 17 October 2011 they were submitted to Lonmin?

MR GCILITSHANA: That's correct.

MR TIP SC: I'm looking now at paragraph 26 of your statement. And is it so that RDOs received particular attention in these demands?

MR GCILITSHANA: Yes, correct, they have been looked after.

MR TIP SC: What was the demand?

MR GCILITSHANA: The demand was to move them from category 4 to category 7.

MR TIP SC: Would a shift of that kind have significant remuneration implications?

MR GCILITSHANA: Yes, the intention you ask to improve their salaries, taking into account the kind of work that they are doing.

MR TIP SC: And that shift would be –

CHAIRPERSON: Sorry, can I ask quickly. You described the process that preceded the formulation of these demands. This particular demand in relation of the RDOs, was it in accordance with what they had asked for?

MR GCILITSHANA: It was a mandate obtained from the mass meeting.

MR TIP SC: Mr Chair, we'll return to that aspect in a moment with a subsequent meeting. Now you

say – you've detailed in paragraph 27 and 28 of your statement certainly preliminary matters you've identified the teams. I would like to move on to paragraph 30 of your statement. And you will see there that what you have done, Mr Gcilitshana, is to set out a number of the meetings that took place between NUM negotiators, including yourself, and Lonmin?

MR GCILITSHANA: That's correct.

MR TIP SC: The dates of those meetings are set out and they span the period 18 October 2011 through to 22 November 2011?

MR GCILITSHANA: Yes.

MR TIP SC: And minutes are kept of these negotiations, they're in the bundle, correct?

MR GCILITSHANA: Correct.

MR TIP SC: I don't want to take the time of the Commission by working through each set of discussions at each meeting, but would it be so that there would be a process of gave and take in respect of demands and offers as these meetings took place?

[12:24] MR GCILITSHANA: That's correct.

MR TIP SC: What I do want to ask you is particularly in relation to the position of RDOs. Did their position enjoy attention in the course of these negotiation meetings?

MR GCILITSHANA: Yes, we did as NUM to put our case on the importance of the role of the RDOs. That's why we had a demand of category 7.

MR TIP SC: Were you able to succeed with that particular demand?

MR GCILITSHANA: We could not succeed.

MR TIP SC: Did you, however, succeed in obtaining a percentage increase at least in respect of the wages of RDOs?

MR GCILITSHANA: That's correct.

MR TIP SC: Now after this process of – well, in the course of the process of these meetings, did you from time to time have report-back meetings at which the state of the negotiations were conveyed to the membership of NUM?

MR GCILITSHANA: Yes, we did have. If one can also go to the, back to the RDOs issue, on the reason not, for the reason not being, for the reason not for the RDOs be upgraded to category 7, company indicated that they are busy with the programme of developing youth in the surrounding communities who can be able to be prepared to take the job of the RDOs, because we have been taking RDO role as a scarce skill, as a -

MR TIP SC: These negotiations were conducted with a facilitator being present. Is that

correct?
MR GCILITSHANA: That's correct.
MR TIP SC: That is a normal arrangement, is it, with NUM's approach to negotiations?
MR GCILITSHANA: That's – yes.
MR TIP SC: Now again in respect of the RDO situation, I just want to turn to a particular aspect of the final negotiating meeting, the sixth meeting held on 22 November 2011, and if I may ask you to turn to paragraph 30.6 of your statement. At this stage, was it correct that you hadn't succeeded in obtaining a change of the categories of RDOs from 4 to 7?
MR GCILITSHANA: Yes.
MR TIP SC: Were you still concerned about their position, the RDOs?
MR GCILITSHANA: Yes.
MR TIP SC: And if I can record what you said in this paragraph, "NUM informed the company that if the position of the category 4 employees, namely the RDOs, was not addressed, they would become a time-bomb," as you put it. "NUM proposed that their basic wage be increased by 10% for both years and that their grade should be rolled up to category 7, as previously demanded."
MR GCILITSHANA: That's correct.
MR TIP SC: Now what was your thinking at

that time, why was it that you used a phrase like "time-bomb" in what you said to the company at that concluding negotiating meeting?
MR GCILITSHANA: I was advising the company on the scarce skills of the demand by the RDOs, taking into account that - if I can take you back - in 2009 when the company was restructuring or retrenching, some of the RDOs wanted to take voluntarily separation packages. They were not allowed. The reason was that they're doing the scarce skills, therefore they can't take a separation package, therefore that remained with the RDOs as we collected that month. That remained on the minds of the RDOs that their job is a scarce skill.
CHAIRPERSON: I didn't hear that word. He said their jobs were a?
MR TIP SC: Scarce skills.
CHAIRPERSON: Scarce skill?
MR TIP SC: Is that right, Mr Gcilitshana?
MR GCILITSHANA: Yes, scarce skills.
MR TIP SC: And generally were you in particular, and NUM generally, concerned that there were particular tensions either existing or potential in respect of the position of RDOs at Lonmin?
MR GCILITSHANA: No.

MR TIP SC: The final mandate from the workers is something that you obtained at paragraph 31, that you discuss in paragraph 31. Are you there?
MR GCILITSHANA: Yes.
MR TIP SC: That was a meeting that was held at Wonderkop in late November 2011 with approximately 5 000 workers in attendance, you say, many of them being RDOs.
MR GCILITSHANA: That's correct.
MR TIP SC: Was that meeting held subsequent to the conclusion of the sixth and final negotiation meeting?
MR GCILITSHANA: That's correct.
MR TIP SC: And you presented the position in respect of where you stood with demands and offers?
MR GCILITSHANA: Leadership of the branch. I was not involved on that day, but the leadership of the branch, of branches did because if I'm not available comrades will select a spokesperson who'll do the report-back.
MR TIP SC: Is what takes place at such a meeting that the current, the status of the demands and the offers from the company are discussed and workers decide whether or not they should give the union a mandate to

accept them?
MR GCILITSHANA: That's correct.
MR TIP SC: And was such a mandate in fact given by the employees, the workers, the members, at that mass meeting?
MR GCILITSHANA: That what was agreed that the leadership can sign the agreement.
MR TIP SC: And in accordance with that then the wage agreement was in fact signed on 2 December 2011, valid for two years?
MR GCILITSHANA: Yes.
MR TIP SC: Details are given in that paragraph, and the agreement itself is part of the bundle. It's not necessary to go into that detail.
CHAIRPERSON: May I just interpose at this stage just to get clarity on what they achieved for the RDOs in comparison with what they sought to get. You say in paragraph 30.6 that, you pointed out the position of the RDOs could become a time-bomb if not addressed, and you proposed a 10% increase for both years of the two-year agreement, and that their grades be rolled up to category 7. Now what you in fact achieved was an increase of 10% for the first year and 9% for the second. Is that correct? Because that's what you achieved in respect of people in category 4.

MR GCILITSHANA: Yes, correct.
CHAIRPERSON: So for the second year you didn't get them the 10% you had sought; you only got them 9% and you didn't get them up to category 7, they stayed in category 4. That's right?
MR GCILITSHANA: Yes, that's correct.
CHAIRPERSON: And as far as the housing allowance was concerned, that of course applied to other workers as well, other employees as well, but you got an increase from 1 700 a month to 1 850 a month. Is that right?
MR GCILITSHANA: Yes.
CHAIRPERSON: This is about 8% -
MR GCILITSHANA: But with the intention –
CHAIRPERSON: - about 8%, with a further increase to 1 950 the following year, which is an increase of course of, the annual increase is of course round about 5%.
MR GCILITSHANA: Correct.
CHAIRPERSON: Is that correct?
MR GCILITSHANA: Yes, that's correct.
CHAIRPERSON: It sounds as if what you achieved for the RDOs left the time-bomb ticking. Is that correct?
MR GCILITSHANA: That is possible,

Commissioner.
MR TIP SC: Mr Gcilitshana, you've given a full account of the approach of NUM in the way that it deals with negotiations and the obtaining of mandates, including the final mandate. Is that the normal practice of NUM? Has it been conducting negotiations in that way for many, many years?
MR GCILITSHANA: That's correct.
MR TIP SC: I want to go on to a different topic now, which is the RDO wage dispute at Lonmin and the background to it. You deal with that in paragraph 33 and following of your statement. You refer there to the internal communiqués issued by Lonmin on 20 and 31 July of 2012. Those are now exhibits.
CHAIRPERSON: Mr Tip, if I can just interrupt at this stage.
MR TIP SC: Yes.
CHAIRPERSON: There's something I'm interested in, and that is you take up the story in respect of what you call the RDO wage dispute, or well, the witness does, with the internal communications of the 20th and 31st of July 2012. Of course what had happened in the meanwhile is that being the Impala adjustment which you referred to earlier in paragraph 11, and what interests me is whether the news – I take it the news of that reached Lonmin –

whether the news of that decision, that adjustment by Impala, impacted in any way on the situation at Lonmin. So that would have been something that would have happened in April, early May, and perhaps that should be dealt with before we then proceed with what happened in July. It's just a suggestion, but it would help me if you dealt with it in that order.
MR TIP SC: We are very happy to follow that suggestion. It makes a great deal of sense, with respect. Mr Gcilitshana, you've heard the observation of the chairperson. You had taken us in the earlier part of your evidence through the events at Impala – you'll recall that – and in particular that there was the second round of unilateral wage adjustments, which were quite extensive, in the course of April 2012. You remember that?
MR GCILITSHANA: I recall.
MR TIP SC: And just for cross-reference, that's paragraph 11 of your statement, read with footnote 9 where details of Impala's offer, unilateral, well, not an offer, unilateral increase was set out. Now bearing that in mind, the question is what impact did that have on the position at Lonmin?
MR GCILITSHANA: It created an expectation.
MR TIP SC: Perhaps you could just

enlarge on that a little. What sort of expectation did it give rise to?
[12:44] MR GCILITSHANA: One expectation would be workers, RDOs who are working in Lonmin maybe cross and go and look for employment at Impala where there's better salary. Secondly, also at Lonmin itself, because the workers do communicate, the thought that there is this achievement at Impala, therefore that might have raised expectation from them, from the workers in Lonmin, that they would also go that route to get this – to get their demand addressed, I mean their expectations resolved.
MR TIP SC: I just want to ask you to pause and to clarify for us the phrase which you have just used, which is to go that route. Are you referring there to the route that was followed by the RDOs at Impala, namely the unprotected action or are you referring to something else?
MR GCILITSHANA: Yes, that's correct.
MR TIP SC: Did you – did any of this come to your ears personally at that time in the period after April, May and June of 2012?
MR GCILITSHANA: No.
MR TIP SC: Let us then go on with your statement at paragraph 33 and Mr Gcilitshana, I'm going to ask you to just bear in mind as we go along, that if

Page 3817

anything occurs to you that is relevant to the question of the impact of Impala on the position at Lonmin, you'll let us know?

MR GCILITSHANA: Okay, thank you.

MR TIP SC: Have you've got Exhibit XX3 and XX4 available to you?

MR GCILITSHANA: Yes, I got.

MR TIP SC: You will see that – well, let me ask you firstly, have you had an opportunity to read through these communiqués?

MR GCILITSHANA: Yes, correct.

MR TIP SC: And if I may, to summarise XX3, the first of those being 20 July 2012, Lonmin conveys to all its employees that the market is difficult, finances are difficult, the environment is competitive and it draws the attention of employees pertinently to the fact that there is in existence a two year wage agreement. And in the communiqué dated 31 July 2012, Lonmin somewhat similarly addresses the fact that there are certain groups of employees who insist in engaging management on separate wage negotiations. It again makes reference to the existence of the current two year agreement and it warns employees that any illegal work stoppages will be dealt with firmly. Did those communicates and the situation that they reflected, come to your attention?

Page 3818

MR GCILITSHANA: I was not involved.

MR TIP SC: At what stage did you become aware of the subject matter dealt with in paragraph 34, that RDOs had marched to the Karee Main Office with demands, which was submitted to Mr De Costa?

MR GCILITSHANA: It was a few days after the march from our structures.

CHAIRPERSON: Before we move onto that, I just want to ask a question if I may, about these internal communicates, Exhibits XX3 and XX4. To whom were they normally addressed, these internal communiqués?

MR GCILITSHANA: To Lonmin employees.

CHAIRPERSON: Who?

MR GCILITSHANA: To Lonmin employees.

CHAIRPERSON: That would include, not only management, but also ordinary employees, would it?

MR GCILITSHANA: Yes, correct.

CHAIRPERSON: I see XX4 in the third paragraph says, "We therefore caution employees against any attempt to embark on unprotected industrial action and intimidation." So that was clearly directed to the employees who were dissatisfied and who were presumably considering embarking upon an unprotected industrial strike. Is that – would that be correct reading of it?

MR GCILITSHANA: That will be correct.

Page 3819

CHAIRPERSON: I thought that I heard you say that you weren't aware of these communications? Have you only become aware of them later? Did I hear you correctly?

MR GCILITSHANA: Yes.

CHAIRPERSON: You were the chief negotiator, NUM's chief negotiator at Lonmin, you were an employee of Lonmin and you never heard about these internal communiqués?

MR GCILITSHANA: The communication is internal communication, Commissioner and I'm not based in Lonmin. I'm based in NUM head office. This communication was internally within the mine premises, not outside. I was not aware of it.

CHAIRPERSON: So effectively you were dependant upon the NUM members at Lonmin to draw your attention to these communicates, and they didn't do so? Is that what you're telling us?

MR GCILITSHANA: Yes, I relied on them to give me communication. As I've indicated that a few days later they did communicate with us.

MR TIP SC: The information that reached you came from NUM members. Did it come from Lonmin at any stage?

MR GCILITSHANA: Not according to my

Page 3820

understanding myself. I know at times some communication is directed to the general secretary, but I don't recall general secretary communicating it with me.

MR TIP SC: Now similar questions arise in respect of the content of paragraph 35 of your statement. Let me just read it. "On or about 23 July 2012, Lonmin's EXCO approved an allowance of R750 per month for RDOs at Karee Mine, R500 per month for RDOs at WPO Western Platinum and EPO and R250 per month for assistant RDOs. The RDOS were informed about these allowances at a meeting that day.

CHAIRPERSON: I'm sorry to interrupt you, but I'd like chronological clarity as things happened. Paragraph 34 says that, "On the 21st of July the RDOs march illegal to Karee Mine office and submitted a demand to Mike De Costa, Lonmin's vice president at Karee Mine, for a wage increase of R12 500." Now when did you first learn about that?

MR GCILITSHANA: As I indicated it was after the 21st. I'm not sure if - I'm not sure that was two days later or three days later, but it was after the 21st.

MR TIP SC: Were you able to establish whether the decision of the RDOs to embark on that march had been done in conjunction with NUM at all?

MR GCILITSHANA: I was informed that NUM was not informed and was not involved.

MR TIP SC: Then perhaps I can move on to paragraph 35. The announcements on 23 July by Lonmin on the various increases for RDOs, when did that come to your attention?

MR GCILITSHANA: It was after the decision was taken by EXCO.

MR TIP SC: Mr Chair, would this be a convenient time to take the lunch adjournment. I see it's just run past 1 o'clock.

CHAIRPERSON: I'm waiting for you to finish at paragraph 36, which you haven't done yet.

MR TIP SC: Yes, well, let me do that. It's – yes, paragraph 36, Mr Gcilitshana, it's related to that point. You say there, "These allowances were decided upon unilaterally by Lonmin, without any negotiations with NUM."

MR GCILITSHANA: That's correct.

MR TIP SC: Those increases were decided upon by Lonmin during the currency of a binding two year agreement?

MR GCILITSHANA: That's correct.

MR TIP SC: And as the chief negotiator of NUM, how did you respond to the fact that this action

had been taken? What was your feelings about that?

MR GCILITSHANA: As NUM we were not happy the way the company did it, because we believe that we should have been involved as Union with collective bargaining rights in Lonmin. I must also indicate that we are not against any money that goes to the workers, it's more of the processes.

CHAIRPERSON: The Commission will adjourn until 2 o'clock.

[COMMISSION ADJOURNS COMMISSION RESUMES]

[14:02] CHAIRPERSON: The Commission resumes. You're still under oath, Sir, and you're still leading the witness in chief, Mr Tip.

MR TIP SC: Indeed, Mr Chairperson. Mr Gcilitshana, we were on the point just before the lunch adjournment of moving to a different topic, which is the fact of the unprotected strike and the role of NUM in relation to it, and if you go to paragraph 37 of your statement you will see that we begin to deal with that subject there. You say there that although you don't know the details, it is clear that the RDOs resolved not to accept Lonmin's offer of the additional allowances and that they would persist with their demand for R12 500 as their basic rate.

MR GCILITSHANA: That's correct.

MR TIP SC: Then you describe in the next paragraph the meeting that NUM convened of 8 August 2012. That was a NUM report-back meeting which had been arranged in any event. Is that correct?

MR GCILITSHANA: That's correct.

MR TIP SC: And the convenor of that meeting was the late Mr Daluvuyo Bongo.

MR GCILITSHANA: Yes, correct.

MR TIP SC: At that stage it was clear to NUM that there was an imminent prospect of an unprotected strike.

MR GCILITSHANA: That's correct.

MR TIP SC: And NUM then at that meeting set out its position and its attitude to the unprotected strike, and in this regard I want to take you in the bundle to pages 71 to 73. You will see there, Mr Gcilitshana, that the second email – of course emails as you know always run back to front, but the second email on that page is from Mr Bongo, addressed to various of the management of Lonmin on August the 8th, 2012.

MR GCILITSHANA: Yes.

MR TIP SC: And Mr Bongo there reports, he says, "The mass meeting went peaceful and the attendance was very good. We educated the RDOs and showed the danger that will be achieved in their wrongdoing. Some NUM

members advised them as well."

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And would that in essence have reflected NUM's position that it was opposed to the strike and that it cautioned people against participating in it?

MR GCILITSHANA: Yes, correct.

MR TIP SC: And I think it's appropriate also to note that the reaction from members of Lonmin's management to what Mr Bongo had said, and at page 71 at the top of the page you will see that there is a reaction, an answering email from Mr Larry Dietrich on the evening of 8 August to Mr Bongo. Do you see that?

MR GCILITSHANA: Yes.

MR TIP SC: And he says, "Good evening. Thank you very much, greatly appreciated. Indeed you are a leader and a man of your word. Thanks, Larry."

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And as a further example of the response of Lonmin, if you turn to page 73, again at the top of the page you will see a response from Mr Etienne Hamman of Lonmin's management, also to Mr Bongo, the same email. You have that? And he says, "Thanks, Daluvuyo, for the feedback. Hope they understand and can get back to adding value at the shaft. The rumour is that they will

Page 3825

not be at work tomorrow. Hope your influence is effective. The visit from the DMR was tough, but good work was done by the NUM guys that joined the various groups. Any info please let me know. Thanks for your friendship."

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And perhaps I may just add, although you had to negotiate with Lonmin about things like wages and working conditions, does the tone of these emails reflect the cordial nature of the relationship that Lonmin and NUM had generally?

MR GCILITSHANA: Yes.

MR TIP SC: Then moving on to paragraph 39 of your statement, you note there what we already know, that "The strike began in earnest on 10 August 2012 when strikers marched to the Lonmin LPD office."

MR GCILITSHANA: Yes.

MR TIP SC: Now I just want to interpose here. As you know, the question has previously arisen of the relationship between the location of Lonmin's LPD office and the NUM office and we had undertaken at that stage to deal with that before the Commission by somebody who really understands the layout, and Mr Gcilitshana, you do understand the layout of the various components of Lonmin and the offices and so forth?

MR GCILITSHANA: Yes.

Page 3826

MR TIP SC: And I'm going to ask you, please, if you could turn to exhibit PP1, which is an annotated Google photograph. Do you have PP1 there?

MR GCILITSHANA: Yes, I do.

MR TIP SC: Yes, right. Mr Gcilitshana, if you look at that you will see that LPD is at the lower edge of that page. Do you see it?

MR GCILITSHANA: Yes.

MR TIP SC: And then you see that there is a yellow line marking a road leading up to the vicinity of the stadium.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: That's the Wonderkop stadium?

MR GCILITSHANA: Yes, correct.

MR TIP SC: And then there is, to the right of that there is a red line again indicating a road. You see that?

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And then there is a little beacon showing the location of the NUM offices.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And to the left there is the koppie.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: Now I just want to ask you

Page 3827

whether you're in a position to confirm the relationship of these points, and in particular whether people marching from the LPD office to the stadium would at any time pass the NUM office.

MR GCILITSHANA: No.

MR TIP SC: I also want you to tell the Commission, please, there's been referring to the Karee Mine. Can you tell us where it is in relation to this photograph? Is it on it or off it?

MR GCILITSHANA: I think that Karee Mine would be on the far left.

MR TIP SC: Would it still be on this exhibit or off the page, as it were?

MR GCILITSHANA: No, it won't be in this exhibit.

MR TIP SC: In other words it's further to the left than is depicted here?

MR GCILITSHANA: Correct.

MR TIP SC: Whilst we're dealing with this topic, I just want to take you also to page 22 of that bundle, and it may best be done by reference to the enlarged copy. You will see there that there are entries for the 10th of August, the same day that we're speaking about. You'll see the date on the left-hand column.

MR GCILITSHANA: Yes, I could see.

Page 3828

MR TIP SC: And towards the top of the page you will see against the time of 6 o'clock that RDOs begin to gather at Wonderkop opposite the stadium.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And if you go down that long entry you will see the time of 8 o'clock in the morning where the group is noted as having started to march to LPD.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And if you go further down you will see that it is recorded by Lonmin Security at 12:20, 20 minutes past noon, do you have the time?

MR GCILITSHANA: Yes, I see.

MR TIP SC: And there it's noted, "The mass dispersed. Management will not entertain their demands. Their view is to engage in work stoppage effective immediately." You see that?

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And at 12:25 it's recorded that the mass is marching towards Wonderkop.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: At 13:30 the security notes that the first group arrives at Wonderkop opposite the stadium.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: 13:45, the mass and the

police arrive at Wonderkop.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And 10 minutes later at 13:55 security notes that the group dismissed from Wonderkop stadium. You see that as well?

MR GCILITSHANA: Yes.

MR TIP SC: And as is apparent from these entries by Lonmin Security, at no stage does this group go anywhere near NUM office.

MR GCILITSHANA: That's correct.

MR TIP SC: Now I want to go back, I'm still with your paragraph 39. We've noted what was recorded about NUM's attitude on the 8th of August. Was that opposition to the strike a consistent position on the part of NUM?

MR GCILITSHANA: It was showing its opposition to unprotected strike.

MR TIP SC: And did it also take the position that employees should in fact report for duty and that any demand should be channelled through the usual structures and processes?

MR GCILITSHANA: That's correct.

[14:22] MR TIP SC: Now I want to take the opportunity again, Mr Gcilitshana, whilst you're in the witness box, to take you to certain other aspects of the

communications between the relevant persons at the time and I'm going to ask you to go to page 76. And so again I'm at that page, because of the funny sequence of emails, but what I'm interested in at this stage is the suggestion that's been made here that the whole of the 10th of August and the night of the 10th of August was entirely peaceful in the location of Lonmin.

And the email that we see in the lower part of that page is from Mr Frank Russo-Bello, one of the senior managers –

COMMISSIONER HEMRAJ: Isn't that page 74 and 75, instead of 76?

CHAIRPERSON: No, I think it's actually 75 and 76. I think – they're going backwards as it were, but the first one of the sequence, I think is an original message from Frank Russo-Bello to Ian Farmer, 7:59 pm on the 10th of August, which starts halfway on our page 75 and concludes, as I see it, on page 76.

MR TIP SC: Yes.

CHAIRPERSON: And then the reply from Mr Farmer is near the top of that page, "My back is still bad. If you need me," he gives the telephone number in England, "as I have no cell phone signal." That seems to be the reply the following morning actually sent 9h19 am to Mr Russo-Bello by Mr Farmer. But the first email appears to

be the one from Frank Russo-Bello to Mr Farmer at 7:59 pm on the 10th of August, is that correct?

MR TIP SC: That's correct, Mr Chair, yes. It's always a problem to sequence them correctly, but that's the one that –

CHAIRPERSON: The point it start on 75, it ends on 76 –

MR TIP SC: It starts on 75.

CHAIRPERSON: Now, what's the passage in it that you wish to refer us to specifically?

MR TIP SC: I'm going to deal only with certain aspects of it.

CHAIRPERSON: I assume that you're referring to the third paragraph of that email which begins – we haven't got the first few words, but I take it, "I assume you are aware of the sequence of events today. Pretty much all RDOs did not go underground, they got together at Wonderkop, then starting making their way to LPD, some 3 500 strong." Is that the passage you're referring to?

MR TIP SC: That's correct. Mr Chair –

CHAIRPERSON: "Security and SAPS eventually managed to," – I don't know what that word is, it's something "them at four way stop, but they pushed their way through eventually and made the LPD all very

agitated," and so on. Is that it?"

MR TIP SC: Yes, that's essentially the email, and I believe that I should just clarify that when I said that there had been a suggestion that the day and the evening of 10th of August 2012 had proceeded entirely peacefully, that certainly doesn't come from Lonmin management. That was the suggestion that was made right in the opening submissions on the part of AMCU and I think some of the families. So we're really dealing with that suggestion and the purpose of placing – drawing the Commission's attention to these emails is to show that it was certainly the understanding of Lonmin management, as well as that of NUM, that in fact there were a great number of events of intimidation during that period. That's the importance of it. Mr Gcilitshana, you're aware of that context? I take it that Mr Frank Russo-Bello is a person well known to you?

MR GCILITSHANA: Yes, I know him.

MR TIP SC: And the chairperson has referred already to the portion of the email that I've placed before you, which records that security and SAPS had managed to – well, to apparently to intervene at the four way stop, but that the marchers who were on their way to the LPD – had pushed their way through, and made it through to LPD. Do you see that in the second paragraph? The

third paragraph rather of that email?

MR GCILITSHANA: Which page again?

MR TIP SC: 75

MR GCILITSHANA: Okay, yes.

MR TIP SC: And it is clear also from the same paragraph that it is recorded by Mr Russo-Bello that management had evidently continuously advised the strikers that this was an illegal strike and that they had prepared and issued them with a brief indicating the same. In other words, a notice warning them and warning them that they were in contravention of numerous issues and that they were already liable for severe disciplinary action and dismissal. Do you see all that? For completeness sake, dismissal would ensue if they did not report for work the next day.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And it is recorded also that Lonmin had applied for an urgent court interdict, which we got, he says, and served them with notification of this.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And, Mr Gcilitshana, it would – am I correct that you would have been aware of these developments at the time, because the application for that interdict was served on NUM also, is that correct?

MR GCILITSHANA: Yes, we did receive.

MR TIP SC: Then Mr Russo-Bello goes on to say, "They eventually dispersed and were escorted back to Wonderkop. Security was kept on full alert and we started receiving numerous reports from the ground that they were planning to disrupt the entire business tonight," that is the night of the 10th of August, "and tomorrow, until we agreed to their demands."

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And did NUM also receive indications and some reports of this nature at the time?

MR GCILITSHANA: As far as I can recall, yes, but it was rumours.

MR TIP SC: When NUM officials addressed the report back – the mass meeting on the 8th of August, did it set itself against this kind of conduct?

MR GCILITSHANA: NUM indicated its position against the unprotected strike and any other action that may be against the law.

MR TIP SC: Would acts that NUM is opposed to include acts of violence in and around the workplace and acts of intimidation?

MR GCILITSHANA: That's correct.

MR TIP SC: Then Mr Russo-Bello in the same email goes on to say, and this is evidently more or less at the time of the email, just before 8 o'clock in the

evening of the 10th of August, he says, "We are now receiving reports of intimidation throughout the business and are attempting to deal with them swiftly and decisively before they escalate in numbers and violence."

MR GCILITSHANA: Yes, I could see.

MR TIP SC: He then notes in his report to Mr Farmer that, "It is contained to RDOs," – perhaps it's missing a word, "If it is contained to RDOs and they are not at work tomorrow, we will then pursue the appropriate process to give them an ultimatum and dismiss them if they don't return. A re-recruitment strategy, including criteria, is being prepared. If it escalates we have a bigger problem." Do you see that?

CHAIRPERSON: I think the word contained is probably a mistake for confined.

MR TIP SC: Yes, I'm sure it must have been intended to be confined. Do you see that, Mr Gcilitshana?

MR GCILITSHANA: Yes, I could see, that's why we were against the unprotected strike. Those are the reasons.

MR TIP SC: Then we go over the page to page 76, and I'm going to confine my question to you just in respect of the first paragraph, because that is what you know about, where it says, "The unions have been engaged,

including at national level and NUM has been generally supportive indicating," – I think there must be a missing word here, "that they want to assist in resolving the issue."

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And again I want to ask you whether that statement by Mr Russo-Bello about NUM's attitude correctly reflects what was indeed the approach of NUM at that time –

MR GCILITSHANA: That's correct.

MR TIP SC: Then I'm going to take you back a page to a second email, also from Mr Frank Russo-Bello also to Mr Ian Farmer, and that is the next morning, the morning of the 11th of August at 9:43.

MR GCILITSHANA: Which page exactly?

MR TIP SC: Page 74 of the bundle.

MR GCILITSHANA: Okay.

MR TIP SC: There are two emails there, the one is at 9:25 where he gives an update to Mr Farmer and basically says that they're still monitoring the situation and they will remain on full alert.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: Then the email below that is at 9:43, and I'm going to just deal with the second paragraph, again because this records the understanding of

Lonmin in respect of what took place at the NUM office. And he says there, "We are currently dealing with a confrontation at Wonderkop between two large contingents, NUM and what appears to be large contingent of possibly AMCU supporters which came out of the informal settlement. There were shots fired and two people injured. One of them our employee. Both stable and being taken to hospital."

MR GCILITSHANA: Yes, I could see.

MR TIP SC: Now, I'm aware that you were not in the vicinity of the NUM office on the 11th of August at all.

MR GCILITSHANA: Yes, I was not.

MR TIP SC: Is it correct that you have participated in the investigations that have been conducted by, amongst others, the legal team of NUM in relation to what took place there?

MR GCILITSHANA: Yes, that's correct.

MR TIP SC: And on the strength of the result of those investigations, are you able to confirm to the Commission that they reflect that two persons were in fact injured there, but that there were no fatalities?

MR GCILITSHANA: That's correct.

MR TIP SC: I'm going to come back to that a little more fully later, but I just wanted to couple that item of evidence to the email of Mr Russo-Bello, where

precisely the same thing is reflected. Now, I'd like you to go on to paragraph 40, if you would, Mr Gcilitshana, of your statement. On the 10th of August, is it correct that NUM convened a mass meeting at the Wonderkop Hostel?

MR GCILITSHANA: That's what the leadership have reported to us, correct.

[14:42] MR TIP SC: Yes. And again direct evidence will be presented, Mr Chair, that it's part of the narrative, and did you also learn that the same message had been conveyed by NUM membership to those who attended the meeting, namely that NUM did not support the unprotected strike, that workers should report for duty, and in the event that they experienced any difficulties doing so, they should report to the NUM office at WPL for assistance.

MR GCILITSHANA: Yes, that's what had been reported to us.

MR TIP SC: Did you hear also that NUM had in addition visited the nearby village and hostels and conveyed the same message to persons?

MR GCILITSHANA: Yes, correct. That's what had been reported.

MR TIP SC: In paragraph 41, you deal there with the events during the 9th and the 10th and 11th of August. Again you were not present in Lonmin during that night. Is that correct?

MR GCILITSHANA: That's correct.

MR TIP SC: Now I want to take you to a few portions again of the bundle and to records made by Lonmin Security. These are the observations that they made in respect of what was taking place in the course of the evening and what NUM officials in the vicinity were doing, and please, if you would look firstly at page 79, and that's the transcript of a brief video at, I think it's shortly after 5 o'clock in the morning of the 11th of August and the Lonmin security officer records, "A group of people waiting for buses," that's with NUM, "apparently NUM persons having discussions with security about people escorting employees to shaft via foot."

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And does that accord also with the reports you received that that is indeed what NUM officials and members were doing, was namely to escort people to work in that period?

MR GCILITSHANA: Yes, they have confirmed it.

MR TIP SC: If you go on with your statement in paragraph 41, you say there that, "During the evening of 10 August 2012 and the early hours of 11 August 2012, NUM assisted numerous employees with transport so that they could report to their respective workplaces,

despite widespread intimidation to those employees who wished to report for duty." Now the portion that I've just dealt with, with you, is part of that, and you will see in your statement a number of other entries are noted in footnote 29. They're all Lonmin Security log entries for the 10th of August.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: I don't propose to look at each of those five, but there are two additional entries, Mr Chair, that I'll take Mr Gcilitshana through just by way of illustration. That is in the early hours of the 11th of August, the first one on page 23 at 2:19, that is part of the enlarged copy, fortunately. Do you see that? I'll just read it, Sir. You have it there, Mr Gcilitshana?

MR GCILITSHANA: Yes.

MR TIP SC: And what is noted there is that R Beukes reported that NUM members informed him that they will go through the village and ask the workers to go to work and he, Beukes, must do the same thing inside the hostel.

MR GCILITSHANA: Yes.

MR TIP SC: And then just on the other side of the picture, at 4:37 it's noted there that PW and GK, who we assume are Lonmin security officers, that they proceed to Wonderkop to check on the situation as they

Page 3841

heard that some people are intimidating the workers. Now bearing in mind that you were not there, I'm not going to pursue that further with you, Mr Gcilitshana, and I'm going to ask you to go on with paragraph 42 of your statement, which concerns NUM members particularly, and it's recorded there that "During the evening of 10 August two NUM members were assaulted near the NUM Western Platinum branch office." That's the NUM office.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: That's also on page 23, if you go to 8 o'clock that evening, 20:00.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And it's noted there that two workers were assaulted near the NUM office at Wonderkop on their way to work.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And if you go to the entry on 16:30 on the same day, 10th of August, also on page 23, you will see – do you have that?

MR GCILITSHANA: Yes, I could see.

MR TIP SC: You'll see the entry made by security there, "Intimidation at Wonderkop NUM offices, complainant T Masilo of number 4 shaft," the company number is given, case book number is given. You see that?

MR GCILITSHANA: Yes, I could see.

Page 3842

MR TIP SC: There were also reports, whether correctly or not, that some strikers had been fired at and shot by Lonmin security personnel. I'm not going to take you into the detail, but the reference there is again a document in the bundle at footnote 32, page 80 to 82. Mr Gcilitshana, on the same basis I'm going to again use the opportunity of you being here to draw attention to certain other Lonmin entries on the 11th of August, concerning the NUM office, and we do not lose sight of the fact that you were not there, and that is that several hundred of the unprotected strikers that gathered near the Wonderkop stadium, and that they intended marching to the NUM offices at WPL.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And in that regard, if you would look at page 24 of the bundle, it's again if you've got the enlarged version that would be the simplest, or easiest to read. Have you got it, Mr Gcilitshana?

MR GCILITSHANA: What is the entry again?

MR TIP SC: It's page 24.

MR GCILITSHANA: Yes?

MR TIP SC: And the entry is against 8:39 in the morning.

MR GCILITSHANA: Yes, I could see.

MR TIP SC: And what is recorded there

Page 3843

is, "A mob of at least 300 gather around Wonderkop, threaten to burn down the NUM office."

MR GCILITSHANA: Yes.

MR TIP SC: And at 14:00, at 2PM that day, if you just go down the page a bit, you'll see the entry there about six or seven lines down at that time, "This morning, Saturday, 2012-08-11, a mob was noted and information was that they want to torch NUM offices and Lonmin Kombi that NUM uses. There was somewhat a faction," it says, but I suppose some friction or whatever that means, "between two groups. Gunshot and two people were injured."

MS BARNES: Chair, I don't want to interrupt unnecessarily. I know that there was an indication that there would be some hearsay led, but this appears to be double hearsay, that this particular witness was of course not present, is now commenting in relation to somebody else who heard somebody else say something, and Chair, I just state for the record that we have a difficulty with the sort of double hearsay evidence as it's being led.

CHAIRPERSON: I take it the purpose of this is to put the whole narrative before us as a single narrative and then there will presumably be evidence backing up some of these statements, and it's conceded that

Page 3844

a good deal of what this witness is saying, is hearsay, and from the nature of things it may as you say be double hearsay, we may even if we're patient get some triple hearsay, but I'll allow it for the moment. We'll evaluate it later, but your objection is noted.

MS BARNES: Thank you, Chair.

MR TIP SC: Mr Chair, I may just confirm that this is certainly the incident about which direct evidence will be led. Why I'm taking the opportunity with Mr Gcilitshana to refer to some security log entries is simply that they are there, they are contemporaneous, they are made not by NUM but by Lonmin Security, and they have a value in that sense. If there is going to be a dispute about the reliability or authenticity of those entries, that can be dealt with.

CHAIRPERSON: We'll deal with that when we get there, but while we're on these entries I just want to refer you to one entry that you referred to. That's the entry at 14:00 on the 11th of August, page 24, 11th of August, there's a series of entries under the time 14:00. In fact there are two 14:00 groups of entries but I'm referring to the first group. The last line of the first group says there was somewhat a faction between two groups, gunshots and two people were injured. You suggested the gunshot and injury of two people probably was, the word was

"friction," a rather strong form of friction I would have thought. If you refer back, however, to the previous page, you will see an entry on page 23, also the 11th of August, 08:00, the third line of that where there's a reference to – this is Joe Mokwadi, presumably a report he made, "Fear of NUM trying to assist and protect its members will lead to NUM taking law into own hands and faction fight between rival unions," and I would suggest that that word "faction" that we were looking at on page 24 is really reference to faction fight. That seems to be governed, would be confirmed by what appears later, gunshot, two people injured. To describe that as friction would be a masterpiece of understatement.

MR TIP SC: Yes. Mr Chair, in the light of the previous use of the same word, I entirely accept that that's intended to be faction.

CHAIRPERSON: Yes, and on that note of acceptance, is it appropriate for us to take the tea adjournment?

MR TIP SC: Certainly.

CHAIRPERSON: We will adjourn for tea. Before we take the tea adjournment, Mr Mpofu wants to say something.

MR MPOFU: Yes, Chairperson, I wanted to make an unconventional request about the break, whether we

couldn't instead finish a bit earlier instead of taking the break because there is a matter –

[15:02] CHAIRPERSON: The difficulty I have is I fear that most people are finding it rather – in the absence of air-conditioning, in reference to a number of entries, finding it very difficult to stay awake and concentrate at the same time.

MR MPOFU: Yes, Sir.

CHAIRPERSON: Some people may be able to do that, maybe you can, but I can't. So, we will take the adjournment, I am mindful however of a certain historic event that is taking place later today. We will adjourn at 4 o'clock strictly.

MR MPOFU: Thank you, Chair.

CHAIRPERSON: Which by my calculation gets us back to Pretoria about 5.

MR MPOFU: Yes, as long as the event is taken into account.

[COMMISSION ADJOURNS COMMISSION RESUMES]

[15:20] CHAIRPERSON: Mr Mpofu, I have an important job for you. Would you be the timekeeper?

MR MPOFU SC: Yes, I will.

CHAIRPERSON: If I'm not aware it's 4 o'clock, would you draw it my attention?

MR MPOFU SC: Yes Sir, I will remind you

at five minutes to 4.

CHAIRPERSON: There will be no injury time sorry, can I rely on you?

MR MPOFU SC: Yes, Chair.

CHAIRPERSON: On this point at least.

MR MPOFU SC: 100 %, today I will be totally -

CHAIRPERSON: And every day. You are still under oath. Mr Tip, I believe you have some more questions.

MR TIP SC: Thank you, Mr Chair. Mr Gcilitshana, we are going to accelerate a little, not dwell on entries in the occurrence books unless we particularly need to. I want to take you on to paragraph 43 and paragraph 44, now you deal there with the events at the NUM office on 11 August 2012, correct?

MR GCILITSHANA: That's correct.

MR TIP SC: I'm going to give effect to that fact that you were not there and that the commission has already heard a fair amount of evidence and will hear further evidence on what took place there. I'm going to go directly to a particular aspect of that, some minutes, some while before we adjourned for tea, I dealt with a topic of the investigations that had been made on behalf of NUM and I want to deal particularly with the subject of the

dockets. Those, Mr Chair, were placed before the commission as XX5 and XX6. Do you have those there?

MR GCILITSHANA: Got it.

MR TIP SC: Now again, Mr Gcilitshana, I'm not going to take you into the content of these dockets, save to ask whether you have had the opportunity to look at them and to establish that these are dockets that have been opened by the SAPS in respect of attempted murder charges by the two persons who were evidently injured by gunshots in the vicinity of the NUM office on the 11th of August 2012. Can you confirm that?

MR GCILITSHANA: Correct.

MR TIP SC: And also that within the docket it is apparent that both of these complainants were taken to the Andrew Saffy Hospital for treatment, can you confirm that?

MR GCILITSHANA: Yes.

MR TIP SC: Now so much for those dockets for the time being, is it also so that the NUM legal team has made every effort to establish whether there are any other dockets or any other indications that persons were killed in the vicinity of NUM office?

MR GCILITSHANA: Yes, I know.

MR TIP SC: And that nothing whatsoever has been located to indicate that such took place?

Page 3849

MR GCILITSHANA: Yes.
MR TIP SC: Now you deal also briefly with the 12th of August and again that is a matter about which you have no direct knowledge and I'm not going to dwell on that, is that correct?
MR GCILITSHANA: Yes.
MR TIP SC: What I am going to do is to take you through to paragraph 45 of your statement, because this is where you personally became involved in the developments at Lonmin. This deals with the period subsequent to 12 August 2012 and you say that Lonmin had then established a central security operation centre. "I regularly attended security briefings at the centre at which we consistently urged Lonmin and the SAPS to increase law enforcement measures to prevent acts of intimidation and violence directed against non-strikers."
MR GCILITSHANA: That is correct.
MR TIP SC: Okay.
MR GCILITSHANA: Although I was not present in all the meetings.
MR TIP SC: That's correct, Mr Gcilitshana, but at the ones that you were and in respect of the discussions with your colleagues that you were involved in, this position set out in your statement was indeed the attitude of NUM at that time?

Page 3850

MR GCILITSHANA: Correct.
MR TIP SC: Then in the next paragraph you record that violence and intimidation continued in the ensuing days. Again there are some Lonmin security log entries, I'm not going to turn to them, merely to record that they are present in your statement. But I want to go onto the remainder of your paragraph 47 where you deal with the deaths of certain NUM members. I will read in respect of the first, on 12 August 2012 a NUM member, "Tupelo Mabebe, was assaulted and stabbed near the K4 shaft at Karee mine. He later died in hospital."
MR GCILITSHANA: That's what we got from the briefing.
MR TIP SC: Now the briefing is at the Lonmin security centre?
MR GCILITSHANA: At the Lonmin security centre.
MR TIP SC: Yes, and similarly I think, "on 13 August 2012 the body of another NUM member, Thembelakhe Mati was found near the railway line in the vicinity of the EPO hostel. He had five gunshot wounds."
MR GCILITSHANA: That's correct.
MR TIP SC: And did that also present itself at the sc briefings?
MR GCILITSHANA: That's correct.

Page 3851

MR TIP SC: "On the next day 14 August 2012, another NUM member and shop steward Isaiah Twala was found brutally murdered near the koppie where the strikers had gathered. The bleached skull of an animal had been placed on his torso."
MR GCILITSHANA: Yes, that is briefing from the security.
MR TIP SC: Now as an addition to your statement on that day, on 14 August 2012, did you attend a meeting convened by NUM at Eastern Platinum?
MR GCILITSHANA: The mass meeting yes, correct.
MR TIP SC: And what was conveyed by NUM to the persons, the workers present there?
MR GCILITSHANA: It was again cautioning the workers for participating in unprotected strike, also cautioning the workers on the issue of violence that was prevailing and intimidation at that point in time and also giving an update, especially with the ultimatum because in serving this ultimatum that workers will be dismissed, at that time management agreed to extend the ultimatum, also giving that update.
MR TIP SC: Did you speak at that meeting?
MR GCILITSHANA: Yes, I did.

Page 3852

MR TIP SC: And were the matters that you have just identified conveyed by you personally?
MR GCILITSHANA: I conveyed them, also the regional office bearer because I was with the deputy Chairperson of the region Elliot Maloyi and the regional coordinator Mahlatso Chetty and the branch leadership.
MR TIP SC: How well attended was that meeting?
MR GCILITSHANA: There were many, I can't tell the figure but there were many.
MR TIP SC: Then I'm going to move on to paragraph 48. You mentioned the fact that Mr Senzeni Zokwana, the President of NUM attended the mine on 12 August and again 15 August. There is a statement from him and he will give evidence in this commission, correct?
MR GCILITSHANA: That's correct.
MR TIP SC: Mr Gcilitshana, that concludes the events up to the 16th of August 2012. You were not anywhere in the vicinity of Lonmin on that fateful day, were you?
MR GCILITSHANA: I was in Lonmin at that day, yes I was.
MR TIP SC: On which day?
MR GCILITSHANA: On the 16th.
MR TIP SC: Yes, and where were you?

MR GCILITSHANA: We had a meeting in the morning, a briefing session at LPD then we left.
MR TIP SC: Yes, thank you for that detail. But once, subsequent to your leaving the events that we have heard about in this commission and which are still being explored at the koppie took place?
MR GCILITSHANA: Yes, we got the reports that there were incidents in the koppie.
MR TIP SC: Just to be clear, you were no longer in the vicinity of Lonmin when those events unfolded?
MR GCILITSHANA: No, we left LPD. I was in Middle Crown. When I said we left, we left LPD we went for Middle Kraal.
MR TIP SC: Now what time did you leave Middle Kraal and leave Lonmin all together?
MR GCILITSHANA: I think it was after 5 o'clock.
MR TIP SC: That's the afternoon of the 16th of August?
MR GCILITSHANA: Yes.
MR TIP SC: And where, where at Middle Kraal were you?
MR GCILITSHANA: We had a meeting with our shop steward at Solidarity offices.

MR TIP SC: And were you aware at all of the events that were unfolding in relation to the shootings that took place later that day at the koppie?
MR GCILITSHANA: We heard about that, that there were people that were killed.
MR TIP SC: Was that after the shootings?
MR GCILITSHANA: That is correct.
MR TIP SC: Now I want to deal finally with certain of the events after the 16th -
COMMISSIONER HEMRAJ: Sorry, Mr Tip?
MR TIP SC: Yes?
COMMISSIONER HEMRAJ: Can the witness perhaps tell us where Middle Kraal is in relation to Wonderkop?
MR TIP SC: Yes, Mr Gcilitshana, perhaps can you describe what Middle Kraal is and where it is? Would it be on PP1?
MR GCILITSHANA: It does not but it's very close, it's before you reach LPD.
MR TIP SC: Is it, do I understand that it's not -
MR GCILITSHANA: Down the next -
MR TIP SC: On the photographs, but lower than the bottom edge of the photograph, some distance away?
MR GCILITSHANA: Yes, some distance away,

yes.
MR TIP SC: Middle Kraal is that, is that part of Western Platinum or is that a different division?
MR GCILITSHANA: It's in Western Platinum.
MR TIP SC: Right, now after the 16th of August you have dealt with certain events that took place in relation to attempts to restore peace in the Marikana area?
MR GCILITSHANA: That's correct.
MR TIP SC: Now I want to deal firstly with the subheading negotiations around the peace accord and settlement and you deal with that from paragraph 50 of your statement. I will read these paragraphs and you can confirm them if they are correct. "On 24 August 2012, the Minister of Labour facilitated a stakeholder meeting at the Rustenburg civic centre in order to seek measures to resolve the protracted unprotected strike and violence. The meeting was attended by representatives from the Department of Labour, the CCMA Lonmin management, NUM including yourself and Solidarity, UASA and NACTU, correct?
[15:40] MR GCILITSHANA: That's correct.
MR TIP SC: "And it was agreed by everybody at this meeting that it was imperative that a resolution to the problem be found, and in this regard the

parties agreed amongst others, that a peace accord should be signed by all stakeholders."
MR GCILITSHANA: That's correct.
MR TIP SC: "And at a further meeting held on 29 August 2012, Lonmin management presented a draft peace accord for discussions. The discussions concerning the peace accord were facilitated by the Department of Labour and the CCMA, with representatives from the South African Council of Churches leading the process. Lonmin management had also offered to pay the strikers the equivalent of one week's salary if they returned to work by Monday, 10 September 2012. A delegation representing the strikers was also present in this meeting and they agreed to take the proposal back to the strikers for discussion."
MR GCILITSHANA: That's correct.
MR TIP SC: Were you present at that meeting also?
MR GCILITSHANA: Yes.
MR TIP SC: And were you present at the meeting on the next day, on 30 August 2012?
MR GCILITSHANA: Yes.
MR TIP SC: On that day you say the delegation from the strikers stated that the offer from Lonmin management was rejected. The parties continued their discussions on the wording of the police accord.

MR GCILITSHANA: Correct.
MR TIP SC: "On 5 September 2012, the peace accord was signed by all the parties with the exception of AMCU and the strikers' delegation who refused to sign it. The parties who signed the peace accord committed themselves unconditionally to engage to eliminate violence and the violation of rights of all stakeholders. They endorsed a shared vision of peace and stability and committed their respective organisations to actively work towards a condition of sustainable peace. In addition, Lonmin committed itself to negotiating the wage demand of 12 500 as soon as the workers terminated the unprotected strike and returned to work."
MR GCILITSHANA: That's correct.
MR TIP SC: Paragraph 55. "Although NUM's position throughout the strike was that workers should return to work and channel their grievances and demands through normal collective bargaining structures and processes, we actively participated in the negotiations that led to the signing of the peace accord, and I and other NUM representatives engaged with the strikers' delegation and provided whatever other assistance was required by them."
MR GCILITSHANA: That's correct.
MR TIP SC: And paragraph 56. "In the

meantime the strike and the associated violence and intimidation continued unabated however. On 11 September 2011" (that should be 2012) "the body of another NUM members, Dumisane Ntinti was found near the koppie where the strikers had gathered. He had multiple stab wounds." Did you hear about that?
MR GCILITSHANA: Yes, that's correct, that's what we got from the security briefing.
MR TIP SC: And finally the topic of the wage negotiations, paragraph 57. "On 13 September 2012 the parties commenced negotiations concerning the strikers' wage demands. Again the process was facilitated by the CCMA and a delegation led by Chief Babikile Holomisa joined the negotiations together with the SACC as observers."
MR GCILITSHANA: That's correct.
MR TIP SC: In paragraph, "On 18 September 2012, the parties signed the wage agreement as an addendum to the two year wage agreement signed in December 2011 between NUM and Lonmin. The addendum was signed by Lonmin, AMCU, NUM, Solidarity, UASA and the delegation representing the strikers."
MR GCILITSHANA: That's correct.
MR TIP SC: Paragraph 59. "As with the negotiations concerning the peace accord, NUM had actively participated in the negotiations concerning the strikers'

demands, in order to ensure that a solution to the protracted violent unprotected strike was found. I had also provided some assistance to the strikers' delegation with certain issues that they did not attend, particularly with regard to the figures relating to the actual wage proposals made during the negotiations."
MR GCILITSHANA: That's correct. I must also indicate that when, at times when the Reverend, who used to be interpreter for the delegation, when he is not able or I will relieve him as an interpreter.
MR TIP SC: I may not have heard, the Reverend, you are talking to Bishop Seoka, are you?
MR GCILITSHANA: No there's another one, I've just forgot the name, who used to be the interpreter.
MR TIP SC: And finally, in paragraph 60, you say, the following, Mr Gcilitshana. "I conclude this statement on a note of sadness. Mr Dolovoyo Bongo, to whom I have referred above, was murdered on 5 October 2012. He would have made a material contribution as a witness in these proceedings."
MR GCILITSHANA: That's correct.
MR TIP SC: Mr Chair, thank you, that completes the evidence-in-chief.
CHAIRPERSON: Mr Budlender, I understood you were going to cross-examine first. Are you in a

position to commence, or would you wish to begin tomorrow morning?
MR BUDLENDER: I am in a position to commence, Chairperson, I am in your hands. I shan't be long, but I shan't finish by four o'clock.
CHAIRPERSON: Well, in the circumstances, I think I would incur the grave displeasure of Mr Mpofu if I didn't adjourn now. The Commission will adjourn until 09:30 tomorrow morning.
[COMMISSION ADJOURNED]
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.
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A

abbreviate 3805:6
able 3754:23 3770:4 3772:13 3782:8 3800:6 3808:4,21 3820:23 3837:19 3846:9 3859:10
absence 3846:5
academic 3748:4
accelerate 3847:12
accept 3812:1 3822:22 3845:15
acceptance 3845:18
access 3795:25
accommodation 3785:23
accord 3839:15 3855:12 3856:1,6,7 3856:25 3857:3,5,20 3858:24
account 3806:15 3810:6 3814:3 3846:18
achievable 3804:17
achieved 3796:25 3812:16,22,24 3813:23 3823:25
achievement 3802:23 3816:8
act 3751:19 3757:4 3770:12 3771:23
action 3779:11 3783:3 3793:9 3816:16 3818:20 3821:25 3833:12 3834:18
active 3756:23
actively 3857:9,19 3858:24
activities 3792:1
acts 3834:19,20,21 3849:15
actual 3746:13 3859:5
AD 3751:24
add 3825:6
added 3800:7
addendum 3858:18,19
adding 3824:25
addition 3766:3 3771:5 3788:13 3838:18 3851:8 3857:10
additional 3756:16 3761:4 3771:1 3776:5 3789:19 3798:8 3822:22 3840:9
address 3744:1
addressed 3809:20 3812:19 3816:11 3818:11 3823:19 3834:13
addresses 3817:19
adequately 3764:3,5
adjourn 3822:8 3845:21 3846:12 3860:8,8
adjourned 3847:23 3860:10
adjournment 3782:17 3782:20,25 3821:10 3822:16 3845:19,22 3846:11
ADJOURNS 3782:21 3822:10 3846:19
adjust 3783:20
adjustment 3784:8 3785:21 3814:23 3815:1
adjustments 3784:17 3785:16 3786:19 3789:9 3815:14
advised 3824:1 3833:7
advising 3810:4
Advocate 3754:21
affect 3788:6 3804:21
affidavits 3761:23
affirm 3765:1
afford 3775:12,16,22 3789:3,10 3790:6
afforded 3771:4
afraid 3757:14
Africa 3770:8
African 3856:9
afternoon 3801:1 3853:19
agent 3797:5 3801:25
aggrieved 3778:24
agitated 3832:1
ago 3790:3
agree 3775:10
agreed 3773:9 3775:23 3812:6 3834:7 3851:21 3855:23 3856:1,13
agreement 3764:9 3767:25 3770:8,11,22 3770:23,25 3771:5 3773:4,10,15 3774:1 3774:13,14,16,17,22 3775:8 3776:5,18 3779:5 3783:22 3787:3,11,23 3795:21 3812:7,9,13,21 3817:17,22 3821:22 3858:17,18
agreements 3789:4 3796:3 3802:20,21 3803:20
agrees 3744:8
air-conditioning 3846:5
alert 3834:3 3836:21
allegations 3763:2,23
allow 3844:4
allowance 3786:4,5 3813:8 3820:7
allowances 3820:10 3821:16 3822:22
allowed 3772:5 3810:9
alluded 3762:19
alternatively 3763:12
AMCU 3763:11 3795:19,25 3796:4,25 3832:8 3837:5 3857:4 3858:20
AMCU's 3796:5
amendment 3800:12
amount 3773:20 3847:20
amounted 3785:25
Andrew 3848:15
anger 3776:12,21
angry 3775:24 3776:11 3777:4,6,6,12
animal 3851:4
annexures 3791:15
annotated 3826:3
annotation 3802:3
announce 3786:18
announcements 3821:4
annual 3802:10 3803:9 3804:2 3813:17
answer 3749:24 3796:17
answered 3749:20
answering 3824:12
anticipation 3756:24
anyway 3781:15
apparent 3829:7 3848:14
apparently 3773:17 3781:11 3782:13 3832:22 3839:11
appear 3758:8
appears 3780:19,22 3794:18 3830:25 3837:4 3843:16 3845:11
application 3833:23
applied 3771:5 3779:5 3813:8 3833:18
apply 3753:21 3762:3 3762:10,12
appointed 3743:18 3772:6
appreciate 3754:25 3756:7 3761:10
appreciated 3824:16
appreciation 3802:6
approach 3790:1,17 3797:25 3798:9 3809:4 3814:3 3836:8
appropriate 3741:10 3762:11,15 3769:24 3798:19 3824:8 3835:10 3845:18
approved 3806:1 3820:7
approximately 3794:11 3794:20 3811:6
April 3783:19 3785:23 3785:24 3815:4,15 3816:21
area 3742:8 3743:12 3748:19 3771:16 3855:9
aren't 3762:14
arisen 3825:18
arises 3763:4
arising 3791:4
arrange 3752:18 3803:12
arranged 3798:24 3823:3
arrangement 3809:3
arrive 3829:1
arrives 3828:22
asked 3782:10 3806:21
asking 3775:5
aspect 3762:19 3776:2 3786:14 3790:2 3802:4 3806:25 3809:7 3847:22
aspects 3761:21 3785:11 3798:7 3829:25 3831:12
assaulted 3841:7,14 3850:10
assaults 3797:14
assess 3761:24
assist 3755:21 3836:3 3845:6
assistance 3792:13 3838:14 3857:22 3859:3
assistant 3820:9
assisted 3839:24
assisting 3753:6
associated 3858:1
Association 3770:7
assume 3831:13,16 3840:24
attached 3794:24
attacked 3756:22
attempt 3797:23 3818:20
attempted 3848:8
attempting 3835:3
attempts 3855:8
attend 3792:16 3851:9 3859:4
attendance 3801:7 3811:7 3823:23
attended 3799:22 3801:16 3803:10 3838:10 3849:13 3852:7,13 3855:19
attends 3792:18
attention 3762:1 3806:6 3807:24 3817:16,25 3819:17 3821:6 3832:11 3842:7 3846:24
attitude 3776:13 3788:6 3790:10 3823:14 3829:13 3836:8 3849:25
auditorium 3770:4,17 3791:8
August 3762:21 3763:24 3823:2,20 3824:13 3825:14 3827:23 3829:13 3830:5,6,17 3831:2 3832:5 3834:6,14 3835:1 3836:14 3837:10 3838:3,24 3839:10,23,23 3840:6 3840:12 3841:6,18 3842:8 3844:19,20 3845:3 3847:16 3848:11 3849:3,11 3850:9,19 3851:1,9 3852:14,14,18 3853:20 3855:7,15 3856:5,20
authenticity 3844:14
available 3746:18 3752:18 3757:9 3758:9,18 3763:22 3811:19 3817:6
awake 3846:6
aware 3818:3 3819:2,3 3819:14 3831:16 3832:15 3833:22 3837:9 3846:23 3854:1
A4 3785:20

B

Babikile 3858:13
back 3751:23 3754:5 3774:5 3776:20 3798:19 3804:15,19 3805:5 3808:17 3810:6 3811:21 3823:18 3824:24 3829:11 3830:21 3834:2,14 3836:12 3837:23 3845:2 3846:16 3856:14
background 3790:25 3814:11
backing 3843:25
backwards 3830:14
bad 3788:9 3830:21
bargaining 3774:13 3779:4 3788:5 3797:5 3797:6 3801:25 3802:6,11 3803:10 3822:5 3857:18
BARNES 3843:13 3844:6
based 3741:18 3767:21 3789:10 3819:11,12
basic 3779:7 3786:3 3787:17 3809:21 3822:24
basically 3836:20
basis 3762:9 3786:19 3842:6
batch 3781:20,24 3783:9
batsman 3754:10
battled 3760:25
beacon 3826:20
bear 3762:7 3816:25
bearer 3852:4
bearing 3815:20 3841:2
began 3766:10 3825:14

begins 3831:14
behalf 3754:7 3768:24 3847:24
believe 3741:6 3761:20 3822:3 3832:3 3847:9
Bello 3836:13
benefit 3754:17 3758:7
benefited 3778:13
benefits 3787:9
best 3754:13 3827:21
better 3760:24 3803:24 3816:5
Beukes 3840:17,19
beyond 3750:18
Big 3751:3
bigger 3835:13
binding 3787:4 3821:21
Bishop 3859:12
bit 3751:23 3843:5 3846:1
blast 3771:20
blasting 3772:1
bleached 3851:4
body 3850:19 3858:3
bomb 3810:2
Bongo 3823:7,19,22 3824:10,13,22 3859:17
book 3746:21 3841:24
books 3748:12 3847:13
bordering 3749:22
bottom 3780:20 3854:24
bound 3757:13,14
box 3829:25
branch 3777:20,20,22 3779:21,25 3791:3,5 3791:6,8,21 3792:9 3792:20,22,23 3793:8 3793:13 3794:21 3796:6 3797:21 3799:6,9,19,23 3800:22 3803:11,14 3811:18,19 3841:7 3852:6
branches 3776:23 3777:15,23,25 3778:4 3800:17 3801:9 3811:19
break 3742:6,21 3845:25 3846:2
bridge 3762:16
brief 3784:7 3786:15 3833:9 3839:8
briefing 3850:13,14 3851:6 3853:2 3858:8
briefings 3849:13 3850:24
briefly 3762:19 3849:2
BRIG 3741:4,12,16 3742:1,5,10 3743:1,5 3743:10,17,23 3744:6 3744:14,17,20,24 3745:2,5,9,20 3746:3 3746:12,23 3747:2,5 3747:10,13,20 3748:6 3748:10,15,20 3749:6 3749:9,12,15,17 3750:3,9,15,20,24 3751:2,8,11,22 3752:10,16 3753:3,13 3754:1
Brigadier 3741:3,10 3742:21,22 3743:22 3744:4 3746:8 3750:8 3752:7,22 3753:19
bringing 3781:13
brings 3781:6
brought 3785:22
brutally 3851:3
Budlender 3748:3 3759:25 3859:24 3860:3
Building 3751:24
buildings 3742:15
bundle 3755:22 3756:2 3756:19,20 3757:11 3758:11 3760:4,16 3784:4,11,20 3786:15 3788:25 3791:15,16 3807:14 3812:13 3823:15 3827:21 3836:16 3839:3 3842:5,16
Burger 3758:13,14 3761:8,12
burn 3843:2
buses 3801:22 3839:11
business 3834:5 3835:2
busy 3808:20
B1 3785:20

C

calculation 3846:15
call 3754:16 3760:24 3763:13 3782:6 3803:3 3814:20
called 3749:10 3764:23 3777:20 3801:2 3802:8 3803:2
canvass 3786:13
can't 3762:8 3763:16 3810:10
Cape 3754:22
capital 3771:9
capture 3752:1
carefully 3765:15
CAS 3759:20
case 3753:21 3759:12 3759:13,14 3762:1,13 3805:25 3808:2 3841:24
cast 3781:18
CAS67/08/2012 3760:11
CAS68/08/2012 3760:11
categories 3771:4 3773:12,18 3784:24 3785:3 3788:13 3809:12
category 3771:2,13 3778:22 3785:3,4,5 3785:17 3790:14 3806:11,11 3808:3,19 3809:19,23 3812:21 3812:25 3813:4,5
cause 3750:11
caution 3818:19
cautioned 3824:5
cautioning 3851:15,17
CCMA 3855:20 3856:8 3858:13
cell 3830:23
central 3800:21 3801:1 3801:14,25 3849:12
centre 3849:12,13 3850:15,17 3855:17
certain 3745:25 3747:23 3760:15 3761:17 3762:6 3763:1,6,11 3776:6 3778:13 3801:10 3817:19 3829:25 3831:12 3842:7 3846:11 3850:8 3854:9 3855:7 3859:4
certainly 3757:8 3764:14 3774:25 3782:14 3807:2 3832:6,12 3844:8 3845:20
certificate 3772:1
Chair 3741:9 3750:16 3752:3 3754:8,12 3755:1,13,16,18 3756:7 3758:4,17 3759:21,25 3760:15 3760:21 3761:12,14 3762:18 3764:8,16 3769:18 3770:12 3776:9 3777:1 3780:14 3781:4 3783:1 3784:12 3786:12 3788:23 3796:22 3802:3 3806:24 3821:9 3831:3,21 3838:8 3840:10 3843:13,19 3844:6,7 3845:14 3846:14 3847:4,11 3848:1 3859:22
chairman 3786:16,22
chairmen 3778:3,17
Chairpersons 3778:8
change 3809:11
channel 3857:17
channelled 3829:20
characterised 3779:15
charge 3772:4
charges 3848:9
check 3742:16 3745:15 3756:19 3840:25
checked 3762:8
Chetty 3852:6
chief 3766:2 3768:6,8 3768:11 3801:6 3819:6,7 3821:24 3822:13 3858:13
chronological 3820:13
Churches 3856:9
circumstances 3742:20 3747:25 3762:6,11 3780:24 3789:1 3860:6
civic 3855:17
clarified 3783:4
clarify 3816:13 3832:3
clarity 3812:16 3820:13
cleaner 3766:11
clear 3771:20 3774:20 3786:19 3805:22 3822:21 3823:9 3833:5 3853:9
clearly 3762:21 3789:18 3818:21
clips 3764:1
close 3854:19
closed 3779:22,23,24
cluster 3743:13
coffers 3774:18 3775:2 3776:19
colleague 3754:20 3769:6
colleagues 3849:23
collected 3810:12
collection 3758:25
collective 3770:11,22 3773:4,10 3774:1,13 3774:14,17,22 3775:7 3783:22 3787:3,11,23 3788:5 3797:5 3802:6 3803:19 3822:4 3857:18
column 3827:24
come 3744:18 3754:5 3754:16 3758:10 3776:20 3779:19 3785:12 3816:20 3817:25 3819:23 3821:5 3832:6 3837:23
comes 3747:24 3758:24 3792:15
commence 3860:1,4
commenced 3858:11
commencement 3798:12
comment 3789:9 3798:8
commenting 3843:17
commission 3741:2 3747:8 3749:11 3750:4 3753:24 3755:9,21 3757:15 3759:21 3762:2 3763:8 3765:5,13 3766:5 3770:12 3771:7 3774:7 3775:1 3782:21,21,22 3784:1 3788:25 3791:11 3794:1 3797:16 3803:16 3807:17 3822:8,10,10,11 3825:21 3827:7 3837:20 3846:19,19 3847:19 3848:2 3852:15 3853:5 3860:8,10
commissioner 3744:8,8 3752:6,11,13,21 3756:22 3758:7 3765:17 3767:8,12,16 3768:2,15,22 3769:4 3775:14 3780:4 3783:5 3784:22 3814:1 3819:11 3830:11 3854:10,12
commissioners 3755:19 3756:19
Commission's 3832:11
committed 3857:6,9,11
committee 3791:6 3792:18,20,20,22,22 3792:23 3793:8,13 3800:22 3803:14
committees 3792:9 3803:11
common 3750:11
communicate 3816:7 3819:21
communicates 3817:24 3818:10 3819:17
communicating 3820:3
communication 3784:5 3819:10,11,12,20 3820:1
communications 3784:5,6 3814:21 3819:2 3830:1
communiqué 3757:22 3757:25 3758:6,20 3760:6,9 3781:5 3817:18
communiqués 3757:20 3779:20 3780:15 3814:13 3817:10 3818:11 3819:9
communities 3808:21
companies 3772:13,19
company 3772:23 3774:17 3775:12,22 3776:16,19 3777:5,6 3777:10,11,14 3783:11 3788:18 3789:3,10,15 3790:5 3801:22 3808:19 3809:18 3810:2,5,7 3811:24 3822:3 3841:23
company's 3778:24
compare 3802:22
comparison 3812:17
competent 3771:22,22 3772:6,9,13,15
competitive 3817:15
compile 3755:22
compiling 3747:1,14

complainant 3841:23
complainants 3848:14
completeness 3762:24 3833:13
completes 3859:23
components 3825:23
comprehensive 3756:11
comrades 3811:20
conceded 3843:25
concentrate 3846:7
concern 3774:11 3775:1 3785:8
concerned 3743:25 3773:13 3774:6,9 3777:23 3804:10 3809:14 3810:22 3813:8
concerning 3783:2 3842:8 3856:6 3858:11,24,25
concerns 3762:20 3841:5
conclude 3859:16
concluded 3770:8 3773:4,16 3776:5
concludes 3830:18 3852:18
concluding 3787:15 3810:2
conclusion 3774:21 3789:3 3811:11
Condemns 3760:7
condition 3794:24 3857:10
conditions 3770:23 3825:8
conduct 3743:12 3792:4 3834:15
conducted 3743:3 3798:2 3808:25 3837:14
conducting 3804:22 3814:6
conference 3802:11,15 3803:10 3804:6
confess 3760:23
confidently 3777:9
confine 3835:23
confined 3835:15,17
confirm 3763:10,15 3765:19,20 3769:21 3827:1 3837:19 3844:7 3848:11,16 3855:15
confirmed 3763:14,16 3839:19 3845:11
confiscated 3797:20
confrontation 3837:3
confused 3747:14
conjunction 3820:25
consequence 3770:20
consequences 3794:10
considered 3764:5 3765:16
considering 3818:23
consist 3743:23
consistency 3805:17
consistent 3829:14
consistently 3849:14
consolidated 3760:5
consolidates 3745:13
constituencies 3799:9
constitute 3803:13
constitution 3791:5
consultations 3764:18
contact 3769:6
contain 3761:17
contained 3835:7,8,14
contemporaneous 3844:11
content 3746:2 3747:4 3820:5 3848:5
context 3768:18 3790:2 3832:16
contingent 3837:4
contingents 3837:3
continued 3768:13 3850:3 3856:24 3858:2
continuously 3833:7
contravention 3833:11
contribution 3786:6 3859:19
controversy 3762:22
convened 3799:5 3800:21 3823:2 3838:4 3851:10
convenes 3799:19
convenient 3756:2 3796:17 3821:10
convening 3799:18
convenor 3823:6
convey 3764:5
conveyed 3808:14 3838:10,19 3851:13 3852:2,3
conveys 3817:13
coordinate 3745:11
coordination 3745:19
coordinator 3802:9 3805:7 3852:6
copies 3754:23 3755:8 3756:25 3758:9 3761:10,13 3763:21
copy 3754:21,22 3756:22 3757:14 3758:16 3760:15 3827:22 3840:13
cordial 3825:9
correctly 3819:4 3831:4 3836:8 3842:2
correctness 3765:19
COSATU 3803:7
Costa 3818:5 3820:16
couldn't 3775:12 3846:1
Council 3799:19,24 3800:11,21 3856:9
councils 3799:5,8
Counsellor 3747:22 3748:24
country 3742:11,14 3749:1,1,2
couple 3837:24
coupling 3764:20
course 3751:6,10,11,14 3752:7 3756:14 3757:16 3762:13 3769:5 3774:21 3782:1 3783:18 3801:24 3803:20 3807:24 3808:12 3813:8,17,17 3814:22 3815:15 3823:17 3839:5 3843:17
court 3761:23 3833:18
covered 3786:2
created 3805:1 3815:23
credibility 3804:21 3805:2
crime 3759:8,9,10,11 3759:18 3760:10,11 3762:25
criteria 3805:22 3835:12
critical 3788:6
cross 3756:11 3762:16 3796:21 3816:4
cross-examine 3859:25
cross-examining 3749:22
cross-reference 3815:17
Crown 3853:13
currency 3821:21
current 3752:13,22 3811:23 3817:22
currently 3765:25 3837:2
C-I-L-I-T-S-H-A-N-A 3754:19

D

Daluvuyo 3823:7 3824:23
danger 3823:24
Daniel 3791:10,12,25 3793:14
date 3781:14 3785:21 3827:24
dated 3757:21 3758:21 3760:8,9 3780:18,21 3817:18
dates 3807:9
day 3741:5 3748:22 3757:16 3800:21 3801:1 3811:18 3820:11 3827:23 3832:4 3833:15 3841:18 3843:5 3847:8 3851:1,9 3852:20,22,23 3854:3 3856:20,22
days 3751:15 3818:6 3819:20 3820:21,21 3850:4
day-to-day 3748:18,23
De 3818:5 3820:16
deal 3741:10,13 3755:3 3762:22 3768:19 3784:10 3785:11 3788:14 3789:24 3790:15 3794:9 3797:11 3802:4,7,9 3814:11 3815:9 3822:19 3825:21 3831:11 3835:3 3836:24 3838:22 3844:1,16 3847:15,25 3849:2 3850:7 3854:8 3855:11,13
dealing 3827:19 3832:9 3837:2
deals 3797:25 3814:4 3849:10
dealt 3750:22 3778:21 3815:4,6 3817:23 3818:3 3840:3 3844:15 3847:23 3855:7
deaths 3850:8
debate 3800:12 3801:11
December 3741:18 3766:8 3770:25 3795:19 3812:9 3858:18
decide 3811:24
decided 3821:16,20
decision 3778:25 3779:11 3783:19 3798:23 3815:1 3820:24 3821:8
decisively 3835:3
defined 3771:22
definite 3764:4
definitely 3747:21 3748:1 3753:6,13
delegates 3803:13
delegation 3856:12,23 3857:4,22 3858:13,20 3859:3,9
demand 3779:6,10 3787:17 3793:18,20 3805:23,23 3806:9,10 3806:20 3808:3,5 3810:5 3816:11 3820:15 3822:23 3829:20 3857:11
demanded 3809:23
demanding 3804:17
demands 3760:9 3790:6 3799:10,14,15 3799:23 3800:2,10,18 3800:23 3801:3,11 3802:25 3803:24 3804:7,11 3805:8,9 3805:12,13,14,18,21 3805:25 3806:6,20 3807:19 3811:15,23 3818:5 3828:15 3834:7 3857:18 3858:12 3859:1
Department 3784:6 3855:20 3856:7
depend 3742:11
dependant 3819:16
depends 3748:21,22,24 3792:14
depicted 3827:17
depth 3743:21 3748:17
deputy 3852:4
describe 3799:2 3801:15 3823:1 3845:12 3854:16
described 3798:1 3806:19
desk 3743:16
despite 3787:22 3840:1
detail 3771:7 3781:1,15 3784:2 3789:25 3793:1 3812:14 3842:4 3853:4
detailed 3796:4 3807:1
details 3766:5 3783:25 3785:16 3793:4,23 3794:17 3812:12 3815:19 3822:21
develop 3746:4,16 3748:1
developed 3747:22 3748:23 3767:5
developing 3748:1 3808:20
development 3741:21 3741:24 3744:10,15 3746:15
developments 3790:2 3833:23 3849:10
didn't 3754:16 3763:23 3776:16 3777:4 3783:12 3796:23 3810:14 3813:3,4 3819:17 3860:8
died 3797:15 3850:11
Dietrich 3824:12
different 3745:22 3750:21 3772:19 3773:18 3778:22 3781:23 3795:16 3814:10 3822:16 3855:3
difficult 3760:17 3817:14,15 3846:6
difficulties 3793:1 3838:13
difficulty 3843:20 3846:3
direct 3789:23 3838:7 3844:8 3849:4
directed 3779:16 3818:21 3820:2 3849:16
direction 3769:18
directly 3762:23 3847:22
disciplinary 3833:12
discontent 3778:16
discuss 3755:25

3800:17,23 3811:3
discussed 3811:24
discussing 3782:24
discussion 3786:1 3856:14
discussions 3807:18 3839:12 3849:23 3856:6,6,25
dismiss 3835:10
dismissal 3783:10 3833:13,14
dismissals 3781:19,21 3783:4 3787:20
dismissed 3780:12,13 3780:23,24 3781:7,11 3781:13 3782:12 3783:8,9,13,15 3794:11 3829:4 3851:20
dispersed 3828:14 3834:2
displeasure 3860:7
dispute 3761:22,24 3762:14,15 3814:10 3814:20 3844:13
disputes 3761:23
disrupt 3834:5
dissatisfaction 3790:16
dissatisfied 3818:22
dissolution 3793:13
dissolved 3791:6,22
distance 3854:24,25
distinguish 3771:9
distributed 3756:10 3758:15
distrust 3789:1
division 3741:18,22 3744:10,21 3745:13 3794:6 3799:3 3855:3
divisional 3744:7,8
divisions 3741:19 3799:20
DMR 3825:2
docket 3759:10,18 3760:10,11 3848:14
dockets 3757:21 3759:9 3759:9,11 3848:1,6,7 3848:18,21
document 3756:9 3757:24 3760:12,13 3760:14,25 3784:16 3784:19 3796:11 3842:5
documentation 3755:4
documents 3755:22 3756:16 3757:6,17,20 3758:8,12,15,25 3760:5 3761:5,9,23 3762:25 3796:18
doesn't 3804:7 3832:6
doing 3743:8 3762:7 3806:16 3810:9 3838:13 3839:6,17
Dolovoyo 3859:17
don't 3746:9,24 3747:22 3748:12 3749:20 3758:12 3760:18 3762:3 3763:18 3764:3 3770:15,17 3777:11 3780:23 3781:11 3796:10,16 3798:6 3807:16 3822:20 3831:23 3835:11 3840:8 3843:13
double 3843:16,20 3844:2
draft 3856:5
drain 3766:11
draw 3819:16 3842:7 3846:24
drawing 3832:10
drawn 3756:10
draws 3817:15
drew 3755:19 3762:1
drill 3771:19 3785:7,16 3785:19 3786:1,9,24 3787:9
drillers 3771:19
driver 3766:23
due 3753:3 3782:1
Dumisane 3858:4
duplicate 3796:23
duty 3829:19 3838:12 3840:2
dwell 3847:12 3849:5

E

earlier 3745:19 3754:14 3780:21 3781:11 3814:24 3815:11 3846:1
early 3769:12 3771:16 3815:4 3839:23 3840:11
earnest 3825:14
ears 3816:20
easier 3757:15 3761:10 3796:20
easiest 3842:18
Eastern 3794:5 3851:10
eaten 3754:21
economy 3802:24
Eddie 3768:25
edge 3826:7 3854:24
educated 3823:24
effect 3847:18
effective 3771:2 3785:15,24 3825:1 3828:16
effectively 3784:7 3819:15
effort 3848:20
efforts 3757:3 3795:10
either 3758:12 3763:11 3766:14 3810:23
elaborate 3777:7
election 3792:8
elections 3791:5 3792:4 3793:2,2
element 3781:2
eliminate 3857:6
Elliot 3852:5
email 3823:17,18 3824:12,23 3830:8,25 3831:14 3832:3,20 3833:1 3834:24,25 3836:12,23 3837:25
emails 3823:17 3825:8 3830:3 3832:11 3836:18
emanate 3742:19 3761:9
embark 3779:11 3818:20 3820:24
embarked 3779:6
embarking 3818:23
employed 3770:10 3795:8
employee 3765:25 3767:24 3772:14 3785:3 3819:8 3837:7
employees 3770:10 3776:3,4,8,10 3777:10 3778:10,12 3780:12,13,23 3781:7 3785:1,17 3788:7,15 3789:14 3790:20 3794:11,19 3795:20 3797:6 3799:22 3801:17,17 3809:19 3812:4 3813:9 3817:14,16,20,23 3818:12,14,16,19,22 3829:19 3839:13,24 3840:1
employer 3801:4 3805:23
employers 3804:2,8
employment 3770:23 3816:5
endeavour 3770:5
endorsed 3857:8
ends 3831:7
enforcement 3849:15
engage 3794:15 3828:15 3857:6
engaged 3835:25 3857:21
engaging 3817:20
England 3830:22
enjoy 3807:24
enlarge 3816:1
enlarged 3760:15 3761:3 3827:22 3840:13 3842:17
enlargement 3761:3
ensue 3833:14
ensuing 3850:4
ensure 3771:16 3789:11 3799:13 3804:7 3859:1
entail 3743:24
entails 3802:6
enter 3795:21
entered 3770:11,22 3796:4
entertain 3828:14
entire 3756:2 3782:1 3783:21 3834:5
entirely 3758:9 3830:6 3832:5 3845:15
entries 3827:22 3829:8 3840:4,5,9 3842:8 3844:10,14,17,20,21 3846:6 3847:13 3850:5
entry 3802:7 3828:6 3841:17,21 3842:19 3842:22 3843:6 3844:18,19 3845:3
environment 3788:5 3817:15
EPO 3820:9 3850:21
equivalent 3856:11
Erick 3754:17,18 3765:8
escalate 3835:4
escalates 3835:12
escort 3839:17
escorted 3834:2
escorting 3839:13
especially 3789:22 3851:19
essence 3787:15 3824:3
essentially 3757:19 3769:12 3832:2
establish 3747:8 3775:4 3781:17 3796:6 3805:17 3820:23 3848:7,20
established 3849:12
Etienne 3824:21
evaluate 3805:18 3844:4
evening 3824:12,15 3832:5 3835:1 3839:6 3839:23 3841:6,11
event 3788:4,6 3802:10 3823:4 3838:13 3846:12,17
events 3762:20 3763:5 3764:15 3768:18 3769:10 3790:25 3801:7 3815:12 3831:16 3832:14 3838:23 3847:15 3852:18 3853:4,10 3854:2,9 3855:7
eventually 3831:23,25 3834:2
everybody 3783:11 3855:24
evidence 3741:6 3748:11 3749:18 3750:2,10,12,19 3753:25 3754:6 3755:6 3756:15 3762:3,8,10 3763:8 3764:14 3765:4 3796:15 3815:12 3837:25 3838:8 3843:20,24 3844:9 3847:20,21 3852:15
evidence-in-chief 3859:23
evidential 3764:7
evidently 3833:7 3834:24 3848:9
exactly 3764:5 3782:16 3836:15
examination 3771:16 3805:9
examine 3804:1
example 3742:14 3824:19
exception 3799:4,21 3857:4
EXCO 3820:7 3821:8
excused 3753:25 3754:2
executives 3800:17
exhausted 3774:18 3775:2 3776:19
exhibit 3741:11 3755:12 3756:2,18 3758:1,3 3759:3 3760:19 3796:14,19 3817:5 3826:2 3827:13,15
exhibits 3796:19 3814:14 3818:10
existence 3817:17,22
existing 3810:23
expect 3796:16
expectation 3804:14,18 3815:24 3816:1,3,9
expectations 3804:21 3805:1 3816:11
experience 3743:22 3746:9 3766:5 3772:8
experienced 3838:13
experiences 3769:9
expert 3749:8,11,14 3750:2,3,7
expertise 3747:8 3748:17
experts 3803:4
expire 3773:16
expiring 3770:24
explain 3749:21 3751:9
explains 3750:18
explored 3853:6
extend 3851:21
extended 3783:20
extensive 3815:14
extent 3762:23
extra 3754:23 3756:25 3775:23 3777:4 3788:14
E-R-I-C-K 3754:18

F

facilitate 3755:5
facilitated 3855:16 3856:7 3858:12
facilitator 3741:24 3746:15 3808:25
facilities 3796:1

fact 3776:4 3780:17 3786:8 3787:21,22 3797:11 3805:22 3812:4,9,22 3817:16 3817:19 3821:25 3822:17 3829:19 3832:13 3837:21 3842:9 3844:21 3847:19 3852:12
faction 3843:9 3844:23 3845:7,8,10,16
factor 3776:23
factors 3776:25
fair 3804:5 3847:20
fairly 3762:19
faith 3788:19 3789:9
families 3832:9
far 3743:25 3757:18 3785:18 3788:2 3813:7 3827:11 3834:11
Farmer 3830:16,21,25 3831:1 3835:7 3836:13,19
fatalities 3837:21
fateful 3852:19
fear 3780:1 3845:5 3846:4
February 3780:11,18 3780:21,25 3781:13 3781:15
fee 3757:4
feedback 3824:24
feedbacks 3777:10 3788:11
feel 3776:4
feeling 3778:16
feelings 3822:1
fell 3779:4
felt 3775:17 3776:15 3778:12 3788:10
fight 3845:7,10
figure 3781:10 3852:10
figures 3781:23 3784:16 3786:24 3859:5
filed 3756:20
final 3764:15 3798:23 3798:25 3801:2 3809:8 3811:1,11 3814:5
finally 3854:8 3858:9 3859:15
finances 3817:14
finding 3846:4,6
finds 3788:14
finish 3745:15 3821:13 3846:1 3860:5
fire 3804:14,19
fired 3837:6 3842:2
firmly 3817:24
first 3749:25 3750:4 3755:7 3756:12 3757:20,22,24 3759:23 3764:10 3766:6 3767:1 3781:20 3783:9 3786:17,25 3788:21 3789:4 3812:23 3817:13 3820:17 3828:22 3830:15,25 3831:15 3835:24 3840:12 3844:22,22 3850:9 3859:25
firstly 3743:1 3756:18 3800:16 3817:9 3839:7 3855:11
five 3751:14 3757:19 3840:9 3847:1 3850:21
floor 3761:15
flowed 3764:18
flows 3786:14
focus 3741:23
follow 3761:11 3769:21 3770:4 3786:13 3815:8
followed 3745:16 3816:15
following 3746:20 3766:17 3786:18 3787:15 3789:8 3813:16 3814:12 3830:24 3859:16
follows 3786:11
foot 3839:13
footage 3750:22 3751:23,25
footnote 3784:14 3791:16 3796:12,13 3796:16 3815:18 3840:5 3842:5
footnotes 3770:13,16 3780:15 3784:1,4
Force 3744:23 3745:7 3745:10,23 3746:13 3746:23
forcibly 3779:22 3797:20
forgot 3859:14
form 3741:20 3746:6 3761:17 3845:1
former 3794:21
formulated 3803:24
formulating 3746:2
formulation 3746:10 3806:19
forth 3756:4 3762:9 3825:24
fortunately 3840:13
forward 3784:10 3785:22
found 3789:16 3850:20 3851:3 3855:25 3858:4 3859:2
four 3780:7 3794:4 3831:24 3832:22 3860:5
Frank 3830:9,16 3831:1 3832:16 3836:12
fresh 3795:10
friction 3843:10 3845:1 3845:1,12
friendship 3825:4
front 3823:18
full 3761:19 3764:9 3769:15 3789:11 3800:22 3814:3 3834:3 3836:21
fuller 3764:18
fully 3802:5 3837:24
full-time 3767:19
functioning 3792:9 3793:7
functions 3741:22
funny 3830:3
further 3749:23 3751:10 3753:20 3754:2 3764:18,20 3780:24 3781:12 3783:19,25 3784:2 3785:21 3796:3 3813:15 3824:19 3827:16 3828:9 3841:3 3847:21 3856:4

G

G 3754:18
gaps 3742:19 3743:25
gather 3781:25 3803:15 3828:3 3843:1
gathered 3800:2,10 3842:11 3851:4 3858:5
Gathering 3751:19
Gcilitshana's 3756:15 3761:18 3764:14
general 3771:9 3778:10 3778:10 3784:23,25 3805:13 3820:2,3
generally 3762:9 3792:11 3793:2 3798:9 3803:19 3810:21,22 3825:10 3836:1
generate 3799:14
generation 3753:12
gentlemen 3793:14
getting 3747:13 3784:8 3784:16
give 3754:23 3756:2 3760:18 3761:19 3763:8 3765:4 3774:10 3776:20 3778:9,16,25 3783:25 3796:17 3811:25 3816:2 3819:20 3835:10 3847:18 3852:15
given 3744:7 3745:12 3750:1,13 3752:17 3753:10,23 3755:12 3756:18 3771:8 3774:20 3775:6 3785:3 3812:4,12 3814:2 3841:24,24
gives 3830:22 3836:19
giving 3741:6 3753:25 3777:9 3788:11 3796:15 3851:19,22
GK 3840:24
go 3742:7 3748:18 3749:1,2 3751:23 3780:25 3782:8,15 3783:13 3790:25 3792:13 3798:18 3800:23 3801:3 3808:17 3812:14 3814:9 3816:4,10,14 3816:23,25 3822:18 3828:5,9 3829:8,11 3830:2 3831:17 3835:22 3838:2 3839:21 3840:18,18 3841:4,11,17 3843:5 3847:21 3850:6
God 3765:7,8
goes 3792:20,22,24 3822:6 3834:1,24
going 3741:8 3742:18 3750:12 3754:6 3763:8,9,14 3769:17 3774:5 3780:15 3783:11 3784:17 3785:2 3789:7,24 3790:23 3793:1 3795:2 3799:17 3805:5 3816:24 3826:1 3830:2,14 3831:11 3835:23 3836:11,24 3837:23 3841:2,3 3842:3,6 3844:13 3847:12,18 3847:21 3848:5 3849:4,7 3850:5 3852:11 3859:25
good 3788:14,18 3789:9 3790:15 3823:24 3824:15 3825:2 3844:1
Google 3826:3
governed 3787:10,22 3845:10
GP 3742:14
gracious 3757:18
grade 3809:22
grades 3812:21
grading 3785:7
granted 3771:1 3773:2
grateful 3757:3 3761:2
grave 3860:7
great 3792:4 3815:9 3832:13
greatly 3824:16
gremlin 3756:21
gremlins 3754:21 3756:25
grievances 3857:17
ground 3834:4
group 3828:7,22 3829:4,8 3839:10 3844:22,23
groups 3817:19 3825:3 3843:11 3844:21,23
guaranteed 3786:1,7 3786:23
gunshot 3843:11 3844:25 3845:11 3850:21
gunshots 3844:24 3848:10
guys 3825:3

H

hadn't 3782:15 3809:11
half 3776:17
halfway 3830:17
Hamman 3824:22
HANABE 3743:4 3791:11
hand 3755:9 3762:25 3763:20 3765:6
handed 3756:17 3757:7 3759:24 3760:12 3761:13 3796:14
handful 3756:15
hands 3845:7 3860:4
Hang 3758:5
happen 3763:24
happened 3743:4 3752:25 3763:23 3778:2 3782:16 3790:13 3793:12 3814:22 3815:3,5 3820:13
happening 3742:11
happens 3742:10 3776:22
happy 3815:8 3822:2
hard 3758:15 3761:10 3761:13
hardcopies 3758:17
hasn't 3763:19 3804:18
haven't 3753:14,23 3759:22 3763:17 3831:15
head 3767:22 3797:15 3805:8,10 3819:12
headed 3760:6,6
heading 3760:7,9 3768:17 3786:17
health 3766:1 3767:6
hear 3779:22 3810:14 3819:3 3838:17 3847:20 3858:6
heard 3815:10 3819:1,8 3841:1 3843:18 3847:20 3853:5 3854:4 3859:11
hearsay 3761:18,21 3762:6,8 3843:15,16 3843:20 3844:1,3,4
held 3762:2 3778:3 3798:19 3801:16 3809:8 3811:6,10 3856:5

help 3745:17 3747:8 3758:13 3765:7,8 3815:6
helped 3768:6
helpful 3756:17 3758:14 3784:9
Hemraj 3752:6,13,21 3754:21 3758:7 3830:11 3854:10,12
Hemraj's 3756:22
he's 3749:20 3751:3 3754:12,14
high 3779:15
highlight 3770:19 3783:18 3790:1
highlighted 3770:6 3784:13
historic 3846:11
history 3761:20
hold 3747:8
holds 3772:1 3802:11
hole 3771:19
holes 3771:18
holiday 3786:4
Holomisa 3858:13
honest 3776:16 3788:10
hope 3755:5 3824:24 3825:1
hospital 3837:7 3848:15 3850:11
hostel 3838:4 3840:20 3850:21
hostels 3838:18
hours 3839:23 3840:11
House 3802:8 3805:7
housekeeping 3755:4 3761:3
houses 3772:9
housing 3813:7
HRD 3744:21 3745:13
human 3744:10,13,14
hundred 3842:10
hypothesis 3744:12

I

Ian 3830:16 3836:13
identification 3742:24
identified 3742:4,24 3807:2 3852:2
identify 3745:11 3748:8 3764:19 3803:23
identifying 3742:3
illegal 3760:7 3817:23 3820:15 3833:8
illustration 3786:2,10 3840:11
immediately 3754:24 3755:2 3763:20 3793:25 3828:16
imminent 3823:10
impact 3815:21 3817:2
impacted 3815:2
Impala 3768:18,20 3769:7,11 3770:9,10 3770:10,22 3771:1 3772:23 3773:2 3775:2,6 3776:3 3777:16 3778:24 3779:22 3780:7,11 3781:19 3783:3,19 3784:5 3785:8 3786:9 3787:12 3788:14 3789:14 3790:2,21,24 3814:23 3815:2,12 3816:5,8,15 3817:2
Impala's 3815:19
imperative 3789:11 3855:24
implications 3806:13
implicitly 3790:16
importance 3792:5 3808:2 3832:15
important 3763:22 3764:7 3770:16 3771:12,15 3772:17 3772:22 3786:10 3790:8 3792:7,9 3800:8 3846:21
improve 3806:15
inaudible 3800:6
incident 3742:17 3743:24 3752:1 3844:8
Incidentally 3785:6
incidents 3742:13 3780:6 3797:12 3853:8
include 3782:12 3818:15 3834:20
included 3787:3 3794:20 3801:19
includes 3742:3
including 3801:17 3807:6 3814:5 3835:12 3836:1 3855:21
inclusive 3798:10
incomplete 3780:19
incompleteness 3781:2
increase 3771:2,3 3773:2,3,9,10,14,17 3773:19,25 3774:7 3775:11,23 3776:5 3777:4 3778:14,25 3782:13 3785:2,21,23 3786:8,23 3787:16 3788:1 3790:15,21 3808:8 3812:20,22 3813:10,16,16,17 3815:20 3820:17 3849:14
increased 3773:20 3786:5 3809:21
increases 3783:20 3784:24 3787:22 3789:17 3821:5,20
incur 3860:7
indebted 3786:12 3791:13
index 3757:11
indicate 3822:5 3848:25 3859:8
indicated 3751:24 3761:8 3769:15 3774:18 3775:2 3783:8 3793:10 3804:12 3808:19 3819:20 3820:19 3834:16
indicates 3788:18
indicating 3826:16 3833:9 3836:2
indication 3774:20 3775:5,6 3843:15
indications 3834:10 3848:21
individual 3751:1 3756:3
individuals 3778:13
industrial 3818:20,23
industry 3766:6 3805:18
inflation 3802:22,22 3804:16
influence 3825:1
info 3825:3
informal 3837:5
information 3743:14 3753:23 3769:15 3780:8 3795:23 3819:22 3843:8
informed 3769:12 3796:9 3799:22 3809:18 3820:10 3821:1,2 3840:17
initially 3741:17 3780:22 3782:2
initiated 3781:22
injured 3837:6,21 3843:12 3844:24 3845:12 3848:10
injuries 3780:6 3797:15
injury 3844:25 3847:2
input 3803:1
inside 3840:19
insist 3817:20
inspection 3763:7 3764:2
instances 3780:14
institute 3803:7
instructed 3743:11
instruction 3742:16 3743:2
intended 3835:17 3842:12 3845:16
intention 3806:14 3813:14
interact 3792:12
interaction 3801:21
interacts 3799:8
interdict 3833:18,24
interest 3767:5
interested 3746:9 3770:18 3785:14 3814:19 3830:4
interests 3785:20 3814:24
internal 3757:25 3758:5,20 3760:5,8 3802:14 3814:13,21 3818:9,11 3819:8,11
internally 3819:13
interpose 3812:15 3825:17
interpreter 3859:9,10 3859:14
interrupt 3774:19 3788:20 3796:10 3814:16 3820:12 3843:14
intervene 3742:20 3832:22
intervention 3744:11 3745:10,14,18,21
interventions 3745:24
intimidate 3783:10
intimidated 3782:14 3783:14
intimidating 3841:1
intimidation 3779:16 3782:9 3818:21 3832:14 3834:21 3835:2 3840:1 3841:22 3849:15 3850:3 3851:18 3858:2
introduced 3749:19 3750:11 3805:7
introduction 3761:6,15
investigations 3763:1 3837:14,19 3847:24
invite 3741:23
invited 3746:5
involved 3743:18,19 3747:5 3766:7 3768:3 3768:20 3769:16 3779:13 3801:9 3811:18 3818:1 3821:2 3822:4 3849:9 3849:24
involves 3800:16
in-house 3752:15,24 3753:10
irrelevant 3781:16
Isaiah 3851:2
Isn't 3830:11
issue 3743:2 3808:17 3836:4 3851:17
issued 3783:12 3814:13 3833:9
issues 3833:11 3859:4
item 3837:25
items 3756:3
it's 3742:5 3744:7 3746:15 3747:23 3748:21,23,24 3749:2 3750:24 3751:2,16 3752:10,12 3754:13 3757:15,15,22,23 3760:6,8,14 3762:10 3762:23,24 3764:4 3766:12,16,20 3768:25 3770:24 3772:16 3777:17 3780:21 3783:23 3786:8,19 3792:6,15 3792:17 3799:13 3802:12 3812:14 3815:5 3821:10,15,15 3822:6 3824:8 3827:16 3828:13,18 3830:13 3831:4,24 3835:8 3838:8 3839:8 3840:23 3841:5,13 3842:16,20 3843:20 3843:25
I'd 3741:23 3754:24 3838:1
I'll 3758:23 3760:3 3769:21 3770:5 3783:18 3791:1 3798:7 3840:10,13 3844:4
I'm 3745:20,21,25 3746:5,9 3747:7,13 3748:16 3754:15 3757:2,3,14,22 3761:2 3765:2 3766:1 3769:16,17 3781:1,16 3785:5 3786:12 3789:7 3790:23 3791:13 3792:25 3796:15 3811:19 3814:18 3826:1 3829:11 3830:2,2,4 3831:11 3835:16,23 3836:11,24 3837:9,23 3841:2,3 3842:3,6 3844:9,21
I've 3743:2 3752:16 3763:17 3789:25 3819:20 3832:20 3840:2 3859:14

J

Ja 3747:13 3751:2 3758:20 3759:7
January 3741:1,19 3771:2 3778:23 3797:23
Jeffrey 3768:6
job 3745:10,15 3746:17 3746:19 3808:22 3810:13 3846:21
jobs 3810:15
Joe 3845:5
join 3767:1
joined 3825:3 3858:13
July 3757:22,23 3758:1 3760:8,9 3785:22,25 3814:14,22 3815:5 3817:13,18 3820:6,14 3821:4
June 3757:21,23 3770:24 3773:16 3816:21

K

Karee 3790:25 3791:3 3791:5 3794:4,5,7,11 3795:16,22 3796:6,25 3797:12,20 3799:4,21 3801:17,18,20,20 3818:4 3820:8,15,16 3827:7,10 3850:11
keep 3789:18
kept 3769:12 3807:13 3834:3
keys 3797:19
Khululekile 3791:10,25 3793:14,22
killed 3763:3 3848:22 3854:5
kind 3762:2 3769:20 3784:2 3804:6 3806:12,15 3834:15
kinds 3783:21
know 3745:14 3747:18 3748:2 3752:22 3758:12 3762:14 3763:18 3780:23 3781:11 3788:2 3791:8 3797:15 3817:3 3820:1 3822:20 3823:17 3825:4,13,18 3831:23 3832:18 3835:25 3843:14 3848:23
knowledge 3745:7,8 3753:17 3761:19 3772:18 3779:21 3849:4
known 3832:17
Kombi 3843:9
koppie 3826:23 3851:3 3853:6,8 3854:3 3858:4
Kraal 3853:14,16,23 3854:13,16 3855:2
K4 3850:10

L

labour 3770:11 3788:5 3855:16,20 3856:8
labourers 3782:7
language 3782:7
large 3803:11 3837:3,4
Larry 3824:12,17
late 3811:6 3823:7
law 3834:18 3845:7 3849:15
layout 3825:22,23
lead 3754:4,5 3845:6
leader 3824:17
leaders 3750:12 3781:21 3788:10,10
leadership 3779:25 3789:1,2 3793:21 3794:21 3797:21 3799:23 3811:17,18 3812:7 3838:6 3852:6
leading 3775:7 3822:12 3826:10 3856:9
learn 3820:18 3838:9
learnt 3753:11
leave 3786:4 3790:23 3853:15,16
leaving 3853:4
led 3754:7 3774:21 3782:2 3787:17 3788:1 3801:8 3843:15,21 3844:9 3857:20 3858:13
left 3753:5 3813:23 3826:22 3827:11,17 3853:2,12,13,13
left-hand 3827:24
legal 3837:15 3848:19
letter 3791:17,21
let's 3741:10 3744:19
level 3782:9 3792:12,17 3792:22,24 3801:12 3836:1
levels 3779:15
liable 3833:12
light 3781:18 3790:21 3845:14
likewise 3792:9
limited 3749:19 3765:25 3795:21
line 3793:11 3800:5 3826:10,16 3844:22 3845:4 3850:20
lines 3843:6
linked 3803:7
list 3800:8 3801:2
little 3751:10,23 3771:7 3816:1 3826:19 3837:24 3847:12
lives 3780:7
living 3786:4
locate 3764:10
located 3848:25
location 3825:19 3826:20 3830:7
loco 3763:7 3764:2 3766:22
lodged 3755:20
log 3840:5 3844:10 3850:4
long 3752:10,12 3828:5 3846:17 3860:5
longer 3853:10
Lonmin's 3797:1 3799:3 3820:7,16 3822:22 3824:9,22 3825:19
look 3743:7 3758:10 3776:2 3789:22 3802:19,21 3803:16 3804:13 3805:13,13 3816:5 3826:6 3839:7 3840:8 3842:16 3848:7
looked 3748:25 3802:25 3806:8
looking 3748:25 3784:23 3806:4 3845:9
looks 3753:22 3760:19 3802:24
lose 3842:9
losing 3772:24
lost 3780:7
lower 3773:12 3826:6 3830:8 3854:23
LPD 3794:6,6 3825:15 3825:19 3826:6 3827:3 3828:7 3831:19,25 3832:24 3832:25 3853:2,12,13 3854:19
lunch 3821:10 3822:15
lying 3777:13

M

M 3771:9
Mabebe 3850:10
Madlanga 3762:1
Magita 3768:6
Mahlatso 3852:6
main 3763:15 3777:23 3818:4
maintain 3769:6
Majadibodu 3768:25
majority 3770:9 3777:9 3780:13 3796:25 3797:1
making 3831:18
Maloyi 3852:5
man 3824:17
managed 3751:25 3831:23 3832:22
management 3760:7 3784:7 3786:15,17,18 3791:17 3817:20 3818:16 3823:19 3824:10,22 3828:14 3832:7,12 3833:7 3851:21 3855:20 3856:5,10,24
managers 3830:10
mandate 3790:9 3798:22 3806:22 3811:1,25 3812:3 3814:5
mandates 3798:11,16 3798:25 3814:4
manner 3769:19
Maphefo 3751:3
march 3802:10 3818:7 3820:15,24 3828:7
marched 3818:4 3825:15
marchers 3832:23
marching 3827:2 3828:19 3842:12
Marikana 3752:1 3797:1,9 3855:8
marked 3757:25,25
market 3785:21 3802:21 3803:17 3804:13 3805:18 3817:14
marking 3826:10
marks 3763:6
Masenya 3751:3,24
Masilo 3841:23
mass 3798:24 3799:19 3800:11 3801:1,15 3806:23 3812:5 3823:23 3828:14,19 3828:25 3834:14 3838:4 3851:11
masterpiece 3845:13
material 3748:8 3756:10 3761:21 3764:7,20 3783:25 3859:19
Mathunjwa 3796:14
Mati 3850:20
matter 3744:22 3750:22 3762:10,21 3775:17 3785:7 3792:4 3797:25 3818:3 3846:2 3849:3
matters 3755:3 3761:18 3762:13,14 3767:6 3770:20 3787:2 3803:16 3807:2 3852:1
mean 3749:9 3773:3 3776:7 3777:3 3816:11
meaning 3745:11
means 3748:23 3843:11
measures 3849:15 3855:17
meet 3800:17,22
meeting 3791:18 3798:24 3800:1 3801:1,14,15 3806:23 3806:25 3807:18 3809:8,8 3810:3 3811:5,10,12,23 3812:5 3820:11 3823:2,3,7,13,23 3834:14 3838:4,11 3851:10,11,24 3852:8 3853:1,24 3855:16,19 3855:24 3856:4,13,17 3856:20
meetings 3798:19 3799:20 3800:12 3807:5,9,20,25 3808:12,13 3849:20
member 3752:8 3850:9 3850:19 3851:2
members 3742:19 3751:18 3752:18 3763:12 3770:9 3779:17 3788:7 3790:4,10 3792:12 3794:21 3795:11 3799:21 3800:3 3801:19,21,21 3803:13 3812:4 3819:16,23 3824:1,9 3839:17 3840:17 3841:5,6 3845:6 3850:8 3858:4
membership 3778:10 3795:5,7,17 3796:5 3796:25 3798:11,20 3808:15 3838:10
memo 3783:12
memories 3764:1
memory 3741:14 3767:2
men 3785:18
mentioned 3763:17 3781:14 3790:3 3852:12
mere 3764:2
merely 3850:5
message 3830:16 3838:9,19
met 3751:24
Middle 3853:13,14,16 3853:22 3854:13,16 3855:2
Mike 3820:16
mind 3762:7 3798:6 3815:21 3816:25 3841:2
mindful 3846:11
minds 3810:12
mine 3768:18 3782:8 3782:15 3790:25 3791:3 3796:6 3797:12,20 3799:5,21 3801:17 3819:13 3820:8,15,16 3827:8 3827:10 3850:11 3852:13
Miner 3771:13,13,15 3771:17,21 3772:4 3778:5
miners 3771:3,8,8 3772:9,9,13,15,24 3773:2,10,11,18 3774:2 3775:17,23 3776:8,10 3777:2,4 3777:24 3778:8,20,21 3778:25 3779:5 3782:4,5,8,12 3783:2 3783:7,13 3785:18 3787:16 3788:13 3790:14
mines 3766:7
mineworkers 3765:24 3771:10
mining 3766:6 3771:13 3772:3,9,13,19 3777:24 3802:8 3805:7
Minister 3855:16
minority 3801:20
minute 3790:3
minutes 3807:13 3828:11 3829:3 3847:1,22
missed 3800:6
missing 3835:8 3836:2
mistake 3835:15
mistaken 3785:5

Mkhwanazi 3741:4,12 3741:16 3742:1,5,10 3742:22 3743:1,5,10 3743:17,23 3744:4,6 3744:14,17,20,24 3745:2,5,9,20 3746:3 3746:12,23 3747:2,5 3747:10,13,20 3748:6 3748:10,15,20 3749:6 3749:9,12,15,17 3750:3,9,15,20,24 3751:2,8,11,22 3752:10,16 3753:3,13 3754:1
mob 3843:1,7
modest 3750:17
Mokwadi 3845:5
moment 3806:25 3844:4
moments 3755:2
Monday 3750:18 3856:12
money 3777:11 3788:14 3789:17,19 3822:6
Mongwaketsi 3791:10 3791:12,25 3793:15
monitoring 3836:20
month 3776:17 3810:12 3813:10,10 3820:7,8,9
months 3775:17,22
morning 3742:7 3756:1 3756:13 3828:6 3830:24 3836:13,14 3839:9 3842:23 3843:7 3853:2 3860:2 3860:9
move 3755:14 3768:16 3769:17 3778:19 3796:24 3806:10 3807:3 3818:8 3821:3 3852:11
moved 3753:6
moving 3784:9 3822:16 3825:12
Mpofu 3845:22,24 3846:8,14,17,20,22 3846:25 3847:4,6 3860:7
multiple 3858:5
murder 3848:9
murdered 3763:9 3851:3 3859:18
M-A-J-A-D-I-B-O-D... 3769:2

N

NACTU 3855:21
Naledi 3803:2,6 3804:4
name 3750:25 3766:14 3768:23 3791:11 3859:14
narrative 3763:9,16 3768:19 3770:13 3838:9 3843:23,24
national 3765:23,24 3766:1 3767:14 3836:1
nature 3761:24 3825:9 3834:10 3844:2
near 3829:9 3830:21 3841:7,14 3842:11 3850:10,20 3851:3 3858:4
nearby 3838:18
necessary 3763:25 3764:13 3770:2 3780:25 3783:24 3793:3 3812:14
need 3770:15 3830:22 3847:14
needs 3742:4,24 3744:10 3745:12 3748:22,25
negotiate 3825:7
negotiated 3794:14
negotiates 3790:4
negotiating 3774:16 3788:18 3809:8 3810:3 3857:11
negotiation 3751:6,10 3751:12 3752:7 3798:12 3802:13 3804:22 3805:3 3807:25 3811:12
negotiations 3752:14 3760:10 3768:4,20 3774:21 3775:6 3785:13 3788:1,15 3790:1,5,17 3797:25 3798:2,9,16 3802:5 3803:24 3807:14 3808:14,24 3809:4 3814:4,6 3817:21 3821:17 3855:12 3857:19 3858:10,11 3858:14,24,25 3859:6
negotiator 3766:2 3768:7,9,11,24 3801:6 3819:7,7 3821:24
negotiators 3752:22 3789:16 3807:6
never 3741:7 3819:8
nevertheless 3767:23
new 3746:4 3758:9 3798:22
news 3780:18 3814:25 3814:25 3815:1
night 3754:16 3830:6 3834:6 3838:25
nine 3773:21 3775:11
nine-day 3741:7,8
ninth 3741:5
non-compliance 3791:4
non-miner 3777:3
non-strikers 3849:16
non-unionised 3763:12
noon 3828:11
normal 3769:5 3809:3 3814:5 3857:18
normally 3742:10 3743:17 3751:18 3753:15 3782:6,7 3803:3,12 3804:4 3818:11
norms 3805:18
North 3777:20,24 3778:8
note 3796:24 3824:9 3825:13 3845:17 3859:17
noted 3828:7,13 3829:12 3840:4,16,23 3841:13 3843:7 3844:5
notes 3828:21 3829:4 3835:6
notice 3833:10
notification 3833:19
Notwithstanding 3770:25
November 3755:20 3807:11 3809:9 3811:6
Ntinti 3858:4
Ntsebeza 3750:22
number 3755:12 3756:3 3759:6,12,20 3760:19 3781:7 3784:7 3785:5 3788:13 3803:11 3807:5 3830:22 3832:13 3840:4 3841:23,23,24 3846:5
numbers 3756:18 3760:1 3796:19 3835:4
numerous 3797:11 3833:11 3834:4 3839:24
NUM's 3789:25 3790:17 3797:21,25 3798:8 3800:17 3802:8 3805:2,7,10 3809:4 3819:7 3824:4 3829:13 3836:7 3857:16

O

oath 3741:3 3763:10 3764:25 3765:4,18 3782:23 3822:12 3847:9
objection 3844:5
objective 3789:18,19
observation 3764:9,16 3815:10
observations 3764:17 3839:4
observers 3858:14
obtain 3795:11 3798:16 3798:25
obtained 3795:25 3803:1 3806:23 3811:2
obtaining 3790:9 3808:8 3809:11 3814:4
obviously 3746:4 3758:24 3761:10 3762:6 3763:22
occurred 3787:21
occurrence 3847:13
occurs 3817:1
October 3770:7,21 3773:5,16 3774:15,22 3775:8 3787:4,11 3800:16 3806:1 3807:10 3859:18
offer 3815:19,20 3822:22 3856:23
offered 3751:10 3752:8 3856:10
offers 3807:20 3811:16 3811:24
office 3741:21 3742:7 3742:23 3743:11 3748:18 3762:20 3767:22 3779:24 3780:1 3805:8,10 3818:4 3819:12 3820:15 3825:15,20 3825:20 3827:3,4 3829:9 3837:1,10 3838:14 3841:8,8,14 3842:9 3843:2 3847:16 3848:10,22 3852:4
officer 3751:2 3839:10
officers 3840:24
offices 3763:7 3779:21 3797:20 3825:24 3826:20 3841:22 3842:12 3843:8 3853:25
official 3742:15 3771:22
officials 3785:18 3834:13 3839:6,17
Oh 3759:3
okay 3747:21 3750:10 3759:3 3817:4 3833:4 3836:17 3849:18
once 3744:6 3853:4
ones 3849:22
opened 3848:8
opening 3832:8
operate 3772:4
operation 3766:15 3794:4 3849:12
operational 3741:20,22 3742:4,12,25
operations 3794:5 3797:2,9
operator 3751:4 3786:2
operators 3785:7,17,19 3786:9,24 3787:9
opportunity 3817:9 3829:24 3842:7 3844:9 3848:6
opposed 3785:24 3824:4 3834:20
opposite 3828:3,22
opposition 3829:14,17
order 3744:25 3748:5 3748:13,18 3749:5,8 3749:16 3750:7 3751:4,6,12 3752:9 3752:14,23 3761:19 3763:25 3789:17 3795:11 3796:1 3798:24 3801:2 3815:7 3855:17 3859:1
ordinary 3762:2 3818:16
organisation 3776:3 3789:12 3803:2
Organisational 3795:21
organisations 3857:9
organise 3757:14
original 3755:8 3830:15
originally 3761:9
ORS 3741:24 3742:3
outlined 3746:21
outraged 3775:18,24 3775:24
outside 3749:1,2 3774:12 3819:13
outsourced 3751:13,14 3752:7,17
o'clock 3828:2,6 3834:25 3839:9 3841:11 3846:13 3860:5
o'clock 3800:20,25 3821:11 3822:9 3846:24 3853:18

P

package 3810:11
packages 3810:8
pads 3754:11
page 3758:23 3759:6 3780:17,20 3781:5 3784:19 3785:15 3786:15 3788:22,24 3789:5 3791:16 3823:18 3824:10,11 3824:20,21 3826:7 3827:13,20 3828:2 3830:2,3,9,11,17,18 3830:21 3833:2 3835:22,23 3836:12 3836:15,16 3839:7 3840:12 3841:10,18 3842:5,16,20 3843:5 3844:19 3845:2,3,9
pages 3760:16,16,19 3784:11 3823:16
paid 3757:4 3767:24
para 3796:12
paragraphs 3769:20 3855:14
part 3746:4,6,17 3761:16 3764:2

3766:15 3769:11 3782:6 3783:8,15 3787:25 3790:8 3804:3 3812:13 3815:11 3829:15 3830:8 3832:8 3838:8 3840:3,12 3855:3
participate 3746:2,25 3753:10
participated 3837:14 3857:19 3858:25
participating 3753:24 3824:5 3851:16
participation 3794:1
particular 3760:25 3767:5 3770:20 3785:8 3786:24 3790:14 3793:1,21 3802:13 3806:6,20 3808:5 3809:7 3810:22,23 3815:13 3827:2 3843:16 3847:22
particularly 3762:13 3769:16 3798:7 3807:23 3841:5 3847:13,25 3859:4
parties 3757:5 3758:8 3856:1,24 3857:3,5 3858:11,17
part-time 3767:22
pass 3753:11 3827:3
passage 3831:9,19
passed 3778:19
patient 3844:3
pause 3816:13
pavilion 3754:10
pay 3775:16,22,23 3786:1,7,23 3788:14 3789:17 3856:10
payable 3787:9
payments 3787:10
peace 3855:8,12 3856:1 3856:6,7 3857:3,5,8 3857:10,20 3858:24
peaceful 3823:23 3830:6
peacefully 3832:6
peg 3762:25
people 3752:25 3753:4 3770:17 3780:6,7 3782:6,6,14 3783:9 3783:12 3803:4 3812:24 3824:5 3827:2 3837:6 3839:11,12,18 3841:1 3843:11 3844:24,25 3845:11 3846:4,9 3854:5
percentage 3776:6 3802:25 3808:8
performance 3804:13
performed 3803:20
performing 3804:16
period 3747:23 3769:11 3797:12 3807:10 3816:20 3832:14 3839:18 3849:10
periods 3745:25
permission 3753:22
persist 3822:23
person 3743:18 3745:8 3745:12 3763:7,16 3768:24 3771:12,15 3771:18,22 3772:1,6 3797:15,17 3802:8 3832:16
personally 3816:20 3849:9 3852:2
personnel 3842:3
persons 3763:2,11 3797:21 3830:1 3837:20 3838:19 3839:12 3848:9,21 3851:14
perspective 3789:16
persuade 3795:20
pertinently 3817:16
phase 3800:14
phases 3745:22
phone 3830:23
photograph 3826:3 3827:9 3854:24
photographs 3854:23
phrase 3810:1 3816:13
picture 3761:19 3802:8 3840:23
Pillay 3755:16 3756:1,8 3757:3,18 3758:18 3761:13
place 3742:13,17 3743:24 3755:7 3766:4 3769:13 3771:7,8 3772:20 3793:3,19 3798:4 3799:3 3801:12 3807:6,20 3811:22 3837:1,16 3839:5 3846:12 3847:21 3848:25 3853:6 3854:3 3855:7
placed 3743:16 3761:22 3832:21 3848:1 3851:5
placing 3832:10
planning 3834:5
Platinum 3765:25 3766:11,13 3768:18 3770:9 3784:5 3794:5 3794:6 3820:9 3841:7 3851:10 3855:3,5
play 3746:19 3768:13
played 3764:12
please 3742:6,21 3745:17 3751:9 3764:25 3825:4 3826:2 3827:7 3839:7
pleased 3754:16 3786:18
plurals 3744:19
pm 3830:16 3831:1
poaching 3772:19
point 3749:25 3763:4 3772:7,12 3774:15 3778:20 3779:20 3781:5 3784:3 3785:19 3786:11,13 3821:16 3822:15 3831:6 3847:5 3851:18
pointed 3763:13 3764:6 3786:22 3812:18
pointing 3771:18 3781:1 3799:4
points 3827:2
police 3742:15 3750:13 3751:13 3752:20 3829:1 3856:25
policies 3805:17
Policing 3741:18,19 3742:12 3745:1 3748:5,13,18 3749:5 3749:8,16 3750:7 3751:7,12 3752:9,14 3752:23
portfolio 3767:10,14
portion 3832:20 3840:2
portions 3764:12 3770:6 3839:3
position 3742:17 3746:19 3747:24 3778:21 3783:2,6 3785:12 3790:24 3795:5,16 3797:21 3807:23,24 3809:15 3809:19 3810:24 3811:15 3812:18 3815:22 3817:2 3823:14 3824:4 3827:1 3829:14,19 3834:17 3849:24 3857:16 3860:1,3
positions 3778:3
possibility 3756:25
possible 3754:22 3762:5 3802:24 3813:25
possibly 3757:5 3770:1 3837:4
post 3766:21
posts 3767:19,22
potential 3805:2 3810:23
PP1 3826:2,3 3854:17
practically 3801:9
practice 3814:5
practices 3805:19
preceded 3757:11 3806:19
precisely 3838:1
preliminary 3764:16 3800:2,10 3801:11 3807:2
premises 3819:13
prepare 3756:11
prepared 3755:9 3756:25 3761:16 3763:19 3764:13,25 3765:2,3 3775:10,16 3808:22 3833:8 3835:12
present 3746:18 3747:16 3753:12 3762:22 3763:11 3790:20 3801:2 3808:25 3838:24 3843:17 3849:20 3850:6,23 3851:14 3856:13,16,19
presentation 3747:15 3751:17 3755:5 3756:14 3761:17 3803:4 3804:4
presented 3751:13,15 3751:18 3765:13 3799:23 3800:3,11 3811:14 3838:8 3856:5
presenting 3746:20
presently 3753:9
president 3820:16 3852:13
presumably 3763:10 3763:15 3764:6 3818:22 3843:24 3845:5
Pretoria 3846:16
Pretty 3831:17
prevailing 3851:18
prevent 3849:15
previous 3802:20 3803:20 3845:2,15
previously 3786:7 3809:23 3825:18
primarily 3805:16
principal 3781:6 3802:17
priority 3798:10
private 3751:14
probably 3791:17 3835:15 3844:25
problem 3749:3 3782:24 3792:15,17 3792:17 3831:4 3835:13 3855:25
problems 3762:7 3792:19,21 3793:7
proceed 3762:9 3783:17 3815:5 3840:25
proceeded 3832:5
proceeding 3756:6
proceedings 3741:1 3859:20
process 3771:13 3790:9 3794:25 3795:15 3798:10,12 3799:9,17 3801:8 3804:22 3805:3,9 3806:19 3807:19 3808:11,12 3835:10 3856:9 3858:12
processed 3779:12 3801:11
processes 3822:7 3829:21 3857:19
production 3771:13 3789:11,18,23
professor 3751:15,16 3752:15,17,23 3753:1 3753:9,12
programme 3746:4,7 3747:21 3748:22 3808:20
programmes 3745:22 3745:24 3746:21 3747:14
progress 3790:5
promoted 3766:18,22 3785:20
promotions 3753:4
proper 3792:4,8 3802:5
properly 3745:16 3804:16
proposal 3856:14
proposals 3859:6
propose 3790:10 3840:8
proposed 3809:21 3812:20
proposes 3791:18
prospect 3823:10
protect 3845:6
protested 3793:17
protesters 3763:12
protocol 3793:11
protracted 3855:18 3859:2
provide 3756:12 3793:4
provided 3751:11 3758:18,25 3773:17 3857:22 3859:3
providing 3777:12
Public 3744:25 3748:5 3748:13,17 3749:5,8 3749:16 3750:7 3751:4,6,12 3752:8 3752:14,22
published 3749:4
purpose 3764:13 3802:18,19 3805:16 3832:10 3843:22
pursue 3835:9 3841:3
pushed 3831:24 3832:24
put 3749:25 3758:23 3772:3 3788:8,8 3796:22 3805:15 3808:2 3809:21 3843:23
puts 3746:6
putting 3774:15
PW 3840:23

Q

question 3749:21,25 3753:14 3772:11 3774:6,24 3775:20

3782:11 3787:7 3804:24 3815:21 3817:1 3818:9 3825:18 3835:23
questions 3752:3,4 3753:21 3754:2 3820:4 3847:10
quickly 3806:18
quite 3745:18 3752:10 3752:12 3802:5 3815:14
Quote 3789:9

R

R 3840:17
railway 3850:20
raise 3765:6 3804:14
raised 3776:20 3804:18 3816:8
raising 3781:16
rate 3786:3,3 3822:24
RDO 3808:23 3809:7 3814:10,20
RDOs 3778:24 3779:3 3779:15 3781:21 3782:2 3783:9,10,10 3783:14 3785:4 3787:17,21 3806:5,21 3807:23 3808:2,9,17 3808:19,22 3809:12 3809:15,19 3810:5,8 3810:11,13,24 3811:8 3812:17,19 3813:23 3816:4,15 3818:4 3820:8,8,10,10,14,24 3821:5 3822:21 3823:24 3828:2 3831:17 3835:7,8
reach 3801:12 3854:19
reached 3779:20 3814:25 3819:22
reaction 3778:10 3824:9,11
read 3741:15 3748:13 3760:3,17 3765:15,22 3769:19 3770:2,2,3 3770:15 3778:23 3789:7 3791:1 3798:7 3815:18 3817:9 3820:6 3840:14 3842:18 3850:8 3855:14
reading 3818:24
really 3776:20 3789:15 3825:22 3832:9 3845:9
reason 3782:10 3804:14 3808:18,18 3808:18 3810:9
reasons 3763:17 3774:11 3835:21
recall 3748:7,12 3750:23,25 3751:7 3763:5 3773:1,6,9 3774:2 3777:17 3815:12,16 3820:2 3834:11
receive 3742:16 3743:2 3799:10 3833:25 3834:9
received 3784:25 3787:21 3801:3 3806:5 3839:16
receiving 3834:4 3835:2
recess 3760:24
recognition 3770:8
recommendation 3744:1,4,7,9
record 3756:9 3765:22 3769:19 3773:25 3778:23 3789:8 3791:2 3798:8 3809:17 3843:19 3850:3,5
recorded 3763:10 3771:6 3773:4 3794:17 3828:10,18 3829:13 3833:6,17 3841:5 3842:25
records 3786:17 3791:21 3832:21 3836:25 3839:3,10
recruited 3795:20
recruitment 3795:10
rectify 3742:18
red 3826:16
refer 3784:4,15 3788:21 3796:11 3814:12 3831:10 3844:10,18 3845:2
reference 3796:20 3817:21 3827:21 3842:4 3845:4,9 3846:5
references 3756:12
referencing 3796:22
referred 3748:8 3750:7 3755:22 3784:9 3786:16 3791:15 3796:16 3814:23 3832:20 3844:18 3859:18
referring 3816:14,16 3827:7 3831:14,20 3844:22
refers 3796:12
refine 3800:4
reflect 3825:9 3837:20
reflected 3817:25 3824:4 3838:1
reflects 3836:8
refresh 3741:14 3764:1
refused 3795:6 3857:4
regard 3744:4 3746:1 3762:6 3763:2 3788:22 3823:15 3842:15 3855:25 3859:5
regardless 3801:20
region 3781:7 3803:14 3852:5
regional 3767:9 3791:20 3792:24 3793:8 3803:10 3852:4,5
regular 3769:6
regularly 3790:4 3849:13
regulating 3770:22
Regulation 3751:19
reinstate 3795:2,7
reinstated 3780:14 3794:19,20
reinstatement 3793:21 3794:25
reinstatements 3787:20
rejected 3856:24
relate 3762:7
related 3787:2 3821:15
relating 3744:23 3755:4 3791:5 3793:2 3859:5
relation 3742:8,23 3746:10 3747:4 3748:4,13 3763:23 3783:2 3806:20 3807:23 3822:18 3827:8 3837:15 3843:17 3854:2,13 3855:8
relations 3770:12 3788:5
relationship 3825:9,19 3827:1
relax 3762:15
relaxed 3762:12
release 3780:18
relevant 3761:20 3770:6 3771:23 3781:3,12 3788:22 3793:25 3797:6 3798:7 3804:2 3817:1 3830:1
reliability 3844:14
relied 3819:19
relieve 3859:10
rely 3751:17 3847:3
remain 3836:21
remainder 3850:7
remained 3767:23 3797:1,5 3810:11,12
remaining 3757:17
remember 3748:3,13 3750:14 3752:11 3761:25 3815:15
remind 3846:25
reminded 3756:8
removed 3780:1
remuneration 3806:13
repeat 3772:10 3774:23 3775:19 3787:6 3804:23
replace 3757:16
reply 3830:20,24
report 3743:2,6,6,15,19 3743:21,23,24 3763:1 3790:4 3798:19 3811:20 3829:19 3833:14 3834:14 3835:6 3838:12,14 3839:25 3840:2 3845:5
reported 3776:18 3838:6,16,21 3840:17
reporting 3797:17
reports 3804:2 3823:22 3834:4,10 3835:2 3839:16 3842:1 3853:7
report-back 3808:13 3823:3
represent 3776:16
representative 3776:14
representatives 3799:10 3855:19 3856:8 3857:21
representing 3776:3 3856:12 3858:21
request 3801:22 3845:25
require 3747:25
required 3857:23
requires 3744:13,14
research 3742:16 3743:3,5,9,12 3747:3 3747:9,18 3748:19,24 3803:5,6 3804:15
researched 3805:12
researcher 3805:12
resolution 3855:25
resolve 3855:18
resolved 3792:21,23 3816:11 3822:21
resolving 3836:3
resource 3744:10,15 3772:14
resources 3744:13
respect 3757:17 3761:18 3763:5 3764:9,19 3769:10 3771:4 3785:16 3786:9 3788:13 3790:6,13,20 3793:7 3795:5 3797:6 3798:1 3807:19 3808:8 3809:6 3810:23 3811:15 3812:24 3814:19 3815:10 3820:5 3835:24 3837:1 3839:5 3848:8 3849:22 3850:8
respective 3799:20 3839:25 3857:9
respond 3821:25
response 3741:20,22 3742:12 3780:10 3824:20,21
responsibility 3741:24 3742:3
restore 3855:8
restructuring 3810:7
result 3795:9 3797:5 3837:19
resultant 3783:3
resulted 3741:20 3793:16 3795:15
resumes 3741:2 3782:21,22 3822:10 3822:11 3846:19
retirement 3786:6
retrenching 3810:7
return 3783:12 3789:11 3806:24 3835:11 3857:17
returned 3856:11 3857:13
Reverend 3859:8,12
reviewal 3747:24
re-employ 3795:2
re-engagement 3794:16
re-examination 3752:3
re-examine 3741:8
re-recruitment 3835:11
right 3748:9 3750:19 3759:4 3765:6 3773:18 3783:16 3803:7 3810:18 3813:5,11 3826:5,16 3832:7 3855:6
rights 3795:21 3822:5 3857:7
rise 3774:11 3778:9,16 3816:2
risen 3796:5
risk 3772:23
rival 3845:8
road 3826:10,16
rock 3785:7,16,19 3786:1,9,23 3787:9
role 3746:18 3768:12 3808:2,23 3822:17
rolled 3809:22 3812:21
round 3813:17 3815:13
route 3816:10,14,15
rules 3762:2,10,16
rumour 3824:25
rumours 3834:12
run 3754:14 3772:23 3821:11 3823:18
running 3789:18
Russo 3836:12
Russo-Bello 3830:9,16 3830:25 3831:1 3832:16 3833:6 3834:1,23 3836:7 3837:25
Rustenburg 3785:17 3785:18 3855:17
R12 3820:17 3822:23
R2 3786:8,8
R250 3820:9
R500 3820:8
R750 3820:7
R9 3779:7 3786:2

S

SACC 3858:14

sadness 3859:17
safe 3771:16
safety 3766:1 3767:6 3780:2
Saffy 3848:15
sake 3762:24 3833:13
salaries 3783:20 3806:15
salary 3785:15 3786:19 3816:6 3856:11
SAPS 3759:9 3831:22 3832:21 3848:8 3849:14
satisfy 3805:22
Saturday 3843:7
save 3848:6
saying 3761:7 3762:12 3776:19 3777:10 3789:15 3790:5 3844:1
says 3754:21 3773:11 3780:19 3786:17 3791:25 3818:19 3820:14 3823:23 3824:15,23 3833:19 3835:1,25 3836:20 3837:2 3843:10 3844:23
scarce 3808:23 3810:5 3810:10,13,16,17,20
schedule 3756:11
scratch 3795:12
seated 3765:10
second 3750:4 3758:22 3759:18 3781:23 3789:22 3791:20 3812:23 3813:2 3815:13 3823:17,18 3832:25 3836:12,24
secondly 3755:18 3771:17 3816:6
secretary 3765:24 3766:1 3767:10,14 3791:3,9,20 3805:13 3820:2,3
section 3792:16
sector 3751:14
sectors 3802:23
security 3828:10,21 3829:4,8 3831:22 3832:21 3834:3 3839:4,10,12 3840:5 3840:24 3841:22 3842:3 3844:10,12 3849:12,13 3850:4,15 3850:16 3851:7 3858:8
seek 3855:17
seeks 3790:9
seen 3763:17 3770:12
select 3811:20
selective 3770:6
Semenya 3741:7,9,13 3741:17 3742:2,6,21 3743:8,15,20 3744:3 3744:12,16,19,22,25 3745:3,6,17 3746:1,8 3746:22,25 3747:3,7 3747:11,17 3748:3,7 3748:11,16 3749:4,7 3749:10,13,16,18 3750:1,6,10,16,21,25 3751:5,9,20 3752:2 3754:3,8
send 3801:22
senior 3805:12 3830:9
sense 3746:13 3815:9 3844:13
sensible 3756:5
sent 3789:13 3830:24
sentence 3788:21 3789:4,8,22
sentences 3789:13
Senzeni 3852:12
Seoka 3859:12
separate 3756:18 3760:10,19 3799:19 3817:20
separation 3810:8,10
September 3856:12 3857:2 3858:2,10,17
sequence 3755:15 3781:18 3830:3,15 3831:4,16
series 3844:20
served 3833:19,24
serves 3767:2
service 3750:14 3753:2 3766:18
services 3741:20,23 3742:12 3777:22
serving 3851:20
session 3853:2
set 3785:16 3786:25 3794:24 3800:14 3807:5,10,17 3815:20 3823:14 3834:15 3849:24
sets 3784:7
settlement 3837:5 3855:13
settlements 3790:10
seven 3843:6
severe 3797:15 3833:12
shaft 3792:17,18,19,21 3824:25 3839:13 3841:23 3850:10
shan't 3860:4,5
share 3753:16 3769:8 3769:16
shared 3857:8
shift 3771:19,20 3806:12,17
shooting 3742:14
shootings 3854:2,6
shop 3799:5,18,23 3800:11,22 3851:2 3853:25
short 3766:5 3804:5
shortcomings 3742:4 3742:25
shortly 3772:3 3777:7 3779:20 3784:10 3839:9
shot 3842:3
shots 3837:6
shouldn't 3750:17
show 3751:4 3832:11
showed 3823:24
showing 3826:20 3829:16
shown 3763:6 3764:1
side 3752:19 3788:9 3840:23
sideways 3802:3
sight 3842:9
sign 3812:7 3857:5
signal 3830:23
signed 3755:7 3774:14 3776:17 3787:4,11 3802:20 3812:9 3856:2 3857:3,5 3858:17,18,19
significant 3806:13
signing 3857:20
similar 3771:3 3820:4
similarly 3817:19 3850:18
simplest 3842:17
simply 3756:2 3758:15 3801:19 3844:11
single 3843:23
Sir 3757:16 3822:12 3840:14 3846:8,25
sit 3742:18
situation 3748:25 3803:17 3809:7 3815:2 3817:24 3836:21 3840:25
six 3843:6
sixth 3809:8 3811:11
skill 3808:23 3810:13 3810:17
skilled 3772:13
skills 3741:21,24 3746:14 3810:5,10,16 3810:20
skull 3851:4
small 3756:15 3760:16
smooth 3755:5
sole 3797:5
Solidarity 3853:25 3855:21 3858:20
solution 3859:1
somebody 3750:23 3825:21 3843:18,18
somewhat 3817:18 3843:9 3844:23
soon 3857:12
sorry 3757:10,22 3759:13 3788:20 3796:12 3806:18 3820:12 3847:3 3854:10
sort 3758:11 3782:16 3788:4 3816:1 3843:20
sorted 3759:23 3782:24
sought 3772:9 3812:17 3813:3
sounds 3749:22 3813:22
source 3756:9
sourced 3761:22 3798:11
South 3770:8 3777:20 3777:24 3778:7 3856:8
span 3807:10
speak 3789:13 3793:24 3851:23
speaking 3762:9 3792:11 3827:23
special 3744:23 3745:7 3745:10,23 3746:12 3746:23 3757:4
specialised 3741:25 3745:6,8 3746:14
specialist 3741:21
specifically 3774:1 3831:10
spell 3754:17 3769:1
spend 3780:15
split 3741:19
Spoelstra 3751:15,16 3753:1,9,12
spokesperson 3811:20
spot 3774:16
spots 3763:13
SS1 3741:11
stab 3858:5
stabbed 3850:10
stability 3857:8
stable 3837:7
stadium 3801:16 3826:11,13 3827:3 3828:3,23 3829:5 3842:12
staff 3772:15
stage 3741:10 3749:24 3754:24 3764:4 3782:20 3784:2 3789:10 3796:18 3800:11,16 3801:24 3809:10 3812:16 3814:16 3818:2 3819:24 3823:9 3825:21 3829:8 3830:4
stakeholder 3855:16
stakeholders 3856:2 3857:7
stand 3764:25
stapled 3757:12
start 3741:10 3744:9 3745:15 3761:7 3831:6
started 3741:6 3767:21 3768:5,10 3783:10 3828:7 3834:4
starting 3831:18
starts 3830:17 3831:8
state 3808:14 3843:19
stated 3856:23
statement 3741:11 3754:22 3755:8,12,19 3755:23 3756:22 3760:4 3761:16 3762:19 3764:4,16 3765:12,16 3768:17 3769:21 3771:6 3778:20 3784:14 3791:1 3794:18 3795:15 3796:12,13 3798:3 3800:15 3805:6 3806:5 3807:2 3807:4 3809:10 3814:12 3815:18 3816:24 3820:6 3822:19 3825:13 3836:7 3838:3 3839:22 3840:4 3841:4 3849:8,24 3850:6 3851:9 3852:14 3855:14 3859:17
statements 3763:14 3797:16 3843:25
status 3811:23
stay 3846:6
stayed 3813:4
step 3802:3
steps 3764:10 3801:7
Steve 3791:9,25 3793:14
Steven 3793:22 3794:7
steward 3792:16 3851:2 3853:25
stewards 3799:5,18,23 3800:11,22
Steward's 3800:21
STF 3746:11 3747:12
stood 3811:15
stop 3752:8 3783:10,11 3796:1 3831:24 3832:23
stoppage 3828:15
stoppages 3760:7 3817:23
stopped 3751:17 3783:14
story 3814:19
strategy 3835:11
strength 3837:18
strictly 3762:3 3846:13
strike 3779:6,11,14 3780:11 3781:22,22 3782:2 3783:3 3787:17,19 3793:17 3793:19 3794:2,3,7 3794:10 3818:24 3822:17 3823:11,15 3824:5 3825:14 3829:14,17 3833:8 3834:17 3835:20 3838:12 3851:16 3855:18 3857:13,16 3858:1 3859:2
strikers 3825:15 3833:7 3842:2,11

3851:3 3856:10,13,14 3856:23 3857:4,21 3858:5,11,21,25 3859:3
striking 3782:13
strong 3831:19 3845:1
structure 3767:20 3793:8
structures 3778:17 3779:12 3803:11 3818:7 3829:21 3857:18
subheading 3855:12
subject 3746:10 3747:4 3747:19 3751:21 3769:18 3783:21 3818:3 3822:20 3847:25
subjected 3805:9
submission 3761:21 3805:23
submissions 3832:8
submit 3744:20
submits 3745:13 3805:8
submitted 3751:25 3806:1 3818:5 3820:15
subsequent 3773:19 3806:25 3811:11 3849:11 3853:4
subsequently 3763:9 3767:13
substantial 3786:23 3787:21 3789:17
succeed 3808:4,6,7
succeeded 3809:11
sufficient 3795:20
sufficiently 3793:25 3796:5
suggest 3845:8
suggested 3844:24
suggestion 3815:6,9 3830:4 3832:4,7,10
summarise 3817:12
supervisor 3772:7
supplementary 3753:21 3764:17
support 3779:6 3782:1 3787:17 3838:11
supporters 3837:5
supportive 3836:2
suppose 3843:10
sure 3746:15,17,19 3748:2 3752:18 3757:4 3796:15 3820:20,20 3835:16
surface 3793:7
surname 3751:3
surrounding 3808:21
suspect 3759:1
suspended 3791:2,9 3792:1 3793:21
suspension 3793:13
suspicion 3790:16
sustainability 3789:12
sustainable 3857:10
sustained 3780:6
swear 3765:4,7,8
swiftest 3769:19
swiftly 3835:3
sworn 3755:3
syllabus 3747:1
S-P 3751:15
S-P-O-E-L-S-T-R-A 3751:16

T

T 3841:23
table 3786:25
take 3747:23 3749:23 3755:2,14 3761:15 3764:25 3765:3 3772:19 3775:17,24 3776:7 3782:19 3786:3 3791:14 3793:3,9,19,25 3795:5 3801:12 3802:3,9 3807:16,19 3808:22 3810:6,8,10 3814:19,25 3821:10 3823:15 3827:20 3829:18,23,25 3831:15 3832:16 3836:11 3839:2 3840:10 3842:4 3843:22 3845:18,22 3846:10 3847:14 3848:5 3849:8 3856:14
taken 3763:20 3764:10 3798:24 3800:8 3815:11 3821:8 3822:1 3837:7 3846:18 3848:15
takes 3761:16 3811:22
talk 3745:20 3789:23
talking 3744:9 3745:21 3745:21,25 3859:12
task 3744:23 3745:7,10 3745:23 3746:12,15 3746:23
tea 3782:17,19 3845:18 3845:21,22 3847:23
teach 3746:22,24
team 3746:6 3772:4 3794:8 3837:15 3848:19
teams 3807:3
telephone 3830:22
tell 3750:17 3774:7 3827:6,8 3852:10 3854:13
telling 3750:12 3819:18
tells 3799:15
tensions 3810:23
term 3760:24
terminated 3857:12
terms 3770:11 3784:8 3788:9 3795:16 3798:10 3802:21,25
testified 3749:7,13 3751:5
testify 3764:15
thank 3753:19,24 3754:1 3755:11,17 3757:2 3761:12,13 3764:21 3765:9,21 3773:23 3776:9 3783:1,16 3784:12 3788:23 3795:4 3817:4 3824:16 3844:6 3846:14 3847:11 3853:3 3859:22
Thanks 3741:4 3824:17 3824:23 3825:4
Thembelakhe 3850:20
thereto 3796:20
there's 3753:20 3772:6 3800:7 3814:18 3816:5 3827:7 3844:20 3845:4 3859:13
they're 3757:11 3758:11 3759:23 3770:16 3793:24 3810:9 3830:14 3836:20 3840:5
they've 3747:15
thing 3743:14 3756:12 3785:14 3790:19 3838:1 3840:19
things 3761:6,8 3820:13 3825:7 3844:2
think 3749:20 3753:5 3753:23 3754:13 3756:16 3757:5,23 3758:24 3763:19 3769:23 3770:15,17 3781:22 3784:4,11 3786:10,11 3791:7 3796:14,15 3824:8 3827:10 3830:13,14 3830:15 3832:8 3835:14 3836:2 3839:8 3850:18 3853:17 3860:7
thinking 3809:25
third 3774:15 3777:22 3818:18 3831:14 3833:1 3845:4
thought 3741:7 3755:21 3756:1 3775:11 3777:13 3816:7 3819:1 3845:2
thousand 3801:17
threaten 3843:2
three 3747:23 3756:25 3777:18 3780:21 3820:21
three-page 3760:14
ticking 3813:23
time 3746:3,6 3747:22 3750:4,5 3752:10,12 3755:19 3756:17 3760:9 3764:11 3770:13,13 3772:7 3778:3 3780:15 3783:20 3789:3 3790:24 3793:25 3807:16 3808:13,13 3810:1,1 3816:20 3821:10 3827:3 3828:2,6,11 3830:1 3833:23 3834:10,25 3836:9 3843:6 3844:20 3846:7 3847:3 3848:19 3849:25 3851:18,21 3853:15
timekeeper 3846:21
times 3745:18 3748:21 3769:8 3820:1 3859:8
time-bomb 3809:20 3812:19 3813:23
today 3831:16 3846:12 3847:6
told 3750:23 3751:1 3754:9 3779:24 3788:15,25 3796:18
tomorrow 3756:12 3825:1 3834:6 3835:9 3860:1,9
tone 3825:8
tonight 3834:5
top 3824:11,21 3828:1 3830:21
topic 3814:10 3822:16 3827:20 3847:23 3858:9
torch 3843:8
torso 3851:5
total 3781:7,14,24 3786:6
totally 3847:7
tough 3825:2
Town 3754:22
train 3747:19 3748:1 3753:15,16,18
trained 3752:15,19,23 3753:1,8
trainees 3753:12
trainer 3748:2 3753:16 3753:18
trainers 3743:10,12,13 3746:14,16,16,18,20 3747:15,17 3748:2 3753:15,17
training 3742:3,19,24 3743:25 3745:9,11,14 3745:21,23 3746:1,2 3746:10,13,18 3747:1 3747:4,12 3750:13 3752:15,24 3753:10
transcribed 3763:21
transcribers 3754:18
transcript 3763:18 3764:2,12 3839:8
transferred 3741:21
transfers 3753:4
translate 3776:13
transmit 3757:19
transport 3839:24
traversed 3762:24
treatment 3848:15
triple 3844:3
trouble 3784:1
true 3746:13
trust 3788:9
truth 3765:5,5,6
try 3805:6
trying 3747:7 3748:16 3845:6
Tupelo 3850:9
turn 3780:16 3786:14 3788:24 3794:23 3797:24 3809:7,9 3824:20 3826:2 3850:5
turned 3775:15,21 3782:15
turning 3778:22
turns 3773:24
Twala 3851:2
two 3754:23 3755:8 3757:20,21 3759:8 3761:5,8 3762:22 3763:2 3764:14 3770:24 3775:17,22 3778:4 3779:4 3781:23 3784:6 3787:4 3793:14 3802:21 3812:10 3817:17,22 3820:21 3821:21 3836:18 3837:3,6,20 3840:9 3841:6,13 3843:11,11 3844:21,23,24,25 3845:11 3848:9 3858:18
two-year 3812:20

U

UASA 3770:7 3855:21 3858:20
ultimatum 3835:10 3851:19,20,21
un 3793:16
unabated 3858:2
unable 3782:14
unconditionally 3857:6
unconventional 3845:25
undergo 3745:24
underground 3766:11 3766:24 3772:4 3831:17
underline 3798:15
undermining 3774:13
understand 3743:21 3748:17 3754:3 3766:14 3777:5 3781:24 3789:15 3799:12 3824:24 3825:23 3854:20
understanding 3820:1 3832:12 3836:25
understands 3825:22

understatement 3845:13
understood 3789:20 3790:16 3859:24
undertaken 3763:1 3825:20
unfolded 3853:11
unfolding 3854:2
unilateral 3773:14 3774:6 3783:19 3785:15 3786:18 3787:16 3788:1 3790:15,21 3815:14 3815:19,20
unilaterally 3771:1 3821:17
union 3765:24 3766:1 3767:20 3770:7 3774:15 3785:18 3788:7,9 3792:1,12 3795:5 3797:1 3799:14 3804:19 3811:25 3822:4
unions 3795:11 3800:22 3835:25 3845:8
Union's 3805:17
unit 3744:23 3745:1,7 3746:13,16 3752:14 3779:4 3797:7
United 3770:7
units 3741:25 3745:4,5 3750:13
unnecessarily 3781:16 3843:14
unpack 3745:17
unprotected 3779:6,11 3780:11 3787:16,19 3816:16 3818:20,23 3822:17 3823:10,14 3829:17 3834:17 3835:20 3838:11 3842:11 3851:16 3855:18 3857:12 3859:2
unreasonable 3804:7 3804:11,20,25
unskilled 3782:7
update 3836:19 3851:19,22
upgraded 3785:4 3808:19
urged 3849:14
urgent 3833:18
use 3744:19 3746:9 3757:15 3842:6 3845:15
uses 3843:9
usher 3757:4,6,9,17
usual 3829:20
utilised 3753:15

V

valid 3770:24 3812:10
valuable 3772:14
value 3770:20 3824:25 3844:13
various 3748:4 3750:13 3783:21 3784:24 3795:11 3821:5 3823:19 3825:3,23
verb 3757:6
version 3842:17
vice 3820:16
vicinity 3826:10 3837:10 3839:6 3848:10,22 3850:21 3852:19 3853:10
video 3750:22 3751:4 3751:23,25 3764:1,11 3839:8
view 3772:12 3828:15
village 3838:18 3840:18
violation 3857:7
violence 3779:15 3797:12 3834:20 3835:4 3849:16 3850:3 3851:17 3855:18 3857:7 3858:1
violent 3859:2
Visible 3741:18,19 3742:12
vision 3857:8
visit 3825:2
visited 3838:18
voluntarily 3810:8

W

wage 3760:10 3771:1,5 3779:4,7 3785:21 3798:9 3809:21 3812:9 3814:10,20 3815:14 3817:17,21 3820:17 3857:11 3858:10,12,17,18 3859:5
wages 3770:23 3787:8 3808:9 3825:8
wait 3758:23
waiting 3821:12 3839:11
walking 3742:15
want 3743:21 3752:4 3755:11 3757:6 3760:24 3764:3 3768:16 3772:14 3775:4 3778:19 3790:1 3796:10,23,24 3797:24 3798:3 3799:13 3802:3,4,9 3807:16,22 3809:7 3814:9 3816:12 3818:9 3823:15 3825:17 3826:25 3827:6,20 3829:11,23 3836:3,6 3839:2 3843:8,13 3844:17 3847:14,25 3850:6 3854:8 3855:11
wanted 3751:20 3752:21 3810:8 3837:24 3845:24
wants 3845:22
warning 3833:10,10
warns 3817:22
Warrant 3751:2
watchman 3754:16
way 3756:6 3757:14 3761:6,14 3769:24 3779:12 3785:25 3786:10 3800:3 3814:3,6 3815:2 3822:3 3831:18,24,25 3832:23,23,24 3840:10 3841:15
weeks 3780:21
week's 3856:11
well-known 3751:3
went 3743:3 3748:4 3757:17 3782:1 3823:23 3853:13
weren't 3782:13
weren't 3777:3 3819:2
Western 3766:11,13 3794:6 3820:9 3841:7 3855:3,4
we'll 3748:1 3749:1 3761:24 3762:16 3779:19 3796:21 3844:4,16
we're 3754:6 3780:15 3827:19,23 3832:9 3844:3,17
we've 3755:9 3760:12 3761:16 3778:21 3829:12
we'll 3806:24
we're 3778:22 3800:15
We've 3771:8
whatsoever 3848:24
what's 3831:9
whilst 3827:19 3829:24
who'll 3811:20
widespread 3794:1 3840:1
windows 3763:6
wish 3765:1 3770:4 3792:12 3831:10 3860:1
wished 3840:2
wishes 3753:20
witness 3749:23 3754:2 3754:4 3755:3 3760:4 3796:11 3814:20 3822:13 3829:25 3843:16 3844:1 3854:12 3859:19
witnesses 3754:5,6 3762:22 3764:15
wonder 3741:7,8
Wonderkop 3801:16 3811:6 3826:13 3828:3,19,22 3829:1 3829:4 3831:18 3834:3 3837:3 3838:4 3840:25 3841:14,22 3842:11 3843:1 3854:14
won't 3749:23 3764:3 3764:13 3770:1 3782:8 3784:1 3827:14
word 3798:15 3810:14 3824:17 3831:23 3835:8,14 3836:3 3844:25 3845:8,15
wording 3856:25
words 3745:13 3753:11 3800:9 3805:16 3827:16 3831:15 3833:10
work 3741:14 3760:7 3766:11 3769:6 3782:9,14,16 3783:11 3783:12,13 3797:17 3806:16 3817:23 3825:1,2 3828:15 3833:14 3835:9 3839:18 3840:19 3841:15 3856:11 3857:9,13,17
worker 3805:8
workers 3771:3,4,17 3776:18,21 3777:3,3 3777:12 3788:9,25 3794:16 3795:3,7 3798:24 3799:10,14 3799:15 3800:5 3801:2,3 3804:18 3805:1 3811:2,7,24 3812:4 3813:9 3816:4 3816:7,9 3822:6 3838:12 3840:18 3841:1,14 3851:14,16 3851:17,20 3857:12 3857:16
workforce 3781:24 3782:1,11 3783:21
working 3743:10 3768:6 3794:8 3807:17 3816:4 3825:8
workplace 3792:15,18 3834:21
workplaces 3839:25
wounds 3850:21 3858:5
WPL 3838:14 3842:13
WPO 3820:8
writings 3748:4
written 3747:11
wrong 3743:3 3753:14
wrongdoing 3823:25
WW 3755:15

X

X 3755:15
XX's 3760:1
XX1 3755:16 3760:3
XX2 3755:24,25 3756:20 3757:10 3760:4,20
XX2.1 3756:3
XX3 3758:3,4 3759:4 3760:5 3817:5,13 3818:10
XX4 3759:6 3760:8 3817:6 3818:10,18
XX5 3759:10 3760:10 3848:2
XX6 3759:19,20 3760:11 3848:2

Y

year 3755:20 3766:17 3766:18 3779:4 3780:12 3802:10,13 3803:21 3812:23 3813:2,16 3817:17,22 3821:21 3858:18
years 3747:23 3770:24 3787:4 3809:22 3812:10,20 3814:7
yellow 3826:10
yesterday 3754:10
youth 3808:20
you'd 3741:7
you'll 3769:20 3815:12 3827:24 3841:21 3843:5
you're 3741:3,6 3749:22 3750:12 3762:12 3765:3 3789:24 3822:12,12 3827:1 3829:24 3831:13,19 3832:15
you've 3774:25 3784:9 3784:19 3788:25 3790:3,12 3792:18 3794:5,17 3803:16 3805:7,15 3807:1,2 3814:2 3815:10 3817:5 3842:16

Z

Zokwana 3852:13

0

000 3779:7 3780:24 3781:8,12 3786:8 3787:17 3794:11,20 3811:7
056 3786:6
08-2012 3759:16
08:00 3845:4
09:30 3860:9
09:34 3741:2
09:54 3750:3

1

1 3765:22 3766:4 3786:4,5,6 3813:10 3813:10,16 3821:11
1st 3780:25 3781:13 3785:22,24
10 3773:21 3780:10 3825:14 3829:3 3839:23 3841:6

3856:12
10th 3827:23 3830:5,6 3830:17 3831:2 3832:5 3834:6 3835:1 3838:3,23 3840:6 3841:18
10% 3773:12,17 3775:11 3809:22 3812:20,22 3813:3
10:14 3760:14
10:34 3770:19
10:54 3779:3
100 3847:6
11 3783:17 3794:11 3814:24 3815:18 3839:23 3847:16 3858:2
11th 3762:21 3763:5,24 3836:14 3837:10 3838:23 3839:9 3840:11 3842:8 3844:19,19 3845:3 3848:11
11.12 3784:7
11:24 3782:22
11:44 3791:11
12 3791:1,2 3796:16 3800:20 3849:11 3850:9 3852:13 3857:12
12th 3791:18 3849:3
12:04 3799:17
12:20 3828:11
12:24 3807:21
12:25 3828:18
12:44 3816:3
13 3780:24 3781:12 3791:16 3796:12,12 3850:19 3858:10
13th 3791:19
13:30 3828:21
13:45 3828:25
13:55 3829:3
14 3794:9,18 3851:1,9
14:00 3843:4 3844:19 3844:20,21
14:02 3822:11
14:22 3829:23
14:42 3838:7
147 3757:25 3758:24 3760:6
149 3759:6
15 3794:23 3852:14
15:02 3846:3
15:20 3846:20
15:40 3855:22
16 3795:14
16th 3852:18,24 3853:20 3854:9 3855:6
16:30 3841:18
17 3780:12 3781:8,14 3806:1
18 3770:25 3773:20 3796:5,13 3807:10 3858:16
18th 3793:17
18% 3773:7,19,19 3776:20 3777:12
19 3796:24
1985 3766:9
1987 3767:3
1994 3767:10

2

2 3756:3 3794:20 3812:9 3822:9
2nd 3780:11,21 3781:14
2PM 3843:4
2:19 3840:12
20 3757:21,22 3758:1 3760:8 3797:10 3814:13 3817:13 3828:11
20th 3780:18 3814:21
20:00 3841:11
200 3780:12,23 3781:10 3781:11,14
2000 3767:18
2001 3767:22
2004 3741:18 3752:11
2005 3752:12 3768:5
2006 3770:7
2007 3768:10
2009 3810:6
2011 3741:19,20 3769:11 3770:21 3771:1 3773:5,16 3775:8 3787:5,11 3791:2,18,19 3795:19 3798:1 3799:3,21 3800:16 3806:1 3807:10,11 3809:9 3811:6 3812:10 3858:3,19
2012 3757:21 3762:21 3769:12 3771:2 3778:23 3780:12 3783:19 3785:22,23 3796:5 3797:19 3814:14,22 3815:15 3816:21 3817:13,18 3820:7 3823:2,20 3825:14 3832:5 3839:23,24 3847:16 3848:11 3849:11 3850:9,19 3851:2,9 3852:18 3855:15 3856:5,12,20 3857:2 3858:3,10,17 3859:18
2012-08-11 3843:7
2013 3741:1 3770:24 3773:17 3797:23
21 3798:3
21st 3820:14,20,22
22 3760:19 3799:2 3807:11 3809:9 3827:20
22nd 3785:22,24
23 3741:1 3760:19 3799:18 3820:6 3821:4 3840:12 3841:10,18 3845:3
23rd 3766:8
24 3760:20 3800:15 3801:15 3842:16,20 3844:19 3845:9 3855:15
25 3802:4,7 3805:6
26 3806:5
27 3807:1
28 3807:1
29 3840:5 3856:5

3

3 3741:13 3780:18 3785:17 3831:19
30 3770:24 3807:3 3856:20
30th 3773:16
30.6 3809:10 3812:18
300 3786:8 3803:13 3843:1
31 3760:9 3811:2,3 3814:14 3817:18
31st 3814:21
32 3842:5
329 3782:6
33 3814:12 3816:24
34 3818:3 3820:14
35 3820:5 3821:4
36 3821:13,15
37 3822:18
39 3825:13 3829:12

4

4 3768:16 3780:20,23 3781:5,10,10 3785:5 3785:5 3800:25 3806:11 3809:12,19 3812:25 3813:5 3841:23 3846:13,23 3847:1
4:37 3840:23
40 3838:2
400 3803:13
41 3838:22 3839:22
42 3841:4
43 3847:14
44 3847:15
45 3849:8
47 3850:7
48 3852:12

5

5 3769:18 3784:6,11,19 3785:15 3786:15 3811:7 3839:9 3846:16 3853:17 3857:2 3859:18
5% 3813:18
50 3855:13
500 3786:5 3820:17 3822:23 3831:19 3857:12
540 3786:2
545 3786:3
55 3857:15
56 3857:25
57 3858:10
59 3858:23

6

6 3770:21 3784:6,11,20 3786:2 3788:22,24 3789:5 3828:2
60 3780:5 3859:15
643 3786:7
67 3759:14,15
6708-2012 3759:12
6808-2012 3759:21

7

7 3770:21 3785:5 3786:7 3791:16 3806:11 3808:3,19 3809:12,23 3812:22 3813:4
7th 3774:14 3797:23
7:59 3830:16 3831:1
700 3813:10
71 3823:16 3824:10
73 3823:16 3824:20
74 3830:11 3836:16
75 3830:12,14,17 3831:6,8 3833:3
76 3830:2,12,14,18 3831:7 3835:23
79 3839:7

8

8 3778:20 3785:17 3823:2 3824:12 3828:6 3834:25 3841:11
8th 3823:20 3829:13 3834:14
8% 3813:13,15
8.5 3774:1
8:39 3842:22
80 3842:5
82 3842:5
850 3786:4 3813:10

9

9 3773:17 3779:14 3784:14 3786:7 3787:17 3815:18
9h19 3830:24
9th 3838:23
9% 3773:12 3812:23 3813:4
9:25 3836:19
9:43 3836:14,24
950 3813:16
991 3786:2,7